**No. 134, Original**

IN THE

# Supreme Court of the United States

STATE OF NEW JERSEY,
*Plaintiff*,

v.

STATE OF DELAWARE,
*Defendant.*

## DELAWARE'S APPENDIX ON CROSS-MOTIONS FOR SUMMARY JUDGMENT

**VOLUME 1 (Pages 1 - 810)**


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December 22, 2006

## TABLE OF CONTENTS

Page

**VOLUME 1**


Compact between the State of New Jersey and the State of Delaware (Mar. 21, 1905) (signed manuscript, on file with Delaware Public Archives, Hall of Records) ..... 1

Act of Jan. 24, 1907, ch. 394, 34 Stat. 858 (1905 New Jersey-Delaware Compact) ..... 11

*New Jersey v. Delaware I* Pleadings:

Partial Record, *New Jersey v. Delaware*, No. 1, Original (1877) (printed in 1897 by The John L. Murphy Publishing Co., Trenton, NJ) ..... 15

Plaintiff's Motion for Writ of Preliminary Injunction, *New Jersey v. Delaware*, No. 1, Original (U.S. filed Mar. 19, 1877) ..... 77

Points Submitted by the Defendant in Opposition to the Motion of Complainant for a Writ of Preliminary Injunction, *New Jersey v. Delaware*, No. 1, Original (U.S. filed Mar. 19, 1877) ..... 85

Order of Continuance, *New Jersey v. Delaware*, No. 1, Original (U.S. Oct. 12, 1897) ..... 91

Plaintiff's Notice on Bill for Injunction and Relief, *New Jersey v. Delaware*, No. 1, Original (U.S. filed Mar. 22, 1901) ..... 93

Defendant's Answer, *New Jersey v. Delaware*, No. 1, Original (U.S. filed Oct. 15, 1901) ..... 95

Notice of Motion, Motion, and Brief for Defendant on Motion for Order of Reference, etc., *New Jersey v. Delaware*, No. 1, Original (U.S. filed Apr. 30, 1903) ..... 163

Notice of Intention to Call Up Motion, *New Jersey v. Delaware*, No. 1, Original (U.S. filed May 15, 1903) ..... 169

Joint Stipulation, *New Jersey v. Delaware*, No. 1, Original (U.S. filed May 28, 1903) ..... 171

Order of Continuance, *New Jersey v. Delaware*, No. 1, Original (U.S. Jan. 3, 1905) ..... 175

Letter of Special Master regarding filing of Interlocutory Report, *New Jersey v. Delaware*, No. 1, Original (Jan. 11, 1906) ..... 177

Materials from *New Jersey v. Delaware*, No. 1, Original (U.S. filed Feb. 1906) (including Interlocutory Report of Commissioner, Stipulation, Proposed Order, and Joint Statement of Reasons for Suspension of Proceedings) ..... 181

Plaintiff's Motion for Directions to Special Master, *New Jersey v. Delaware*, No. 1, Original (U.S. filed Sept. 14, 1906) ..... 193

Affidavit of Robert H. McCarter in support of Plaintiff's Motion, *New Jersey v. Delaware*, No. 1, Original (U.S. filed Sept. 15, 1906) ..... 197

*New Jersey v. Delaware II* Pleadings:

Plaintiff's Bill of Complaint, *New Jersey v. Delaware*, No. 19, Original (U.S. filed June 3, 1929) ..... 199

Defendant's Answer to Complaint, *New Jersey v. Delaware*, No. 19, Original (U.S. filed Oct. 9, 1929) ..... 217

Order granting New Jersey's Motion for Appointment of Special Master, *New Jersey v. Delaware*, No. 19, Original (U.S. Jan. 6, 1930) ..... 274

Deposition Transcripts -- Delaware Witnesses:

David P. Blaasch (Oct. 26, 2006) ..... 275

Philip J. Cherry (Oct. 20, 2006) ..... 289

Laura M. Herr (Oct. 18, 2006) ..... 305

Robert W. Hutchins (Oct. 26, 2006) ..... 325

William F. Moyer (Oct. 18, 2006) ..... 339

Kurt Reuther (Oct. 5, 2006) ..... 393

William F. Streets (Sept. 26, 2006) ..... 419

Deposition Transcripts – New Jersey Witnesses:

Kevin Broderick (Sept. 27, 2006) ..... 445

Richard G. Castagna (Oct. 24, 2006) ..... 481

Suzanne Dietrick (Oct. 13, 2006) ..... 539

Ruth E. Ehinger (Oct. 23, 2006) ..... 577

James R. Johnson (Nov. 1, 2006) ..... 619

Martin J. McHugh (Oct. 11, 2006) ..... 651

Beth S. Reddy (Oct. 20, 2006) ..... 679

David Q. Risilia (Oct. 4, 2006) ..... 707

Carl W. Wentzell (Oct. 20, 2006) ..... 751

Steven Whitney (Oct. 10, 2006) ..... 771

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Volume Page
1302
L01
007
1905
NJ & DE
Boundary
Compact
08768

# Compact between THE State of New Jersey AND THE State of Delaware,

## Relating to the boundary controversy between said States

### Whereas

a controversy hath heretofore existed between the states of New Jersey and Delaware, relating to the jurisdiction of such portion of the Delaware River as is included within the circle of twelve mile radius, an arc of which constitutes the northern boundary of the State of Delaware, and it is the mutual desire of said States to so settle and determine such controversy as to prevent future complications arising therefrom;

### And Whereas,

there is now pending in the Supreme Court of the United States, a cause wherein the said State of New Jersey is the complainant and the said State of Delaware is the defendant, in which cause an injunction has been issued against the State of Delaware restraining the execution of certain statutes of the State of Delaware relating to fisheries in said river, which said litigation hath been pending for twenty-seven years and upwards;

### And Whereas,

for the purpose of adjusting the differences between the said two States arising out of said conflict of jurisdiction,

Edward C. Stokes, Robert H. McCarter, Franklin Murphy and Chauncey G. Parker, have been appointed Commissioners on the part of the State of New Jersey by joint resolutions of the Legislature of said State, and Preston Lea, Robert H. Richards, Herbert H. Ward and George H. Bates have been appointed commissioners on the part of the State of Delaware, by joint resolution of the General Assembly of said State to frame a compact or agreement between the said States and legislation consequent thereon, to be submitted to the Legislatures of said two States for action thereon, looking to the amicable termination of said suit between said States now pending in the Supreme Court of the United States, and the final adjustment of all controversies relating to the boundary line between said States and their respective rights in the Delaware River and Bay.

## Now Therefore,

the said State of New Jersey, by its Commissioners aforenamed, and the said State of Delaware, by its Commissioners above named, do hereby make and enter into a compact or agreement between said States as follows:

**Article 1:** Criminal process issued under the authority of the State of New Jersey against any person accused of any offence committed upon the soil of said State, or upon the Eastern half of said Delaware River, or committed on board of any vessel being under the exclusive jurisdiction of that State, and also civil process issued under the authority of the State of New Jersey against any person domiciled in that State, or against property taken out of that State to evade the laws

thereof may be served upon any portion of the Delaware River between said States from low water mark on the New Jersey shore to low water mark on the Delaware shore, except upon Reedy and Pea Patch Islands, unless such person or property shall be on board a vessel aground upon or fastened to the shore of the State of Delaware, or the shores of said islands or fastened to a wharf adjoining thereto, or unless such person shall be under arrest or such property shall be under seizure by virtue of process or authority of the State of Delaware.

**Article II:** Criminal process issued under the authority of the State of Delaware against any person accused of an offence committed upon the soil of said State, or upon the western half of said Delaware River or committed on board of any vessel being under the exclusive jurisdiction of that State, and also civil process issued under the authority of the State of Delaware against any person domiciled in that State, or against property taken out of that State to evade the laws thereof, may be served upon any portion of the Delaware River between said States from low water mark on the Delaware shore to low water mark on the New Jersey shore, unless said person or property shall be on board a vessel aground upon or fastened to the shore of the State of New Jersey, or fastened to a wharf adjoining thereto, or unless such person shall be under arrest, or such property shall be under seizure by virtue of process or authority of the State of New Jersey.

**Article III:** The inhabitants of the said

States of Delaware and New Jersey shall have and enjoy a common right of fishery throughout, in and over the waters of said river between low-water marks on each side of said river between the said States, except so far as either State may have heretofore granted valid and subsisting private rights of fishery.

**Article IV:** Immediately upon the execution hereof the Legislature of the State of New Jersey shall appoint three Commissioners to confer with three Commissioners to be immediately appointed by the General Assembly of the State of Delaware for the purpose of drafting uniform laws to regulate the catching and taking of fish in the Delaware River and Bay between said two States, which said commissioners for each State respectively shall, within two years from the date of their appointment, report to the Legislature of each of said states the proposed laws as framed and recommended by said joint Commission. Upon the adoption and passage of said laws so recommended by the respective Legislatures of said two States said laws shall constitute the sole laws for the regulation of the taking and catching of fish in the said river and bay between said States. Said laws shall remain in force until altered, amended or repealed by concurrent legislation of the said two States. Said Commissioners shall also ascertain the dividing line between said river and bay, and where each of the shores of said two States, where said dividing line extended shall intersect the same, shall, at the joint expense of said States, erect a suitable monument to mark the said dividing line. Said dividing line between

said monuments shall be the division line between the said river and bay for the interpretation of and for all purposes of this compact, and of the concurrent legislation provided for herein.

The faith of the said contracting States is hereby pledged to the enactment of said laws so recommended by said Commissioners, or to such concurrent legislation as may seem judicious and proper in the premises to the respective Legislatures thereof.

Each State shall have and exercise exclusive jurisdiction within said river to arrest, try and punish its own inhabitants for violation of the concurrent legislation relating to fishery herein provided for.

**Article V:** All laws of said States relating to the regulation of fisheries in the Delaware River not inconsistent with the right of common fishery hereinabove mentioned shall continue in force in said respective States until the enactment of said concurrent legislation as herein provided.

**Article VI:** Nothing herein contained shall affect the planting, catching or taking of oysters, clams or other shell fish, or interfere with the oyster industry as now or hereafter carried on under the laws of either State.

**Article VII:** Each State may, on its own side of the river, continue to exercise riparian jurisdiction of every kind and nature, and to make grants, leases

and conveyances of riparian lands and rights under the laws of the respective States.

**Article VIII:** Nothing herein contained shall affect the territorial limits, rights or jurisdiction of either State in, on or over the Delaware River, or the ownership of the sub-aqueous soil thereof, except as herein expressly set forth.

**Article IX:** This agreement shall be executed by the said Commissioners, when authorized to do so by the Legislatures of the said States. It shall thereupon be submitted to Congress for its consent and approval. Upon the ratification thereof by Congress it shall be and become binding in perpetuity upon both of said States; and thereupon the suit now pending in the Supreme Court of the United States, in which the State of New Jersey is complainant and the State of Delaware is defendant, shall be discontinued, without costs to either party, and without prejudice. Pending the ratification hereof by Congress said suit shall remain in state quo.

Done in two parts (one of which is retained by the Commissioners of Delaware, to be delivered to the Governor of that State, and the other one of which is retained by the Commissioners of New Jersey, to be delivered to the Governor of that State) this twenty-first day of March in the Year of our Lord, one thousand nine hundred and five.

Edward C Stokes
Robert H. McCarter
Franklin Murphy
Chauncey G. Parker

By Stokes Jr
Robt H. Richards
Herbert N. Ward.
Geo. H. Bates

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Volume Page

Delaware – New Jersey
Compact

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Volume Page
1302 - L01 - 007
1905
NJ + DE Compact

January 28, 1907. [H. R. 21083.] [Public, No. 31.]

CHAP. 393.—An Act To increase the limit of cost of five light-house tenders heretofore authorized.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the limit of cost of tender for inspector in the third light-house district, in the Light-House Establishment, under the Light-House Board, in the Department of Commerce and Labor, heretofore authorized, is hereby increased by the sum of sixty-five thousand dollars, so as to make the total limit of cost two hundred thousand dollars instead of one hundred and thirty-five thousand dollars, as heretofore authorized.

Light-house tenders. Cost of, increased. Third district. Vol. 33, p. 1171.

Sixth district. Vol. 33, p. 1171.

SEC. 2. That the limit of cost of tender for inspector in the sixth light-house district, heretofore authorized, is hereby increased by the sum of sixty thousand dollars, so as to make the total limit of cost two hundred thousand dollars instead of one hundred and forty thousand dollars, as heretofore authorized.

Eleventh district. Vol. 33, p. 1171.

SEC. 3. That the limit of cost of tender for inspector in the eleventh light-house district, heretofore authorized, is hereby increased by the sum of sixty thousand dollars, so as to make the total limit of cost two hundred thousand dollars instead of one hundred and forty thousand dollars, as heretofore authorized.

Twelfth district. Ante, p. 824.

SEC. 4. That the limit of cost of tender for engineer service in the twelfth light-house district, heretofore authorized, is hereby increased by the sum of sixty-five thousand dollars so as to make the total limit of cost two hundred and fifteen thousand dollars instead of one hundred and fifty thousand dollars, as heretofore authorized.

Thirteenth district. Ante, p. 824.

SEC. 5. That the limit of cost of tender for inspection service in the thirteenth light-house district, heretofore authorized, is hereby increased by the sum of sixty-five thousand dollars, so as to make the total limit of cost two hundred and fifteen thousand dollars instead of one hundred and fifty thousand dollars, as heretofore authorized.

Contracts.

SEC. 6. That the Secretary of Commerce and Labor is hereby authorized to enter into contracts for any or all of the tenders herein referred to within the respective limits of cost, as provided by this Act.

May be built in navy-yards.

SEC. 7. That the President may direct that all or any of the tenders in this Act referred to shall be constructed in any of the Government navy-yards within the respective limits of cost provided.

Approved, January 28, 1907.

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January 24, 1907. [S. 4870.] [Public, No. 32.]

CHAP. 394.—An Act Giving the consent of Congress to an agreement or compact entered into between the State of New Jersey and the State of Delaware respecting the territorial limits and jurisdiction of said States.

Preamble.

Whereas commissioners duly appointed on the part of the State of New Jersey and commissioners duly appointed on the part of the State of Delaware, for the purpose of agreeing upon and settling the jurisdiction and territorial limits of the two States, have executed certain articles, which are contained in the words following, namely:

"First. Whereas a controversy hath heretofore existed between the States of New Jersey and Delaware relative to the jurisdiction of such portion of the Delaware River as is included within the circle of twelve-mile radius, an arc of which constitutes the northern boundary of the State of Delaware, and it is the mutual desire of said States to so settle and determine such controversy as to prevent future complications arising therefrom; and

"Whereas there is now pending in the Supreme Court of the United States a cause wherein the said State of New Jersey is the complainant and the said State of Delaware is the defendant, in which cause an

DE06770

injunction has been issued against the State of Delaware restraining the execution of certain statutes of the State of Delaware relating to fisheries in said river, which said litigation hath been pending for twenty-seven years and upwards; and

"Whereas for the purpose of adjusting the differences between the said two States arising out of said conflict of jurisdiction, Edward C. Stokes, Robert H. McCarter, Franklin Murphy, and Chauncey G. Parker have been appointed commissioners on the part of the State of New Jersey by joint resolution of the legislature of said State, and Preston Lea, Robert H. Richards, Herbert H. Ward, and George H. Bates have been appointed commissioners on the part of the State of Delaware by joint resolution of the general assembly of said State, to frame a compact or agreement between the said States and legislation consequent thereon, to be submitted to the legislatures of said two States for action thereon, looking to the amicable termination of said suit between said States now pending in the Supreme Court of the United States, and the final adjustment of all controversies relating to the boundary line between said States, and to their respective rights in the Delaware River and Bay: Now therefore,

"The said State of New Jersey, by its commissioners above named, and the said State of Delaware, by its commissioners above named, do hereby make and enter into a compact or agreement between said States as follows:

"ARTICLE I. Criminal process issued under the authority of the State of New Jersey against any person accused of an offense committed upon the soil of said State, or upon the eastern half of said Delaware River, or committed on board of any vessel being under the exclusive jurisdiction of that State, and also civil process issued under the authority of the State of New Jersey against any person domiciled in that State, or against property taken out of that State to evade the laws thereof, may be served upon any portion of the Delaware River between said States from low-water mark on the New Jersey shore to low-water mark on the Delaware shore, except upon Reedy and Pea Patch islands, unless said person or property shall be on board a vessel aground upon or fastened to the shore of the State of Delaware, or the shores of said islands, or fastened to a wharf adjoining thereto, or unless such person shall be under arrest or such property shall be under seizure by virtue of process or authority of the State of Delaware.

"ART. II. Criminal process issued under the authority of the State of Delaware against any person accused of an offense committed upon the soil of said State, or upon the western half of said Delaware River, or committed on board of any vessel being under the exclusive jurisdiction of that State, and also civil process issued under the authority of the State of Delaware against any person domiciled in that State, or against property taken out of that State to evade the laws thereof, may be served upon any portion of the Delaware River between said States from low-water mark on the Delaware shore to low-water mark on the New Jersey shore, unless said person or property shall be on board a vessel aground upon or fastened to the shore of the State of New Jersey, or fastened to a wharf adjoining thereto, or unless such person shall be under arrest or such property shall be under seizure by virtue of process or authority of the State of New Jersey.

"ART. III. The inhabitants of the said States of Delaware and New Jersey shall have and enjoy a common right of fishery throughout, in, and over the waters of said river between low-water marks on each side of said river between the said States, except so far as either State may have heretofore granted valid and subsisting private rights of fishery.

DE06771

"ART. IV. Immediately upon the execution hereof the legislature of the State of New Jersey shall appoint three commissioners to confer with three commissioners to be immediately appointed by the general assembly of the State of Delaware for the purpose of drafting uniform laws to regulate the catching and taking of fish in the Delaware River and Bay between said two States, which said commissioners for each State, respectively, shall, within two years from the date of their appointment, report to the legislature of each of said States the proposed laws so framed and recommended by said joint commission. Upon the adoption and passage of said laws so recommended by the respective legislatures of said two States said laws shall constitute the sole laws for the regulation of the taking and catching of fish in the said river and bay between said States. Said laws shall remain in force until altered, amended, or repealed by concurrent legislation of the said two States. Said commissioners shall also ascertain the dividing line between said river and bay, and upon each of the shores of said two States where said dividing line extended shall intersect the same, shall, at the joint expense of said States, erect a suitable monument to mark the said dividing line. Said dividing line between said monuments shall be the division line between the said river and bay for the interpretation of and for all purposes of this compact, and of the concurrent legislation provided for therein.

"The faith of the said contracting States is hereby pledged to the enactment of said laws so recommended by said commissioners, or to such concurrent legislation as may seem judicious and proper in the premises to the respective legislatures thereof.

"Each State shall have and exercise exclusive jurisdiction within said river to arrest, try, and punish its own inhabitants for violation of the concurrent legislation relating to fishery herein provided for.

"ART. V. All laws of said States relating to the regulation of fisheries in the Delaware River not inconsistent with the right of common fishery hereinabove mentioned shall continue in force in said respective States until the enactment of said concurrent legislation as herein provided.

"ART. VI. Nothing herein contained shall affect the planting, catching, or taking of oysters, clams, or other shell fish, or interfere with the oyster industry as now or hereafter carried on under the laws of either State.

"ART. VII. Each State may, on its own side of the river, continue to exercise riparian jurisdiction of every kind and nature, and to make grants, leases, and conveyances of riparian lands and rights under the laws of the respective States.

"ART. VIII. Nothing herein contained shall affect the territorial limits, rights, or jurisdiction of either State of, in, or over the Delaware River, or the ownership of the subaqueous soil thereof, except as herein expressly set forth.

"ART. IX. This agreement shall be executed by the said commissioners when authorized to do so by the legislatures of the said States. It shall thereupon be submitted to Congress for its consent and approval. Upon the ratification thereof by Congress it shall be and become binding in perpetuity upon both of said States; and thereupon the suit now pending in the Supreme Court of the United States, in which the State of New Jersey is complainant and the State of Delaware is defendant, shall be discontinued without costs to either party and without prejudice. Pending the ratification hereof by Congress said suit shall remain in statu quo.

"Done in two parts (one of which is retained by the commissioners of Delaware, to be delivered to the governor of that State, and the other one of which is retained by the commissioners of New Jersey, to

DE06772

be delivered to the governor of that State) this twenty-first day of March, in the year of our Lord one thousand nine hundred and five."

| | |
|---|---|
| EDWARD C. STOKES, | PRESTON LEA, |
| ROBERT H. MCCARTER, | ROBERT H. RICHARDS, |
| FRANKLIN MURPHY, | HERBERT H. WARD, |
| CHAUNCEY G. PARKER, | GEO. H. BATES. |

And whereas the said agreement has been confirmed by the legislatures of the said States of New Jersey and Delaware, respectively: Therefore

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the consent of the Congress of the United States is hereby given to the said agreement and to each and every part and article thereof: *Provided*, That nothing therein contained shall be construed to impair or in any manner affect any right or jurisdiction of the United States in and over the islands or waters which form the subject of the said agreement.

Approved, January 24, 1907.

Delaware River. Agreement between New Jersey and Delaware as to, ratified. Proviso. Rights of United States not affected.

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CHAP. 397.—An Act To reorganize and to increase the efficiency of the artillery of the United States Army.

January 25, 1907. [S. 3023.] [Public, No. 23.]

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the artillery of the United States Army shall consist of the Chief of Artillery, the coast artillery, and the field artillery. The coast artillery and the field artillery shall be organized as hereinafter specified, and the artillery shall belong to the line of the Army: *Provided*, That on and after July first, nineteen hundred and eight, the Chief of Artillery shall cease to exercise supervision over the field artillery and shall thereafter be designated as the Chief of Coast Artillery.

Army. Artillery reorganization. Coast and field artillery organization. Vol. 31, p. 748, amended. Proviso. Chief of Artillery to be Chief of Coast Artillery after July 1, 1908, etc.

SEC. 2. That the Chief of Artillery or Chief of Coast Artillery shall be an additional member of the General Staff Corps, and his other duties shall be prescribed by the Secretary of War.

To be additional member of General Staff Corps.

When a vacancy occurs in the office of the Chief of Artillery or Chief of Coast Artillery the President may appoint to such vacancy, by and with the advice and consent of the Senate, an officer selected from the coast artillery, who shall serve for a period of four years unless reappointed for further periods of four years; and any officer who shall hereafter serve as Chief of Artillery or Chief of Coast Artillery shall, when retired, be retired with the rank, pay, and allowances authorized by law for a brigadier-general on the retired list. The position vacated by an officer appointed Chief of Artillery or Chief of Coast Artillery shall be filled by promotion in that arm according to existing law, but the officer thus appointed shall continue in the same lineal position in his arm which he would have held if he had not been so appointed, and shall be an additional number in the grade from which he was appointed or to which he may be promoted: *Provided*, That there shall not be at any time in the coast artillery more than one additional officer by reason of the appointment of a Chief of Artillery or Chief of Coast Artillery and the relief of an officer from such duty.

Vacancies; how filled.

Rank, etc., upon retirement.

Additional number in grade. Proviso. Limit.

SEC. 3. That the coast artillery is the artillery charged with the care and use of the fixed and movable elements of land and coast fortifications, including the submarine mine and torpedo defenses.

Coast artillery; duties.

SEC. 4. That the field artillery is the artillery which accompanies an army in the field, and includes light artillery, horse artillery, siege artillery, and mountain artillery.

Field artillery.

SEC. 5. That the coast artillery shall constitute a corps, and shall consist of one Chief of Coast Artillery with the rank, pay, and allow-

Coast artillery to constitute a corps. Number of officers.

DE06773

# Supreme Court of the United States.

OCTOBER TERM, 1884.

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## No. 1. ORIGINAL DOCKET.

The State of New Jersey,

*Complainant,*

VS.

The State of Delaware.

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# RECORD.

TRENTON, N. J.:
THE JOHN L. MURPHY PUBLISHING COMPANY, PRINTERS.
1897.

# INDEX.


| | PAGE |
|---|---|
| Notice of motion for leave to file bill | 3 |
| Notice of motion for subpœnas | 3 |
| Notice of motion for preliminary injunction | 3 |
| Proof of notice of motion | 4 |
| Motion for leave to file bill | 5 |
| Minute order granting leave to file bill, awarding subpœnas, and assigning motion for preliminary injunction for argument | 5 |
| Bill of complaint | 6 |
| Subpœna | 51 |
| Proof of service of subpœna | 51 |
| Argument on motion for preliminary injunction | 52 |
| Order for preliminary injunction | 52 |
| Proof of service of preliminary injunction | 54 |
| Injunction and proof of service | 55 |
| Order to plead, answer or demur | 57 |
| Docket entries | 58 |
| Agreement of counsel May 2d, 1892 | 59 |
| Notice to plead, &c., accepted July 13th, 1897 | 60 |
| Notice of application for decree *pro confesso*, and to refer same to United States Commissioner September 8th, 1897 | 60 |
| Substitution of counsel | 61 |

# Supreme Court of the United States

## IN EQUITY.

THE STATE OF NEW JERSEY
v.
THE STATE OF DELAWARE.
On Bill, &c.

### NOTICE OF MOTION FOR LEAVE TO FILE BILL, SUBPŒNAS AND PRELIMINARY INJUNCTION.

*To the State of Delaware and to the Governor and Attorney-General of said State:*

Notice is hereby given that on Friday, the second day of March, 1877, at ten o'clock in the forenoon of that day, or as soon thereafter as the court can attend to the same, in the Supreme Court room, in the capitol, in the city of Washington, District of Columbia, I will make motions before the Supreme Court of the United States, on behalf of the State of New Jersey, for leave to file in said court a bill in equity by the State of New Jersey against the State of Delaware, and also the affidavits annexed to said bill (copies of which bill and affidavits will be herewith delivered to you), that process of subpœna may issue from said court, to be directed to the State of Delaware to answer said bill, and also for a preliminary writ of injunction pursuant to the prayer in that behalf in said bill contained; and the statements of said bill and the affidavits and the extract from the last biannual message of the Governor of the State of Delaware, annexed to said bill, will be used and relied upon to

support the said motion for a preliminary writ of injunction. Copies of said motion are herewith delivered to you.

I have the honor to be, very respectfully,

Your obedient servant,

JACOB VANATTA,

*Atty.-Genl. and Sol. of Complainant.*

Dated at Trenton, N. J.,
February 17th, 1877.

---

PROOF OF NOTICE OF MOTION.

UNITED STATES OF AMERICA, }
STATE OF NEW JERSEY, } *ss.*

*Milo Yeomans*, of full age, being duly sworn according to law, on his oath saith that he resides at Trenton, in the State of New Jersey, and that, at the request of Jacob Vanatta, the Attorney-General of the State of New Jersey, he did deliver on the twentieth day of February, 1877, to Hon. John P. Cochrane, Governor of the State of Delaware, at his residence near Middletown, in the State of Delaware, a notice of which the above notice is a true copy, and also a printed copy of the bill of complaint, and a printed copy of the motion mentioned in said notice; and on the same day deponent did deliver to Hon. John B. Pennington, Attorney-General of the State of Delaware, at the State House, at Dover, Delaware, a notice of which the above notice is a copy, and two printed copies of said bill in equity, and two printed copies of the said motion.

MILO YEOMANS.

Subscribed and sworn to before me, February 26th, 1877, at Trenton, New Jersey.

W. S. BELVILLE,
*U. S. Commr., Dist. of N. J.*

Endorsed—Original. U. S. Supreme Court. In Equity. The State of New Jersey *v.* The State of Delaware. Notice of Motion. Filed 13th March, 1877.

MOTION FOR LEAVE TO FILE BILL.

Supreme Court of the United States. The State of New Jersey *v.* The State of Delaware. Original No.

Now comes the above-named complainant and moves Court for leave to file in this court its bill in equity against above-named defendant and for process to answer.

FREDERICK T. FRELINGHUYSEN,
*Of Counsel for Complainant.*

Suppose process had better issue to Hon. John P. Cochran, Governor of Delaware, and the writ can be enclosed to John B. Pennington, Attorney-General of Delaware, over. He will procure the Governor's acceptance of service.

T. F. BAYARD.

Endorsed—Sup. Court U. S., 1876. Oct. Term. Original The State of New Jersey, Complt., *v.* The State of Delaware. Motion for leave to file bill and for process. Filed 13th March, 1877.

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MINUTE ORDER GRANTING LEAVE TO FILE BILL, AWARDING SUBPŒNAS, AND ASSIGNING MOTION FOR PRELIMINARY INJUNCTION FOR ARGUMENT.

On the 13th of March, A. D. 1877, the following entry appears of record, to wit:

"Supreme Court of the United States. The State of New Jersey, Complainant, *v.* The State of Delaware.

On motion of Mr. E. L. Stanton leave is hereby granted him to file bill in this cause, and it is ordered that subpœnas issue to the defendants, and that the motion for preliminary injunction be assigned for argument on Monday next, the 15th instant."

## BILL OF COMPLAINT.

*To the Justices of the Supreme Court of the United States:*

The State of New Jersey, one of the States of the United States of America, brings this its bill against the State of Delaware, also one of the States of the United States of America, and thereupon your orator complains and says:

That your orator is the owner in fee-simple of a portion of the bed of the Delaware river, that is to say, from the southeasterly corner of the State of Pennsylvania, on said river, down said river to and into Delaware bay. That within the limits aforesaid, your orator's part of the bed of said river extends from the New Jersey shore thereof to the middle of said river. That within and beyond the limits aforesaid the tides of the ocean ebb and flow, and that, within the limits aforesaid, your orator has and is entitled to, in and on every part of the waters of said river, an equal interest and concurrent jurisdiction with the State of Delaware, and that your orator has title to the rights aforesaid, by the means hereinafter stated, namely:

A. Letters-patent from Charles the Second, King of England, to his brother James, the Duke of York, bearing date the twelfth of March, 1664, in and by which the said King did give and grant unto his said brother James, Duke of York, his heirs and assigns, all that part of the mainland of New England, beginning at a certain place called or known by the name of St. Croix, next adjoining to New Scotland, in America; and from thence extending along the seacoast unto a certain place called Petuaquine, or Pemaquid, and so up the river thereof to the farthest head of the same as it tendeth northward; and extending from thence to the river of Kenebeque, and so upwards by the shortest course to the river of Canada northward, and also all that island or islands commonly called by the several name or names of Matowacks or Long Island, situate, lying and being towards the west of Cape Codd, and the Narrow Higansetts abutting upon the mainland between the two rivers there, called

or known by the several names of Conecticut or Hudson's river, together also with the said river called Hudson's river, and all the lands from the west side of Conecticut to the east side of Delaware bay. And also, all those several islands called or known by the names of Martin's Vineyard and Nantuke's, or otherwise Nantukett; together with all the lands, islands soiles, rivers, harbours, mines, minerals, quarries, woods, marshes, waters, lakes, fishings, hawkings, huntings and fowling; and all other royaltys, profits, commodities and hereditaments to said several islands, lands and premises belonging and appertaining, with their and every of their appurtenances.

And further by the said patent, did grant unto the said James, Duke of York, his heirs, deputies, agents, commissioners and assigns, full and absolute power and authority to correct, punish, pardon, govern and rule all such the subjects of such King, his heirs and successors, as should from time to time adventure themselves into any the parts or places aforesaid, or that should at any time thereafter inhabit within the same according to such laws, orders, ordinances, directions and instruments as by the said Duke or his assigns should be established; and in defect thereof, in case of necessity, according to the good discretions of his deputies, commissioners, officers or assigns respectively; as well in all causes and matters capital and criminal as civil, both marine and others; so always as the said statutes, ordinances and proceedings should not be contrary to, but as near as conveniently may be, agreeable to the laws, statutes and government of the realm of England.

Also to make, ordain and establish all manner of orders, laws, directions, instructions, forms and ceremonies of government and magistracy, fit and necessary for and concerning the government of the territories and islands aforesaid, so always that the same be not contrary to the laws and statutes of the realm of England, but as near as may be agreeable thereunto; and the same at all times thereafter to put in execution or abrogate, revoke or change, not only within precincts of the said territories or islands, but also upon the seas in going and coming to and from the

same, as he or they in their good discretion should think the fittest for the good of the adventurers and inhabitants there.

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And further, that it should be lawful to and for the said James, Duke of York, his heirs and assigns, in his or their discretion, from time to time, to admit such and so many person or persons to trade and traffique unto and within the said territories and islands aforesaid, and unto every or any part and parcel thereof; and to have, possess and enjoy any lands or hereditaments in the parts and places aforesaid, as they should think fit, according to the laws, orders, constitutions and ordinances by the said Duke, his heirs, deputies, commissioners and assigns, should be made and established by virtue of and according to the true intent and meaning of the said letters-patent.

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And further, did give and grant unto the said Duke, his heirs and assigns, and declare that it should be lawful to and for him, them or any of them at all and every time and times thereafter, out of any of the said King's realms or dominions whatsoever, take, lead, carry and transport in and to their voyages, and for and towards the plantations of said territories and islands, all such and so many of his subjects or any other strangers being not prohibited or under restraint, that would become the subjects of said King, and live under his allegiance, as should willingly accompany them on the said voyages, etc.

And also to all and every such governor or governors or other officers or ministers as by the said Duke, his heirs and assigns, should be appointed to have power and authority of government and command in or over the inhabitants of the said territories or islands that they and every of them should, and lawfully might, from time to time at all times thereafter, for their own defense and safety encounter, expulse, repel and resist, by force of arms, as well by sea as by land, and all ways and means whatsoever, all such person and persons as without the special license of the said Duke, his heirs or assigns, should attempt to inhabit within

the said precincts and limits of said territories and islands. And also all and every such person and persons whatsoever, as should enterprise or attempt at any time thereafter the destruction, invasion, detriment or annoyance to the parts, places or islands aforesaid, or any part thereof, as by reference to the said letters-patent, leave of reference to which is hereby prayed, will more fully and at large appear.

B. That after the making of the said grant, and in or about the year 16 , the territory included in the said grant was conquered by the military power of the States of the United Provinces of the Netherlands, and afterwards in or about the the said territory by the said conqueror was surrendered to the King of England, and thereupon, in order to make good and affirm and establish the aforesaid grant, the said King of England, by his letters-patent bearing date on or about the twenty-ninth day of June, 1674, did grant and convey unto the said Duke of York all and every of the property and all and every of the rights, powers and privileges granted, conveyed, transferred and assured in and by the patent first hereinbefore mentioned, using in the last one of the said patents the same words which are used in the first of the said patents, and no others except those stating the date, as by reference to the last-mentioned of said patents, leave of reference to which is hereby prayed, will more fully and at large appear.

C. By lease and release, which lease was dated the 23d and the release the 24th day of June, 1664, made by the said James, Duke of York, etc., party of the first part, and Lord John Berkeley and Sir George Carteret, parties of the second part, the said James, after reciting the grant so as aforesaid made to him by the aforesaid letters-patent, dated 18th March, 1664, for a competent sum of good and lawful money to him paid by the said Berkeley and Carteret, did grant and bargain, sell, release and confirm to said Berkeley and Carteret, their heirs and assigns forever, all that tract of land adjacent to New England and lying and being to the westward of Long Island and Manhitas Island, and bounded on the east part by the main sea and part by Hud-

son's river, and hath upon the west Delaware bay or river, and extendeth southward to the main ocean as far as Cape May at the mouth of Delaware bay, and to the northward as far as the northernmost branch of the said bay or river of Delaware, which is forty-one degrees and forty minutes of latitude, and crosseth over thence in a straight line to Hudson's river in forty-one degrees of latitude, which said tract of land is hereafter to be called by the name or names New Cæsarea or New Jersey, and also all rivers, mines, minerals, woods, fishings, hawking, hunting and fowling, and all other royalties, profits, commodities and hereditaments whatsoever to the said lands and premises belonging or in anywise appertaining, with their and every of their appurtenances, in as full and ample a manner as the same is granted to the said Duke of York by the before-recited letters-patent, and all the estate, right, title, interest, benefit, advantage, claim and demand of the said James, Duke of York, of, in and to the said and premises, or any part or parcel thereof, and the reversion and reversions, remainder and remainders thereof.

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To have and to hold, all and singular, the said tract of land and premises with their and every of their appurtenances, and every part and parcel thereof, unto the said Berkeley and Carteret, to their heirs and assigns forever, to the only use and behoof of the said Berkeley and Carteret, their heirs and assigns forever, yielding and rendering therefor yearly and every year the sum of twenty nobles, lawful money of England, if the same should be lawfully demanded, at or in the Inner Temple Hall, London, at the feast of St. Michael, the archangel, yearly. As by reference to the said release, leave of reference to which is prayed, will more fully and at large appear.

D. "The concession and agreement of the lords proprietors of the province of New Ceseres or New Jersey, to and with all and every the adventurers and all such as shall settle or plant there," made and published by the said John Berkeley and George Carteret, and bearing date the 10th

day of February, in the year of our Lord one thousand six hundred and sixty-four. These concessions and agreements were made for the purpose of inducing people to settle and dwell in the said province, and were pledges, guarantees and assurances to such settlers. Said concessions relate to the power and rights of the governor, and council, and secretary or register, surveyor-general, assemblymen and other officers in the said province; to the legislative power of the assembly, among which were in the said province to create and appoint such and so many ports, harbors, creeks and other places for the convenient loading and unloading of goods and merchandise out of ships, boats and other vessels, as should be expedient, with such jurisdictions, privileges and franchise to such ports, etc., belonging, as they should judge most conducing to the general good and welfare of the province.

And that the inhabitants of the said province should have free passage through or by any seas, bounds, creeks, rivers or rivulets, etc., in the said province, through or by which they must necessarily pass to come from the main ocean to any part of the province aforesaid, as by reference to the said concession and agreements, leave of reference to which is hereby prayed, will more fully and at large appear.

These grants and concessions bear even date with the appointment and commission of Sir Philip Carteret, the first Governor of New Jersey, who was appointed by the said proprietors, Lord John Berkeley and Sir George Carteret, and by his letter of instructions, bearing even date with his commission, Governor Carteret, by the said proprietors, was authorized and directed, for the said proprietors, and in their names, "to let, sell, convey and assure such land in our said province to such person and persons, and for such estate and estates, and with such provisions, conditions and limitations as we by our concessions and agreements, under our hand and seal, bearing date with these presents, to and with the adventurers are obliged to grant, and as you shall be directed by such other instructions and rules as from time to time you shall receive from us, and not otherwise; hereby ratifying and confirming whatsoever you shall lawfully do pur-

suant to such our concessions, and to such instructions, rules and directions as aforesaid, and also to make * * *

Provided, and it is hereby declared, that this present deed, or anything therein contained, doth not extend or shall be deemed or taken to extend to you our said Governor or Councillors, or either or any of them, any power or authority to make any manner of grant, conveyance or demise, or other like disposition of any lands lying within or being part of the said province, but according to our said concessions and instructions, as by reference, leave of which is prayed, will more fully appear. * * * * *

E. An indenture, made the twenty-ninth day of July, 1674, between James, Duke of York, etc., of the one part, and said Sir George Carteret of the other part. This indenture recites the letters-patent made by the King to the Duke of York, bearing date the twenty-ninth of June, 1674, and then witnesses that the Duke, in consideration of a competent sum of money, "doth grant, bargain, sell, release and confirm unto the said George Carteret, his heirs and assigns, all that tract of land adjacent to New England, and lying and being to the westward of Long Island and Manhattan Island, and bounded on the east part by the main sea and part by Hudson's river, and extends southward as far as a certain creek called Barnegat, being about the middle between Sandy Point and Cape May, and bounded on the west in a straight line from the said creek called Barnegat to a certain creek in Delaware river, next adjoining to and below a certain creek in Delaware river called Renkokus Kill, and from thence up the said Delaware river to the northernmost branch thereof, which is in forty-one degrees and forty minutes of latitude, and on the north, crosseth thence in a straight line to Hudson's river in forty-one degrees of latitude, and also all rivers, mines, minerals, wood, fishing, hawking, hunting and fowling, and all royalties, profits, commodities and hereditaments whatsoever to the said lands belonging or appertaining; with their and every of their appurtenances in as full and ample a manner as the same is granted unto the said James, Duke of York,

by the before-recited letters-patent, and all the estate, right, title, interest, benefit, advantage, claim and demand of the said James, Duke of York, of, in and to the said lands and premises, or any part or parcel thereof, and the reversion and reversions, remainder and remainders thereof," which grant was subject to a yearly rent of twenty nobles, lawful money of England, if the same should be lawfully demanded, at the Inner Temple Hall, London, as by reference to this last-mentioned grant, leave of reference to which is hereby prayed, will more fully and at large appear.

F. An indenture quintipartite, bearing date the first of July, Anno Domini 1676, between the said Sir George Carteret of the first part, William Penn of the second part, Gawn Lawry of the third part, Nicholas Lucas of the fourth part, and Edward Billinge of the fifth part. This deed recites the aforesaid letters patent from the King to the Duke of York, dated the 12th of March, 1664; the said lease and release from the Duke of York to Berkeley and Carteret, bearing date the 23d and 24th day of June, 1664; an indenture of bargain and sale dated the 18th of March, 1673, between the said John Lord Berkeley of the one part, and John Fenwick of the other part, by which said Berkeley granted to Fenwick all the moiety or half part of him, said Berkeley, of, in and to the said tract of land called New Cesarea or New Jersey; two other indentures, one being indenture of bargain and sale, dated the 9th of February, 1674, from the said John Fenwick and Edward Billinge of the one part, said William Penn, Gawn Lawry and Nicholas Lucas of the other part, and the other being an indenture tripartite of grant, release or confirmation, bearing date the tenth of February, 1674, between said John Fenwick of the first part, said Edward Billinge of the second part, and the said William Penn, Gawn Lawry and Nicholas Lucas of the third part, and that by several other good and sufficient assurances in the law duly executed, said moiety, or half part of said tract of land; the said moiety or half part of all and every other the said several and respective premises so conveyed unto the said John Fenwick

as aforesaid, were conveyed unto and then were vested in the said William Penn, Gawn Lawry and Nicholas Lucas and their heirs, to the use of them and their heirs and assigns forever (in which, nevertheless, the said Edward Billinge claimed to have equitable interest), so as the said William Penn, Gawn Lawry and Nicholas Lucas then actually stood seized of, and in one undivided moiety or half part of all and every the said premises so granted unto the said John Lord Berkeley and Sir George Carteret as aforesaid, as joint tenants between themselves; and did then hold the same to them and to their heirs, as tenants in common with the said Sir George Carteret, who was then actually seized of the other undivided moiety or half part of all and every the same premises, and did then hold the same to him and his heirs as tenant in common with the said William Penn, Gawn Lawry and Nicholas Lucas, and it was further recited in the said deed that said Sir George Carteret, William Penn, Gawn Lawry and Nicholas Lucas had agreed to make a partition of the said tract of land, and of the said several and respective premises, into two parts, then in and by the said indenture said Edward Billinge, and the said William Penn, Gawn Lawry and Nicholas Lucas, by and with the consent, direction and appointment of the said Edward Billinge, testified by his being a party to the said indenture, and by his sealing and executing the same, did bargain, sell, release, confirm and convey unto the said Sir George Carteret, his heirs and assigns forever, the easterly part of New Jersey, to have and hold in severalty; and by the same indenture, the said Sir George Carteret did bargain, sell, release, confirm and convey unto the said William Penn, Gawn Lawry and Nicholas Lucas, to their heirs and assigns forever, the westerly part of New Jersey, to have and to hold to them, their heirs and assigns in severalty. The division line between the said easterly and westerly parts of New Jersey, in the said indenture is described as follows: From the northernmost branch or part of the beforementioned river, called Delaware river, and to the most northerly point or boundary of the said tract of land and premises so granted by his royal highness, James, Duke of

York, unto the said Lord Berkeley and Sir George Carteret, now by the consent and agreement of the parties to these presents, called, and agreed to be called The North Partition Point, and from thence, that is to say, from the said North Partition Point extending southward by a straight and direct line drawn from the said north partition southward, through the said tract of land, unto the most southerly point of the east side of Little Egg Harbor aforesaid; which said most southerly point of the east side of Little Egg Harbor is now by the consent and agreement of the parties to these presents called and agreed to be henceforth called the South Partition Point; and which said straight and direct line drawn from the said North Partition Point, thro' the said tract of land unto the said South Partition Point is now by the consent and agreement of the said parties to these presents called and agreed to be called the line of partition, and with the land in the westerly side of the said partition line said Sir George Carteret did convey unto the said William Penn, Gawn Lawry and Nicholas Lucas, all and every the isles, islands, rivers, mines, minerals, woods, fishings, hawkings, huntings and fowlings, and all other royalties, governments, powers, forts, franchises, harbors, profits, commodities and hereditaments whatsoever, unto the said westerly part, share and portion of the said tract of land and premises, as by reference to this indenture, leave of reference to which is hereby prayed, will more fully and at large appear.

G. An indenture made the sixth day of August, Anno Domini 1680, between James, Duke of York, etc., of one part, and Edward Billinge, William Penn, Gawn Lawry, Nicholas Lucas, John Eldridge and Edward Warner of the other part. This indenture recites the letters-patent from the King to the Duke of York, dated the 12th of March, 1664, the lease and release from the Duke of York to Berkeley and Carteret, dated the 23d and 24th of June, 1664, the conveyance from John Lord Berkeley to John Fenwick of Berkeley's moiety; that the conveyance to Fenwick was in trust for Edward Billinge, his heirs and

assigns; that Fenwick and Billinge conveyed the said moiety to William Penn, Gawn Lawry, Nicholas Lucas, and their heirs, to certain uee, that is to say, as to ten equal and undivided one-hundred parts thereof to the use of the said John Fenwick, and of his heirs and assigns forever, and as to the other moiety equal and undivided part of the said undivided moiety to the use of the said William Penn, Gawn Lawry and Nicholas Lucas, their heirs and assigns forever, in trust for the said Edward Billinge, his heirs and assigns forever, that after which the said John Fenwick conveyed all his said ten equal and undivided hundred parts of the said undivided moiety, unto John Eldridge and Edward Warner, their heirs and assigns forever; that Eldridge and Warner conveyed the same ten equal undivided hundred parts unto the said William Penn, Gawn Lawry and Nicholas Lucas, their heirs and assigns forever, the better to enable them, the said Edward Billinge, William Penn, Gawn Lawry and Nicholas Lucas, to make a partition of the said entire premises with the said George Carteret. Then reciting the aforesaid partition by which the western part of New Jersey was conveyed in severalty to said Penn, Lawry and Lucas. That after the partition, pursuant to a trust for that purpose reposed in them, they conveyed ten full equal undivided one-hundred parts of the said westerly part of New Jersey unto the said John Eldridge and Edward Warner, and their heirs, for their own use forever. And further recites that the said William Penn and Gawn Lawry remain still seized of the other ninety equal and undivided one-hundred parts of West New Jersey, to them and their heirs in trust for the said Edward Billinge, his heirs and assigns forever, then reciting that after the conveyance from the Duke of York, that Berkeley and Carteret, as aforesaid, and in the times of the late war between the King of England and the States of the United Provinces of the Netherlands, the armies and subjects of the said States General gained possession, not only of the said premises so by his Royal Highness conveyed to Berkeley and Carteret, and also of other lands and hereditaments which were originally granted unto his said Royal Highness by his said Majesty's said letters-patent herein-

before recited—all which were afterwards regained from the said States, or by them delivered up unto his said Majesty; then reciting the aforesaid letters-patent from the King to the Duke of York, dated the 27th of June, 1674, then after these recitals the said indenture declares for a consideration therein expressed, and for the better extinguishing of all such claims and demands as his said Royal Highness may anyways have of or in the premises aforesaid now called West New Jersey, or any part of them, and for the further and better settling, conveying, assuring and confirming of the same, and of every part thereof, according to the purport and meaning of these presents, his Royal Highness did grant, bargain, sell and confirm unto the said William Penn, Gawn Lawry, Nicholas Lucas, John Eldridge and Edward Warner, all that part, share and portion of all those parts, shares and portions of that entire tract of land and all these entire premises so granted by his said Royal Highness unto the said John Lord Berkeley and Sir George Carteret, and their heirs as aforesaid, as in and by and upon the said partition aforesaid was and were vested in the said William Penn, Gawn Lawry and Nicholas Lucas and their heirs, and then agreed to be called by the name of West New Jersey, together with all the islands, bays, rivers, waters, forts, mines, quarries, royalties, franchises and appurtenances whatsoever to the same belonging or in anywise appertaining, and all the estate, right, title, interest, reversion, remainder, claim and demand whatsoever, as well in law as in equity, of him the said James, Duke of York, of, into and out of the same, or any part or parcel of the same; as also the free use of all bays, rivers and waters leading into or lying between the said premises or any of them in the said parts of America, for navigation, free trade, fishing or otherwise, to have and to hold to said Penn, Lawry, Lucas, Eldridge and Warner, their heirs and assigns forever to certain uses, namely, as to ten equal and undivided hundred parts thereof to the use of said John Eldridge and Edward Warner, and of their heirs and assigns forever, and as to the other ninety equal undivided hundred parts thereof to the use of the said William Penn,

Gawn Lawry and Nicholas Lucas, and of their heirs and assigns forever, in trust, nevertheless, for the said Edward Billinge his heirs and assigns forever.

And further, for the better enabling said Edward Billinge, his heirs and assigns, to improve and plant the said premises with people, and to exercise all necessary government there, whereby the said premises might be the better improved and made more useful to him, his heirs and assigns, and to the King's Majesty, said Duke of York did give, grant, assign and transfer unto the said Edward Billinge, all and every such the same powers, authorities, jurisdictions, governments and other matters and things whatsoever, which by the said respective recited letters-patent, or either of them, are and were granted or intended to be granted to be exercised by the said Duke of York, his heirs, assigns, deputies, officers or agents, in, upon or in relation unto the said premises thereby confirmed or intended to be confirmed, and every of them, in case the same were then in the actual seizure of the said Duke of York, to be held, enjoyed, exercised and executed by him, the said Edward Billinge, his heirs and assigns, and by his deputies, officers, agents and commissioners, as fully and amply to all intents, constructions and purposes as his said Royal Highness, or his heirs, might or could hold, enjoy, use, exercise or execute the same by virtue of the said letters-patent.

And your orator further shows that in this indenture West New Jersey is described as "All that westernly part, share and portion of the said whole and entire tract of land and premises as before mentioned which is extending southward and westward and northward along the seacoast and the before-mentioned bay or river, called Delaware bay and Delaware river, unto a certain point there now called the South Partition Point, being the most southerly point of the east side of a certain place or harbor lying on the southern part of the said tract of land and premises called or known in the map of the said premises by the name of Little Egg Harbor, unto a certain other point there now called the North Partition Point," etc., as by reference to the said last-mentioned indenture, leave of reference to which is prayed, will more fully and at large appear.

H. The concessions and agreements of the proprietors, freeholders and inhabitants of the province of West Jersey, in America, bearing date the third of March, 1676, which were agreed to and signed by the said Edward Billinge, Gawn Lawry, William Penn, Nicholas Lucas and others. The sixth chapter of this document grants and dedicates lands for highways and streets, and cities, towns and villages, and for wharfs, keys, harbors and for public houses, * * * as also that the inhabitants of the said province have free passage through or by any seas, bounds, creeks, rivers, rivulets, in the said province, through or by which they must necessarily pass to come from the main ocean to any part of the province aforesaid.

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"That all the inhabitants within the said province of West Jersey, have the liberty of fishing in Delaware river, or on the seacoast;" as by reference to the said concessions and agreements, leave of reference to which is hereby prayed, will more fully and at large appear.

And your orator respectfully submits and charges that whatever rights the said Duke of York, or the said William Penn, may have acquired in or to the Delaware river from the King of England after the making of the concessions and agreements last hereinbefore referred to, in equity were subject and subordinate to the rights granted by the said concessions and agreements to the inhabitants and property-holders of West New Jersey, in or by virtue of the said concessions and agreements; and that said William Penn was, and all persons, associations, and every State claiming by, through, or under him were, are and should be estopped from asserting or maintaining that any rights or pretended rights acquired by the said Duke of York, or by said Penn, in or to any part of the Delaware river from the King of England, subsequent to the year 1676, do or can destroy, lessen or impair any of the rights in or to the Delaware river, or any part thereof, conferred upon the inhabitants of West New Jersey, by the said concessions and agreements.

I. A deed of surrender from the proprietors of East and West New Jersey of their right, or pretended right of government to Her Majesty Queen Anne, bearing date the fifteenth day of April, 1702, duly executed by the then proprietors of each of said divisions, in and by which the said proprietors for themselves and heirs did surrender and yield up unto their then sovereign, Anne, Queen of England, all powers of government as to New Jersey granted by King Charles II. to the Duke of York, and by the Duke of York to the said proprietors, as by reference to said surrender, leave of reference to which is prayed, will more fully appear.

The said surrender was accepted by the Queen in council on the seventeenth day of April, 1702, and ordered to be enrolled in her Majesty's High Court of Chancery.

J. By the American Revolution, which took place by the declaration of independence, bearing date the fourth day of July, 1776, the State of New Jersey became, and was, and from thenceforth has been a free and independent State, and as such became entitled to have and to hold all such rights as free and independent States may have or hold, to do all acts and things which independent States may of right do, and by force of the said revolution and said independence the said State of New Jersey became invested not only with all and every power of government in and over the territory of said State and the tide-waters adjacent thereto, but also became invested with all the property, and rights of property, within and appertaining to said State, which immediately before said revolution were vested in the crown of England; that at the time the said revolution took place the bed of the river Delaware in its whole width and length, from the falls in said river at or near Trenton, to the mouth of said river—that is, throughout the whole extent to which the tide ebbed and flowed in said river—belonged to and was vested in the crown of England in trust for the uses and purposes of the subjects of the King of Great Britain; that by means of the said revolution, the said independence of the State of New Jersey, and the treaty of peace between the King

of Great Britain and the United States of America, concluded at Paris, September 3d, 1783, that portion of the bed of the Delaware river, last hereinbefore mentioned, situate between the States of New Jersey and Delaware, to the middle of said river, became vested in fee-simple in the State of New Jersey; the remaining portion thereof, by the same means and at the time being vested in the State of Delaware; and so the title to the bed of said river, your orator respectfully submits, hath ever since continued and now is. As to the waters of said river between the State of New Jersey and the State of Delaware, your orator respectfully submits that ever since the fourth of July, 1776, your orator, and the State of Delaware, have each had and been entitled to an equal interest therein, and each has had a right to exercise equal and concurrent jurisdiction in and over the same, and an equal right for its citizens and inhabitants to fish in said waters.

Your orator is aware that it has at times been alleged and pretended on behalf of the State of Delaware that Charles II., King of England, by alleged letters-patent, said to bear date March 22d, 1683, did grant to his brother, the Duke of York, "the town of 'Newcastle,' otherwise called Delaware, and fort therein or thereunto belonging, situate, lying and being between Maryland and New Jersey, in America, and all that tract of land lying within the compass or circle of twelve miles above the said town, situate, lying and being upon the river Delaware, and all the islands in the said river of Delaware, and the said river and the soil thereof lying north of the southernmost part of said circle of twelve miles about said town," but your orator denies that the said alleged patent was ever legally made or ever legally delivered by the said King Charles II. to his said brother James, Duke of York, and that said patent never had any legal existence. And your orator further contends, and respectfully submits, that if it shall appear that said alleged patent had legal existence and validity, that then and in that case, by legal and just construction thereof, it cannot and should not be construed to include or control any part of the bed of said river lying northerly or

easterly of the middle of said river, and no rights of jurisdiction or fishery in said river except equal and concurrent rights with your orator.

K. To the bed of the river Delaware, and jurisdiction in and over said river so as aforesaid claimed, your orator hath title and right by long, peaceable and undisputed possession, use and enjoyment—that is, possession, use and enjoyment which began with the earliest settlement of the State of New Jersey, and which hath continued ever since without interruption or dispute, excepting only the interruption and dispute hereinafter complained of.

During all that time the citizens and residents of New Jersey, under the authority of your orator, and with its leave and license, from time to time, have improved the easterly shore of said river, opposite to the State of Delaware, from a point opposite to the boundary line between Pennsylvania and Delaware, on the Delaware river, to and below a point on the easterly side of said river, twelve miles below New Castle, as their wants and convenience have required, by erecting dykes and embankments and building wharves, docks, piers and other structures and arrangements. The southwesterly limits of the counties of Salem, Cumberland and Cape May (which counties lie opposite to the State of Delaware, and bound on the said river) by usage and legislative enactment, have been the main ship channel of the river and bay of Delaware. The laws of your orator relative to fishing in the Delaware river, for over seventy years, have been recognized, obeyed and enforced on every part of that part of said river which lies between the State of New Jersey and the State of Delaware, and the citizens and inhabitants of the State of New Jersey, for more than two hundred years, have claimed, exercised and enjoyed, except as hereinafter stated, without molestation or interruption, the right of fishing in all parts of said river, equally and in common with the citizens and inhabitants of the State of Delaware, and during all that time the courts of New Jersey have exercised jurisdiction, in respect of wrongs

committed on said river, where it runs between said two States, and complained of in the courts of your orator.

2.

Your orator further shows that the Legislature of the State of Delaware passed an act March 28th, 1871, entitled "An act for the protection of fishermen," in and by the first section of which it is enacted "that it shall be unlawful for any person not being a citizen of the State to take or catch fish of any kind in Delaware bay or river or any of the creeks emptying into the same, within the limits of this State, without obtaining from the clerk of the peace of one of the counties a license therefor, which license shall be granted on paying to the clerk, for the use of the State, twenty dollars, and shall be in force for one year from its date, and shall be confined to one boat or vessel named therein; provided, that transient vessels may catch fish for their own immediate use. If any master of a boat or vessel, or other person, shall violate this section, he shall be deemed guilty of a misdemeanor, and shall pay to the State a fine of fifty dollars, and the boat or vessel used in such violation of the law, with all her tackle, apparel and furniture, and all her implements for fishing, gill net or seine, or any contrivance for taking fish, and anything so taken shall be forfeited, and may be seized and detained for trial by any officer or person. Such trial may be had before any justice of the peace, and if condemned the property seized shall be sold by his order, and the proceeds, deducting costs and charges, be equally divided among the captors; provided, that an appeal shall be allowed from the judgment of the justice, if applied for within ten days, to the Court of General Sessions of the Peace and Jail Delivery, on security being given by bond and sufficient surety in the full value of the property condemned, conditioned to be void if such judgment be reversed by said court," as by reference to this act, leave of reference to which is hereby prayed, will more fully and at large appear.

That by a supplement to said last-mentioned act passed by the Legislature of Delaware, March 29th, 1871, it was

enacted "that it shall be unlawful for any resident or citizen of this State to catch or take any shad, for the purpose of sale, in Delaware river or bay, or any of the creeks or rivers emptying into the same, within the limits of this State, without first obtaining from the clerk of the peace of one of the counties a license therefor, which license shall be granted on paying to the clerk of the peace aforesaid, for the use of the State, five dollars, and shall be in force one year from its date, and shall be confined to one boat or vessel named therein." By the second section of said act it is enacted "that all provisions of the act to which this is a supplement shall, with the exception of section one of said act, be applicable to citizens and residents of this State."

And your orator further shows that certain officers of the State of Delaware, whose names are unknown to your orator, construed the said act of the State of Delaware as requiring or authorizing them to arrest citizens of New Jersey while pursuing the occupation of fishing in the river Delaware, on easterly side of said river, and easterly of the middle and near to the easterly shore of said river, and under that construction, in the month of April and early part of the month of May, in the year 1872, officers of the State of Delaware, on the easterly side of the middle of the river Delaware, arrested twenty or more citizens and inhabitants of the State of New Jersey, who were then and there, in accordance with the laws of the State of New Jersey, engaged in the occupation of fishing in the said river on the easterly side of said river, and seized their vessels and fishing implements and carried the said citizens and residents into the State of Delaware, and there charged them with violation of the aforesaid act relative to fishing, in this, that said persons had not taken a license and paid the license fee of twenty dollars prescribed by the first section of the aforesaid act, and the courts and authorities of the State of Delaware did enforce the provisions of the said act against said citizens and residents of New Jersey, and did thereby assert an exclusive jurisdiction over the whole of said river from shore to shore in disregard and defiance of the rights of your orator, and thereupon the Governor of the State of New Jersey did

issue his proclamation, bearing date the eighth day of May, 1872, reciting and proclaiming as follows:

"A proclamation by the Governor of New Jersey.

"Whereas, citizens of New Jersey, while pursuing the occupation of fishing in the river Delaware, on the eastern side of said river, and within the jurisdiction of this State, have recently been arrested by persons claiming to act under the laws and authority of the State of Delaware and taken as prisoners out of this State;

"And whereas, the business of those so arrested has been seriously interrupted, and the like business of many other citizens will be disturbed should similar aggression upon the authority and jurisdiction of this State be continued;

"And whereas, disputes in relation to jurisdiction between States should be submitted to the legal tribunal created with especial reference to such disagreements, and should not be permitted to result in a collision of opposing local authorities, or in individual retaliation:

"Therefore, I hereby give notice and proclaim that the State of New Jersey claims jurisdiction over that part of the river Delaware, between the States of Delaware and New Jersey, which is easterly of the middle line of said river, and further claims that all persons who conform to the fishing laws of the State of New Jersey have the right to fish on the eastern side of said river, without permission or license of any other State.

"And I notify and warn all persons not to molest, disturb, arrest, or attempt to arrest, without lawful process, issued by some legal authority in this State, any citizen of New Jersey, at any place within her jurisdiction.

"And I exhort the people of this State, if any illegal arrest or interference be attempted, to refrain from acts of violence, assuring them that every effort will be made to have the questions involved determined by the proper tribunal.

"Given at the executive chamber, at Trenton, this
[L. S.] eighth day of May, A. D. one thousand eight hundred and seventy-two.

"Attest, JOEL PARKER.

"JOS. A. HALL, Private Secretary."

4

That on the thirtieth of January, 1873, the Legislature of the State of Delaware did adopt joint resolutions of which the following is a copy:

"Whereas, it appears by the message of his Excellency the Governor, and the documents accompanying the same, that the State of New Jersey makes claim for her citizens of the right to fish in that part of the waters of the Delaware within the limits of the 'twelve-mile circle' and eastward of the channel of said river, thus denying the exclusive jurisdiction of this State over the said waters within the said circle, a jurisdiction never doubted in Delaware, nor questioned elsewhere with confidence until now, so far as this General Assembly is informed;

"And whereas, his Excellency the Governor of New Jersey, in his correspondence with the Governor of this State, has suggested that the question of exclusive jurisdiction, and of authority involved in the claim maintained by that State, be settled by resort to legal proceedings which this Legislature have respectfully declined to adopt, believing that the question can be more appropriately settled and justice done otherwise and as hereinafter provided for;

"And whereas, it is of the utmost importance that no questions of sovereign title or rights should exist between States;

"And whereas, in this case such do exist they should be settled as becomes the high parties; therefore,

"Be it enacted by the Senate and House of Representatives of the State of Delaware in General Assembly met, That the whole subject of controversy be submitted to the decision of six commissioners, three to be appointed by the Legislature of each State, and that their decision shall be final.

"Resolved, That said decision be submitted in writing, upon parchment, under the hands of the said commissioners, to this Legislature, and to that of the State of New Jersey, and be entered upon the journal of each house of the General Assembly of each State as a perpetual memorial of the end of the aforesaid controversy; and that similar certificates be made and delivered to the Governor of each

State, to be placed among the executive archives; and further, that each State, through its Governor, make proclamation for six months, in the newspapers printed within its borders, of the aforesaid decision, to the end that full public information thereof may be given.

"Resolved, That Joseph P. Comegys of Kent county, William G. Whiteley of New Castle county, and Edward L. Martin of Sussex county, be appointed commissioners on the part of this State for the purpose aforesaid; that they be at once notified by the Speaker of the Senate of such their appointment, and in case at the end of five days from such notice, either of them has not accepted said appointment, that another from the same county be appointed in his place.

"Resolved, That a copy of the foregoing preamble and resolutions, duly certified by the Governor to the Governor of New Jersey, with a request that they be laid before the Legislature, that the aforesaid controversy shall be settled during the present session of the Legislature of each State.

"Resolved, That each of the said commissioners shall each receive for his services hereunder the sum of five hundred dollars, to be paid by the State Treasurer, on the certificate of the Speaker of the Senate, that the said services have been performed.

"Adopted at Dover, January 30th, 1873."

That on the fourteenth of February, 1873, the Legislature of the State of Delaware did adopt other joint resolutions of which the following are copies, namely:

"Joint resolutions supplementary to those passed on the 30th of January last, respecting the fishery question with New Jersey.

"To avoid all question or debate as to the extent of the powers conferred upon the commissioners appointed by this State, under the resolutions adopted on the 30th day of January last, and on those to be appointed by the State of New Jersey, according to the suggestions therein:

"Resolved, by the Senate and House of Representatives

of the State of Delaware in General Assembly met, That no question was intended to be submitted by the said resolutions respecting the title of this State to the river Delaware, and the soil thereof within the limits of the twelve-mile circle, but only whether, notwithstanding such title, the citizens of New Jersey have the right to fish in said river within that circle; and if so, the nature and extent of that right. And the said commissioners are to consider that no other question but that here mentioned is submitted to them, this State refusing to allow her aforesaid title to be drawn in question by said commissioners, or in any other manner.

"Resolved, That a copy of the foregoing, duly certified, be forwarded by the Governor to the Governor of New Jersey.

"Adopted at Dover, February 14th, 1873."

"Joint resolution supplementary to the joint resolution with respect to the subject of differences between the State of New Jersey and this State.

"Resolved, by the Senate and House of Representatives of the State of Delaware in General Assembly met, That all of the preamble to the 'Joint resolution with respect to the subject of difference between the State of New Jersey and this State,' adopted on the 30th ultimo, after the words 'so far as this General Assembly is informed," be and the same is hereby stricken out, and in lieu thereof these words shall be substituted: And the said preamble shall be read and construed and published according to the change made.

"And whereas, it is important that the said question should be at once settled, so that there shall be no conflict of claim hereafter.

"Adopted at Dover, February 19th, 1873."

Your orator further shows that on the seventeenth of February, 1873, the Legislature of the State of Delaware passed another act entitled "A supplement to the act entitled an act for the protection of fishermen," in and by which it is enacted as follows;

"A supplement to an act entitled 'An act for the protection of fishermen.'

"Section 1. That it shall be unlawful for any person, not being a citizen of this State, under this act, to use more than three hundred fathoms of gill-net or seine; and that any person who may violate this section shall be deemed guilty of a misdemeanor, and shall pay to the State a fine of twenty-five dollars for every such violation.

"Section 2. That the Governor be and he is hereby authorized to appoint five commissioners who shall be appointed in and for and shall reside in the county of New Castle, in the towns of Port Penn, Delaware City, New Castle, Wilmington and Claymont, one in each place; and the appointment shall be made and vacancies filled by the Governor for and during the period of two years. The said commissioners are hereby authorized and required to take cognizance of all violations of the act to which this is a supplement, to arrest any and every offender against the aforesaid law, to seize and detain the boat or boats of said offenders, and are hereby invested with all the powers, privileges and remunerations of the sheriff and constables enumerated in the act aforesaid."

* * * * * * * *

Passed at Dover, February 19th, 1873.

That shortly thereafter the Legislature of the State of New Jersey did pass an act which was approved on the 26th of February, 1873, and is entitled "An act for the settlement of the territorial limits and jurisdiction of the State of New Jersey and the State of Delaware," which act reads as follows:

"1. Be it enacted by the Senate and General Assembly of the State of New Jersey, That the Governor shall, by and with the advice and consent of the Senate, appoint three commissioners, who shall have full powers on the part of the State of New Jersey, to meet three commissioners appointed, or to be appointed under or by virtue of a law of the State of Delaware, to negotiate and agree respecting the

territorial limits and jurisdiction of the State of New Jersey and the State of Delaware; and if by death, resignation, or otherwise, a vacancy do happen among those appointed by the State of New Jersey, the Governor, or person administering the government of this State, is hereby authorized to supply the same.

"2. And be it enacted, That the said commissioners on the part of the State of New Jersey, or a major part of them, shall have full power and authority to agree upon, settle and determine the limits of territory and jurisdiction between the said States as to them may seem just; and their agreement in the premises in writing, signed and sealed by the said commissioners of both, or a majority of them, respectively, if made on or before the first day of January next, shall become binding on the State of New Jersey, when confirmed by the respective Legislatures of the State of Delaware and of the State of New Jersey, and the Congress of the United States shall consent thereto.

"3. And be it enacted, That the said commissioners shall meet at such time and place as they may agree upon, and that the expenses and disbursements of the said commissioners for surveys, if any shall be necessary, for maps and copies of maps, of documents of any kind that may be deemed useful, and for any other purpose which shall aid them in the discharge of their duties, and a reasonable compensation for their services, shall be ascertained and allowed by the Governor and paid by the Treasurer, on the Governor's warrant, out of any moneys in the treasury not otherwise appropriated.

"4. And be it enacted, That the Governor shall transmit to the Governor of the State of Delaware a copy of this act.

"5. And be it enacted, That this act shall take effect immediately.

"Approved February 26th, 1873."

And shortly thereafter the Governor of New Jersey, with the advice and consent of the Senate, did appoint three commissioners for the purposes named in said act, namely, Abraham Browning, of the county of Camden; Cortlandt

Parker, of the county of Essex, and Albert H. Slape, of the county of Salem, all of whom accepted said appointment.

Your orator further shows that, after receiving information of the passage of the said supplemental resolutions by the Legislature of the State of Delaware, of the 14th and 19th of February, 1873, the Legislature of the State of New Jersey did pass another act, which was approved on the eleventh of March, 1873, and is in the words following:

"A supplement to the act approved February twenty-sixth, one thousand eight hundred and seventy-three, entitled 'An act for the settlement of the territorial limits and jurisdiction of the State of New Jersey and the State of Delaware.'

"Whereas, it appears that the State of Delaware has in some measure modified the original joint resolution passed by the Legislature of that State with respect to the subject of difference between the State of New Jersey and that State, and thereby declined to submit to commissioners any question as to the title claimed by said State to a part of the Delaware river, but has authorized the submission of the question whether the citizens of New Jersey have the right to fish in that part of the Delaware river claimed by the State of Delaware, and the nature and extent of that right; and whereas, it is expedient to settle at this time so much of the difference between the said States as may be settled amicably; therefore,

"1. Be it enacted by the Senate and General Assembly of the State of New Jersey, That the commissioners already appointed under the act to which this is a supplement, and their successors, shall have power to settle so much of the difference between this State and said State of Delaware as the said State of Delaware has submitted, or may from time to time hereafter submit; provided, however, that nothing in this act contained shall be construed to, or to authorize said commissioners by any act or agreement to affect any other claim or jurisdiction of New Jersey in or over the whole or any part of the Delaware river or the soil thereof, notwithstanding the settlement of said fishery question.

"2. And be it enacted, That if the said State of Delaware shall hereafter give more enlarged powers to its commissioners, the said commissioners of this State, and their successors, may act upon and exercise every of the powers given in this act, or the act to which this is a supplement, to the extent of the submission under such enlarged powers so to be given by said State of Delaware.

"3. And be it enacted, That the said commissioners and their successors shall remain charged with the matters mentioned in the said act to which this is a supplement, until the same shall be finally settled under the powers by said act given; and such as shall be given by said State of Delaware or otherwise, notwithstanding the agreement contemplated by said act to which this is a supplement, may not be made on or before the first day of January next; and that any agreement made under this act or the act to which this is a supplement shall be submitted to the Legislature of this State, and be ratified and confirmed by this State in the manner prescribed by the act to which this is a supplement, and be consented to by Congress before the same shall be finally binding on this State.

"4. And be it enacted, That a copy of this act shall be transmitted to the Governor of Delaware, and that the same shall take effect immediately.

"Approved March 11th, 1873."

Your orator further shows that on the eighth of April, 1873, the Legislature of the State of Delaware did adopt certain other joint resolutions, of which the following is a copy:

"Joint resolution in reference to the fishery question.

"Resolved by the Senate and House of Representatives of the State of Delaware in General Assembly met:

"1st. That any and all laws of the State requiring a license to fish for shad within the waters of this State, be and the same are hereby suspended pending the negotiations between the commissioners appointed by this State and the State of New Jersey for the settlement of the fishery question.

"2d. That upon the determination of the questions submitted to the said commissioners favorable to the claim of this State, the commissioners appointed on the part of this State are hereby authorized to make such a compromise or settlement as will secure to the people of the State of Delaware and the people of the State of New Jersey, the mutual right of fishery in the Delaware bay, and in that part of the Delaware river lying between the two States.

"Adopted at Dover, April 8th, 1873."

Your orator further shows that after the date of the resolution last quoted, the aforesaid commissioners, appointed by the State of Delaware and by your orator, had various conferences and discussions; that after a considerable time the said commissioners on the part of Delaware submitted to the said commissioners appointed by your orator, a printed argument setting forth their views of the matters in dispute, and of the rights of the said parties respectively in and over the subject-matters thereof; that the commissioners on the part of your orator engaged in the discussion and consideration in dispute, in good faith, and with a sincere hope and wish of reaching an agreement and settlement that would be reasonable and just and satisfactory to both parties, and were engaged in preparing their argument in reply to the argument submitted by the commissioners on the part of Delaware, but before the commissioners on the part of your orator were able to complete and submit their reply, the Legislature of the State of Delaware, on the twenty-fourth of February, 1875, adopted a joint resolution, of which the following is a copy:

"Joint resolution directing the State Treasurer to pay Jos. P. Comegys, Wm. G. Whiteley and E. L. Martin each five hundred dollars.

"Whereas, by joint resolution, adopted at Dover Jan. 30th, 1873, Jos. P. Comegys, Wm. G. Whiteley and Edward L. Martin were appointed commissioners on the part of Delaware, to meet a like number of commissioners on the part of the State of New Jersey, with power to consider and

decide the right of the citizens of New Jersey to fish in that part of the water of the Delaware river within the limits of the 'twelve-mile circle,' and eastward of the channel of the said river; and whereas, it appears to this General Assembly that said Joseph P. Comegys, W. G. Whiteley and E. L. Martin have performed the duties enjoined upon them as far as possible; now, therefore,

"Resolved by the Senate and House of Representatives of the State of Delaware in General Assembly met, That the State Treasurer be and he is hereby directed to pay to the said Jos. P. Comegys, Wm. G. Whiteley and Edward L. Martin, each, the sum of five hundred dollars, as provided in the aforesaid joint resolution.

"Adopted at Dover, February 24th, 1875."

And afterwards, and on the twenty-sixth day of March, 1875, the Legislature of the State of Delaware did pass another joint resolution, of which the following is a copy:

"The Hon. Joseph P. Comegys of Kent county, William G. Whiteley of New Castle county, and Edward L. Martin of Sussex county, as commissioners with respect to the subject of differences between the State of New Jersey and this State, the said commissioners having fully performed their duty, and reported the result of their labors to the General Assembly:

"Be it resolved by the Senate and House of Representatives of the State of Delaware in General Assembly met, That the said Joseph P. Comegys, William G. Whiteley and Edward L. Martin are hereby relieved of further duties as commissioners of this State.

"Adopted at Dover, March 26th, 1875."

And your orator further shows that no copy of either one of the joint resolutions last quoted was transmitted to the Governor or Secretary of State, or any other executive officer of the State of New Jersey, nor to the Legislature thereof; your orator had no notice whatsoever of the adoption of either one of the resolutions last quoted, until after the first of January, 1876, but until that time, and until in

or about the month of March, 1876, your orator understood and believed that the said commission was still in full force, and was not aware that the State of Delaware had modified or withdrawn the power so as aforesaid conferred upon her said commissioners, or that they had been discharged from the said commission or withdrawn from the duties thereof; and your orator did not learn of that fact until on or about the 20th of March, 1876, when the attention of the Governor of New Jersey, by one of its citizens, was called to a notice published in the "Morning Herald," a newspaper published at Wilmington, in the State of Delaware, on the fifteenth of March, 1876, purporting to be signed by John Springer, a Clerk of the Peace, at New Castle, and is as follows:

"NOTICE TO FISHERMEN.

"The action of the General Assembly of the State of Delaware in 1873, also in 1875, did not repeal the law requiring a State license for catching shad or fish of any kind in the Delaware river. The same does remain in full force at this time. Therefore, all persons engaged in fishing in said Delaware bay or river, or creeks, must procure a State license.

"The licenses are issued at the office of the Clerk of the Peace at New Castle, and at number 309 West Second street, Wilmington.

"JOHN SPRINGER,
"Attest, Clerk of the Peace at New Castle.
"M. A. J. SPRINGER, Deputy,
"No. 309 West Second street, Wilmington."

Your orator further shows that after receiving the information last shown, communications were had between the Governor of Delaware and other officers of said State on the one side, and your orator's Governor and other officers on the other side, from which your orator learned that the State of Delaware claims and insists that the aforesaid joint resolutions of the State of Delaware, adopted April 8th, 1873, had been abrogated by the other joint resolutions of said

Legislature, adopted February 24th, 1875, and March 26th, 1875, and was no longer in force, and that the Governor and executive officers of the State of Delaware understood that it was their right and their duty to treat as belonging to and within the exclusive jurisdiction of the State of Delaware, the whole of the river Delaware from shore to shore, from a point twelve miles below the town of New Castle to the northerly boundary of said State on said river, and within that space to enforce the said fishing laws, and all other laws, of the State of Delaware, and enforce the penalties thereby prescribed upon all citizens and inhabitants of the State of New Jersey who should fish anywhere in that part of said river without having taken out the license and paid the license fee of twenty dollars prescribed against non-residents of Delaware, in and by her aforesaid fishing laws, and the said Governor and executive officers of the State of Delaware refused to make any agreement with your orator to stay the execution of said laws, or to refrain from enforcing them against the citizens or residents of New Jersey pending a suit in this honorable court for the settlement of the matters so as aforesaid in controversy between your orator and the said State of Delaware; and your orator is informed and believes, and charges the truth to be, that it is the intent and purpose of the State of Delaware, and the executive officers thereof, to enforce the said fishing laws of the State of Delaware, and other laws of said State, against any and all citizens and inhabitants of the State of New Jersey who may, without the twenty dollars license, fish in any part of said river, north of the point of said river twelve miles below the town of New Castle, and south of the northerly boundary line of the State of Delaware on the Delaware river, and to enforce all laws of the State of Delaware on and over that part of said river, as and if said last-named State had sole and exclusive jurisdiction over all that part of said river; that said enforcement of said fishing and other laws will not only be contrary to and violative of the rights and powers of your orator in the premises, and burdensome and injurious to the citizens and inhabitants of the State of New Jersey, but will also be likely to lead to

breaches of the peace and create disturbances and commotions and violent strifes between the people of the said two States, and lead to unfriendly relations between the said two States and the people thereof, injurious to the peace and prosperity of both.

And your orator further shows that thereupon the Legislature of New Jersey did pass, and the Governor did approve, a joint resolution of which the following is a copy:

"Joint resolution relative to the rights of the State of New Jersey in that part of the Delaware river which runs between the States of Delaware and New Jersey.

"Whereas, the State of Delaware now claims to own the bed and to have exclusive jurisdiction, from shore to shore, of a portion of the Delaware river, extending from the boundary line between the States of Pennsylvania and Delaware, for some distance below the town of New Castle, and has lately endeavored to exercise jurisdiction co-extensive with said claim; and whereas, this State hath always claimed and now doth claim to own the bed of said river to the middle thereof, so far as said river lies between this State and the State of Delaware, and to be entitled to exclusive jurisdiction (subject to the Constitution of the United States and the acts of Congress made in pursuance thereof) over its half of said river, and hath always, heretofore, exercised jurisdiction accordingly; and whereas, it is desirable and necessary that the rights of this State, as between it and the State of Delaware, in and to said river, shall be definitely, finally and conclusively settled; and whereas, the efforts heretofore made to settle said matters of difference by consultation and agreement between the said differing States have proved ineffectual; therefore,

"1. Be it resolved by the Senate and General Assembly of the State of New Jersey, That the Governor of this State be and he is hereby authorized to cause to be instituted and prosecuted in the Supreme Court of the United States a suit in equity, or an action at law, by the State of New Jersey against the State of Delaware, to ascertain, determine and settle the true territorial boundary line between said

States, and the extent of the jurisdiction of each of said States in and on said river, and for that purpose the Governor shall have power to employ, on behalf of this State, counsel to assist the Attorney-General in the commencement and prosecution of said suit or action, and the expenses necessarily and reasonably attending the commencement and prosecution of said suit or action, on bills certified by the Governor, shall be paid out of any moneys in the treasury not otherwise appropriated.

"2. And be it further resolved, That this resolution shall take effect immediately.

"Approved March 30th, 1876."

And your orator further shows that this bill, by the direction of the Governor of your orator, by authority of and pursuant to the joint resolutions last quoted, hath been prepared and is presented.

To the end, therefore, that the said the State of Delaware may full, true, direct and perfect answer make to all and singular the matters hereinbefore stated or charged, as fully and particularly as if the same were hereinafter repeated, and it thereunto interrogated paragraph by paragraph, and more especially that it may state whether it has not in and since the year 1872 claimed to own, in severalty and exclusively, the whole bed of the Delaware river from a point on said river twelve miles below the town of New Castle to the boundary line, on said river, between the State of Delaware and the State of Pennsylvania, and also whether it does not claim that its inhabitants are entitled to the sole and exclusive right of fishing in that portion of said river last hereinbefore mentioned, and also whether it has not denied, and does or not now deny, the right of the inhabitants of New Jersey to fish in any part of that portion of said river except under license from the State of Delaware, and whether its officers have not, in and since the year 1872, arrested the inhabitants of New Jersey and imprisoned them, and seized their property and deprived them thereof for fishing in that portion of said river, as well for being and fishing, without license from the

State of Delaware, in said river, on the easterly side of the middle of said river, north of a point twelve miles below New Castle and south of the State of Pennsylvania, as for being and fishing on the other side of the middle of that portion of said river, without license from the State of Delaware, and whether it and its officers have not threatened and do not mean and intend to arrest and imprison the citizens and residents of New Jersey, and to imprison, fine and otherwise punish them, to seize and dispose of the property of any of the citizens or inhabitants of New Jersey who may be found fishing on or in any part of said river north of a point twelve miles below New Castle, and a point twelve miles above the same town, without a license from the State of Delaware, and whether it is not the intent and purpose of the executive and ministerial officers of the State of Delaware to require the citizens and residents of New Jersey to pay larger or greater fees for licenses to fish in that portion of the Delaware river last above described than can or will be charged to citizens or residents of the State of Delaware for licenses to fish on the same portion of said river.

Your orator therefore respectfully prays that the State of Delaware may fully answer this bill, but without oath or affirmation.

That the true boundary line between the State of New Jersey and the State of Delaware may be ascertained, declared, defined and perpetually established.

That the rights and estate of your orator in the bed of said river, and the territorial extent thereof, may be ascertained, declared and established.

That the jurisdiction of your orator and of its courts and officers in and over the Delaware river, so far as said river is between the State of New Jersey and the State of Delaware, may be ascertained, defined, declared and perpetually established.

That the rights of the citizens and inhabitants of New Jersey to fish in that part of the Delaware river which is between the State of New Jersey and the State of Delaware, may be ascertained, declared and perpetually established and secured to them.

That the State of Delaware, its officers, agents and servants, and every person acting or claiming to act under or by the power or authority of the State of Delaware, or any of its laws, may be perpetually enjoined from imposing any tax, assessment, or imposition whatsoever by way of license fee or otherwise, upon any citizen or resident of the State of New Jersey, and from requiring them, or any of them, to take a license from or under the State of Delaware for right or authority to fish in the river Delaware. Or if said State may legally be permitted to require a license for fishing in any part of the said river, and to impose a tax for such license, or for fishing in said river, that it be enjoined perpetually from imposing any tax therefor, on citizens or residents of New Jersey, and from prescribing or requiring any license therefor for citizens or residents of New Jersey other or different from what is imposed upon and prescribed or required from citizens or residents of the State of Delaware; and, also, may be perpetually enjoined from arresting, imprisoning, trying, fining, or in any manner punishing, or seizing, holding or selling any property of any citizen or resident of New Jersey for fishing in any part of the Delaware river. And that your orator may have such other and further relief in the premises as the nature and circumstances of its case require, and as may be agreeable to equity.

May it please your Honors to grant unto your orator not only a writ or writs of injunction according to the prayers aforesaid, or to such extent and in such form as to your Honors shall seem proper, but also a writ of subpœna to be directed to the said the State of Delaware, requiring it to be and appear in the Supreme Court of the United States, at a time therein to be named, then and there to fully answer this bill, and to stand to, abide and perform such orders and decrees in the premises as to the said court shall seem meet and proper, and as may be agreeable to equity. And your orator will ever pray, &c.

JACOB VANATTA,
*Attorney-General of New Jersey,*
*and Solicitor of the Complainant.*

UNITED STATES OF AMERICA,
STATE OF NEW JERSEY, } ss.

*Samuel Callahan*, being duly sworn according to law, on his oath deposes and says that he is sixty-six years of age and resides at Pennsville, in the township of Lower Penns Neck, in the county of Salem and State of New Jersey, and has resided in that place all his life; that since the year 1824 he has, every year, been engaged in the business of fishing for all kinds of fish on the Delaware river, with nets; that his fishing, during the time aforesaid, has extended from Marcus Hook to Reed's Island, which last-named place is about twelve miles below New Castle, and has been down on both sides of and in the middle and in all parts of said river, within the limits aforesaid, as deponent saw fit, and at his free will and pleasure; and at no time during the period aforesaid did deponent pay anything or take out any license for the privilege of fishing in said river from the State of Delaware, nor from any authority whatsoever; nor was deponent ever asked to pay or take license for fishing in said river; nor, prior to the year 1872, did deponent ever hear that any resident of the State of New Jersey had ever been required or asked to pay or take out license for the privilege of fishing in said river, but all Jerseymen who saw fit to do so fished in said river freely, at their own pleasure, without leave asked of anyone as a matter of right. In the year 1872 deponent heard that some Jerseymen had been arrested for fishing in said river without license from the State of Delaware, but no one ever arrested deponent, or offered to arrest him, for fishing in said river.

SAMUEL CALLAHAN, SR.

Sworn and subscribed before me, at Trenton, New Jersey, February 9th, 1877.

LEWIS W. SCOTT,
*United States Commissioner, District of New Jersey.*

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UNITED STATES OF AMERICA,
STATE OF NEW JERSEY, } ss.

*William Hawn*, being duly sworn according to law, on his oath deposes and says that he is fifty-nine years old and resides in Pennsville, in the county of Salem, New Jersey; that Pennsville is about half a mile north of a point opposite to New Castle, Delaware; deponent has resided in Pennsville continually since the year 1834, and during all that time has been interested in, and most of the time actually engaged in fishing, for all kinds of fish, in the Delaware river, and deponent's fishing therein has been done in all parts of said river, from Penn's Grove, which is about seven miles north of Pennsville, to the mouth of Alloway's creek, which is about twelve miles below Pennsville, and during all the time aforesaid, prior to the year 1872, deponent never heard that any Jerseyman, or resident of New Jersey, was required or asked to pay anything, or to obtain a license from anyone for the privilege of fishing in said river, but all who chose to do so fished in any part of said river, at their will and pleasure, freely, as a matter of right. In the early part of May, 1872, deponent heard that some of his acquaintances had been arrested and carried into the State of Delaware, by officers of that State, for fishing in said river without license from the State of Delaware, and the word was that all who fished in said river, or any part thereof, north of Alloway's creek, without such license as aforesaid, would be arrested by officers from Delaware, and thereupon, under the advice of friends, deponent went to New Castle, in Delaware, to obtain license for deponent's sons, who were carrying on the fishing business in which deponent was then interested, and for that purpose went to the Clerk of the Peace in New Castle, and asked said clerk whether he required that license should be taken out for Jerseymen to fish on the easterly side of said river, and said clerk said Jerseymen must take out license from Delaware to fish in any part of said river. Deponent complained of the hardship or injustice of that requirement, but said clerk said that all who fished in said river without such license would be arrested, and thereupon deponent paid to said clerk a

license fee or tax of twenty dollars, and a fee of fifty cents for the issuance of the license, and thereupon deponent received from said clerk a license, of which the following is a copy:

"In the name and authority of the State of Delaware.

"STATE OF DELAWARE, *ss.*:

"James Ponder, Governor of the said State, to all persons to whom these presents may come. Greeting:

"This license is granted to Thomas Hawn & Brother, residents of the village of Pennville, in the county of Salem and State of New Jersey, to take or catch shad, for the purpose of sale, in Delaware river or bay, or any of the creeks or rivers emptying into the same, within the limits of this State, they having paid to the Clerk of the Peace of New Castle county, the sum of twenty dollars, for the use of the State, conformably to the provisions of an act of the General Assembly of this State, entitled A supplement to the act entitled 'An act for the protection of fishermen,' passed at Dover, March 29th, 1871.

"This license shall continue in force one year from the date hereof; and shall be confined to one boat or vessel named Charles Henry.

"Given under my hand, and countersigned by the Secretary of State, and sealed under the seal of his office, at Dover, the eighth day of May, in the year of our Lord one thousand eight hundred and seventy-two (1872).

"JAMES PONDER.

"JOHN H. PAYNTER, Secretary of State."

Deponent further saith that he paid the said twenty 50-100 dollars under protest, and it was so endorsed on said license. Deponent has taken no license for fishing since 1872, although he has been engaged in that business ever since. Last year there were reports that arrests would be made by the officers of Delaware for fishing in said river without license, but so far as deponent knows, no such arrests were made.

WILLIAM HAWN.

Sworn and subscribed before me, at Trenton, New Jersey, February 9th, 1877.

JAMES WILSON,
*U. S. Commissioner.*

UNITED STATES OF AMERICA,
STATE OF NEW JERSEY, } ss.

*John Q. A. Denny*, being duly sworn according to law, on his oath saith that his age is forty-six, and that he lives at Pennsgrove, Salem county, New Jersey, which is about eight and a half miles above a point opposite to New Castle, Delaware, and deponent has lived in that place all of his lifetime, and for 27 years last past deponent has every year been engaged in the business of fishing in the Delaware river, from Gloucester, which is 22 or 23 miles above Pennsgrove, to Cohansey, which is about 35 miles below Pennsgrove. During the time aforesaid deponent has used vessels and nets in said business of fishing, and has, at his free will and pleasure, fished on both sides of said river and in all parts thereof, and at no time did deponent ever take any license from or pay any money to the State of Delaware for the privilege of fishing in said river; and never, prior to the year 1872, did deponent ever hear from anyone that the State of Delaware, or anyone in its name or on its account, had ever claimed or pretended to claim, that said State had or claimed any right to impose any license fee or tax of any kind on any resident of New Jersey, for the right or privilege of fishing in any part of said river. In the year 1872, deponent was informed that some 22 Jerseymen were arrested by officers from Delaware, for fishing without license from the State of Delaware, for fishing in said river; and in the month of April, 1872, an attempt was made by the officers of said last-named State, to arrest deponent for fishing in said river near Port Penn, but deponent escaped without being arrested by them, and since then no attempt has been made to arrest deponent for fishing in said river.

J. Q. A. DENNY.

Sworn and subscribed before me, February 9th, 1877, at Trenton, New Jersey.

JAMES WILSON,
*U. S. Commissioner.*

UNITED STATES OF AMERICA,
STATE OF NEW JERSEY, } ss.

*George Stanton*, of full age, being duly sworn, on his oath deposes and says that he is forty years old, that he lives at Pennsgrove, Salem county, New Jersey, and has resided at said Pennsgrove over 27 years last past continually, and for nineteen years last past has, every year been engaged in the business of fishing in the Delaware river, from a point twelve miles above New Castle, Delaware, to a point about twenty miles below New Castle, and during all that time, at his free will and pleasure, has fished in all parts of said river within the limits aforesaid, without paying anything, or having any license therefor, except that on the 2d of May, 1872, deponent, with twenty-one of his neighbors, all of whom were residents of the said county of Salem, while fishing in said river, about one-half of a mile easterly of the middle of the channel of said river, and about eleven miles above New Castle, were arrested by officers from the State of Delaware. Said officers came to deponent and his said neighbors, on a tugboat called the "Falcon," in command of Captain John Haycock, which boat came from Wilmington, Delaware. Deponent does not know the names of the officers who made said arrests, but they claimed to be acting in the name of and by the authority of the State of Delaware. Said officers seized the said twenty-two persons, one of whom was deponent, and eleven rowboats and eleven fishing nets, which were then and there in the possession and use of said twenty-two persons. All the persons arrested protested against the arrest, and one or two verbally refused to submit to said arrest, and thereupon one of said officers drew a pistol and pointed it at the person so refusing, and said if he, the person objecting, did not come on board of the "Falcon" he would make him, or words to that effect. All of said twenty-two persons, as soon as

arrested, with said rowboats and nets, by the "Falcon," were taken into Wilmington, Delaware, and there by said officers were taken to the office of the District or Prosecuting Attorney in Wilmington. Said attorney told said prisoners they had been violating the laws of the State of Delaware. The prisoners told the said attorney that they had been fishing, when arrested, on the easterly side of the middle of the river, but he replied that the State of Delaware claimed the whole river, from shore to shore, twelve miles above and twelve miles below New Castle, and then he stated what the punishment was for the offense with which the said prisoners were charged—that is, for fishing in the said river, within the limits aforesaid, without license from the State of Delaware, which punishments were forfeiture of the boats and nets, and fine and imprisonment. The said attorney further said that the said prisoners could take their choice, take out license and pay $20 therefor, and the expenses of the arrest, doing which they could go their way, or else they could go to jail and wait for and have a trial. As all of said prisoners were poor persons, and could not afford to go to jail and incur the expenses of trial, they were compelled to accept licenses and pay therefor. They took out eleven licenses, one license for each boat, and paid for each license $20.75, and for the costs of the arrests $55.

Since in 1872, deponent has taken out no license or paid any tax to the State of Delaware for the right to fish in the Delaware river or in any part of it. Before 1872 deponent had never heard that anyone questioned or denied the right of deponent, or of any citizen of New Jersey, to fish freely in any part of the Delaware river between New Jersey and Delaware.

Since said arrests, deponent has frequently heard fishermen, resident in New Jersey, declaring that if persons or officers from Delaware should again arrest citizens of New Jersey, on the Delaware river, for fishing in said river without license from the State of Delaware, the arrests would not be submitted to, but would be resisted with all the force necessary to defeat such arrests; and deponent verily believes that if such arrests are again attempted they will be

resisted and that violence, bloodshed and loss of life will be the probable and almost certain result.

GEORGE STANTON.

Subscribed and sworn to before me, at Trenton, New Jersey, February 13th, 1877.

[L. S.] J. D. HALL,
*Notary Public.*

UNITED STATES OF AMERICA,
STATE OF NEW JERSEY, } *ss.*

*Job Barber*, of full age, being duly sworn, on his oath deposes and says that he is fifty-one years old, and resides in Pennsgrove, Salem county, New Jersey, and has lived in said county all of his life except the first eight years of his life, and that for twenty-two years last past he has been engaged in the business of fishing in the Delaware river, from a point about twelve miles above New Castle, Delaware, to a point about twenty miles below New Castle, in all parts of said portion of said river, and without paying anything for so doing, or having license therefor from the State of Delaware, no such pay or license ever having been asked for except in 1872. Deponent has heard the foregoing affidavit of George Stanton read and understands its contents. Deponent was one of the persons arrested at the time spoken of in said Stanton's affidavit, and with said Stanton and the others of said prisoners, was taken into Wilmington, Delaware, and deponent knows that the statements of the said affidavit of said Stanton, as to what occurred at and after said arrests, to be true, and that they are true. He further saith that he believes that if the State of Delaware should make any efforts hereafter to arrest Jerseymen for fishing in said river, it will cause breaches of the peace, and very likely bloodshed, and probably worse consequences.

JOB BARBER.

Subscribed and sworn to before me, at Trenton, New Jersey, February 13th, 1877.

[L. S.] J. D. HALL,
*Notary Public.*

Extract from the annual message of Hon. John P. Cochran, Governor of the State of Delaware, dated 2d January, 1877, addressed and delivered to the General Assembly of said State at its session held in January, 1877:

"Since the last session of the General Assembly, the 'fishery controversy' has been renewed between this State and the State of New Jersey, involving the jurisdiction of the respective States over that portion of the Delaware river lying within 'the compass or circle of twelve miles about the town of New Castle' to low-water mark on the New Jersey shore.

"On the 28th day of March, 1871, the General Assembly passed an act declaring it unlawful for any person, not being a citizen of this State, to catch or take fish of any kind in Delaware bay or river, or any of the creeks emptying into the same, within the limits of this State, without first paying twenty dollars, for the use of the State, to the Clerk of the Peace for one of the counties, for an annual license therefor. A supplement to said act, passed at the same session, declared it also unlawful for any resident or citizen of this State to catch or take any shad, for the purpose of sale, in Delaware river or bay, or any of the creeks or rivers emptying into the same, within the limits of this State, without first paying five dollars for an annual license therefor for the use of the State.

"The enforcement of these provisions by the arrest of citizens of New Jersey engaged in fishing within that portion of the Delaware river lying within the twelve-mile circle, was promptly opposed by the authorities of that State with a claim of jurisdiction over said river east of the middle line, and of the legal right of her citizens to fish on the New Jersey side of the river without the license of Delaware, either within or without the said circle.

"The controversy arising over this question of disputed jurisdiction, led, during the year 1872, to a correspondence and subsequent conference between the late Executives of the two States, which finally resulted in their agreement to bring the subject to the attention of the Legislatures of their respective States, and recommend the appointment of com-

missioners on the part of each to settle the matter in dispute. Their recommendations were accordingly made, and a joint commission, consisting of three members from each State, and comprising lawyers of acknowledged learning and ability, was appointed by legislative authority. Shortly after their appointment a joint resolution of the General Assembly suspended all laws requiring a license to fish for shad within the waters of this State, pending the negotiations between the commissioners of the two States.

"But all efforts of the joint commissioners to reach a satisfactory basis of definite settlement of the matter in controversy having failed, it was finally agreed between them, as I am duly informed, that the commissioners from each State should prepare and present to the other a written or printed statement of the title and claim involved in the controversy of each State, with the grounds upon which the same were based, which might be reported by them to their respective States. I am also informed that as early as July, 1874, the commissioners from this State duly delivered the statement asserting and vindicating the claim and title of Delaware, but that the commissioners from New Jersey have as yet wholly failed to do likewise in behalf of their State. This omission on the part of the latter, having continued until March 26th, 1875, was construed to be an implied adandonment of their case and a tacit relinquishment of their alleged claim of title and jurisdiction. The General Assembly of this State accordingly, on that day, adopted a joint resolution declaring that the commissioners on the part of this State, having fully performed their duty and reported the result of their labors, were relieved of further duties as such commissioners.

"The effect of this resolution was to abrogate their authority and terminate their negotiations, and to revive the suspended license laws. It thereupon became my imperative duty, under my constitutional obligation to 'take care that the laws be faithfully executed,' to sign and cause to be issued the licenses prescribed by the acts I have referred to. Immediately upon his receiving information of this fact, I was solicited by His Excellency Governor Bedle, of New

Jersey, to meet him in Philadelphia for a conference upon the subject, with a view to some amicable arrangement for the temporary postponement of the execution of the law in question until the necessary proceedings could be had for the final settlement of the controversy by some competent authority. But desirable as it was to secure an amicable adjustment of our differences, and to avert any disturbance of the friendly relations which have so long existed between the citizens of New Jersey and Delaware, I was, nevertheless, unable to comply with his Excellency's desire, because I had no power, as the Executive of this State, to suspend for an instant, any law upon its statute-book. Therefore, after a complete review of the history of the controversy and a thorough interchange of views, it became apparent that the State of New Jersey must necessarily resort to the proper legal tribunal for an adjudication, if she is determined to insist upon her denial of our title and jurisdiction over the Delaware river to her low-water mark within the twelve-mile circle. In confirmation of this conclusion it has been communicated to me officially that the Attorney-General of New Jersey is now engaged in the completion of a bill in equity in support of the pretensions of that State, and that the same will shortly be filed in the Supreme Court of the United States for the purpose of having the true boundary line between the two States judicially determined and finally and definitely established. If this proceeding shall indeed be taken by New Jersey, it will be incumbent upon the General Assembly at its present session to make adequate provision for the proper vindication of that rightful claim of title and jurisdiction which, I believe, has never before been denied by New Jersey, but which, on the contrary, is based upon original and incontestable grants, and has been uninterruptedly asserted and maintained by the State of Delaware for the space of nigh two centuries, and I would respectfully recommend that such legislation be had as will meet all exigencies likely to arise, pending the litigation."

SUBPŒNA.

THE UNITED STATES OF AMERICA, ss.

[SEAL.] The President of the United States of America to the State of Delaware, Greeting:

For certain causes offered before the Supreme Court of the United States, having jurisdiction in equity, you are hereby commanded that, laying all other matters aside and notwithstanding any excuse, you be and appear before the said Supreme Court holding jurisdiction in equity, on the third Monday of May next, at the city of Washington, in the District of Columbia, being the seat of the National Government of the United States, to answer unto the bill of complaint of the State of New Jersey in the said court exhibited against you.

Hereof you are not to fail at your peril.

Witness the Honorable Morrison R. Waite, Chief Justice of the said Supreme Court, at the city of Washington, the fourteenth day of March, A. D. 1877.

D. W. MIDDLETON,
*Clerk Supreme Court U. S.*

1877, March 29th. Service of the within writ is this day accepted.

JOHN P. COCHRAN,
*Governor of the State of Delaware.*

JOHN B. PENNINGTON,
*Attorney-General of the State of Delaware.*

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PROOF OF SERVICE OF SUBPŒNA.

I, John G. Nicolay, Marshal of the Supreme Court of the United States, do hereby certify that I have served the within writ by receiving from John P. Cochran, Governor of the State of Delaware, and John B. Pennington,

Attorney-General of the State of Delaware, their written acceptance of service of this writ upon the State of Delaware, as appears in the foregoing endorsement.

Done at the city of Washington this fifth day of April, A. D. eighteen hundred and seventy-seven.

JOHN G. NICOLAY,
*Marshal.*

Endorsed—Supreme Court U. S. 1876. October Term No. The State of New Jersey, Complainant, vs. The State of Delaware. Subpœna and Service. Filed 5th April 1877.

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## ARGUMENT ON MOTION FOR PRELIMINARY INJUNCTION.

On the 19th day of March, A. D. 1877, the following entry appears of record, to wit:

"Supreme Court of the United States. The State of New Jersey, complainant, *v.* The State of Delaware.

"The argument of the motion for preliminary injunction in this cause was commenced by Mr. F. T. Frelinghuysen of counsel for the complainant, continued by Mr. T. F. Bayard, of counsel for the respondent, and concluded by Mr. Jacob Vanatta, of counsel for the complainant."

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## ORDER FOR PRELIMINARY INJUNCTION.

On the 26th day of March, A. D. 1877, the following entry appears of record, to wit:

"Supreme Court of the United States. No. 17. Original. October Term, 1876. The State of New Jersey, Complainant, *v.* The State of Delaware. Bill in Equity

and being argued by Mr. Frelinghuysen and Mr. Vanatta for the complainant, and by Mr. Bayard for the defendant, and it appearing by the allegations of the bill, duly verified by affidavits and other evidence of public character, that for a long period of time, to wit, more than seventy years last past, the State of New Jersey has claimed and exercised jurisdiction over the easterly portion of the river Delaware to the middle of the same, where the said river runs between the said State and the State of Delaware, and that (except as hereinafter stated) the citizens and inhabitants of New Jersey have, during said period, exercised the right of freely fishing in said river, in common with the citizens and inhabitants of said State of Delaware, but that recently, to wit, from and since the year 1872, the State of Delaware has claimed exclusive jurisdiction of the whole of said river from the southerly line of Pennsylvania southwardly to the distance of twelve miles below the town of New Castle, and has interfered with and claimed to control the right of fishing thereon, and has exacted fines and other impositions from the said citizens and inhabitants of New Jersey for fishing as aforesaid, unless they would take out licenses for that purpose from the authorities of the State of Delaware, and pay certain fees and exactions for said licenses, and has caused to be arrested certain of said citizens and inhabitants for refusing to comply with such requirements; and that the State of Delaware still threatens and intends to enforce its said claims, which are resisted by the State of New Jersey; and that the public peace between the citizens and inhabitants of said States is liable to be endangered and interrupted by reason of the premises; and this suit being brought for the purpose of determining the true boundary line between the said States, and settling the controversies between them in reference to the matters aforesaid; therefore—

It is ordered by the court that an injunction do issue to enjoin and restrain the said State of Delaware, its officers, agents and servants, that they and each and every of them do henceforth desist and refrain from imposing any tax, assessment or imposition whatsoever, by way of license fee

or otherwise, upon any citizen or resident of the State of New Jersey, and from requiring them, or any of them, to take a license from or under the State of Delaware for right or authority to fish in the river Delaware, as they have heretofore been accustomed to do, before the said interference; and from arresting, imprisoning, trying, fining, or in any manner punishing, or seizing, holding or selling any property of any citizen or resident of New Jersey for fishing in said river as aforesaid, until this court shall make other order to the contrary.

March 26th, 1877.

True copy.

Test:

D. W. MIDDLETON,

[L. S.] *Clerk Supreme Court U. S.*

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PROOF OF SERVICE OF PRELIMINARY INJUNCTION.

*Robert L. Hutchinson*, United States Marshal in and for the District of New Jersey, being by me duly sworn according to law, upon his oath says that on the eleventh day of April, A. D. eighteen hundred and seventy-seven, he served a copy of the annexed "order for an injunction" upon His Excellency John P. Cochran, Governor of the State of Delaware, by showing to him the annexed copy of said order and the seal of the court thereon, and informing him of the contents therein, and delivering to him a true copy of said order; and upon the Honorable John B. Pennington, Attorney-General of the State of Delaware, on the twelfth day of April, A. D. eighteen hundred and seventy-seven, by showing to him the annexed copy of said order and the seal of the court thereon, and informing him of the contents therein, and delivering to him a true copy of said order.

R. L. HUTCHINSON,

*U. S. Marshal for the District of New Jersey.*

Sworn and subscribed before me, at Trenton, N. J., on this seventeenth day of April, A. D. 1877.

W. S. BELVILLE,
*U. S. Commissioner, District of N. J.*

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INJUNCTION AND PROOF OF SERVICE.

THE UNITED STATES OF AMERICA, ss.

[SEAL.] The President of the United States of America to the State of Delaware, its officers, agents and servants, Greeting:

Whereas, the State of New Jersey, complainant, hath lately exhibited its bill before the Supreme Court of the United States, at Washington, against you, the said State of Delaware, defendant, praying relief touching the matters therein mentioned;

And whereas, by an order of the said Supreme Court, made in the said cause on the 26th day of March, A. D. 1877, it was ordered that a preliminary injunction should issue, under the seal of the said Supreme Court, to restrain the said State of Delaware, its officers, agents, and servants, that they, and each and every of them, do henceforth desist and refrain from imposing any tax, assessment, or imposition whatsoever, by way of license fee or otherwise, upon any citizen or resident of the State of New Jersey, and from requiring them, or any of them, to take a license from or under the State of Delaware for right or authority to fish in the river Delaware, as they have heretofore been accustomed to do before the interference of the said State of Delaware, as mentioned in said order, and from arresting, imprisoning, trying, fining, or in any manner punishing or seizing, holding, or selling any property of any citizen or resident of New Jersey for fishing in said river as aforesaid, until the said court shall make other order to the contrary:

You and each of you are therefore hereby commanded

and enjoined that you do desist and refrain from imposing any tax, assessment, or imposition whatsoever, by way of license fee or otherwise, upon any citizen or resident of the State of New Jersey, and from requiring them, or any of them, to take a license from or under the State of Delaware for right or authority to fish in the river Delaware, as they have heretofore been accustomed to do before the interference of the said State of Delaware, as mentioned in said order; and from arresting, imprisoning, trying, fining, or in any manner punishing or seizing, holding, or selling any property of any citizen or resident of New Jersey for fishing in said river, as aforesaid, until the said court shall make other order to the contrary.

Hereof fail not at your peril.

Witness the Honorable Morrison R. Waite, Chief Justice of the said Supreme Court, this 31st day of March, A. D. 1877.

D. W. MIDDLETON,
*Clerk Supreme Court U. S.*

Robert L. Hutchinson, United States Marshal in and for the District of New Jersey, being by me duly sworn according to law, upon his oath says that on the eleventh day of April, A. D. eighteen hundred and seventy-seven, he served the annexed writ of injunction upon His Excellency John P. Cochran, Governor of the State of Delaware, by showing to him the original writ and the seal of the court thereon and informing him of the contents therein, and delivering to him a true copy of said writ; and upon the Honorable John B. Pennington, Attorney-General of the State of Delaware, on the twelfth day of April, A. D. eighteen hundred and seventy-seven, by showing to him the original writ and the seal of the court thereon, and informing him of the contents therein, and delivering to him a true copy of said writ.

R. L. HUTCHINSON,
*U. S. Marshal for the District of New Jersey.*

Sworn and subscribed before me, at Trenton, N. J., on this seventeenth day of April, A. D. 1877.

W. S. BELVILLE,
*U. S. Commissioner, Dist. of N. J.*

Endorsed—Sup. Court U. S. 1876, Octo. Term. Original. No. 1. The State of New Jersey *v.* The State of Delaware. Injunction and service. Filed 20th April, 1877.

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ORDER TO PLEAD, ANSWER OR DEMUR.

On the 23d day of April, A. D. 1877, the following entry appears of record, to wit:

"Supreme Court of the United States. The State of New Jersey, Complainant, *v.* The State of Delaware.

"On motion of Mr. Frelinghuysen, of counsel for the complainant, it is ordered that the State of Delaware plead, answer or demur to the bill of complaint filed in the above-stated case on or before the second Monday of October next; and that when an issue of fact is joined, each party be at liberty, on ten days' notice, to take testimony before a Commissioner of the Circuit Court of the United States, in such manner as testimony is usually taken for the purpose of being used in the Circuit Courts of the United States."

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I, James H. McKenney Clerk of the Supreme Court of the United States, do hereby certify that the foregoing manuscript and printed pages, numbered from one to sixty, inclusive, contain a true copy of the record in the case of The State of New Jersey, Complainant, *v.* The State of Delaware, No. 1, original, October Term, 1884, as the same remains upon the files and records of said Supreme Court.

In testimony whereof I hereunto subscribe my name and affix the seal of said Supreme Court, at the city of Washington, this first day of May, A. D. 1885.

[L. S.] JAMES H. MCKENNEY,
*Clerk of the Supreme Court of the United States.*

DOCKET ENTRIES.

Supreme Court of the United States. No. 1. Original. October Term, 1897. The State of New Jersey, Complainant, *v.* The State of Delaware. Bill in Equity.

1877, March 13th. Motion for leave to file bill and for process filed.

1877, March 13th. Notice of motion and proof of service filed.

1877, March 13th. Leave granted to file bill and subpœna ordered to issue.

1877, March 13th. Bill filed.

1877, March 15th. Subpœna issued to the Marshal.

1877, March 19th. Motion for preliminary injunction argued.

1877, March 26th. Ordered that preliminary injunction issue.

1877, March 29th. Copy of order sent to Mr. Frelinghuysen.

1877, March 31st. Injunction issued to Mr. Frelinghuysen.

1877, April 5th. Proof of service of subpœna filed.

1877, April 20th. Proof of service of order and injunction filed.

1877, April 23d. Ordered that defendant plead, answer or demur on or before second Monday of October next, and when issue is joined, testimony to be taken in the usual manner.

1892, May 16th. Leave granted to file stipulation extending time to plead, answer or demur.

1892, May 16th. Stipulation filed.

1897, May 24th. Ordered that the clerk notify counsel that the court expects this cause to be disposed of at the next term.

True copy.

Test:

[L. S.] JAMES H. MCKENNEY,

*Clerk of the Supreme Court of the United States.*

AGREEMENT OF COUNSEL, MAY 2d, 1892.

In the Supreme Court of the United States. The State of New Jersey, Complainant, *v.* The State of Delaware, Defendant. Original. In equity.

And now, to wit, this second day of May, A. D. 1892: Whereas, by an understanding between the counsel, the said cause has been permitted to stand until this time upon the rule to plead, answer or demur, with the agreement that the defendant should not be required to act upon such rule until counsel on either side should desire to press the case to a hearing: It is thereupon agreed by counsel on both sides that the said understanding is continued and that the time to plead, answer or demur is hereby extended without limit, provided that the defendant may be at any time required to plead, answer or demur, on sixty days' notice from the plaintiff, or the defendant may of its own motion, at any time, plead, answer or demur with the same effect as if the same were done under the original rule; and in either case, upon the filing of a plea, answer or demurrer, the case shall proceed as if the same had been done under the original rule; that nothing in this agreement shall be construed to affect in any manner or impair the obligations of the injunction heretofore issued in this cause, to wit, on the 31st day of March, 1877, but the same shall remain in full force and vigor until the further order of the court in the premises. Signed in triplicate.

JOHN P. STOCKTON,
*Of Counsel for Plaintiff.*

GEORGE GRAY,
GEO. H. BATES,
*Of Counsel for Defendant.*

NOTICE TO PLEAD, &c., ACCEPTED JULY 18th, 1897.

State of New Jersey, Complainant, *v.* State of Delaware, Defendant. In Supreme Court. Original No. 1.

Now, to wit, this 18th day of July, A. D. 1897, notice to plead, answer or demur as provided for in the agreement of May 2d, 1892, is accepted by defendant, and further notice waived.

GEO. GRAY,
*Of Counsel for Defendant.*

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NOTICE OF APPLICATION FOR DECREE PRO CONFESSO AND TO REFER SAME TO UNITED STATES COMMISSIONER, SEPTEMBER 8th, 1897.

United States Supreme Court. Between the State of New Jersey, Complainant, and the State of Delaware, Defendant. Original Number 1. On Bill for Injunction and Relief.

SIR—Take notice that I shall apply to the Supreme Court of the United States, at the Capitol in Washington, D. C., on Monday, the eleventh day of October next, at twelve o'clock noon, or as soon thereafter as counsel can be heard, for leave to enter a decree *pro confesso* in above-stated cause and to refer the same to a United States Commissioner to take the proofs which may be offered before him by complainant in support of complainant's bill, of all which you hereby have notice.

Your obedient servant,
S. H. GREY,
*Attorney-General for the State of New Jersey, and Solicitor of Complainant.*

To the Hon. George Gray, Solicitor of Defendant.
Dated Trenton, N. J., September 8th, 1897.

Due and legal service of within notice is hereby acknowledged.

GEO. GRAY,
*Solicitor for Defendant.*

## SUBSTITUTION OF COUNSEL.

In the Supreme Court of the United States. Between the State of New Jersey, Complainant, and the State of Delaware, Defendant. Original number one. On Bill for Injunction and Relief.

It is hereby stipulated and agreed that Samuel H. Grey, Attorney-General of the State of New Jersey, may be substituted as solicitor for complainant in above-stated cause, and that a rule of the court making such substitution may be entered, pursuant to the practice of the court to that effect.

October 2d, 1897.

GEO. GRAY,
*Solicitor for Defendant.*

Brief of Vanatta (on mo) for
Filed 19th March 18(

# SUPREME COURT OF THE UNITED STATES.

## IN EQUITY.

THE STATE OF NEW JERSEY,

vs.

THE STATE OF DELAWARE.

Motion by the plaintiff for leave to file the bill, for process to answer, and for a writ of preliminary injunction.

The bill states that the State of New Jersey is the owner, in fee simple, of a portion of the bed of the Delaware river—that is to say, from the south-easterly corner of the State of Pennsylvania, on said river, to and into Delaware bay. That within the limits aforesaid, New Jersey's part of the bed of said river extends from the New Jersey shore thereof to the middle of said river.

That the tide extends in said river northerly, above and beyond the State of Delaware.

That within the limits aforesaid, the State of New Jersey has an equal interest (including the right of fishing) and a concurrent jurisdiction with the State of Delaware. Bill, page 1.

The bill then states, with considerable fullness, the title of the plaintiff to what it claims, referring to and stating various documents and public acts, beginning with the patent from Charles 2d, King of England, to his brother James, Duke of York, dated March 12th, 1664, and extending to and including the treaty of Paris, between Great Britain and the United States, dated September 3d, 1783. Bill, pages 1 to 15.

Among the plaintiff's title, the bill states "long, peaceable and undisputed possession, use and enjoyment, which began with the earliest settlement of the State of New Jersey, and

DE04655

which hath continued ever since, without interruption or dispute, except the interruption complained of in the bill.

That during all that time the citizens and residents of New Jersey, under the authority, and with the leave and license of the plaintiff, have improved the easterly shore of the Delaware, opposite to the State of Delaware, from a point opposite to the boundary line between Pennsylvania and Delaware, on the Delaware river, to and below a point on the easterly side of said river to and below a point on the easterly side of said river, twelve miles below New Castle, as their wants and convenience have required, by erecting dykes and embankments, and building wharves, docks, piers and other structures and arrangements. That the south-westerly limits of the Counties of Salem, Cumberland and Cape May (which lie opposite to the State of Delaware, and adjoin on said river) by usage and legislative enactment have been the main ship channel of the river and bay of Delaware. That the laws of New Jersey, relative to fishing in the Delaware, for over seventy years have been recognized, obeyed and enforced on every part of that part of said river which lies between the State of New Jersey and the State of Delaware, and that the citizens and inhabitants of New Jersey, for more than two hundred years, have claimed, exercised and enjoyed, without molestation or interruption (except the interruption complained of in the bill), the right of fishing in all parts of said river, equally and in common with the citizens and inhabitants of the State of Delaware, and that during all that time, the Courts of New Jersey have exercised jurisdiction, in respect of wrongs committed on said river, where it runs between the said two States, and complained of in the Courts of New Jersey. Bill, pages 16, 17.

With regard to a patent alleged to have been made by Charles 2d to James, Duke of York, said to bear date 22d March, 1683, under which it is supposed that Delaware may, possibly, claim some right to the whole bed of the river, for a distance of twenty four miles, i. e.: twelve miles on each side of New Castle, the bill denies that the said alleged patent was ever legally made, or ever legally delivered by the said King to the Duke of York, and that the said alleged

DE04656

patent ever had any legal existence, and it insists that if it shall appear that the alleged patent had legal existence and validity, that then and in that case, by the legal and just construction thereof, it can not, and should not be construed to include, or control, any part of the bed of said river lying northerly or easterly of the middle of said river, and no rights of jurisdiction, or fishing, in said river to the State of Delaware, except equal and concurrent rights with New Jersey. Bill, pages 15, 16.

The grievances complained of are: That the Legislature of the State of Delaware, on 28 March, 1871, passed an act entitled, "An act for the protection of fishermen," by the first section of which it is enacted that it shall be unlawful for any person not being a citizen of the State of Delaware to take or catch fish of any kind in the Delaware bay or river, or any of the creeks emptying into the same, within the limits of that State, without obtaining from the Clerk of the Peace of one of the Counties a license therefor, which license should be granted on payment to the Clerk, for the use of the State, twenty dollars, which license should be in force for one year from its date, and should be confined to one boat or vessel named therein, except that transient vessels might catch fish for their own immediate use.

Said act further provides that if any master of a boat or vessel, or other person, shall violate the said first section, he shall be deemed guilty of a misdemeanor, and pay to the State a fine of fifty dollars, and the boat or vessel used in such violation of the law, with all her tackle, apparel and furniture, and all her implements for fishing, gill net or seine, or any contrivance for taking fish, and anything so taken shall be forfeited, and may be seized and detained for trial by any officer or person. By a supplement to that act, passed March 29, 1871, it was prescribed that it should be unlawful for any resident or citizen of the State of Delaware to catch or take any shad, for the purpose of sale, in Delaware river or bay, or any of the creeks or rivers emptying into the same, within the limits of that State, without license, for which five dollars were to be paid for the use of the State, the license to be in force one year from its date, and confined to one boat or ves-

DE04657

sel named therein, and declaring " that all provisions of the act to which this is a supplement, shall, with the exception of section one of this act, be applicable to citizens and residents of this State."

That the officers of the State of Delaware construed the said act as requiring or authorizing them to arrest citizens of New Jersey while pursuing the occupation of fishing in the river Delaware, in the easterly side of said river, and easterly of the middle and near to the easterly shore of the river, and under that construction, in the month of April, or early part of the month of May, 1872, officers of the State of Delaware, on the easterly side of the middle of the river Delaware, above New Castle, but less than twelve miles above that place, arrested twenty or more citizens and inhabitants of the State of New Jersey, who were then and there engaged in fishing in said river, and seized their vessels and fishing implements, and carried these fishermen and their property so seized into the State of Delaware, on a charge against said persons that they had not taken license and paid the license fee of twenty dollars, and compelled the persons so arrested to pay fines and take out licenses and pay therefor twenty dollars each; and thereby did assert and ever since have asserted an exclusive jurisdiction over the whole of said river, from shore to shore, for a distance of twelve miles above New Castle and twelve miles below that place, in disregard and defiance of the rights of the plaintiffs.

Bill, pages 17—19.

The bill then states negotiations between the two States, and various acts and resolutions of the two States, the result of which is that no settlement of the controversy has been reached; that by joint resolution of the Legislature of New Jersey, approved March 30, 1876, the Governor of New Jersey was authorized to cause to be instituted and prosecuted in this Court a suit in equity or an action at law, by the State of New Jersey against the State of Delaware, to ascertain, determine and settle the true territorial boundary line between the State of New Jersey and the State of Delaware, and the extent of the jurisdiction of each of said States in and on said river.

That after the passage of that resolution, efforts were made

DE04658

by the plaintiff with the Governor and Attorney General of Delaware to induce them to agree to not enforce the penalties prescribed by the aforesaid act of Delaware against citizens or residents of the State of New Jersey, against fishing in said river without license from the State of Delaware, pending this suit in this Honorable Court, but they declined to so agree, and insisted it was their right and duty to treat as belonging to and within the exclusive jurisdiction of the State of Delaware, the whole of the river Delaware from shore to shore, from a point twelve miles below the town of New Castle to a point twelve miles above that town on said river, and to enforce the fishing and other laws of Delaware accordingly. The prayers of the bill are (page 32 and 33) first, that the true boundary line between the two States may be ascertained, declared, defined and perpetually established; second, that the rights and estate of the plaintiff in the bed of said river, and the territorial extent thereof, may be defined, declared and established; third, that the jurisdiction of the plaintiff, and its Courts and officers, in and over the Delaware river, so far as said river is between the State of New Jersey and the State of Delaware, may be ascertained, defined, declared and perpetually established; fourth, that the rights of the citizens and inhabitants of New Jersey to fish in that part of the Delaware river which is between the State of New Jersey and the State of Delaware, may be ascertained, declared and perpetually established and secured to them; fifth, that the State of Delaware, its officers, etc., may be perpetually enjoined from imposing any tax, assessment or imposition whatsoever, by way of license fee, or otherwise, upon any citizen or resident of New Jersey, and from requiring any of them to take a license from, or under, the State of Delaware for right to fish in the river Delaware, or, if Delaware may legally be permitted to require a license from Jerseymen to fish in any part of the river Delaware, that it be enjoined perpetually from imposing any tax therefor on citizens or residents of New Jersey, and from prescribing or requiring any license therefor from citizens or residents of New Jersey, other or different from what is imposed upon or required from citizens or residents of the State of Delaware, and also may be perpetually enjoined from arresting, imprisoning, trying, fin-

ing, or in any manner punishing or seizing, holding or selling any property of any citizen or resident of New Jersey, for fishing in any part of the Delaware river; sixth, for general relief.

The bill is accompanied by affidavits of fishermen, resident in the County of Salem, New Jersey, who testify that, prior to the year 1872, they, and other New Jersey fishermen, without tax or license from any authority or person, fished for all kinds of fish in any and all parts of the river, at their free will and pleasure as a matter of right. That they never heard the right of Jerseymen to so fish in that river denied or questioned before the year 1872. That in that year, some of them were arrested by officers from Delaware and carried into that State as prisoners, and obliged to pay the expenses of their arrest, and to pay for and take out license to obtain their liberty. That since 1872, none of them has taken any license or paid any tax for fishing in said river, although they have every year fished therein, and some of the affiants expressed a belief that if persons, claiming to act under the authority of the State of Delaware, should hereafter arrest Jerseymen for fishing in the Delaware river, the arrests would be resisted, and breaches of the peace, bloodshed and worse mischief will be very likely to ensue. There is also appended to the bill an extract from the last biennial message of the Governor of that State, delivered to the Legislature in January, 1877, in which the Governor states that he was solicited by the Governo of New Jersey to temporarily postpone the execution of the law in relation to the fishing in the river Delaware against citizens of New Jersey, until the necessary proceedings could be had for a final settlement of the controversy by some competent authority, but that he was unable to comply with that request, because he had no power, as the executive of that State, to suspend for an instant any law upon its statute book, and stating that it will be incumbent upon the General Assembly, at its present session, to make adequate provision for the proper vindication of the claim of Delaware, and recommending that such legislation will be had as will meet all exigencies likely to arise pending the litigation.

A preliminary injunction is asked for, on the ground that without it, while the litigation is in progress, the arresting of

DE04660

Jersey fishermen, by officers of Delaware, for fishing in the Delaware river, will be morally certain to result in breaches of the peace, with bloodshed, and probable loss of life, as well as a dangerous and disastrous disturbance of the friendly and peaceful relations heretofore existing, and which should continue to exist between the two States.

I.

It is assumed that leave to file the bill and take out process to answer, to be served upon the Governor and Attorney General of the defendant State, will be granted almost as a matter of course.

*State of Georgia vs. Grant*, 7 *Wall*, 241.

*State of Florida vs, State of Georgia*, 11 *Howard*, 293.

II.

*As to the preliminary Injunction.*

The Constitution, Art. 4, § 4, declares that "The United States shall guarantee to every State in this Union a republican form of government, and shall protect each of them against invasion."

That protection against invasion, it is assumed, is to be furnished by that department of the government which, by the Constitution, is vested with the power most appropriate to furnish the protection required by the nature and character of the invasion. In this case, the judicial power being adequte and appropriate for that purpose, should furnish the necessary protection. For that purpose Article 3, § 2, ¶ 1, extends the judicial power of the government to controversies between two or more States, and ¶ 2 of the same section provides that the Supreme Court shall have original jurisdiction in all cases in which a State shall be a party.

*See Rev. Stat.* § 687.

Section 716 of the Revised Statutes prescribes that the Supreme Court, and Circuit and District Courts, shall have power to issue writs of *scire facias*. They shall also have power to issue all writs not specifically provided for by statute, which may be necessary for the exercise of their respective jurisdictions, and agreeable to the usages and principles of law.

This necessarily includes the writ of injunction, which is

DE04661

one of the most necessary and useful instruments in a Court of Equity.

This Court granted a preliminary injunction at August term, 1792.

*The State of Georgia vs. Brailsford*, 2 *Dallas*, 402.

The same power was recognized—

*The State of New York vs. The State of Connecticut*, 4 *Dallas*, 1.

The bill shows a good title in the plaintiff to the subject matter of the controversy. It also shows a peaceable, undisturbed, and unquestioned and undisputed possession and enjoyment under claim of right for more than two centuries, excepting only the invasion complained of, which occurred in 1872. It also shows an existing purpose and determination on the part of Delaware to invade the territory and defy and disregard the jurisdiction and authority of the plaintiff, and to arrest and carry beyond the State of New Jersey its citizens, and to punish them in another State for acts done within their own State, by fine, imprisonment and confiscation of their property. Such acts are destructive of the rights of the plaintiff and subversive of its authority, and destructive of friendship and peace between the two States and the citizens thereof, and exposes them to great danger of irreparable mischief and to a multiplicity of suits. It is, therefore, eminently a proper case for a preliminary injunction.

*High on Injunctions*, §§ 4, 5, 12, 13, 480, 511.
*Pennsylvania vs. Whaling*, 13 *Howard*, 518.
*Kerr on Injunctions*, p. 11, 12.

The case shows that the plaintiff is now in the possession and enjoyment of the rights it here asserts. That possession should not be disturbed until the rights of the parties are finally settled by the decree of the Court.

*High on Injunctions*, § 21.
*Kerr on Injunctions*, pp. 603, 604.

So, too, the injunction should issue to restrain illegal taxation by Delaware upon citizens of New Jersey.

*High on Injunction*, § 354, 357.

DE04662

D. X Original
#1 Brief of Bayard (on motion) for Defendant
Filed 19th March 1877

IN THE

# Supreme Court of the United States.

| | |
|---|---|
| THE STATE OF NEW JERSEY<br>*vs.*<br>THE STATE OF DELAWARE. | In Equity. |

*Points submitted by the Defendant in opposition to the motion of Complainant for a Writ of Preliminary Injunction.*

1st. The object of the bill of complaint is to settle the boundary line, for about twenty-five miles on the river Delaware, between the State of Delaware and the State of New Jersey.

2d. The jurisdiction of this court is not denied, and a settlement through its decision is desired by both parties.

3d. The defendant objects to the order for the preliminary injunction prayed for in the bill of complaint (see page 33)—

1st. Because the right and possession of that part of the river Delaware now brought into question is in a STATE OF THE UNION, and is not merely usufructory.

DE04663

What the state possesses she governs, and has a political and moral obligation to control, which creates an interest of the highest character which this court will guard and respect until the title to the territory in dispute has been adjudicated.

It is believed that this court has never granted a preliminary injunction restraining the *exercise of political power* by a state over a disputed territory in advance of its decision as to title.

The cases in 2d and 4th Dallas, cited in the complainant's brief, not only do not sustain, but are counter to the prayer of his bill.

At the time of the adoption of the Federal Constitution there were controversies existing between eleven states respecting their boundaries, which arose under their respective charters, among which was recognized by this court the present case between New Jersey and Delaware.

See opinion of this court in 1838.

The State of Rhode Island vs. The State of Massachusetts, 12 Peters, 724,

In none of these eleven cases of disputed boundaries was a preliminary injunction to restrain the exercise of its political jurisdiction, by a state prayed for or granted in advance of the determination of title to the disputed territory.

The boundaries of New Jersey in the Delaware river and bay, were determined in 1823 in the case of—

Corfield vs. Coryell, 4 Washington C. C. Rep., p. 371.

In which the court, laying down the rule for the construction of the charter of that state in settling its boundaries,

DE04664

say: "*we think the claim of New Jersey, under these grants, to any part of the bay or river Delaware, below low-water mark, cannot be maintained.*"—(p. 384.)

The same grants were under consideration in this court, and the same construction as to their boundary *by the river* given by this court in—

Handley's Lessee vs. Anthony, 5 Wheaton, 574.

In 1847 a controversy arose in relation to the "Pea-Patch," an island in the middle of the river Delaware, within the radius of the "twelve-mile circle," and included within the boundaries claimed in the present proceeding to be within the limits and jurisdiction of the State of New Jersey.

This island had been ceded by the State of Delaware to the United States in 1814, and Fort Delaware has been constructed upon it.

The claimant, Mr. Humphrey, of New Jersey, based his title upon the same grants of Charles 2d, King of England, as are now set forth in the present title of complaint.

By agreement of parties the matters in controversy were submitted to the sole arbitration of that distinguished jurist, the Hon. John Sergeant, of Philadelphia, with full power and authority to examine witnesses and receive evidence according to the rules of law and equity.

A full report of the testimony, arguments of counsel, and the decision of the arbitrator, is contained in—

Senate Executive Document No. 21, 1 Session, 30th Congress.

DE04665

At page 221 of the document will be found Mr. Sergeant's decision, from which we extract the following:

"The importance of the case consists chiefly in this: That it involves the question of boundary for nearly twenty-five miles between the two states just named.

"It is true that the settlement of that boundary is not submitted, nor to be decided in the arbitration, New Jersey and Delaware not being parties to the submission, nor having agreed so to submit their rights. But it is also true that in conveying the one to the United States, and the other to an individual, the island in controversy, *they have necessarily communicated to the grantees the right to assert the title* respectively conveyed to them, and to dispute the adverse title; *and it is very manifest that this controversy turns mainly if not entirely upon the question of the limits and jurisdiction of the respective states.*"

Mr. Sergeant, after the fullest presentation of the paper title on both sides, and the depositions of many witnesses, (see p. 66–94 of Ex. Doc.,) decided that the title and jurisdiction of the State of Delaware extended on that part of the river Delaware within the twelve-mile circle around the town of New Castle, *to low-water mark on the New Jersey side.*

There is, and could in the very nature of this case be, no irreparable injury to the complainants.

The case presents the usual and ordinary features of police control by a state over the waters of a river *within its chartered limits*—for the regulation and protection of fishing—against injurious nets, or other modes of capture.

DE04666

There is no pretence of obstruction to free navigation; or of the unconscientious exercise of a legal power by the defendant in creating waste or other injury.

The jurisdiction of the court to interfere by injunction in any case is purely equitable, and every feature in the case now before them will exclude the exercise of that power.

T. F. BAYARD,
*Of Counsel for the State of Delaware.*

# Supreme Court of the United States.

No. 1, Orig. October Term, 1897.

The State of New Jersey, Complainant,

vs.

The State of Delaware.

On motion of Mr. George Gray, of counsel for the defendant,

It is ordered by the Court that this cause be, and the same is hereby, continued until the next term.

October 12, 1897.

Frontier collections of the Historical Society of Delaware, 505 Market St., Wilmington, DE 19801
302-655-7161 www.hsd.org

DE17170

# Supreme Court of the United States.

Between—

THE STATE OF NEW JERSEY, COMPLAINANT,

AND

THE STATE OF DELAWARE, DEFENDANT.

**On Bill for Injunction and Relief—Notice, etc.**

SIR: Take notice that I shall apply to the Supreme Court of the United States, at the Capitol, in Washington, D. C., on Monday, the 8th day of April next, at 12 o'clock noon, or as soon thereafter as counsel can be heard, for leave to enter a decree *pro confesso* in above-stated cause, and to refer the same to a United States commissioner to take the proofs which may be offered before him by complainant in support of complainant's bill; of all which you hereby have notice.

Your obedient servant,

S. H. GRAY,
*Attorney General for the State of New Jersey and Solicitor of Complainant.*

Dated TRENTON, N. J., *March 29, 1901.*

To the Hon. H. H. WARD, *Attorney General of the State of Delaware and Solicitor of the Defendant.*

Due and legal service of the above notice is hereby acknowledged.

H. H. WARD,
*Attorney General of the State of Delaware and Solicitor of the Defendant.*

DE14937

No. 1 Orig.

Answer of Defendant.

Filed Oct. 15, 1901.

Office Supreme Court U. S.
FILED
OCT 15 1901
JAMES H. McKENNEY,
Clerk.

# United States Supreme Court

## No. 1 ORIGINAL. IN EQUITY.

*THE STATE OF NEW JERSEY,*
*Complainant,*

*AND*

*THE STATE OF DELAWARE,*
*Defendant.*

## DEFENDANT'S ANSWER.

THE JOHN R. DOUGLASS PRINTING CO., WASH., D.C.

# UNITED STATES SUPREME COURT.

| | |
|---|---|
| THE STATE OF NEW JERSEY, COMPLAINANT, AND THE STATE OF DELAWARE, DEFENDANT. | IN EQUITY. No. 1 ORIGINAL. ANSWER. |

The Answer of the STATE OF DELAWARE, one of the States of the UNITED STATES OF AMERICA, the defendant, to the Bill of Complaint of the STATE OF NEW JERSEY, also one of the States of the United States of America, the complainant.

This defendant, now and at all times hereafter, saving to itself all and all manner of benefit of exception, or otherwise, that can or may be had or taken to the many errors, uncertainties and imperfections in the said Bill of Complaint contained, for answer thereto, or to so much thereof as this defendant is advised it is material or necessary for it to make answer to, answering says:

## I

That this defendant is the owner in severalty and in fee-simple of the whole bed of the Delaware River lying within the compass or circle of twelve miles about the town of New Castle in the State of Delaware, to wit, within the circumference of a circle of a radius of twelve miles described about the Court House in the said town of New Castle as a centre, and all islands in said River Delaware, within the compass of said

circle, and the said river and soil thereof lying North of the Southernmost part of the said circle of twelve miles about the said town, together with all the lands, islands, soil, rivers, harbors, mines, minerals, marshes, waters, fishings, huntings and fowlings, and all other royalties, privileges, profits, rents, services, franchises, duties, jurisdictions, liberties, privileges, commodities and hereditaments to the said premises, or any of them belonging or appertaining, with their and every of their appurtenances, and all the estates, rights, titles, interests, benefits, advantages, claims and demands whatsoever of, in, or to the said premises, and of every part and parcel thereof; and all government and all rights of government, all jurisdiction, whether legislative, judicial or executive, all fisheries and exclusive control and jurisdiction thereof in, on or over the said portion of said river and the waters thereof, subject, in all the particulars aforesaid, only to the limitations, if any there be, of the Constitution and Laws of the United States of America. That save as hereinbefore appears, this defendant is advised that said Bill of Complaint raises no question of government, jurisdiction, fishery, or control or jurisdiction thereof, right, title, interest, benefit, advantage, claim or demand between or by the parties to this cause; and this defendant denies that the complainant is the owner, in fee simple or otherwise, of any portion of the bed of the Delaware River within the compass of said circle of twelve miles about the said town of New Castle, so described as aforesaid, and hereinafter called the "twelve mile circle", or that within the limits aforesaid the complainant is the owner of the part of the bed of said river extending from the New Jersey shore thereof to the middle of said river, or that within the limits aforesaid the complainant has or is entitled to, in or on any part of the waters of said river, below low-water mark on the New Jersey shore thereof, an equal interest and concurrent jurisdiction with the de-

fendant, or that the complainant has any title to any of the rights claimed in its Bill of Complaint by the means in said Bill of Complaint stated.

This defendant admits that within and beyond the limits aforesaid the tides of the ocean ebb and flow.

And with respect to the title and jurisdiction alleged and claimed by and for the complainant, on its own behalf, in its said bill of complaint, this defendant, further answering, saith:—

1. This defendant believes that Charles the Second, King of England, by letters patent bearing date the twelfth day of March 1664, to his brother James, Duke of York, his heirs and assigns, did give and grant the lands and premises, royalties, rights, powers, authorities, liberties, hereditaments and appurtenances in the section or sections of said Bill of Complaint denominated by the letter A, by said complainant set forth and described, but for greater certainty as to said letters patent and all of the provisions thereof it craves leave to refer to the said letters patent when produced in this cause.

But this defendant claims, and respectfully submits, that if it shall appear by evidence in this cause that said alleged patent ever had legal existence and validity, that then and in that case, by legal and just construction thereof, it cannot and should not be so construed as to include, within the express description of the lands and premises therein contained, or as to control any part of the bed of said River Delaware within the compass of the said twelve mile circle, nor any right of jurisdiction or fishery in said portion of said river.

2. This defendant admits that, subsequent to the year 1664, and in or about the year 16 , a portion of the territory included in the said description of the said alleged grant, set

forth under section A in said Bill of Complaint, was conquered by the military power of the States of the United Provinces of the Netherlands, the seat of whose power in America was at New Amsterdam, and that afterwards, and in or about the said territory by the said conqueror was surrendered to the King of England. And this defendant believes that, in order to make good and affirm and establish the alleged grant aforesaid, or otherwise, the said King of England by his letters patent bearing date on or about the twenty-ninth day of June, 1674, did grant and convey unto the said Duke of York, all and every of the property and all and every of the rights, powers and privileges alleged to have been granted, conveyed, transferred and assured in and by the alleged patent first in said Bill of Complaint mentioned, using in the last one of the said alleged patents the same words which in said Bill of Complaint are alleged to have been used in the first of the said alleged patents, and no others, except those stating the date; but for greater certainty as to said letters patent and all of the provisions thereof it craves leave to refer to the said letters patent when produced in this cause. And this defendant further claims, and respectfully submits, that if it shall appear by evidence in this cause that said alleged confirmatory patent ever had legal existence and validity, that then and in that case, by legal and just construction thereof, it cannot and should not be so construed as to include, within the express description of the lands and premises therein contained, or to control any part of the bed of said River Delaware within the compass of the said twelve mile circle, nor any right of jurisdiction or fishery in said portion of said river.

3. This defendant doth not know and cannot set forth as to its belief or otherwise, whether or not it is the fact that the said James, Duke of York, etc., by lease and release bearing dates the twenty-third and twenty-fourth days of June, 1664,

respectively, after reciting the grant so as aforesaid alleged to have been made to him by the aforesaid alleged letters patent, dated 12th March, 1664, for a valuable consideration, to Lord John Berkeley and Sir George Carteret, their heirs and assigns forever, did grant and assign, sell, release and confirm, the lands and premises, royalties rights, hereditaments and appurtenances in the section or sections of said Bill of Complaint denominated by the letter C, by said complainant set forth and described; or whether or not the said alleged lease and release were ever legally made or ever legally delivered by the said James, Duke of York, to the said Berkeley and Carteret; or whether or not said lease and release ever had any legal existence. But this defendant claims and respectfully submits that if it shall appear by evidence in this cause that said alleged lease and release ever had legal existence and validity, that then and in that case, by legal and just construction thereof, they cannot and should not be so construed as to include or control any part of the bed of said River Delaware within the compass of the said twelve mile circle, nor any right of jurisdiction or fishery in said portion of said river; and further that the said James, Duke of York, did not then and thereby convey to the said Berkeley and Carteret a more extensive title or other lands than the title and lands alleged to be so derived to or vested in him by the title to him, the said Duke of York, as invoked by said complainant in its said Bill of Complaint.

4. This defendant doth not know and cannot set forth as to its belief or otherwise, whether or not it is a fact that the said Lord John Berkeley and Sir George Carteret, as alleged Lords Proprietors of the province of New Ceserea or New Jersey, made or published the concessions and agreements, bearing date the tenth day of February in the year of our Lord one thousand six hundred and sixty-four, to

and with all and every the adventurers and all such as shall settle or plant there, in the first two paragraphs of the section of said Bill of Complaint denominated by the letter D by said complainant set forth and described; or whether or not said alleged grants and concessions bear even date with the appointment and commission of Sir Philip Carteret, alleged to be the first Governor of New Jersey, who was appointed by the said alleged proprietors, Lord John Berkeley and Sir George Carteret, as in the third paragraph of the said section of said bill of complaint denominated by the said letter D by said complainant mentioned; or whether the said alleged Governor Carteret, by his alleged letter of instructions, bearing even date with his alleged commission, was authorized or directed by or for the said alleged proprietors and in their names in manner, form or substance as by said complainant is set forth and mentioned in the third and fourth paragraphs of the section of said bill of complaint denominated by the said letter D; or whether or not the said alleged concessions and agreements, or the said alleged appointment and commission of Sir Philip Carteret as Governor aforesaid, or the said alleged letter of instructions to said alleged Governor, were ever legally made, executed, delivered, promulgated, issued, and received, respectively; or whether or not the said alleged concessions and agreements, appointment and commission, or letter of instructions ever had any legal existence. But this defendant claims and respectfully submits that if it shall appear by evidence in this cause that said alleged concessions and agreements, appointment and commission, or letter of instructions, or either or any of them ever had legal existence and validity, that then and in that case, by legal and just construction thereof, neither the said concessions and agreements, nor the said appointment and commission, nor the said letter of instructions, can or should be so construed as to include, control, or refer to any part of the bed of said River Del-

aware within the compass of the said twelve mile circle, nor any right of jurisdiction or fishery in said portion of said river; and further that the said alleged Lords Proprietors could and did not then and by either the said alleged concessions and agreements, or appointment and commission or letter of instructions confer to and upon any person a more extensive title, or other lands, or more extensive, more liberal, or other powers, authorities, pledges, guarantees, assurances, rights, jurisdictions, privileges, franchises or concessions, than those titles, lands, powers, authorities, pledges, guarantees, assurances, rights, jurisdictions, privileges, franchises or concessions alleged to be so derived to or vested in them by the title to them the said Lords Proprietors as invoked by said complainant in its said Bill of Complaint.

5. This defendant doth not know and cannot set forth as to its belief or otherwise, whether or not it is the fact that James, Duke of York, etc., by indenture made the twenty-ninth day of July, 1674, to the said Sir George Carteret, his heirs and assigns, did grant, bargain, sell, release and confirm the lands and premises, royalties, rights, profits, commodities, hereditaments and appurtenances in the section of said Bill of Complaint denominated by the letter E by said complainant set forth and described; or whether or not the said alleged Indenture was ever legally made or ever legally delivered by the said James, Duke of York, to the said Sir George Carteret; or whether or not said indenture ever had legal existence. But this defendant claims and respectfully submits that if it shall appear, by evidence in this cause, that said alleged indenture ever had legal existence and validity, that then and in that case, by legal and just construction thereof it cannot and should not be so construed as to include or control any part of the bed of said River Delaware within the compass of the said twelve mile circle, or any right of jurisdiction or fishery

in said portion of said river; and further, that the said James, Duke of York, did not then and thereby convey to the said Sir George Carteret a more extensive title or other lands than the title and lands alleged to be so derived to or vested in him by the title to him the said Duke of York, as invoked by said complainant in its said Bill of Complaint.

6. This defendant doth not know and cannot set forth as to its belief or otherwise, whether or not it is the fact that Sir George Carteret of the first part, William Penn of the second part, Gawn Lawry of the third part, Nicholas Lucas of the fourth part, and Edward Billinge of the fifth part, entered into or made an indenture quintipartite, bearing date the first day of July, Anno Domini, 1676, reciting the aforesaid alleged letters patent from the King to the Duke of York, dated the twelfth of March 1664, and the said alleged lease and release from the Duke of York to Berkeley and Carteret bearing date the twenty-third and twenty-fourth days of June 1664, in and by which indenture quintipartite said Edward Billinge, and the said William Penn, Gawn Lawry, and Nicholas Lucas, by and with the consent, direction and appointment of the said Edward Billinge, testified by his being a party to the said indenture and by his sealing and executing the same, did bargain, sell, release, confirm and convey unto the said Sir George Carteret, his heirs and assigns forever, the easterly part of New Jersey, to have and hold in severalty; and whether or not, by the same indenture, the said Sir George Carteret did bargain, sell, release, confirm and convey unto the said William Penn, Gawn Lawry and Nicholas Lucas, to their heirs and assigns forever, the westerly part of New Jersey, to have and to hold to them, their heirs and assigns in severalty, according to a certain description of the division line between the said easterly and westerly part of New Jersey in the said alleged indenture and in the said Bill of Complaint described; and

whether or not in and by which alleged indenture, it is averred, that the said Sir George Carteret did convey, with the land on the westerly side of the said partition line, unto the said William Penn, Gawn Lawry and Nicholas Lucas all and every the isles, islands, rivers, mines, minerals, woods, fishings, hawkings, huntings and fowlings, and all other royalties, governments, powers, forts, franchises, harbors, profits, commodities and hereditaments whatsoever unto the said westerly part, share and portion of the said tract of land and premises, as in the section of said Bill of Complaint denominated by the letter F, by said complainant set forth and described; or whether or not the indenture of bargain and sale, dated the eighteenth of March 1673, between the said John, Lord Berkeley of the one part and John Fenwick of the other part, by which said Berkeley is said to have granted to Fenwick all the moiety or half part of him said Berkeley, of, in and to the said tract of land called New Ceserea or New Jersey, or the two other indentures, one being indenture of bargain and sale, dated the ninth of February, 1674, from the said John Fenwick and Edward Billinge of the one part, said William Penn, Gawn Lawry and Nicholas Lucas of the other part, and the other being an indenture tripartite of grant, release, or confirmation, bearing date the tenth day of February, 1674, between said John Fenwick of the first part, said Edward Billinge of the second part and the said William Penn, Gawn Lawry, and Nicholas Lucas of the third part, and the said several other alleged good and sufficient assurances in the law, duly executed, by which the said moiety or half part of said tract of land and all and every other the said several and respective premises so alleged to be conveyed unto the said John Fenwick were said to have been conveyed unto, and at the date of the said indenture quintipartite were said to be vested in, the said William Penn,

Gawn Lawry and Nicholas Lucas and their heirs, to the use of them and their heirs forever (in which nevertheless the said Edward Billinge claimed to have equitable interest) so as the said William Penn, Gawn Lawry and Nicholas Lucas are said to have then actually stood seised of and in one undivided moiety or half part of all and every the said premises so granted unto the said John Lord Berkeley and Sir George Carteret as aforesaid, as joint tenants between themselves, and did then, as it is alleged, hold the same to them and to their heirs as tenants in common with the said Sir George Carteret, who was then, as it is said, actually seised of the other undivided moiety or half part of all and every the same premises and did then, as it is alleged, hold the same to him and his heirs as tenants in common with the said William Penn, Gawn Lawry and Nicholas Lucas, all of which indentures and other good and sufficient assurances in the law are, in said section of said bill of complaint, denominated by the said letter F, by said complainant mentioned and described as recited in the said indenture quintipartite, were, or either of them was in fact, ever legally made or ever legally delivered in pursuance of their several tenors and intents; or whether or not, as, it is alleged, is further recited in said indenture quintipartite, the said Sir George Carteret, William Penn, Gawn Lawry and Nicholas Lucas had theretofore agreed to make partition of the said tract of land, and of the said several and respective premises into two parts, as in the section of said bill of complaint denominated by said letter F, by said complainant is further set forth and averred; or whether or not the said indenture quintipartite was ever legally made or ever legally delivered by the said Sir George Carteret to the said William Penn, Gawn Lawry and Nicholas Lucas; or whether or not the said indenture quintipartite or the said several indentures and other good and sufficient assurances in the

law in the said indenture quintipartite said to have been recited, or the alleged and recited agreement to make partition, between Sir George Carteret of the one part and William Penn, Gawn Lawry and Nicholas Lucas of the other part, or any of them, ever had any legal existence. But this defendant claims and respectfully submits, that if it shall appear by evidence in this cause that said alleged indenture quintipartite, or the said indentures and assurances therein recited, or the said agreement to make partition therein recited, ever had legal existence and validity, that then and in that case, by legal and just construction thereof, they or either of them cannot and should not be so construed as to include, refer to, or control any part of the bed of said River Delaware within the compass of the said twelve miles circle, nor any right of jurisdiction or fishery in said portion of said river; and further, that the said parties to the said indenture quintipartite, and to the said several indentures and other assurances in the law, and agreement for partition therein said to be recited, could not and did not then and thereby either convey or receive more extensive titles or other lands then the titles and lands alleged to be so derived to or vested in the several grantors therein or parties thereto, as invoked by said complainant in its said Bill of Complaint.

7. This defendant doth not know and cannot set forth as to its belief or otherwise, whether or not it is the fact that the said James, Duke of York, etc., by indenture made the sixth day of August, Anno Domini, 1680, wherein were certain recitals in said Bill of Complaint enumerated and set forth, and wherein Edward Billinge, William Penn, Gawn Lawry, Nicholas Lucas, John Eldridge and Edward Warner were parties of the other part, for a consideration in said indenture expressed, and for the better extinguishing of all such claims and demands as his said Royal Highness

might anyways have had of or in the premises aforesaid, then called West New Jersey, or any part of them, and for the further and better settling, conveying, assuring and confirming of the same and of every part thereof, according to the purport and meaning of said presents, did grant, bargain, sell and confirm unto the said William Penn, Gawn Lawry, Nicholas Lucas, John Eldridge and Edward Warner, their heirs and assigns, the lands and premises, royalties, rights, franchises, privileges, and appurtenances, for the respective interests, estates, intents, uses and trusts, in the section or sections of said Bill of Complaint denominated by the letter G, by said complainant set forth and described; or whether or not the said Duke of York by said indenture, for the reasons therein said to be recited and set forth in the said section or sections of the said Bill of Complaint, or otherwise, did give, grant, assign and transfer unto the said Edward Billinge the powers, authorities, jurisdictions, governments and other matters and things whatsoever, which by the aforesaid respective letters patent from the King to him the said Duke, or either of them, are or were granted or intended to be granted to be exercised by the said Duke of York, his heirs, assigns, deputies, officers or agents, in, upon, or in relation unto the said premises thereby said to be confirmed or intended to be confirmed, and every of them, in case the same were then in the actual seizure of the said Duke of York, to be held, enjoyed, exercised and executed by him the said Edward Billinge, his heirs and assigns, and by his deputies, officers, agents and commissioners as fully and amply to all intents, constructions and purposes as his said Royal Highness, or his heirs, might or could hold, enjoy, use, exercise or execute the same by virtue of the said letters patent, as in the second paragraph of the section of said Bill of Complaint denominated by the letter G, by said complainant set forth and described; or whether

or not the several patents and conveyances and the several declarations of trust, holdings in trust and trusts, the partitions, purposes and intents of the several parties to said conveyances said to be recited in the said indenture of the sixth day of August, 1680, and set forth and enumerated by said complainant in the first paragraph of the said section of its said Bill of Complaint denominated by the said letter G, where ever legally made, delivered, entered into, undertaken, expressed or agreed to by the several parties thereto; or whether the said indenture of the sixth day of August, A. D., 1680, or the said patents, conveyances, declarations of trust, holdings in trust, trusts and partitions therein alleged to be recited, ever had any legal existence. But this defendant claims and respectfully submits that, if it shall appear, by evidence in this cause, that said alleged indenture, or the said patents, conveyances, declarations of trust, holdings in trust, trusts and partitions therein said to be recited, ever had legal existence and validity, then and in that case, by legal and just construction thereof, they or either of them cannot and should not be so construed as to include, refer to or control any part of the bed of said River Delaware within the compass of the said twelve mile circle, nor any right of jurisdiction or fishery in said portion of said river; and further, that neither the said James, Duke of York, nor any of the granting parties in any of the said recited conveyances, declarations of trust, trusts or partitions, did then and thereby convey to the grantees in the said indenture of the sixth day of August, 1680, or in any of the said recited conveyances, declarations of trust, trusts or partitions, respectively, more extensive titles or other lands than the titles and lands alleged to be so derived to or vested in them, the said Duke and other said grantors respectively, by the title or titles to them respectively as invoked by said complainant in its said Bill of Complaint.

8. This defendant doth not know and cannot set forth as to its belief or otherwise, whether or not it is the fact that concessions and agreements of the proprietors, freeholders and inhabitants of the province of West Jersey, bearing date the third of March, 1676, were agreed to and signed by the said Edward Billinge, Gawn Lawry, William Penn, Nicholas Lucas and others, the sixth chapter of which document, as it is alleged, grants and dedicates lands for highways, and streets, and cities, towns and villages, and for wharves, keys, harbors, and for public houses, and further provides that the inhabitants of the said province have free passage through or by any seas, bounds, creeks, rivers, rivulets, in the said province, through or by which they must necessarily pass, to come from the main ocean to any part of the province aforesaid, and further, that all the inhabitants within the said province of West Jersey have the liberty of fishing in Delaware River, or on the sea coast, as by said complainant is set forth in the first paragraph of the section of said Bill of Complaint denominated by the letter H; or whether or not the said alleged concessions and agreements were ever legally made, or ever legally delivered by the said supposed proprietors to said freeholders and inhabitants; or whether or not the said concessions and agreements ever had any legal existence. But this defendant claims and respectfully submits that if it shall appear by evidence in this cause that said alleged concessions and agreements ever had legal existence and validity for any purpose, that then and in that case, by legal and just construction, such document cannot and should not be construed so as to include, control or refer to any part of the bed of said River Delaware within the compass of the said twelve mile circle, nor any right of jurisdiction or fishery in said portion of said river; and further, that the said supposed proprietors could not and did not then and thereby give or convey to or confer upon

the said freeholders and inhabitants of West Jersey more extensive rights, titles, royalties or privileges or other lands than the rights, titles, royalties, privileges or lands alleged to be so derived to or vested in them by the title to them the said supposed proprietors as invoked by said complainant in its said Bill of Complaint; and further, that, as will more fully appear in this Answer, upon the setting-out of the title of this defendant to that portion of the said Delaware River and of the bed thereof, included within the compass of the said twelve mile circle, and upon the comparison thereof with the said pretended title of said complainant set forth in the said Bill of Complaint, subsequent to all of the patents, grants, indentures, conveyances, concessions, agreements, commissions, letters of instructions and partitions mentioned and described in said Bill of Complaint, in its sections denominated by the letters A, B, C, D, E, F, G and H, to wit on or about the twenty-second day of March, A. D. 1683, the said Charles the Second, King of England, by his letters patent bearing the date last aforesaid, granted to the said James, Duke of York, all of the said river and the soil and bed thereof included within the compass of the said twelve mile circle; that the said latter grant of the said King to the said Duke of York was about eighteen years subsequent to the first letters patent, and about eight years subsequent to the second letters patent, from the said King to the said Duke, cited and invoked by said complainant in its said Bill of Complaint as the source and fountain head of its said pretended title; that the said two letters patent, original and confirmatory, so cited and averred by said complainant, contain no express grant of that portion of the said River Delaware or of the bed thereof included within the compass of the said twelve mile circle, nor any words of implication that may be construed as an estoppel to prevent the due, operative, and legally effective grant of such portion of the said river and

of the bed thereof to the said Duke of York by the letters patent of the said King, of March the twenty-second, 1683, even had the said King been only a private person; and that inasmuch as the said Charles the Second was King of England at the times of the granting of said two letters patent so cited and averred in said Bill of Complaint as and for the title of said complainant to the premises in dispute, and no estoppel binds the crown, no impediment, either in fact or law, appears wherefore the said letters patent of the twenty-second of March, 1683, were not legally and equitably effective to then pass the title to the Duke of York of the said premises in question. And this defendant further claims and respectfully submits that, even if it shall appear by evidence in this cause that said alleged concessions and agreements of the third day of March, 1676, mentioned in the section denominated by the letter H in said Bill of Complaint, ever had legal existence and validity for any purpose, it is averred in said Bill of Complaint, in the section thereof denominated by the said letter G, that the powers and authority to make said concessions and agreements of March the third, 1676, were exclusively granted to and vested in the said Edward Billinge, the said supposed *cestui que trust* of the larger part of said West New Jersey, and the specially and solely named grantee of the said Duke of York of said powers and authorities; that the said William Penn, Gawn Lawry and Nicholas Lucas are averred in the last above mentioned section of said Bill of Complaint to have been, not the beneficial owners of said West New Jersey, or of any part thereof, but trustees thereof only for the said John Eldridge, Edward Warner and Edward Billinge; and that the said William Penn and his co-trustees joined, if it be a fact that they did join, in the execution of the said concessions and agreements of the third day of March, 1676, as formal parties only, by virtue of their said trus-

teeship. And this defendant denies that whatever rights the said Duke of York, or the said William Penn may have acquired in or to the Delaware River from the King of England after the making of the concessions and agreements last hereinbefore referred to, in equity were subject and subordinate to the rights alleged to be granted by the said concessions and agreements to the inhabitants and property holders of West New Jersey, in or by virtue of the said concessions and agreements. And this defendant further denies that the said William Penn was, or that all persons, associations or every State claiming by, through, or under him were, are or should be, estopped from asserting or maintaining that the rights acquired by the said Duke of York, or by said Penn, in or to the said part here in question in this cause of the Delaware River, from the King of England, subsequent to the year 1676, do and may destroy, lessen or impair all pretended rights to or in that portion of the Delaware River here in question in this cause and every part thereof, alleged in said Bill of Complaint to have been conferred upon the inhabitants of West New Jersey by means of the said concessions and agreements.

9. This defendant doth not know and cannot set forth, as to its belief or otherwise, whether or not it is the fact that the alleged then proprietors of East and West New Jersey by deed of surrender, bearing date the fifteenth day of April, 1702, and said to have been duly executed by the then alleged proprietors of each of said divisions, for themselves and heirs did surrender and yield up unto their then Sovereign Anne, Queen of England, all their right or pretended right and powers of government as to New Jersey, alleged to be granted by King Charles the Second to the Duke of York, and by the Duke of York to the said proprietors, or whether or not the said supposed surrender was

accepted by the Queen in Council on the seventeenth day of April, 1702, and ordered to be enrolled in her Majesty's High Court of Chancery, as in the section of said Bill of Complaint, denominated by the letter I, by said complainant set forth and described; or whether or not said alleged surrender was ever legally made, or ever legally delivered by the said proprietors to the said Anne, Queen of England; or whether or not said alleged surrender or said alleged acceptance thereof ever had any legal existence or validity. But this defendant claims and respectfully submits that if it shall appear by evidence in this cause that said alleged deed of surrender and said alleged acceptance thereof ever had legal existence and validity, that then in that case, by just and legal construction thereof and of the said alleged evidences of the supposed title of the complainant to the premises in dispute in this cause, the said alleged surrender or the said alleged acceptance thereof cannot and should not be so construed as to include or control any part of the bed of said River Delaware within the compass of the said twelve mile circle, nor any right of jurisdiction or fishery in said portion of said river; and further, that the said alleged then proprietors of East and West New Jersey could not then and thereby surrender to the said Anne, Queen of England, a more extensive title, or other or more extended rights or powers of government or over other territory than the title, and the rights and powers of government and territory then actually vested in them.

**10.** This defendant admits that by the American Revolution, which took place by the Declaration of Independence, bearing date the fourth day of July, 1776, the State of New Jersey became and was, and from thenceforth hath been, subject to and under the Constitution of the United States since the adoption thereof, a free and Independent State; and as such became entitled, subject as aforesaid,

to have and to hold all such rights as free and independent States may have or hold, to do all acts and things which independent States may of right do; and by force of the said revolution and said independence, subject as aforesaid, the said State of New Jersey became invested not only with all and every power of government in and over the territory of said State, but also became invested with all the property, and rights of property, within and appertaining to said State, which immediately before said revolution were vested in the Crown of England; but this defendant denies that by virtue of any of the premises the said complainant became invested with any power of government in or over the tide waters adjacent to the territory of said State, so far as the said tide waters are included within the compass of the twelve mile circle aforesaid. This defendant denies that at the time the said revolution took place the bed of the River Delaware in its whole width and length, from the falls in said river at or near Trenton to the mouth of said river, that is, throughout the whole extent to which the tide ebbed and flowed in said river, belonged to or was vested in the crown of England in trust for the uses and purposes of the subjects of the King of Great Britain, or that by means of the said revolution, the said independence of the State of New Jersey, and the treaty of peace between the King of Great Britain and the United States of America, concluded at Paris, September the third 1783, that portion of the bed of the Delaware River, last hereinbefore mentioned, situate between the States of New Jersey and Delaware, to the middle of the said river, became vested in fee simple in the State of New Jersey, or that the remaining portion thereof, by the same means and at the same time was vested in the State of Delaware, or that so the title to the bed of said river hath ever since continued and now is. But, on the contrary, this defendant avers and respectfully submits that at and immediately be-

fore the time the said revolution took place, so much of the bed of the said River Delaware as then was and now is included within the compass of the said twelve mile circle belonged to and was vested in the proprietors of the land and the said river and soil thereof included within the compass of said twelve mile circle, by a title derived from the Crown of England, and hereinafter fully set forth; that by means of the said revolution, the said independence of the State of Delaware, and the treaty of peace between the King of Great Britain and the United States of America, concluded at Paris as aforesaid, all that portion of the bed of the Delaware River, situate between the States of New Jersey and Delaware, included within the compass of the said twelve mile circle, became vested in fee simple in the State of Delaware: and that so the title to the said portion of the bed of said river, this defendant respectfully submits, hath ever since continued and now is. This defendant further denies that ever since the fourth of July, 1776, or at any time, hath the said complainant and this defendant each had, or been entitled to, an equal interest in the waters of said river between the State of New Jersey and the State of Delaware, or that each has had a right to exercise equal or concurrent jurisdiction in and over the same, or an equal right for its citizens and inhabitants to fish in said waters. But, on the contrary, this defendant avers and respectfully submits, that ever since the fourth of July, 1776, this defendant hath had and been entitled to a sole and exclusive interest in so much of the waters, between the State of New Jersey and the State of Delaware, of said river as are included within the compass of the said twelve mile circle, subject only to the common rights of navigation thereof, and hath had the right to sole and exclusive jurisdiction in and over the same, and to the sole and

exclusive right for its citizens, inhabitants and licensees to fish in said waters:

This defendant avers that it hath at all times been alleged on behalf of this defendant that Charles the Second, King of England, by due and authentic letters patent, bearing date March 22, 1683, did grant to his brother, the Duke of York, "All that the town of New Castle, otherwise called Delaware, and fort therein, or thereunto belonging, situate, lying, and being between Maryland and New Jersey, in America; and all that tract of land lying within the compass of a circle of twelve miles about the said town, situate, lying, and being upon the River Delaware, and all islands in the said River Delaware; and the said river and soil thereof lying north of the southernmost part of said circle of twelve miles about the said town;" that said patent was duly and legally made and duly and legally delivered by the said King Charles the Second to the said Duke of York, and that the same has ever since the said making and delivery thereof continued to have legal existence; and that by legal and just construction thereof, said patent may and should be construed to include and control the part of the bed of said river lying northerly and easterly of the middle of said river, and all rights of jurisdiction and fishery in said river, so far and to such an extent as the said part of the bed of said river and the waters thereof are included within the compass of the said twelve mile circle.

**11.** This defendant denies that said complainant hath title or right to the bed of the River Delaware, within the compass of the said twelve mile circle, or jurisdiction in and over said portion of said river, by long peaceable and undisputed possession, or that said possession, use or enjoyment began with the earliest settlement of the State of New Jersey or hath continued ever since, without in-

terruption or dispute, excepting only the interruption and dispute in said Bill of Complaint alleged.

But on the contrary this defendant avers that such jurisdiction was not exercised and seldom if ever asserted by the complainant, and that the history of the government of the State of New Jersey witnesses the practical acknowledgement of the jurisdiction of the defendant as claimed by it now and heretofore, until and except as it was denied by this suit.

This defendant doth not know and cannot set forth as to its belief or otherwise, whether or not it is the fact that during all the time from the said earliest settlement of the State of New Jersey to the time of the filing of the said Bill of Complaint, the citizens and residents of New Jersey, under the authority of said complainant, and with its leave and license, from time to time have, or to what extent, improved the easterly shore of said river opposite to the State of Delaware, from a point opposite to the boundary line between Pennsylvania and Delaware, on the Delaware River, to a point on the easterly side of said river twelve miles below New Castle, as their wants and convenience have required, by erecting dykes and embankments or building wharves, docks, piers or other structures or arrangements; or whether or not the Southwesterly limits of the County of Salem, by usage or legislative enactment in the State of New Jersey, or elsewhere outside the State of Delaware, have been the main ship channel of the Delaware River. This defendant is informed and believes, and therefore avers, that the laws of said complainant, relative to fishing in the Delaware River, for over seventy years have not been recognized, obeyed or enforced on any part of said river which lies between the State of New Jersey and the State of Delaware, within the compass of the said twelve mile circle; and that the citizens and inhabitants of the State of New Jersey for

more than two hundred years, have not claimed, exercised or enjoyed, except as in said Bill of Complaint stated, without molestation or interruption, the right of fishing in all parts of said river, equally and in common with the citizens and inhabitants of the State of Delaware; and that during all that time the Courts of New Jersey have not exercised jurisdiction, in respect to wrongs committed on said river, within the compass of the said twelve mile circle, and complained of in the Courts of said complainant. And this defendant claims and respectfully submits that even if the citizens and residents of New Jersey, during the time, in the localities, and in the manner set forth in the said Bill of Complaint, have improved the easterly shore of said river, by erecting and building thereon, dykes, embankments, wharves, docks, piers or other structures or arrangements, the building and erecting, in manner aforesaid, of such structures or arrangements cannot and should not be held effectual in law or in equity in any event, to affect in any way or to any extent the title or right of this defendant to or its jurisdiction over, any portion of the soil or bed of the said river or of the waters thereof included within the compass of the said twelve mile circle, not actually and physically occupied by the said structures or arrangements; and that the State of New Jersey cannot, whether by such actual or physical occupation, if any such occupation there be, of any part of the original territory, jurisdiction, rights, privileges, franchises, powers, or estates, or any of them, of any and every nature and description or of any appendants or appurtenances to them or any of them appertaining, of the State of Delaware as they, or any of them, existed at the date of the adoption of the Constitution of the United States, or otherwise howsoever, acquire any part or portion of such territory, jurisdictions, rights, privileges, franchises, powers or estates, or any of them, of any and every nature

and description, or of any appendants or appurtenances to them or any of them appertaining, of the State of Delaware, unless and until it may and shall be shown that the Congress of the United States, and the several legislatures of the States of New Jersey and Delaware have expressly and formally consented thereto.

And this defendant further claims and respectfully submits that the said complainant, whether as a colony or State, cannot derive any title to, or any jurisdiction over, any of the premises in dispute in this cause, as against the defendant, whether as a colony or as a State, by prescription.

## II

And this defendant, further answering, saith that the true title, jurisdiction, government and sovereignty of, over, in and to that portion of the River Delaware lying and being within the limits of the said twelve mile circle, as hereinbefore set forth and alleged, have been and now are vested in this defendant by the means hereinafter stated.

1. The title by discovery of the Atlantic Coast of North America, at least as far south as Virginia, is claimed and, as this defendant is informed and believes, generally admitted to have been acquired by England by force of the voyage, along said coast, of Sebastian Cabot in or about the years 1497–8. That part of the coast which now constitutes the State of Delaware was, as this defendant is informed and believes, visited in or about the year 1606 by Captain John Smith, an English Navigator, and in or about the year 1611 by Lord Delaware, the English Governor of Virginia; but neither of them landed, merely sailing into Delaware Bay and departing. After a similar visit to the Bay, in or about the year 1609, Henry

Hudson, then in the employment of a Dutch Company, and sailing under the flag of the Netherlands, went northward to the Bay of New York, and discovered and navigated the Hudson River, of which, in consequence of his report, in the following year (1610) the Dutch took possession, and established various trading posts, including one at the site of the City of New York and one at the site of the City of Albany, which were respectively known under the Dutch occupation as Fort Amsterdam (afterwards New Amsterdam) and Fort Orange.

2. And this defendant, further answering, saith that from and after the establishment of the Dutch settlements in New York on the Hudson River, then called the North River, as hereinbefore set forth, there were repeated and continuous efforts by the same people to establish settlements on the Delaware River, then called the South River, which they explored so far as the Schuylkill, and also to establish other settlements easterly from New York as far as the Connecticut River, both of which rivers and the lands contiguous thereto were settled and governed by and as part of the colony having its headquarters and central point of authority at and in the settlement on or near the City of New York, then designated as New Amsterdam. During the period of upwards of fifty years thereafter, all of said territory, including the territory composing the present State of Delaware, and the River Delaware, and the said twelve mile circle, was known as the New Netherlands, and was claimed and, except as herein stated, governed as and for a colony of the States General of the United Provinces of the Netherlands, or under the authority thereof. And this defendant is informed and believes that during the said period of Dutch supremacy, as early as the year 1622 or 1623, there were settlements by the Dutch from New Amsterdam on

the easterly side of the River Delaware. In the year 1630, lands along the Delaware Bay and River, extending from Cape Henlopen to Bombay Hook, were acquired by Samuel Godyn on behalf of a Dutch Company, one of whom, De Vries, a navigator, in or about the year 1631, near what is now the town of Lewis, then called Hoernkill, established a colony, which, on his return in the following year, he found had been exterminated by the Indians. And this defendant further avers that a patent for the lands so acquired by the said Godyn were issued directly from the government of the States General of the United Netherlands, by the Director and Council of the Colonial Government, whose seat was on the island of Manhattans, and that other patents for lands in Delaware were from time to time issued by said Colonial Government, all of which always have been and still are recognized in the State of Delaware as the valid inception of the legal title to the lands to which they respectively relate. And this defendant craves leave to refer to the said patents and prays that the same when proved at the hearing of this cause may be taken as a part of this answer.

And this defendant further answering saith that in or about the year 1638 a Swedish expedition under Peter Minuit, formerly Governor of the New Netherlands under the Dutch Sovereignty, arrived in the Delaware River and commenced to establish settlements on the West side thereof and built a fort named Fort Christina at or near the site of the present city of Wilmington. The settlement of the Country by the Swedes continued until about the year 1647; but immediately after the first arrival of Minuit, the Dutch authorities of the New Netherlands protested against the Swedish operations and did not cease, during all the years of their continuance, to assert the rights of government and of proprietory title of the United Provinces of the Netherlands to and in the Delaware River and the land now constituting

the State of Delaware, and of and over which the said state claims ownership, jurisdiction and government in this suit. These protests not having received the desired attention, and it being considered that the "intention" of the Swedes was "to dispossess and unseat the (Dutch) Company from the entire river," in or about the year 1651, as this defendant is informed and believes, the then Director at New Amsterdam, Stuyvesant, proceeded to the Delaware and personally disputed with Johan Printz, who after the departure of Minuit had been the head of the Swedish settlements known as New Sweden, as to the right of the Swedes to interfere in a country claimed by the Dutch as an appendage or appurtenance of the colony which had its seat of government at New Amsterdam. Thereupon, Director Stuyvesant built Fort Casimer at or near New Castle, which action led to hostilities with the Swedes, who, under Johan Rysingh, who had then succeeded Printz, took the said fort in or about the year 1654; and, the hostilities continuing, on or about August thirty-first, 1655, Fort Casimer was retaken by the Dutch, to whom also a few days after Fort Christina also surrendered. As the result of these operations, the Swedish settlements formally acknowledged the sovereignty of the Dutch as established at New Amsterdam, and formal articles of the terms of the surrender were executed under date of September eleventh, 1655, as to Fort Casimer, and September 25–15 of the same year, as to Fort Christina. Provision was made therein for the protection of Swedes who chose to remain and for the return of those who wished to go back to Europe. All of which will appear from the documents referred to and a multitude of others relating to the government of the Delaware Country and River by the Dutch Colonial Government of the Netherlands, to which, when cited at the hearing of this cause, this defendant craves leave to refer and prays that they may be taken as part of this answer.

And this defendant further avers that the said land and river of Delaware became thereupon known by the general designation of the South River of the New Netherlands, and continued to be further settled by active immigration promoted and assisted by the Government of the United Provinces of the Netherlands and the City of Amsterdam, and further that such government continued undisturbed and unchallenged from any quarter until the conquest of the New Netherlands by the English forces under James, Duke of York, hereinafter mentioned and set forth.

3. Charles the Second, King of England, in assertion of the English title by discovery and partial occupation of the territories therein described, granted his letters patent to his brother, James, the Duke of York, bearing date the twelfth of March, 1664, which letters patent are those alleged, mentioned and described in the said section or sections of said Bill of Complaint denominated by the letter A; and this defendant hereby refers to the said letters patent as a whole and makes the same a part of this, its answer. That pursuant to the powers and authority in said letters patent contained, the said Duke of York did duly constitute and appoint, by his commission duly issued, dated on or about the second day of April, 1664, Colonel Richard Nichols to be his deputy Governor within the lands, islands and places in said letters patent mentioned and granted, to perform and execute all and every the powers which were by the said letters patent granted to the said Duke; as by reference to the said commission, when produced in this cause, will more fully appear, and which this defendant prays may be taken as a part of this its answer.

That thereafter, on or about the twenty-fifth day of the month of April, 1664, the said Charles the Second,

issued his commission to the said Colonel Richard Nichols, and Sir Robert Carre, George Cartwright and Samuel Maverick, to visit certain of the Colonies of England in America and determine complaints, accompanied by two letters of instructions, by one of which the said commissioners were directed to reduce to subjection and obedience to the English Crown the Dutch at Long Island and elsewhere within the Colonies and territories claimed by the King. And this defendant refers to the said commission and letters of instructions and prays that the same may, when produced in this cause, be taken as a part of this, its answer.

4. After the date of said letters patent, and in or about the month of September in said year 1664, the portion of said territory described in said letters patent in the occupancy and actual government of the Dutch, dominated by, and surrounding, their then seat of government at New Amsterdam, otherwise and later called New York, was, under the commission aforesaid, to said Nichols and others, conquered by the military power of the King of England, said Charles the Second. That at the date of the said conquest, the said Bay and River Delaware and the territories lying upon the west side thereof, were and constituted a dependancy of the Dutch Government having its seat of Government at said New Amsterdam; which said Government, for many years as aforesaid, had had and exercised, and then did have and exercise, all the rights and powers of a proprietor in, of and over the soil and waters of the said river Delaware and said territories adjacent thereto, and all jurisdiction, whether legislative, judicial or executive, and all government and rights of government in, upon and over the said river Delaware, the soil and waters thereof and said territories adjacent thereto. That in or about the month of October in said

year, 1664, the said Bay and River Delaware and said territories adjacent thereto, including the premises here in dispute, so dependant upon, subject to and owned by the Dutch Government at New York, were, as such a dependency, also conquered by the military power of the said King of England, and the inhabitants thereof submitted without resistance to the authority of said King, and took oaths of allegiance to him and his Governor. That by the treaty of Breda, made on or about the thirty-first day of July, 1667, between the English and Dutch, all the territories conquered by the English as aforesaid, including the premises here in dispute, were confirmed to the English. That from the year 1664 until in the year 1673, the Bay and River Delaware and the said territories lying adjacent to and west thereof, including the premises here in dispute, constituted a dependancy of, and were governed in all particulars by the Government of the Duke of York at New York, and the said Duke of York and his said government during said period had and exercised all government and rights of government, all jurisdiction, whether legislative, judicial or executive, over said Bay, River and Territory, as such a dependancy as aforesaid, and over all of the inhabitants thereof, and all and every of the rights of a proprietor of, in and over the soil and waters of said River and Territory, including the premises here in dispute.

5. That in or about the month of July 1673, the territory, the seat of Government of which was at New York, was reconquered by the military power of the States General and the Prince of Orange, whereupon, without the direct exercise of military force, the Delaware dependancy, as above described, including the premises here in dispute, as the direct consequence of the conquest of the seat of said Government at New York, also fell into the

hands of and was occupied as the territory of the States of the United Provinces of the Netherlands; and the inhabitants of said dependancy, in the same year, in or about the month of September, declared their submission under obedience to the honorable lords States-General of New Netherlands. That upon said reconquest of New York and its said dependancy, and for the space of about seven months thereafter, the governors and government of the Dutch at New York had and exercised all government and rights of government, all jurisdictions, whether legislative, judicial or executive, and all and every of the rights of a proprietor, in and over the said River Delaware and said Territory adjacent thereto, as a dependancy of the said Government at New York, and in and over the soil and waters of said River and Territory, including the premises here in dispute.

6. By the Treaty of Peace, signed at Westminster, in or about the month of February, 1674, the Territory of which the seat of Government was at New York as aforesaid, including the said dependancy of the Bay and River Delaware and said Territories adjacent thereto, were restored to their former lord or proprietor; and by virtue of which treaty, the said River Delaware and the lands adjacent thereto upon the west, were restored as a dependancy to the said Government of the said Duke of York, who as lord proprietor thereof, thereafter governed the same and exercised jurisdiction in, and the rights of a proprietor over, the same, in manner and form as he had theretofore done before the said reconquest of the same by the said States General.

7. That thereupon, in order to make good and affirm and establish the aforesaid grant covered by the said letters patent of the said date of the twelfth of March, 1664,

the said Charles the Second, King of England, by his letters patent, bearing date on or about the twenty-ninth day of June, 1674, did grant and convey unto the said Duke of York, all and every of the property and all and every of the rights, powers and privileges, granted, conveyed, transferred and assured in and by the said patent first made as aforesaid, using in the last one of the said patents the same words which are used in the first of the said patents and no others, except those stating the date; to which last mentioned letters patent this defendant refers, as a whole, and makes the same a part of this, its answer.

8. That in the year 1680, William Penn petitioned King Charles the Second to grant him Letters Patent for a tract of land in America, lying north of Maryland, on the east bounded with the Delaware River, on the west limited as Maryland, and northward to extend as far as plantable. That said petition was referred by the said King to the Lords of the Committee of said King's most Honorable Privy Council for the affairs of Trade and the Plantations, who considered the same from abont the month of June 1680 until about the month of March 1681. That among other persons consulted by said Lords of said Committee, as to said grant, was His Royal Highness the Duke of York, in consideration of his recognized possession of and title to the lands and premises involved in said petition and the proposed grant thereunder. That the southerly boundary of the proposed grant was fixed and determined by the said Lords of said Committee, and by Lord Chief Justice North, upon their reference of the same to him, only upon the consent and approval of the said Duke of York, who was by them conceded to have held and possessed ever since the conquest of New York by Colonel Nichols, as an appendix and part of the government of New York, all that Colony or Plantation known by the name of Dela-

ware Colony, or more particularly, New Castle Colony. And this defendant craves leave to refer to all and every of the minutes, acts and proceedings of the said Lords of the Committee of said King's Most Honorable Privy Council for the affairs of Trade and the Plantations, all correspondence with, and in behalf of said Lords of said Committee, and all acts, proceedings and correspondence by, with and in behalf of His Royal Highness, the said Duke, and of all other persons, relative to the said petition and the consequent Royal Grant of the territory and Province of Pennsylvania, and prays that the same may, when produced in this cause, be taken as a part of this, its answer.

9. That King Charles the Second, by letters patent under the great seal of England, bearing date the fourth day of March, 1681, and published by royal proclamation on the Second day of April, 1681, granted unto William Penn, his heirs and assigns, upon his petition aforesaid, all that tract or part of land in America, with all the islands therein contained, as the same is bounded on the east by Delaware River, from twelve miles distance, northward of New Castle Town, unto the three and fortieth degree of northern latitude if the said river doth extend so far northward; but if the said river shall not extend so far northward, then by the said river so far as it doth extend, and from the head of the said river the eastern bounds are to be determined by a meridian line, to be drawn from the head of the said river unto the said three and fortieth degree, the said lands to extend westwards, five degrees in longitude, to be computed from the said eastern bounds, and the said lands to be bounded on the north, by the beginning of the three and fortieth degree of northern latitude, and on the south, by a circle drawn at twelve miles distance from New Castle northwards and westwards unto the beginning of the fortieth degree of northern lati-

tude, and then by a straight line westwards, to the limit of longitude above mentioned. That by the same charter, the territory of Pennsylvania was erected into a province, and appropriate powers of government thereof were conferred upon William Penn and his heirs. And this defendant prays leave to refer to said letters patent and charter, and that the same may be taken as a part of this, its answer.

**10.** That James, Duke of York, made and executed an indenture, dated the twenty-first day of August, 1682, to the said William Penn, wherein is recited that, his Royal Highness being willing and desirous that the tract or part of land called Pennsylvania should be granted and assured unto the said William Penn and his heirs, and for that purpose having signified and declared his assent thereto to the Right Honorable the Lords of the Committee of Plantations, his said Majesty by his letters patent under the great seal of England, bearing date the fourth day of March in the third and thirtieth year of his reign, for the considerations therein mentioned, did grant unto the said William Penn and his heirs, all that tract or part of land in America, with the islands therein contained and thereunto belonging, as the same was bounded and described in and by the said Letters Patent and therein called Pennsylvania, together with the several royalties, franchises, jurisdictions and privileges therein contained, and that his Royal Highness, for the consideration therein mentioned, was willing and pleased to confirm and make any farther assurance of the said tract of land and premises unto the said William Penn and his heirs; and thereupon, by said indenture, said Duke remised, released and forever quit claimed unto William Penn, his heirs and assigns, all the estate, right, title, interest, rents, services, duties, payments, property, claim and demand whatsoever, of his Royal Highness,

of, into or out of the said tract of land and all and singular other the lands, islands, tenements, hereditaments and other things comprised in the said recited letters patent and within the bounds and limits therein mentioned, to have and to hold the said tract of land, rents, services, hereditaments and premises unto the said William Penn, his heirs and assigns forever. And this defendant hereby refers to the said indenture and prays that the same may be taken and considered, when in evidence in this cause, as a part of this, its answer.

**11.** By deed signed and sealed but not witnessed, bearing date the twenty-first day of August, 1682, James, Duke of York, demised, granted, bargained and sold unto William Penn all that the town of New Castle, otherwise called Delaware, and all that tract of land lying within the compass or circle of twelve miles about the same, situate, lying and being upon the River Delaware in America, and all islands in the said River Delaware and the said River and soil thereof lying north of the southernmost part of the said circle of twelve miles about the said town, together with all rents, services, royalties, franchises and duties and all the estate, interests and powers whatsoever of his said Royal Highness in or to the same, to have and to hold all the same granted, or intended to be granted, town, circle, islands, to William Penn, his executors, administrators and assigns, for ten thousand years from the day before the date, without impeachment of waste, at a yearly rent of five shillings. And this defendant hereby refers to the said deed of lease and prays that the same, when in evidence in this cause, may be taken as part of this, its answer.

**12.** By a deed sealed and delivered in the presence of witnesses, bearing date the twenty-fourth day of August, 1682, the said James, Duke of York, demised, granted,

bargained and sold unto William Penn, upon due consideration, all that town of New Castle and all that tract of land lying within the compass or circle of twelve miles about the same, situate, lying and being upon the River Delaware, and all islands in the same river, and the said river and soil thereof lying north of the southernmost part of the said circle of twelve miles about the said town, to have and to hold to the said William Penn, his executors and administrators and assigns, for ten thousand years, at the yearly rent of five shillings. And this defendant refers to the said deed of lease and prays that the same may, when produced in this cause, be taken as a part of this, its answer.

**13.** By a deed sealed and delivered in the presence of witnesses, bearing date the twenty-fourth day of August, 1682, the said James, Duke of York, upon due consideration, bargained, sold, let and to farm let unto the said William Penn all that tract of land upon Delaware River and Bay, beginning twelve miles south from the town of New Castle, and extending south to the Horerkilns, otherwise called Lopen, together with free and undisturbed use and passage into and out of all harbors, bays, waters, rivers, isles and inlets belonging to or leading to the same, together with the soils, fields, woods, underwoods, mountains, hills, fennes, isles, lakes, rivers, rivulets, bays and inlets situate in or belonging unto the limits and bounds aforesaid, with all the rights of the Duke to the same, to have and to hold for the space of ten thousand years; in which deed the said William Penn covenanted *inter alia* to yield one-half the profits of the office of Registry &c., to the said Duke, who also reserved a right of distress for his rents. And this defendant refers to the said deed of lease and prays that the same may, when produced in this cause, be taken as a part of this, its answer.

14. By a deed of feoffment, bearing date the twenty-fourth day of August, 1682, the said James, Duke of York, for due consideration therein mentioned, did bargain, sell, enfeoff and confirm unto the said William Penn, his heirs and assigns forever, all that the town of New Castle, otherwise called Delaware, and all that tract of land lying within the compass or circle of twelve miles about the same, situate, lying and being upon the River Delaware, in America, and all islands in the said River Delaware, and the said river and soil thereof, lying north of the southermost part of the said circle of twelve miles about the said town, together with all rents, services, royalties, franchises, duties, jurisdictions, liberties and privileges thereunto belonging; and all the estate, right, title, interest, powers, property, claim, and demand whatsoever, of his said Royal Highness, of, ~~in~~ or to the same, or any part or parcel thereof; saving always and reserving to his Royal Highness, his agents and servants, free use of all ports, ways and passages into, through and out of the bargained premises, and every part and parcel thereof; to have and to hold the said town and circle of twelve miles of land about the same, islands, and all other the before mentioned or intended to be hereby bargained premises, with their appurtenances, unto the said William Penn, his heirs and assigns, to the only use and behoof of him the said William Penn, his heirs and assigns, forever, yielding and paying therefor yearly and every year unto his said Royal Highness, his heirs and assigns, the sum of five shillings of lawful money of England, at the feast of St. Michael the Archangel, only.

And in and by said indenture his said Royal Highness, for himself, his heirs and assigns, did covenant and grant to and with the said William Penn, his heirs and assigns, that his said Royal Highness, his heirs and assigns, would at any time or times thereafter, during the space of seven years next ensuing the date thereof, upon the request, and at the costs and charges in the law of the said William Penn, his

heirs and assigns, do, make and execute, or cause or procure to be made, done and executed, all and every such further act and acts, conveyances and assurances in the law whatsoever, for the further conveying and assuring the said town and circle of twelve miles of land about the same, and islands, and all other premises, with the appurtenances, unto the said William Penn, his heirs and assigns, forever, as by the counsel learned in the law of the said William Penn, his heirs or assigns, shall be reasonably devised, advised, or required.

And his said Royal Highness further thereby made, constituted and appointed John Moll of New Castle aforesaid, esquire, and Ephraim Harman, of New Castle aforesaid, gentleman, jointly and either of them severally, his true and lawful attorneys, and by said presents, did give and grant unto the said John Moll and Ephraim Harman, his said attorneys, or either of them, full power and authority for him, and in his name and stead, into all and singular the premises thereinbefore mentioned, or intended to be thereby aliened, enfoeffed and confirmed, and into every or any part or parcel thereof, in the name of the whole, to enter, and quiet and peaceable possession and seisin thereof, or of any part or parcel thereof, in the name of the whole, to enter and receive; and after peaceable possession thereof had and taken as aforesaid, to deliver quiet and peaceable possession and seisin thereof, or of any part or parcel thereof, in the name of the whole, to the said William Penn, his heirs or assigns, or to his or their lawful attorney or attorneys, sufficiently authorized to receive and take the same, and him or them to leave in the quiet and peaceable possession thereof, according to the true intent and meaning of said presents. And his said Royal Highness did further thereby allow of, ratify and confirm whatsoever the said John Moll and Ephraim Harman, his said attorneys, should lawfully do or cause to be done, in and about the premises, by virtue of said presents, to be as

good and effectual in the law, to all intents and purposes whatsoever, as if his said Royal Highness had done the same in his own person, or had been present at the doing thereof.

And this defendant craves leave to refer to the whole of said last recited indenture of feoffment, when produced in evidence or proved, at the hearing of this cause, and prays that the same, when so produced or proved, may be taken as part of this, its answer.

15. By further deed or indenture of feoffment, bearing date the twenty-fourth day of August, 1682, the said James, Duke of York, for the due consideration therein mentioned, did bargain, sell, enfeoff, and confirm unto the said William Penn, his heirs and assigns forever, all that tract of land upon Delaware River and Bay, beginning twelve miles south from the town of New Castle, otherwise called Delaware, and extending south to the Whorekills, otherwise called Cape Henlopen, together with free and undistrubed use and passage into and out of all harbors, bays, waters, rivers, isles, and inlets, belonging to or leading to the same; together with the soil, fields, woods, underwoods, mountains, hills, fens, isles, lakes, rivers, rivulets, bays, and inlets, situate in or belonging unto the limits and bounds aforesaid; together with all sorts of minerals; and all the estate, interest, royalties, franchises, powers, privileges and immunities whatsoever, of his said Royal Highness therein, or in or into any part or parcel thereof: saving always and reserving to his said Royal Highness, his agents and servants, free use of all ports, ways and passages into, through and out of the said bargained premises, and every part and parcel thereof; to have and to hold the said tract of land, and all and singular other the premises, with the appurtenances, unto the said William Penn, his heirs and assigns, to the only use and behoof of him,

the said William Penn, his heirs and assigns forever, to be holden of his said Royal Highness and his heirs, as of their castle at New York, in free and common soccage, yielding and paying therefor yearly and every year, to his said Royal Highness, his heirs and assigns, one rose, at the feast of St. Michael the Archangel yearly, if demanded.

And in and by said indenture the said William Penn covenanted for himself, his heirs and assigns, within the space of one year next ensuing the date of said presents, to set up an office, or offices of Registry, wherein he should keep account of the rents and other profits arising out of said bargained premises, and annually to pay to his said Royal Highness one full moiety of all and all manner of rents, issues and profits, as well extraordinary as ordinary, as shall be made or raised upon, or by reason of the premises or any part thereof. And in said deed, his said Royal Highness reserved a right of distress for any unpaid arrears of said moiety of said profits.

And his said Royal Highness for himself, his heirs and assigns, did further covenant and grant to and with the said William Penn, his heirs and assigns, by said presents, that his said Royal Highness, his heirs and assigns, would, at any time or times thereafter, during the space of seven years next ensuing the date thereof, upon the request, and at the costs and charges in the law of the said William Penn, his heirs and assigns, do, make, and execute, or cause or procure to be made, done and executed, all and every such further act and acts, conveyances and assurances, in the law whatsoever, for the further conveying and assuring the said tract of land, and all and singular other the premises, with the appurtenances, under the said William Penn, his heirs and assigns, forever, as by the counsel learned in the law of the said William Penn, his heirs or assigns, should be reasonably devised, advised or required.

And his said Royal Highness further thereby made, constituted and appointed John Moll of New Castle aforesaid, esquire, and Ephraim Harman of New Castle aforesaid, gentleman, jointly, and either of them severally, his true and lawful attorneys, and thereby did give and grant unto the said John Moll and Ephraim Harman, his said attorneys, or either of them, full power and authority for him, and in his name and stead, into all and singular the premises thereinbefore mentioned, or intended to be thereby aliened, enfeoffed and confirmed, and into every, or any part or parcel thereof, in the name of the whole, to enter, and quiet and peaceable possession and seisin thereof, or of any part or parcel thereof, in the name of the whole, to take and receive; and after peaceable possession thereof had and taken as aforesaid, to deliver quiet and peaceable possession and seisin thereof, or of any part or parcel thereof, in the name of the whole, to the said William Penn, his heirs or assigns, or to his or their lawful attorney or attorneys, sufficiently authorized to receive and take the same, and him or them to leave in the quiet and peaceable possession thereof, according to the true intent and meaning of said presents. And his said Royal Highness did thereby allow of, ratify and confirm, whatsoever the said John Moll and Ephraim Harman, his said attorneys should lawfully do, or cause to be done, in and about the premises, by virtue of said presents, to be as good and effectual in the law, to all intents and purposes whatsoever, as if his Royal Highness had done the same in his own person, or had been present at the doing thereof.

And this defendant hereby refers to the said indenture of feoffment and prays that the same may, when produced in this cause, be taken as a part of this, its answer.

**16.** That on or about the twenty-eighth day of Octo-

ber, 1682, the said William Penn, either in his proper person or by his attorney, did demand, and the said John Moll and Ephraim Harman, or one of them, being the said Duke's attorneys for such purpose, duly constituted as aforesaid, did with great form and solemnity, deliver and leave the said William Penn in the quiet and peaceable possession and seisin of the premises contained in both the said respective indentures of feoffment, pursuant to the power and authority given by the same respective indentures of feoffment, by delivery to the said William Penn, of the fort at New Castle, and of turf and twig, and of water and soil of the River Delaware; memorandums of the delivery of seisin were duly prepared and attested by several witnesses, which memorandums, or records thereof, remain to this day. And this defendant hereby refers to the records and memorandums of the said liveries of seisin, and prays that they may when produced in this cause, be taken as parts of this, its answer.

**17.** That on or about the said twenty-eighth day of October, 1682, the inhabitants of the town of New Castle, upon Delaware River, having heard the indenture read, made between his Royal Highness, James, Duke of York, &c., and said William Penn, wherein said Duke transferred his right and title to New Castle, and twelve mile circle about the same, with all powers and jurisdictions, and services thereunto belonging, unto the said William Penn, and having seen by the said Duke's appointed attorneys, John Moll and Ephraim Harman, both of New Castle, possession given, and by their governor, the said William Penn, possession taken, whereby they were made subjects, under the king, to the said William Penn, did in the presence of God, solemnly promise to yield to him, the said William Penn, all just obedience and to live quietly and peaceably under his government. That of the said oath of allegiance and submission to the said William

Penn, a memorandum was made and signed by said inhabitants of the town of New Castle, or by representatives thereof, which said memorandum, or a due record thereof, remains to to this day. And this defendant bereby refers to the said memorandum of said oath of allegiance and submission, or to the record thereof, and prays that the same when produced in this cause, may be taken as a part of this, its answer.

18. That shortly after the delivery of such possession and seisin of said territory and River Delaware, included within said twelve mile circle, to the said William Penn, as aforesaid, and sometime in the month of November, 1682, the said Duke of York's Commander-in-Chief and Council established at New York, issued a proclamation, declaration, or order, addressed or directed to the several justices of the peace, magistrates, and other officers at New Castle, St. Jones, Deale, alias Whore Kill, at Delaware, or within any of the bounds and limits mentioned in the said recited indentures of feoffment to the said William Penn. Said order or proclamation recites that his Royal Highness had been graciously pleased by indenture under his hand and seal, bearing date the twenty-fourth day of August, then last past, for the consideration therein mentioned, to bargain, sell, enfeoff, and confirm unto William Penn, Esquire, his heirs and assigns forever, all that town of New Castle, otherwise called Delaware, and all that tract of land lying within the compass or circle of twelve miles about the same, with all islands, and the river and the soil thereof lying north of the southermost part of the said circle, and all rents and services, royalties, franchises, duties, jurisdiction, privileges and liberties thereunto belonging, and by another indenture of the same date, for the consideration therein likewise mentioned, had also bargained, sold, enfeoffed, and confirmed under the said William Penn, Esquire, his heirs and assigns foever, all

that tract of land upon Delaware River and Bay, beginning twelve miles south from the town of New Castle, otherwise called Delaware and extending south to the Whore Kills, otherwise called Cape in Lopen, with all isles, rivers, rivulets, bays and inlets, royalties, franchises, powers, privileges, and immunities whatsoever, and in and by the said indentures, appointed and authorized John Moll, esquire, and Ephraim Harman, gentleman, to deliver to him, the said William Penn, free and actual possession of the premises, as by the said indentures, there produced and shown to said Commander-in-Chief and Council, and by them well approved of and entered in the public records of said Province, did and may more at large appear; and said proclamation further recited that the said Commander-in-Chief and Council being thereby fully satisfied of the said William Penn's right to the possession and enjoyment of the premises; whereupon the said order or proclamation proceeded, that the said Commander-in-Chief and Council theretofore thought fit and necessary to signify and declare the foregoing to the persons to whom said proclamation was addressed, to prevent any doubt or trouble that might arise or accrue, and to give them their thanks for their good services done in their several offices and stations during the time they remained under his Royal Highness' Government; which proclamation concluded as follows: "expecting no further account than that you readily submit and yield all due obedience and conformity to the powers granted to the said William Penn in and by the said indentures in the performance and enjoyment of which we wish you all happiness." And this defendant refers to the said order or proclamation or the due record thereof, and prays that the same may, when produced in this cause, be taken as a part of this, its answer.

19. That the Duke of York having, by each of his said indentures of feoffment of the twenty-fourth of August, 1682, covenanted with the said William Penn to make and procure further assurance of the premises contained within the said recited indentures of feoffment as aforesaid, he, the said Duke of York, did in pursuance and performance of his said covenants, very shortly after the date of the said feoffments, make his application to the said King, Charles the Second, for a more particular and express grant under the great seal of England, of the said lands and waters contained in the said feoffments, and since called the three lower counties, and did procure and obtain the same.

Pursuant to the said application of the said Duke of York, the said King, Charles the Second, by his letters patent, under the great seal of England, bearing date at Westminster on or about the twenty-second day of March, which was in the thirty-fifth year of his reign, Anno Domini 1683, (O. S. 1682), which date was not quite seven calendar months after the date of the said Duke's said feoffments, did give and grant unto said James, Duke of York, his heirs and assigns, all that, the town of New Castle, otherwise called Delaware, and fort therein or thereunto belonging, situate, lying and being between Maryland and New Jersey in America; and all that tract of land lying within the compass or circle of twelve miles about the said town, situate lying and being upon the River Delaware, and all the islands in the said River Delaware, and the said river and soil thereof lying north of the southermost part of the said circle of twelve miles about the said town; and all that tract of land upon Delaware River and Bay, beginning twelve miles south from the said town of New Castle, otherwise called Delaware, and extending south to Cape Lopen; together with all the lands, islands, soils, rivers, harbors, mines, minerals, quarries, woods,

marshes, waters, lakes, fishings, hawkings, huntings and fowlings, and all other royalties, privileges, profits, commodities and hereditaments, to the said town, fort, tracts of land, islands and premises, or to any or either of them belonging or appertaining, with their and every of their appurtenances, situate lying and being in America, and all of the said King's estate, right, title and interest, benefit, advantage, claim and demand whatsoever, of, in or to the said town, fort, lands, or premises, or any part or parcel thereof, and the reversion and reversions, remainder and remainders thereof, together with the yearly and other rents, revenues and profits of the premises, and of every part and parcel thereof; to have and to hold the said town of New Castle, otherwise called Delaware, and fort, all and singular the said lands and premises with their and every of their appurtenances, thereby given and granted, or thereinbefore mentioned to be given and granted, unto the said James, Duke of York, his heirs and assigns forever; to be holden of the said King, his heirs and successors, as of his manor of East Greenwich, in his County of Kent, in free and common soccage, and not in capite or by Knight service; yielding and rendering, and the said James, Duke of York, for himself, his heirs and assigns, did thereby covenant and promise to yield and render unto the said King, his heirs and successors, of and for the same, yearly, and every year, four beaver skins, when the same should be demanded, or within ninety days after such demand made.

And of the King's special grace, certain knowledge, and mere motion, for him, his heirs and successors, the said King did thereby give and grant unto the said James, Duke of York, his heirs, deputies, agents, commissioners and assigns, full and absolute power and authority to correct, punish, pardon, govern and rule, all such the subjects of said King, his heirs and successors, or any other person or persons as should from time to time adventure themselves into any

of the ports and places aforesaid, or that should or did at any time thereafter inhabit the same, according to such laws, orders, ordinances, directions and instructions, as by the said Duke of York, or his assigns, should be established; and in defect thereof, in cases of necessity, according to the good discretion of his deputies, commissioners, officers, or assigns respectively, as well in all cases and matters capital and criminal as civil, both marine and others, so always as the said statutes, ordinances and proceedings be not contrary, but (as near as may be) agreeable to the laws, statutes and government of the said King's realm of England; and saving and reserving to said King, his heirs and successors, the receiving, hearing and determining of the appeal and appeals of all, or any person or persons of, in, or belonging to the town, fort, lands and premises aforesaid, or touching any judgment or sentence to be there made or given.

And by said Letters Patent the said King further granted that it should and might be lawful to and for the said Duke of York, his heirs and assigns, from time to time, to nominate, make, constitute, ordain and confirm such laws as aforesaid, by such name or names, style or styles, as to him or they should seem good; and likewise to revoke, discharge, change and alter, as well as all and singular governors, officers and ministers, which should thereafter be by him, or them, thought fit and needful to be made or used within that aforesaid town, fort, lands and premises; and also to make, ordain and establish all manner of laws, orders, directions, instructions, forms and ceremonies of government and magistracy, fit and necessary for and concerning the government of the said town, fort, lands and premises, so always as the same be not contrary to the laws and statutes of said King's realm of England, but (as near as may be) agreeable thereunto, and the same at all times thereafter to put in execution, or abrogate, revoke or

change, not only within the precincts of the said town, fort, lands and premises, but also upon the seas, in going and coming to and from the same, as he, the said Duke of York, or his heirs and assigns, in their good discretion, shall think fittest for the good of the adventurers and inhabitants. And the said King did thereby further grant, ordain and declare that such governors, deputies, officers and ministers, as from time to time shall be authorized and appointed in manner and form aforesaid, shall and may have full power and authority within the said town, fort, lands and premises, to use and exercise martial law in case of rebellion, insurrection and mutiny, in as large and ample manner as the said King's Lieutenants, in his counties within his realm of England, had or ought to have, by force of their commission of Lieutenancy, or any law or statute of his said realm.

And the King by said Letters Patent did further for himself, his heirs and successors, grant unto the said Duke of York, his heirs or assigns, in his or their discretions, from time to time, to admit such and so many person and persons to trade and traffic unto and within the said town, fort, lands and premises, and into every and any part and parcel thereof, and to have, possess and enjoy any lands and hereditaments in the parts and places aforesaid, as they shall think fit, according to the laws, orders, constitutions, and ordinances, by the said Duke of York, his heirs, deputies, commissioners and assigns, from time to time, to be made and established by virtue of, and according to, the true intent and meaning of said presents, and under such conditions, reservations and agreements, as the said Duke of York, his heirs and assigns, should set down, order, direct and appoint, and not otherwise, as aforesaid.

And the said King, did further of his especial Grace, certain knowledge, and mere motion, for himself, his heirs,

and successors, give and grant unto the said Duke of York, his heirs and assigns, by said presents, that it should and might be lawful to and for him, them, or any of them, at all and every time and times thereafter, out of any of the said King's realms or dominions whatsoever, to take, load, carry and transport, in and into their voyages for and towards the plantation of the said town, fort, lands and premises, all such and so many of the said King's loving subjects, or any other strangers being not prohibited, or not restrained that would become the said King's loving subjects, and live under his allegiance, and should willingly accompany them on the said voyage, together with all such clothing, implements, furniture, or other things, usually transported, and not prohibited, as should be necessary for the inhabitants of the said town, fort, lands and premises, and for their use and defense thereof, and managing and carrying on the trade with the people there, and in passing and returning to and fro; yielding and paying unto the said King his heirs and successors, the customs and duties therefore due and payable, according to the laws and customs of the said King's realm.

And the said King by said letters patent did also for himself, his heirs and successors, grant to the said Duke of York, his heirs and assigns, and to all and every such Governor and Governors, Deputy or Deputies, or their officers or ministers, as by the said Duke, his heirs or assigns, should be appointed, to have power and authority of government, and command in and over the inhabitants of the said town, fort, lands and premises, that they and every one of them should, and lawfully might, from time to time, and at all times forever thereafter, for their several defences and safety, encounter, repulse and expel and resist by force of arms, as well by sea as by land, and by all ways and means whatsoever, all such person and persons as, without

the special license of the said Duke, his heirs or assigns, should attempt to settle and inhabit within the several precincts and limits of the said town, fort, lands and premises, and also all and every such person or persons whatsoever, as should enterprise and attempt at any time thereafter, the destruction, invasion, detriment or annoyance, to the parts, places, town, fort, lands and premises aforesaid or any part thereof.

And said King did, by his said Letters Patent, declare his will and pleasure to be, and did thereby declare and grant, that said Letters Patent, or the enrollments thereof, should be good and effectual in law, to all intents and purposes whatsoever, notwithstanding the not well or true reciting or mentioning of the premises, or any part thereof, or of any former or other Letters Patent or grants whatsoever, made or granted of the premises, or of any part thereof, by the said King, or any of his progenitors, unto any person or persons whatsoever, bodies politic or corporate, or any other law or other restraint, incertainty or imperfection whatsoever to the contrary in any wise notwithstanding, although express mention of the true yearly value or certainty of the premises, or any of them, or of any other gifts or grants by him, or by any of his progenitors, theretofore made to the said Duke of York, in said presents was not made, or any statute, act, ordinance, provision, proclamation or restriction theretofore had, made, enacted or provided, or any other matter, cause or thing whatsoever, to the contrary thereof in any wise notwithstanding.

As by reference to said Letters Patent will more fully and at large appear. To which Letters Patent this defendant hereby refers and prays that the same may, when produced in this cause, be taken as a part of this, its answer.

That immediately after the said last mentioned Let-

ters Patent had passed the great seal, the said Duke of York, who was no other than a trustee for the said William Penn therein, and had obtained them in pursuance of his said covenant for further assurance, did deliver over the same original last mentioned letters patent under the great seal, to the said William Penn, into the custody and possession of whom, his heirs and assigns, the same did thereby pass and ever after remain.

**20.** And this defendant further avers that, upon the making of the feoffments from the Duke of York to the said William Penn, and of the said Royal Letters Patent to the Duke of York, for the benefit of the said William Penn as aforesaid, the said William Penn straightway entered into full seisin, possession and exercise of the lands, territories, rivers, waters, the royalties, government and rights of government, and jurisdiction, whether legislative, judicial or executive, conferred by the said feoffments and said Letters Patent; and particularly entered upon the possession and full exercise of all of the titles, powers, royalties, privileges, franchises, jurisdictions, governments and rights of government conferred by said two last mentioned feoffments and said letters patent, within, upon and over the territory, lands, soils, waters, and property included within the compass of said twelve mile circle, and had and exercised, within said last mentioned bounds, all and every the rights of a proprietor, under the terms of all of his muniments of title aforesaid. And further that in the improvement and settlement of said last mentioned territories, the said William Penn and his heirs expended large sums of money. That the said William Penn, and his heirs, continued in the possession, enjoyment and exercise of all the powers and privileges, rights and titles, jurisdiction and government of the said territories, lands and premises, with the full knowledge of, and with the full recognition of his governmental and

proprietary rights therein by the Crown of England, and without its let or hindrance, from the time of the taking possession and exercise of the same as aforesaid, until the time of the American Revolution, excepting that, for a short period during the reign of Queen Anne of England, he was removed from the government of his said Provinces, but shortly thereafter was most fully and completely restored thereto. All of which by reference to very numerous grants by William Penn and his heirs to sundry persons, and from numerous legislative, judicial and executive acts, laws, records, documents, provincial charters and acts of provincial settlement, will more fully and at large appear, to all of which this defendant prays leave to refer and to make the same, when produced in this cause, a part of this, its answer.

21. That on or about the month of December, 1682, the said William Penn under his hand and broad seal, as proprietor and governor of the Province of Pennsylvania, and of the said Three Lower Counties, issued and published an Act of Union for annexing and uniting of the counties of New Castle, Jones's, and Whorekills, alias New Dale, to the Province of Pennsylvania. The said Act of Union, after sundry recitals of the title of the said William Penn to the said Province of Pennsylvania and said Three Lower Counties, as by reference thereunto will fully appear, enacted that the county of New Castle, Jones's and Whorekills, alias New Dale, should be annexed, and by the authority of the said proprietor and governor, by and with the advice and consent of the deputies of the freemen of said Province, and counties aforesaid in assembly made, were thereby annexed unto the Province of Pennsylvania, as of the proper territory thereof; and that the people therein should be governed by the same laws, and enjoy the same privileges in all respects, as the inhabitants of Pennsylvania did or should enjoy from time to time therein,

anything in said law, or any other law, act or thing, in said Province, to the contrary thereof in any wise notwithstanding. And this defendant hereby refers to the said Act of Union and prays that the same when produced in this cause, may be taken as a part of this, its answer.

**22.** That the union of the said Three Lower Counties to the Province of Pennsylvania continued in full force, both legislative and otherwise, until about the year 1701; in which said year, the said William Penn granted and promulgated a charter of privileges to the inhabitants of the said Province of Pennsylvania and said Three Lower Counties, called the Territories thereof, whereby he granted full permission under said charter of privileges for the said Province and the said Territories, to have and maintain several legislatures. That subsequent to about the year 1702, no further joint legislative assemblies of representatives from the Three Lower Counties and from the said Province of Pennsylvania were ever held. And this defendant hereby refers to the said charter of Privileges, to the acts and proceedings of the legislative bodies of the Three Lower Counties, and of the said Province of Pennsylvania, so far as relating to the said legislative disunion between the Three Lower Counties and the said Province of Pennsylvania, and prays that the same may, when produced in this cause, be taken as a part of this, its answer.

**23.** That from the year 1682 down to the year 1776, the said William Penn and his heirs, under various wills, deeds of settlement, and descents, continually had, held, possessed, retained, and exercised the rights of proprietor and proprietors of the territory, lands, waters, and premises, included within the compass of the said twelve mile circle, under the powers, titles, and authorities granted to the original proprietor, and so held and exercised by him as

aforesaid, and as modified by various charters of privileges granted by said proprietors to the Province of Pennsylvania, and the said Three Lower Counties. And this defendant prays leave to refer to the said wills, deeds of settlement, and descents, or to the due records thereof, and to the several charters of privileges, for further particulars in this behalf; and that the same may, when produced in this cause, be taken as parts of this, its answer.

24. That at the date of the American Revolution, which took place by the Declaration of Independence, bearing date the Fourth day of July, 1776, the territorial limits of the State of Delaware extended to and included, *inter alia*, all those lands and that portion of the Delaware River, its waters and the soil and bed thereof to low water mark on the New Jersey shore, included within the compass of said twelve mile circle; and such its limits and boundaries had continuously been and remained down to the date of said Revolution from about the year 1682. That by said American Revolution, the State of Delaware became and was, and from thenceforth has been, a free and independent state, and as such became entitled to have and to hold all such rights as free and independent states may have or hold, to do all acts and things which independent states may of right do; and by force of the said Revolution and said Independence the said State of Delaware became invested with all and every power of government in and over the territory of said State and the tide waters adjacent thereto, and particularly to the full extent of the limits and boundaries of said State as they existed at the time of said American Revolution as aforesaid, and also became invested, not only with all the property and rights of property, royalties, powers, and franchises, governmental powers and authority and jurisdictions within and appertaining to said State, which immediately before said Revolution were vested in the then and

former proprietor or proprietors of its territory within the limits and bounds aforesaid, but also with all the property, rights of property, privileges, franchises, powers, governmental power and jurisdictions, if any thereof yet then remained in the Crown of England, in manner and form as they were so vested in said Crown; that by means of said Revolution, the said independence of the State of Delaware, and the Treaty of Peace between the King of Great Britain and the United States of America, concluded at Paris, September third, 1783, all that portion of the bed, soil and waters of the Delaware River last hereinbefore mentioned, to low water mark on the New Jersey shore and included within the compass of said twelve mile circle, became vested in fee simple in the State of Delaware; and so the title to the bed of said portion of said river, this defendant respectfully submits, hath ever since continued and now is.

**25.** That to and in the said bed and soil of said portion of the Delaware River and to jurisdiction in and over said river, so as aforesaid claimed, this defendant hath title and right by long and peaceable possession, use and enjoyment, which use, possession and enjoyment began with the earliest determination of the said boundaries of said State as hereinbefore set forth and hath ever since continued, without interruption or dispute. That in, over and with reference to the portion of said Delaware River and the soil and the bed thereof, as a part of the recognized territory of said State of Delaware, the said State hath from time to time continuously passed and enforced legislative acts, its courts have continuously, both before and after the American Revolution, exercised jurisdiction and issued and enforced processes, writs, orders, judgments and decrees, and the courts of the United States within the district of said State, have enforced their processes, orders and writs.

That with reference to the rights of fishing and every regulation and control thereof in said river, within the limits of said twelve mile circle, the State of Delaware hath never relinquished or abandoned the proprietary rights which it hath always possessed, had and defended, from the inception of its title to the bed and soil and waters of said river, within the limits of said twelve mile circle, in the year 1682, to the present day, but on the contrary, this defendant saith that the said proprietary rights, and title to said fisheries and fishings in said portion of said river, and the regulation and control thereof, this defendant hath continuously from the said year 1682 to the present day claimed, exercised and defended.

That in the exercise, by this defendant, of proprietary right, jurisdiction and sovereignty, in and over the said twelve mile circle, its Legislature did, on May 27th, 1813, pass an Act entitled "An Act Ceding to the United States of America the Jurisdiction which this State has over the Pea Patch, on certain conditions therein mentioned" (being Digest of Delaware Laws of 1829, page 673), in and by which the State of Delaware ceded to the United States of America, for the purpose of erecting forts, batteries and fortifications thereon for the protection of the River Delaware and the adjacent country, a certain island in the River Delaware and within the twelve mile circle; which was thereupon, in pursuance of said cession, occupied by the Government of the United States of America, and fortifications were thereupon built thereon, and have ever since been maintained. That after said cession, and prior to the year 1847, the title of the United States of America under said cession, was questioned by James Humphrey who claimed through sundry mean[illegible] conveyances, under grants from the State New Jersey or its proprietary; and that for the purpose of determining the right, title, sovereignty and jurisdiction of the State of Delaware in and

over the said island, at the time of said cession, as aforesaid, to the United States of America, an arbitration of and concerning the same was had, heard and determined by and before the Honorable John Sergeant of Pennsylvania, who was designated as an arbitrator for the express purpose of determining the said right, title, jurisdiction and sovereignty, under and pursuant to the authority of an Act of the Congress of the United States, approved August 8th, 1846, under which the said arbitrator was appointed, and, when so appointed, was constituted a special tribunal for determining the same. That the question of the right, title, jurisdiction and sovereignty of the State of Delaware of, in, to and over the River Delaware and the soil thereof, within the twelve mile circle, was the very question involved in said litigation and determined by the said special tribunal, so created for that purpose; and that to the said litigation and decision the parties to this suit, that is to say, the States of New Jersey and Delaware, were privies in ~~the~~ estate to and with the respective parties. That during the hearing and determination of said arbitration, full and accurate minutes of all proceedings were taken by the Secretary of the reference, who was then, theretofore and subsequently, the regular and only reporter of the decisions of the District and Circuit Courts of the United States in the District of Pennsylvania and the Third Circuit; and that said minutes, having been carefully written out, were transmitted to the proper department of the Government of the United States and were, pursuant to a resolution of the Senate of the United States, printed and published as Senate Executive Document No. 21 of the first session of the Thirtieth Congress. That the decision of the said arbitrator was, that the title and jurisdiction to and over said island and to the river and soil thereof, within the said twelve mile circle, was in the said State of Delaware. That the said decision was reached after the most thorough

examination of the facts, upon the original documents, the testimony of witnesses, the law applicable thereto, and the argument of able counsel representing both sides. And the defendant craves leave to refer to the said Senate Executive Document No. 21, and to the record and proceedings of the said arbitration and decision, when produced at the hearing of this cause.

# III

1. And this defendant, further answering, saith that its Legislature did, on March 28th, 1871, pass an Act entitled "An Act for protection of Fishermen" (being Chap. 72, Vol. 14, Laws of Delaware), as is in said Bill of Complaint alleged, but that the said Act is not fully set forth in said Bill of Complaint, nor is that portion of the same from which the said Bill of Complaint purports to make a quotation set forth with entire accuracy; and this defendant therefore craves leave to refer to the said Act when produced at the hearing of this cause.

And this defendant, further answering, saith that its Legislature did also pass, March 29th 1871, a supplement to said last mentioned Act, entitled "A Supplement to the Act entitled 'An Act for the Protection of Fishermen'" (being Chap. 73, Vol. 14, Laws of Delaware), the terms and tenor of which said last mentioned Act are accurately set forth in said Bill of Complaint.

And this defendant, further answering, denies that any of its officers, at any time, construed the said acts of the Legislature of this defendant as requiring or authorizing them to arrest citizens of New Jersey, or any other persons, while lawfully pursuing the occupation of fishing in the River Delaware; and that it does not know and cannot set forth as to its belief or otherwise, whether it is a fact that officers of this defendant arrested citizens and inhabitants

of the State of New Jersey, and seized their vessels and fishing implements and carried the said citizens and residents into the State of Delaware and there charged them with violation of the aforesaid Act relative to fishing, by not taking out a license and paying the license fee of Twenty Dollars ($20.00) prescribed by the first section of the aforesaid Act of March 28th, 1871.

And this defendant, further answering, does not admit that its courts and authorities did enforce the provisions of the said Act against citizens and residents of New Jersey; but this defendant avers that its courts and officers have at all times asserted the jurisdiction of the State of Delaware over the said twelve mile circle, and its right of control of fishing therein, and that if any arrests were made by the officers of this defendant, as set forth in said Bill of Complaint, such arrests were made only of persons who were found to be violating the laws of the State of Delaware, rightly made and enforced within its own lawful jurisdiction, and in execution of the laws of said State then in force. And this defendant further avers that the courts and authorities of the State of Delaware have always asserted, and still continue to assert and maintain, an exclusive jurisdiction over the whole of said river within the said twelve mile circle to low-water mark on the New Jersey shore thereof, as hereinbefore more particularly set forth. This defendant believes, and is willing to admit, that the Governor of the State of New Jersey did issue his proclamation bearing date the eighth day of May, 1872, as is in said Bill of Complaint set forth; but for greater certainty it craves leave to refer to the said proclamation when produced at the hearing of this cause.

2. And this defendant, further answering, admits that its Legislature did, January 30th, 1873, adopt certain joint resolutions, substantially as set forth in said Bill of Com-

plaint (being Chap. 588, Vol. 14, Laws of Delaware); and also that the said Legislature did, on the 14th day of February, 1873, adopt certain other joint resolutions set forth substantially in said Bill of Complaint (being Chap. 593, Vol. 14, Laws of Delaware); and that the said Legislature did, on February 19th, 1878, adopt a certain other joint resolution, amending the preamble of the joint resolution of January 30th, 1873 (being Chap. 594, Vol. 14, Laws of Delaware); which said resolutions are substantially as set forth in said Bill of Complaint; but for greater certainty this defendant craves leave to refer to all of said resolutions when produced at the hearing of this cause.

3. And this defendant, further answering, saith that it admits that on February 19th, 1878, its Legislature passed another Act entitled "A Supplement to the Act entitled 'An Act for the Protection of Fishermen'" (being Chap. 419, Vol. 14, Laws of Delaware), the terms and tenor of which said Act are substantially set forth in the said Bill of Complaint; but for greater certainty this defendant craves leave to refer to the said Act when produced at the hearing of this cause.

4. And this defendant, further answering, saith that it believes to be true, and therefore admits, that the Legislature of the State of New Jersey did pass an Act, approved February 26, 1873, entitled "An Act for the Settlement of the Territorial Limits and Jurisdiction of the State of New Jersey and the State of Delaware", as set forth in said Bill of Complaint; but for greater certainty this defendant craves leave to refer to said Act when produced at the hearing of this cause.

And this defendant admits that the Governor of New Jersey did appoint three commissioners for the purposes named in said last mentioned act, as set forth in said

Bill of Complaint, and that said commissioners accepted said appointment.

5. And this defendant, further answering, saith that it believes it to be true, and therefore admits, that the Legislature of the State of New Jersey did pass another Act, approved March 11th, 1873, as in said Bill of Complaint is set forth, but upon what information the said Legislature of the State of New Jersey acted in passing the said last mentioned Act, this defendant has no knowledge, except so far as the same is disclosed by the terms of the Act itself; but for greater certainty this defendant craves leave to refer to said Act when produced at the hearing of this cause.

6. And this defendant, further answering, admits that on the eighth day of April, 1873, its Legislature, acting in a spirit of inter-state comity, and with a desire to have the questions of difference between the two states, growing out of the legislation of the State of Delaware, hereinbefore set forth and referred to, settled amicably and without any friction resulting from the enforcement of the laws of this defendant which were complained of by the Legislature and other officers of New Jersey, and the validity of which was to be examined into and passed upon by the joint commissioners of the two States, passed certain joint resolutions (being Chap. 605, Vol. 14, Laws of Delaware), suspending the laws of the State of Delaware requiring a license to fish for shad within its waters pending the negotiations between the commissioners appointed by the two states for the settlement of the fishery question, and authorizing the said commissioners to consider and determine the mutual right of fishery in the Delaware Bay and in that part of the Delaware River lying between the two states, as is in said Bill of Complaint alleged; but for greater certainty

this defendant craves leave to refer to said resolutions when produced at the hearing of this cause.

7. And this defendant, further answering, saith that it believes that the commissioners of the two states had various conferences and discussions, and that the commissioners on the part of Delaware submitted to the commissioners on the part of New Jersey a printed argument setting forth their views of the matters in dispute and of the rights of the parties respectively in and over the subject matters thereof, and that the views of the said commissioners of this defendant, as embodied in the said printed argument, were afterwards reported to the Legislature of this defendant. And this defendant craves leave to refer to the said printed argument prepared by its commissioners as aforesaid and submitted to the commissioners of New Jersey, and craves leave to produce the same at the hearing of this cause. This defendant cannot say with certainty what was done by said commissioners, but it believes that the commissioners from both states did engage in a discussion and consideration of the subject in dispute in good faith and with the sincere hope and wish of reaching an agreement and settlement that would be reasonable, just and satisfactory to both parties; but this defendant is informed and believes that all efforts of the joint commissioners to reach a satisfactory basis of settlement failed, and that it was after the discussion and failure to agree that it was determined that the commissioners from each state should present a written or printed statement of their title and claim, with the grounds upon which the same were based. In pursuance of that agreement, the commissioners of this defendant did duly deliver the statement so agreed upon by them to be prepared and presented, asserting and vindicating the claim, title and jurisdiction of this defendant as it had always theretofore been maintained, the said statement being the printed argument hereintofore referred to. But

this defendant is also informed and believes that the commissioners of New Jersey wholly failed to prepare and deliver to the commissioners of this defendant their statement of the claims of the State of New Jersey, and that they continued so to do until March 26th, 1875; which failure on the part of the commissioners of the State of New Jersey to present their argument and statement of claims as agreed upon by the commissioners of the two states was construed and accepted by the Executive and the Legislature of this defendant as an abandonment of the case, and tacit relinquishment of the alleged claim of title and jurisdiction in the State of New Jersey, and a practical admission that the objections taken by the officers of the State of New Jersey to the legislation which had been passed by the General Assembly of this defendant, as hereinbefore referred to and set forth, were not well founded. And thereupon the Legislature of this defendant passed certain joint resolutions February 24th, 1875, (being Chap. 238, Vol. 15, Laws of Delaware), and certain other resolutions on March 26th, 1875, (being Chap. 249, Vol. 15, Laws of Delaware), under and by which the said commissioners were discharged from further consideration of the subject, and relieved of further duties as commissioners as aforesaid, both of which joint resolutions are not accurately set forth in the said Bill of Complaint; and for greater certainty this defendant craves leave to refer to the same when produced at the hearing of this cause.

And this defendant, further answering, saith that it hath no knowledge whether either of the joint resolutions last cited was transmitted to the Governor, or Secretary of State, or any other executive officer of the State of New Jersey, or to the Legislature thereof, or whether the complainant had any notice whatsoever of the adoption of either one. But this defendant is advised that the said

resolutions related entirely to its own commissioners, and neither of them contained any matter which, in the exercise of the comity due from one state to another, rendered it necessary to have formal notice thereof sent to the complainant, it having been assumed by the officers of this defendant that the failure of the commissioners of the complainant to prepare their statement and deliver the same to the commissioners of this defendant, as it was agreed by the two joint commissions should be done, was virtually and practically an abandonment of the controversy, on the part of the complainant, by those who were officially designated to represent it therein.

8. And this defendant, further answering, saith that it believes it to be true, and therefore admits that a notice was published by the Clerk of the Peace in and for New Castle County, giving notice to fishermen of the necessity, under the laws of the State of Delaware, to procure license for fishing in the Delaware Bay or River or creeks within the jurisdiction of this defendant, as in said Bill of Complaint is set forth; but for greater certainty this defendant craves leave to refer to the said notice when produced at the hearing of this cause.

And this defendant, further answering, saith that it believes it to be true that communications passed between the officers of the two states, and that the Governor and executive officers of this defendant understood that it was their right and their duty to treat as belonging to, and within the exclusive jurisdiction of, the State of Delaware, the whole of the River Delaware within the said twelve mile circle, and to enforce the said fishing laws and all other laws of this defendant and the penalties thereby prescribed, upon all persons who should violate the said laws.

And this defendant further believes it to be true that the Governor and executive officers of this State refused

to make any agreement with the officers of the complainant to stay the execution of any of the laws of the defendant, or to refrain from enforcing them against all persons who should violate them, for the reason that the executive officers of this defendant had no power or authority, under the Constitution of this defendant, to suspend or neglect the execution of its laws.

And this defendant, further answering, admits that it is its purpose to enforce all its laws on and over that part of the River Delaware lying within the said twelve mile circle, for the reason that this defendant claims, and has always hitherto claimed, that it has and hath sole and exclusive jurisdiction over all that part of said river, as hereinbefore is more particularly set forth.

9. And this defendant, further answering, saith that it believes to be true, and therefore admits, that the Legislature of New Jersey did pass, and the Governor did approve, the joint resolutions approved March 30th, 1876, as in said Bill of Complaint is set forth; but for greater certainty this defendant craves leave to refer to the same when produced at the hearing of this cause.

Lastly this defendant, further answering, doth say that it hath not only in and since the year 1872, but at all times theretofore, claimed to own in fee simple the bed and soil of the Delaware River from a point in said river, twelve miles below the town of New Castle to the boundary line between the State of Delaware and the State of Pennsylvania, that is to say, within the said twelve mile circle, and that this defendant claims to have the sole and exclusive jurisdiction and control of the right of fishing in that part of the said river last hereinbefore mentioned. This defendant doth not know, and therefore cannot admit, the arrest of the inhabitants of New Jersey or their

imprisonment, or the seizure of their property, but it avers that resistance to the State of Delaware, in the exercise of its lawful jurisdiction over the said twelve mile circle, was attempted by persons believed to be citizens of New Jersey, and that measures were taken by the officers of this defendant to enforce the laws relating to fishing therein, but that all proceedings relating to the enforcement of said laws were, in fact, suspended by the negotiations which thereupon immediately took place between the executive officers of the States of New Jersey and Delaware, and that, as this defendant believes, no further efforts were made to enforce the said laws, because, of the expectations entertained in both states, that the whole subject would be amicably settled and disposed of by the action of the commissioners appointed to represent the two states as hereinbefore set forth. That after the action by the Legislature of this defendant, which resulted in practically repealing the suspension of the laws relating to fisheries complained of in the said Bill of Complaint, the Executive and officers of this defendant, in pursuance of their constitutional obligations to take care that the laws be faithfully executed, did give notice, as hereinbefore set forth, that the Act of March 28th, 1871, would be enforced. That suggestions were made by the then Governor of New Jersey to the then Governor of this defendant, to endeavor to reach some amicable arrangement for the postponement of the execution of the law, but that the Governor of Delaware found himself unable to enter into such arrangement, because he had no power, as the Executive of the State, to suspend any law upon its statute books. That thereupon the proceedings were taken by the State of New Jersey, under which the injunction was issued in this cause, and that since that time no effort has been made and no action taken toward the enforcement of that law. But this defendant is advised and insists that but for the said

injunction, it claims the right of jurisdiction and control in the premises, as hereinbefore set forth.

Whereupon this defendant, having fully answered, confessed, traversed and avoided or denied all the matters in the said Bill of Complaint material to be answered, according to the best knowledge and belief of this defendant, hereby expressly denies all allegations of said Bill of Complaint which have not been herein expressly answered, if any there be, and humbly prays this Honorable Court to enter its decree that this defendant be hence dismissed with its reasonable costs, in this behalf, most wrongfully sustained.

HERBERT H. WARD,
*Attorney General of the State of Delaware.*

GEO. H. BATES,
*Of Counsel.*

*Solicitors of the Defendant.*

IN THE

# Supreme Court of the United States

THE STATE OF NEW JERSEY,
*Complainant*

vs.

THE STATE OF DELAWARE,
*Defendant*

In Equity,
No. 1, Original.

## Notice of Motion for Order of Reference, Etc.

DEAR SIR:

Please take notice that on Monday, the eleventh day of May, A. D. 1903, at twelve o'clock noon, or as soon thereafter as counsel can be heard, we will make a motion in the Supreme Court of the United States, at the Capitol in Washington, D. C., for an order of reference to a Master and Special Commissioner, to be entered in said suit, and also for an order regulating the taking of testimony in said cause

DE14939

and for fixing the time at which the said cause shall be set down for a hearing, of all which you hereby have notice.

Very respectfully yours,

HERBERT H. WARD,
*Attorney-General of the State of Delaware.*

GEO. H. BATES,
*Of Counsel,*
*Solicitors for Defendant.*

April 30, 1903.

To HON. THOMAS N. MCCARTER,
*Attorney-General of the State of New Jersey,*
*and Solicitor for Complainant.*

Service of the above notice is hereby acknowledged.

THOS. N. MCCARTER,
*Attorney-General of the State of New Jersey,*
*and Solicitor for Complainant.*

---

**Motion for Order of Reference, Etc.**

And now comes the above-named defendant and moves the Court for an order of reference to a Master and Special Commissioner, to be entered in said suit, and also for an order regulating the taking of testimony in said cause and for fixing the time at which the said cause shall be set down for a hearing.

HERBERT H. WARD,
*Attorney-General of the State of Delaware.*

GEO. H. BATES,
*Of Counsel,*
*Solicitors for Defendant.*

IN THE

# Supreme Court of the United States

THE STATE OF NEW JERSEY,
*Complainant,*

vs.

THE STATE OF DELAWARE,
*Defendant.*

In Equity.
No. 1, Original.

**Brief for Defendant on Motion for Order of Reference, etc.**

This motion is made, pursuant to notice given April 30th, last, that on Monday May 11th, "or as soon thereafter as counsel can be heard," the defendant would make such motion.

On May 11th, the day named in the notice, the Court was not in session, having adjourned from May 4th to May 18th. Accordingly, not as being required but as a matter of courtesy, further notice (a copy of which is appended) was given to and accepted by the complainant's solicitor that the motion, which had been duly filed in the clerk's office on the 11th inst, would be called up on the 18th inst. "or as soon thereafter as counsel can be heard.'

Where the notice of intention to make a motion specifies a day on which the Court is not in session, it is available for the first day thereafter on which, under the rules or practice of the Court, motions are permitted. This is equally true whether the day named in the notice is by law a non-juridical day or some day on which there happens to be no session by reason of a casual adjournment. The Court may order the notice amended, but this is not essential.

Where a motion was made November 4th, and the notice specified November 2d, or so soon thereafter as

counsel could be heard, objection was made that the other party was not aware that the case would be taken up on that day which was not appointed for such motions. It was *held* that there was no injury as the objecting party was bound to be ready on November 2d, when the motion might have been made, and the case was ordered to proceed.

*In re Electric Telegraph Co., of Ireland*, 10 W. R. 4.

Where the notice was given for a day falling within the Easter vacation, when the Courts were not sitting, it was objected that the notice was void. The Court said there was "no force in the objection, it must be overruled."

*In re Coulton; Haming* vs. *Elliot*, 34 Ch., Div. 22.

In a precisely similar case the law court, at the hearing of the motion, amended the notice and the argument proceeded.

*Williams* vs. *De Bonaville*, 17 Q. B. Div. 180.

The New Jersey Supreme Court held that notice of a motion naming as the day of hearing a legal holiday, "or as soon thereafter as the court can attend to the same," is a good notice for the day succeeding the designated day, that being the first day on which the Court was in session.

*White* vs. *Rockafellar*, 45 N. J. L. 299.

In the case at bar the day named in the notice was not a non-juridical day, and the printed daily journal of the Court shows no announcement which would be notice to counsel, at the date of the notice, that the court would not be in session on the day named in it. On April 27 it was announced "that the call of the docket will be suspended on Friday, May 1, and that the Court will adjourn for the term on Monday, June 1, next." And no further reference to the subject was made until May 4, when there was an adjournment to May 18.

The purpose of the present motion is to obtain from the Court, before its adjournment for the term, an order prescribing the mode of trial and regulating the taking of proofs, limiting the time therefor as to each side, and fixing the time for final hearing.

In the desire for this general result, we are permitted to state that counsel for the complainant concurs, and it is also proper to inform the Court that counsel are very near to an agreement upon a stipulation to be submitted to the Court for its approval, in accordance with the precedents in cases which have arisen between States under the original jurisdiction of this Court.

The case at bar probably involves a more complicated investigation of facts and historical data than any which has preceded it, together with much documentary evidence. It is agreed on both sides that it would further the interests of justice and the ascertainment of the facts necessary for the information of the Court, as well as the convenience of counsel, to have the proofs taken for both sides by a master or special commissioner, and to have also times limited therefor.

The main questions on which full agreement has not been reached prior to the hearing of this motion are (1) the extent of the powers which both sides will unite in asking the Court to confer upon the Master in the order of reference and (2) the period to be allowed to each party to complete its proofs.

It is believed that after the explanation to the Court of the situation and an understanding how far it will be agreeable to the Court to have the views of counsel embodied in a stipulation, there will be reached, without difficulty, an agreement to be communicated to the Court during the recess, through the clerk, in full time for the entry of an order at the present term, providing for the trial and final disposition of the cause.

It is agreed by counsel on both sides that the cause cannot be properly tried so as to reach a hearing in this Court before the October Term, 1904, but it is the desire of both sides to reach a final argument before the close of that term. The preliminary investigations required on either side, which it is possible must be prosecuted in part in England, will prevent a hearing, even with the exercise of the utmost diligence, at the next term, but both sides are united in the determination to spare no effort to bring this long litigation to a conclusion.

HERBERT H. WARD,
GEO. H. BATES,
*for Defendant.*

## Notice of Intention to Call Up Motion.

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

| | |
|---|---|
| THE STATE OF NEW JERSEY, *Complainant,* vs. THE STATE OF DELAWARE, *Defendant.* | No. 1 Original. *In Equity.* Motion for reference, etc. |

DEAR SIR:

We write to advise you that at the opening of the Court, on Monday next, the 18th instant, or as soon thereafter as counsel can be heard, in the Supreme Court of the United States, we purpose to call up the motion filed in the above stated cause on the 11th instant, of which you had notice as filed with said motion.

Very respectfully yours,

H. H. WARD,
*Attorney-General of Delaware.*

GEO. H. BATES,
*Of Counsel,*
*Solicitors for Defendant.*

May 15, 1903.

HON. THOMAS N. MCCARTER,
*Attorney-General of New Jersey,*
*and Solicitor for Complainant.*

I acknowledge the receipt of a letter, of which the foregoing is a correct copy, on the day of its date.

THOS. N. MCCARTER,
*Attorney-General of New Jersey*

DE14938

FILE COPY.

Office Supreme Court U. S.
FILED
MAY 28 1903
JAMES H. McKENNEY,
Clerk.

In the

# Supreme Court of the United States

THE STATE OF NEW JERSEY,
*Complainant,*

*vs.*

THE STATE OF DELAWARE,
*Defendant.*

In Equity.

No. 1, Original.

## Stipulation.

And now to wit this twenty-sixth day of May, A. D. 1903, it is hereby stipulated and agreed by and between the solicitors of the parties to said cause respectively, subject to the consent and approval of the Court, as follows:

1. That there shall be appointed a Master and Examiner to be selected from among the members of the Bar of a State other than those which are parties to the cause, and thereupon the cause shall be immediately referred to such Master for the taking of proofs, hearing of arguments, and report to the Court of his findings of fact and conclusions of law thereon, in accordance with the rules and practice of the United States Courts sitting in Equity.

DE04668

2. The testimony of witnesses taken before the Master shall be upon oral examination of such witnesses at such points as may be designated by the Master, either upon the agreement of counsel or on the application of either party, in which case ten days' notice of the time and place designated shall be given to counsel for the other party.

3. Duly authenticated copies of official documents, records, or maps may be offered in evidence by either party as evidence, in the cause, upon furnishing to the adverse party copies thereof, subject to exception to their competency as evidence, or to the sufficiency and legality of the authentication.

4. The Attorney-General of each State, for the time being, is hereby designated as the agent of such State to receive any and every notice which may from time to time be necessary or proper to be served upon such State during the progress of the cause.

5. The Master may employ a stenographer or stenographers, the compensation for whose services, including copies of the proofs and depositions, to be furnished to the counsel, shall be reported by the Master and charged in the costs or divided between the parties as may be directed by the Court.

6. The cause shall be set down for hearing at the October term, 1904, on such day or days as the Court shall direct, after the filing of the Master's report. The testimony shall be taken in the following manner and the proofs on either side closed as herein stipulated, unless for good cause shown the time be in any case extended by the Court, or by stipulation of counsel filed. Eight months from the date of this order shall be allowed to the complainant for putting in its proofs and four months thereafter

shall in like manner be allowed to the defendant for putting in its proofs; two months after the close of the defendant's proofs shall be allowed to the complainant for its proofs in rebuttal and one month thereafter, if desired, may be allowed by the Master to the defendant for any proofs in reply to new matter brought out by the complainant's rebutting evidence. After the close of proofs on both sides there shall be allowed three months for the presentation to the Master of the arguments of counsel on both sides under such regulations as may be agreed upon by counsel, or, in default of agreement prescribed by the Master. The report of the Master together with all the proofs and depositions taken and received by him, together with his findings and conclusions thereon, shall be filed with the Clerk of the Court on or before the first day of February, A. D. 1905.

7. Time for exceptions to the Master's report shall be limited as may be directed by the Court on the filing of the Master's report.

8. Where depositions are taken orally and the evidence is stenographically reported, it may be written out by the stenographer and certified by the Master and no signature of witness shall be required.

ROBERT H. McCARTER,
*Attorney-General of New Jersey.*

HERBERT H. WARD,
*Attorney-General of Delaware.*

GEORGE H. BATES,
*Of Counsel.*

The following draft of an order founded upon the foregoing stipulation, is submitted for the consideration of the Court with the approval of counsel on both sides.

DE04670

(Copy.)

SUPREME COURT OF THE UNITED STATES.

No. 1, Original, October Term, 1904.

The STATE OF NEW JERSEY,
Complainant,

vs.

The STATE OF DELAWARE.

On motion of Mr. Herbert H. Ward, of counsel for the defendant, and in pursuance of a stipulation between the parties dated the seventeenth day of December, 1904, and filed in this cause.

IT IS ORDERED BY THE COURT that the time within which the defendant shall close its evidence be, and the same is hereby, extended until the first day of March, A. D. 1905; that the time within which the complainant may put in any rebutting evidence be, and the same is hereby, extended until the first day of June, A. D. 1905; that the defendant shall have one month thereafter, or until the first day of July, A. D. 1905, within which it may offer any further evidence that shall be competent at that stage of the proof; that the parties shall then have until the first day of November, A. D. 1905 to prepare and present arguments before Hon. Francis Rawle, the Master appointed in this cause; and that the said Master shall make and file his report in said cause on or before the first day of March, A. D. 1906.

January 3, 1905.

Endorsed:
Supreme Court of the United States
October Term, 1904, Term No. 1, Original.
Order.
Filed Jany. 3d, 1905.

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**DE H.S.**
**Box 7 File 2**

DE18093

THE STATE OF NEW JERSEY,
Complainant,

vs.

THE STATE OF DELAWARE

SUPREME COURT OF THE
UNITED STATES.

January 11th, 1906.

Hon. Robert H. McCarter,
Attorney General of New Jersey,
Hon. Robert H. Richards,
Attorney General of Delaware.

Dear Sirs:-

The amended order of January 3, 1905, in this case directed that the defendant's evidence should be closed before March 1st, 1906, and fixed the respective periods within which successive steps should be taken. About March 1st, 1906, counsel informed me that negotiations were pending for a settlement of the case. This information was somewhat informally given, but in pursuance of it and of the understanding of counsel, the further taking of testimony ceased. The official documents under which counsel took this action have never been brought to my attention. I am of opinion that this should be done so that my Record may show the ground of this action in the cause.

If this authority consists of Acts of Assembly of the respective States, I would deem it sufficient if copies of these acts were filed with me, together with proper letters or a stipulation from counsel explaining the applicability of

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these acts and setting forth what action or inaction is desired on the part of the Master.

Of course, before this entry is made, the Record should be complete up to the time when we ceased to take testimony.

The order fixed March 1st, 1906, as the last day for filing of the final report of the Master. I would be glad to have counsel consider the question as to whether it is not incumbent upon me, as the case now stands, to make an interlocutory report to the Court explaining why their order has not been complied with, to the end that the Court may take such further action as it may deem best. As at present advised, I think that such report should be made. And, seeing that the times fixed for the completion of the proofs and for the argument have elapsed and that therefore it is obvious that the report cannot be filed by the first of March, there is no reason why such report, if made, should not be made at any time. It would seem to me better that it should not be left until the end of the period assigned for the filing of my report.

I am of opinion that a meeting should be held at which we can decide upon these various suggestions and any other suggestions that may occur to us. It would suit me better if the holding of this meeting can be postponed until about February 1st.

Yours very truly,

Master &c.

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DE H.S.
Box 7 File 2

DE18141

IN THE

# Supreme Court of the United States.

THE STATE OF NEW JERSEY,
*Complainant,*

*vs.*

THE STATE OF DELAWARE,
*Defendant.*

No. 1. ORIGINAL.

*To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:*

The Commissioner appointed by the Court in the above case respectfully reports as follows:

By a supplemental Order of the Court, dated January 3, 1905, it was ordered that the defendant should close its evidence by the first day of March, 1905; that the rebuttal evidence should be taken by the first day of June, 1905, with a further allowance until the first day of July, 1905, for further evidence on behalf of the defendant, and that the Commissioner should file his report on or before the first day of March, 1906.

The taking of testimony was proceeded with until February 3, 1905; at this time the defendant's proofs had been substantially, though not entirely, completed. Subsequently counsel presented to the Commissioner evidence of certain

legislative action by the State of New Jersey and the State of Delaware, respectively, looking to the termination of the present litigation, though leaving the question of boundary unsettled:—

The Legislature of the State of Delaware by a Joint Resolution approved February 18, 1905, appointed four Commissioners to confer with like Commissioners appointed by the State of New Jersey "for the purpose of framing a compact or agreement between the said states and legislation consequent thereon, to be submitted to the legislatures of said two states for action thereon, looking to the amicable termination of the suit between said states now pending in the Supreme Court of the United States and the final adjustment of all controversies relating to the boundary line between said states and to their respective rights in the Delaware River and Bay." (Delaware Laws, 1905, p. 462.)

On February 14, 1905, a Joint Resolution was passed by the legislature of the State of New Jersey in the same words, *mutatis mutandis*. (New Jersey Acts, 1905, p. 568.)

The Commissioners subsequently agreed upon the terms of a "Compact between the State of New Jersey and the State of Delaware relating to the boundary controversy between said States," which is as follows:

Whereas A controversy hath heretofore existed between the States of New Jersey and Delaware, relative to the jurisdiction of such portion of the Delaware River as is included within the circle of twelve miles radius an arc of which constitutes the Northern boundary of the State of Delaware, and it is the mutual desire of said States to so settle and determine such controversy as to prevent future complications arising therefrom;

And Whereas There is now pending in the Supreme Court of the United States, a cause wherein the said State of New Jersey is the complainant and the said State of Delaware is the defendant, in which cause an injunction has been issued

against the State of Delaware restraining the execution of certain statutes of the State of Delaware relating to fisheries in said river, which said litigation hath been pending for twenty-seven years and upwards;

And Whereas For the purpose of adjusting the differences between the said two States arising out of said conflict of jurisdiction, Edward C. Stokes, Robert H. McCarter, Franklin Murphy, and Chauncey G. Parker, have been appointed Commissioners on the part of the State of New Jersey by joint resolution of the Legislature of said State, and Preston Lea, Robert H. Richards, Herbert H. Ward and George H. Bates have been appointed Commissioners on the part of the State of Delaware by joint resolution of the General Assembly of said State, to frame a compact or agreement between the said States and legislation consequent thereon, to be submitted to the Legislatures of said two States for action thereon, looking to the amicable termination of the said suit between said States now pending in the Supreme Court of the United States, and the final adjustment of all controversies relating to the boundary line between said States, and to their respective rights in the Delaware River and Bay;

Now Therefore, The said State of New Jersey, by its Commissioners above named, and the said State of Delaware, by its Commissioners above named, do hereby make and enter into a compact or agreement between said States as follows:

Article I. Criminal process issued under the authority of the State of New Jersey against any person accused of an offence committed upon the soil of said State, or upon the Eastern half of said Delaware River, or committed on board of any vessel being under the exclusive jurisdiction of that State, and also civil process issued under the authority of the State of New Jersey against any person domiciled in that State, or against property taken out of that State to evade the laws thereof, may be served upon any portion of the Delaware River between said States from low-water mark on the New

Jersey shore to low-water mark on the Delaware shore, except upon Reedy and Pea Patch Islands, unless said person or property shall be on board a vessel aground upon or fastened to the shore of the State of Delaware, or the shores of said islands, or fastened to a wharf adjoining thereto, or unless such person shall be under arrest or such property shall be under seizure by virtue of process or authority of the State of Delaware.

Article II. Criminal process issued under the authority of the State of Delaware against any person accused of an offence committed upon the soil of said State, or upon the western half of said Delaware River, or committed on board of any vessel being under the exclusive jurisdiction of that State, and also civil process issued under the authority of the State of Delaware against any person domiciled in that State, or against property taken out of that State to evade the laws thereof, may be served upon any portion of the Delaware River between said States from low-water mark on the Delaware shore to low-water mark on the New Jersey shore, unless said person or property shall be on board a vessel aground upon or fastened to the shore of the State of New Jersey, or fastened to a wharf adjoining thereto, or unless such person shall be under arrest, or such property shall be under seizure by virtue of process or authority of the State of New Jersey.

Article III. The inhabitants of the said States of Delaware and New Jersey shall have and enjoy a common right of fishery throughout, in and over the waters of said river between the low-water marks on each side of said river between the said States, except so far as either State may have heretofore granted valid and subsisting private rights of fishery.

Article IV. Immediately upon the execution hereof the Legislature of the State of New Jersey shall appoint three Commissioners to confer with three Commissioners to be

immediately appointed by the General Assembly of the State of Delaware for the purpose of drafting uniform laws to regulate the catching and taking of fish in the Delaware River and Bay between said two States, which said Commissioners for each State respectively shall, within two years from the date of their appointment, report to the Legislature of each of said States the proposed laws so framed and recommended by said joint Commission. Upon the adoption and passage of said laws so recommended by the respective Legislatures of said two States said laws shall constitute the sole laws for the regulation of the taking and catching of fish in the said river and bay between said States. Said laws shall remain in force until altered, amended or repealed by concurrent legislation of the said two States. Said Commissioners shall also ascertain the dividing line between said river and bay, and upon each of the shores of said two States, where said dividing line extended shall intersect the same, shall, at the joint expense of said States, erect a suitable monument to mark the said dividing line. Said dividing line between said monuments shall be the division line between the said river and bay for the interpretation of and for all purposes of this compact, and of the concurrent legislation provided for therein.

The faith of the said contracting States is hereby pledged to the enactment of said laws so recommended by said Commissioners, or to such concurrent legislation as may seem judicious and proper in the premises to the respective Legislatures thereof.

Each State shall have and exercise exclusive jurisdiction within said river to arrest, try and punish its own inhabitants for violations of the concurrent legislation relating to fishery herein provided for.

Article V. All laws of said States relating to the regulation of fisheries in the Delaware River not inconsistent with the right of common fishery hereinabove mentioned shall con-

tinue in force in said respective States until the enactment of said concurrent legislation as herein provided.

Article VI. Nothing herein contained shall affect the planting, catching or taking of oysters, clams or other shell fish, or interfere with the oyster industry as now or hereafter carried on under the laws of either State.

Article VII. Each State may, on its own side of the river, continue to exercise riparian jurisdiction of every kind and nature, and to make grants, leases and conveyances of riparian lands and rights under the laws of the respective States.

Article VIII. Nothing herein contained shall affect the territorial limits, rights or jurisdiction of either State of, in or over the Delaware River, or the ownership of the subaqueous soil thereof, except as herein expressly set forth.

Article IX. This agreement shall be executed by the said Commissioners, when authorized to do so by the Legislatures of the said States. It shall thereupon be submitted to Congress for its consent and approval. Upon the ratification thereof by Congress it shall be and become binding in perpetuity upon both of said States; and thereupon the suit now pending in the Supreme Court of the United States, in which the State of New Jersey is complainant and the State of Delaware is defendant, shall be discontinued, without costs to either party, and without prejudice. Pending the ratification hereof by Congress said suit shall remain *in statu quo*.

Done in two parts (one of which is retained by the Commissioners of Delaware, to be delivered to the Governor of that State, and the other one of which is retained by the Commissioners of New Jersey, to be delivered to the Governor of that State) this day of in the Year of Our Lord, One Thousand Nine Hundred and Five.

The Legislature of the State of Delaware, by an act approved March 20, 1905, adopted, ratified and confirmed this Compact. (Delaware Laws, 1905, p. 12.) This act, after

reciting the appointment of Commissioners by the respective States, and the terms of the Compact *in extenso*, provided as follows:

"Therefore, be it enacted, etc.

"SECTION 1. The foregoing compact or agreement, and every clause, matter and thing therein contained, be, and the same is, hereby adopted, ratified and confirmed as and for the act and deed of the State of Delaware, and the Commissioners of the said State are hereby authorized and empowered, on its behalf, to execute the same in duplicate, and to deliver one copy thereof to the Commissioners of the State of New Jersey.

"SECTION 2. It shall be the duty of the Governor, at or before the next session of Congress of the United States, to transmit a duly certified copy of this Act to the President of the United States, with the request that it be communicated to Congress for its action thereon."

The Legislature of the State of New Jersey, by an act approved March 21, 1905, also adopted, ratified and confirmed the Compact. This act is in the same words as the Delaware act, *mutatis mutandis* (New Jersey Laws, 1905, p. 67).

In pursuance of this authority the Compact was signed by the Commissioners on March 21, 1905. (Delaware Laws, 1905, Appendix, p. 2.)

The Congress of the United States has not yet taken action in the premises.

Upon these facts, the Commissioner, at the request of Counsel, suspended further proceedings. As the time has almost expired within which the Commissioner was ordered to file his report, he deems it proper to place before the Court the present condition of the cause.

Respectfully submitted,

Francis Raoul

*Commissioner.*

# Supreme Court of the United States

STATE OF NEW JERSEY
*vs.*
STATE OF DELAWARE. } In Equity—No. 1, Original.

## STIPULATION.

It is stipulated by counsel with reference to the report of the commissioner, filed February 19, 1906, that the Court be asked to approve the action of the commissioner as therein set forth and to enter an order authorizing the commissioner, pending the final result of the Legislative action reported by him, to suspend further proceedings in the cause until the further order of the Court; provided, that counsel on either side may, at any time, on due notice to the counsel for the opposite party, make application to the Court for other or further instructions to the commissioner, as circumstances may require. Dated the twenty-third day of February, 1906.

ROBERT H. McCARTER,
*Attorney-General,*
*for Complainant.*

ROBERT H. RICHARDS,
*Attorney-General,*
GEO. H. BATES,
H. H. WARD,
*for Defendant.*

IN THE

# Supreme Court of the United States

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|---|---|
| STATE OF NEW JERSEY *vs.* STATE OF DELAWARE. | In Equity. No. 1, Original. |

*On Motion for Approval of Interlocutory Report of Special Commissioner.*

And now, this ——— day of February, 1906, on the interlocutory report of the Special Commissioner in this cause, made February 19, instant, and the stipulation of counsel filed this day:

*It is ordered*, That the action of said Commissioner in suspending the taking of testimony, pending certain legislative action setforth in said report be, and the same is approved.

*It is further ordered*, That the said Commissioner is hereby authorized to continue the suspension of proceedings before him in this cause until the further order of the Court.

*Provided*, That counsel on either side may at any time, on due notice to counsel for the opposite party, make application to the Court for other or further instructions to the Commissioner.

# Supreme Court of the United States

STATE OF NEW JERSEY
vs.
STATE ON DELAWARE. } In Equity—No. 1, Original.

*Statement of reasons submitted orally for the joint application of Counsel on both sides for suspension of proceedings until the further order of the Court.*

The compact which was passed by the Legislatures of the two States was, as will appear from its terms in the report of the Commissioner, not a settlement of the disputed boundary, but a truce or *modus vivendi.*

This answers the inquiry of the Court as to whether in case of non-action by Congress the compact might be made the basis of a consent decree.

Its main purpose is to provide for enacting and enforcing a joint code of laws regulating the business of fishing in the Delaware River and Bay.

It was submitted to Congress for its deliberate and not merely perfunctory action thereon. Under the terms of the compact and pursuant thereto, the two States appointed Commissioners to frame and submit to the Legislatures a code of joint fishing laws to govern both States. The Commissioners are now engaged in that work. Very soon after the compact had been communicated to Congress, the Commissioners of both States unanimously joined in a request that no action should be taken by Congress pending the action of the Commissioners.

Because of this situation it was agreed by Counsel to ask the Court to suspend proceedings without limit of time, leaving it open to the Court either of its own motion or on application of Counsel to make any further order in the premises.

A limited suspension can only operate by way of pressure

for hurried action by Congress in contravention of the request of the representatives of both States for delay; and a suspension of proceedings in the Court while the subject is pending in Congress will contribute to the orderly disposition of the matter in controversy.

With respect to the long time during which the case has been pending—it lay dormant for many years by consent of both Court and Counsel. Since it was actively taken in hand it has been pressed very expeditiously—quite as much so as was possible in view of the nature of the investigation required.

GEO. H. BATES,
*Of Counsel for Deft.*

# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1906.

## No. 1, Original.

THE STATE OF NEW JERSEY, COMPLAINANT,

*vs.*

THE STATE OF DELAWARE

## MOTION FOR DIRECTIONS TO SPECIAL MASTER.

ROBERT H. McCARTER,
*Attorney General of the State of New Jersey,*
*Counsel for Complainant*

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C. 26242

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# SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

## No. 1, Original.

STATE OF NEW JERSEY

*vs.*

STATE OF DELAWARE.

## MOTION FOR DIRECTIONS TO SPECIAL MASTER.

### Statement.

The State of New Jersey, complainant above named, moves this honorable court to direct the special master heretofore appointed, to make and file his report, upon the matters and things heretofore referred to him, with all convenient speed and without permitting either side to present any further evidence before him. On the 19th day of February, 1906, said special master, Francis Rawle, Esq., filed his report with this honorable court, setting up, among other things, the fact that the complainant had closed its proofs; that the defendant had offered considerable evidence, and that it had been brought to his attention that an agreement of compromise had been reached between the two parties, which included the appointment of a joint commission from each of the States of New Jersey and Delaware, parties litigant, to frame a treaty or agreement settling the boundary between them, which was the subject-matter of the said litigation, and praying the instruction of the court in the premises, with the result that on the 23d day of April, 1906, an order was duly entered in the said cause by this honorable court that all

DE04672

further proceedings be suspended until Tuesday, October 9, 1906. After the approval by the legislatures of the States of New Jersey and Delaware respectively of the compact of agreement between the commissioners from each of said States, the governors of said States transmitted to the President of the United States copies of such legislative action, pursuant to the terms of said compact, with the result that the President in turn duly transmitted the same to Congress, and a bill was introduced in the Senate by the Honorable John Kean, Senator from New Jersey, ratifying the said compact of agreement between the two States, pursuant to the provisions of the Constitution of the United States, which bill was passed by the Senate and immediately transmitted to the House of Representatives for its action thereon during its last session, but, owing to the opposition of the representative from the State of Delaware in the House of Representatives, the said bill was not reported by the Judiciary Committee of the House of Representatives, to which it was in due course referred, before the adjournment of Congress, in the summer of 1906, and so congressional ratification of said agreement of settlement at that time failed—this, too, notwithstanding every effort was made by the representatives of the State of New Jersey in the House of Representatives to procure the passage of said bill in the House before it adjourned.

The complainant therefore moves that this honorable court either further suspend proceedings herein until the next session of Congress, in order that said bill may be enacted into a law, or that said cause be directed to be proceeded with and the special master be directed to make his report with all convenient speed, without any further evidence being taken before him.

All of which is respectfully submitted.

ROBERT H. MCCARTER,
*Attorney General of the State of New Jersey.*

[Endorsed:] Supreme Court of the United States. State of New Jersey *vs.* State of Delaware. Motion for directions to special master. Robert H. McCarter, Attorney General of New Jersey.

DE04673

SUPREME COURT OF THE UNITED STATES.

No. 1, ORIGINAL.

STATE OF NEW JERSEY

vs.

STATE OF DELAWARE.

## NOTICE.

SIR: Take notice that on Tuesday, the 9th day of October, 1906, at the opening of the above-named court on that day, in the city of Washington, I shall, on behalf of the State of New Jersey, complainant above named, apply to the court for an order directing Francis Rawle, Esquire, special master, to make and file his report as special master, upon the matters and things heretofore referred to him, with all convenient speed and without permitting either side to present any further evidence before him, and upon such application I shall read an affidavit, a copy of which is hereto annexed.

Yours respectfully,

ROBERT H. MCCARTER,
*Attorney General of the State of New Jersey.*

*Dated September* 14, 1906.

To Hon. ROBERT H. RICHARDS, *Attorney General of the State of Delaware.*

SUPREME COURT OF THE UNITED STATES.

No. 1, ORIGINAL.

STATE OF NEW JERSEY

*vs.*

STATE OF DELAWARE.

## AFFIDAVIT.

UNITED STATES OF AMERICA, *ss:*

Robert H. McCarter, being duly sworn according to law, on his oath says: I am the Attorney General of the State of New Jersey, and as such have during my term had charge of the prosecution of the above-named suit. Immediately upon my qualification as Attorney General I took up the conduct of this suit and had presented all the evidence on behalf of the complainant, and attended at the taking of the proofs on the part of the defendant. In the meantime and on the 19th day of February, 1906, Francis Rawle, Esquire, special master, filed his report with this honorable court, setting up, among other things, the fact that an agreement of compromise had been reached between the two parties, complainant and defendant, and that legislative action had been taken in each of the States ratifying the compact of agreement, and praying the instruction of the court in the premises, with the result that on the 23d day of April, 1906, an order was entered in the said cause that all further proceedings be suspended until Tuesday, October 9, next. After the approval by the legislatures of the States of New Jersey and Delaware respectively of the compact of agreement between the commissioners from each of said States, the governors of said States transmitted to the President of the United States copies of such legislative action, pursuant to the terms of said compact, with the result that the President in turn duly transmitted the

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same to the Congress, and a bill was introduced into the Senate by the Honorable John Kean, Senator from New Jersey, ratifying the said compact of agreement, pursuant to the provisions of the Constitution of the United States, which bill was passed by the Senate and was immediately transmitted to the House of Representatives for its action thereon, but, owing to the opposition of the representative from the State of Delaware, the said bill was not reported by the Judiciary Committee of the House of Representatives, to which it was in due course referred, before the adjournment of Congress, in the summer of 1906, and so congressional ratification of said agreement of settlement failed—this, too, notwithstanding every effort was made by the representatives of the State of New Jersey in the House of Representatives to procure the passage of said bill in the House before it adjourned.

ROBERT H. MCCARTER.

Subscribed and sworn to before me, at Newark, this 15th day of September, A. D. 1906.

[SEAL.] NELLIE B. CRAWFORD,
*Notary Public of New Jersey.*

[Endorsed:] Supreme Court of the United States. State of New Jersey *vs.* State of Delaware. No. 1, original. Notice. Robert H. McCarter, Attorney General of the State of New Jersey. Service of a copy of the within notice hereby acknowledged this 20th day of September, 1906. Rob't H. Richards, Att'y Gen. of the State of Delaware.

*Notice.*

[1] IN THE

# Supreme Court of the United States

OCTOBER TERM, 1929.

No. 19 Original.

STATE OF NEW JERSEY,

*Plaintiff,*

*vs.*

STATE OF DELAWARE,

*Defendant.*

## NOTICE.

TO:

Hon. C. Douglas Buck, Governor, and

Hon. Reuben Satterthwaite, Jr., Attorney-General of the State of Delaware.

SIRS:

Please be advised that on Monday, June 3, 1929, the plaintiff will apply to the Court for leave to file its bill of complaint, a copy of which is annexed hereto.

WILLIAM A. STEVENS,
Attorney-General.

DUANE E. MINARD,
Assistant Attorney-General,
*Solicitors for Plaintiff.*

Dated May 25, 1929.

[2] **MOTION FOR LEAVE TO FILE BILL OF COMPLAINT.**

Comes now the State of New Jersey, by its Attorney-General, and asks leave of the Court to file its bill of complaint herewith submitted.

WILLIAM A. STEVENS,
Attorney-General.

DUANE E. MINARD,
Assistant Attorney-General,
*Solicitors for Plaintiff.*

May 27, 1929.

The purpose of this suit is to ascertain and establish the true boundary line between the plaintiff and the defendant.

WILLIAM A. STEVENS,
Attorney-General.

DUANE E. MINARD,
Assistant Attorney-General,
*Solicitors for Plaintiff.*

[3] **PROOF OF MAILING COPIES OF MOTION AND BILL OF COMPLAINT.**

STATE OF NEW JERSEY, }
COUNTY OF ESSEX. } ss.:

VERA E. CASTELLANO, of full age, being duly sworn according to law, on her oath deposes and says:

1. On May 28, 1929, in the Post Office in the City of Newark, New Jersey, I deposited in sealed envelopes with the postage thereon by registered mail prepaid, a true printed copy of the annexed motion, notice and bill of complaint addressed to each of the following persons:

Hon. C. Douglas Buck, Governor of the State of Delaware, Dover, Delaware.

Hon. Reuben Satterthwaite, Jr., Attorney-General of Delaware, Du Pont Building, Wilmington, Delaware.

VERA E. CASTELLANO.

Sworn and subscribed before me this 28th day of May, 1929.

JOHN J. GAFFEY,
Attorney at Law of N. J.

[4] **BILL OF COMPLAINT.**

Filed June 3, 1929.

*To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:*

The plaintiff, State of New Jersey, by its Attorney-General, brings its bill of complaint against the defendant, State of Delaware, and alleges and shows:

I.

1. The plaintiff is a State of the Union having its Capital and seat of government at the City of Trenton, Mercer County, New Jersey, and exercises through its Legislature the powers and duties of sovereignty within its territorial limits under and by virtue of its constitution. This suit is instituted by direction of the Legislature of the plaintiff and with the approval of the Governor thereof.

2. The defendant, State of Delaware, is a State of the Union having its Capital and seat of government in the City of Dover, Kent County, Delaware, and exercises [5] through its Legislature the powers and duties of sovereignty within its territorial limits under and by virtue of its constitution.

II.

3. The jurisdiction of this Court depends upon the ground that this is a suit in which a state is a party, within the provisions of Article III, Section 2, of the Constitution of the United States.

III.

4. From the southeasterly corner of the State of Pennsylvania in the Delaware River to the main sea at the

mouth of Delaware Bay, said river and bay are navigable waters wherein the tide ebbs and flows and form the boundary line between the plaintiff and the defendant.

6. The controversy involved in this suit is where, in said river and bay, the exact division of territory between the parties lies. The plaintiff claims the ownership in fee-simple of that portion of the subaqueous soil lying easterly of the thalweg thereof; the defendant claims ownership in fee-simple of the whole bed of said river to low water mark on the easterly shore, lying within the circumference of a circle of a radius of twelve miles described about the Court House in the town of New Castle in the State of Delaware as a centre and all the islands in said river within the compass of said circle, and of that portion of the subacqueous soil of the remainder of said river and bay westerly of the geographical centre thereof.

8. By letters-patent dated March 12, 1664, Charles II, King of England, granted and conveyed to James, Duke of York, his heirs and assigns, certain lands in America, including all the lands from the west side of Connecticut to the east side of Delaware bay, together with all the [6] lands, islands, soils, rivers, harbours, mines, minerals, quarries, woods, marshes, waters, lakes, fishings, hawkings, huntings and fowling, and all other royalties, profits, commodities and hereditaments to said several islands, lands and premises belonging and appertaining, with their and every of their appurtenances.

7. Said letters-patent also granted to said James, Duke of York, his heirs, deputies, agents, commissioners and assigns, full and absolute power and authority to correct, punish, pardon, govern and rule all such the subjects of said King, his heirs and successors, as should from time to time adventure themselves into any of the parts or places aforesaid, or that should at any time thereafter in-

habit within the same, according to such laws, orders, ordinances, directions and instructions as by said Duke or his assigns should be established; and in defect thereof, in case of necessity, according to the good discretions of his deputies, commissioners, officers or assigns respectively; as well in all causes and matters capital and criminal as civil, both marine and others; so also as the said statutes, ordinances and proceedings should not be contrary to, but as near as conveniently may be agreeable to the laws, statutes and government of the realm of England.

8. By lease dated June 23, 1664, and release dated June 24, 1664, said James, Duke of York, after reciting the grant aforesaid made to him by said letters patent of March 12, 1664, conveyed to Lord John Berkeley and Sir George Carteret, their heirs and assigns forever, all that tract of land adjacent to New England and lying and being to the westward of Long Island and Manhitas Island and bounded on the east part by the main sea and part by Hudson's river, and having upon the west Delaware bay or river, and extending southward to the main ocean as far as Cape May at the month of Delaware bay and to the northward as far as the northern most branch of the said [7] bay or river of Delaware, which is forty-one degrees and forty minutes of latitude, and crossing over thence in a straight line to Hudson's river in forty-one degrees of latitude, which said tract of land was thereafter to be called by the name or names of New Caesarea or New Jersey.

9. Said lease and release also conveyed all rivers, mines, minerals, woods, fishings, hawking, hunting and fowling, and all other royalties, profits, commodities and hereditaments whatsoever to the said lands and premises belonging or in anywise appertaining, with their and every of their appurtenances, in as full and ample a manner as the same were granted to the said Duke by the aforementioned

letters-patent of March 12, 1664, and all the estate, right title and interest, benefit, advantage, claim and demand of the said Duke of, in and to said lands and premises, or any part or parcel thereof, and the reversion and reversions, remainder and remainders thereof.

10. Meanwhile the Dutch, whose seat of government in America was in New Amsterdam, now New York, claimed occupancy and actual government, by conquest and settlement of a portion of the territory conveyed by said lease and release of June 23, and 24, 1664. In or about the month of September, 1664, the Dutch in and about New Amsterdam were conquered by the military power of Charles II, King of England, and by the Treaty of Breda, made on or about July 31, 1667, between the governments of said Charles II, and the United Provinces of the Netherlands, all of the territories conquered by the English of the Dutch, including the territory of New Jersey above described in said lease and release of June 23, and 24, 1664, were surrendered and confirmed to the English Crown.

11. A doubt having arisen whether the English Crown was not revested by said Treaty of Breda with the title [6] and government of the lands granted and conveyed to said James, Duke of York, in and by said letters-patent of March 12, 1664, said Charles II, King of England, by letters-patent dated June 29, 1674, re-granted and re-conveyed to said James, Duke of York, said lands and territory by the same description and by the same words as theretofore in said letters-patent of March 12, 1664.

12. By deed dated March 18, 1673, said Lord John Berkeley conveyed to one John Fenwick, in trust for one Edward Byllynge, all the moiety or undivided one-half part or interest in and to said tract of land called New Jersey.

13. By deed dated February 9, 1674 and by deed dated February 10, 1674, said John Fenwick and said Edward

Byllynge, conveyed to William Penn, Gawen Lawrie and Nicholas Lucas (subject to an equitable interest claimed by said Edward Byllynge), said moiety or undivided one-half part or interest formerly of the said Lord John Berkeley in said tract of land as aforesaid.

14. By deed dated July 29, 1674, said James, Duke of York, reciting said letters-patent of June 29, 1674, reconveyed unto said Sir George Carteret, his heirs and assigns, the northerly portion of the tract of land called New Jersey, described as all that tract of land adjacent to New England, and lying and being to the westward of Long Island and Manhitas Island, and bounded on the east part by the main sea and part by Hudson's river, and extending southward as far as a certain creek called Barnegatt, being about the middle between Sandy Point and Cape May, and bounded on the west by a straight line from said creek called Barnegatt to a certain creek in Delaware River, next adjoining to and below a certain creek in Delaware river called Renkokus Kill, and from thence up said Delaware river to the northernmost branch thereof, which is in forty-one degrees and forty minutes of latitude, [9] and on the north, crossing thence in a straight line to Hudson's river in forty-one degrees of latitude.

15. Said last mentioned deed also conveyed all rivers, mines, minerals, wood, fishing, hawking, hunting and fowling, and all royalties, profits, commodities and hereditaments whatsoever to the said lands belonging or appertaining; with their and every of their appurtenances in as full and ample a manner as the same was granted unto the said James, Duke of York, by said letters-patent of June 29, 1674, and all the estate, right, title, interest, benefit, advantage, claim and demand of the said James, Duke of York, of, in and to said lands and premises, or any part or parcel thereof, and the reversion and reversions, remainder or remainders thereof.

16. By deed dated July 1, 1676, between said Sir George Carteret, William Penn, Gawen Lawrie, Nicholas Lucas and Edward Byllynge, reciting said letters-patent of March 12, 1664, said lease and release of June 23, and 24, 1664, and the deeds mentioned in the foregoing paragraphs 12 and 13 hereof, and reciting that the said Penn, Lawrie and Lucas (including the equitable interest of said Byllynge) stood seized of and in one undivided moiety or half part, of all and every of said premises so granted unto the said Lord John Berkeley and Sir George Carteret as aforesaid as joint tenants between themselves, and did then hold the same to them and to their heirs, as tenants in common with the said Sir George Carteret who was then seized of the other undivided moiety or half part thereof, and reciting that the parties had agreed upon a partition of said tract of land into two parts, said Byllynge, Penn, Lawrie and Lucas conveyed unto said Sir George Carteret, his heirs and assigns forever, the easterly part of New Jersey, to have and to hold the same in severalty, and the said Carteret conveyed unto said Penn, Lawrie and Lucas, to their heirs and assigns forever, the [10] westerly part of New Jersey, to have and to hold to them, their heirs and assigns in severalty, the line of division between said easterly and westerly parts being fully described in said deed. Said parts comprised the whole of the territory or tract originally conveyed by said James, Duke of York to said Berkeley and Carteret, and were conveyed with all the appurtenances and privileges heretofore described with respect to the conveyance of said whole tract by said James, Duke of York to said Berkeley and Carteret.

17. By deed dated August 6, 1680, containing certain recitals, including said letters-patent of March 12, 1664, said lease and release of June 23, and 24, 1664; said deed from said Lord John Berkeley to said John Fenwick; said

deed from Fenwick and Byllynge to said Penn, Lawrie and Lucas; the subsequent conveyance of interests to John Eldredge and Edward Warner; the claims to said territory by the Dutch and the reconquest thereof by the British; said letters-patent of June 27, 1674, and further reciting that for the better extinguishing of all such claims and demands as said Duke of York may anyways have of, or in the premises aforesaid called West New Jersey or any part thereof and for the further and better settling, conveying, assuring and confirming the same, said James, Duke of York, conveyed unto Edward Byllynge, William Penn, Gawen Lawrie, Nicholas Lucas, John Eldredge and Edward Warner all that part, share or portion of all those parts shares and portions of the entire premises so granted by said Duke of York unto said John Lord Berkeley and Sir George Carteret, and their heirs as aforesaid, as in and by and upon the said partition aforesaid was and were vested in said Penn, Lawrie and Lucas and their heirs, then agreed to be called by the name of West New Jersey, comprising all that part of New Jersey bordering [11] on said Delaware river and bay, except the portion thereof described in the deed recited in paragraph 14 hereof.

18. Said last mentioned deed also conveyed all the islands, bays, rivers, waters, forts, mines, quarries, royalties, franchises and appurtenances whatsoever to the same belonging or in anywise appertaining, and all the estate, right, title, interest, reversion, remainder, claim and demand whatsoever, as well in law as in equity, of him the said James, Duke of York, of, into and out of the same, or any part or parcel of the same.

19. Said last mentioned deed also conveyed all and every such the same powers, authorities, jurisdictions, governments and other matters and things whatsoever,

which by the said respective recited letters-patent, or either of them, are and were granted or intended to be granted to or exercised by the said Duke of York, his heirs, assigns, deputies, officers or agents, in, upon or in relation unto the said premises thereby confirmed or intended to be confirmed, and every of them, in case the same were then in the actual seizure of the said Duke of York.

20. By deed of surrender dated April 15, 1702, and accepted April 17, 1702, the proprietors of East New Jersey and the proprietors of West New Jersey, for themselves and their heirs, did surrender and yield up unto Anne, Queen of England, all sovereignty and powers of government as to New Jersey granted by Charles II, King of England, to James, Duke of York, and by said Duke of York to the said proprietors, or their predecessors, and thereafter until the war of the Revolution, the territory of New Jersey was governed by the English monarchs under governors appointed thereby.

21. As a result of the American Revolution, which followed the Declaration of Independence on July 4, 1776, [12] the State of New Jersey became and ever since has been a free and independent State possessed of all the rights thereof and vested with all and every power of government in and over the territory thereof and the tidal waters adjacent thereto, which immediately before the Revolution were vested in the Crown of England.

22. At the time of said Revolution, the bed of the Delaware River and Bay underneath the tidal waters thereof and between the highwater mark on either side, from Trenton to the main sea at the mouth of the Bay at Cape May, belonged to and was vested in the Crown of England in trust for the use and possession of the subjects of the King; that by virtue of said Revolution and the resulting

independence of the State of New Jersey and by virtue of the Treaty of Paris negotiated between the Kingdom of Great Britain and the United States of America and signed at Paris, September 3, 1783, that portion of the bed of the Delaware River and Bay which divides the States of New Jersey and Delaware, lying between the thalweg thereof and the highwater mark on the easterly shore became and has ever since remained vested in fee simple in the State of New Jersey, and the remaining portion thereof westerly of the thalweg thereof to the highwater mark on the westerly shore became and has ever since remained vested in fee simple in the State of Delaware.

23. The Legislature of the plaintiff by joint resolution adopted February 14, 1905, appointed a commission to confer with a like commission appointed by the Legislature of the defendant for the purpose of framing a compact looking to the amicable termination of a dispute then pending over the boundary line in question. On February 13, 1905, the Legislature of the defendant appointed a like commission for that purpose. After a number of conferences said commissions agreed upon concurrent jurisdiction by the plaintiff and the defendant over the [13] waters of the Delaware River and Bay but were unable to agree upon the question of boundary or upon the territorial rights of the parties therein. An agreement or compact respecting jurisdiction over said waters was signed by the commissioners, and ratified by the Legislatures, of the plaintiff and defendant, respectively, and approved by act of Congress. Said agreement or compact expressly provided that nothing therein contained should affect the planting, catching or taking of oysters, clams or other shellfish or interfere with the oyster industry as then or thereafter carried on under the laws of either State, and that each State should on its own side of the river continue to exercise riparian jurisdiction of every kind and

nature and to make grants, leases and conveyances of riparian lands and rights under the laws of the respective States. And it was also expressly provided in said agreement or compact that nothing therein contained should affect the territorial limits, rights or jurisdiction of either State of, in or over the Delaware River, or the ownership of the sub-aqueous soil thereof, except as therein expressly set forth.

24. The dispute between the plaintiff and the defendant, and their officers and citizens, respectively, concerning the boundary line between the two States in the Delaware River and Bay and concerning the territorial ownership of the bed of said river and bay as between said States, has existed for many years and the question has been from time to time and negotiations have been conducted between the plaintiff and the defendant, and between commissions appointed by the Legislatures thereof, respectively, for the purpose of settling the dispute, and the plaintiff, by leave of this court, filed its bill of complaint against the defendant on March 13, 1877, praying that the true boundary line between the plaintiff and the [14] defendant might be ascertained, declared, defined and perpetually established, and that the rights of the parties in the bed of said river and the territorial extent thereof might be ascertained, declared and established. An answer was filed therein on October 14, 1901 and a replication thereto was filed November 26, 1901, but said suit was discontinued by consent of the parties, under the provisions of an agreement or compact between the parties in 1905 and the questions of boundary and territorial ownership were left undetermined.

25. Ever since the year 1799 the Legislature of the plaintiff has enacted and had in force statutes regulating the oyster industry within its territorial limits, including

Delaware River and Bay, and since the year 1899 said industry has been regulated by the plaintiff through a commission which, since the year 1915, has been and is now known as the Board of Shell Fisheries. In the bed of said Delaware river and bay within the area involved in the dispute between the plaintiff and the defendant the plaintiff has developed and maintained and now maintains extensive oyster beds along the easterly side of the thalweg of said river and bay.

26. During all of this time the citizens and residents of the plaintiff under and by virtue of the authority conferred and licenses issued by the plaintiff have improved the easterly side of said river and bay throughout the entire extent thereof by erecting dikes and embankments and the construction of wharves, docks, piers and other structures which have remained in the continuous and uninterrupted use and possession of said citizens and residents.

27. The oyster industry of the plaintiff in Delaware river and bay is of great actual and potential value and now produces annually four million bushels of oysters of [15] the annual value of approximately seven million dollars. The plaintiff has appropriated and expended therein approximately one million dollars and the citizens of the plaintiff have invested therein and in the equipment and facilities necessary therefor and incident thereto upwards of fifteen million dollars.

28. During the month of May, 1925, citizens of the defendant under the claim of ownership by the defendant, came upon the waters of the easterly side of the thalweg of the bay and took seed oysters to the extent of many thousands of bushels from the bed of the bay claimed to be owned in fee simple by the plaintiff.

20. The portion of the Delaware river and bay from which citizens of the defendant claim the right to take oysters from lands claimed by the plaintiff comprises a large area which produces annually seed oysters of great value, being a substantial part of valuable seed oyster beds, which are the only natural oyster beds from which plaintiff and its citizens can obtain an annual supply of seed oysters for planting more than thirty thousand acres of land leased by the plaintiff to its citizens and now under cultivation by them in the Maurice River Cove on the westerly side of said bay.

21. By Joint Resolution No. 4 entitled "Joint Resolution relating to the boundary controversy between the State of New Jersey and the State of Delaware," approved March 28, 1927, the Legislature of the plaintiff appointed a commission to confer with a like commission of the defendant for the purpose of framing a compact or agreement between said States and legislation consequent thereto to be submitted to the Legislatures of said States, respectively, for action thereon looking to the final adjustment of all controversies relating to the boundary line between the plaintiff and the defendant, and to their respective rights in the Delaware River and Bay. A similar commission was appointed by the Legislature of the defendant and said commissions conducted negotiations for a period, but were unable to agree upon the questions submitted for their consideration.

22. By a report dated April 16, 1929, the commission appointed by the Legislature of the plaintiff reported that meetings had been held with the commission appointed by the defendant but without reaching an agreement, and recommended that the matter of the boundary line controversy between the two States be referred to the Attorney General to the end that appropriate action should be taken to fix and determine said boundary line.

32. On April 17, 1929, by a joint resolution entitled "Joint Resolution concerning the boundary line between the States of New Jersey and Delaware in the Delaware River and Bay," approved May 6, 1929, the Legislature of the plaintiff instructed its Attorney-General to institute such legal proceedings as may be necessary to ascertain and establish the boundary line between the plaintiff and the defendant.

33. The defendant and its citizens by persisting in their present claims of title to the subaqueous soil claimed by the plaintiff on the easterly side of the thalweg of said Delaware river and bay, have created a conflict between the parties and their respective citizens and between the public authorities and officers of the plaintiff and the defendant respectively charged with the duty of enforcing the laws of the respective states, which cannot be settled or determined by any legal means other than by resort to this Honorable Court.

34. The plaintiff claims title in fee simple to the bed of said Delaware river and bay which divides the States of [17] New Jersey and Delaware from the thalweg thereof to the highwater mark on the easterly shore under and by virtue of the sovereignty of the Crown of England existing prior to, and to which it succeeded as a result of the Declaration of Independence, the American Revolution and the Treaty of Paris, aforesaid, and under and by virtue of the common law of England as existing and applied at that time both in England and in the British colonies in America and which was adopted by the plaintiff and the defendant upon attaining their independence, and has ever since existed and been applied by the courts of the plaintiff and the defendant.

IV.

In consideration whereof, and for as much as the plaintiff is without adequate remedy in the premises, at and by the strict rules of the common law, and can only obtain relief in this Honorable Court, where matters of this nature are properly cognizable and relievable, plaintiff prays;

That the said defendant, State of Delaware, may to the best and utmost of its knowledge, remembrance, information and belief, full, true and perfect answer make to all and singular the matters aforesaid, but not under oath, answer under oath being hereby expressly waived;

That this court grant unto the plaintiff the United States' writ of injunction, issuing out of and under the seal of this Honorable Court, to be directed to the said defendant, State of Delaware, perpetually restraining and enjoining it, its citizens, officers, agents and employees, and all other persons acting or claiming or assuming to act under its authority, from taking oysters or other property, and from claiming or exercising any territorial or ownership rights in, upon or over the subaqueous soil in [6] said Delaware river and bay easterly of the thalweg thereof or between said thalweg thereof and the highwater mark on the easterly side of said river and bay;

That the true boundary line between the State of New Jersey and the State of Delaware, may by order of this court, be ascertained, declared, defined and perpetually established and that the rights and title of the plaintiff, and of its citizens and inhabitants, claimants thereunder, in the bed of said Delaware river and bay and the territorial extent thereof may be so ascertained, declared and established.

That this court grant unto the plaintiff the United States' writ of subpoena, issuing out of and under the seal

of this Honorable Court, to be directed to the said defendant, State of Delaware, commanding it, by a certain day and under a certain penalty therein to be expressed, to be and appear before this Honorable Court, then and there to answer all and singular the said premises, and to stand to, abide by and perform such order and decree therein as to your Honors shall seem meet, and shall be agreeable to equity and good conscience;

And that the plaintiff may have such further or other relief in the premises as the nature of the case may require, and as shall be agreeable to equity and good conscience.

And the plaintiff, as in duty bound, will ever pray, etc.

STATE OF NEW JERSEY,

By WILLIAM A. STEVENS,
Attorney-General.

DUANE E. MINARD,
Assistant Attorney-General,
Solicitors for Plaintiff.

WALTER H. BAGGS,
Counsel.

[1] **MOTION FOR LEAVE TO FILE BILL OF COMPLAINT.**

Mr. Duane E. Minard, for Complainant.

June 3, 1929. Granted, and process is ordered to issue returnable on Monday, July 1, next. (279 U. S. 825; 73 L. ed. 978.)

Answer.

[1]

# ANSWER.

Filed July 1, 1929.

The Answer of State of Delaware, Defendant, to the Bill of Complaint of State of New Jersey, Plaintiff.

## I.

1. This defendant admits that the plaintiff above named is a State of the Union, having its capital and seat of government at the City of Trenton, Mercer County, New Jersey, and exercises through its Legislature the powers and duties of sovereignty within its territorial limits, under and by virtue of its constitution. This defendant believes it to be true that this suit was instituted by direction of the Legislature of the plaintiff and with the approval of the Governor thereof.

2. This defendant admits that State of Delaware, the defendant, is a State of the Union, having its capital and seat of government in the City of Dover, Kent County, Delaware, and exercises through its Legislature the powers and duties of sovereignty within its territorial limits, under and by virtue of its constitution.

[2]

## II.

3. This defendant admits that the jurisdiction of this Court depends upon the ground that this is a suit in which a State is a party within the provisions of Article III, Section 2, of the Constitution of the United States.

## III.

4. This defendant admits that from the southeasterly corner of the State of Pennsylvania in the Delaware River to the main sea at the mouth of Delaware Bay, that said

*Answer.*

river and bay are navigable waters wherein the tide ebbs and flows and form the boundary line between the plaintiff and the defendant.

5. This defendant admits that the controversy involved in this suit is where, in said river and bay, the exact division of territory between the said plaintiff and the said defendant lies. This defendant admits that the plaintiff claims ownership in fee simple of that portion of the subaqueous soil lying easterly of the thalweg thereof; and that the defendant claims ownership in fee simple of the whole bed of said Delaware River to low water mark on the easterly shore thereof, lying within the circumference of a circle of a radius of twelve miles described about the courthouse in the Town of New Castle, in the State of Delaware, as a center, and all the islands in said river within the compass of said circle, and all that portion of the subaqueous soil of the remainder of said river and bay westerly of the geographical center thereof.

6. This defendant believes that Charles II, King of England, by letters-patent dated March 12, 1664, did grant and convey to James, Duke of York, his heirs and assigns, certain lands in America, including all the lands from the west side of Connecticut to the east side of Delaware Bay, together with all the lands, islands, soils, rivers, harbours, mines, minerals, quarries, woods, marshes, waters, lakes, fishings, hawkings, huntings and fowling, and all other royalties, profits, commodities and hereditaments to said several islands, lands and premises belonging and appertaining, with their and every of their appurtenances, but for greater certainty as to [3] said letters-patent and all of the provisions thereof, it craves leave to refer to the said letters-patent when produced in this cause. But this defendant claims and respectfully submits that if it shall appear by evidence in this cause that said alleged patent ever had legal existence and

*Answer.*

validity, that then and in that case, by legal and just construction thereof, it cannot and should not be construed so as to include within the express description of the lands and premises therein contained, or as to control any part of the bed of said Delaware River within the compass of said twelve mile circle or that portion of the subaqueous soil of the remainder of said river and bay westerly of the geographical center thereof.

7. This defendant believes that said letters-patent also granted to James, Duke of York, his heirs, deputies, agents, commissioners and assigns, full and absolute power and authority to correct, punish, pardon, govern and rule all such the subjects of said King, his heirs and successors, as adventure themselves into any of the parts or places aforesaid, or that should at any time thereafter inhabit within the same, according to such laws, orders, ordinances, directions and instructions as by said Duke or his assigns should be established; and in defect thereof, in case of necessity, according to the good discretions of his deputies, commissioners, officers or assigns respectively; as well in all causes and matters capital and criminal as civil, both marine and others; so also as the said statutes, ordinances and proceedings should not be contrary to, but as near as conveniently may be agreeable to the laws, statutes and government of the realm of England. But this defendant claims and respectively submits that if said patent ever had any legal existence and validity, that then and in that case, by legal and just construction thereof, it cannot and should not be construed to apply to any part of the bed of said Delaware River within the compass of the said twelve mile circle, or to that portion of the subaqueous soil of the remainder of said river and bay westerly of the geographical center thereof.

*Answer.*

8. This defendant does not know and cannot set forth as to its belief or otherwise, whether or not the said James, [4] Duke of York, by lease dated June 23, 1664, and release dated June 24, 1664, after reciting the grant aforesaid made to him by said letters-patent dated March 12, 1664, conveyed to Lord John Berkeley and Sir George Carteret, their heirs and assigns forever, all that tract of land adjacent to New England and lying and being to the westward of Long Island and Manhitas Island and bounded on the east part by the main sea and part by Hudson's River, and having upon the west Delaware Bay or River, and extending southward to the main ocean as far as Cape May at the mouth of Delaware Bay, and to the northward as far as the northernmost branch of the said Delaware Bay or Delaware River, which is forty-one degrees, forty minutes of latitude and crossing over thence in a straight line to Hudson's River in forty-one degrees of latitude, which said tract of land was thereafter to be called by the name or names of New Caesarea or New Jersey. But this defendant claims and respectfully submits that if it shall appear by evidence in this cause that said alleged lease and release ever had any legal existence and validity, that then and in that case, by legal and just construction thereof, they cannot and should not be so construed as to include or control any part of the bed of said River Delaware within the compass of said twelve mile circle or any portion of the subaqueous soil of the remainder of said river and bay westerly of the geographical center thereof.

9. This defendant does not know and cannot set forth as to its belief or otherwise, whether or not said lease and release also conveyed all rivers, mines, minerals, woods, fishings, hawkings, hunting and fowling, and all other royalties, profits, commodities and hereditaments whatsoever to the said lands and premises belonging or in

Answer.

any way appertaining, with their and every of their appurtenances, in as full and ample a manner as the same were granted to the said Duke by the aforementioned letters-patent of March 12, 1664, and all the estate, right, title and interest, benefit, advantage, claim and demand of the said Duke of, in and to said lands and premises, or any part or parcel thereof, and the reversion and reversions, remainder and remainders thereof. But this [5] defendant claims and respectfully submits that if it shall appear in evidence in this cause, that said lease and release ever had any legal existence and validity, that then and in that case, by legal and just construction thereof, they cannot and should not be so construed as to include or control any part of the bed of said Delaware River within the compass of said twelve mile circle, nor any right of jurisdiction in said portion of said river, or that portion of the aqueous soil of the remainder of said river and bay westerly of the geographical center thereof.

10. This defendant believes that the Dutch, whose seat of government in America was in New Amsterdam, now New York, claimed occupancy and actual government, by conquest and settlement of a portion of the territory conveyed by said lease and release of June 23rd and 24th, 1664, and in or about the month of September, 1664, the Dutch in and about New Amsterdam were conquered by the military power of Charles II, King of England, and by the Treaty of Breda, made on or about July 31st, 1667, between the governments of said Charles II and the United Provinces of the Netherlands, all of the territories conquered by the English from the Dutch, including the territory of New Jersey above described in said lease and release of June 23rd and 24th, 1664, were surrendered and confirmed to the English Crown. And this defendant further claims and respectfully submits that the territories so surrendered cannot and should not be so construed as

*Answer.*

to include any part of the said River Delaware within the compass of said twelve mile circle, or any portion of the subaqueous soil of the remainder of said river and bay westerly of the geographical center thereof.

11. This defendant believes that a doubt did arise as to whether the English Crown was not revested by said Treaty of Breda with the title and government of the lands granted and conveyed to said James, Duke of York, in and by said letters-patent of March 12, 1664, that said Charles II, King of England, by letters-patent dated June 29, 1674, regranted and reconveyed to said James, Duke of York, said lands and territory by the same description and by the same words as [6] theretofore in said letters-patent of March 12, 1664. And this defendant further claims and respectfully submits, that if it shall appear by evidence in this cause, that said alleged confirmatory patent ever had legal existence and validity, that then and in that case, by legal and just construction thereof, it cannot and should not be so construed as to include within the express description of the lands and premises therein contained, or to control any part of the bed of said Delaware River within the compass of said twelve mile circle, or any portion of the subaqueous soil of the remainder of said river and bay westerly of the geographical center thereof.

12. This defendant does not know and cannot set forth as to its belief or otherwise, whether or not by deed dated March 18, 1673, said Lord John Berkeley conveyed to one John Fenwick, in trust for one Edward Byllynge, all the moiety or undivided one-half part or interest in and to said tract of land called New Jersey. But this defendant claims and respectfully submits that if it shall appear by evidence in this cause that said deed dated March 18, 1673, had any legal existence or validity, that then and in that case, by legal and just construction thereof, it cannot

and should not be so construed as to include or control any part of the bed of said Delaware River within the compass of said twelve mile circle or any portion of the subaqueous soil of the remainder of said river and bay westerly of the geographical center thereof.

13. This defendant does not know and cannot set forth as to its belief or otherwise, whether or not by deed dated February 9, 1674, and by deed dated February 10, 1674, the said John Fenwick and said Sir Edward Byllynge conveyed to William Penn, Gawen Lawrie and Nicholas Lucas, (subject to an equitable interest claimed by said Edward Byllynge) said moiety or one-half undivided interest formerly of the said John Berkeley in said tract of land as aforesaid. But this defendant claims and respectfully submits that if it shall appear by evidence in this cause that said deeds dated February 9, 1674, and February 10, 1674, had any legal existence or validity, that then and in that case, by legal and just con- [7] struction thereof, they cannot and should not be so construed as to include or control any part of the bed of said Delaware River within the compass of said twelve mile circle or any portion of the subaqueous soil of the remainder of said river and bay westerly of the geographical center thereof.

14. This defendant does not know and cannot set forth as to its belief or otherwise, whether or not by deed dated July 20, 1674, said James, Duke of York, reciting said letters patent of June 29, 1674, reconveyed unto the said George Carteret, his heirs and assigns, the northerly portion of the tract of land called New Jersey, described as all that tract of land adjacent to New England, and lying and being to the westward of Long Island and Manhitis Island, and bounded on the east part by the main sea and part of Hudson's River, and extending southward as far as a certain creek, called Barnegatt, being about the middle between Sandy Point and Cape May, and bounded

on the west by a straight line from said creek called Barnegatt, to a certain creek in Delaware River next adjoining to and below a certain creek in Delaware River called Renkokus Kill, and from thence up said Delaware River to the northernmost branch thereof, which is in forty-one degrees and forty minutes of latitude, and on the north, crossing thence in a straight line to Hudson's River in forty-one degrees of latitude. But this defendant claims and respectfully submits that if it shall appear by evidence in this cause that said alleged indenture ever had legal existence or validity, that then and in that case, by legal and just construction thereof, it cannot and should not be so construed as to include or control any part of the bed of said Delaware River within the compass of said twelve mile circle or any portion of the subaqueous soil of the remainder of said river and bay westerly of the geographical center thereof.

15. This defendant does not know and cannot set forth as to its belief or otherwise, whether or not said last mentioned deed also conveyed all rivers, mines, minerals, wood, fishings, hawking, hunting and fowling, and all royalties, profits, commodities and hereditaments whatsoever to the said land belonging or appertaining; with their and every of their ap- [8] purtenances in as full and ample a manner as the same were granted unto the said James, Duke of York, by said letters-patent of June 29, 1674, and all the estate, right, title, interest, benefit, advantage, claim and demand of the said James, Duke of York, of, in and to said lands and premises, or any part or parcel thereof, and the reversion and reversions, remainder and remainders thereof. But this defendant claims and respectfully submits that if it shall appear by evidence in this cause that said alleged indenture ever had legal existence or validity, that then and in that case, by legal and just construction thereof, it cannot and should not be so construed as to

Delaware,

include or control any part of the bed of said Delaware River within the compass of said twelve mile circle or any portion of the subaqueous soil of the remainder of said river and bay westerly of the geographical center thereof.

This defendant does not know and cannot set forth to the belief or otherwise, whether or not by deed dated [illegible], 1676, between said Sir George Carteret, William Dawon Lawrie, Nicholas Lucas and Edward Byllynge, reciting said letters-patent of March 12, 1664, said lease and release of June 23 and 24, 1664, and the deeds mentioned in the foregoing paragraphs 12 and 13 hereof, reciting that the said Penn, Lawrie and Lucas (including the equitable interest of said Byllynge) stood seized of and in one undivided moiety or half part, of all and every of said premises so granted unto the said Lord John Berkeley and Sir George Carteret as aforesaid, as tenants between themselves, and did then hold the same to them and to their heirs, as tenants in common with the said George Carteret who was then seized of the other undivided moiety or half part thereof, and reciting that the parties had agreed upon a partition of said tract of land into two parts, said Byllynge, Penn, Lawrie and Lucas conveyed unto said Sir George Carteret, his heirs and assigns forever, the easterly part of New Jersey, to have and to hold the same in severalty, and the said Carteret conveyed unto said Penn, Lawrie and Lucas, to their heirs and assigns forever, the westerly part of New Jersey, to have and to hold to them, their heirs and assigns in severalty, the line of divi- [9] sion between said easterly and westerly parts being fully described in said deed; or whether or not said parts comprised the whole of the territory or tract originally conveyed by said James, Duke of York, to said Berkeley and Carteret, and were conveyed with all the appurtenances and privileges heretofore de-

scribed with respect to the conveyance of said whole tract by said James, Duke of York, to said Berkeley and Carteret. But this defendant claims and respectfully submits that if it shall appear by evidence in this cause, that the said deed dated July 1, 1676, ever had legal existence or validity, that then and in that case, by lawful and just construction thereof, it cannot and should not be so construed as to include, refer to or control any part of the said Delaware River within the compass of said twelve mile circle or any portion of the subaqueous soil of the remainder of said river and bay westerly of the geographical center thereof.

17. This defendant does not know and cannot set forth as to its belief or otherwise, whether or not by deed dated August 6, 1680, containing certain recitals, including said letters-patent of March 12, 1664, said lease and release of June 23 and 24, 1664; said deed from said Lord John Berkeley to said John Fenwick; said deed from Fenwick and Byllynge to said Penn, Lawrie and Lucas; the subsequent conveyance of interests to John Eldredge and Edward Warner; the claims to said territory by the Dutch and the reconquest thereof by the British; said letters-patent of June 27, 1674, and further reciting that for the better extinguishing of all such claims and demands as said Duke of York may anyways have of, or in the premises aforesaid called West New Jersey or any part thereof and for the further and better settling, conveying, assuring and confirming the same, said James, Duke of York, conveyed unto Edward Byllynge, William Penn, Gawen Lawrie, Nicholas Lucas, John Eldredge and Edward Warner all that part, share or portion of all those parts, shares and portions of the entire premises so granted by said Duke of York unto said John Lord Berkeley and Sir George Carteret, and their heirs as aforesaid, as in and by and upon the said partition aforesaid was and

Answer.

were vested in [10] said Penn, Lawrie, and Lucas and their heirs, then agreed to be called by the name of West New Jersey, comprising all that part of New Jersey bordering on said Delaware River and Bay, except the portion thereof described in the deed recited in paragraph 14 hereof. But this defendant claims and respectfully submits that if it shall appear by evidence in this cause, that the said indentures ever had legal existence or validity, that then and in that case, by lawful and just construction thereof, they cannot and should not be so construed as to include, refer to or control any part of the said Delaware River within the compass of said twelve mile circle or any portion of the subaqueous soil of the remainder of said river and bay westerly of the geographical center thereof.

18. This defendant does not know and cannot set forth as to its belief or otherwise, whether or not said last mentioned deed also conveyed all the islands, bays, rivers, waters, forts, mines, quarries, royalties, franchises and appurtenances whatsoever to the same belonging or in anywise appertaining, and all the estate, right title, interest, reversion, remainder, claim and demand whatsoever, as well in law as in equity, of him the said James, Duke of York, of, into and out of the same, or any part or parcel of the same. But this defendant claims and respectfully submits that if it shall appear by evidence in this cause, that the said alleged indentures ever had legal existence or validity, that then and in that case, by lawful and just construction thereof, they cannot and should not be so construed as to include or control any part of the bed of said Delaware River within the compass of said twelve mile circle or any portion of the subaqueous soil of the remainder of said river and bay westerly of the geographical center thereof.

*Answer.*

19. This defendant does not know and cannot set forth as to its belief or otherwise, whether or not said last mentioned deed also conveyed all and every such the same powers, authorities, jurisdictions, governments and other matters and things whatsoever, which by the said respective recited letters-patent, or either of them, are and were granted or intended to be granted to or exercised by the said Duke of [11] York, his heirs, assigns, deputies, officers or agents, in, upon or in relation unto the said premises thereby confirmed or intended to be confirmed, and every of them, in case the same were then in the actual seizure of the said Duke of York. But this defendant claims and respectfully submits that if it shall appear by evidence in this cause, that the said alleged indenture ever had legal existence or validity, that then and in that case, by lawful and just construction thereof, it cannot and should not be so construed as to include or control any part of the bed of said Delaware River within the compass of said twelve mile circle or any portion of the subaqueous soil of the remainder of said river and bay westerly of the geographical center thereof.

20. This defendant does not know and cannot set forth as to its belief or otherwise, whether or not by deed of surrender dated April 15, 1702, and accepted April 17, 1702, the proprietors of East New Jersey and the proprietors of West New Jersey, for themselves, and their heirs, did surrender and yield up unto Anne, Queen of England, all sovereignty and powers of government as to New Jersey granted by Charles II, King of England, to James, Duke of York, and by said Duke of York to the said proprietors, or their predecessors, and whether or not thereafter until the war of the Revolution, the territory of New Jersey was governed by the English monarchs under governors appointed thereby; or whether or not said alleged surrender was ever legally made or

ever legally delivered unto Anne, Queen of England. But this defendant claims and respectfully submits that if it shall appear by evidence in this cause that said alleged deed of surrender ever had legal existence or validity, that then and in that case, by just and lawful construction thereof, and of the alleged evidences of the supposed title of the complainant to the premises in dispute in this cause, the said alleged surrender cannot and should not be so construed as to include or control any part of the bed of the Delaware River within the compass of the said twelve mile circle, or that portion of the subaqueous soil of the remainder of said river and bay westerly of the geographical center thereof; and further that the [12] said alleged then proprietors of East and West New Jersey could not then and thereby surrender to the said Anne, Queen of England, a more extensive title or other, or more extended rights or powers of government, or over other territory than the title and the rights and powers of governments and territory then actually invested in them.

This defendant admits that as a result of the American Revolution which followed the Declaration of Independence on July 4, 1776, the State of New Jersey became and ever since has been a free and independent State, possessed of all the rights thereof and vested with all and every power of government in and over the territory thereof and the tidal waters adjacent thereto, which immediately before the Revolution were vested in the Crown of England. But this defendant expressly denies that by virtue of any of the premises that said complainant became vested with any power of government in or over the tidal waters adjacent to the territory of said State of New Jersey, so far as the said tidal waters are included within the compass of the twelve mile circle as aforesaid, or westerly of the geographical center of the remainder of said river and bay.

*Answer.*

22. This defendant denies at the time of said Revolution the bed of the Delaware River and Bay underneath the tidal waters thereof and between the highwater mark on either side, from Trenton to the main sea at the mouth of the Bay at Cape May, belonged to and was vested in the Crown of England, in trust for the use and possession of the subjects of the King; and that by virtue of said Revolution and the resulting independence of the State of New Jersey, and by virtne of the Treaty of Paris, negotiated between the King of Great Britain and the United States of America, and signed at Paris September 3, 1783, that portion of the bed of the Delaware River and Bay which divides the States of New Jersey and Delaware, lying between the thalweg thereof and the high water mark on the easterly shore became and has ever since remained vested, in fee simple, in the state of New Jersey, and that the remaining portion thereof westerly of the thalweg thereof to the high water mark on the westerly [13] shore became and has ever since remained vested, in fee simple, in the State of Delaware.

But on the contrary, this defendant avers and respectfully submits that at and immediately before the time the said Revolution took place, so much of the bed of the said Delaware River as then was and now is included within the compass of the said twelve mile circle and all that portion of the subaqueous soil of the remainder of said river and bay westerly of the geographical center thereof belonged to and was vested in the proprietors of the land and the said river and soil thereof included within the compass of said twelve mile circle and westerly of the geographical center of said river and bay south of said twelve mile circle, by a title derived from the Crown of England, and hereinafter fully set forth; that by means of the said Revolution, the said independence of the State

[illegible] Delaware, and the Treaty of Peace between the King of Great Britain and the United States of America, concluded at Paris as aforesaid, all that portion of the bed of the Delaware River, situate between the States of New Jersey and Delaware, included within the compass of the said twelve mile circle, and all that portion of the said river and bay south of said twelve mile circle westerly of the geographical center thereof, became vested, in fee simple, in the State of Delaware; and that so the title to the said portion of the said river and bay, this defendant respectfully submits, has ever since continued and now is. This defendant avers and respectfully submits that ever since July 4, 1776, this defendant has had and been entitled to the sole and exclusive interest in so much of the waters, between the State of New Jersey and the State of Delaware, of such river as are included within the compass of said twelve mile circle, and in the waters of said river and bay south of said twelve mile circle, westerly of the geographical center thereof, subject only to the common rights of navigation thereof, and hath had the sole and exclusive jurisdiction in and over the same. This defendant avers that it hath at all times been alleged on behalf of this defendant that Charles II, King of England, by due and authentic letters-patent bearing date March 22, 1683, [14] did grant to his brother, the Duke of York, "All that the Town of New Castle, otherwise called Delaware, and fort therein, or thereto belonging, situate lying and being between Maryland and New Jersey, in America; and all that tract of land lying within the compass of a circle of twelve miles about the said town, situate lying and being upon the Delaware River, and all islands in the said Delaware River, and the said river and soil thereof lying north of the southernmost part of said circle of twelve miles about the said town"; that said patent was duly and legally made and duly and legally delivered by the said

*Answer.*

King Charles II to the said Duke of York, and that the same has ever since the said making and delivering thereof continued to have legal existence; and that by legal and just construction thereof said patent may and should be construed to include and control the part of the bed of said river lying northerly and easterly of the middle of said river, and all rights of jurisdiction of said river, so far and to such an extent as the said part of the bed of said river and the waters thereof are included within the compass of the said twelve mile circle.

23. This defendant believes that the Legislature of the plaintiff by joint resolution adopted February 14, 1905, appointed a commission to confer with a like commission appointed by the Legislature of the defendant for the purpose of framing a compact looking to the amicable termination of a dispute then pending over the boundary line in question. And that on February 13, 1905, the Legislature of the defendant appointed a like commission for that purpose. And that after a number of conferences said commissions agreed upon concurrent jurisdiction by the plaintiff and the defendant over the waters of the Delaware River and Bay but were unable to agree upon the question of boundary or upon the territorial rights of the parties therein. And that an agreement or compact respecting jurisdiction over said waters was signed by the commissioners, and ratified by the Legislatures, of the plaintiff and defendant, respectively, and approved by an act of Congress. And that said agreement or compact expressly provided that nothing therein contained should affect [15] the planting, catching or taking of oysters, clams or other shellfish or interfere with the oyster industry as then or thereafter carried on under the laws of either State, and that each State should on its own side of the river continue to exercise riparian jurisdiction of every kind and nature and to

Answer.

grants, leases and conveyances of riparian lands and rights under the laws of the respective States. And that it was also expressly provided in said agreement or compact that nothing therein contained should affect the territorial limits, rights or jurisdiction of either State in or over the Delaware River, or the ownership of the subaqueous soil thereof, except as therein expressly set forth. But this defendant expressly denies that said commissions settled or attempted to settle or fix the boundary line between the State of New Jersey and the State of Delaware.

This defendant admits that the dispute between the plaintiff and the defendant, and their officers and citizens, respectively, concerning the boundary line between the two States in the Delaware River and Bay and concerning the territorial ownership of the bed of said river and bay as between said States, has existed for many years and the question has arisen from time to time and negotiations have been conducted between the plaintiff and the defendant and between commissions appointed by the Legislatures thereof, respectively, for the purpose of settling the same, and the plaintiff, by leave of this court, filed its bill of complaint against the defendant on March 13, 1877, praying that the true boundary line between the plaintiff and the defendant might be ascertained, declared, defined and perpetually established, and that the rights of the States in the bed of said river and the territorial extent thereof might be ascertained, declared and established. That an answer was filed therein on October 14, 1901, and a replication thereto was filed November 26, 1901, but said suit was discontinued by consent of the parties, under the provisions of an agreement or compact between the parties in 1905 and the question of boundary and territorial ownership were left undetermined.

*Answer.*

[16] 25. This defendant does not know and cannot set forth as to its belief or otherwise, whether or not ever since the year 1799 the Legislature of the plaintiff has enacted and had in force statutes regulating the oyster industry within its territorial limits, including Delaware River and Bay, and whether or not since the year 1899 said industry has been regulated by the plaintiff through a commission which, since the year 1915, has been and is now known as the Board of Shell Fisheries. And whether or not in the bed of said Delaware River and Bay within the area involved in the dispute between the plaintiff and the defendant the plaintiff has developed and maintained and now maintains extensive oyster beds along the easterly side of the thalweg of said river and bay. But this defendant expressly denies that the said complainant by virtue of any of the premises of the said complainant became seized of that part of the Delaware River within the compass of said twelve mile circle, or that portion of the subaqueous soil of the remainder of said river and bay westerly of the geographical center thereof.

26. This defendant does not know and cannot set forth as to its belief or otherwise, whether or not during all of this time the citizens and residents of the plaintiff under and by virtue of the authority conferred and licenses issued by the plaintiff have improved the easterly side of said river and bay throughout the entire extent thereof by erecting dikes and embankments and the construction of wharves, docks, piers and other structures which have remained in the continuous and uninterrupted use and possession of said citizens and residents. But this defendant claims and respectfully submits that even if the citizens and residents of the State of New Jersey in the localities and in the manner set forth in the said Bill of Complaint have improved the easterly side of said river and bay throughout the entire extent thereof by erecting

dykes and embankments and the construction of wharves, docks, piers, and other structures which have remained in continuous and uninterrupted use and possession of said citizens and residents, it cannot and should not be held effectual in law or in equity in any event to affect in any way or to any extent the title or right of this defendant to, or its jurisdiction over, any portion of the soil or bed of the said river, or of the waters thereof included within the compass of said twelve mile circle and that portion of said bay or river west of the geographical centre thereof; and that the State of New Jersey cannot acquire by such actual or physical occupation, if any such occupation there be, of any part of the original territorial, jurisdiction, rights, privileges, franchises, powers, or estates of any of them, of any and every nature and description, or of any appendants or appurtenances to them or any of them appertaining, of the State of Delaware as the same or any of them existed at the date of the adoption of the Constitution of the United States, or otherwise howsoever acquire any part or portion of such territory, jurisdiction, rights, privileges, franchises, powers of estates, or any of them, of any and every nature and description, or any appendants or appurtenances in them or any of them appertaining, of the State of Delaware, unless and until it may be and shall be shown that the Congress of the United States and the several Legislatures of the States of New Jersey and Delaware have expressly and formally consented thereto. And this defendant further avers and respectfully submits that the said complainant cannot derive any title to, or any jurisdiction over any of the premises in dispute in this cause as against the defendant by prescription.

This defendant does not know and cannot set forth of its belief or otherwise, whether or not the oyster industry of the plaintiff in Delaware River and Bay is of

*Answer.*

great actual and potential value and now produces annually four million bushels of oysters of the annual value of approximately seven million dollars. And that the plaintiff has appropriated and expended therein approximately one million dollars and the citizens of the plaintiff have invested therein and in the equipment and facilities necessary therefor and incident thereto upwards of fifteen million dollars.

28. This defendant does not know and cannot set forth as to its belief or otherwise, whether or not during the month of May, 1925, citizens of the defendant under the claim of [18] ownership by the defendant, came upon the waters of the easterly side of the thalweg of the bay and took seed oysters to the extent of many thousands of bushels from the bed of the bay claimed to be owned in fee simple by the plaintiff. But this defendant avers that during the month of May, 1925, it was the owner of the said Delaware Bay to the geographical center thereof and had a right to take seed oysters from said bay west of the geographical center thereof.

28. This defendant believes that the portion of the Delaware River and Bay from which citizens of the defendant claim the right to take oysters from lands claimed by the plaintiff comprises a large area which produces annually seed oysters of great value, being a substantial part of valuable seed oyster beds, which are the only natural oyster beds from which plaintiff and its citizens can obtain an annual supply of seed oysters for planting more than thirty thousand acres of land leased by the plaintiff to its citizens and now under cultivation by them in the Maurice River Cove on the easterly side of said bay.

30. This defendant believes that by Joint Resolution No. 4 entitled "Joint Resolution relating to the boundary controversy between the State of New Jersey and the

Delaware," approved March 28, 1927, the Legis- the plaintiff appointed a commission to confer the commission of the defendant for the purpose a compact or agreement between said States consequent thereto to be submitted to the of said States, respectively, for action thereon the final adjustment of all controversies relat- boundary line between the plaintiff and the and to their respective rights in the Delaware And that a similar commission was ap- legislature of the defendant and said com- ducted negotiations for a period, but were upon the questions submitted for their

defendant believes that by a report dated the commission appointed by the Legisla- the plaintiff reported that meetings had been commission appointed by the defendant but an agreement, and recommended that the boundary line controversy between the referred to the Attorney-General to the end action should be taken to fix and deter- boundary line.

defendant believes that on April 17, 1929, by entitled "Joint Resolution concerning between the States of New Jersey and Delaware River and Bay," approved May legislature of the plaintiff instructed its At- to institute such legal proceedings as may ascertain and establish the boundary line plaintiff and the defendant.

defendant believes that the defendant and its claimed by the plaintiff on the easterly

*Answer.*

side of the thalweg of said Delaware River and Bay, have created a conflict between the parties and their respective citizens and between the public authorities and officers of the plaintiff and the defendant respectively charged with the duty of enforcing the laws of the respective states, which cannot be settled or determined by any legal means other than by resort to this Honorable Court.

34. This defendant admits that the plaintiff claims title in fee simple to the bed of said Delaware River and Bay which divides the States of New Jersey and Delaware from the thalweg thereof to the high water mark on the easterly shore. And this defendant does not know and cannot set forth as to its belief or otherwise, whether or not the said plaintiff claims said title under and by virture of the sovereignty of the Crown of England existing prior to, and to which it succeeded as a result of the Declaration of Independence, the American Revolution and the Treaty of Paris, aforesaid, and under and by virtue of the common law of England as existing and applied at that time both in England and in the British colonies in America and which was adopted by the plaintiff and the [20] defendant upon attaining their independence, and has ever since existed and been applied by the courts of the plaintiff and the defendant.

And this defendant, further answering, saith that the true title, jurisdiction, government and sovereignty of, over, in and to that portion of the River Delaware lying and being within the limits of the said twelve mile circle, as hereinbefore set forth and alleged, have been and now are vested in this defendant by the means hereinafter stated.

1.—The title by discovery of the Atlantic Coast of North America, at least as far south as Virginia, is claimed and, as this defendant is informed and believes, generally

Answer.

entitled to have been acquired by England by force of the voyage, along said coast, of Sebastian Cabot in or about the years 1497-8. That part of the coast which now constitutes the State of Delaware was, as this defendant is informed and believes, visited in or about the year 1606 by Captain John Smith, an English Navigator, and in or about the year 1611 by Lord Delaware, the English Governor of Virginia; but neither of them landed, merely sailing into Delaware Bay and departing. After a similar visit to the Bay, in or about the year 1609, Henry Hudson, then in the employment of a Dutch Company, and sailing under the flag of the Netherlands, went northward to the Bay of New York, and discovered and navigated the Hudson River, of which, in consequence of his report, in the following year (1610) the Dutch took possession, and established various trading posts, including one at the site of the City of New York and one at the site of the City of Albany, which were respectively known under the Dutch occupation as Fort Amsterdam (afterwards New Amsterdam) and Fort Orange.

And this defendant, further answering, saith that from and after the establishment of the Dutch settlements in New York on the Hudson River, then called the North River, as hereinbefore set forth, there were repeated and continuous efforts by the same people to establish settlements on the Delaware River, then called the South River, which they ex- [21] plored so far as the Schuylkill, and to establish other settlements easterly from New York as far as the Connecticut River, both of which rivers and the lands contiguous thereto were settled and governed by and as part of the colony having its headquarters and central point of authority at and in the settlement on or near the City of New York, then designated as New Amsterdam. During the period of upwards of fifty years thereafter, all of said territory, including the territory

*Answer.*

composing the present State of Delaware, and the River Delaware, and the said twelve mile circle, was known as the New Netherlands, and was claimed and, except as herein stated, governed as and for a colony of the States General of the United Provinces of the Netherlands, or under the authority thereof. And this defendant is informed and believes that during the said period of Dutch supremacy, as early as the year 1622 or 1623, there were settlements by the Dutch from New Amsterdam on the easterly side of the River Delaware. In the year 1630, lands along the Delaware Bay and river, extending from Cape Henlopen to Bombay Hook, were acquired by Samuel Godyn on behalf of a Dutch Company, one of whom, De Vries, a navigator, in or about the year 1631, near what is now the Town of Lewis, then called Hoernkill, established a colony, which on his return in the following year, he found had been exterminated by the Indians. And this defendant further avers that a patent for the lands so acquired by the said Godyn were issued directly from the government of the States General of the United Netherlands, by the Director and Council of the Colonial Government, whose seat was on the island of Manhattans, and that other patents for lands in Delaware were from time to time issued by said Colonial Government, all of which always have been and still are recognized in the State of Delaware as the valid inception of the legal title to the lands to which they respectively relate. And this defendant craves leave to refer to the said patents and prays that the same when proved at the hearing of this cause may be taken as a part of this answer.

And this defendant further answering saith that in or about the year 1638 a Swedish expedition under Peter Minuit, [22] formerly Governor of the New Netherlands under the Dutch Sovereignty, arrived in the Delaware River and commenced to establish settlements on

...st side thereof and built a fort named Fort ...a, at or near the site of the present city of ...ington. The settlement of the Country by the Swedes ...ained until about the year 1647; but immediately after ... arrival of Minuit, the Dutch authorities of the ...Netherlands protested against the Swedish opera- ...and did not cease, during all the years of their ...nance, to assert the rights of government and of ...ary title of the United Provinces of the Nether- ...and in the Delaware River and the land now con- ...the State of Delaware, and of and over which the ...claims ownership, jurisdiction and govern- ... this suit. These protests not having received the ... attention, and it being considered that the "in- ... of the Swedes was "to dispossess and unseat ...(Dutch) Company from the entire river," in or ... the year 1651, as this defendant is informed and ..., the then Director at New Amsterdam, Stuyvesant ...ded to the Delaware and personally disputed with ... Printz, who after the departure of Minuit had ... head of the Swedish settlements known as New ..., as to the right of the Swedes to interfere in a ... claimed by the Dutch as an appendage or appur- ... of the colony which had its seat of government ...w Amsterdam. Thereupon, Director Stuyvesant ...Fort Casimer, at or near New Castle, which action ... hostilities with the Swedes, who under Johan ..., who had then succeeded Printz, took said fort ...about the year 1654; and, the hostilities continuing, ... about August thirty-first, 1655, Fort Casimer was ...n by the Dutch, to whom also a few days after ...Christina also surrendered. As the result of these ...tions, the Swedish settlements formally acknowl- ...the sovereignty of the Dutch as established at New ...rdam, and formal articles of the terms of the sur- ... were executed under date of September eleventh,

*Answer.*

1655, as to Fort Casimer, and September twenty-fifth of the same year, as to Fort Christina. Provision was made therein for the protection of Swedes who chose to remain and for the return of [23] those who wished to go back to Europe. All of which will appear from the documents referred to and a multitude of others relating to the government of the Delaware Country and River by the Dutch Colonial Government of the Netherlands, to which when cited at the hearing of this cause, this defendant craves leave to refer and prays that they may be taken as part of this answer.

And this defendant further avers that the said land and river of Delaware became thereupon known by the general designation of the South River of the New Netherlands, and continued to be further settled by active immigration promoted and assisted by the Government of the United Provinces of the Netherlands and the City of Amsterdam, and further that such government continued undisturbed and unchallenged from any quarter until the conquest of the New Netherlands by the English forces under James, the Duke of York, hereinafter mentioned and set forth.

3.—Charles the Second, King of England, in assertion of the English title by discovery and partial occupation of the territories therein described, granted his letters patent to his brother, James, the Duke of York, bearing date the twelfth of March, 1664, which letters patent are those alleged, mentioned and described in the said Bill of Complaint; and this defendant hereby refers to the said letters patent as a whole and makes the same a part of this, its answer. That pursuant to the powers and authority in said letters patent contained, the said Duke of York did duly constitute and appoint, by his commission duly issued, dated on or about the second day of April, 1664, Colonel Richards Nichols to be his deputy

...nor within the lands, islands and places in said ... patent mentioned and granted, to perform and ... all and every the powers which were by the ... letters patent granted to the said Duke; as by ... to the said commission, when produced in this ... will more fully appear, and which this defendant ... may be taken as a part of this its answer.

... thereafter on or about the twenty-fifth day of the ... of April, 1664, the said Charles the Second, issued
[24] commission to the said Colonel Richard ..., and Sir Robert Carre, George Cartwright and ... Maverick, to visit certain of the Colonies of ... in America and determine complaints, accom- ... by two letters of instructions, by one of which ... commissioners were directed to reduce to subjec- ... and obedience to the English Crown the Dutch at ... land and elsewhere within the Colonies and terri- ... claimed by the King. And this defendant refers ... said commission and letters of instructions and ... that the same may, when produced in this case, ... as a part of this, its answer.

... After the date of said letters patent, and in or ... the month of September in said year 1664, the ... of said territory described in said letters patent ... occupancy and actual government of the Dutch, ... by, and surrounding their then seat of govern- ... New Amsterdam, otherwise and later called New ..., under the commission aforesaid, to said Nichols ..., conquered by the military power of the ... England, said Charles the Second. That at ... of the said conquest, the said Bay and River ... and the territories lying upon the west side ... were and constituted a dependency of the Dutch ... having its seat of Government at said New ...; which said Government, for many years as

*Answer.*

aforesaid, had had and exercised, and then did have and exercise, all the rights and powers of a proprietor in, of and over the soil and waters of the said river Delaware and said territories adjacent thereto, and all jurisdiction, whether legislative, judicial or executive, and all government and rights of government in, upon and over the said river Delaware, the soil and waters thereof and said territories adjacent thereto. That in or about the month of October in said year 1664, the said Bay and River Delaware and said territories adjacent thereto, including the premises herein in dispute, so dependant upon, subject to and owned by the Dutch Government at New York, were, as such a dependency, also conquered by the military power of the said King of England, and the inhabitants thereof submitted without resistance to the authority of said King, and took oaths of [25] allegiance to him and his Governor. That by the treaty of Breda, made on or about the thirty-first day of July, 1667, between the English and Dutch, all the territories conquered by the English as aforesaid, including the premises here in dispute, were confirmed to the English. That from the year 1664 until the year 1673, the Bay and River Delaware and the said territories lying adjacent to and west thereof, including the premises here in dispute, constituted a dependency of, and were governed in all particulars by the Government of the Duke of York at New York, and the said Duke of York and his said government during said period had and exercised all government and rights of government, all jurisdiction, whether legislative, judicial or executive, over said Bay, River and Territory, as such a dependency as aforesaid, and over all of the inhabitants thereof, and all and every of the rights of a proprietor of, in and over the soil and waters of said River and Territory, including the premises here in dispute.

or about the month of July 1673, the territory of Government of which was at New York, ...ured by the military power of the States ... the Prince of Orange, whereupon without ...ercise of military force, the Delaware de... above described, including the premises here ... the direct consequence of the conquest of ...ald Government at New York, also fell into ... and was occupied as the territory of the ... United Provinces of the Netherlands; and ... of said dependency, in the same year, in ... month of September, declared their submis... obedience to the States-General of New Neth... upon said reconquest of New York and ...endency, and for the space of about seven ...after, the governors and government of the ... York had and exercised all government and ...rnment all jurisdictions, whether legislative, ...ecutive, and all and every of the rights of ... in and over the said River Delaware and ... adjacent thereto, as a dependency of the ...ment at New York, and in and over the soil ... of said River and Territory, including the ... in dispute.

... the Treaty of Peace, signed at Westminster, ... the month of February, 1674, the territory of ...ent of Government was at New York as afore... the said dependency of the Bay and River ... said Territories adjacent thereto, were re... their former proprietor; and by virtue of which ... said River Delaware and the lands adjacent ... the west, were restored as a dependency to ... Government of the said Duke of York, who as ... thereof, thereafter governed the same and ex... jurisdiction in, and the rights of a proprietor over,

*Answer.*

the same, in manner and form as he had theretofore done before the said reconquest of the same by the said States General.

7.—That thereupon, in order to make good and affirm and establish the aforesaid grant covered by the said letters patent of the said date of the twelfth of March, 1664, the said Charles the Second, King of England, by his letters patent, bearing date on or about the twenty-ninth day of June, 1674, did grant and convey unto the said Duke of York, all and every of the property and all and every of the rights, powers and privileges, granted, conveyed, transferred and assured in and by the said patent first made as aforesaid, using in the last one of the said patents the same words which are used in the first of the said patents and no others, except those stating the date; to which last mentioned letters patent this defendant refers, as a whole, and makes the same a part of this, its answer.

8.—That in the year 1680, William Penn petitioned King Charles the Second to grant him Letters Patent for a tract of land in America, lying north of Maryland, on the east bounded with the Delaware River, on the west limited as Maryland, and northward to extend as far as plantable. That said petition was referred by the said King to the Lords of the Committee of said King's most Honorable Privy Council for the affairs of Trade and the Plantations, who considered the same from about the month of June 1680 until about the month of March 1681. That among other persons consulted by said Lords of said Committee as to said grant, was [27] his Royal Highness the Duke of York, in consideration of his recognized possession of and title to the lands and premises involved in said petition and the proposed grant thereunder. That the southerly boundary of the proposed grant was fixed and determined by the said Lords of said Committee, and by

Chief Justice North, upon their reference of the same only upon the consent and approval of the said of York, who was by them conceded to have held possessed ever since the conquest of New York by Nichols, as an appendix and part of the government of New York, all that Colony or Plantation known name of Delaware Colony, or more particularly, Castle Colony. And this defendant craves leave to to all and every of the minutes, acts and proceedings of the said Lords of the Committee of said King's Honorable Privy Council for the affairs of Trade Plantations, all correspondence with, and in behalf said Lords of said Committee, and all acts, proceedings and correspondence by, with and in behalf of his Highness, the said Duke, and of all other persons, to the said petition and the consequent Royal of the territory and Province of Pennsylvania, and that the same may, when produced in this cause, taken as a part of this its answer.

That King Charles the Second, by letters patent the great seal of England, bearing date the fourth March, 1681, and published by royal proclamation Second day of April 1681, granted unto William his heirs and assigns, upon his petition aforesaid, that tract or part of land in America, with all the therein contained, as the same is bounded on the by Delaware River, from twelve miles distance, ward of New Castle Town, unto the three and degree of northern latitude if the said river doth so far northward; then by the said river so far as extend, and from the head of said river the eastern are to be determined by a meridian line, to be from the head of the said river unto the said and fortieth degree, the said lands to extend westward five degrees in longitude, to be computed from

*Answer.*

the said east- [28] ern bounds, and the said lands to be bounded on the north, by the beginning of the three and fortieth degree of northern latitude, and on the south, by a circle drawn at twelve miles distance from New Castle northwards and westwards unto the beginning of the fortieth degree of northern latitude, and then by a straight line westwards, to the limit of longtitude above mentioned. That by the same charter, the territory of Pennsylvania was erected into a province, and appropriate powers of government thereof were conferred upon William Penn and his heirs. And this defendant prays leave to refer to said letters patent and charter and that the same may be taken as a part of this, its answer.

10. That James, Duke of York, made and executed an indenture, dated the twenty-first day of August, 1682, to the said William Penn, wherein is recited that, his Royal Highness being willing and desirous that the tract or part of land called Pennsylvania should be granted and assured unto the said William Penn and his heirs, and for that purpose having signified and declared his assent thereto to the Right Honorable the Lords of the Committee of Plantations, his said Majesty by his letters patent under the great seal of England, bearing date the fourth day of March in the third and thirtieth year of his reign, for the considerations therein mentioned, did grant unto the said William Penn and his heirs, all that tract or part of land in America, with the islands therein contained and thereunto belonging, as the same was bounded and described in and by the said Letters Patent and therein called Pennsylvania, together with the several royaltics, franchises, jurisdictions and privileges therein contained, and that his Royal Highness, for the consideration therein mentioned, was willing and pleased to confirm and make any further assurance of the said tract of land and premises unto the said William Penn and his

and thereupon, by said indenture, said Duke released and forever quit claimed unto William his heirs and assigns, all the estate, right, title, rents, services, duties, payments, property, claim demand whatsoever, of his Royal Highness, of, into or the said tract of land and all and singu- [29] lar the lands, islands, tenements, hereditaments and things comprised in the said recited letters patent within the bounds and limits therein mentioned, to and to hold the said tract of land, rents, services, aments and premises unto the said William Penn, rs and assigns forever. And this defendant hereby to the said indenture and prays that the same may and considered, when in evidence in this cause, as of this, its answer.

By deed signed and sealed but not witnessed, bearthe twenty-first day of August, 1682, James, Duke demised, granted, bargained and sold unto Wilnn all that the town of New Castle, otherwise called e, and all that tract of land lying within the or circle of twelve miles about the same, situate, and being upon the River Delaware in America, islands in the said River Delaware and the said and soil thereof lying north of the southermost part said circle of twelve miles about the said town, with all rents, services, royalties, franchises and and all the estate, interests and powers whatsoever Royal Highness in or to the same, to have and to the same granted, or intended to be granted, town, islands to William Penn, his executors, administraand assigns, for ten thousand years from the day the date, without impeachment of waste, at a yearly five shillings. And this defendant hereby refers said deed of lease and prays that the same, when in this cause, may be taken as part of this, its

*Answer.*

12.—By a deed sealed and delivered in the presence of witnesses, bearing date the twenty-fourth day of August, 1682, the said James, Duke of York, demised, granted, bargained and sold unto William Penn, upon due consideration, all that town of New Castle and all that tract of land lying within the compass or circle of twelve miles about the same, situate, lying and being upon the River Delaware, and all islands in the said river, and the said river and soil thereof lying north of the southernmost part of the said circle of [30] twelve miles about the said town, to have and to hold to the said William Penn, his executors and administrators and assigns, for ten thousand years, at the yearly rent of five shillings. And this defendant refers to the said deed of lease and prays that the same may, when produced in this cause, be taken as a part of this, its answer.

13.—By a deed sealed and delivered in the presence of witnesses, bearing date the twenty-fourth day of August, 1682, the said James, Duke of York, upon due consideration, bargained, sold, let and to farm let unto the said William Penn all that tract of land upon Delaware River and Bay, beginning twelve miles South from the Town of New Castle, and extending South to the Horerkilns, otherwise called Lopen, together with free and undisturbed use and passage into and out of all harbors, bays, waters, rivers, isles and inlets belonging to or leading to the same, together with the soils, fields, woods, underwoods, mountains, hills, isles, lakes, rivers, rivulets, bays and inlets situate in or belonging unto the limits and bounds aforesaid, with all the rights of the Duke to the same, to have and to hold for the space of ten thousand years; in which deed the said William Penn covenanted inter alia to yield one-half the profits of the office of Registry &c., to the said Duke, who also reserved a right of distress for his rents. And this defendant refers to the said deed of lease and

...nt the same may, when produced in this cause, ... as a part of this, its answer.

...By a deed of feoffment, bearing date the twenty-... day of August, 1682, the said James, Duke of York, ... consideration therein mentioned, did bargain, sell, ... and confirm unto the said William Penn, his heirs ... forever, all that the town of New Castle, other-... called Delaware, and all that tract of land lying ... the compass or circle of twelve miles about the same ... lying and being upon the River Delaware, in ... and all islands in the said River Delaware, and ... river and soil thereof, lying north of the southern-... of the said circle of twelve miles about the said ... ether with all rents, services, royalties, franchises, ... jurisdictions, lib- [31] erties and privileges ... belonging; and all the estate, right, title, interest, ... property, claim and demand whatsoever, of his ... al Highness, of, in or to the same, or any part ... thereof; saving always and reserving to his ... ighness, his agents and servants, free use of all ... ys and passages into, through and out of the bar-... premises, and every part and parcel thereof; to ... to hold the said town and circle of twelve miles ... about the same, islands, and all other the before ... or intended to be hereby bargained premises, ... appurtenances, unto the said William Penn, his ... assigns, to the only use and behoof of him the ... illiam Penn, his heirs and assigns, forever, yielding ... ing therefor yearly and every year unto his said ... ighness, his heirs and assigns, the sum of five ... of lawful money of England, at the feast of St. ... ...e Archangel, only.

...and by said indenture his said Royal Highness, ... lf, his heirs and assigns, did covenant and grant ... ith the said William Penn, his heirs and assigns,

*Answer.*

that his said Royal Highness, his heirs and assigns, would at any time or times thereafter, during the space of seven years next ensuing the date thereof, upon the request, and at the costs and charges in the law of the said William Penn, his heirs and assigns, do, make and execute, or cause or procure to be made, done and executed, all and every such further act and acts, conveyances and assurances in the law whatsoever, for the further conveying and assuring the said town and circle of twelve miles of land about the same, and islands, and all other premises, with the appurtenances, unto the said William Penn, his heirs and assigns, forever, as by the counsel learned in the law of the said William Penn, his heirs or assigns, shall be reasonably advised, or required.

And his said Royal Highness further thereby made, constituted and appointed John Moll of New Castle aforesaid, Esquire, and Ephraim Harman, of New Castle aforesaid, gentlemen, jointly and either of them severally, his true and lawfully attorneys, and by said presents, did give and grant unto the said John Moll and Ephraim Harman, his said at- [32] torneys, or either of them, full power and authority for him, and in his name and stead, into all and singular the premises thereinbefore mentioned, or intended to be thereby aliened, enfeoffed and confirmed, and into every or any part or parcel thereof, in the name of the whole, to enter, and quiet and peaceable possession and seisin thereof, or of any part or parcel thereof, in the name of the whole, to enter and receive; and after peaceable possession thereof had and taken as aforesaid, to deliver quiet and peaceable possession and seisin thereof, or of any part or parcel thereof, in the name of the whole, to the said William Penn, his heirs or assigns, or to his or their lawful attorney or attorneys, sufficiently authorized to receive and take the same, and him or them to leave in the quiet and peaceable possession thereof, according to

intent and meaning of said presents. And his
yal Highness did further thereby allow of, ratify
nfirm whatsoever the said John Moll and Ephraim
his said attorneys, should lawfully do or cause to
in and about the premises, by virtue of said
to be as good and effectual in the law, to all in-
purposes whatsoever, as if his said Royal High-
done the same in his own person, or had been
at the doing thereof.

his defendant craves leave to refer to the whole of
recited indenture of feoffment, when produced in
or proved, at the hearing of this cause, and prays
same, when so produced or proved may be taken
of this, its answer.

By further deed or indenture of feoffment, bear-
the twenty-fourth day of August, 1682, the same
Duke of York, for the due consideration therein
ed, did bargain, sell, enfeoff, and confirm unto the
William Penn, his heirs and assigns forever, all that
land upon Delaware River and Bay, beginning
miles south from the town of New Castle, other-
lled Delaware, and extending south to the Whore-
otherwise called Cape Henlopen; together with free
disturbed use and passage into and out of all
bays, waters, rivers, isles, and inlets, belonging to
ing to the same; together with [33] the soil,
woods, underwoods, mountains, hills, isles, lakes,
rivulets, bays, and inlets, situate in or belonging
limits and bounds aforesaid; together with all
minerals and all the estate, interest, royalties,
ons, powers, privileges and immunities whatsoever,
said Royal Highness therein, or in or into any part
thereof; saving always and reserving to his said
Highness, his agents and servants, free use of all
ays and passages into, through and out of the said

*Answer.*

bargained premises, and every part and parcel thereof; to have and to hold the said tract of land, and all and singular other the premises, with the appurtenances, unto the said William Penn, his heirs and assigns, to the only use and behoof of him, the said William Penn, his heirs and assigns forever, to be holden of his said Royal Highness and his heirs, as of their castle at New York, in free and common soccage, yielding and paying therefor yearly and every year, to his said Royal Highness, his heirs and assigns, one rose, at the feast of St. Michael the Archangel yearly, if demanded.

And in and by said indenture the said William Penn covenanted for himself, his heirs and assigns, within the space of one year next ensuing the date of said presents, to set up an office or offices of Registry, wherein he should keep account of the rents and other profits arising out of said bargained premises, and annually to pay to his said Royal Highness one full moiety of all and all manner of rents, issues and profits, as well extraordinary as ordinary, as shall be made or raised upon, or by reason of the premises or any part thereof. And in said deed, his said Royal Highness reserved a right of distress for any unpaid arrears of said moiety of said profits.

And his said Royal Highness for himself, his heirs and assigns, did further covenant and grant to and with the said William Penn, his heirs and assigns, by said presents, that his said Royal Highness, his heirs and assigns, would at any time or times thereafter, during the space of seven years next ensuing the date thereof, upon the request and at the costs and charges in the law of the said William Penn, his heirs and [34] assigns, do, make, and execute, or cause or procure to be made, done and executed, all and every such further act and acts, conveyances and assurances, in the law whatsoever, for the further conveying and assuring the said tract of land, and all and singular

promises, with the appurtenances, under the said Penn, his heirs and assigns, forever, as by the learned in the law of the said William Penn, his assigns, should be reasonably advised or required.

said Royal Highness further thereby made, con- and appointed John Moll of New Castle aforesaid, and Ephraim Harman of New Castle aforesaid, jointly, and either of them severally, his true attorneys, and thereby did give and grant unto John Moll and Ephraim Harman, his said at- either of them, full power and authority for his name and stead, into all and singular the hereinbefore mentioned, or intended to be there- enfeoffed and confirmed, and into every, or any thereof, in the name of the whole, to enter; and peaceable possession and seisin thereof, or or parcel thereof, in the name of the whole, to ceive; and after peaceable possession thereof as aforesaid, to deliver quiet and peaceable and seisin thereof, or of any part or parcel name of the whole, to the said William Penn, assigns, or to his or their lawful attorney or sufficiently authorized to receive and take the or them to leave in the quiet and peaceable thereof, according to the true intent and mean- presents. And his said Royal Highness did of, ratify and confirm, whatsoever the said Ephraim Harman, his said attorneys should cause to be done, in and about the premises, said presents, to be as good and effectual in intents and purposes whatsoever, as if his had done the same in his own person, or at the doing thereof.

*Answer.*

And this defendant hereby refers to the said indenture of feoffment and prays that the same may, when produced in this cause, be taken as a part of this, its answer.

[35] 16.—That on or about the twenty-eighth day of October, 1682, the said William Penn, either in his proper person or by his attorney, did demand, and the said John Moll and Ephraim Harman, or one of them, being the said Duke's attorneys for such purposes, duly constituted as aforesaid, did with great form and solemnity, deliver and leave the said William Penn in the quiet and peaceable possession and seisin of the premises contained in both the said respective indentures of feoffment, pursuant to the power and authority given by the same respective indentures of feoffment by delivery to the said William Penn, of the fort at New Castle, and of turf and twig, and of water and soil of the River Delaware; memorandums of the delivery of seisin were duly prepared and attested by several witnesses, which memorandums, or records thereof, remain to this day. And this defendant hereby refers to the records and memorandums of the said liveries of seisin, and prays that they may when produced in this cause, be taken as parts of this, its answer.

17.—That on or about the said twenty-eighth day of October, 1682, the inhabitants of the town of New Castle upon Delaware River, having heard the indenture read made between his Royal Highness, James, Duke of York, &c., and said William Penn, wherein said Duke transferred his right and title to New Castle, and twelve mile circle about the same, with all powers and jurisdictions, and services thereunto belonging unto the said William Penn, and having seen by the said Duke's appointed attorneys, John Moll and Ephraim Harman, both of New Castle, possession given, and by their governor, the said William Penn, possession taken, whereby they were made subjects,

the king, to the said William Penn, did in the ... of God, solemnly promise to yield to him, the ... William Penn, all just obedience and to live quietly ... peaceably under his government. That of the said ... allegiance and submission to the said William ... memorandum was made and signed by said ... nts of the town of New Castle, or by representa- ... thereof, which said memorandum, or a due record ... remains to this day. And this defendant hereby ... the said memorandum of said oath of al- ... and submission, or to [36] the record thereof, ... that the same when produced in this cause, ... ken as a part of this, its answer.

... shortly after the delivery of such possession ... of said territory and River Delaware included ... twelve mile circle, to the said William Penn, ... and sometime in the month of November, ... said Duke of York's Commander-in-Chief and ... established at New York, issued a proclamation, ... or order, addressed or directed to the several ... the peace, magistrates, and other officers at ..., St. Jones, Deale, alias Whore Kill, at Dela- ... within any of the bounds and limits mentioned ... recited indentures of feoffment to the said ... Said order or proclamation recites that ... Highness had been graciously pleased by in- ... his hand and seal, bearing date the twenty- ... of August, then last past, for the considera- ... mentioned, to bargain, sell, enfeoff, and con- ... William Penn, Esquire, his heirs and assigns ... that town of New Castle, otherwise called ... and all that tract of land lying within the ... circle of twelve miles about the same, with ... and the river and the soil thereof lying north ... thermost part of the said circle, and all rents

*Answer.*

and services, royalties, franchises, duties, jurisdictions, privileges and liberties thereunto belonging, and by another indenture of the same date, for the consideration therein likewise mentioned, had also bargained, sold, enfeoffed, and confirmed under the said William Penn, Esquire, his heirs and assigns forever all that tract of land upon Delaware River and Bay, beginning twelve miles south from the town of New Castle, otherwise called Delaware, and extending south to the Whore Kills, otherwise called Cape in Lopen, with all isles, rivers, rivulets, bays and inlets, royalties, franchises, powers, privileges, and immunities whatsoever, and in and by the said indentures, appointed and authorized John Moll, esquire, and Ephraim Harman, gentleman, to deliver to him, the said William Penn, free and actual possession of the premises, as by the said indentures, there produced and shown to said Commander-in-Chief and Council, and by them [37] well approved of and entered in the public records of said Province, did and may more at large appear; and said proclamation further recited that the said Commander-in-Chief and Council being thereby fully satisfied of the said William Penn's right to the possession and enjoyment of the premises; whereupon the said order or proclamation proceeded, that the said Commander-in-Chief and Council theretofore thought fit and necessary to signify and declare the foregoing to the persons to whom said proclamation was addressed, to prevent any doubt or trouble that might arise or accrue, and to give them their thanks for their good services done in their several offices and stations during the time they remained under his Royal Highness' Government; which proclamation concluded as follows: "Expecting no further account than that you readily submit and yield all due obedience and conformity to the powers granted to the said William Penn in and by the said indentures in the performance and enjoyment of which we wish you all happiness." And

fendant refers to the said order or proclamation due record thereof, and prays that the same may, produced in this cause be taken as a part of this wer.

That the Duke of York having, by each of his dentures of feoffment of the twenty-fourth of 1682, covenanted with the said William Penn to nd procure further assurance of the premises d within the said recited indentures of feoffment said, he, the said Duke of York, did in pursuance formance of his said covenants, very shortly date of the said feoffments make his applica- the said King, Charles the Second, for a more and express grant under the great seal of of the said lands and waters contained in the ments, and since called the three lower counties. procure and obtain the same.

nt to the said application of the said Duke the said King, Charles the Second, by his tent, under the great seal of England, bearing Westminster on or about the twenty-second day h, which was in the thirty-fifth year of his nno Domini 1683, which [38] date was not en calendar months after the date of the said said feoffments, did give and grant unto said Duke of York, his heirs and assigns, all that, of New Castle, otherwise called Delaware, and on or thereunto belonging, situate, lying and tween Maryland and New Jersey in America; that tract of land lying within the compass or twelve miles about the said town, situate lying upon the River Delaware, and all the islands said River Delaware, and the said river and soil ying north of the southermost part of the said twelve miles about the said town; and all that

*Answer.*

tract of land upon Delaware River and Bay, beginning twelve miles south from the said town of New Castle otherwise called Delaware, and extending south to Cape Lopen; together with all the lands, islands, soils, rivers harbors, mines, minerals, quarries, woods, marshes, waters lakes, fishings, hawkings, huntings and fowlings, and all other royalties, privileges profits, commodities and hereditaments, to the said town, fort, tracts of land, islands and premises, or to any or either of them belonging or appertaining with their and every of their appurtenances, situate lying and being in America, and all of the said King's estate, right, title and interest, benefit advantage, claim and demand whatsoever, of, in and to the said town, fort, lands or premises or any part or parcel thereof, and the reversion and reversions, remainder and remainders thereof, together with the yearly and other rents, revenues and profits of the premises and of every part or parcel thereof; to have and to hold the said town of New Castle, otherwise called Delaware and fort, all and singular the said lands and premises with their and every of their appurtenances, thereby given and granted, or thereinbefore mentioned to be given and granted, unto the said James, Duke of York, his heirs and assigns forever; to be holden of the said King, his heirs and successors, as of his manor of East Greenwich, in his County of Kent, in free and common soccage, and not in capite or by Knight service; yielding and rendering, and the said James, Duke of York, for himself, his heirs and assigns, did thereby covenant and promise to yield and render unto the said King, his heirs and successors, [39] of and for the same, yearly, and every year, four beaver skins, when the same should be demanded, or within ninety days after such demand made.

And of the King's special grace, certain knowledge, and mere motion, for him, his heirs and successors, the said King did thereby give and grant unto the said

...ke of York, his heirs, deputies, agents, com-... and assigns, full and absolute power and ... to correct, punish, pardon, govern and rule, ... subjects of said King, his heirs and successors, ...ther person or persons as should from time to ...venture themelves into any of the ports and ...oresaid, or that should or did at any time ... inhabit the same, according to such laws, ...rdinances, directions, and instructions, as by ... Duke of York, or his assigns, should be estab-... in defect thereof, in cases of necessity, accord-... good discretion of his deputies, commissioners, ... assigns respectively, as well in all cases ...rs capital and criminal as civil, both marine ... so always as the said statutes, ordinances ...dings be not contrary, but (as near as may ...ble to the laws, statutes and government of ...ing's realm of England; and saving and reserv-... King, his heirs and successors, the receiving, ... determining of the appeal and appeals of ... person or persons of, in, or belonging to the ... lands, and premises aforesaid, or touching ...ent or sentence to be there made or given.

... said Letters Patent the said King further ...hat it should and might be lawful to and for ... Duke of York, his heirs and assigns, from time ... nominate, make, constitute, ordain and confirm ... as aforesaid, by such name or names, style ... as to him or they should seem good; and like-...voke, discharge, change and alter as well as ...ingular governors, officers and ministers, which ...ereafter be by him, or them, thought fit and ... be made or used within that aforesaid town, ... and premises; and also to make, ordain and ... all manner of laws, orders, directions, instruc-..., forms and ceremonies of government and

Answer.

magistracy, fit, and necessary for and concerning the government of the said town, fort, lands and premises, so always as the same be not contrary to the laws and statutes of said King's realm of England, but as near as may be, agreeable thereunto, and the same at all times thereafter to put in execution or abrogate, revoke or change not only within the precincts of the said town, fort, lands and premises, but also upon the seas in going and coming to and from the same, as the said Duke of York, or his heirs and assigns, in their good discretion, shall think fittest for the good of the adventurers and inhabitants. And the said King did thereby further grant, ordain and declare that such governors, deputies, officers, and ministers, as from time to time shall be authorized and appointed in manner and form aforesaid, shall and may have full power and authority within the said town, fort, lands and premises, to use and exercise martial law in case of rebellion, insurrection and mutiny, in as large and ample manner as the said King's Lieutenants, in his counties within his realm of England, had or ought to have by force of their commission of Lieutenancy, or any laws or statute of his said realm.

And the King by said Letters Patent did further for himself, his heirs and successors, grant unto the said Duke of York, his heirs or assigns, in his or their discretions, from time to time, to admit such and so many person and persons to trade and traffic into and within the said town, fort, lands and premises, and into every and any part and parcel thereof, and to have, possess and enjoy any lands and hereditaments in the parts and places aforesaid, as they shall think fit, according to the laws, orders, constitutions, and ordinances, by the said Duke of York, his heirs, deputies, commissioners and assigns, from time to time, to be made and

...ained by virtue of, and according to, the true intent ...meaning of said presents, and under such conditions, ...ervations and agreements, as the said Duke of York ...irs and assigns, should set down, order, direct and ...ed, and not otherwise, as aforesaid.

And the said King, did further of his especial Grace, ...n knowledge, and mere motion, for himself, his heirs, ...ssors, give and grant unto the said Duke of York ...irs and assigns, by said presents, that it should and ...be lawful to and for him, them, or any of them, at ...d every time and times thereafter, out of any of ...d King's realms or dominions whatsoever to take ...carry and transport, in and into their voyages for ...wards the plantation of the said town, fort, lands, ...remises, all such and so many of the said King's ...subjects, or any other strangers being not pro- ...ed, or not restrained and that would become the said ...loving subjects, and live under his allegiance, and ...willingly accompany them on the said voyage, to- ...with all such clothing, implements, furniture, or ...things, usually transported and not prohibited, as ...ld be necessary for the inhabitants of the said town ...lands and premises, and for their use and defense ...and, and managing and carrying on the trade with the ...there, and in passing and returning to and fro, ...ding and paying unto the said King his heirs and ...ssors, the customes and duties therefore due and ...able, according to the laws and customs of the said ...'s realm.

And the said King by said letters patent did also for ...himself, his heirs and successors, grant to the said Duke ...York, his heirs and assigns, and to all and every such ...vernor and Governors, Deputy or Deputies, or their ...ers or ministers, as by the said Duke, or his heirs or ...igns, should be appointed, to have power and authority

of government, and command in and over the inhabitants of the said town, fort, lands and premises, that they and every one of them, should, and lawfully might, from time to time, and at all times forever thereafter, for their several defences and safety, encounter, repulse and expel and resist by force of arms, as well by sea as by land, and by all ways and means whatsoever, all such person and persons as, without the special license of the said Duke, his heirs or assigns, should attempt to settle and inhabit within the several precincts and limits of the said town, fort, lands and premises, and also all and every [42] such person or persons whatsoever, as should attempt at any time thereafter, the destruction, invasion, detriment or annoyance, to the parts, places, town, fort, lands and premises aforesaid or any part thereof.

And the said King did, by his said Letters Patent, declare his will and pleasure to be, and did thereby declare and grant, that said Letters Patent, or the enrollments thereof should be good and effectual in law, to all intents and purposes whatsoever notwithstanding the not well or true reciting or mentioning of the premises, or any part thereof, or of any former or other Letters Patent or grants whatsoever, made or granted of the premises, or of any part thereof, by the said King, or any of his progenitors, unto any person or persons whatsoever, bodies politic or corporate, or any other law or other restraint uncertainty or imperfection whatsoever to the contrary in any wise notwithstanding, although express mention of the true yearly value or certainty of the premises, or any of them, or of any other gifts or grants by him, or by any of his progenitors, theretofore made to the said Duke of York, in said presents was not made, or any statute, act, ordinance, provision, proclamation or restriction theretofore had, made, enacted or provided, or any other matter,

...use or thing whatsoever, to the contrary thereof in any ... notwithstanding.

...As by reference to said Letters Patent will more fully ... at large appear. To which Letters Patent this defend... hereby refers and prays that the same may, when pro... in this cause, be taken as a part of this, its answer.

...That immediately after the said last mentioned Letters ...ent had passed the great seal, the said Duke of York, ... was no other than a trustee for the said William Penn ...rein, and had obtained them in pursuance of his said ...enant for further assurance, did deliver over the same ...inal last mentioned letters patent under the great seal, ... the said William Penn, into custody and possession of ...m, his heirs and assigns, the same did thereby pass ... ever after remain.

...20.—And this defendant further avers that, upon ...making of the feoffments from the Duke of York to ... said William Penn, and of the said Royal Letters ...ent to the Duke of York, for the benefit of the said ...illiam Penn as aforesaid, the said William Penn straight ...ay entered into full seisin, possession and exercise of the ...nds, territories, rivers, waters, the royalties, govern... and rights of government, and jurisdiction, whether ...islative, judicial or executive, conferred by the said ...offments and said Letters Patent; and particularly en... upon the possession and full exercise of all of the ...ties, powers, royalties, privileges, franchises, jurisdic... governments and rights of government conferred ...y said two last mentioned feoffments and said letters ...tent, within, upon and over the territory, lands, soils, ...aters, and property included within the compass of said ...elve mile circle, and had and exercised, within said last ...entioned bounds all and every the rights of a proprietor, ...under the terms of all of his muniments of title aforesaid.

*Answer.*

And further that in the improvement and settlement of said last mentioned territories, the said William Penn and his heirs expended large sums of money. That the said William Penn, and his heirs, continued in the possession, enjoyment and exercise of all the powers and privileges, rights and titles, jurisdiction and government of the said territories, lands and premises, with the full knowledge of, and with the full recognition of his governmental and proprietary rights therein by the Crown of England, and without its let or hindrance, from the time of the taking of possession and exercise of the same as aforesaid, until the time of the American Revolution, excepting that for a short period during the reign of Queen Anne of England, he was removed from the government of his said Provinces, but shortly thereafter was most fully and completely restored thereto. All of which by reference to very numerous grants by William Penn and his heirs to sundry persons, and from numerous legislative, judicial and executive acts, laws, records, documents, provincial charters and acts of provincial settlement, will more fully and at large appear, to all of which this defendant prays leave to refer and to make the same, when produced in this cause, a part of this, its answer.

[44] 21.—That on or about the month of December 1682, the said William Penn under his hand and seal, as proprietor and governor of the Province of Pennsylvania, and of the said three Lower Counties, issued and published an Act of Union for annexing and uniting of the counties of New Castle, Jone's, and Whorekills, alias New Dale, to the Province of Pennsylvania. The said Act of Union, after sundry recitals of the title of the said William Penn to the said Province of Pennsylvania and the said Three Lower Counties, as by reference thereunto will fully appear enacted that the county of New Castle, Jone's and Whorekills, alias New Dale, should be annexed, and by

*Answer.*

the authority of the said proprietor and governor, by and with the advice and consent of the deputies of the freemen of said Province, and counties aforesaid in assembly made, were thereby annexed unto the Province of Pennsylvania, as of the proper territory thereof; and that the people therein should be governed by the same same laws, and enjoy the same privileges in all respects, as the inhabitants of Pennsylvania did or should enjoy from time to time therein, anything in said law, or any other law, act or thing, in said Province to the contrary thereof in any wise notwithstanding. And this defendant hereby refers to the said Act of Union and prays that the same when produced in this cause, may be taken as a part of this, its answer.

22. That the union of the said Three Lower Counties to the Province of Pennsylvania continued in full force, both legislative and otherwise, until about the year 1701; in which said year, the said William Penn granted and promulgated a charter of privileges to the inhabitants of the said Province of Pennsylvania and said Three Lower Counties, called the Territories thereof, whereby he granted full permission under said charter of privileges for the said Province and the said Territories, to have and maintain several legislatures. That subsequent to about the year 1702, no further joint legislative assemblies of representatives from the Three Lower Counties and from the said Province of Pennsylvania were ever held. And this defendant hereby refers to the said charter of Privileges, and the acts and proceedings of the legislative bodies of [46] the Three Lower Counties, and of the said Province of Pennsylvania, so far as relating to the said legislative disunion between the Three Lower Counties and the said Province of Pennsylvania, and prays that the same may, when produced in this cause, be taken as a part of this, his answer.

*Answer.*

23.—That from the year 1682 down to the year 1776, the said William Penn and his heirs, under various wills, deeds of settlement, and descents, continually had, held, possessed, retained, and exercised the rights of proprietor and proprietors of the territory, lands, waters, and premises, included within the compass of the said twelve mile circle, under the powers, titles, and authorities granted to the original proprietor, and so held and exercised by him as aforesaid, and as modified by various charters of privileges granted by said proprietors to the Province of Pennsylvania, and the said Three Lower Counties. And this defendant prays leave to refer to the said wills, deeds of settlement, and descents, or to the due records thereof, and to the several charters of privileges, for further particulars in this behalf; and that the same may, when produced in this cause, be taken as parts of this, its answer.

24.—That at the date of the American Revolution, and by the Declaration of Independence, bearing date the Fourth day of July, 1776, the territorial limits of the State of Delaware extended to and included, inter alia, all those lands and that portion of the Delaware River, its waters and the soil and bed thereof to low water mark on the New Jersey shore, included within the compass of said twelve mile circle; and such its limits and boundaries had continuously been and remained down to the date of said Revolution from about the year 1682. That by said American Revolution, the State of Delaware became and was and from thenceforth has been, a free and independent state, and as such became entitled to have and to hold all such rights as free and independent states may have or hold to do all acts and things which independent states may of right do; and by force of the said Revolution and said Independence the said State of Delaware became invested with all and every power of govern- [46] ment in and over the territory of said State and the tide waters

...wer

...acent thereto, and particularly to the full extent of the ...mits and boundaries of said State as they existed at the ...me of said American Revolution as aforesaid, and also ...ame invested, not only with all the property and rights ...property, royalties, powers, and franchises, governmental powers and authority and jurisdictions within and pertaining to said State, which immediately before said ...volution were vested in the then and former proprietor ...proprietors of its territory within the limits and bounds ...resaid, but also with all the property rights of property, privileges, franchises, powers, governmental power ...jurisdictions, if any thereof yet then remained in the ...wn of England, in manner and form as they were so ...ted in said Crown; that by means of said Revolution, ...said independence of the State of Delaware and the ...ty of Peace between the King of Great Britain and the ...ted States of America, concluded at Paris, September ..., 1783, all that portion of the bed, soil and water of ...Delaware River last hereinbefore mentioned, to low ...r mark on the New Jersey shore and included within ...compass of said twelve mile circle, became vested in ...mple in the State of Delaware; and so the title to ...bed of said portion of said river, this defendant respectfully submits, hath ever since continued and now is.

...—That to and in the said bed and soil of said por... of the Delaware River and to jurisdiction in and over ...River, so as aforesaid claimed, this defendant hath ...and right by long and peaceable possession, use and ...yment, which use, possession and enjoyment began ...the earliest determination of the said boundaries of ...State as hereinbefore set forth and hath ever since ...tinued, without interruption or dispute. That in, over ...with reference to the portion of said Delaware River ...the soil and the bed thereof, as a part of the recog... territory of said State of Delaware, the said State

*Answer.*

hath from time to time conclusively passed and enforced legislative acts, its courts have continuously, both before and after the American Revolution, exercised jurisdiction and issued and enforced processes, writs, [47] orders, judgments and decrees, and the courts of the United States within the district of said State, have enforced their processes, orders and writs. That with reference to the rights of fishing and every regulation and control thereof in said river, within the limits of said twelve mile circle, the State of Delaware hath never relinquished or abandoned the proprietary rights which it hath always possessed, had and defended, from the inception of its title to the bed and soil and waters of said river, within the limits of said twelve mile circle, in the year 1682, to the present day, but on the contrary, this defendant saith that the said proprietary rights, and title to said fisheries and fishings in said portion of said river, and the regulation and control thereof, this defendant hath continuously from the said year 1682 to the present day, claimed, exercised and defended.

That in the exercise, by this defendant, of proprietary right, jurisdiction and sovereignty, in and over the said twelve mile circle, its Legislature did, on May 27th, 1813, pass an Act entitled "An Act Ceding to the United States of America the jurisdiction which this State has over the Pea Patch, on certain conditions therein mentioned" (being Digest of Delaware Laws of 1829, page 673), in and by which the State of Delaware ceded to the United States of America, for the purpose of erecting forts, batteries, and fortifications thereon for the protection of the River Delaware and the adjacent country, a certain island in the River Delaware and within the twelve mile circle; which was thereupon in pursuance of said cession, occupied by the Government of the United States of America, and fortifications were thereupon built thereon, and have

since been maintained. That after said cession, and
to the year 1847, the title of the United States of
America, under said cession, was questioned by James
Humphrey who claimed through sundry mean convey-
ances, under grants from the State of New Jersey; and
that for the purpose of determining the right, title, sover-
eignty and jurisdiction of the State of Delaware in and
over the said island, at the time of said cession, as afore-
said to the United States of America, an arbitration of and
concern- [48] ing the same was had, heard, and deter-
mined by and before the Honorable John Sergeant of Penn-
sylvania, who was designated as an arbitrator for the ex-
press purpose of determining the said right, title, jurisdic-
tion and sovereignty, under and pursuant to the authority
of an Act of the Congress of the United States, approved
August 8th, 1846, under which the said arbitrator was
appointed, and, when so appointed, was constituted a spe-
cial tribunal for determining the same. That the question
of right, title, jurisdiction and sovereignty of the State of
Delaware of, in, to and over the River Delaware and the
shores thereof, within the twelve mile circle, was the very
question involved in said litigation and determined by the
said special tribunal so created for that purpose; and that
in said litigation and decision the parties to this suit,
that is to say, the States of New Jersey and Delaware,
were privies in estate to and with the respective parties
thereto; that during the hearing and determination of said arbitra-
tion full and accurate minutes of all proceedings were
taken by the Secretary of the reference, who was then,
and before and subsequently, the regular and only re-
porter of the decisions of the District and Circuit Courts
of the United States in the District of Pennsylvania and
the Third Circuit; and that said minutes, having been
carefully written out, were transmitted to the proper de-
partment of the Government of the United States and

*Answer.*

were, pursuant to a resolution of the Senate of the United States, printed and published as Senate Executive Document No. 21 of the first session of the Thirtieth Congress. That the decision of the said arbitrator was, that the title and jurisdiction to and over said island and to the river and soil thereof, within the said twelve mile circle, was in the said State of Delaware. That the said decision was reached after the most thorough examination of the facts, upon the original documents, the testimony of witnesses, the law applicable thereto, and the argument of able counsel representing both sides. And the defendant craves leave to refer to the said Senate Executive Document No. 21, and to the record and proceedings of the said arbitration and decision, when produced at the hearing of this cause.

[49] Whereupon this defendant, having fully answered, confessed, traversed and avoided or denied all the matters in the said Bill of Complaint material to be answered, according to the best knowledge and belief of this defendant, humbly prays this Honorable Court to enter its decree that this defendant be hence dismissed with its reasonable costs, in this behalf, most wrongfully sustained.

State of Delaware, by

REUBEN SATTERTHWAITE, JR.
Attorney General
Solicitor of the Defendant.

## NOTICE.

...n. Reuben Satterthwaite, Jr., Attorney-General of ...ate of Delaware.

...se be advised that on Monday, December 9, 1929, ...plaintiff will apply to the Court for the appointment ...Special Master.

WILLIAM A. STEVENS,
Attorney-General.

DUANE E. MINARD,
Assistant Attorney-General,
*Solicitors for Plaintiff.*

...ed December 2, 1929.

...scribe hereof is acknowledged this 2d day of Decem-...1929.

REUBEN SATTERTHWAITE,
*Solicitor for Defendant.*

[2] **MOTION FOR THE APPOINTMENT OF A SPECIAL MASTER.**

Comes now the State of New Jersey, by its Attorney-General, and asks the Court for the appointment of a Special Master to take testimony and prepare and file his findings, with recommendations for a decree herein.

WILLIAM A. STEVENS,
Attorney-General.

DUANE E. MINARD,
Assistant Attorney-General,
*Solicitors for Plaintiff.*

WALTER C. BACON,
Counsel.

December 9, 1929.

[1] **MOTION FOR THE APPOINTMENT OF A SPECIAL MASTER IN THIS CASE.**

Mr. Duane E. Minard, of Newark, New Jersey, for the motion.

January 6, 1930, Granted; and William L. Rawls, Esquire, of Baltimore, state of Maryland, is appointed Special Master in this cause, with the power to summon witnesses, issue subpoenas, and to take such testimony as may be introduced and such as he may deem necessary to call. The master is directed to make findings of fact and conclusions of law, and to submit the same to this court with all convenient speed, together with his recommendations for a decree. The findings, conclusions and recommendations of the special master shall be subject to consideration, revision, or approval by the court. (*280 U. S. 529; 74 L. ed. 595.*)

IN THE SUPREME COURT
OF THE UNITED STATES

- - -

STATE OF NEW JERSEY : NO. 134, Original
:
v. :
:
STATE OF DELAWARE :

- - -

OCTOBER 26, 2006

- - -

Oral deposition of DAVID P. BLAASCH taken pursuant to notice, was held at the law offices of CONNOLLY, BOVE, LODGE & HUTZ, LLP, The Nemours Building, 1007 North Orange Street, 9th Floor, Wilmington, Delaware beginning at 9:25 a.m. on the above date, before Dottyann Y. Walsh, a Certified Shorthand Reporter and Notary Public in the State of Delaware.

- - -

ESQUIRE DEPOSITION SERVICES
Suite 1210
1600 John F. Kennedy Boulevard
Philadelphia, Pennsylvania 19103
(215) 988-9191

10

Q. Can you tell me the substance of those conversations.
A. **The conversations were limited to scheduling, rescheduling.**
Q. First we will get into a little background information. Where did you go to high school?
A. **New York.**
Q. When did you graduate?
A. **1984.**
Q. Did you go on to college?
A. **Yes.**
Q. What college did you attend?
A. **SUNY Cobleskill, State University of New York at Cobleskill.**
Q. Spell Cobleskill for me.
A. **C-O-B-L-E-S-K-I-L-L.**
Q. Did you graduate from SUNY Cobleskill?
A. **Yes.**
Q. When did you graduate?
A. **1986.**
Q. What degree did you receive?
A. **An associates degree.**

11

Q. In what major or field of study?
A. **Fisheries and wildlife technology.**
Q. Did you have any other formal education after your associates degree from SUNY?
A. **Yes.**
Q. Could you tell me what that was?
A. **Delaware State Police Academy.**
Q. Did you graduate from the Academy?
A. **Yes.**
Q. When was that?
A. **1988.**
Q. Did you receive some sort of certificate or degree as a result of that Academy attendance?
A. **Yes.**
Q. What degree did you receive?
A. **Certified through the Council on Police Training, COPT certification.**

12

Q. Where are you employed?
A. **State of Delaware.**
Q. What division of the State of Delaware do you work for?
A. **Department of Natural Resources and Environmental Control, called DNREC, D-N-R-E-C.**
Q. And where particularly in DNREC do you work?
A. **Division of Fish and Wildlife Enforcement.**
Q. And what is your position with DNREC Fish and Wildlife Enforcement?
A. **I believe the common title now is enforcement officer 5, called lieutenant.**
Q. And how long have you been a lieutenant with DNREC?
A. **I believe it is three or four years.**
Q. And before holding the position of lieutenant, what position or job did you hold?

13

A. **Senior corporal.**
Q. And was that also with DNREC enforcement?
A. **Yes.**
Q. How long did you hold the position of senior corporal?
A. **I don't remember.**
Q. Was senior corporal your first position with Delaware DNREC?
A. **No.**
Q. What position did you hold with DNREC prior to becoming a senior corporal?
A. **Corporal.**
Q. Prior to being a corporal were you also employed with DNREC?
A. **Yes.**
Q. Can you tell me what positions you held?
A. **Agent first class, AFC.**
Q. Was agent first class basically your entry position with DNREC when you sought employment there?
A. **No.**

14

Q. What was your position prior to agent first class?
**A. Trainee, fish and wildlife enforcement trainee.**
Q. Would that have been your first position at DNREC?
**A. Yes.**
Q. Do you remember when you began your employment as a trainee at DNREC?
**A. Yes.**
Q. Could you tell me?
**A. March of 1988.**
Q. Was DNREC the employer you went to immediately after graduating from the Delaware Police Academy?
**A. Yes.**
Q. Can you tell me what your responsibilities were as a trainee at DNREC fish and wildlife.
**A. Yes, my responsibilities as a trainee were to learn the job of a fish and wildlife enforcement agent.**
Q. How long did the trainee

15

position last?
**A. I don't remember.**
Q. After completing the trainee position, you moved to agent first class?
**A. Yes.**
Q. And what were your responsibilities as an agent first class?
**A. My primary responsibilities were to enforce the fish, game and boating regulations in the State of Delaware as well as any criminal and traffic violations that might be associated with those fish, game and boating stops.**
Q. I forget if I asked you before, do you remember how long you remained an agent first class before becoming corporal?
**A. I don't remember.**
Q. When you moved from becoming agent first class to corporal, what were your responsibilities?
**A. Responsibilities I had as a corporal were similar to those of the**

16

**agent first class, patrolling the lands and waters of Delaware, enforcing fish, game, boating regulations as well as criminal and traffic law. Primarily fish, game and boating.**
Q. Do you recall how long you remained a corporal?
**A. Ma'am, I don't remember.**
Q. When you became a senior corporal with Delaware DNREC, what were your responsibilities?
**A. Responsibilities as senior corporal were to enforce the fish, game and boating laws in the State of Delaware as well as the criminal, traffic violations associated with fish, game and boating stops; also, and this can go back to the other ranks as well, instructing at hunter safety, boater safety classes, doing public presentations, public outreach.**
Q. Where do you conduct your hunter and boating safety classes?
**A. Various locations throughout**

17

**New Castle County.**
Q. I believe you said that for the last three or four years you held your present position as lieutenant with DNREC, correct?
**A. That is correct, I believe it is three or four years.**
Q. Can you tell me what your responsibilities are as the lieutenant?
**A. My responsibilities as a lieutenant have switched from routine patrol to more of an investigative supervisory position.**
Q. How many employees do you supervise?
**A. One.**
Q. And who would that be?
**A. Sergeant John Webb.**
Q. Is Sergeant John Webb the individual who actually conducts the patrols over the last three or four years?
**A. Sergeant Webb conducts some patrols.**

18

Q. What patrols does he conduct?
**A. Sergeant Webb conducts waterborne as well as upland patrols, targeting violations of fish, game and boating laws and regulations.**
Q. Would it be fair to say that you have not been involved in routine patrols for the last three or four years?
**A. No, that is not fair to say.**
Q. What would be accurate then, do you conduct routine patrols?
**A. I do occasionally conduct routine patrols.**
Q. Can you describe for me the routine patrol of a DNREC officer such as yourself.
**A. The routine patrol of DNREC officers assigned to fish and wildlife is to patrol the lands and waters of the State of Delaware, to enforce fish, game, boating regulations and law, to detect violations of fish, game and boating law, respond to complaints from the public**

19

**called in to our dispatcher about violations of fish, game and boating laws and regulations.**
Q. Where are your operations based for the water patrols in the Delaware?
**A. Are you asking my personal operations or the division's operations?**
Q. The division's operations.
**A. The enforcement sections' main office is in Dover, Delaware.**
Q. And where does enforcement base its equipment, its boats that it uses for these patrols?
**A. Several locations throughout the state, one in each county, one field office in each county.**
Q. And what area of the state is serviced by your Delaware City facility?
**A. New Castle County.**
Q. Can you describe for me DNREC's enforcement patrols within the area of the Delaware River, commonly

20

known as the 12-mile circle? As a factual basis, are you familiar with the 12-mile circle in the Delaware River?
**A. Not really.**
Q. What is your understanding of the Delaware/New Jersey border at the Delaware River?
**A. Delaware's territory extends to the mean low watermark on the New Jersey shore of the Delaware River.**
Q. And is that your understanding for the entire coastline or is there a discrete area to which that applies?
**A. It is not for the entire coastline.**
Q. Could you tell me where that border applies as you understand it.
**A. That border would begin at the southern end at Artificial Island and it continues north up to near Oldmans Creek.**
Q. Could you describe for me now DNREC enforcement patrols within the

21

area of the Delaware River from Artificial Island to Oldmans Creek?
**A. Enforcement patrols consist of fish and wildlife agents from Delaware checking boats, recreational boats, commercial fishing boats and also doing special operations, targeting negligent operation, operating under the influence and commercial fisheries violations and also recreational fishing violations.**
Q. Is there any regularly scheduled pattern for these patrols?
**A. The pattern would depend upon the seasons and tides.**
Q. Is there a schedule or routine for these patrols that you could describe during the summer months?
**A. During the summer months fish and wildlife agent patrols are geared mostly towards recreational boating law enforcement.**
Q. Are your enforcement people out on the river every day, multiple times a day, is there some way that you

22

could describe the frequency of your patrol?

**A. Are you asking if I personally go once a day or the agents in general?**

Q. The agents in general, the people.

**A. I can't tell you how many times per day the agents go out. However, the agents are required, fish and wildlife agents are required to log in 150 hours underway time, that would be on board a patrol boat, 150 hours per year. During the summer months, the agents are generally assigned anywhere from 25 to 30 hours per month underway.**

Q. And how many agents are there on staff at DNREC who conduct these patrols?

**A. The entire DNREC, I'm not sure. I couldn't give you an accurate number.**

Q. How about in New Castle County where your base of operations is?

23

**A. New Castle County, the agents that are assigned boat hours per month, I believe there is five or six of us that are assigned hours underway.**

Q. Are you as a lieutenant still assigned hours underway each month?

**A. I am assigned some hours underway, but not as many as the lower ranking officers.**

Q. Who supervises the five or six officers who do these patrols out of New Castle?

**A. Captain Robert Hutchins supervises the other officers with the exception of Sergeant Webb.**

Q. Is there a routine path or practice for conducting these water patrols that you could describe for us?

**A. I'm not sure what you mean by routine path or practice.**

Q. On an average day, on a routine patrol, boat puts into water at Delaware City, where would it proceed to?

**A. That depends on the specific goal of that operation, if it was a scheduled patrol or scheduled special operation or just routine patrol. It would also depend on the seasons and weather.**

24

Q. Summer day, routine patrol, could you describe for me the course your patrol would take on the water?

**A. The course of routine patrol on a summer day could possibly include higher traffic areas where more recreational boaters would be likely to congregate.**

Q. Can you describe the higher traffic areas in your jurisdiction?

**A. The higher traffic areas generally include boat ramps and marinas.**

Q. Are there any boat ramps and marinas on the Jersey side of the river that you would routinely patrol?

**A. Yes.**

Q. Can you tell me what they are?

**A. The Pennsville boat ramp.**

25

Q. If you can, describe what actions your enforcement officer would take coming upon the Pennsville boat ramp with just recreational boat traffic there.

**A. Stop and board any vessels, observe committing rules of the road violations.**

Q. Assuming it is the right time of the year -- assuming -- assuming we are at the right time of the year for fishing to be permitted on the river, would you also make inspections for fishing licenses?

**A. The state doesn't require fishing license for recreational fisbermen in tidal water. But we would check those boats if it was the closed season, we would check those boats for undersize or possessing any striped bass during that time of the year during closed season.**

Q. If you found a violation of either the rules of the road or fishing

26

rules, what actions would your officer take?
A. **The officer would generally issue a voluntary assessment, I should say write a ticket, make an arrest. And he would also board that vessel and during his boarding check that boat for any equipment violations, to insure that the operator of the boat was in compliance carrying all of the safety equipment that was necessary on board -- flares, life jackets, horns, bells, whistles, PFDs, and all registration, current registration. And nighttime lights.**
Q. If your officer determined that there was an equipment deficiency, what actions would they take?
A. **The officer would arrest him, write a ticket, issue a voluntary assessment.**
Q. What is a voluntary assessment?
A. **A voluntary assessment is**

27

**mail-in ticket, similar to a traffic ticket I suppose, with the violations noted on the Universal Criminal Complaint and Summons. The defendant has a certain amount of time, a month to either send the thing in with payment or else contest it.**
Q. Where do tickets that are contested go for hearing?
A. **Most of us drop all our tickets off, our court copies off to the justice of the peace courts, either 9 in Middletown or 11 up in New Castle. The defendant will either contest them in JP court or Court of Common Pleas in Wilmington.**
Q. If you notice or your officer discovers a boat with inadequate safety equipment on the river, is the boater then allowed to continue on the water or are they directed to do something?
A. **Ma'am, it depends what sort of violation they have committed**

28

**determines whether or not they will just be directed back to their home port or whether they will he towed in or whether they will be escorted in.**
Q. Can you describe for me the nature of violations that would result in towing or an escort in. And when you say in, I'm assuming you are talking about back to your base of operations, is that correct?
A. **Not necessarily.**
Q. Perhaps then you could describe to me the violations that would result in towing or escort of a vessel.
A. **If the operator was intoxicated, if there were children on board without life jackets, if there were adults on board without life jackets, if there was no life jackets on the vessel period.**
Q. How do you determine where to tow or escort the vessel to in those situations?
A. **Unless the operator is going**

29

**to be taken into custody, such as a operating under the influence, that vessel will be either towed or escorted to its mooring or the ramp it was launched out of.**
Q. If the vessel is moored or launched out of a marina on the New Jersey shore, would your officers then take the vessel to the New Jersey marina?
A. **Yes.**
Q. But assuming the operator is intoxicated and going to be taken into custody, where would he go with his vessel at that point?
A. **Most of the time back to Delaware City where our police boats are moored.**
Q. You said most of the time, are there occasions where you have taken them somewhere else?
A. **Yes.**
Q. Could you describe where you take them on those alternate occasions?
A. **To the Wilmington fire dock**

30

on the Christiana River. It is close to Wilmington PD where they have the toxalyzer machine.
Q. When conducting your patrols, do your officers ever board docks, piers or wharves that are attached to the New Jersey coastline to take enforcement action?
A. Occasionally.
Q. Can you describe those occasions to me.
A. The most recent one I can recall, there was a call for assistance for a vessel in distress which we also do search and rescue in addition to the enforcement duties. I drove my patrol boat to the east side of Pea Patch Island, that was the location the vessel in distress was described as being. It was described as a small boat with three or four men on board that was yelling for help, the person reporting the incident was supposed to have called in from the pier on Fort Mott. I drove my patrol

31

boat to the area, I checked several boats that were fishing, there was some sort of fishing contest going on, I believe it was for catfish. None of the boats I talked to had any information or knowledge of men yelling for help. I drove my police boat over to the Fort Mott pier, I tied off, I hopped the fence, and talked to the half dozen people standing up on the pier. None of them admitted to calling to dispatcher with a report of men yelling for help. None said that they had heard anybody yelling for help.
Q. Other than as part of your investigation, does DNREC routinely patrol on the docks and piers in New Jersey or do you stay away from them and stay on the water?
MR. BOYER: Objection, compound. You may answer the question.
THE WITNESS: Are you asking if we patrol the piers?

32

BY MS. CHUDZIK:
Q. Yes.
A. I believe the parks, the division of parks patrols the pier at Fort Mott.
Q. And when you say the division of parks, the division of parks from which state are we talking about?
A. Delaware division of parks and recreation.
Q. I believe earlier you said that in addition to routine patrols, you do special operations on the river as part of your duties?
A. Yes.
Q. Could you describe those special operations to me.
A. A special operation would be providing an enforcement presence for an event that was to include a large number of recreational vessels such as a fireworks display at night, a boat parade, this special operation could also include a pattern check of every boat in

33

a high traffic area or the pattern might include every third boat that passed by a location, every second boat. It is a certain pattern so we are not picking out boats at random you understand. So we are not targeting boats, we want to make it as fair as possible. Normally our pattern checks consist of every boat unless we are busy at the time.
Q. And how often would checks like that be conducted by DNREC?
A. More than weekly during the summer. The pattern check could also include OUI enforcement, setting up specifically at times when people would be leaving events. And we would check every boat to insure that the operator is not intoxicated.
MR. BOYER: For the record, tell us what OUI stands for.
THE WITNESS: Operating under the influence. Some states call it BUI, boating under the influence.

34

BY MS. CHUDZIK:
Q. Do you conduct these special operations on both the Delaware and New Jersey side of the river?
**A. Yes.**
Q. Can you tell me the locations in New Jersey at which you frequently conduct such operations?
MR. BOYER: Objection.
THE WITNESS: We don't --
MR. BOYER: I don't believe he testified to --
MS. CHUDZIK: The frequency.
MR. BOYER: Or in New Jersey.
BY MS. CHUDZIK:
Q. On the New Jersey side of the river, can you tell me where DNREC has conducted such operations?
**A. In the Delaware River on the east side of the channel, we conducted operations off the ramp in Pennsville.**
Q. Is there a way to describe for particularly what off the ramp in

35

Pennsville means?
**A. We were in the Delaware River to the west side of the Pennsville ramp.**
Q. Are there markers or buoys in the river that your officers use as reference points in setting up these operations?
**A. Not normally.**
Q. How would an officer on a DNREC boat determine -- that set up his location in Pennsville beyond the mean low waterline?
**A. Our patrol boats are large enough, the water is shallow enough that unless it is high tide, we can't get right up to the ramp.**
Q. So if I'm understanding this correctly, your boats are large enough that you really can't travel closer to shore beyond the mean low waterline, is that accurate?
**A. That would be correct unless it is high tide. At low tide we cannot**

36

**generally get past that mean low watermark.**
Q. How do the officers orient themselves during high tide to the mean low watermark?
**A. The officers generally stay 20 feet or so off the ramp in the shoreline. We try not to get close to either shore with the motors. There is generally a lot of sand, rocks, there could be pilings, and we don't generally try to run our patrol boats too close to either shore in order to protect the lower units and propellers.**
Q. Would it be fair to say that 20 feet from shoreline is your rule of thumb for conducting a patrol along the shore?
**A. I could say 20 feet roughly, but more so than the actual distance, we look at the depth gauges on our boats and try not to run in less than two feet of water.**
Q. In addition to your fish and

37

wildlife enforcement responsibilities, do your officers patrol or make inspections for any other purposes along the Delaware?
**A. No, we patrol for fish, game and boating. Occasionally we have been called for homeland security to do surveillance work, observation work, photography with other agencies.**
Q. In conducting your patrols or investigations along the Delaware, do you have occasion to coordinate with any New Jersey law enforcement agencies?
**A. Yes.**
Q. Could you describe those occasions for me.
**A. Most of the time it is Pennsville Police Department.**
Q. And how does this coordination happen?
**A. The City of Pennsville hosts an event called Septemberfest annually. It includes a fireworks display, and the Pennsville Police Department calls the**

38

division of fish and wildlife to provide a waterborne enforcement presence.
Q. When you are called upon to do this for Septemberfest, where would the DNREC officers locate themselves for this enforcement effort?
A. DNREC fish and wildlife enforcement agents generally park or moor or patrol the area right off of the Pennsville ramp.
Q. And when you say right off again, how close to the Pennsville ramp do you locate yourself?
A. I couldn't give you an exact distance because normally we circulate around through the crowd of boats checking safety equipment, registrations and also for rules of the road violations.
Q. In addition to Pennsville, are there any other locations on the eastern or New Jersey side of the Delaware that your enforcement officers are frequently drawn to?

39

A. Not as frequently as Pennsville.
Q. How about can you list after Pennsville the next location of most activity on the eastern or New Jersey side of the river?
A. It would either be Killcohook National Wildlife Refuge or possibly the area of the river near the Phoenix wreck, that would be down towards Salem Cove. Gull Island would be another one in that area.
Q. What is that?
A. It is called Gull Island.
Q. As a DNREC officer, what statutes of the State of Delaware are you charged with enforcing?
A. As a DNREC officer with the Division of Fish and Wildlife, I'm charged with enforcing the fish, game and boating regulations and laws and also associated criminal and traffic laws.
Q. Could you describe to me the traffic laws you are charged with

40

enforcing?
A. If I observe a dangerous moving violation on the road, I will then take action, I will take enforcement action to stop that moving violation. If I make a fish, game or boating arrest, and there is an associated motor vehicle violation, I then may or may not charge for that motor vehicle violation.
Q. I believe you stated earlier that Delaware doesn't have its own fishing restrictions or limitations, is that correct?
A. I don't remember saying that. We do have seasons, we do have regulations.
Q. What Delaware fishing regulations apply to fishing on the Delaware River?
A. Size limit for certain species of fish and also creel limits, that would be the number of fish a person can have. And finally there would be seasons where take was either allowed or

41

prohibited of certain species of fish.
Q. Are there any Delaware game regulations which apply to the Delaware River?
A. Game regulations would include waterfowl. Waterfowl would be the biggest game I could think of that would be regulated on the waters of the Delaware River.
Q. And what waterfowl regulations does Delaware have that you enforce?
A. Similar to the fishing. There is seasons for certain species of waterfowl. There is -- and there is bag limits as opposed to creel limits. Bag limits is the number of birds one can take in a certain amount of time. There is no size limits as there would be for fish.
(Recess at 10:21 a.m.)
(Resumed at 10:28 a.m.)
BY MS. CHUDZIK:
Q. Lieutenant, have you ever

42

issued a citation for a violation to someone for activity they have conducted on a pier or wharf attached to the State of New Jersey?

**A. Not as far as I can remember.**

Q. Going back to a routine summer patrol by a DNREC officer. Is there a standard route or path they are charged to take to cover the territory out of the New Castle operations?

**A. We have three enforcement entities under DNREC that have enforcement officers. I can only speak for fish and wildlife enforcement agents. I can't speak for the enforcement agents of parks or the environmental control side.**

Q. I apologize, just for fish and wildlife officers, is there a path for a routine patrol that they are required to travel to make sure they cover the territory out of the New Castle office?

43

**A. No, no. There is no set pattern.**

Q. Are you able to estimate what percentage of your enforcement actions take place as a result of a complaint that is called in to your offices?

**A. I'm not sure I understand.**

Q. What percentage of your activity on the water are a result of complaints called in to your office?

**A. I couldn't tell you a percentage.**

Q. Do you frequently get complaints called in to you?

**A. Yes.**

Q. Is there any pattern to those complaints, any geographic areas from which you routinely get complaints?

**A. There is no one specific geographic area. It is the entire county of New Castle and also the State of Delaware the complaints are called in from.**

44

Q. In addition to the routine patrols and the special operations that you have described for us already out of the Delaware fish and game DNREC, are there any other activity that your people conduct on the river?

**A. Yes.**

Q. Could you describe them for me?

**A. The other activity we would conduct on the river I hadn't mentioned yet would be assisting other agencies.**

Q. What kind of assistance are you called upon to do?

**A. The main one that comes to mind would be response to oil spills.**

Q. What agency would call your fish and wildlife people in in that instance?

**A. That would be another branch of DNREC, air and waste or environmental control. I can't remember which they prefer right now.**

Q. And what kind of activity

45

would a fish and wildlife officer be required to do in response to an oil spill?

**A. We would -- because we have the boats, we would transport personnel from that division to the area of the spill to conduct surveys, take photographs and possibly take samples. The other agency we would assist, and I'm not sure if it is considered another agency, would be our own division of fish and wildlife, the wildlife section. We would transport biologists, and also I know we have taken people from Tri-State Bird Rescues before, the biologists would be doing their own surveys and taking their own samples, as far as what impact the spill may have on wildlife, migrating birds, fish, crabs.**

Q. Beyond the oil spills, have there been any other emergencies which DNREC fish and wildlife have been called on to respond to?

**A. Yes.**

Q. Could you describe them for me.

**A. Emergencies would include boating accidents. I didn't stress before when you were asking me my different duties, as I came up through the ranks. I didn't stress enough that search and rescue is a big part of our responsibilities. So boating emergencies, boating accidents would be another response we would make.**

MS. CHUDZIK: I have nothing further. Thank you for your time.

(Witness excused.)

(Deposition concluded at approximately 10:37 a.m.)



CERTIFICATE

I HEREBY CERTIFY that the witness was duly sworn by me and that the deposition is a true record of the testimony given by the witness.

It was requested before completion of the deposition that the witness, DAVID P. BLAASCH, have the opportunity to read and sign the deposition transcript.

DOTTYANN Y. WALSH, a
Certified Shorthand Reporter and
Notary Public of the
State of Delaware
CSR License Number: 251-RPR
Notary Number: 20051147009
Notary expiration: April 14, 2007
Dated: November 6, 2006

(The foregoing certification of this transcript does not apply to any reproduction of the same by any means, unless under the direct control and/or supervision of the certifying reporter.)



INSTRUCTIONS TO WITNESS

Please read your deposition over carefully and make any necessary corrections. You should state the reason in the appropriate space on the errata sheet for any corrections that are made.

After doing so, please sign the errata sheet and date it.

You are signing same subject to the changes you have noted on the errata sheet, which will be attached to your deposition.

It is imperative that you return the original errata sheet to the deposing attorney within thirty (30) days of receipt of the deposition transcript by you. If you fail to do so, the deposition transcript may be deemed to be accurate and may be used in court.



ERRATA

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ACKNOWLEDGMENT OF DEPONENT

I, DAVID P. BLAASCH, do hereby certify that I have read the foregoing pages, 1 - 46, and that the same is a correct transcription of the answers given by me to the questions therein propounded, except for the corrections or changes in form or substance, if any, noted in the attached Errata Sheet.

_____

DAVID P. BLAASCH DATE

Subscribed and sworn to before me this _____ day of _____, 20____.

My commission expires: _____

_____

Notary Public



LAWYER'S NOTES

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ACKNOWLEDGMENT OF DEPONENT

I, DAVID P. BLAASCH, do hereby certify that I have read the foregoing pages, 1 - 46, and that the same is a correct transcription of the answers given by me to the questions therein propounded, except for the corrections or changes in form or substance, if any, noted in the attached Errata Sheet.

11-14-2006

DAVID P. BLAASCH DATE

MATTHEW F. BOYER
NOTARIAL OFFICER
Delaware Attorney No. 2564
Pursuant to 29 Del. C. §4323(a)(3)

Subscribed and sworn to before me this 14th day of November, 2006.

My commission expires: N/A

Matthew F. Boyer (attorney at law)
Notary Public

IN THE SUPREME COURT
OF THE UNITED STATES

- - -

STATE OF NEW JERSEY : NO. 134, Original
:
v. :
:
STATE OF DELAWARE :

- - -

OCTOBER 20, 2006

- - -

Oral deposition of PHILIP J. CHERRY taken pursuant to notice, was held at the law offices of CONNOLLY, BOVE, LODGE & HUTZ, LLP, The Nemours Building, 1007 North Orange Street, 9th Floor, Wilmington, Delaware beginning at 9:34 a.m., on the above date, before Dottyann Y. Walsh, a Certified Shorthand Reporter and Notary Public in the State of Delaware.

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ESQUIRE DEPOSITION SERVICES
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1600 John F. Kennedy Boulevard
Philadelphia, Pennsylvania 19103
(215) 988-9191

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INDEX

- - -

Testimony of: PHILIP J. CHERRY

By Ms. Conklin 5

- - -

EXHIBITS

- - -

| NO. | DESCRIPTION | PAGE |
|---|---|---|
| Cherry-1 | Affidavit of Philip Cherry | 9 |



- - -

DEPOSITION SUPPORT INDEX

- - -

Direction to Witness Not to Answer
Page Line Page Line Page Line
None

Request for Production of Documents
Page Line Page Line Page Line
None

Stipulations
Page Line Page Line Page Line
None

Question Marked
Page Line Page Line Page Line
None



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PHILIP J. CHERRY, after having been duly sworn, was examined and testified as follows:

- - -

DIRECT EXAMINATION

- - -

BY MS. CONKLIN:

Q. Good morning, Mr. Cherry, my name is Barbara Conklin and sitting to my left is Rachel Horowitz. We are both deputy attorneys general from the State of New Jersey and we are here in connection with litigation brought by the State of New Jersey against the State of Delaware concerning certain rights in the Delaware River. Have you ever been deposed before?

A. No.

Q. Let me give you a few guidelines to make this proceeding move along more easily. I am here to ask you questions and I believe you have been put under oath.

6

A. Yes.
Q. And the purpose of this is essentially a substitute for being in court. This proceeding can be used in lieu of live testimony so we expect your answers to be as truthful as possible and to the extent of your recollection. I would ask you that if I ask a question that is not clear to you, let me know and I can try to rephrase it or clarify any confusion. The other thing you need to keep in mind is that the court reporter can only take down verbal responses. So we have to try both of us not to speak at the same time. And I will endeavor to do that. I can be guilty of that on several occasions. I will try to allow you to speak completely and fully before I begin another question.
The other thing is that try not to do nods of the head, any nonverbal response will not reflect on the record. We don't want that to be the case. Is there any reason today why you would not

7

be able to give us a full and truthful response to a question, such as medication, that type of thing?
A. No.
Q. Where are you currently employed?
A. With the State Department of Natural Resources and Environmental Control, Delaware.
Q. Is that what we could refer to as DNREC, D-N-R-E-C?
A. That is correct.
Q. What is your current position there?
A. I'm the director of policy and planning for that agency.
Q. How long have you held that position?
A. Since 2000.
Q. What is your education and professional training?
A. I have a bachelors degree in geology granted in 1978 from the State University of New York College of

8

Buffalo. And a masters in geology from the University of Delaware in 1983. I have been employed with the State Department of Natural Resources since 1983 in various capacities until I took a brief assignment with Governor Carper in 1998 for three years before returning to the Department of Natural Resources in 2000.
Q. Are you trained as a hydrogeologist?
A. I am.
Q. That is a subspecialty of geology?
A. It is.
Q. Very, very briefly, what does a hydrogeologist do?
A. In my case, study the groundwater resources of a particular area. Groundwater of course resides underground in the rocks and sediment that are here in Delaware, for instance. And the movement of that water, the quality of that water, the availability

9

of that water for withdrawal and use is something that a hydrologist or a geohydrologist or hydrogeologist, all essentially synonymous terms, would do.
Q. Would that exclude the study of surface waters?
A. Not necessarily. The landscape that we see is the result of millennia of movement of surface water, landscapes and land forms are formed by surface water. And so that is a geological process as well. Hydrogeology typically focuses on underground resources, but surface resources are considered a part of that science.
Q. Would it be fair to say that surface water resources were a secondary focus to your educational efforts and studies?
A. Yes.
MS. CONKLIN: Let me mark as Exhibit 1 this document.
(Exhibit Cherry-1 marked for identification.)

10

BY MS. CONKLIN:
Q. Mr. Cherry, does this document look familiar to you?
**A. It does.**
Q. Can you tell me what it is?
**A. It is my affidavit in this case.**
Q. Right, a copy of it, correct?
**A. Correct.**
Q. I just wanted to insert it into the record now in case we needed to refer to it in the next series of questions. As part of your study of geology, did you focus on hydrogeology in the Delaware, in the State of Delaware or were you specializing in another area?
**A. My thesis as required for my masters was entitled The Hydrogeology of the Smyrna/Clayton Area of Delaware. So yes, I did study the hydrogeology of Delaware. And in my capacity at the Department of Natural Resources earlier on in my career, I studied hydrogeology**

11

**for Delaware.**
Q. I was focusing more on your educational -- your bachelors and masters years when you were --
**A. In my --**
Q. -- in your academic career.
**A. In my academic career as I have so answered, yes.**
Q. As part of your academic career, did you ever hear of a document called the Compact of 1905?
**A. No.**
Q. As part of your academic career, did you ever become aware of the border between New Jersey and Delaware as it runs along the Delaware River?
**A. No.**
Q. In your academic career, did you have any involvement in commenting on any of Delaware's coastal zone policies?
**A. No.**
Q. During your academic years, did you have any involvement in the drafting or commenting on regulations

12

relating to coastal zones in Delaware?
**A. No.**
Q. In your academic years, did you provide any information -- let me rephrase this. In your academic years, did you have any involvement in the submission of applications by private individuals for permits from DNREC?
**A. I applied for my own permits as a graduate student for well permits, but other than that, no.**
Q. Let me direct you to Exhibit 1, paragraph 2 which appears to be a recitation of the various positions you have been employed in at DNREC, is that correct?
**A. It is.**
Q. Is paragraph 2 an accurate summary of the positions that you have held since 1983 in state government?
**A. It is.**
Q. Paragraph 2 indicates that from 1983 to 1990 you were employed by the Division of Water Resources in DNREC,

13

is that correct?
**A. It is.**
Q. Initially as a geohydrologist and again as manager of the water supply branch, is that correct?
**A. Yes.**
Q. What were your duties in the 1983 to 1990 position?
**A. Issuing well permits, issuing water allocation permits, advising Delawareans on how to get water, where to get water, the quality of that water, assessing the quality of that water, interacting with various other programs within the agency on water, groundwater related issues, database management, general management of the staff there.**
Q. And how many -- go ahead.
**A. That would be about it.**
Q. And how many staff did you supervise?
**A. Towards the end of that seven-year period in 1989, 1990 I would**

14

say about 10.
Q. Did you supervise staff who reviewed applications for leases of Delaware subaqueous lands?
**A. No, that was a different program.**
Q. And what program would that be?
**A. That would be the -- well, I guess the wetland section at the time. Now I believe they call themselves the subaqueous lands program.**
Q. Did you supervise any staff who reviewed applications for permits to conduct activities on subaqueous lands?
**A. No.**
Q. As part of your duties as manager in the Division of Water Resources, did you ever become aware of a document called the Compact of 1905?
**A. No.**
Q. Have you ever -- at that time were you aware of a document called the Compact of 1907?

15

**A. No.**
Q. During this period of time, did you ever gain an understanding of where the border between New Jersey and Delaware lay with respect to the Delaware River?
**A. No.**
Q. It simply wasn't a concern of yours at that time?
**A. It wasn't.**
Q. I would direct you to paragraph 5 of your affidavit. In that paragraph there is a reference to a December 1971 proposal submitted by the El Paso Eastern Company to construct a liquified natural gas terminal in New Jersey, is that correct?
**A. That's correct.**
Q. Would it be fair to say that you don't have any personal knowledge of that 1971 application?
**A. It would be fair to say that.**
Q. And I would also like to

16

direct your attention to paragraph 7 of your affidavit. In that paragraph there is a description of a July 13, 1990 application for a status decision by Keystone Cogeneration Systems, is that right?
**A. That's correct.**
Q. Would it be fair to say that you have no personal knowledge concerning that particular application?
**A. That is correct.**
Q. Going back to your career in DNREC, in 1990 I believe you took a new position, is that correct?
**A. I did.**
Q. And was that with what section of DNREC?
**A. That was in the office of the secretary.**
Q. Let me just double-check paragraph 1 here, when did you go with the pollution prevention program?
**A. The pollution prevention program was created in 1990 in the office**

17

**of the secretary.**
Q. And when you say it was created in the office of the secretary, we are talking about the secretary of DNREC?
**A. That's correct.**
Q. Which would be I suppose a commissioner perhaps in other states?
**A. It is equivalent to New Jersey commissioner for instance.**
Q. And when you say it was created in the office of the secretary, what does that mean to you?
**A. The Department of Natural Resource, DNREC has five operating divisions. And the office of the secretary is a quasi sixth division overseeing the activity if you will of those five divisions. But there are some programs that reside in the office of the secretary because they are umbrella programs, having applicability across divisional lines as did the pollution prevention program.**

18

Q. And what exactly was your position in the pollution prevention program?
**A. I was the director of the program.**
Q. How many people were assigned to the pollution prevention program?
**A. Two.**
Q. Including yourself?
**A. Including myself.**
Q. And what were your duties?
**A. To develop the program, to launch it, to carry out the statutory requirements in Title 7 Chapter 60, the Pollution Prevention Act of 1990 as passed by the Delaware general assembly.**
Q. Talking about water pollution?
**A. Air, water, waste, all forms of pollution.**
Q. This was a very broad mandate then?
**A. It was.**

19

Q. And in the course of this particular program assignment, how did you interface or interact with the other divisions in DNREC?
**A. My goal, my job was to promote the concept of waste reduction, of source reduction as defined in the Federal Pollution Prevention Act. In other words, don't treat the waste after it has been created but find ways to not create it in the first place. Pollution prevention is a term of art. It means source reduction. Reducing the waste generation at the source before it is generated and therefore before you have to deal with it going out the pipe. So my job was to educate folks within the agency on what pollution prevention was, to change their mindset as regulators who might regulate what is coming out of the pipe to promote their -- helping their clients, permittees in Delaware, with understanding what source reduction was,**

20

**with adopting source reduction techniques as a tool for dealing with environmental emissions. I had an educational interaction with the staff in the agency, not a lot of programmatic, we were not a regulatory program, we didn't have rules and regulations. We were there again more to educate folks on how -- a different thought process, a different paradigm of dealing with waste generally.**
Q. And the education function you performed, was this inside the department?
**A. All -- that was mostly inside the department.**
Q. Would this -- would it be fair to say that your focus was basically solid waste and hazardous waste?
**A. No. That was a big part of it. But air emissions was another considerable component.**
Q. As part of your duties in this program, did you have any supervision of individuals who reviewed

21

applications for subaqueous leases?
**A. No.**
Q. Did you have any involvement in the issuance of permits for activity on subaqueous land?
**A. No.**
Q. To what extent did your program have anything to do with water quality in the Delaware River?
**A. Nothing specific that I recall.**
Q. Did your program undertake any type of mailings to permittees or to businesses that had received certain types of permits from the State of Delaware?
**A. I don't recall, possibly.**
Q. If such mailings or communications had been sent, do you know what type of permittees you would have been reaching out for?
**A. The focus of the program was on solid and hazardous waste and air emissions primarily.**

22

Q. At the time you had that program, were there permit programs in effect for air emissions in Delaware?
A. **Yes.**
Q. And were there permit programs in effect for generators and collectors of hazardous waste?
A. **Yes.**
Q. And were there permit programs in effect for collectors of solid waste?
A. **Yes.**
Q. I believe your affidavit indicates that at some point you left the pollution prevention program in 1993?
A. **My affidavit says that in 1990 I was promoted and served as the pollution prevention director until 1993. That is correct.**
Q. And then what happened professionally?
A. **Professionally I went to work in a more direct capacity for the secretary as his executive assistant.**

23

Q. And did you --
A. **Doing different things.**
Q. When you say different things, did you have a specific brief or assignment in terms of assisting the secretary?
A. **I was his policy advisor, I was his legislative liaison, I helped him in all executive matters.**
Q. Did the secretary have another executive assistant in addition to you?
A. **No.**
Q. Had this position existed prior to you assuming your role?
A. **Yes.**
Q. And who had been your predecessor?
A. **I don't remember. I don't remember. It was a different cabinet secretary prior to 1993.**
Q. You mean a different secretary?
A. **Yes. Cabinet secretary,**

24

**yes.**
Q. And who was the secretary in 1993?
A. **Kristoff Talou, T-A-L-O-U.**
Q. How long did you function as executive assistant to Secretary Talou?
A. **Until 1998. May of 1998.**
Q. And in May of 1998 did you change positions or continue on or what?
A. **I transferred if you will to work for Governor Carper as his legislative liaison.**
Q. So at that point when you became legislative liaison for Governor Carper, did you leave DNREC at that point?
A. **I took a leave of absence under the merit rules of the state of Delaware.**
Q. As executive assistant to Secretary Talou, did you become aware of a document called the Compact of 1905?
A. **I did not.**
Q. Did you read any

25

communications or reports that discussed a document called the Compact of 1905?
A. **No.**
Q. Did you read any documents or reports that discussed the Compact of 1907?
A. **No.**
Q. Did you attend any meetings during your executive assistant years with representatives from federal agencies where New Jersey's authority to issue subaqueous leases or leases of subaqueous land were discussed?
A. **Not that I recall.**
Q. Do you recall attending any meetings with representatives from the State of New Jersey when you were an executive assistant where New Jersey authority to issue subaqueous leases in the Delaware River was discussed?
A. **No.**
Q. Are you aware of any legislation that was proposed during the time that you were an executive assistant

26

where -- concerning the Compact of 1905?
A. No.
Q. Do you recall any legislation that was proposed during the time that you were an executive assistant that related to regulation of activities in the Delaware River by the State of Delaware?
A. No.
Q. When you say you were a legislative liaison for the secretary -- Secretary Talou, what did -- what duties did you perform that made you a legislative liaison?
A. In the Delaware General Assembly, there are literally thousands of pieces of legislation introduced every year. My job was to review them, look for ones that impacted the environment or our agency, circulate them for comment within our agency, formulate a position on that piece of legislation, work with the governor's office and the secretary in formulating and articulating that

27

position. And then sharing that, lobbying that, if you will, legislators on that piece of legislation; and there were many.
Q. But none of them to your recollection concerned the Compact of 1905?
A. No.
Q. Can you say when the first time was that you learned about the Compact of 1905?
A. In this case.
Q. And approximately what time was that?
A. 200' early '05 maybe.
Q. In what context was it raised?
A. I believe it was after our coastal zone industrial control board had ruled on the BP application.
Q. And at the time -- what day -- what year do you believe that that ruling occurred?
A. That ruling was -- I believe

28

it is in my affidavit. I believe it was late '04.
Q. At that time you were in what position in state Government?
A. I had returned at that point to the Department of Natural Resources at the director of policy and planning. In 2000 I returned and that was the position I was holding at that time and that I still hold.
Q. As director of policy and planning, when did you first learn of British Petroleum's plans -- their proposed project to construct a liquified natural gas facility along the Delaware River?
A. I believe my affidavit says 2002. It does. Paragraph No. 8.
Q. At paragraph 8?
A. Correct.
Q. And how did you learn of the British Petroleum proposed project?
A. They called and asked for a meeting.

29

Q. And when you say they, who was they?
A. They were represented by Dave Swaisey. Not sure what firm he was with at the time.
Q. And Dave Swaisey as far as you know was a representative of British Petroleum?
A. That is the way he represented himself at our meeting, yes.
Q. When you refer to a meeting, when did this meeting occur?
A. In 2002.
Q. And who was present for this meeting?
A. I know Dave Swaisey was there. I remember Lauren Segal, I believe that is how you pronounce her name. Jeff Foulks and obviously myself. There may have been others, I don't recall.
Q. Was secretary Hughes present for this meeting for any part of it?
A. He was not.

30

Q. Was this the only meeting you had concerning the British Petroleum proposed project that involved BP representatives?
**A. No. I have relayed the first meeting I had with them.**
Q. Let's talk about that first meeting. I'm sorry, you said it was in 2002?
**A. I believe so.**
Q. And what was the purpose of the meeting as you recall?
**A. Mr. Swalsey was trying to interpret how the coastal zone would impact the proposed BP facility.**
Q. And can you be a little more specific?
MR. SEITZ: Before you answer, I would like to note for the record to the extent you are going to explore the Delaware officials, their contact with BP, we reserve the right to go in and petition the Special Master to do

31

the same of New Jersey representatives. If you are going to do this, I would like to note for the record, you are opening the door for us to explore the same discussions that BP has had with New Jersey representatives.
BY MS. CONKLIN:
Q. In this meeting, was there a discussion of the Compact of 1905?
**A. Not to my recollection.**
Q. In this meeting, was there a discussion of -- to any extent, New Jersey's jurisdiction over the project?
**A. No. The question --**
Q. That is fine. Was there a subsequent meeting concerning -- with British Petroleum representatives which you attended?
**A. Yes.**
Q. And can you tell me when that meeting occurred?
**A. Not precisely. During 2003.**
Q. Was there a meeting at which

32

British Petroleum representatives were present as well as yourself and Secretary Hughes?
**A. Yes.**
Q. Do you recall the Compact of 1905 being discussed in that meeting?
**A. I do not.**
Q. Was there any discussion of Delaware authority to regulate the proposed project?
**A. There was discussion about the applicability of the Coastal Zone Act to this project, yes.**
Q. Was there a discussion of New Jersey's authority over the proposed project?
**A. Not specifically that I recall.**
Q. Did BP representatives assert that New Jersey had regulatory jurisdiction over the proposed project?
**A. I don't recall.**
Q. Was there -- are you aware of a legal opinion that was discussed in

33

this meeting concerning Delaware authority over the proposed BP project?
**A. Could you repeat the question?**
Q. Sure. Was there a legal opinion or memorandum originating from Delaware state offices that was discussed in this meeting which concerned Delaware authority over the proposed BP project?
MR. SEITZ: Object to the form of the question. You can answer it.
THE WITNESS: No.
BY MS. CONKLIN:
Q. Was there any legal opinion or advice from Delaware officials discussed at this meeting with BP representatives?
**A. Not that I recall.**
Q. Forgive me if I'm repeating myself, but I want to make sure I understand this. Do you recall any discussion of the Compact of 1905 at this second meeting?

34

A. I don't.
Q. Was there any discussion of the allocation of regulatory authority between Delaware and New Jersey concerning the proposed BP project?
A. I don't believe so.
Q. Was there another meeting between -- at which you attended at which BP representatives were present?
A. Likely, yes. There was clearly more than one meeting, more than my first, I don't recall them individually. Maybe two or three in toto.
Q. And at none of these meetings was the Compact of 1905 discussed in any way?
A. As I discussed shortly ago, I don't recall the compact being brought up at all in any of those early meetings.
Q. Do you recall whether British Petroleum representatives asserted that Delaware did not have regulatory authority over this project,

35

the proposed project?
A. No, I don't recall that.
Q. Were there any written communications sent to BP representatives after any of these meetings? I will clarify that. I think that is too broad. Were there any written communications from your office sent to BP representatives following any of these meetings?
A. No, likely not.
Q. Would there have been any e-mail communications?
A. Not that I specifically remember.
Q. As executive assistant to the DNREC secretary, do you have legal counsel available to you in the event you need legal advice?
A. Yes.
Q. And who would that counsel be?
A. Through the deputy attorney general's office.

36

Q. Are there attorneys on staff at DNREC?
A. There are not.
Q. Are there to your knowledge staff members of DNREC who are attorneys but who perform other functions for DNREC?
A. Yes.
Q. Were any such staff members present for any of the meetings we discussed -- that you described between BP and yourself and other staff members?
A. I don't believe so.
Q. Do you have any -- can you give me an estimate of the number of subaqueous lands leases that Delaware issues in a given year?
A. I have no idea, no.
Q. Do you receive written reports from each division of DNREC on some regular basis?
A. Each division is required to submit a weekly report to the secretary. They don't include in those the number of

37

permits or what have you that they have issued for the week. But yes, this is a weekly report. Doesn't contain a lot of detail.
Q. Is there an annual report that would contain that type of information?
A. Not that I'm aware of.
Q. Does the secretary of DNREC issue an annual report to the legislator?
A. He does not, nor would she would there be one.
Q. When did Secretary Talon step down?
A. That was after I went to the governor's office, I will guess 1999.
Q. And the secretary who succeeded Secretary Talon was Secretary Hughes?
A. No. Between those two was Secretary Nick DePasquale.
Q. When did Secretary DePasquale move on?
A. I will guess early 2002.

38

maybe late '01.
Q. So Secretary DePasquale had no involvement in any of the discussions you described between British Petroleum representatives and yourself?
A. No, he was gone then.
MS. CONKLIN: Take a five-minute break.
(Recess at 10:14 a.m.)
(Resumed at 10:21 a.m.)
BY MS. CONKLIN:
Q. Let me go back and ask a couple of more questions concerning the series of meetings with British Petroleum representatives. The first meeting you recall was around 2002?
A. Yeah.
Q. And this was a meeting at which you were present?
A. Yes.
Q. You indicated there were three representatives from BP that you recalled?
A. I recalled Lauren Segal and

39

Jeff Foulks and Dave Swalsey. In my mind I see another shadow in the room but I don't recall who that was.
Q. Was there an attorney present from the attorney general's office?
A. No.
Q. Was that the shadow?
A. No.
Q. Was Lauren Herr present from the wetlands section?
A. No.
MR. SEITZ: I think it is Laura.
BY MS. CONKLIN:
Q. Was there any staff member present from any of the divisions?
A. No, Mr. Swalsey wanted to talk about the Coastal Zone Act.
Q. When you say they were talking about the Coastal Zone Act, you are talking Delaware's Coastal Zone Act?
A. Yes.
Q. Was there a discussion about

40

the parts of the BP project that were applicable -- that were subject to jurisdiction under the coastal zone management and parts of the project that was not?
A. Mr. Swaisey wanted to know if the part -- if the part of the project in Delaware's waters would be subject to a Coastal Zone Act permit or would be permittable at all under the Delaware Coastal Zone Act.
Q. And what did BP say was the portion of the project that was in Delaware coastal waters?
A. The pier.
Q. And what portion of the project was not in the coastal waters according to BP, in the Delaware coastal waters?
A. There is a land-based portion of the project, there is the pier and the docking facility. And they were inquiring about the pier.
Q. What was your understanding

41

of where Delaware's jurisdiction began vis-a-vis the facility on the land and the end of the pier?
A. The mean low waterline on the Jersey shore. On territorial waters.
Q. And when did you learn that?
A. I think Mr. Swaisey brought that up. I have known that since administering the Coastal Zone Act.
Q. And when did you begin administering the Coastal Zone Act?
A. When I came back in 2000.
Q. And that was when you were assistant to Secretary Talou?
A. No. After I returned from Governor Carper's office in 2000, then working for Secretary DePasquale.
Q. In what context did you need to know about the mean low waterline jurisdictional boundary?
A. Well, Mr. Swaisey very clearly stated that in his opinion that the pier would be regulated by the Delaware Coastal Zone Act and hence

42

wanted to know whether -- how it would be treated by the Coastal Zone Act, whether it would be prohibited or regulated in some fashion.

Q. And you said at some point there was a secondary -- or second meeting between BP representatives and I think you also indicated you were attending as well?

A. Yes.

Q. Can you recall who was present for that second meeting?

A. I don't recall exactly.

Q. Was it the same crew?

A. It was Lauren Segal, it was Jeff Foulks and as I said previously I believe it was even more than one more meeting. There may have been a total of three or more. I don't recall specifically. But others were present at that latter meeting.

Q. Did the BP representatives make any presentation in writing to you in support of their position?

43

A. These were more exploratory meetings informing the secretary on what LNG was, on what the sort of the larger scheme of the project was. We were not debating legalities at that point.

Q. At what point in the discussion did the parties become focused on whether this was a bulk transfer facility?

A. Early on the question was is it a bulk transfer facility or is it a pier for a single manufacturing use, and hence exempted from the bulk product transfer prohibition.

Q. During the course of these meetings, did BP file any application --

A. No.

Q. -- with DNREC?

A. No, no.

Q. That came afterwards?

A. We encouraged them to do that.

Q. At any of these meetings do you recall whether there was a

44

representative from the Delaware AG's office present?

A. I don't recall. Again, it wasn't a legal matter at that time.

Q. Do you recall whether there was a representative from the wetlands and subaqueous section at any of these meetings?

A. I don't recall.

Q. So it is possible you were the only person from DNREC there?

A. No. Perhaps at the first meeting, yes. At the second meeting as I have suggested and have said, Secretary Hughes was there, our deputy secretary may have attended one or more of those meetings.

Q. And who would that have been?

A. The deputy secretary?

Q. Yes.

A. David Small.

Q. Do you recall any memorandum or written communication as a result of

45

these meetings summarizing the content of them?

A. No.

Q. To your recollection, the Compact of 1905 wasn't raised at all in any of these meetings?

A. That's correct.

Q. Did anybody discuss a lease that was issued to Dupont for subaqueous lands in any of these meetings?

A. Not to my recollection.

Q. Did British Petroleum representatives indicate any -- describe any applications that they were filing with the State of New Jersey with respect to this proposed project?

A. I don't recall.

Q. Did you or your staff have any contact as a result of these meetings with any representatives from the State of New Jersey?

A. No.

Q. And by representatives, I mean staff members of the Department of

46

Environmental Protection.
**A. Not as a result of those meetings.**
Q. Did you have any -- did you or your staff have any contact with representatives from the State of New Jersey after British Petroleum filed an application with DNREC?
**A. For coastal zone?**
Q. For coastal zone applicability or consistency.
**A. Coastal zone status decision?**
Q. Right.
**A. No.**
Q. And by communications, I mean any written communications or e-mail communications.
**A. No.**
Q. What was your involvement with the project after British Petroleum filed their application with DNREC?
**A. I was supervising the program at the time so I read the**

47

**application, I made sure that it went through all of the appropriate procedures, public notice, reviewed the comments on it and prepared our position for the secretary's review.**
Q. To what extent did anyone in the wetlands and subaqueous lands section work on the application?
**A. They wouldn't have worked on the status decision application.**
Q. Were you the person who worked on the status decision application?
**A. Myself and Dennis Brown.**
Q. Dennis Brown?
**A. Brown.**
Q. And what is his position?
**A. He is a planner, he works for me.**
Q. And when you say he is a planner, does he specialize in a specific --
**A. In Coastal Zone Act administration, yes.**

48

Q. Would this be a normal way of processing a request for a status determination?
**A. Yes.**
Q. Were all status determinations routed through you?
**A. All status decision applications go to Dennis and get routed through me.**
Q. And how long had you been processing these status decision determinations?
**A. Since I returned in 2000 and had supervisory responsibilities over Dennis and the program.**
Q. Did you perform any other reviews concerning applications to the wetland and subaqueous lands section?
**A. I wouldn't review those permits. That is done by that program.**
Q. So just hypothetically, if a project was deemed consistent -- when I say consistent, but theoretically -- if a project were not prohibited under

49

Delaware regulations, would you have any further involvement in its permitting?
**A. If a project were not prohibited under Delaware's Coastal Zone Act, it may still have a requirement to seek a permit under the Coastal Zone Act. And in which case, I would have continued that permitting process with a subject facility, with a facility that was seeking a permit.**
Q. Again we are talking hypothetically, would that permit application be primarily reviewed by someone else in another division, the appropriate division?
**A. Permit applications for Coastal Zone Act purposes are often times shared around the agency and we seek comment from different program areas on what is being proposed. Less so with status decision applications.**
Q. And how would you describe your role in that process? Are you the coordinator of basically shepherding that

50

application to its final determination?
A. **I'm the supervisor for the planner who has the responsibility of doing all the legwork on that permitting program. He does the mundane things, gets the permit in, gets the paperwork flowing. He reports to me, the reports and the recommendations and ultimately the permits or the decisions come through me on the way to the secretary.**
Q. So just so I understand, the planner would then be the chief coordinator of the applications related to a specific project?
A. **Yeah, he's best described as a clerk I guess would be a good description of his duties.**
Q. Would the planner then be -- if a hypotbetical project needed a subaqueous lands lease, would the planner be responsible for determining -- for issuing that lease?
A. **No, no, no. Typically Coastal Zone Act permits and certainly**

51

**status decisions come well before permits might be issued for air, water, waste, wetlands impact.**
Q. And the planner's function with respect to those earlier determinations is simply to do what?
A. **I'm not sure I follow your question.**
Q. I'm just trying to determine when you bave a hypothetical project that has gotten a favorable status determination, in other words it is not prohibited, and then a request for a subaqueous land lease or permit is then filed, what is the planner's involvement at that point with that project?
A. **The planner -- the planner would have no involvement in reviewing, commenting on or in any way touching that subaqueous lands permit or for that matter an air permit or a waste permit. That is not what he does.**
Q. To what extent are you aware of the progress of an application for a

52

subaqueous lands lease or a permit for activities on a subaqueous land?
A. **We are typically not. Again, as I said, the Coastal Zone Act status decision or permit would be done well ahead, conceivably months ahead of any programmatic environmental permits that would then flow.**
Q. Are there circumstances under which once again, a hypothetical project is found to be not prohibited under the coastal zone rules, would you then -- is it typical for you to then continue to monitor its progress through its lease applications and its permit applications?
A. **Typically not. If it is not prohibited and I will assume it still needs a coastal zone permit, we would process the permit. If the permit was received, that would be the end of our involvement in that particular project. They would then go off and deal with the various programs within the agency and**

53

**get their respective permits.**
Q. Is it part of your job responsibilities to monitor or be aware of permit applications for activity on subaqueous lands in Delaware?
A. **No.**
Q. Under what circumstances if any would you monitor or become aware of such -- of the progress of such applications?
A. **It is hard to speculate. It is possible in one or more instances I suppose if it were to come to my attention. But not normally.**
Q. Would you he given a draft decision on a permit application for activity on subaqueous land?
A. **No, no.**
Q. Do you recall ever being given one to review prior to its issuance?
A. **There was a case in this case as is seen in my affidavit where a permit was sought, a subaqueous lands**

54

permit was sought for some borings in the Delaware River with respect to this project. Staff in the subaqueous lands section knew that this was a project that was undergoing coastal zone review and did bring that to my attention, yes. But normally outside of that case, normally not, no.

Q. To whom do you report directly?

A. Secretary Hughes.

Q. Anyone else?

A. David Small, our deputy, approves my leave. The secretary would rather not deal with those particular issues.

Q. Prior -- in any of your previous positions in DNREC, would you comment on proposed regulations? DNREC regulations of course.

A. Yes.

Q. Do you recall commenting on any regulations that concerned Delaware jurisdiction over projects on the New

55

Jersey side of the river, the Delaware River?

A. No.

Q. Do you recall attending any staff meetings in DNREC in which the 1905 Compact was discussed?

A. No.

MS. CONKLIN: We are done.

MR. SEITZ: Thank you.

(Witness excused.)

(Deposition concluded at approximately 10:44 a.m.)

56

CERTIFICATE

I, DOTTYANN Y. WALSH, a Notary Public and Certified Shorthand Reporter of the State of Delaware, do hereby certify that prior to the commencement of the examination, PHILIP J. CHERRY was duly sworn by me to testify to the truth, the whole truth and nothing but the truth.

I DO FURTHER CERTIFY that the foregoing is a verbatim transcript of the testimony as taken stenographically by and before me at the time, place and on the date hereinbefore set forth, to the best of my ability.

I DO FURTHER CERTIFY that I am neither a relative nor employee nor attorney nor counsel of any of the parties to this action, and that I am neither a relative nor employee of such attorney or counsel, and that I am not financially interested in the action.

_____

DOTTYANN Y. WALSH, CSR
Notary Number: 20051147009
Notary Expiration: April 14, 2007
CSR Number: 251-RPR
Dated: November 3, 2006

57

LAWYER'S NOTES

PAGE LINE

IN THE UNITED STATES
OF THE UNITED STATES

| | | |
|---|---|---|
| STATE OF NEW JERSEY, Plaintiff(s), | : | CIVIL ACTION |
| | : | NO. 134, Original |
| v. | : | |
| STATE OF DELAWARE, Defendant(s). | : | |

Wednesday, October 18, 2006

Oral deposition of LAURA M. HERR, held at the law offices of CONNOLLY BOVE LODGE & HUTZ LLP, The Nemours Building, 1007 North Orange Street, Wilmington, DE 19899, beginning at 3:15 p.m., on the above date, before Debra J. Weaver, a Federally Approved RPR, CRR, CSR of NJ (No. XI 01614) and Delaware (No. 138-RPR, Expiration 1/31/08), and a Notary Public of New Jersey, Pennsylvania and Delaware.

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2

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3

INDEX


| WITNESS | PAGE |
|---|---|
| LAURA M. HERR | |
| BY MS. CONKLIN | 6 |


EXHIBITS


| MARKED | DESCRIPTION | PAGE |
|---|---|---|
| Herr-1 | Letter dated 6/17/04 to William Moyer from DuPont Chambers Works, with attachments, Bates DUP 0000920-982 | 17 |
| Herr-2 | e-mail dated 9/20/04 to William Moyer from W. Harding Drane, Jr., Bates DUP 0000717, DE 19422-19431 | 17 |
| Herr-3 | Letter dated 12/14/05 to Ms. Laura Herr from DuPont, Bates DUP 0000001-26, 39-45, 99-102 | 19 |
| Herr-4 | Letter dated 3/1/06 to John D. Strait from Laura M. Herr, with attachment, Bates DUP 0001339-1343 | 29 |
| Herr-5 | Letter dated 9/30/91 to William Moyer from W. Harding Drane, Jr., Bates DE 02197-2198 | 34 |
| Herr-6 | Subaqueous Lands Lease Granted to Keystone Cogeneration System, Inc., date of issuance: 9/30/91, Bates DE 02200-2205 | 34 |
| Herr-7 | Letter dated 7/25/04 to Ms. Laura M. Herr from Victor J. Schuler, Bates DE 01462-1468 | 44 |
| Herr-8 | Memorandum dated 9/10/05 to John A. Hughes from Laura Herr, Bates DE 01540 | 45 |


4

5

DEPOSITION SUPPORT INDEX

Direction to Witness Not to Answer
Page Line Page Line Page Line
None

Request for Production of Documents
Page Line Page Line Page Line
None

Stipulations
Page Line Page Line Page Line
None

Question Marked
Page Line Page Line Page Line
None

6

LAURA M. HERR,
after having been first duly
sworn, was examined and testified
as follows:

EXAMINATION

BY MS. CONKLIN:
Q. Good afternoon, Ms. Herr.
A. Yes.
Q. My name is Barbara Conklin and the person to my left is Rachel Horowitz also from my office. We're both deputy attorney's general from the state of New Jersey and we represent New Jersey in litigation with the great state of Delaware concerning jurisdiction in certain areas of the Delaware River. This is, of course, just a general description, not intended as a final, final definition of the litigation.
You have been placed under oath and this is the same thing as being in court essentially.

7

The court reporter, unfortunately, can only take down oral responses, and I would ask that you make all of your answers orally rather than by a shake of the head or nod.
The second rule is that I will try very hard not to speak when you are speaking because the court reporter can only take down one of us at a time.
A. Okay.
Q. And number three, if you have any confusion about my questions or something is unclear, please let me know and I'll try and rephrase the question.
A. Okay.
Q. Have you been deposed before?
A. No.
Q. You have not.
Well, good, then we can dispense with all those nasty questions.
What is your current title at DNREC?
A. I'm a program manager 2 in

8

the Wetlands and Subaqueous Lands Section.
Q. All right. And what are your duties?
A. I am the manager in charge of implementing DNREC's wetlands law and regulations, subaqueous lands law and regulations, marina regulations and our 401, or the quality certification program.
Q. Let me ask you. How many people do you supervise?
A. Yes. I supervise six scientists and two support staff and a vacant manager position at the moment.
Q. What percentage of your workforce is devoted to subaqueous lands leases and permits?
A. All of the staff work on all of the programs, so I think that answers the question.
Q. Do you have any perception of what percentage of their time is devoted to subaqueous lands leases and

9

programs?
A. I would say the subaqueous program occupies probably 60 to 65 percent of the time.
Q. I see. Do you submit a report each year concerning the subaqueous lands program?
A. No.
Q. All right. Do you make an accounting at all of the number of leases that you issue on a given year?
A. An accounting?
Q. Yeah.
A. No. No.
Q. Do you keep track of the number of leases?
A. We keep track, yes.
Q. Okay. Is this information conveyed to anybody other than for just your own internal use?
A. No, not conveyed to anyone.
Q. Do you make an accounting of the income that is derived from leases?
A. Yes.

10

Q. All right. Is that information conveyed to anybody outside your own section?
**A. Outside the section, but not outside the department. We confer with our accounting section regarding the lease fees that we collect each year.**
MR. WALTON: Just make sure you let her finish the question. The court reporter is going to get mad at you.
THE WITNESS: Sorry. Okay.
BY MS. CONKLIN:
Q. How long have you held the manager's position?
**A. This current position, I have been in the position officially since July of '05 and was acting manager for six months prior.**
Q. So you became acting manager approximately January of '05?
**A. Right.**
Q. Okay. Prior to your position as acting manager, what was your

11

position in DNREC?
**A. I was the lower level manager in that same section, the program manager 1, for approximately ten years.**
Q. For ten years. And to whom did you report during those ten years?
**A. To Bill Moyer.**
Q. Okay. All right. And what were your duties when you were reporting to Bill Moyer?
**A. Essentially implementing those same programs, slightly different duties in terms of the day-to-day permitting operations. And I also had delegated signatory authority to sign some of the permits that we issued under the programs, the various programs.**
Q. You had delegated authority?
**A. Yes, yes.**
Q. All right. During your ten years as a lower level manager, what percentage of your time would you estimate was dedicated to subaqueous lands leases and permits?

12

**A. Again, about 60 percent of the time. Yeah, sure, 60 to 65 percent.**
Q. As part of your duties, did you calculate the amount of fees that were due from leases of subaqueous lands?
**A. Yes.**
Q. Okay. And when you had an application for a subaqueous lands lease, did you review any maps of areas of -- of subaqueous areas -- let me ask the question again.
In reviewing applications for subaqueous lands leases, did you refer to any maps of subaqueous areas that were available to you?
**A. All of the applications that we received are required to include location information, so clearly each application would have a very specific location. And we would also review the potential for cumulative impacts by looking at aerial photography of the area where the proposed structure is located. That would be a typical way of**

13

**approaching it.**
Q. Okay. How would you assure yourself that the area upon which the proposed activities are occurring was owned or controlled by the applicant?
**A. In most instances, the area is not owned or controlled by the applicant. I'm not sure if that answers your question.**
Q. Are there types of permits that you issue that do not require the applicant to own or lease subaqueous lands?
**A. Are there types of applications -- can you repeat it?**
Q. Do you issue permits for activities on subaqueous land?
**A. Yes.**
Q. In circumstances when people don't own or lease the subaqueous land in question?
**A. Yes.**
Q. Okay. And what types of activities are those?

14

**A. All of the types that we permit may or may not occur on public subaqueous lands; that is, they may or may not occur off of the property that is owned by the applicant, and so that would include things like docks and piers, utility lines, shoreline stabilization, dredging, culverts and bridges, you know, all kinds of structures.**

Q. All right. Let me perhaps try and be more specific. I understand that the Delaware River is a tidal body of water?

**A. Yes.**

Q. All right. Would there be any circumstance under which an applicant would not -- would there be a circumstance under which the applicant would not need a lease of the subaqueous land on which an activity is proposed?

**A. If the applicant could demonstrate that the state had specifically granted that tidal underwater land to that property owner,**

15

**to the applicant, if they can provide documentation of that, it might be conceivable that we would issue a construction permit rather than a lease for that activity. Yes.**

Q. But if the applicant for a -- if a person were to apply to construct something on subaqueous lands and did not own or lease them, would you require them to get a lease?

**A. Yes.**

Q. Okay. And would they be making that application for a lease to you?

**A. Yes.**

Q. All right. Are there any maps that you would consult to determine whether an applicant's claim to own or lease a subaqueous parcel was true or not?

**A. No, we don't typically get that information from maps.**

Q. **Okay.** If you received an application -- if you received an

16

application for an activity on a subaqueous land and the applicant said, I have proof I already own this parcel or have leased this parcel already, how would you go about determining the truth of that allegation?

**A. We would require that the applicant submit a copy of their deed and may require a title search to determine whether or not, as you trace that deed back in time, there ever was actually a specific grant from the state of that underwater land to the previous or current property owner.**

Q. So am I getting the impression that the work for that type of search would be done by the applicant?

**A. Yes.**

Q. **All right. Is it under any** other circumstance done by somebody in your office instead of the applicant?

**A. Not that I can recall.**

Q. Okay. In your experience, have you ever received an application for

17

a permit on subaqueous lands where the applicant claimed ownership or control based on a document from the state of New Jersey?

**A. Yes.**

Q. Okay. Can you recall the circumstances under which that occurred?

**A. I recall that the state of New Jersey applied for a permit to rehabilitate the Fort Mott State Park pier.**

Q. Okay. Do you recall any other circumstance, just sitting here today?

**A. No.**

**(Whereupon, Deposition Exhibit No. Herr-1, Letter dated 8/17/04 to William Moyer from DuPont Chambers Works, with attachments, Bates DUP 0000920-982, and Exhibit No. Herr-2, e-mail dated 9/20/04 to William Moyer from W. Harding Drane, Jr., Bates DUP 0000717, DE**

18

19422-19431, was marked for identification.)
BY MS. CONKLIN:
Q. Ms. Herr, I've presented you with exhibits marked as Herr-1 and Herr-2. Herr-1 is a, I'm representing to you, is a draft of a permit presented to or conveyed to Mr. William Moyer on August 17th, 2004 concerning a subaqueous lands permit requested by DuPont Chambers Works facility in Deepwater, New Jersey. And exhibit Herr-2 is an e-mail communication to your supervisor, Mr. William Moyer, from an attorney, W. Harding Drane, Jr., attaching two deeds in the state of New Jersey, which, according to Mr. Drane, grant DuPont the underwater lands associated with the outfall structure that DuPont was apparently proposing to build or improve.
Do either of these documents look familiar to you?
A. No.
Q. Okay. In the course of his

19

deposition, I asked Mr. Moyer about the e-mail indicated here, and --
MR. WALTON: That's Herr-2.
MS. CONKLIN: Yes, it's Herr-2.
BY MS. CONKLIN:
Q. -- and Mr. Moyer indicated that he had forwarded it to you for consideration since he was leaving his job very shortly thereafter. And I'm asking you whether you recall receiving this communication?
A. I don't recall receiving it.
Q. Okay. All right. Do you recall handling the request for a subaqueous lands permit by DuPont?
A. No.
Q. Okay. All right.
MS. CONKLIN: Can we have this marked as Herr-3, please.
(Whereupon, Deposition Exhibit No. Herr-3, Letter dated 12/14/05 to Ms. Laura Herr from DuPont, Bates DUP 0000001-26,

20

39-45, 99-102, was marked for identification.)
BY MS. CONKLIN:
Q. Let me ask you as a preliminary question, Ms. Herr. Approximately how many applications for subaqueous lands permits do you receive on an annual basis?
A. I would estimate --
Q. I'm sorry, that you would personally handle. I'm sorry.
A. That I -- I see all of the subaqueous land applications that come through at at least some stage of the process, and that would be approximately 300 a year.
Q. All right. I'm now showing you Herr-3, which is a cover letter dated December 14, 2005 to Ms. Laura Herr, Section Manager. Would that be you?
A. Yes.
Q. Okay. And it is from a gentleman, Albert Boettler, B-O-E-T-T-L-E-R, from corporate

21

remediation of DuPont conveying a subaqueous lands permit application, and it's numbered DUP 2 through 26. And then on page 39 I included figures from 39 through 45. And then there is a cover page from a similar application that apparently was directed to the Army Corps of Engineers. My intent was to include here as much descriptive material as I could. This is certainly not the entire application.
A. Yes.
Q. Does any of this material refresh your recollection about whether you might have received an application concerning the DuPont Chambers Works improvements?
A. Yes.
Q. Okay. Would this communication or would this application be the first you bad ever heard about this proposed work?
A. This specific proposed work, yes.

22

Q. All right. And you have no recollection of a conversation with Mr. Drane, Mr. W. Harding Drane, concerning subaqueous land rights that DuPont was citing?

MR. WALTON: Objection. Lack of foundation.

You can answer.

MS. CONKLIN: Okay. Let me ask this another way.

BY MS. CONKLIN:

Q. Prior to receipt of this application on December 14th, 2005, did you discuss any subaqueous lands grants or leases that had been issued to DuPont for their Deepwater property?

**A. Yes.**

Q. Can you tell me what those conversations entailed.

**A. I recall one meeting where I was present with Mr. Drane where we discussed an existing outfall which DuPont had which they had modified without having obtained a permit from the**

23

**department.**

Q. Did Mr. Drane allege that DuPont owned the land on which the outfall was located?

**A. My understanding was that he indicated that the state of New Jersey had granted DuPont those underwater lands at that meeting.**

Q. And what was -- who else was at the meeting aside from you?

**A. I don't recall.**

Q. And what was your response?

**A. I recall that the final disposition of that meeting was that Mr. Drane agreed to make application post-construction for that -- for that outfall. So it was an after-the-fact application would be made to the state of Delaware for that outfall.**

Q. For a lease?

**A. For a lease for that outfall, yes.**

Q. All right. Was there any correspondence that memorialized that

24

understanding --

**A. Not to my knowledge.**

Q. -- between --

**A. Sorry.**

Q. That's all right.

And let me be more specific. Was there any correspondence, e-mail or otherwise, that originated from DuPont that memorialized any part of that meeting?

**A. Not that I recall seeing.**

Q. Okay. And did your office issue anything in writing that memorialized that meeting?

**A. Not that I recall.**

Q. All right. Did you discuss the Compact -- I'm going to ask you. Have you heard of something called the Compact of 1905?

**A. I've heard of it.**

Q. Okay. Did you discuss the Compact of 1905 in your meeting with Mr. Drane?

**A. I don't believe so.**

25

Q. On what basis did Mr. Drane allege that his title work or deeds or leases from New Jersey should be accepted by Delaware?

**A. I don't recall.**

Q. Did Mr. Drane ask you to discuss this with your supervisors prior to making a decision?

**A. No.**

Q. Was this decision made by yourself?

**A. I'm not sure what decision you're referring to.**

Q. That was poorly phrased. My mistake.

Did you discuss this request from Mr. Drane with any of your other staff members or supervisors prior to making a decision on how DuPont should proceed?

**A. I don't recall. I only recall the final disposition of the meeting being that when we walked out, the understanding was that DuPont would**

26

be applying for a lease for the structure that was already in place.
Q. Did DuPont, by applying -- did DuPont indicate that they were agreeing to file an application for the lease because their title work from New Jersey was not valid?
MR. WALTON: I'm going to object to lack of foundation.
BY MS. CONKLIN:
Q. Did DuPont indicate that they were abandoning their claim that their lease from New Jersey was valid for the work they were requesting from Delaware?
**A. Not that I recall.**
Q. Was an attorney from the Delaware attorney general's office present for this meeting?
**A. I don't recall.**
Q. Was there a phone conference arranged in connection with this meeting?
**A. No.**
Q. As a result of this meeting,

27

then, you're indicating that DuPont filed the application we have as Herr-3, exhibit Herr-3, correct?
**A. No. I know that we left the meeting believing that DuPont would be filing an application, but I don't ever recall seeing an application from DuPont for that structure.**
Q. Okay. So the application for -- that we have identified as Herr-3 is for a different permit?
MR. WALTON: This one.
THE WITNESS: Thank you.
MR. WALTON: Take your time.
THE WITNESS: That's correct.
BY MS. CONKLIN:
Q. So let me backtrack here.
There was another application filed by DuPont as a result of the meeting of which we've been speaking?
**A. I believe the application in Herr-3 is a completely separate project**

28

**from what was discussed at the meeting.**
Q. Okay. All right. To your recollection, did -- and, again, forgive me, it's getting late in the day here -- DuPont did then file for a permit or a lease for this outfall structure?
**A. I never saw any application for the outfall structure subsequent to the meeting.**
Q. Okay. Is it possible one of your other staff handled it?
**A. It would have had to come through me to be assigned.**
Q. All right. Do you know whether the outfall structure was ever repaired?
**A. I don't.**
Q. Okay. All right. The application identified as Herr-3, exhibit Herr-3, is for a stabilization project. There were remedial activities apparently related to removal of tainted sediments. Is that your understanding of this application?

29

**A. Yes.**
Q. All right. And as a result of this application, was there a permit issued to DuPont for this remedial work?
**A. Yes.**
Q. And let me show you this.
MS. CONKLIN: Mark this as Herr-4.
(Whereupon, Deposition Exhibit No. Herr-4, Letter dated 3/1/06 to John D. Strait from Laura M. Herr, with attachment, Bates DUP 0001339-1343, was marked for identification.)
BY MS. CONKLIN:
Q. Is the exhibit marked Herr-4, which is a subaqueous lands permit issued to DuPont, the permit that was applied for in Herr-3, Exhibit 3, to your knowledge?
**A. I believe it is.**
Q. And this is a permit to conduct certain remedial activities, remove tainted soil and treat it,

30

correct?
A. Yes.
Q. Broadly speaking.
A. Yes.
Q. And this was issued March 7 of 2006?
A. Yes.
Q. Okay. I notice there's a fee, paragraph 6 under Special Conditions, for dredging public subaqueous lands.
A. Yes.
Q. There was no provision -- there was no requirement that DuPont obtain a lease for the lands it was dredging?
A. That's correct.
Q. Okay. And is this according to normal procedure?
A. Yes.
Q. Okay. If they were going to be putting any type of structure on the land, under normal circumstances, would you have required a lease?

31

A. Yes.
Q. Okay. As a result of this work -- under normal circumstances, when someone dredges and removes sediment like this, would there not be some sort of mitigation requirement associated with the project?
A. There may or may not be a mitigation requirement. It's not standard for dredging projects.
Q. Oh, it's not. All right.
If there was mitigation required as a result of this, who would be supervising that?
A. The project scientist.
Q. And would that be an individual in your shop?
A. Yes.
Q. Okay.
(Recess taken from 3:50 p.m. to 3:56 p.m.)
BY MS. CONKLIN:
Q. Ms. Herr, when did you indicate that you started with DNREC?

32

A. In 1986.
Q. Oh, okay. 1986.
And prior to that time, what did you do professionally?
A. I worked for an environmental consultant, Ichthyological Associates.
Q. And did your work at the Associates concern subaqueous lands --
A. Yes.
Q. -- in any way?
A. Yes.
Q. And in what aspect or respect?
A. We were studying the benthic community, the underwater lands and the river water quality in regards to an environmental impact statement for a cooling tower at the Salem nuclear generating station.
Q. All right. And how long were you employed in that capacity?
A. It was four years.
Q. Okay. And what is your

33

professional training and education?
A. My education, I received a bachelor's degree in biology from the University of Delaware in 1981 and a master's degree from Drexel University in environmental science in 1995, came out of college into that Ichthyological Associates position, and after being laid off there was hired shortly thereafter by the Department of Natural Resources.
Q. And you were hired by the department in, what, '86?
A. 1986.
Q. Are you familiar, this is going to be going back a little bit earlier into your career, of an application for a subaqueous lands permit by a Keystone Cogeneration Systems in New Jersey?
A. I'm aware of that file in our files.
Q. Okay.
MS. CONKLIN: Let us mark Herr-5 and 6.

34

(Whereupon, Deposition Exhibit No. Herr-5, Letter dated 9/30/91 to William Moyer from W. Harding Drane, Jr., Bates DE 02197-2198, and Exhibit No. Herr-6, Subaqueous Lands Lease Granted to Keystone Cogeneration System, Inc., date of issuance: 9/30/91, Bates DE 02200-2205, was marked for identification.)

BY MS. CONKLIN:

Q. Ms. Herr, I've provided you with two exhibits, Exhibit 5 being a letter dated September 30th, 1991 from an attorney named W. Harding Drane, Jr., on behalf -- submitting on behalf of Keystone Cogeneration Systems an application to your supervisor, William Moyer, for a subaqueous lands permit, and Exhibit 6 being a subaqueous lands lease issued by the state of Delaware to Keystone Cogeneration Systems. Do either of these documents look familiar to you?

**A. No.**

35

Q. All right. Do you recall Mr. Moyer discussing with you an application by Keystone Cogeneration Systems for a subaqueous lease?

**A. No.**

Q. And you did not work on this file?

**A. Not that I recall.**

Q. All right. Are you aware of any conversations -- are you aware of any communications between the state of New Jersey and your office concerning the issuance of a subaqueous lease by the state of New Jersey for the same area that is conveyed in this lease by Delaware?

**A. No.**

Q. All right. Were you aware of any meeting between the Delaware attorney general's office and officials from the state of New Jersey at the New Jersey Tidelands -- the Bureau of Tidelands Management concerning Keystone Cogeneration Systems' subaqueous lease

36

issued by New Jersey?

**A. No.**

Q. Are you aware of any communications concerning New Jersey's authority to issue Keystone Cogeneration Systems a subaqueous lease? I'm sorry, let me withdraw that. I think I left out a word.

Are you aware of any communications concerning New Jersey's authority to issue Keystone Generation Systems a subaqueous lease?

**A. No.**

Q. All right. Are you familiar with a person named James Johnson at the Bureau of Tidelands in the state of New Jersey?

**A. No.**

Q. Okay. Are you familiar with a person named William Anderson?

**A. No.**

Q. Again, state of New Jersey.

**A. Yeah.**

Q. Are you familiar with an

37

area called the 12-mile circle?

**A. Yes.**

Q. Okay. And when did you first become aware of this area? When did you first become aware of the area that was called the 12-mile circle?

**A. I think in college.**

Q. And do you recall how you became aware of it, in what context?

**A. My best friend is the daughter of the state geologist and so...**

Q. And what was your understanding of what the 12-mile circle was?

**A. My -- you know, my imperfect understanding is that it was an artifact of perhaps a 17th century rendering of the boundary of the state of Delaware relative to, I think, New Castle, the city of New Castle.**

Q. In connection with this 12-mile circle, did you ever hear of the term 1905 Compact?

**A. No.**

38

Q. All right. Is today the first time you ever heard of the 1905 Compact?
**A. Yes.**
Q. So the 1905 Compact is not a matter of any type of discussion in your office?
**A. Not that I'm aware of.**
Q. All right. When you say you're not familiar with the 1905 Compact, then I must ask you, you've never read a document called the 1905 Compact?
**A. No.**
Q. Have you ever read a document called the 1907 Compact between Delaware and the state of New Jersey?
**A. No.**
Q. What is your understanding of the boundary line between Delaware and New Jersey as a result of -- within the 12-mile circle?
**A. My understanding is that Delaware's boundary extends to the**

39

**eastern side of the Delaware River to the mean low water line against the shore, the New Jersey shore.**
Q. All right. And in the course of your duties as manager at the Wetlands and Subaqueous Section, if you receive an application for a subaqueous lease, do you make a determination whether the area -- where the area is located precisely inside -- where the area is located?
**A. Yes.**
Q. Okay. And how do you make that determination? How do you locate an area that is proposed for lease?
**A. The application requires that the applicant provide a drawing and location maps to locate the precise -- the specific area where the project is proposed.**
Q. What type of description of location do you accept or prefer?
**A. We require a location map, usually a roadmap, as well as a scaled**

40

**drawing relative to the property boundaries of the structure.**
Q. Do you locate the subaqueous parcel with respect to the upland parcel? Is that how you locate them?
**A. I'm not sure I quite understand that.**
Q. Is there a grid or a map that puts lot and block numbers on subaqueous land parcels?
**A. No.**
Q. Okay. How do you identify a particular subaqueous land parcel?
**A. We do not divide the subaqueous lands into parcels.**
Q. Okay. How do you identify one subaqueous land parcel from another? How do you distinguish them?
**A. There are -- we don't recognize parcel boundaries within subaqueous lands at all.**
Q. Okay.
**A. In public subaqueous lands. I should clarify.**

41

Q. Okay. How do you determine -- how do you distinguish between subaqueous parcels that are leased to private individuals?
**A. We don't lease parcels. We lease the area that's under the footprint of the structure that's being constructed.**
Q. All right. And how do you locate that structure vis-a-vis the shoreline?
**A. Again, the application provides a scaled drawing depicting the proposed structure relative to the deeded upland property boundaries.**
Q. Oh, all right. When your office issues a subaqueous lease, how is -- how is that lease recorded or identified? How is that area identified for future reference?
**A. The application drawing in the file is one way. And we also require that the lease be recorded with the county Recorder of Deeds office, so that**

42

should the upland property change hands, the new owner will be aware of the lease with the state of Delaware.
Q. If I needed to look up a particular subaqueous parcel, how is that information filed in your office?
A. Again, we don't recognize subaqueous parcels.
Q. My mistake.
If I wanted to locate a specific subaqueous parcel that had been leased to an upland owner, is this information filed in your office at all?
A. No parcels in subaqueous lands. You could locate a structure.
Q. Okay. And how would I do that?
A. By the applicant's name or if you knew the lease number.
Q. Oh, all right. And the lease number is a unique number?
A. Yes.
Q. Does it have the year?
A. Yes.

43

Q. Does it have a year prefix, suffix?
A. The last two digits of the number represent the year in which it was --
Q. It was issued?
A. It was received actually.
Q. The application?
A. Yes.
Q. All right. Does the number convey the year that it expires?
A. The identification number?
Q. Yes.
A. No.
Q. Is this information on computer?
A. Yes.
Q. Okay. How far back does that information data go?
A. We have more than one database. I believe it goes back into the late 1970s.
Q. So just so I understand, your office issues subaqueous -- leases

44

for subaqueous land only to the upland owners, the owners of the upland adjacent property?
MR. WALTON: I'm going to object to the form of the question.
You can answer.
THE WITNESS: Should I answer?
MR. WALTON: If you understand it, you can answer.
BY MS. CONKLIN:
Q. Will your office issue a subaqueous land lease to anyone other than a person who owns or controls the immediately adjacent uplands?
A. No.
MS. CONKLIN: Let me have this marked as 7.
(Whereupon, Deposition Exhibit No. Herr-7, Letter dated 7/25/04 to Ms. Laura M. Herr from Victor J. Schuler, Bates DE 01462-1468, was marked for

45

identification.)
MS. CONKLIN: I'm sorry, mark this as 8.
(Whereupon, Deposition Exhibit No. Herr-8, Memorandum dated 3/10/05 to John A. Hughes from Laura Herr, Bates DE 01540, was marked for identification.)
BY MS. CONKLIN:
Q. Ms. Herr, I have provided you Exhibit 7, which is a July 25th, 2004 application for a permit to refurbish and upgrade an existing derelict pier submitted on behalf of Fenwick Commons, I believe, LLC, by a Victor Schuler, S-C-H-U-L-E-R, a bio-environmental consultant, and this application, I believe, is directed to you, correct?
A. Yes.
Q. All right. I have a very limited question about this. The re section here says -- at the top of the page of Exhibit 7, it says "Application for Delaware DNREC-WLSL..." What is

46

WLSL?
**A. That's a typo. It should be WSLS, and that stands for Wetlands and Subaqueous Lands Section.**
Q. Thank you.
"...permit to refurbish and upgrade an existing derelict pier that extends into the Delaware River at Penns Grove, New Jersey but is largely in Delaware jurisdictional waters..." And then it goes out to add outshore moorage, et cetera, et cetera.
And I now would like to direct you to exhibit Herr-8. And this exhibit appears to be a memorandum to John Hughes, secretary of DNREC, originally from you, dated March 10th, regarding a reduction in subaqueous lands lease fee for Riverwalk Project in Penns Grove. Now, I don't -- can you tell me whether the Riverwalk Project in Penns Grove is essentially the same project as was described in the Exhibit 7?
**A. Yes.**

47

Q. Okay. And this is a memorandum justifying a reduction in the lease, correct?
**A. Yes.**
Q. And my question is, if you read the text, "In recognition of the public nature and community revitalization aspects of the above-referenced project, as well as its location substantially within the State of New Jersey, the Wetlands and Subaqueous Lands Section recommends that you reduce the subaqueous lands 'filled lands' lease fee" to the following amounts.
What changed between Exhibit 7 and Exhibit 8 -- well, what changed between July 2004 and March 2005 to change the description of this property -- the project as being largely in Delaware jurisdictional waters to being substantially within the state of New Jersey?
**A. Our understanding of the project was that the pier revitalization for which the application was made was only a small portion of the overall project, which included a riverwalk on the upland in New Jersey and other community redevelopment aspects to the project. Those are the aspects I was referring to in the memorandum in Exhibit 8, that those are the aspects that are substantially within New Jersey, not the pier portion of the project, which is only a minor or, you know, one aspect of the project.**

48

Q. When your section determines a lease fee, do you look to the value or, how would I put it, do you look to the nature of the upland development that's associated with the subaqueous lands activity?
**A. Not usually.**
Q. Would this be an exception then to the normal rule?
**A. Yes.**
Q. Okay. So under normal circumstances, in valuing a subaqueous lands lease, you look only to the activity that is not on the uplands?
**A. Yes.**
Q. Is there a formula that is utilized by your office for establishing lease values?
**A. There are fees that were promulgated by Delaware's general assembly, and we follow those.**
Q. In the course of your employment at DNREC, have you ever come across -- have you ever seen a lease issued by DNREC which allowed a lessee to postpone payment of a lease of subaqueous lands based on various conditions, any condition?
**A. Postpone payment? Not that I can recall.**
Q. Okay. Do you recall any lease being -- again, this is, of course, based on your recollection and your review of the leases that have been presented to you by your employees. Are

49

50

you aware of any lease of subaqueous lands that made payments to the state conditional on certain circumstances?

**A. No.**

Q. Okay. If a lessee were to request the insertion of a provision that postponed payment of a lease payment or made it conditional on certain events, could you authorize the insertion of that clause in a lease?

**A. I could not.**

Q. Who would be the person to authorize that?

**A. The cabinet secretary has the authority under our Environmental Protection Act to reduce certain fees and alter the timing of their payment.**

Q. All right. I'm getting tired because I can't recall. Do you recall seeing a lease that predated your employment at DNREC that excused a lessee from payment of lease fees under certain current conditions?

**A. I don't recall seeing that,**

51

**no.**

Q. All right. Have you attended any meetings with New Jersey state officials concerning coordination of coastal zone management programs between Delaware and New Jersey?

**A. No.**

Q. Have you seen any reports from any individuals who allegedly have attended such meetings?

**A. No.**

Q. Were you involved in the assessment or -- in the review of a memorandum of agreement between New Jersey and Delaware back in the early 1990s that would have set criteria for coordination of coastal permits?

**A. Not that I recall.**

Q. Okay. Are you aware of any agreement between your office and the state of New Jersey concerning coordination of the issuance of coastal zone permits?

**A. No.**

52

Q. If you were to receive an application today for a subaqueous lands lease in which the applicant -- no, let me rephrase that.

If you were to receive an application for a subaqueous lands permit from an applicant who alleged that they leased the property from the state of New Jersey and did not need a lease from the state of Delaware, to whom would you take that application for review or consideration?

**A. If the applicant failed to apply for the necessary lease, we would refer it to our attorneys at the Department of Justice.**

Q. When you say Department of Justice, attorney general's office?

**A. Yes.**

Q. Okay. Who are your -- do you have specific attorneys assigned to your program?

**A. Yes. To our program specifically?**

53

Q. Yes.

**A. No.**

Q. Okay. Do you have -- well, let me ask you. Do you know the attorneys to whom such an inquiry would be sent?

**A. Yes.**

Q. Okay. Who would those people be?

**A. It would be sent to Kevin Maloney.**

Q. I'm sorry?

**A. Kevin Maloney. It would be sent to Kevin Maloney.**

Q. All right. And have you worked with Mr. Maloney for a number of years?

**A. Yes.**

Q. All right. But to your knowledge, you don't recall receiving an application for a subaqueous lands permit in which the applicant was basing a claim on an instrument issued by the state of New Jersey?

54

A. **I don't.**
Q. And any other attorneys other than Mr. Maloney?
A. **We refer it to Mr. Maloney and he designates an attorney to work on the case.**
Q. Is an attorney by the name of June MacArtor one of the attorneys who would handle those types of inquiries?
A. **No.**
Q. Is June MacArtor, do you know, still performing legal services for DNREC?
A. **I don't believe so.**
Q. Okay. And if I may, who is your -- to whom do you report again?
A. **Kevin Donnelly.**
Q. I'm sorry, Kevin Donnelly, and he is a division manager?
A. **He is a division director.**
Q. And Mr. Donnelly reports to?
A. **The cabinet secretary.**
Q. Who is these days?
A. **John Hughes.**

55

Q. John Hughes. Thank you very much. That's what I needed to know.
MS. CONKLIN: I think if you give me just two minutes, I think we'll be done.
(Recess taken from 4:25 p.m. to 4:31 p.m.)
BY MS. CONKLIN:
Q. A couple of quick questions here, Ms. Herr. Let me refer you to Herr-8, which is a memorandum, March 10, 2005. And this is -- this concerns a subaqueous lands fee. So it would obviously be correct to say there was a subaqueous lands lease involved here that was issued to Fenwick Commons, right?
A. **Yes.**
Q. Okay. My question is, based on your earlier answer where you said that leases are recorded in the county of the upland property to which they're connected -- now, I'm looking at Herr-7, and I am flipping to page 6, page 6 --
MR. WALTON: And the --

56

BY MS. CONKLIN:
Q. Page 6 of Exhibit 7.
MR. WALTON: DE 1467?
MS. CONKLIN: Yes, that is correct. That is correct.
MR. WALTON: Thank you.
BY MS. CONKLIN:
Q. I do not see any address here that corresponds to an address in a Delaware county. Am I missing it here? Perhaps it's here and I don't see it.
A. **You're not missing it.**
Q. Okay. Where would this lease be filed in the case of Fenwick Commons?
A. **My recollection is that we did not require this lease to be recorded in accordance with our standard procedure for leases issued where the upland property is in Delaware.**
Q. All right. And does this procedure apply in cases where there's a subaqueous lands lease to an upland owner in New Jersey?

57

A. **I'm sorry, I didn't follow you. Does this --**
Q. No. You indicated that in the case of Fenwick Commons, your office did not require this lease to be filed in a recording office in Delaware?
A. **Yes.**
Q. Why is that?
A. **Because the upland portion of the parcel is in New Jersey.**
Q. All right. Would that not apply in the case of all other subaqueous leases that are issued when the upland owner is in -- when the upland parcel is in New Jersey?
A. **Yes.**
Q. If I wanted to locate the subaqueous lands leases issued by the state of Delaware for subaqueous lands adjacent to New Jersey uplands, where would I go to find that information?
A. **We could query our database for -- based on the address of the applicant.**

58

Q. Okay. But aside from accessing that database, there would be no other place to get that information?
**A. Not that I'm aware of.**
Q. Are you aware of any objection entered by Fenwick Commons or on behalf of Fenwick Commons to the need to obtain a lease from Delaware for their proposed activities?
**A. I don't recall.**
Q. You don't recall seeing anything in writing in which they or people on their behalf objected to the need to obtain a lease from the state of Delaware?
**A. No.**
Q. Subaqueous lands lease?
**A. Right. No.**
Q. Did you have any involvement in any subaqueous lease renewals on behalf -- subaqueous lease renewals by DuPont?
**A. I can't recall offhand. You're talking about DuPont's Chambers**

59

**Works?**
Q. Uh-huh.
**A. Lease renewals. I just don't recall without checking the files.**
Q. And did you have any involvement in the issuance of any subaqueous leases or permits to Keystone Cogeneration --
MR. WALTON: Asked and answered.
BY MS. CONKLIN:
Q. -- systems?
Did we? What did she answer?
MR. WALTON: Exhibits 1 and 2, I think. The letter from Harding Drane.
MS. CONKLIN: Yes, we did go into that. Thank you. You have refreshed my own recollection.
We have no further questions. Thank you very much.
MR. WALTON: We will read and sign.

60

And if I could make a request that we have the exhibits attached because, as I said before, sometimes I lose them if they're not attached to the transcript.
(Witness excused.)
(Whereupon, at 4:38 p.m. the proceedings concluded.)

61

CERTIFICATE

I hereby certify that the witness was duly sworn by me and that the deposition is a true record of the testimony given by the witness.

It was requested before completion of the deposition that the witness, LAURA M. HERR, have the opportunity to read and sign the deposition transcript.

DEBRA J. WEAVER, RPR, CRR, CSR
NJ CSR License No. XI 01614
DE Certification No. 183-RPR
(Expires 1/31/08)
Dated : November 15, 2006

(The foregoing certification of this transcript does not apply to any reproduction of the same by any means, unless under the direct control and/or supervision of the certifying shorthand reporter.)

62

INSTRUCTIONS TO WITNESS

Please read your deposition over carefully and make any necessary changes. You should assign a reason in the appropriate column on the errata sheet for any change made.

After making any change which has been noted on the following errata sheet, along with the reason for any change, sign your name to the errata sheet and date it.

You are signing it subject to the changes you have made on the errata sheet, which will be attached to the deposition. You must sign in the space provided.

Return the original errata sheet to the deposing attorney within thirty (30) days of receipt of the transcript by you.

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ERRATA

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ACKNOWLEDGMENT OF DEPONENT

I, LAURA M. HERR, do hereby certify that I have read the foregoing pages, 1 - 60, and that the same is a correct transcription of the answers given by me to the questions therein propounded, except for the corrections or changes in form or substance, if any, noted in the attached Errata Sheet.

_____

LAURA M. HERR

Subscribed and sworn to before me this

_____ day of _____, 20____.

My commission expires:_____

_____

Notary Public

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LAWYER'S NOTES

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LAURA M. HERR

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E R R A T A

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ACKNOWLEDGMENT OF DEPONENT

I, LAURA M. HERR, do hereby certify that I have read the foregoing pages, 1 - 60, and that the same is a correct transcription of the answers given by me to the questions therein propounded, except for the corrections or changes in form or substance, if any, noted in the attached Errata Sheet.

Laura M. Herr

LAURA M. HERR

Subscribed and sworn
to before me this
29th day of November, 2006.
My commission expires: May 9, 2007

Gayle Calder

Notary Public

GAYLE H. CALDER
NOTARY PUBLIC
STATE OF DELAWARE
My Commission Expires May 9, 2007

IN THE SUPREME COURT
OF THE UNITED STATES

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STATE OF NEW JERSEY : NO. 134, Original
:
v. :
:
STATE OF DELAWARE :

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OCTOBER 26, 2006

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Oral deposition of ROBERT W. HUTCHINS taken pursuant to notice, was held at the law offices of CONNOLLY, BOVE, LODGE & HUTZ, LLP, The Nemours Building, 1007 North Orange Street, 9th Floor, Wilmington, Delaware beginning at 12:26 p.m., on the above date, before Dottyann Y. Walsh, a Certified Shorthand Reporter and Notary Public in the State of Delaware.

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INDEX

- - -

Testimony of: ROBERT W. HUTCHINS
By Ms. Chudzik 5

- - -

EXHIBITS

- - -

| NO. | DESCRIPTION | PAGE |
|---|---|---|
| Hutchins-1 | Definition of the boundary line between DE and NJ | 22 |



- - -

DEPOSITION SUPPORT INDEX

- - -

Direction to Witness Not to Answer
Page Line Page Line Page Line
None

Request for Production of Documents
Page Line Page Line Page Line
None

Stipulations
Page Line Page Line Page Line
None

Question Marked
Page Line Page Line Page Line
None



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ROBERT W. HUTCHINS, after having been duly sworn, was examined and testified as follows:

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DIRECT EXAMINATION

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BY MS. CHUDZIK:

Q. Hi, Captain Hutchins. My name is Helene Chudzik. I'm a deputy attorneys general –

**A. Excuse me one second. I have a slight hearing problem, so if you talk up just a little bit.**

Q. I will try.

**A. Sorry to interrupt.**

Q. If it gets too low, remind me.

**A. That is great there.**

Q. I will try to maintain it. I'm one of the deputy attorneys general who is working on this case for the State of New Jersey, the ongoing dispute between New Jersey and Delaware with

6

regard to the border along the Delaware River. Are you familiar with that litigation at all?
A. Yes.
Q. Before we get started today, have you ever been deposed?
A. Yes.
Q. Could you tell me when?
A. No, I do not remember.
Q. Was it some time ago?
A. Yes.
Q. Let me just refresh your memory about how we do this in the hopes that we will have a clear record. The court reporter here will be taking everything down and it will end up in a booklet. Our goal here is to have it be a clear record of what went on. In order to do that, it is helpful if only one of us speaks at a time. If I'm asking a question, please wait to answer, I will also try and wait until you complete your answer to follow up. Also another thing we have to be careful of is that we

7

communicate verbally. No nods of the head, uh-huhs, hand signals, things like that that we all rely on in communicating. Do you understand that?
A. Understood.
Q. If I ask a question and your attorney has an objection, he will raise that. Please wait until he's finished and we are finished discussing it if at all before answering it so again we can have a clear record.
The other thing I ask is that you don't guess. If you don't remember something, that is fine. Just tell us. If, however, I ask you a question and you can estimate, just tell us so that the record again is clear about your answer. Do you understand that?
A. Understood.
Q. The other thing is I will give you opportunities for break whenever you need it. If I'm not paying close attention or whatever and you need it,

8

just signal us, we would be happy to break. Do you have any questions about the instructions?
A. No, I do not.
Q. Is there anything that would prevent you from testifying truthfully and accurately regarding this matter today?
A. No.
Q. Did you review any documents in preparing for today?
A. Yes.
Q. What documents did you review?
A. Reviewed the documents that I had sent to this law firm.
Q. Other than your attorney, did you speak with anybody regarding any aspect of this matter?
A. Yes.
Q. Who did you speak with?
A. Lieutenant Blaasch.
Q. What did you speak with him regarding?

9

A. Mainly concerning scheduling.
Q. Getting into a little background, can you tell me where you went to high school?
A. Smyrna High School.
Q. Do you remember when you graduated?
A. 1966.
Q. And after high school, did you go on to college?
A. No, I went into the military, the US Army, went to Vietnam in 1968 and 1969.
Q. After your tour of duty in Vietnam, did you go on to college?
A. I went to college at Delaware Tech in the early '70s. But I did not complete my degree.
Q. Other than Delaware Tech, did you attend any other graduate schools?
A. Numerous, hundreds, Delaware State Police Academy, 1974, I have a US

10

Coast Guard 100-ton captain's license. I'm a certified rescue diver. And I have attended -- we are required to have a minimum of 40 hours training per year every year, and I have done that for -- I have been on 32 years. So numerous training classes.

Q. Can you describe the areas you have been trained in.

A. Law enforcement, laws of evidence, laws of arrest, jurisdiction, search and rescue, medical technician, radar, loran, navigation, first aid, homeland security.

Q. And can you tell me who provided this training to you, what institution?

A. Most of the training was provided by agencies in the State of Delaware. I have been trained by the US Coast Guard, I attended New Jersey State Marine Academy for marine operations back in the '70s.

Q. You said earlier you have a

11

Coast Guard 100-ton captain's license?

A. Yes, that license, I have had it for 20 years. The license has recently expired because I will be 58, I didn't want to use it anymore.

Q. And did that require annual training to keep you updated?

A. It required certification, no annual training, every five years you had to be recertified by a physical, have a certain amount of water hours, actual out on the water -- hours on the water, it was mandated by the Coast Guard in a five-year period.

Q. Where are you presently employed?

A. I'm employed by the Department of Natural Resources Environmental Control, Division of Fish and Wildlife Enforcement section.

Q. What is your position with DNREC?

A. I am a captain in charge of supervision for New Castle County for

12

fish and wildlife enforcement.

Q. And how long have you held that position?

A. Since 1988.

Q. Prior to 1988, where were you employed?

A. From 1974 to 1988 I was a Delaware Marine police officer, patrol officer.

Q. Prior to 1974 when you were a marine police officer, where were you employed?

A. I was a commercial waterman.

Q. Did you become a commercial waterman after the --

A. US Army.

Q. What did you do as a commercial waterman?

A. Commercial fisherman.

Q. Did you work on the boats, did you pilot them?

A. I had my own boat and my own nets.

Q. Where did you fish?

13

A. Delaware Bay, near Woodland Beach.

Q. What were your duties as a Delaware marine police patrol officer?

A. We would patrol Delaware waters, I patrolled all three counties -- New Castle, Kent and Sussex. And our duty was to enforce primarily the boating and natural resources laws of boating on the Delaware and engage in search and rescue activities.

Q. What are your responsibilities with DNREC as a captain?

A. Presently they are primarily administrative duties over the officers that I have in the field in New Castle County, law enforcement and search and rescue.

Q. How many officers do you supervise?

A. Seven full-time and 1 have one reserve part-time.

Q. In what laws are the division of fish and wildlife enforcement

14

officers charged with enforcing?
**A. We have the authority to enforce any statute in the Delaware code. That involves the natural resources laws and also the criminal code, traffic code, drug code, we have statewide authority and jurisdiction.**
Q. Earlier when you talked about your responsibilities now, you said that now they are primarily administrative. Have your responsibilities changed while you have been in the position of captain?
**A. Yes, to one degree. In the beginning I was more like a patrol captain where I spent probably half of that time on patrol administrative duties, and the last five years have been primarily administrative. But I would respond out to important situations on the water.**
Q. Can you estimate or characterize how much you are out on the water responding in a year?

15

**A. No.**
Q. As the supervisor of these seven or eight officers, do you schedule their patrols on the water? What exactly do you do?
**A. I schedule their hours of operation.**
Q. During a given shift, what are the –
**A. I also would schedule in conjunction with Lieutenant Blaasch, any special operations or special needs we may have to take care of.**
Q. Can you tell me your understanding of the location of the Delaware/New Jersey border?
**A. Yes.**
Q. Could you?
**A. It is my understanding that the State of Delaware has jurisdiction in the Delaware River east of the main shipping channel and west of the main shipping channel from the northern tip of Artificial Island, that is where Alloways**

16

**Creek starts, north, to a little bit north of Oldmans Creek on the New Jersey side across from Claymont. If you draw a line across from Claymont. That would go over to the mean low watermark.**
Q. How do you ascertain where the mean low watermark is on the each side of the river?
**A. Mean low watermark is where the low water normally is low, not because of an excessive storm or some other event. It is just an average where it is normally low.**
Q. When you are out on a boat in the river, how can you ascertain where the mean low waterline is?
**A. From years of experience, you see when the tide goes out, there is in Delaware this is like -- excuse me for a second. There is about a five and a half foot to maybe six foot rise and fall of the tide. And from years of experience, you get to see what, where the low watermark is on a shoreline.**

17

Q. Are there any physical markers of this mean low waterline out there for reference?
**A. No.**
Q. Are you familiar with the 12-mile circle or what is referred to as the 12-mile circle in terms of the area of the Delaware River that that encompasses?
**A. Are you referring to 12-mile circle from the City of New Castle?**
Q. Yes.
**A. Yes.**
Q. So if I asked you what Delaware's fish and game enforcement -- what program was within the 12-mile circle, would you be able to describe that to me?
**A. Yes.**
Q. Please do.
**A. We enforce all of the commercial fisheries laws, and that would be commercial fin fishing, commercial crabbing, there is no commercial oyster**

18

industry up in that area. We enforce the boating safety laws. We enforce the hunting and wildlife laws. We would also enforce the criminal, Delaware criminal code, Title 16 which is narcotics, anything that came out of us enforcing the natural resources law that was applicable in the Delaware code, we would enforce those other laws in the Delaware code.

Q. For this enforcement program on the river, what equipment do you use?

A. What equipment?

Q. Yes.

A. We have numerous patrol boats from 25 foot on down to 13 foot.

Q. Do these patrol boats make routine patrols or trips through the area of Delaware?

A. Yes.

Q. How often does that happen?

A. In the summertime almost every day.

Q. And how many patrols on a

19

given day in the summer would you estimate there are?

A. I can't answer that.

Q. What would a routine patrol of the area within the New Castle County jurisdiction consist of?

A. Routine patrol if there is such a thing, would be leaving Delaware City, we keep two vessels moored at the Delaware City dock. We keep another one moored in Wilmington. We have vessels located down to Augustine Beach which is directly across from the nuclear power plant. They would utilize one of those vessels to go out on patrol. We would be working maybe a special -- checking for boaters under the influence of alcohol, speeding vessels, vessels operating negligently or negligent operations. They are constantly on call and respond to search and rescue calls from the Coast Guard, US Coast Guard and the 911 emergency New Castle fire board center.

Q. Are all of your enforcement

20

efforts for the New Castle area, Delaware River part of your responsibility conducted from watercraft?

A. No.

Q. What other methods do you use?

A. We do homeland security. We respond to criminal incidents on the water whether it is a fatal boat accident, an assault on a vessel, for example, which we have done.

Q. Do you or your enforcement staff board docks, piers or wharves that are attached to the shores of New Jersey to undertake enforcement actions?

A. We have.

Q. And when was that?

A. I cannot answer that. I do not know exactly.

Q. Can you recall as best you can what the incident was that caused you to get on the dock?

A. There had been calls from the dock at the Fort Mott facility for

21

assistance, law enforcement assistance, but I do not remember what the incidents are.

Q. Would you have any memory of who might have made the call for assistance?

A. No, I do not.

Q. Do you know who has general jurisdiction over Fort Mott?

A. Fort Mott is in the State of New Jersey. The Fort Mott -- the pier that goes into Fort Mott is in the State of Delaware. The pier is in the river, Delaware River.

Q. Can you describe for me the special operations that you are called upon to undertake in the Delaware?

A. There may be a US Navy vessel coming through our waters and maybe moored at Wilmington and we will provide security for that vessel.

Q. Anything else?

A. We have worked with the US Customs and US Coast Guard on drug

22

**interdiction, narcotics.**
MS. CHUDZIK: Can you mark this.
(Exhibit Hutchins-1 marked for identification.)
BY MS. CHUDZIK:
Q. Captain Hutchins, I show you now what has been marked Hutchins-1 for identification, it is Bates stamp DE29854 and DE29855. I will ask you, are you familiar with this document?
**A. Yes.**
Q. Can you tell me what report -- first of all, the title is definition of the boundary line between Delaware and New Jersey from report of the USC&GS to the State of New Jersey and Delaware in marking the boundary line. Can you tell me what report this was attached to?
**A. Yes.**
Q. Specifically --
**A. Are you asking me which report?**

23

Q. Yes.
**A. This was attached to a 19 -- a document from a Delaware deputy attorney general which he reaffirmed --**
MR. BOYER: I will caution you on the basis of attorney/client privilege. To the extent this document was authored by a Delaware deputy attorney general --
THE WITNESS: That is correct.
MR. BOYER: -- conveying legal advice to you, I will instruct you not to testify as to the contents or advice of that communication.
THE WITNESS: It was a memo from our attorney general, deputy attorney general.
BY MS. CHUDZIK:
Q. Do you remember the date of that memo?
**A. 1993.**

24

Q. And have you ever seen the full report of the US Coast Guard which this appears to be a part of?
**A. No.**
Q. Would you have any idea of the date of authorship of the document that is Hutchins-1?
**A. No.**
Q. Do your patrols on the Delaware patrol or inspect for anything in addition to the fish and wildlife laws that you have talked about?
**A. When we are on patrol, we are out looking for anything that may be unusual or a violation of Delaware code. If we saw, for example, a new bulkhead, marina or pier that was being built, we would notify the appropriate section within our department.**
Q. To your knowledge, have any such notifications been made by the people you supervise?
**A. Yes.**
Q. Could you tell me what you

25

recall of that?
**A. I do not remember.**
Q. Can you estimate was it in the last five years?
**A. No, I cannot.**
Q. Could you walk us through a routine enforcement action by one of your officers for a boating or boating safety or related incident on the Delaware.
**A. Are we talking about a hypothetical situation?**
Q. Right. If they came upon -- routine inspection which gives rise to concerns on the water.
**A. Most of the time they are operating a marked patrol boat that identifies them as a Delaware police vessel. They are in a police uniform. They would come alongside and verbally identify themselves, advise the occupants of the vessel, why they were stopping them, and what they were checking for. And if it happened to be for safety equipment, they would ask to see life**

26

jackets, observing the boat at the time, they would maybe observe registration on the state, boat registration. Checking the occupants to see if they are not under the influence of alcohol, if there are children on board, are the children wearing life jackets.

Q. Do your officers write citations or tickets for violations they discover?

A. Yes.

Q. And if -- where are those violations returnable? What court would hear if that is the appropriate term?

A. If they are issued a summons on the water, the subject who was issued the summons is given a copy, and officer would take that summons to the nearest justice of the peace court.

Q. And for the New Castle County jurisdiction, where would those justice of the peace courts be?

A. Could be justice of the peace court in Middletown and it could be

27

justice of the peace court 11 in New Castle. Could be in Wilmington. Primarily we use New Castle and Middletown justice of the peace courts.

Q. And if your officers determine that the boat is unsafe or that the operator is unsafe to operate the boat, what actions do they take?

A. That is a twofold question. If -- we have the authority under the Delaware code, if we deem a vessel unseaworthy, to terminate its voyage and take the vessel and its occupants to the nearest safe port. If the operator, for example, is under the influence of alcohol or drugs, he would be given preliminary test for that on scene. And if there was probable cause for arrest for that, he would be arrested on the spot and taken into custody.

Q. And where would your officers in the New Castle area take the individual that he had taken into custody?

28

A. On initial stop for OUI, there is field tests. Similar to road tests but they are done in a vessel. PBT, if you are familiar with that, is also utilized.

Q. Could you explain what PBT is.

A. First test are physical tests of the boat operator. But they are more aimed for you are out on the water in unstable condition. So they are aimed at judging if a person is under the influence. We have portable Breathalyzers which gives a readout, but they are only good for probable cause. Once we establish that there is probable cause for an arrest, we would take the subject to a State Police troop or -- and have him wait there for about 40 or 50 minutes and use the intoxilyzer.

Q. What would happen to the vessel, where would the vessel be taken?

A. The vessel would be impounded.

29

Q. And where would you take an impounded vessel?

A. That is a twofold question, too. If the vessel -- if you could contact -- if the vessel was not involved in a criminal act, besides the operator, the vessel could be released to a relative who is willing to remove it from the water on a boat trailer, for example. If the vessel was involved in say a fatal boat collision, the vessel would be removed from the water and stored at our evidence facility in Little Creek.

Q. In where?

A. Little Creek.

Q. Does your staff ever undertake any joint enforcement efforts with other public agencies?

A. Yes.

Q. Could you describe those for me.

A. I believe I explained that we work with US Coast Guard frequently on combatting OUI, search and rescues

30

continuously. After 9/11 we are working with the US Coast Guard, FBI, Customs, we attend monthly meetings on homeland security issues, we work with the US Fish and Wildlife Service.

Q. Do you have any joint undertakings with any New Jersey public entities?

A. Yes.

Q. Could you describe those for me.

A. The police department in Pennsville has a Septemberfest in the fall of each year, and we coordinate with them to insure public safety in the waters right off of Pennsville Beach.

Q. Could you describe your operations during the Pennsville Septemberfest.

A. Yes, we have been doing them at least -- it has been a long time. Initially there was a real problem in the waters right adjacent to the beach at Pennsville, New Jersey, Delaware

31

jurisdiction where they would -- during the Septemberfest at nighttime, they shoot off fireworks. Boaters would raft up there and anchor and it would be one very large party with a lot of alcohol consumed and they would shoot fireworks off after dark. We had numerous boat accidents. So we started working that to combat the OUI problem, and it is nothing like it was years ago.

Q. If you discover a drunken boater at the Septemberfest off Pennsville, where is the boater taken?

A. He is taken to Delaware, processed.

Q. Are you aware of any citations being issued by one of your enforcement officers for activity on a pier in New Jersey?

A. Not on a pier, no.

Q. How about on a wharf or dock or other related item in New Jersey?

A. They have checked fishermen, for example, on the small pier off of

32

Killcohook which is in Delaware jurisdiction, in the Delaware River east of the shipping channel which goes into Killcohook Refuge.

Q. And what would they be checking the fishermen for?

A. Size, limit, so forth, quantity. We also -- we have had fatal boat accidents right near that pier at Killcohook. We interviewed a lot of people that were on that pier to find out if they were witnesses to the fatal boat accident.

Q. What kind of game code enforcement activities are you responsible for?

A. Pardon me, did you say game?

Q. Game.

A. We enforce all the wildlife regulations in Delaware, waterfowl, hunting. We are also federal US fish and wildlife agents, have federal authority.

Q. How close to the shoreline can your patrols get with their boats?

33

A. Certain areas, a lot of the areas, we can get right -- are you talking about the portion of the Delaware River east of the shipping channel?

Q. Right, the eastern side -- I'm particularly interested in the eastern side.

A. The majority of the portion of the area we can get right up to the mean low watermark.

Q. Can you characterize that demarcation by a deptb of water?

A. Shallow at low tide. Our bows may rub into sand, but the outboards have enough water, you could utilize them.

Q. What would you consider to be a shallow water? Can you give me a depth in feet?

A. Example, Pennsville ramp, the ramp that is located in Pennsville, New Jersey extends out into the Delaware River and at the mean low watermark, the bow of our patrol boats can go right to

34

the beginning of the ramp. And they would probably be in six inches of water or maybe aground on the sand.
Q. Just to make sure I understand this correctly, are you saying the end of the water pier in Pennsville is at the mean low waterline?
A. Pennsville is not a pier. Pennsville is a boat ramp where they are launching boats. And the ramp extends out into the Delaware River.
Q. Does your office receive requests for assistance or calls from the eastern New Jersey side of the shoreline?
A. As far as search and rescue calls, yes. Again, would you rephrase that again, please.
Q. I'm trying to find out, do you respond to calls regarding dangerous boating, search and rescue and things like that that are received from locations on the eastern side of the Delaware?
A. We respond to any and all

35

calls in the Delaware River within our jurisdiction. And that is the 12-mile circle from city of New Castle. We also respond to search and rescue outside of that.
Q. How many enforcement officers are there in your division at DNREC?
A. 28.
Q. With regard to the officers that you indicated that you supervise, are you responsible for their scheduling?
A. Yes.
Q. Do you schedule routine patrols for them?
A. Yes.
Q. Is there a set number of hours that each officer has to be in -- on the water each month?
A. Normally no. What they are required to have is a minimum of 150 hours underway in police boats per year.
Q. Do you have any hourly requirements for being underway for

36

yourself?
A. No.
Q. When was the last time you personally undertook a patrol of the Delaware?
A. Approximately I think it was back in September. I recovered a body from a drowning victim. Was involved in a boat accident.
MS. CHUDZIK: I don't have anything else for you.
THE WITNESS: Thank you.
(Witness excused.)
(Deposition concluded at approximately 1:09 p.m.)

37

CERTIFICATE

I HEREBY CERTIFY that the witness was duly sworn by me and that the deposition is a true record of the testimony given by the witness.

It was requested before completion of the deposition that the witness, ROBBRT W. HUTCHINS, have the opportunity to read and sign the deposition transcript.

DOTTYANN Y. WALSH, a Certified Shorthand Reporter and Notary Public of the State of Delaware
CSR License Number: 251-RPR
Notary Number: 20051147009
Notary expiration: April 14, 2007
Dated: November 6, 2006

(The foregoing certification of this transcript does not apply to any reproduction of the same by any means, unless under the direct control and/or supervision of the certifying reporter.)

## INSTRUCTIONS TO WITNESS

Please read your deposition over carefully and make any necessary corrections. You should state the reason in the appropriate space on the errata sheet for any corrections that are made.

After doing so, please sign the errata sheet and date it.

You are signing same subject to the changes you have noted on the errata sheet, which will be attached to your deposition.

It is imperative that you return the original errata sheet to the deposing attorney within thirty (30) days of receipt of the deposition transcript by you. If you fail to do so, the deposition transcript may be deemed to be accurate and may be used in court.



## ERRATA

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## ACKNOWLEDGMENT OF DEPONENT

I, ROBERT W. HUTCHINS, do hereby certify that I have read the foregoing pages, 1 - 36, and that the same is a correct transcription of the answers given by me to the questions therein propounded, except for the corrections or changes in form or substance, if any, noted in the attached Errata Sheet.

_____

ROBERT W. HUTCHINS DATE

Subscribed and sworn to before me this

_____ day of _____, 20____.

My commission expires:_____

_____

Notary Public



## LAWYER'S NOTES

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E R R A T A

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| PAGE | LINE | CHANGE |
|---|---|---|
| 19 | 16 | add "operation" after the word special. |
| 19 | 19 | delete " or Negligent operations." |
| 19 | 21 | delete "coast" |
| 19 | 22 | delete "guard" |
| 25 | 14 | add "safety" before the word concerns |
| 26 | 2 | delete "on" and add "of" |
| 27 | 10 | delete " IF" |
| 28 | 18 | delete " or" after word trap. |
| 29 | 4 | delete " if you could" |
| 29 | 5 | delete " contact" |
| 29 | 5 | delete " if the vessel" |
| 30 | 21 | delete " at least" |
| 30 | 21 | delete " it has been" |
| 31 | 1 | add " be" after word would |
| 32 | 8 | delete " we" |
| 36 | 7 | delete " September" |
| 36 | 7 | add " July 18, 2006" |
| | | Nov. 13, 2006 |
| | | Robert W. Hutchins |

ACKNOWLEDGMENT OF DEPONENT

I, ROBERT W. HUTCHINS, do hereby certify that I have read the foregoing pages, 1 - 36, and that the same is a correct transcription of the answers given by me to the questions therein propounded, except for the corrections or changes in form or substance, if any, noted in the attached Errata Sheet.

Robert W. Hutchins 11/14/06

ROBERT W. HUTCHINS DATE

MATTHEW F. BOYER
NOTARIAL OFFICER
Delaware Attorney No. 2564
Pursuant to 29 Del. C. §4323(a)(3)

Subscribed and sworn to before me this 14th day of November, 2006.

My commission expires: N/A

Matthew F. Boyer (attorney at law)

Notary Public

IN THE UNITED STATES
OF THE UNITED STATES

| | | |
|---|---|---|
| STATE OF NEW JERSEY, Plaintiff(s), | : | CIVIL ACTION |
| | : | NO. 134, Original |
| v. | : | |
| STATE OF DELAWARE, Defendant(s). | : | |

Wednesday, October 18, 2006

Oral deposition of WILLIAM F. MOYER, held at the law offices of CONNOLLY BOVE LODGE & HUTZ LLP, The Nemours Building, 1007 North Orange Street, Wilmington, DE 19899, beginning at 9:35 a.m., on the above date, before Debra J. Weaver, a Federally Approved RPR, CRR, CSR of NJ (No. XI 01614) and Delaware (No. 138-RPR, Expiration 1/31/08), and a Notary Public of New Jersey, Pennsylvania and Delaware.

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INDEX

WITNESS PAGE
WILLIAM F. MOYER
BY MS. CONKLIN 7

EXHIBITS

MARKED DESCRIPTION PAGE

Moyer-1 Memo dated 9/4/81 to Bill Moyer from Mike Malkiewicz, Bates DE 19366 91

Moyer-2 Memo dated 9/10/81 to Bill Moyer from Mike Malkiewicz, Bates DE 19367 91

Moyer-3 Lease Granted to E.I. Du Pont de Nemours and Company dated 9/29/71, Bates DUP 0001256-1261 91

Moyer-4 Memo dated 1/15/82 to Juns MacArtor from William Moyer, Bates DE 19368 94

Moyer-5 Letter dated 10/23/81 to Alan L. Skinner, Esquire, from June D. MacArtor, no Bates stamp 96



Moyer-6 Letter of Authorization dated 3/18/82 to Lewis A. Caccese, P.E., from William F. Moyer, Bates DE 19371 126

Moyer-7 Letter dated 2/9/88 to State of Delaware, DNREC, from Reinhold Betschel, with enachment, Bates DUP 0001013-1020 131

Moyer-8 Letter dated 2/9/88 to Reinhold Betschel from William F. Moyer, Bates DE 19393-19396 145

Moyer-9 Letter dated 9/30/91 to William Moyer from W. Harding Drane, Jr., Bates DE 02197-2198 151

Moyer-10 Subaqueous Lands Lease Granted to Keystone Cogeneration System, Inc., date of issuance: 9/30/91, Bates DE 02200-2205 151

Moyer-11 Letter dated 8/17/04 to William Moyer from DuPont Chambers Works, with attachments, Bates DUP 0000920-982 153



Moyer-12 e-mail dated 9/20/04 to William Moyer from W. Harding Drane, Jr., Bates DUP 0000717, DE 19422-19431 155

Moyer-13 Coastal Zone Management for Delaware, February 18, 1971, Governor's Task Force on Marine and Coastal Affairs, Bates DE 16444-16484 165

Moyer-14 The Coastal Zone of Delaware, Governor's Task Force on Marine and Coastal Affairs, no Bates stamp 166

Moyer-15 Delaware Bay Report Series, Volume 8, Economic and Social Aspects of Delaware's Coastal Zone, by Joel M. Goodman, Spring 1973, no Bates stamp 177

Moyer-16 Memo dated 7/27/94 to Peder Hansen, et al., from Sara W. Cooksey, Bates DE 27936-27941 180

DEPOSITION SUPPORT INDEX

Direction to Witness Not to Answer
Page Line Page Line Page Line
None

Request for Production of Documents
Page Line Page Line Page Line
104 3

Stipulations
Page Line Page Line Page Line
None

Question Marked
Page Line Page Line Page Line
None


WILLIAM F. MOYER,
after having been first duly sworn, was examined and testified as follows:

EXAMINATION

BY MS. CONKLIN:

Q. Good morning, Mr. Moyer.

**A. Good morning.**

Q. My name is Barbara Conklin. To my left is Rachel Horowitz. We're both deputy attorney's general. We represent the state of New Jersey in litigation against the state of Delaware concerning jurisdiction located in the Delaware River. And, of course, this is just a broad statement of what the litigation is about.

We are here to ask you questions and you are here to reply under oath to those questions. This is very -- this is the same thing as being in court. The court reporter sitting between us will take down anything that you say orally but cannot take down nods or shakes of the head. So I'm going to ask that all of us try and place all of our responses -- speak all of our responses and not nod.

MR. WALTON: I'm sure the court reporter will remind you if you're nodding.

MS. CONKLIN: Probably.

BY MS. CONKLIN:

Q. The second cardinal rule is to speak in sequence because the court reporter can't take down two people speaking at once. So I will really try very hard not to trample on your answers.

And the third cardinal rule is, if there's something you don't understand, let me know, and I will try and rephrase the question or clarify whatever it is that's unclear to you.

Do you understand?

**A. I do. Thank you.**

Q. All right. Is there any reason today, anything that you're aware of, that would keep you from answering these questions truthfully --

**A. No.**

Q. -- such as medication, anything like that?

**A. No.**

Q. Very good.

Let me ask you, have you ever been deposed before?

**A. I have.**

Q. All right. Could you -- how long ago was that?

**A. Seven, eight years ago was probably my last one. I've been deposed several times.**

Q. And where were you employed at the time?

**A. With the Department of Natural Resources and Environmental Control, who I'll refer to as DNREC.**

Q. DNREC, and that's D-N-R-E-C?

**A. Yes.**

Q. And were the depositions all

10

related to one case?
A. No.
Q. All right. Could you just briefly describe the litigation for each of your depositions?
A. I cannot.
Q. Okay.
A. It's been a while. I don't even remember what the cases were.
Q. All right. Were these challenges to decisions made by DNREC?
A. I can't -- I just don't remember.
Q. Okay. Just forgive me because sometimes if I pose a question, it might refresh your recollection.
A. I understand.
Q. Did this have to do with -- were you deposed in your official capacity?
A. Yes, yes.
Q. All right. And at the time you were deposed, what were you doing for the department?

11

A. In the same capacity that I've been in for the last 30 years, which was a section manager for the Wetlands and Subaqueous Lands Section.
Q. All right. And were the depositions -- were your depositions then related to your work --
A. Yes.
Q. -- for the Wetlands Section?
A. Yes.
Q. Do you recall whether these depositions concerned a specific decision that you made?
A. In some cases, yes.
Q. All right. And were these decisions concerning a permit or license that you had issued?
A. In some cases, yes.
Q. Okay. Were any of these depositions concerning a license or permit issued to British petroleum?
A. No, not that I recall. No.
Q. Okay. Were any of these depositions related to a license or

12

permit issued to DuPont de Nemours?
A. No.
Q. All right. At this point you don't recall what those depositions were related to?
A. Well, they would -- they would either be related to a permit that we had denied that somebody challenged that went through our appeal process and then somehow got into a court case. That probably is what they were all involved with. Some rendering of a decision on a permit application.
Q. And in the course of these depositions, did you have to explain how you went about determining land area for a subaqueous license?
MR. WALTON: Object to the form of the question.
THE WITNESS: Yeah, I'm not sure I understand the question.
BY MS. CONKLIN:
Q. Okay. In any of these depositions, did you have to explain how

13

you went about determining the area of a subaqueous license?
A. I don't recall.
Q. Okay.
A. I don't recall.
Q. All right. Very good.
Did you testify in any proceeding after these depositions were taken?
A. I don't recall. As a result of the deposition you're saying? No, I don't recall.
Q. Okay. Have you ever testified in court before?
A. Yes.
Q. Okay. Do you know what court you testified in?
A. Yes.
Q. Could you describe that court for me?
A. Chancery Court in Sussex County, Federal District Court, several magistrate court cases, Superior Court enforcement cases. A number of vary -- a

14

variety of different courts.
Q. And when you say District Court, you're talking Federal District Court?
A. Yes.
Q. In Wilmington?
A. Yes.
Q. All right. And how recent was that?
A. Early 1980s.
Q. Okay. When was the last time you recall testifying in court, how recently?
A. 2002. 2001, 2002.
Q. Do you recall which of the courts you appeared in at that time for testimony?
A. It was Sussex County, I believe it was Court of Common Pleas, if I'm not mistaken.
Q. Very good. All right. Where are you currently employed?
A. I'm employed part-time at an

15

environmental consulting firm called Duffield Associates in Wilmington, Delaware.
Q. And what is your position there?
A. I'm a senior consultant.
Q. Okay. And what are your duties?
A. I work with permit applications and reviewing state and federal regulations, giving talks and obtaining clients for Duffield.
Q. All right. And when you talk about permit applications, could you describe them for me?
A. Yes. I've been involved with submitting applications to DNREC for subaqueous lands and wetlands permits and to the Corps of Engineers for federal permits pursuant to the Clean Water Act.
Q. And when did you -- when did you begin your job at -- I'm sorry, is it --
A. Duffield.

16

Q. Duffield. I'm sorry.
A. Yeah. In May of 2005.
Q. Since May 2005, have you had occasion to submit any permit applications on behalf of British petroleum?
A. I have not.
Q. Since 2005, have you had any occasion to submit any applications on behalf of DuPont?
A. No.
Q. Have you submitted any applications, same question, for Logan Generating?
A. No.
Q. All right. You say you also give talks --
A. Yes.
Q. -- as part of your job?
A. Yes.
Q. Could you describe the talks that you give as a result of your job?
A. I gave one talk to Duffield employees on the state and federal

17

regulatory program. I spoke last week at the Delmarva Wetlands Conference. Those are probably the two most recent.
Q. Did you give a formal paper at the Delmarva Wetlands Conference?
A. I would say that it's formal. It's not a published paper, but it was a formal presentation.
Q. And what was the subject of the presentation?
A. State and federal regulations. Just a review of the state and federal regulatory program.
Q. Okay. And when we talk about regulatory program, could you describe what you mean?
A. The Federal 404 Regulatory Program and the State Wetlands Program specifically on this particular talk.
Q. Okay. Would the State Wetlands Program include regulation of subaqueous lands?
A. No.
Q. When I use the term

18

subaqueous lands, what is your understanding of that term?
**A. Subaqueous lands are lands below the mean high water line in the state of Delaware.**
Q. And put another way, that means they're under water?
**A. Correct.**
Q. Okay. Let me ask you, is there a term that is used as a synonym for subaqueous lands or should I just use subaqueous lands for the next few hours?
**A. Most people use underwater lands.**
Q. Underwater lands?
**A. Yes.**
Q. Very good. I think that will be a little easier on both of us here, underwater lands.
But the formal term is subaqueous?
**A. Yes.**
Q. In New Jersey it's different. Anything rather than

19

subaqueous.
So would it be fair to say as part of your job for Duffield that you communicate with DNREC staffers as part of your job for -- as part of your involvement in permit applications?
**A. Yes.**
Q. Have you since May of '05 communicated with Ms. Laura Herr, H-E-R-R?
**A. Yes.**
Q. And have those communications been restricted, aside from just social stuff, to the permit application at hand?
**A. Yes.**
Q. What is Ms. Herr's position at DNREC; do you know?
**A. Yes. She's my successor. She's the section manager for the Wetlands and Subaqueous Land Section.**
Q. She's the section manager?
**A. Uh-huh.**
Q. And do you know who she

20

reports to?
**A. Kevin Donnelly, division director, two Ns, two Ls.**
Q. Okay. Is there another section manager in addition to Ms. Herr in that section?
**A. Yes.**
Q. Okay. Do you know who that is?
**A. There's several. Four or five.**
Q. There are about four or five?
**A. Yes. The division is divided into, I believe, five sections.**
Q. Okay. Just briefly, can you tell me what those sections are?
**A. I'll try. Water Pollution Control -- I'm sorry. Surface Water Protection, Groundwater Protection, the Laboratory, Watershed Assessment Section and -- I guess that's it. Surface Water, Groundwater, Watershed Assessment and the Laboratory, and Wetlands and Subaqueous**

21

**Lands.**
Q. When you say wetlands and subaqueous, are those two areas combined under one manager?
**A. Yes. Yes.**
Q. Okay. And to your knowledge, that manager is Ms. Laura Herr?
**A. Herr.**
Q. Herr. I'm sorry. All right. Okay.
Are you aware of a distinction between a subaqueous license and a subaqueous permit?
**A. No.**
Q. Okay. Is there a distinction between a subaqueous license and a subaqueous grant to your knowledge?
**A. Well, we don't use those terms, so I don't know, at least as it pertains to Delaware.**
Q. Okay. What types of interests does the state of Delaware give to people to occupy or use subaqueous

22

lands?
A. Either a subaqueous lands permit or subaqueous lands lease, aside from other minor approvals, like letters of permission or repair and replace permissions.
Q. Okay. A subaqueous lands lease in general does what?
A. Allows people to occupy subaqueous lands for a period of ten years subject to the terms and conditions of the subaqueous lands lease.
Q. To your knowledge, in the last ten, 20 years, does Delaware or has Delaware given out grants of subaqueous land --
A. What was the time?
Q. In other words, have they given up ownership of subaqueous land in a document in exchange for money?
A. In what time frame?
Q. In the last 20 years.
A. No.
Q. To your knowledge, does the

23

state have that authority if they chose to do it?
A. Yes.
Q. Tell me what a subaqueous permit does.
A. A subaqueous permit is for activity on private or nonpublic subaqueous lands.
Q. Okay. When you say nonpublic subaqueous lands, what do you mean? What does that term mean?
A. The area between the mean high and mean low water or in nontidal lands where the state does not have ownership of the subaqueous lands. Any nonpublic subaqueous lands would be private subaqueous lands, as we use the term.
Q. When you say the state doesn't have ownership, would that include categories where -- categories where subaqueous land was leased out already?
A. No.

24

Q. Okay.
A. That's still considered public.
Q. Got it.
And could you describe what a letter of permission is?
A. There are certain categories of activity that don't change the size or dimensions of a structure that's already been approved, so we allow minor repairs to be made without going through the full permit process. It's an abbreviated permitting process where we don't have to go to public notice and review the whole litany of requirements that people have to meet for the full permit.
Q. All right. Since May of '05, have you had occasion to submit applications for a letter of permission?
A. Yes. From Duffield?
Q. On behalf of a client, yes.
A. Yes.
Q. All right. And have you also had occasion to file an application

25

for a subaqueous permit?
A. Yes.
Q. All right. And have you had occasion to file an application for a subaqueous license?
A. Not license. Lease?
Q. I'm sorry, lease, yes.
A. I have not.
Q. Okay. Are you a member of any organization or group that concerns itself with wetlands regulations?
A. I belong to the Association of State Wetlands Managers.
Q. All right.
A. I was on the board for a number of years.
Q. Okay.
A. And I'm a certified environmental professional with the National Association of Environmental Professionals, emeritus I might add.
Q. Emeritus.
How long have you been a member of the association of state

26

wetland managers?
A. **20 years.**
Q. And does the association concern itself to any degree with issues related to use of subaqueous lands?
A. **No.**
Q. Does the association concern itself with permits for activities on subaqueous lands?
A. **No.**
Q. So would it be fair to say the organization is concerned solely with wetlands issues?
A. **Yes.**
Q. All right. Are you a member of any organization or group that has commented on regulations relating to subaqueous lands?
A. **No.**
Q. Okay. And by regulations, I'm talking about either federal or state law of any sort.
A. **Right. I've not.**
Q. Okay. Since you have been

27

employed at Duffield, have you had any discussions with any of the staff at DNREC concerning applications other than those you have filed on behalf of clients?
A. **Yes.**
Q. And did any of those discussions concern applications for subaqueous leases?
A. **I don't recall. I think they were mainly permits, subaqueous permits.**
Q. And how did these subaqueous permit discussions come about?
A. **They were projects that I saw that were on public notice, and I asked to review the applications. And if there was occasion where I felt the applications were inadequate or incomplete, I submitted a letter to DNREC with my comments. I might add that that was not as a Duffield employee. That was more on my own -- my own personal time.**
Q. Why would you be – why

28

would you comment on applications before DNREC that did not concern a client of yours?
A. **Just because of my concerns about whether or not the applications were complete and were complying with the applicable rules and regulations.**
Q. What would be your status -- now, let me rephrase this.
Would you be submitting comments simply as a private citizen then?
A. **Yes, yes.**
Q. Would your comments indicate that you are making comments as a consultant on behalf of Duffield?
A. **No, no.**
Q. Okay. And have you been submitting these comments on all projects that have been advertised since May of '05?
A. **No. Just one or two.**
Q. And could you describe the applications that you felt were

29

appropriate to comment on?
A. **One most recently was an application adjacent to the port of Wilmington, on the Christina River, where the applicant proposed to dredge the river and build a dock for shipping out garbage to recycling locations. I reviewed the application and felt that it was not complete and submitted my comments on what I thought needed to be added to make the application complete.**
Q. When you say you reviewed the application, how did you -- how did you go about reviewing the application?
A. **I had an appointment at DNREC and went in and reviewed it from their file.**
Q. And why did you choose that particular application to review and comment on?
A. **Because I knew that that area of the Christina River had contaminated sediments and there was nothing in the public notice that**

30

indicated that they were testing any of the sediment before they dredged it. And I had a concern with that.
Q. And do you recall -- I think you said there were one or two -- one or two applications that you had commented on. Do you recall any of the others?
A. I think one of the other ones was requests to change the wetlands map that went on public notice. And another one was for a minor marina somewhere down in lower Delaware in one of our inland bays.
Q. You indicated earlier that Ms. Herr, I'll probably never pronounce her name correctly, forgive me.
A. Like the potato chip.
Q. Herr's. I mispronounce that, too. Ms. Herr is a section manager among four or five other section managers; is that correct?
A. Yes.
Q. Okay. Do all the section managers report to Mr. Kevin Donnelly?

31

A. Yes.
Q. Okay. Who is a division director?
A. Yes.
Q. All right. And do you know to whom Mr. Donnelly reports?
A. Secretary John Hughes.
Q. Okay. And when you use the term secretary, what's the formal title?
A. Secretary John Hughes.
Q. Secretary of what?
A. Oh, I'm sorry, the Department of Natural Resources and Environmental Control.
Q. Which we are referring to as DNREC?
A. DNREC, that's correct.
Q. How many division directors are there that you're aware of?
A. Five.
Q. And I'm going to test your knowledge here.
A. I thought you might.
Q. Could you give me an

32

overview of the other division directors, not their names necessarily, but their job titles.
MR. WALTON: Make sure she finishes her question.
THE WITNESS: Okay.
You just want the name of the divisions?
BY MS. CONKLIN:
Q. Yes.
A. Air Resources.
Q. Hang on. Yes.
A. Air and Waste Management. Fish and Wildlife. Division of Fish and Wildlife. Division of Soil and Water Conservation. Division of Recreation.
Q. And Kevin Donnelly is division director of which of those?
A. Water Resources.
Q. And just so I understand I've got this right, Mr. Donnelly as director of Water Resources has under his supervision sections related to the Water Pollution Control Act, surface water,

33

groundwater, laboratory section and watershed assessment?
A. That's correct.
Q. And watershed assessment handles wetlands and subaqueous issues?
A. No.
Q. Where does the --
A. Wetlands and subaqueous lands handles wetlands and subaqueous lands issue. I don't know if you mentioned that --
Q. I'm sorry. Say that again. I didn't hear you.
A. Wetlands and subaqueous lands, which is under Mr. Donnelly, handles wetlands and subaqueous.
Q. Okay. It's its own little section?
A. Yes.
Q. And that is all under Ms. Herr?
A. Yes.
Q. Thank you.
A. You're welcome.

34

Q. When were you first -- let me ask you something. What's your education and professional training?

**A. How detailed do you want it? General degrees and years?**

Q. General degrees and years will be fine.

**A. Okay. 1967, bachelor's degree, BS, in biology from Dickinson College; 1972, Master of Science degree in environmental engineering sciences from University of Florida; and then some postgraduate work and several courses that didn't lead to any degrees. Those are the two degrees I have.**

Q. When were you first employed by the state of Delaware?

**A. March 1st, 1974.**

Q. All right. Prior to that time, how were you employed?

**A. June of 19 -- I'm sorry, September of 1967 to June of 1970 I was a biology teacher at a private boarding school in Pennsylvania.**

35

**From '70 to '71 I was a private schoolteacher at a private day school in Jacksonville, Florida.**

**And from '72 to, I hope these dates all figure out, from '72 to '74 I was a regional biologist for the then Florida Department of Pollution Control in Jacksonville, Florida.**

Q. What was your position when you were first employed with the state of Delaware?

**A. I worked for one year in the National Pollutant Discharge Elimination System program, NPDES.**

Q. All right. And what was your title?

**A. Resources engineer.**

Q. Okay. And how long did you have that position?

**A. One year.**

Q. All right. And what were your job duties as a resource engineer?

**A. Review applications for discharging of pollutants and preparing**

36

**draft permits, putting them on public notice, and then forwarding them on to my supervisor for signature and issuance.**

Q. And who was your supervisor back then?

**A. Lee Beetschen.**

Q. Do you want to try and spell that?

**A. Yes. B-E-E-T-S-C-H-E-N.**

Q. To your knowledge, is this gentleman still working within the state?

**A. He is not.**

Q. All right. When you were resource engineer for approximately one year, did your work require you to review or look at subaqueous lands leases?

**A. No.**

Q. All right. When you say you were the resource engineer for one year, are we looking at roughly from March of '74 to March of '75, approximately?

**A. Yes, yes.**

Q. And did you take a new position in March of '75 with the state

37

of Delaware?

**A. I did.**

Q. And what position would that be?

**A. Manager of the Wetlands and Subaqueous Lands Section.**

Q. Okay. As manager of the Wetlands and Subaqueous Lands Section, how many individuals did you supervise?

**A. At that time?**

Q. Uh-huh.

**A. One clerical -- I'm sorry. Two clerical positions. That was it.**

Q. That was it? So you were it?

**A. I was the one.**

Q. You were the one.

Tell me what your duties were as being manager of yourself. I'm not sure I envy that circumstance.

**A. Still the same as they were later on, is to get applications for wetlands permits and subaqueous lands permits and subaqueous lands leases and**

38

follow the procedures required in our department's regulations to issue approvals.

Q. I just want to make sure I'm clear on this. When you took the position of manager of the Wetlands and Subaqueous Lands Section, you were the only person doing the substantive processing and decisions of applications?

A. That's correct.

Q. Okay. May I ask what training you received, if any, after you took the manager's position as to how to process these applications?

A. On-the-job training. No specific -- I attended some -- over the period of three or four years, I attended some outside training courses and relied on my background from my job in Florida, where I did similar work to subaqueous and wetlands.

Q. And when you talk about your job in Florida, you're talking about your position with the Department of Pollution

39

Control in Jacksonville?

A. Yes.

Q. And what experience did you have with subaqueous lands down there?

A. I was in charge of 13 counties in Northeastern Florida for biological monitoring and report-writing, but also in charge of the dredge and fill program for that section of the state of Florida.

Q. And just briefly, I'm still talking about when you were in Jacksonville, Florida, the dredging and filling program that you supervised, to what extent did that require you to focus on ownership issues of subaqueous land?

A. It did not.

Q. Did you have to at any time during this job focus on interpretation of maps delineating ownership of subaqueous land?

A. No.

Q. What experience did you take from the job in Florida that assisted you

40

in your new position in Delaware as manager of the wetlands and subaqueous lands program?

A. A general understanding of rules and regulations, administrative procedures and processes, enforcement activity, review of environmental impact statements and environmental assessments, how to conduct an environmental evaluation of impacts of dredging and filling. That's about it.

Q. That's a lot.

Where did you get your training, if any, concerning delineation of subaqueous lands?

A. On-the-job training with Florida and the state of Delaware.

Q. Okay. When you say you had on-the-job training in Florida, what aspect of your job in Florida concerned subaqueous lands issues?

A. Well, most of the dredging that we permitted took place on subaqueous lands adjacent to mostly

41

residential projects, residential dredging. So I had to have knowledge of what impacts that dredging would have and where the people wanted to dredge and what the permit process was.

Q. As part of your job in Florida, did you have to learn -- did you -- did you correlate the location of dredging projects to any type of mapping of subaqueous lands?

A. Not any mapping, no.

Q. All right. Well, I'm just -- all right.

When you became manager of the wetlands subaqueous lands program in Delaware, was there any staff member on duty when you took the job that had performed that title or that function before you were employed?

A. Not on duty, but was available to me.

Q. And who was that person?

A. John Street.

Q. Okay. And what position did

42

Mr. Street have to your knowledge in DNREC for the state of Delaware?

**A. He was the previous manager of the Wetlands and Subaqueous Lands Section.**

Q. Okay. Do you know how long he had been manager?

**A. I do not.**

Q. Do you know when the Wetlands and Subaqueous Lands Section was created?

**A. I do not.**

Q. When you took the job, to what extent were you in communication with Mr. Street concerning your work involving subaqueous lands?

**A. How often? Probably once every several months.**

Q. Okay. From whom did you learn how to read subaqueous lands -- maps of subaqueous lands?

**A. I'm not sure what you mean when you say maps of -- I'm not sure what maps of subaqueous lands is.**

43

Q. How did you learn to correlate applications for specific activities on subaqueous lands with maps purporting to show ownership of those subaqueous lands?

**A. Okay. We had a -- we had staff from the attorney general's office assigned to DNREC in our environmental unit. And there were two or three deputies attorney general assigned to that, and I got a lot of my education and background in sessions with them. And also our division director, who supervised John Street, had an excellent knowledge of issues surrounding subaqueous lands.**

Q. What is the -- what was the name of that division director?

**A. M.C. Vasuki, V-A-S-U-K-I. M.C. initials.**

Q. When you took the position of manager, were you reporting to Mr. Vasuki?

**A. Lee Beetschen was my direct supervisor. Mr. Vasuki was my division director.**

44

Q. Got it.

Do you know how long Mr. Vasuki had been division director before you came on board?

**A. Probably five years.**

Q. Okay. And do you know how long Mr. Beetschen had been in his position when you came on board?

**A. I do not.**

Q. Okay. Forgive me, Mr. Vasuki was division director and Lee Beetschen was?

**A. Manager.**

Q. Your manager. Okay. All right.

And you reported to Mr. Beetschen?

**A. Right.**

Q. Forgive me, maybe I'm a little confused here.

**A. Okay.**

Q. You were manager of Wetlands

45

and Subaqueous?

**A. Yes.**

Q. And so you're a manager, and you're reporting to Mr. Beetschen who is also a manager?

**A. Yes, it was a little confusing because the organization structure was a little different back then because of the size of the organization. I'm not so sure back when I took over I was called a manager. I think Lee Beetschen was a manager of the section. I'm not exactly sure what I was called at that time.**

Q. Was it a Civil Service position?

**A. Yes, yes.**

Q. Okay. So there would probably be a Civil Service record buried somewhere in some office that would have your formal title?

**A. Yes.**

Q. All right. At some point -- how long were you manager of the Wetlands

46

and Subaqueous Lands Section?
**A. 29 and a half years.**
Q. Okay. Now, during that time, I assume that the organizational structure changed somewhat in DNREC?
**A. Yes.**
Q. Okay. How long do you recall reporting to Mr. Lee Beetschen?
**A. Approximately five years.**
Q. And during that time, were you the only person that was processing applications for subaqueous lands leases?
**A. For a period of time, a short period of time before more staff was added.**
Q. Okay. And how many more staff were added?
**A. Over what time period?**
Q. The five years you reported to Mr. Beetschen.
**A. Two.**
Q. Two more staff.
And what did these staff members do?

47

**A. Processed permits.**
Q. Okay. So you had company?
**A. I finally got some help, yes.**
Q. All right. And were you supervising these staff members?
**A. I was.**
Q. Okay. And did these staff members -- let me ask you.
As part of your job as manager, did you communicate with the AG's office concerning individual applications for subaqueous leases?
**A. Yes.**
Q. Okay. And did these two additional staff members also have that privilege of communicating directly with the AG's office?
**A. They did not. They communicated through me.**
Q. Okay. I see.
During that five-year period when the office expanded dramatically to three people, who were your DAGs who

48

assisted you in your work if you can recall?
**A. If I can recall. Mike Parkowski, F. Michael Parkowski.**
Q. Can you spell that last name, sir?
**A. P-A-R-K-O-W-S-K-I.**
**And June MacArtor.**
Q. Can you spell her last name?
**A. M-A-C capital A-R-T-O-R.**
Q. Anybody else?
**A. Not that I recall.**
Q. And what were their formal titles?
**A. Deputy attorney general.**
Q. To your knowledge, were these individuals, it may sound silly, but I have my own reasons for asking, were they employed by the Office of the Attorney General of the state of Delaware?
**A. Yes.**
Q. Okay. Did you have any attorneys available to you for

49

consultation that were employed by DNREC?
**A. No.**
MR. WALTON: Let's take a break.
(Recess taken from 10:21 a.m. to 10:28 a.m.)
BY MS. CONKLIN:
Q. Back on the record.
**A. Okay.**
Q. And you realize you're still under oath?
**A. Yes.**
Q. Thank you. I have to ask. I have to say these things.
**A. That's fine.**
Q. Let me go back to the five-year period -- this five-year period of which we are speaking when you acquired two staff members to assist you. This five-year period commenced in what year?
**A. Oh, gosh.**
Q. You became manager in March -- no. It would have been March of

50

'75?
**A. Uh-huh.**
**I would say within six months I hired my first assistant, first staff person. And maybe a year after that I hired the second one.**
Q. Right.
**A. That's -- that's to the best of my recollection.**
Q. And at the end of this five-year period, what changed with respect to the organizational structure?
**A. None.**
Q. All right. Did you get -- did you get a new person -- was there another person to whom you reported?
**A. Oh, gosh. No. I believe I began reporting directly to the division director.**
Q. Which would be Mr. Vasuki?
**A. Yes.**
Q. Okay. How long was Mr. Vasuki a division director?
**A. I don't recall.**

51

Q. Okay.
**A. I don't recall.**
Q. There might be one quick way to approach this. When you left DNREC, who were you reporting to?
**A. Kevin Donnelly. When I left, when I retired when I left?**
Q. Yes.
**A. Kevin Donnelly.**
Q. All right. Was there another division director between Mr. Vasuki and Kevin Donnelly?
**A. Oh, gosh, yes. Gosh, yes.**
Q. Like any good state agency.
**A. Well, they're politically appointed.**
Q. Are they really? Okay.
**A. Yes.**
Q. And when you say politically appointed, and this is probably just gory curiosity on my part, but does that mean when a new governor comes in, there's generally a change of management --
**A. Not always.**

52

Q. -- from one degree to another?
**A. Not always.**
Q. So it doesn't necessarily correlate to a new governor?
**A. No.**
Q. All right. Do you recall who the -- I believe you said that the secretary was John Hughes when you first came on board?
**A. No.**
Q. I'm sorry.
**A. You asked who I reported to when I left. It was John Hughes.**
Q. Oh, I'm sorry. Okay.
And when you left, you said you reported to John Hughes, right?
**A. Right.**
Q. John Hughes was what? What was his title?
**A. Cabinet secretary.**
Q. Cabinet secretary. Okay. Of DNREC?
**A. Correct.**

53

Q. Okay. So you recall reporting to Mr. Vasuki --
**A. Yes.**
Q. -- earlier in your career, and you recall also reporting to John Hughes. Do you recall anybody else who you used to report to?
**A. Yes.**
Q. Could you give me some names?
**A. Do you want division directors or cabinet secretaries or both?**
Q. Let's start with division directors.
**A. Girard Esposito, Austin P. Olney, O-L-N-E-Y. Give me a moment. Jose Huerta, H-U-E-R-T-A, John Egan, E-G-A-N, Wayne Ashbee, A-S-H-B-E-E. That's about as best as I can do. I know there were two or three others, but I just can't pull out their names.**
Q. And the cabinet secretaries, your first cabinet secretary was, to whom you reported, was?

54

A. **John Bryson.**
Q. Okay. Do you remember what years he was secretary?
A. **I do not. He was there when I started.**
Q. Okay.
A. **Harry Derrickson, secretary.**
Q. Harry?
A. **Harry Derrickson, D-E-R-R-I-C-K-S-O-N. Jack Wilson. Tom Eichler. You can also put him down as a division director, too. That's one I forgot. Austin P. Olney became secretary. They're the ones I remember.**
Q. Your memory is good.
A. **Not always.**
Q. And through all of these division directors to whom you reported, you continued to occupy the position of manager --
A. **Yes.**
Q. -- of the Wetlands and Subaqueous Section?
A. **Yes. Through somewhat**

55

**modified changes in names. It was not always called the same thing. But for all intents and purposes, it was the Subaqueous and Wetlands Section.**
Q. Ultimately, can you tell me what the changes in title were?
A. **Wetlands Section, Wetlands and Underwater Lands Section, and Wetlands and Subaqueous Lands Section, which finally it came to be known. I think those are probably the three.**
Q. All right. When you first came on -- when you first became manager, was it known as the Wetlands Section?
A. **Yes.**
Q. And do you recall when it became the Wetlands and Underwater Lands Section?
A. **I do not.**
Q. Was it sometime after you hired your two assistants?
A. **I don't know.**
Q. Okay. All right. When you first came on board as manager, were the

56

attorneys Mike Parkowski and June MacArtor on board?
A. **Yes.**
Q. When you came on board as manager, you were issuing -- were you issuing permits as well as subaqueous lands leases?
A. **Yes.**
Q. Okay. As part of your duties, did you have to account for the revenue that was brought in as a result of any subaqueous leases?
A. **Yes.**
Q. Did you make a report of that revenue?
A. **Yes.**
Q. Were reports filed on a regular basis?
A. **By regular you mean?**
Q. At predictable intervals.
A. **Yes. Yes.**
Q. And what intervals were they?
A. **Annually, although, you**

57

**know, as we collected them, they went to our accounting office and they may have kept their own separate records for that. But my report was an annual summary of all fees collected.**
Q. And to whom was that report given?
A. **The division director.**
Q. All right. Do you know, in the early years of your tenure at DNREC as manager, to what use the lease money was put?
A. **I believe that initially it went back into the department's budget, but at some point it changed and went into the general fund.**
Q. Gee, I'm shocked.
A. **Yes.**
Q. In the early years, did your office, the Wetlands and Subaqueous -- the Wetlands Section and the Subaqueous Lands Section depend on the revenue for its operating budget?
A. **No.**

58

Q. Okay.
A. No.
Q. All right. Do you have any sense of the number of subaqueous lands leases you were issuing on an annual basis when you and the two employees came on board?
A. No, no.
Q. When you made your annual report to your division director, do you believe that you might have included that type of information --
A. Yes.
Q. -- in the report?
A. Yes.
Q. Okay. And would the report also have included the number of permits for activities on subaqueous lands that you had issued?
A. Yes.
Q. As part of your job duties as manager, did you monitor any activities on subaqueous lands after a permit was issued?

59

A. Monitor in what way? If you could --
Q. Were -- who determined whether the activity on subaqueous lands was being done in conformance with a permit?
A. We would occasionally go back to a site where a subaqueous lands permit had been issued and just check to see if it was in compliance. We also relied on complaints that would come in from people that something had been built and they wanted to know whether it was in compliance, and we would go out and respond to that complaint. So we did have a -- we had a surveillance program that was very spotty, quite spotty.
Q. Could you tell me, in your early years when you were there as manager with your two employees, what procedure would you use to process an application for a subaqueous lands lease?
A. The application was reviewed and any deficiencies were made known to

60

the applicant in writing. And once the application was complete, per the regulations, it was placed on public notice for a 20-day period. Any comments that we had were forwarded to the applicant to respond to. If there was a meritorious request for public hearing, we would hold a public hearing.
Let me explain the two different routes.
If the application was complete and there was no request for a public hearing and the 20 day notice period was up, we would send the lease to the applicant to sign and notarize and then it would come back and at that time it went to the governor for execution.
If a public hearing was requested, we prepared a hearing officer's report -- or the hearing officer prepared a report and made a recommendation to me whether the lease should be issued or not, and it was either denied or it was then issued.

61

Q. At what point in this process did anyone look at a map of the subaqueous area that was the subject of the application?
MR. WALTON: I object to the form of the question.
BY MS. CONKLIN:
Q. Well, let me try and simplify this.
Were there maps on file in your office that depicted subaqueous lands that were -- that might be the subject of an application?
A. I'm not sure what type of map you're referring to. Are you referring to a highway map, an aerial photo map? There were no regulatory maps.
Q. There were no regulatory maps.
Back in 1975 or '76, when you received an application for a subaqueous lands lease, how did the department or how did you determine

62

whether that land -- how did you determine who owned the land?

**A. The subaqueous land?**

Q. Uh-huh.

**A. We -- at the direction -- at the direction of the attorney general's office, if the land was below the mean high water line and above -- I mean, I have to go through nontidal and tidal areas because we considered subaqueous lands to be both nontidal and tidal.**

**In the nontidal stream, it would depend on what the upland property's deed said. If their deed said they owned to the middle of the stream, that was private subaqueous lands and we issued a permit for any structural activities out there. If the permit had a meets and bounds description on it and it only went to the edge of the upland property and there was no deed or description of the stream, we assumed that was public subaqueous lands and the lease would have to be issued beyond that**

63

**person's upland property.**

**In tidal waters, if -- in tidal waters, the adjacent riparian owner owned the subaqueous lands between high water and low water, and the state of Delaware owned the subaqueous lands below the mean low water line.**

Q. And were there maps available to you in the early -- I think it was '74 or '75 when you first started as manager. Were there maps available to you that depicted areas waterward of the mean low water line in tidal areas?

**A. You mean that had the low water line depicted?**

Q. Yes.

**A. No.**

Q. Okay. How did you go about determining whether an applicant was requesting to lease property that was out shore of the mean low water line?

**A. We would go out to the sites. We visited every site that applied for a permit. And we would take**

64

**visual observations of the high and low tide mark based on the rack line or the vegetative line and certain -- certain geographical or biological features that would tell -- that could average where the low tide line was. We did not do a survey. There were few instances -- I would say that 99 percent of our applications were for a dock or a pier to go out in the water, and those structures, as I said, 99 percent of the time would cross over land between the mean high and mean low water line and also extend beyond the mean low water line on the public's subaqueous land.**

Q. Do you have an estimate about the percentage of applications -- no. Let me take that back.

Is the Delaware River considered a tidal water?

**A. Yes.**

Q. What --

**A. Up to a certain point.**

Q. Up to a certain point. What

65

point is that?

**A. In Delaware it's all tidal.**

Q. Fine. That's what I needed to know.

Back in the early part of your tenure as manager, do you have a sense of what proportion of your applications for leases concerned tidal waters as opposed to nontidal?

**A. No. No.**

Q. I mean, was it rare for you to get an application for a lease in tidal waters?

**A. Rare?**

Q. Yeah.

**A. I wouldn't characterize it as rare, no. No.**

Q. Okay. I'm trying to approach this from a different angle.

**A. Yes, yes.**

Q. So it would not have been unusual for you to have gotten applications requesting leases for tidal areas in the Delaware River?

66

A. **Yes, yes.**
Q. Okay. Let me ask you, how -- when you visited these sites and determined the high and low water marks, how did you determine the -- how did the -- how did you determine the area that was the subject of the lease?
A. **Well, generally, if there was a lease for a pier, we didn't distinguish between what part of that pier was on private subaqueous lands and what part of that pier was on public subaqueous lands. We just issued a subaqueous lands lease for the entire structure, realizing that part of that structure probably was over private subaqueous lands. Again, we received no objections from the lessees, and that's the way we handled it.**
Q. Who was responsible for recording the location of lease boundaries onto a map?
A. **No one.**
Q. So when you issued a lease

67

or your staff issued a lease of a subaqueous tidal property, the only thing you went by was the written meets and bounds on a lease?
A. **I'm not sure what you're getting at.**
Q. What was -- if I wanted to find out what area was the subject of a lease that was issued back in 1975 or '76, where would I go to find out the meets and bounds of the leased area?
A. **There was no meets and bounds of the leased area. It was -- you would look at the lease itself and see what size the structure was, and that's the area that we leased to the applicant.**
Q. Okay. So the footprint of the structure was the evidence of the area that was being leased?
A. **That's correct, yes.**
Q. Okay. And you didn't count area that was occupied by boats --
A. **No. No.**
Q. -- that might be using the

68

structure?
A. **Right.**
Q. All right.
A. **I know it varies from state to state.**
Q. Right.
When you issued a subaqueous lease, did the lease cross-reference particular drawings?
A. **Yes. Yes. The lease -- construction had to be in accordance with the approved plans that were submitted.**
Q. Did you issue -- when you approved a subaqueous lands lease, did you always have to have an approved project submitted along with it in order to issue that lease?
MR. WALTON: I object to the form of that question.
BY MS. CONKLIN:
Q. Let me try and make it aimpler.
Did you issue a subaqueous lands lease just for an area of

69

underwater land without having a proposed project?
A. **By a proposed project, you mean something on the upland portion?**
Q. No. A project for a specific structure on subaqueous lands.
A. **Yes, there had to be an intended -- they had to tell us what the intended use and purpose of that pier was going to be.**
Q. And would it be fair to say you needed a proposed project in order to know the area that was going to be leased?
A. **Yeah. We needed a drawing of what the structure was going to be, yeah. Correct.**
Q. All right. Did there come a time when you had maps of suhaqueous lands available to you to refer to?
A. **No.**
Q. So is it fair to say that the procedure you've described to me about reviewing and approving subaqueous

70

lands leases was the procedure that applied throughout your tenure at DNREC?

**A. Well, we did get a little bit more sophisticated as time went on, and for some of the larger commercial and industrial projects, we may have required the applicant to go out and actually survey the mean high and mean low water lines, using NGBD and vertical datums and that type of thing. But for minor residential docks and piers, we didn't require that type of surveying be done.**

Q. Let me ask you, early -- well, if you had received an application for a subaqueous lands permit, in other words, a permit to conduct activities on subaqueous lands, and an applicant submitted to you a preexisting lease or grant in connection with that permit, how would you go about determining whether the activity was occurring on leased or granted land?

MR. WALTON: I object to the form of the question, and lack of

71

foundation and because it attempts to characterize the prior testimony of the witness.

BY MS. CONKLIN:

Q. Do you understand my question?

**A. No.**

Q. In the course of your tenure as manager, and I'm thinking more of the early years here, did you ever receive an application for a subaqueous lands permit that was -- that the applicant claimed was going to be occurring on lands that were already leased to them?

**A. Okay.**

Q. I mean, did you get such an application as you recall?

**A. Again, I'm confused about -- is it somebody that already has a lease for a structure on subaqueous lands?**

Q. Yes.

**A. And they're now applying for a permit to modify that structure?**

Q. Yes.

72

**A. Yes, we did.**

Q. All right. How did you go about determining whether the proposed activities were actually occurring on areas that were leased to this person or this applicant or determining that they needed to apply for a lease?

MR. WALTON: Again, I object to the form of the question.

BY MS. CONKLIN:

Q. Do you understand my question?

**A. I'm not sure. I don't think so.**

Q. Okay.

**A. It's probably a procedural thing that -- that type of thing you're describing is not something that is familiar to me as to how we would handle an application -- how the process worked.**

Q. All right. Let me ask you --

**A. You need to clarify.**

Q. The error is probably mine

73

and let me try it again.

What would you do if you received an application for a permit that was going to be -- that was proposed to occur where -- where the activities were proposed to occur on land that the applicant claimed they owned?

**A. Oh. Okay. Subaqueous land that they claim they owned?**

Q. Yes. How did you go about determining whether their ownership was valid or not?

**A. Well, the burden of proof was on the applicant. Generally we would refer those types of disputes to the attorney general's office for their resolution of that because our understanding was that anything below the mean water line, their claim was false, that they could not claim land below the mean low water line unless they had a specific grant from William Penn or something back in the 16 or 1700s. And they were referred to the attorney**

74

general's office for resolution.
Q. So it was not part of your duties to make a final determination in those cases?
A. No.
Q. Just about the validity of a grant claim, it was not your job?
A. No, no.
Q. When an issue came up that required input from the attorney general's office concerning a competing claim for subaqueous lands, what communication was sent to you that -- how were you informed of how that issue was resolved? Was there a writing or was it done orally?
MR. WALTON: Objection. Compound question. And to the extent that you're seeking any communications or go beyond how a communication, I object on the basis of attorney/client privilege, but for the manner of the mere communication or how you

75

received it, it's fine to answer, just not the substance of the communication.
THE WITNESS: It was generally a memo from the deputy attorney general.
BY MS. CONKLIN:
Q. And was this memo informing you of a final resolution of a claimed ownership for the subaqueous lands?
A. Yes.
Q. Okay. And you would take that at face value and then proceed with the application?
A. At face value? I'm not -- can you just explain what you mean by --
Q. Let me ask you something. When something was referred to the attorney general's office, when there was a competing claim -- when someone claimed to have subaqueous lands rights, were you part of the process at the attorney general's office that reviewed that claim?

76

A. No.
Q. All right. Do you know what process was used at the attorney general's office to evaluate claims for subaqueous lands ownership?
A. Not specifically. We had conversations about particular projects, but we weren't involved in how they did it.
Q. So you don't know what maps or data they consulted in resolving these issues of ownership?
A. No.
Q. Did that situation change at any point in your career?
A. No.
Q. Okay. Did there come a time in DNREC where there was like GIS technology available to DNREC that would show subaqueous land lease boundaries?
A. No.
Q. Okay. If there were such maps or GIS information available, would the attorney general's office have it?

77

A. I don't know.
Q. All right.
A. Not to my knowledge.
Q. All right. Who calculated the fee to be charged for leases of subaqueous land?
A. My office.
Q. All right. And was this based on a formula?
A. Yes. It was based on a fee schedule.
Q. Did you have a fee schedule back in 1975?
A. Yes.
Q. Was it a straight cubic yard figure? Oh, I'm sorry. Was it a per unit figure?
A. Yes, yes, it was.
Q. All right. And what were the units?
A. Square feet of structure and cubic yards of material dredged.
Q. Okay.
(Recess taken from

78

11:05 a.m. to 11:13 a.m.)
BY MS. CONKLIN:
Q. To your knowledge, does DNREC keep a map of the location of all the leases it issues?
**A. A separate map showing what lands it's leased?**
Q. Uh-huh.
**A. No.**
Q. When you were manager at DNREC, did you ever see such a map?
**A. No.**
Q. All right. Did you ever talk to anybody at DNREC who claimed to have seen that map, any such map?
**A. No.**
Q. Okay. If a member of the public wanted to find out what areas of subaqueous land had been the subject of a lease issued by your section, where would they go to find that information out?
**A. Well, they would come to us and we would have to search on -- we keep a database and that database is kept**

79

**alphabetically by year of who leases are issued to, and we would have to search all those leases and then pull them out by hand, showing where those leased lands were.**
Q. And when you say alphabetically by --
**A. Lessee.**
Q. Lessee name?
**A. Yes.**
Q. Okay. So for each year there would be a whole new alphabetical listing?
**A. Yes.**
Q. Is there a database that shows when leases expire?
**A. Yes.**
Q. Did you have records like that available to you in the '70s?
**A. No. No.**
Q. What records did you keep in the early years of your career that recorded lessee identity?
**A. Just a file, an alphabetical**

80

**filing system with the lessees in there and then the general -- kind of a notebook of what all those leases were. It was all done by hand, all manually. It was the '70s.**
Q. At some point did this become computerized information?
**A. Yes.**
Q. Okay. When was that?
**A. I can't say specifically what -- when it was.**
Q. And the computerized information was the same information as was kept longhand?
**A. Yes. Yes.**
Q. All right. So I would still go by year and then within each year an alphabetical listing of leaseholders?
**A. Yes, assuming they do it the same way now that was done when I was there.**
Q. You can only speak to --
**A. Yes.**
Q. You can only speak to how it

81

was done when you were there?
**A. Yes.**
Q. As manager, was there a lot or block number assigned to subaqueous leases?
**A. Usually it was by parcel number, by the property parcel number from each county.**
Q. And when you say from each county, what do you mean?
**A. Well, New Castle County has their own separate parcel numbers. Kent and Sussex each has their own property parcel numbers.**
Q. How did you know whether an applicant's designation of a parcel number was correct?
**A. We had the parcel number books in our offices that we checked them against.**
Q. How did the counties arrange parcels of subaqueous lands?
**A. Well, these were parcels of the upland adjacent to the subaqueous**

82

lands. I'm sorry, not parcels of subaqueous lands. Sorry if I misled you.
Q. Okay. How did a parcel number of an upland property relate to a subaqueous area that was the subject of a lease?
A. It didn't originally, but now all leases are recorded. They're recorded in the Recorder of Deeds office in each county. So those deeds now go with the property. If the property is sold, one of the documents that goes with the property deed is the subaqueous lands structure attached to the property.
Q. Okay. When you would consult a county book, did those county books parcel out and identify subaqueous lands and assign numbers to that subaqueous land?
A. I don't believe so.
Q. Did the county book impose a grid on subaqueous lands and assign numbers --
A. No.

83

Q. -- to each grid?
A. Not to my knowledge.
Q. All right. How did you go about assigning a parcel number to a subaqueous lease, a particular area?
MR. WALTON: Object to the form of the question.
BY MS. CONKLIN:
Q. Okay. Was there an identifying number assigned to each subaqueous area that was leased by the state?
A. Just -- we put a number on the lease, identifying number on the lease, and that was what was recorded in the Recorder of Deeds office.
Q. Okay. Was the numbering system just sequential based on --
A. Basically, yes.
Q. -- date of receipt or something?
A. Yes.
Q. So, for example, if I have a -- if you received -- if you were going

84

to issue a lease and the application was number 1234, 1,234, did 1-2-3-4, that number, become assigned to the area that was the subject of that subaqueous lease?
A. I assume so, when it was recorded in the Recorder of Deeds office.
Q. Okay. And the recording in the county office began when to your knowledge?
A. Ten years ago. That's a best guess.
Q. Was there any point in time in which this numbering system changed?
A. Yeah, it probably changed several times over the 30 years that I was there, just the format and how we recorded when it came in. It was either changed from month, year and then the number or a sequential number through the year. Yeah, I do believe it changed a couple of times.
Q. At any point in time when you were manager, did subaqueous land have a lot and block assigned to it?

85

A. No.
Q. When you as a consultant now file an application for a permit for activity on some subaqueous land, do those permits refer to a lot and block?
A. No.
Q. All right. If as part of your consulting duties you have to research whether a particular subaqueous parcel is owned or leased, how do you go about doing that?
MR. WALTON: And I object to the form of the question.
BY MS. CONKLIN:
Q. Let me rephrase that.
Have you ever had occasion as a consultant to have to determine whether a subaqueous area in the Delaware River is the subject of a lease or do you ever have to determine who owns a subaqueous area? How do you go about determining that?
A. I don't know how to do that as a consultant.

86

Q. Okay. Who would be the appropriate person to do that?
**A. I'm not -- I believe it would be DNREC, someone in the Wetlands and Subaqueous Lands Section.**
Q. When you were manager at DNREC, who would do that inquiry? If that inquiry needed to be made, who would do it?
**A. Of what subaqueous lands was leased? I would imagine it would be -- I'm not sure I understand the question. Inquiry from an individual person or a consulting firm or --**
Q. If someone, anyone, DNREC employee, member of the public, needed to know whether a particular subaqueous area was the subject of a lease or not, where would they go to find out?
**A. They would come to our office, Wetlands and Subaqueous Lands Section.**
Q. Okay. And where would you find that information out?

87

**A. In our records that we kept on what land was leased at what location.**
Q. Okay.
**A. Based on the upland property owner and the lessee's name.**
Q. Okay.
**A. They would indicate what area they would want to search and we would find the tax parcels of the people that own that upland property and then search our database to see whether any of those parcel property owners had subaqueous lands leases.**
Q. How would the upland property location help you in finding out whether a subaqueous parcel was leased or not?
**A. Because the records are all filed by who owns the upland property. So if that name is not in our database, presumably no subaqueous lands lease has been issued for that piece of property.**
Q. Okay. How do you go -- how do you track changes in ownership of upland property?
**A. It's very difficult. But, now, since subaqueous land leases have to be recorded, when the property changes hands, that lease goes with the property, so the new property owner, that lease would be part of their deed.**
Q. Would it then be the case that the only people who would be getting leases would be owoers of upland property?
MR. WALTON: Object to the form of the question.
BY MS. CONKLIN:
Q. Would you be -- let me ask you. As a manager in DNREC, did you issue at any time, when you were employed, did you issue a lease for a subaqueous parcel to someone who was not the owner of the adjacent uplands?
**A. No. Owner or had an interest in the property?**
Q. Right.
**A. Yeah. A legal interest in the property or permission from the owner.**
Q. Right. In setting the value of a lease area, did you consider the value -- did you consider how the construction on the subaqueous land contributed to the value of the upland parcel?
**A. No.**
Q. Okay. In determining the value of -- how do I put it -- the fee for lease of subaqueous property, did you determine -- was the ratio in size between the upland and the subaqueous development relevant?
**A. No.**
Q. Okay. And in determining the fee for a subaqueous lease, you indicated that the area that -- you considered the area waterward of the mean low water as well as what additional area?
**A. Between mean high and mean low.**

90

Q. And that was also part of the area that DNREC charged a lease fee for?
**A. Yes.**
Q. Okay. As part of your job as manager, was it your responsibility to determine -- to ensure that leaseholders made their annual fee payments?
**A. Yes.**
Q. Okay. And as part of your job at DNREC, did you receive applications for renewal of leases of subaqueous lands?
**A. Yes.**
Q. Okay. As part of your duties as manager, do you recall receiving an application for a lease renewal of subaqueous lands from DuPont de Nemours, otherwise popularly known as DuPont?
**A. At what location? I'm not sure. There are several DuPont facilities.**
**(Whereupon, Deposition**

91

**Exhibit No. Moyer-1, Memo dated 9/4/81 to Bill Moyer from Mike Malkiewicz, Bates DE 19366, was marked for identification.)**
**MS. CONKLIN:let me show you a document identified as Exhibit 1, which will be Moyer-1, also referred to by Bates number DE 19366.**
**(Whereupon, Deposition Exhibit No. Moyer-2, Memo dated 9/10/81 to Bill Moyer from Mike Malkiewicz, Bates DE 19367, was marked for identification.)**
MS. CONKLIN: And I will also provide you a copy of an exhibit marked Moyer-2.
(Whereupon, Deposition Exhibit No. Moyer-3, Lease Granted to E.I. Du Pont de Nemours and Company dated 9/29/71, Bates DUP 0001256-1261, was marked for identification.)
MS. CONKLIN: And just for

92

convenience, I will give you a copy of an exhibit marked Moyer-3.
BY MS. CONKLIN:
Q. Mr. Moyer, I provided you with three exhibits. Moyer-1 is a memorandum to Bill Moyer from Mike Malkiewicz, M-A-L-K-I-E-W-I-C-Z. And Moyer-2 is -- Moyer-1 is dated September 4, 1981. And then Moyer-2 is another memorandum dated September 10, 1981. And these memoranda purport to be regarding renewal of a DuPont Chambers Works subaqueous lease.
Do these memoranda refresh your recollection whether you had occasion to consider an application for renewal of a subaqueous lease by DuPont at its Chambers Works facility?
**A. I honestly don't remember. This is for the dock. To the best of my recollection, based on these -- based on these memoranda, I think we received application for a renewal, but I can't say for sure.**

93

Q. All right. Moyer-3, I'm representing to you, is a copy of a lease granted to E.I. DuPont on September 29, 1971, and it is executed by Russell Peterson, who I believe was the governor of Delaware at that time. And my question would be, if this 1971 lease needed to be renewed, would that renewal application have been filed with your office?
**A. Yes.**
Q. All right. Do you recall, looking at Moyer-3, which is this lease, whether you had occasion to consider the renewal of this lease?
**A. I can't remember.**
Q. All right. Do the memoranda identified as Moyer-1 and Moyer-2 suggest to you that the renewal of this lease was in fact submitted to you?
**A. It seems to indicate that we had an application for a renewal.**
Q. All right.
**A. And I can only assume that**

94

we issued it, but I don't recall. I don't have a vivid memory of whether that was actually reissued or not, unless you have a copy you can share with me.

Q. Before you would determine whether to renew a lease or not, would you routinely check to make sure that a lessee had paid all its lease payments under the prior lease?

A. Yes.

Q. Do you recall checking whether DuPont had paid its lease obligations under this 1971 lease?

A. I do not, no.

MS. CONKLIN: I'd like this marked as Moyer-4.

(Whereupon, Deposition Exhibit No. Moyer-4, Memo dated 1/15/82 to June MacArtor from William Moyer, Bates DE 19368, was marked for identification.)

BY MS. CONKLIN:

Q. Mr. Moyer, I provided you with an exhibit marked Moyer-4, which

95

appears to be a memorandum to June MacArtor, M-A-C capital A-R-T-O-R, from William Moyer dated January 15, 1982, Subject: Subaqueous Lands Lease-DuPont. And the memorandum reads, "To date, the Wetlands Section has not received the lease payment requested in your October 23rd, 1981 letter to Mr. Alan Skinner.

"Could you inquire as to the reason for the delay and get back with me?"

Does this memorandum refresh your recollection whether you had occasion to look at the 1971 lease and inquire whether lease payments had been made?

A. Yes, I think it's clear that I had looked at the lease and was trying to determine why the fee had not been paid.

Q. Okay. There's a reference here to an October 23rd, 1981 letter from -- when you say "your," it must he

96

June MacArtor; at least I'm thinking that's the case. Do you recall being given a copy of that letter?

A. No. Well, yeah, I must have had a copy of the letter as indicated in this memorandum. At some point when we tried to obtain a lease fee from a lessee, if they didn't pay it, we'd refer it to the deputy attorney general's office for further action.

MS. CONKLIN: I have an exhibit for Moyer-5.

(Whereupon, Deposition Exhibit No. Moyer-5, Letter dated 10/23/81 to Alan L. Skinner, Esquire, from June D. MacArtor, no Bates stamp, was marked for identification.)

BY MS. CONKLIN:

Q. Mr. Moyer, I presented you with an exhibit marked Moyer-5, which appears to be a letter dated October 23rd, 1981 from June MacArtor to Alan Skinner, Esquire, Legal Department,

97

E.I. DuPont de Nemours.

Looking at your memorandum, Exhibit Moyer-4, it refers to an October 23rd, 1981 letter to Mr. Alan Skinner, does it not?

A. Yes.

Q. Okay. Do you have any reason to believe that Moyer-5, the letter I just handed to you, do you have reason to believe that this is the letter referred to in your memo?

A. Yes.

Q. Okay. Sitting here today, do you recall having seen this before?

A. I don't recall it. I did see it before, yes.

Q. All right. Were you aware whether Ms. MacArtor received a response to her letter?

A. No.

Q. All right. Did Ms. MacArtor ever advise you about whether you would be getting a payment from DuPont for its 1971 lease obligations?

98

MR. WALTON: I'm going to place an objection on advice from Ms. MacArtor to Mr. Moyer because, as Mr. Moyer testified, she was the attorney for the attorney general's office assigned to the Department of Natural Resources and Environmental Control at that time.

MS. CONKLIN: I understand that. And I also understand that it's Mr. Moyer's obligation to determine whether fee payments have been made before he can act on a pending application or renewal.

MR. WALTON: Let me make that suggestion to sort of resolve the impasse. Why don't you ask Mr. Moyer about his personal knowledge and not what Ms. MacArtor advised and that would remove my objection on attorney/client privilege basis.

99

BY MS. CONKLIN:

Q. You sent a memo to -- I'm sorry, let me ask you.

Exhibit Moyer-4 is a memo that you sent to June MacArtor asking for her to inquire as to the reason for the delay in a DuPont payment, right?

**A. Yes.**

Q. And does this exhibit, Moyer-4, also ask Ms. MacArtor to get back to you on that issue?

**A. Yes.**

Q. Did Ms. MacArtor get back to you on that issue?

MR. WALTON: Answer the question, but the substance of the testimony is privileged -- or the substance of the communication is privileged.

THE WITNESS: Not to my knowledge. I don't recall.

BY MS. CONKLIN:

Q. You never heard from --

**A. I don't recall receiving a letter or correspondence back from her.**

100

Q. Would you have issued a renewal of the subaqueous lands lease if a lessee had not paid its lease obligations under a prior lease?

**A. No.**

Q. And on what basis would you -- how would I put it? On what -- is that just standard procedure?

**A. Well, the lease -- the lease's condition is that if the terms and conditions of the lease are not met, it's subject to enforcement penalties or nonrenewal. I mean, at the end of ten years, you revisit the entire application again and make a determination again of whether there's been compliance. And one of the bases for not renewing is noncompliance with the permit.**

Q. Did your section ever receive any payment from DuPont for the 1971 lease identified as Moyer-3?

**A. Not that I recall. I don't know.**

101

Q. If I wanted to find out whether DuPont had paid any -- had submitted any payments to the state for its obligations under its 1971 lease, which is Moyer-3, where would I go to find that out?

**A. To the records of the Wetlands and Subaqueous Lands Section.**

Q. Okay. To your knowledge, was this lease renewed?

**A. My understanding -- my understanding is that all structures that are beyond the low water line on the easterly side of the Delaware River have been leased. Those that extend in beyond the low water line into Delaware waters have the appropriate leases, but I can't testify whether this specific one was reissued. I don't know whether there was a later application or what took place after this.**

Q. If there were structures put on subaqueous lands that had been leased and the lease expired and wasn't renewed,

102

what was your office's policy about keeping the structures on the subaqueous land?

**A. It varied, depending on the size and impact of the structures. We would either -- well, we had options of taking enforcement, reissuing the lease with the new structure on there and a new fee, or having the structures removed.**

Q. All right. The exhibit identified as Moyer-3 is entitled "Lease Granted to E.I. DuPont deNemours & Company to dredge, construct a bulkhead, fill behind said bulkhead, construct a dock and construct a fuel oil storage tank at its 'Chambers Works' facility along the Delaware River."

Did you determine whether any of these improvements had ever been erected as a result of this lease?

**A. No.**

Q. And just to make my question clear, you never -- you never attempted to determine that?

103

**A. Did not.**

Q. Okay. And it's your testimony today that you never found out whether DuPont paid the state of Delaware for the lease identified as Moyer-3?

MR. WALTON: Object to the characterization of the prior testimony.

BY MS. CONKLIN:

Q. Do you understand my question?

**A. Could you rephrase it or --**

Q. Sure. Did you ever find out whether DuPont paid its obligations under this 1971 lease?

**A. They could have paid it. I just don't recall it. And I never -- I don't recall going back and trying to find out if they had paid it or not. I just can't recollect that long ago as to whether that fee was paid or not.**

Q. What did you do with the application that was pending before you in 1981 for renewal of the DuPont

104

Chambers Works subaqueous lease?

**A. I don't recall.**

MS. CONKLIN: Counsel, I'm going to make a request for you to search your files and provide a copy of any renewals of this lease or to advise us whether there was no renewal on record. I'll put all this in writing.

MR. WALTON: I'll have to look.

BY MS. CONKLIN:

Q. When you received the application from DuPont Chambers Works that's referred to in the first two memos, Moyer-1 and Moyer-2, did you look at the 1971 lease that they were requesting to renew?

**A. I would assume so, yes.**

Q. All right. When you looked at the lease -- I'm going to direct you to Moyer-3. If you could turn to page 3, which is also identified as DUP 0001258 at the bottom of the page.

105

**A. Yes.**

Q. Okay. There is a paragraph that's indented, and it sets forth payment amounts, does it not, for --

**A. Yes.**

Q. -- lease and dredging of subaqueous lands? Does the paragraph provide for a ten-year lease?

**A. Yes.**

Q. Is that a standard lease term --

**A. Yes.**

Q. -- in your section?

**A. Uh-huh. Yes.**

Q. Okay. All right.

I'd like to look -- let's see, I will just read into the record a paragraph that begins about ten sentences from the bottom. It says 1(a). "Lessee agrees to pay lessor the amounts, with 6 percent annual interest from the date of this agreement, as scheduled in the preceding paragraph in the event that the disputed title to the subaqueous lands in

106

question is resolved in favor of lessor at some future date under a final judgment of a federal court of competent authority. Lessor agrees to defer the collection of the fees, herein referred to, until the title question is resolved as herein agreed."

Do you recall seeing this provision before today?

**A. Yes.**

Q. Okay. And where have you seen this provision?

**A. In this lease.**

Q. Okay. And when do you recall reviewing this particular portion of the lease?

**A. In the draft permit that went out to the lessee from my office to sign and notarize.**

Q. So there was a draft permit that your office issued?

**A. Well, it's not a draft. The lease as prepared goes to the applicant or lessee for them to sign, notarize and**

107

**return to my office.**

Q. And would this lease that you're referring to have been sent out sometime in 1981 or 1982?

**A. I assume it was sent out in 1971. Sometime in '71.**

Q. Okay. So this is -- this is -- when you say you saw this provision, when did you first see this provision?

**A. I don't recall.**

Q. Okay. Did you ever see this provision in any other lease other than this document?

**A. It is a unique condition, but I can't say that it wasn't on other leases.**

Q. All right. Do you recall whether this was on any other lease issued to DuPont?

**A. I don't recall.**

Q. But it could have been on some other lease issued to some other lessee?

108

**A. It's possible, yes.**

Q. Okay. Would you have put this provision in a lease on your own authority?

**A. No.**

Q. Who would have had to have approved the insertion of this type of language in a lease document?

MR. WALTON: I'm going to object on the grounds that this lease document that we've been referring to occurred before Mr. Moyer's tenure in the Department of Natural Resources, Environmental Control.

BY MS. CONKLIN:

Q. Mr. Moyer, you've testified that this language that I've read into the record could have been on one or two other leases that were issued by your office? Did I hear you correctly?

**A. Yes.**

Q. All right. If this language was on one or two other leases issued by

109

your office, would you have had the authority to put this language in the lease?

**A. This was -- this was not one of the standard conditions that we put in leases. I was authorized to put in conditions that I felt were necessary to comply with state law and regulation, but my reading of this condition would indicate to me that it had some involvement from the attorney general's office or someone other than my section.**

Q. Who in DNREC would have had authority to -- who in DNREC would have had the authority to approve the insertion of this language in a subaqueous lands lease?

**A. Again, I would assume that it would be the attorney general's office. It was not something that was normally part of my routine lease issuance.**

Q. Did the attorney general's office review every lease prior to its

110

signature by DNREC officials?
A. No.
Q. Who would send a draft lease to the attorney general's office for insertion of a paragraph like this?
A. I don't know.
Q. Do you recall when this request for an application for a lease renewal was pending for DuPont whether there was -- let me rephrase this.
At the time when the question of a renewal of this DuPont lease was pending in your office, did you get the impression there was going to be litigation over this?
A. I don't recall.
Q. Did you meet with the attorney general's office concerning DuPont's request for renewal of its subaqueous lands lease from 1971?
A. Again, I don't recall.
Q. Back when DuPont's request for a renewal of its subaqueous lands lease was before you, had you heard of

111

something called the 12-mile circle?
A. I have heard of the 12-mile circle. I'm not sure where in my tenure with DNREC I heard of that. I can't -- I can't testify that it was during this time -- time frame when we got the application for renewal.
Q. Back when this request for DuPont's -- back when DuPont's request for a subaqueous lands lease was pending before you, were you aware of something called the Compact of 1905?
A. No.
Q. When you first became manager of the subaqueous -- of the Wetlands and Subaqueous Section, did Mr. Street ever tell you there was something called the 1905 Compact?
A. No.
Q. Okay. Were you aware when you -- in the early -- well, when you took the job as manager of the Wetlands and Subaqueous Lands Section, was it part of your official duties to know the

112

boundaries of subaqueous lands that were under the control of the state of Delaware?
A. Yes.
Q. Okay. How did you go about making -- how did you go about learning that boundary?
A. Several maps that I'd looked at of Delaware and New Jersey, USGS topo maps, state highway maps. Just general surveys of the state boundary line showing where the state line was.
Q. And could you generally describe the boundary of the state of Delaware as it traverses and goes down the Delaware River?
A. Uh-huh. The 12-mile circle that you referred to, which goes over to the easterly side of the Delaware River, just above the existing Logan power generating plant, then down to the low water line of New Jersey to a point just at the tip of Artificial Island, westerly across Artificial Island, and then down

113

through the middle of the Delaware Bay. And I believe that those locations are actually monumented where that line is located.
Q. When you saw the -- when you observed that the boundary line between the states departed from the middle of the channel, did you ever ask why that was the case?
A. Probably, yes.
Q. And what was your understanding of why the boundary line was located at the mean low water line -- the mean low water line on the New Jersey side as you described?
A. Just general discussions that I had with probably attorneys or other staff people at DNREC about the 12-mile circle and how that line was established from the center of New Castle and the line was drawn and going back to the deed of William Penn. Just general discussions.
Q. Were you aware of any

114

connection between the DuPont lease, which we've identified as Moyer-3, and anything related to that boundary that you just described?

MR. WALTON: I'm going to object to the form of the question.

BY MS. CONKLIN:

Q. You indicated that there was -- well, let me ask you.

You indicated that there was a boundary between Delaware and New Jersey that was along a mean low water line in parts of the Delaware River, right? Are you aware of any connection between the 1971 lease and its renewal and the setting of that boundary at the mean low water line?

**A. I don't know of any connection between that lease renewal and the setting of the boundary line because my understanding is that the boundary line was set long before DuPont came in to renew that lease. And I could only**

115

**assume, looking at the '71 lease, that there must have been a structure there that went beyond that boundary into Delaware waters or Delaware subaqueous lands.**

Q. Are you aware of any claims that DuPont made that concerned its failure to pay -- that supported its failure to pay its lease obligations under the 1971 lease?

**A. I'm not. Or I don't recall.**

MR. WALTON: Off the record.

(Recess taken from 12:04 p.m. to 1:10 p.m.)

BY MS. CONKLIN:

Q. Mr. Moyer, forgive me if I repeat some questions. I don't know if I am; I don't think I am, but I will ask you, do you have a recollection of the number of leases of subaqueous land that you processed in an average year when you were at the --

**A. Leases?**

Q. -- when you were at DNREC?

116

**A. 30 or 40.**

Q. Just in an average year?

**A. Approximately, uh-huh.**

Q. All right. Now, would you be able to distinguish between lease renewals and new leases in that number?

**A. No, no.**

Q. Okay. Was this 30 to 40 number a number that represented your entire office's efforts on leases?

**A. Yes, yes.**

Q. Okay. At its largest size, how many people were processing lease applications in your Wetlands and Subaqueous Section?

**A. Eight to ten.**

Q. Not clerical, just -- I'm excluding clerical from that.

**A. Okay. I'd say six.**

Q. Would that include you?

**A. Yes.**

Q. Okay. All right. As manager of the Wetlands and Subaqueous Section, did you at any time give

117

instructions to your staff members concerning the 1905 Compact?

**A. No.**

Q. Did you give any instructions to your staff members concerning any handling of requests for leases adjacent to the New Jersey side of the Delaware River?

MR. WALTON: Object to the characterization of the New Jersey side. Easterly half.

MS. CONKLIN: Okay. Let me rephrase it.

BY MS. CONKLIN:

Q. Did you give any instructions to your staff members concerning any special rules that applied to lease applications for subaqueous land located immediately next to uplands on the New Jersey side of the Delaware River?

MR. WALTON: Same objection.

MS. CONKLIN: I'm going to ask you to answer.

118

MR. WALTON: You can answer.
THE WITNESS: Not special instructions, just instructions that the subaqueous lands statute applied to the mean low water line on the easterly side of the Delaware River and that, you know, the same statute and the same regulation applied to that side of the river as it did to the Delaware side of the river, within the boundaries of the state.
BY MS. CONKLIN:
Q. Did any of your staff members ever discuss with you any lease application where the applicant claimed to have a title to the subaqueous lands given to them from the state of New Jersey?
**A. No. Not that I recall.**
Q. Did you ever discuss with any of your staff members an application for a subaqueous lease that concerned an area that had been leased to the

119

applicant by the state of New Jersey?
**A. Not that I recall, no.**
Q. If you had been -- if you had in front of you an application for a subaqueous lands lease in which the applicant provided a document that showed that the applicant had received a lease for that same area from the state of New Jersey, can you tell me what procedure you would have employed to determine or process that lease application?
**A. I probably would have referred it to our attorney general's office for a determination of whether -- what the status of that particular lease was.**
Q. And when you got back --
**A. But I haven't -- that's speculative. I wasn't faced with that situation that I can recall.**
Q. If you had a question concerning -- when you had a question that required -- take that back.
If you had an application

120

for a subaqueous lands lease that presented an issue that required resolution by the attorney general, would you then process that application as instructed by the attorney general?
**A. Yes.**
Q. All right. If there were factual determinations that needed to be made by the attorney general as to a lease claim, for example, would you include those factual determinations in a written document approving or denying the lease application?
**A. Not necessarily, no. Like a findings document or something like that that the Corps of Engineers does?**
Q. Yes.
**A. No.**
Q. When an applicant files a request to renew a lease for subaqueous lands, is there any type of public notice that is provided when that application is filed?
**A. Yes.**

121

Q. And what is that?
**A. 20 day public notice in the local newspaper and a newspaper of general circulation in the state.**
Q. Is there any publication by DNREC that contains notice of applications like that?
**A. Only to the extent that it's put on our Internet location. There's no separate publication. It's a notice in the newspaper. And we have a mailing list that we send it out to also.**
Q. And when you say a mailing list, what do you mean?
**A. The statute requires that certain other state offices require a copy of the public notice, and then we have citizens that write in and say they want to be on our mailing list, so we send it to them also.**
Q. To your recollection, if an applicant filed -- to your recollection, was the Office of the Attorney General routinely copied by applicants for

122

renewals of leases of subaqueous lands?
**A. No.**
Q. So under normal conditions, the only way the attorney general staff would become involved on a subaqueous lands lease would be if one of your staff requested them to look at a particular issue?
**A. That's correct. Requested through me.**
Q. Right.
**A. Right.**
Q. If a renewal -- if DNREC issues a renewal of a subaqueous lands lease, is there public notice of that action?
**A. No.**
Q. How does the public know if an application for a renewal of a subaqueous lands lease has been granted or denied?
**A. They would have to contact our office.**
Q. To your knowledge, and this

123

is only based on your knowledge, can third parties, in other words, people who did not apply for the lease, can third parties appeal a DNREC decision granting or denying a subaqueous lease?
MR. WALTON: I think that calls for a legal conclusion. I object.
But you can answer.
BY MS. CONKLIN:
Q. If you know. I mean, is there such a procedure?
**A. There are provisions in the subaqueous land statute that you can -- there is an Environmental Appeals Board. And you can appeal -- you can appeal a denial -- let me make sure I have this straight. You can appeal the granting of a subaqueous lands lease, but I believe it's denial of a lease that can only be appealed on the grounds that you received -- that the state has treated the particular lessee differently than other -- than other ones like in similar**

124

**circumstances I believe is the language in that. So there are circumstances where you can appeal the use of public subaqueous lands and other places where you can't.**
Q. Is the request for a hearing directed to the secretary of DNREC?
**A. To the Environmental Appeals Board.**
Q. Okay.
**A. For an appeal hearing, yes.**
Q. Just a hypothesis. If I'm a neighbor to a property that has just been leased, that DNREC has issued a subaqueous lease for, and I wanted to get my appeal before the board that you referred to, who would I submit my request to? The secretary?
**A. No. This is a separate --**
Q. Go directly to the board?
**A. Yes.**
Q. Okay. All right.
Getting back to routine business, when you were manager of the

125

Wetlands and Subaqueous Lands Section, do you recall how many permits in an average year you and your staff issued?
**A. Subaqueous? Subaqueous and wetlands?**
Q. Permits for activities on subaqueous lands.
**A. 75.**
Q. In issuing a permit -- no.
In reviewing an application for a permit for activity on subaqueous lands, did you have to make a determination whether the area that is the subject of the application, whether that area was the subject of a prior lease?
**A. Yes. Yes.**
Q. Okay. And if it wasn't, what would you require the applicant to do?
**A. Comply with all the requirements of the subaqueous lands application as set forth in their application. They have to have a**

126

**complete application fulfilling all the points of the application.**

Q. All right. If somebody -- strike that.

MS. CONKLIN: Moyer-6.

(Whereupon, Deposition Exhibit No. Moyer-6, Letter of Authorization dated 3/18/82 to Lewis A. Caccese, P.E., from William F. Moyer, Bates DE 19371, was marked for identification.)

BY MS. CONKLIN:

Q. Mr. Moyer, I'm showing you something marked as Exhibit 6, which is a March 18, 1982 letter of authorization concerning repair and replacement of something known as a pile cluster, P-I-L-E, cluster, with filled steel sheet structures by DuPont at a location -- at Deepwater, New Jersey. And it is a letter to Lewis Caccese, C-A-C-C-E-S-E, of S. T. Hudson Engineers, and it is signed by William F. Moyer, Manager. Is that the very Moyer we have in front of

127

us?

**A. That is correct.**

Q. That is correct.

My question here is, this is a letter of authorization?

**A. Yes.**

Q. To issue a letter of authorization, must the applicant own or lease the subaqueous lands on which the activity is proposed?

**A. Not necessarily. In the time frame that this was issued, letters of authorization could be issued for structures that had been grandfathered in before we started acquiring subaqueous lands leases. And I believe that was the case with this 36-pile cluster that was preexisting in 1969.**

Q. How would somebody know whether a letter of authorization was issued for a grandfathered structure or would have required a new lease for the proposed activity?

MR. WALTON: I'm going to

128

object to the form of that question.

BY MS. CONKLIN:

Q. Can you --

**A. What do you mean by somebody? You said how does somebody know, meaning --**

Q. In other words, is this the only public record of the approval for this activity?

**A. Yes.**

Q. All right.

**A. The regulations allow repairs and modifications without going through the public notice process.**

Q. When was the subaqueous lands law enacted to your knowledge?

**A. To my knowledge, 1967, '68 time frame. There were earlier versions of that, but that's the one that we refer back to.**

Q. Right. So how -- forgive me, but how could you grandfather a structure that was built in 1969 then?

129

**A. The regulations didn't take place until July of -- the administrative regulations under those statutes didn't take place until 1969, July of 1969. And we -- I think we felt that the regulations didn't -- the statute didn't become effective until administrative regulations were adopted.**

Q. If I wanted to find out the location of the work described in this letter of authorization, how would I go about doing that?

**A. Request to look at the application that accompanied this approval -- preceded this approval.**

Q. If the application was no longer on file, in other words, it had been destroyed as a normal records retention policy, what other source of information would there be for me to locate where this work was done?

**A. The only thing I could think of is the permittee, Mr. Caccese, or somebody at DuPont would have a copy of**

130

it.
Q. Is there any map of which you're aware that would reflect the location of the work described on this Letter of Authorization?
**A. No. Again, unless it's in the application, with the application.**
Q. And this Letter of Authorization -- do you believe this Letter of Authorization pre-dates the time that permits and leases were filed with the county clerks?
**A. Yes.**
Q. Okay. Would Letters of Authorization such as this now be filed with county clerks?
**A. No. Only leases.**
Q. Only leases.
**A. Only leases.**
Q. Okay. And permits would not be, though?
**A. They would not.**
Q. Permits for activities on subaqueous lands --

131

**A. Correct.**
Q. -- would not be?
**A. Correct.**
Q. Okay.
MS. CONKLIN: Let's mark this as Moyer-7.
(Whereupon, Deposition Exhibit No. Moyer-7, Letter dated 2/9/88 to State of Delaware, DNREC, from Reinhold Betschel, with attachment, Bates DUP 0001013-1020, was marked for identification.)
BY MS. CONKLIN:
Q. Mr. Moyer, I've shown you an exhibit marked Moyer-7, which is a document identified as DUP 1013 through DUP 1014, 1015, 1016, 1017, 1019, and then -- oh, no, there it is, 1020. Sorry about that. It's at the bottom of the page there.
The top page, DUP 1013, is a letter from Mr. Betschel, B-E-T-S-C-H-E-L, to yourself; is that

132

correct?
**A. Correct.**
Q. Dated February 9, 1988. And it purports to enclose a check for $100 as a fee for a Letter of Authorization for maintenance dredging of the DuPont Chambers Works pier area.
Do you recall receiving this application and this check -- I'm sorry, an application such as that?
**A. Vaguely.**
Q. Okay. In processing this application for maintenance dredging, would you have had to determine whether DuPont either owned or leased the subaqueous area on which the dredging was going to be occurring?
**A. No.**
Q. And why not?
**A. At the time this process was in place, the only requirement for dredging on public subaqueous lands was that there be a fee paid for the amount of material removed. And I believe that**

133

**if it was maintenance dredging, in other words, the area had been dredged before, I don't believe there was even a fee for the amount of material taken out for maintenance dredging.**
Q. So if I understand you correctly, during this period, which is apparently February 1988, a permit to dredge could be issued without the applicant leasing the subaqueous area being dredged?
**A. That's correct.**
Q. Okay. Can you tell me on what basis that was your understanding?
**A. Just the way the regulations were written. You need a permit to remove material from public subaqueous lands and pay an appropriate fee. There was no requirement that you had to lease the land from the state to do that.**
Q. How long was that the case?
**A. I think the only thing that's changed is you can still do the dredging, but I don't believe that there**

134

is a waiver of the fee for the amount of material removed. I believe there's a fee for both maintenance dredging and new dredging from public subaqueous land.
Q. What's the difference between -- forgive me -- but the difference between maintenance dredging and new dredging?
A. The maintenance dredging, you have to provide documentation that the area has been dredged before and that what you're going to take out -- what you're going to remove is not going to go any deeper than the previously authorized depth. New dredging is for an area that's never been dredged before or you're going to go down deeper than the previous dredging cycle.
Q. What was your understanding with respect to -- let me rephrase that.
Was it your understanding that a lease would be required for a new dredging of subaqueous land?
A. No. No.

135

Q. Okay. Has that changed --
A. No.
Q. -- to your knowledge?
A. No. To my knowledge, it has not.
Q. If I direct your attention to the second sentence of the letter dated February 9, 1988, also known as Moyer-7, it says, "Also enclosed is our NJDEP approved Waterfront Development Permit Number 87-0843-1."
And if you turn the page to DUP 1014, there appears to be a Coastal Permit 87-0843-1 dated January 20th, 1988 issued to Mr. Betschel, B-E-T-S-C-H-E-L, as representative of DuPont in Deepwater. And my question would be, did you review or look at this waterfront development permit when it was sent to you?
A. I would assume that we did, yes.
Q. Did you determine that this waterfront development permit was for the activity that was also the subject of the

136

application pending before you?
MR. WALTON: I'm going to object to the form of the question.
THE WITNESS: I would assume it was for the same thing since they attached it to the letter -- cover letter to us regarding doing the dredging.
BY MS. CONKLIN:
Q. Prior to this, had you received applications for activities on subaqueous lands where the applicant provided evidence that the activity had also been permitted by the state of New Jersey?
A. Yes.
Q. Did you discuss any of these applications with your legal advisors?
A. I don't recall.
Q. What relevance -- no. Take that back.
Why did you believe you had authority to issue a permit for the same

137

activity that the state of New Jersey had issued a permit for?
A. Because it was taking place on public subaqueous lands of the state of Delaware, below the mean lower line of the easterly side of the Delaware River.
Q. All right. Did you have any conversation with any representative from the state of New Jersey concerning any permit -- no, concerning New Jersey's jurisdiction to issne permits for activities like that?
A. Any public officials did you say?
Q. Yes.
A. Yes.
Q. Could you tell me when those conversations occurred or those communications occurred?
A. At various times during my career. I can't tell you any one particular date or time.
Q. Do you recall whether anyone else from your department was present

138

with you?
A. **I don't recall.**
Q. Do you recall whether the 1905 Compact was discussed during these meetings?
A. **It was not.**
Q. Do you recall whether this particular application from DuPont for maintenance dredging was discussed at one of those meetings?
A. **With New Jersey?**
Q. Uh-huh.
A. **I don't recall.**
MR. WALTON: You're referring to Moyer-7?
MS. CONKLIN: Right. Thank you.
BY MS. CONKLIN:
Q. Did you ever communicate with New Jersey and object to the issuance of this waterfront development permit referenced in Moyer-7?
A. **No.**
Q. To your knowledge, did

139

anyone else in your office object?
A. **Not to my knowledge.**
Q. Would a permit that contained -- would an application containing a permit authorization from another state like this routinely be brought to the attorney general's attention?
A. **No.**
Q. Would it be fair to say that you would process applications such as these as if the New Jersey permit hadn't been provided to you?
A. **Yes. We would -- we would, though, in our approval normally have a condition that would say any other permit requirements -- state or federal or local permit requirements you need to comply with.**
Q. Turning to page -- if I direct you to Exhibit 7, page DUP 1016, I direct you to the first, second, third, fourth paragraph of DEP permit 87-0843-1 issued January 20th, 1988 to DuPont in

140

Deepwater, New Jersey, and the permit states, "This permit authorizing maintenance dredging and disposal is issued in accordance with and solely within the area of grants to E.I. DuPont deNemours & Company, Incorporated, on August 21, 1916, November 20, 1916, and July 16, 1917 recorded in Liber v; page 92, Liber v; page 161 and Liber w; page 62, respectively.
"The previous NJDEP Waterfront Development Permit 82-0519-1 authorized dredging and dredge spoil disposal at these same locations. The spoil disposal site is located on Tidelands Map #351-1764."
I think you indicated, Mr. Moyer, that you likely read this permit since it was attached to the correspondence that was directed to you, right?
A. **Yes, yes.**
Q. Okay. My question is whether -- on what basis you would have

141

issued your permit for activities on subaqueous land if you had received information like this that DuPont actually owned the property on which the activity was proposed?
MR. WALTON: I'm going to object in that it calls for speculation.
MS. CONKLIN: Let me rephrase this.
BY MS. CONKLIN:
Q. Mr. Moyer, you indicated that you read the permit that was attached to the application that was directed to you. Did you notice that there was a recitation by the state of New Jersey that DuPont owned the property on which the dredging was to occur?
A. **Yes, I read that. Yes.**
Q. Okay. Given that allegation, on what basis did you issue a permit to DuPont for the maintenance dredging?
A. **Probably on the basis that**

142

**that grant that New Jersey made probably was not a valid grant.**

Q. Okay. And in making that determination -- did you make that determination yourself?

**A. I would imagine it was based on previous discussions with the attorney general's office.**

Q. Would those discussions have arisen from the controversy arising from the 1971 lease to DuPont?

**A. I don't recall.**

Q. Do you recall on what occasion, prior to this, you became aware of the claim to ownership that rested on grants from 1916 from New Jersey to DuPont?

**A. Could you repeat that?**

Q. Sure.

Prior to this -- prior to seeing this recitation in the NJDEP permit, when did you become aware that DuPont -- when did you become aware that there was a claim that DuPont -- or an

143

allegation that DuPont owned property, subaqueous property, arising from a deed in 1916 from the state of New Jersey?

**A. Well, probably when I read this document.**

Q. I'm sorry, I thought you said that you had also discussed this in previous discussions with the attorney general?

**A. Yes. We probably got other similar requests from New Jersey with this same type of permit from New Jersey, and I'm assuming that I had conversations with the attorney general's office saying -- requesting whether or not these grants were valid. I don't remember anything in writing. And to my best recollection, the response was that New Jersey didn't have the authority to grant that land because it was public lands of the state of Delaware and that we could issue approval for maintenance dredging whether or not these grants had been issued.**

144

Q. And when you -- when this advice was given to you, did the advice -- did the advice in any way concern the 1905 Compact?

**A. Not to my knowledge.**

Q. Did you ever read the 1905 Compact?

**A. I have not.**

Q. And up until this point in time, which is around January of 1988, had you ever discussed the 1905 Compact with DNREC staff at all?

**A. No.**

Q. Did you receive any instructions from your supervisors concerning how to -- concerning the 1905 Compact?

MR. WALTON: Excludeing conversations with counsel.

BY MS. CONKLIN:

Q. Did you receive any instructions from your supervisors concerning the 1905 Compact?

**A. No.**

145

Q. Were you aware of any policy that DNREC adopted that cited to or relied upon the 1905 Compact to your knowledge?

**A. No, not to my knowledge.**

MS. CONKLIN: Let's see. I think we're up to 8.

(Whereupon, Deposition Exhibit No. Moyer-8, Letter dated 2/9/88 to Reinhold Betschel from William F. Moyer, Bates DE 19393-19396, was marked for identification.)

THE WITNESS: These are different. Okay.

BY MS. CONKLIN:

Q. Mr. Moyer, I've handed you something marked Exhibit 8, a letter dated February 9, 1988 signed by, I believe -- is it yourself?

**A. Yes.**

Q. To Mr. Betschel representing E.I. DuPont concerning maintenance dredging. Is this the letter by which

146

you approved the application referred to in Exhibit 7?
**A. I'm just looking for -- yes, it does.**
Q. Okay. And does this approval in any way address the issue of DuPont's -- or the question of whether DuPont owns the area being dredged?
**A. It does not.**
Q. At the time that you were issuing these permits, did you copy anyone in New Jersey, not DuPont, but any staff or official in the state of New Jersey with this permit?
MR. WALTON: Objection. Compound question.
MS. CONKLIN: You can answer.
THE WITNESS: No, we did not.
BY MS. CONKLIN:
Q. Did you perceive it as a problem that New Jersey was issuing permits for the same activities that

147

Delaware was?
**A. No.**
Q. And, again, I'm sorry if I asked this question already. I may not have. Did you discuss with counsel the fact that you were receiving applications that contained permits issued by the state of New Jersey?
**A. Initially, when we started receiving those, yes.**
Q. And what were your instructions in terms of how the process is done?
MR. WALTON: Objection. That's attorney/client privileged because discussions with counsel and then you're asking what the instructions were given from the attorney general's office.
BY MS. CONKLIN:
Q. Following your discussions with the attorney general's office, how did you process these applications?
**A. As if it was just an**

148

**application to the state of Delaware, to DNREC, regardless of whether Jersey had issued a permit.**
Q. Are you aware of any communications between the Delaware attorney general's office and New Jersey officials concerning that circumstance?
**A. I'm not.**
Q. Are you familiar with an individual named James Johnson at the New Jersey Tidelands Bureau?
**A. I'm not.**
Q. Jim Johnson?
**A. No.**
Q. Okay. Are you familiar with a woman named JoAnn Cubberley at the New Jersey Tidelands Council?
**A. I'm not. In the past, I've spoken to several people with New Jersey government, but I just don't recall the names.**
MR. WALTON: Barbara, can I take two minutes?
MS. CONKLIN: Sure. Go

149

right ahead.
(Recess taken from 1:58 p.m. to 2:06 p.m.)
BY MS. CONKLIN:
Q. A couple of quick follow-up questions concerning the DuPont application for dredging, which I believe is Exhibit 7, and the approval, which is Exhibit 8. Did you discuss that application or any aspect of it with the Army Corps of Engineers?
**A. I believe I did, yes.**
Q. Okay. And do you recall with whom you discussed it at the Army Corps of Engineers?
**A. Based on the copy of the letter, I believe I discussed it with Dick Hassel, the second page of Exhibit 8.**
Q. Right, H-A-S-S-E-L.
All right. Who is Charles McNally?
**A. Environmental scientist on my staff that handled the applications.**

150

Q. And what was the nature of your discussion with Mr. Hassel of the Army Corps of Engineers?
**A. Just that we had received an application and that they would be alerting him, as we did routinely, that they would probably be getting an application from DuPont to do the dredging. We hold -- we hold monthly meetings with the Corps in Dover. We have basically a joint permit processing procedure with the Corps.**
Q. During any of these discussions with the Army Corps concerning applications pending before Delaware, did you discuss the fact that you were receiving some applications for activities that had already been permitted by New Jersey?
**A. I don't believe so.**
Q. Did you have any indication that the people you were speaking to at the Army Corps of Engineers were aware of this at all?

151

**A. No.**
Q. Did you ever discuss the Compact of 1905 with any staff or members of the Army Corps of Engineers?
**A. No.**
MS. CONKLIN: Let's mark this as Moyer 9.
(Whereupon, Deposition Exhibit No. Moyer-9, Letter dated 9/30/91 to William Moyer from W. Harding Drane, Jr., Bates DE 02197-2198, and Exhibit No. Moyer-10, Subaqueous Lands Lease Granted to Keystone Cogeneration System, Inc., date of issuance: 9/30/91, Bates DE 02200-2205, were marked for identification.)
BY MS. CONKLIN:
Q. Mr. Moyer, I provided you with two exhibits. Exhibit 9 is a letter dated September 30th, 1991 directed to you from an attorney named W. Harding, H-A-R-D-I-N-G, Drane, D-R-A-N-E, Jr., dated September 30th, '91, and the letter

152

refers to a subaqueous lands permit and lease to Keystone, K-E-Y-S-T-O-N-E, Cogeneration Systems, Incorporated.
And attached as Exhibit 10 appears to be a subaqueous lands lease issued by the state of Delaware, September 30th, 1991 to Keystone Cogeneration System, Incorporated.
Can you tell me whether the lease referred to in the letter of September 30th, '91 is that which is attached as Exhibit 10?
**A. Yes, it is.**
Q. And did you issue the lease to Keystone?
**A. We prepared the lease. It was issued by the secretary of the department.**
Q. Did you become aware at any time after September 30th, 1991 that the state of New Jersey issued a subaqueous lease for the same area?
**A. No.**
Q. Were you aware of any

153

discussions between the attorney general's office and staff members at the New Jersey Tidelands Bureau concerning grants to Keystone?
**A. Not that I recall.**
Q. Or licenses, subaqueous licenses to Keystone?
**A. Not that I recall.**
Q. Did anyone from the state of Delaware ever advise you of New Jersey's position with respect to issuance of a subaqueous lands lease to Keystone?
**A. A Delaware subaqueous lands lease?**
Q. No. New Jersey's.
**A. No.**
Q. All right.
MS. CONKLIN: And we're up to Moyer-11.
(Whereupon, Deposition Exhibit No. Moyer-11, Letter dated 8/17/04 to William Moyer from DuPont Chambers Works, with attachments, Bates DUP

154

0000920-982, was marked for identification.)
BY MS. CONKLIN:
Q. Mr. Moyer, I've provided you a copy of Exhibit 11, which is -- which is comprised of a two-page letter dated August 17th, 2004 to yourself from Paul J. Gorzsas, G-O-R-Z-S-A-S, operations manager at DuPont's Chambers Works in Deepwater, New Jersey, conveying a draft permit application for a subaqueous lands permit. And I do not believe that this is the complete permit application. It is comprised of pages DUP 922 through 982, I believe. And, again, I am not -- I don't believe that this is the complete draft application.
Do you recall receiving this application? No. Take that back.
Do you recall receiving a draft of an application from DuPont for activities in subaqueous lands?
**A. I don't recall. I just can't say for sure. This is not -- it**

155

**might help me. Of course this isn't signed. We stamp everything that comes into our office. It has no received stamp. It just does not ring a bell.**
Q. Do you recall having a meeting with any DuPont representative concerning this document which is marked draft?
**A. No.**
MS. CONKLIN: Okay. We're up to 12.
(Whereupon, Deposition Exhibit No. Moyer-12, e-mail dated 9/20/04 to William Moyer from W. Harding Drane, Jr., Bates DUP 0000717, DE 19422-19431, was marked for identification.)
BY MS. CONKLIN:
Q. There is a statement on the August 17th, 2004 letter, Exhibit 11, midway through the second paragraph, "Since 1960, DuPont has owned the riparian rights for the tracts of land in Delaware River housing the outfall

156

structure."
**A. Could you point that out? Okay. I got it.**
Q. Got it?
**A. Uh-huh.**
Q. Exhibit 12, which I provided to you, appears to be -- I think it's an e-mail communication from W. Harding Drane to william.moyer@state.de.us concerning DuPont. Was this an e-mail to you on September 20th, 2004 --
**A. Yes.**
Q. -- concerning an application at DuPont for a request for a subaqueous lands permit?
**A. That's correct.**
Q. Okay. Do you recall getting this e-mail?
**A. I do. Yes.**
Q. Okay. Did you read the -- the e-mail says that it's conveying two deeds from the state of New Jersey, a 1960 and a 1967 deed, which Mr. Drane alleges grants DuPont underwater lands

157

associated with the Chambers Works outfall structure. Is that on the e-mail?
**A. Yes.**
Q. All right. Did you review the deeds that were attached to the e-mail?
**A. I did.**
Q. All right. Did you discuss with Mr. -- did you have a discussion with Mr. Harding as a result of this e-mail?
**A. I remember meeting with Harding now about this, and he said that he would present -- he would get me this information after our meeting. Unfortunately, I left soon after this e-mail was sent. And I think -- I think some correspondence continued after my retirement, and I'm not sure exactly what that was. But this did arise when DuPont was getting involved with processing some nerve gases and a question arose as to whether or not that outfall line had a**

158

lease from the state of Delaware or whether they needed one.
Q. Who was -- you said you had a meeting with Mr. Drane?
A. Yes.
Q. And who else was present for the meeting?
A. As best I can recall, somebody -- an official from DuPont may have been in that meeting also.
Q. Was there anybody from the Delaware attorney general's office present?
A. I don't believe so. I don't believe so.
Q. And what was discussed at the meeting?
A. As best I can recall, just whether or not DuPont would need any type of approval from Delaware to make any changes to the end of that outfall pipe. I think they wanted to put a diffuser on it or change the design in some way.
Q. Whether DuPont --

159

A. Whether they would need an approval from Delaware to make any changes to the end of the pipe.
Q. Okay. When you say approval, do you mean a permit?
A. Permit or lease.
Q. All right. Was the content of Mr. Harding's e-mail discussed in your meeting?
A. No. This was sent subsequent to our meeting. The e-mail was sent after the meeting.
Q. Who requested the meeting?
A. And it came through our division director, Kevin Donnelly. Someone had made an inquiry I think through our NPDES program related to the treatment of this material and whether or not the discharge pipe would have to be changed to handle that extra discharge from the treatment plant. And that's how they got into discussions about the outfall pipe.
Q. This e-mail that is

160

identified as Exhibit 12, however, discusses apparently only title issues to subaqueous land, right?
A. Right.
Q. What, if anything, did you do when you received this e-mail?
A. I don't believe I did anything except pass it on to Laura Herr in anticipation of her having to deal with this issue once I retired.
Q. And when did you retire?
A. October 31st, 2004.
Q. How long had Ms. Herr been with the department as of September of '04?
A. Ten to 12 years as best I can recall.
Q. Did you have any communication with Ms. Herr or did you just forward the e-mail to her?
A. No, no, no. We discussed the situation with her, as I did with a number of loose ends that I had.
Q. And what was your discussion

161

concerning DuPont's -- concerning DuPont's position concerning its title to underwater lands referenced in this e-mail?
A. That there needed to be further investigation and follow-up on the validity of this deed, and I suggested that she meet with the -- our attorney general's office, to get them involved at this point.
Q. Did you receive anything in writing from Mr. Drane as a follow-up of this e-mail?
A. Not while I was there. Not to my knowledge, no.
Q. Did you receive any phone calls from Mr. Drane concerning this e-mail?
A. Not to my knowledge. Except maybe to confirm I had received it.
Q. Are you aware of any written instructions from the attorney general's office concerning the validity of any lease or grant issued to DuPont by the

162

state of New Jersey?
MR. WALTON: That went to third parties or internal -- are you asking for internal agency communication or communications with third parties?
MS. CONKLIN: No.
BY MS. CONKLIN:
Q. I'm asking for any conclusions that were conveyed to your office for your official action and filing that gave you instructions on how to interpret any subaqueous lands grant or license that was issued to DuPont by New Jersey.
MR. WALTON: And those instructions from the attorney general's office would be attorney --
MS. CONKLIN: Would be for your use and reference.
MR. WALTON: Right. But would be attorney/client privileged because they would be

163

advice given to the department by a member of the attorney general's office. So, therefore, I'm going to object on the grounds of attorney/client privilege.
BY MS. CONKLIN:
Q. Did you -- but let me ask you. Did you receive any -- did you receive any communications concerning the validity of those grants to which you had to refer in determining and reviewing an application by DuPont?
**A. No. No.**
Q. Did any of your staff refer to such things in reviewing and issuing a final decision on an application by DuPont?
**A. Not to my knowledge.**
Q. Okay. And just for the sake of completeness, did you receive any verbal instructions from the attorney general's office concerning the interpretation of the grant to release issued to DuPont from the state of New

164

Jersey which you used in reviewing and deciding an application from DuPont for either a lease or a permit for subaqueous lands?
MR. WALTON: You can answer the question.
THE WITNESS: Not to my knowledge.
BY MS. CONKLIN:
Q. I'm going back into your deep, dark past in --
**A. I don't have one.**
Q. -- into your light-filled and felicitous past when you were in academics. I'm thinking back to 1970 or '71. Were you aware of a task force that was convened by the governor of Delaware to study the Delaware River and like coastal areas of Delaware, the state of Delaware?
**A. This is before I was hired. I have knowledge of it.**
Q. Are you aware of whether the task force ever issued like a final

165

report to the governor about the Delaware River and coastal areas of the state?
**A. Yes, I'm familiar with that document.**
Q. Okay. Did you contribute to it?
**A. I did not.**
Q. Let me ask you one thing. Are you aware of whether there were preliminary recommendations made by the task force to the governor of Delaware?
**A. I believe that there were.**
Q. Okay. But you don't recall --
**A. I'm answering based on that -- I'm familiar with several of these kinds of documents, so I don't know what specific one you're referring to.**
MS. CONKLIN: Well, here, let's mark these and go forward from there. 13 and 14.
(Whereupon, Deposition Exhibit No. Moyer-13, Coastal Zone Management for Delaware, February

166

18, 1971, Governor's Task Force on Marine and Coastal Affairs, Bates DE 16444-16484, and Exhibit No. Moyer-14, The Coastal Zone of Delaware, Governor's Task Force on Marine and Coastal Affairs, no Bates stamp, was marked for identification.)

BY MS. CONKLIN:

Q. Mr. Moyer, I've provided you with an Exhibit 13, the title page of which is "Coastal Zone Management for Delaware." It's dated February 18, 1971, and the bottom says "Governor's Task Force on Marine and Coastal Affairs." And the cover page is marked DE 16444 and the document extends to DE 16484.

And I direct you to the third page, which is DE 16446, which is a letter --

MR. WALTON: I'm sorry, 16446?

MS. CONKLIN: Yes.

BY MS. CONKLIN:

167

Q. Third sheet of paper in dated February 18, 1971, from Chairman James Wakelin, Jr., conveying the Preliminary Report on the Coastal Zone of Delaware to the governor of Delaware as prepared by the Task Force on Marine and Coastal Affairs. Have you seen this report before?

**A. I have, yes.**

Q. All right. Can you tell me what the Task Force on Marine and Coastal Affairs was and what it was supposed to be doing to your knowledge?

**A. To the best of my knowledge, it was to examine those environmental issues that were problematic in Delaware and recommend a course of action for correcting those problems.**

Q. Okay. Was this task force recommendation kept on file in your office?

**A. It was on my bookshelf.**

Q. That's fair.

It was on your bookshelf?

168

**A. Yes.**

Q. And did it -- was it kept there for the duration of your employment?

**A. I believe it's still there, yes.**

Q. Okay.

**A. I didn't steal it and take it home.**

Q. And are you aware whether you used this in any way for reference or assistance in determining applications for subaqueous leases or permits?

**A. No. No, we did not.**

Q. Let me direct your attention to Exhibit 14. And I'm going to represent to you that this is -- these are portions of a much larger book, the cover of which, though, is copied here, and the book is the "Coastal Zone of Delaware," and it is the, as reflected on the second page of this exhibit, the final report of the Governor's Task Force on Marine and Coastal Affairs, April 1970

169

through October 1971, presented to the Honorable Russell Peterson, P-E-T-E-R-S-O-N, Governor of the State of Delaware, published by the College of Marine Studies, University of Delaware.

MR. WALTON: I'm just going to ask a question. Pardon me. I don't see any Bates numbers on this.

MS. CONKLIN: No. This was referred to in Delaware's Answers to Interrogatories as a reference book.

MR. WALTON: Okay. That was a reference book.

MS. CONKLIN: It was a reference book, exactly. This is the first that we have used it in a deposition. This particular exhibit is a series of pages and I'll be very happy to provide it at the close of the deposition.

BY MS. CONKLIN:

Q. Let me ask you, Mr. Moyer,

170

have you seen this task force report before?
**A. I have.**
Q. All right. Going to the back of the -- did you contribute to it?
**A. I did not.**
Q. In the back of this report there is a William Moyer who provided information on climatological material, some climatological material. That's not you?
**A. Where is that? I've got it. It's 197.**
Q. Is it 197?
**A. Yes.**
Q. It's in the bibliography at the end, 197. Moyer, W.J. You're Moyer, W.F.?
**A. That's right.**
Q. So you did not provide the climatological data in this report?
**A. I wasn't employed there yet when this came out.**
Q. Correct. When you did

171

become employed with DNREC, at what point did you become familiar with the existence of this task force report?
**A. Within a year or so.**
Q. Was this report circulated in DNREC when it was issued?
**A. I don't know.**
Q. That was poorly phrased. Was this report available within the department?
**A. I would assume, yes.**
Q. Because you saw it, right?
**A. Exactly.**
Q. All right. Did you read the report?
**A. I did.**
Q. All right. And were you responsible for reading this report as part of your job duties?
**A. No.**
Q. All right. Did you discuss this report at all with your supervisor?
**A. No.**
Q. Did you attend any meetings,

172

internal meetings, at DNREC, not legal meetings, but staff meetings concerning the conclusions in this report?
**A. No.**
Q. At the time you were -- first came on board and you read this report, were you in the process of assisting the department in drafting any regulations?
**A. I was involved with finalizing the wetlands regulations when I came on board.**
Q. Okay. And when we say wetlands regulations, we're looking at -- we are not discussing anything related to subaqueous lands?
**A. That's correct.**
Q. Did you read this -- let me direct you to -- let me ask you. Did you read the recommendations in the report?
**A. I did.**
Q. Would it be fair to say that there were recommendations at the end of every chapter of this report to your

173

recollection?
**A. Yes.**
Q. I mean, we have the entire book here.
**A. Yes. There appears to be recommendations at the end of each chapter.**
Q. Right. And as a result of reading this book, did you become aware of the 1905 Compact?
**A. I did not.**
Q. Let me direct you to page --
**A. This is not the whole report, though, right?**
Q. Oh, no. No, this is definitely not the whole report.
**A. All right.**
Q. And this is -- and I'd be very happy to do this right now. This is the acknowledgments section and the table of contents. It's basically page iii through 36, xxxvi, and page 337 through page 464.
MR. WALTON: And while we're

174

doing that, I'm just going to place an objection for the record that this does not have Bates stamp on it. I note that on certain pages, specifically, it says the "Property of New Jersey DEP Information Resource Center" on page xv, and it does not have Bates numbers and has not been produced to us.

MS. CONKLIN: Right.

MR. WALTON: And so I'm going to pose an objection on those grounds.

MS. CONKLIN: And like I said, for the record, this was provided as a reference document by Delaware to New Jersey in Answers to Interrogatories, which is how we found out about it.

BY MS. CONKLIN:

Q. So if I may direct your attention to page 242 --

MR. WALTON: I'm sorry, 242?

175

MS. CONKLIN: I'm sorry. It's 342.

MR. WALTON: 342. Okay.

BY MS. CONKLIN:

Q. And, actually, yeah, 342. Oh, I'm terribly sorry. Wrong. 339. My mistake. It's Section 8.222. Do you recall reading the chapter 8, which is segregated by fisheries?

**A. Vaguely. I did read it. I don't know how much I recall.**

Q. All right. I'm pointing to Section 8.222. There's a reference there, is there not, to the Delaware/New Jersey Fisheries Compact in 1907. Have you ever seen a reference to this compact before?

**A. Other than in here?**

Q. Yeah.

**A. No.**

Q. All right. Did anyone in DNREC refer to the Compact of 1907 also as a Compact of 1905?

**A. Not to my knowledge.**

176

Q. And I'm going to direct you to page 343, Section 8.4, the bottom of the page. It says, "The task force recommends that the Delaware-New Jersey Fisheries Compact be nullified." And it goes on to make other recommendations as well. Do you recall reading that recommendation?

**A. Vaguely, yes.**

Q. Did you discuss it with any of your staff members?

**A. No.**

Q. Do you have any reason to know why the compact in this case of 1907 is referred to as a fisheries compact?

**A. No.**

Q. Do you know to what use this report was put by DNREC?

**A. By DNREC? I do not.**

Q. All right. Did you see reference to this report in any policies or regulations that were passed or that were circulated in your department?

**A. Not regulations, no.**

177

Q. Did you see it in any other document?

**A. I believe it was referenced as a document in the Coastal Zone Act.**

MS. CONKLIN: And let us do that as 15.

(Whereupon, Deposition Exhibit No. Moyer-15, Delaware Bay Report Series, Volume 8, Economic and Social Aspects of Delaware's Coastal Zone, by Joel M. Goodman, Spring 1973, no Bates stamp, was marked for identification.)

MR. WALTON: I'm going to lodge the exact same objection. And I'll just state it again for the record, that this appears to be a reference, Delaware Bay Report Series, and it has a number on it, State -- and it's on the second page, it says New Jersey State Library, and it has not been produced to us with Bates numbers. To my knowledge, it's also not

178

been identified by New Jersey, but if I'm incorrect on that, I'm sure Ms. Conklin will let me know ahead of time.

So I'm going to place an objection on those two grounds.

BY MS. CONKLIN:

Q. Mr. Moyer, I've shown you an exhibit numbered 15, which is a portion only of a Delaware Bay Report Series, Volume 8, Economic and Social Aspects of Delaware's Coastal Zone by Joel M. Goodman, and it's dated spring of 1973, and it's the College -- and it was published by the College of Marine Studies, University of Delaware.

Are you familiar with a series of reports called the Delaware Bay Report Series?

**A. I'm not.**

Q. Okay. I notice that Exhibit 14 is also published by the College of Marine Studies, University of Delaware. And I was curious if whether

179

you were aware of any ongoing relationship between the University of Delaware and the state of Delaware, in particular your department, in terms of using or benefitting from material and research done in this series?

**A. I'm not aware of any. I mean, to the extent that these reports were done, they were probably used for something, but I'm not exactly sure, except for this one, Number 14, I'm not familiar with how the other reports were used.**

Q. Do you know how many were in the Delaware Bay Report Series?

**A. I do not.**

Q. Okay. Have you seen them available in DNREC offices?

**A. Some of them. Not -- not 15, I've never seen this one before.**

Q. All right. And just to be certain, you didn't utilize any material in this Delaware Bay Report Number 8 in connection with your work --

180

**A. No.**

Q. -- as manager?

**A. No.**

Q. Okay. Thank you.

MS. CONKLIN: We have one more. This is 16.

(Whereupon, Deposition Exhibit No. Moyer-16, Memo dated 7/27/94 to Peder Hansen, et al., from Sara W. Cooksey, Bates DE 27936-27941, was marked for identification.)

BY MS. CONKLIN:

Q. Mr. Moyer, I've shown you Exhibit 16. It's Bates stamped DE 27936 through 27941. And the front page is a memorandum, and I'll just read the typed section, to Peder Hansen, H-A-N-S-E-N, John Schneider, S-C-H-N-E-I-D-E-R, John Hugg, H-U-G-G, Bob Taggart and Bill Moyer. Would that be you?

**A. Yes.**

Q. And it's dated July 27th, 1994 from Sarah Cooksey, C-O-O-K-S-E-Y,

181

Administrator, and it's on the letterhead of State of Delaware, Division of Soil and Land Conservation in Dover, and it purports to convey an MOA, memorandum of understanding, between Delaware and New Jersey. Do you recall seeing this memorandum and the attached MOA before?

**A. Yes.**

Q. Okay. Can you tell me whether the MOA which is in draft form attached to this memorandum was ever signed and executed between the states?

**A. I don't believe that it was.**

Q. Okay. Is it fair to say that this was offered for your comments?

**A. Yes.**

Q. The memorandum was provided to you for comment?

**A. That's correct.**

Q. Okay. Looking at the handwritten comments on this particular exhibit, are any of them yours?

**A. Yes.**

Q. Oh, this is your writing?

182

A. Yes.
Q. Oh, all right.
A. Not all of it.
Q. Oh, okay.
A. Now that I look at some of the other pages.
Q. All right. Which of the comments did you provide?
A. Page 3, I added subaqueous lands permits.
Q. Right. So --
A. I believe I also added the Roman numerals and the letters.
Q. Okay. From your perspective, and let me ask to your understanding, what was the purpose of this memorandum from Delaware's perspective?
A. I believe at the time, this was early in the approval of our Coastal Management Program by NOAA, Federal Office of Coastal Zone Management, and they were just trying to determine whether or not it would be possible for

183

the state of New Jersey to do the consistency determinations, coastal zone consistency determinations required by the federal Coastal Zone Management Act.
Q. Let me direct to you item 1, Purpose and Applicability. And it's on DE 27937.
A. Okay.
Q. The purpose and applicability states, "This Memorandum of Agreement between the New Jersey Department of Environmental Protection and the Delaware Department of Natural Resources and Environmental Control establishes a framework for coordinating the policies and activities of each state's Coastal Management Program in the area of the Delaware River and Delaware Bay transected by the common state boundary (as defined in State of New Jersey versus State of Delaware 296 US 694 (1934)."
To what extent does your recollection about the consistency or the

184

ability of the state of New Jersey to do a consistency finding fit in with the purpose and applicability in paragraph 1?
A. Well, I believe that the Coastal -- the federal Coastal Zone -- federal Coastal Zone Management law allows states to enter into agreements establishing who does the coastal zone consistencies in waters between the two states.
Q. And --
A. And I believe that Sarah Cooksey in this memorandum was exploring whether that would be an option for Delaware to pursue with New Jersey.
Q. All right. In connection with this memorandum, did anybody internally at your shop or in DNREC discuss what would happen in the event that Delaware denied an application for activity on subaqueous lands and New Jersey approved an application for the same activity on subaqueous lands?
MR. WALTON: Objection.

185

Lack of foundation.
MS. CONKLIN: You can answer.
THE WITNESS: Not to my knowledge.
BY MS. CONKLIN:
Q. Did you submit any other comments with respect to this proposed memorandum?
A. No.
Q. Okay. Did you attend any meetings in which this memorandum was discussed?
A. No.
Q. No meetings with New Jersey officials at all?
A. No, no.
Q. Let me ask you, you indicated that Laura Herr worked with you for approximately ten years before you left DNREC?
A. Yes.
Q. In what capacity did she work for you?

186

A. She was a program manager 1. I was a section manager or program manager 2 was our classification.
Q. And in the real world, what does that mean?
A. She reported to me.
Q. Got it. Okay.
And what were her job duties?
A. She was in charge of overseeing issuance of all permits and leases.
Q. All permits and leases?
A. Yes.
Q. And how many people did she supervise that you recall?
A. Now? When I left?
Q. Yes.
A. Eight.
Q. Okay. If an issue needed to be discussed with the attorney general's staff, would she be the person through whom requests to -- would she be the person who would determine whether

187

requests for advice would be forwarded to the attorney general's office?
A. It would generally go through the director's office. He would have the final say. If she had a question of the attorney general's office, it would go through our division director.
Q. When you were manager, I thought you said it went through you; in other words, you determined whether something needed to be referred to the attorney general's office when you were there as manager?
A. I would determine whether it needed to be referred to the attorney general's office, but then I would send it to them through the director's office.
Q. And it would be up to the director to forward that memo?
A. Correct.
Q. All right. And when Ms. Herr -- I'm sorry. When you left, did Ms. Herr take your job, essentially your

188

position?
A. Eventually, yes.
Q. And if she had a question for the attorney general's office, would it have been conveyed in the same fashion, through the director's office?
A. I would hope so, yes.
Q. I mean, you had no reason to think that the procedure had changed?
A. Correct.
Q. Have you discussed the -- have you discussed anything of the Compact of 1905 with Laura Herr?
A. No.
MR. WALTON: Outside the presence of counsel.
MS. CONKLIN: Outside the presence of counsel.
THE WITNESS: No.
BY MS. CONKLIN:
Q. Let me just direct your attention to page -- on Exhibit 16, DE 27940, and at the bottom of that page, there is a section in handwriting that

189

states -- there's a section in handwriting at the bottom of the page. Is that your handwriting?
A. No.
Q. Okay. All right.
A. Mine is a little bit more legible than that.
Q. Were you aware whether you were going to be serving as a point of contact with respect to this MOA if it had been executed?
A. I believe there was that potential, yes.
Q. Okay. That's why you retired, right?
A. This is ten years before.
Q. All right. And who would have been your counterpart at New Jersey? Do you know?
A. I do not, no. I knew who it was then. We talked fairly regularly.
Q. And you say your counterpart, you mean counterpart for, what, subaqueous?

190

A. **Yes.**
Q. In New Jersey?
A. **Yes.**
Q. Do you remember this person's name?
A. **I do not.**
Q. Even though you talked fairly regularly?
A. **That's --**
Q. Was it a man or a woman?
A. **A man.**
Q. It was a man. All right. And this would have been --
A. **I had some dealings with Bob Tudor.**
Q. T-U-D-O-R?
A. **T-U-D-O-R. I just can't pull out the other names.**
Q. Did you have any contact with William Anderson?
A. **Not to my recollection.**
Q. Okay. I'm probably going to just throw a couple more names out just in case. James Johnson does not ring any

191

bells?
A. **It does not, no.**
Q. Steven Whitney?
A. **No.**
Q. And when you say you had some regular contact with your counterpart in New Jersey, when you talk about counterpart, counterpart in what aspect of your job?
A. **The person who would be in charge of issuing approvals for work off the coast.**
Q. On subaqueous lands?
A. **On subaqueous lands. There's another person who I've been at submerged land conferences to and I can't remember his name.**
Q. And would you discuss issues arising from licensing and permits of activities in the area off the Salem County coast in New Jersey, in what's known as the 12-mile circle?
A. **In the Delaware Bay?**
Q. In the Delaware Bay.

192

A. **Yes, yes.**
Q. And when you discussed this with this gentleman, was there anybody else present? Was it a group discussion?
A. **Not particularly. They were just one on one.**
Q. Was there any written communication arising from these meetings?
A. **Not to my knowledge.**
MS. CONKLIN: Well, if you could just give me a couple minutes here, if you could just stretch your legs here, I think I may be done.
THE WITNESS: Okay.
(Recess taken from 3:02 p.m. to 3:08 p.m.)
BY MS. CONKLIN:
Q. One more quick question. If I wanted to find out what permits were issued by the state of Delaware in connection with the construction of the Delaware Memorial Bridge, where would I

193

go?
A. **Do you have a date when the Delaware Memorial Bridge was constructed? That might help me to --**
Q. Well, there's a one and a two. There's the original -- the first bridge and then there was a second. And I'm thinking the first bridge would have been sometime in the '50s, possibly early '60s.
A. **I think the best bet would be the Delaware River Bay Authority would probably have the most complete records on that. And, of course, the Wetlands and Subaqueous Lands Section could do a search under the Delaware River Bay Authority.**
Q. The Wetlands and Subaqueous -- I'm sorry, it was called the Subaqueous Lands Act?
A. **Underwater Lands Act.**
Q. Underwater Lands Act. That was the Underwater Lands Act, and I think that was in 1961. Am I in the right area

194

there?
A. Yes.
Q. Are you aware personally whether the department issued permits prior to that -- prior to 1961 for activities on subaqueous land?
A. **I believe that there were permits issued for subaqueous lands, but to my knowledge, it was done by the Department of Transportation. Some permits were issued by the Department of Transportation.**
Q. Would that be the same as the highway department, or different?
A. Yes.
Q. Same?
A. Yes.
Q. Okay. And would these be permits just specifically for the bridge, for the Memorial Bridge?
A. Yes.
Q. Okay. Very good.
MS. CONKLIN: Thank you very much. I believe we're done.

195

THE WITNESS: You're welcome. Thank you.
MR. WALTON: And we'll read and sign.
(Witness excused.)
(Whereupon, at 3:10 p.m. the proceedings concluded.)

196

CERTIFICATE

I hereby certify that the witness was duly sworn by me and that the deposition is a true record of the testimony given by the witness.

It was requested before completion of the deposition that the witness, WILLIAM F. MOYER, have the opportunity to read and sign the deposition transcript.

DEBRA J. WEAVER, RPR, CRR, CSR
NJ CSR License No. XI 01614
DE Certification No. 183-RPR
(Expires 1/31/08)
Dated : November 15, 2006

(The foregoing certification of this transcript does not apply to any reproduction of the same by any means, unless under the direct control and/or supervision of the certifying shorthand reporter.)

197

INSTRUCTIONS TO WITNESS

Please read your deposition over carefully and make any necessary changes. You should assign a reason in the appropriate column on the errata sheet for any change made.
After making any change which has been noted on the following errata sheet, along with the reason for any change, sign your name to the errata sheet and date it.
You are signing it subject to the changes you have made on the errata sheet, which will be attached to the deposition. You must sign in the space provided.
Return the original errata sheet to the deposing attorney within thirty (30) days of receipt of the transcript by you.

ERRATA

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ACKNOWLEDGMENT OF DEPONENT

I, WILLIAM F. MOYER, do hereby certify that I have read the foregoing pages, 1 - 196, and that the same is a correct transcription of the answers given by me to the questions therein propounded, except for the corrections or changes in form or substance, if any, noted in the attached Errata Sheet.

_____
WILLIAM F. MOYER

Subscribed and sworn to before me this
____ day of _____, 20____.
My commission expires:_____

_____
Notary Public



LAWYER'S NOTES

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E R R A T A

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| 32 | 16 | Division of Parks and Recreation |
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| 70 | 9 | NGBD → NGUD |

William F. Moyer
11/22/06

ACKNOWLEDGMENT OF DEPONENT

I, WILLIAM F. MOYER, do hereby certify that I have read the foregoing pages, 1 - 196, and that the same is a correct transcription of the answers given by me to the questions therein propounded, except for the corrections or changes in form or substance, if any, noted in the attached Errata Sheet.

William F. Moyer

WILLIAM F. MOYER

Subscribed and sworn to before me this 5th day of Dec., 2006.

My commission expires: _____

Attorney at Law

Notary Public

IN THE SUPREME COURT
OF THE UNITED STATES

- - -

STATE OF NEW JERSEY : NO. 134, Original
:
v. :
:
STATE OF DELAWARE :

- - -

OCTOBER 5, 2006

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Oral deposition of KURT REUTHER taken pursuant to notice, was held at the law offices of CONNOLLY, BOVE, LODGE & HUTZ, LLP, The Nemours Building, 1007 North Orange Street, 9th Floor, Wilmington, Delaware beginning at 9:29 a.m., on the above date, before Dottyann Y. Walsh, a Certified Shorthand Reporter and Notary Public in the State of Delaware.

- - -

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INDEX

- - -

Testimony of: KURT REUTHER

By Ms. Balint 5

By Mr. Walton 84

- - -

EXHIBITS

- - -

NO. DESCRIPTION PAGE

Reuther-1 DNREC Air & Waste Management Complaint Files 66



- - -

DEPOSITION SUPPORT INDEX

- - -

Direction to Witness Not to Answer
Page Line Page Line Page Line
None

Request for Production of Documents
Page Line Page Line Page Line
60 7

Stipulations
Page Line Page Line Page Line
None

Question Marked
Page Line Page Line Page Line
None



- - -

KURT REUTHER, after having been duly sworn, was examined and testified as follows:

- - -

DIRECT EXAMINATION

- - -

BY MS. BALINT:

Q. Good morning.

A. **Good morning.**

Q. I'm Ellen Barney Balint. I'm a deputy attorney general, a lawyer, for the State of New Jersey in the New Jersey versus Delaware matter that we are here to talk about today. Before we get going, have you ever been deposed before? Have you ever been in a situation like today where your deposition testimony has been requested?

A. **No.**

Q. It is a little different than a regular conversation and there is some special rules about how we interact. So I would like to go through those

6

differences before we get started. The big difference is that everything that you and I say and any of the other attorneys sitting here today is taken down by the court reporter who is sitting on your left and before we started she put you under oath. Do you understand that everything that goes on today can be admissible in court at a later date as if this testimony was given in court?

**A. Yes.**

Q. Because everything we say is being taken down and will be made into a transcript, we need to do a few things for the clarity of the record, first of all we try not to speak over each other. So I'm going to try very hard not to interrupt you, to let you finish what you have to say and I would ask that you wait to hear the end of my question before you begin answering. Sometimes you feel like you know where somebody is going at a conversation, but we don't do that at a deposition. Do you understand?

7

**A. Yes, I do.**

Q. Part of that going along with listening to the whole question, when we read the testimony, we are going to assume that you understood the question, so if there is anything that I say that sounds ambiguous to you or there is double negatives and you are not sure which way we are going, or any other problem with the question, I would ask you to let me know and I will try to clarify the question. Is that okay?

**A. Yes.**

Q. And the other thing that doesn't work on a transcript is hand gestures which I do a lot of and uh-huhs and un-uhs, so I would ask that all of your responses be verbal and that yes or no be your response to an affirmative or negative answer. Understood?

**A. Yes.**

Q. If you don't know the answer to a question, that is okay. I would ask that you not guess on things, but that it would be okay to estimate if that is appropriate in your opinion. For example, if you can't remember the date that something happened within a year, like if you don't remember the exact year or you don't remember the exact time but you think it was October or you can remember that it was definitely in the '90s, that kind of an estimate is all right, but I would ask that you let me know that you are making that kind of an estimate. Understood?

**A. Yes.**

Q. Is there any reason that you feel you wouldn't be able to give accurate testimony today because of any medications you are taking, any illness or any reason that your memory or perceptions might be affected today?

**A. No.**

Q. Can you tell me your current title?

**A. I'm the chief enforcement officer for the Division of Air and Waste Management which is within the Department of Natural Resources Environmental Control.**

Q. Before we get more into your employment, I would like to start with a little background information. What is the highest level of education you have achieved?

**A. I have a bachelors degree from the University of Delaware with additional credits from University of Virginia, NC State and West Virginia University.**

Q. Your bachelors from the University of Delaware, when did you achieve that degree?

**A. 1984.**

Q. And what was your major area of study?

**A. Parks management.**

Q. Can you tell me a little bit about what that area of study entails.

**A. Certainly. The parks management degree at the University of**

10

Delaware when I was there was geared towards natural resource based facility management, in other words it prepares you to run or operate, maintain state parks in natural areas.

Q. Did you have any minor area of study --

A. No.

Q. -- at the University of Delaware? What did your studies at the University of Virginia entail?

A. That was a parallel program with the FBI Academy and that was based in criminal justice.

Q. What years or year was that?

A. That was 1998.

Q. Did you get a degree or certificate?

A. Just a certification that I'm a graduate of the FBI Academy.

Q. Was there any environmental aspect of the FBI training that you had at the University of Virginia?

A. No.

11

Q. So it was just the regular training that an FBI agent would get?

A. The FBI runs a state program, so it was general criminal justice subject matter -- administrative law, interviewing, physical fitness, public relations, that type of thing.

Q. So a different program than an FBI agent?

A. Correct.

Q. When did you attend the North Carolina State University?

A. That was a program run out of Wheeling, West Virginia, and that was in the mid '80s, and that is an estimate.

Q. And what was that program?

A. That was focused on parks maintenance and management.

Q. How was the course of study at North Carolina State different than your bachelors studies at the University of Delaware?

A. It was more of an advanced level that discussed operational planning

12

and preventive maintenance planning for outdoor recreational areas.

Q. Did you receive any type of degree or certification?

A. Certification of completion.

Q. And what year was that?

A. In the mid '80s, '85, '86.

Q. What about your studies at West Virginia University?

A. That again was run out of Wheeling, West Virginia, very similar to the NC State credits, that particular field of study focused on the management of aquatic facilities at outdoor recreation areas.

Q. Can you give me any examples of those type of facilities?

A. Certainly, community swimming pools would be an example, lake side waterfront areas at a larger natural resource area, associated boat ramps, things of that nature.

Q. And when did you attend this program at West Virginia University?

13

A. That was approximately 1987.

Q. Again, did you receive any type of degree or certificate?

A. Certificate of completion.

Q. You refer to these postgraduate studies as receiving credits, are you working towards any -- towards any type of postgraduate degree?

A. No, I'm not.

Q. When was your first -- what was your first employment after graduating from the University of Delaware?

A. I worked for the Delaware Department of Natural Resources Parks Division.

Q. And when did you get that job?

A. October of 1984.

Q. What was your first job title?

A. I was an assistant park superintendent.

Q. And what were your duties as

14

an assistant park superintendent?
A. **As an assistant park superintendent, I attended the Delaware State Police Academy, received my certification in law enforcement for Delaware, so I had ranger and law enforcement style duties as well as operations and maintenance duties.**
Q. What type of things might you need to do in your ranger and law enforcement role?
A. **Basically a park ranger in the State of Delaware is responsible for public safety on the park. To make an analogy, it is traditional policing but in a natural resource area.**
Q. Can you give me a couple of examples that would be typical of that job?
A. **Certainly, alcohol violations, safety violations with regard to boating, hunting, fishing, some domestic style disputes related to campground activities.**

15

Q. And in the case of such an incident, what would be the consequences to the park goer? Did you give out tickets, did you arrest people?
A. **In some cases they were issued a physical summons, in other cases they were taken into custody.**
Q. So a criminal summons would serve like a traffic ticket where you would get a crime and have to appear at some point?
A. **Correct.**
Q. What were your park operations duties as an assistant park superintendent?
A. **I would assist the park superintendent in devising preventive maintenance strategies, budgeting, personnel management.**
Q. How long did you hold that title as an assistant park superintendent?
A. **I was promoted to the position of park superintendent in the**

16

**spring of 1987 as I recall.**
Q. In the spring of 1987?
A. **Yes.**
Q. Backtracking a bit to your first job as an assistant park superintendent, were you working at a single park or were you working at multiple parks?
A. **Between 1984 and 1987 I was transferred at the need of the division on a couple of different occasions. I worked at Bellview State Park, Carpenter State Park and Lums Pond State Park.**
Q. Do any of those three parks border the Delaware River?
A. **No.**
Q. In the spring of 1987 when you were promoted to park superintendent, what park were you assigned to?
A. **Brandywine Creek State Park.**
Q. And what were your duties as the park superintendent?
A. **Very similar to those of an assistant park superintendent, however,**

17

**the park superintendent has overall authority and responsibility for the activity occurring at the area.**
Q. So you had final decision-making power?
A. **Yes.**
Q. -- at that park? And how long did you hold that position?
A. **I was there until August of 1989 as I recall.**
Q. And what was the next position you held?
A. **I accepted a promotion to a larger park area.**
Q. What park was that?
A. **That was Delaware Seashore State Park.**
Q. Where is the Delaware Seashore State Park located?
A. **It is approximately a mile south of Dewey Beach, Delaware on the Atlantic Ocean.**
Q. Is there any part of Brandywine Creek State Park that borders

18

the Delaware River?
A. No.
Q. What were your duties as the superintendent of the Delaware Seashore State Park?
A. Similar to those at Brandywine Creek State Park, but at the larger facility I became responsible for the water treatment system, a waste water treatment system, and a greater variety of activities for the park user which included a marina.
Q. During this period from 1984 to 1989, had you undergone any additional training with the state that we haven't spoken of?
A. A variety of in-service training offered through state personnel office, our own agency.
Q. Other than the university courses we discussed at the beginning and the Delaware State Police Academy you attended prior to or at the beginning of your employment in 1984, did you

19

participate in any other training outside of your department, outside of DNREC?
A. Yes.
Q. What was that?
A. As a result of being transferred to Delaware Seashore State Park, I attended the Delaware Technical and Community College for the purpose of obtaining a waste water treatment operator's license.
Q. Do you recall when that was?
A. Approximately 1987, '88.
Q. How long did you stay the superintendent of the Delaware Seashore State Park?
A. Until June of 1992.
Q. And what was your next job?
A. I was a captain assigned in my current division in charge of operations for New Castle County.
Q. So that was a captain of the DNREC Division of Air and Waste Management?
A. And enforcement, yes.

20

Q. Air and waste management enforcement?
A. Yes.
Q. Has that division retained the same name and organizational structure since that time to the present?
A. Yes.
Q. What were your duties as a captain in charge of New Castle County for the Division of Air and Waste Management Enforcement?
A. I managed a staff of six environmental protection officers, coordinated their activity in enforcement of environmental law. Additionally the enforcement group participates as part of the emergency response team for hazardous materials and oil spill response.
Q. What is the mission of the New Castle County office of the Division of Air and Waste Management Enforcement? What was that office charged with doing?
A. The mission was not specific to New Castle County operations, we have

21

a statewide unit. So it would be the entire mission.
Q. But as the county office, you would be fulfilling that mission within the county?
A. Correct.
Q. So what is the general mission of the office?
A. The mission of the enforcement section is to enforce appropriate environmental law for protection of public safety and the environment.
Q. And can you tell me which environmental laws you are charged with enforcing?
A. Yes. My unit or the unit enforces all the laws related to air and waste management within the state. Additionally we provide enforcement services for the Division of Water Resources and the Division of Soil and Water Conservation.
Q. Enforcement services for

22

which two divisions?
A. **It is Division of Air and Waste Management.**
Q. Right.
A. **Division of Water Resources and Division of Soil and Water Conservation.**
Q. What policing methods does this office utilize in enforcing these laws?
MR. WALTON: Object to the form of the question. It is vague as policing methods.
BY MS. BALINT:
Q. Do the officers of the New Castle County office of the Division of Air and Waste Management Enforcement have routine patrols?
A. **Yes.**
Q. Can you describe those for me?
A. **Yes. We meet with our program areas of responsibility periodically, identify their needs, their**

23

**concerns and some of the programmatic issues that they deal with. And then we direct patrols geared towards looking for those events that may be occurring in the area.**
Q. Can you give me some examples of directed patrols?
A. **Certainly. Open burning of trash and refuse as it relates to air pollution, the transportation of solid and hazardous wastes and looking for appropriate permits on the conveyance, looking for illegal docks, violations of filling wetlands and making sure that contractors that are developing new properties have appropriate soil and erosion controls in place.**
Q. How long did you serve as captain of the New Castle County office?
A. **Until August of 2004.**
Q. And what was your title change at that point?
A. **Chief of enforcement.**
Q. How did your duties change

24

when you were promoted to chief of enforcement?
A. **My duties became more administratively oriented in terms of development of policy, management of budget, setting strategic goals as opposed to operational responsibilities that I had as a captain.**
Q. Currently how many captains serve under your authority?
A. **One.**
Q. And currently how many officers are there below the captain?
A. **10.**
Q. Are there any additional employees of the office?
A. **One administrative support specialist.**
Q. Where is the office located, your current office?
A. **My office is in Dover, Delaware.**
Q. Is the New Castle County office of the Division of Air and Waste

25

Management Enforcement located in Dover?
A. **No.**
Q. Where is that located?
A. **New Castle, Delaware.**
Q. Can you describe the New Castle facility for me, please?
A. **Yes, the New Castle facilities are located at 715 Grantham Lane. It is a state office building that was reclaimed from a former industrial site and it houses enforcement, a branch of emergency response and most of your engineering and compliance branch for the division -- I'm sorry, for the air resources section.**
Q. How many and what kind of vehicles are available to the New Castle enforcement office?
A. **There are five vehicles assigned to the New Castle County group, two of which are sport utility vehicles. The other are Crown Victorias, standard police cars.**
Q. Does the New Castle

26

enforcement office have any aquatic vehicles?
**A. Yes.**
Q. Can you tell me how many and what kind?
**A. The unit overall statewide has two vessels. One is a 21-foot Boston Whaler, and the other is a 19-foot Crestliner.**
Q. I'm sorry, 20-foot --
**A. 21-foot Boston Whaler. And a 19-foot Crestliner.**
Q. Where are those two boats normally stationed?
**A. The 21-foot Boston Whaler is normally staged at our New Castle office. And the Crestliner is normally staged at our Georgetown office.**
Q. What is the normal routine or use of the 21-foot Boston Whaler that is stationed out of New Castle?
**A. That vessel has two missions. First it is used to respond to oil spills or events occurring on the**

27

**Delaware River. Secondarily it is used to patrol for some of those subaqueous land and wetland issues we discussed a few moments ago.**
MS. BALINT: Can you read back that last answer.
(The record is read back.)
BY MS. BALINT:
Q. First addressing the response to oil spills and other events in the Delaware, can you describe for me what those responsibilities would include?
**A. Yes. In the event that we are notified of an oil spill or a discharge or release into the Delaware River, we will send our vessels out with personnel to truth the event.**
Q. I'm sorry, to what?
**A. To truth it. In other words to locate it using GPS technology, using latitude and longitude, and to actually make sure it is truly an event occurring.**
Q. In the event you are

28

notified of an oil spill or other emergency event, what personnel within your office take the Boston Whaler out?
**A. Could be anybody on the staff, one of the 12 people that I mentioned before.**
Q. Are all of your officers trained to be able to drive that boat and know all of the same response procedures?
**A. Yes.**
Q. When you say your first job is to truth the event, you are essentially assuring that it wasn't a false report?
**A. Correct.**
Q. After the verification and location of the accident or spill, what is the next thing that your officers would do?
**A. Our officers would contact the members of our emergency response team, ask for their assistance in terms of evaluating the spill, defining control measures designed to contain the spill**

29

**and ultimately develop strategy to conduct clean-up and final end point to make sure that what is clean is clean. Our officers concurrently will investigate the source of the spill, try to determine how and why it happened and who may be responsible for it. With the goal to ultimately prosecute those people if in fact a crime had been committed.**
Q. You described this first possibility of a response as being oil spills and other events, what other types of events could it be?
**A. There are a number of industrial point sources, permitted point sources that come out of the Delaware River. Industry has a requirement to notify us of excursions or problems that they have with their outfalls, and upon that type of notification, we will go out and check those things.**
Q. Do you respond to boating accidents or other kinds of emergencies?
**A. Only if there is an oil**

30

spill involved for my unit, boating accidents.
Q. So if a boating accident caused a ruptured gas tank, you might be called out?
A. Yes.
Q. The emergency response team that you referred to, can you describe for me what part of the Delaware state government that team is located in?
MR. WALTON: I will object to the form of the question. I don't think I understood it.
BY MS. BALINT:
Q. Is the emergency response team that you referred to part of DNREC, or is it a State Police office or where else might it be located?
A. It crosses a variety of departmental lines and it is ultimately managed by the Delaware Emergency Management Agency.
Q. Is the Delaware Emergency Management Agency a function of Delaware

31

State Police or is it an independent agency?
A. It is contained within the Department of Safety and Homeland Security.
Q. Just trying to understand it from an organizational perspective, is the State Police department part of the Department of Safety and Homeland Security as well?
A. Yes.
Q. So the emergency management agency is not under the state police but parallel to it, under the umbrella of the Department of Safety and Homeland Security?
A. I would characterize it as a sister division.
Q. You said that the responsibility for the emergency response team crosses department lines, what departments have some responsibility for the emergency response team?
A. Of course DNREC, Safety and

32

Homeland Security through both DEMA and the Delaware State Police, the Division of Public Health, Department of Transportation, Delaware State Fire School and a few others that I don't recall off the top of my head.
Q. But those are the major ones.
A. Yes.
Q. In your tenure working at the Division of Air and Waste Management Enforcement since -- is it 1992?
A. Yes.
Q. Can you tell me approximately how many oil spills your office has responded to? Oil spills in the Delaware River.
A. Many, I don't even want to estimate.
Q. In the last 10 years from 1996 to 2006, can you approximate how many oil spills in the Delaware River the Delaware Division of Air and Waste Management Enforcement might have

33

responded to?
A. I can't give you a hard number, but all of those that have been reported to us we have responded to.
Q. How about in the last five years from 2001 to 2006, can you estimate how many oil spills your office may have responded to?
A. Again, I can't give you a number, but we have responded to all of them that have been reported.
Q. How about in the last year, from October 2005 to today?
A. Again, I don't have a firm number for you, but if an oil spill occurs on the Delaware River, our vessel or our personnel are going out to truth it and validate it.
Q. Can you give me some idea of the frequency of oil spills that you may respond to? Is it once a week, once a month, twice a month, twice a year, any idea?
A. I think in terms of

34

frequency, once a month.
Q. Is there any seasonal -- have you noticed any seasonal trends? Like are there more in the summer, more at Christmastime?
A. Haven't noticed a seasonal trend.
Q. Have you noticed in the 14 years you have been working in the office an increase or decrease in oil spills generally?
A. Remains pretty constant.
Q. Of the oil spills that your office has responded to, would you say that any of them have been major spills like the entire load of a tanker?
A. Yes.
Q. And how many major spills do you think you have had?
A. Two that I can think of off the top of my head. One was called the Presidente Rivera spill. And I believe that occurred in approximately 1989. And most recently we had the Athos I oil

35

spill which was November of 2004.
Q. And what was that ship?
A. Athos I, A-T-H-O-S.
Q. Can you describe for me generally what happened when -- in the spill of the Presidente Rivera in 1989.
A. As I recall, the ship was actually north of the Delaware River border in Pennsylvania at anchorage, it lost steerage, hit an obstruction. As a result, released a large quantity of oil which came down the Delaware River and impacted our state.
Q. When you say a large quantity of oil, can you give me any kind of idea, can you give me a quantum we are talking about here?
A. I can't give you an exact figure, but it was six figures and I believe it was 300,000-gallon range.
Q. Who were the emergency responders that responded in the de Rivera?
A. At that time it was the

36

chief of enforcement, gentleman by the name of William Hill. And the emergency response component of our emergency response team was a gentleman by the name of John Mormon.
Q. John who?
A. Mormon.
Q. Who were the emergency response agencies that responded to the spill of the Presidente Rivera?
A. I don't recall all of them. I do know the National Guard was activated.
Q. Was there any Coast Guard response?
A. Not that I'm aware of. And I need to clarify, I was working for the parks division at that point in time, 1989.
Q. Right. Are you aware of response from the USEPA or FEMA?
A. Not aware.
Q. So you had no personal involvement in the response to the

37

Presidente Rivera spill?
A. Not the response at the time of the incident. However, the follow-up and some of the other things were in my tenure in 1992.
Q. So they were still cleaning up three years later?
A. Yes.
Q. What kind of residual cleanup duties were there in 1992?
A. Tar balls and other oil debris that was washing up on shore.
Q. And how would your office respond to that?
A. We would go check the different notifications or complaints that we received of tar balls coming up, sample the material to analyze it to make sure it was in fact coming from the Presidente Rivera and then arrange for cleanup.
Q. About how long do you think that residual cleanup lasted? Are you still hearing about Presidente Rivera

38

stuff today and still cleaning it up?
**A. On occasion things still float up and we believe came from the Presidente Rivera.**
Q. And you still identify it that way?
**A. Most of it has solidified at this point so it would be more detrimental to the environment to clean it than to just leave it there.**
Q. The second major spill you identified I believe occurred during your tenure, the spill of the Athos I in 2004, is that correct?
**A. Yes.**
Q. Can you describe for me the emergency response to the spill of the Athos I.
**A. Yes, the Athos I was coming into anchorage up in the Philadelphia area. Similar circumstances of the Presidente Rivera, it struck something, a submerged item which caused a rupture in the hull. That rupture in the hull**

39

**released approximately 230,000 gallons of oil, which ultimately on its downward path impacted Delaware waters.**
Q. How did the office -- the New Castle office Division of Air and Waste Management Enforcement respond to that emergency?
**A. That particular event was federalized so at the behest of the Coast Guard, we staffed a unified command area. And working in concert with the Coast Guard, we had field personnel evaluating shorelines, evaluating the quantity of oil in the river, and overseeing cleanup operations.**
Q. So your office hosted the unified command center?
**A. No.**
Q. Where was that set up?
**A. Philadelphia.**
Q. But your office participated in responding according to the orders of the unified command center?
**A. We were a participant in the**

40

**unified command center. And then tasked out our field personnel here in Delaware to examine different aspects of the spill and their impact on Delaware.**
Q. In the federalized response to the spill of the Athos, who were the other emergency responders -- response agencies, federal and state?
**A. Federal would be the United States Coast Guard, the EPA, US Fish and Wildlife Service, NOAA, and that is all I can recall federally off the top of my head. From the state perspective, there was the State of Delaware, the State of New Jersey, the State of Pennsylvania, it would have been their natural resources agencies, and predominantly their state police agencies.**
Q. I think you said that the Coast Guard was the lead federal agency for the unified command of the emergency response in this incident?
**A. Yes.**
Q. Correct me if I'm using the

41

wrong jargon, and it was a unified command system, not an incident command system?
**A. Yes.**
Q. Were the various response agencies assigned different tasks by the Coast Guard, by the unified command?
**A. Yes.**
Q. Do you have any -- how would you describe the Coast Guard's role in the emergency response?
MR. WALTON: Let me -- for that particular incident?
MS. BALINT: Yes. For the Athos.
THE WITNESS: For the Athos, the Coast Guard becomes the federal on-scene coordinator. And it is their job at that point, because it is multi-jurisdictional, multi-state, to bring the different representatives from the various jurisdictions in to make sure that

42

the interest of the localities, the states or local jurisdictions are being sufficiently taken care of. The Coast Guard also brings to bear a variety of resources, financial and otherwise, through some of their assets to facilitate the cleanup. They are also responsible for working directly with the suspected potential responsible party to access things such as the Coast Guard spill fund or any limits of liability, spill contingency funds that the potential responsible party has.

BY MS. BALINT:

Q. Does the Coast Guard have any field responsibilities in that cleanup? Are they actually physically cleaning up the spill?

**A. They oversee spill cleanup management.**

Q. When you mentioned Coast Guard assets, are you talking about Coast

43

Guard vessels, what are you talking about?

**A. Both vessels and personnel.**

Q. How would you describe the EPA's role in the cleanup to the Athos spill?

**A. EPA was supporting the Coast Guard with physical assets and personnel, science and technology.**

Q. Physically, how is oil spilled into a river cleaned up? You don't have a street cleaner machine, what is it that we do out in the river to clean this up?

**A. There are actually a variety of techniques that are employed. One method for free-floating product is to use a skimmer device that can actually capture the oil, separate from the water and then discharge clean water out the back while it captures oil. One methodology is to use containment boom so the oil is contained into an area and then we physically put oil absorbent pads**

44

**on the oil and capture it and bring it up to land.**

**Another technique used in that particular incidence was something called a VSOR -- sorry but I don't remember what that acronym stands for. But basically we had submerged oil that couldn't be captured with the control mechanisms with the pads or the oil skimming device, and these were designed to go down under the water and use oil absorbent material in the pockets, and they would be brought up onto a ship and up onto land for ultimate disposal. There is a variety of methodologies.**

Q. Is there any agency that has specialized vehicles for this or were all of the agencies contributing?

MR. WALTON: I object to the form of the question.

MS. BALINT: Answer if you can. If you can understand the question. The devices and methods that you described, are they

45

performed on and by regular boats or are there specialized – is there specialized equipment, specialized vehicles?

THE WITNESS: Specialized equipment.

BY MS. BALINT:

Q. Specialized equipment that you use on a regular boat?

**A. Specialized vessels and specialized equipment used on a regular boat.**

Q. Who has the specialized boats?

**A. Outside contractors.**

Q. What was US Fish and Wildlife's role in the cleanup of the Athos spill?

**A. They were examining impacts to their wildlife areas up and down the Delaware River and Bay. Which included the wildlife area at Tinicum, some of the historical resource areas up in Pennsylvania, Delaware River, and Bombay**

46

Hook. In addition to looking at their land resources and impacts of the oil, they had a concern also about migratory birds and the transport of oil material leaving from water areas to inland areas.

Q. Can you describe for me a little bit more what Delaware's emergency response was to the Athos spill. You said before that you were tasked, that fuel personnel were tasked to examine impacts. Can you tell me what that is and whether there were any other tasks?

A. Yes. One of the things that we pursued with the assistance of the Delaware State Police was twice daily flyovers of the impact areas to basically track the oil, see where it was going, where it was heading, and attempting to get a handle on potential impacts downstream. We also had people out on the shoreline walking looking for areas of impact of oil where it may have made landfall. And we had some of our scientific support personnel down in our

47

Dover office evaluating the type of oil, potential impacts to the water column, fisheries, shell fisheries, that type of thing.

Q. The impact to the water column?

A. Water column, yes.

Q. What is the water column?

A. The water column is essentially in a water body, it is striated, it's got levels to it. So certain oils may permeate the surface, certain oils or contaminants may permeate throughout the entire wedge of water, some may sink and go directly to the bottom and not have impact at the top of the water. So it is basically trying to get a composite feel for what was occurring throughout the entire length of the body of water.

Q. Can you describe for me generally New Jersey's response to the Athos spill.

A. New Jersey's response was

48

very similar to that of the State of Delaware.

Q. So it is your belief that New Jersey examined the impact, did patrols by air and walking the shores and scientific evaluation of the different impacts?

A. Yes.

Q. Can you tell me whether the Athos spill went into the 12-mile circle?

A. Yes.

Q. Can you tell me whether the spill -- the oil spill in the 12-mile circle went past the mean low waterline and onto the New Jersey shore?

A. No.

Q. You don't believe it did?

A. I can't tell you that it did.

Q. You can't tell me that it did, okay. Do you have any reason to believe that the oil spill would have been contained by the Delaware border along the mean low waterline of the New

49

Jersey shore?

MR. WALTON: I object to the form of the question.

MS. BALINT: Read it back.

(The record is read back.)

BY MS. BALINT:

Q. Do you have any reason to believe that the oil would have not crossed that border?

A. No, no.

(Recess at 10:33 a.m.)

(Resumed at 10:41 a.m.)

BY MS. BALINT:

Q. Moving on from oil spills to you said that your office has two primary missions for the Boston Whaler, one is response to oil spills and other events, and the other is patrol of subaqueous land issues?

A. Correct.

Q. You had said that the other event you were talking about would be excursions at industrial point sources?

A. Correct.

50

Q. And those wouldn't be patrolled on a routine basis but you would go if you were called out if somebody called in a problem?
**A. Correct.**
Q. Do you have any idea of the frequency of response to point source excursions?
**A. Again, it is a hard number to get a grasp of, but we get called very frequently from the industrial users on the Delaware.**
Q. Would you say more or less frequently than the oil spills which you estimated might be once a month?
**A. More frequently.**
Q. Are you aware of your office responding to point source excursions at facilities located on the New Jersey side of the Delaware River?
**A. Yes.**
Q. Can you tell me about the incidents that you recall?
**A. I don't recall specific**

51

**instances, we maintain a database or a record of all calls, excursions that we get so we can share them with our regulatory partners within the agency. I'm aware of some that have come from the Chambers Works facility.**
Q. What kinds of excursions are you aware of occurring at the Chambers Works facility?
**A. Again, I don't know specific details about their excursions but it generally has to do with something to do with their NPDS permit.**
Q. Even though I know N -- NPDS standing for?
**A. National Pollutant Discharge Elimination System.**
Q. Have you personally responded to calls at the Chambers Works facility?
**A. No.**
Q. What would Delaware's response to an excursion of the NPDS permit at the Chambers Works facility

52

entail?
**A. Our office would make contact with the facility or evaluate the discharge at the outfall, and then generally we turn that over to our regulatory groups who would follow up with any type of inspection, enforcement as -- I should say civil administrative enforcement action or corrective action that is required. If the release was criminal in nature, then it would stay with my office.**
Q. Are you aware of any instance that resulted in criminal actions against the Chambers Works facility?
**A. No.**
Q. When you say you would contact the facility, is that a telephone contact or do you physically go there?
**A. Could be either.**
Q. Are you aware of your office responding to point source excursions on the New Jersey side of the Delaware at

53

any other facilities besides the Chambers Works facilities?
MR. WALTON: Object to the characterization of the New Jersey side of the river.
BY MS. BALINT:
Q. When I say the New Jersey side of the river, is there any confusion in your mind what side of the river I'm talking about?
**A. No, to me it means east.**
Q. Would you prefer I say the east side of the river?
**A. Yes.**
Q. Other than responding to incidents at the Chambers Works facility, are you aware that your office responded to point source excursions at other facilities on the east side of the Delaware River?
**A. No.**
Q. You said that the second category of responses that the -- that your office would attend to with your

54

Boston Whaler would be subaqueous issues. Can you describe for me what subaqueous issues your office is concerned with?

**A. Yes. The subaqueous land act in Delaware essentially makes it clear that the state owns the portion of the land that is underneath the water. And as a result of that, people or entities cannot put piers, structures, things of that nature out over the state lands that are beneath the water without the appropriate permits. So our activities are geared towards checking areas where those things are likely to be installed. And if we notice anything out there, making sure that they have the appropriate permits.**

Q. Do you know when Delaware's subaqueous land act was enacted?

**A. No.**

Q. Was it recently?

**A. No.**

Q. So it predated your tenure in your office?

55

**A. Yes.**

Q. Other than the building of piers or other structures on subaqueous lands, you had said something about wetlands. What are your office's wetland issues?

**A. Very similar to subaqueous lands. The State of Delaware has jurisdiction over tidal wetlands in our jurisdiction. So we are looking for the illegal fill-in of any wetland area adjacent to river marine areas or tidal areas.**

Q. Are there any other subaqueous land issues that your office attends to -- pays attention to?

**A. I'm not quite sure I understand the question.**

Q. Beyond looking for new piers or structures that don't have proper permits, and the possible illegal filling of tidal wetland, are there any other issues or problems that your office watches for with regard to subaqueous

56

lands?

**A. No.**

Q. Are you familiar with Killcohook State Park or Killcohook -- are you familiar with an area called Killcohook?

**A. Yes.**

Q. Can you tell me where it is?

**A. It is on the east side of the river, approximately adjacent -- little bit north of Fort Delaware State Park or Pea Patch Island.**

Q. And who owns or controls the Killcohook area?

**A. The Killcohook area is part of the State of Delaware.**

Q. Is it a Delaware State Park?

**A. I don't know.**

Q. Do you know how the Killcohook area got to be in existence?

**A. No.**

Q. Are you aware of the Army Corps of Engineers' involvement in the Killcohook area?

57

**A. No.**

Q. How is it that your office patrols for subaqueous land issues such as unpermitted piers or structures or the illegal filling of wetlands? Does your office patrol, go out routinely looking for new piers or other structures that may not have proper licenses and permits?

**A. Yes.**

Q. And can you tell me the frequency of patrol?

**A. The New Castle County area approximately three times per year.**

Q. And can you describe for me what one of those patrols would entail.

**A. Yes, generally our boat leaves the Delaware City marina after it is put there on a ramp. Our staff members basically go up the west side of the Delaware River, penetrate any of the streams, water bodies that they can, head up to the Pennsylvania line, turn around and then come down the east side of the Delaware River doing the same --**

58

**performing the same activity. And then generally in the area of Artificial Island, they will cut back over to the west side and then work down to lower New Castle County again penetrating the tributaries to the best of their ability.**

Q. When your patrol reaches the Pennsylvania line on the west side of the river, crosses the river and begins to patrol on the eastern side of the river, how is the Delaware border identified?

**A. What we do is look for new structures on the land that are coming out into the water. And then once we establish that there is a new structure coming out into the water, we have to go back to our mapping systems and figure out if it is actually in Delaware.**

Q. Would it be correct to say that during the patrol, there is no attempt to identify the beginning and end of the Delaware border on the northern aspect of the east side of the Delaware River during the patrol, and that that

59

border issue is investigated after the patrol?

MR. WALTON: Objection. Lack of foundation.

BY MS. BALINT:

Q. When I asked how the northern part of the Delaware border is identified by your office's patrol as it crosses the Delaware River from the western to the eastern coast, your response to me was that the patrol looks for new structures during its patrol and that after the patrol, they go to a map to find out if the new structure is in Delaware or not. Is that a fair characterization?

**A. That is correct.**

Q. From that answer, I understand that the patrol personnel don't worry about where the border is when they are out there patrolling, that they are just out there looking for new structures, is that correct?

**A. That's correct.**

60

Q. Is a report made when your office makes this patrol of the shores of the Delaware?

**A. A float plan is filed for the mission, a report is generated if they identify any new structures.**

MS. BALINT: I would like to make a transcript request that the float plans and reports, the structure reports I guess, that the witness has just identified be produced. Because I don't believe they have been. I have seen nothing of this sort.

MR. WALTON: I don't know that it is -- I'm not saying it is or isn't, but I don't know that it is subject to the document request. Certainly if it is subject to the document request made by New Jersey, we will produce it. I don't know sitting here. I don't remember what the exact requests were.

61

MS. BALINT: Whether or not it is the subject of any prior document request, I am currently requesting as part of this deposition, the document to which the witness refers.

MR. WALTON: To be clear, so this would be in addition to your document requests.

MS. BALINT: It is one or the other. It is either a supplement to the old document request or it is a new document request following up on the deposition testimony.

MR. WALTON: I'm just trying to be clear.

BY MS. BALINT:

Q. You say that before -- is there a name for this patrol? I keep stumbling over what we are talking about. What would you call this patrol?

**A. We would call it a special operation.**

62

Q. And if you were having like an internal meeting with your officers and the captain, we are having a special operation to what?
**A. Identify wetland fill-ins and illegal docks.**
Q. You said that prior to conducting the special operation, there would be a float plan filed, is that correct?
**A. That is correct.**
Q. What is in a float plan?
**A. Float plan essentially details the assets that are needed, anticipated time of departure, anticipated time of return, the personnel that are on board and generally identifies an activity for use of the boat. It is essentially a safety document so that we can keep track of our folks when they are out on the water.**
Q. And other than the Boston Whaler, are there any other assets required for this patrol?

63

**A. Our navigational equipment, cameras.**
Q. What kind of personnel would participate in such a patrol?
**A. Someone from our staff, someone from within the enforcement group.**
Q. Just one person?
**A. Two people on board.**
Q. And what would their duties be on this patrol?
**A. To captain the boat and one would be an observer, one would be the boat operator. And those positions are interchangeable.**
Q. Do you have any personal knowledge of such subaqueous patrols identifying unlicensed or unpermitted piers or structures on the eastern side of the Delaware River during your tenure?
**A. Can you restate?**
MS. BALINT: Could you read it.
(The record is read back.)

64

THE WITNESS: No.
BY MS. BALINT:
Q. If there were unidentified or unpermitted piers or structures found on any shore of the Delaware, there would be a report filed after the patrol?
**A. Yes.**
Q. Are you aware of any patrols identifying illegal wetland filling on the eastern side of the Delaware?
**A. No.**
Q. But if there were, again, there would be a report filed?
**A. Yes.**
Q. You said that these patrols occur three times a year, is that a regular schedule?
**A. Seasonal.**
Q. And what seasons?
**A. We usually try and hit spring, summer and fall.**
Q. Has your office ever responded to an emergency on a pier or a structure on the eastern side of the

65

Delaware?
**A. Not that I'm aware of.**
Q. If your office had responded to an emergency on a pier or structure on the eastern side of the Delaware, would there be any record of that response?
**A. Yes.**
Q. How would one find or identify such a record?
**A. We maintain a database of all of our activities.**
Q. Could you search your database for responses to piers or structures on the eastern side of the Delaware?
**A. Yes.**
MS. BALINT: I would like to make a transcript request --
MR. WALTON: It has been produced.
MS. BALINT: It has been produced?
MR. WALTON: Yes, ma'am, it was produced a long time ago, too.

66

I can get you the exact date of the production if you would like. I would like to confer with chief. Those are the documents you gave me, is that what you are referring to?

THE WITNESS: Yes.

BY MS. BALINT:

Q. I will show you documents that are Bates stamped DE16974 through DE17001 and ask you to identify these documents for me.

**A. I cannot identify these documents.**

Q. So this would not be a printout from your office?

**A. That is correct.**

Q. I will show you a set of documents that have been Bates stamped DE211750 through DE211794 and ask you to identify these documents for me.

**A. I cannot.**

**(Recess at 11:09 a.m.)**

**(Exhibit Reuther-1 marked**

67

**for identification.)**

**(Resumed at 11:27 a.m.)**

MR. WALTON: Off the record we had a discussion about whether a certain document was produced. I went up and looked through our stuff and provided a copy to counsel for New Jersey. And I assume you will mark it.

MS. BALINT: Marked it Reuther-1.

BY MS. BALINT:

Q. Chief Reuther, can you describe for me what exhibit -- what the pages Bates stamped DE21808 to DE20' -- sorry, 801 to 808, what does this document represent?

**A. What this document represents is a activity list from our records database.**

Q. And has this list been selected to certain activity or is this all of the activities for your office for the years represented?

68

**A. No, it is a selected portion.**

Q. And what were the selection criteria?

**A. Under location, Delaware River.**

Q. So this is all of DNREC Air and Waste Management complaints for the years 1986 through the present?

MR. WALTON: I object to the form of the question. You can answer if you can understand it.

BY MS. BALINT:

Q. Is this a list of all of those complaints for the year 1986 to the present? Is Exhibit Reuther-1 a list of all of DNREC Air and Waste Management complaints for the Delaware River for the years 1986 to 2006?

**A. To the best of my knowledge, yes.**

Q. Can you tell me why the listing begins in 1986?

**A. That is the origin of our**

69

**database.**

Q. And prior to 1986, where would similar records be found?

**A. I don't know.**

Q. If you would, could we just walk through the first entry on Page DE21801 to discuss and describe the information that is entered for each complaint. Starting with the year column, could you describe the different information that is listed for that first complaint.

**A. Yes. The first entry in the column of this report is for the year. And the year of this particular complaint is 1986. The complaint number is a discrete number that is assigned to each one of the calls or each one of the complaints that we receive in our office, and this one was assigned 10068. That particular complaint came in on July 12 of 1986 and it was assigned to environmental protection officer 51. The location of the incident was at the**

70

**Delaware River and the Branch Canal. The nature of the complaint was an oil spill. And the suspected object of the complaint was Texaco.**

Q. By object, you mean what?

**A. The potential responsible party or the suspect. The action comment is indicated here as closed. Which means that that particular report has been closed.**

Q. If I wanted to know more about the oil spill that happened on July 12, 1986, would there be an individual report filed about this incident?

**A. Yes.**

Q. And that report would have more information, is that correct?

**A. Yes.**

Q. What additional kinds of information would be contained on an individual report?

**A. Individual reports will show the officer assigned, the action taken in**

71

**the form of a narrative and to what division of our department and section it related to in terms of program. And it would also indicate the county of the complaint.**

Q. After the initial report is filed, would there be additional paperwork detailing follow-up investigation or other consequences?

**A. Possibly.**

Q. So in some instances there would be and maybe not in other instances?

**A. That's correct.**

Q. Looking at this list, are you able to identify incidents which occurred on the eastern side of the Delaware River?

**A. Yes.**

Q. Can you do that for me.

**A. Yes.**

MR. WALTON: Just for clarification, do you need to go through every single line on every

72

single call?

MS. BALINT: Well, let's talk about that. Where on this list would you look to identify complaints which originated on the eastern side of the Delaware River?

THE WITNESS: Looking under the location code, for example, entry number one which we discussed was Delaware River and Branch Canal, I know the Branch Canal is in Delaware City so that is on the western edge. However, Delaware River across from the DP&L plant in Edgemoor.

BY MS. BALINT:

Q. Where is that located?

**A. Edgemoor plant is just north of the Port of Wilmington.**

Q. And would that be on the eastern or western side of the river?

**A. The area across from the DP&L, Edgemoor site is on the eastern**

73

**side of the river.**

Q. So that is a location on the other side of the river that is otherwise hard to describe so you describe it by something that is located on the western side?

**A. Correct.**

Q. Going down this list, how about what would be easier for you, would you like to scan and identify for me things that look like they are on the eastern side or should we discuss each entry?

**A. Well --**

Q. And you can say whether it is eastern or western?

MR. WALTON: Or you can take a minute and highlight them. If that is not objectionable to you. He can sit here and highlight them and then we can read them off.

MS. BALINT: Off the record.

(Discussion off the record.)

THE WITNESS: Some of these

74

are as you suggest are nebulous -- are we off the record?

(Discussion off the record.)

BY MS. BALINT:

Q. You have had an opportunity to look through the exhibit marked Reuther-1 to identify complaints that appear from these documents to have occurred on the eastern side of the Delaware River?

**A. Yes, I have.**

Q. Can we go through the document and you point those out to me?

**A. Yes. Starting on Page DE21801, complaint year 1986, No. 10687. On the same page, year of complaint is 1989, complaint No. 2145.**

Q. And the location is?

**A. Delaware River off of Claymont.**

Q. Okay.

**A. Year is 1990, same page, complaint No. 10474. Location is Delaware River from Claymont to Delaware**

75

**Memorial Bridge. 1990, same page, complaint No. 10720. Delaware River Dupont Chambers Works.**

**Same page, 1991, complaint No. 1250, location is Delaware River, PA and Delaware border. Same page, year is 1992, complaint number is 133, location is Delaware River off of Pennsville. Same page, year is 1993, complaint is 1463, location is Delaware River from Pennsville, New Jersey.**

**Same page, 1993, complaint No. 1829, location is Delaware River three miles north of Memorial Bridge.**

Q. Was that complaint No. 1829?

**A. Correct. Turning the page to 21802. Midway through the page, the year is 1996, the complaint number is 209. The location is Delaware River near Fox Point in channel. Same page, year is 1996, complaint No. 3102, location is Delaware River, New Jersey side, north of Reedy Island, Port Penn.**

**Same page, year is 1996,**

76

**complaint number 4139, location Delaware River, Gloucester, New Jersey.**

**Turning to Page 21803. Top of the page, year is 1996, complaint number is 6490, location is Delaware River near Penns Grove, New Jersey. Going down to the bottom third, year is 1998, the complaint number is 2192, location is Delaware River, Camden, New Jersey.**

**Changing pages to 21804, near the top of the page, the year is 1999, the complaint number is 382, the location is Delaware River, Gloucester, New Jersey. Going to the bottom third of the page, the year is 1999, the complaint number is 4488, the location is Delaware River, Swedesboro, New Jersey, mile marker 81.**

**Same page, year is 1999, complaint number is 4764. The location is Delaware River, Deptford, New Jersey. Same page, year is 1999, complaint number is 5207, location is Delaware River,**

77

**Deptford, New Jersey.**

**Changing pages to 21805, about one third down, the year is 2001, the complaint is 204, location Delaware River, at PA line. Same page going all the way to the bottom, year is 2003, complaint number is 4328, location is Delaware River at PA state line.**

**Changing pages to 21806, about a third of the way down the page, the year is 2004, the complaint number is 4741, the location is Delaware River.**

Q. How is it that you identify that one as being on the eastern side of the river?

**A. Under -- going further over on this sheet, the object of the complaint is identified as the MV Athos I.**

Q. And the MV Athos I is a ship?

**A. Correct.**

Q. Is it just your personal knowledge that that was on the eastern

78

side of the river?
A. Yes. Same page, complaint number is 4889, location is Delaware River, and again that was related to the Athos I. Same page, the year is 2005, complaint number is 590, location is Delaware River at Chambers Works. Approximately a third down of the same page, the year is 2005, the complaint number is 1284, the location is Delaware River at Paulsboro, New Jersey. And just at the end of the page the year is 2005, complaint number is 1888, location is Delaware River at Paulsboro, New Jersey. Final listing on that page is 2005, complaint number 1997, location is Delaware River, Gloucester County, New Jersey.
Changing pages to 21807, first entry, year is 2005, complaint number is 2123, the location is Delaware River, Salem, New Jersey. The year is 2005, the complaint number is 3793, location Delaware River, Salem, New

79

Jersey. The year is 2005, complaint number is 3928, location is Delaware River, Paulsboro Beach, Paulsboro, New Jersey.
Same page, year is 2006, complaint number is 101, location is Delaware River at West Deptford, New Jersey. Same page, year is 2006, complaint number is 1385, location is Delaware River at Logan Township, New Jersey. Year is 2006, complaint number is 1439, location is Delaware River at Artificial Island, New Jersey.
Year is 2006, complaint number is 1490, location Delaware River, Lower Alloways Township, New Jersey. At the bottom of the page, second one from last, year is 2006, complaint number is 2152, location Delaware River, Paulsboro, New Jersey.
Switching pages to DE21808, first entry, year is 2005, complaint number is 2169, location Delaware River, West Deptford, New Jersey.

80

Q. We discussed earlier that your office would respond to or be concerned with two major kinds of problems on the Delaware River, one being oil spills and other incidents, and one being subaqueous issues. Does the list that we have marked as Reuther-1 appear to itemize any subaqueous issues or is this list limited to that first category of oil spills and other actions?
A. This record appears to be comprehensive as to all of our activity on the river. I did identify five that were outside the realm of a spill.
Q. Can you identify and describe for me those five non-spill entries?
A. Yes, on Page DE21804, the year is 1998, complaint number is 6006, location is identified as Delaware River at the Port of Wilmington and nature of that complaint is erosion control.
The next site is on Page 21805, about two thirds down the

81

page, complaint number -- year is 2002, complaint is 6181, location is Delaware River at Marcus Hook. The nature is dumping, and based on the object of the complaint, associated with dredging.
Directing your attention to Page 21808, first listing, the year is 2006, complaint number is 2169, this was a miscellaneous investigation, unknown male in a kayak.
Q. Can you explain to me why your office would be responding to a complaint of an unknown male in a kayak?
A. Yes.
Q. Why?
A. In the post 9/11 era, all agencies that have jurisdiction on the water or waterborne abilities get intelligence briefings and notification from a variety of sources.
Q. So your concern about a male in a kayak wouldn't be a spill or a pollution concern per se, it would be more of a police concern?

82

A. **Correct.**
Q. Okay.
A. **Same page, year is 2006, complaint No. 2364, location is Delaware River, Marcus Hook, Pennsylvania, the nature of this complaint is materials handling, and materials handling is an air resources style complaint.**
**And the final site on Page 21808 is year 2006, complaint No. 2457, the location is the Delaware River in New Castle, and we participated in a response and readiness drill.**
Q. In that last entry where you participated in a response and readiness drill, what was the type of emergency for which you were drilling your readiness?
A. **I don't know.**
Q. What does the information in the object of complaint name column tell you about that drill?
A. **Someone by the name of Richard Parks trading as Penn MA was involved with the drill. Probably the**

83

**organizer.**
Q. That wouldn't be one of your employees?
A. **That's correct.**
Q. Relying on the document marked as Reuther-1, does your office have a record of any subaqueous -- a record of any subaqueous land issue arising on the eastern side of the Delaware River between 1986 and the present?
A. **Not that I'm aware of.**
Q. Does the information in this exhibit identify any response your office may have made to an emergency or other incident at a pier or other structure on the eastern side of the Delaware River?
A. **Can you repeat the question.**
MS. BALINT: We will have it read back.
(The record is read back.)
THE WITNESS: No.
MS. BALINT: Thank you very much. I think we are done today.

84

MR. WALTON: Two points of clarification.
EXAMINATION
BY MR. WALTON:
Q. Chief Reuther, just a couple of points to clarify your testimony. When counsel for New Jersey was questioning you regarding oil spills in the Delaware River, do you remember that?
A. **Yes.**
Q. If there was a spill in the Delaware River, would it be limited to just oil spills or would it be gasoline and other hazardous chemicals?
A. **Our response would be precipitated on hazardous materials.**
Q. When we say oil spill, that includes gasoline or trying to think of other examples.
A. **Gasoline, oil, abandoned drums, floating cylinders, any chemical discharges that may have occurred.**
Q. Thank you for that clarification. And second, regarding

85

your jurisdiction, if there is a pier that crosses into Delaware territory, in the 12-mile circle, and an event occurred on a pier that would be within your response, would you respond to that?
A. **Yes.**
Q. Is it your testimony that it would be your responsibility to respond to that?
A. **Yes.**
Q. Are you aware of any incidents that occurred on a pier that you did not respond to?
A. **No, I'm not aware of any instance.**
MR. WALTON: That is all I have.
MS. BALINT: Thank you.
(Witness excused.)
(Deposition concluded at approximately 12:08 p.m.)

CERTIFICATE

I HEREBY CERTIFY that the witness was duly sworn by me and that the deposition is a true record of the testimony given by the witness.

It was requested before completion of the deposition that the witness, KURT REUTHER, have the opportunity to read and sign the deposition transcript.

DOTTYANN Y. WALSH, a
Certified Shorthand Reporter and
Notary Public of the
State of Delaware
CSR License Number: 251-RPR
Notary Number: 20051147009
Notary expiration: April 14, 2007
Dated: October 16, 2006

(The foregoing certification of this transcript does not apply to any reproduction of the same by any means, unless under the direct control and/or supervision of the certifying reporter.)



INSTRUCTIONS TO WITNESS

Please read your deposition over carefully and make any necessary corrections. You should state the reason in the appropriate space on the errata sheet for any corrections that are made.

After doing so, please sign the errata sheet and date it.

You are signing same subject to the changes you have noted on the errata sheet, which will be attached to your deposition.

It is imperative that you return the original errata sheet to the deposing attorney within thirty (30) days of receipt of the deposition transcript by you. If you fail to do so, the deposition transcript may be deemed to be accurate and may be used in court.



ERRATA

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ACKNOWLEDGMENT OF DEPONENT

I, KURT REUTHER, do hereby certify that I have read the foregoing pages, 1 - 85, and that the same is a correct transcription of the answers given by me to the questions therein propounded, except for the corrections or changes in form or substance, if any, noted in the attached Errata Sheet.

KURT REUTHER DATE

Subscribed and sworn to before me this
_____ day of _____, 20____.
My commission expires:_____

Notary Public

LAWYER'S NOTES

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Kurt Reuth 11-02-2006

KURT REUTHER DATE

Subscribed and sworn
to before me this
_____ day of _____, 20____.
My commission expires:_____

_____
Notary Public

IN THE SUPREME COURT
OF THE UNITED STATES

- - -

STATE OF NEW JERSEY : NO. 134, Original
:
v. :
:
STATE OF DELAWARE :

- - -

SEPTEMBER 26, 2006

- - -

Oral deposition of WILLIAM F. STREETS, taken pursuant to notice, was held at the law offices of CONNOLLY, BOVE, LODGE & HUTZ, LLP, The Nemours Building, 1007 North Orange Street, 9th Floor, Wilmington, Delaware beginning at 10:02 a.m., on the above date, before Dottyann Y. Walsh, a Certified Shorthand Reporter and Notary Public in the State of Delaware.

- - -

ESQUIRE DEPOSITION SERVICES
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Philadelphia, Pennsylvania 19103
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INDEX

- - -

Testimony of: WILLIAM F. STREETS


By Ms. Balint 5

By Mr. Walton 98


- - -

EXHIBITS

- - -


| NO. | DESCRIPTION | PAGE |
|---|---|---|
| Streets-1 | Emergency responses | 5 |
| Streets-2 | 2000, Delaware River incidents | 5 |
| Streets-3 | 1999, Delaware River incidents | 5 |




- - -

DEPOSITION SUPPORT INDEX

- - -

Direction to Witness Not to Answer
Page Line Page Line Page Line
None

Request for Production of Documents
Page Line Page Line Page Line
None

Stipulations
Page Line Page Line Page Line
None

Question Marked
Page Line Page Line Page Line
None



- - -

(Exhibits Streets-1, Streets-2 and Streets-3 marked for identification.)

WILLIAM F. STREETS, after having been duly sworn, was examined and testified as follows:

- - -

DIRECT EXAMINATION

- - -

BY MS. BALINT:

Q. Good morning, Mr. Streets.

**A. Good morning.**

Q. My name is Ellen Barney Balint. I'm a deputy attorney general for the State of New Jersey and we are going to be taking your deposition in the matter of the State of New Jersey versus the State of Delaware which is in the Supreme Court of the United States. Are you aware of the disagreements that are the subject of this action, sir?

**A. Yes.**

Q. Before we get into the meat

6

of the questions, I need to ask you some general questions about yourself and give you some instructions about the deposition. Do you understand that you are -- the court reporter has asked you to speak under oath today and it is as if you were in court that you have promised to tell the truth?

**A. Yes.**

Q. Have you ever been deposed before?

**A. Yes.**

Q. When?

**A. I would say around 1980, involving an automobile accident, a civil suit resulting in somebody being injured in an accident.**

Q. Was that your only previous deposition or have you been deposed in other matters?

**A. No, that is the only one.**

Q. What was your participation in that accident?

**A. I was the driver of the**

7

**vehicle that was involved.**

Q. And in terms of the litigation, were you the plaintiff or the defendant?

**A. I was the plaintiff.**

Q. How was that case resolved?

**A. I'm not sure, ma'am, I was with the volunteer fire company, I don't know what the outcome of the case was.**

Q. I know that you have been deposed before, but I would like to take a few minutes to go over the deposition process today just to make sure that you understand the rules here. The court reporter is sitting at the end of the table and she's going to take down every word that is said today, everything that I say, everything that you say. And we will be following a question and answer format.

The critical thing about a deposition, the difference between this and a regular conversation is that it is very important that you listen to the

8

questions because I'm going to assume that you understood my questions. So when I ask you a question, make sure that you understand what I'm asking, and if you don't, please ask me to rephrase that. Do you understand?

**A. Yes.**

Q. A second special thing about depositions is that the court reporter really can't take down what two people are saying at the same time. Most often in conversation we speak over one another, but we can't do that today. So I would ask that you wait until I'm done answering -- asking my question before you begin to answer. Do you understand that?

**A. Yes.**

MR. WALTON: I'm sure the court reporter will remind you if you do that.

BY MS. BALINT:

Q. Another important thing is that she can only write down what is

9

said, not the gestures I'm making with my hands, and indistinct verbalizations like uh-huh and un-uh are really hard to read. You can't tell whether that is a yes or no. So if your response is either yes or no, I would ask that you say yes or no.

**A. Yes, ma'am.**

Q. If your attorney objects to any question that I ask, please don't answer until your attorney and I have discussed his objection at which point you will either be asked -- you will either be asked to answer the question or I will attempt to rephrase the question in a way to meet the objection. Do you understand that?

**A. Understood.**

Q. Please don't guess at your answers. If you don't know an exact answer, you can certainly estimate, but if you are estimating on something, please say about or probably or whatever. But if you have no idea of an answer, please don't guess.

10

A. **Yes, ma'am.**
Q. Do you understand? If in the course of this deposition you remember something that you didn't remember at the time that I asked a question, you can tell me, you can say, you know, that just reminds me, you were asking about something else before, and now I remember where before I didn't. I would rather you do that if something occurs to you than to have an incomplete record. Okay?
A. **Understood.**
Q. If at any time you need to take a break, that is fine, just let me know. Sometimes these things go on for a long time. We will certainly take a break if we get to the lunch hour. Do you have any questions about --
A. **No.**
Q. -- this proceeding?
MR. WALTON: Off the record.
(Discussion off the record.)
BY MS. BALINT:

11

Q. Mr. Street, is there anything that would prevent you from testifying truthfully or accurately this morning such as any medications you have been taking?
A. **No, ma'am.**
Q. Or any illness you have been suffering?
A. **No, ma'am.**
Q. Or any trauma or bereavement?
A. **No, ma'am.**
Q. Is there any other reason you feel you wouldn't be able to truthfully or accurately testify today?
A. **No.**
Q. Did you review any documents in preparing for today's deposition?
MR. WALTON: I will object, excluding documents reviewed with counsel.
MS. BALINT: Actually any documents. I'm not asking about any communication with counsel,

12

I'm asking about documents he may have read.
MR. WALTON: To the general question, you can answer, have you reviewed any documents in preparation for deposition.
THE WITNESS: Yes.
BY MS. BALINT:
Q. Can you tell me what documents you have reviewed?
MR. WALTON: Objection. I'm going to object to that question on the grounds of attorney/client privilege. Which documents were selected and reviewed with the witness by counsel constitutes Work Product.
BY MS. BALINT:
Q. Were there -- excluding any documents that may have been written to you by your attorney, such as letters or memos or e-mails, can you tell me the other documents that you reviewed in preparation for today's deposition?

13

A. **The documents that I provided to Mr. Walton.**
Q. And can you tell me what those are.
A. **Computer printouts of data of emergency responses from New Castle County.**
Q. Mr. Streets, I will show you three pages of documents that have been marked Exhibits Streets-1, Streets-2 and Streets-3. And I will ask you to take a look at those, please. Mr. Streets, are those the documents that you gave to your attorneys?
A. **That's correct.**
MR. WALTON: I will ask to go off the record one more time.
(Discussion off the record.)
(Recess at 10:12 a.m.)
(Resumed at 10:32 a.m.)
BY MS. BALINT:
Q. Mr. Streets, can we just briefly go through these three sets of documents and have you identify for me

14

what they represent. Looking at Streets-1, could you describe this list for me.

**A. This is a computer printout of data starting at 1994. At the top of the page it has run number and first number indicates it is 1994. And the next number is indicating what the activity number for the year is 18,554 incidents of the year so far. The next report time was 1994 on 0703 for July 3rd, fire district 1533, there is a water rescue Pea Patch Island on the north end.**

**So reading across left to right, it tells you the year is the first two numbers, the incident case number chronologically by year. The next column is the year in total, and the last four digits indicate the day -- month and day of the month that the incident occurred.**

**Column three indicates the response area that the incident occurred in, representing the fire district, and**

15

**the last one is the location provided by the caller of the incident.**

Q. Looking on the first page we start with an incident that was on July 3rd, 1994, and the last incident on the last page was on September 18, 2006, is that correct?

**A. Correct.**

Q. Moving to Streets-3 -- Streets-2, I'm sorry, can you describe for me what this document set is and how it differs from the first set.

**A. Document 2 is a more detailed report of document 1 in regards that I printed out the entire responses for calendar year 2000 that were handled by New Castle County. And on Page 2 it is a detailed report of an incident that occurred on the 8th of January in the year 2000, at approximately 1717 hours which military time is 5:17 p.m. This incident is of a river rescue in the Delaware River opposite the Ommelanden Range. Going down the line, 1717 is the**

16

**entry time that was entered into our computer system, to generate a response. Second line indicates that we have assigned that a case number for future references. In this case it would be case 1109 -- 1,109 incidents for the year.**

**Next line down control, tells me that station 18 was the primary response that is handled by computer terminal 41. Going down the next line at 1799, we station alerted the volunteer fire companies of 18, 20, and 29 to the incident. Next line is 1722, we notified the marine police who also has jurisdiction for this response. At 1722, it also indicates that we notified the Coast Guard of a response in the Delaware River.**

**The next line, 1723 advised marine police will not be responding unless needed, their boat is currently out of the water. Going down to the next line, it has at 1725, dispatch of a unit.**

17

**It is followed by the assist of a unit to the same incident.**

Q. Is there any indication of what kind of unit that is --

**A. Yes, ma'am.**

Q. -- dispatched?

**A. Looks here like the computer data shifted over, it is 18 marine 1 -- it is 1725, parentheses 77, 18, the 18 should be after assist. 18 marine 1 was the unit responding. And they were in route to the 3rd Street boat ramp where they have availability to get into the water from the City of New Castle. At 1726 they are showing they are arriving at the 3rd Street boat ramp.**

Q. Where it says on scene?

**A. Yes, ma'am, on scene, I'm sorry. 1727 shows that Eric Wagner who is the City of Wilmington cell phone number for future reference if we needed to contact him. At 1728 --**

Q. Excuse me, on that last line?

18

A. 1727?
Q. Yes. Where it says --
A. Miscellaneous.
Q. -- miscellaneous, P was Eric Wagner. What does P indicate?
A. Again it looks like it is a typo -- not a typo, but looks like the computer has shifted off the screen. Put in parentheses that they were to contact Eric Wagner. And my -- Eric Wagner's phone number would have been a contact for the response.
Q. Is he a responder or someone at the scene at the time of the incident? Can you tell?
A. No, ma'am, I can't.
Q. Okay.
A. Next line is 1728, you see in front of the on scene, you see TI', TPR, that is our trooper 4 is our aviation unit that responded.
Q. Is that a helicopter?
A. Yes, ma'am. 1731, it indicates an assist that is 29 marine 1

19

was the second water rescue vehicle in the water. We have another assisting unit, marine 2 followed by 1732 location is that those units are at the Augustine boat ramp, that would be station 29, the 29 marine 1 unit would be putting off at Augustine where they have their boat ramp. 1733, 20 marine 1 is at the 7th Street, they are assisting and they are in route to the 7th Street off ramp. That is in the City of Wilmington where they have their boats that they put off at. 1733, that is their marine units also to go to put off at 7th Street. At 1733, 18 marine 1 indicates they are at Delaware City. And the next three indications 34 -- 34 and 40, indicates respective units have arrived on the scene of the vessel.
The next indication is 1740, it is AIQ which stands for available in quarters. That is the support unit that took the boat to 7th Street, they are back in quarters. At 1744, SITCON is the

20

acronym for situation's under control. It means they have the vessel safely and the situation is under control. 1745, disposition, TRN, true case, TRN. It is the acronym we use for the case was a true run, it wasn't a false call. It was true. And the next three indications are that the respective units are returning available on radios, AOR stands for available on radio.
Page 2 of that incident again it indicates that the other two indications are that the other two units are available on radio, and the case was closed out.
Q. This set of documents that has been labeled as Streets-2, does it represent all of the Delaware River incidents handled by who? Who are the responders that this represents?
A. This particular one incident.
Q. No, the entire batch. Looking at the front page.

21

A. Okay.
Q. It says Delaware River incidents handled hy New Castle County 911 center. Does this set of documents represent all of the State of Delaware's emergency response on the Delaware River for 2000 or is it a smaller subset?
MR. WALTON: Object to form of the question, compound question.
BY MS. BALINT:
Q. Okay. We will get into those questions as we get into your duties and responsibilities. Looking at Streets-3, would it be correct to assume that Streets-3 is the 1999 -- it is identical to Streets-2 only it represents the incidents in 1999?
A. Partial. It is not a complete year. I stopped it in May.
Q. You stopped in May?
A. Yes, it only goes from January to May.
Q. Why is that?

22

A. Time constraints.
Q. How were these two documents created, Streets-2 and Streets-3?
A. We have backup tapes of all our data stored in archives. To retrieve this data marked Streets-2 and 3 entailed putting approximately 26 data tapes one at a time on our backup driver to extract data from which every year I was requiring information from.
Q. Do you know how many years there are data tapes, similar data tapes for this information?
A. I have data tapes available for everything that is included in Streets-1 from 1994. Again, Streets-1 is a summary. Streets-2 and 3 is a more detailed.
Q. Is there any data available prior to 1994?
A. I would say yes.
Q. What do you base that answer on?
A. We have changed computer

23

systems since '94, and although the tapes may be available, the method to extract it may not be. I would have to get our IS people to see whether we can extract data from those prior to '94 tapes on our current system.
Q. Was there a time prior to 1994 when the records were kept on paper rather than computer?
A. No. We have been computerized since 1973, New Castle County.
Q. So prior to 1973, it would have had to be on paper?
A. I can't answer that because I have not been employed there that long. Since my hire, it has all been computerized.
Q. Other than Streets-1, Streets-2 and Streets-3, and also excluding any letters, memorandum or e-mail directly to you from your attorneys, did you review any other documents prior to today's deposition?

24

A. No.
Q. Other than your attorney, have you spoken with anyone concerning any aspect of this case?
A. My boss who had to know where I was going, what I was leaving the office for.
Q. Who is your boss?
A. David J. Roberts, he is the chief of communications.
Q. Chief of communications for what entity?
A. It is New Castle County, Department of Public Safety.
Q. Did you talk to Mr. Roberts about any of the information in these documents?
A. No, ma'am.
Q. Aside from Mr. Roberts, did you talk to anybody about today's deposition or any of the other issues involved in this case?
MR. WALTON: Excluding counsel.

25

MS. BALINT: Excluding counsel.
THE WITNESS: No.
BY MS. BALINT:
Q. Mr. Streets, what is your date of birth?
A. June 24, 1946.
Q. June 24, 1946?
A. Correct.
Q. Where do you work?
A. I work for New Castle County Government.
Q. Any particular branch of that Government?
A. Department of Public Safety, emergency communications.
Q. Department of Public Safety, emergency communications?
A. Emergency communications division, yes, ma'am.
Q. How long have you worked for New Castle County Department of Public Safety emergency communications division?
A. I'm in my 31st year, ma'am,

26

started February 1975.
Q. What was your job just before you started working with Delaware County -- or New Castle County?
A. I worked construction, ma'am.
Q. And who did you work for?
A. Private company called County Plumbing and Heating located in Wilmington.
Q. And when did you work for County Plumbing and Heating, do you remember the years?
A. 1967 to 1974.
Q. What was your job at that employment?
A. I was an apprentice plumber.
Q. Prior to working for County Plumbing and Heating, who did you work for?
A. United States Government.
Q. What branch of the United States Government did you work for?
A. Marine Corp, United States

27

Marine Corp.
Q. What were your dates of service?
A. December '63 to December of '66.
Q. What was your job title and rank in the Marine Corp?
A. I was PFC and I was administrative clerk.
Q. PFC standing for what?
A. Private first class.
Q. While in the Marine Corp working as an administrative clerk, what types of duties did you have?
A. Basically recordkeeping.
Q. Prior to working for the Marine Corp, what was your employment?
A. I was in school.
Q. What was the highest level of education?
A. I have a high school equivalent GED and some college.
Q. When did you receive your GED?

28

A. In the Marine Corp, 1964.
Q. And what college?
A. Delaware Technical and Community College.
Q. When did you attend college at Delaware Technical and Community College?
A. 1971 to 1972.
Q. What was your course of study there?
A. Fire technology.
Q. Can you explain for me generally what fire technology study entails?
A. At the time I had just had joined the local volunteer fire company, and I was interested in fire suppression as well as trying to become a career firefighter with the Wilmington Fire Department. And part of the application process was if you had college -- some college, you had a better chance on getting on the department, so I started pursuing those studies.

29

Q. What volunteer fire company did you begin with?
A. I'm still with Aetna, A-E-T-N-A, Aetna. Full name is Aetna Hose, Hook and Ladder Company. It is located in Newark, Delaware.
Q. What county is Newark, Delaware in?
A. That is New Castle County.
Q. Does the Aetna Hook -- Hose, Hook and Ladder Company have a numeric designation?
A. Station 7, 8 and 9. We have three stations located in Newark.
Q. And would I be right in thinking that the stations 7, 8 and 9, refer to a hose truck, hook truck and ladder truck?
A. No, basically we started out with one station, and because of the expanding growth of the town, we put two substations or basically they are equal stations. One houses engine and a specialized piece. We have a rescue, a

30

ladder and what they call SCORP (ph), an articulating arm truck, that is the difference in the three stations. They all have engines, ambulances and one specialized piece.
Q. When did you join Aetna Hose?
A. September 1969.
Q. At that time was Aetna Hose an all volunteer company?
A. Yes, ma'am.
Q. Does it still volunteer?
A. No, ma'am, we have crews that handle EMS calls, emergency medical services or ambulance calls.
Q. When did that change occur? When did the company first hire?
A. I don't have an answer, don't know an exact date when it was. I would say within the last 10 years because of the growth and the call volume pretty much demanded we have a steady volunteer services available to handle the calls as they are needed.

31

Q. Do you currently have paid drivers?
A. Newark has paid career staff. What they do is the driver and the EMT are both paid, that is to insure that the ambulance gets out on the runs. In the event a fire happens, they are permitted to drive the apparatus.
Q. So your paid driver drives both your ambulance and fire truck?
A. It is part of their job, every piece of apparatus they must drive.
Q. What is your current involvement at Aetna Hose?
A. I'm a casual member. Age, family commitments do not allow me to put the time in that I have in the past.
Q. When would you say -- what years would you say you were an active member of the company?
A. An active member? I have been very active up until the last probably two years.
Q. So from 1969 when you joined

32

to perhaps --
A. 2004 probably when my response started to drop off.
Q. When you attended Delaware Technical and Community College, did you attain any degrees or certificates or --
A. No, ma'am, I was working more towards an associates. And to get hired by the county and because of the shift work, I wasn't able to continue the day work school.
Q. Have you attended any continuing education or other college level classes since that time?
A. No, ma'am.
Q. Have you ever had your employment terminated in a non-volunteer manner?
A. Not to my knowledge.
Q. You are presently employed by the New Castle County Department of Public Safety emergency communications division, correct?
A. Yes, ma'am.

33

Q. Where is your place of business located?
A. 3601 North Dupont Highway. It is located in New Castle.
Q. What Government operations are located at that address?
A. It is the police headquarters building. We also have a communications section within the police as well as emergency medical services.
Q. Just briefly, can you describe for me the structure of the policing units in the State of Delaware. And I ask because I'm not familiar with county police departments.
MR. WALTON: I will object to the form of the question. I think there was a couple in there.
BY MS. BALINT:
Q. Does the State of Delaware have state troopers?
A. Yes.
Q. What are the officers who work at the county police headquarters,

34

what kind of officers are they?
A. They are county police officers.
Q. Do the municipalities have additional police force?
A. Yes, some municipalities have their own police department.
Q. And some do not?
A. Most of the incorporated areas have their own police department to my knowledge.
Q. What percentage of your county would you say is unincorporated?
A. I wouldn't be able to guess, ma'am.
Q. Is it --
A. Percentage wise, I don't know. The way the jurisdiction agreement is drawn up between the State of Delaware and the county police force, we handle all communities. So if you live in a community within New Castle County, New Castle County Police have jurisdiction over that complaint. All major rivers,

35

roadways and railways are state jurisdiction, they handle the complaints. The town of Newport has their own police department that does their corporate limits. The City of New Castle has its own private police department that handles their corporate limit responses. The town of Delaware City has its own police department. City of Wilmington has its own police department. City of Newark has its own police department. New Castle County we have multiple police agencies to provide service to the public. It depends geographically where you are located whether you are going to get a municipal, a Wilmington Police or a county police as well as the state.
Q. When an emergency call goes out, how is it determined who is the first responder to that call among those various departments?
A. We have a geodatabase in our computer that is purified by jurisdictional agreement, and

36

electronically once an address is entered into the system, it will give you the proper jurisdiction for the police. Electronically it is then sent to our central dispatch and our 911 center, we handle every police agency except for the City of Newark and the City of Wilmington.
Q. So all of the counties except for Newark --
A. And Wilmington are dispatched out of my center, correct.
Q. And when you refer to your center, what is that?
A. That is the New Castle County 911 center.
Q. How is emergency response dispatched in Newark and Wilmington?
A. If we were to receive the call, the way the system is designed for telephones on all the hard-wired phone lines, there is an ESN, which stands for emergency services number routing. If you are located within the jurisdiction

37

of Newark or Wilmington, when you pick up your phone at your home, it would automatically go into the Wilmington Police Department. Same would happen in Newark. If you live in Newark, your phone is associated with Newark jurisdiction, it would go to directly to Newark Police Department. If in the process of receiving the call they determine it is an ambulance or a fire response, it is electronically sent to us by a single button transfer through the telephone system.
Q. So the 911 center does handle the ambulance and fire calls?
A. For everybody in New Castle County.
Q. For Newark and Wilmington included?
A. That is exactly, yes.
Q. What is your current position with your employer?
A. I'm the administrator/custodian of records for

38

**the 911 center.**
Q. How long have you been in this current position?
**A. For 17 years.**
Q. What are your duties as the administrator and custodian of records for the 911 center?
**A. I handle all physical responsibilities for the 911 center, budgetary, payroll, etcetera, deals with physical. Also as custodian of records I maintain all the records for the 911 center, I respond to subpoenas from various agencies, as well as freedom of information requests as it relates to 911 calls.**
Q. Can you tell me generally how the 911 center records are maintained.
**A. Our center we have a master log-in recorder. It records all incoming and outgoing telephone calls to the center as well as a computerized system to track incidents within the county. I**

39

**maintain the tapes and the recording device in my office.**
Q. Are these records transferred to another media at some point?
**A. They have in the past been transferred to DVD when the file gets too big for the data recorder tape.**
Q. And where are the DVDs?
**A. In my office.**
Q. Are there any 911 center records that are not in your office?
**A. Well, all the computer data tapes are housed in our storage office. It is accessible by key only.**
Q. Do you know, sir, what laws -- law or laws are established that authorize the operation the 911 center? Do you know what your statutory authority is?
MR. WALTON: Objection. Compound qnestion.
MS. BALINT: Strike the first one. Do you know what the

40

statutory authority for the county to operate the 911 center is?
THE WITNESS: Not firsthand, no, ma'am.
BY MS. BALINT:
Q. Do you have -- what staff works in your office?
**A. Just myself.**
Q. Do you work in coordination with the dispatchers? It is the dispatching process that you record, is that correct?
**A. That's correct.**
Q. So do you work with the dispatchers in any way?
**A. I have oversight on them as far as the tapes and the quality of tapes and the stuff said on the tapes. It is part of my review process when I do the review stuff.**
Q. Do the dispatchers report to you?
**A. Operationally my counterpart handles the operation part of the center,**

41

**I do the administrative side.**
Q. Who is your counterpart?
**A. Dennis Quinn.**
Q. How do you spell Quinn?
**A. Q-U-I-N-N.**
Q. What is Mr. Quinn's title?
**A. Team leader. Same as me, I'm team leader administrative, he's team leader operational.**
Q. Have you received any special training for your job?
**A. Training from the phone company, training from the logging -- master logging system, training from our IT people that had to extract data. Yes, I have routine training.**
Q. Within the New Castle County Police Department, is that what it is called, first of all?
**A. New Castle County Department of Public Safety. Within that umbrella we have police, emergency medical services, communications as well as office of emergency management, they are**

42

under the same umbrella as the public safety department.
Q. Who is the officer in charge of the county police department?
A. Our director of public safety is Ronald Frazier. Ernest is his first name, Ernest R. Frazier, F-R-A-Z-I-E-R. He oversees the entire department.
Q. Who is the lead officer in the police unit that is within the Department of Public Safety?
A. He will be sworn in Friday, ma'am. We have a new chief being sworn in Friday. I don't know what his full title or name is.
Q. Who is his predecessor?
A. Lieutenant Colonel Scott McLaren, he is currently holding that position before he is sworn in Friday.
Q. Scott --
A. M-c-L-A-R-E-N.
Q. And what is Lieutenant Colonel Scott McLaren's job title?

43

A. He is the acting chief of police.
Q. Within the Department of Public Safety, who is the most -- the top ranking person in the emergency services?
A. The director oversees the entire department, Lieutenant Colonel McLaren handles the police, my boss, David J. Roberts, has the communication section.
Q. Who heads EMS?
A. Chief Lawrence Tan, T-A-N.
Q. Who is in charge of the OEM, office of emergency management?
A. He is in the acting position also, his name is David Carpenter, Junior.
Q. What is Mr. Carpenter's job title?
A. A lot of preplanning with the industrial sites for disasters, a lot of drills and preplanning for the citizens, they have a citizens emergency response team. He goes out to

44

communities, provides insight and sets up plans how to evacuate if we have a flood or natural disaster, as well as he writes plans for all of the hazardous sites in our jurisdiction.
Q. Do you know what Mr. Carpenter's job title would be, is he the chief --
A. He is the acting coordinator of the office of emergency management.
Q. What is the area of jurisdiction that New Castle County 911 center covers?
A. The area of jurisdiction?
Q. Yes, sir.
A. Everything north of the Smyrna River, that is located just north of the town of Smyrna bordered on the west by the State of Maryland, by the north and northwest by the State of Pennsylvania, and by the east at the low watermark on New Jersey.
Q. Mr. Streets, are you aware of a document that is called the 1905

45

Compact?
A. No idea, ma'am.
Q. Are you aware of a demarcation that is called the 12-mile circle?
A. I have heard of it, yes, ma'am.
Q. What is your understanding of the 12-mile circle?
A. Well, historically it goes back to a point in time when they used the center of old New Castle as the -- using the 12-mile boundary, within 12 miles of the center of New Castle, City of New Castle, that was the New Castle County jurisdiction.
Q. So the 12-mile circle went 365 degrees around the center of old New Castle?
MR. WALTON: Object to the form of the question. Also there is no foundation for it.
BY MS. BALINT:
Q. I thought I understood what

46

you said to be that the 12-mile circle is a historical demarcation that begins in the center of old New Castle, is that right?
**A. That is my understanding.**
Q. And that it originally defined New Castle County jurisdiction.
**A. That is my understanding.**
Q. And that the original jurisdiction of New Castle County was limited to that area within a 12-mile circle of the center of New Castle, Delaware?
**A. That is my understanding.**
Q. Is it your understanding that the circle was indeed a complete 365-degree circle?
**A. I'm not exactly sure. I can't say yes or no for that.**
Q. Today's New Castle County boundaries that you described for me as being the Smyrna River on the south, Maryland on the west, Pennsylvania on the north and northwest and the low watermark

47

of New Jersey in the Delaware River on the east, do those boundaries coincide with the 12-mile circle?
**A. Without a map, it would be purely a guess, I have no idea, ma'am. How far it is from New Castle to Smyrna.**
Q. Can you picture in your mind a map of your county? Is your county circular?
**A. No.**
Q. What shape would you say that your county is?
**A. It is more of oblong, rectangle.**
Q. So it is currently not a circular shaped county?
**A. No.**
Q. Do you have any idea when the current borders of New Castle County were established?
**A. No, ma'am.**
Q. Thinking about the 12-mile circle with respect to the Delaware River, do you know where the 12-mile

48

circle enters the Delaware River on the north?
**A. No, no, I don't.**
Q. From the Delaware side -- from the State of Delaware going into the Delaware River, do you know where the 12-mile circle enters the river?
MR. WALTON: I will place an objection because I don't think I understand the question.
MS. BALINT: Let's try this with a map. We are looking at a map that is called Delaware River Smyrna River to Wilmington. And it was provided by the State of Delaware in discovery and it has been marked DE18214. Does this map show the northern and southern boundaries of New Castle County?
THE WITNESS: Doesn't show the north. I don't see anything up towards Claymont or Oldmans Creek. Looks like it stops around Edgemoor, north of the City of

49

Wilmington.
BY MS. BALINT:
Q. Does it show the 12-mile circle?
**A. The only circles I see are the compasses.**
Q. Acknowledging that the 12-mile circle isn't shown on that navigation map, do you know from your own personal knowledge where the circle would be on that map?
**A. No, ma'am.**
**(Recess at 11:20 a.m.)**
**(Resumed at 11:40 a.m.)**
**BY MS. BALINT:**
Q. Mr. Streets, with respect to the northern border of New Castle County, can you tell me where that northern border intersects the Delaware River?
**A. On the Jersey side just north of Oldmans Creek I think is the little creek that comes out of there, comes right up to Claymont.**
Q. And on the Delaware side,

50

how would you describe that northern --
**A. It is right at the state line, the Pennsylvania/Delaware state line. There is an imaginary line from the curvature over to what do you call that point in the river -- I don't know what word I'm looking to use.**
Q. Is there a place name that coincides with the Delaware/Pennsylvania line that we are talking about?
**A. A place name?**
Q. Yes, if I didn't have a map, where would I go?
**A. I would say go to Claymont, and if you got to Marcus Hook you would be in Pennsylvania.**
Q. So between Claymont and Marcus Hook?
**A. Right.**
Q. The northern border of Delaware's jurisdiction on the Jersey side of the Delaware you said began just north of Oldmans Creek?
**A. Yes.**

51

Q. Where is Oldmans Creek with respect to the Pennsylvania/Delaware line between Claymont and Marcus Hook on the other side of the river? Are they adjacent to one another? Is one east of the other?
**A. Oldmans Creek is east of Claymont itself. If you are looking at a map, it is looking east towards New Jersey.**
Q. Directly east or would it be southeast?
**A. I would say it is southeast.**
Q. On the southern end, on the southern border of New Castle County, can you tell me where New Castle County ends on the New Jersey shore?
**A. It is an imaginary line from the Smyrna River east to the low watermark in the Delaware River.**
Q. Do you know whether Delaware's jurisdiction continues south of that imaginary line which is east of the Smyrna River?

52

**A. No, ma'am, that is not my jurisdiction.**
Q. What county --
**A. Kent County, Maryland.**
Q. Kent County, Maryland --
**A. I'm sorry, Kent County, Delaware, they run alongside each other. Kent County, Maryland and Kent County, Delaware.**
Q. Are you aware of whether there is a portion of Kent County along the low waterline of the Jersey shore?
**A. No.**
Q. So as far as you know, Delaware's jurisdiction ends at the imaginary line east of the Smyrna River at the low watermark on the New Jersey side of the Delaware River?
**A. For New Castle County.**
Q. For New Castle County.
**A. Correct.**
Q. And you are unaware of any other Delaware jurisdiction on the New Jersey side?

53

**A. Not to my knowledge. I know we have had -- I keep pronouncing the name of the place, Killcohook, is that how you pronounce that?**
Q. Uh-huh.
**A. We have had incidents on the Riverside of Killcohook Wildlife Refuge.**
Q. What county would Killcohook be in?
**A. Well, the portion I'm speaking of is considered to be part of Delaware, it touches the river there.**
Q. What county in Delaware would Killcohook be?
**A. New Castle County.**
Q. So that is your county?
**A. That's correct.**
Q. On the New Jersey side of the Delaware River, are you aware of any Delaware response, emergency response to incidents that occur south of the Smyrna River?
**A. I'm not personally, that is Kent County's responsibility.**

54

Q. Who is your counterpart at Kent County?
**A. Kevin Sipple, S-I-P-P-L-E.**
Q. S-I' --
**A. 'P-P-L-E.**
Q. And Mr. Sipple operates the 911 emergency response --
**A. He is my counterpart in Sussex -- Kent County, yes. He has a boss but he doesn't --**
Q. He is the records custodian there?
**A. Yes, Kevin and I are counterparts in the respective counties.**
Q. Is there any level of coordinated operations between Kent County and New Castle County with regard to emergency response?
**A. Yes, we have mutual aid with each other.**
Q. Do you have any records of New Castle County personnel responding to incidents on the New Jersey side of the Delaware River south of the Smyrna River?

55

**A. No.**
Q. Can you describe for me generally what kind of emergency response New Castle County performs in the Delaware River.
**A. River rescues, river service calls, any calls for emergency response in our jurisdiction.**
Q. Are you aware of whether New Castle County Department of Public Safety performs routine police patrol of the Delaware River?
**A. As I said earlier, that is the state employee's jurisdiction.**
Q. So any routine police -- policing of the river would be done by the state police?
**A. State police or the state marine police, there is two bodies. State police handle major crimes and the marine police under the State of Delaware handle the waterways.**
Q. Does the state police actually patrol the river or is that the

56

responsibility of the state marine police?
**A. Marine police.**
Q. Do you know where the state marine police are -- where their point of operation is, where they are headquartered?
**A. They are statewide. We have a boat ramp in Delaware City.**
Q. Are there any other state marine police boat ramps in your county?
**A. That is the only one I know of, ma'am.**
Q. Do you know where the state marine headquarters is?
**A. Dover.**
Q. Do the state marine police have any facility in Delaware City other than the boat ramp?
**A. I'm not aware.**
Q. So is it your understanding that if the marine police were to embark from the boat ramp in Delaware City, that they would bring a boat there on a

57

trailer?
**A. No, they have a boat moored there. They have a large -- I believe it is -- it is a large vessel, I would say 21-foot, probably bigger. They have a vessel that is moored there.**
Q. So is it a docking facility or --
**A. It is a private dock, Delaware City Marina. The marina police and the local fire company both have their vessels there side by side.**
Q. What is the local fire company for Delaware City?
**A. Delaware City, ma'am.**
Q. Do you know how many fire boats Delaware City Fire Company has?
**A. They have two. One inland water, it is a small boat, and one large boat for the river.**
Q. When you say large, do you have any idea how big that boat might be?
**A. No.**
Q. Do the state marine police

58

operate the 21-foot vessel that is moored in Delaware City on a routine basis?
**A. I wouldn't know what their schedule is, ma'am.**
Q. If you wanted to find out, who would you ask?
**A. I'm not sure who is in charge now, but I would call my counterpart in Kent County and ask him who is in charge of the marine police, captain, or what his rank is there.**
Q. Why do you think your counterpart in Kent County might have a better idea about the marine police?
**A. They are based out of Dover, which is in Kent County. And our access to them is a 1-800 number to let them know we need a response. And it is answered at the 911 center.**
Q. Do you know if the state marine police conduct police patrols of the river or whether their activities are limited to emergency response?
MR. WALTON: I'm going to

59

lodge one objection to this entire line of questioning in that Mr. Streets is not a police officer nor employed by the police. So I'm giving you latitude and I will allow him to answer the question to the best of his knowledge. So I don't have to object every single time, I will lodge one blanket objection to this entire line of questioning.
BY MS. BALINT:
Q. I understand the objection. This is the witness that was offered for this range of topics.
MR. WALTON: He can answer the question.
MS. BALINT: If we need to depose additional witnesses, that is one thing. But I would like to explore the boundaries of this witness's knowledge.
MR. WALTON: And that is fine. I'm lodging my objection

60

now to the entire line of questioning so we don't have to do it repeatedly, okay?
BY MS. BALINT:
Q. My last question, Mr. Streets, was basically whether you know the state marine police conduct routine patrols or whether their operations are limited to emergency response.
**A. No.**
Q. You don't know?
**A. I don't know whether they have police responsibility there or just responders.**
**(Recess at 11:52 a.m.)**
**(Resumed at 1:01 p.m.)**
**BY MS. BALINT:**
Q. Good afternoon, Mr. Streets.
**A. Good afternoon.**
Q. Other than your role as the records custodian for the New Castle County Department of Public Safety, do you have any other experience with

61

police, fire and emergency responses in the Delaware River within the 12-mile circle?
**A. I was originally hired as the dispatcher, and I performed that function for 14 years before I was promoted.**
Q. As a dispatcher, can you give me some idea of the frequency of emergency calls that would come in with regard to incidents in the Delaware River generally?
**A. It would vary. It is seasonal.**
Q. Can you elaborate on that?
**A. Obviously in the warmer weather you would have more boaters out on the water versus the wintertime when it is more cold, you would have less boaters.**
Q. During the summer, do you have any idea of the frequency, do you recall the frequency perhaps of emergency calls within the Delaware River

62

generally?
**A. This summer?**
Q. No, in the 14 years when you were a dispatcher.
**A. I would say they run higher when the boaters are out on the water.**
Q. During the summer months, what type of frequency are we talking about, once or twice a day, more than that, once a week, once a month?
**A. Again, it would vary. It depended how many people were out on the river. Without looking at documentation, I couldn't tell you whether it is five times a week, 10 times a month, it would vary.**
Q. Perhaps during the summer season it would be something like five times a week or 10 times a month?
**A. It could be.**
Q. But more than like once a month?
MR. WALTON: Objection. It calls for speculation.

63

MS. BALINT: No, if he can recall.
MR. WALTON: He answered the question.
BY MS. BALINT:
Q. Your recollection is that it would have been more calls than once a month?
**A. Yes.**
Q. And something like five times a week to 10 times a month?
**A. Yes.**
Q. During the summer season?
**A. Yes.**
Q. Is that frequency -- that was during your 14 years as a dispatcher, would you say -- do you have any idea if the frequency is similar, more or less today?
**A. No, ma'am, no idea.**
Q. Have you ever personally participated in emergency responses in the Delaware River?
**A. As a dispatcher?**

64

Q. No.
**A. No, I'm not a water person.**
Q. What about as in your role as a volunteer fireman?
**A. No, my company has no water jurisdiction.**
Q. Do you have any personal knowledge of how the police, fire and emergency personnel would identify the border between New Jersey and Delaware when they are out there in the water?
**A. My understanding is at the low watermark on New Jersey, everything west of that is the jurisdiction of the State of Delaware, and the emergency response from New Castle County would respond for incidents on the river.**
Q. Is the low watermark as far as you understand an identifiable location that you could find if you went out there?
**A. I don't know of one.**
Q. Are you aware of Delaware providing police, fire or emergency

65

response to any docks or structures on the New Jersey side of the Delaware River within the past 12 months?
**A. Without referring to the records, I wouldn't know if vessels had run aground on any of those items you are talking about, without referring to the documents, I wouldn't know.**
Q. Do you have any personal knowledge of any Delaware emergency response to incidents on docks or other structures on the New Jersey side of the river at any time?
**A. Again, I would have to refer back to the documents to see whether there is an indication of an incident that we are talking about.**
Q. Did you review the documents you produced today prior to giving them to your attorney?
**A. The only review was to make sure they were in chronological order. I didn't go line for line.**
Q. Are you aware of whether

66

Delaware emergency responders are the first responders to incidents at docks and structures on the New Jersey side of the Delaware River?

**A. No knowledge.**

Q. In reviewing the documents that you produced today, would you be able to identify who the first responder at an incident would be?

**A. On the documents I handed to you?**

Q. Yes.

**A. It is indicated by the fire grid.**

Q. The fire grid, on Streets-2 and 3?

**A. Streets Document 1.**

Q. And how would I determine --

**A. Third column where it says fire D, that is the dispatch group, 15, 15 is the designated number for the Delaware City Fire Company. 29 is designated for Port Penn Fire Department.**

Q. And the fire district that

67

is identified on the list on Streets-1 is the first responder to that incident?

**A. That is your primary response.**

Q. Reviewing document Streets-1, is it apparent on this document which incidents may have happened on the New Jersey side of the Delaware River?

**A. No.**

Q. So today looking at document Streets-1, you can't tell me which of these incidents occurred on the New Jersey side of the Delaware River?

**A. All these incidents indicated are responses from the Delaware into the river, they all indicate they are Delaware jurisdiction by virtue of their address and their response, fire district.**

Q. The first two numbers in the fire district code tell you what district responded, is that correct?

**A. Are you talking about the**

68

**fire D column?**

Q. The fire D column.

**A. 15 is station 15. And geographical 33 indicates it is a water response. It is a systematic we have in place, anything with a 3 on it indicates a water response.**

Q. So 33 means water response?

**A. 34 is a second grid because Delaware City is such a large grid as well as New Castle, 18, that they have split it in half. What it is is a natural barrier to indicate who the second and third responding company would be.**

Q. So, for example, the first 34 on that list, 1534, it says Delaware River area?

**A. Yes.**

Q. What do you know about the responders from those numbers?

**A. That would indicate -- 34 would indicate it is a southern part of their district, and would require a**

69

**different response as far as the second and third due responding company.**

Q. So 15 is what district?

**A. Delaware City.**

Q. 29?

**A. Is Port Penn.**

Q. 11?

**A. Is Brandywine Hundred.**

Q. Brandywine 100?

**A. Brandywine Hundred.**

Q. Brandywine 100?

**A. Brandywine Hundred is their company. Brandywine Hundred Fire Company. It is a location of the county, north of the City of Wilmington, area is called Brandywine Hundred so the fire company is named after it.**

Q. District 18?

**A. Is Goodwill.**

Q. Where is that located?

**A. New Castle.**

Q. Where is district 20?

**A. Holloway Terrace which has the responsibility of the twin spans.**

70

Q. When you say the twin spans, are you talking about --
**A. The two Delaware Memorial Bridges.**
Q. Where is district 24?
**A. It is Odessa. It is the southern part of the county, south of Port Penn Fire Company.**
Q. Mr. Streets, there are some runs that indicate that they go to the Delaware River under the power lines, can you tell me where that is?
**A. That is between Delaware City and Goodwill, opposite the Delmarva power plant.**
Q. And do these power lines run all the way across the river?
**A. Yes, ma'am.**
Q. Do you know where the power lines end up on the New Jersey side?
**A. No, ma'am.**
Q. Mr. Streets, can you describe for me the police jurisdiction on the Delaware Memorial Bridge. Do you

71

have any understanding about who has jurisdiction over the bridge?
MR. WALTON: Objection.
That is a compound question.
BY MS. BALINT:
Q. Mr. Streets, do you know what police authority -- authority or authorities have jurisdiction over the Delaware Memorial Bridge?
**A. Delaware River Bay Authority.**
Q. Are there any other police units that have jurisdiction?
**A. On the bridge?**
Q. **Yes.**
**A. Not to my knowledge.**
Q. And the Delaware Bridge authority is an interstate authority comprised of Delaware and New Jersey or do you know? Sorry, compound. Is the Delaware Bridge authority part of the Delaware state government?
**A. I don't know.**
Q. You don't know about the

72

organization of that?
**A. No, I don't know of the organization for them.**
Q. Does the Delaware River bridge authority have its own police officers?
**A. Yes.**
Q. Do you know how big its force is?
**A. No, ma'am.**
Q. Do you know if any other police provide mutual aid to the Delaware bridge authority?
MR. WALTON: I will just for clarification of the record, it is Delaware River Bay Authority. Delaware River Bay Authority. DRBA.
THE WITNESS: DRBA.
BY MS. BALINT:
Q. So is it your understanding that Delaware State Police and/or New Castle County Police would not respond to incidents on the bridge itself?

73

**A. Correct.**
Q. But Delaware does respond to incidents, water incidents under the bridge?
**A. Delaware State Police again has jurisdiction over all waterways.**
Q. Do you know if the emergency responders in New Castle County provide mutual aid to emergency responders on the New Jersey side of the Delaware?
**A. There is a mutual aid agreement between both states for first responders.**
Q. What is your understanding of that mutual aid agreement if any?
**A. It is pretty much they call, we will assist. If we call, they will come and assist us.**
Q. Do you know, sir, if a boater is on a boat in the middle of the river and uses his cell phone to call 911, do you know where that call would be routed?
**A. Depends on the tower which**

74

**the cell phone was attached to.**
Q. What are the possibilities?
**A. Of them getting us?**
Q. Well, depending on the cell tower, where could it go? Where could the call go?
**A. It would depend on the location of the phone as it relates to the location of the tower, by wireless, it will go to the closest tower. It may be setting in Delaware, it may be setting in New Jersey. Depending on where the individual is at when the cell phone call is made.**
Q. If it is a boater in the 12-mile circle and they get -- and they are closest to a Delaware cell tower, where would the call go?
**A. Comes to my center.**
Q. And if that boat were closer to a cell tower on the New Jersey side, where would that call go?
**A. Again, closeness doesn't really determine where the call is going.**

75

**All cell sites are designed to take certain calls, and an overload will be pushed off to another tower. There is chances they may hit a New Jersey tower or a Delaware tower. Time of day basically determines the availability of the cell site at those towers.**
Q. So the first -- the call will go through the closest available tower?
**A. Correct.**
Q. And if the closest available tower is on the Delaware side, the call is routed through your center?
**A. Yes.**
Q. If the closest available tower is located on the New Jersey side of the river, where is the call routed?
**A. It would probably go to a New Jersey PSAP, that is Public Safety Access Point, same thing as a 911 center.**
Q. Is there any agreement or practice about rerouting those calls if they end up going -- if the call -- if

76

the call goes to New Jersey?
**A. Yes, they single button -- they can transfer to our jurisdiction.**
Q. Do you know if that is the practice? Is that what happens?
**A. Yes.**
Q. What if the boat was south of the 12-mile circle in the river and the call was routed through the closest available cell tower which was in New Jersey and went to the New Jersey PSAP, how would the emergency responders know if that was New Jersey or Delaware waters?
**A. Again, referring back to the document, this indicates that all the responses are in Delaware jurisdiction based on the low watermark.**
Q. How do the -- in your 911 center, if you get a call from the Delaware River -- strike that. South of the 12-mile circle, do you know where the border between New Jersey and Delaware is?

77

**A. No.**
Q. Is any of your district south of the 12-mile circle?
**A. My district goes all the way to the Smyrna River. If that is 12 miles from New Castle, then all of that is within the 12-mile area. Again, I don't have the ability of looking at a map. My jurisdiction is everything north of the Smyrna River to the Jersey low watermark, north is Delaware -- is our emergency response area.**
Q. And you are not personally aware of whether the 12-mile circle crosses the Delaware north or south of the Smyrna River?
**A. No, ma'am.**
Q. Who is in charge of coordinating emergency responses on the Delaware River in New Castle County?
**A. Coordinating the responses?**
Q. Yes.
**A. The individual fire company's jurisdiction it was in.**

78

Q. How would -- what if it were a police matter on the Delaware River, who would be in charge of coordinating police emergency response?
**A. Police matter?**
Q. Yes.
**A. Can you give me an example of what you mean by a police matter?**
Q. A drunken boater.
**A. That would go to the marine police would handle it enforcing boats being handled carelessly on the river.**
Q. What about the response to major emergencies? Who would coordinate that?
**A. That would be coordinated through the volunteer fire company whose jurisdiction it lies in.**
MR. WALTON: Can I ask for a clarification on that, when you say a major emergency, what do you mean by that?
MS. BALINT: If there were an incident such as a tanker crash

79

that resulted in fire and spill with major consequences of the spill spreading through the water and such, who would coordinate a response to such an emergency?
THE WITNESS: The representative district who was responding would then -- the Coast Guard is automatically notified of major incident and US Coast Guard has jurisdiction over the local authority.
BY MS. BALINT:
Q. Does Delaware utilize fire towers or any other type of observation to guard for emergencies on the Delaware River?
**A. No.**
Q. So for Delaware emergency responders tu go to an incident, that would have to be triggered by what?
**A. A call.**
Q. It would have to be triggered by a 911 call?

80

**A. Yes.**
Q. Is your 911 center aware of or on the same frequency as other emergency responders to the Delaware River?
**A. The State of Delaware is on a 800 megahertz system and it is statewide. New Jersey first responders are not on the same frequency.**
Q. How is mutual aid coordinated?
**A. Mutual aid is coordinated through the fire company which provides mutual aid in New Jersey with radios on the Delaware system.**
Q. So Delaware fire companies provide their own Delaware frequency radios to New Jersey fire departments?
**A. Those ones that are providing mutual aid, yes.**
Q. And is it your understanding that the same is true in the inverse?
**A. No, ma'am.**
Q. How are Delaware fire

81

companies made aware of a need for mutual aid in New Jersey?
**A. Their communication center would then contact us.**
Q. On via telephone?
**A. Via telephone.**
Q. Looking at the detailed incident reports represented on Streets-2 and 3, would --
MR. WALTON: Can you give me the Bates number?
MS. BALINT: They are all sort of the same form. I'm talking about the form of the report.
MR. WALTON: My apologies.
THE WITNESS: Which page are you on? 2680' what?
BY MS. BALINT:
Q. We could go to a specific one. If you could refer to page marked DE 26809, please.
**A. Okay.**
Q. This appears to be a river

82

rescue at the -- what is that location?
**A. Off of the Salem Nuclear plant.**
Q. And who were the responders to this incident?
**A. Lower Alloways, Salem County called, Lower Alloways had requested assistance from us.**
Q. And where can one discern that on this form?
**A. Go down to where it says control, P 59. You go past 1609 hours, control.**
Q. Okay. Control.
**A. You have 00P and a 59, that indicates that is an out-of-county company. 59 would represent a New Jersey company, Lower Alloway. And you will see it was handled by dispatch terminal 45.**
Q. And you know from this that there was a phone call from Lower Alloways that triggered this call?
**A. It indicates Salem County called us via phone and requested**

83

**assistance. Where you see phone, it has Salem typed in there. That is where we got the call from, Salem County 911 center.**
Q. Are you able to discern from this form who the first responder at this incident was?
**A. No, because we do not control New Jersey units.**
Q. So your recordkeeping wouldn't identify New Jersey participation?
**A. That's correct.**
Q. On that line that says control P59 and there is an arrow and a 45?
**A. Yes.**
Q. What does that mean?
**A. That is our dispatch positions. 45 would go to a specific terminal.**
Q. And 59 came from Lower Alloways?
**A. 59, yes.**

84

Q. Generally looking at these documents, it seems that the column -- well, looking at that control line, there is the column that says control and there is a column of two zeros, and then the last column that says P: 59 to 45.
**A. Yes.**
Q. That last column appears to be incomplete. Would that be correct -- I mean, if you look at the entry below the P 59, it is ATION S?
**A. As I say, historically, this is probably moving from the old data to the new, looks like characters jump one left column, that should be station. 20 is alerted to the incident. And it indicates our code for what it is, F00, it is a fire response. Year 99. It is on the 16th of April and it is daily case 90. If you look at the top of the page, it says incident number, right at the top, below incident history detail, you will see the exact same numbers up there. Once that is time stamped down here, it**

85

**automatically becomes part of the permanent record.**
Q. If one wanted to see all of the data from this last column, is there someplace that that information is located today?
**A. I would say no. Also on this data here and we don't have audio tapes back to 1999 so I could hear exactly what the conversation was.**
Q. You can't -- can you bring this file up on a computer and scroll to see more information?
**A. I would have to refer to my IT people, because again, this is old data files that I put on to try to extract the information for you.**
Q. If you could turn to page Bates stamped DE26813. This appears to be another incident involving Lower Alloway Fire Department and Delaware responders, is that correct?
**A. Yes.**
Q. The date of this incident --

86

what is the date of this incident?
**A. 22nd of April, 1999.**
Q. And what was the first communication that Delaware received?
**A. We received a call from the phone number indicated at 2345.**
Q. So that would be 11:45 p.m.?
**A. Yes, uh-huh.**
Q. And could we just walk through the incident from that point.
**A. Sure.**
Q. It says the first entry was at that time, and then ASNCAS, what is that?
**A. Assigned a case number.**
Q. And then there are two control entries?
**A. It looks like it went to one position and then it was transferred to another position within the room. That could have been due to the call volume.**
Q. So that is talking about the dispatchers?
**A. Workstations. 41 to 46 are**

87

**the workstations within as the computer knows them.**
Q. Then the next entry is STALRT?
**A. That is station alerted. That would be Port Penn was alerted at 2349.**
Q. And then another one?
**A. Station 18 was alerted at 2352.**
Q. The next entry is miscellaneous, 99 A?
**A. I don't know, that is a unit from Port Penn -- that could be a 2299 A means that somebody is responding. If the first number is a 29, it is a unit from Port Penn. 29 would be the station and 9 A would be the unit.**
Q. So you would guess that it would be 29 A?
**A. Yeah, something from Port Penn, the station was alerted.**
Q. The next entry indicates DISPER 9?

88

**A. In front of that you see U, that would be U 29, utility 29 which would be the utility that pulls the boat. It is in front of the DISP. Before the bracket. It would be U 29 which again it is the utility vehicle that pulls the boat to the ramp.**
Q. Was dispatched at?
**A. 2357, right.**
Q. The next entry would be another station alert --
**A. 0001, they alerted Holloway Terrace to also assist.**
Q. What is the next entry?
**A. 0005 29 marine 1 was in route. Means that you see 29 before the bracket?**
Q. Yes.
**A. It is 29 assist marine 1, that is what the abbreviation stands for, the marine 1 is the marine unit and they are in route to the Delaware River. And it looks the same thing as the utility vessel got there at the same time as the**

89

**boat so obviously they were pulling the boat. 0005 indicates U 2 in the bracket and the on scene 9, utility 29 has arrived on scene at the boat ramp with the boat.**
Q. What about 0007?
**A. 0007, MRU is marine rescue unit 20 is responding. 0023, 29 marine 1 miscellaneous, indicated Lower Alloway 10-2 meaning they were with the vessel. You will see the next line 0023 completes that sentence, you see WITH vessel.**
Q. Okay.
**A. 0030. MRU 20 has arrived at Augustine Beach where they are going to put off the boat.**
Q. Where is Augustine Beach?
**A. U-G-S-T-I-N-E Beach, right off of Port Penn. It is almost right across from the power plant. It is a waterway opposite --**
Q. Augustine Beach is on the Delaware side?
**A. On the Delaware side across**

90

from the power plant. Or I guess it is just north of the power plant.
Q. And the next one?
A. 0037, 20 marine 1 is actually on their way in the river. 0045, 20 marine 1 has arrived with the vessel.
Q. On scene?
A. Yes. And the next indication, AOR looks like at 1:27, 29 marine 1 became available, they are returning and available by radio at 1:46. 20 marine 1 made themselves available on radio. At 1:56 marine rescue unit 20 which pulls the boat advise they are available. In reading it, the boat was back, they finally got the boat on the vehicle to tow it back to the fire station 1:56. And at 2:08, utility 29 classified as a two alarm and they were available in quarters, AIQ. Incident was closed at 2:08.
Q. And AIQ meaning?
A. AIQ is available in

91

quarters.
Q. This incident is listed as a river rescue emergency.
A. Uh-huh.
Q. Does that tell you what was wrong in this incident?
A. No, it doesn't. Doesn't go into details for exactly what specifics was. Reason for the response.
Q. Was there anywhere on here that indicated that the vessel was towed?
A. It just -- no, it does not.
Q. And is that a single page record, there is no more to it?
A. Correct.
Q. If the vessel were towed in that incident, would the record necessarily reflect it?
A. Yes. If we could go off and I could explain something.
MR. WALTON: No, no, no.
THE WITNESS: I just wanted to -- okay.
BY MS. BALINT:

92

Q. Looking to the next incident report on page DE26814, is this a continuation of the last incident?
A. No, it is different dates, ma'am.
Q. Different dates?
A. 25th of April. The one we talked about earlier was the 22nd of April. This is an entirely different incident. 25th of April.
Q. So it is two days later and would be separate?
A. Correct.
Q. What type of assistance might be rendered that would not be documented here?
A. What do you mean?
Q. I mean, on Bates stamp DE26813, it appears that several emergency river rescue boats responded to a location on the Delaware River, and yet it doesn't -- does it tell you what those responders did?
A. No.

93

Q. And it doesn't tell you what the problem out there was?
A. No.
Q. Does it identify who was having the emergency?
A. No.
Q. Would that indicate that there was a false alarm of some sort?
A. No, indicates it is a true alarm by the TRA at the bottom.
Q. Does the Delaware 911 center have standard operating procedures regarding what kind of information should be in a report?
A. Yes.
Q. Pursuant to your standard operating procedures, should the nature of the emergency and the outcome of the incident be identified on the report?
A. If we were advised.
Q. Is the nature of an emergency a standard part of the information dispensed by a dispatcher?
A. Normally, yes.

94

Q. And if the dispatcher had dispensed the information, should it be on this report?
**A. Correct.**
Q. Towards the end of the report where it indicates that marine units 29, 20 MRU 2 are back at quarters, AOR?
**A. Available on radio for another response.**
Q. Is it standard procedure that when a unit is -- becomes available, that there would be a report about the nature of the incident that is being closed out?
**A. That fire company, the individual company would have it.**
Q. The fire company would have it.
**A. Yes.**
Q. So if one were interested in more detail on the incident that occurred on April 23, 1999, one would find those records where?

95

**A. Contact the local fire company.**
Q. So the Port Penn Fire Company would have a report?
**A. They should.**
Q. In the event of an emergency to which multiple agencies respond, is the Delaware, New Castle County 911 emergency response center involved in any way in setting up the command structure at that incident?
**A. That is the district fire chief.**
Q. In an instance where multiple agencies with jurisdiction respond to a single incident, are the communications conducted through the 911 emergency -- through your 911 center?
**A. Yes.**
Q. Is a record of those multi-agency communications kept?
**A. Audio tapes for three years. Nothing beyond three years.**
Q. Are there incidents to which

96

the Coast Guard is the first responder in the Delaware River in New Castle County?
**A. Very infrequently.**
Q. What would cause the Coast Guard to be a first responder?
**A. What would?**
Q. Yes.
**A. I'm not aware they are. We make notification of all incidents on the river, and because of their location, whether they are coming out of Gloucester or Cape May, our responders are a lot closer than the Coast Guard to make an effective rescue.**
Q. Are you aware whether or not the Coast Guard makes routine patrols of the Delaware River within New Castle County?
**A. No idea.**
Q. Within New Castle County, what part of the Department of Public Safety would be concerned with security on the Delaware River?
**A. We don't have any**

97

**jurisdiction. Delaware State Police have jurisdiction on the river.**
Q. For security issues?
**A. Rephrase that.**
Q. Well, security in the sense of post 9/11 kind of security issues of what ships are going through.
**A. I don't know the answer.**
Q. In the course of your employment, do you have any interaction with David Carpenter who is the coordinator of New Castle County's office of emergency management?
**A. We have conversation at times.**
Q. Is there any functional interaction between your office and his?
**A. He is a resource for us.**
Q. What do you mean by that?
**A. Large instance, he is a resource for Red Cross, if a lot of people have been displaced by a fire or a flood, he is our initial contact as emergency regional management. He would**

98

have the contact for all those people to assist those people that are in need.

(Recess at 2:08 p.m.)

(Resumed at 2:09 p.m.)

MS. BALINT: Thank you so much, Mr. Streets. I have no further questions for you.

THE WITNESS: Thank you.

EXAMINATION

BY MR. WALTON:

Q. Mr. Streets, I would like to ask you one follow-up question to clarify the record. On Streets-1, there are descriptions over on the far right-hand column?

A. Right.

Q. Where it says Pea Patch Island. First one says Pea Patch Island north end. Do the descriptions in that column tell basically where an emergency response occurred?

A. The closest location that the caller could provide.

MR. WALTON: That's all I

99

have.

(Witness excused.)

(Deposition concluded at approximately 2:14 p.m.)

100

CERTIFICATE

I, DOTTYANN Y. WALSH, a Notary Public and Certified Shorthand Reporter of the State of Delaware, do hereby certify that prior to the commencement of the examination, WILLIAM F. STREETS was duly sworn by me to testify to the truth, the whole truth and nothing but the truth.

I DO FURTHER CERTIFY that the foregoing is a verbatim transcript of the testimony as taken stenographically by and before me at the time, place and on the date hereinbefore set forth, to the best of my ability.

I DO FURTHER CERTIFY that I am neither a relative nor employee nor attorney nor counsel of any of the parties to this action, and that I am neither a relative nor employee of such attorney or counsel, and that I am not financially interested in the action.

DOTTYANN Y. WALSH, CSR
Notary Number: 20051147009
Notary Expiration: April 14, 2007
CSR Number: 251-RPR
Dated: October 10, 2006

101

LAWYER'S NOTES

PAGE LINE

IN THE
SUPREME COURT OF THE UNITED STATES

- - -

STATE OF NEW JERSEY :
v. :
STATE OF DELAWARE :

- - -

September 27, 2006

- - -

Oral deposition of Kevin Broderick was held at the Offices of NJDEP, Bureau of Tidelands, 9 Ewing Street, Trenton, New Jersey, commencing at 9:30 a.m., on the above date, before Samantha A. Oakley, Certified Shorthand Reporter and Notary.

- - -

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- - -



- - -

INDEX

- - -

Testimony of: Kevin Broderick


Page

By Mr. Seitz 6


- - -

EXHIBITS

- - -


| NO. | DESCRIPTION | PAGE |
|---|---|---|
| Broderick-1 | NJ Coast Management Program (excerpts) | 30 |
| Broderick-2 | Affidavit | 51 |
| Broderick-3 | Letter | 66 |
| Broderick-4 | Letter | 66 |
| Broderick-5 | Letter | 66 |
| Broderick-6 | Letter | 66 |
| Broderick-7 | Subaqueous Lands Permit | 66 |
| Broderick-8 | Letter | 66 |
| Broderick-9 | Agenda | 66 |
| Broderick-10 | Letter | 66 |
| Broderick-11 | Letter | 77 |
| Broderick-12 | Subaqueous Lands Lease | 77 |
| Broderick-13 | Supplemental Lease Approval | 77 |
| Broderick-14 | Supplemental Lease Approval | 77 |
| Broderick-15 | Permit | 77 |
| Broderick-16 | Supplemental Lease Approval | 77 |
| Broderick-17 | Letter | 77 |
| Broderick-18 | Letter | 77 |
| Broderick-19 | Subaqueous Lands Use | 77 |
| Broderick-20 | Memorandum | 95 |
| Broderick-21 | Application | 95 |
| Broderick-22 | Letter | 95 |
| Broderick-23 | Letter | 95 |
| Broderick-24 | Subaqueous Lands Lease Agreement | 95 |
| Broderick-25 | Letter | 95 |
| Broderick-26 | Letter | 95 |
| Broderick-27 | Subaqueous Lands Lease | 95 |




Exhibits Continued:


| NO. | DESCRIPTION | PAGE |
|---|---|---|
| Broderick-28 | Letter | 95 |
| Broderick-29 | Permit | 116 |
| Broderick-30 | Permit | 121 |
| Broderick-31 | Maps | 136 |




- - -

DEPOSITION SUPPORT INDEX

- - -

Direction to Witness Not to Answer
Page Line Page Line Page Line
None

Request for Production of Documents
Page Line Page Line Page Line
None

Stipulations
Page Line Page Line Page Line
None

Question Marked
Page Line Page Line Page Line
None

6

Kevin Broderick, after having been duly sworn, was examined and testified as follows:

- - -

ORAL EXAMINATION

- - -

BY MR. SEITZ:

Q. Good morning, Mr. Broderick. Thank you for coming this morning. My name is C.J. Seitz. I'm an attorney representing the State of Delaware in the case New Jersey versus Delaware. I assume you're familiar with that case generally?

**A. Yes.**

Q. Before I begin, I want to go over a couple of ground rules so that we have an organized deposition. It's important for us to speak one at a time. Try not to anticipate my question and answer it before I finish speaking because the court reporter can only take down one person talking at a time. If we screw it up, we'll try and get it back in

7

sync and she'll probably tell us as well. But if you would be careful not to anticipate the answer to my questions, that would be helpful to her.

If I ask you a question that you don't understand, please let me know because my job here is to try and ask clear questions and I don't want to have a misunderstanding between us about what it is I'm asking. Is that acceptable?

**A. Yes.**

Q. The other thing is, you have to answer verbally. Uh-huh or nods don't work for the court reporter as well.

**A. Gotcha.**

Q. It will help her if you use yes or no or whatever explanation you want to give rather than uh-huh or huh-huh.

**A. Okay.**

Q. Thank you. Is there anything that you are aware of today that would prevent you from testifying truthfully?

8

**A. No.**

Q. Good. In preparation for the deposition today, other than conversations you have had with attorneys for the State of New Jersey, what did you do to prepare?

**A. I just re-reviewed the certification I previously provided. I didn't go back through any other additional files or -- just basically went over my cert.**

Q. When you say cert, do you mean the affidavit that was filed?

**A. Correct.**

Q. Thank you. Did you meet with counsel at all to prepare for your deposition? Please don't tell me what the substance of the meeting was. I just want to know whether you met with counsel?

**A. Yes.**

Q. When did that occur?

**A. Monday morning.**

Q. Who was there?

9

**A. Helene Chudzik, Bill Anderson and Amy Donlan (ph) I believe was her name.**

Q. They're all attorneys for New Jersey if I'm correct, right?

**A. Correct.**

Q. Were there any nonattorneys present in the room?

**A. No, just me.**

Q. Let's start off with some easy stuff, okay?

**A. Okay.**

Q. Could you give me a sketch of your educational background?

**A. I have a bachelor's in arts in zoology from Rutgers University in Newark.**

Q. What year did you get your bachelor's degree?

**A. 1979.**

Q. It sounds like there's a consistency among people in the room, except for Ryan.

And after you got your

10

degree in zoology, did you continue your education in any way?
A. **Other than taking some Weltons courses offered by EPA and some other management courses offered by DEP, there's been no other graduate work if that's the question that you're asking.**
Q. Right. Other than continuing environmental education or courses like that, you don't have any additional degrees; is that correct?
A. **Correct.**
Q. Thank you. What was your first employment after you received your degree in zoology in 1979?
A. **I was a self-employed house painter from December until -- December '79 until I started in November of 1980.**
Q. In November of 1980 you started with DEP?
A. **Correct.**
Q. And what was your title when you started in 1980?

11

A. **I was an environmental specialist trainee.**
Q. What does an environmental specialist trainee do?
A. **Basically a position where you learn what permits the program handles. I mean, you're not really responsible for too many detailed cases. You get basically some of the easier cases that the program handles.**
Q. Where were you located?
A. **Labor and Industry Building in Trenton.**
Q. In Trenton, okay. How long were you in that position?
A. **I believe that was a six-month position.**
Q. Where did you go after that?
A. **It's probably easier to explain. I have been except for a one-year period, I have been with the Land Use Regulation Program since 1980 until present.**
Q. Rather than to continue to

12

torture you with individual questions, why don't you just tell me how you progressed and what your different positions have been since 1980 with LURP?
A. **It's probably easier to track backwards, if that's acceptable.**
Q. That's acceptable.
A. **I have been bureau manager since I believe it's 2002. The year before that I was a supervising program development specialist working for the assistant commissioner for Natural Resources. The ten year -- no, it would have been from '89 until I guess '02, I was a supervising environmental specialist with Land Use Regulation Program.**
**Ten years before that I was a principal environmental specialist with the Land Use Regulation Program. And I guess that brings us to --**
Q. To 2002.
A. **From '89, the ten years from -- I was supervising environmental**

13

**specialist from '89 until I left the program. And then from '89 to '99 I was a principal environmental specialist with the program. And then, I guess, the previous -- I guess it's nine years that's remaining I was either environmental specialist trainee, environmental specialist or senior environmental specialist.**
Q. You started off as a environmental specialist trainee and then you became a principal --
A. **No, senior first.**
Q. Then you became a principal environmental specialist in 1989?
A. **I believe that was the time frame, yes.**
Q. You held that position through about '99 when you became a supervisory --
A. **Supervisory environmental specialist.**
Q. I think you had said program specialist before; is that the same

14

thing?
A. I was supervising environmental specialist from '99 until I -- I'm sorry. It would have been '89 until about 2001 I was a supervising environmental specialist. And then I left to work for the commissioner of Natural Resources for a year, which would have brought me to 2002, which is when I returned back to the Land Use Program.
Q. Let's not do all the early things and let's jump to the supervising program specialist or whatever you want to call it. What did you do in that position?
A. I was responsible for the five different permits or five different statutes that we regulate under for the counties of Cape May, Cumberland, Salem, Gloucester, part of Ocean and I want to say part of Camden as well. The five statutes that we implement or were charged with is the Coastal Area Facility Review Act.

15

Q. CAFRA?
A. CAFRA. Coastal Wetlands Law of 1970, The Waterfront Development Law, the Flood Hazard Area Control Act and the Freshwater Wetland Protection.
Q. You said you went to work for the commissioner for a year. What did you do for the commissioner?
A. I was special assistant in charge of chasing -- doing referrals and other assorted projects. I was also in charge of looking at legislation and how it impacted or did not impact some of the resources of agencies like Fish and Wildlife and Parks and Forestry.
Q. When you say chasing referrals, what do you mean by that?
A. The government as a whole receives numerous letters from various citizens. Depending upon who they come from or who they're addressed to, the department is required to either respond with a phone call, try to answer the constituent's question or if it's a

16

legislator you have to generate a letter response detailing what the department or at least the division's position is relative to the questions being asked.
Q. When you became bureau manager in 2002, what were your responsibilities?
A. I went back to overseeing for the Coast Bureau, the five statutes mentioned earlier. But now I had the counties that I was -- that I was in charge of were Monmouth, Ocean, Atlantic, Cape May, Cumberland, Salem, Gloucester, Camden and Burlington. So anybody that issued a permit within those counties worked for me, and my job is to ensure and currently is to ensure that the permits we do issue are consistent with the rules as well as any denials we issue are issued on a sound basis.
Q. So it sounds like your jurisdiction expanded from all the way up the Delaware River down to Cape May up the coast to Monmouth County?

17

A. Yes.
Q. I think included within your jurisdiction now since 2002, and it sounds like earlier than that as a matter of fact, are the five municipalities in what we call the Twelve Mile Circle; is that correct?
A. Correct.
Q. Do you understand what I mean by the Twelve Mile Circle?
A. Yes.
Q. What is your understanding of the Twelve Mile Circle?
A. That it's -- I always want to say Wilmington, but it's not Wilmington. That is a 12-mile arc from New Castle that basically lays out where the boundaries are -- Delaware relative to the boundaries of New Jersey.
Q. What do you understand to be the boundary line between Delaware and New Jersey within the Twelve Mile Circle?
A. I believe it's the mean low water line.

Q. When you say mean low water mark, do you mean mean low water mark on the New Jersey shore?
**A. Correct.**
Q. Within the Twelve Mile Circle?
**A. Correct.**
Q. Do you have an understanding of where the border goes outside the Twelve Mile Circle when you go south of the Twelve Mile Circle along the New Jersey shoreline?
**A. My understanding is the boundary basically to be north of the Twelve Mile Circle, it would be the middle of the channel. South of the Twelve Mile Circle I have never looked at the boundary, but I would expect it to be the same sort of situation where it would be halfway across.**
Q. How did you come to your understanding of the boundary between New Jersey and Delaware within the Twelve Mile Circle?



**A. It does show up on state maps. There's also been some exposure through prior permit applications where the boundary shows up.**
Q. Would it be fair for me to say that some of your experience in determining where the border is between the two states within your job responsibilities comes from your experience in processing permit applications?
**A. In processing and/or reviewing, yes.**
Q. I think you spoke earlier about the five programs or laws that you administer part of your permitting responsibility. The first one you mentioned was the waterfront development act?
**A. Yes.**
Q. I don't want you to be a lawyer but I want you to, if you could, give me a shorthand explanation of what the waterfront development act regulates.



**A. It regulates any work out beyond the existing mean high water line of tidal waters within the State of New Jersey.**
Q. Could you give me some examples of what kind of activity would fall within the regulatory scheme of the waterfront development act?
**A. We would look at the construction of marinas. We would look at the construction of piers or floating docks for private individuals like single-family homes. We would look at or do look at different dredging activities. We look at port construction, those sorts of activities.**
Q. Within the statutes in New Jersey and otherwise, I have seen a reference to piers, wharves and docks. Do you draw a distinction between any of those three?
**A. Only that when you consider a wharf, a wharf is generally -- I would consider it an unloading area often**



**constructed of solid fill of some sort because of the loads that the ships that would be depositing there, so you need a fairly substantial structure.**
Q. How about a pier?
**A. A pier is pile-supported structure. It also can be rather large, depending upon what the use is. It may -- it could substitute for a wharf. We would tend to nowadays be more restrictive in our issuance of permits for fill. So things that we would permit currently would be all-pile supported structures as opposed to -- I shouldn't say all but the majority of them would be pile-supported structures as opposed to solid fill.**
Q. How about the difference between a pier and a dock? Is there a difference?
**A. A dock could have several different variations. It could be a floating dock, say for a marina or for a single-family home. Where you might have**

22

**a pier that comes after off the upland out to a floating dock would be an example of the difference.**

Q. Otherwise are they the same?

**A. Are the names interchangeable are you asking?**

Q. That's a better way to ask.

**A. They could be. They could be interchangeable, yes.**

Q. Are you familiar with the 1905 Compact between New Jersey and Delaware?

**A. I have heard about it but never read it.**

Q. Do you have an understanding what the 1905 Compact, what the subject matter of that was?

**A. Not specifically.**

Q. Do you have a general understanding of what the 1905 Compact between the states, what the agreement was?

**A. Again, not specifically.**

Q. Maybe my question wasn't

23

clear. I was asking for a general recollection rather than a specific recollection or understanding.

**A. Again, without having read it, I can't -- I really can't answer that question.**

Q. Fair enough. When you perform your duties as bureau manager, have you considered the impact of the 1905 Compact upon your regulatory authority?

**A. No.**

Q. When New Jersey exercises its regulatory authority under the Acts that we're discussing, do you consider the boundary between the two states?

**A. Except for noting that it's there, it's my understanding that New Jersey has the right to permit structures that originate in its waters out to the extent that the structure is requested.**

Q. Have you always had that understanding?

**A. Yes.**

24

Q. So that's been your understanding since 19 what -- 1980 when you joined or when did that first become your understanding?

**A. I would say -- well, I couldn't tell you when I had my first permit that that may have been a subject, but I would say it would be accurate to say that since the start of my employment with the program.**

Q. And how did you come to that understanding that, I think as you said it, that New Jersey can regulate docks or piers extending from the upland into the riverbed of the Delaware River within the Twelve Mile Circle?

**A. It would be more of an understanding that we have the right under the Waterfront Development Law to regulate construction in any tidal waters of the state, not just limited to the Twelve Mile Circle and would treat permit applications the same essentially anywhere within tidal waters associated**

25

**with the State of New Jersey.**

Q. So is it your testimony today that within the Twelve Mile Circle New Jersey has always taken the position that it can regulate waters and docks that extend into Delaware territory?

**A. Yes.**

Q. And what is the basis of your understanding of that right with New Jersey? In other words, how did you come to that understanding? Did somebody tell you?

**A. No. Again, it would be how the department interprets the Waterfront Development Law.**

Q. We left off. We talked about the waterfront development act. You told me what that was about. I think the next act is the Wetlands Act, correct, that you mentioned?

**A. That would be one of them, yes.**

Q. Could you give me a general understanding of what that regulates?

A. The Wetlands Act of 1970 addresses coastal wetlands. It's based on -- what the state did was they recognized the value -- the environmental value of coastal marshes and then passed a law to protect them. What was happening was that a lot of them were being filled in and/or dredged for lagoons and/or housing. A lot of -- when you look at the science of it, a tidal marsh is probably one of most -- from a biomass perspective, is one of the most productive acre-by-acre ground that the US has. It provides more biomass than say an acre of corn in Kansas. It not only provides nursery stock, it provides the tridis (ph) that feeds crabs and all those things and everything else is sort of built on and that's why the law was originally passed.

So once the state did all this aerial photography, they groundtruthed the lines and then established a set of regulations laying



out what activities were or were not acceptable in a map coastal wetland.

Q. Part of your job responsibilities are to administer the permitting under that act?

A. Correct.

Q. We talked about CAFRA before also. Could you give me just a general description of what that regulates?

A. Sure. The statute was originally passed in 1973 and was a facility-based approach where we looked at industrial plants, large housing developments, large parking lots, developments -- and sort of our residential threshold was 24 units. What we eventually found, under a great deal of pressure from the environmental groups, is that the original statute had a number of loopholes. So in 1994 the statute changed from a facility-based approach to essentially a first adjacent land use approach. So now we regulate single-family homes like on beaches or



dunes, those sorts of things. If you didn't break the 24-unit threshold we didn't have authority to regulate placement of hotels or condominiums on dunes up and down the coast.

We still regulate large scale developments like Holiday City or Hotel Casinos, those sorts of things but when the law changed we went really to a first-adjacent land use type approach.

Q. I think you mentioned a flood control regulation as well?

A. Flood Hazard Area Control Act.

Q. What does that cover?

A. It's otherwise known as an stream encroachment permit. We look at any work proposed in flood plains of the State of New Jersey. These would he nontidal flood plains. So it would be things like construction of houses, construction of outfalls, roads with the intent being to provide -- or to prevent flood damage either at the property in



question or downstream property owners.

Q. Was the last one you mentioned the Clean Water Act?

A. Fresh Water Wetlands Protection Act.

Q. Can you tell me what that is, please?

A. That was a law passed in '87 effective in 1988 with an additional component related to transition areas, which is an upland portion of the -- an upland portion of land adjacent to the freshwater wetlands. The idea being is what similar to coastal wetlands in that -- well, freshwater wetlands also provide for flood storage, provide for threatened endangered species habitat. The idea behind the act was to protect what would be delineated as a freshwater wetland from development pressures.

Q. Thank you. I'd like to turn to a little different subject matter right now, which is New Jersey Coastal Zone Management Program. Are you

30

familiar with the documents that capture the Coastal Zone Management Program in general?

**A. Do you mean the impact statement that was written for -- to get the initial program accepted?**

Q. Yes.

**A. Yes, then I am.**

MR. SEITZ: Let's mark this.

(Whereupon document was marked Broderick-1 for identification.)

BY MR. SEITZ:

Q. I have handed you what we have marked as Broderick deposition Exhibit-1, which is a document starting with Bates number Delaware 20352 and ending with Delaware 20616. The document is not consecutive. The complete document is about 6 inches thick. So rather than crate that all the way up from Wilmington, I just pulled out of this excerpts I wanted to ask you about, okay?

**A. Okay.**

31

Q. Also included is the table of contents in case you wanted to get your bearings as well. I did this to save the trees rather than bring the whole thing.

Just looking at the cover page, Mr. Broderick, is this the document we were just referring to, the Environmental Impact Statement?

**A. I believe that it is. I think your original copy is orange, or do you just have a copy?**

Q. We just have a copy from New Jersey. It may be orange; it's hard for me to tell.

**A. It does look like that.**

Q. I'll represent to you we copied it from New Jersey's files. Could you tell me what this document is, this overall document?

**A. This was the final -- basically, a final impact statement that laid out the enforceable rules of New Jersey's Coastal Management Program. It**

32

**also contained the legal basis by which we can regulate in New Jersey, both for our CAFRA statute, Waterfront Development Law and at that time it was the -- it Waterfront, CAFRA and the Coastal Wetlands Law.**

**It also contained -- it was a comments and response document, because this came out first in a draft form I want to say in '78. So when people had a chance to review it they offered numerous comments and the comments were also incorporated into this document.**

Q. Would it be fair to say it's almost like the Bible of the New Jersey Coastal Management Program?

**A. It was our initial working document to regulate development in the coastal zone.**

Q. Was it an important document?

**A. Yes.**

Q. And I think, as you said and correct me if I'm wrong, there were

33

certain statements and commitments being made to the federal government as a part of this document, correct?

**A. I believe so, yes.**

Q. Was it submitted to the federal government so that New Jersey could obtain funding for its Coastal Management Program?

**A. I believe that it was, yes.**

Q. Would you agree with me that the statements in here, it was important for New Jersey to be accurate about what was contained in the document because it was being used by the federal government as a funding consideration?

**A. Yes.**

Q. If you will turn past the table of contents, Mr. Broderick, to what is labeled page 19 of the document and is Bates number DE 20381. When I refer to the Bates number that's the numbering that the lawyers have put on the document in the corner.

**A. Okay.**

Q. But it's otherwise page 19 of the document. This is chapter 2 and it's entitled Boundary, do you see that?
**A. Yes.**
Q. You're welcome to take as much time as you would like to read the next two pages. Why don't you do that and then I'm going to ask you a question about the very last part of the second page, okay?
**A. Okay.**
Q. Take your time to review the document so you're familiar with it.
**A. (Witness reading.)**
Q. Okay?
**A. Yes.**
Q. Turning to 20382, which is otherwise page 20 of the document, there's a section entitled, Seaward and Interstate Boundaries; do you see that?
**A. Yes.**
Q. The second paragraph of that section says -- and I'm going to quote it so that we have it in the record. "In



most of Salem County..." -- by the way, that's the county that you have had supervisory responsibility for, correct?
**A. Correct.**
Q. "...the Delaware-New Jersey state boundary is the mean low water line on the eastern (New Jersey) shore of the Delaware River. The New Jersey and Delaware Coastal Management agencies have discussed this issue and have concluded that any New Jersey project extending beyond mean low water must obtain coastal permits from both states, New Jersey and Delaware, therefore, will coordinate reviews of any proposed development that would span the interstate boundary to ensure that no development is constructed unless it would be consistent with both state coastal management programs."
Do you see that?
**A. Yes.**
Q. Does that refresh your recollection or maybe change your earlier opinion that you expressed that



regulation of docks and wharves that extended into Delaware territory within the Twelve Mile Circle from New Jersey would be regulated exclusively by New Jersey?
**A. I don't believe that I said that they would be regulated exclusively by New Jersey but that we had the ability to regulate construction emanating from New Jersey waters out into the -- from New Jersey that went out into this area. I didn't know that this particular language was here.**
Q. What do you understand this language to mean?
MS. CHUDZIK: I'm going to object to the form as calling for an improper opinion. I'm not sure he has any personal knowledge of the meaning of this.
MR. SEITZ: When I asked him at the beginning whether he was familiar with the document he said he was.



MS. CHUDZIK: He can answer.
THE WITNESS: Could you restate the question?
BY MR. SEITZ:
Q. My question was, what is your understanding of the language that I just quoted in the document that you earlier said you were familiar with?
**A. It essentially says that any development that crosses beyond the mean low water line would require -- it says that no development would be constructed unless it would be consistent with both states' coastal management programs.**
Q. In fact, Mr. Broderick, isn't it the case that for certain projects that have occurred within the Twelve Mile Circle on your watch the states have coordinated their coastal management programs?
**A. I have never personally coordinated with Delaware on applications, no.**
Q. Were you ever involved in

the Keystone project?
**A. It was a permit that we issued, yes.**
Q. Were you involved with that project?
**A. The person that issued the permit worked for me at that time, so yes.**
Q. How about Fort Mott, were you involved with that project?
**A. Yes.**
Q. Didn't New Jersey coordinate with Delaware on that project?
**A. Which one?**
Q. Fort Mott.
**A. Fort Mott, as I remember it, was the rehabilitation of an existing pier and/or wharf with the intended use being the reestablishment of a ferry service between Fort Mott and Pea Patch Island.**
Q. My question was a little broader, though. Did New Jersey coordinate with Delaware for the Fort



Mott pier application?
**A. Only because of the -- it was a project that was spanning into both states. Are you asking did we coordinate with Delaware on if the rehabilitation of the pier and the limits in the rehabilitation were acceptable?**
Q. I'm just asking whether you coordinated with Delaware. That was my question, which seems to be a yes or no answer if you can. Did New Jersey coordinate with Delaware, yes or no, for the Fort Mott pier?
**A. Coordinate to what extent?**
Q. Coordinate in processing the application to build a pier or rehabilitate the pier?
**A. Not that I remember.**
Q. We'll get into that in a little more detail later. So your understanding of this language is that no development would be constructed unless a project that spanned on to Delaware soil within the Twelve Mile Circle was also



consistent with its state Coastal Management Program, correct?
**A. That's what it says, yes.**
Q. Is it your testimony today that New Jersey did not follow this, or you don't know?
**A. I would say that in most instances it has not been followed.**
Q. Do you know why not?
**A. No.**
Q. As we said earlier, Mr. Broderick, this was a document that was submitted to the federal government to obtain funding for New Jersey's program. Wouldn't you agree with me that a statement about coordinating with Delaware's program would be important for the federal government to understand what was going to be the case?
**A. I would believe so, yes.**
Q. Could you turn to the next page of this document, please, which is Delaware 20614, that's the Bates number. It's page 253 of the document. It's



titled, Energy Production and Transmission; do you see that?
**A. Yes.**
Q. I don't plan to ask you any questions about that page. I do plan to ask you questions starting on the bottom of the next page under liquified natural gas and carrying over to the next page, but I wanted to give yon an opportunity to review this section and when you have bad an opportunity to look through it let me know and then we'll ask the questions.
**A. Okay. (Witness reading.) Stopping at recreation?**
Q. Stopping at recreation, yes.
**A. Okay. All set.**
Q. Thank you. If you will turn to page 20615, which is otherwise page 254 of the document of Broderick-1, there's a section entitled, Liquified Natural Gas, do you see that?
**A. Yes.**
Q. Then there's a quote from the National Energy Plan with statements

that are applicable to New Jersey. And then in this document New Jersey goes on to say, and I'm going to put this in the record as well, "The New Jersey Coastal Program states that LNG terminals are discouraged unless they are constructed so as to neither unduly endanger human life nor property nor otherwise impair the public health, safety and welfare and comply with the Coastal Resource and Development Policies. Because the tankering of LNG could pose potential risk to life and property adjacent to New Jersey's waterways which also serve as boundaries with the states of Pennsylvania and Delaware along the Delaware River and the state of New York and the Port of New York and New Jersey, the state considers decisions concerning the siting of LNG terminals to be an interstate matter." Do you see that language?

**A. Correct.**

Q. Again, this was a document



submitted to the federal government for New Jersey to obtain funding for its Coastal Management Program, correct?

**A. Correct.**

Q. And the statements in here, I think you already testified, were important because the federal government would be relying on them in making their decision whether to fund New Jersey's program, correct?

**A. I believe so, yes.**

Q. It's the case, is it not, that New Jersey told the federal government that when it came to siting LNG facilities along the Delaware River that it was an interstate matter, meaning that Delaware would be involved in the decision making, correct?

**A. Well, as written in 1980, yes.**

Q. So that in 1980 that was correct, right?

**A. That's what it says.**

Q. Have you had any discussions



with anyone about what New Jersey's obligations were under the Coastal Management Program in 1980 regarding siting of LNG terminals along the Delaware River?

**A. No.**

Q. Do you have a view on whether LNG terminals could pose a potential risk to life and property adjacent to the New Jersey and Delaware shores?

**A. Could we go off the record for a second?**

Q. Do you want to confer with your counsel?

**A. Yes.**

Q. Certainly.

MS. CHUDZIK: Sure.

(Whereupon a break was taken.)

(Whereupon the last question was read back.)

THE WITNESS: The answer would be yes.

BY MR. SEITZ:



Q. And what is your view of that?

**A. Well, any large industrial-type development if not operated properly could have a risk to citizens and/or the environment irregardless of wherever it was placed, but that if operated correctly it's my opinion that these -- they are and can be safely-run facilities.**

Q. Do you agree with the statement that New Jersey made in 1980 that tankering of LNG could pose potential risk to life and property adjacent to New Jersey's waterways?

**A. Again, it would be my opinion that in 1980 the technology for this sort of industry, while it existed, was perhaps not perfected and that since then the technology has gotten better like almost in any subject that we talk about from computers to oil and gas industry. That's currently a safe -- if run correctly is a safe facility.**

46

MR. SEITZ: I'll ask the court reporter to read back the question because I'm not sure you answered my question.
(Whereupon the last question was read back.)
THE WITNESS: Actually, I believe that I did answer that question because I think in 1980 when this was written the technology for running these type facilities, while it existed, may have not been perfected in that over -- since 1980 the industry has gotten better at what they do.
BY MR. SEITZ:
Q. So your answer is yes, you agree with the statement in 1980 that was just read?
MS. CHUDZIK: I think perhaps we need you to clarify. Are you saying he --
MR. SEITZ: I have asked him whether he agreed or disagreed

47

with the statement that was read.
MS. CHUDZIK: Does he presently agree it's accurate or would he agree in 1980 it was accurate?
BY MR. SEITZ:
Q. I qualified it, do you agree with the statement that New Jersey made in 1980 that the tankering of LNG could pose potential risk to life and property adjacent to New Jerseys's waterways? Do you agree in 1980 when New Jersey made that statement, it was a correct statement?
**A. To be honest, I don't know enough about the industry to say if it was a correct statement or not.**
Q. You just gave us an opinion today --
**A. Yes, that's my opinion but I didn't write this document.**
Q. I understand that but you just offered an opinion, you said that it was safe and now you're saying you don't

48

have enough knowledge to know whether it was safe in 1980 but you do now.
**A. I don't know how to answer.**
Q. Would you agree with the statement that New Jersey made in 1980 that, "The state considers decisions concerning the siting of LNG terminals to be an interstate matter?"
**A. That's the plain language of the document.**
Q. I'm asking you in your position of authority with the State of New Jersey whether you agree with that statement, siting of LNG terminals should be an interstate matter?
**A. I believe that New Jersey should -- has the ability to safely place facilities within its borders, and I don't know what else to tell you.**
Q. Do you disagree it's an interstate matter?
**A. I believe -- I mean, our position has been that we have the right to regulate structures either onshore or**

49

**outshore of the State of New Jersey and do take into consideration various safety aspects.**
Q. Mr. Broderick, you said it's always been New Jersey's position?
**A. Correct.**
Q. If it's always been New Jersey's position, then why in 1980 did New Jersey write in this document that Delaware Coastal Zone Management Program would apply to Delaware soil for structures extending beyond the New Jersey coastline and why did New Jersey say in this paragraph that the siting of LNG facilities is an interstate matter if that's always been New Jersey's position?
MS. CHUDZIK: I'm going to object to form. I think it's a compound question. I'm not sure we have the foundation for him explaining this writing. I believe he testified he didn't write it.
THE WITNESS: But I should

attempt to answer?
MS. CHUDZIK: If you can.
THE WITNESS: For starters, again, I didn't -- this came out in August of 1980 before I was hired. It would have been language potentially drafted in 1978 as part of the draft environmental impact statement. Why did it say -- again, I was not involved in any of the -- didn't read it before I started, so I have no idea why they would have said that.
BY MR. SEITZ:
Q. You would agree with me that it's inconsistent with the opinion you expressed that New Jersey has the right to regulate structures on Delaware soil within the Twelve Mile Circle extending from the New Jersey shoreline?
A. **It would appear to be inconsistent, yes.**
Q. Let me know when you want



take a break.
A. **Okay, now would be good.**
**(Whereupon a break was taken.)**
**BY MR. SEITZ:**
Q. We're going to put that one aside.
A. **And I give this to...**
Q. The court reporter.
(Whereupon document was marked Broderick-2 for identification.)
BY MR. SEITZ:
Q. Mr. Broderick, the court reporter has handed you what we have marked is Broderick-2, which as an affidavit that you filed in this case. Do you recognize it?
A. **Yes.**
Q. Paragraph 1 of the affidavit, and stop me if you need to time to read; I don't want to go too fast. I'm assuming you're familiar with it. There's a sentence in paragraph 1 that says, "I have knowledge of the matters set forth herein, based upon my



personal knowledge and upon my review of the NJDEP files in this matter." Do you see that statement?
A. **Yes.**
Q. Which of the matters do you have personal knowledge of and which are based on your review of files? Is there a way for you to segregate that out so that I can understand what you have personal knowledge of versus looking at files?
A. **So I can just go through the affidavit and say which sections are --**
Q. Sure.
A. **Paragraph 12 would have been a file -- based on a file review. Paragraph 13 would be personal knowledge. Paragraph 14 would be personal knowledge. Paragraph 15 would have been an application issued during my tenure as supervisor, but I don't specifically remember it and this would come up as part of the file review, as would the same would apply to paragraph 16.**



Q. Thank you. I want to understand what exactly you did to prepare this affidavit. You have an explanation in paragraph 9. Do you see paragraph 9?
A. **Yes.**
Q. As I understand it, and correct me if I'm wrong, there were certain records that were in database and other records were in boxes; is that correct?
A. **It's probably better described as our databases are currently electronic. Prior to going electronic we used to keep handwritten listings of the permit applications. All of our applications end up -- basically after the expiration date end up in boxes in the warehouse.**
Q. Even today?
A. **Even today.**
Q. Rather than me ask you 20 questions, why don't you tell me what you did to assemble the information that's in

54

this affidavit?
A. **Okay. We went through what I asked Mark Fedorowicz to do was -- what he could from electronic database generate a listing for applications within those five municipalities. Then we also looked at the written listing for the time period that we had, again, for the five municipalities. Once we had that list we went and looked at the individual ones. Because the Waterfront Development Statute has an upland component and an in-water component that are different, we would have eliminated all the ones that had just an upland component. Then we would have had to look at -- and once we got down to that number, we would have had to actually look at the files to see what applications actually involved work beyond the mean low water line that may have been applicable to what was basically the information request.**
Q. I need you to help me

55

understand what the universe of documents was that you looked at, so bear with me while I try to walk through this so I understand it.
A. **Sure.**
Q. There's a computerized permitting tracking system; is that fair to say?
A. **Correct.**
Q. And what years does the database of that permitting tracking system encompass?
A. **Our current system only goes back as for as 2001. It's NJEMS. It's like New Jersey Environmental Management System. The department uses it on a fairly wide basis. Before that we had a program called Paradox, and I want to say those applications go back to '88 plus or minus maybe, '87. And then prior to that it would have been handwritten records.**
Q. So in your search, did you search the Paradox system as well?
A. **Yes.**

56

Q. So you searched --
A. **I'm sorry. I didn't personally search it. I asked that our records custodian do the search.**
Q. Who is Mr. --
A. **Fedorowicz.**
Q. So Mr. Fedorowicz went and he looked at the EMS system for -- what did he look for specifically? What was he searching for?
A. **Initial direction was to -- the easiest way to search is give me all waterfront development permits that were decided on by the department or by the program for the five municipalities. That would give you a real large list, again, remembering there's an upland component that wouldn't apply to this particular case.**
Q. Why does it not apply?
A. **It doesn't involve any work in the water. Under the Waterfront Development Statute we would have and we have always had the ability to look at**

57

**single-family homes. Since our jurisdiction is limited to a minimum of 100 feet up to a maximum of 500 feet, we've looked at a lot more things than we did initially under CAFRA.**
Q. So Mr. Fedorowicz looked in the EMS database which takes us from 2001 to current?
A. **Correct.**
Q. And he looked in the Paradox database which takes us from 2001 back to 19 --
A. **I want to say '88.**
Q. We'll say that's a rough break point. And then Mr. Fedorowicz looked at written records back how far?
A. **I want to say that goes back to like '82 perhaps.**
Q. For all of those databases -- for the databases and the written records he was looking for waterfront development act permits, correct?
A. **Correct.**
Q. We know that the waterfront

58

development act was enacted in 1914 I believe, correct?
**A. Correct.**
Q. Was there an attempt made to look back for written records earlier than roughly 1988?
**A. Prior to 1988?**
Q. Yes.
**A. Only -- yes, but they would have been on the written list essentially.**
Q. I apologize for being confused. So Mr. Fedorowicz did look for any waterfront development permits from the 1900's all the way up to present day?
**A. No. He would not have had access to any databases prior to approximately '82.**
Q. Why is that?
**A. We just -- well, why is that?**
Q. Do the records still exist?
**A. I believe that they -- there are some records, but we just don't have**

59

**access to them. We looked at everything that we had some sort of information on it that we could track.**
Q. I'm not trying to be tricky here. I'm just trying to understand why didn't you look prior to 1982? In other words, why 1982?
**A. That was the sources of information we had available.**
Q. But there is some information prior to 1982 that's around but you just didn't have access to it; is that correct?
**A. I don't know that there's a database that exists that we could pull the information from whether written or --**
Q. Help me out here. Where are the records prior to 1982 dealing with the waterfront development act permits?
**A. Specifically, I don't know.**
Q. Did Mr. Fedorowicz go and try and find them, do you know?
**A. I don't know.**

60

Q. Sitting here today, you don't know why those weren't looked for or examined?
**A. No.**
Q. Okay. So we got the written records from 1982 to 1989. And then we have the -- excuse me -- to '89 and then EMS from '89 to '98. I got that right?
**A. It would be Paradox from approximately '88.**
Q. And then EMS '98?
**A. Right.**
Q. You searched those sources for waterfront development permit applications, correct?
**A. Correct.**
Q. After your review of, I think you describe it as 350 hoxes and the Paradox and EMS databases you came up with 58 hits essentially, correct?
**A. Correct.**
Q. Of those 58 hits you pulled out 14 applications -- of 58, 14 of those came from the warehouse, right?

61

**A. Correct.**
Q. And 22 came from the database, right?
**A. Yes.**
Q. So you have 22 from the database, 14 from the application files. What accounts for the difference between the 58 and the 36?
**A. I don't specifically know.**
Q. If I had to guess, I'm thinking it was permits from 2001 forward because they're not referred to, but I don't know and I'm just trying to figure out. When you started with 58 we got 36 accounted for but we've got some missing in between. I just didn't know what happened to them.
**A. What I can tell you is that we did as extensive a search as we could.**
Q. I'm not questioning that.
**A. We're not trying to hold back any information, good or bad.**
Q. I'm not questioning your integrity. I'm trying to figure out --

62

the numbers don't add up and I'm trying to understand why they don't add up. Is that something that you could find out so that we do n't have to spend time on this now?

**A. Yes, we can clarify that information, sure.**

Q. Is that something you can do at a break today or is that going to take you more time?

**A. I don't know that Mr. Fedorowicz is in today but...**

Q. Maybe we can give it a try.

**A. We can try, sure.**

Q. So we have 350 boxes. We have two databases which is distilled down to 58 development applications and of those 58 you have identified five that you believe are relevant to this lawsuit, correct?

**A. Correct.**

Q. Because if you look at Paragraph 11 of your affidavit, you make the statement that the program has issued

63

a number of permits. And I just wanted to make sure that the five were the total number rather than some other permits that were not included in the affidavit. Do you see my point of clarification there?

**A. Actually, yes.**

Q. Could you clarify for me when you make the statement a number of permits in Paragraph 11 that you are referring to the five that you identify in paragraphs 12 through 16?

**A. I believe that the five that were listed were the ones that appeared, based on a file review, to pertain to this case.**

Q. Let me try my question because I must not be asking it very well. Paragraph 11 you refer to the program has issued a number of permits. A number could be zero or it could be one or it could he 1,000, right?

**A. It could be five.**

Q. It could be five. That's

64

what I'm trying to ask you. Is it the five or are there others?

**A. I think it's the five. In preparing the affidavit, I think that's the number.**

Q. So the number referred to in Paragraph 11 is 5?

**A. I believe it is.**

Q. Will you tell me or let me know if it's anything different or let your attorneys know?

**A. Absolutely.**

Q. You said I believe, which leads me to believe you're 90 percent but not 100 percent. If there's some doubt will you let us know?

**A. Yes.**

Q. Just to summarize again, 350 boxes, two databases were looked at over a 25-year period which resulted in 58 development applications. Of those 58 you came up with five that identified crossings in the Delaware subaqueous land, correct?

65

**A. Correct.**

Q. Let's look at the first one, which is DuPont, Chambers Works, okay. Before we look at the exhibits, could you tell me whether you had any involvement with any of the permits for the DuPont Chambers Works?

**A. No.**

Q. So is your knowledge --

**A. As listed here?**

Q. Yes.

**A. No.**

Q. So this would not fall within the category of your personal knowledge, correct?

**A. Correct.**

Q. You were just repeating in your affidavit the information that Mr. Fedorowicz gave you, correct?

**A. Correct.**

Q. I'm going to show you a few documents.

Off the record.

(Whereupon documents were marked

66

Broderick-3 through Broderick-10 for identification.)
BY MR. SEITZ:
Q. Mr. Broderick, we have put before what has been marked as Broderick-3 which is a letter bearing Bates number 19301 to 19302. Do you have that in front of you?
**A. Yes.**
Q. This letter is a letter to the Army Corps of Engineers from a staff hydrologist at what was the predecessor to the Delaware Natural Resources Environmental Control, and it deals with constructing a bulkhead and a fuel oil storage tank in the Delaware River at Chambers Works. Do you see that in the first paragraph?
**A. Yes.**
Q. The Chambers Works facility, what do you understand where that is located?
**A. It's just north of the Delaware Memorial Bridge.**

67

Q. It's within the Twelve Mile Circle, correct?
**A. Correct.**
Q. The border between New Jersey and Delaware at that point in time extends north -- even now extends over to the mean low water mark on the New Jersey shore, correct?
**A. Correct.**
Q. Do you see in this letter there's some discussion about there was a moratorium placed on subaqueous lands projects in the Delaware River and Bay by the Delaware legislature?
**A. Yes.**
Q. Do you know anything about that?
**A. Nothing at all.**
Q. Do you have any personal knowledge of the DuPont Deepwater facility's request to build this bulkhead?
**A. No.**
Q. Let's turn to what has been

68

marked as deposition Exhibit-4, which is a document bearing Bates numbers Delaware 19304 to Delaware 19305, which is a February 19, 1971 letter from John Bryson, B-R-Y-S-O-N, director of the Division of Environmental Control to the Honorable Laird Stabler who was then Attorney General of the State of Delaware. Do you have that in front of you?
**A. Yes.**
Q. Do you see in this letter on the second page, the second paragraph from the top that there was some question about the 1905 treaty and the Supreme Court decision of 1933 in Delaware's jurisdiction to regulate that project at Deepwater. Do you see that language?
**A. Yes.**
Q. Does that refresh your recollection at all about any dispute of the Deepwater project about whether Delaware had regulatory authority?
**A. I'm not sure I understand**

69

**the question.**
Q. Does it help you recall anything or any knowledge you might have about what happened at the Deepwater authority -- excuse me -- the Deepwater DuPont location and installing bulkheads?
**A. 1971 would have been before -- it would have been nine years before my time. So as I stated earlier, I never read, I believe it was, the 1905 compact.**
Q. Right.
**A. So other than the language stated here, that's the only clarification as otherwise provided.**
Q. My question was simpler than that. It was just, in your position that you have held or the positions you have held since 1980 in any discussions you have had about the Deepwater facility, do you recall any discussions about any position that Delaware took on the 1905 treaty back in the 1970s?
**A. No.**

70

Q. Broderick-5 is an April 5, 1971 letter bearing Bates Delaware 19309 to 310. It's a letter from a Staff Geohydrologist at DNREC or predecessor to DNREC to the Army Corps. Do you see in paragraph 1 there's a reference to an opinion from the Attorney General of the State of Delaware?

**A. Yes.**

Q. That Delaware has no jurisdiction between the mean high and mean low water marks on the New Jersey shore and that the moratorium did not apply to the New Jersey shore. Do you see that?

**A. Yes.**

Q. Do you also see the following paragraph where the Attorney General concluded that any proper proposed work in the Delaware River which will extend below the mean low water mark is in Delaware waters and would require a permit from the State of Delaware. Do you see that?

71

**A. Yes.**

Q. Does that refresh your recollection about discussing Delaware's authority over the Chambers Works project anytime during your tenure in the positions you have had with New Jersey?

**A. I don't believe that we have ever discussed it.**

Q. Looking at bullet point 2, liquified natural gas terminal near Oldmans Creek, New Jersey. Do you see that?

**A. Yes.**

Q. Were you aware that there was a proposal back in the early '70s for an LNG terminal near Oldmans Creek in New Jersey?

**A. No.**

Q. Is this the first time you heard about that?

**A. Absolutely.**

Q. If you turn the page, do you see that Delaware took the position in this letter that any work within Delaware

72

waters will require a permit from Delaware; do you see that?

**A. Yes.**

Q. But you don't have any of personal knowledge of this application; is that correct, for an LNG terminal back in the early '70s?

**A. No.**

Q. Now let's go to number 6, which is an October 15, 1982 letter bearing a DuPont Bates stamp of 0001021. Do you see that?

**A. Yes.**

Q. This is a letter to DuPont from DNREC, do you see that?

**A. Yes.**

Q. It deals with approval of maintenance dredging, do you see that in the first paragraph?

**A. Yes.**

Q. Do you recall any discussion within New Jersey about Delaware's ability to regulate dredging for the Chambers Works facility?

73

**A. No.**

Q. Exhibit Broderick-7 is a document bearing Delaware Bates number 19645 to 19649. It's subaqueous lands permit granted to DuPont Chambers Works for dredging and backfilling and to install a sheet pipe wall near Deepwater, New Jersey. Do you see that?

**A. Yes.**

Q. Were you or are you -- either were or are you aware of any riparian subaqueous land permits that Delaware issued for the Chambers Works facility?

**A. No.**

Q. So in your affidavit when you're referring to the Chambers Works facility at paragraph 12 of your affidavit, you refer to a permit that New Jersey issued for dredging, correct?

**A. Yes.**

Q. But you were unaware or are you unaware that Delaware also issued permits for dredging?

74

A. **I did not know that, no.**
Q. So you weren't aware that what is the subaqueous lands permit of Exhibit-7 was issued to DuPont, correct?
A. **Correct.**
Q. Let's look at what has been marked as Broderick-8, which is an April 7, 2004 letter bearing Delaware Bates number 25932 to 25933. It's a letter on letterhead by both the State of Delaware and the State of New Jersey signed by both governors. Do you see that?
A. **Yes.**
MS.CHUDZIK: Did we skip another one?
MR. SEITZ: Off the record.
(Whereupon a discussion was held off the record.)
BY MR. SEITZ:
Q. I cleared up my mistake. You have the letter from the two governors?
A. **Yes.**

75

Q. Have you been involved at all in the VX nerve gas disposal issue at Chambers Works?
A. **No.**
Q. Were you aware that DuPont has a proposal to dispose of VX nerve gas residue at the Chambers Works facility and discharge some residue into the Delaware River?
A. **Only through the newspapers.**
Q. So no personal knowledge?
A. **Correct.**
Q. Let's look at Broderick-9, which is an agenda dated March 10, 2004 bearing Delaware Bates number 25974 to 25979. This, again, deals with disposal of neutralized VX; do you see that?
A. **Yes.**
Q. Would the same answer you just gave me to deposition Exhibit-8 apply that you don't have any personal knowledge of VX disposal review by both New Jersey and Delaware?
A. **Correct.**

76

Q. Exhibit Broderick-10 is a letter bearing DuPont Bates number 1339 to 1343, which is a letter dated March 1, 2006 from Laura Herr of DNREC to DuPont representatives. Do you see that?
A. **Yes.**
Q. Do you understand that this is a subaqueous lands permit that was granted by the state of Delaware to DuPont for a location at Carney's Point, Salem County, New Jersey which is the Chambers Works facility?
A. **Yes.**
Q. Were you aware that Delaware as recently as March 7, 2006 granted a subaqueous lands permit to DuPont?
A. **No.**
Q. After reviewing these, Mr. Broderick, is it fair to say that for the DuPont Chambers Works facility for both dredging and building bulkheads and things like that that it appears that both Delaware and New Jersey were exercising regulatory authority over that

77

project, that facility?
A. **It would appear they're exercising joint permit review, yes.**
Q. Let's turn to the Keystone project which I think you said you have personal knowledge of, correct?
A. **Correct.**
MR. SEITZ: Let's go off to mark these.
(Whereupon documents were marked Broderick-11 through Broderick-19 for identification.)
BY MR. SEITZ:
Q. Mr. Broderick, we're going to turn our attention now to the project known as Keystone. Can you tell us generally what that project is?
A. **The permit that was before the department was for, as I remember it, a coal-fired power plant/cogeneration facility that contained or I should say included a pier ran into the Delaware River where coal would be delivered and then shipped to the upland.**

78

Q. What was your involvement in that permitting process?
**A. The person that actually did the review of the permit applications worked for me at the time and it would have been, as we discussed earlier, making sure that the review being done was consistent with your rules and the approval issued was in compliance.**
Q. Could you tell me specifically what you did with regard to this project? Did you review the paperwork coming from the person you identified as being on the scene or how did it work?
**A. Okay. Generally, depending upon who had signature authority, if I had signature authority for that particular permit the project manager would review the material, give it to me for signature. I would read through the analysis and make sure that I agreed with the analysis presented and sign the eventual permit.**

79

**In 1990, I don't know that I would have had signature authority for the final permit. So the project manager would have prepared the analysis. I would have gone through it to make sure, again, that it was consistent, made any changes necessary to make it consistent and then I would have passed it on to the bureau manager, who would most likely have had signature authority.**
Q. When you were involved with the New Jersey permitting process for Keystone, were you aware that Delaware was also involved in permitting the project?
**A. I believe that I was, yes.**
Q. What do you recall about Delaware's involvement in the permitting of the Keystone project?
**A. As I remember, that it was occurring on a separate tract.**
Q. What do you mean by that?
**A. Just that it had been submitted concurrently with our**

80

**application. Applicants in their -- especially for large scale developments during -- they're required to do essential due diligence process, find out what needs to be done and whether it's local approval, state approval, Army Corps approval and if they do a good job they submit them all at the same time so that the reviews can occur and hopefully they get to the end of one they're close to the end of all the others. That's how I believe that this overall project was approached.**
Q. Did you have any interaction with the people at Delaware?
**A. Not that I remember, no.**
Q. I think you testified earlier that it had always been your understanding that New Jersey had regulatory authority over such things as piers extending out into the Delaware River within the Twelve Mile Circle from the New Jersey shore, correct?
**A. Correct.**

81

Q. This project had a pier extending out into the Delaware River from the New Jersey shore within the Twelve Mile Circle, correct?
**A. Correct.**
Q. And it was Delaware, in fact, that regulated the pier; isn't that correct?
**A. I believe that our permit addresses construction of the pier.**
Q. Do you have an understanding of what Delaware's permitting addresses?
**A. At the time, no.**
Q. Did you think it was odd that Delaware was also involved with the project?
**A. I don't specifically remember.**
Q. Do you remember it being an issue of why Delaware would be involved with regulating the project?
**A. No.**
Q. Do you remember anybody else discussing whether Delaware had

regulatory authority over the project?
**A. Other than knowing it was occurring, we were proceeding on our own permit path line to review potential impacts and see if the use was acceptable. Once determining that the use was acceptable, make sure that impacts were mininized and then issued a permit.**
Q. As far as you're aware, did New Jersey issue a license or a riparian grant for the Keystone project?
**A. I don't remember specifically.**
Q. Do you know if Delaware did?
**A. I don't remember that either.**
Q. Did it occur to you when you were processing the New Jersey permit to address with the applicant whether they had to obtain Delaware approvals or not?
**A. Relative to?**
Q. The pier, the dock.
**A. No, in that we already knew**



**that they had applied.**
Q. So what were you thinking about that at the time or were you not thinking about it? In other words, you said it's always been New Jersey's position it would regulate the pier at this location. Why wasn't it said about the fact that Delaware was demanding the ability to regulate the pier as well?
**A. We often -- I mean, we deal with the Army Corps of Engineers a lot who also have dual jurisdiction. They proceed along their own permit timeline. We would have considered it basically the same -- in the same fashion. I don't remember that there were any objections raised by Delaware to this facility, so there was no reason to ask.**
Q. So if I understand your answer then that the thinking may have been with New Jersey that it wasn't unlike where both jurisdictions have, as you said, dual permitting authority, correct?



**A. Right.**
Q. Can you think of any other instances where Delaware might have exercised what you've termed dual permitting authority?
**A. The only other specific case where I know there was at least some sort of coordination and/or permitting requirements was in the Fort Mott case.**
Q. We have seen today, have we not, that it also was in the DuPont case that there were some dual permitting going on at the Chambers Works facility in New Jersey, correct?
**A. Based on information provided, the answer would be yes.**
Q. Let's take a look at exhibit Broderick-11, which is a document bearing Delaware Bates number 2180. It's a November 19, 1990 letter from Toby Clark, who is the secretary of DNREC to Richard Ciliberti at Keystone. Do you have that in front of you?
**A. Yes.**



Q. Do you see in this letter that there was a determination by Mr. Clark that the proposed pier is not a prohibited offshore bulk product transfer facility. Do you see that?
**A. Yes.**
Q. Do you have an understanding that Delaware has a Coastal Zone Act?
**A. Yes.**
Q. Do you also understand that offshore bulk product transfer facilities are not permitted in Delaware's coastal zone?
**A. I have never read what's allowed or not allowed under Delaware CCM program.**
Q. You know there's a program but you're not sure of what the details of it are?
**A. Correct.**
Q. Let's turn to the next exhibit which is Exhibit-12, which is a document bearing Delaware Bates number 2200 to 2242. It's titled a

86

Subaqueous Lands Lease Granted to Keystone for the Construction of an Industrial Pier on Public Subaqueous Lands and to Conduct Dredging in the Delaware River at Logan Township, and the date of this grant is September 30, 1991. Do you see that?

**A. Yes.**

Q. I think I asked you earlier whether you were aware of any New Jersey riparian licenses or grants for the Keystone project and I think your answer was you're not sure; is that right?

**A. I don't remember, correct.**

Q. Here is a Delaware subaqueous lands lease for the Keystone pier. Do you see that?

**A. Yes.**

Q. Would you agree with me then that from this document that both New Jersey and Delaware were exercising joint regulatory authority over the Keystone project?

**A. Based on this information,**

87

**yes.**

Q. Let's turn to Exhibit-13 please, which is a document bearing Delaware Bates number 2377 to 2378. It's a Supplemental Approval granted to Keystone to amend the subaqueous lands lease to build the pier in the Delaware River. Do you see that?

**A. Yes.**

Q. And, again, you would agree with me that this is further confirmation based on this document that Delaware was exercising regulatory authority over the pier that was extending into the Delaware River from the Keystone project, correct?

**A. Yes.**

Q. Turn to Exhibit-14, please, which bears Delaware Bates numbers 2289 to 2290. This is another supplemental approval granted to Keystone for the pier and to conduct dredging. Do you see that?

**A. Yes.**

Q. Would you agree with me that

88

as of the date of this approval, which is May 28 of 1993 that Delaware was continuing to exercise regulatory authority over the pier and dredging activities at Keystone?

**A. Yes.**

Q. Looking at Exhibit Number-15, which bears Delaware Bates number 16855 to 16857. It's a September 2, 1994 letter from DNREC to Keystone. Do you see that?

**A. Yes.**

Q. And do you see that DNREC granted approval for operation of a coal unloading facility on the coal pier which is part of the Keystone project. Do you see that?

**A. Yes.**

Q. Wouldn't you agree with me that as of 1994 Delaware was continuing to exercise regulatory authority over the pier on the Keystone project?

**A. Correct.**

Q. Exhibit Broderick-16. If

89

I'm going too fast slow me down.

**A. I'm good.**

Q. 16 is a document bearing Delaware Bates number 2407 to 2408. It's another supplemental approval granted to Keystone by DNREC to amend the subaqueous lands lease for constructing the pier on Delaware land, and this one is dated January 6, 1995. So we see in 1995 Delaware was continuing to exercise its regulatory authority over the Keystone pier extending into the Delaware River within the Twelve Mile Circle, correct?

**A. Are we on 16?**

Q. Yes.

**A. I'm looking for the date.**

Q. Look at the body of the first paragraph.

**A. Because if I look at the end it says December 1994.**

Q. Right. Look at the effective date in the first paragraph.

**A. Okay.**

Q. Do you see it handwritten in

there?
A. Yes.
Q. So is the answer to my question yes, I don't have TO repeat the whole thing again?
A. Yes.
Q. Exhibit-17 is a document bearing Delaware Bates number 2294, which is a letter to Logan Generating Company from DNREC where DNREC grants a one-year extension of the subaqueous lands permit to dredge. Do you see that?
A. Yes.
Q. So as of 1995 DNREC was exercising regulatory authority over dredging operations at the Logan facility, the Keystone facility, correct?
A. Yes.
Q. Exhibit-18 is document bearing Delaware Bates number 2308 to 2311. It's a letter from DNREC to Logan, otherwise known as Keystone, for maintenance dredging at the Logan Keystone plant. Do you see that?



A. Yes.
Q. So as of '97 Delaware was continuing to exercise regulatory authority over dredging operations at Keystone, correct?
A. Yes.
Q. Exhibit-19 is a document bearing Delaware Bates numbers 2409 through 2413, which is another subaqueous lands lease granted to Logan, otherwise known as Keystone, to build two 25 foot by 25 foot Mooring dolphins, six 16 foot by 16 foot breasting dolphins, a 70 foot by 105 foot dock, a 22 foot by 450 foot pier, four 4 foot by 109 foot dock sections, two 4 foot by 104.5 foot dock sections, two 2 foot by 4 foot dock sections and a 10 foot by 10 foot loading platform at the Keystone facility, dated November 9, 2001. Do you see that?
A. Yes.
Q. As of 2001, Delaware had continued to issue subaqueous lands leases to the Keystone facility, correct?



A. Yes.
Q. Do you know if Keystone also applied to New Jersey for riparian grant or license for this same area?
A. No, I wouldn't know that.
Q. Would that be something Mr. Castagna would know?
A. I would believe so, yes.
Q. Are you not involved in the riparian grants and license process?
A. Basically, no.
Q. So when someone comes with a waterfront development act permit application, do those permit applications sometimes involve riparian grants or licenses?
A. Yes.
Q. That's not something that you would handle, that's handled by someone else?
A. It would be handled by the Bureau of Tidelands.
Q. Mr. Castagna is with the Bureau of Tidelands, correct?



A. Correct.
Q. So Mr. Broderick, just to put a point on this as far as the Keystone project is concerned, and I think to use your words, New Jersey and Delaware exercised joint regulatory authority over the overall project, correct?
A. It would appear that way, yes.
Q. As far as the pier is concerned, it appears that Delaware was exercising regulatory authority over the pier and dredging operations, correct?
A. In addition to the State of New Jersey.
Q. Right. I think if you look through the New Jersey documents you won't see a lot of approvals for the pier or continuing approvals for the pier or dredging operations or riparian leases or grants. So I want to understand your qualification to my question. I think you're saying that when New Jersey

94

approved the project as a whole it approved the pier as well?
**A. Yes.**
Q. Typically when New Jersey has a project which involves both the uplands and a portion of it extending into the river, does it approve that under one permit or does it have separate permits under the Waterfront Development Act and other acts?
**A. In almost all instances where we can issue one document we would issue just one document.**
Q. Do you know what document was issued for Keystone?
**A. I believe it was a stream encroachment, freshwater wetlands and a waterfront development permit with both upland and in-water components.**
Q. I'm sorry I didn't bring that with me. I'll look at that as well. Do you want to take five minutes?
MR. SEITZ: Off the record.
(Whereupon a break was taken.)

95

(Whereupon documents were marked Broderick-20 through Broderick Broderick-28 for identification.)
BY MR. SEITZ:
Q. We left off at Fort Mott, I believe. We have been going through the projects that were contained in your affidavit, the five permit applications that you identified in your affidavit and now we're up to Fort Mott. We have premarked a bunch of exhibits, which we're going to go through but before we get to the exhibits I want to ask you a couple general questions. First, Fort Mott is where?
**A. It's like the southwest corner of New Jersey above -- I guess it's a spot in the state where they could actually defend by canon, river traffic.**
Q. And it's within the Twelve Mile Circle, correct?
**A. I believe that it is, yes.**
Q. What was your involvement with the permitting for the refurbishment

96

of the wharf at Fort Mott State Park?
**A. I would have been responsible for making sure that the proposed use was acceptable and that when it did go through the rehabilitation process that it minimized impacts to a maximum extent practical, as well as make sure that there -- we also knew there was a historic structure, so we had to coordinate with our own historic people to make sure that any I'll call it an adaptive reuse and/or rehabilitation met their standards as well.**
Q. Did you personally have any conversations with any Delaware representatives about their regulatory authority over the Fort Mott refurbishment?
**A. Not that I remember, no.**
Q. Do you recall discussing the issue of Delaware's jurisdiction internally at New Jersey regarding refurbishment of the pier?
**A. We knew of it was a joint**

97

**project -- the goal of the project was at the end to reinstitute ferry service between the Fort and Pea Patch Island, which I think was wholly within Delaware waters. So we were aware of it, yes.**
Q. Was there any discussion about what jurisdiction Delaware had over a refurbishment of the pier in New Jersey?
**A. No.**
Q. It just kind of happened or what's your recollection?
**A. I don't know that they ever really commented on the specific refurbishment. Again, we would have taken our own permit path to look at is the use acceptable and have they minimized impacts to the maximum extent that they could.**
Q. When you say they --
**A. When I say they, I always refer to the applicant, which in this instance would have been Parks and Forestry.**

Q. We should then take a look at some of the documents and maybe that will then draw some more information out of you about what happened. Looking at Broderick-20, which is in front of you, it's a document with Bates number Delaware 1817 to 1818, and it's memorandum, January 8, 1995 with a big smudge in the middle of it. This must have been the best we could have done in the files. First of all, do you know who Gregory Marshall is, who is the recipient of the memo?

**A. At the time he was director of Division of Parks and Forestry.**

Q. Who was Dan Saunders?

**A. Dan Sanders was one of their project managers under the state historical office.**

MS. CHUDZIK: State Historic Preservation Office.

BY MR. SEITZ:

Q. Thank you. Mr. Broderick, this is a memorandum of agreement. Do



you see that it's titled that?

**A. Yes.**

Q. It says it's a draft. This is a draft memorandum of agreement between the historical interests and the parks or can you tell me who are the parties to this agreement?

MS. CHUDZIK: I'm going to object to the characterization of the document. I think it discusses the agreement; it's not the agreement itself.

MR. SEITZ: Thank you for clearing that up for me.

BY MR. SEITZ:

Q. It discusses a draft memorandum of agreement. Who was the memorandum of agreement between, do you remember or who would it have been between?

**A. It looks from the information here it would be between Delaware Historic Preservation and the New Jersey Office of Historic**



**Preservation.**

Q. Were you involved in the preparation of this memorandum of agreement that's referred to?

**A. No.**

Q. If you look down at the paragraph that has the smudge, the second paragraph, why don't you read that to yourself the best you can, okay. Then I'll ask you some questions about it.

**A. (Witness reading.) Okay.**

Q. I know it's a little hard to read, but would you agree with me that the gist of it is that New Jersey operated under, as it says here, a working assumption that because part of the structure that was being rehabilitated would be in Delaware waters that Delaware would regulate that portion of the project?

**A. I would read it to say that pier and/or wharf was constructed prior to any Supreme Court decision establishing where the state line was and**



**that the only portion of the rehabilitation that would actually be in Delaware waters would be the Newark that would surround the existing pier.**

Q. Right. So would you agree that the last sentence says, "...the new structure will therefore be in the State of Delaware?" Do you see that?

**A. I do read that.**

Q. As I understand it, maybe you can correct me if I'm wrong but there was an existing structure but a new one was going to be built around the old structure, correct?

**A. As I remember, it was just basically reinforcement work around the outside of the existing historic structure. It's like building of a bulkhead -- remember we talked about wharves earlier, this is something that I would call a wharf because it's a filled-type structure.**

Q. It says here, the rehabilitation of the pier will be

102

accomplished by building new structure around the existing pier and that's what you're talking about, right?
**A. Correct.**
Q. The new structure will, therefore, be in the State of Delaware. Did you understand that to be the case when you were processing this permit application, mainly that part of this would be in the State of Delaware?
**A. I knew that there was a portion of the overall project that was going to be in waters in the State of Delaware. I don't know that this particular memo, since it wasn't copied to Land Use Regulation, would have been in our permit file. So I can't say. I mean, I can say I don't know -- I would have known it was going to be in Delaware waters except like in the other projects we reviewed, we would have taken a position that we had the ability to issue waterfront development permits for structures outshore of our shoreline.**

103

**And I believe that the whole rehabilitation was subject to our jurisdiction.**
Q. Let me clarify that a little bit. When you say subject to your jurisdiction, are you saying that it was exclusive to New Jersey or that Delaware might also have jurisdiction?
**A. We knew that Delaware -- there's a difference between the project and the pier. So we knew that there was Delaware jurisdiction over portions of the project because there was also rehabilitation work on Pea Patch Island but I would not have taken the position -- it's not -- I can't say for sure. It's not likely I would have taken the position that Delaware also had the authority to approve this particular work or needed to approve this particular work.**
Q. Let's look at Exhibit-21, which is a DEP Land Use Regulation Program application form, okay?

104

**A. Okay.**
Q. The applicant name is New Jersey DEP, Division of Parks and Forestry. This is a document bearing New Jersey Bates number 5423 to 5439, okay?
**A. Yes.**
Q. If you look, this is an application by DEP for the Fort Mott State Park project, correct?
**A. Correct.**
Q. It talks about rehabilitation of the pier, right?
**A. Yes.**
Q. That was the goal of the project. Then if you turn to the second page under permit modification, are you with me?
**A. Yes.**
Q. It says, State - Delaware Department of Natural Resources and Environmental Control. Then it also refers to US Army Corps?
**A. Correct.**
Q. So I think you said earlier

105

that it wouldn't have been your understanding that Delaware had any jurisdiction but here we have a form where DEP is saying as part of the permit modification that the State of Delaware is part of the process, correct, for the pier?
**A. It says there are other permits -- well, for clarification for starters, this wouldn't be under permit modification. It would be under the section with where -- I mean, the section of LURP form is for people tell us what other permits that they know are going to be necessary.**
Q. Okay.
**A. So it's not permit modification. It would be other where they then specify the Army Corps of Engineers and specify the State Department of Natural Resources for Delaware.**
Q. Correct.
**A. But it doesn't necessarily**

106

specify since we already knew that portions of the project as referenced on the first page were on Pea Patch Island, it wouldn't necessarily be clear to me by reading it that this was for the pier and not for Pea Patch Island, without looking at some other supporting documentation.

Q. Do you know whether there were any approvals necessary from Delaware for what was going on on Pea Patch Island?

A. If there was -- well --

Q. Because this is talking about the pier.

A. It's unspecified as to any improvements that may have been occurring on Pea Patch Island or at Fort DuPont.

Q. There's a fee calculation here, right?

A. Correct.

Q. What's that fee calculation based on?

A. Waterfront Development Permit applications are based on a

107

percentage of what the total project costs are.

Q. Do you know whether the total project costs included any component for what was going to happen on Pea Patch Island?

A. As part of our fee calculations, we generally get a sheet where the applicant specifies how the fee was calculated. So by looking at that particular number, I couldn't tell you.

Q. I want to understand your testimony, though because we're going to get into some later documents that it's your testimony that as far as you were concerned New Jersey had exclusive regulatory authority over the pier being built as part of the Fort Mott project?

A. Correct.

Q. Let's look at deposition Exhibit-22, which is a document bearing Delaware Bates number 1797 to 1798.

A. Okay.

Q. This is a letter to Mr.

108

Cianfrani, who is with the Corps from an archeologist at the State of Delaware, okay?

A. Yes.

Q. In here Delaware took the position, would you agree, that because the pier is located within the State of Delaware they were participating in the review process for the Army Corps permits?

A. That is the position.

Q. Turning to the next exhibit, which is 23, which is a document bearing Delaware Bates number 1801, we have a letter from DNREC William Moyers who is the program manager of Wetlands and Subaqueous Land Section to New Jersey DEP where the State of Delaware waives the water quality certification. Do you see that?

A. Correct.

Q. Why was Delaware waiving the water quality certification if it had no regulatory authority over this project?

109

MS. CHUDZIK: Again, I'll object on the basis of foundation. I'm not sure he has the ability to testify to this.

THE WITNESS: It would appear from reading the letter that this -- this is generated in response to a question raised by the Army Corps of Engineers who would need a water quality certificate to allow the work to go forward.

BY MR. SEITZ:

Q. Why wouldn't they ask New Jersey for that?

MS. CHUDZIK: Same objection.

THE WITNESS: Our permit that we would have issued would have automatically included the work quality certificate as part of that.

BY MR. SEITZ:

Q. I apologize for being

confused a little bit, but if New Jersey issued the water quality certificate --
**A. Correct.**
Q. -- why was the Army Corps of Engineers asking Delaware for a waiver?
MS. CHUDZIK: Again, object based upon foundation. I'm not sure he's competent to testify to that.
THE WITNESS: I don't know.
BY MR. SEITZ:
Q. Let's look at Exhibit-24 please, which is a document bearing Delaware Bates number 1802 to 1808, which contains a Subaqueous Lands Lease granted by the State of Delaware to New Jersey Department of Environmental Protection. Do you see that?
**A. Yes.**
Q. If New Jersey had exclusive regulatory jurisdiction, why was New Jersey asking Delaware for a subaqueous lands lease?
**A. I believe the lease not only**



**addresses reconstruction of the pier but an additional area outside of the pier structure.**
Q. Let's look at the title of the lease. For the reconstruction of a pier to include a placement of a barge 30 feet by 100 feet and a pile-supported platform 10 feet by 10 feet on the Delaware River in New Castle County adjacent to New Jersey Fort Mott State Park. So that lease includes the pier, does it not?
**A. It would appear to, yes.**
Q. Back to my question, why is New Jersey DEP asking Delaware for a subaqueous lands lease if New Jersey takes the position that it has exclusive regulatory jurisdiction over this project?
**A. I don't know.**
Q. So does that cause you to question your statement that New Jersey was, in fact, asserting exclusive jurisdiction over the pier as part of the



Fort Mott project?
**A. No.**
Q. This contradicts that opinion, does it not?
**A. It would appear to.**
Q. Do you know who at New Jersey DEP made the request for a subaqueous lands lease?
**A. No, only that it came from the Division of Parks and Forestry and probably would have -- it would appear to have been Department Director Carl Nordstrom based on the signature on page 1808.**
Q. Who is Carl Nordstrom?
**A. At the time he was Deputy Director of the Division of Parks and Forestry.**
Q. Do you know whether it was the policy of DEP to have documents like this reviewed by legal counsel before they were executed by representatives of the state?
**A. We have a lot of documents**



**that we generate reviewed by counsel prior to issuance, but I couldn't tell you, because it's a different division, whether it was their standard operating procedure to have it looked at prior to signing.**
Q. I'm going to skip 25 for now and move to 26. Exhibit-26 is a document bearing Bates number DE1885 to 1886, which is a letter from New Jersey DEP to a representative at the Delaware River and Bay Authority. Do you have that?
**A. Yes.**
Q. This is a 1997 letter. This is Carl Nordstrom again, the deputy director we were just referring to, correct, who wrote this document?
**A. Correct.**
Q. In the first paragraph it says that he has reviewed the land lease and then goes on to talk about the licenses that apply to this project. Do you see that?
**A. I believe so, yes.**

114

Q. He first refers to a tidelands resource license and you know what that is, right?
**A. Yes.**
Q. That would be a license issued by New Jersey, correct?
**A. Yes.**
Q. Then it refers to the Delaware subaqueous lease on the second page. Mr. Nordstrom says, the division also accepts full responsibility for the renewal of this lease for the initial and renewal term of our proposed agreement. Do you see that?
**A. Yes.**
Q. Would you agree with me that this, once again, is inconsistent with your opinion that New Jersey had exclusive regulatory authority over the pier at Fort Mott?
**A. It would be appear to be inconsistent with my position, yes.**
Q. Looking at Exhibit-27, which is a document bearing Bates number DE1976

115

to 1980, Mr. Broderick, this is subaqueous lands lease granted to New Jersey DEP for the reconstruction of the pier granted February 7, 1996. Do you see that?
**A. Yes.**
Q. The question I would ask you again is, is this document also inconsistent with your opinion that Delaware had exclusive regulatory jurisdiction over the Fort Mott project?
MS. CHUDZIK: Just for purposes of the record, I think you might have meant New Jersey in that question.
MR. SEITZ: Thank you for clearing it up if I got it wrong.
BY MR. SEITZ:
Q. Does this document, is it inconsistent with your opinion that New Jersey has exclusive regulatory jurisdiction over the Fort Mott project?
**A. Again, it would appear that way, yes.**

116

MR. SEITZ: I'm going to skip Exhibit-28 as well. Everyone is going to be confused. I want the record to be clear, that I did not use Exhibit 28 or 25.
BY MR. SEITZ:
Q. Let's turn next to the boat ramp.
(Whereupon document was marked Broderick-29 for identification.)
BY MR. SEITZ:
Q. Mr. Broderick, we have put before you Broderick-29, which bears New Jersey Bates number 4413 to 4415. I believe this is the boat ramp rehabilitation that's referred to in your affidavit, correct?
**A. Yes.**
Q. And refresh my memory, did you have personal knowledge of this or you don't?
**A. I believe this was one of the ones where it was the time frame I was involved in the review but did not**

117

**have or don't have -- didn't remember it until the file review.**
Q. Do you have your affidavit there?
**A. Yes.**
Q. Paragraph 15, that's the boat ramp that we're referring to in Exhibit-29, correct?
**A. Correct.**
Q. There's a statement in your affidavit, at the boat ramp location mean low water is approximately 60 feet from the bulkhead and the ramp extends at least 30 feet beyond the mean low water line within the Twelve Mile Circle. Did you measure that?
**A. Physically measure it?**
Q. Yes.
**A. I wouldn't have, no.**
Q. Where did the information -- is that what somebody told you it was?
**A. No. It would have been information that would have been pulled from the permit file.**

Q. Does the permit file mark the mean low water line?
**A. Yes.**
Q. And did you look at the permit file and make this determination that the boat ramp location mean low water was about 60 feet from the bulkhead?
**A. That would have been where the statement came from, yes.**
Q. Did you do that or did someone else do that?
**A. No, I would have looked at it.**
Q. How did you figure out it was 30 feet beyond the mean low water line?
**A. Well, at this point I don't have access to the plans, so I couldn't describe how we arrived at the description.**
Q. Do you recall personally measuring it or how did it happen?
**A. All the plans we receive**



**with permit applications are scalable. It's simple enough to throw a scale on the plan and see what the distances are.**
Q. Looking at Exhibit-29, do you remember what or could you describe for me what was being done?
**A. It was essentially rehabilitation of an existing -- what would have been at the time a deteriorated concrete boat ramp?**
Q. And the boat ramp extended from above the high water mark to 30 feet beyond the mean low water mark?
**A. Correct, but it also had an upland component and it was proposing construction of parking spaces to promote usage of the rehabilitated boat ramp.**
Q. Do you know what was involved? Was the old concrete taken out and new concrete poured or how did it occur?
**A. Generally that is what happens, they take out the old and put in -- it doesn't say expand it, so based on**



**this particular permit it would appear that they pulled it out and put it back into the same spot.**
Q. Do you know how long that concrete boat ramp had existed at that location?
**A. No.**
Q. If you look in Exhibit-29, it appears that there is a riparian instrument that would accompany it; is that right?
**A. Correct.**
Q. Does that tell you that there was a riparian grant that accompanied the first construction of the ramp or is that too hard to tell?
**A. You wouldn't be able to tell by reading this how extensive the riparian instrument was.**
Q. Do you know whether anyone at Delaware whether at DNREC or otherwise was aware that this work was being done?
**A. Not that I know of.**
Q. As far as you're aware, no



one within your department had informed Delaware that this permit was being requested, correct?
**A. Not that I know of, no.**
Q. Let's turn to the next exhibit, please?
(Whereupon document was marked Broderick-30 for identification.)
BY MR. SEITZ:
Q. Mr. Broderick, we have marked as Exhibit-30 a document bearing New Jersey Bates number 4416 to 4418, which is a permit which is referred to in the last paragraph of your affidavit, correct?
**A. Correct.**
Q. And could you tell me -- first of all, I think you said you did not have personal knowledge of this installation; am I correct?
**A. Correct. It would have come from review of the file.**
Q. And it looks like there was 113 linear feet of 30-inch PVC storm

122

water force main pipes with a 30-inch steel goose neck for discharge into the Delaware River?
**A. Correct.**
Q. Then it also looks like there was rip-rap between beneath the proposed goose neck on an intertidal beach area?
**A. Correct.**
Q. Do you know whether the intertidal beach area for this permit application is above or below the mean water line?
**A. It's not specified in this document. We wouldn't be able to tell without looking at the development plans for the case.**
Q. In your affidavit there's a statement that the improvements through the intertidal beach area extend approximately 9 feet beyond the mean low tide line within the Twelve Mile Circle. Do you see that?
**A. Yes.**

123

Q. Do you recall how you would have come up with that 9 feet?
**A. One of our standard requirements for submission of a waterfront development permit is that the plans need to contain a certain set of information. We generally ask for mean low water line, the mean high water line, limits riparian conveyance, generally structures on adjacent properties, those sorts of things. So in just simply being able -- if you received a plan that satisfied all those say even those limited requirements, then you would be able to tell how far it extended out beyond the mean low water line.**
Q. Is it fair to say that this is extension of storm water pipes for drainage into the Delaware River?
**A. Yes.**
Q. So just stepping back from this project for a second, in your affidavit from all of the documents that you reviewed, including the computerized

124

database from 1980 to present, you have come up with five examples of projects that originate with the New Jersey shore and extend past the mean low water line into Delaware territory within the Twelve Mile Circle, correct?
**A. That is true.**
Q. And of those five we have discussed three of them -- DuPont, Keystone and Fort Mott, whereas we have seen today through the documents Delaware also exercised some kind of joint jurisdiction with New Jersey over those projects, correct?
**A. That is true.**
Q. So the remaining two projects where we don't appear to have any Delaware connection are a replacement of concrete boat ramp and a 9-foot encroachment of a storm water pipe into the Delaware River, correct?
**A. Correct.**
Q. For the 9-foot encroachment into the Delaware River, are you aware of

125

anyone in New Jersey informing Delaware that the project was being undertaken?
**A. No.**
Q. Let's turn to the Crown Landing project for a second before we conclude here. What has been your involvement, if any, with the Crown Landing application to build the LNG terminal?
**A. I would say my involvement to date has been very limited.**
Q. What's your limited involvement?
**A. The way that the department is currently structured, applications that require dredging and/or are considered port development are handled by the office of Dredging and Sediment Technology. They mostly arose -- it used to be all the waterfront development permits used to be handled by our office, but after -- or as we were going through some of the dredging problems up in Newark Bay and on the Hudson River for**

126

port continuance it was felt that the dredging function was better handled and/or associated with site remediation program. So there was a small breakout group that was pulled and placed under what's called the Office of Dredging and Sediment Technology. They report to the director of Site Remediation. But also associated with Crown Landing project are several gas lines to take the gas away from the proposed LNG site. That's been my primary area of focus in that right now the project -- or those permits have been withdrawn because it was my position that the permits were really not right for consideration since we didn't know first of all the result of this court case and as a result whether or not that project would ever actually move forward. So it didn't make sense from a management perspective to assign staff to a permit that would take a lot of work for the gas lines if it was never going to happen. So that's been my area of involvement.

127

Q. Are you talking about gas lines on the land or under the water?

A. This would be gas lines coming from the eventual LNG site itself. So it would be -- there would be upland waterfront development jurisdiction. There would be Freshwater Wetland Protection Act jurisdiction. There might be some Flood Hazard Area Control Act permits required, but it would be basically from the inland -- from the facility. If this is the water, the crack in the table is the water, here's the facility would be the pipes coming from the facility moving eastward (witness indicating).

Q. In other words, when you were point to your example on the table, basically all the activity on the upland side which might include some wetlands?

A. Correct.

Q. So it doesn't deal with any issue of dredging in Delaware waters, correct, or Delaware soil?

128

A. No.

Q. Other than that involvement, have you had any other involvement with the Crown Landing project? You did this affidavit, obviously?

A. Right. This doesn't necessarily address Crown Landing. It's -- I know the department is reviewing it. I have not looked at the impact statements associated with it. A lot of the information that I know was being submitted is all propriety because of Homeland Security, so they're keeping a fairly close lid on it.

Q. What regulatory approvals would have to go through you, I think you said your involvement was with the dredging aspect of it; is that correct?

MS. CHUDZIK: I'm going to object on relevance. I believe there is limiting language in the Order of the Special Master with regard to discovery permits regarding this project.

129

THE WITNESS: I would not be involved. That's the other office. That's the Office of Dredging and Sediment Technology that's involved with the dredging.

BY MR. SEITZ:

Q. Permits for this project don't go through you for the Crown Landing project don't go through you?

A. Other than the gas lines.

Q. Other than what you already said?

A. Right.

Q. Have you been involved in any discussions with anyone about the impact of the 1905 Compact on tbe ability of the Crown Landing project to proceed, other than with your attorneys?

A. No.

Q. You haven't been to any meetings with anybody at DEP discussing how the Compact has impacted the Crown Landing project?

A. No discussions other than

130

some that have occurred with counsel.
Q. Are you aware of any examples where New Jersey objected to Delaware exercising concurrent jurisdiction with New Jersey for projects within the Twelve Mile Circle?
A. I can't remember any objections from either side.
MR. SEITZ: Give me a couple of minutes.
(Whereupon a break was taken.)
BY MR. SEITZ:
Q. Mr. Broderick, I brought with me, through great personal trouble, a bunch of maps. These bear Bates number DE28987 through 28992, okay. These maps are titled 1934 Mean Low Water Line Delaware-New Jersey. They are in sections which you will see cover the Twelve Mile Circle sections 1 through 6. And on these charts or these maps I'll represent to you there's a yellow line that's drawn here. The purpose of that yellow line is to mark the 1934 mean low

131

water line. It's essentially an overlay of that onto the shoreline as of 2005, okay?
A. Okay.
Q. So since you're an expert on every inch of this coastline going down the Delaware River and up the coast, let's look at the Delaware River section here. I wonder if you could, we're looking at section 1 and I'm pretty sure, correct me if I'm wrong, that what we see the dock extends out on section 1 right below the tanker that appears to be anchored out in the middle of the Delaware River, that's the Keystone project; is that correct?
A. That's what it appears to be, yes.
Q. And then if we go further south, what I really need you to do or to help me with is to identify where the boat ramp is and where the outfall pipe projects, if you can, on these maps.
A. This is Pennsgrove so I

132

think we're still further south. Pennsville, I think is still south of here.
Q. Correct. The Delaware Memorial Bridge is section 3, correct.
A. Correct.
Q. We're looking at section 4 now below the middle of it --
A. This would be Fort Mott.
Q. -- we're looking at a pier that extends out in the bottom half of the map which is probably Fort Mott. That probably is farther south than the two we're looking for, right, the boat ramp and the pipe?
A. Right. Can I see --
Q. Take look a section 3?
A. Yes.
Q. I think you're looking at the town of Pennsville south of the Delaware Memorial Bridge there. The first thing you see along the Jersey shoreline appears to be a jetty of some sort and there appears to be some kind of

133

dock structure here, bottom left-hand corner.
A. You really can't tell from this particular photography where those projects are located.
Q. Here's my attempt at a point, okay?
A. Yes.
Q. These maps try to recreate the 1934 mean low water line by the yellow line that follows the Jersey coastline.
A. Okay.
Q. And when in your affidavit you made the point that the outfall pipe went 9 feet past the mean low water line and the boat ramp I think of you made the point that it extended 30 feet past the mean water low line. Do you know when the mean low water line was calculated or when it was established that was used in your affidavit?
A. Unless it was contained -- well, we require that people use existing

**conditions when they apply for permits. When you look at the mean high water line it's a 19-year average compiled by the Army Corps -- of elevation changes. It ends up being set at a certain elevation that then you can tie back into local land benchmarks to determine where the mean high and the mean low water line is. Without looking at the development plan for those projects, you wouldn't -- I couldn't tell you what datum points were used or whether they're even accurate.**

Q. So is it fair to say that for all of the projects, all of the five projects you identified, that it's uncertain whether -- let me try it again.

For all of the five projects that you identified it's unclear whether any of those projects extended beyond the mean low water line as it existed in 1934?

**A. That would be an unknown.**

Q. You didn't mean to convey that in your affidavit? You weren't



tying it to 1934, you were tying it to existing conditions or a 19-year average or whatever the people used as part of their submission, the datum, to determine mean low water line, correct?

**A. Correct.**

Q. So it wouldn't be correct to rely upon those figures for extension beyond mean low water line if the low water line reference point was 1934 mean low water line, correct?

**A. I don't know that we would use a 1934 mean low water line.**

Q. That's a legal issue which the lawyers will fight over what the appropriate mean low water line is. I'm trying to establisb as a factual matter you did not intend to represent to The Court in your affidavit that those distances beyond the mean low water line were tied to a 1934 establishment of the border, correct?

**A. No, that the was not meant to happen.**



MR. SEITZ: Thank you. I think that's all I have.

We're going to mark as Broderick deposition Exhibit-31 the maps we were just referring to, which are sections 1 through 6 of maps entitled 1934 Mean Low Water Line Delaware-New Jersey, prepared by W.S. Schenck on August 3, 2005. Thank you very much, Mr. Broderick.

(Whereupon document was marked Broderick-31 for identification.)

(Witness excused.)

(Deposition concluded at approximately 1:45 p.m.)



CERTIFICATE

I HEREBY CERTIFY that the witness was duly sworn by me and that the deposition is a true record of the testimony given by the witness.

Samantha A. Oakley
Certified Shorthand Reporter
Date: September 27, 2006

(The foregoing certification of this transcript does not apply to any reproduction of the same by any means, unless under the direct control and/or supervision of the certifying reporter.)

LAWYER'S NOTES

| PAGE | LINE | |
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IN THE SUPREME COURT
OF THE UNITED STATES

- - -

STATE OF NEW JERSEY :
:
V. :
:
STATE OF DELAWARE : NO. 134, Original

- - -

October 24, 2006

- - -

Oral deposition of RICHARD G. CASTAGNA, held at Richard J. Hughes Justice Complex, 25 Market Street, Trenton, New Jersey, 08625 commencing at 9:45 a.m. on the above date, before Teresa M. Beaver, a Registered Professional Reporter and a Notary Public in the Commonwealth of Pennsylvania.

- - -

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- - -

INDEX

- - -


| WITNESS | | PAGE NO. |
|---|---|---|
| RICHARD G. CASTAGNA | | |
| | By Mr. Attaway | 5 |


- - -

EXHIBITS

- - -


| NO. | DESCRIPTION | PAGE NO. |
|---|---|---|
| 1 | Affidavit of Richard G. Castagna | 13 |
| 2 | Affidavit of Richard G. Castagna | 59 |
| 3 | 1905 Compact | 95 |
| 4 | Letter dated 1/29/71 | 107 |
| 5 | Letter dated 2/19/71 | 107 |
| 6 | Letter dated 4/5/71 | 107 |
| 7 | Letter dated 10/15/82 | 107 |
| 8 | Subaqueous Lands Permit | 107 |
| 9 | Letter dated 3/1/06 | 107 |
| 10 | Letter dated 4/7/04 | 107 |




- - -

EXHIBITS (CONTINUED)

- - -


| NO. | DESCRIPTION | PAGE NO. |
|---|---|---|
| 11 | Agenda Technical Briefing Meeting | 107 |
| 12 | State of New Jersey Coastal Management Program - Bay and Ocean Shore Segment dated May 1978 | 115 |
| 13 | State of New Jersey Coastal Management Program - Bay and Ocean Shore Segment and Final Environmental Impact Statement | 115 |
| 14 | Options for New Jersey's Development Coast - March 1979 | 120 |




- - -

EXHIBITS (CONTINUED)

- - -


| NO. | DESCRIPTION | PAGE NO. |
|---|---|---|
| 15 | Proposed New Jersey Coastal Management Program and Draft Environmental Impact Statement | 127 |
| 16 | New Jersey Coastal Management Program - August 1980 | 127 |
| 17 | Permit - Issuance date September 24, 1991 | 145 |
| 18 | Memo dated 8/28/91 | 159 |
| 19 | Summary Analysis dated 9/24/91 | 159 |
| 20 | Memo daed 7/7/94 | 171 |
| 21 | Permit - Issuance date 1/24/96 | 178 |
| 22 | New Jersey's Responses to Delaware's First Requests for Admissions | 183 |

- - -

EXHIBITS (CONTINUED)

- - -

| NO. | DESCRIPTION | PAGE NO. |
|---|---|---|
| 23 | Ariel Photographs | 183 |

- - -



DEPOSITION SUPPORT INDEX

Direction to Witness Not to Answer

| Page | Line | Page | Line |
|---|---|---|---|
| None | | | |

Request For Production of Documents

| Page | Line | Page | Line |
|---|---|---|---|
| None | | | |

Stipulations

| Page | Line | Page | Line |
|---|---|---|---|
| None | | | |

Questions Marked

| Page | Line | Page | Line |
|---|---|---|---|



- - -

RICHARD G. CASTAGNA, after having been duly sworn, was examined and testified as follows:

- - -

EXAMINATION

- - -

BY MR. ATTAWAY:

Q. Good morning, Mr. Castagna.

**A. Good morning.**

Q. My name is Scott Attaway and I represent the State of Delaware in this case, New Jersey versus Delaware, filed in the Supreme Court of the United States. The docket number is Original Number 134.

Before we begin, I just want to establish a few ground rules. First, if you don't hear a question, please let me know and I'll repeat it.

If you don't understand a question, let me know and I'll try to rephrase it.

And let me finish my



question before you begin your answer and likewise, I will try to let you finish speaking before I continue, so the court reporter only has to take down one person at a time. Do you understand all these instructions?

**A. Yes, I do.**

Q. Is there any reason that might impede your ability to testify truthfully today; medication, for example?

**A. No.**

Q. Before we get started, I just want to note for the record at the request of Mr. Andersen, that I was just handed about ten minutes ago some documents Bates stamped New Jersey 7744 through -- sorry -- I reordered them by date. The sequential number is 7709 through 7744.

Is that correct, Mr. Andersen? Okay.

And these pertain to the Keystone project.

10

BY MR. ATTAWAY:
Q. Other than conversations with counsel, Mr. Castagna, and -- am I pronouncing your name correctly?
**A. That's correct, yes.**
Q. That's what I heard from others. I always like to ask.
What did you do to prepare for your deposition other than speak with counsel?
**A. I just reviewed my affidavit.**
Q. Okay.
**A. And that's what I did.**
Q. Any other documents?
**A. Any other documents? Just my affidavit and -- yeah, that's what I reviewed.**
Q. Okay. How many times did you meet with counsel to prepare? Again, I don't want to know the substance of what you talked about with your counsel.
**A. I believe three times.**
Q. Do you remember the dates?

11

**A. Last Thursday and last Friday.**
Q. Okay.
**A. And there was one prior date the week before. I don't recall.**
Q. With whom did you meet?
**A. With Mr. Andersen.**
Q. Anyone else?
**A. No.**
Q. Was --
**A. Well, I did also meet at this office here at an earlier date. And I believe Barbara was there.**
Q. Okay.
**A. And I also -- yeah, Barbara and Bill were both there.**
Q. Okay. Anyone else walk in the room while you were talking?
**A. That's all I recall.**
Q. Okay. Have you read the initial pleadings in this case?
**A. The initial pleadings? Briefly I looked them over, yes.**
Q. You submitted an affidavit?

12

**A. Yes.**
Q. Filed with those initial pleadings; correct?
**A. Yes.**
Q. Did you read the other affidavits that were submitted?
**A. No.**
Q. You just read yours?
**A. Yes.**
Q. You didn't read Stephen Whitney's affidavit?
**A. No.**
Q. Okay. Did you ever read an affidavit submitted subsequently by Mr. Andersen?
**A. Submitted by Mr. Andersen, no.**
Q. Have you read any of the transcripts of any of the depositions taken in this case to date?
**A. No.**
Q. Have you talked to anyone other than counsel in preparation for this deposition?

13

**A. No.**
Q. All right.
MR. ATTAWAY: I'd like to introduce Exhibit 1, which is your affidavit.
- - -
(Whereupon, the exhibit was marked Castagna-1 for identification.)
- - -
BY MR. ATTAWAY:
Q. All right. Your affidavit, first of all, let me lay a foundation. Is this the affidavit that you prepared and that was filed on -- I believe it was filed in July of 2005; although I see on the date it says June 27th, 2005 on your affidavit is this the affidavit that you prepared and that New Jersey filed with its initial pleadings?
**A. Yes.**
Q. Okay. The first sentence of Paragraph 1 says that you're currently the supervisor of the Southern Region of

14

the Bureau of Tidelands Management in the New Jersey DEP, which stands for Department of Environmental Protection. Is that still your position?

**A. No.**

Q. What happened since the filing of this affidavit?

**A. In October of 2005, I was appointed the acting manager.**

Q. Who did you replace?

**A. Jo Ann Cubberley.**

Q. How long was she the -- well, I take it she was the manager of the Bureau of Tidelands?

**A. That's correct.**

Q. Is there anyone above her in the Bureau of Tidelands?

**A. No.**

Q. To whom did she report?

**A. She reported to Mark Mauriello.**

Q. What's his position?

**A. At that time he was the director.**

15

Q. Of what?

**A. Division of Land Use Regulation.**

Q. So the Bureau of Tidelands is within the Division of Land use Regulation?

**A. Yes.**

Q. Let's just go up the chain from the manager of the Bureau of Tidelands to the commissioner.

So, Ms. Cubberley then and now yourself as acting manager report to the -- I don't know if it's still Mark Mauriello but you said his title was director of --

**A. At the time, he was the director. But he now is -- since that time, he has now become the assistant commissioner.**

Q. For --

**A. For Land Use Regulation.**

Q. Does the assistant commissioner for Land Use Regulation oversee the Bureau of Tidelands?

16

**A. Yes.**

Q. And also -- I thought there was a Land Use Regulation Division. I might have the terminology wrong. But maybe you can clarify my confusion here.

**A. There are a number of assistant commissioners.**

Q. Right.

**A. And I know that Mark Mauriello oversees the Bureau of Tidelands.**

Q. Okay.

**A. Okay. I'm not certain of his exact division, but I believe it's the land use -- assistant commissioner of Land Use Regulation. But that might not be the exact terminology.**

Q. And Mr. Mauriello or whoever is in his position as director of Land Use Regulation, then reports directly to the commissioner?

**A. At the present time, Mr. Mauriello, yes, reports directly to the commissioner, yes.**

17

Q. Is Mr. Mauriello also the assistant commissioner for the Coastal Management Bureau?

**A. I'm not certain. I'm not certain.**

Q. Do you know, is there a flow chart outlining the layers and the structure of the DEP that would set out these positions?

**A. I don't know, but there could be.**

Q. You haven't seen one?

**A. I haven't seen one.**

Q. All right. And you occupy the top spot in the Bureau of Tidelands?

**A. That's correct.**

Q. And then Paragraph 1 goes on to say that for 16 years before 1993, you were several types of environmental specialist.

When did you begin with the Bureau of Tidelands or at the DEP if you started somewhere else?

**A. Began with the DEP in May of**

18

1977.
Q. What was your position at that time?
**A. Senior environmental specialist.**
Q. So, that's encompassed within this sentence that begins for 16 years before that?
**A. Yes.**
Q. Before that, did you work somewhere after college?
**A. I was in graduate school. I was a graduate assistant and I taught earth science.**
Q. And what was your graduate school degree in?
**A. Geography.**
Q. Geography. And undergraduate?
**A. Geography.**
Q. Okay. You must like maps.
**A. I do.**
Q. I just want to go briefly through your position, starting in May of

19

1977 and just establish what your job duties were and who you reported to.
**A. Uh-huh.**
Q. And I'd like some detail but I also don't want to belabor it. We'll strike a middle balance.
**A. Okay.**
Q. Maybe I'll just start out and you can give me a narrative, starting in May of '77 and if I ask specific questions, then I'll ask them.
**A. Okay. Beginning in 1977 I worked for the Office of Environmental Analysis, within the New Jersey Department of Environmental Protection. I -- using aerial photography and maps, I delineated New Jersey's tidelands claims to lands now or formerly flowed by the mean high tide.**
Q. Starting in '77 --
**A. Until 1977 I was promoted to principal environmental specialist.**
Q. Okay.
**A. Where I supervised the team**

20

**who was charged with using aerial photography and maps to delineate the states tideland claims to lands now or formerly tide flowed by mean high water.**
Q. You went from supervising to principal environmental specialist pretty soon?
**A. Senior in 1977 to principal.**
Q. Okay. I misspoke.
**A. In 1979.**
Q. In '79. Okay.
**A. Yes.**
Q. I thought I heard '77.
**A. I started in '77.**
Q. Right. So, in 19 -- starting in 1979, it sounds like you were doing pretty much the same thing you were doing to begin with, with the maps and photography, aerial photography, but in the capacity of also supervising other folks doing the same thing?
**A. Yes. Yes. That's true.**
Q. And how long did that continue before you were promoted to

21

supervising environmental specialist?
**A. Well, in 1987, I came over to the Bureau of Tidelands management and my title was the same; principal environmental specialist.**
Q. Okay.
**A. And my role at the Bureau of Tidelands at this time was to assist the Attorney General's office and the Tidelands resource counsel in assessing the strength and validity of tidelands claims.**
Q. What does it mean to assess the strength and validity of tidelands claims?
**A. To determine the accuracy of the line, to provide support for the Attorney General's office. To certain the validity of the line.**
Q. And the line is -- what sort of line?
**A. The State of New Jersey has mapped all of its tidelands. And it was my role, when there was concern as to the**

22

placement of that line, as to its accuracy. I would, viewing photography and maps, I would support the states -- I was able to support the state's position.
Q. And what would the line delineate?
A. Lands now or formerly flowed by the mean high tide.
Q. Is it the case then that you would determine where the high tide line existed?
A. The mean high tide line, yes.
Q. Mean high tide line?
A. Yes; that's what we did.
Q. And that is -- is there any other sort of line that's included within the line that you were talking about?
A. No.
Q. So, just --
A. Just the mean high tide line.
Q. Just figuring out the line on the shore?

23

A. Yes.
Q. This mean high tide?
A. Yes.
Q. And I gather you look at averages over a certain number of years and vegetation marks and things like that to determine that?
A. We would look at historical maps and we would look at aerial photography.
Q. Okay. So, these maps that you started working on, from 1977 through at least 1987, and perhaps beyond, but we haven't gone that far yet, those were all concerns, only with the mean high tide line?
A. Yes. Yes.
Q. And once you joined the Bureau of Tidelands in 1987, then just tell me for more of your job history there?
A. Well, in, again, in 1987, I joined the Bureau of Tidelands. In 1990, I was promoted to a supervisor;

24

supervising environmental specialist.
Q. How did that change your job duties?
A. It did not change my duties. It was a promotion for my work.
Q. Okay. Did you have more people to supervise?
A. At that time, no.
Q. And between 1990 and 1993 --
A. In 1993, Joe Ann Cuhberley became the manager. At that time, I was asked to supervise the -- she regionalized the bureau. I was asked to be the supervisor of the Southern Region.
Q. Okay.
A. Of the Bureau of Tidelands.
Q. So, prior to that time, the bureau was not regionalized?
A. Yes.
Q. That was a new thing that she implemented?
A. Yes.
Q. And then she asked you to be the supervisor of the Southern Region?

25

A. Yes, that's correct.
Q. And you kept that position until it was last year when you were promoted?
A. Yes.
Q. In 1977, who did you report to?
A. At the time, the chief of the office was a gentleman by the name of Roland Yuhans.
Q. Could you spell that? Was it Roland?
A. Roland.
Q. Younghans?
A. Yeah. Y-U-H-A-N-S or something. I'm not certain.
Q. Just like it sounds?
A. Yeah.
Q. Okay. What was his position?
A. He was the bureau chief.
Q. Of --
A. The Office of Environmental Analysis.

26

Q. Was that connected with the Bureau of Tidelands in any way?
**A. There were two separate offices. We were the matching arm of the Bureau of Tidelands Management. We prepared the maps that the Bureau of Tidelands used to assert claims.**
Q. Okay. Did other bureaus within the DEP also use the maps that you created during that time?
**A. I don't believe so, no.**
Q. Okay. At least not to any large degree?
**A. No.**
Q. So, is it fair to say that at that time, the Office of Environmental Analysis was a division within the Bureau of Tidelands?
**A. Could you repeat that question?**
Q. You said that it was an arm of the Bureau of Tidelands. I just wanted to get a little more clarity on what that meant. I was just asking if it

27

was fair to say that the Office of Environmental Analysis, at that time, was within the Bureau of Tidelands or was it separate?
**A. It was separate. It was separate.**
Q. But your job was -- your work supported the work of the Bureau of Tidelands?
**A. Yes.**
Q. Supplied the maps --
**A. That they used.**
Q. Okay. Did there come a time when the Office of Environmental Analysis was either done away with or --
**A. Yes.**
Q. -- or changed?
**A. Yes. The office was disbanded.**
Q. Disbanded. That's the word I was looking for.
Do you remember about when that happened?
**A. About 1990.**

28

Q. So, you moved to Bureau of Tidelands in 1987, before the Office of Environmental Analysis was disbanded?
**A. It was disbanding.**
Q. Disbanding at that time?
**A. At that time. But the remains of the office, I believe, were still there for a year, a year or two afterwards.**
Q. Okay. How long did you report to Mr. Younghans and to whom did you report after that?
**A. I reported to Mr. Younghans from 1977 until Mr. Younghans' retirement in 1987. That's the same year I transferred.**
Q. Okay. And who did you report to when you transferred to the Bureau of Tidelands?
**A. James Johnson.**
Q. Did he have the same position that Joann Cubberley had and that you now have?
**A. Yes.**

29

Q. And that would be manager of the Bureau of Tidelands?
**A. Mr. Johnson was the manager at the time.**
Q. Okay.
**A. I'm not certain if that was his exact title, but he was the person in charge.**
Q. Okay. There was no one higher in the Bureau of Tidelands than Mr. Johnson?
**A. No.**
Q. Do you remember to whom Mr. Johnson reported? Is there an assistant commissioner or a bureau chief?
**A. I'm not certain. It might have been John Weingart, but I'm not certain of that.**
Q. Do you recall what Mr. Weingart's title and/or job responsibilities were at that time?
**A. Director of coastal resources.**
Q. And who would Mr. Weingart

30

have reported to?
A. **I don't know.**
Q. Was he close to the top? Was it possible he reported directly to an assistant commissioner?
A. **It's possible; but I'm not certain of that.**
Q. So, there probably weren't many people, if any, between him and the assistant commissioner?
A. **I don't know.**
Q. For how long did you report to Mr. Johnson?
A. **Until 1993, when he retired.**
Q. And Ms. Cubberley took over?
A. **Yes.**
Q. What were your responsibilities between 1987 and 1990? Or did we already go over that? You were still doing the map and you were supervising other people; right?
A. **Uh-huh.**
Q. Anything to add?
A. **Between 1987 and 1990? I**

31

**think we went over that.**
Q. Okay.
A. **And then in 1993, we regionalized.**
Q. Right. How did your duties change in 1993 when you became the supervisor of the Southern Region?
A. **I was a supervisor of the region, Southern Region and we reviewed applications, tidelands applications and prepared those applications for review by the Tidelands Resource Council.**
Q. Okay. That was starting in '93?
A. **Yes.**
Q. Prior to 1993, had you reviewed any tidelands applications?
A. **No.**
Q. So, that was a pretty significant change in job duties; correct?
A. **Yes.**
Q. Did you still have responsibility for creating the maps,

32

delineating the high tide line?
A. **Well, the mapping was completed by that time.**
Q. Okay.
A. **But I can -- yeah, it was completed by that time.**
Q. As of what point in time did the maps you created establish the mean high tide line?
A. **Could you repeat the question?**
Q. It was not the clearest question.
My understanding is that the mean high tide can change over decades.
So, as of what point in time did you -- did you attempt in your maps to depict the mean high tide line?
A. **We used a base map from 1977 and we -- in areas where we showed the mean high water line, those were -- that was the mean high water line at that time.**
Q. And -- in the '70s? Did you

33

say '77?
A. **'77 or it could have been early '80s; when the mapping was done.**
Q. Okay. Okay.
A. **Or mid '80s; whenever that mapping was done, that was the line that was used.**
Q. And geographically, did you create the high tide, the mean high tide maps on the Delaware River?
A. **Did I personally?**
Q. Or did you oversee?
A. **I'm not certain.**
Q. Okay.
A. **I would have to look to see. I don't recall.**
Q. How many maps did you create or cause to be created during the portion of your career where you were dealing with maps, which I understand is 1977 through 1993?
A. **Well, there are 1,620 maps. And I would have had a hand in a few hundred of them. A few hundred of them.**

34

Q. Who would have done the others?
**A. A list of all the employees, you mean? Is that what you are asking?**
Q. You can generalize.
I thought you said you supervised, was it -- how many people did you say you supervised?
**A. During the mapping program?**
Q. Yes.
**A. Two.**
Q. And that's between 1977 through '93? Although I realize in the beginning you weren't supervising anybody.
**A. Well, there were four teams. I supervised one of the teams, if that would clarify.**
Q. There were three people on your team including yourself?
**A. Yes.**
Q. So, if the other teams had three people, that would be nine other people doing those?

35

**A. That's correct.**
Q. So, when you say you had your hand in a few hundred, it might be fair to say that you did close to 25 percent, if you were one of four teams?
**A. That's quite possible, yes.**
Q. I'm not asking for exact.
**A. I don't know an exact number. I've never counted how many I've done.**
Q. Do you remember whether those maps focused on a contiguous area of the coastline of New Jersey; such that they were focused in a particular geographic region or were they spread out in a more random manner?
**A. They were more random.**
Q. You might be doing one one way in the Hudson River and the next one the next day in the Delaware River?
**A. That's correct.**
Q. When you became supervisor of the Southern Region, you said you reviewed tidelands applications.

36

Did you have any other duties?
**A. I continued to assist the Attorney General's Office and the Tidelands Resource Council in assessing the strength and validity of our claims.**
Q. Just so I make sure I understand, when you are assessing the validity of your claims, you are talking about the fact of where the mean high tide line exists?
**A. Well, more in terms of formally tidelands; did they fill by natural means or artificial means.**
**I would review historical maps and aerial photography in an attempt to make a determination how those lands changed.**
Q. And was that to delineate lands that were owned by the state versus lands that were owned by private parties?
**A. I don't follow your question.**
Q. What was the significance

37

of -- why was it necessary to determine where the high tide line exists?
**A. Well, an applicant or a person would come before the counsel or say the state doesn't have any interest in my property. My property filled by natural means; not by artificial means. Just as an example.**
Q. Please go ahead.
**A. And by reviewing aerial photography and maps over a period of time, I can make a determination of how that property was filled.**
Q. Okay. What is your understanding of who would own the lands if they had been previously flowed by the tide but filled in at some point?
**A. If they were artificially filled in, the state would still own those lands unless they were previously granted.**
Q. Is that because the state is deemed to own lands that are flowed by the tide?

38

A. Yes.
Q. So, the state owns beginning at the mean high water line?
A. Yes.
Q. What was the process, starting in 1993, through today, that you would go through as a general matter, in reviewing tidelands applications?
A. **Application would come in. We would note any deficiencies on the application. If there's a -- if the applicant failed to submit paperwork, we would let the applicant know; if they failed to submit an appraisal or if he failed to submit a survey or if the documentation, we would write to the applicant and let them know.**
**If it was a grant application, we would expect to have a narrative appraisal. If an appraisal was not with the application, we would request an appraisal.**
Q. All right.
A. **For a license application,**

39

**no applications can be brought to the counsel until we have an approved waterfront development permit.**
**So, there was a process of a checklist of going through to see if everything is administratively complete.**
**When it is complete, we can proceed to present the application to the tidelands counsel for their review.**
Q. In Paragraph 1, there's a sentence, and it's on Page 26A, if you look at the page number at the top. I believe it's Page 2 of your affidavit but the numbering is from the appendix that New Jersey filed and there were other documents before this?
A. **Uh-huh.**
Q. It says, "The Bureau of Tidelands serves as staff to the Tidelands Resource Council in the Department of Environmental Protection in the State of New Jersey."
And then there's a site to the New Jersey statute.

40

What does it mean to say that the Bureau of Tidelands serves as staff to the Tidelands Resource Council?
A. **That's essentially what we do. We serve as their staff. We make the applications ready for their review.**
Q. What is the Tidelands Resource Council?
A. **It's a 12 member voluntary board, appointed by the governor, but makes the initial decisions on whether or not to approve tidelands applications.**
Q. Are they paid?
A. **No.**
Q. Hence the word volunteer.
A. **Yes.**
Q. Do you know how long they serve?
A. **They serve, they have a term but it can be renewed.**
Q. What is the standard term?
A. **I believe -- I'm not certain but I believe it's four years.**
Q. What sort of -- I'm sorry.

41

You've probably answered that already.
You mentioned the permits that waterfront development permits and other permits are required before you can issue a tidelands grant or lease.
Do you give the Tidelands Resource Council information on whether those permits have been approved in order to enable them to make their decision?
A. **The application cannot go to the council unless the permit is approved.**
Q. Okay.
A. **So, it is understood, if the application is before them, that the permit has been approved.**
Q. Okay. So, in doing your job, at the Bureau of Tidelands as staff to the resource council, you would be required to make sure that the waterfront development and other environmental permits had been granted by the other divisions in the DEP before you could forward the application to the Resource

42

Council; correct?
**A. The waterfront development department is what we're looking for.**
Q. What about the acronym CAFRA; do the CAFRA permits have to be approved before the riparian conveyance can occur?
**A. If it's a condition of the waterfront development permit, then yes. So, we look for that waterfront development permit which may have other conditions.**
Q. And you make sure whatever those conditions are --
**A. We're looking for that permit; whatever that waterfront permit is.**
Q. Do you then forward the actual permit to the Tidelands Resource Council?
**A. No.**
Q. But you look at the permit yourself?
**A. We do look at the permit,**

43

**yes.**
Q. Further down in the Paragraph 1, the last sentence says "Since 1869 the council and its predecessors has been the agency initially responsible for determining whether the state should make any grant, lease or conveyance of state riparian lands and rights under the laws of New Jersey."
There's a phrase grant, lease or conveyance.
What is your understanding of the meaning of those three terms?
**A. Well, a grant is the deed for the state's riparian interest in a property.**
**A lease is a rental agreement for the state's riparian interest in a property.**
Q. Does a conveyance have a distinct meaning?
A. **Well, a conveyance is a sale. It more relates to a grant.**

44

**We're conveying land.**
Q. Is a grant not a sale of land?
**A. Well, what I'm saying is a grant is a deed. It's a sale of land.**
Q. Okay. So, a grant and conveyance --
**A. Can he used.**
Q. Are synonyms?
**A. Yes.**
Q. Is there any context you can think of where they would have different meanings?
**A. Not at this time.**
Q. State riparian lands is a phrase that you use here.
What is your understanding of the meaning of state riparian lands?
**A. Again, lands that are now or formerly flowed by the tide.**
Q. Does New Jersey still grant or convey lands, state riparian lands as you called them here?
**A. Yes. The state does still**

45

**grant riparian lands.**
Q. How many such grants, leases or conveyances have you worked on in your tenure at DEP?
**A. I cannot -- I don't know.**
Q. A lot?
**A. Yes, a lot. I -- I don't know the number.**
Q. In the hundreds? In the thousands?
**A. How many grants, leases or licenses? I would say in the thousands.**
Q. Around 1,000, give or take? You don't have to be exact. I just want to get a ballpark.
**A. Since my tenure with DEP? I would say a few thousand.**
Q. A few thousand. All right.
And that's all in the Southern Region?
**A. Yes.**
Q. Where does the Southern Region turn into what I would assume would be the Northern Region?

46

A. If we begin on the Atlantic coast and we begin with Atlantic County, we move south to Cape May County, over the Cumberland County and then proceed north along the Delaware up to Mercy County here in Trenton.
Q. So, everything from Atlantic City more or less is the Northern Region?
A. From Atlantic City --
Q. Or wherever Atlantic County ends?
A. Yes.
Q. Somewhere north of Atlantic City but probably not too terribly far?
A. Uh-huh.
Q. Do you have any idea -- I mean -- well, let's see. You said you worked on a few thousand riparian grants, leases or conveyances between -- would that be between 1993 and today?
A. Yes.
Q. What I meant to ask, and my question was not specific, but I was -- in -- had in mind the time when you were

47

reviewing tidelands applications as opposed to creating the maps for others to use.
So, is it -- so, that few thousand number is basically from 1993 to 2006?
A. Yes.
Q. Do you have any idea, within the Southern Region, how many such grants have been issued, beginning in the mid 1800s?
A. That's in my affidavit. There's a record in my affidavit, which speaks to that.
Q. Are you talking about Paragraph 8, that goes through the specific grants? I'm talking much more broadly; like how many grants has the bureau -- the Tidelands Resource Council and its predecessors issued in the Southern Region?
A. Oh, in the entire Southern Region?
Q. Right.

48

A. Since 1869?
Q. Right.
A. I could not begin to know. I mean thousands.
Q. Thousands and thousands?
A. Thousands.
Q. In the Northern Region, those counties tend to be a lot more populus than the counties in the Southern Region, I would imagine; is that correct?
A. I'm not -- I can't say that for certain. I mean there was some --
Q. I'm thinking since it includes the Newark area, the Metropolitan area, the Hudson River?
A. If you're asking if more people live in North Jersey than South Jersey, I would say yes.
Q. Fair enough.
A. That's a fair statement.
Q. Fair enough.
Do you have any knowledge about approximately how many even, you know, just talking again in the

49

thousands, how many riparian grants, leases or conveyances have been issued by the Tidelands Resource Council throughout its history in the Northern Region?
A. Again, thousands.
Q. Would the Tidelands Resource Council have issued a lot more such grants in the Northern Region than in the Southern Region, throughout its roughly 150 year history?
A. I'm not certain of that.
Q. What does a grant, lease or conveyance of state riparian lands permit the grantee or do or lessee, as the case may be?
A. Could we break that question up? You asked me -- could you ask that again?
Q. When someone obtains a grant, lease or conveyance of state riparian lands, which I'm taking that language from the end of Paragraph 1 of your affidavit, what are they permitted to do, once they have that?

50

A. **The grant is a sale of land. And when you say what they were permitted to do, that is more focused on what the permit says.**

**We are -- the Bureau of Tidelands, when they grant land, it's a sale of land.**

Q. Okay. So, it doesn't authorize any particular activity to occur on those lands; is that correct?

A. **Well, for example, if -- if we were talking about a lease, for example, and a person wants to build a pier. It's kind of inherent, in building a pier, that the person would be able to access the pier with a boat.**

**But as far as any particular -- are you asking -- whether are they permitted to do certain things?**

Q. Are they permitted to load and unload particular types of cargo as a result of the -- let's say somebody built a pier on lands that were granted or leased and they wanted to unload

51

pesticides, for example.

Does the grant authorize them to do that?

A. **No. That's a permit.**

Q. Okay.

A. **But it's inherent in any construction of a pier that there will be some unloading and off loading of cargo; in order for the person to be able to access the channel.**

**But as far as what they are permitted to do, that's the focus of a permit.**

Q. Okay. So, that's a completely different issue?

A. **Yes.**

Q. From the riparian grant lease?

A. **Yes.**

Q. In Paragraph 2 starts off "Is the staff of the bureau is the custodian of the records of the actions of the council and its predecessor agencies."

52

Do I understand from that that the bureau keeps all the records of the actions of the council from its origination?

A. **We keep all of the records from about the 1870s.**

Q. And did you review all those records in preparing your affidavit?

A. **Did I review all the records? No.**

Q. Let me try asking it this way.

The following sentence starts out "In preparing this affidavit, I have reviewed those records." What is included in the phrase "those records"?

A. **Well, we're referring to the actions of the council, which are a part of what I've mentioned in -- I talked about my affidavit, specific grants or licenses that were issued by the council. Those are the ones that I did review.**

Q. Okay. In those records of actions by the counsel, did you see any

53

discussion of any particular activities that would be occurring on a structure that was authorized under the grant?

A. **If I did, they would have been permitted activities. They would have had to have had activities that would have been a separate portion of this. Okay?**

Q. Okay.

A. **In addition to getting the grant, the applicant would have had to have gotten the necessary approvals by any state, local or federal jurisdictions on the top of activity.**

Q. Can the grants or leases be issued without the issuance of the other required permits?

A. **Can you give me an example of what you're referring to? Any grant be issued --**

Q. Well, let's say there was a pending application for a waterfront development permit.

And also an application for

54

a lease of the lands that the applicant wanted to use.

**A. Well, like I had previously said, the counsel will not approve an application unless the permit has been approved first.**

Q. All right. Does the Tidelands Resource Council concern itself with whether a project crosses from New Jersey into another state?

**A. No.**

Q. Does the Bureau of Tidelands concern itself with the issue of whether a project crosses a boundary from New Jersey into another state?

**A. No.**

Q. So, the Bureau and therefore the Tidelands Council would basically look to see if the project was authorized under New Jersey laws and wouldn't consider one way or another whether another states laws might apply?

**A. Yes.**

Q. In Paragraph 2 also, you

55

mentioned "The laws of New Jersey concerning legislative riparian grants."

What laws do you mean to refer to there?

**A. Well, prior to 1871, the grants, conveyances, were issued by the legislature.**

Q. So, that's all -- this phrase only refers to the laws of New Jersey from 1871 back?

**A. Well, the laws of New Jersey concerning legislative riparian grants. Those are the grants issued prior to 1871.**

Q. You're talking about the grants issued directly by the legislature as opposed to issues by the Tidelands Resource Council?

**A. Or its predecessor.**

Q. I assume those were issued under the authority of the legislature; correct?

**A. Yes.**

Q. That's why I just wasn't

56

clear about what this --

**A. Yes.**

Q. -- included. But you just meant 1871 and before. What portions of the record compile the New Jersey versus Delaware did you review?

**A. Can you be more specific? When you say --**

Q. Well, your affidavit in Paragraph 2 -- sorry I didn't point you to that but I'm just going through it -- it says -- this is a list of what you reviewed. And the next thing in the list is "Portions of the record compiled in New Jersey versus Delaware."

**A. 1934 proceedings. I had just looked through some of the proceedings but did not look in any kind of depth at all. I just looked at the proceedings from 1934, the action.**

Q. Just very briefly, last in this paragraph you mentioned the response of Delaware to a Freedom of Information Act request concerning River Walk in

57

Penns Grove. What did that consist of?

**A. I don't recall.**

Q. You testified in New Jersey versus New York, another original jurisdiction case; correct?

**A. That's correct.**

Q. What was the nature of your -- were you a fact or expert witness in that case?

**A. I was an expert witness.**

Q. What was the area of your expertise?

**A. Delineation of tidelands.**

Q. I'm sorry?

**A. The delineation of tidelands and the interpretation of aerial photography and historical maps.**

Q. Was the purpose there to determine where the mean high tide line once existed?

**A. The purpose there was to identify the natural high water line at Ellis Island; describe changes to the island between the 18th century and the**

58

present.
Q. Are there other cases that you've testified as an expert?
A. Yes.
Q. How many cases were those?
A. Are you referring to cases that went to trial? Or just --
Q. Just cases that were filed. It doesn't matter how far they proceeded.
A. I know of a case in Atlantic County, back in -- I believe it was 1987, '86. I was accepted as an expert in interpretation of delineation of maps.
Q. What did that case concern?
A. It involved a riparian claim.
Q. So, your purpose was to figure out where the high tide, the mean high tide line existed?
A. Yeah, where the historical high tide line was.
Q. I want to introduce Exhibit 2, Castagna-2.
- - -

59

(Whereupon, the exhibit was marked Castagna-2 for identification.)
- - -
BY MR. ATTAWAY:
Q. I got this from the National Archives. You'll see at the bottom it says reproduced at the National Archives.
This is -- I've included the caption, affidavit of Richard Castagna and I just included the signature page, which is Page 18 and then beyond that, there's an Exhibit A, that is your resume and Exhibit B that has a list of cases in which you testified?
A. Yeah. There were a number of cases. I'm not sure if I was qualified as an expert in all of these.
Q. Okay.
A. I was just trying to recall which one I knew I was qualified as an expert.
Q. I don't want to belabor this but I want to ask you a couple of

60

questions about these.
There are nine cases listed here; correct?
A. Yes.
Q. Did all of these cases concern the establishment of the location of the mean high tide line?
A. No.
Q. Did most of them concern that question?
A. Yes.
Q. And was that the limit of your involvement or testimony in those cases?
A. In the cases that involve the location of high tide line?
Q. Right.
Maybe you can just tell me which cases those were by numbers?
A. Number one, location of the high tide line.
Q. Okay.
A. Number two, number three, number four, number five, number six,

61

number seven, those.
Q. Okay.
A. Eight and nine were not.
Q. Okay. I'll get to those in a minute. Of one through seven, did any of those concern the boundary between New Jersey and Delaware, in any way?
A. No.
Q. Have you ever been involved in another case that concerned the boundary between those two states in any way?
A. No.
Q. Did these seven cases essentially concern the line dividing the rights of private parties and the state with respect to lands abutting the coast?
A. Yes.
Q. Okay. But none of those were on the -- well, were any of these on the Delaware River?
A. No.
Q. Eight is Beal V Hill. What was that case about?

62

A. A drowning; a child drowned in Crosswicks Creek in Burlington County. And I was just, as a representative from the Bureau of Tidelands, I was just asked to answer some questions.
Q. And number nine?
A. That had more to do with photo interpretation. It was not directly related to tidelands. It had to do -- I don't recall the specifics. But it did not have to do with tidelands. It had to do with what was -- with photo interpretation. I don't recall the specifics.
Q. Okay. Fair enough. I think we're done with this exhibit.
MR. ATTAWAY: This would be a good time for me to take a break if everybody else is in agreement.
THE WITNESS: Very good.
- - -
(Whereupon, there was a recess commencing at 10:45 a.m. and concluding at 10:56 a.m.)

63

- - -
BY MR. ATTAWAY:
Q. Back on the record.
A. Is there something I can correct from what I said previously?
Q. Sure.
A. You had asked me who I had spoken to, what other attorneys. I did also speak with Rachael Horwitz and Amy Dolin. I just wanted to clarify.
Q. At the meetings that you mentioned?
A. At the meetings I had mentioned.
Q. Okay.
A. I just wanted to clarify that.
Q. Okay. I understand. You meet one attorney, they all just kind of run together.
A. They all ran together.
Q. Proceeding through your declaration, Paragraph 3 states that "Riparian rights in New Jersey have been

64

delincated by statute."
What is your understanding of the meaning of that phrase riparian rights?
A. Riparian rights are the right of an upland owner to utilize the water area in front of his property for purposes of constructing piers, docks, wharfs.
Q. Does an upland owner have a riparian right to load or unload any particular kind of cargo, such as pesticides, coal, energy?
A. Only if he receives a permit or if he makes an application to local, federal, state authorities and get permission to do that.
Q. Within New Jersey, where would that person apply to get permission to handle certain cargo?
A. That, I can't answer.
Q. Would the permit that was awarded for -- to authorize that activity be termed a riparian permit?

65

A. It's not -- riparian permit? There are riparian licenses. But you're asking me whether something that another office issued would be called a riparian permit? I don't know.
Q. Have you ever seen such a permit called a riparian permit; heard or seen it called that?
A. I'm familiar with waterfront permits but I've never seen on the top riparian permit, no.
Q. Have you heard it described as a riparian permit?
A. No.
Q. The next sentence in Paragraph 3 states "Riparian owners have no constitutional riparian rights."
What do you mean here by riparian owners?
A. Riparian owners are the owners of property adjacent to the water.
Q. So, is it the case that by owning property that is adjacent to the water, that the property owner acquires

66

riparian rights?
**A. Rephrase that question. Is it --**
Q. Is it the case that a riparian owner, by virtue of owning property that abuts waters, would obtain riparian rights?
**A. If he so desired; if he made an application to do that.**
Q. Okay. Is it fair to say that riparian rights are incidents of the ownership of property abutting the waters?
**A. What do you mean by incidents of?**
Q. Is it -- a riparian owner gets riparian rights by virtue of his or her ownership of the land abutting the waters; is that correct?
**A. Yes.**
Q. So, if someone owned a parcel that was say 500 feet inland, but did not abut the water, would that person have any riparian rights?

67

**A. If their property does not abut the water, no.**
Q. The rest of Paragraph 3 cites laws from New Jersey, both in the 1800s and the 1900s.
Have you done any legal studies, Mr. Castagna?
**A. No.**
Q. Do you work with these laws regularly?
**A. Well, they serve as the basis for what we do.**
Q. So, in the course of your job, have you occasion to read and interpret and understand the laws that you cite here in Paragraph 3?
**A. Yes.**
Q. Do you also consult with the Attorney General's Office in interpreting those laws?
**A. Most definitely.**
Q. In what context would you commonly consult with the Attorney General's Office? And just to be clear,

68

I don't want you to tell me anything that you've told the Attorney General's Office or that they've told you, because that would be privileged.
**A. Well, the interpretation of one of these laws, I would consult the Attorney General's Office.**
Q. Okay. Does that happen fairly commonly in the course of your day-to-day work?
**A. No.**
Q. I'm sorry?
**A. No.**
Q. How often would you say that an issue comes up that you need to consult the Attorney General's Office?
**A. With regard to these specific laws?**
Q. Well, with regard to these laws and the other laws governing the work that you do.
**A. If I have a question, I do consult the Attorney General's Office concerning some of these laws.**

69

Q. Does that happen regularly?
**A. Not that often, no.**
Q. Can you estimate, on average, how many times a year since you've been supervisor of the Southern Region and now manager?
**A. I would say once a month or once every couple of months I'll have a question.**
Q. Okay. Fair enough.
In Paragraph 4 and it's on page that's number 28A.
**A. 28A or 27?**
Q. The paragraph starts on 27A but I want to look at 28A.
**A. It continues. Okay.**
Q. Yes. The paragraph talks about several rights that riparian owners have. And then it says the exercise of this right is subject to obtaining applicable state environmental permits and a tidelands license.
And I take it that's just a restatement of what you've already

70

testified to today that a riparian grant doesn't authorize any particular activity if other permits are required; is that correct?

**A. Yeah, that's correct.**

Q. And then the next sentence talks about riparian owners having a common law right to accretion and also a risk of suffering a loss of their land by erosion?

**A. Uh-huh.**

Q. In your understanding, is that a riparian right that riparian owners have?

**A. Yes.**

Q. And I take it that that would be determined hy the location of the mean high tide line, which is determined -- which is determined in large part by the maps that you worked on throughout your career?

**A. Determine what? Where?**

Q. In order to determine accretion or erosion, what would you have

71

to look at first, to determine whether accretion or erosion had occurred?

**A. I would look at a series of aerial photography.**

Q. In order to determine what?

**A. Determine whether it was accretion or fill. If someone filled the property or if it built out naturally.**

Q. Okay. So, would accretion occur when the mean high tide line moved water ward?

**A. Accretion occurs when the mean high tide line moves water ward, yes.**

Q. And erosion occurs when it moves the other way and the landowner losses land.

Are there any other riparian rights that riparian owners have in your understanding?

**A. Well, they have the right to build structures in front of their property. And no one else could build those structures without their**

72

**permission.**

Q. Anything else you can think of?

**A. Right now, that's all I can think of.**

Q. And in Paragraph 5, it says, "Such in general were the riparian rights of property owners in New Jersey in 1905 or shortly thereafter; rights which continue to be in effect to the present day."

As a result of reading that, am I right to assume that your understanding is that the riparian rights of property owners haven't changed in any material way between 1905 and today?

**A. To go back to your other question, I mean another right of a property owner is to be able to reach a navigable channel and to construct wharfs or piers to enable him to do that.**

**They have the first right to do that. No one else could do that on their property without their permission,**

73

**but that's a right that they have to he able to reach that channel.**

Q. And that's a riparian right, in your understanding?

**A. In my understanding, that's a right to reach, to get a vessel out to the channel.**

Q. And you said earlier that the right to load or unload particular cargo, though, would not be included within that riparian right because the wharf owner would have to get a permit?

**A. They'd have to get a permit in order to do that but they have an inherent right to get out to thc main channel.**

Q. Next -- the next portion of your affidavit, there is a heading before Paragraph 6 and the heading states, "Action of the State of New Jersey asserting its riparian jurisdiction over the lands of the Delaware River within the 12 mile circle."

I'd like to break this down

74

first. What is the 12 mile circle?
**A. What is the 12 mile circle?**
Q. In your understanding.
**A. It's a circle that intersects portions of land that's offshore of New Jersey.**
Q. Where is it located, in general?
**A. It extends from Southern Gloucester County and includes most of Salem County.**
Q. And Southern Gloucester County, am I correct to say, that that's at the location where the boundaries of Pennsylvania, New Jersey and Delaware meet?
**A. I'd have to look at a map. I'm not certain of that.**
**You through in Pennsylvania there. I haven't addressed that issue.**
Q. Is Gloucester County north of Salem County?
**A. Gloucester County is north of Salem County, yes.**

75

Q. Let me try it this way: Where is the northern boundary of the 12 mile circle?
**A. In Logan Township; Gloucester County.**
Q. Is Logan Township near the Pennsylvania, New Jersey border?
**A. Well, Logan Township is in New Jersey.**
Q. If I were in a boat, heading north in the Delaware River and I were first adjacent to Salem County on my right and then I go further north and I'm adjacent to Gloucester County on my right.
At some point I would leave Delaware; correct?
**A. Yes.**
Q. And then what state would I enter if I continue up the Delaware River?
**A. If you continue up the Delaware River, New Jersey would be on your right and Pennsylvania would be on your left.**

76

Q. Okay. So, there's a point in the river where the boundary of Delaware or the State of Delaware stops and then north of that New Jersey and Pennsylvania own respective parts of the Delaware River; is that correct?
**A. I'd have to look at a map.**
Q. So the northern part of the 12 mile circle is in Logan township.
And what about the southern part?
**A. It's in Salem County.**
Q. Okay. Do you know about how much distance there is between the northern and southern parts?
**A. It's about 29 miles.**
Q. Where, within that 29 mile stretch, which also is within the 12 mile circle, does the boundary lie between New Jersey and Delaware?
**A. The boundary between New Jersey and Delaware is the low water line.**

77

Q. On which side of the river?
**A. On the New Jersey side.**
Q. Are you aware of a boundary agreement between New Jersey and Delaware about how to establish the mean low water mark, delineating the boundary between the states?
**A. Are you referring to the compact?**
Q. I'm referring to a more recent agreement between the two states, where the states mapped the boundary and agreed where the boundary would lie.
**A. No.**
Q. You're not aware of that?
**A. A boundary agreement?**
Q. Yes.
You're not aware of an agreement that establishes the mean low water line at the level that it existed in 1934?
**A. I was aware of the 1904 compact. And I was aware of the 1934 decision.**

78

**But after that, no.**
Q. Okay. Fair enough.
Do you know -- you said you created maps and reviewed more maps of the boundary.
Actually, you said you weren't sure if you created maps within the 12 mile circle earlier, we were talking about the Delaware River. But have you reviewed maps over time to see where the mean low water line existed at different points in time over the course of history?
**A. No.**
Q. Within if 12 mile circle?
**A. No. No.**
Q. Do you know whether there's been any accretion or erosion between 1934 and the present day within the 12 mile circle that would make the actual mean low water line have changed positions?
**A. I've not investigated that.**
Q. Okay. The heading also

79

includes the phrase riparian jurisdiction.
What is your understanding of riparian jurisdiction?
**A. Well, the sovereign authority of a -- of a state to regulate, tax and police the area between the shoreline or mean high water and a navigable channel.**
Q. When did you come to that understanding?
**A. When reviewing this application in this case.**
Q. And by this application --
**A. Excuse me. In this litigation.**
Q. Did you review the application filed by BP to build the crown landing project that's the subject matter of this litigation?
**A. We have an application for a -- an interim license in a lease. We have not yet received a permit. So, I have not yet reviewed in any depth.**

80

Q. So, it wasn't until this case that you came to the understanding that riparian jurisdiction includes a state's right to regulate, tax and police?
**A. Well, it's been my understanding, but I've focused in on it because of this particular case.**
Q. When did you come to this understanding?
**A. When did it come to my understanding? In the course of my work, the Bureau of Tidelands, it's my understanding that the jurisdiction of a riparian owner is to be able to reach a navigable channel. I've always known that. That's not anything that's -- that's the purpose of what the Bureau of Tidelands -- that's the purpose of any licensee. He wants to be able to reach navigable waters.**
Q. I just want to back up a step. You mentioned the location of the boundary on the 12 mile circle on the low

81

water line of the New Jersey shore.
When did you become aware of the location of that boundary?
**A. I have seen maps that showed the boundary line over the course of my tenure here; that shows the low water line.**
Q. Is it fair to say that early in your career, starting in 1977, that you were aware of the location of the boundary within the 12 mile circle?
**A. That's fair to say. I had seen a boundary line on maps that did show that.**
Q. Okay. What is your understanding of New Jersey's authority, regulatory authority within the 12 mile circle, over a project that begins in New Jersey, but extends into Delaware?
**A. It is my understanding that as far as my bureau, the Bureau of Tidelands is concerned, an applicant has the right to reach navigable waters.**
**And as defined in -- as I've**

82

been told by counsel.
Q. During what time period?
A. Whenever I've asked the question about our ability to -- the Bureau's ability to issue licenses or grants beyond the low water line, I've been told by my counsel we can do that.
Q. Starting -- what's the earliest time in which you developed that understanding?
A. I can't say for certain, but it goes back maybe ten years.
Q. If we're in 2006 now --
A. Some time when I became Southern Region supervisor.
Q. So, before you became Southern Region supervisor, you did not have that understanding?
A. Well, it never became an issue. Because my area of my concern was above the -- delineating the mean high water line.
Q. So, it just never came up and you never considered it?

83

A. It never came up.
When it did come up, I asked counsel the question about can we issue licenses or any riparian instruments and they said yes, we can.
And I followed my counsel's advice as to how I would handle those issues.
Q. When did you first face the question of whether you could issue a license for lands that extended into Delaware?
A. I don't recall.
Q. You started with the -- you said it was not before 1993; correct?
A. I don't believe it was.
Q. Do you remember in connection with what project this question came up?
A. Before you asked that question, I was thinking -- no, I don't. I don't recall what specific project. But I may have seen this low water line on the map. I asked counsel, I said we

84

can issue tidelands conveyances beyond that line.
Q. And you don't remember when?
A. No. No.
Q. Was it in 2005 when BP filed its application?
A. No. It was long before then.
Q. Do you know whether it was in connection with a structure that now exists in the 12 mile circle?
A. I don't recall.
Q. Later on, we're going to go through the specific grants that you've talked about in your affidavit and maybe it will come back to you which grant this question came up with regard to?
A. It may not have been a specific case. It just might have been a general question. I mean I'm not saying it was a specific case. It could have just been a general question. There's a line here and we -- what can we do. I was told that we can issue licenses,

85

leases and grants.
Q. I would just ask later when we go through those to keep it in mind. If it comes back to you, you let me know. I'll try to remember to ask you as well.
A. Okay.
Q. In Paragraph 7 of your affidavit, there are three perhaps within that numbered paragraph.
The third one states "From 1978 to the present, the council conditioned it's approval of a grant, license or easement on the applicants obtaining a New Jersey regulatory permit; together with all other required federal, New Jersey and local regulatory permits."
What changed in 1978?
A. I don't recall. I was not a part of this process in 1978; I just know that a separate permit was required.
Q. How did you get the information to include this fact in your affidavit?
A. Well, it's just common

86

knowledge in the Bureau that at some point in time, a separate permit was required from another bureau.

Prior to that, the permit was part of the grant package. Counsel approved both the permit and the license.

Q. So, prior to 1978, what sorts of permits would the counsel approve in addition to the riparian grant, lease or conveyance?

A. I wasn't here, so I don't know.

But I --

Q. Well, you just said that they approved permits, but you don't know what kind of permits they approved?

A. Well, they would approve permits for a particular activity that would have been part of the application.

Q. Can you recall any particular document that would establish that?

A. No.

Q. Do you recall having seen

87

one?

A. No.

Q. Can you think of any particular activity that was approved by the Tidelands Resource Council?

A. Prior to 1978?

Q. Yes.

A. Yeah. Within the 12 mile circle?

Q. Yes.

A. They are mentioned in my affidavit.

Q. I think your affidavit mentions the grants, leases and conveyance of land; but -- okay. Where in your affidavit does it show that the Tidelands Resource Council approved a particular activity to occur on the lands that were the subject of a grant, lease or conveyance?

A. Well, it was my understanding that prior to the approval of any tidelands conveyance, there would need to be also approval of the activity

88

by the state or local or federal authority.

Q. Would that approval have been given by the Tidelands Resource Council or by some other entity?

A. That approval would had to be given by some other entity.

Q. For the particular activities?

A. For the particular activity.

Whether it's federal, local or state; they would have to approve the activity.

Q. But the Tidelands Resource Council would not have anything to do with approving particular activities?

A. No. No.

Q. They would simply approve or deny the application to grant the lands?

A. Right; after 1978 there was a separate office that did the permitting.

Q. Okay.

A. Okay. But prior to that,

89

there may have been local or state or federal.

Q. But not the Tidelands Resource Council?

A. No, not the Tidelands Resource Council.

Q. I thought I -- I must have misunderstood your answer before.

A. No, they didn't approve permits.

Q. Or to approve particular activities, whether or not they were a permit or not but they did not; correct?

A. That's correct.

Q. You said earlier it was your understanding that New Jersey has the authority to issue grants, leases and conveyances of lands that belong to Delaware; is that correct?

A. Yes.

Q. How did you come to that understanding?

A. Through my counsel.

Q. In what time period?

90

A. As I said, some time -- since 1993.
Q. And I know we already went over this. Let me just try one more question about it.
Was it relatively early in your tenure starting in 1993 or was it more recent?
A. I believe it was earlier in my tenure when I became the Southern Region supervisor.
Q. Okay. What about New Jersey's regulatory authority within the 12 mile circle to issue or deny permits relating to particular activities?
A. I cannot address permitting.
Q. What is your understanding of Delaware's regulatory authority within the 12 mile circle as it applies to a boundary straddling project, if that term is clear enough?
A. I don't know.
Q. Have you ever considered it?
A. No.

91

Q. Prior to this litigation, do you know whether New Jersey has ever contended that Delaware lacks the authority to regulate boundary straddling projects within the 12 mile circle?
A. Prior to this -- I don't know; no.
Q. You're not aware of any?
A. I'm not aware of any, no.
Q. And by New Jersey, I mean yourself, anyone in the Department of Environmental Protectioo or anyone else employed by or represented by the state?
A. I can't speak to anyone else in the department.
Q. I'm just asking for your personal knowledge. I just want to clarify that when I said New Jersey, I meant a lot of people.
A. Yeah.
Q. So, you're not aware of anybody that represents the State of New Jersey or is employed by it that has contended that Delaware lacks regulatory

92

over a boundary straddling project; correct?
A. Could you -- could you just say the questiou again?
Q. Sure.
A. Just so I --
Q. Okay. Prior to this litigation, are you aware of any employee or representative of the State of New Jersey, that has ever stated that Delaware lacks the authority to regulate a project that straddles the boundary between the two states within the 12 mile circle?
A. Well, yes. Again, when I have consulted with my counsel, I was told that we are allowed, the Bureau of Tidelands, we have jurisdiction authority to approve tidelands conveyances out shore of any high water line -- of any low water line.
Q. Have you ever heard anyone say that that precluded Delaware from regulating activities to occur on those

93

lands; to the extent the lands bclong to Delaware?
A. No.
Q. Are you familiar with Delaware's coastal zone laws?
A. No.
Q. Delaware's Subaqueous Lands Acts?
A. No.
Q. Delaware's Coastal Zone Management Act?
A. No.
Q. Not even in the context of this litigation have you become familiar with those laws?
A. No.
Q. Are you familiar with any other Delaware permitting laws?
A. No.
Q. You mentioned the 1905 compact earlier.
What is your understanding of that document?
A. My understanding of that

94

**document is that the State of New Jersey has sovereign authority to issue tidelands leases, licenses and grants out to the main channel.**

Q. Do you have an understanding, based on that document, of Delaware's authority to regulate a project that straddles the boundary between the two states?

**A. No.**

Q. No understanding one way or the other?

**A. No.**

Q. Okay.

**A. Well, my understanding is they don't have the authority to regulate, insure of the navigation channel on the New Jersey side.**

Q. And how did you come to that understanding?

**A. That understanding is based on what I've read from the compact.**

Q. Okay. I'd like to introduce Castagna-3, which is a copy of the 1905

95

compact.

I just want you to identify where in the compact you base that understanding.

- - -

(Whereupon, the exhibit was marked Castagna-3 for identification.)

- - -

THE WITNESS: Article 7, each state on its own side of the river continued to exercises riparian jurisdiction of every kind and nature and to make grants, leases and conveyances of riparian land and rights under the laws of the respective states.

BY MR. ATTAWAY:

Q. When did you first read this language?

**A. The first time I read this was -- the beginning of this litigation.**

Q. What is your understanding of how this language applies to any

96

permitting activities by Delaware as applied to a boundary straddling project?

**A. Again, permitting activity -- I'm not here to address permitting activities.**

Q. You have no --

**A. That's not within my scope of knowledge.**

Q. Okay. So, just to clarify, have you no understanding one way or another about the meaning of Article 7 as applied to the authority of Delaware or New Jersey to issue permits regulating activities to occur on a wharf extending into Delaware?

**A. What I'm saying, I can't speak to that. It's not within my authority to speak to that.**

Q. Does that mean that you have no understanding?

**A. What it means is I don't have the knowledge about the permitting process.**

Q. Okay. Fair enough. Are you

97

aware of any occasion where Delaware has exercised regulatory authority over a project that straddles the boundary within the 12 mile circle?

**A. Yes.**

Q. On what occasions?

**A. There was a license application by DuPont this past summer for dredging and for the placement of rip-rap on the -- that straddled the boundary and it was actually inshore of the boundary.**

Q. And Delaware issued a permit for that?

**A. Yes.**

Q. Have you seen the Delaware permit?

**A. No.**

Q. How did you find out about it?

**A. I was told by the applicants.**

Q. Okay. Did you say anything to the applicants about whether they

98

needed to apply to Delaware?
**A. I told them they needed to apply to New Jersey.**
Q. Did you say anything about whether they needed to apply to Delaware?
**A. I said it was within our jurisdiction here. And I don't recall what I told them as far as Delaware.**
Q. Did you have any discussions with them about whether or not Delaware had any regulatory authority at all over the project?
**A. I don't recall.**
Q. Was anyone else -- who was present at that meeting, first for the DEP or anyone else associated with New Jersey?
**A. Well, I was there -- I don't recall the names of the parties of the representatives of DuPont.**
Q. Do you remember how many people there were?
**A. Three or four people.**
Q. Were you by yourself from

99

New Jersey?
**A. I believe so.**
Q. Are you aware of other occasions where Delaware has exercised regulatory authority over a boundary straddling project?
**A. In the scope of my knowledge, no.**
Q. Does your affidavit --
**A. Could I just check my affidavit?**
Q. Sure.
**A. In my affidavit, we were to turn to 37A.**
Q. You're referring to the discussion --
**A. The Fenwick Commons.**
Q. Did you attend any meetings with Fenwick Commons?
**A. No.**
Q. Regarding this?
**A. No.**
Q. Are you aware of any meetings between anyone from the State of

100

New Jersey and the representatives of Fenwick?
**A. No.**
Q. What is your understanding of Delaware's regulation of that project?
**A. I just know that they applied to the State of Delaware for this project.**
Q. Do you know whether Delaware approved it or not?
**A. I don't know.**
Q. Okay. Anything else? Any other occasions where Delaware --
**A. Can I review?**
Q. Please.
**A. Yes. An assignment of management rights; turn to Page 50A.**
Q. That's the Fort Mott project that you're referring to?
**A. The rehabilitation of the pier.**
Q. Okay. Did you attend any meetings or have any conversations about this project?

101

**A. No, because this was before the time I was -- I don't recall.**
Q. This was before the time you were what?
**A. The manager.**
Q. But you were supervisor of the Southern Region; correct?
**A. Right. But I don't recall attending any meetings.**
Q. And this is in the Southern Region; correct?
**A. Yes. But like I said, I don't recall.**
Q. And was there a tidelands conveyance in conjunction with this?
**A. It was a management agreement.**
Q. What is -- what do you mean by management agreement?
**A. Well, in turn for allowing public access, we allowed the Division of Parks and Forestry within the State of New Jersey, to use the area for free.**
Q. Okay. Did the Tidelands

102

Resource Council issue an approval for that to happen?
**A. Yes.**
Q. So, there is a tidelands instrument I think you called them?
**A. It's called a management agreement.**
Q. In the course of deciding whether to approve that or assisting your bureau, staff assisting the Tidelands Resource Council in this decision whether to approve the management agreement, did you determine whether or not the necessary permits had been granted?
**A. Well, the permits would have had to have been issued prior to the issuance of a management agreement.**
Q. And your bureau would have made sure that that had happened before you recommended to the Tidelands Resource Council that they approve the tidelands grants?
**A. Yes.**
Q. Or the management agreement?

103

**A. Management agreement.**
Q. So, therefore, the permitting bodies within DEP would have transmitted the Fort Mott permits to your division or your bureau, the Bureau of Tidelands; is that correct?
**A. Yes.**
Q. Do you remember seeing that?
**A. No.**
Q. Do you know who would have seen that?
**A. The former manager.**
Q. Ms. Cubberley would have seen it and reviewed it?
**A. Yes.**
Q. Would anyone below her have reviewed it and then perhaps written a memorandum or recommending? I assume the managers are busy?
**A. I don't recall.**
Q. Is this the type of thing that you as a manager would review yourself when it came in?
**A. Yes; but sometimes the**

104

**manager would just review things herself. And I would not see them.**
Q. I meant now that you are the manager, would this be the type of thing --
**A. Oh, yes.**
Q. Would you read the permits yourself before sending --
**A. The permits would be reviewed by people that work for me, to make sure they --**
Q. So, you would insure that the permits had been issued?
**A. I would be sure they are issued before it goes before the Tidelands Council.**
Q. Would you read the permits yourself or would you rely on your staff?
**A. I would rely on the staff.**
Q. Do you know if that was Ms. Cubberley's practice as well?
**A. I don't know.**
Q. Do you know who would have been on Miss Cubberley's staff to review

105

the permits and report to her if that was -- if that had been her practice?
**A. I would have been on her staff.**
Q. But you didn't process this permit?
**A. I don't recall processing this.**
Q. Or this management agreement?
**A. I don't recall.**
Q. Okay. Do you know who did?
**A. I don't recall.**
Q. Was there anyone above you in the Southern Region?
**A. No.**
Q. You reported directly to Ms. Cubberley?
**A. Uh-huh.**
Q. Someone else in the Bureau of Tidelands would have reviewed the Fort Mott documents and reported directly to Ms. Cubberley?
**A. No. Mrs. Cubberley could do**

106

this herself.
Q. If she had gotten someone to review the documents first, would it have been you?
A. Could have been.
Q. Who else could it have been?
A. Could have been other staff members.
Q. What are their names?
A. William Kresnosky, Michael Cuccia.
Q. Can you spell those last names?
A. Kresnosky, K-R-N-E-S-O-S-K-Y, and Cuccia, C-U-C-C-I-A.
Q. Can you spell Kresnosky again. I think there might be some more letters in it.
A. K-R-E-S-N-O-S-K-Y.
Q. Okay.
A. Again, I don't recall. I don't know who reviewed this case.
Q. Okay. But somebody would

107

have read the permit in the Bureau of Tidelands?
A. Yeah.
MR. ATTAWAY: Off the record.
- - -
(Whereupon, the exhibits were marked Castagna-4 through 11 for identification.)
- - -
(Whereupon, there was a brief recess.)
- - -
BY MR. ATTAWAY:
Q. When we were off the record, Mr. Castagna, I had exhibits marked Castagna-4 through 11 and these documents all pertain to Delaware's regulation of DuPont; generally the Chambers Works Facility that is upland of New Jersey, but as I understand it, has structure that extends into the Delaware River.
Is that consistent with your understanding?

108

A. Yes.
Q. Have you seen any of these documents?
A. I don't recall seeing them.
Q. Have you been generally familiar with Delaware's regulation of the Chamber Works facility over the years?
A. No.
Q. Did you have an understanding that Delaware was not regulating that facility?
A. Well, it's my understanding they were regulating or they were having some influence on the regulation of that facility.
Q. Okay.
A. By virtue of this permit that was issued -- not the permit -- the tidelands license that was issued. And the meeting I had with Delaware, I understood that they were also being regulated by Delaware.
Q. Okay. And that's the

109

meeting last summer that you talked about a little while ago?
A. Yeah, it was very clear that they had meetings and they had previously had their approvals in hand from Delaware when they met with me.
Q. Okay. And these exhibits that we are just looking at, would you agree that they showed that Delaware has exercised some regulatory authority over the Chamber Works project over the last few decades?
A. Well, again, I've never seen these documents before. I really haven't had a lot of time to review them.
But a quick look at these indicates there's some type of regulatory authority that is being handed by Delaware in these cases, these matters.
Q. Okay. The Chamber Works facility, is that a big facility?
A. I don't know.
Q. Your affidavit talks about a number of grants by the State of New

110

Jersey or by the Tidelands Resource Council, to be more specific, to DuPont. There are multiple grants to DuPont; is that correct?

**A. Yes.**

Q. Do you know how many of those grants are con -- do you know how many of those grants concern the Chamber Works facility?

**A. I don't recall.**

Q. How would you determine that, if you had to do so?

**A. I would have to have a map, showing the property. And then I could look at the map, determine which of these grants that I referred to -- refer to the Chambers Works facility.**

Q. Looking at Exhibit 10 -- the April 7th, 2004 letter. It has letterhead at the top by both the State of Delaware and State of New Jersey. Would you agree that this is a joint letter written by the governors of New Jersey and Delaware to the acting

111

secretary of the Army Department of Defense, the Pentagon?

**A. Are you referring to the April 7th letter?**

Q. I am.

**A. Where it says Governor of the State of Delaware and State of New Jersey?**

Q. Correct.

**A. But I don't know what the content of this is or how it -- what the meaning of it is; because I haven't had any time to read it in any kind of depth.**

Q. I understand; the first paragraph talks about eliminating stockpiles of the nerve agent VX, now stored at Newport, Indiana.

Have you at any time during your tenure in DEP been familiar with any proposals to dispose of VX gas at the Chamber Works facility?

**A. No. No.**

Q. Do you know what VX is?

**A. No.**

112

Q. You're not familiar that VX is a nerve agent that was used in World War II?

**A. No.**

Q. All right. During the Exhibit 11, this is titled agenda technical briefing meeting, treatment and disposal of neutralized VX at DuPont Chambers Works.

And it says -- do you have it? It will be on the bottom, if they are still in order?

**A. Okay.**

Q. This is an agenda technical briefing meeting, treatment and disposal of neutralized VX at DuPont Chambers Works at the Delaware DNREC Office, Department of Natural Resources and Environmental Control is the acronym DNREC.

On the second page there it looks like a sign-in sheet and it's dated March 10th, '04.

On the top half of the page

113

there are three names of people that appear to be from New Jersey DEP because that's what's written next to their name, Sam Wolfe, Susan Rosenwinkel and Pilar Patterson?

**A. No.**

Q. Do you know who they are?

**A. No.**

Q. Never seen their names before?

**A. No.**

Q. What about Bob Tudor?

**A. Yes.**

Q. Who is Bob Tudor?

**A. He was at one time an assistant director.**

Q. Of?

**A. He had something in the coastal resources area. It may have been assistant director of coastal resources or some -- I don't recall his exact title but I know he had authoritative position in coastal resources at one point.**

Q. Did you ever meet Mr. Tudor?

114

A. **Yes.**
Q. Did you ever work with him?
A. **Not directly, no**
Q. Did you work with him indirectly?
A. **I can't say I have. I mean I know who he is at the time. It was many years ago. I don't remember being in any meetings with him that concerned any issues like this.**
Q. Issues like what?
A. **I don't remember being in any meetings, period. I mean --**
Q. Is he one of the people that would have transmitted permits or permit applications to the Bureau of Tidelands?
A. **He may have.**
Q. Do you recall ever seeing his name on documents that you worked with in the Bureau of Tidelands?
A. **I don't recall.**
Q. So, when you say he may have been one of the people that transmitted permits to the Bureau of Tidelands, do

115

you have any knowledge that he did that?
A. **Well, because I believe he worked in coastal resources. So, he must have had some influence on the issuance of permits.**
Q. All right.
MR. ATTAWAY: Break?
- - -
(Whereupon, there was a luncheon recess commencing at 12:08 p.m. and concluding at 1:10 p.m.)
- - -
MR. ATTAWAY: Please mark this.
- - -
(Whereupon, the exhibit was marked Castagna-12 for identification.)
- - -
MR. ATTAWAY: This is 13.
- - -
(Whereupon, the exhibit was marked Castagna-13 for

116

identification.)
- - -
BY MR. ATTAWAY:
Q. I've had premarked two exhibits; Castagna-12 is a draft dated May, 1978, State of New Jersey, Coastal Management Program Bay and Ocean shore Segment.
And then Exhibit 13 is the final version of the same document dated I believe it's August, 1978.
And these are voluminous documents, for which I've provided excerpts.
Mr. Castagna, before we get to the documents, are you familiar, in general, with New Jersey Coastal Management Plan?
A. **No.**
Q. Ever heard of it?
A. **Yes.**
Q. What is your understanding, however slim, of the Coastal Management Plan?

117

A. **This is a plan to manage the coastal zone, but I've never been in an office that had to deal with this directly.**
**So, I've always known of it. I've never had to deal with it.**
Q. Is it your understanding that the Coastal Management Plan doesn't affect the work of the Bureau of Tidelands?
A. **No. It doesn't -- no.**
Q. No, that's not your understanding or no, the coastal management --
A. **The coastal management plan does not effect the work of the Tidelands Resource Council and Bureau of Tidelands.**
Q. Have you read any portions of the Coastal Management Program documents before today?
A. **No.**
Q. Have you seen them?
A. **These documents?**
Q. Yes.

118

A. I don't recall seeing them.
Q. I just want to look at Page 18 of Exhibit 12 and I'll just say that the same text is included in the final version on Page 19 and I won't ask you to agree with me on that.
But let's just look at Page 18 of Exhibit 12.
The first full paragraph on that page reads "New Jersey's bay and ocean source segment boundary with the State of Delaware, through Delaware Bay and the Delaware River was established in 1933 by the U.S. Supreme Court in New Jersey versus Delaware, 291 U.S., 361."
Is that consistent with your understanding of where the boundary lies?
A. Are you referring to the first sentence?
Q. I need to read further. I'm sorry.
A. Okay.
Q. "The interstate boundary is generally along the ship channel in the

119

middle of Delaware Bay. However, from a point near the northern tip of Artificial Island in Lower Alloway Creek Township, Salem County, the interstate boundary between New Jersey and Delaware extends north at the mean low water line on the New Jersey shoreline until the Delaware Pennsylvania boundary."
Is that consistent with your understanding of where the boundary between New Jersey and Delaware lies in the 12 mile circle?
A. Yes.
Q. And then the last sentence reads "Resolution of potential conflicts between the coastal policies of Delaware and New Jersey will require continued coordination and work in the first year of program approval, toward appropriate agreements between the coastal management programs of both states, Salem County and the affected municipalities."
I know you said you hadn't seen this document, so, is it the case

120

that you haven't read this language before?
A. No.
Q. This last sentence where it talks about continued cooperation and work in the first year of program approval between Delaware and New Jersey, is that a concept that you were familiar with at any time during your tenure at DEP?
A. No.
Q. I'd like to mark another exhibit.

- - -

(Whereupon, the exhibit was marked Castagna-14 for identification.)

- - -

BY MR. ATTAWAY:
Q. We've had marked for identification, Castagna-14 which is a document entitled Options for New Jersey's developed coast dated March, 1979, produced by the Department of

121

Environmental Protection. And that's stated on the cover page.
Mr. Castagna, have you seen this document before?
A. No.
Q. Have you heard of its existence?
A. No.
Q. You've had a chance just in the last few minutes to review pages 144 -- 141 through 144, which concern the boundary between Delaware and New Jersey; correct?
A. Yes.
Q. Just looking at Page 144, the last sentence in the first paragraph states that "Major development extending into the Delaware River could require approval from the State of Delaware, in addition to approvals from the State of New Jersey."
Is that a concept that you were familiar -- have been familiar with at any time at the DEP?

122

A. **This paragraph, was it 144, first paragraph?**
Q. I'm sorry. 141.
A. **I thought you said 144.**
Q. My mistake. Take your time. That's fine.
A. **Could you repeat the question?**
Q. We'll start over. The first paragraph on Page 141 talks about the boundary and the fact that it exists at the mean low water line on the New Jersey shoreline; correct?
A. **Yes.**
Q. And in the last paragraph states "Consequently, major development extending into the Delaware River could rewire approval from the State of Delaware, in addition to approvals from the State of New Jersey."
I read that correctly?
MR. ANDERSEN: Off the record.
- - -

123

(Whereupon, there was an off-the-record discussion.)
- - -
BY MR. ATTAWAY:
Q. I'm looking at the last sentence in the first paragraph -- strike that.
The last sentence of the first paragraph states "Consequently, major development extending into the Delaware River could require approval from the State of Delaware, in addition to approvals from the State of New Jersey."
Did I read that correctly?
A. **Yes.**
Q. Is that consistent with your understanding as a regulator in the DEP?
A. **From my perspective, from the Bureau of Tidelands, and how we handle riparian applications, this is not my understanding of how we would handle this particular -- it's my understanding, we have jurisdiction out to the channel.**

124

**So, this is not consistent with my knowledge and my understanding.**
Q. What is your understanding as to the extent of Delaware's jurisdiction?
A. **My understanding of the boundary line is the low water line.**
Q. Right.
A. **However, the State of New Jersey has exclusive jurisdiction for riparian matters out to the channel.**
Q. And when you say riparian matters, does that include or exclude the necessary permits that are required?
A. **I'm referring to the issuance of riparian grants, leases and licenses.**
Q. And so as you testified earlier, if I remember it correctly, the permitting for specific activities is an entirely separate matter; is that correct?
A. **That's correct.**
Q. About halfway down the page,

125

there's a paragraph that starts, "In 1971, the State of Delaware enacted a stringent coastal zone act which prohibited heavy industrial development in a defined coastal zone.
"Since the boundary between New Jersey and Delaware, extends to the New Jersey shoreline, the restrictive provisions of this coastal management law applied to development that would be proposed for sites involving land and water along the Salem County waterfront."
Again, is this type of permitting activity outside the bounds of your knowledge?
A. **This is -- yes, the permitting activity is outside the scope of what I would handle.**
Q. And at the bottom of the page, there's one sentence paragraph that states "Consequently, under Delaware law, some types of activities would be prohibited from locating along the Delaware River in Salem County, while

126

other facilities desiring to locate along the river would need to obtain permit approval from the State of Delaware."

Is that something that you have any knowledge about one way or the other?

**A. No.**

Q. You had a chance to skim through the next two pages. There's a map on Page 142 and then 144 and 144 have text and they generally, as I read it, pertain to Delaware's permitting authority under its coastal zone laws, the Underwater Land Act and the Coastal Zone Act; is that correct?

**A. That's correct.**

Q. Is there anything in this discussion that's within your knowledge in the Bureau of Tidelands?

**A. No.**

Q. So, these all concern permitting activities?

**A. Permitting activities.**

Q. That is outside the scope of your job duties and knowledge?

**A. That's correct.**

Q. I think we're done with that exhibit.

MR. ATTAWAY: I'd like to mark for identification Castagna-15.

- - -

(Whereupon, the exhibit was marked Castagna-15 for identification.)

- - -

MR. ATTAWAY: This is the draft 1980 coastal management plan. And I'd like to mark Castagna-16 which is the final 1980 New Jersey Coastal Management Plan. And these again are voluminous documents that I have excerpted.

- - -

(Whereupon, the exhibit was marked Castagna-16 for identification.)

128

- - -

BY MR. ATTAWAY:

Q. Mr. Castagna, looking at Exhibit 15, Page 18, which is by the way, Bates stamped Delaware 24213, there's a paragraph at the bottom of the page under the heading Seaward and Interstate Boundaries.

Do you see that?

**A. Yes.**

Q. And it begins, I'll just read that paragraph, "In most of Salem County, the Delaware and New Jersey state boundary is the mean low water line on the eastern New Jersey shore of the Delaware River. The New Jersey and Delaware coastal management agencies have discussed this issue and have concluded that any New Jersey project extending beyond mean low water must obtain coastal permits from both states."

Have you seen this language before?

**A. No.**

129

Q. Have you seen this -- the 1980 Coastal Management Plan before?

**A. No.**

Q. Never read it? Never opened it?

**A. No.**

Q. And I take it from your previous answers that you don't have an understanding of whether this language is correct or not; is that true?

**A. When you say an understanding, what -- can you be more clear?**

Q. In your career at DEP, have you developed an understanding as to whether Delaware coastal management laws would apply to a boundary straddling project?

**A. Well, my understanding, we would require a waterfront development permit in the State of New Jersey; from a project. And we don't require or, to my knowledge, we have ever required a permit from Delaware in order to approve a**

130

project in New Jersey.
Q. If a project only went to the low water mark, in other words, it did not cross the boundary, would a new Jersey waterfront development permit still be required?
A. **Oh, yes.**
Q. Okay. And that's because the law applies below mean high water; correct?
A. **Yes.**
Q. So, even if it were determined that New Jersey had no authority beyond the boundary, New Jersey would still regulate under the Waterfront Development Act projects that extend beyond mean high water?
A. **That's my understanding.**
Q. Turning back to the sentence I just read, or the second of the two sentences I just read it talks about the "New Jersey and Delaware coastal management agencies having discussed the issue."

131

Do you have any awareness of any such discussions between New Jersey and Delaware?
A. **No.**
Q. Do you know if any of your colleagues or superiors at any time had --
A. **Not to my knowledge.**
Q. Okay. Let's turn to Exhibit 16, which is the final New Jersey Coastal Management Program document; August 1980.
And if you could look at Page 20, the last paragraph.
A. **Okay.**
Q. Is that basically the same language we just read or that I just read out of the draft?
A. **It appears to be the same language.**
MS. CONKLIN: Let him finish his question.
BY MR. ATTAWAY:
Q. All right. Let's -- sticking with the final version, which is

132

Exhibit 16, turn past the yellow slip sheet and there's Pages 254 and 255.
Take a moment to read that two paragraph discussion and then I'll have a question or two about it.
A. **Okay. I've read it.**
Q. The first paragraph has some language quoted from the National Energy Plan. And I just want to look at the second paragraph and I'll read that it states "The New Jersey Coastal Program states that LNG terminals are discouraged unless they are constructed so as to neither unduly endanger human life nor property nor otherwise impair the public health, safety and welfare and comply with the coastal resource and development policies.
"Because the tankering of LNG could pose potential risk to life and property, adjacent to New Jersey waterways, which also serve as boundaries with the States of Pennsylvania and Delaware along the Delaware River and the

133

State of New York and the Port of New York and New Jersey, the state considers decision concerning the siting of LNG terminals to be an interstate matter."
Is this discussion consistent with your understanding during your tenure at DEP regarding the citing of LNG terminals, which for the record, LNG stands for liquefied natural gas?
A. **My understanding that permits are required. And my understanding is that New Jersey has this area of -- New Jersey has the riparian jurisdiction up to the channel. But any decision on whether to put this -- any type of facility is contingent upon obtaining state, local, federal permits.**
Q. Okay. Including those of Delaware?
A. **From the Bureau of Tidelands, we're looking for a permit from the State of New Jersey.**
**But that can be a matter that can be brought up later. But --**

134

it's my understanding that a permit from the State of New Jersey is required.
Q. Okay. The end of the statement that I just read talks about the siting of LNG terminals being an interstate matter.
Is that consistent with your understanding?
A. No.
Q. Is it inconsistent with your understanding?
A. Yes.
Q. In what way?
A. With respect that the State of New Jersey, as riparian jurisdiction, up to the channel; the edge of the channel. And that's how it's inconsistent.
Q. In your understanding, does riparian jurisdiction include or exclude the permits that are required in addition to the riparian grant, lease or conveyance that the Bureau of Tidelands handles?

135

A. Well, the permits would be required. Permits from the State of New Jersey. That's my understanding.
And this matter could not proceed without those permits being issued. That's why the counsel could not hear this matter until these permits were issued.
Q. And you testified earlier that whether or not Delaware could also require permits was not an issue that was within your knowledge; is that correct?
A. That is not within my knowledge, yes.
Q. But in discussing this, you just said that whether the citing of LMG terminals is an interstate matter is inconsistent with your understanding and I'm just trying to understand how you can both not have any knowledge of whether or not Delaware has permitting authority and state that for Delaware to have permitting authority is inconsistent with your understanding.

136

A. Again, my understanding is that a permit is required from the State of New Jersey.
I do not have knowledge of whether a permit is required from the State of Delaware for this facility.
It is not -- the Tidelands Resource Council will approve this if there's a permit from the State of New Jersey.
Q. Let's turn the next page, it's a yellow sheet.
Actually, let's go -- I'll make this easy; go to the end of the exhibit and there's a little logo that says let's protect our earth and a picture of a bird and a wave and on the preceding page, which is number 533, there's a list of people, maybe I should direct you to 532 and 33. It's a two page, Appendix J?
A. 533?
Q. Yes.
A. Okay.

137

Q. You might want to look at 532; Appendix J it says preparers of the New Jersey Coastal Management Program and Final Environmental Statement. On this page there's a list of people from NOAA and then on 533, and then there's a list of people from the New Jersey Department of Environmental Protection.
Starting at the top, do you know who David Kinsey is?
A. He was a former director of the Bureau of Coastal Resources.
Q. Okay. Did you work with him?
A. Not directly, no.
Q. Would you get permits forwarded from his department to tidelands?
A. I believe when he was director, I worked -- I did not work for the Bureau of Tidelands.
Q. Okay.
A. I can't say that for certain, but he was a director when I

138

worked for the Office of Environmental Analysis, when I wasn't mapping tidelands and I don't know when he retired or moved on but I don't recall him being the director when I worked for the Bureau of Tidelands.

Q. You moved to the Tidelands in '87?

A. '87.

Q. Okay.

A. So, I --

Q. And this document is 1980.

Let's move on down to the bottom half of the page.

There's a single spaced paragraph that begins "Planning assistance was also provided by" and it lists a number of people, starting with Chief Steven Whitney in the Bureau of Coastal Project Review.

And then a little bit lower it says "Chief James Johnson of the Bureau of Tidelands."

Is that the same James

139

Johnson that preceded Joe Ann Cubberley in the management position that you now hold?

A. Yes. Yes.

Q. Do you know how long Mr. Johnson held this position?

A. Approximately 25 years.

Q. So, from 1993, back 25 years?

A. Approximately, more or less. I believe it was approximately 25 years.

Q. Do you know if he was ever interested in or knowledgeable about the boundary between New Jersey and Delaware and the implications for each regulatory authority?

A. No.

Q. You never talked to him about it?

A. No.

Q. Did you know that he provided input for this document?

A. No.

140

Q. Do you have any reason to think that having read the statements that we just went over about Delaware having permitting authority over boundary straddling projects that it would have caused Mr. Johnson to say no, that's not right?

A. I don't know.

Q. Let's turn back a couple of pages beyond the yellow slip sheet. I'm looking at 499. This is an excerpt from the list of comments submitted by parties to the DEP. I'm looking at Number 392.

Do you see that?

A. Yes.

Q. I'll just read it, it says Salem County is strongly opposed to the statement in this revision that any project in the area must be consistent with both Delaware's and New Jersey's coastal programs and obtain permits from two states."

Did I read that correctly?

A. Yes.

141

Q. It says the commenter committing this is Salem County Planning Board.

The response from DEP is as follows "This disagreement is noted but DEP has found no other solution available by administrative action to address the peculiar New Jersey/Delaware boundary in Salem County where the Delaware state line reaches to low tide on the New Jersey shore."

Did I also read that correctly?

A. Yes.

Q. Before today, have you read or otherwise become familiar with this general complaint lodged by Salem County?

A. No.

Q. And I guess based on your prior testimony about your lack of knowledge and expertise with regard to permitting requirements, this is not something that you could give an opinion about one way or another; correct?

142

A. That's correct.
Q. Are you familiar with a compact between Delaware and New Jersey entered in 1962, regarding structures that cross the river?
A. No.
Q. I'd like to turn back to your affidavit, please, Page 49A, Subparagraph 41, which is within Paragraph 8 of your affidavit.
A. Did you say Page 48, Subparagraph 38?
Q. Page 49, Subparagraph 41; about Keystone.
A. Okay.
Q. The latter half of the second paragraph on Page 49A talks about -- I'll read it, it says "On September 30th, 1991 the State of Delaware granted Keystone Cogeneration Systems, Inc., permission to construct a coal unloading pier and to conduct dredging at this location. The document included a subaqueous lands lease for ten

143

years, which may be renewed in the public interest."
Do you know whether New Jersey conditioned its permit on the issuance of this Delaware permit that you discuss?
A. Referring to Item 41?
Q. Yes, sir.
A. Well, this was before I was regional supervisor. So, I don't have any recollection of this approval when counsel approved it.
Q. Okay. If I remember correctly, a few minutes ago you said you weren't aware of any instance where New Jersey conditioned a New Jersey permit on the issuance of Delaware permits; is that correct?
A. Well, this morning, I spoke to the licenses that were issued this past summer and I spoke to the fact that I was aware of those approvals by the State of Delaware.
But you're asking a

144

different question now.
Q. It is a different question, yes.
A. And what you're saying is whether our -- whether the Bureau of Tidelands approval was conditioned upon the approval of the State of Delaware?
Q. You can answer that question.
A. I mean is that what you're asking?
Q. You can answer that question and I can ask --
A. Could you rephrase the question so I can understand exactly what you're asking.
Q. Okay. I believe you said earlier that you were not aware of any instance where New Jersey conditioned its permit on the issuance of Delaware permits; is that correct?
A. Yes.
Q. Have you seen the permit that New Jersey issued to Keystone?

145

A. I don't recall looking at it, no.
Q. So, in preparing this affidavit, where you spend two paragraphs talking about the Keystone project and specifically about Delaware's permit issued to Keystone, you didn't review New Jersey's permit to Keystone?
A. I guess I don't recall reviewing that permit.
Q. Okay. Let me introduce that permit for identification.
- - -
(Whereupon, the exhibit was marked Costagna-17 for identification.)
- - -
THE WITNESS: Okay.
BY MR. ATTAWAY:
Q. Looking at Exhibit 17, have you seen this permit issued by New Jersey to Keystone before?
A. I don't recall seeing this.
Q. So, you didn't review it in

146

preparing your affidavit?
A. No.
Q. Okay.
A. I don't recall seeing it.
Q. You mentioned earlier that it was the duty of the Bureau of Tidelands to insure that all the necessary permits were issued before forwarding the application to the Tidelands Resource Council for processing; correct?
A. That's correct.
Q. I know this was before your -- before 1993, when you became supervisor but you were at the Bureau of Tidelands at this time; correct?
A. That's correct.
Q. Do you know whether this permit would have necessarily been transferred -- transmitted to the Bureau of Tidelands?
A. Yes, it would have been transferred to the Bureau; prior to the approval.

147

Q. Okay. And would it have been reviewed by the manager?
A. At that time, James Johnson, yes.
Q. And turning to page --
A. Or one of his -- one of the people who worked on this.
Q. And his staff?
A. His staff.
Q. Would his staff read the permit and summarize it?
A. Uh-huh.
Q. And report to Mr. Johnson?
A. Or they would just let him know the permit was approved.
Q. Would somebody read the permit and flag any what might be unusual conditions?
A. I couldn't speak to what was happening back then, because I wasn't involved in that process.
Q. As manager --
A. But it seems to me that the permit should have been viewed and looked

148

at to see if there were any special conditions.
Q. Okay. As manager today, or acting manager, I think you said, is it your practice, either to read the permit to yourself or to make sure that someone else reads them and reports to you?
A. Yeah. I do not read all the permits myself; because of all the applications.
The permits are read by a staff person, who reviews the permits and once that permit is submitted, the application can proceed and be reviewed by the Tidelands council.
Q. Page 5, at the top of the page, terms and conditions, letter E, it says "Prior to construction, the permittee must submit copies of all the permits or approvals listed below to the element."
And I believe element refers to the Land Use Regulation Division; is that correct?

149

A. I'm not certain.
Q. Turn back to Page 1, issuing Land Use Regulation elements. I'm not familiar with the terminology element.
Is that just a word in this context used to refer to the Land Use Regulation?
A. It appears so.
Q. Division or department or whatever?
A. It appears so.
Q. Okay. And condition four 4 says Subaqueous Land and Coastal Zone Management, Delaware.
Is it your understanding, based on this, that the permittee that is Keystone, could not begin construction until it had secured the necessary Delaware permits?
A. That's my understanding by reading this, yes.
Q. If a permit like this came across your desk, in the Bureau of Tidelands, would you think anything of it

150

or would you just keep reading?
**A. Well, this was a requirement to get this permit.**
**But as far as the Tidelands Resource Council, they are looking for the approval permit, which they did receive.**
**So, in order to get the permit, they had to meet these conditions.**
**What the Tidelands Resource Council is looking for, is the approval -- the approval of this permit and once that permit is approved, they would issue the license.**
**One of the conditions here is that they obtain a lease in the State of Delaware and they didn't meet that condition; we would have never have seen the permit.**
**Because it wouldn't have been approved. If it's not approved, it wouldn't have gotten to the Tideland's council.**

151

Q. Okay. Do you know whether -- this condition says "Prior to construction, the permittee must submit copies of all the permits or approvals listed below to the element."
And it's --
**A. Again, I'm speaking about permits, which I really don't have any authority to do. I'm just looking at this permit and I'm looking at this from the Tidelands Resource. What the council is looking for is just the approval of the permit. Okay? So, this was approved by a different -- as the element of, what's this, the -- the Land Use Regulation.**
Q. So, is it your understanding that this permit would never be forwarded to the Bureau of Tidelands unless and until the Delaware permits had been secured?
**A. Again, I am not -- I cannot speak to the permitting people.**
Q. Okay.

152

**A. So, they need to approve this permit.**
**When this permit is approved, they submit it to us. And I cannot speak to what their requirements are for this particular matter.**
Q. Okay. The date on this permit is September 24, 1991; correct?
**A. Yes.**
Q. And according to your affidavit, the second paragraph of Paragraph 8, Subparagraph 41, it says that the Delaware permit was issued on September 30th, which is six days later; correct?
**A. Yes.**
Q. Are you aware of any discussions with Keystone by any New Jersey employee or representative about Delaware's regulatory authority over this project?
**A. No.**
Q. The Keystone project?
**A. No.**

153

Q. Are you aware that Mr. William Andersen and Mr. James Johnson claim to have had some sort of discussions about Delaware's regulatory authority over the Keystone project in this time period?
**A. I'm not aware of that.**
Q. And you haven't talked to either one of them about it?
**A. About this particular project? And they are speaking with --**
Q. Let me withdraw that question, because any discussions you had with Mr. Andersen would be privileged; so, I don't intend to ask about that.
Your affidavit mentions a permit issued by the State of Delaware on September 30th, 1991.
How did you learn that information in order to incorporate it in your affidavit?
**A. This information was provided to me by my staff. And I did not personally look at all of it, you**

154

know. I reviewed it but I did not --
Q. So, did you cause portions of this affidavit to be written by your staff?
A. They supplied the information to me. Okay? And that information was then given to the AG's office, which would summarize this.
Q. So, is it likely the case that one of your staff members had a copy of the Delaware permit to refer to here?
A. They could have looked through the file and looked at it and made that determination.
Q. Okay. Does that mean that the Delaware permit would be in the Keystone file, kept by the Bureau of Tidelands?
A. It may be. I'm not certain of that. It could be.
Q. In the course of this litigation, did you make available documents, either in the custody of yourself or anyone else in the Bureau of

155

Tidelands or the Bureau itself, to Council for Production of Delaware?
A. Yes.
Q. When did you do that?
A. I do recall someone from Delaware coming to the Bureau.
We had made copies of information that they copied and collected. And they used that information and took it with them.
Q. How about subsequent to that, in -- over this past summer, summer of 2006? Did you provide any documents?
A. Personally? I don't recall. Oh, yeah, well, I did -- I did -- there was some documents related to the DuPont lease that was approved this past July that I did supply.
Q. Did you -- were you given a copy or made aware of the substance of the discovery request served by Delaware this past June?
A. Yes.
Q. Did you provide documents in

156

response to those requests?
A. There was discovery -- are you referring to the discovery? There were documents that were supplied, yes.
Q. When were those supplied and by whom?
A. They were supplied by counsel.
Q. And when did that happen?
A. This past summer.
Q. Aside from the DuPont documents that you just mentioned?
A. They were supplied by counsel.
Q. The DuPont documents were supplied by counsel?
A. I believe so.
Q. Let me start over because I think we're not communicating.
This past June, Delaware served document requests -- by this past June, I mean June of 2006, three months ago, four months ago, whatever, Delaware served, as part of the formal discovery

157

process in this litigation, requests for production of documents and there were a number of specific requests.
Were you given a copy of those?
A. Yes.
Q. And that was this past June?
A. If it's what I'm thinking of, you requested copies of photography? Aerial photography? That we did supply.
Q. That's the only request that you remember?
A. These requests went through the AG's Office. So, they may have handled these through my staff.
Q. So, it was only a request for photographs?
A. I don't --
Q. Aerial photographs?
A. I don't recall. Again, these requests went through the AG's Office. So --
Q. Well, I believe asking if they went to you. What I'm trying to ask

158

is were you made aware that Delaware had requested documents and did you search or cause files of the Bureau of Tidelands to be searched in response to those Requests for Production of Documents?

**A. I do recall last year, last fall, we did assemble some documents for Delaware.**

Q. Okay.

**A. But I don't recall this past summer.**

Q. But nothing since then except for the aerial photographs that were produced in the last couple of months?

**A. I do recall the aerial photography. That was handled by one of my staff.**

Q. Okay.

**A. He assembled the aerial photographs and he provided those to Delaware.**

**There may have been other documents that my staff would have**

159

**handled that I was unaware of.**

Q. Are you aware that Delaware issued more permits to Keystone than the one mentioned on September 30th, 1991 in your affidavit?

**A. No.**

MR. ATTAWAY: Off the record.

- - -

(Whereupon, the exhibit was marked Castagna-18 and 19 for identification.)

- - -

(Whereupon, there was a recess commencing at 2:18 p.m. and concluding at 2:30 p.m.)

- - -

BY MR. ATTAWAY:

Q. We've had marked as Exhibits 18 and 19 first a memorandum dated August 28th, 1991 from Robert Tudor to James Johnson regarding Keystone and then 19 is a titled State of New Jersey Department of Environmental Protection and Energy

160

Land Use Regulation Element Bureau of Coastal Regulation, Summary Analysis dated September 24, 1991; also about Keystone.

Mr. Castagna, have you had a chance to take a look at these documents during the break?

**A. No, I haven't; but I'll look now.**

Q. Okay. We'll wait.

**A. Is there anything specific you'd like me to look at?**

Q. Well, I'd like you to read the one page letter, Exhibit 18.

**A. Okay.**

Q. And I will point you to a couple of places in the longer document.

**A. Okay.**

Q. Exhibits 18 is dated August 28th and it's from Robert Tudor to James Johnson.

And Robert Tudor, you mentioned earlier, he was in the, I think the coastal management bureau; is that

161

correct?

**A. Yes.**

Q. What is the staff preliminary analysis that he mentions in this memorandum but that is not actually attached to the copy that we have?

**A. I have no idea.**

Q. Do you commonly receive a staff preliminary analysis for a project?

**A. No.**

Q. From coastal management?

**A. No.**

Q. But this is 1991 and it was when James Johnson was the head of the Bureau of Tidelands; correct?

**A. That's correct.**

Q. It appears from this memorandum that Mr. Johnson did receive a staff preliminary analysis from Mr. Tudor; is that correct?

**A. Yes.**

Q. Exhibit 19 is titled a summary analysis, which is different phraseology than staff preliminary

162

analysis.
And I note that the summary analysis is dated September 24th, which is almost a month after the memorandum claiming to attach the staff preliminary analysis.
So, what I'd like to find out is, is the summary analysis the same thing in substance that was transmitted to Mr. Johnson on August 28th, 1991? Do you have any idea?
**A. I have no idea.**
Q. Okay. For the record, these two exhibits, 18 and 19 are the documents -- they are some of the documents, let me be more specific, two of the five documents that I was provided with by New Jersey counsel, about ten minutes before we started this deposition this morning.
Looking at Exhibit 19, I just want to turn to the last page, the signature page.
And confirm with you that it

163

is signed by Bob Tudor, the final page?
**A. Yes.**
Q. Do you still have the Keystone permit handy? Keep the signature page on Exhibit 19 open. I'd like you to compare the signature of Bob Tudor to the signature that's on the Keystone permit. Does it appear to you the Bob Tudor signed the Keystone permit as well?
**A. I'm not an expert in signatures but it appears to be similar.**
Q. And Ruth Ehinger also signed this summary analysis that we have as Exhibit 19; correct?
**A. Yes.**
Q. Did you work with Ruth Ehinger at any time?
**A. No.**
Q. How about David Fanz, who also signed the summary analysis?
**A. I've never worked with them.**
Q. I have a few more questions about the summary analysis.

164

If you turn to the second page, Roman one, introduction; Roman two, summary analysis and number three, administrative history, Roman three.
And then on the next page, which is Page 3 of the permit, which is under the administrative history section, there is -- there is a paragraph at the bottom of Page 3, which is Bates stamped New Jersey 7711, that talks about the 1905 compact.
Do you see that?
**A. Second to the last paragraph?**
Q. Yes.
**A. Yes.**
Q. Just take the time you need to read that paragraph, plus the carry-over paragraph.
**A. Okay.**
Q. What is your understanding of those two paragraphs?
**A. New Jersey stated that, according to Article 7 of the compact,**

165

**New Jersey had the right to exercise riparian jurisdiction for the construction of this project. And it also talked about the fact that Delaware assumed they had jurisdiction and also required a permit.**
Q. All right. So, would you read this to acknowledge that while New Jersey contended that it had the right to issue a riparian instrument through the Bureau of Tidelands, that Delaware, nevertheless, still had authority to apply its Coastal Zone Act and require a permit?
**A. Well, it doesn't say it had the authority. It just said Delaware had assumed it had jurisdiction.**
Q. Do you remember the condition in the final permit that is dated the same date as this summary analysis, September 24th, that requires the applicant to get permits from Delaware before beginning construction?
**A. Yes.**

166

Q. In that context, would you read this language in the summary analysis to acknowledge that Delaware had authority to require a permit under the 1905 compact?

**A. Well, the way I look at this is that the permit included a condition that there would be an approval by the State of Delaware for the project.**

Q. If New Jersey were taking the position that Delaware had no authority to require a permit, then why on earth would the permit require a Delaware -- would the New Jersey permit require a Delaware permit.

MS. CONKLIN: I'm going to have to enter an objection to the entire line of questioning. He's repeatedly stated he doesn't know anything about permits. It's speculation. If you want speculation, you can continue.

BY MR. ATTAWAY:

Q. You can answer.

167

**A. Again, I will say, I'm not the person who writes or deals with permits.**

**So, I would agree with counsel.**

Q. Turning to the back of the summary analysis, New Jersey 7738, Exhibit 19?

**A. Yes.**

Q. Looking at Number 5, and then there's A through D underneath it, is that in substance the same condition that was placed in the final permit that required, prior to construction, that Keystone obtain the permits from Delaware?

**A. Yes.**

Q. So, it's the case then that in the same document, stating that New Jersey had riparian jurisdiction to issue a riparian grants to the Keystone project, the same document requires coastal zone permits from Delaware, prior to construction; is that correct?

168

**A. What the Tidelands Resource Council is looking for is an approved permit.**

**And a permit required approval by the State of Delaware, so be it.**

**But all the Tidelands Resource Council, I believe, was looking for was approval from the State of New Jersey.**

Q. And the Tidelands Resource Council, to your knowledge, never took the position that Delaware lacked regulatory authority over a project that the Resource Council approved; is that correct?

**A. Can you repeat the question?**

- - -

**(Whereupon, the following portion of the record was read by the court reporter:**

**"QUESTION: And the Tidelands Resource Council, to your knowledge, never took the**

169

**position that Delaware lacked regulatory authority over a project that the Resource Council approved; is that correct?")**

- - -

THE WITNESS: It is my understanding that the Tidelands Resource Council only required a permit from the State of New Jersey and did not require any approvals from the State of Delaware. That's my --

BY MR. ATTAWAY:

Q. So, to --

**A. That's my knowledge, yeah.**

Q. To your knowledge, the Tidelands Resource Council never took the position that Delaware lacked the authority to regulate a boundary straddling project; correct?

**A. You say lacked the authority?**

Q. Yes.

**A. I still don't --**

170

Q. Did the Tidelands Resource Council ever take the position that Delaware could not regulate a project that extended into Delaware?
**A. I don't know. I don't know.**
Q. To your knowledge, that never --
**A. To my knowledge, I don't know.**
Q. Are you aware of a draft of a memorandum of understanding that was negotiated by New Jersey and Delaware in 1994 regarding coordination of permit reviews by the respective states?
**A. No.**
Q. Are you familiar with Steven Whitney?
**A. I know of Steven Whitney.**
Q. Did you work with him at any time?
**A. No.**
Q. I'd like to mark for identification Castagna-20.

- - -

171

(Whereupon, the exhibit was marked Castagna-20 for identification.)

- - -

BY MR. ATTAWAY:
Q. I will just identify it. This is a -- it is a one-page cover memorandum from Steven Whitney to distribution. And there's a list of names at the bottom of the page under distribution.
Attached to this one-page cover memo is a short multi-page memorandum of agreement between New Jersey Department of Environmental Protection and Delaware Department of Natural Resource and Environmental Control.
And the cover memo is dated July 7th, 1994.
Mr. Castagna, have you ever seen this before?
**A. No.**
Q. Page 1 -- I'm sorry -- the

172

cover memorandum, which is Delaware 27930 on the Bates stamp has a list of distribution. It says Bob Tudor, U.S. EPA.
Is that the same Bob Tudor that signed the Keystone permit and the summary analysis memo in 1991? Is he then in 1994, had he moved to EPA?
**A. I'm not certain of that.**
Q. The distribution states that Joe Ann Cubberley was on the distribution list.
She was your boss at the time; correct?
**A. That's correct.**
Q. Did you ever discuss or did she discuss with you the fact that representatives of New Jersey DEP and DNREC were negotiating an agreement to coordinate permitting activities?
**A. No.**
Q. I just have one or two more questions about this.
On Page 2 of the draft

173

memorandum, there's a section titled sharing of development applications.
I'll give you a chance to read that; it's a half page paragraph. I will just ask you a question about the last sentence.
**A. Okay.**
Q. The last sentence of that paragraph reads "Both agencies recognize that each agency has the independent authority to approve or deny applications pursuant to its own regulations. DEP and DNREC will share applications under the following authorities."
And then it lists a number of laws issued by the representative states.
With respect to the statement that both agencies recognize that each agency has the independent authority to approve or deny applications pursuant to its own regulations, is that also a matter of permitting that is beyond your area of knowledge?

174

A. That's correct.
Q. So, yours is just limited to the riparian grants, leases and conveyances but not permits for any activities to be conducted thereon?
A. That is correct.
Q. You said earlier that you couldn't recall any instance where New Jersey had expressly conditioned the validity of the New Jersey permit on the issuance of Delaware permits.
And then we looked at Keystone and you said that you had not been familiar with that condition and that permit; correct?
A. That's correct.
Q. Has anything in our discussion refreshed your recollection about another permit that New Jersey issued that required Delaware permits?
A. Again, I mentioned DuPont issue. That was fresh in my memory, because I just -- that was just presented to the Tidelands Resource Council this

175

past summer.
Q. Did the permit issued by New Jersey for that DuPont project require Delaware permits?
A. The permit was already issued.
Q. Did the permit that New Jersey issued --
A. The license.
Q. Okay. Did the license that New Jersey issued say that Delaware permits were required?
A. Well, no. The counsel made a statement that they don't -- there was a statement made at the counsel meeting that kind of, I forget exactly what it was, but it basically stated that the jurisdiction for this area is within New Jersey.
Q. What document is that statement contained in? Is that the minutes of the council meeting?
A. It might be the minutes of the council meeting.

176

Q. Okay. I don't think I've seen that. Have you provided that to your counsel for production in Delaware?
A. I don't know if they've asked for it or -- I don't know.
Q. Since we're on the record, I'd like to ask for a copy of it now to be produced in due course.
MR. ANDERSEN: Yes.
MR. ATTAWAY: Thank you.
BY MR. ATTAWAY:
Q. Turning to your affidavit, Page 50.
I'm looking at Subparagraph 44.
This is a discussion of the Fort Mott project; correct?
A. That's correct.
Q. And New Jersey issued a, I think we talked about this earlier, a management -- what did you call it?
A. Management agreement.
Q. Management agreement.
And that was a document

177

issued by the Tidelands Resource Council; correct?
A. That's correct.
Q. The latter part of this paragraph, and it's on Page 51, says "One of the administrative conditions in this permit imposed by New Jersey was that certain aspects of this project were subject to approval by the State of Delaware.
Does this refresh your recollection as to whether you recall New Jersey having condition to permit on the issuance of a Delaware permit?
A. What I recollect is this was a requirement by the Division of Parks and Forestry. It was not a requirement by the Tidelands Resource Council. It was Parks and Forestry.
Q. So, when you said you weren't aware of any condition imposed by New Jersey, you really meant a condition imposed by the Bureau of Tidelands?
A. Bureau of Tidelands. This

178

was a condition imposed as part of the permitting process.
Q. It states here that Delaware approved a lease for this project on -- in February of 1996; correct?
A. Yes.
Q. And it's your understanding that – well, let's just introduce the permit for clarity.
- - -
(Whereupon, the exhibit was marked Castagna-21 for identification.)
- - -
BY MR. ATTAWAY:
Q. Have you had a chance to review the Fort Mott permit?
A. Yes.
Q. Does this refresh your recollection as to who imposed the administrative condition?
A. Yeah. This -- the permit was for the Department of Parks and Forestry. I guess the condition was by

179

the Land Use Regulation program.
Q. So, the applicant was one division of the DEP and the -- that applied to another division of DEP for a permit to rehabilitate Fort Mott pier; correct?
A. That's correct.
Q. Do you know how it came to be that this -- that the administrative condition requiring Delaware permits was included in this permit?
A. No.
Q. You never discussed that condition with Ms. Cubberley?
A. No.
Q. Did you have anything to do with the Fort Mott tidelands conveyance?
A. I don't recall. I don't believe I was involved in this. It doesn't -- I don't remember that I was involved in this.
It doesn't say, oh, yeah, I was -- no.
Q. So, would Miss Cubberley

180

have prepared the Tidelands instrument herself?
A. Yes.
Q. Do you have a copy of the tidelands instrument?
A. We would have a copy in our office, yes.
Q. And would you have the transmittal of any permits in your office as well?
A. If there's a copy, yes, the permit should also be in our file along with the actual document.
Q. I'd like to request that you provide to your counsel and that counsel produce the file on Fort Mott from the Bureau of Tidelands.
A. Okay.
MR. ANDERSEN: We've already done that. Off the record.
- - -
(Whereupon, there was a recess commencing at 2:58 p.m. and concluding at 3:04 p.m.)

181

- - -
BY MR. ATTAWAY:
Q. Mr. Castagna, what is your understanding of the Crown Landing project that is at issue in the litigation?
A. Well, Crown Landing, BP, has proposed to build a liquefied petroleum facility in Logan Township, Gloucester County. I understand that there are permits that have not yet been approved as yet. We have an application at our bureau for a tidelands conveyance.
Q. Are you aware of positions taken by the various people in the DEP about Delaware's regulatory authority over that project?
A. No.
Q. Are you aware of a letter from David Risilia, filed at the federal energy regulatory commission, regarding Delaware's regulatory over the Crown Landing project?
A. I don't recall.

182

Q. Are you aware of any subsequent retraction by other people of certain statements that Mr. Risilia made in his February 4th, 2005 letter?
A. No.
Q. Just not something that you've had to deal with at all?
A. No.
Q. You have no knowledge?
A. No.
Q. You haven't seen any of the letters to FERC or to the parties regarding whether or not Delaware has regulatory authority?
A. **There is information in our file. I looked at it quickly. I haven't spent a lot of time because it's a pending case which we don't have a permit for. Because there is no permit. It's essentially just sitting there. It's not going anywhere. It's not anything I'm actively working on.**
Q. Okay. Fair enough.
MR. ATTAWAY: Let's take a

183

break.
- - -
(Whereupon, there was a recess commencing at 3:06 p.m. and concluding at 3:26 p.m.)
- - -
(Whereupon, the exhibits were marked Castagna-22 and 23 for identification.)
- - -
BY MR. ATTAWAY:
Q. I've just had marked as Exhibits Castagna-22 New Jersey responses to Delaware's First Request for Admissions. And then Castagna-23 is a stack of aerial photos that were recently produced by New Jersey as individual documents, but to save time, and I don't think this will have any effect on our discussion, I had them marked as a set.
So, they are all Exhibit 23.
And it's my understanding that these are all of the aerial photos that New Jersey produced over the last

184

couple of months.
And one final note about Exhibit 23, the Bates numbers that we -- we got these documents on a CD. And each file was labeled with a discrete Bates number, however, on a number of the documents the Bates number was not on the image so when we printed them out, we had a printout with no Bates number.
So, I had my assistant, paralegal, place by hand, so it would be obvious that it was, you know, this is different from what we pointed out, the Bates number that was contained on the electronic file.
And that's been double checked.
So, I apologize in advance if there ends up being an error on the numbering but we did our best to make sure that what was on the CD is reflected on the printout.
Before we get to those, Mr. Castagna, I want to start with

185

paragraph of your affidavit.
It is quite long; it goes from Page 29 to Page 55 and it has 44 subparagraphs; correct?
A. Yes.
Q. And Paragraph 8 has some introductory text before you get to the subparagraph. It starts out by saying that on at least eight occasions between 1854 and 1905 New Jersey exercised its riparian jurisdiction by approving state tidelands conveyances below the low water line within the 12 mile circle.
Then it goes on to say that you Mr. Castagna found 33 instances between 1905 in which New Jersey, it says here, continued to exercise its riparian jurisdiction on the New Jersey side of the river within a 12 mile circle.
When you say riparian jurisdiction here, I take it from our prior discussion throughout the day, that you were referring solely to the grants, leases and conveyances of land issued by

186

the Bureau of Tidelands; is that correct?
**A. Well, by riparian jurisdiction, I'm referring to New Jersey sovereign authority to regulate tax and police the area between the mean high water line and the navigation channel.**
Q. Okay. Does your -- what do you mean by regulate?
**A. Well, by regulate, to issue the tidelands conveyances, that the predecessors of the tidelands resource counsel have done since 1854.**
Q. Okay. And I take it from our previous discussion that when you use the word regulate, you don't mean to include any permits that other divisions of DEP issue; correct?
**A. That's correct.**
Q. And again, you said you mentioned policing.
Does your affidavit talk anywhere about policing structures or grants or what sort of policing?
**A. No.**

187

Q. Okay.
**A. That's just my understanding of what riparian jurisdiction is.**
Q. That's the understanding that you came to over the last year?
**A. Yeah.**
Q. Do you have any knowledge of any acts of policing a structure or a riparian grant?
**A. No.**
Q. What is your understanding of policing, as you are using it right now?
**A. By policing, to I guess if there was a crime committed or if there's any acts of vandalism, it would be under the jurisdiction of New Jersey. If it's on a structure that New Jersey has authorized the placement of.**
Q. But you don't have any knowledge of any particular --
**A. No. No.**
Q. -- exercises of policing?
**A. No.**

188

Q. Does policing include anything else?
**A. Not that I can think of right now.**
Q. It doesn't include permitting?
**A. No.**
Q. Towards the bottom of Page 30, you refer to a map depicting the grants. That map is attached to your affidavit; correct?
**A. Yes.**
Q. And let's just turn to that map briefly.
**A. Okay.**
Q. The map has, there are numbers 1 through 44 up and down the New Jersey shoreline within the 12 mile circle; correct?
**A. Yes.**
Q. And there are sort of rectangular shapes that extend out into the water.
Are those intended to be

189

drawn to the scale of the map?
**A. No.**
Q. Subparagraphs 1 through 44 discuss how many grants issued by the Tidelands Resource Council or its predecessors?
**A. That's correct.**
Q. I was trying --
**A. Was that a question?**
Q. Yeah. Maybe it wasn't a very good question. Maybe I can do it this way: We talked about the language at the beginning of Paragraph 8 where you mentioned eight conveyances before 1905 and 33 after 1905.
Those two numbers add up to 41; correct?
**A. Yes.**
Q. Subparagraphs 1 through 44 and Paragraph 8 discuss 41 riparian grants; correct?
**A. There are 41 riparian conveyances. There are a couple of numbers that are not referring to actual**

190

conveyances. It's just information being supplied.
Q. That's what I thought. I just wanted to make sure we were on common ground.
A. Yes. Yes.
Q. Did New Jersey give Delaware notice before it issued any of these grants?
A. I don't know.
Q. How would Delaware find out that New Jersey had issued a riparian grant, lease or conveyance?
A. Well, they are filed with the county clerk in the county of record.
Q. So, someone from Delaware would have to go and search the files of the counties all up and down the New Jersey shoreline within the 12 mile circle to discover whether a grant had been made?
A. They are also available in the Bureau of Tidelands management, these records are kept.

191

Q. Here in Trenton?
A. Here in Trenton.
Q. Anywhere else?
A. The legislative grants are listed in the laws of New Jersey.
Q. How many legislative grants were there?
A. Well, those that were issued prior to 1871. I believe there was one in 1871 and all of those prior.
So, there may have been maybe four or five.
Q. Okay. Just looking at Paragraph Number 1, this talks about a grant to Thomas Broadway.
What, if any structure ever existed on the lands covered by this grant?
A. In the 1934 proceedings, the New Jersey versus Delaware number two, Mr. Sherman, on behalf of the State of New Jersey, testified that a wharf existed at this location.
Q. Who is Mr. Sherman?

192

A. He was an engineer who worked for the Bureau of Commerce and Navigation, which is a predecessor to the Bureau of Tidelands.
Q. And he was New Jersey's witness during that proceeding; correct?
A. My understanding, yes.
Q. There are a number of grants with respect to which -- that were issued before 1934; with respect to which Mr. Sherman, or at least your affidavit doesn't say that Mr. Sherman said that there was a structure on those grants; correct?
A. That's correct.
Q. If you didn't say in your affidavit that Mr. Sherman had so testified that there was a structure there, is it then the case that he did not so testify?
A. I don't know if that's to be true; because I wasn't there.
Q. That was a convoluted question.

193

Was it your intention to include a reference to all the instances where Mr. Sherman testified there was a structure on a particular grant?
A. Yes.
Q. And are you aware, with respect to grants regarding which Mr. Sherman did not testify that a structure existed, are you aware of any other evidence showing that a structure existed on that particular grant up to 1934?
A. If the structure appeared on an aerial photograph, if a structure existed prior to 1934, but still existed on an aerial photograph in 1934, it would appear.
Q. Are you aware of any such structures?
A. I do know that a number of structures do appear in aerial photography but I'm not certain which ones did, off the top of my head.
Q. So, sitting here right now,

194

with respect to grant number one, do you know anything more than what is stated in your affidavit? In other words, do you know what the nature of this wharf was when it was built, how long it was used, when it fell into disuse?

**A. No.**

Q. So, we'd have to look at Mr. Sherman's testimony that you cite and see whatever that says?

**A. That's correct.**

Q. And that would be the position of a New Jersey's own witness in that case; correct?

**A. Yes.**

Q. Let's look at Exhibit 22 which is New Jersey response to Delaware's First Request for Admissions.

I think we're only going to discuss Response Number 34, which is Page 16 and 17.

I'll give you a chance to read that and I'll ask you a couple of questions.

195

**A. Okay.**

Q. Mr. Castagna, have you seen this response to Delaware's Request for Admissions before?

**A. Yes.**

Q. Did you assist in preparing the response?

**A. Are you referring specifically to 34?**

Q. 34, yes.

**A. My staff reviewed aerial photography and documented the evidence that is shown here.**

Q. Did you review this before it was served on Delaware?

**A. Yes.**

Q. Did you review the aerial photographs underlying it?

**A. I reviewed the aerial photographs, yes.**

Q. I'd like to just go through these and establish where we -- where there is no evidence, at least it's stated here, that any structure ever

196

existed on a particular grant and I just want to keep a running tally and figure out what the total number is.

So, let's go through --

**A. I know approximately how many appear on aerial photography.**

Q. Okay. Maybe it we can approach it that way.

**A. I'm not going to be able to tell you which ones, hut I know an approximate number.**

Q. Okay.

**A. Approximately 21, 22 appear on aerial photography.**

Q. Structures?

**A. Structures, yeah.**

Q. And that's at any given point in time?

**A. Yeah. At some point in time.**

Q. Okay. At some point in time, there are 21 or 22 discrete structures showing on aerial photographs?

**A. That's correct.**

197

Q. All right. And maybe we can do this more quickly. And that's very helpful; thank you.

When I count these responses A through X and go through them, I count 16 grants on which the response states that there is no structure on the referenced aerial photographs. And there's also no testimony by Mr. Sherman that a grant existed at the time that he gave his testimony or any time prior to that.

So, I count 16. Does that -- is that number consistent with your understanding of all of these data? If you like, we can just go through them. It won't take very long.

**A. The aerial photography began around 1930.**

Q. Right.

**A. To 2002. So, if there was a seasonal structure on a grant that was issued in 1916 and it was there for two years and they took it out, we would**

198

have -- unless there was some documentation of that structure, we would have no knowledge of it.

Q. Okay. But you're not aware of any such documentation?

A. For seasonal?

Q. Right.

A. No. And also, the other thing I wanted to say is that these aerial -- many of these aerial photos may have been taken in the winter months. And again, you might have a situation where it might have been a seasonal structure that may have been put in during the summer months and then taken out.

So, that's another area where there's some unknown; whether there was a structure there.

Q. What kind of structures are seasonal structures?

A. Well, like a personal floating dock.

Q. How far out in the river

199

would that typically extend?

A. It would extend far enough out to reach navigable waters. So the vessel can reach a point where they could reach the waters to get out.

Q. Are we talking small water craft?

A. Yeah.

Q. I assume so, if it's a temporary dock that would come and go with the seasons?

A. Right.

Q. And small water craft has a shallow draft; correct?

A. That is correct.

Q. And a water draft with a shallow draft would not need very deep water to dock in; would it?

A. That's true.

Q. So, isn't it likely that such a temporary structure would not have to extend beyond the low water mark?

MS. CONKLIN: I'm going to object for lack of foundation

200

because we don't know the depth of the channel where each of these things are located. The record indicates that there's -- I'm not going to go into what the record indicates but until he establishes he knows what the depth of channel is, we're speculating about whether a boat could clear, how far the pier has to go, et cetera.

BY MR. ATTAWAY:

Q. What is your understanding with respect to how far out a seasonal structure would have to go?

A. Well, if it's low water, the structure would have to go beyond the low water line, because if it went just to the low water line, at low tide it would be mud.

And the boat would not be able to navigate out to the channel.

Q. Isn't it possible that the boat could navigate out and come back at high tide?

201

A. That's possible.

Q. But you were aware of no evidence of any such seasonal structure having existed?

A. No. No.

Q. Let's just go through this list. I'm going to skip over a few numbers and we'll come back to them.

I just want to go through the numbers, where I think if we look at your affidavit, and the affidavit will not have any reference to Sherman's testimony that a structure existed at the time he testified or any time previous. And he testified in what year?

A. 1934.

Q. Okay. If that's what your understanding is.

So, number three, him looking at your affidavit, I don't see any reference to Sherman's testimony or any other evidence of a structure.

And the admission response is not specific, but I take it based on

202

your affidavit and the response to A that New Jersey is aware of no evidence showing that a structure existed at any point in time on that grant; is that correct?

**A. That's correct.**

Q. With respect to B, which is Subparagraph 8, again, I don't see any testimony from Sherman and the response indicates that there's no aerial photography from 1930, 1951, 1962, 1979, 2000 or 2002 showing a structure; correct?

**A. That's correct.**

Q. There's no evidence between 1883 and the present day that a structure ever existed?

A. **But again, the grant was issued in 1883 and we're showing photography that started in 1930. There may have been a structure there.**

Q. Mr. Sherman investigated all of the grants in order to determine whether a structure existed on them; is

203

that correct?

**A. I don't know what his purpose was. But it appears that would have been the case.**

Q. Wasn't his purpose just to identify the grants on which structures existed; either when be testified or at some previous point in time?

**A. It would appear to be so.**

Q. The same question with respect to C. No mention in your affidavit as to a structure and no structure shown on the aerial photographs that you refereuce; is that correct?

**A. That's correct.**

Q. So, we're up to -- I'm just going to keep a running tally in my copy here. And if you'd like to do the same, I just want to get a number that we can agree on once we've gone through the list as to where there's no evidence of a structure.

I think we're up to three; A, B and C.

204

D, let's skip over. E, Subparagraph 13 no evidence in your affidavit or the admission response indicating that a structure existed at any time after the 1916 grant?

**A. Okay.**

Q. Okay, you agree?

**A. Yes. Yes.**

Q. Okay. So, that's number four; correct?

**A. Number four?**

Q. I just wanted to keep a running tally on grants on which there's no evidence of a structure existing from the issuance of the grants. Let's go back. I've numbered A, one.

**A. A is one, okay.**

Q. And B is two and if you want to mark it on your exhibit right next to the letter, that might be easiest. You're certainly free to write on it, if you want.

So, C would be three?

**A. Okay.**

205

Q. E would be four. Now we're up to F, which we baven't talked about yet.

Looking at Subparagraph 16 in your affidavit, I don't see any reference to a structure there or in the admission response.

So, I would number that five, if you're in agreement?

**A. Okay.**

Q. And H, Number 18, Subparagraph 18, I don't see any evidence in either place; can we number that six.

**A. Okay.**

Q. And "I" would be seven, I believe, which is Subparagraph 24?

**A. Okay.**

Q. And then letter J, Subparagraph 25, I would number that eight, if you're in agreement.

**A. Okay.**

Q. And letter K, Subparagraph 26, I would number that nine, if you agree?

206

A. Okay.
Q. L, Subparagraph 28, I would number that ten.
A. Okay.
Q. Letter M, Subparagraph 29, I would number that 11.
A. Okay.
Q. Letter N, Subparagraph 30, I would number that 12.
A. Okay.
Q. Subparagraph O -- I'm sorry, letter O, Subparagraph 31, I would number that 13.
A. Okay.
Q. Letter P, Subparagraph 32, I would number that 14.
A. Okay.
Q. Letter Q, Subparagraph 33, I would number that 15?
A. Okay.
Q. Letter S, Subparagraph 36, I would number that 16?
A. Okay.
Q. And then skipping all the

207

way down to X, Subparagraph 43, I would number that 17.
A. Okay. 17.
Q. Okay. So, we're in agreement that 17 -- respect to 17 of the 41 grants discussed in Paragraph 8, there's no evidence at any point in time between the date of the grant and today that a structure ever existed on those lands; is that correct?
A. Yes.
Q. Okay. So, we have 17 there.
Now I just want to back up and go over the areas of -- that were -- where Delaware asked in its admission request to admit that no structure existed and New Jersey disagreed and stated that certain structures were found on aerial photography.
So, I just want to go back to D, letter D, which is Subparagraph 10. I would just ask you, in the set of aerial photographs that New Jersey has produced and is marked as Exhibit 23, to

208

show me what photographs demonstrate that a pier is shown on that site.
A. These are not -- these are just copies of the photos that we provided.
Are these labeled here? Let's see.
Q. Let me ask a couple of questions about the production of the aerial photos.
How did -- I take it, my understanding that you caused these photos to be provided to counsel and then counsel provided them to Delaware; correct?
A. Yes.
Q. In what form did your office provide the photos?
A. They were scanned. They were digitized. They were scanned and put on a CD.
Q. These were originally hard copy photographs?
A. Originally hard copies that

209

were scanned.
Q. And they were scanned into electronic format. Okay.
And I will represent to you that I had these printed out off of a CD that we received and as I stated earlier, I had them labeled with the Bates stamps that were on the CD but not on the image themselves.
So that when you say I'm basing there on photo X, you will able to provide a Bates stamp that everyone can identify later on.
There's still something we need to clear up about the quality or the authenticity of the photographs?
A. Again, these are not the same clarity as the originals. And even the digitized versions; because they are copied.
Q. Did you compare the electronic scanned version with the hard copy?
A. No, I didn't.

210

Q. To see if there was any loss of quality?
**A. No, I didn't.**
Q. So, you don't know if printing out one of these images from the CD would look nearly as good as the original from which they were scanned?
**A. The originals were looked at on a stereo magnification, also, which we're looking at a paper print. It's not going to have the same clarity as looking at it under a stereoscope, look at the photos.**
MR. ANDERSEN: Off the record.
- - -
(Whereupon, there was an off-the-record discussion.)
- - -
BY MR. ATTAWAY:
Q. Let's try this starting with Subparagraph 10.
MR. ANDERSEN: Do you see which ones I'm talking about?

211

Here. Take my copy. This is Paragraph 10.
BY MR. ATTAWAY:
Q. Mr. Castagna, which aerial photographs document the statement in letter D that a pier is shown on this site in 1940, 1977 and 1979 aerial photography?
**A. 1940 NJ 06796, number ten, Eugene DuPont grant, there's an arrow pointing to a pier.**
Q. Do you know what sort of pier this is?
**A. It's a pier that extends out from the shoreline into the water.**
Q. Could you tell when you looked at this under magnification whether this pier was, in 1940, a usable pier or was it dilapidated?
**A. I did not look at it. I was just looking to see if there was a structure there. I wasn't looking for the condition.**
Q. So, you don't know whether

212

it was usable or not?
**A. No.**
Q. Let's move on to letter G; still on request for admission, 34; Subparagraph 17, it says pilings and a dock shown?
**A. Exhibit 1977 NY 06787; Paragraph 8, number 17, there's a structure that appears with pilings.**
Q. Is that the Chamber Works facility?
**A. I'm not certain of that.**
Q. That's the 1977 photo.
Do we also have a 1979?
**A. Yes, there's also a 1979 photo.**
MS. CONKLIN: Could you read the page, please.
THE WITNESS: 1796 NJ 06789.
BY MR. ATTAWAY:
Q. Let's move on to letter R, Subparagraph 34.
MR. ANDERSEN: Can we take a break for a minute?

213

- - -
(Whereupon, there was a brief recess.)
- - -
MR. ANDERSEN: It appears that the aerial -- that the reproductions that you've made here of the photography that we gave you are too pixilated for some of us to even be able to read the notations that we've put on the outside here. The original documentation is not -- should reproduce better than this. We of course have the originals of it.
What I propose to do because we didn't have it at the time we -- that these answers were prepared by the staff, we didn't have the Bates numbers that we gave you here, is that we can cross reference each one of these Bates numbers, each one of these answers to the Bates numbers.

214

MR. ATTAWAY: Okay.
MR. ANDERSEN: And then if you have further questions about individual photographs, we can go through that. And ultimately, if your technical people and our technical people aren't able to produce better copies of these things, then we'll produce the originals if we have to.
MR. ATTAWAY: Okay. That's a very good resolution to that.
MR. ANDERSEN: Some of these we can't read.
MR. ATTAWAY: My experience in reading some of the images on screen, they were very hard to read and I was having to zoom in to read a few of them.
So, but -- but I think your proposed resolution is a good one.
MR. ANDERSEN: All right.
MR. ATTAWAY: I agree.
MS. CONKLIN: What's a time

215

frame for getting this done, Bill? Do you have any idea?
MR. ANDERSEN: I don't know. Where is Tom?
THE WITNESS: He's here.
MR. ANDERSEN: It's a question of getting to Tom.
MR. ATTAWAY: As long as we get it in a reasonable period of time. I don't think there's an urgency to it. Okay.
MR. ANDERSEN: We believe that all of the -- if this is all of the aerial photography that we gave you, then we believe that it demonstrates all of the information that we show that we referred to in answer to admission number 34.
MS. CONKLIN: We're going to get them better resolution -- we're going to get them correlated Bates numbers for each of these itemized structures.

216

MR. ANDERSEN: Right. And if the technical people can't get together, why this isn't a better resolution, we'll either give them a better set of these copies ourselves or somehow get them the originals.
MR. ATTAWAY: Could you just give us a copy of the hard copies before they were scanned, along with the correlation?
MR. ANDERSEN: That's a question I'd like to pose to the technical people to see how it's done.
MR. ATTAWAY: That might be the easiest thing.
MR. ANDERSEN: I don't know the expense of that and I don't know the time frame for that.
MS. CONKLIN: We need to ask.
MR. ANDERSEN: Right.
MR. ATTAWAY: Okay. Let me

217

see if I have any other questions, in that case.
I have no further questions.
MS. CONKLIN: Thank you.
- - -
(Whereupon, the deposition concluded at 4:18 p.m.)
- - -

CERTIFICATE

I hereby certify that the proceedings and evidence noted are contained fully and accurately in the notes taken by me on the deposition of the above matter, and that this is a correct transcript of the same.

_____

Teresa M. Beaver, RPR

(The foregoing certification of this transcript does not apply to any reproduction of the same by any means, unless under the direct control and/or supervision of the certifying shorthand reporter.)



INSTRUCTIONS TO WITNESS

Please read your deposition over carefully and make any necessary corrections. You should state the reason in the appropriate space on the errata sheet for any corrections that is made.

After doing so, please sign the errata sheet and date it.

You are signing same subject to the changes you have noted on the errata sheet, which will be attached to your deposition.

It is imperative that you return the original errata sheet to the deposing attorney within thirty (30) days of receipt of the deposition transcript by you. If you fail to do so, the deposition transcript may be deemed to be accurate and may be used in court.



ERRATA

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ACKNOWLEDGEMENT OF DEPONENT

I, _____, do hereby certify that I have read the foregoing pages, _____ and that the same is a correct transcription of the answers given by me to the questions therein propounded, except for the corrections or changes in form or substance, if any, noted in the attached Errata Sheet.

_____

DATE SIGNATURE

Subscribed and sworn to before me this _____ day of _____, 200__.

My commission expires: _____

Notary Public

LAWYER'S NOTES

| PAGE | LINE | |
|---|---|---|
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IN THE
SUPREME COURT OF THE UNITED STATES

- - -

STATE OF NEW JERSEY :
v. :
STATE OF DELAWARE :

- - -

October 13, 2006

- - -

Oral deposition of Suzanne Dietrick was held at the Offices of NJDEP, Bureau of Tidelands, 9 Ewing Street, Trenton, New Jersey, commencing at 9:30 a.m., on the above date, before Samantha A. Oakley, Certified Shorthand Reporter and Notary.

- - -

ESQUIRE DEPOSITION SERVICES
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INDEX

- - -

Testimony of: Suzanne Dietrick


| | Page |
|---|---|
| By Mr. Newell | 5 |


- - -

EXHIBITS

- - -


| NO. | DESCRIPTION | PAGE |
|---|---|---|
| Dietrick-1 | NJ CMP | 45 |
| Dietrick-2 | 1905 Compact | 54 |
| Dietrick-3 | Deficiency Letter | 63 |
| Dietrick-4 | Response to Deficiency Letter | 70 |
| Dietrick-5 | Letter | 76 |
| Dietrick-6 | Letter | 82 |
| Dietrick-7 | Lease | 101 |
| Dietrick-8 | Letter | 103 |
| Dietrick-9 | Delaware Federal Consistency | 106 |
| Dietrick-10 | Subaqueous Lands Lease | 113 |
| Dietrick-11 | Supplemental Approval | 114 |
| Dietrick-12 | Permit | 115 |
| Dietrick-13 | Memorandum | 121 |
| Dietrick-14 | Subaqueous Lands Lease | 124 |
| Dietrick-15 | Letter | 126 |
| Dietrick-16 | Letter | 131 |
| Dietrick-17 | Subaqueous Lands Permit | 133 |




- - -

DEPOSITION SUPPORT INDEX

- - -

Direction to Witness Not to Answer

| Page | Line | Page | Line | Page | Line |
|---|---|---|---|---|---|
| 97 | 21 | | | | |

Request for Production of Documents

| Page | Line | Page | Line | Page | Line |
|---|---|---|---|---|---|
| None | | | | | |

Stipulations

| Page | Line | Page | Line | Page | Line |
|---|---|---|---|---|---|
| None | | | | | |

Question Marked

| Page | Line | Page | Line | Page | Line |
|---|---|---|---|---|---|
| None | | | | | |



Suzanne Dietrick, after having been duly sworn, was examined and testified as follows:

- - -

ORAL EXAMINATION

- - -

MR. NEWELL: This is the deposition of Suzanne Dietrick being taken in the State of New Jersey versus State of Delaware, 134 Original, in the Supreme Court of the United States. This deposition is being held in the office of the Bureau of Tidelands, 9 Ewing Street, Trenton, New Jersey. Today's date is October 13, 2006. It is currently a little before 9:30 a.m.

Present in addition to Ms. Dietrick are myself, Ryan Newell, attorney for the State of Delaware, Meridith Gaudio, my co-worker, Eileen Kelly, attorney for the State of New Jersey and

6

Samantha Oakley, certified court reporter.
BY MR. NEWELL:
Q. Good morning, Ms. Dietrick.
A. **Good morning.**
Q. Thank you for coming. As I said, my name a Brian Newell I'm an attorney for the State of Delaware.
You understand you're under oath, correct?
A. **Yes.**
Q. Is there anything that would prevent you from testifying fully and accurately today?
A. **No.**
Q. Do you have any mental or physical limitations that would prevent you from testifying fully and accurately?
A. **No.**
Q. Are you currently on any medication?
A. **No.**
Q. Ms. Dietrick, have you ever been deposed before?

7

A. **No.**
Q. Do you understand how a deposition works?
A. **Yes.**
Q. Just to clarify, what I'm going to do is ask you some questions about what you do and what you know as it affects this case. You have to answer those questions under oath. When I'm all said and done, and your lawyer may ask questions if she wants to, but at the end the court reporter is going to type up the transcript, the record, and that's going to be it. Do you understand?
A. **Yes.**
Q. I'm going to ask that you listen carefully to the questions that I have asked you and answer only those questions that you hear fully. If you don't hear a question, please stop me and I'll repeat it. Will you do that?
A. **Yes.**
Q. I also want you to answer only those questions that you completely

8

understand. If you don't understand a question, please let me know, I'll try to rephrase it. Do you promise to do so?
A. **Yes.**
Q. I'm going to assume that if you answer a question you both heard and understood these questions; is that correct?
A. **Yes.**
Q. It's also important that only one person speak at a time. The court reporter can only listen to one person. If I'm talking, wait until I finish and if you're talking I'll do the same; is that okay?
A. **Yes.**
Q. Also, I need you to provide verbal answers like you're doing so far. Nodding and shaking your head huh-huh or uh-huh won't suffice. Ms. Oakley is going to need you to provide a verbal answer, a no, a yes or some explanation. Got it?
A. **Yes.**

9

Q. If you need to take a break today at some point, let me know and I'll try to accommodate you.
A. **Okay.**
Q. Other than conversations with your attorney, please tell me how you prepared for today's deposition.
A. **I reviewed the permit file within the Office of Dredging and Sediment Technology.**
Q. Did you bring that document with you today?
A. **No.**
Q. Did you happen to read any of the pleadings in this case?
A. **No.**
Q. Did you talk to anyone else to prepare?
A. **I asked Dave Risilia how his deposition went last week and that was it.**
Q. Did you have meetings with counsel?
A. **Yes.**

10

Q. When exactly did you meet with counsel?
A. **On October 4th and October 12th.**
Q. Let's go back to the October 4th date. Who was present at that meeting?
A. **Myself and Eileen Kelly.**
Q. That was it?
A. **Yes.**
Q. No one else walked into the room?
A. **No.**
Q. How about October 12th, that was the other date?
A. **Is that yesterday? Yes, myself and Eileen Kelly.**
Q. Again, just the two of you the entire time?
A. **Yes.**
Q. Just to get into a little bit of background, could you explain to me what your educational background is?
A. **I have bachelor of science**

11

**in Marine Science from Stockton State College.**
Q. What year was that?
A. **1989, I graduated. I started with the Department of Environmental Protection June of 1989, and I have been employed by this agency since then.**
Q. Let's take a step back. What exactly does that degree entail?
A. **The study of marine life and ecosystems associated with marine life and icthyology, physiology of species. That's about it.**
Q. Is that something you use a lot in your job today?
A. **Yes, I do.**
Q. You mentioned that you started work at the DEP. Right after graduation, is that your first full-time job?
A. **No. Prior to that I was an executive assistant at a camp.**
Q. What kind of camp?

12

A. **Philadelphia Child Settlement Camp for Underprivileged Children.**
Q. That was prior to your under graduate degree?
A. **Yes.**
Q. Let's kind of work from 1989 when you started at the DEP, that is the Department of Environmental Protection, correct?
A. **Yes.**
Q. Let's start from there and kind of go year by year or job by job, if you will. And when doing so, please provide me with the title, what you did and the time period that you worked in that position.
A. **June of 1989 I was employed by the Bureau of Industrial Discharge Permits. My job was to issue NJPDES permits for industrial discharges to surface water. From then until probably 1992. I then transferred within that same bureau to the Whole Effluent**

13

**Toxicity Unit and in that capacity I was required to review whole effluent toxicity tests related to discharge to surface water permits and also to develop the permit effluent limits related to whole effluent toxicity.**
**In January of 1998, I was hired by the -- transferred to the Land Use Regulation Program and began working in the Dredging Unit within that program, and then in June of 1998 I then transferred into the newly created Office of Dredging and Sediment Technology within the Site Remediation Program.**
**In September of 2002, I became the manager of the Office of Dredging -- Office of Dredging and Sediment Technology and that is where I am currently employed.**
Q. Taking a step back when you were with LURP.
A. Yes.
Q. There was a dredging department within that?

14

A. **There was a unit, and there was a supervisor. In addition to his capacity of managing the dredging unit he also handled freshwater wetlands permits and other employees, but I was tasked with handling the dredging for the State of New Jersey in that capacity.**

Q. Does that department still work with dredging at all?

A. **No. They do not work with dredging in tidal waters; our office is responsible for that. They still are involved in the dredging and permitting and approval for freshwater lakes.**

Q. So the dredging responsibilities for tidelands has now shifted to the Office of Dredging and Sediment Technology?

A. **For tidal waters.**

Q. Is your current office, which is the Office of Dredging and Sediment Technology, is that part of the Department of Environmental Protection?

A. **Yes.**

15

Q. Who do you report to within your office?

A. **Irene Cropp.**

Q. Now, going up the ladder, does your office report to any other agencies higher up in the hierarchy?

A. **No.**

Q. At your office, do you have anyone who works underneath you?

A. **I have four employees.**

Q. Their names are?

A. **Dave Risilia, Jeff Thein, Mark Davis and Gary Nickerson.**

Q. What does each of those individuals do?

A. **They each are tasked with handling separate sections of the State of New Jersey dredging activities and port-related activities are split into counties and each one is given a certain area.**

Q. So you are the top, the chief person in the Office of Dredging and Sediment Technology?

16

A. **Yes, I am.**

Q. A little more specifically, what specific types of work would the Office of Dredging and Sediment Technology do?

A. **We issue waterfront development permits, freshwater wetlands permits, water quality certificates, federal consistency and stream encroachment permits.**

Q. Do you get involved with the testing of soil at all?

A. **Yes, we do.**

Q. In what capacity?

A. **The sediment sample results come in as part of the application for waterfront development or whatever regulatory permit is issued. Prior to those results being submitted to us, we work with an applicant and develop a sediment sampling plan for analyzing those materials.**

Q. Does your office concern itself with the effects of activities on

17

the Delaware River, the effect activities would have on fish and wildlife?

A. **Yes, we do.**

Q. How so?

A. **Generally when an application is submitted to our office, it is transmitted to the Division of Fish and Wildlife for them to be given the opportunity to evaluate the project and to submit comments to our office as to the conditions that they would like incorporated and/or information that they believe is deficient in the application.**

Q. So it sounds like there's a lot of coordination that goes on between your office and other offices within the DEP?

A. **Yes. Then on top of the State Fish and Wildlife, we also work with the National Marine Fishery Service and the U.S. Fish and Wildlife Service.**

Q. Are you familiar with the Bureau of Tidelands?

A. **Yes, I am.**

Q. Where, relative in the organizational structure of the DEP, do they fall to your office?
**A. Can you rephrase?**
Q. Sure. Is the Bureau of Tidelands an agency that you would work with quite often or is it someone you report to or someone that reports to you?
**A. There's no direct reporting. We coordinate with them because as a requirement of any waterfront development permit, an applicant is required to demonstrate that they have a tideland instrument for the area that they're proposing to regulate activity into and/or they have applied for said tidelands instrument as we are going through the permit process. So we do work with them in getting an understanding as to what existing tideland instruments may be out there for a project.**
Q. When you say tidelands instrument, what exactly are you speaking



of?
**A. When we issue a waterfront development for a regulated activity they also required to get a tidelands instrument to put that feature in waters owned by the State of New Jersey. So what they are required to do is file an application with the Bureau of Tidelands for a grant lease or license to occupy those lands -- those waters.**
Q. So if I were looking to do something within the tidelands, I would first go to the Bureau of Tidelands and then branch out to the other departments or other interests?
**A. Typically what is done is that the waterfront development permit is submitted, and if there's already a tidelands grant for that area, the process is much easier to go through. What then happens is that if we do not see appropriate documentation of any sort we do refer the applicant to start the process with the Bureau of Tidelands.**



Q. Are you familiar with the director of the Bureau of Tidelands or the lead person in the bureau?
**A. I was.**
Q. Do you know who it is?
**A. No, not off the top of my head.**
Q. How frequently does your office or you, yourself, in your role at the office interact with the Bureau of Tidelands?
**A. On pretty much every application.**
Q. So you have to coordinate a lot with your applications?
**A. Yes, to work with them to make sure they are aware of the application and/or inquire as to where the license is, if it has been applied for.**
Q. Is there anything else -- is that all you know about the Bureau of Tidelands as it affects your job?
**A. Pretty much.**



Q. Are you familiar with New Jersey's Coastal Management Office?
**A. Yes, I am.**
Q. Is that also part of the DEP?
**A. Yes.**
Q. What exactly does that office do?
**A. They're responsible for the Coastal Zone Management program and coordinating with NOAA in making sure that our enforceable policies are up-to-date and approved by the National Oceanic and Atmospheric Administration and also working on just getting information out regarding the Coastal Zone Management areas and the coastal effects of activities on our coastal zone.**
Q. Does your office interact a lot with the Coastal Management Office?
**A. Yes, we do.**
Q. Do they set forth regulatory procedures or guidelines or laws that

22

you're required to follow?
A. **I would actually say it's a coordinated approach. The Coastal Management Office does some of the regulations and then the Land Use Regulation Program also does some of the regulatory revisions.**
Q. Who is in charge or who is the director of the Coastal Management Office?
A. **Ruth Ehinger.**
Q. Does the Office of Dredging and Sediment Technology respond to any police or fire or other emergency calls in the Delaware River?
A. **No.**
Q. That would be outside the scope of what you do?
A. **That is correct.**
Q. Are you familiar at all with the Delaware River Basin Commission?
A. **Yes, I am.**
Q. For my knowledge, could you please explain what they do?

23

A. **They are responsible for review of -- what I have been involved with -- as developer of TMDL's for parameters of the concern within estuary, from a water quality standpoint. They also evaluate the sediment quality in and around the Delaware Estuary and they also are involved in evaluated point source discharges into their basin and they work very closely with our NJDES DSW program.**
Q. If you don't mind, sometimes when you use these acronyms if you wouldn't mind saying them for the first time. What is TMDLs?
A. **Total daily maximum loads.**
Q. So it's TDMLs?
A. **I'm sorry. Total maximum daily loads, TMDLs. Sorry. I'm used to doing acronyms.**
Q. I'm not up on the lingo yet. So you interact frequently also with the DRBC?
A. **Not really.**
Q. No?

24

A. **No.**
Q. Are you familiar with the Delaware River Bay Authority?
A. **Yes, I am.**
Q. Can you please explain what you understand that they do?
A. **We are involved with them related to their dredging activities and port-related activities at their facilities.**
Q. When you say their facilities, where are their facilities?
A. **In the Delaware River. I am not clear as to exactly where they're located.**
Q. How often do you interact with the DRBA?
A. **At interagency meetings as well as during the permitting process, we work with our consultants predominantly?**
Q. Who would be present at an interagency meeting?
A. **It's held twice a year. It's generally related to the disposal**

25

**location, the Weeks Marine and the users that take their dredge material to that facility, and that is when we run into the different agencies that are within the harbors as well as some of the private facilities. Army Corps of Engineers is in attendance, New Jersey DOT and/or their consultants.**
Q. The DOT would be Department of Transportation?
A. **Yes.**
Q. Would there be just New Jersey agencies?
A. **No. There's also the Philadelphia Regional Port Authority, DRPA, representative is there and I believe -- I'm not sure of the other organizations.**
Q. Would Delaware have any agencies present at those interstate meetings?
A. **I have only been in attendance at one where they have been present, DNREC.**

Q. Let's go a little more specific into the application review process. Could you describe for me the step-by-step process if someone were to come to your office and want a dredging permit, where would they begin and what would be the process that they would go through?

**A. Okay. Typically, it is recommended that they have a preapplication meeting with our office to go over the scope of the project and to look at the proposed dredging component. At that time we typically ask them to perform a hydrographic survey of the area of dredging, get a volume of material they're proposing to remove as well as the proposed disposal location.**

**That documentation is then submitted to our office and we develop a sediment sampling plan for their use in going out and doing a chemical, as well as a physical evaluation, of the material to be removed. Then a waterfront**



**development permit application is submitted. We review that application within 20 days of its receipt and at that point we issue -- if necessary and we feel we need additional information, a deficiency letter is issued which details what items were not found in the application or a request clarification on what was presented in the application.**

**At that time we typically ask that the applicant respond within 30 days within receipt of our deficiency letter addressing all of the items that were in the letter. When that response comes back in we have 15 days to look at that information and if everything comes back in and has answered all of our deficiencies, at that time from that receipt of that response that would -- we would deem the application complete and that would start our 90-day review period for that application, and we have 90 days in which to render a decision on the application.**



Q. What would be a deficiency that would hold up a process?

**A. Missing information, certain rules on coastal zone management were not addressed at all or not addressed adequately for us to glean whether or not they have demonstrated compliance with our rules on coastal zone management.**

**Administrative may be not notices were not filed properly to the appropriate entities and also demonstrating whether or not they have any information on tidelands.**

Q. So there are other permits or approvals that someone might need and if they don't have those approvals or permits, would that be a deficiency as well?

**A. If they had not demonstrated that -- for one, they did not demonstrate that they had the tidelands instrument already or that they had not applied for said instrument that would be a deficiency that would be identified.**



Q. Would there be any federal permits or approvals that they would need prior to -- that would prevent them from moving on?

**A. Typically, the Army Corps of Engineers who issues their permits for these types of activities, they do not issue their approvals until we issue our documents. So it is somewhat contingent on us issuing our permit decision and then they issue theirs.**

Q. Once you give your approval in the Office of Dredging and Sediment Technology, would you then send that to the Army Corps?

**A. Yes, we do.**

Q. Would there be any other interstate agencies that would have interest, any of the bordering states that border New Jersey?

**A. Um...**

Q. Let me rephrase that. Would there be any permits or applications required from other states if this

30

project were to extend into other states' waters?
MS. KELLY: Object to the foundation of that. Go ahead.
THE WITNESS: Typically, if there's -- the example I can use is if in Pennsylvania a dredging project was discharging its dredging material in Weeks Marine, which is located in New Jersey, they would also be required to get a Pennsylvania permit for the dredging activity and we would issue a water quality certificate for the discharge of the dredging material into Weeks' facility.
BY MR. NEWELL:
Q. Thank you. When someone obtains a tidelands instrument, does that necessarily entitle them to the right to dredge?
**A. They would need to get our waterfront development permit and water quality certificate.**

31

Q. That's a separate thing, to clarify?
**A. Yes.**
Q. Are you familiar at all with New Jersey's Coastal Zone Management Program?
**A. Yes, I am.**
Q. In your office, what role does the New Jersey CZMP have, is it a guideline?
**A. Out of the -- within the Coastal Zone Management program Ruth's office is required to submit what are referred enforceable policies under the rules of Coastal Zone Management and those are our guiding rules as we are going through our waterfront development permit. So I know that that -- that those enforceable policies are within the Coastal Zone Management Program document.**
Q. So when your office is approving a dredging permit, for example, you attempt to do those in a manner that's consistent with the CZMP?

32

**A. Yes.**
Q. What is your understanding of the boundary between New Jersey and Delaware?
**A. Can you clarify that?**
Q. Sure. Within the Delaware River.
**A. I know that the state line goes mainly within the New Jersey and Delaware and there is this Twelve Mile Circle.**
Q. Where would that state line be in the river, do you have any knowledge of where that line lies?
**A. Down the middle of the river below the Twelve Mile Circle and within the circle it's at the mean high waterline.**
Q. At the mean high waterline?
**A. Yes.**
Q. On which side?
**A. I'm sorry. Mean low waterline.**
Q. On which side of the river?

33

**A. New Jersey side.**
Q. So within the Twelve Mile Circle the boundary between Delaware and New Jersey, it's your understanding that it runs to the low water mark on New Jersey's side?
**A. That is correct.**
Q. Have you ever been on a boat ride down the Delaware River?
**A. Yes, I have.**
Q. What times?
**A. May of 2005, around there.**
Q. Was that part of your -- was that an employment-related trip?
**A. Yes. We had asked Weeks Marine to have us take a boat ride and look at some of the facilities they dredge on both the Philadelphia and New Jersey side.**
Q. Where is Weeks Marine?
**A. At the Commodore Barry Bridge.**
Q. When exactly did you become familiar with the term that you used

earlier, the Twelve Mile Circle?
**A. In the review of this project.**
Q. This project being the Crown Landing project?
**A. The BP LNG project.**
Q. Prior to that you had never heard the term Twelve Mile Circle?
**A. I knew that in the vicinity of the DuPont facility when we were involved in a permit action at that facility that Delaware was issuing some sort of approval. I was not aware of what they were going to issue.**
Q. Why was Delaware issuing an approval?
MS. KELLY: Object to the foundation of that.
BY MR. NEWELL:
Q. Do you have an understanding why Delaware would have issued an approval?
**A. Not at the time.**
Q. Do you have any



understanding now as to what?
**A. Yes.**
Q. What is your understanding?
**A. That they have the authorization to evaluate projects within this Twelve Mile Circle.**
Q. Prior to coming to understand the term the Twelve Mile Circle, were you aware that the boundary ran to the low water mark on the New Jersey side within the Delaware River?
**A. I'm not sure of the question.**
Q. You said just recently it just come within the last two years since this project has been pending you became familiar with the term Twelve Mile Circle. Prior to that, were you aware of where the boundary lay between Delaware and if New Jersey?
**A. No, not in this area.**
Q. Does your job at all require you to know where the boundary lay? For example, does your job require you to



know where New Jersey territory extends to?
**A. Yes.**
Q. But you did not know where the boundary lay between Delaware and New Jersey?
**A. In this area. I knew where it was below this area in Delaware, south of the Delaware Bay.**
Q. South of the bay?
**A. Well, south of where it runs down the middle of the river and the bay.**
Q. Are you familiar with any structures extending from the New Jersey shore into Delaware territory?
**A. Current structures?**
Q. Sure.
**A. No.**
Q. You're not familiar with any structures?
**A. No.**
Q. What is your understanding of New Jersey's regulatory authority within the Twelve Mile Circle?



MS. KELLY: Overbroad but go ahead if you can.
THE WITNESS: We are authorized to regulate all activities in that stretch.
BY MR. NEWELL:
Q. So all activities within the Twelve Mile Circle?
**A. Yes.**
Q. So that would mean all activities that extend beyond the low water mark of the New Jersey shore into the Twelve Mile Circle?
**A. If they originate in New Jersey.**
Q. And by originate --
**A. The structure would originate in New Jersey. For example, a pier structure.**
Q. Do you have an understanding as to Delaware's regulatory authority within the Twelve Mile Circle?
**A. No, I do not.**
Q. Are you aware of your office

ever objecting to Delaware's exercise of dredging permits -- of regulating dredging permits within the Twelve Mile Circle?

**A. Not that I'm aware of.**

Q. Are you aware, to your knowledge, of any other New Jersey agency ever objecting to Delaware's exercise of jurisdiction in the Twelve Mile Circle?

**A. No.**

Q. Correct me if I'm wrong, but I believe you just said that it was your understanding that New Jersey would have regulatory authority for any projects extending from the New Jersey shore into the Twelve Mile Circle?

**A. That is correct.**

Q. To your knowledge, how long has that been New Jersey's position? Has it always been that position? Let me rephrase.

Has New Jersey always maintained that it is their regulatory authority to govern and regulate any



projects extending from the New Jersey shore into the Twelve Mile Circle?

MS. KELLY: I'm going to object to foundation. Go ahead -- no present knowledge.

THE WITNESS: Not to my knowledge. I'm not aware of it.

BY MR. NEWELL:

Q. If a project were to extend from the New Jersey shore into the Twelve Mile Circle in Delaware territory, would your office have the authority to authorize dredging in the Twelve Mile Circle?

**A. Yes.**

Q. Does New Jersey authorize dredging projects that would extend from the New Jersey shore into let's say New York territory?

**A. Yes.**

Q. Does New Jersey authorize dredging projects that, again, originate in New Jersey but would extend into Pennsylvania?



**A. Yes.**

Q. And that dredging would occur within the other state?

**A. Yes.**

Q. Just to kind of tie things up if you wouldn't mind, could you just reiterate for me what New Jersey's position is regarding dredging activities that take place in Delaware soil but begin on the New Jersey shore?

MS. KELLY: I'm going to object. That's a very broad question, New Jersey's position. Are you asking in her capacity at the Office of Dredging? I mean, she can answer it but I'm just putting my objection on the record. It's very vague and broad, so.

BY MR. NEWELL:

Q. I'll rephrase. What is your understanding is as an employee of the Office of Dredging and Sediment Technology as to New Jersey's regulatory



authority regarding dredging activities that take place in Delaware but originate in New Jersey?

**A. That we have the regulatory authority to issue permits for that activity.**

Q. If the projects extended into the Twelve Mile Circle within Delaware would your office coordinate with the Delaware agency in charge of dredging?

**A. We have in past coordinated with PADEP on projects that originated in Pennsylvania in which the dredge material was coming into New Jersey.**

Q. I'm sorry. How about if it extends into the Twelve Mile Circle within Delaware. The Twelve Mile Circle is within Delaware territory. Has your office interacted or coordinated with Delaware agencies for dredging permits?

**A. No.**

Q. Just to give me a little more understanding of what your office

42

does, what coastal zone laws, statute, regulations govern the work you do? I recognize it's a broad question. Just kind of take your time and I'll let you explain what various laws and things you work with on a day-to-day basis.

**A. The rules on coastal zone management, the coastal zone program rules, the freshwater wetlands regulations, stream encroachment regulations and also the federal consistency regulations.**

Q. Taking each one of those individually, could you just explain what each of those laws governs or what they say?

**A. The rules on coastal zone management are acceptability conditions for regulated activities that occur within the coastal zone of New Jersey and how a project should be constructed in order to demonstrate compliance with those rules in order to minimize or avoid impacts to any sensitive habitat.**

43

**Freshwater wetlands protection act regulates activities in freshwater wetlands. The coastal permit program rules are more the administrative regulations as to how we do our permit decisions, as well as the adjudicatory hearing process, as well as the civil administration penalty process.**

**The federal consistency regulations apply to federal agencies that are looking to do activities in our coastal zone.**

Q. Did you mention the Coastal Area Facilities Review Act?

**A. I call them the federal consistency regulations.**

Q. Okay. That's CAFRA?

**A. I'm sorry. We only minimally get involved with the CAFRA regulations.**

Q. And the Waterfront Development Act?

**A. That is the law over the rules on coastal zone management.**

44

Q. Do you know what chapter of the New Jersey statutory code regulates dredging?

**A. I'm not sure of the question.**

Q. Are you familiar with New Jersey's statutory code?

**A. Yes.**

Q. Within that code there's a section of dredging; do you know what section that is?

**A. No.**

Q. Are you familiar with the chapter entitled that regulates the issuance of riparian leases, grants or conveyances?

**A. No.**

Q. Are you familiar with any of Delaware's coastal zone laws?

**A. No.**

Q. I'd like to discuss now for a little bit the New Jersey Coastal Management Plan. Are you familiar with the Final Environmental Impact Statement

45

that New Jersey issued in regard to its coastal management plan?

**A. No.**

Q. But you are familiar with the coastal management plan?

**A. Yes.**

MR. NEWELL: I'd like to have marked Dietrick-1.

(Whereupon document was marked Dietrick-1 for identification.)

BY MR. NEWELL:

Q. What I have before you is marked Dietrick-1. You will see that it has at the bottom right-hand corner Bates number DE20352. Just so you understand, Bates number is basically the marking that lawyers use when sharing exhibits or documents with opposing counsel and the court.

This is a huge document. I have only provided you with a brief couple of pages. I didn't want to have to carry the whole thing here and I'm sure you don't want the whole thing

46

either. I did provide you with the table of contents if you want to take a couple of minutes to familiarize yourself with that. Just take your time and see what it covers.

**A. To clarify, I was shown this document yesterday by my attorneys, the cover of it.**

Q. You were shown just the cover of it?

**A. Yes, I did not go through it.**

Q. Now that you remember you have seen that document, were you shown any other documents that you're aware of?

**A. No.**

Q. Have you had a chance to review the table of contents?

**A. Yes.**

Q. Albeit briefly?

**A. Yes.**

Q. If you wouldn't mind turning to page 19 in the document but it's actually has Bates number DEP20381. Are

47

you there?

**A. Yes.**

Q. You will see that we're in Chapter 2 of the Coastal Management Plan entitled Boundary. Do you see that?

**A. Yes.**

Q. I'm going to ask that you read this section on boundary. It will be -- the next page will be page 19 and page 20. If you wouldn't mind taking your time and just reading that. When you're done, I'm going to ask you a couple of questions as it pertains to page 20.

**A. (Witness reading.) Okay.**

Q. You have had a chance to read these two pages?

**A. Yes.**

Q. Again, please take your time when you're doing this. I'm in no hurry. If you wouldn't mind again turning to what is DE20382, page 20. Do you see the section on Seaward and Interstate Boundaries?

48

**A. Yes.**

Q. I'm going to read the second paragraph into the record and then I'm going to ask you a question on it. Please listen as I do read it. "In most of Salem County, the Delaware-New Jersey State boundary is the mean low waterline on the eastern (New Jersey) shore of the Delaware River. The New Jersey and Delaware Coastal Management agencies have discussed this issue and have concluded that any New Jersey project extending beyond mean low water must obtain coastal permits from both states. New Jersey and Delaware, therefore, will coordinate reviews of any proposed development that would span the interstate boundary to ensure that no development is constructed unless it would be consistent with both state coastal management programs."

Can you tell me what your understanding of this language is?

**A. That if a project that originates in New Jersey extends into the**

49

**Delaware-New Jersey state boundary that both states have the ability to issue permits for that activity.**

MR. NEWELL: Would you mind reading back that answer for me?

(Whereupon the last answer was read back.)

BY MR. NEWELL:

Q. When you say extends into the boundary, do you mean extends beyond one state's boundary into the other state?

**A. Below mean low water, as is here.**

Q. So if it were to extend from the New Jersey side that would be from the New Jersey shore across the mean low water into Delaware territory?

**A. That is correct.**

Q. Thank you. I was just trying to clarify.

If you don't mind, please flip a couple of pages. I'm going to ask you to turn to what we have as DE20614.

50

Actually, it should be the next page. You will see at the bottom it's page 253 of the Coastal Management Plan. I'm not actually going to ask you any questions about this page in front of you. I'll begin asking you questions starting at the bottom of the next page under the section Liquified Natural Gas carrying over on to the following page. But in fairness, please feel free to review the entire section. So starting on page 253 and carrying over to page 255 stopping at recreation on page 255. Do you see that?

**A. Yes.**

Q. Take your time.

A. **(Witness reading.)**

Q. Ms. Dietrick, so you know we'll take a break right after this.

**A. Okay.**

Q. Please turn to DE20615 -- I apologize, 20616. The first full paragraph on that page, I'm going to read that into the record and again ask you questions when I'm finished. "The New

51

Jersey Coastal Program states that LNG terminals are discouraged unless they are constructed so as to neither unduly endanger human life nor property nor otherwise impair the public health, safety and welfare, and comply with the Coast Resource and Development Policies." Because the tankering of LNG could pose potential risk to life and property adjacent to New Jersey's waterways which also serve as boundaries with the states of Pennsylvania and Delaware along the Delaware River and the state of New York in the Port of New York and New Jersey, the state considers decisions concerning the siting of LNG terminals to be an interstate matter." Do you see that language?

**A. Yes.**

Q. In particular, what is your understanding of the final two lines of that paragraph stating the state considers decisions concerning the siting of LNG terminals to be an interstate

52

matter?

**A. It appears to be talking about the tankering of the LNG vessels and the potential risk to the different states which border the bistate rivers and that all states should be involved in the siting of those facilities.**

Q. By involved, what do you mean by that?

**A. It talks about decisions. I can't go beyond what that decisions means.**

Q. So if an LNG facility were to he placed extending from the New Jersey shore into the Twelve Mile Circle, is it your understanding that New Jersey would have to work with Delaware because this would be an interstate matter?

MS. KELLY: Are you asking based on this document?

MR. NEWELL: Yes.

THE WITNESS: Yes.

BY MR. NEWELL:

Q. Would that mean -- is that

53

your understanding --

**A. Based on the reading of this document.**

Q. Please let me finish. Would it be your understanding that for an LNG facility that involved dredging that the dredging would involve interstate cooperation?

**A. Based on the reading of this document.**

MR. NEWELL: Why don't we take a break? Let the record show there is beeping going on in the office and we'll take a break and see if we can fix it.

(Whereupon a break was taken.)

BY MR. NEWELL:

Q. Ms. Dietrick, we're now back on the record. While we were off the record, did you happen to have any conversations with counsel?

**A. Yes, I did.**

Q. Was it about the substance of your testimony?

54

A. Yes.
Q. Let's move on. Are you familiar with interstate compacts between the State of New Jersey and Delaware?
A. The 1905 Compact.
MR. NEWELL: I'd like to have marked Dietrick-2.
(Whereupon document was marked Dietrick-2 for identification.)
BY MR. NEWELL:
Q. What I have handed you marked Dietrick-2, the first page it has Delaware Bates DE06770. This is the Compact of 1905 that you just referenced between the State of New Jersey and the State of Delaware. You are familiar with this document?
A. I'm not familiar with this document.
Q. But you have heard of the Compact of 1905?
A. That is correct.
Q. How did you become aware of the compact of 1905?

55

A. In going through the LNG project application.
Q. So you saw reference to the Compact of 1905 in the application?
A. Yes, and information coming from the applicant.
Q. And the applicant being British Petroleum or Crown Landing?
A. That is correct.
Q. What you say information coming the applicant, what type of information might that be?
A. It was response to a deficiency letter.
Q. Prior to that, had you had any interaction or any knowledge of the Compact of 1905?
A. As we were going through the application also.
Q. So your first awareness of the Compact of 1905 came about with New Jersey's interactions with BP/Crown Landing?
A. And our review of the

56

application also.
Q. No other occasions you have an opportunity to rely upon the compact?
A. No.
Q. Can you give me your understanding of the Compact of 1905?
A. No.
Q. So you have no understanding of what it actually states or means?
A. I guess clarify the question.
Q. What is your understanding of the Compact of 1905 and what the document says?
A. That there is a circle in and around the Port of Wilmington that is -- was established as waters of Delaware.
Q. That understanding came about based on information provided by the applicant?
A. And in discussions with the project manager.
Q. The project manager being?
A. Dave Risilia.

57

Q. So the project manager was Dave Risilia who was within your office?
A. That's correct.
Q. Just to clarify, you have actually never read this document?
A. That is correct.
Q. So if I were to ask you about particular sections of this document you would have no understanding as to what those sections would mean?
A. I have never reviewed this document.
Q. You mentioned that the compact discusses the Twelve Mile Circle. Are you aware of any discussion within the compact about jurisdiction of the two states, New Jersey and Delaware?
A. No I am not.
Q. So to your knowledge, the Compact of 1905 strictly deals with boundary?
A. My understanding is that, yes.
Q. Since the Crown Landing

application, have you had any other opportunities to rely on the Compact of 1905 in your role in the Office of Dredging and Sediment Technology?

**A. This is the only application currently before our office.**

Q. Under what context did the Compact of 1905 come up in the Crown Landing application?

**A. As we were going through the application and reviewing that application, there were a number of newspaper accounts regarding the Compact of 1905.**

Q. Those were current newspapers?

**A. Yes.**

Q. So --

**A. Referencing it.**

Q. So 2004, 2005 time period?

**A. That is correct.**

Q. Did you rely on those newspaper articles for what they said about the Compact of 1905?



**A. No, it just made references to it.**

Q. Do you understand why Crown Landing or British Petroleum would have brought to your attention the Compact of 1905?

**A. No, I do not.**

Q. So it's fair to say that you're familiar with the proposed Crown Landing project?

**A. In a management role.**

Q. In a management role within the Office of Dredging and Sediment Technology?

**A. Correct.**

Q. And that is because is there proposed dredging issues with this Crown Landing pier?

**A. There's proposed dredging as a regulated activity.**

Q. Can you tell me a little bit about what that dredging would be or where it would be I should say?

**A. The dredging is to occur around the pier structure in order to allow for the vessel to be moored at the pier structure.**



Q. Where would that pier be? Would that be within New Jersey territory?

**A. It originates in New Jersey.**

Q. The pier originates in New Jersey?

**A. Yes.**

Q. Would it extend into Delaware territory?

**A. Yes, it extends into Delaware waters.**

Q. That dredging, would it be of New Jersey soil as well Delaware soil then?

**A. I'm not sure of the question.**

Q. You said the dredging would occur at the pier. You said that the pier originates in New Jersey, extends into Delaware. So would there be dredging of both New Jersey soil so --



**A. It's dredging in Delaware waters.**

Q. Completely in Delaware waters?

**A. I'm not sure.**

Q. Do you have any idea how much -- the approximate amount how much soil is anticipated to be dredged?

**A. I think approximately 800,000 cubic yards.**

Q. For someone who doesn't really know how much a cubic yard is, how much is 800,000 cubic yards?

**A. It's difficult to quantify. A cubic yard is 3 by 3 by 3 so...**

Q. Do you have any analogy that you can relate it to in terms of amount?

**A. It would be equivalent to the dredging of a section of the federal navigation channel in the New York-New Jersey Harbor, the volume.**

Q. We're talking about a lot of dredging?

**A. Yes.**

Q. Are you familiar at all with the Marcus Hook Anchorage?
**A. I know where it is located.**
Q. Do you have knowledge whether the use of the Crown Landing facility would interfere with the anchorage?
**A. I know it's in the vicinity of the project.**
Q. But do you know whether if the proposed Crown Landing facility were to come to fruition, would the use of that facility interfere at all with the anchorage?
**A. I can't answer that question.**
Q. That is because you do not know the answer?
**A. I do not know the answer.**
Q. Would there be anyone you could talk to to find out that answer?
**A. The project manager, Dave Risilia.**
Q. Dave Risilia would know that



answer?
**A. Yes.**
Q. Is the dredging associated with the Crown Landing, is that more dredging than you're used to seeing for the projects you permit or is it less?
**A. It's on the larger scale.**
MR. NEWELL: I'd like to have marked Dietrick-3.
(Whereupon document was marked Dietrick-3 for identification.)
BY MR. NEWELL:
Q. Ms. Dietrick, what we have here that has now been marked as Dietrick Dietrick-3 has Bates numbers NJ01036 to NJ1067. You will see that these are NJ, which means that this document was provided by the State of New Jersey to the State of Delaware. What you have before you is February 4, 2005 letter from the Office of Dredging and Sediment Technology to David Blaha of Environmental Resources Management. This letter is signed by Dave Risilia. Are



you familiar with this document?
**A. Yes, I am.**
Q. What is your understanding of this document?
**A. It's a deficiency letter on an application that was submitted to our office upon review by Dave Risilia. These are the items that he believes are missing and/or need further clarification within the application that was submitted.**
Q. Environmental Resources Management, is that the applicant?
**A. That is the consultant.**
Q. They are the consultant to whom?
**A. BP.**
Q. Would this communication also have been sent to BP?
**A. There is a copy sent to a Laurie Beppler of BP Crown Landing.**
Q. What exactly does a consultant do for an applicant?
**A. Prepare the application on**



**behalf of the applicant.**
Q. So is a consultant someone that is familiar with New Jersey's coastal laws and what would be needed for the permit?
**A. They're familiar with the application contents and our rules on coastal zone management, yes.**
Q. Thank you. So to clarify, this letter here then is in reference to the proposed Crown Landing facility in Logan Township; is that correct?
**A. That is correct.**
Q. In order to ask some questions, I know you said you are familiar with it but I want to give you a chance to read this document. Can you please look at this first page NJ01036, and I want you to see the third paragraph. It begins, the project site. Please take your time and read that and let me know when you have finished.
**A. (Witness reading.) Finished.**
Q. Thank you. Just listen to

66

me as I read this into the record and then I'm going to ask you some questions about it. "The project site is located in the States of Delaware and New Jersey. Accordingly, activities taking place from the mean low waterline (MLWL) outshore are located in the State of Delaware and therefore are subject to Delaware Coastal Zone Management Regulations. Activities or associated impacts to New Jersey's coastal resources occurring from the MLWL landward are the subject of this application."

Is it your understanding that Mr. Risilia in this paragraph is stating that activities occurring for the proposed Crown Landing project that extend beyond the mean low waterline into the Twelve Mile Circle would be subject to Delaware regulation?

**A. Yes, but we issued a letter of clarification shortly after this deficiency letter was issued.**

Q. As far as this letter itself

67

right here, is it your understanding that Mr. Risilia is saying that Delaware would have jurisdiction over some of this project?

**A. Based on the contents of this letter, yes.**

Q. Do you know what type of research or work Mr. Risilia did to prepare this letter?

**A. I believe he relied on the previous permit application that we had reviewed for the DuPont permit in which an approval was obtained from the State of Delaware for that regulated activity.**

Q. I assume that this letter is a fairly important letter to the applicant; is that correct?

**A. That is correct.**

Q. And Office of Dredging and Sediment Technology I would assume would take all efforts to make sure the statements made in the letter are correct; is that true?

**A. Yes.**

68

Q. So they would not make a false representation knowingly?

**A. Can you clarify that statement?**

Q. If the statement that Mr. Risilia stated in the third paragraph were false, he would have made -- he made every effort to make sure that this statement is accurate?

**A. At the time, yes.**

Q. Did you get a chance to review this letter before it was sent?

**A. Yes.**

Q. Did you provide comments to Mr. Risilia on this letter?

**A. I do not recall.**

Q. Would it surprise you if Mr. Risilia testified in deposition that you did provide comments on this letter?

**A. No, it would not surprise me.**

Q. Do you typically review and provide comment upon similar deficiency letters?

69

**A. On a project of this scale, yes.**

Q. For smaller projects Mr. Risilia might act solo?

**A. That's correct.**

Q. If you had been aware of an inaccuracy in this letter, would you have alerted Mr. Risilia to the error?

**A. Yes.**

Q. Do you know if counsel reviewed this letter?

**A. I do not recall.**

Q. Along the same lines, if counsel would have reviewed this letter, do you know who the attorney would have been?

**A. No, I do not.**

Q. Does the Office of Dredging and Sediment Technology have a deputy attorney general assigned to that office?

**A. Multiple DAGs are assigned.**

Q. Do you know who they are?

**A. A few. Rachel Horowitz, Lewin Weyl, Bill Andersen and at the time**

**I believe there was a Steve Brower who was employed.**
Q. Mr. Brower is no longer?
**A. Not that I'm aware.**
Q. So is it possible that if a letter were reviewed by attorneys for the Office of Dredging and Sediment Technology that those might have been some of the people who reviewed the letter?
**A. I believe.**
Q. But you're unaware whether they did or did not?
**A. I do not recall.**
MR. NEWELL: I'd like to have this marked Dietrick-4.
(Whereupon document was marked Dietrick-4 for identification.)
BY MR. NEWELL:
Q. Ms. Dietrick, what I have before you now is marked DE28549. That's the Bates number.
MS. KELLY: Just for the



record, is that arrow on the original or is that something that was added?
MR. NEWELL: Ms. Kelly, I believe this arrow, to my understanding, was on the document that we received. It's not my arrow, and I don't believe that that arrow is going to come into play right now.
MS. KELLY: That's fine.
BY MR. NEWELL:
Q. What you have before you again is marked DE28549 to DE28550. It is Dietrick Exhibit-4. It is letter dated May 11, 2005 from Gregory Roden to David Risilia regarding the Crown Landing facility. Ms. Dietrick, do you know who Mr. Roden is?
**A. No.**
Q. After looking at this letter, is there anything that you can use to identify who he may be?
**A. He's the attorney for BP.**



Q. So prior to seeing his name on this document you're unfamiliar with who Mr. Roden is?
**A. The name does not sound familiar to me.**
Q. Are you familiar with this document?
**A. I reviewed it this morning.**
Q. You did review it this morning?
**A. Yes.**
Q. Did you review that with counsel?
**A. No.**
Q. You reviewed that on your own?
**A. Yes.**
Q. I hate to keep coming back to this but this is now the second time. Were there any other documents that you reviewed for your deposition today?
**A. The permit file.**
Q. So this is within the file?
**A. Yes.**



Q. That clarifies. Thank you.
**A. Within the file.**
Q. So there are multiple documents within that file?
**A. That's correct.**
Q. That's my error.
Would you please turn to what is DE28550, it's the second and final page of this document. Taking your time, please read the first paragraph on this document beginning with also in your letter. Notify me when you're done.
**A. (Witness reading.) Okay.**
Q. You have had a chance to read that paragraph?
**A. Yes.**
Q. Again, Mr. Roden is the author of this letter and after reading that paragraph, do you agree that Mr. Roden disagrees with Mr. Risilia's conclusion that Delaware would have jurisdiction over the Crown Landing project?
MS. KELLY: Object to the

form.
BY MR. NEWELL:
Q. Mr. Risilia in Dietrick-3 that we just read stated that Delaware would have jurisdiction over the Crown Landing project. You have now had a chance to read Dietrick-4. In this paragraph, Mr. Roden comments on Mr. Risilia's February 4th letter. Is it your understanding that in this paragraph Mr. Rodeu is disagreeing with the position taken by Mr. Risilia in his February 4th letter?
**A. Based on what is written in this letter, yes.**
Q. So it's your understanding then what Mr. Roden is saying here contrasts with what Mr. Risilia said?
**A. Based on what is in this letter, yes.**
Q. That's all I'm asking you for, what's in this letter. I'm not concerned what his position is in any other way, just this letter.



**A. Yes.**
Q. Do you have any idea why Mr. Roden in this paragraph says that New Jersey officials had "recently stated the project was subject only to New Jersey regulation?"
**A. No, I do not.**
Q. So do you think this issue of whether Delaware has jurisdiction over the proposed Crown Landing facility is an important issue to British Petroleum?
MS. KELLY: Object to foundation.
BY MR. NEWELL:
Q. Please answer the question.
**A. Based on the reading of this letter, yes.**
Q. What in this letter indicates that that would be an important issue?
**A. Because Mr. Roden chose to make a clarification in this letter.**
Q. This letter is dated May 11, 2005 and Mr. Risilia's letter was dated



February 4, 2005. If this were such an important issue, do you know why Mr. Roden would have waited over three months to correct Mr. Risilia?
**A. I do not know.**
MR. NEWELL: I'd like to have marked Dietrick-5.
(Whereupon document was marked Dietrick-5 for identification.)
BY MR. NEWELL:
Q. What has been marked Dietrick-5 has Bates number NJ01011 to NJ 01012. This is a May 24, 2005 letter from Joseph J. Seebode to Mr. Blaha regarding the Crown Landing project. Ms. Dietrick, are you familiar with this exhibit?
**A. Yes, I am.**
Q. Was this one of the documents within the permit file?
**A. Yes.**
Q. Do you know Mr. Seebode?
**A. Yes.**
Q. Where does Mr. Seebode work?



**A. At the time he was my assistant commissioner in the site remediation program. He is now currently employed with the Army Corps of Engineers, New York District. He was on an IPA for two years.**
Q. IPA, what is that?
**A. Interagency switch of people.**
Q. Lots of acronyms here. So at the time you said he was your assistant and that would be in the Office of Dredging and Sediment Technology?
**A. He was my assistant commissioner, yes.**
Q. Just, again, what does an assistant commissioner do?
**A. He, at the time, managed the entire site remediation program within the DEP.**
Q. So would he be on the same hierarchal level as Mr. Risilia?
**A. No. He would be the same hierarchal level as my current assistant**

78

commissioner, Irene Crop.
Q. So it would be you would be at the top and then your assistant, Mr. Risilia; is that correct?
A. Okay. Actually, it would be Dave Risilia, myself, assistant commissioner, commissioner.
Q. Okay.
A. He's not an assistant at all. He's an assistant commissioner.
Q. So the assistant is someone you would report to; is that correct?
A. Yes, that's correct.
Q. Again, I understand you're familiar with this but take your time and read this letter. Again, let me know when you're finished and I'll ask you some questions.
A. (Witness reading.) Okay.
Q. Do you know if this letter was written in response to Mr. Roden's May 11 letter to Mr. Risilia?
A. I do not know.
Q. Do you think that it might

79

have been, considering the relative proximity of days of Mr. Roden's to Mr. Risilia's letter being May 11th and this letter being May 24th, 2005, which is just under two weeks later?
A. Can you rephrase the question?
Q. Because this letter is written 13 days after Mr. Roden's letter to Mr. Risilia, do you think that this is response from the Office of Dredging and Sediment Technology to Mr. Roden's letter?
A. I'm still not clear on the question.
Q. Let's back up. Is it your understanding in this letter that Mr. Seedbode states that New Jersey has jurisdiction over this entire project?
A. Correct.
Q. And it's your understanding that Mr. Seebode states that Delaware does not have jurisdiction of this project even though a portion of the pier

80

is in Delaware or would be in Delaware?
A. That is my understanding of this letter.
Q. Do you understand Mr. Seebode's position to be consistent with the position stated by Mr. Roden's letter to Mr. Risilia?
A. Yes.
Q. Do you understand that Mr. Seebode's position in this letter contradicts Mr. Risilia's letter of February 4, 2005?
A. Yes.
Q. Mr. Seebode at the time worked at the Office of Dredging and Sediment Technology?
A. He was the assistant commissioner of the site remediation program of which the Office of Dredging and Sediment Technology is one of offices he manages.
Q. In light of that, and in light of the fact that you just testified that Mr. Seebode's position is consistent

81

with Mr. Roden's position but in contradiction to Mr. Risilia's stance as to Delaware's proposed jurisdiction, do you feel that this letter was sent to Environmental Resources Management as a result of Mr. Roden sending the letter to Mr. Risilia?
MS. KELLY: Object. She's already testified she didn't know.
BY MR. NEWELL:
Q. Please answer the question.
A. Yeah, I have no personal knowledge as to why this was sent.
Q. So you don't remember any of the preliminary issues that went into drafting this letter?
A. I remember discussions with our attorneys as we were developing this letter.
Q. Isn't it important for the Office of Dredging and Sediment Technology to know the extent of New Jersey's jurisdiction as it pertains to dredging?

A. **Yes.**
Q. So can you explain why in two different letters three months apart, the office took different positions?
MS. KELLY: I'm going to object to that but you can answer.
THE WITNESS: We were mistaken in our first letter and we felt the need to clarify it here. We did not have a lot of experience permitting activities in this stretch of the river.
BY MR. NEWELL:
Q. Permitting activities that extend into Delaware?
A. **Permitting activities into the 12-mile radius.**
Q. And the 12-mile radius is within the State of Delaware?
A. **That is correct.**
Q. Thank you.
MR. NEWELL: I'd like to have marked Dietrick-6.
(Whereupon document was marked



Dietrick-6 for identification.)
BY MR. NEWELL:
Q. What has now been marked as Dietrick-6 is a document containing Bates DE1230 to DE1231. This is a letter dated June 13, 2005 from you, Ms. Dietrick, to Magalie R. Salas of the Federal Energy Regulatory Commission regarding the Crown Landing LNG project. Are you familiar with this document?
A. **Yes.**
Q. Is this one of the documents that would have been in the permit file?
A. **Yes.**
Q. Feel free to take a moment to read the letter and refresh yourself.
A. **(Witness reading.)**
Q. Okay?
A. **Yes.**
Q. Can you tell me why this letter was sent to the Federal Energy Regulator Commission? We'll call them FERC to make it easy.
A. **Because NOAA had submitted**



**comments on the draft environmental impact statement of which we were provided a copy and felt the need to clarify our position on the regulation of the BP project.**
Q. Do you know if counsel for the Office of Dredging and Sediment Technology reviewed this letter?
A. **Yes.**
Q. They reviewed it prior to it being sent?
A. **Signed?**
Q. Signed or sent.
A. **Yes.**
Q. Did they provide comment to you on the letter?
A. **Yes.**
Q. Did they assist you in drafting the substance of the letter?
A. **I believe so.**
Q. Do you know whether they did?
A. **I can't definitively say yes or no.**



Q. So your position is you're unsure whether you wrote this letter or had assistance from counsel in writing this letter?
A. **I believe we had assistance from counsel writing this letter.**
Q. Did you receive assistance from anybody else in writing this letter?
A. **Not that I recall.**
Q. How did you arrive at your conclusion that New Jersey, and not Delaware, would have jurisdiction over the parts of the Crown Landing project within Delaware territory?
A. **Based upon our letter of May 24, 2005.**
Q. Did you have a different opinion prior to the letter of May 24?
A. **I'm not sure of the question.**
Q. Did you have a different position as to New Jersey's jurisdiction over the Crown Landing project prior to the May 24th letter?

**A. When you say jurisdiction, what are you meaning?**
Q. In your letter, you state that New Jersey has exclusive riparian jurisdiction of every kind and nature on its side of the Delaware River. Has this always been your understanding of New Jersey's jurisdiction within the Twelve Mile Circle?
**A. Yes.**
Q. If that had always been your position as to New Jersey's jurisdiction --
**A. I'm sorry.**
Q. That's okay. We have a lot of dates here. Take your time and sort it all out.
**A. From our involvement in the other project, as I said, there was an approval of some nature issued by the State of Delaware for that activity. So when we issued the first letter, that was our understanding that there was some approvals. What they were, we were not**



**clear on. From the State of Delaware. On May 24, as I said, we corrected our deficiency letter and this serves to further clarify to FERC that position under the compact.**
Q. How were you able to comment on the Compact of 1905 when you stated earlier that you have never read the Compact of 1905?
**A. We received guidance from our attorneys.**
Q. Do you think it was important at the time to review the Compact of 1905?
**A. Myself, no.**
Q. So you were comfortable drafting this letter and placing your signature on it without reading the Compact of 1905?
**A. And working with our attorneys, yes.**
Q. Do you remember earlier discussing the Coastal Management Program, which I believe is marked as



Dietrick-1?
**A. Yes.**
Q. Do you remember discussing the section which said that any projects extending into the boundary of Delaware within the Twelve Mile Circle required cooperation and permitting from Delaware and New Jersey?
**A. Yes.**
Q. Is the position you take in this June 13, 2005 letter consistent with what you read in the Coastal Management Program?
**A. It appears to be.**
Q. How does it appear to be?
**A. That New Jersey has the right to regulate docks, wharves and piers that originate in New Jersey.**
Q. Is that your understanding of what the Coastal Management Program states?
**A. Yes, that we have the ability to regulate those activities.**
Q. What is your understanding



as to Delaware's ability to regulate projects that extend from the New Jersey shore into Delaware territory?
MS. KELLY: Are you asking her based on her review of the Coastal Zone Management Plan?
BY MR. NEWELL:
Q. Yes.
**A. Based on the review of this document.**
Q. In your letter of June 13, 2005, are you stating that Delaware would have jurisdiction over parts of the Crown Landing project that extend into Delaware territory?
**A. No, we are not.**
Q. Is it not that that position is inconsistent with what you just stated is your understanding of the Coastal Management Program?
**A. On my review of that document, yes.**
Q. So yes, it is inconsistent?
**A. Yes.**

Q. Did you happen to review the CMP at any point during the prior to drafting your June 13, 2005 letter?
**A. No.**
Q. Would it be important to be consistent with the CMP?
MS. KELLY: I'm going to object to the foundation of that.
BY MR. NEWELL:
Q. You can answer the question.
**A. Can you rephrase it?**
Q. Sure. Would it have been important in your June 13 of 2005 letter to be consistent with the contents of the CMP?
**A. Yes.**
Q. Do you know of any consequences that would happen if a position you take is inconsistent with the Coastal Management Program?
**A. I'm not sure of the question.**
Q. Well, you just stated it's important to be consistent with the CMP



and you also stated that this letter here, your June 13 letter, is inconsistent.
MS. KELLY: Objection; that's vague.
THE WITNESS: I need to clarify. This states that New Jersey has the right to regulate docks, wharves and piers associated with dredging. This document says that we have the ability to regulate -- New Jersey has the -- has the ability to regulate those activities. That's where I'm saying it's consistent. So this says it's consistent with that statement in this document.
BY MR. NEWELL:
Q. Let me ask you to clarify. What do you mean when you say that, "New Jersey has exclusive riparian jurisdiction of every kind and nature on its side of the Delaware River?"
**A. That we have the right to**



**regulate activities that originate in New Jersey but go into Delaware waters, that we have that right.**
Q. And by exclusive, does that preclude Delaware from having that similar right?
**A. Yes.**
Q. Is that consistent with what you read in the CMP, which is right before you right now?
**A. It does not appear to be consistent.**
Q. Thank you.
MS. KELLY: Do you need a break.
THE WITNESS: I could use a bathroom break.
BY MR. NEWELL:
Q. We're about to take a break. Again, is there any problem with the fact that you're not consistent with the CMP? For example, would you have to retract your opinion if it's not consistent with the CMP?



MS. KELLY: That's very vague. I'm objecting to the form. You can answer.
THE WITNESS: I don't understand the question, I guess.
BY MR. NEWELL:
Q. You stated that it's important in your role in the Office of Dredging and Sediment Technology to be consistent with the CMP. If you're not consistent with the CMP, is that a problem?
MS. KELLY: Continue the objection that it is vague. I'm also going to add an objection that you're really asking her for legal opinions, I think, as to which she's not qualified and which go to the issues in this case. But subject to that objection if she can answer, she can.
THE WITNESS: I can't answer. I'm not sure what the

question is.
MR. NEWELL: Fair enough. I'll move on.
MS. KELLY: If we're moving on can we take a break?
MR. NEWELL: Just let me finish one section, please, and then we'll take a break.
BY MR. NEWELL:
Q. Going back, Ms. Dietrick, and I'll try to be quick for you, to Mr. Risilia's February 4, 2005 letter which again we have marked as exhibit Dietrick-3 and we have read the section regarding his understanding of New Jersey and Delaware's jurisdiction over the proposed Crown Landing project. Is it your understanding that Mr. Risilia's statement in his February 4, 2005 letter is consistent with the CMP?
**A. There appears to be differences.**
Q. As it pertains to Delaware's jurisdiction for projects that extend



from the New Jersey shore into the Twelve Mile Circle, is Mr. Risilia's statement in his February 4, 2005 letter consistent with similar provisions of the CMP?
**A. This is saying that they must obtain coastal permits from both states. The February 4, 2005 letter states that outshore are subject to the State of Delaware and from mean high waterline landward are subject to New Jersey's coastal zone. So they do not appear to be consistent.**
Q. Is it your understanding that the CMP states that projects extending from New Jersey shore into the Delaware River -- excuse me -- into Delaware territory in the Twelve Mile Circle require permitting from both Delaware and New Jersey?
**A. That's what this states.**
Q. Is it your understanding that in Mr. Risilia's February 4, 2005 letter he states that activities crossing into the Delaware territory would require



Delaware permits?
**A. From the mean low waterline out into the State of Delaware, yes.**
Q. So is it your opinion that what Mr. Risilia states is consistent with what we just stated from the CMP that permits for projects extending from the New Jersey shore into Delaware territory would require permitting from Delaware?
**A. Yes, looking -- I don't mean to be difficult, but he is saying that something from mean low water outshore are -- must demonstrate compliance with Delaware's coastal zone and activities from mean low water landward are New Jersey's coastal zone. And this appears to say that activities located below mean low water would obtain permits for both states. So to me there is a distinction in this language and this language, there's a difference.**
MR. NEWELL: Let's take a break.



(Whereupon a lunch break was taken.)
BY MR. NEWELL:
Q. Ms. Dietrick, I hope you had an a enjoyable lunch. While you were at lunch, did you happen to have any conversations with counsel?
**A. Yes, I did.**
Q. Did you talk about the substance of this deposition at all?
**A. Yes.**
Q. Any questions that I might ask you?
**A. No.**
MS. KELLY: You can -- okay, go ahead.
THE WITNESS: No.
BY MR. NEWELL:
Q. About the questions that I had already asked you?
MS. KELLY: I'm going to direct her not to answer that, privileged, getting into the actual discussion. I'm going to

direct her not to answer that.
You can look at her all day but...
BY MR. NEWELL:
Q. You're not going to answer the answer then?
**A. No.**
Q. Because your attorney told you not to answer?
**A. That's correct.**
Q. But you did have conversation about this deposition?
MS. KELLY: She already said yes.
MR. NEWELL: The objection is noted.
BY MR. NEWELL:
Q. Moving on. You mentioned earlier DuPont's facility in New Jersey. Is that the Chambers Works facility in Deepwater, New Jersey?
**A. That is correct.**
Q. Are you aware of any dredging activities that have taken place at the Chambers Works facility?



**A. It was actually remediation of contaminated soils that existed offshore of the upland areas. So they needed to construct a cofferdam, and I believe they entombed the material.**
Q. What does entombed mean?
**A. Put in a cofferdam and then put over a -- usually they use a cement bentonite fill material to basically entomb the area so that it's no longer exposed to the water body.**
Q. Were you involved with that at all?
**A. I authorized the permits.**
Q. Do you know what year that was?
**A. I'm not sure of the exact year.**
Q. Approximate?
**A. 2003, 2002.**
Q. The facility at Chambers Works, does that originate on the New Jersey shore?
**A. Yes.**



Q. Does it extend into the Twelve Mile Circle into Delaware territory?
**A. I'm not sure of what any of their structures extend into.**
Q. Are you aware of any Delaware regulation of dredging at the DuPont Chambers Works facility?
**A. Regulation as in issuance of permits?**
Q. Are you aware of Delaware issuing permission to dredge at the Chambers Works facility?
**A. Not that I'm aware of.**
Q. But you said you are aware of New Jersey doing that, correct?
**A. It was not a dredging permit; it was a remediation.**
Q. Remediation is distinct from dredging?
**A. Correct.**
Q. Can you clarify what remediation would he?
**A. In this case, there was**



**contaminated sediments that were located offshore of the facility. We were involved in the permitting of that to construct a cofferdam and entomb the material. So we did not issue a dredging permit for that activity.**
Q. Thanks for the clarification.
MR. NEWELL: Let's mark Dietrick-7.
(Whereupon document was marked Dietrick-7 for identification.)
BY MR. NEWELL:
Q. Ms. Dietrick, I have placed before you now what has been marked as Dietrick-7 with Bates number DE19340 to DE19345. This is a 1971 lease from the State of Delaware to DuPont. Please take a moment. Are you familiar with this document?
**A. No, I am not.**
Q. Please take a moment to familiarize yourself with it. Let me know when you have had enough time.

A. **(Witness reading.) Okay.**
Q. Does this lease grant DuPont permission to dredge at the Chambers Works facility?
MS. KELLY: Object to the foundation and personal knowledge, but if she can testify from the document, then fine.
MR. NEWELL: She just said she had a chance to familiarize herself with it.
THE WITNESS: This appears to be a tidelands lease.
BY MR. NEWELL:
Q. Does it authorize dredging by the State of Delaware -- does the State of Delaware authorize dredging?
A. **It authorizes to dredge.**
Q. Based on this document, would it be your opinion that Delaware has exercised jurisdiction over dredging in the Twelve Mile Circle of a project that extends from the New Jersey shore?
MS. KELLY: Objection;



foundation and personal knowledge.
BY MR. NEWELL:
Q. Based on this document that you have now become familiar with.
A. **It appears to allow the lessee, DuPont, permission to dredge, construct the bulkhead, fill behind the bulkhead and construct a dock.**
Q. So is that yes?
A. **Yes.**
Q. Thank you.
MR. NEWELL: Let's mark Dietrick-8.
(Whereupon document was marked Dietrick-8 for ideutification.)
BY MR. NEWELL:
Q. Ms. Dietrick, what is before you now has been marked as Dietrick-8. It is a document with Bates number DE19380. It is an October 15, 1982 letter from William Moyer to DuPont. Are you familiar with this document?
A. **No, I am not.**
Q. Please take a moment and



read the document.
A. **(Witness reading.) Okay.**
Q. In this document, does the State of Delaware authorize DuPont to dredge at the Chambers Works facility?
A. **Yes.**
Q. After reviewing this document, would it be your opinion that Delaware, based on this document, has exercised jurisdiction to permit DuPont to dredge at the Chambers Works facility?
A. **They issued a wetlands permit it looks like.**
Q. I point you to the second sentence in the first paragraph, and I'll read it into the record. "The Department hereby authorizes the maintenance dredging in accordance with the plans submitted subject to the following conditions..."
A. **It authorizes the activity.**
Q. The activity is dredging?
A. **Correct.**
Q. To your knowledge, would



they be authorizing dredging at the Chambers Works facility because this project extends into tbe Twelve Mile Circle?
A. **I can't draw any conclusions from this.**
Q. That is, would Delaware, if this were strictly within New Jersey and did not cross the low water mark on the New Jersey shore, do you know if Delaware would issue a permit for dredging of New Jersey soil?
MS. KELLY: I'm going to object on the same objection, foundation, personal knowledge. You're asking her to speculate about Delaware. She can do it if she wants or if she can.
THE WITNESS: Can you rephrase the question?
BY MR. NEWELL:
Q. Sure. You stated here that Delaware has authorized dredging by DuPont at the Chambers Works facility.

106

Earlier you stated that you were unaware as to whether or not the Chambers Works facility crossed the mean low waterline into Delaware territory, and because you don't know where it crosses lines, I'm just asking, do you think that Delaware would regulate dredging of New Jersey soil or is it more likely that they're regulating the dredging of Delaware soil?

**A. Again, I don't know where the line is. All I'm seeing is that the permit was issued at this point.**

MR. NEWELL: Let's mark Dietrick-9.

(Whereupon document was marked Dietrick-9 for identification.)

BY MR. NEWELL:

Q. Ms. Dietrick, what you have before you now is marked as Dietrick-9. It begins with the Bates number DUP0000099. This is a subsection or smaller part of a very large document. What I have provided you with is the cover page and table of contents and a

107

couple of other pages I want to ask you some questions about. Are you familiar at all with this document?

**A. No, I am not.**

Q. What it is, it's a December of 2005 submission by DuPont. It says it's regarding Delaware Federal Consistency. Please take a moment and review the table of contents to see what this document in whole might pertain to. Then when you're done that, you can flip over to page what would be DUP103 and read the following two pages, 103 and 104. Take your time.

**A. (Witness reading.)**

Q. Going back to the cover again before we start to get into questions about the 103 and 104 pages. It says Delaware Federal Consistency, do you have any idea what that means?

**A. That the applicant is demonstrating compliance with Delaware's Coastal Zone Management Program.**

Q. Thank you. I honestly

108

didn't know what it meant.

Let's turn over to page 103 or start at page 103. This is your understanding that DuPont would submit this to show that they were in compliance with Delaware's coastal zone laws?

**A. Correct.**

Q. Would they submit something like this also to New Jersey if the project extended from New Jersey soil?

**A. Yes.**

Q. This is still the same facility, the Chambers Works facility?

**A. Right.**

Q. Looking on page DUP103, do you see subsection 1.3 entitled Jurisdictional Areas and Permit Requirements?

**A. Yes.**

Q. I'm going to take some time to read this into the record and ask you some questions about it. "Since SWMU 52 project activities will be conducted within New Jersey and Delaware, project

109

activities fall under the jurisdiction of both states. The New Jersey Department of Environmental Protection (NJDEP), Delaware Department of Natural Resources and Environmental Control (DNREC), as well as the US Army Corps of Engineers (USACE) are the regulatory agencies with jurisdiction in the area." After reading this section, is DuPont submitting statements that New Jersey has exclusive jurisdiction over the Chambers Works project?

**A. Based on the reading of this document, no.**

Q. Ms. Dietrick, please turn the page to DUP104. At the top of the page we're going to see the chart. It's a chart with subheadings -- column headings I should say, Agency is the first column. The second column is Law/Regulation and the third column is Jurisdictional Area. Under the agency column you will see there are four agencies listed: USACE for the Army

110

Corps; DNREC; NJDEP, Land Use Regulation Program; NJDEP, Bureau of Tidelands. Can you please state to me based on this chart what is your understanding of DNREC's jurisdiction?

MS. KELLY: Are you asking her to read the chart?

MR. NEWELL: Yes.

MS. KELLY: Because otherwise I'm objecting.

THE WITNESS: DNREC regulates the governing use of subaqueous lands, subaqueous lands below mean low water within the State of Delaware.

BY MR. NEWELL:

Q. Will you do the same thing for me for what it says for the New Jersey DEP and specifically under the law regulation section where it says waterfront development law?

**A. Waterfront development law, interstate lands between mean low water and mean high water and within 500 feet**

111

**of mean high water.**

Q. I'm sorry. Does it say interstate or intertidal?

**A. I'm sorry. Intertidal lands.**

Q. After looking at this chart, what is your understanding of Delaware's jurisdiction as to the DuPont project, more specifically DNREC's regulatory jurisdiction?

**A. Based on what is in this project description, DNREC is from subaqueous lands below mean low water in the State of Delaware and NJDEP intertidal lands between mean low water and mean high water 500 feet back onto the land.**

Q. So that would be NJDEP would have jurisdiction up to the mean low waterline on the New Jersey shore?

**A. Based on what is in this document, yes.**

Q. That would also mean that DNREC would have jurisdiction up to the

112

mean low water mark on the New Jersey shore, so within the Twelve Mile Circle?

**A. Based on what is in this document, yes.**

Q. Ms. Dietrick, are you familiar at all with Keystone Cogeneration Plant in Swedesboro, New Jersey?

**A. No, I am not.**

Q. So you would be unaware of any dredging activities that occurred at Keystone?

**A. I'm not aware of any dredging activities.**

Q. If I were to tell you that the Keystone facility extended beyond the mean low water mark into the Delaware territory, would you have any reason to disagree with that statement?

**A. I have no knowledge of the facility.**

Q. Have you ever had any knowledge of the facility?

**A. No.**

113

MR. NEWELL: I'd like to mark Dietrick-10.

(Whereupon document was marked Dietrick-10 for identification.)

BY MR. NEWELL:

Q. Ms. Dietrick, what you have in front of you now is Dietrick-10. To clarify, Dietrick-10 is Bates stamped DE02400 to DE02405. That which you have before you is a September 30, 1991 subaqueous lands lease from the Delaware Department of Natural Resources and Environmental Control to Keystone. Are you familiar at all with this document?

**A. No, I am not.**

Q. Since you're not familiar with it, please take some time to review this document.

**A. (Witness reading.) Okay.**

Q. I'll represent to you Keystone is a facility that begins on the New Jersey shore and extends into the Twelve Mile Circle. After reviewing this document, is it true that the Delaware

Department of Natural Resources and Environmental Control authorized Keystone to conduct dredging at the Delaware River, Logan Township, Gloucester County, New Jersey?

**A. Based on the letter, to dredge 40,000 cubic yards from the Delaware River.**

Q. They did authorize dredging, correct?

**A. That is correct.**

**(Whereupon document was marked Dietrick-11 for identification.)**

**BY MR. NEWELL:**

Q. Ms. Dietrick, what you have before you now has been marked as Dietrick-11. It has Bates number DE2377 to DE2378. As you can see from this document, it's an April 6, 1992 Supplemental Approval from DNREC to Keystone. Are you familiar at all with this document?

**A. No.**

Q. Again, feel free to take



your time and review the document.

**A. (Witness reading.) Okay.**

Q. After reviewing this document, is it your understanding that that document authorized Keystone to conduct dredging in the Delaware River?

**A. It actually appears to be a supplemental approval of the original document issued on September 30 of 1991.**

Q. This supplemental approval permits dredging activities?

**A. Yes.**

Q. After reviewing this document, is it your opinion that Delaware has exercised jurisdiction over dredging of the Keystone project within the Twelve Mile Circle?

MS. KELLY: Object to form, foundation. Sounds like it's getting to he a legal opinion but...

THE WITNESS: Based on the review of this document, yes.

(Whereupon document was marked



Dietrick-12 for identification.)

BY MR. NEWELL:

Q. Ms. Dietrick, what you have before you has Bates numbers NJ04403 to NJ4409. This is a permit from the New Jersey Department of Environmental Protection to Keystone. Are you familiar with this document?

**A. No, I am not.**

Q. Again, take your time and review the document and let me know when you're finished.

**A. (Witness reading.) Okay.**

Q. In this document, did the DEP grant Keystone permission to dredge at its facility?

**A. Yes.**

Q. But again, just to clarify, in your role at your Office of Dredging and Sediment Technology you were unaware of any dredging at Keystone; is that correct?

**A. That's correct.**

Q. Would you mind, please



turning to page NJ04407 and NJ04408. If you would on 4407, you will see what appears to be subsection number 10. It's bold and underscored and capital letters ADMINISTRATIVE: Waterfront and Individual Freshwater Wetlands. Do you see that?

**A. Yes.**

Q. Please take a moment, again, to review this subsection 10, which goes on to the following page and end with sub letter g.

**A. (Witness reading.)**

Q. Have you had enough time to review that section?

**A. Yes.**

Q. Turning to page 4408 under sub letter e, you will see that this is a listing of four copies of permits or approvals that the permittee must submit. Approval number 4 is subaqueous land coastal zone management from Delaware. Do you see that?

**A. Yes.**

Q. They're also two permits required to be obtained from the State of New Jersey and one from the Delaware River Basin Commission. Does this appear to state that there must be permits from both Delaware and New Jersey required from Keystone?

**A. Based on what is in this document, yes.**

Q. Is this sub letter e. inconsistent with your position that New Jersey has exclusive jurisdiction of projects extending from the New Jersey shore into Delaware territory?

MS. KELLY: Objection; legal conclusion.

THE WITNESS: I can't really answer that.

BY MR. NEWELL:

Q. Your answer is you have no basis to answer that question?

**A. I have no basis to answer that question.**

Q. Is it your position that



that document requires permits from Delaware for activities at the Keystone facility?

**A. It requires that prior to construction the permittee has to submit copies of all permits or approvals and one of which appears to be from the State of Delaware.**

Q. Because it requires permits from New Jersey and Delaware, does this appear to require interstate approvals?

**A. It appears to require permits from both the State of Delaware and the State of New Jersey.**

Q. Thank you. After reviewing the documents for Keystone Cogeneration, is it your opinion that Delaware. At their very least. Has exercised jurisdiction along with New Jersey over dredging within the Twelve Mile Circle?

MS. KELLY: Object to the form of that question. The same objections as before: Basis, legal opinion, foundation,



personal knowledge, all that but...

THE WITNESS: Based on the review of these documents, there were two permits issued.

BY MR. NEWELL:

Q. Is that a yes that Delaware and New Jersey have exercised jurisdiction over Keystone Cogeneration?

**A. Based on these documents.**

Q. Yes?

**A. Yes.**

Q. Thank you. Ms. Dietrick, are you familiar at all with the Fort Mott Pier in New Jersey?

**A. No.**

Q. So you would have no knowledge whether or not that pier began on the New Jersey shore?

**A. No.**

Q. And you would have no knowledge whether that pier, if it did begin on the New Jersey shore, whether it extended into Delaware territory?



**A. No.**

Q. Therefore, you would have no knowledge of any dredging activities at Fort Mott Pier?

**A. No.**

Q. I'd like to show you what we're going to mark as Dietrick-13.

(Whereupon document was marked Dietrick-13 for identification.)

BY MR. NEWELL:

Q. What you have before you has now been marked as Dietrick-13. It contains the Bates numbers DE01817 to DE01818. It's a two-page document. This is a January 8, 1995 memorandum from Gregory Marshall of the New Jersey Department of Environmental Protection to Dan Saunders regarding Fort Mott. Are you familiar with Mr. Marshall?

**A. No.**

Q. Are you familiar with Mr. Saunders?

**A. No.**

Q. Are you familiar at all with

this document?
**A. Not at all.**
Q. Take a moment again, read the document. I apologize that some of the second paragraph and into the third paragraph is marred. I will do my best to not question you on the marred parts. Do your best read it, if you will, the entire document.
**A. (Witness reading.) Okay.**
Q. You have had time to review the document?
**A. Yes.**
Q. Going back to the first page, DE01817, if you look at the second paragraph, can you tell me whether or not this Fort Mott Pier extends into Delaware waters?
**A. I can't read this. I mean, I can't even read it. It's difficult even to read that section.**
Q. Can you read the first sentence of the second paragraph beginning with as you know?



**A. It says that the Fort Mott pier extends into Delaware waters.**
Q. Can you continue reading?
**A. Therefore, subject to review by the both the state -- by both the Delaware and the New Jersey SHPO for purpose of section 106.**
Q. After reviewing this paragraph, is it your understanding that because the pier extends into Delaware waters that it would be subject to review by Delaware?
**A. Based on the reading of this document, yes.**
Q. So, yes, Delaware would have the authority to review the projects at the pier?
MS. KELLY: Object to the form of the characterization.
THE WITNESS: Based on the reading of this document, therefore, subject to review by both the state -- by both the Delaware and the New Jersey SHPO.



I'm not familiar with section 106.
BY MR. NEWELL:
Q. Moving past Fort Mott, are you familiar at all with the Colonial Pipeline Company?
**A. I know the company, yes.**
Q. What do you know about them?
**A. We did a permit for them to construct a pipeline in the Arthur Kill.**
Q. Where is Arthur Kill?
**A. In the New York-New Jersey Harbor.**
Q. Was there dredging associated with the pipeline at Arthur Kill?
**A. No.**
Q. Are you familiar with any pipelines that Colonial has that extending from New Jersey into Delaware?
**A. No, I am not.**
**(Whereupon document was marked Dietrick-14 for identification.)**
**BY MR. NEWELL:**
Q. Ms. Dietrick, I'd like to



show you what we have marked as Dietrick-14. It has Bates numbers DE05691 to DE05695. This is an August 3, 1987 subaqueous lands lease from the State of Delaware to Colonial. Are you familiar with this document?
**A. No, I am not.**
Q. Again, I repeat myself. Feel free to take your time as much as you need and review this document.
**A. Okay.**
Q. Ms. Dietrick, could I ask you to turn to DE5692? Do you see at the very top, third line, "This lease shall be subject to the following conditions..." If you would please read subparagraph number 2 to yourself.
**A. (Witness reading.) Okay.**
Q. Does subparagraph 2 on DE05692 authorize Colonial Pipeline to conduct dredging activities?
**A. Yes.**
Q. Ms. Dietrick, based on this document, can you tell me which state is

authorizing the dredging?
**A. Based on this document it appears that the State of Delaware is issuing the dredging of 1,217 cubic yards of material.**
Q. Thank you. Ms. Dietrick, I'd like show you what we are going to mark as Dietrick-15.
(Whereupon document was marked Dietrick-15 for identification.)
BY MR. NEWELL:
Q. Ms. Dietrick, we have before you what's marked Dietrick-15. This document contains Bates numbers DE05764 to DE05765. Are you familiar at all with document?
**A. No.**
Q. This is a February 21, 1991 approval for dredging from the Delaware Department of Natural Resources and Environmental Control to Colonial Pipeline. Please take a moment again to familiarize yourself with this document. Take as much time as you need, please.



**A. (Witness reading.) Okay.**
Q. In this document, does DNREC authorize Colonial Pipeline to conduct dredging activities?
**A. Yes.**
Q. Looking on page DE05764, which is the first page of your document, you will see under the colon at the end of the first paragraph three enumerated subsections. I'd like you to take a look at subsection number 1.
**A. Okay.**
Q. After looking at subsection number 1, does it state that the dredging is to be conducted in accordance with Delaware law, more specifically the DNREC Surface Water Quality Standards?
**A. Yes.**
Q. Thank you. Ms. Dietrick, I represent to you that the Colonial Pipeline in question extends from the New Jersey shore into Delaware territory within the Twelve Mile Circle. After reviewing these documents regarding



Colonial Pipeline, is it your opinion Delaware has exercised jurisdiction over dredging?
MS. KELLY: Objection to the form; legal opinion; ultimate conclusion in the case and no personal knowledge. Go ahead.
THE WITNESS: Can you rephrase the question?
BY MR. NEWELL:
Q. Absolutely.
MR. NEWELL: Do you want to stipulate the objection?
MS. KELLY: Yes, unless you change it.
BY MR. NEWELL:
Q. Let me repeat the question for you. After reviewing the documents pertaining to Colonial Pipeline, is it your opinion that Delaware has exercised jurisdiction over dredging of the Colonial Pipeline that extends from the New Jersey shore into Delaware territory within the Twelve Mile Circle?



**A. Based on my reading of this document, yes.**
Q. Ms. Dietrick, we'll go a little bit more and we'll take a break. I understand there's probably some post-lunch tiredness going on, at least from my part.
Are you familiar at all with the Connectiv facility in Logan Township?
**A. Not in my capacity in the Office of Dredging, no.**
Q. Are you aware that such a facility exists?
**A. Yes.**
Q. Can you tell me what you your knowledge is of that facility as to where it lies?
**A. I believe -- it's the cogen?**
Q. Yes.
**A. I believe it's located north of the DuPont Chambers Works property.**
Q. By cogen you mean cogeneration facility?
**A. Yes.**

Q. What exactly does a cogeneration facility do?
**A. I think it just converts coal oil to another viable product for energy use.**
Q. Do you know whether the Connectiv plant starts on the New Jersey shore?
**A. I know the facility is located on the shore.**
Q. Do you know whether that facility extends into Delaware territory?
**A. I do not know.**
Q. If I represent to you that it does, would you have any reason to disagree with me?
**A. I have no personal knowledge what the structures are.**
Q. Are you aware of any dredging activities that have taken place at Connectiv?
**A. Not that I can recall.**
Q. Also, as a point of clarification, are you aware that



Connectiv was formerly known as Delmarva Power?
**A. No, I did not.**
Q. I'll represent to you that it was. I know my power bill has changed. I'd like to show what we are now going to mark Dietrick-16.
(Whereupon document was marked Dietrick-16 for identification.)
BY MR. NEWELL:
Q. Ms. Dietrick, what I have now placed before you, again, is Dietrick-16. It contains Bates numbers DE06135 to DE06135. This is a November 27, 1995 approval from the Delaware Department of Natural Resources and Environmental Control to Delmarva Power. Are you familiar at all with this document?
**A. No.**
Q. Again, please take your time and review the two pages and let me know when you have had sufficient time to review it.



**A. (Witness reading.) Okay.**
Q. After reviewing this document, does it appear at the time Delmarva Power approached DNREC for permission to conduct maintenance dredging at its facility?
**A. Yes.**
Q. After reviewing this document, did DNREC authorize Delmarva Power to conduct dredging?
**A. Yes.**
Q. Was this authorization issued subject to requirement that Delmarva Power not violate the State of Delaware Department of Natural Resources and Environmental Control Surface Water Quality Standards?
**A. Based on my reading of this document, yes.**
Q. So after reviewing this document, is it your opinion that Delaware has exercised jurisdiction over dredging at the Delmarva Power facility?
**A. Based on my review of this**



**document, yes.**
Q. Ms. Dietrick, I'd like to show you one more exhibit before we take a break. We're going to mark this Dietrick-17.
(Whereupon document was marked Dietrick-17 for identification.)
BY MR. NEWELL:
Q. What has now been placed before you is Dietrick-17. It contains the Bates numbers DE06188 to DE06189. Are you familiar at all with this document?
**A. No.**
Q. Before you is a May 5, 1999 subaqueous lands permit for maintenance dredging from the Delaware Department of Natural Resources and Environmental Control to Delmarva Power and Light. Take your time and read the document and let me know when you have had a chance to sufficiently review it.
**A. (Witness reading.) Okay.**
Q. Flipping over to) the second

page which is DE06189, looking at subparagraph number -- or paragraph number 2, again, does this document state that the dredging was to be conducted according to DNREC Surface Water Quality Standards?

**A. One question of clarification. This permit appears to be authorizing dredging from the Delaware River at a location in Delaware -- Wilmington, Delaware.**

Q. Where are you looking?

**A. Up at the top.**

Q. The address right here?

**A. No, the address up here (witness indicating).**

Q. I believe that is the address of the company, Delmarva's address, as you can see in the addressee line.

Again, if we turn to 6189, paragraph 2, does the document state that dredging should be done within DNREC's Surface Water Quality Standards?



**A. Based on what is in this letter, yes.**

Q. After reviewing these two documents from Connectiv, then Delmarva Power, is it your opinion that Delaware exercised jurisdiction over dredging at this facility within Delaware territory?

**A. Based on my reading of these documents, yes.**

Q. Let's take a quick break.

(Whereupon a break was taken.)

BY MR. NEWELL:

Q. Ms. Dietrick, back on the record here. We'll do our best to close this up shortly. Again, I'm going to ask, did you have any conversation with counsel during break regarding the substance of your testimony today?

**A. Yes. She said it was going okay.**

Q. Have you understood all the questions as you have answered today, not necessarily the questions I have asked?

**A. Yes.**



Q. Did you reveal all the facts that you were asked about?

**A. Yes.**

Q. In light of the documents that you have reviewed today and the testimony you have given regarding those documents, would you agree that Delaware has exercised jurisdiction over dredging projects within the Twelve Mile Circle?

**A. Based on my reading of the documents presented to me, yes.**

Q. Excluding New Jersey's current position regarding the proposed Crown Landing facility --

MS. KELLY: The what facility?

MR. NEWELL: Crown Landing.

BY MR. NEWELL:

Q. Excluding New Jersey's current position regarding the Crown Landing facility and based on the documents that you have reviewed today, is it fair to say that it's been the practice of both New Jersey and Delaware



to issue approvals for improvements extending from the New Jersey shore into the Twelve Mile Circle?

MS. KELLY: We still have the list of stipulated objections, right?

MR. NEWELL: Yes.

THE WITNESS: Can you repeat that question?

BY MR. NEWELL:

Q. Not considering Crown Landing -- New Jersey's current position regarding jurisdiction of current proposed Crown Landing facility, based on your review of the documents today, is it fair to say it has been the practice of both New Jersey and Delaware to issue approvals for improvements extending from the New Jersey shore into Delaware territory within the Twelve Mile Circle?

**A. Based on my review of the document and having no knowledge of where in some cases these facilities related to mean low water, it appears that there has**

138

**been permits issued by both states.**
Q. Some of the facilities you were aware cross mean low water, correct?
**A. For DuPont.**
Q. In that instance, both Delaware and New Jersey issued permits?
**A. That is correct.**
Q. So if you can, yes or no, would that be an example of interstate approval for the DuPont facility?
MS. KELLY: Object to the form. Go ahead.
THE WITNESS: When you say interstate, I'm not sure what that means.
BY MR. NEWELL:
Q. Approvals by both New Jersey and Delaware.
**A. There were approvals issued by both states for that project, yes.**
Q. You will recall in your June 13, 2005 letter you stated that New Jersey has exclusive riparian jurisdiction. If you would like, feel

139

free to turn to that now and refresh your memory. We have that marked as Dietrick-6.
After reviewing the documents today, is it fair to say that the position you took as New Jersey having the authority to exercise exclusive riparian jurisdiction, that that position is inconsistent with the documents you reviewed today?
MS. KELLY: Object to the extent it calls for a legal conclusion.
THE WITNESS: I mean, I can't really answer that based on – I can't really answer that.
BY MR. NEWELL:
Q. Is your understanding that exclusive riparian jurisdiction of every kind and nature means that for a project extending from the New Jersey shore into Delaware territory within the Delaware River that New Jersey alone possesses the authority to regulate that project?

140

MS. KELLY: Objection; leading conclusion, go ahead.
THE WITNESS: Can you repeat the question?
BY MR. NEWELL:
Q. Does your letter of June 13 state that New Jersey has exclusive riparian jurisdiction of every kind and nature?
**A. My June 13 letter states that.**
Q. When you wrote that, was your understanding of exclusive riparian jurisdiction of every kind and nature that it was New Jersey that retained the authority to regulate the Crown Landing project and not Delaware?
**A. Based on what is contained in this letter, yes.**
Q. That was your opinion when you wrote this letter?
**A. That is what is contained in this letter.**
Q. Was that your opinion when

141

you wrote this letter?
**A. I also worked with counsel on this letter.**
Q. Correct, but your name as signed to this document, correct?
**A. Correct.**
Q. So that was your opinion when you signed this letter?
**A. That is what is in letter.**
Q. That is what you wrote?
**A. Yes.**
Q. Is what you wrote then consistent with the documents you reviewed today in which Delaware exercised jurisdiction of projects extending from New Jersey shore into Delaware water?
MS. KELLY: Object on the legal conclusion basis, but I'll continue that objection to these questions.
THE WITNESS: I'm not aware of whether or not there were any permits issued by New Jersey for

these projects, so I can't answer.
BY MR. NEWELL:
Q. I believe you have just stated that exclusive riparian jurisdiction would mean that New Jersey alone had the ability to authorize and issue permits and that would mean that Delaware would not have the authority to do that?
**A. Yes.**
Q. You have seen documents today in which Delaware has authorized dredging?
**A. Correct.**
Q. So my question to you is, based on the documents you reviewed today, is the position you stated your June 13, 2005 letter inconsistent?
**A. My June 13 letter appears to be inconsistent with these permits that I have been shown.**
Q. In going back I believe two exhibits, Ms. Dietrick -- exhibit we have marked Dietrick-3, you will see Mr.



Risilia's letter to Mr. David Blaha. Do you remember reviewing this document earlier?
**A. Yes.**
Q. Again, we focused earlier on the third paragraph in which Mr. Risilia stated that because the Crown Landing facility was going to extend from the New Jersey shore into Delaware water and Delaware territory that approvals would be required from both Delaware and New Jersey; is that correct?
**A. That is correct.**
Q. After reviewing the documents today in which you have seen Delaware and New Jersey issue approvals for projects extending from the Jersey Shore into Delaware territory, is it your opinion that Mr. Risilia's February 4, 2005 letter is consistent with those documents?
**A. It appears to be consistent with those documents.**
MR. NEWELL: I have no



further questions. Thank you for your cooperation.
MS. KELLY: I don't have any questions.
(Witness excused.)
(Deposition concluded at approximately 2:00 p.m.)



CERTIFICATE

I HEREBY CERTIFY that the witness was duly sworn by me and that the deposition is a true record of the testimony given by the witness.

Samantha A. Oakley
Certified Shorthand Reporter
Date: October 13, 2006

(The foregoing certification of this transcript does not apply to any reproduction of the same by any means, unless under the direct control and/or supervision of the certifying reporter.)

LAWYER'S NOTES

| PAGE | LINE | |
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IN THE SUPREME COURT
OF THE UNITED STATES
- - -

STATE OF NEW JERSEY : NO. 134, Original
:
v. :
:
STATE OF DELAWARE :
- - -

OCTOBER 23, 2006
- - -

Oral deposition of RUTH E. EHINGER, taken pursuant to notice, was held at the offices of the Department of Environmental Protection, 9 Ewing Street, Trenton, NJ 08609, commencing at 8:46 a.m., on the above date, before Kimberly S. Gordon, a Registered Professional Reporter and Notary Public in the State of New Jersey.

- - -

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- - -



INDEX

Testimony of:
RUTH B. EHINGER


| | PAGE |
|---|---|
| By Mr. Attaway | 5 |


EXHIBITS


| NO. | DESCRIPTION | PAGE |
|---|---|---|
| Ehinger-1 | May 1978 Draft NJ Coastal Management Program | 41 |
| Ehinger-2 | August 1978 Final NJ Coastal Management Program | 41 |
| Ehinger-3 | March 1979 Options for NJ's Developed Coast | 51 |
| Ehinger-4 | 1980 Draft NJ Coastal Management Program | 63 |
| Ehinger-5 | August 1980 Final NJ Coastal Management Program | 63 |
| Ehinger-6 | N.J.S.A. 32:11E-1 | 88 |
| Ehinger-7 | Keystone Permit | 93 |
| Ehinger-8 | 7/7/94 Memorandum | 110 |
| Ehinger-9 | 8/30/93 Letter | 124 |
| Ehinger-10 | Fort Mott Permit dated 1/21/96 | 141 |
| Ehinger-11 | Fort Mott Permit | 145 |
| Ehinger-12 | LURP Application Form | 148 |
| Ehinger-13 | 3/6/97 Letter | 152 |
| Ehinger-14 | 2/3/05 e-mails | 158 |
| Ehinger-15 | 2/4/05 Letter | 159 |




- - -

DEPOSITION SUPPORT INDEX

- - -

Direction to Witness Not to Answer
Page Line
None

Request for Production of Documents
Page Line
130 9

Stipulations
Page Line
None

Question Marked
Page Line
None



- - -

RUTH E. EHINGER, after having been duly sworn, was examined and testified as follows:

- - -

EXAMINATION

- - -

BY MR. ATTAWAY:

Q. Good morning Ms. Ehinger.

**A. Good morning.**

Q. My name is Scott Attaway. And I represent the State of Delaware in this case, which is New Jersey versus Delaware, Original No. 134, filed in the Supreme Court of the United States.

Before we begin, just a couple of ground rules: First, if you don't hear a question, let me know and I'll repeat it. If you don't understand a question, also let me know and I'll rephrase it.

And because this is being taken down by the court reporter, it's important that only one of us speak at a

6

time. So you should let me finish my question before you start to answer, and likewise, I should do my best to let you finish your answer before I say something else.

Do you understand these instructions?

**A. Yes.**

Q. Is there any reason of which you're aware that would impair your ability to testify truthfully today such as any physical or medications, any other limitations?

**A. No.**

Q. Other than conversations with counsel, what did you do today to prepare for your deposition?

**A. Basically, I looked through things with counsel. I looked through my resume to see the time frames when I was working in different jobs. I actually looked at the program document, that one section people have asked about, I mean, talked about over the last few years.**

7

**Basically, that was it.**

Q. When you said the program document, what document is that?

**A. The 1980, the orange book we call it, 1980 Coastal Program.**

Q. Coastal Management Plan?

**A. Right.**

Q. When did you meet with counsel?

**A. I met with counsel Friday -- on the phone Friday and then a few days before when I was last scheduled, which was maybe two weeks ago. I don't know the date offhand.**

Q. And did you meet or talk with Ms. Kelly here?

**A. Just this morning.**

Q. And the counsel that you spoke with before?

**A. With Barbara Konklin on Friday. And Luann Reilly Mancheczek was who I had seen before the previously scheduled date.**

Q. Have you testified before in

8

any case, either a deposition or live testimony in a court?

**A. Yes.**

Q. How many times?

**A. Depositions several times. In cases, maybe, I don't know, a dozen, maybe less, probably less, too many.**

Q. If it's too many, it will take too long to go through them all. I'll try to be brief. So were those cases all employment related, that is, related to your employment with the Department of Environmental Protection?

**A. Yes.**

Q. Did any of those cases concern the boundary between New Jersey and Delaware?

**A. No.**

Q. Did any of those cases concern the document known as the Compact of 1905?

**A. No.**

Q. Did any of those cases concern riparian rights?

9

**A. Riparian rights? Well, Waterfront Development permits at least which are in tidal waters, so I guess that extension. I was not there on the tidal rights.**

Q. Did all of those cases concern the Waterfront Development applications?

**A. Not only those, no.**

Q. What aspect of the Waterfront Development applications did those previous cases in which you testified concern?

**A. Applying regulations, Coastal Zone Management regulations to a specific proposed facility.**

Q. Were any of those proposed facilities located in whole or in part in the Delaware River?

**A. None of the ones I can think of were.**

Q. Just briefly, since you reviewed your resume to remind yourself of all the jobs -- I would have to do the

10

same thing, at least going back beyond a particular time.

Let's start currently and then I'll go back to the beginning and we'll move forward. Currently, what is your title, position?

**A. I'm Manager III in the Coastal Management Office in DEP.**

Q. And just for the record and for the reporter, DEP stands for Department of Environmental Protection, correct?

**A. Right.**

Q. So what is your college education?

**A. Bachelor of Science in biology from Brown University and a Master of Science in biologic oceanography from the University of Rhode Island.**

Q. After college, where did you work?

**A. After college?**

Q. Yes.

11

**A. I went to graduate school.**

Q. I'm sorry, after graduate school?

**A. I came to work for DEP.**

Q. And do you remember what year that was?

**A. 1979.**

Q. What was your title then?

**A. It was Senior -- well, DEP's titles -- it was either Senior Planner or Senior Environmental Specialist.**

Q. What were your job responsibilities at that time?

**A. To review applications for CAFRA, initially CAFRA permits.**

Q. And CAFRA stands for?

**A. Coastal Area Facility Review Act.**

Q. I assume you moved to several positions afterward. What was the first move after 1979?

**A. I started taking on additional responsibilities. The first -- and I became a Principal Environmental Specialist. The thing that was really substantively different was becoming a supervisor in 1985.**

12

Q. Describe your duties as supervisor.

**A. I was responsible for what was called the Shorefront Region, which went from Cape May Point to Sandy Hook and along Rariton Bay Shore. And I was responsible for reviewing the work of my staff, which reviewed applications under the Waterfront Development Law, CAFRA and the Wetlands Act of 1970.**

Q. Did the shorefront you were charged with overseeing include shorelines of the Delaware River?

**A. No.**

Q. So just from Cape May north?

**A. Right.**

Q. And you said your title in 1985 or your responsibility was supervisor. What were you supervising?

**A. I was supervising four to five staff who reviewed these permit applications.**

13

Q. And following that, what was your next position?

**A. I became the Bureau Chief for the Bureau of Coastal Project Review in 1988.**

Q. What was the nature of that change in your responsibilities?

**A. I became responsible for all of the CAFRA Waterfront Development and Coastal Wetlands permits issued or the applications reviewed, I should say.**

Q. When you say all, do you mean the geographic region for which you were responsible increased?

**A. Yes.**

Q. And did it increase to include areas of the Delaware River?

**A. Yes.**

Q. Was there any portion of the Delaware River that was excluded from your oversight responsibilities?

**A. It was just the tidal areas, so it was not north of Trenton.**

Q. But basically up the Delaware River to Trenton or approximately to Trenton?
**A. Yes.**
Q. The next position, what would that have been?
**A. It was the same title but the responsibilities changed in that in 1990 I added on the, in this geographical area -- I added geographical area and Freshland Wetlands Protection Act responsibilities and Flood Hazard Area Control Act responsibilities. At that point, I had everything from Burlington and Monmouth County south.**
Q. So same title but just more responsibilities?
**A. Right.**
Q. And after 1990?
**A. Actually, I don't even know the year but it was the same responsibilities.**
Q. Do you know approximately the time period?



**A. Probably like '96 or seven maybe. I don't know.**
Q. What was that new title?
**A. That's when I became Manager III.**
Q. What does Manager III mean?
**A. There's a series of manager titles in Civil Service, the lowest being Manager IV, which is usually bureau chief. And then III is an assistant director typically, II is usually a director and -- actually, a one can be a director also. I'm not sure.**
Q. So what's the difference between a manager and a bureau chief?
**A. I think it's how much you get paid and how many people work for you maybe. I'm not sure.**
Q. So you're currently Manager III in the Coastal Management Office. How does that fit into the DEP as a general matter, the structure of the DEP?
**A. In 2001, I left the permitting office and went to this**



**office. I'm sorry, how does it fit into what, DEP?**
Q. Yes.
**A. I report to the Director of the Office of Policy Planning and Science, who reports to the Chief of Staff, I believe, who reports to the Commissioner.**
Q. So Chief of Staff is Chief of Staff to the Commissioner?
**A. Correct, for the department.**
Q. What does the Waterfront Development Act in general require?
**A. It's an act that was passed to look at commerce and navigation issues back in 1914, and it requires permits for development in and along tidal waters.**
Q. What are the standards that you use for deciding whether to approve or deny a Waterfront Development Act application?
**A. The Coastal Zone Management rules.**
Q. And just describe briefly



those rules.
**A. N.J.A.C. 7:7E, they set standards that are grouped in three different -- there's location policies that deal with where something is proposed; used policies that deal with proposed use; and resource policies that deal with various resources like water quality, fish, scenic resources, et cetera.**
Q. Where does CAFRA fit into that?
**A. Fit into the -- that meaning?**
Q. I'm sorry, it was a vague question. Do the regulations that you cited, which were New Jersey 7:7E, do those incorporate CAFRA as well?
**A. Those are used to review CAFRA applications.**
Q. Are there any other regulations that are used to review CAFRA applications?
**A. There are Coastal Permit**

18

**Program rules which have general permits and also jurisdiction and procedures.**

Q. Do you know where those are codified?

**A. 7:7, N.J.A.C. 7:7.**

Q. So 7:7 and 7:7E together, do those cover the universe of CAFRA and Waterfront Development Act regulations or are there others as well?

**A. Those are the primary. I can't think of other regulations offhand.**

Q. Are those regulations voluminous?

**A. Yes. Aren't they all?**

Q. Are you familiar with Delaware's coastal zone laws?

**A. No.**

Q. Ever had occasion to look at Delaware's Subaqueous Lands Act?

**A. No.**

Q. Coastal Zone Management Act?

**A. No.**

Q. Are you familiar with the Twelve-Mile Circle?

19

**A. Yes.**

Q. What is your understanding of the Twelve-Mile Circle, please?

**A. That it's a circle around, I think, Wilmington that stems back from colonial times and identifies areas that are in the State of Delaware as opposed to in the Delaware River.**

**Well, it's a circle around them that is part of the Delaware, the areas within Delaware. And it comes from colonial times is basically my understanding.**

Q. What is your understanding of the boundary -- let me back up. The Twelve-Mile Circle is applicable to the Delaware River, correct?

**A. It is applicable to the Delaware River that's within the circle.**

Q. Where on the river is the Twelve-Mile Circle; could you identify the north and south?

**A. I know it comes, I think, from Wilmington and you draw a circle**

20

**around.**

Q. So do you know where the top of the circle would be?

**A. Not really, 12 miles north.**

Q. Or the bottom?

**A. Not exactly.**

Q. Do you know whether the Delaware Memorial Bridge is within the Twelve-Mile Circle?

**A. Actually, I don't know.**

Q. What is your understanding of the boundary between New Jersey and Delaware within the Twelve-Mile Circle?

MS. KELLY: Are you asking her currently, her current understanding?

MR. ATTAWAY: Yes.

THE WITNESS: That the areas within the circle are in the State of Delaware.

BY MR. ATTAWAY:

Q. If I were on a boat sailing from the Delaware shore to the New Jersey shore within the Twelve-Mile Circle, do

21

you know at what point I would leave Delaware and enter New Jersey?

**A. If you're on a boat in the circle?**

Q. Right.

**A. I guess it would depend where you were on the -- I don't understand your question, I guess.**

Q. Do you know whether the boundary between New Jersey and Delaware is in the middle of the Delaware River or is it at the New Jersey shore within the Twelve-Mile Circle?

**A. In part, it's at the Jersey shore. And then it must go further away from the Jersey shore within the circle, I assume.**

Q. Do you know where on the New Jersey shore the boundary lies?

**A. You mean what municipality or something?**

Q. Would it be at high tide or at low tide, if you know?

**A. I'm not positive.**

22

Q. Fair enough. Are you familiar with the structures that extend from the New Jersey shore into Delaware, again, within the Twelve-Mile Circle?
**A. Existing structures that do?**
Q. Yes.
**A. No, I don't think I am. I can't think of any that I know of.**
Q. Do you know whether there have ever been any structures that crossed from New Jersey into Delaware within the Twelve-Mile Circle?
**A. I guess I'm having a hard time -- it depends. I guess, if the Delaware Bridge is, then it crosses from one to the other. But I don't know if it's in or it isn't in the circle.**
Q. Do you know whether the Twelve-Mile Circle includes the boundary between Delaware and Pennsylvania --
**A. No, I don't know.**
Q. -- at the northern point?
**A. Don't know.**
Q. In the context of your job

23

as a regulator, do you have occasion to have an understanding of New Jersey's regulatory authority within the Twelve-Mile Circle?
**A. Do you mean my previous job? I'm not a regulator today. But you mean when I was in a job as a regulator?**
Q. Let's start with right now, because you are still employed by the DEP, right?
**A. Yes.**
Q. As manager?
**A. But I'm not regulating anything.**
Q. As a public servant for the State of New Jersey, --
**A. Okay.**
Q. -- what is your understanding of New Jersey's regulatory authority within the Twelve-Mile Circle?
**A. My understanding today --**
Q. Yes.
**A. -- is that if we had, and I guess my understanding is limited to the**

24

**Waterfront Development Law, that if there was some structure being proposed and extended from our shore out into that area New Jersey would regulate it.**
Q. If that structure crossed the boundary, let's say it's a wharf or a pier, if it crossed the boundary between New Jersey and Delaware and extended into Delaware, what is your understanding of New Jersey's regulatory authority over that sort of project?
**A. My understanding again today is that we would regulate that.**
Q. And would Delaware also regulate it?
**A. I don't know if Delaware would or wouldn't regulate it.**
Q. Did you ever have a different understanding of the respective states' authority within the Twelve-Mile Circle?
**A. I wasn't really aware of the Twelve-Mile Circle, so I don't know if I had a different understanding of**

25

**authority. I still thought New Jersey would regulate there.**
Q. When did you learn of the existence of the Twelve-Mile Circle?
**A. I don't know the time exactly. I remember hearing of it I'm guessing sometime in the '90s.**
Q. Early '90s, late '90s?
**A. I couldn't even tell you.**
Q. Do you know whether New Jersey or anyone representing the state has contended that Delaware lacks regulatory authority over a project that straddles the boundary between both states?
**A. I know there's the case of the LNG facility that's proposed we're here for today.**
Q. That's the case we're talking about today. That's why you're here today.
**A. Yes.**
Q. Prior to that?
**A. Prior to that, did I know of**

-- could you say it again?
Q. Sure. Are you aware of anyone within New Jersey or that represented the state or worked for the state having contended that Delaware lacked regulatory authority over a project that extended from New Jersey into Delaware, in other words, a boundary straddling project?
A. I don't ever remember discussing anything about that.
Q. Have you had conversations with anyone from the State of Delaware concerning Delaware's regulatory authority over a project that straddled the boundary?
A. Over this specific project, we've acknowledged that we are at odds. But we haven't had any discussion in depth of any sort. We've avoided that.
Q. Prior to that?
A. Prior to that, I don't remember any discussions.
Q. In the history of your



employment at DEP, have you had an occasion to come across the word riparian?
A. Yes.
Q. What is your understanding of that word?
A. Of riparian?
Q. Yes.
A. Relating to shores. My context has been tidal shores, riparian lands.
Q. What are riparian lands?
A. The lands that are under the, I think of it as lands under the mean high waterline or along the shore.
Q. When did you come to that understanding?
A. Probably a long time ago. I don't know. Early in my career I dealt with riparian lands, riparian rights.
Q. Does the State of New Jersey grant riparian rights?
A. Today?
Q. Yes.



A. Some. Typically, they're leases or licenses today.
Q. How does that occur?
A. Through an application which comes to the Bureau of Tidelands. And the Tidelands Resource Council then votes on that and then ultimately it gets signed. I think grants get signed by the governor maybe and others, but I'm not sure.
Q. You mentioned the Bureau of Tidelands and the Tidelands Resource Council. Just explain briefly your understanding of those two entities.
A. The Bureau of Tidelands is a bureau within the Department of Environmental Protection in what's now the Division of Land Use Regulation. The Tidelands Resource Council has appointed members -- I don't even remember how many at the moment; it's been a while -- who then review the various applications for conveying the state's tidelands and vote to approve those or not.



Q. Who appoints the members of the Tidelands Resource Council?
A. I actually don't know for sure.
Q. Why would someone need to apply to the Bureau of Tidelands for a permit?
A. If they were proposing something that would occupy state tidelands or perhaps if they were -- and then dredging would be, removing sand or sediment from state's tidelands.
Q. Does your office -- it's Coastal Resource Management?
A. Coastal Management Office.
Q. Is your office involved in the work of the Bureau of Tidelands?
A. No.
Q. Do you coordinate with the work of the Bureau of Tidelands?
A. No.
Q. Do you send information to the Bureau of Tidelands about your permitting processes?

30

A. I don't do permit processes anymore.
Q. At the time when you were -- you did permits for?
A. A long time.
Q. Just remind me from approximately when to when?
A. To 2001.
Q. And starting in 1979?
A. Yes.
Q. When you were issuing permits, did you send the permits to the Bureau of Tidelands at any time?
A. Yes. If it was a Waterfront Development permit that needed tidelands conveyance, it would have been sent to the Bureau of Tidelands.
Q. And how would you know that it needed a tideland conveyance?
A. Many of them came in -- on the application form, the applicant should have indicated that it needed a tidelands conveyance and that they were applying for that at that time.

31

Q. And the criteria for that generally was that they were proposing to build a structure or do something on submerged lands owned by the State of New Jersey?
A. Yes, at or below the mean high waterline or formerly flow lands.
Q. When you say formerly flow lands, does that mean lands that were once under water but perhaps had been filled and are no longer below water?
A. Yes.
Q. Is it necessary for an applicant for a tidelands conveyance first to get all the applicable permits from the Coastal Management Office?
A. That changed over time while I was doing permits. Initially, we would review for the permits, send an unsigned permit over, at which time Tidelands would act and then we would sign the permit.
Somewhere, and I don't know the time frame, it was decided that that

32

was too cumbersome a process and tidelands conveyances could be issued or permits could be issued, I guess -- permits could be issued even before the tidelands conveyance, so that's basically how it went.
I'm not sure if tidelands conveyances were issued before the permits now that I think of it. But that was the main process change that I'm aware of because we'd sign the permits or not. First, we had to sign them until they had a conveyance and then we signed them regardless of having the conveyance with a condition.
Q. And once you signed the permits, would you then send a copy of the awarded permit to the Bureau of Tidelands?
A. Yes.
Q. Why would you do that?
A. So that they would have a record and could take whatever action they needed to take.

33

Q. In your understanding, was it necessary for the applicant to prove to the Bureau of Tidelands that it had already obtained all the necessary wetlands permits in order to get the riparian conveyance that they were seeking from tidelands?
A. I'm not sure if they required that.
Q. But as a matter of course, you would send the executed permit to the Bureau of Tidelands so that they would be aware of the action that you had taken?
A. Yes.
Q. And during what period was that the common practice?
A. I don't know when we switched over to that rather than the unsigned permits. But for all the time I was there, we either sent an unsigned or a signed permit to Tidelands.
Q. So from 1979 to 2001, you would send either the signed or unsigned permits --

34

A. **Right.**
Q. -- to the Bureau of Tidelands to indicate the action that your bureau either had taken or was planning to take?
A. **Right. That was the process we had established.**
Q. Are you familiar with the document known as the 1905 Compact between New Jersey and Delaware?
A. **I'm aware of it.**
Q. When did you first become aware of it?
A. **In the last year or two as this case arose.**
Q. Had you read the Compact?
A. **No.**
Q. So you never heard of it or discussed it prior to the past year and-a-half or so?
A. **I don't remember ever hearing of it or discussing it before, no.**
Q. We talked briefly a little

35

bit earlier about projects that straddled the boundary, and what I mean by that is a project that would begin and, for example, a wharf, that would begin on the New Jersey shore and extend into the water beyond the boundary line between the two states, and therefore, it would be what hopefully we can refer to in shorthand as a boundary straddling project.
A. **Okay.**
Q. Are you aware of any Delaware regulation of a boundary straddling project within the Twelve-Mile Circle?
A. **I'm aware in this case that Delaware took some action.**
Q. What is your understanding about this case?
A. **That Delaware denied the LNG facility under a Delaware statute, which I think dealt with industrial uses or something of the Delaware River.**
Q. How did you come to learn

36

that?
A. **I'm not sure, either newspaper article. There are plenty of newspaper articles and maybe someone here told me also.**
Q. As part of your job responsibilities as Manager of the Coastal Bureau?
A. **As part of my job? So your question is did someone tell me as part of my job responsibilities?**
Q. Yes. Or did you learn of it in the course of performing your job as opposed to reading the morning newspaper?
A. **I don't know where I first learned of it. I learned of it at my job as well as reading the paper.**
Q. Does working on this case comprise any part of your current job responsibilities?
MS. KELLY: Can I ask you a question? When you say this case, are you referring to the LNG Project or the litigation?

37

MR. ATTAWAY: Good question. Let's take it one at a time.
BY MR. ATTAWAY:
Q. Aside from your being at this deposition today, does working on this litigation, which is New Jersey versus Delaware, Original No. 134, comprise any part of your current job responsibilities?
A. **Aside from this deposition, I'm not working on it.**
Q. Does New Jersey's regulatory processes in processing BP's application to bill the LNG facility comprise any part of your job responsibilities?
A. **I was at an early meeting when BP came into the department. I don't have any permit review responsibilities, but I have been asked a few times by staff who are reviewing it to look at letters they've drafted on deficiencies or policy application.**
Q. When did your involvement begin?

**A. Somewhere around the time of the first -- when a deficiency letter was being drafted. And I don't actually know which deficiency. I think there had been several. I don't know if it was the first or which.**

Q. Do you know whose name that deficiency letter would have gone out under?

**A. No. I know who prepared it. It was Dave Risilia. I don't know whose name was on the letter.**

Q. Was it a substantial letter; in other words, did it contain a number of pages?

**A. Yes.**

Q. Maybe 30, 40 pages?

**A. A lot of pages.**

Q. Would that have been in early 2005?

**A. It could have been. I don't know when the application actually first came in.**

Q. So you advised or consulted



with your staff regarding the deficiencies stated in the letter that eventually went out?

**A. Dave is not my staff, does not report to me. So he asked me to look at it, so I did look at it with him.**

Q. In doing that, did you discuss any issues with him concerning the boundary between Delaware and New Jersey?

**A. I don't remember discussing the boundary. I remember discussing application of the Coastal Zone Management rules.**

Q. What general subjects do you recall discussing with him?

**A. Partly applying the energy use rules, which is something that isn't applied very often. Some people aren't that familiar with it.**

**That was probably the main thing that he asked me about. I know there are a lot of other things he talked about. He was concerned about some of**



**the dredge, sediment analysis for dredging, removal of shallows, rain fisheries, how fisheries would be affected. Those were some of the other issues.**

Q. Did you discuss with him the fact that Delaware had denied a permit for BP to build the project?

**A. I don't know.**

Q. Prior to the current proposed project by BP, which is also known as Crown Landing -- would you agree with that?

**A. Sounds right. I know it's BP. I guess it is. If you tell me it is, I believe you.**

Q. I'll represent to you that that's my understanding.

**A. Okay.**

Q. I was just asking to make sure we had some common ground.

**A. Okay.**

Q. It often gets referred to as the BP Project or the Crown Landing



Project.

**A. Okay.**

Q. And my understanding is that those mean the same thing.

**A. Okay.**

Q. I just didn't --

**A. That's good to know.**

Q. Prior to the Crown Landing Project, are you aware of any instance where Delaware exercised regulatory authority over a boundary straddling project?

**A. I don't know of one where they exercised authority.**

MR. ATTAWAY: Can we take a little break?

MS. KELLY: Sure.

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(A recess occurred.)

- - -

(Ehinger-1 and Ehinger-2 marked for identification.)

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BY MR. ATTAWAY:

Q. We've just had marked as exhibits Ehinger-1 and Ehinger-2. There's a draft Coastal Management Program, Bay and Ocean Shore Segment for the State of New Jersey dated May 1978, which is Exhibit-1. And then Exhibit-2 is the final version of the same document that was issued in August 1978.

MR. ATTAWAY: For the record, these are voluminous documents. They're approximately 500 pages each, and therefore, I included only small excerpts for the exhibits which is basically the title pages, the table of contents and the section on boundaries defining the coastal zone.

BY MR. ATTAWAY:

Q. Ms. Ehinger, have you seen either of these documents before?

**A. I have seen them before.**

Q. Do you remember when you first saw them?



**A. Not specifically, no.**

Q. Rough time period?

**A. Probably when I started working at the DEP, I guess. But I don't remember.**

Q. So perhaps 1979 --

**A. Perhaps.**

Q. -- because that's when you started working at DEP?

What is your understanding of New Jersey's Coastal Management Program? What was it intended to accomplish?

**A. The program establishes, I think, eight or six basic goals that are actually in these documents that are basically to balance development pressures with I guess you'd say protection of environmental areas.**

Q. Looking at Exhibit-1, on the front page, it says Draft Environmental Impact Statement, U.S. Department of Commerce, National Oceanic and Atmospheric Administration, Office of Coastal Zone Management. Is it your understanding that this document was submitted to the federal government?



**A. The letter on the inside indicates it was submitted to the federal government. Yes, that's my understanding.**

Q. Do you know the process of developing this document, like how long did it take and --

**A. No. I didn't start working here until 1979, so I wasn't involved in this document.**

Q. I understand you weren't involved. But do you have an understanding of when the process leading to the creation of this document started?

**A. I know the federal act passed in 1972, so it would have been after that, between 1972 and 1978.**

Q. Do you have an understanding of roughly how many resources went into preparing the document for submission to the federal government?



**A. You mean dollars or people?**

Q. Any way you can quantify it, substantial --

**A. When I started working, there was a Coastal Planning Office that worked on these on the federal program.**

Q. Who headed the Coastal Management Office at that time?

**A. The division was headed by Donald Graham.**

Q. I'm sorry, did you say Coastal Planning Office a moment ago?

**A. Yes. I don't know its official name but that's what I called it.**

Q. The entity you intended to refer to, who headed that?

**A. When I started working, I would say it was John Weingart -- no, it could have been Dave. I don't know for sure. I could name a couple possibilities.**

Q. John Weingart or David?

**A. Kinsey maybe.**

46

Q. What was the purpose of submitting the Coastal Management Plan to the federal government?

**A. The federal act allows a state to develop a coastal plan, at which point one part is their federal dollars associated with it; another is that there's the ability of the state to have sort of a coherent plan for managing their coast; and another is federal consistency, which is the ability of the state to review various federal actions in or affecting their coastal zone.**

Q. You mentioned federal dollars. What does that mean?

**A. There are federal grants that come, that states with an approved Coastal Management Program for are eligible.**

Q. So, in that sense, in submitting this document to the federal government, was it an important document for New Jersey?

**A. You mean what did New Jersey**

47

**think at that time? I mean, I wasn't here in 1978. I wasn't even in the state. I don't know how it was perceived in New Jersey really at that time.**

Q. Please turn to Page 18 of Exhibit-1, the May 1978 draft. And that's actually a section that begins on Page 16. There's a photograph in between.

I'm going to just ask you a question about the first, full paragraph on Page 18 but feel free to read from the beginning of that section on for context and then let me know when you're ready to proceed.

**A. Okay.**

Q. The first paragraph on Page 18 reads as follows: Quote, New Jersey's Bay and Ocean Shore Segment boundary with with the State of Delaware through Delaware Bay and the Delaware River was established in 1933 by the U.S. Supreme Court in New Jersey versus Delaware (291 U.S. 361), end quote.

48

Ms. Ehinger, at any time during your employment with DEP, have you been familiar with the case that's cited here?

**A. Aware of. I don't know that I would call it familiar with.**

Q. When did you first become aware of that case?

**A. I became aware of the case in the context of this whole issue over the Crown Landing Project. I was aware of the fact the boundary was there somewhere before that but I don't know when.**

Q. And the next sentence states: Quote, the interstate boundary is generally along the ship channel in the middle of Delaware Bay. However, from a point near the northern tip of Artifical Island, in Lower Alloways Creek Township, Salem County, the interstate boundary between New Jersey and Delaware extends north at the mean low waterline on the New Jersey shoreline until the

49

Delaware-Pennsylvania boundary, end quote.

Does that sentence or is that sentence consistent with your understanding of where the boundary is between New Jersey and Delaware?

**A. As I said earlier, I'm aware that it extends to the shore. I don't really know where the northern and southern places it hits the New Jersey shore are.**

Q. And then the last sentence in that first paragraph on Page 18 -- which, by the way, for the record is Bates stamped DE23849.

Ms. Ehinger, you may be aware of Bates stamps. But if you're not, it's the numbers that the lawyers use to identify documents. You'll see that in the lower right-hand corner.

The last sentence of the first paragraph on that page reads: Quote, resolution of potential conflicts between the coastal policies of Delaware

50

and New Jersey will require continued coordination and work in the first year of Program approval, toward appropriate agreements between the Coastal Management Programs of both states, Salem County and the affected municipalities, end quote.

What is your understanding of this language?

**A. You mean what do I think that sentence means?**

Q. Yes.

**A. I have no understanding other than reading it here. It means to me that New Jersey and Delaware are going to figure out how they're going to handle, how their Coastal Management Programs will coordinate or work on any potential conflicts in this area and they're going to spend a year doing it or a year after they're approved.**

Q. Had you seen the language in this document before today?

**A. I don't remember reading this particular one.**

51

Q. Do you remember discussing the concept of coordination between New Jersey and Delaware at any time during your career in the department?

**A. Not coordinating of this nature. I mean, that we should talk to each other and work together in general because we're adjacent states. But no, not boundary specific stuff.**

Q. I just have one question about the second document. Keep the first document, Exhibit-1, open to Page 18. And I just want you to read the second, full paragraph on Page 19 of Exhibit-2 and just tell me in general whether that is in substance the same language?

**A. Yes.**

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**(Ehinger-3 marked for identification.)**

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**BY MR. ATTAWAY:**

Q. We've marked as Exhibit-3 a

52

document titled Options for New Jersey's Developed Coast dated March 1979, and it's from the Department of Environmental Protection of New Jersey.

Ms. Ehinger, do you remember when in 1979 you started working for the DEP?

**A. January.**

Q. And this document was dated March 1, 1979. Have you seen this document before today?

**A. I found it in a box for Rachel Harvis last week or so. I don't remember seeing it before that.**

Q. Did you look for other documents to be used in this case when you were searching for this document?

**A. Last week I think it was or maybe the week before Rachel was looking --**

MS. KELLY: Hold on. That's kind of getting into what Rachel asked her to do in terms of -- it's relevant whether she's seen

53

it before.

But she said that she looked at it at the request of counsel in preparation for this case and for document productions. I think anything else would be privileged, so if we can move away from that.

BY MR. ATTAWAY:

Q. What I'm asking is what you did and not what an attorney told you to do?

**A. I pulled out, I looked for a document titled Options for New Jersey's Developed Coast which had three volumes and I found two of them. And I left them to be picked up in my office.**

Q. Were you looking specifically for this document?

MS. KELLY: I'm going to object because of request of counsel to -- I'm not sure whether this was in response to your request or whatever, but I think it's a privileged issue.

If you want to ask her about the substance of the document, her knowledge of it, that's fine.

MR. ATTAWAY: I will.

BY MR. ATTAWAY:

Q. At any other time prior to last week when you looked for this document, did you search your files for documents to he given to New Jersey attorneys for use in this case?

**A. We made all the documents in our office available to New Jersey attorneys. They went through all our files.**

Q. When was that?

**A. I don't know when that was, the last couple years. And then Delaware attorneys came up and looked also.**

Q. When you say all the documents in your office, can you be a little more specific?

**A. We have boxes, dozens of boxes of files. We have file drawers. We have documents in bookcases. So it's**



**all of those various things.**

Q. Where are those documents located?

**A. On the seventh floor of the DEP building.**

Q. The main DEP building just down the street from here?

**A. Yes, 401 East State Street.**

Q. How far back do those documents go?

**A. I don't know, 1970s, but I don't know if they go before that or when in the '70s.**

Q. Is there another location, an off-site location to which documents could have been sent between the '70s and today?

**A. Not from our office, I don't believe so. Land Use Regulation uses storage for permit files. I don't know if they use them for anything else.**

Q. You said Land Use uses storage for permit files. Do you mean off-site storage?



**A. Yes, because they have many permit application files that go way back. Some of them are off site. A lot of them are off site.**

Q. So if someone wanted to find all of the documents relevant to New Jersey's Coastal Management Program, where would one look to find those?

**A. I would look in our office. I would look in Land Use Regulation.**

Q. I'm sorry, I don't mean to interrupt you. When you say our office --

**A. The Coastal Management Office. And I would look in the Division of Land Use Regulation Offices. And I guess that's really all I can think of. NOAA's offices, I guess.**

Q. NOAA, being a federal agency?

**A. Yes, in Silver Spring.**

Q. Do you know if the Land Use Regulation Offices were searched for documents relevant to New Jersey's



Coastal Management Plan?

**A. Do I know? No, I don't know.**

Q. Who is in charge of Land Use?

**A. Tom Micai is the director, M-I-C-A-I.**

Q. Do you know how long he's been the director?

**A. Not very long.**

Q. Who preceded him?

**A. Mark Moriello.**

Q. Do you know about how long was his tenure?

**A. Mark's?**

Q. Yes.

**A. Beginning of 2002. Is that when we had the election? 2002 to 2006.**

Q. Based on your reference to the election, does that mean that that position is a political appointment?

**A. It sometimes is and sometimes isn't.**

Q. Is your position a political

58

appointment?
A. **No.**
Q. And who do you report to?
A. **Jean Herm.**
Q. And what is his or her title?
A. **She is Director of the Office of Policy Planning and Science.**
Q. And is she a Manager II?
A. **I don't know what her Civil Service title is.**
Q. Let's turn back to the Options document. Thanks for humoring me with that diversion.
You've had a chance to look at Pages 141 to 144. Is that correct?
MR. ATTAWAY: Just for the record, these are Bates stamped DE29661 through 29664. And this is a voluminous document, and I've provided only excerpts as a deposition exhibit.
BY MR. ATTAWAY:
Q. So that was a long question.

59

My question was intended to be: Have you had a chance to look at this today?
A. **Yes.**
Q. Have you seen this -- I'm sorry, you answered that earlier you had seen the document.
Had you read Pages 141 through 144 before today?
A. **Not that I know of.**
Q. The first paragraph on Page 141, the last sentence states -- the paragraph talks about the U.S. Supreme Court decision in New Jersey versus Delaware from 1933 that was referenced earlier in the 1978 reports. And the paragraph ends:
Consequently, major development extending into the Delaware River could require approval from the State of Delaware, in addition to approvals from the State of New Jersey, end quote.
What is your understanding of that language?

60

A. **My understanding that whoever wrote this felt that what it says. I mean, I can't really elaborate what it says. Major development could require approval from the State of Delaware as well as approvals from New Jersey.**
Q. Was that consistent with your working understanding during your tenure at DEP?
A. **I really don't remember ever thinking about Delaware permits when I worked doing permits.**
Q. Toward the bottom of Page 141, there's a discussion about what's termed as Delaware's, quote, stringent Coastal Zone Act, which prohibited heavy industrial development in a defined coastal zone. Since the boundary between New Jersey and Delaware extends to the New Jersey shoreline, the restrictive provisions of this Coastal Management Law applied to development that would be proposed for sites involving land and

61

water along the Salem County Waterfront, end quote.
Is that statement consistent with your understanding of Delaware's regulatory authority?
A. **My understanding today of Delaware's regulatory authority do you mean?**
Q. We can take it first today and then I'll ask you at other points in time.
A. **I guess what I would say is my -- I don't really try to interpret Delaware law is what I would say.**
**My understanding today is that New Jersey would regulate these things, and my understanding in the past was New Jersey would regulate these things. And I really didn't get into whether or not or how Delaware regulated.**
Q. On Page 143 in the middle, there's a heading that's titled Delaware Jurisdiction in Salem County. And then further down there's a discussion of the

62

Delaware Underwater Lands Act. The last, full sentence on that page reads:

The only experience with the Delaware Underwater Lands Act and development in New Jersey was in 1971 when Delaware granted a lease to the DuPont Chambers Works in Deepwater to use subaqueous lands in the Delaware River, end quote.

Do you have any knowledge about Delaware's grant in 1971 of the referenced lease to Chambers Works?

**A. No.**

Q. So not now or at any point in time?

**A. Correct.**

Q. On Page 144, the last paragraph, second sentence reads: The Delaware Attorney General issued an advisory opinion concerning the effect of the provisions of Delaware's Coastal Zone Act on industrial development activities in Salem County, which attempted to clarify questions regarding permissible

63

uses, end quote.

Were you at any time familiar with such an opinion by the Attorney General of Delaware?

**A. No.**

\- - -

**(A recess occurred.)**

\- - -

**(Ehinger-4 and Ehinger-5 marked for identification.)**

\- - -

**BY MR. ATTAWAY:**

Q. Before we proceed to the two exhibits that I've just had marked, I have one follow-up question on the last exhibit, the Options report. We were discussing three pages about the boundary between New Jersey and Delaware, Pages 141 through 144. Do you know who would have had responsibility for writing that section?

**A. No. I know a bureau but not a person.**

Q. Which bureau would have

64

written that?

**A. It's what I call the Coastal Planning Bureau, but I don't know.**

Q. And was that the bureau that was headed either by Dave Kinsey or John Weingart that you mentioned earlier?

**A. Right.**

Q. Do you know what those -- I'm sorry, I have more than one question. Do you know what those individuals are doing now?

**A. They both are in the state. Yes, I know what at least one is doing.**

Q. Okay.

**A. John Weingart is at Rutgers. And he's also the Highlands, like the chair or something of the Highlands.**

Q. Is he employed by the State of New Jersey?

**A. He works at Rutgers, so I assume that means yes. Dave Kinsey is in New Jersey doing something. He's working in New Jersey.**

Q. In the private sector as far

65

as you know?

**A. In the private sector as far as I know, possibly also at a university though.**

Q. Are Mr. Weingart or Mr. Kinsey employed by the DEP?

**A. Mr. Kinsey is not. And I don't know if this Highlands council that was established by law in the last few years has -- I assume he's not an employee. I don't know how he gets appointed to this role he has.**

Q. Let's move onto the exhibits that are now marked Ehinger-4 and Ehinger-5. Ehinger-4 is the draft 1980, New Jersey Coastal Management Program. And Exhibit-5 is the final of the same document dated August 1980.

Ms. Ehinger, you've referred to this document as the orange book?

**A. Not the draft, the final.**

Q. So Exhibit-5?

**A. Yes, Exhibit-5.**

Q. The August 1980 final

66

report?
A. **Correct.**
Q. And is that because it has an orange cover?
A. **It sure is.**
Q. How widely used is the orange book?
A. **It's not widely used.**
Q. What about early on when it was first promulgated?
A. **There's a big section of it that is regulations, and the regulations were used a lot.**
Q. So shortly after it was promulgated the orange book was used often within the DEP?
A. **The regulations sections were. We had a lot of regulations printed separate, so it could have been an excerpt from it. But that substantively was the same as the regulations in the orange book.**
Q. Do you know whether attorneys for New Jersey reviewed the

67

orange book before it was issued?
A. **I don't know.**
Q. In your experience, is this the type of document that would be reviewed by attorneys before it were issued?
A. **Not necessarily.**
Q. Unless it was submitted to the federal government for funding, correct?
A. **It was submitted to the federal government for approval of the Coastal Management Program on a statewide basis.**
Q. And did New Jersey receive federal funding as a result?
A. **New Jersey received federal funding, yes.**
Q. Would you consider it important for the document submitted to the federal government to receive federal funds to be accurate in all respects?
A. **I think it's important for any document to be accurate.**

68

Q. Would you consider the Coastal Management Plan to be an important document for New Jersey?
A. **Yes.**
Q. Looking at Exhibit-4, which is the May 1980 draft, I'd like you to look at the last paragraph on Page 18, which for the record is DE24213. Again, these coastal management documents are voluminous and I've provided only excerpts. Ready?
A. **Yes.**
Q. The last paragraph on Page 18 talks about the boundary between New Jersey and Delaware. And let me just read it. I think it's three sentences long.
Quote, in most of Salem County, the Delaware-New Jersey State boundary is the mean low waterline on the eastern (New Jersey) shore of the Delaware River. The New Jersey and Delaware Coastal Management agencies have discussed this issue and have concluded

69

that any New Jersey project extending beyond mean low water must obtain coastal permits from both states. New Jersey and Delaware, therefore, will coordinate reviews of any proposed development that would span the interstate boundary to ensure that no development is constructed unless it would be consistent with both state Coastal Management Programs, end quote. Did I read that correctly?
A. **Yes.**
Q. Would Mr. Kinsey and/or Mr. Weingart have drafted this language as well as the boundary language in the Options report?
A. **I don't know if they would have drafted it. And I didn't mean to say they drafted this language in the Options report. I meant to say they would have been overseeing the office that drafted it. I don't know who drafted this language.**
Q. So they would have had final approval over whether to include or

70

exclude this language in the report issued to the public?
**A. Final approval you said?**
Q. Yes.
**A. I don't know if they would have had final approval. They would have certainly had a role, an approval role. Whether it was final, I don't know.**
Q. So they would have given their opinion on whether this language should be included or excluded in the final report as released to the public?
**A. I guess I should clarify. This is my view in the regulatory permitting world of how things worked in the planning world which they were overseeing, so I really wasn't involved. I can't really say exactly how they did it or what opinions they gave.**
**What I can say is the permitting section was here and didn't get involved. They were in charge of the planning section where these documents came from. So that's really what I'm --**

71

**maybe a better segue intended.**
Q. Who else was in the planning department that was responsible for creating this document?
**A. There's a whole, small bureau that was in the planning office. You mean the names of some of the people?**
Q. If you can remember any.
**A. I mean, I can remember some of the names. I don't know the time periods. I know there's an Allan Campbell. There was a Stewart McKenzie. There was Skip Wiener. There were others. Those are some of them. This was a long time ago.**
Q. I understand.
**A. And we really didn't work that much together on these things.**
Q. So you were in permitting, and they were in planning?
**A. Correct.**
Q. Did you provide input to the Coastal Management Plan, the orange book?
**A. I don't remember doing so.**

72

Q. Let's look at Exhibit-5, which is the final version. And I'd just like you to look at Page 20 and compare it to what I just read into the record of Page 18 of the draft and let me know if it's the same language.
**A. It is.**
Q. Thank you. On Page 254 and 255 of the final, the orange book, Exhibit-5, there's a passage, just a couple of paragraphs pertaining to liquified natural gas, which I think earlier you referred to as LNG, which is the acronym for liquified natural gas. If you can take a moment to read that, let me know when you're ready.
**A. Okay.**
Q. The first paragraph quotes some language from the National Energy Plan. And then the second paragraph, which is on Page 255, DE20616 is the Bates stamp, states as follows:
Quote, the New Jersey Coastal Program states that LNG terminals

73

are discouraged unless they are constructed so as to neither unduly endanger human life nor property nor otherwise impair the public health, safety and welfare, and comply with the Coastal Resource and Development Policies. Because the tankering of LNG could pose potential risk to life and property adjacent to New Jersey's waterways which also serve as boundaries with the states of Pennsylvania and Delaware along the Delaware River and the state of New York in the Port of New York and New Jersey, the state considers decisions concerning the siting of LNG terminals to be an interstate matter, end quote.
Did you have a similar understanding that the siting of LNG terminals would be an interstate matter?
**A. I never, until this project came along, thought about LNG terminals siting. So if you mean -- and when it did, I was not actually thinking of it as**

74

**an interstate matter. I was thinking of it as a New Jersey matter.**

Q. On what basis were you thinking of it as a New Jersey matter?

**A. Just because I thought in my view it was New Jersey, so that's how I thought of it.**

Q. Were you aware that part of the facility, the proposed facility was going to be in Delaware?

**A. I became aware of that somewhere along the line, yes.**

Q. What was your initial understanding of whether Delaware would have authority to regulate the proposed project to the extent that it extended into Delaware?

**A. I never really thought about Delaware regulating it or not.**

Q. So you were just --

**A. I kind of focused on New Jersey regulation, not other states' regulations.**

Q. So you saw a project and you

75

saw that it was at least partially in New Jersey and you thought that New Jersey regulations would apply to it but you didn't give a thought one way or another to Delaware?

**A. Right. And I wasn't particularly involved in the project either.**

Q. Who was primarily involved in processing the permits for the proposed BP facility?

**A. It's in the Office of Dredging and Sediment Technology. The project manager is David Risilia, and his supervisor is Suzanne Dietrich.**

Q. I'd like to turn to the last page of Exhibit-5, the orange book.

**A. This?**

Q. Yes -- well, the next to last page. Page 533, it's the last page with text on it. This is a list of people involved in preparing the document. At the top, I think you'll see a list, David Kinsey and John Weingart.

76

And Allan Campbell, I think you mentioned his name.

**A. Yes.**

Q. Between Mr. Kinsey, Mr. Weingart and Mr. Campbell, who do you think would most likely have focused on the boundary issues that we've discussed in the various drafts and final Coastal Management Plans?

**A. I don't know.**

Q. Below that, there's a list of planning staff. Any idea who would have been primarily involved in the boundary language?

**A. No.**

Q. Below that, there's a paragraph that says: Planning assistance was also provided by Chief Steven Whitney and a number of other individuals of the Bureau of Coastal Project Review, including yourself. What planning assistance did you provide for the orange book?

**A. I don't remember providing**

77

**any planning assistance. They listed everyone, probably everyone in the bureau. But I don't remember.**

Q. Could you possibly have given comments to Chief Steven Whitney, who then passed it on?

**A. I don't remember looking at a draft. I don't remember being involved in it.**

Q. Mr. Whitney was your superior at that time?

**A. Yes, he was.**

Q. And he was the chief of the --

**A. Bureau of Coastal Project Review. I worked for Phil Sandine, who worked for Steve.**

Q. I see Phil Sandine's name in there. So you reported to Mr. Sandine and then he reported to Mr. Whitney?

**A. Correct.**

Q. Did you at any point work directly with Mr. Whitney?

**A. What do you mean by work**

78

**directly with? Like talk to him directly?**

Q. Let me break it up into several questions. Did you at any time throughout your career at DEP report correctly to Mr. Whitney?

**A. Yes.**

Q. During what period of time?

**A. When I was a supervisor, I reported to him at least part of the time, if not all of the time.**

Q. And I know you said it early on. If you can remind me of the dates?

**A. '85 to '88, beginning of '88.**

Q. At other times, did you talk directly to Mr. Whitney about permitting issues?

**A. We talked about permitting issues when I was working in -- when he was a bureau chief, I was talking to him about permitting issues, yes.**

Q. Did you ever talk to him about the boundary between New Jersey and

79

Delaware?

**A. I don't ever remember talking to him about the boundary.**

Q. Further down in that paragraph after listing the individuals in the Bureau of Coastal Project Review, it goes on: Chief Thomas Hampton of the Bureau of Coastal Enforcement and Field Services. What was that bureau's function?

**A. That bureau's function was to -- in 1980, we're talking -- was to enforce the three coastal permitting statutes; Waterfront Development, Wetlands Act of 1970 and CAFRA. And they also conducted site inspections for permit applications.**

Q. And then next is Chief James Johnson of the Bureau of Tidelands. We talked a little earlier about the Bureau of Tidelands. And I think you said in general, and correct me if I'm wrong, that that's the bureau that would advise the Tidelands Resource Council about

80

whether to grant or deny a permit for a riparian conveyance?

**A. Whether or not they advise them -- they're the staff to them. I don't know if you would say they gave them advice or they just prepared all the documents and pulled the information together.**

Q. But they provided supporting information for --

**A. Yes.**

Q. -- the Tidelands Resource Council to decide whether to approve or deny a grant application?

**A. They did provide them the information, yes.**

Q. Did you ever work with Mr. Johnson? It says Chief James Johnson.

**A. Work with him or for him?**

Q. First, for him.

**A. No.**

Q. That's what I would have assumed. Did you ever work with him?

81

**A. Sometimes on an application -- sometimes I would be involved with the Bureau of Tidelands in trying to figure out some kind of tricky or tidelands issue, particularly a dock type of thing.**

Q. What type of issue would that be?

**A. When neighbors complain about where someone's dock is going to be, whether it should be their riparian rights or someone else's and it will affect their navigation in and out of their dock or their property.**

Q. Did you inform Mr. Johnson of permits that you were processing that applied to activities to occur on lands covered by an application for a riparian conveyance?

**A. We sent them the permits either signed or unsigned. And at one point, we used to send them just notice of applications but I don't know when that stopped.**

82

Q. So you would have sent Mr. Johnson a copy of any permit that you proposed to issue or had issued. Is that correct?

**A. We would have -- and it wasn't me personally sending but the process was that a permit that needed a tidelands conveyance of something below the mean low waterline would be sent to the Bureau of Tidelands.**

Q. And that was the standard operating procedure --

**A. Yes.**

Q. -- that it would be sent by the Bureau of Coastal Management to the Bureau of Tidelands?

**A. Right.**

Q. And would the chief typically review the permits?

**A. The chief?**

Q. Of the Bureau of Tidelands.

**A. I don't know if he reviewed them.**

Q. Do you know who in Tidelands

83

would review them?

**A. No.**

Q. Do you know how long Mr. Johnson was Chief of the Bureau of Tidelands?

**A. No, a long time.**

Q. Was he chief when you started in 1979?

**A. Yes.**

Q. When was he succeeded, if you remember?

**A. I don't remember.**

Q. Do you remember who succeeded him?

**A. Yes, JoAnne Cubberley.**

Q. And how long did Ms. Cubberley serve as the Chief to the Bureau of Tidelands?

**A. I don't know that either. She retired a year or two ago. From whenever he left until then, she was.**

Q. So she was, as far as you know, she was the Chief of the Bureau of Tidelands following Mr. Johnson's exit

84

and until Ms. Cubberley's retirement?

**A. Yes.**

Q. Did you work with Ms. Cubberley in any way?

**A. Yes.**

Q. Would you forward Ms. Cubberley as well as to Mr. Johnson when he had the position a copy of any permit that your division proposed or had executed?

**A. If it had a tidelands issue. If it was below -- if it is now and formerly flowed the mean high water, you need a conveyance.**

Q. Any activity proposed to be undertaken below mean high waterline, those permits would be forwarded to the Bureau of Tidelands?

**A. They should have been, if they didn't already have some kind of conveyance.**

Q. So, in other words, if there was already a conveyance in existence and this was a permitting application for a

85

new activity to occur on that same land, then would you or would you not send the permit to the Bureau of Tidelands?

**A. If you were -- it's easier with an example.**

Q. Sure.

**A. If you had formerly flowed land that's already been granted, then you wouldn't send that to tidelands. If you were doing maybe some kind of, if you had a license area for a dock at someone's home and you were doing something to modify that dock but it was all still within the license and the same number of slips, you wouldn't necessarily need to send that. But the majority of them would be sent.**

Q. Do you know whether there's an amendment process for the New Jersey Coastal Management Plan?

**A. There is a process to amend or change a state program.**

Q. And what is that process?

**A. The process is to -- the one**

86

**that we've done has been program changes as opposed to amendments, and that's the one I'm familiar with.**

Q. What's the difference between a program change and amendment?

**A. The amendments I think have to go, they're a bigger process and a bigger change. What we've submitted are what we call routine program changes, which would be a change to the program. What we've worked on has been changes to enforceable policies, which is primarily our regulations and statutes, which it is our regulations and statutes.**

Q. And when you say the programs or the changes were submitted, were they submitted to the federal government or were you talking about to the State of New Jersey?

**A. New Jersey would submit them to the federal government for approval by the federal government.**

Q. And that applies to routine program changes as well as I think what

87

you contrasted them with would be amendments?

**A. Yes. Either would have to be approved by the federal government.**

Q. Presumably, it's a different process or standard for approving amendments --

**A. Right.**

Q. -- as opposed to routine?

**A. Yes, a different process at least.**

Q. You mentioned routine program changes. Are you aware of any amendments that New Jersey sought to affect to its Coastal Management Program?

**A. We went from the '78 to the '80 and it included other areas. As far as I know, that wasn't considered an amendment. It was just the final program. And I don't know of any amendments, just program changes.**

Q. Do you know how many routine program changes have been submitted to the federal government?

88

**A. Quite a few. I don't know the number.**

Q. Do you know if it's more or less than ten?

**A. I'd say it's around ten.**

Q. Fair enough. Are you familiar with the Delaware River and Bay Authority?

**A. Delaware River and Bay Authority? I'm not sure I am.**

Q. Are you familiar with the Compact of 1962 between Delaware and New Jersey?

**A. No.**

Q. Let me just see if this refreshes your recollection.

- - -

(Ehinger-6 marked for identification.)

- - -

BY MR. ATTAWAY:

Q. We've had marked as Ehinger-6 the New Jersey statute codifying a Delaware-New Jersey Compact

89

originally executed in 1962. Ms. Ehinger, have you seen this before?

**A. Not that I'm -- no, I don't remember ever seeing it before.**

Q. Are you aware of it having read the -- I think you read the preamble and maybe selected other portions. Does this refresh your recollection as to hearing about any such Compact?

**A. No.**

Q. Turning to Page 10 of the printout which is the exhibit, there's Article XXII and its title, Environmental Protection. I'll just read Part A. It says:

Quote, the planning, development, construction and operation of any project, other than a crossing, shall comply with all environmental protection laws, regulations, directives and orders, including, without limitation, any coastal zone laws, wetlands laws, or subaqueous land laws or natural resource laws, now or hereafter

enacted, or promulgated by the state in which the project, or any part thereof, is located, end quote.

So focusing on the language towards the end, the state in which tbe project, or any part thereof is located, does this refresh your recollection as to the coordination between New Jersey and Delaware of a boundary straddling project?

**A. It doesn't refresh my recollection because I don't remember ever seeing it before.**

Q. Is this consistent with any policy that you're aware of within the department?

**A. No. As I said, I don't remember discussing a coordinated review ever or wbat Delaware's authority should be in these areas.**

Q. You just focused on New Jersey requirements and didn't --

**A. Right.**

Q. -- concern yourself one way



or another with whether Delaware had or lacked regulatory authority over a boundary straddling project. Is that correct?

**A. That's correct. I mean, and I really didn't have much occasion. I mean, I was looking at thousands of permits and I don't remember any -- there aren't those that stand out in this area to my mind.**

Q. Do you remember ever processing a permit that concerned a boundary straddling project?

**A. Do I remember ever processing one? I remember as I reviewed documents tbere were a couple of permits, but I don't remember ever -- if I know now that there were some, yes. Do I remember processing them, no.**

Q. And you know from reviewing documents during what time period?

**A. Just looking through when I was with the Attorney General's Office a few weeks ago, a couple of permits.**



Q. In preparation for this deposition?

**A. Correct.**

MR. ATTAWAY: Should we take a break?

MS. KELLY: Sure.

- - -

(A recess occurred.)

- - -

BY MR. ATTAWAY:

Q. Ms. Ehinger, do you know whether DEP has ever conditioned a New Jersey permit on the satisfaction of Delaware's permitting process?

**A. In reviewing these few applications for depositions, I saw two permits that did so. So, at that time, I became aware of it.**

Q. Which permits were those?

**A. One was a park, Fort Mott, I think Fort Mott Park. And one is a cogen plant.**

Q. Is that the Keystone Project?



**A. Yes.**

Q. Let me just introduce that permit, the Keystone permit and have it marked.

- - -

(Ehinger-7 marked for identification.)

- - -

BY MR. ATTAWAY:

Q. Just let me know when you're ready to proceed?

**A. I am ready to proceed. Are we going to talk about it? I can read this all through or I could after you ask a question.**

Q. I'll have a few questions but not about every single part of it, so you can take the time to read more carefully if you want.

**A. Okay.**

Q. This is Exhibit-7, marked Ehinger-7. It's a permit from New Jersey DEP to the Keystone Cogeneration System. It's dated September 24, 1991. Is this

94

the permit to which you just referred that you had recently reviewed?
**A. Yes.**
Q. The last page, Page 6, underneath the signature line states Ruth Ehinger, Manager, Bureau of Coastal Regulation.
**A. Yes.**
Q. Which is yourself, correct?
**A. It is myself.**
Q. Is that your signature?
**A. No, it is not.**
Q. Whose signature is that?
**A. Bob Tudor's signature.**
Q. What is your familiarity with this permit? In other words, had you seen it before reviewing it and preparing for your deposition?
**A. I don't remember seeing it before that.**
Q. Would you, in the normal course of your duties, have reviewed this permit?
**A. If I were -- normal**

95

**procedure would be I would sign a permit of this type if I were in the office. But if I didn't, I wasn't there and someone else signed it, that means I probably would not have seen it.**
Q. Page 5 has some pre-conditions for the authority to construct the facility. One of those is Subaqueous Land and Coastal Zone Management from Delaware. Is that correct?
**A. Yes.**
Q. Do you know how this condition made it into this permit?
**A. No.**
Q. Is this condition consistent with the statement in the 1980 Coastal Management Program, which you call the orange book, concerning Delaware's regulatory authority over boundary straddling projects?
If you need to look back at that, I think it's on Page 20 of that. That's Exhibit-5, the final version of

96

the orange book.
**A. That says it will coordinate reviews. It doesn't specifically say anything about permits.**
Q. The middle sentence of that final paragraph on Page 20, again, Exhibit-5 states: Quote, the New Jersey and Delaware Coastal Management agencies have discussed this issue and have concluded that any New Jersey project extending beyond mean low water must obtain coastal permits from both states, end quote.
That's what I was meaning to refer to. And I apologize I wasn't more specific before.
**A. Right. So your question is what again?**
Q. Is the condition in the Keystone permit that the applicant get permits from Delaware before constructing the project consistent with the sentence I just read from the 1980 Coastal Management Plan, the orange book?

97

**A. Yes.**
Q. What would have been the process for this condition being incorporated in the Keystone permit?
**A. I don't know why anyone came up with this condition because, as far as I know, we weren't seeing many of these and I wasn't even aware this was happening. I can only tell you the process for preparing permits in general and permit conditions.**
Q. Okay.
**A. Which is there's a project manager assigned. I think it was Dave Fanz it says. And each person worked in various regions, and he would have had a supervisor.**
**So Dave would have put together a draft permit and the supervisor would have reviewed it and then submitted it -- and they would have had a general region which would include the Delaware and then that would have been submitted up to me, in this case,**

98

for signature.
I would have signed all the permits in the whole southern half of the state. By this point, I would have signed Freshwater Wetlands, Stream Encroachment, CAFRA, Waterfront Development and Coastal Wetlands permits.
Q. Who was Mr. Fanz's supervisor?
A. Kevin Broderick would have been his supervisor.
MS. KELLY: Who, I'm sorry?
THE WITNESS: Kevin Broderick.
BY MR. ATTAWAY:
Q. So, in the normal course of things, Mr. Fanz would have prepared the permit including this condition that Keystone first get permits from Delaware before constructing the project and he would have submitted it to Kevin Broderick?
A. In the normal course, he would have prepared the permit with

99

whatever conditions he felt were appropriate and submit it to Kevin Broderick.
Q. Is it possible that someone else besides Mr. Fanz could have inserted this condition?
A. His supervisor could modify things certainly. I mean, yes, the reason you have these various people reviewing is because they can change things.
Q. And they could --
A. And they could insert or delete or modify.
Q. And the supervisor again would have been Kevin Broderick?
A. Right.
Q. And then what would Mr. Broderick have done with the permit once he thought it was in shape?
A. He would have finished the cover sheet and sent it onto me if I was there.
Q. On the page Bates stamped

100

NJ04404, which it actually says Page 1 Continued of the permit, it says prepared by David Fanz. But before Mr. Fanz's, there's a William M. Berns. Who is Mr. Berns and what was his role?
A. He was an engineer and he would have revicwed any stream encroachment permits, which this was apparently, as well as stormwater to see if stormwater was being properly handled.
Q. So is it likely the case that he would not have been involved in drafting the condition that we were talking about, the Delaware permit condition?
A. It is not likely he would have been involved.
Q. You said he was an engineer, so he was more focused on the engineering aspects as opposed to the boundary aspects?
A. He would be focused on engineering aspects.
Q. Would anyone else have been

101

involved in drafting this permit?
A. I don't know who drafted -- I mean, I don't know of anyone else who was involved. I don't remember the permit drafting, so I couldn't say of anyone else.
Q. But in the normal course in this time period, are there other individuals who might have been involved in drafting a permit such as this one?
A. No. It would typically be the supervisor with the person who was assigned to it.
Q. Are you aware of any advice given by any representative of New Jersey to Keystone regarding the scope of Delaware's authority over the project?
A. No, I'm not.
Q. Do you know an attorney named William Anderson?
A. Yes.
Q. Do you work with him a lot or a little bit?
A. I have worked with him over

102

**the years. I don't work with him much at all now.**
Q. At any time has he advised your department?
**A. He's the attorney that handles the Tidelands, Bureau of Tidelands primarily, so he would advise there.**
Q. Under what circumstances would you have legal counsel review a permit that you were planning to issue?
**A. I don't remember them reviewing permits I was about to issue as opposed to permit applications I was about to deny.**
Q. What about permits that you had issued?
**A. Would the Attorney General's Office review them?**
Q. Yes.
**A. No.**
Q. Would the Keystone permit have been the type of permit that you or your division sent to the Bureau of

103

Tidelands in conjunction with the tidelands conveyance?
**A. Yes, because of the dredging in the river and outfalls in the river.**
Q. So this Keystone permit would have been sent to the Bureau of Tidelands, correct?
**A. Should have been.**
Q. Should have been in the normal course?
**A. I can't say it would have been.**
Q. That's fine. To whom would it have been addressed during this time period?
**A. I imagine just to the bureau, not to an individual -- actually, let me just see if it talks about needing a tidelands conveyance.**
**This permit doesn't, at least I don't see it saying anything about it needing a tidelands conveyance. So, in that case, it probably wouldn't have been sent, unless I'm missing it.**

104

**So I don't see a condition related to tidelands, so I don't know if it would have gotten to them or not.**
Q. If the applicant had needed a tidelands conveyance before constructing this project, would it have been the case in the normal course that this permit would have been sent to the Bureau of Tidelands?
**A. It should have been sent to the Bureau of Tidelands if it needed conveyance.**
Q. Are you aware that Mr. Anderson submitted an affidavit in this litigation?
**A. I have that book that has everybody's stuff but I don't know if it's in there. Not exactly. I know I have a book of the case filing, but I haven't read through it.**
Q. The initial filing?
**A. Yes.**
Q. Do you recall whether or not you read Mr. Anderson's affidavit?

105

**A. No, I don't remember reading his affidavit.**
Q. Is it possible you read it and just don't remember it today?
**A. I think it's unlikely I read it.**
Q. Mr. James Johnson was listed in the 1980 Coastal Management Plan as being the Chief of the Tidelands Bureau. Are you aware of any advice that he purportedly gave to Keystone regarding Delaware's regulatory authority over the Keystone Project?
**A. No.**
Q. Are you aware of whether or not he had any discussions with any representative of Delaware regarding Delaware's regulatory authority over the project?
**A. No.**
Q. Are you aware of whether anyone at New Jersey had any conversations with anyone representing Delaware about the scope of Delaware's

authority over the Keystone Project?
**A. No.**
Q. This was signed by Bob Tudor. Who is Mr. Tudor, and why would he have signed for you during this time period?
**A. He was the division director and --**
Q. Is that above or below you?
**A. That would have been above.**
Q. So you reported directly to Mr. Tudor?
**A. Yes. And depending on the type of permit, the authority either when I wasn't there either went up to the director or I could have signed someone in my bureau like a supervisor.**
Q. Would Mr. Tudor have been involved in reviewing the substance of the permit before he signed it?
**A. I guess I can't say what he did to sign permits.**
Q. Did he sign a lot of permits for you?



**A. I wouldn't say a lot. I signed -- I mean, I was responsible at this period probably for 3,000 maybe a year or so, a couple thousand Coastal and then Wetlands and Stream Encroachment. So most of them I would sign.**
**But if I wasn't there, then -- and they have deadlines. They have 90-day deadlines, a lot of them, so you can't wait until someone shows up in the office again. But I would say he probably didn't sign a lot, but I don't know how many.**
Q. If this had come to you, in other words, if you had been in town when it was ready for signature, would you have read the permit before signing it?
**A. Yes.**
Q. And would this condition on Page 5 have given you any pause had you seen it?
**A. I would say back then I would have asked about it since I wasn't familiar with ever doing anything like**



**that.**
Q. Who would you have asked?
**A. I would have first gone to the supervisor and Dave Fanz, the project manager, and say what's going on with this.**
Q. Anyone else?
**A. At that point -- I mean, it's hard for me to say what I would have done then since I wasn't -- I mean, I wasn't doing it. It's hard for me to go back in time and think of what I would have done had I been faced with it at that time.**
**I probably would, if I had been -- I would have found out what they said and gone from there, I guess you'd say.**
Q. Is it possible you would have had it reviewed by the Attorney General's Office?
**A. I couldn't say what I would do.**
Q. Are you aware of any efforts



by New Jersey and Delaware to coordinate review of boundary straddling projects?
**A. In pulling files for this case, I became aware of something that had been underway at some point along the line.**
Q. What was that? First of all --
**A. I didn't become aware in great detail. When was that?**
Q. When did you become aware of it?
**A. I remember finding out about it just when we were going through all these files to say which ones to give -- the Attorney's General Office in the end went through all our files but sort of focused them in on certain drawers of stuff. And that would have been after the case came up, 2004, 2005, I guess.**
Q. Let me introduce another exhibit.
- - -
(Ehinger-8 marked for

identification.)

- - -

BY MR. ATTAWAY:

Q. So what's been marked as Exhibit-8 is a memorandum to distribution and then there's a list of several names at the bottom of the page from Steven Whitney, manager. And I take it that's Manager of the Coastal Bureau or whatever it was called at that time. Is that correct?

**A. I think it would be manager of whatever the planning entity was at that time.**

Q. And this is a one-page cover memo that attaches a draft Memorandum of Agreement between New Jersey Department of Environmental Protection and Delaware Department of Natural Resources and Environmental Control. And it's Bates stamped DE27930 through 35.

Ms. Ehinger, is this the document you were just talking about that you had reviewed recently?



**A. I don't know if I saw the memo. But I saw the MOA, a draft. I don't know if there's more than one draft either. But this is similar to it, if not the same.**

Q. The distribution list includes your name. Is that correct?

**A. That is correct.**

Q. Do you recall seeing this in 1994?

**A. No, I do not.**

Q. Do you recall being familiar with the substance of the document, if not the document itself?

**A. In 1994?**

Q. Yes.

**A. In 1994, I was doing permits. CAFRA had just been amended and we had spent -- July 19th it was going to take effect, and we were going to start regulating single family homes. And we had to put together regulations. And I don't have any recollection of this coming through at that time.**



Q. It was a busy time?

**A. It was an extremely busy time.**

Q. On Page 2 of the memorandum toward the bottom of the page --

**A. Page 2 of the memorandum, not the --**

Q. The MOA.

**A. Right, not the memo.**

Q. It's confusing because there's a cover memorandum distributing the draft MOA.

**A. Okay.**

Q. So I intended to refer to Page 2 of the MOA, which is DE27932.

**A. Okay.**

Q. The last, full sentence on that page states: Both agencies recognize that each agency has the independent authority to approve or deny applications pursuant to its own regulations, end quote.

Is that consistent with your understanding at the time?



**A. At the time, I don't remember any -- I had no thought to what Delaware regulated in this area.**

Q. One way or another? You didn't think they could; you didn't think they couldn't?

**A. I don't remember thinking about it one way or the other, that they could or couldn't.**

Q. Going back to the cover memorandum, the distribution was, and I'll just go down the list of names, Sarah Cooksey at DNREC, which for the reporter that's D-N-R-E-C, an abbreviation for Department of Natural Resources and Environmental Control.

Did you know Ms. Cooksey during this time period?

**A. I don't know when I met her. I don't know if I knew her then.**

Q. In what context did you first meet her?

**A. I met her at a Federal Consistency Workshop we both attended,**

**but I don't know when that was.**
Q. And what is a Federal Consistency Workshop?
**A. It was an all-day workshop/seminar put on by NOAA to bring in federal agencies and state and explain sort of how the federal consistency process under the Coastal Management Act worked and could work better.**
Q. What is a federal consistency determination?
**A. It's a determination by a state that a federal action, a proposed federal action is consistent with their Coastal Management Program.**
Q. The state's Coastal Management Program?
**A. Right.**
Q. So the federal government has to comply with the state's Coastal Management Program?
**A. Yes, with some caveats.**
Q. Fair enough. We could be here for several days discussing caveats



and things like that, so we won't go there.
The next name is Robert Tudor, USEPA. Is that the same Bob Tudor that signed the Keystone permit?
**A. Yes.**
Q. And I gather that between 1991 and 1994 he went to the EPA?
**A. Yes.**
Q. When did he leave DEP?
**A. I don't know, between 1991 and -- I don't know.**
Q. Did you say you reported directly to him?
**A. Yes. There was a period I reported to him while he was director in what was I think then the Division of Coastal Resources.**
Q. Do you know who succeeded him?
**A. For sure? Not for sure.**
Q. To the best of your recollection.
**A. I think Ernest Hahn, I**



**believe.**
Q. And did you report directly to Mr. Hahn --
**A. Yes.**
Q. -- after that?
John Weingart is listed on here. You mentioned his name earlier in conjunction with the Coastal Management Plan. What was his role at this time?
**A. It's really hard for me to tell for sure where people were at given times. I could tell you one of two roles he was in. He may have been and most likely was assistant commissioner but it's -- I think he must have been that. He was a director somewhere but it must have been before that.**
Q. My understanding of the structure of DEP is that there is one commissioner who is at the top and is politically appointed. Is that correct?
**A. Yes.**
Q. And then below him or her would be several assistant commissioners?



**A. That used to be the case. It varies. There may be deputy commissioners and there may not be. And they're higher than assistant commissioners.**
Q. At this time, do you remember if there were any deputy commissioners?
**A. Who was commissioner at this time? I don't know.**
Q. It says at the top Robert C. Shinn, Commissioner. It's on the letterhead anyway.
**A. Then either there was a chief of staff that people reported to or a deputy commissioner, but I don't know which at that point.**
Q. Do you know what Mr. Weingart's title would have been as assistant commissioner? In other words, my understanding is there are assistant commissioners for X and Y and Z.
**A. Right. Do you mean do I know what -- I don't know what all he had**

**control -- probably environmental regulation but that's a guess.**
Q. Do you know at that time how many assistant commissioners there were?
**A. No.**
Q. Or can you remember some of the other fields that they would have been assistant commissioner over?
**A. There would have been someone over Natural Resources. There would have been someone I think at this point over sort of planning types of things. There would have been someone having to deal with waste of various types, hazardous waste, I don't know, a management and budget kind of person.**
Q. Are any of those other assistant commissioners in the list here as far as you know, the distribution list?
**A. No.**
Q. Who is Martin Bierbaum, which is the next name on the list?
**A. Who was he? I can't tell**



**you what people's roles were at given dates because it changed so much. I can't tell you what, in July of 1994, I don't know where Marty Bierbaum worked.**
Q. Do you remember at any point in time --
**A. Yes.**
Q. -- what his role was?
**A. Yes. At one point, he oversaw what I'm calling a planning entity, which at one point was in the Division of Coastal Resources and then was moved to another group, which was -- I don't even know what it was called, like a watershed kind of group. And I don't know when that happened.**
Q. Approximate time period? Was it before or after '94 that you're talking about?
**A. I'm afraid I can't tell you.**
Q. And Ernie Hahn you mentioned. I honestly don't remember what you said about him, but you mentioned him a few minutes ago.



**A. He became a division director. He may have been a director at this time. Before that, he was a supervisor in the Division of Coastal Resources. And he became assistant commissioner eventually but not in '94, no, definitely not in '94.**
Q. What about now, is he still with the state?
**A. He is with the Delaware Rariton Canal Commission which is sort of, I don't know, it's one of those things it's not in the department but it's a quasi-state.**
Q. Is it an interstate entity?
**A. No, it manages the canal on the Jersey side.**
Q. Theresa Fowler?
**A. She worked in the planning, Coastal Planning Section probably for Steve Whitney.**
Q. Dennis Hart?
**A. What did he do at this point? I don't know. He was at one**



**point a director of the group that did all the treatment works approvals, like sewer, various things related to sanitary waste management.**
Q. And Bill O'Sullivan?
**A. He would have probably been an administrator director at this point over the air permits.**
Q. So he would have been the top person regarding air permits?
**A. Possibly the top. He became the top.**
Q. Tom Wells?
**A. He was at that point with the Green Acres Program.**
Q. And JoAnne Cubberley?
**A. Would have been with the Tidelands.**
Q. And at that time, she was the director, whatever her title -- my understanding from what you said earlier was she was the highest person in that bureau?
**A. She was, presumably by '94.**

**As I said, I don't know the time frames of all these things.**

Q. But whenever she succeeded Mr. James Johnson, she took his position as the top spot in the Bureau of Tidelands, correct?

**A. Correct.**

Q. So would you say that most of the names, if not all of them, on this list from the DEP were fairly high up in the department?

**A. Yes.**

Q. They were either division chiefs or assistant commissioners or somewhere in that realm?

**A. Bureau chiefs, not division; bureau, being a lot lower than a division. Most of them are bureau or division.**

Q. But would you characterize any of them as low- or even medium-level staff?

**A. Theresa Fowler.**

Q. Anyone else?



**A. As I said, I don't know when they got these various jobs for sure, so I would assume the others had the higher titles by then. I'm not positive.**

Q. Mr. Steven Whitney submitted an affidavit in this case in New Jersey's initial filing. I think you said earlier that you had a copy of at least a portion of that initial filing. Is that correct?

**A. I have a volume that's, I think, the initial filing or a portion of it.**

Q. Have you read it?

**A. No.**

Q. How did you get it?

**A. From the Attorney General's Office.**

Q. So you did not read Mr. Whitney's affidavit submitted in this case?

**A. I don't remember reading any of the affidavits.**

Q. Have you spoken with Mr. Whitney about this case?



**A. No.**

Q. When is the last time you spoke with Mr. Whitney?

**A. A long time ago, before he went to Maine.**

Q. He didn't invite you to go to Maine?

**A. No.**

MR. ATTAWAY: Now I'd like to introduce Exhibit-9, and we can go off the record for a moment.

- - -

(A discussion off the record occurred.)

- - -

(Ehinger-9 marked for identification.)

- - -

THE WITNESS: Got it.

BY MR. ATTAWAY:

Q. We've had marked as Exhibit-9 a letter dated August 30, 1993, and it's to the Tidelands Resource Council through JoAnne Cubberley,



Administrator, Bureau of Tidelands from Ruth E. Ehinger, Manager of Bureau of Coastal Regulation. And it's regarding a Tidelands Recommendation Memo. And then it lists several permits by number, Freshwater Wetlands permit, Waterfront Development permits and other permits. And it's on letterhead of the State of New Jersey, Department of Environmental Protection, Land Use Regulation Program.

The text of the letter is short. I'll just read it. It says: The Land Use Regulation Program has reviewed the above-referenced application and found it consistent with the applicable rules on Coastal Zone Management. Therefore, a permit has been issued, a copy of which is enclosed.

Recommendation: I, therefore, recommend that the Tidelands Resource Council approve this conveyance. The program has no concerns regarding public access at this particular site.

I gather from reading this,

126

Ms. Ehinger, and please let me know if you agree or not, that this is a recommendation from you effectively to the Tidelands Resource Council transmitted through JoAnne Cubberley, who was the top person in the Bureau of Tidelands, and recommendation that the tidelands conveyance be approved. Is that correct?

**A. It's signed by someone else for me recommending that it be approved.**

Q. Are you referring to the handwritten initials --

**A. Correct.**

Q. -- in the From?

Do you know whose initials those are?

**A. Kevin Broderick's.**

Q. So it says KB for next to your name?

**A. Yes, or KJB.**

Q. But it's Kevin Broderick?

**A. Correct.**

Q. Why would this document have

127

been prepared and sent to Tidelands Resource Council?

**A. As we talked about before, the procedure was that once we issued a permit, if it needed a tidelands conveyance, it would be sent, the permit was to be sent to the Bureau of Tidelands and there was a cover memo that went with it. And this is the cover memo that would have gone over, it was a form kind of memo saying -- because the main thing was we reviewed it under the rules, and therefore, it met the rules. And, secondly, we would address if there were public access conditions that should be included in that tidelands conveyance.**

Q. And this was a standard letter that would have been sent letting the Tidelands Resource Council know that the required permits had been issued by your division and so that they would be free to issue the conveyance if they otherwise found it appropriate. Is that fair to say?

128

**A. That's correct.**

Q. During what period of time would you or Mr. Broderick signing for you have sent these types of letters?

**A. It would typically have been signed and sent the same day as the permit was signed and sent. They would have come together in a folder to sign both.**

Q. I mean, during your tenure in the business of issuing permits -- which I think you said was '79 through 2001 more or less?

**A. Right.**

Q. Throughout that time period, is this the type of letter that would have been sent to the Bureau of Tidelands with respect to permits?

**A. I don't remember the early, early ones. It changed somewhere along the line, but this was something used for a substantial period of time.**

Q. Starting approximately when, in the '80s?

129

**A. I really couldn't tell you exactly.**

Q. Remember we talked about the Keystone permit earlier?

**A. Yes.**

Q. That was in September of 1991 as the date on the permit. If that had been sent to the Bureau of Tidelands, would it have been accompanied by a memorandum such as this?

**A. I'm sure there would be some memorandum, but I really don't know if the form changed over time.**

Q. It may have a different look in format, but there would have been some kind of transmittal?

**A. I would expect there to be a transmittal.**

Q. Would that still be in your files, a copy of it?

**A. It should be.**

Q. I'd like to ask that you look for that and give it to your counsel?

130

A. **In my files personally?**
Q. Yes.
A. **I don't have any personal.**
Q. In the files of your -- what did you understand me to ask?
A. **In the department's files, which are the Division of Land Use Regulation.**
MR. ATTAWAY: I'd like to ask, and maybe I should direct this to counsel and I'll follow-up in writing, I'd like to ask that you cause those files to be searched for the cover memorandum that could have gone with the Keystone.
MS. KELLY: We can look into what ones have been produced already and we'll take that under advisement. That was for the Keystone permit?
MR. ATTAWAY: Correct.
BY MR. ATTAWAY:
Q. Just a couple more questions

131

about this type of letter, if one exists, with respect to Keystone. How would you go about searching for a copy of that letter in the department's files?
A. **I would go to the permit application file for this file, for the Keystone file number and look in it. And --**
Q. How difficult would that -- please finish, I'm sorry.
A. **They could also look in the Bureau of Tidelands files, if they have a file on this case.**
Q. Does your department keep a file? Would it be a file with all documents relevant to a particular permit?
A. **It would be a file, yes, with the documents relative to these permits would all be in one, actually not one file but together.**
Q. So they're all located together? They're filed together --
A. **Yes.**

132

Q. -- under Keystone and this file number?
A. **Under this file number with Point 1, 2, 3 and 6.**
Q. How difficult would it be to locate that?
A. **Something this old would be in a warehouse. It would be in a warehouse, and I've never been in the warehouse thankfully. But I know they're all in boxes shrink-wrapped together. It wouldn't be easy.**
Q. How long would it take someone to locate that?
A. **I don't know. I've never been there.**
Q. Are there indices the department keeps to show what box number, for example, the Keystone permit would be in?
A. **There are, yes. The file clerk in Land Use would be the one that could explain how it's all tracked and searched.**

133

Q. Have you ever requested files to be retrieved from off site?
A. **Yes.**
Q. And what was the process when you did that?
A. **I think there was a form we would fill out. Probably I would just, what do you call it, IM, instance message. I would e-mail the person and ask, but I know there's a form that you're supposed to fill out.**
Q. And how long typically did it take to get the documents back that you're requesting?
A. **It would take a month. It could take a long time.**
Q. Do you know where those documents were kept, permitting documents off site?
A. **It's either Trenton or Hamilton, not exactly.**
Q. Is it in the custody, is it a building that's operated by the state or does the state contract with a

134

document preservation service to keep it?
**A. I don't know. The state doesn't have a document preservation service, but I don't know who owns the building.**
Q. So it might belong to the State of New Jersey and it might not; you just don't know?
**A. I don't know.**
Q. But just to reiterate, all the documents pertaining to Keystone would be collected in one place?
**A. These files should all be filed sequentially that are listed on the permit.**
Q. And the cover memorandum transmitting this permit to Bureau of Tidelands would, in all likelihood, be located in that same location, correct?
**A. Everything that Land Use has – I should rephrase that. Bureau Coastal Regulation or whatever it's called, these files should be there.**
- - -

135

**(A recess occurred.)**
- - -
**BY MR. ATTAWAY:**
Q. Are you familiar with a DEP employee named Dorina Fritzera?
**A. Yes.**
Q. Am I pronouncing her name correctly?
**A. Close enough.**
Q. How long did she work for the department?
**A. I don't know.**
Q. Do you have an approximate time?
**A. I would say approximately 20 years.**
Q. From starting when?
**A. I don't know.**
Q. What time period?
**A. I don't know when she started. All I know is she's been here quite a while.**
Q. Is she still at the department?

136

**A. Yes.**
Q. What is her current job duties?
**A. Her job duties? She works in my office. One of her main things is responsibilities for the federal grant and managing all the funds, getting the grant applications in.**
Q. Is that grant applications under the Coastal Management Plan?
**A. Yes, grant applications to NOAA for federal Coastal Zone Management funds.**
Q. Which is the same; it just follows out of the 1980 orange book document?
**A. It's funds that states are eligible for because they have approved Coastal Management Programs.**
Q. And the orange book is the original approval of the Coastal Management Program. Is that correct?
**A. Yes. So that's a big part of her responsibilities. And then she**

137

**has various other tasks that vary year-to-year, depending on what our grant application requires us to do or says we will do.**
Q. And does she have any input or involvement in whether to grant or deny a permit?
**A. No.**
Q. Does she have any input or involvement in developing policy for the Coastal Management Division?
**A. Our office has some input in developing coastal policy, and being in that office, she has some. We work sort of collaboratively I guess you could say.**
Q. Did she do anything besides submit the grant applications to the federal government?
**A. Yes.**
Q. What else did she do?
**A. She is responsible for the Coastal Estuary and Land Conversation Program, which is a land acquisition program.**

**One of the things she's working on now is actually in the Delaware River area we have a project for mapping some of the Delaware River bay bottom I guess it is. She just put on a conference last week that was a submerged land conference which brought people from around the country, so she planned all that out. And then working with the Delaware Estuary Program trying to look at restoration opportunities along the Delaware, on our Delaware bay/shore area. That's some examples.**

Q. You mentioned you were a Manager III. Compare the level at which Ms. Fritzera is at to the Manager III position.

**A. It's a lower level.**

Q. Could you quantify how many levels lower?

**A. It's not in the same series. She reports to me. But I don't know -- it's not really a series that relates specifically. It's not like you go up**



**from this to Manager III.**

Q. Where do you go from where she's at?

**A. Actually, I don't know her title. She's in the Environmental Scientist series which goes from a III to a II to a I and then that's it unless you get a manager title somewhere.**

Q. Do you know what number she is in the Environmental Scientist series?

**A. I'm pretty sure she's a I.**

Q. She worked her way up from III to I over the years?

**A. I don't know what she started at. She might have switched in from something else. I don't know.**

Q. Where do the Environmental Scientists fit in?

Let me ask it this way: I think it was David Fanz who was the person that prepared the permit for Keystone?

**A. Right.**

Q. What was his position



compared to Ms. Fritzera's?

**A. You mean his title?**

Q. Yes.

**A. He was an Environmental Specialist, a Principal Environmental Specialist or something at that time, I think, probably a Principal Environmental Specialist.**

Q. And how does her title differ or her job responsibilities is what I'm trying to ask?

**A. Okay. She didn't do permits and he did, permit application reviews, so that would be the fundamental difference.**

Q. Would they be on different levels or the same level, if you could compare them, even though one did permits and one didn't do permits, just in terms of level within the division?

**A. I don't know. It's all Civil Service stuff. I don't know.**

Q. You mentioned the Fort Mott Project earlier. I'd like to introduce



the next exhibit, Exhibit-10.

- - -

(Ehinger-10 marked for identification.)

- - -

(A recess occurred.)

- - -

BY MR. ATTAWAY:

Q. This Fort Mott permit is dated January 21, 1996. It is marked as Ehinger Exhibit No. 10. Have you had a chance to review this, Ms. Ehinger?

**A. I did.**

Q. Is this one of the permits that you reviewed in preparing for your deposition?

**A. Yes.**

Q. And this is signed on the last page, it's a three-page permit, by it looks like Kevin Broderick, if I'm reading it correctly, for Ruth Ehinger, Manager, Bureau of Coastal Regulations?

**A. Yes.**

Q. When was the first time that

142

you saw this permit?
A. **First time I remember seeing it is when I was getting ready for depositions.**
Q. Within the last couple of weeks?
A. **Yes.**
Q. Is this something that you would have reviewed at the time, that is, in January 1996?
A. **I would review if I were in the office but I wouldn't review -- in the normal course of events, I would review the permits. If I'm not available, someone else would review the permits and I wouldn't have.**
Q. And that was Mr. Broderick. Was he still the person to whom you reported in 1996?
A. **No, he reported to me. Bob Tudor was the one previous that we discussed to whom I reported.**
Q. Thank you. You're correct. I misremembered. Kevin Broderick

143

reported to you; you reported to Bob Tudor in that time period?
A. **Right.**
Q. In the Administrative Conditions on Page 2, there's a sentence that states: The following project aspects are subject to approval of the State of Delaware: A, installation of floating ferry mooring associated pilings and, B, removal of rip-rap against the crib structure below mean low water.
Were you aware of that condition existing in this permit --
A. **No.**
Q. -- before reading this in preparation for your deposition?
A. **No.**
Q. The first page states that it's prepared by Bruce Stoneback. I gather that he performed the function that David Fanz performed in the Keystone permitting process?
A. **Right.**
Q. So Mr. Stoneback prepared

144

this permit and submitted it to Kevin Broderick?
A. **Right.**
Q. Where do you think he would have gotten the information that caused him to insert the Administrative Condition No. 2 regarding required approvals from the State of Delaware?
A. **I don't know.**
Q. You stated that you were not aware of this condition in this permit until very recently?
A. **I do not remember this condition or this permit prior to that.**
Q. On this permit, the applicant is on Page 1 in the box on the top left. It states the applicant is the New Jersey Department of Environmental Protection, Division of Parks and Forestry.
So is it fair to say that this was one division of DEP applying to your division of DEP for coastal permits?
A. **Yes.**

145

Q. Do you know whether DEP applied to the State of Delaware for the Delaware permits referenced here?
A. **I'm not sure.**
MR. ATTAWAY: Let me introduce Exhibit Ehinger-11.
- - -
(Ehinger-11 marked for identification.)
- - -
BY MR. ATTAWAY:
Q. I've just had marked as Exhibit-11 a permit application. And my understanding is that this is an application from the State of New Jersey, Department of Environmental Protection, Division of Parks and Forestry, to the Delaware Department of Natural Resources and Environmental Control for a permit to rehabilitate the pier at Fort Mott. Does that seem correct to you, Ms. Ehinger?
A. **That does seem correct.**
Q. And this permit application spans from Delaware Bates No. 1914

146

through 1970, so 70 minus 14 is about 56 pages.
**A. You're talking about these numbers?**
Q. Yes, on the lower right-hand corner.
**A. Yes.**
Q. It's a substantial permit application; would you agree with that?
**A. A substantial number of papers.**
MS. KELLY: What permit application?
MR. ATTAWAY: Substantial in length.
THE WITNESS: There's a lot of pages here.
BY MR. ATTAWAY:
Q. How long are the permit applications to your division, if you can quantify?
**A. An application form is four pages, which is similar to what this is. I think it's four-pages long. And then**

147

**there's other accompanying materials, like property owners, which is here; site description; there's an analysis of the project under the regulations. So it varies depending on the scope of the project.**
Q. So the applicant here to Delaware provided a lot of attachments to the form of application, correct?
**A. Yes.**
Q. And you have not seen this before?
**A. I don't remember ever seeing this.**
Q. And does this refresh your recollection as to whether you were familiar with the fact of whether or not New Jersey applied to Delaware for a permit for Fort Mott?
**A. I don't remember. I wasn't familiar with whether we did or did not apply or New Jersey DEP did or did not apply.**
MR. ATTAWAY: I'd like to

148

introduce Exhibit-12.
- - -
(Ehinger-12 marked for identification.)
- - -
BY MR. ATTAWAY:
Q. Exhibit-12 is the State of New Jersey's application to the Land Use Regulation Program for permission to rehabilitate the Fort Mott Pier. Is that correct?
**A. Yes.**
Q. And this is dated toward the back of the document September 19, 1995, Bates Page NJ05437. This is signed by Carl Nordstrom. Who is Mr. Nordstrom, if you know?
**A. He was Deputy Director of the Division of Parks and Forestry in the New Jersey DEP.**
Q. How many people would have been above him in DEP?
**A. There would be a director, an assistant commissioner, maybe someone**

149

**else and then a commissioner.**
Q. So he was the second highest person in his division, Division of Parks and Forestry?
**A. Yes.**
Q. So deputy director, he reported to the director. Do you know who the director was at that time?
**A. Darn, I can see his face.**
Q. Could you draw it? Does the reporter have an Etch-a-Sketch?
**A. I'll think of it but I can't right now.**
Q. But then above him or her about would he the assistant commissioner and then the commissioner?
**A. Right.**
Q. And I know you mentioned earlier that there at some points have been deputy commissioners and you're not sure whether that was true at this time?
**A. Right.**
Q. I don't have much on this. On the second page of the exhibit which

150

is NJ05424, there's a typewritten entry in the top half of the page that says -- the information requested by the permit form is Permit Modification. And then it says: State - Delaware Department of Natural Resources and Environmental Control and Federal - U.S. Army Corps of Engineers.

Does that indicate that a permit is required from those two entities, the Delaware and the U.S. Army Corps?

**A. It indicates that the applicant is saying that there's an application for other permits, one of which is the Delaware permit.**

Q. I'll go with the Bates numbers because there aren't page numbers on all of the pages. NJ05428, there's another entry for required permits for U.S. Army Corps and Delaware Subaqueous Lands.

Does that similarly indicate that the applicant is applying for

151

permits from the U.S. Army Corps and from Delaware?

**A. Yes.**

Q. Same question with respect to Page 5431?

**A. 31?**

Q. 5431.

**A. Do you have a question, I'm sorry? Did you ask me something?**

Q. I just said the same basic question. Does this page also indicate that the applicant was applying to Delaware for a subaqueous land permit?

**A. Yes.**

Q. So that's three mentions of the application for a permit from Delaware, correct?

**A. Correct.**

Q. And then on Page 5434 would you agree that there's a fourth mention of a permit application to Delaware?

**A. There's a mention of discussing it with them, having discussed. I see a mention of discussing**

152

**the project with a representative.**

Q. Are you aware whether or not Delaware issued the permits referenced to the New Jersey Division of Parks and Forestry?

**A. I don't know.**

Q. You didn't review any Delaware permits in your preparation for –

**A. I kind of vaguely think I -- I don't remember that specifically, sorry.**

\- - -

**(Ehinger-13 marked for identification.)**

\- - -

THE WITNESS: Greg Marshall, that's who it was. The director was Greg Marshall.

BY MR. ATTAWAY:

Q. Greg Marshall was the Director of the Division of Parks and Forestry at the time that Carl Nordstrom was the Deputy Director?

153

**A. Yes.**

Q. I had marked as Exhibit-13 a letter from Carl Nordstrom, Deputy Director, New Jersey Division of Parks and Forestry within the DEP. It's dated March 6, 1997. The letter is written to David J. Hazelton, Project Assistant to Delaware River and Bay Authority. And it's regarding riparian/subaqueous license/leases, Fort Mott Pier Project.

Ms. Ehinger, have you seen this letter before?

**A. Not that I can recall.**

Q. Were you aware of any of the matters discussed in the letter before reading it today?

**A. No.**

Q. Do you know who Mr. David Hazelton is?

**A. No, not other than what I read here.**

Q. It's suggests that he was at the Delaware River and Bay Authority?

**A. It does.**

154

Q. Do you know anything about the Delaware River and Bay Authority?
**A. Did this talk about it? I don't offhand know about it.**
Q. If you don't recall, you don't need to learn it from a document that I've shown you.
**A. I don't recall, no. They might be who operated the ferry but I don't know.**
Q. On Page 2 of the letter, and it's a two-page letter, there's a discussion which is titled Delaware Subaqueous Lease. It states:
Quote, this lease was issued on February 7, 1997 and expires on February 7, 2007. Once again, as long as the division operates this pier, quote, unquote, for the public good, there is no concern on our part that this lease won't be extended beyond 2007, end quote.
What is your understanding of this language just reading it now?
**A. That there was a lease**

155

**issued by the State of Delaware for the Fort Mott Pier Project.**
Q. And was Mr. Nordstrom reporting on the prospect of having the lease renewed once it expired?
**A. He indicated that he, I would say he expected it would be renewed or could be renewed or extended.**
Q. And it states that the lease expires in February of 2007, correct?
**A. Correct.**
Q. So, at the time this letter was written, Mr. Nordstrom was operating under the understanding that Delaware was within its rights to issue a permit for this project?
MS. KELLY: I'm going to object on foundation and personal knowledge. But go ahead.
THE WITNESS: I would say he was, I don't know if -- he had applied for a lease apparently and received it and felt that it could be extended and that he was

156

operating under it.
BY MR. ATTAWAY:
Q. And if he had thought that there was no need to get a lease from Delaware, would there have been any reason to write a letter reporting --
MS. KELLY: Same objection.
BY MR. ATTAWAY:
Q. -- that Delaware would renew the lease?
**A. I don't know -- I mean, it's hard for me to say what Carl Nordstrom thought. Presumably, he thought he needed to do these things and that's why he did them.**
Q. On the CC list, there is Assistant Commissioner Hall. Do you or did you know Assistant Commissioner Hall?
**A. Yes.**
Q. And what is his or her full name?
**A. Jim, James.**
Q. Do you remember what he was assistant commissioner of?

157

**A. I would call it Natural Resources.**
Q. And he would report directly to the commissioner, correct?
**A. Unless there was a deputy commissioner and chief of staff in between.**
Q. And Director Marshall, what was his first name?
**A. Greg.**
Q. And he was the Director of Fish and Wildlife?
**A. No. He was the Director of Division of Parks and Forestry.**
Q. There are five more names with just a first initial and last name. Just going down the list, tell me their first name, if you know it, and what their job title and responsibilities were at the time.
**A. The only one I recognize is Al Payne.**
Q. Al as in Allan?
**A. Or Albert. I don't know.**

158

Q. But A-L?
A. **Yes. I don't even know what his -- he was in Parks and Forestry, I believe. I don't know what his job responsibilities would be.**

- - -

**(Ehinger-14 marked for identification.)**

- - -

**BY MR. ATTAWAY:**
Q. Exhibit Ehinger-14 is an e-mail from Elaine Makatura to Ruth Ehinger dated February 3, 2005. And the subject line says it's regarding a BP press release. Ms. Ehinger, could you describe this e-mail in your own words?
A. **It's an e-mail from Elaine to me with copying in a press release saying that DNREC had made a negative decision on the Crown Landing Project and asking if DEP had issued permits for it or raised concerns about it in writing.**
Q. Did you respond?
A. **I probably -- I don't**

159

**remember the response. Chances are I responded.**
Q. Do you know the answer to the question she poses as we sit here today?
A. **Had we issued any permits, no. Had we raised any concerns, we had raised concerns through deficiency letters through the application that was to the department, to our department.**
Q. Do you know when the first deficiency letter went out?
A. **No.**

- - -

**(Ehinger-15 marked for identification.)**

- - -

**BY MR. ATTAWAY:**
Q. What's been marked as Ehinger Exhibit-15 is a letter dated February 4, 2005 from David Risilia, Project Manager, Office of Dredging and Sediment Technology, to David Blaha, Environmental Resources Management. And

160

it's a deficiency letter for Crown Landing's Waterfront Development application. Have you seen this letter before, Ms. Ehinger?
A. **Yes.**
Q. And this is 32-pages long for the record. Is that correct?
A. **Yes.**
Q. Did you provide any input to this letter?
A. **Yes.**
Q. What sort of input did you provide and to whom did you provide it?
A. **To Dave Risilia. What I remember talking about is how to apply energy policies at the Energy Facility Use Rule.**
Q. Is that Page 22?
A. **22 and discussions on 24 and 25.**
Q. Did you provide comments on any other part of this letter?
A. **I don't remember. That was the main discussion Dave and I had.**

161

Q. Turning back to Page 1, the third paragraph states: Quote, the project site is located in the States of Delaware and New Jersey. Accordingly, activities taking place from the mean low waterline (MLWL) outshore are located in the State of Delaware and, therefore, are subject to Delaware Coastal Zone Management Regulations. Activities or associated impacts to New Jersey's coastal resources occurring from the MLWL landward are the subject of this application, end quote. Do you recall reading this?
A. **I don't recall reading it.**
Q. You received drafts of this letter?
A. **I did receive drafts or a draft.**
Q. Before it was sent out?
A. **Yes.**
Q. So reading this paragraph on Page 1 didn't make you pause and wonder whether it was accurate?

A. **I don't really remember -- I mean, my job was not and is not looking at permits, so this was sort of as a favor to Dave interpreting what he was doing for the Energy Facility Use Rule. I don't really remember getting into the nitty-gritty of anything else.**

Q. Do you know whether subsequently this statement about Delaware's regulatory authority was retracted by New Jersey?

A. **I know, yes, there was at least one letter that I couldn't tell you the substance of. But the gist of it was that New Jersey had authority to review this below the mean low waterline as well.**

Q. And that Delaware could also review it or that Delaware could not review it?

A. **I don't think it said Delaware could review it. I think it just said New Jersey.**

Q. You don't think it mentioned



Delaware?

A. **I actually have seen the letter, but I can't remember the detail of the letter.**

Q. I just want to make sure I understand your answer. You thought that it didn't speak at all to Delaware's regulatory authority?

A. **I don't know if it's one -- I know it said New Jersey had authority below the mean low waterline. I'm not positive what it said relative to Delaware's having authority or not.**

Q. Were you involved in any way in drafting or commenting on drafts in that letter?

A. **Yes. I saw that letter.**

Q. Do you know who wrote it?

A. **Probably -- I'm not sure who wrote it. I remember talking about it with Dave and Suzanne Dietrich.**

Q. In what time period?

A. **I don't know when the letter was sent.**



Q. The letter we were just talking about, the exhibit is February 4, 2005.

A. **It was after this, but I don't know what month.**

Q. Couple months after?

A. **I don't know.**

MR. ATTAWAY: Just give me a moment, please.

I have no further questions.

- - -

(Witness excused.)

(Deposition concluded at approximately 1:00 p.m.)

- - -



CERTIFICATE

I HEREBY CERTIFY that the witness was duly sworn by me and that the deposition is a true record of the testimony given by the witness.

Kimberly S. Gordon, a
Registered Professional Reporter
and Notary Public
Dated: OCTOBER 27, 2006

(The foregoing certification of this transcript does not apply to any reproduction of the same by any means, unless under the direct control and/or supervision of the certifying reporter.)

UNITED STATES SUPREME COURT

DOCKET NO. 134, ORIGINAL

- - -

STATE OF NEW JERSEY, :
Plaintiff, :
:
v. :
:
STATE OF DELAWARE, :
Defendant. :

- - -

DEPOSITION UNDER ORAL EXAMINATION OF

JAMES R. JOHNSON

TRENTON, NEW JERSEY

NOVEMBER 1, 2006

- - -

REPORTED BY: SILVIA P. WAGE, CSR

- - -

ESQUIRE DEPOSITION SERVICES
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JOB NO. 9078

Transcript of the deposition of JAMES R. JOHNSON, called for Oral Examination in the above-captioned matter, said deposition taken pursuant to Supreme Court Rules of Practice and Procedure, by and before SILVIA P. WAGE, a Certified Shorthand Reporter and Notary Public for the State of New Jersey, at the RICHARD HUGHES JUSTICE COMPLEX, 25 Market Street, Fourth Floor, Conference Room D-1, Trenton, New Jersey, commencing at 10:19 a.m.



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INDEX


Testimony of: JAMES R. JOHNSON
By Mr. Attaway 6


EXHIBITS


Johnson-1 State of NJ Coastal Management Program Bay & Ocean Shore Segment 57
Johnson-2 State of NJ Coastal Management Program-Bay and Ocean Shore Segment and Final Environmental Impact Statement 57
Johnson-3 Options for NJ's Developed Coast 65
Johnson-4 Proposed NJ Coastal Management Program and Draft Environmental Impact Statement 69
Johnson-5 NJ Coastal Management Program August 1980 69
Johnson-6 7/26/91 letter to Richard Long from James Johnson 79
Johnson-7 8/1/91 letter to Richard Long from James Johnson 79
Johnson-8 3/14/91 letter to Anthony Pratt from Steven Whitney 83
Johnson-9 8/28/91 Memorandum to James Johnson from Robert Tudor 87
Johnson-10 State of NJ Department of Environmental Protection & Energy Land Use Regulation Element Bureau of Coastal Regulation Summary Analysis 11/24/91 89
Johnson-11 Permit No. 0809-91-0010.1, .2, .3 and .6 effective 9/24/91 99
Johnson-12 7/7/94 memorandum to Distribution from Steven Whitney 102
Johnson-13 10/20/06 letter to Collins Seitz, Esq. From Barbara Conklin 112




DEPOSITION SUPPORT INDEX

Direction to Witness Not to Answer
Page Line Page Line Page Line
(NONE)

Request for Production of Documents
Page Line Page Line Page Line
(NONE)

Stipulations
Page Line Page Line Page Line
(NONE)

Question Marked
Page Line Page Line Page Line
(NONE)

6

JAMES R. JOHNSON, after having been duly sworn, was examined and testified as follows:

- - -

DIRECT EXAMINATION BY MR. ATTAWAY

- - -

Q. Good morning, Mr. Johnson.
**A. Good morning.**
Q. My name is Scott Attaway and I represent the State of Delaware and the caption for this case is New Jersey versus Delaware. It's Original Number 134 filed in the United States Supreme Court.
Before we begin, I just want to establish a few ground rules so that the deposition goes smoothly.
**A. Okay.**
Q. So, first, if you don't hear a question, please, let me know and I'll repeat it. And if you don't understand a question, likewise, let me know and I'll try to rephrase it.
**A. Very well.**
Q. Because this is being taken down by a court reporter it's important that only one of us speak at a time. So I'll do my best not to start a new question until I'm sure that you finished your

7

answer and, likewise, it's best if you wait to begin your answer until I finish my question.
**A. Agreed.**
Q. Okay. And I see you understand the instructions I've just given you, correct?
**A. Yes, sir.**
Q. Is there any reason of which you're aware that could impede your ability today to testify truthfully such as any medical or physical limitations?
**A. No, sir.**
Q. Okay. Other than conversations with counsel, what did you do to prepare for your deposition today?
**A. Very little.**
Q. Okay. It should be quick to go through that then.
So what did you do, did you review documents or...
**A. No.**
Q. And other than counsel, did you talk to anyone else to prepare for the deposition?
**A. Just Rachel to tell me what the case was about.**
Q. Okay. So you're currently retired,

8

correct?
**A. Yes.**
Q. And I assume you were contacted at some point by counsel for New Jersey about this case, correct?
**A. Yes.**
Q. Okay. And I don't want to know anything about was said during those conversations, but when did that first contact occur?
**A. About two weeks ago, three weeks ago.**
Q. Okay. And was that Miss Horowitz that contacted you?
**A. No. It was -- what is her name? Shes' out sick.**
Q. Barbara Conklin?
**A. Barbara, yes.**
Q. How many times did you meet with either Miss Conklin or Miss Horowitz or another attorney for the State of New Jersey?
**A. I did not have any meeting. Barbara had called me at a place where I do consulting work.**
Q. Okay.
**A. The name of the firm is Charles Jones and she called me at that office to ask me if I would testify regarding the Delaware/New Jersey**

9

**boundary line.**
Q. Okay. And so you've talked with her a little bit on the phone?
**A. And today is the day that I met Rachel.**
Q. So just those two contacts?
**A. Yes.**
Q. Okay. And you didn't review any documents in connection with those discussions with your attorneys?
**A. No.**
Q. Okay.
All right. Have you been deposed before in any other case?
**A. Years ago.**
Q. Okay.
**A. In my capacity as -- with the State of New Jersey and the State's tidelands program.**
Q. Okay. What was that case about?
**A. Offhand I cannot remember.**
Q. What time period would it have been in?
**A. It would have been early '90s, late '80s.**
Q. Was that a court case, if you can

10

remember?
A. I believe so.
Q. And you gave a deposition or were deposed in that case, correct?
A. Yes.
Q. Or did you testify at trial?
A. I do not believe I did.
Q. Okay. Were there any other instances in which you gave testimony either through a deposition, live testimony or an affidavit?
A. I believe there was, but for me to recall things that happened 13, 14, 15, 20 years ago...
Q. Right.
So you recall only one case of giving testimony, that was a deposition you referred to, correct?
A. Yes.
Q. All right. And was that case or did that case involve in any way the boundary between New Jersey and Delaware?
A. No.
Q. Did it involve in any way Delaware's or New Jersey's regulatory authority over activities within the Delaware River?

11

A. No, sir.
Q. Do you remember geographically what area that case was concerned with?
A. No, I do not.
Q. Okay, fair enough.
I just want to go through a little bit of your background.
Did you go to college?
A. Just evening college at Trenton Junior College and took some courses at Rutgers.
Q. Okay. Any degrees as a result of that?
A. No, no, sir.
Q. What time period was that or if you remember the specific year when you ended your studies?
A. It would have been in the '60s.
Q. Okay. And my understanding is that you started at the Department of Environmental Protection or DEP for short in about 1970; is that correct?
A. No.
Q. No, okay.
A. Originally, I started in 1958. I worked with -- at that time it was called the Bureau

12

of Navigation and it was a Civil Service position.
I was taking the Civil Service test and passed another position with the Mercer County -- County of Mercer New Jersey Bridge Engineering Department in the bridges division and thought I would like to -- it would be exciting to design and build bridges, but they -- before I came with government, I was working with a consulting engineer land surveying company and doing a lot of field surveys. And when the county bridge department found out that I had some surveying background, I was immediately put into the field staking out and doing as-builts on bridges, standing in a middle of a creek on December the 12th taking profiles, feet wet, half way up my legs my pants were wet.
Q. As a former brick layer in Boston for a number of years, I can relate to standing in cold water.
A. So about a year later I had passed another test to come back to the office that I had left a year earlier and that was the Navigation Bureau. So I went back to them in 1960 and stayed there ever since from -- between -- until 1970 when the division had appointed me the supervisor of that navigation -- of the riparian grants and leases

13

section of the Bureau of Navigation. So I was more or less the head of the riparian grants and leases.
(There is a discussion off the record.)
A. I was in charge of the riparian grants and leases section from May of 1970 until I retired.
Q. Okay.
A. In different titles, I guess it's called.
Q. But you were at the head of that division and structure of --
A. Head of that program since May of 1970, yeah, but having been somewhat the assistant from 1960 to 1970.
Q. Who did you report to from 1960 to 1970?
A. An individual by the name of Anthony Scoppetullo, S-c-o-p-p-e-t-u-l-l-o.
Q. Good memory of that spelling.
Do you remember all of the different titles that you held between 1970 -- I'm sorry, I didn't ask when you retired.
A. When I retired, I was the manager of the Bureau of Tidelands Management and in -- there's been so many titles that I was using.

14

Q. Were the different titles a result of just reorganizations that were made by DEP?
**A. Yes, sir, that's what they were.**
Q. Did your job responsibilities change in any material way between 1970 and when you retired?
**A. Yes and no. In addition to being the supervisor of grants and leases in 1970, the division was without a supervisor of a section called or an office called permits and licenses. And my bureau chief at that time, a James Rankin, R-a-n-k-i-n, said, Jim, you've been around long enough that you kind of know, you know, all these programs that are being run by the bureau, would you help me out and take over the -- in addition to what you're doing with grants and leases -- take over the running of the permits and license section, which I did for a while until he found someone to fill that position, an individual by the name of Donald Graham, G-r-a-h-a-m.**
Q. Okay. Let me just back up a little bit.
**A. Yes, sir.**
Q. When did you take up the permit and licensing functions?

15

**A. Right about May of 1970.**
Q. May of 1970?
**A. Yes.**
Q. And how long until Mr. Graham took that over?
**A. I guess Mr. Graham came on board maybe '71, '72.**
Q. So for about one or two years?
**A. Yes, about one or two years.**
Q. After 1972, did you have any involvement in issuing permits?
**A. Yes.**
Q. What was that involvement?
**A. To review applications that were filed with the office. I had one engineer working with me in that program, an individual by the name of Paul McDowell, M-c-D-o-w-e-l-l.**
Q. Were you reporting to Donald Graham at that time?
**A. I was reporting then to James Rankin. Don kind of -- Mr. Graham kind of succeeded me a year a half, two years later.**
Q. Okay.
**A. Don -- Mr. Graham was at that time when I took over the program an inspector with our**

16

**division, an inspector of what they called bulkheads and dredging and he was in our Toms River office.**
Q. When you --
**A. So we kind of promoted Don within the division to be the supervisor of permits and licenses.**
Q. When you were just discussing Paul McDowell being on your staff, was that in the 1970 to '72 time period or was that a different time period?
**A. That was in 1970, I believe.**
Q. So, after 1972, did you have any involvement in permitting?
**A. No.**
Q. No, okay.
Did you review permits in any way?
**A. We reviewed applications for permits, yes.**
Q. Sorry, after 1972?
**A. Oh, no, no.**
Q. Did you receive notice of permits in your capacity at the Bureau of Tidelands?
**A. What my office would do would be when an application was filed for a tidelands grant or lease, we would send notice of that application to**

17

**the permits group for their review and comment as to whether or not the grant or lease should be issued and whether or not the use for the state property was acceptable under the rules and regulations of the department and through the permits division.**
Q. So it isn't the case that the permits division would assess the use proposed to be made of the lands at issue in the grant application?
**A. Yes, sir, yes, sir.**
Q. Okay.
**A. In other words, the State of New Jersey has been in the so-called real estate business for a long time. One of the earliest grants, riparian grants, issued by the State dates back to 1804 to a group called the Associates of Jersey, which is today known as Jersey City.**
Q. A long history.
**A. It's a long history.**
**We decided, finally, in 1970 that before the State would convey now a formerly flowed tidelands, that any conveyance should be in the public interest. And the only way of determining whether or not a grant or lease is in the public interest is to find out how the property is going to be used, so that from that time forward no tidelands grant,**

18

lease or license would be issued without one making a companion application for a waterfront development pursuant to N.J.S.A -- New Jersey Statute's Annotated -- 12:5-3.

Q. When you said from that time and you described the conditioning of a riparian grant on the issuance of the waterfront development permit, what was the time that you had in mind?

A. From 1970.

Q. From 1970, okay.

A. Yes.

I say that because the state -- as I indicated the state has been in the so-called real estate business as early as 1804.

Q. 1804.

A. And there were many tidelands grants, riparian grants, issued by the State of New Jersey without knowing how the land was going to be built upon, improved, used, so on and so forth. Even though there was language in all of the conveyances or leases or licenses issued by the state that in order to develop the land being conveyed by the state, released by the state, that it couldn't be built upon without first procuring a permit for the improvements.

19

Q. When did that language first start appearing in the riparian grants or leases?

A. A long time ago.

Well, the permit law, the Waterfront Development Permit Law, was enacted in 1914. So really at some point in time right after that the language was being put in in the grants that any improvements of the lands being conveyed, leased required permits to be obtained by the grantee or lessee after issuance.

In 1970, we finally thought that they were -- or at least in my mind I thought of them as being blank checks that we would sell -- the state would convey -- I'm still using after 13 years the term we -- that the state was selling land and then at some point in time may have to say, well, yeah, we sold you the land but we don't like what you want to develop the land for.

Q. Right.

A. And it's not -- it just wasn't good business in my personal mind to be doing that, selling somebody a piece of land or leasing somebody a piece of land, taking their money for the leases or grants and then later on down the road telling them, no, you can't build a pier that wide or you

20

can't build a pier that long or you can't bulkhead, you can't fill, you can't moor boats, you can't dredge, you can't, you know. We should know up front what they want to do and then decide to go through with it.

Q. So, if I understand you correctly, someone could get -- at least prior to 1970 -- could get a riparian grant or lease to use submerged lands but there would be no restriction in the grant on what they could do with the lands, correct?

A. That's right, yes.

Q. And you said that the state could come along later and restrict the uses and say that, oh, you can't build the pier or you can't build that bulkhead or you --

A. Pursuant to the condition of the grant that required them to get a waterfront development permit --

Q. I see.

A. -- to do any activity on the lands that were heretofore granted.

Q. And then subsequently the issuance of the permits became a condition of getting the grant, so the applicant couldn't get a valid grant unless and until all the permits were in place?

21

A. That's right or at least have some indication from the people that would issue the permit that what was proposed for the lands that were being asked to be conveyed or leased to them was in the public interest and being done in accordance with departmental rules and regulations.

Q. And your job throughout this period aside from the period in 1970 to '72 was strictly on what you called the real estate business side; is that correct?

A. Yes, yes, sir.

Q. And so that didn't involve assessing whether a permit was appropriate or not, correct?

A. Whether the approval of a permit was appropriate?

Q. Yes.

A. That's true.

Q. Okay. When did you retire from the DEP?

A. June -- July 1st, 1993.

Q. At that time what was your title? I think you said it earlier and I apologize, if you could just repeat it.

A. This was manager of the tidelands management program.

22

Q. Is that the Bureau of Tidelands, was it called that then?
**A. Yes, it could have been the Bureau of Tidelands, yeah, Bureau of Tidelands Management.**
Q. And was it your job to advise the Tidelands Resource Council?
**A. Yes, sir.**
Q. What was the -- just briefly, what is your recollection of the function and nature of the Tidelands Resource Council?
**A. The Tidelands Resource Council is made up of 12 individuals all appointed by the governor, confirmed by the senate.**
**They meet and review applications for the grant, lease or license or permission to use state owned tidelands, determine whether or not the conveyance or lease or permission to use those lands is in the public interest, and environmentally sound. And in order to determine whether or not it's in the public interest, they determine whether or not the use proposed by the applicant is environmentally sound and in the public interest.**
Q. How would the Tidelands Resource Council go about ensuring that the use proposed was environmentally sound?

23

**A. Recommendations would be made by the permits operation whether or not the simultaneous application for waterfront development permit was going to be approved or was approved.**
Q. So is it the case that the Tidelands Resource Council would get notice of whether a permit application had been or was going to be approved but that the Tidelands Resource Council itself would not rule on -- would not actually grant or deny the permit application?
**A. That's true.**
Q. Okay.
**A. In fact, the Tidelands Resource Council would not act on an application unless and until they had the recommendation from the permit operation.**
Q. Starting at what point in time was that procedure in place?
**A. From pretty much May of 1970 when I took over the operation.**
Q. But not before that?
**A. Before that there was one point and I don't recall the dates where the council actually made decisions too on permit applications.**
Q. You don't recall when that --

24

**A. I do not, no.**
Q. Do you know if there are any documents substantiating that?
**A. I'm trying to think.**
**I guess the best example would be to review the council minutes to see at what point in time they changed from making decisions on permit applications to not making any further decisions on permit application.**
Q. What types of permits would they assess?
**A. They would be waterfront development permit --**
Q. And what -- and what were the standards that the Tidelands Resource Council would apply in assessing those applications?
**A. Basically, whether or not the development was in the public interest and there were no objections to the project.**
Q. Are you aware of any such permit applications that the Tidelands Resource Council ruled on with respect to projects that straddled the boundary between New Jersey and Delaware?
**A. Not that I'm aware of.**
Q. Can you recall any specific permit or

25

project that the Tidelands Resource Council -- with respect to which the Tidelands Resource Council assessed a permit application?
**A. I do not recall, but I'm sure they have.**
Q. Since you retired, have you done any work for New Jersey?
**A. In New Jersey or for the...**
Q. For the State of New Jersey is what I meant to ask.
**A. No, sir.**
Q. Okay. Are you being paid for your work on this case?
**A. No, sir.**
Q. All right. Not by New Jersey and not by anyone else?
**A. No, sir. I do a lot of things I don't get paid for.**
Q. Like being a grandfather?
**A. Yes, yes, but I enjoy that.**
**(There is a discussion off the record.)**
Q. You mentioned earlier that you were at a consulting firm, I think. So let me just ask it this way.
Since 1993, have you done any work for hire?

26

A. You mean with the Charles Jones Group or...
Q. I was asking more broadly with any -- like after you retired from the state, did you go to work for someone else or in a self-employed capacity?
A. Yeah, I've done -- helped surveyors. I've done application work for tideland grants on properties where it would not be considered in my opinion any kind of a conflict, but for the most part they were residential properties that cleared title if a property that was once formerly tide flow.
Q. Would --
A. In other words, being an agent for an application for a tidelands grant to clear a title to someone's residential lot.
Q. And that's an application to the Bureau of Tidelands?
A. That's an application to the Bureau of Tidelands.
Q. How many of those applications have you been involved in in which you represented a private party before the Bureau of Tidelands?
A. Maybe a dozen.

27

Q. Spread out between 1993 and the present?
A. Yes.
Q. Okay. Do you have any such applications currently pending?
A. Yes.
Q. How many of those?
A. Ten.
Q. Ten, okay.
Who do you normally work with at the Bureau of Tidelands in presenting these?
A. Well, applications are filed with today Richard Castagna, C-a-s-t-a-g-n-a. He's the manager of the Tidelands Management Bureau.
Q. Do you talk directly with Mr. Castagna in the course of prosecuting the permit applications?
A. Not really, pretty standard. You have the property owner fill out the application form or have their attorney certify their title. The title insurance company supply copies of their record deed and the property owner orders a boundary line survey and that survey shows the areas of the state's claim. It's pretty simple.
Q. Did Mr. Castagna used to work for you

28

in the Bureau of Tidelands?
A. Yes, yes, sir.
Q. How for how many years?
A. I would say around ten years.
Q. Do you know when that ten-year period began, if not exactly, approximately?
A. I would say sometime during the '80s.
Q. You mentioned that -- I'm sorry, go ahead.
A. Mr. Castagna was with the office of Environmental Analysis and that was the group that did the mapping tidelands, mapping for the State of New Jersey. And when that office finished their task of mapping all of the lands within the State of New Jersey that are affected by now or formerly flowed tidelands, the office was just disbanded and I took on -- my program took on about four or five, six members of that prior office to work in my office. Because prior to that time, my office was very, very small, about half the size of what it is today, if not less than that.
Q. How many people were in your office at that time?
A. Before Richard Castagna and some of the other people came over?

29

Q. Correct.
A. Like 10, 20 people.
Q. And that would have been throughout the '70s and into '80s; is that the time period we're talking about?
A. Yes, maybe even smaller in the '70s. I was kind of hands-on manager.
Q. Okay.
A. And I tried to do everything even though all my commissioners kept on yelling at me and why are you still in the office at 8:30, 9 o'clock at night, you know.
Q. Understood.
A. Why are you coming in on Saturdays and Sundays; delegate, delegate, delegate.
Q. And you said it was because of the paid hourly overtime, right?
A. There was overtime?
Q. Just kidding.
A. Oh, okay.
Q. After you left the Bureau of Tidelands on July 1st, 1993, who succeeded you?
A. Joanne Cubberley, C-u-b-b-e-r-l-e-y.
Q. Did she work under you before you left?

30

A. Yes.
Q. For about how long?
A. A little bit more than what I said about Rich Castagna, maybe about 10 to 12 years.
Joanne, too, was with the same office of Environmental Analysis and when they were getting near the end of their project, she came over to my program.
Q. Okay. Did she report directly to you during that 10 to 12 years?
A. Yes.
Q. There was no one in between?
A. No.
Q. So you got to know her pretty well?
A. Yes.
And then Rich Castagna succeeded Joanne when she retired at the end of last year?
Q. And you know that because you're still in contact with Mr. Castagna through your permit applications?
A. Not permit applications. They're the grant -- tideland grant application.
Q. Thanks, thanks, I misspoke.
A. But, yes, I stayed close to the program anyway. I mean, I always thought of the

31

program as being a family and we worked that way, you know, as a family. We helped out each other and things like that. So they're good people and I like the people and will always like those people.
Q. Sounds like a nice working relationship.
A. And when I go in there, I mean, it's like chatting about families and things like that more than anything else.
But I go in there at least twice a week and I go in there because at Charles Jones where I'm working now we try to keep our records at Charles Jones updated, so that when someone comes to us to ask -- at Charles Jones -- they ask questions about whether or not a piece of property is subject to a state tidelands ownership claim and whether or not there's any prior conveyances that may have affected that claim, we can give them the same answers that hopefully the state could give them in a quicker time.
Q. Okay. You mentioned earlier that representing these private parties before the Bureau of Tidelands didn't in your mind create any kind of conflicts.
What kind of representation would it in your

32

understanding create a conflict?
A. Well, I'm worried more about properties that I had some independent -- or not independent -- but I had some association in my dealings at the state; in other words, it was a prior application that maybe I had denied and someone comes to me and said, you know, you're not with the state anymore, will you reapply to the state and try to get me a grant. Those cases as far as I'm concerned is a clear cut conflict of interest and I just tell them, no, don't call me, I'll call you. So I'm pretty careful and particular about what I agree to assist somebody on.
Q. Okay. The permits that you were involved in issuing in '70 to '72, what types of activities were those permit applications for?
A. They'd be for dredging, building of docks, piling, placing piling for boat moorings, bulkheads, revetments, things like that along the shore front, cable companies for cable crossings of tidal waterways for sanitary sewer pipes, electrical, gas, some activities for bridge building; in other words, counties, municipalities, state department, highway department. No one is exempted from having to get a permit or to purchase

33

or to lease or get permission to use state owned tidelands. So, I mean, it's a gamut of activities that would be covered.
Q. Okay. If you issued a permit for someone to build a dock or a wharf, would you also get into regulating the types of cargo that would be loaded and unloaded from that wharf?
A. Most likely.
Q. So the permits -- did you have any permits that you can remember for any kind of hazardous cargo?
A. Not that I recall.
Q. I'll take this in two steps, but I wanted to ask you what statutes and regulations you administered.
First, we can look at the 1970 to '72 period when you were issuing permits and then I'll ask you more broadly about the real estate business that you mentioned.
A. Okay.
Q. So the first question is what were the statutes and regulations that you administered when you were reviewing permit applications?
A. The statute would have been what I mentioned before, New Jersey Statutes Annotated

34

12:5-3, which is the New Jersey's Waterfront Development Law dealing with activities of navigable waterways.

Q. When you say development, you mean buildings on the shore?

A. Buildings -- at that time it was buildings on the mean high water line or waterward thereof.

(There is a discussion off the record.)

A. You see in state tidelands law the mean -- the natural mean high water line is the line of demarcation between state government and private ownership. It's a property line.

Q. And I'm sorry, you said geographically the law applies from mean high water line to?

A. To any navigable waterway shore to shore.

Q. And were you involved in reviewing any permit applications for a project that straddled the boundary between New Jersey and Delaware?

A. I cannot recall. I may have and I just don't remember.

Q. Okay, fair enough.

That was 1970?

35

A. That's right.

Q. It was a while ago.

Starting in 1972 -- and I recognize there might be some overlap back to 1970.

But from 1970 or 1972 through 1993, what statutes and regulations did you administer with respect to the grants and leases?

A. I guess it would be anywhere within N.J.S.A., again, Title 12:3-1 et. seq. I mean, there are numerous sections to that chapter or sections.

Q. Do you know what the title of that chapter was and the statute was?

A. No, I do not.

Q. Do you know if it had the word riparian in it?

A. I'm sure it did.

Q. In your career as a regulator, were you familiar with Delaware's laws applying to the Delaware River?

A. I was aware of a Compact entered into between the states of Delaware and New Jersey in 19 -- Compact of 1905.

Q. Okay. When did you become familiar with that?

36

A. Pretty much earlier on. My predecessor Tony Scoppetullo and myself, we kept little notebooks in our office which had information which probably was handed down by both of our predecessors regarding the boundary line between New Jersey and Delaware and I believe there was a copy of the Compact in that notebook.

Q. You said early on. Can you be a little bit more precise even if you can't be precise on it when you learned the existence of the Compact?

A. I would guess we would go back to when -- back to the 1960s when I was the assistant to the supervisor at that time, Mr. Scoppetullo.

Q. In what context did that come up for the first time?

A. I do not recall. It may have been in connection with applications that were being filed within the 12 Mile Circle and grants being issued to applicants within that area?

Q. Okay. You mentioned the 12 Mile Circle. What is the 12 Mile Circle?

A. The 12 Mile Circle is what describes the boundary between New Jersey and -- yeah -- between New Jersey and Delaware, the center point being, I believe, New Castle, Delaware.

37

Q. Okay.

A. And maps would show the arc crossing the Delaware River to where the arc would intersect the low water line on the New Jersey side of the Delaware River and bay.

Q. Okay. So what is your understanding of the boundary between New Jersey and Delaware within that 12 Mile Circle?

A. My personal understanding would be that the low water line on the New Jersey side of the river, Delaware River or bay, would be the state boundary line. But this Compact in my opinion would allow the state to exercise its riparian jurisdiction within the Delaware boundary on the New Jersey side of the river.

Q. When did you first learn the location of that boundary?

A. I would guess in the 1960s.

Q. Do you remember in what context that issue came up?

A. No, sir.

It may have been looking at an S-o (phonetic) road map.

Q. Fair enough.

A. Or Exxon today.

38

Q. Right.
What is your understanding of the word riparian?
A. **Riparian, I guess, would mean lands below the mean high water line or high water line.**
Q. Are you familiar with the term riparian rights?
A. **Riparian rights, yeah. That -- I mean people toss that around almost like they -- I recall them doing with wetlands. I mean, they would call wetlands riparian land and riparian lands wetlands. Sometimes they are and sometimes they're not.**
**Riparian like a riparian owner could mean someone who owns the fast land, the upland adjoining a body of water. Riparian rights could mean that someone has received from the State of New Jersey the riparian rights connected with his property which would include then the land under the waters of the waterway adjoining his property.**
Q. Would someone have a riparian right to offload any particular kind of cargo?
MS. HOROWITZ: Objection. You're asking for a legal conclusion.
MR. ATTAWAY: I'm asking for his

39

understanding as a regulator.
A. **You can answer.**
**(There is a discussion off the record.)**
MS. HOROWITZ: It's based on his understanding.
A. **Could you ask me the question again?**
MR. ATTAWAY: Could you read the question back?
(Whereupon, the question is read back as follows:
"Question: Would someone have a riparian right to offload any particular kind of cargo?")
A. **Well, if you use the term offload, there would have to be, what, some kind of stationary structure or vehicle, vessel in the water?**
Q. On a wharf, for example.
A. **An authorized wharf --**
Q. Correct.
A. **-- is what you're talking about?**
Q. Correct.
A. **Providing when the wharf was built that the permit that authorized the construction didn't prohibit it or if the grant obtained from the State of New Jersey did not prohibit that activity,**

40

**if that -- I don't know if that answers your question. It's kind of...**
Q. I think you said earlier that none of the riparian grants expressly authorized any particular activity to occur on the lands granted or leased under the riparian document, correct?
A. **That's true for the most part. I mean, there were -- there are of record some riparian/tideland grants that have use restrictions in them such as when the State of New Jersey issues grants to the highway department, transportation department or in some cases municipalities or county agencies. They do so with a condition that the lands can only be used for certain purposes.**
**The one thing I'm thinking of is, again, referring to the Statutes at 12:5 -- of colon 3-33 and 34 allow governmental agencies a prior right over one's preemptive right to apply for tideland areas outshore of property they don't own fee simple to providing they use the land for public purposes, a street, highway, place of resort or public recreation.**
Q. Okay. You mentioned that the -- you mentioned one's preemptive right. What sort of preemptive right were you referring to?

41

A. **Under New Jersey law, the owner of the fast land adjoining the tidelands has the right of first refusal to apply for and obtain riparian rights -- a tidelands grant. That's the preemptive right, the right of first refusal to apply for the grant.**
Q. Okay. So, if I owned lands in New Jersey that abutted the mean high water line on the Delaware River, what kind of riparian rights would I have as owner of that property?
MS. HOROWITZ: Objection. Again, you're asking for a legal conclusion.
Q. I'm asking based on your understanding as a regulator.
A. **Well, as an upland owner, he could apply for a tidelands grant, lease or license.**
**And under today's procedures, he would also have to make an application for a waterfront development permit to show the state how he would -- how he intends to use or develop lands that he is applying for outshore of his record title exercising his preemptive right.**
Q. As the riparian owner in your understanding as a regulator, what sorts of activities, if any, would the riparian owner be

42

authorized to engage in?
A. **Well, under his -- within his application for a waterfront development permit under the rules today he'd have to show that that activity that he's proposing is consistent with the state's rules and policies regarding lands under tide water or adjacent thereto.**
Q. In your career at DEP, did you ever hear of a waterfront development permit referred to as a riparian permit?
A. **You mean today or...**
Q. Throughout your career at DEP.
A. **Yes, yes.**
Q. In what context?
A. **I guess my own. I mean, I used to call them riparian permits because they went with riparian grants and leases and licenses and easements. But I'm sure others have used the same term riparian permit.**
**I mean, even today some of the title insurance companies you talk to and some of the attorneys who call them riparian permits, you know. You know, I try to get them to, you know, you got to catch up, they're now called waterfront development permits or coastal permits or...**

43

Q. You mentioned the term riparian jurisdiction a little while ago. What is your understanding of that term?
A. **Riparian jurisdiction would be in areas between the natural mean high water lines of any tidal waterway within New Jersey's -- within New Jersey.**
**(There is a discussion off the record.)**
Q. You just said that in your understanding riparian jurisdiction was between the mean high water lines --
A. **The natural mean high water lines of any tidal waterways.**
Q. Within New Jersey?
A. **Yes.**
Q. When you first mentioned riparian jurisdiction, I think, it was in the context of the 1905 Compact, correct?
A. **Yes, sir.**
Q. What is your understanding -- well, first of all, is that term used in the 1905 Compact?
A. **That I don't recall.**
Q. And what context did you learn or first hear of the term riparian jurisdiction?
A. **As I recall it, something that I've always used working in the tidelands area, tidelands program.**
Q. Do you recall how your understanding of that term developed?
A. **No, sir. It may have been on my own.**
Q. Did you read the 1905 Compact?
A. **At some point in time I probably did.**
Q. Did you talk to others about any specific language in the Compact throughout your career at DEP?
A. **That I don't -- I can't recall. No, I just can't recall.**
**In the capacity that I was in at the Tidelands Management Program at every meeting of the Tidelands Resource Council we had somebody representing the Attorney General's Office at each and every meeting. So it may have come up during one of the cases within that area that was being presented where the council may have solicited the attorney -- deputy attorney general's comments or opinions or perhaps even the deputy may have given information to the group, to the Tidelands Resource Council, to assist them in their deliberation of cases, particularly, cases I guess that were being considered along that Delaware shorelines stretch.**

44

45

Q. During that time that you were at DEP, do you remember any particular deputy attorney general who were present at the Tidelands Resource Council meetings?
A. **From 1970 to 1993?**
Q. We can take it a step at a time.
A. **We had a lot of them.**
Q. We can work backwards if you want, if it's fresher in your memory.
A. **Yeah, the deputy that was there in 1993 when I retired is William E., middle initial E., Andersen, that's A-n-d-e-r-s-e-n. At times when he would be on vacation or unable to then make meetings, other deputies from the section would cover for him. Steven Brower would be one, Steven E. Brower, B-r-o-w-e-r, deputy attorney general.**
**Let me think. I mean, the agendas or the minutes of each council meeting on the front page of each set of minutes would be the deputy that attended that meeting.**
**But for the most part, it was William Andersen and, I believe, Bill Andersen succeeded the deputy or the assistant attorney general before him would have been Elias Abelson, A-b-e-l-s-o-n.**
Q. Do you remember, approximately, when

46

Mr. Andersen took over for Mr. Abelson?
A. **Early '80s, late '70s. It's just a guess.**
Q. Fair enough, fair enough.
But to the best of your recollection, the progression was Mr. Abelson and then Mr. Andersen unless either of those were on vacation for a particular meeting if somebody was covering for them, correct?
A. **Yes, yes.**
Q. Okay, thanks.
During the time that you were at DEP, were you familiar with any structures or projects that crossed the Delaware/New Jersey boundary within the 12 Mile Circle?
A. **Am I familiar with any structures?**
Q. Such as wharfs.
A. **Huh?**
Q. Such as wharfs.
A. **I'm sure I am. But for me to recall which ones, specifically, I can't do it. I mean, if you showed me a map or an aerial and said this particular one, I might be able to say, yeah, I remember that.**
Q. Okay. But without having to recall

47

the names of them, do you recall approximately how many there were at any given time?
A. **No, no, no.**
**See, in addition, to the few things that I was doing in my capacity there, I loved to do inspections. So I would at times use a Fixed Plane Aircraft or a helicopter and fly the coast in order to bring the council up to date on how things were progressing and to take pictures and things like that.**
**In fact, I recall at one point in time the commissioner calling me where New Jersey was concerned about medical waste coming out of New York, Manhattan, and they wanted to know -- see if they could pinpoint exactly where the medical waste was coming from. So somebody said, why don't you put Jim in a Fixed Wing and that's where I was.**
**And I recall like it was today the pilot saying, Jim, you know how far off the coast we are here in the Atlantic ocean?**
**And I said, quite a ways.**
**And you know what altitude we're flying at?**
**I said, no, pretty low.**
**Do you know if we have an engine problem how far we'd get if I was able to turn the aircraft back**

48

**and head towards the New Jersey beaches?**
**I said, no.**
**He said not very far, so can you hurry up taking pictures?**
Q. I can see why that sticks in your mind.
Did you ever do a fly over like that in the Delaware River?
A. **I'm sure I did.**
Q. Within the 12 Mile Circle?
A. **I'm sure I did, yeah.**
Q. Do you have any recollection of the --
A. **As long as it didn't interfere with the Philadelphia airport pattern, you know, incoming flights because the people flying the plane or helicopter would know where those danger zones are and he'd say, no, we can't go there.**
Q. Understood.
A. **And I would listen.**
Q. Do you have any recollection at all about the scope or extent of development that would cross the boundary within the 12 Mile Circle?
A. **No, I do not. I do not recall anything like that today.**

49

Q. Okay. You can't recall whether it was, you know, minimal on the one hand or extensive on the other?
A. **No, I would think it's minimal, I mean, but that's just a guess on my part.**
Q. Fair enough.
Why don't we take a little break, five or ten minutes.
(There is a short recess taken at 11:27.)
(Deposition resumes at 11:58 a.m.)
Q. Mr. Johnson, in the context of your job as a regulator, did you have occasion to have an understanding of New Jersey's regulatory authority within the 12 Mile Circle?
A. **No.**
Q. Then I take it you didn't have occasion to have an understanding of Delaware's regulatory authority in the 12 Mile Circle either?
A. **No.**
Q. So you didn't have any understanding as to whether New Jersey would have any authority beyond the boundary line?
A. **Well, under the Compact that gave New Jersey authority beyond the -- within the State of Delaware beyond the boundary line, which was the low**

50

water line on the New Jersey side of the waterway.
Q. What is your understanding of that New Jersey authority?
A. That the State of New Jersey still had riparian authority or jurisdiction.
Q. What did you base that understanding on?
A. I would guess both my reading of the Compact of 1905 between the two states and advice or guidance afforded me by the Attorney General's Office.
Q. Okay. What was your understanding of the scope of New Jersey's riparian jurisdiction within Delaware?
A. The state could entertain an application for tideland grants, leases and licenses from property owners bordering that area to apply for and receive tidelands instruments.
Q. What about permitting for the activities which you mentioned earlier was a separate matter?
A. The permitting when the separate office was established was based upon recommendations from the permits group given to my people to present to the Tidelands Resource Council in their

51

deliberations on tideland applications.
Q. And I think you said earlier you don't recall working on a permit application for a project that straddled the boundary between New Jersey and Delaware; is that correct?
A. That's correct.
Q. Do you remember working on riparian grant or lease applications for lands that extended from New Jersey into Delaware?
A. I do remember one particular one, which would have been a co-generation facility. I believe that was Keystone, which was to obtain a grant, lease or license to use state owned tidelands outshore of a grant, an existing riparian grant, that was issued to either a predecessor in title or a property owner at the time they got the grant, which I believe was Sun Oil Company or Corporation
Q. Oh, what happened with respect to that grant application?
A. I believe a lease was issued.
Q. Was that issued by the Tidelands Resource Council?
A. Approved by the Tidelands Resource Council and concurred by the then governor and commissioner of the Department of Environmental

52

Protection.
Q. Okay. Did New Jersey issue any permits or did it receive a permit application for any particular uses to be made of that property?
A. That I do not recall.
Q. You don't recall?
A. No.
Q. The Tidelands Resource Council would have received notice of any such permit, correct?
A. Either notice of a permit or a recommendation that there was no objection to the issuance of the grant based upon the proposed activity or structures, yes.
Q. Okay. Who would have sent that to the Tidelands Resource Council in that time period?
A. What time period was it?
Q. I was just thinking maybe -- well, did you say the Keystone permit -- well, what time period according to your recollection was this Keystone grant?
A. I'm thinking late '80s, 1980s.
Q. Okay.
A. Am I close?
Q. We'll get into some documents in a little bit about that.

53

A. Okay.
Q. Who would have sent notification of the permit application or the grant of a permit to the Tidelands Resource Council?
A. Back around what I'm thinking the late '80s or middle '80s probably would have been Steve Whitney or Ruth Ehinger.
Q. Okay.
A. They were managers of the permit unit at that time.
Q. Did you work with them in their job in reviewing permit applications?
A. I didn't work with them. We would ask for their comments independently.
Q. All right. Did you during that time period receive a copy of the permit application?
A. I may have or perhaps when the application was filed with my group, my program, there was an indication by the applicant's agent that a simultaneous application had been filed with the permits office.
Q. Okay. So the filing with your office would have been for riparian instrument?
A. Therefore for a riparian instrument either grant, lease or license, yes.

54

Q. Okay. Did you ever talk with Mr. Whitney or Miss Ehinger about whether or not New Jersey had authority to issue permits for activities to occur in Delaware?
**A. Not that I recall.**
Q. Did you have an understanding then or at anytime during DEP whether New Jersey had authority to regulate activities on a project that straddled the boundary but the activities would be occurring in Delaware?
**A. No.**
Q. And to be clear, I'm talking about, you know, something that would happen at the end of wharf that extended from the New Jersey Shore passed the boundary line into Delaware; same answer?
**A. And you're talking about permits?**
Q. Correct, correct.
**A. Not tideland grants, leases or licenses?**
Q. Exactly right, that's what I'm trying to ask.
**A. No, no.**
**I had enough to do so I kind of kept -- where I finally got to where I just had proprietary interest of the State of New Jersey, that that's**

55

**what I focused on.**
Q. Okay. So you just focused on the issuance of the riparian grants and leases?
**A. Yes.**
Q. And not any permitting activities that the other branches of the department would handle, correct?
**A. That's true.**
Q. Okay. And when you were doing permits, the issue of permitting for activities within Delaware never came up?
**A. Not that I recall.**
Q. Did you have an understanding whether Delaware would have the authority to require permits for activities to occur on a structure that extended from New Jersey into Delaware?
**A. No.**
Q. Did that issue ever come up, in your recollection?
**A. I do not believe so, but I may have instructed the applicant's agent or the applicant that they should contact other parties to see if they had any interest in the development being proposed such as routinely we would tell people not only do you need state approval to build things but**

56

**you need Corp of Engineer approval.**
**We were forever instructing agents and applicants and property owners that, you know, not only do you need a state permit to build that dock but you have to contact the Corp of Engineers and there's two different districts and you ought to reach out to them and file an application with them, if it's necessary, and get their approval, if it's necessary.**
Q. Did you ever advise them as to whether or not they should apply to Delaware for a permit?
**A. I don't recall.**
Q. Okay.
**A. It's been a while since I looked at that file.**
Q. I understand.
**A. Or any file that I've handled.**
Q. Are you aware that Delaware ever issued permits for activities to occur on structures that extended from New Jersey into Delaware within the 12 Mile Circle?
**A. No, sir.**
Q. Never?
**A. Never.**

57

Q. Never saw or heard of any such permits?
**A. Never.**
Q. Would it surprise you to know that such permits exist?
**A. Nothing would surprise me today.**
Q. So you didn't have any reason to think during your career at DEP that Delaware lacked the authority to require permits for boundary straddling projects that extended into Delaware?
**A. No.**
MR. ATTAWAY: Let's go off the record and mark a couple of exhibits.
(There is a discussion off the record.)
(Johnson-1 and Johnson-2 are received and marked for Identification.)
MR. ATTAWAY: On the record.
I've had premarked as Exhibits Johnson-1 and Johnson-2 a May 1978 draft and an August 1978 final version of the State of New Jersey Coastal Management Program Bay and Ocean Shore Segment.
And to be clear, these are excerpts from voluminous documents.
Q. Mr. Johnson, these documents pertain to what's known as the Coastal Management Program of

58

New Jersey.
Are you familiar with that program, generally?
**A. Yes, generally.**
Q. When did you first become familiar with the Coastal Management Program?
**A. I guess basically when I received a copy of the rules. As I recall, didn't it have a blue cover on it?**
Q. I don't know what color the cover was.
**A. I think they were blue at that time but they were voluminous for sure; I guess around 1978.**
Q. Do you have an understanding of the process of development leading up to the Coastal Management Program?
**A. I do not.**
Q. Do you know what caused the State of New Jersey to develop this Coastal Management Program?
**A. No, not really.**
Q. Do you know who was involved primarily in developing the Coastal Management Program?

59

**A. As I recall, I believe it was a David Kinsey and his staff.**
Q. Okay. Do you remember who was on his staff?
**A. I think John Weingart was on his staff and possibly Steve Whitney.**
Q. Anyone else that comes to mind?
**A. But I can't recall their names. If I mention any names, I may be getting them mixed up with them being part of commenting to my office concerning these rules. The rules may have already been done by then.**
Q. When would they have commented to your office?
**A. Once the rules and regulations and policies were adopted.**
Q. Okay. So after the release?
**A. Yes.**
Q. I'd like to just ask you a question or two about language on Page 18 of Exhibit 1 and 19 of Exhibit 2, which I think the language is identical, but I won't put words in your mouth with respect to that.
But if you'll look on Page 18 of Exhibit 1, there is a paragraph that begins, New Jersey's Bay

60

and Ocean Shore Segment Boundary, and that same paragraph is on Page 19.
Have you had a chance to read those?
**A. Yes, sir.**
Q. Do those look in substance if not word for word the same?
**A. Yeah.**
Q. This paragraph references a 1933 decision by the US Supreme Court in New Jersey versus Delaware.
Is that something that you were familiar with?
**A. No, sir.**
Q. And I just want to read a sentence or two and I'll read from Page 19 of Exhibit 2.
And it says after the citation to the case New Jersey versus Delaware --
(There is a discussion off the record.)
Q. Let me start over.
After the citation to New Jersey versus Delaware this passage states, quote, "the interstate boundary is generally along the ship channel in the middle of Delaware Bay. However, from a point near the northern tip of Artificial Island in Lower Alloways Creek Township, Salem County the interstate

61

boundary between New Jersey and Delaware extends north at the mean low water line on the New Jersey shoreline until the Delaware/Pennsylvania boundary. Resolution of potential conflicts between the coastal policies of Delaware and New Jersey will require continued coordination and work in the first year of program approval toward appropriate agreements between the coastal management programs of both states, Salem County and the affected municipalities," end quote.
This refers to the area within the 12 Mile Circle, correct?
**A. Yes.**
Q. Where the boundary is at the low water mark on the New Jersey shoreline?
**A. Um-hum.**
Q. The last sentence that I read that talks about the resolution of potential conflicts and agreements between the coastal management programs in both states, is that a concept that you were familiar with --
**A. No, sir.**
Q. -- at this time?
**A. No, sir.**
Q. So you weren't familiar with any

62

attempt to or proposed coordination between the coastal management programs of New Jersey and Delaware?
**A. I was not.**
Q. Did you subsequently become familiar with any coordination attempts between the states?
**A. No, sir, thank goodness.**
Q. Were you aware of any meetings between New Jersey representatives and Delaware officials concerning the boundary between New Jersey and Delaware?
**A. You mean concerning these rules or just...**
Q. In this time period.
I know you mentioned something about Keystone in the -- I guess you recall it might have been in the late '80, but we'll get to that later on.
But, yes, during this time period, the late '70s, early '80s.
**A. The only thing I recall is being at this meeting that someone from the Delaware Attorney General's Office had with the deputy attorney general from New Jersey Bill Andersen. That's...**
Q. Do you remember when that was?

63

**A. No, I do not.**
Q. Was it in connection with the Keystone project?
**A. I'm not sure. It may have been.**
Q. Do you think it was in the late '70s or early '80s?
**A. In the '80s, I would guess.**
Q. Okay. Do you remember what the -- why was that meeting called?
**A. I do not remember. It may have had something to do with Keystone maybe contacting Delaware or, you know, me asking the agent for the applicant to let Delaware know what you're doing here in New Jersey with making this application. It may not be. I just cannot remember.**
Q. Okay. You said it might have been in connection with advice that you gave to an applicant to let Delaware know what the applicant intended to do; is that correct?
**A. It may have been.**
Q. Did you give that sort of advice to other applicants as a general matter in the course of your career at the DEP?
**A. As I said before, I was always telling people not only do you need approvals from**

64

**New Jersey, you need approvals from the Federal Government through the US Army Corp of Engineers, that was -- and also with local municipalities. I was forever telling people that, that it's not over when you think it's over.**
Q. We're not the only game in town, right?
**A. Right.**
Q. Would you have said that they needed to check with the appropriate officials in Delaware?
**A. I believe I would have, yes.**
Q. Okay. I'll come back to this meeting that you were talking about with Mr. Andersen, unless it comes back to you that that meeting occurred within this time period.
We're talking about the 1978 coastal management plan.
**A. I just don't remember. I apologize.**
Q. No, that's okay. Your memory is what it is.
And, I mean, do you have a recollection of whether it was likely in connection with the Coastal Management Program or not likely that it was in connection with that program?
**A. I just don't remember.**

65

Q. Okay, fair enough.
MR. ATTAWAY: I'd like to mark Exhibit 3 for identification.
(Johnson-3 is received and marked for Identification.)
(There is a discussion off the record.)
MR. ATTAWAY: Okay. Back on the record.
Q. I've marked for identification Exhibit Johnson-3, which is a document dated March 1979 from the Department of Environmental Protection entitled Options for New Jersey's Developed Coast. And it's subtitled a Preview of a State Coastal Management Program for parts of and then it lists a number of New Jersey counties, including Salem County.
Mr. Johnson, have you seen this document before?
**A. I don't recall. I may have, but I don't recall with any certainty.**
Q. Okay. Turning to Pages 141 to 144, which those constitute Appendix F, which is titled the Delaware New Jersey Boundary Line and Interstate Coastal Management along the Salem County shoreline.
You've had a chance just now to at least

66

skim these four pages, correct?
A. **Yes, sir.**
Q. Do you recall having read this at any point in your career at DEP?
A. **No, sir.**
Q. On Page 141, the first sentence states, quote, "The Delaware Coastal Zone Act of 1971 includes or at least impedes major waterfront industrial development along the shoreline of Salem County, New Jersey as a result of the peculiar interstate boundary between the State of New Jersey and the State of Delaware along the Delaware River, end quote.
As I read this sentence, it states that the Delaware Coastal Zone Act of 1971 applies to industrial development along the shoreline of Salem County, New Jersey. Just reading this language on the face of it, would you agree with that?
MS. HOROWITZ: Objection. He's just said that he doesn't recall ever reading this --
MR. ATTAWAY: That's on the record.
MS. HOROWITZ: -- before.
There is no foundation for your question. That's the nature of the objection.
Q. You can still answer it.

67

THE WITNESS: Would you read the question back again, please?
(Whereupon, the question is read back as follows:
"Question: As I read this sentence, it states that the Delaware Coastal Zone Act of 1971 applies to industrial development along the shore line of Salem County, New Jersey. Just reading this language on the face of it, would you agree with that?")
A. **Yes.**
Q. Okay. Did you have an understanding of whether the Delaware Coastal Zone Act would apply to projects that extended from New Jersey into Delaware?
A. **Did not.**
Q. That was a decision to be made by the permitting folks?
A. **Yes, sir, yes, sir.**
Q. You don't have to call me sir, but I appreciate that.
A. **I'm sorry.**
Q. I should be calling you, sir.
As a general matter, these four pages, Pages 141 to 144, discuss the application of Delaware's

68

Coastal Zone Laws to projects that extend from New Jersey into Delaware; is that generally correct?
A. **That's correct.**
MS. HOROWITZ: I'm just a little behind with that.
But, again, I'm objecting, lack of foundation.
Q. But if I understand your prior testimony, you don't have any understanding one way or another as to whether the things said in here about Delaware's permitting authority are correct or incorrect; is that true?
A. **That's true.**
Q. Did you ever discuss with anyone else in the New Jersey DEP whether or not Delaware would have permitting authority over projects that extend into Delaware from New Jersey?
A. **I do not recall.**
Q. Did you have discussion or were you present at discussions with any representatives of Delaware in which the topic of Delaware's permitting authority came up?
A. **Again, I do not recall.**
MR. ATTAWAY: I think we're done with this exhibit.

69

I'd like to mark two additional Exhibits -- stay on the record for a moment -- and these are a draft and final excerpts of the 1980 Coastal Management Program in New Jersey.
And you can go off the record.
(There is a discussion off the record.)
(Johnson-4 and Johnson-5 are received and marked for Identification.)
MR. ATTAWAY: Back on the record.
Q. Mr. Johnson, you've had a chance to review Page 18 of Exhibit 4 and Page 20 of Exhibit 5?
A. **Yes.**
Q. Under the heading of seaward and interstate boundaries, there are two paragraphs. I want to ask you about the second paragraph that begins -- well, let me just read it.
"In most of Salem County, the Delaware and New Jersey state boundary is the mean low water line on the eastern New Jersey shore of the Delaware River. The New Jersey and Delaware coastal management agencies have discussed this issue and have concluded that any New Jersey project extending beyond mean low water must obtain coastal permits from both states," end quote.

70

Is that language the same or similar in both exhibits?
**A. It is.**
Q. Okay. With respect to the last sentence I read about the New Jersey and Delaware Coastal Management Agencies having discussed the boundary issue and concluded that any boundary straddling project would have to obtain permits from both states, do you have any recollection of that process of discussion between the New Jersey and Delaware agencies?
**A. No, I do not.**
Q. You didn't hear about that occurring?
**A. No.**
Q. Okay. And I think you said earlier that you had no understanding of whether Delaware would or would not have any permitting authority over a boundary straddling project; is that correct?
**A. That's true, yes.**
Q. But that you regularly advised applicants to New Jersey that they might need to check with Delaware authorities to see if a permit would be required, right?
MS. HOROWITZ: Objection. I don't believe that was what he said.

71

Q. If I misstated what you said before, please let me know.
**A. I always tried to inform applicants dealing with my program that there were other regulatory type agencies that should be contacted about projects.**
Q. And that that could include Delaware?
**A. That could include Delaware, yes.**
Q. Thank you.
Do you recall whether you provided input to the 1980 Coastal Management Program?
**A. I do not recall.**
Q. Looking at Exhibit 5, which is the final -- it's this one right here.
**A. Okay.**
Q. You can put four away, I think.
At the very end there is a two-page Appendix J that is entitled preparers of the New Jersey Coastal Management Program.
I think if you turn to the end and then go back two pages, you'll find it.
**A. Page 532?**
Q. Correct.
**A. Okay.**
Q. And this appendix is just two pages

72

long. It's 532 and 533.
And the first page lists preparers from a Federal agency called NOAA, N.O.A.A., the second page lists preparers in the New Jersey DEP and the first name is David Kinsey, who I think you mentioned earlier --
**A. Yes.**
Q. -- is the person you thought --
**A. And John Weingart, too.**
Q. Right.
Farther down there is a paragraph that starts out, planniog assistance was also provided. And toward the bottom of that paragraph it mentions Chief James Johnson of the Bureau of Tidelands, which is yourself, correct?
**A. Yeah, I know that guy. That is correct.**
Q. I just have to make sure there wasn't another Chief James Johnson running around.
**A. With or without Indian feathers, right?**
Q. Do you recall what sort of planning assistance they might have been referring to here?
**A. No, I do not. I mean, was it in connection with the Delaware and New Jersey boundary**

73

**or was it in relation to something else, somewhere else in this voluminous document I do not recall.**
Q. Okay. Do you think it likely that you would have provided input regarding the boundary issues?
**A. I doubt it.**
Q. Who do you think would have provided input leading to the inclusion of the text that we read on Page 20?
**A. I do not know.**
**You mean among all these names that are here?**
Q. Correct.
Or if someone is not listed and you think they might have provided input, you can tell me that, too.
**A. I don't know.**
**There may have been a deputy attorney general assigned to that program, to this Coastal Regulatory Program, at that time that assisted in the wordings.**
Q. Okay. Is this the type of document that would have been reviewed by either counsel?
**A. That -- I can't answer that. I don't know. I would think legal counsel would be of some**

74

assistance in preparing it, but I don't know that for a fact.
Q. Okay. Just one more question about this.
A. Oh, here it is, special thanks to Deputy Attorney General John Van Dalen, way down at the bottom.
Q. Did you work with Mr. Van Dalen?
A. On occasion, yeah, he was a deputy attorney general in the Attorney General's Office and the deputies that were assigned to the DEP, yes.
Q. Do you know how long he was at -- he was a deputy attorney general?
A. He just retired about two years ago -- or not retired. I think every time I say he got retired, I get hollered at.
He left the Attorney General's Office. But he goes back into the '80s, late '70s, '80s, I believe.
Q. And was he assigned to DEP during that time?
A. I believe he was, yes.
Q. So was the setup of the Attorney General's Office that a particular attorney would be assigned to advise one agency and only one agency?

75

A. I think so. I know Jack was also -- Mr. Van Dalen was also counsel to the Hackensack Meadowlands Development Commission, which was not part of the Environmental Protection Department but was within the Department of Community Affairs, I believe.
Don't ask me about that connection.
Q. Okay, I'll take your advice.
I just have one or two more questions, and if you can turn back -- we were at Page 532 and if you could turn back to Page 499. But because this is excerpted, it's basically the next page back.
A. Oh, is it?
Q. Yeah.
A. Thank you.
Q. It's before the yellow sheet.
(There is a discussion off the record.)
Q. I just want to ask you about -- if you look at the right column, there is a passage that begins with the number 392 and it's about Salem County. It's about a comment that Salem County submitted respecting this program, Coastal Management Program document, and their response from DEP.
A. Yes, sir.

76

Q. Okay. Let me just read it for clarity in the record. The comment says -- and it's from the Salem County planning board -- it says, Salem County is strongly opposed to the statement in this revision that any project in the area must be consistent with both Delaware's and New Jersey's coastal programs and obtain permits from two states.
And the response from DEP is, this disagreement is noted, but DEP has found no other solution available by administrative action to address the peculiar New Jersey/Delaware boundary in Salem County where the Delaware state line reaches to low tide on the New Jersey shore.
I know you testified earlier that you hadn't been familiar about any disputes over whether Delaware had a regulatory authority over a boundary straddling project.
Does this refresh your recollection?
A. I was not aware of -- this is probably something that came out of the public hearing, I guess, before the adoption of the coastal rules. And I was not aware of Salem County's comments.
Q. Okay. And I think we discussed earlier the language regarding Delaware's regulatory

77

authority that was in the draft and the final 1980 Coastal Management Program and that didn't change from the draft to the final, correct?
A. That's correct, yes.
Q. Okay, we're done with that exhibit.
(There is a discussion off the record.)
(There is a short recess taken at 12:48.)
(Deposition resumes at 1:03 p.m.)
MR. ATTAWAY: Back on the record.
Q. Mr. Johnson, are you aware whether New Jersey ever placed a condition in one of its permits that Delaware permits first be issued?
A. I am not aware of that.
Q. You mentioned the Keystone project earlier and you said that was a co-gen facility?
A. Yes.
Q. What is a co-gen facility, please?
A. It's a facility that produces electricity.
Q. Were you involved in issuing the riparian instrument to Keystone?
A. Somewhere along the line, yes, sir, represented the application to the Tidelands Resource Council.
When it was approved, the instrument would

78

have been prepared by my office and reviewed by the Attorney General's Office and then sent to the applicant for their review and approval as to form.

And once it was approved as to form, I would forward the instrument to the commissioner of the department for the commissioner's review and approval of the document. And then once his approval was obtained, the document would then be forwarded to the Office of the Attorney General who would review it, sign it and forward it to the governor for the governor's review and approval and then onto the Secretary of State for attestation of the signatures and back to my office for delivery.

Q. Sounds like a very official process.

A. Yes, a fail safe process.

Q. In the course of forwarding the documents around to all the people that you just mentioned, would the permit file or some permitting documents have been included?

A. No, sir.

Q. Okay. Where would the permitting documents have come in?

A. The permitting documents would have been as part of the file of the office that handles the permit applications.

79

Q. I thought you said earlier that you ensured that the permits were in place before recommending to the Tidelands Resource Council that a grant be issued?

A. I don't know if I said the permits were in place. I meant that the people who make decisions on permits had reached that decision.

Q. Okay. And would your office have received the actual permits?

A. Either the actual permit or a copy of the letter transmitting the permit.

MR. ATTAWAY: Okay. I'd like to mark for identification two exhibits. These are two one-page letters. Let's mark the letter dated July 26th as the next number.

(Johnson-6 and Johnson-7 are received and marked for Identification.)

MR. ATTAWAY: Back on the record.

A. Even for that long ago.

Q. Mr. Johnson, I've just had marked for identification Exhibits 6 and 7. Exhibit 6 is a letter dated July 26, 1991 from Richard Long to yourself -- I'm sorry -- from yourself to Richard Long.

A. Yes.

80

Q. And Exhibit 7 is from yourself also to Richard Long dated August 1st, 1991. These are both one-page letters.

I'll just let you describe in your own words what these letters signify.

A. Okay. The letter marked Johnson-6 is a letter dated July 26, 1991 to a Richard Long. Richard Long would have been the agent for the applicant Sun Refining Marketing -- Sun Refining and Marketing Company who made an application to my office for a long-term lease and interim license. And this letter, basically, says that we acknowledge receipt of the application and we assigned it an application file number or a Docket Number I was calling it at that time and the file number would have been 91-0190-T. It also makes reference to permit application file numbers 0809-91-0010.1, dash .2, .3 and .4. So it's actually an acknowledgment of an application by my office.

It further goes onto say that my office understands that a companion application for a waterfront development, stream encouragement, wetlands Type A and freshwater wetlands permits as designated above. And that's why you have the .1, .2, .3 and .4, they're all separate applications,

81

that they have been filed with the Bureau of Regulation for their determination as to whether the proposed use of the tidelands area being applied for is consistent with the coastal resource and development policies.

And I went onto say that these comments are required prior to scheduling your application for consideration by the Tidelands Resource Council, which I talked earlier about.

Q. Right.

A. Finding out if everything is going to be a go.

And I sent a copy of that letter to the Bureau of Revenue. And the Bureau of Revenue is -- the copy of my letter to them is what transmitted that large $25 check of theirs in payment of the application filing fee.

I also sent a copy of the application to a Kevin Broderick, who is with the Bureau of Regulations, the work that -- the office that handles the waterfront development applications. In fact, Kevin is still with the Bureau, I believe, in that same program, in the waterfront development program.

And a copy of the letter went to the staff

82

appraiser in my program. At that time I had three appraisers that reviewed appraisal documents, real estate appraisal documents, that were submitted by the applicant that were subject to my programs review and advice to the Tidelands Resource Council once this application went before the council.

Q. Okay.

A. The second letter marked Johnson-7 is a letter dated August 1st, 1991 and again a letter from me to Richard Long, the agent for the applicant, at that time identified as Keystone Co-generation Systems.

So, apparently, what Richard Long did was to submit additional documents to change the name of the application from Sun Refining and Marketing Company to Keystone Co-generation Systems, INC, and that's what I was acknowledging in my August 1st letter was the revised documents being filed with my office.

Q. Okay.

A. We retained the same file number 91-0190-T. And, again, I copied the Bureau of Revenues so they could change their database and also send a copy to the permits office to the attention of Kevin Broderick.

83

Q. Thank you.

MR. ATTAWAY: I'd like to mark for identification Johnson-8 and this is a one-page letter from Steven Whitney to Anthony Pratt dated March 14, 1991.

And we can go off the record and give Mr. Johnson a chance to review this.

(Johnson-8 is received and marked for Identification.)

Q. Mr. Johnson, have you seen this before letter before today?

A. No, I don't believe so.

Q. You mentioned Steven Whitney earlier. What was his role at this point in time March 14th, 1991?

A. Steve Whitney was, I guess, my counterpart insofar as the office or Bureau of Regulation was concerned, what I referred to as the Waterfront Development Permit Section Wetlands Coastal Zone Management so on and so forth or CAPRA (phonetic).

Q. So he was in charge of permits and you were in charge of the tidelands --

A. Tidelands, yes.

Q. That's what you mean by he's your

84

counterpart?

A. Yes, yes.

Q. Copied on this letter is Dave Fanz, F-a-n-z.

Do you know who Dave Fanz was?

A. No.

According to the letter he was the -- he worked under Steve as a project reviewer.

Q. Okay. But the name is not familiar to you today?

A. No.

Q. The letter is addressed to Anthony P. Pratt, Division of Soil and Water Conservation at the Delaware Department of Natural Resources and Environmental Control.

Did you know Mr. Pratt?

A. I did not.

Q. Or know of him?

A. No.

Q. Never heard his name before?

A. Never heard his name before.

Q. The first paragraph of the letter refers to an application received by the New Jersey Division of Coastal Resources for several coastal permits for coal fired co-generation facility with a

85

coal handling pier.

This was the Keystone project, correct?

A. I believe so, yes.

Q. And, actually, I'm looking up in the regarding line of the letter and it does mention Keystone. In fact, it states, quote, "joint review of project within the States of Delaware and New Jersey, Keystone Co-generation Systems," end quote.

A. Yes, it does as the subject matter of the letter of Steve Whitney's letter.

Q. In the second paragraph of this letter Mr. Whitney says, considering our Federal Coastal Zone Management Grant task to produce a better coordination effort for development of this kind, I'm forwarding to you this application for your review.

Do you know what he's talking about here, the Federal Coastal Zone Management Grant task to produce a better coordinated effort?

A. No, I do not.

Q. Do you know what Federal Coastal Zone Management Grant would be?

A. No.

Q. Do you know whether by submitting New Jersey's Coastal Management Program to the Federal

86

government that if approved New Jersey could get Federal funds to implement its coastal management program?

**A. I've heard of that, yes, but I was not part of that grant request or...**

Q. Fair enough.

On its face would you agree that this letter by Mr. Whitney proposes coordination between New Jersey and Delaware with respect to permitting reviews for the Keystone project?

MS. HOROWITZ: Objection since he didn't write the letter and he's not familiar with it and it speaks for itself.

But you can answer it.

Q. You can still answer it.

**A. It appears to be.**

Q. Thank you.

Does this ring any bells with respect to any coordination efforts between New Jersey and Delaware?

**A. It does not.**

Q. Okay.

MR. ATTAWAY: I'd like to introdnce for identification Johnson-9, which is a one-page memorandum, dated August 28th, 1991 from Robert

87

Tudor, T-u-d-o-r, to James Johnson.

Q. And we can go off the record and give you a chance to review this, Mr. Johnson.

(Johnson-9 is received and marked for Identification.)

Q. Mr. Johnson, what is your understanding of this memorandum?

**A. This would have been the -- what I've been talking about is getting -- before the Tidelands Resource Council makes a decision to sell or at least -- or permit someone to use state owned tidelands, that the council is sure that the use of the area being applied for is acceptable to the DEP and the State of New Jersey.**

**And this document more or less says that they're recommending approval of the facility pending resolution of several issues and asking that the council or that I consider and present to the council that there should be a public access policy or public access condition in the grant.**

Q. This mentions a -- well, the first sentence says, please find attached a copy of the staff preliminary analysis for this project that was prepared by my staff.

Would that have been an analysis of the

88

appropriateness of granting or denying the permit application?

**A. I would think so.**

Q. Now, this document that I've given you doesn't have the attachment and this is the way for the record we received it from New Jersey.

Do you know where the attached analysis would have been stored after you received it?

**A. Once received, I would have made it part of the application file, which is the file number or docket number that was identified in the letters that I had or I forget the dates now.**

Q. Right, the tidelands docket numbers --

**A. The tidelands docket numbers, yeah.**

Q. And the file number on this is the coastal permit --

**A. That would have been the coastal permit application file number.**

MR. ATTAWAY: I would like to introduce Exhibit 10, which is a multi-page summary analysis of the Keystone project, dated September 24, 1991.

And we can go off the record.

(Johnson-10 is received and marked for

89

Identification.)

(There is a discussion off the record.)

MR. ATTAWAY: Back on the record.

Q. Mr. Johnson, do you remember seeing this document before today?

**A. I cannot recall.**

Q. Okay. Just looking back briefly to Johnson-9, the first sentence of that memorandum which is to yourself from Robert Tudor, it claims to attach a copy of the staff preliminary analysis, but the memorandum is dated August 28th, 1991 and then Exhibit 10 is called a summary analysis rather than a staff preliminary analysis and it's dated roughly a month later, September 24th, 1991.

Do you have any reason to think that this summary analysis would in substance have been the same thing that was attached to the August 28th memorandum?

**A. I would have no idea.**

Q. Is this the type of analysis that you were accustomed to receiving from the permitting folks?

**A. Most likely.**

Q. Just backing up a step. On Exhibit 9, the document is from Robert Tudor. Who

90

is Mr. Tudor?
A. **Bob Tudor went through many titles. I think back then he was Steve Whitney's -- Bob may have been the director. Steve was at that time assistant director or manager.**
Q. Okay.
A. **Yeah.**
Q. So Bob Tudor would have been at the top of the permitting division?
A. **Yes.**
Q. Who would he have reported to at that time position-wise?
A. **I believe he reported to an assistant commissioner.**
Q. And the assistant commissioner would then report to the commissioner?
A. **Yes.**
Q. And there was only one commissioner at DEP, correct?
A. **Yes.**
**Now, if you look back at the last page, 740 --**
Q. Okay.
A. **-- it identifies what his title was when this summary analysis September 24, 1999 --**

91

**1991, excuse me --**
Q. Right.
A. **-- was issued. And he was at that time the administrator of the Land Use Regulation Element, which is like a director.**
Q. Okay.
A. **Division director.**
Q. And he would have reported -- in this title, he would have reported directly to the assistant commissioner?
A. **Yes.**
Q. And just looking at the signature page, there are three signatures on it. The one at the bottom is Bob Tudor, which we were just discussing.
A. **Yes.**
Q. And above that it says approved by Robert A. Tudor and then it has his signature, correct?
A. **Yes.**
Q. So he would have been the one that approved this analysis by the face of this document, correct?
A. Yes.
Q. And then above that there is a

92

signature by Ruth Ehinger?
A. **Yes.**
MR. ATTAWAY: The spelling is E-h-i-n-g-e-r, just like it sounds.
Q. And that says, approval recommended by, so Miss Ehinger would have recommended approval to Mr. Tudor but she wouldn't have had the authority to make the approval I gather?
A. **That's correct.**
Q. And then, finally, the first signature on here is David Fanz who we discussed earlier that you didn't know, but it appeared from the letter that he was a staff member of Steven Whitney and this says, this analysis was prepared by Mr. Fanz, correct?
A. **Yes, he was the so-called project review officer, yes.**
Q. Turning back to pages -- and I'll identify this by Bate's stamp -- oh, there actually are page numbers. They just don't appear on every page.
But it's Page 3 and 4 of the document, New Jersey Bate's oumber 7711 and 12.
A. **Yes.**
Q. You've had a chance to review the two

93

paragraphs here, there is a full paragraph and then a carry-over paragraph?
A. **Yes.**
Q. And it might be easier if I just read this.
The first paragraph states, quote, "the proposed co-generation facility includes a barge delivery system that encroaches into the jurisdiction of both the State of New Jersey and the State of Delaware. In 1905 the States of New Jersey and Delaware entered into a Compact regarding riparian jurisdiction for this type of situation. Article 7 of that Compact authorizes each state on its own side of the Delaware River to exercise riparian jurisdiction of every kind and nature and to make grants, leases of conveyances of riparian lands and rights under the laws of the respective states.
The second paragraph, as a result of that Compact, the State of New Jersey required Keystone Co-generation Systems to obtain a riparian instrument for the barge unloading facility and interim lease and license --
A. **Interim.**
Q. An interim license and long-term

94

lease was issued on September 9th, 1991, and then there's a file number," end quote.

First of all, did I read that correctly, including your correction right at the end?

**A. Yes, you did.**

Q. Thank you.

**A. I apologize.**

Q. No, no, I appreciate that.

So is this consistent with your understanding of the Compact, that New Jersey had the authority to issue a riparian instrument?

**A. Yes.**

Q. And just refresh my memory, what was the basis for your understanding that that's how the Compact worked?

**A. Is the September 9th, 1991 date the actual date of delivery of the long-term lease to Keystone?**

Q. That's what it says here, but I don't know the answer to your question.

**A. Okay.**

**Because if I acknowledge receipt of the application in July of 1991, then I had to go and take the application -- wait for comments from the project review people and they present it to the**

95

**Tidelands Resource Council and type their minutes and return them to the next meeting. I realize when I ran the program -- I had the council meeting twice a month whereas they meet only once a month today. And then after the council approves their minutes and I write to the agent and ask him for fees to prepare the document and prepare the document and get the Attorney General's Office to review it and mail a copy to the agent for his review and comment within two months I could issue a document already signed by the governor. Man, I was good.**

**I'm just wondering if that's true. Was the long-term lease issued September 9th, 1991?**

Q. Well, I don't know.

**A. Or was it --**

Q. It says here it's interim. I don't know what effect that has on it.

**A. Well, there's actually two documents, two applications, an interim license which would allow somebody at their own risk to undertake construction once it was approved by the permits branch and at risk hoped that the long-term lease would be dually executed -- a separate document -- executed by all of the authorized state officials that are required to sign off on a transfer of**

96

**tidelands.**

**I'm, like, kind of confused. Maybe he's only talking about an interim license was issued on September the 9th, 1991 or is September the 9th, 1991 the date that the Tidelands Resource Council approved the application based upon a recommendation that development of the area would be issued, so I don't know how to respond to your question. I mean, it's...**

Q. Let's go onto the sentence that carries over onto the next page. It says, the State of Delaware has also assumed jurisdiction and required a coastal zone permit and a subaqueous land permit.

**A. Where is that at?**

Q. It's at the bottom in the carry-over sentence.

**A. Gotcha.**

Q. Those permits were issued on September 13th, 1991.

**A. Okay.**

Q. So do you recall that Delaware assumed jurisdiction and required permits for the Keystone project?

**A. I did not.**

97

Q. Now, this entire passage, these two paragraphs we were just discussing, on Pages New Jersey 7711 and 12, they appear to state that it was proper for New Jersey to issue a riparian grant but it also notes that Delaware had assumed jurisdiction and required permits itself.

**A. Yes.**

Q. Is it your understanding based on this that New Jersey was acknowledging that Delaware had the authority to require permit for the Keystone project?

MS. HOROWITZ: Objection, foundation, didn't prepare the document, the document speaks for itself.

Q. You can still answer.

**A. It appears that's how the document reads.**

Q. Turning to Page 7738, which is also marked Page 30 of the original document, and maybe I should refer you back to the previous page where in a section called Section 7 Administrative Conditions?

**A. Yes.**

Q. And the condition number 5 on Page 30, Bate's number 7738 states, prior to construction

98

the permit team must submit copies of all the permits or approvals listed below to the element, which means the Land Use Regulation Element, correct?

A. Yes.

Q. And condition D, 5d, is subaqueous land and coastal zone management Delaware.

So is it your understanding from this that the proposal in the summary analysis was to require the issuance of Delaware permits before construction could occur under the New Jersey permits?

MS. HOROWITZ: Same objection, no foundation, didn't write the document and speaks for itself.

You can answer.

A. **Once again, that's how it reads, prior to construction the permit team must submit.**

Q. The condition on this permit, is that consistent with your understanding of the regulatory authority of the respective states?

A. **It appears to be.**

Q. So your understanding as a regulator in DEP was that while New Jersey had the authority to issue a riparian grant of lands within Delaware that Delaware still retained the authority to

99

regulate the activities and require permits for that project; is that correct?

A. **That's my understanding.**

MR. ATTAWAY: I'd like to introduce Exhibit 11 and this is the permit issued by the Land Use Regulation Element to Keystone dated September 24th, 1991.

Q. And, Mr. Johnson, I'll give you whatever time you need to review this and let me know when you're ready to go back on the record.

(Johnson-11 is received and marked for Identification.)

MR. ATTAWAY: Back on the record.

Q. Mr. Johnson, have you seen the Keystone permit before today?

A. **I do not recall. I may have and what's ever in the tidelands application file I have most likely seen.**

Q. As a matter of course, would the final permit have been transmitted to your office in order for you to fulfill your responsibility to advise the Tidelands Resource Council?

A. **In most cases, yes.**

Q. So, in the normal course, you would have received this final permit?

100

A. Yes.

Q. Turning to Page 5, which is Bate's stamped New Jersey 4408, there is a condition E and then one, two, three, four and I'll just read it.

It says, prior to construction, the permittee must submit copies of all the permits or approvals listed below to the element.

And skipping one, two and three, number 4 reads, subaqueous land and coastal zone management Delaware.

Is that the same condition that was recommended in the summary analysis that we just looked at in the previous Exhibit 11?

MS. HOROWITZ: Objection, lack of foundation. The witness did not prepare the document. I don't believe he prepared either document that you referred to in the question.

Q. Mr. Johnson, reading Exhibit 10 and 11 is this condition that Delaware permits be provided to the Land Use Regulation Element, is it the identical condition in both documents?

A. Yes.

Q. Thank you.

Do you have any recollection of how this condition made it into this permit?

101

A. **I do not.**

Q. Never discussed it with anyone?

A. No.

Q. Are you aware of any other New Jersey permits that had similar condition requiring Delaware permits before construction could begin?

A. No.

Q. Looking at Page 6, the permit was prepared for the signature of Ruth Ehinger.

Do you know whether that is her signature on the line?

A. **No, it appears to be the signature of Robert Tudor.**

Q. And he's the same -- would he and Miss Ehinger sign the summary analysis we discussed in Exhibit 10, correct?

A. Yes.

Q. Thank you.

Do you know whether Delaware issued permits to the Keystone project?

A. **I do not know.**

Q. Do you remember ever discussing the Keystone project with the woman who became your successor, Miss Cubberley?

A. **I do not recall ever discussing it**

102

with Miss Cubberley.
MR. ATTAWAY: I'd like to introduce another exhibit, Exhibit 12, and this is a memorandum from Steven Whitney to a number of people on a distribution list dated July 7, 1994. And it has an attachment to it.
Let's go off the record and give Mr. Johnson some time to review this.
(Johnson-12 is received and marked for Identification.)
(There is a discussion off the record.)
Q. Mr. Johnson, have you seen this memorandum before today?
**A. July 1994? I was gone a year before.**
Q. You were gone, okay.
**A. The answer is no.**
Q. All right. This cover memorandum from Mr. Whitney was sent to a distribution list and some of the people on the distribution list are Robert Tudor, Ruth Ehinger, and also your successor Joanne Cubberley; is that correct?
**A. That's correct.**
Q. And this concerns a proposed agreement for the New Jersey and Delaware officials to share information regarding permitting of

103

boundaries straddling projects; is that what this document appears to pertain to?
**A. It appears to pertain to that, yes.**
Q. In the attachment to the one-page cover memorandum, there is a four or five-page draft memorandum of agreement between New Jersey DEP and Delaware Department of Natural Resources and Environmental Control.
Page 2, which is Bate's stamped Delaware 27932, has a long paragraph in a section entitled sharing of development applications. Do you see that?
**A. Yes.**
Q. Just let me give you a chance to read that paragraph.
**A. Okay.**
Q. Okay. The last two sentences of that paragraph read, quote, "Both agencies recognize that each agency has the independent authority to approve or deny applications pursuant to its own regulations. DEP and DNREC -- that's D-N-R-E-C -- which share applications under the following authorities," and then following that are a number of laws of both New Jersey and Delaware.
Referring back to the sentence that says,

104

both agencies recognize that each agency has the independent authority to approve or deny applications pursuant to its own regulations, is that consistent with the understanding that you held when you were at the DEP?
MS. HOROWITZ: Objection since he's never seen the document and didn't prepare it and the draft is dated after he left the DEP.
Q. I'm asking if the statement is consistent with your understanding in your career as a regulator at DEP?
**A. So you're asking was it my understanding that when an application was filed for a tidelands grant, lease or license within this area of Delaware/New Jersey?**
Q. Right.
You can call it a boundary straddling area.
**A. There was nothing written that said it should be done. But as I indicated before, I personally thought it was a good idea to solicit comments from overlapping agencies such as local municipalities as well as other departments, other agencies, Corp of Engineers, and in this case probably to the State of Delaware.**
Q. Okay. Did you ever hear anyone

105

throughout your career at DEP object to Delaware's exercise of permitting an authority to a project across from New Jersey into Delaware?
**A. No.**
Q. Were you aware of any earlier drafts of this proposed memorandum of agreement between the two states that circulated while you were still at DEP?
**A. I was not aware of any --**
Q. Okay.
**A. -- agreement documents.**
Q. Okay. I'll represent to you that Steven Whitney has testified in this case that this was a multi year process beginning in 1991. And I'm not asking you to agree with me that he did so testify. I'm just telling you and if counsel wants I can introduce a document that can substantiate that, but I don't think it's necessary. I just want to get your recollection of things.
And I want to explain to you that's why I'm asking you about this document, even though it's dated after you left. But it refers to a process that may have been under -- in process for several years.
Does that ring any bells, do you remember

106

such a process beginning in 1991 or at anytime during your tenure at DEP?
A. **Not that I recall.**
Q. Okay. And you never talked to Miss Cubberley about who was copied on this memorandum about such a proposal to share information?
A. **No.**
Q. Okay. Earlier on you testified that -- did you have something?
A. **No, no.**
Q. I apologize. I thought you wanted to say something.
Earlier on you mentioned that there was a meeting that you were at. It may have been Keystone, may not have been Keystone, but William Andersen was there and you said that -- and there was a Delaware deputy attorney general there as well.
Do I have that correct?
A. **That's correct.**
Q. Tell me about that meeting.
Well, I asked you a couple of things earlier and you said you don't remember why the meeting was called?
A. **I do not.**

107

Q. Okay. And you don't remember when it was, but it might have been in the late '80?
A. **That's what I'm thinking. It was the late '80, early 90s.**
Q. Is the meeting vivid in your memory or is it vague?
A. **Very vague.**
Q. Very vague, okay.
Having looked at some of these Keystone documents is your recollection any different now as to the subject matter of the meeting?
A. **No.**
Q. Okay, fair enough.
A. **Still very cloudy.**
Q. Do you remember all the participants of the meeting?
A. **I believe it was just three of us.**
Q. That would be you, Mr. Andersen and someone else?
A. **Me, Bill Andersen and the individual from Delaware.**
Q. Who was the individual from Delaware?
A. **That I do not recall.**
Q. But you're certain he or she was an attorney?

108

A. **I believe so.**
Q. But you're not sure whether the other person there was a Delaware attorney?
A. **I'm not. I'm not.**
Q. You're not sure?
A. **I'm thinking he was and I'm kind of thinking it wouldn't have been me reaching out to set up the meeting. It was probably Mr. Andersen and he was using my office to have the meeting. I mean, that happened now and then. I mean, I had maps and files and things like that rather than have the meeting at -- over here at the Justice Complex or wherever the Attorney General's Office was located at that time.**
**It would be more convenient in case we had to look at maps or look at files or look at documents that were within the Bureau of Tidelands.**
Q. Okay.
A. **Which records date back, as I indicated, a long time ago.**
Q. A long time ago, 1804.
Having taken a few depositions there, I'm going to guess that that was at the Bureau of Tidelands at 9 Ewing Street; is that where your office was?

109

A. **Yes, yes.**
**My program was the first document of that building after it was renovated. Prior to that we were out at -- I forget when we moved. We were out in Arctic Parkway. We moved from Arctic Parkway to there and before that where were we -- Five Station Plaza where permits is now. It's actually occupied by Green Acres because I remember the commissioner telling me -- he called me over when we were going to get moved out of Trenton to Arctic Parkway and he said, you know, you're the only program that seems to run itself, so I'm thinking about moving you out there.**
**I said, well, I've got to go back and talk to my people first before I give you any answer. So I went back.**
**And they were worried about are we still going to be invited to the Christmas party, are we going to be invited to the picnic, are we going to get our paychecks.**
Q. They are all strong and valid concerns.
So back to this meeting that was attended by you and Mr. Andersen and someone who may or may not have been Delaware attorney.

110

What's your recollection of that conversation?
**A. Basically, I recall talking about -- we were talking about the Compact of 1905 and I believe he had no idea that such a Compact existed.**
Q. He meaning?
**A. He the visitor from -- the person other than Bill Andersen.**
Q. Do you know how long this person had been working for Delaware?
**A. If, in fact, the person was from Delaware, no, I do not.**
Q. So you're not sure if this person was a representative of Delaware?
**A. Not positive but I believe he was.**
Q. You said the subjects of the Compact came up. How did that arise?
**A. I don't recall. It may have something to do with New Jersey assuming they had jurisdiction.**
Q. To do what?
**A. To do anything at all, I guess, within the State of Delaware.**
Q. Was the conversation focused around your real estate program, as you called it earlier?

111

**A. Yes.**
Q. Or was it about permits?
**A. No, it would have just been about the real estate program.**
Q. So just about whether New Jersey under the Compact at issue --
**A. Could issue a tidelands grant, assert any type of --**
Q. And --
**A. -- instrument that would convey an interest in title.**
Q. All right. What was said at that meeting?
**A. I do not recall.**
Q. Did you say anything to the person who you think but aren't sure was from Delaware about New Jersey's rights under the Compact?
**A. No, I think most of the conversation was between that person and Bill Andersen.**
Q. Okay. What did Mr. Andersen say?
**A. I'm sorry, but I don't remember.**
Q. So all you remember is that the subject of the Compact came up?
**A. Yes.**
Q. And nothing beyond that?

112

**A. Not that I recall.**
Q. So you don't remember Mr. Andersen saying one way or another how the Compact should be interpreted?
**A. No.**
Q. So, as you put it before, your memory on that meeting is very vague?
**A. Yes, very, very vague, with a double very.**
Q. I'd like to introduce another exhibit. It's going to be Johnson-13 and this is a letter from counsel for New Jersey to counsel for Delaware and it's about subjects that you would be knowledgeable about.
(Johnson-13 is received and marked for Identification.)
**A. Okay.**
Q. This is a letter dated October 20th, 2006 from Barbara Conklin, Deputy Attorney General from New Jersey, to Collins J. Seitz, who is Special Counsel for Delaware.
Have you seen this letter before?
**A. No.**
Q. So you didn't see it in draft form before it went out?

113

**A. No.**
Q. Below your name and address there is a long paragraph with a lot of semicolons that carries over from the first page to the second that starts out, expected testimony colon and I just want to go through this sequentially.
The first part says, as supervisor of the Office of Riparian Lands Management within the Division of Marine Services now the Bureau of Tidelands Management between 1970 and 1993, Mr. Johnson shall testify that he reviewed applications for licenses to occupy New Jersey tidelands which were approved or denied by the Board of riparian commissioners, semicolon.
Do you agree with that statement?
**A. So this is talking about applications prior to 1970?**
Q. Well, it states between 1970 and 1993.
**A. That I was -- yeah, between 1970 and 1993 I was the supervisor of the Tidelands Management Program for New Jersey.**
Q. And you reviewed applications for licenses?
**A. And I reviewed applications for**

114

grants -- well, licenses, yes.
Q. So that statement is accurate?
A. Yes.
But then you get into which were approved or denied by the Board of Riparian Commissioners?
Q. Do you know what the Board of Riparian Commissioners is?
A. Well, when somebody says Riparian Commissioners, they're going back to like 1914, 1912.
So, yeah, I probably looked at some of them, you know; all of them, I doubt it but...
Q. Was the Board of Riparian Commissioners succeeded by the Tidelands Resource Council?
A. Tidelands Resource Council.
Q. Do you know about when that happened?
A. No.
I'm trying to think.
Q. That's okay. It's not important.
A. Yeah, I can't -- I don't remember.
Q. Let's move on through this.
The next clause says, that he issued permits for activities in such areas until the permitting program was transferred to another part of NJ DEP in

115

later 1970s.
Should that really read 1972 based on your previous testimony?
A. Yeah.
Q. Okay. You didn't review any permits after 1972, correct?
A. No, no, not at all.
Q. And then next it says that you were aware of the Compact of 1905 while supervisor.
That's what you testified to before?
A. Yes.
Q. And then next it says, that it was his understanding of the Compact of 1905 provided the New Jersey Board of Riparian Commissioners authority to issue grants and licenses within the 12 Mile Circle and ontshore of the mean low water line.
Is that statement accurate?
A. Yes.
Q. Next, that he was present at a meeting at the Bureau of Tidelands in Trenton in the early 1990s at which an attorney representing the State of Delaware was informed that the Compact of 1905 authorized New Jersey to issue licenses and permits to occupy and utilize areas below the MLWL within the 12 Mile Circle.

116

Is that statement accurate?
A. Well, again, I believe but I am not positive that the attorney I met with with Bill Andersen was an attorney representing the State of Delaware. I'm not positive about that.
Q. Okay. So you couldn't testify with certainty that the person there was an attorney representing the State of Delaware?
A. No, no, I couldn't.
Q. And you also couldn't testify with certainty that the person represented Delaware in any capacity, correct?
A. Could not.
Q. In fact, that person may have just been a private party and not employed by the State of Delaware at all, correct?
A. Again, I don't believe I set the meeting up. It was set up by Bill Andersen.
Q. So Mr. Andersen would --
A. He'd have to tell you about how the meeting was arranged or who the person was or, in fact, the person was representing the State of Delaware.
Q. But you don't know whether the person was even employed in any way by the State of

117

Delaware?
A. I don't know.
MS. HOROWITZ: Objection. That's been asked and answered a number of times.
Q. Your answer was that you don't know?
A. I don't know.
Q. And, also, it says that the meeting was at the Bureau of Tidelands in the early 1990s.
Based on what you said earlier, I gather it's the case that you're not sure of the time period?
A. Not sure, late -- I think I said late 1980, early 1990s.
Q. And your recollection of this meeting was, I think you put it, double very vague?
A. Yes.
Q. Okay. Part of the statement at the end, as I recall it, roughly, the second half where it says that this person who as we just discussed may or may not have represented Delaware in any capacity was informed that the Compact of 1905 authorized New Jersey to issue licenses and permits to occupy and utilize areas below the MLWL within the 12 Mile Circle.
I gather based on what you just testified to

118

that you don't have a recollection of whether or not that was said at that meeting, correct?
A. **I do not.**
Q. This is written in the passive voice. It says that the attorney representing the State of Delaware was informed of these things.
Who is it that did the informing?
A. **It would have been Bill -- Bill, Mr. Andersen.**
Q. But sitting here today, you don't recall whether this is what Mr. Andersen told this other person?
A. **I do not.**
Q. The very last clause states, and that a copy of the 1905 Compact was provided to Delaware counsel at that time.
Do you have any recollection of whether that is true or not?
A. **I believe it was but not with any certainty.**
Q. Did you know counsel for New Jersey was going to write a letter like this and send it to Delaware?
A. **No.**
MR. ATTAWAY: Just give me a couple

119

of minutes.
Q. Do you recall the last time you spoke with Mr. Andersen?
A. **It may have been a week or two ago.**
Q. Okay.
A. **See, I get down -- like I indicated I think earlier, a couple of days a week stop at tidelands and update the database for Charles Jones and to pick up copies of documents that tidelands issues, particularly, licenses and copies of grants that perhaps we can't read out of what we had scanned and now have so that we can reproduce it right there in the shop. So it might have been last week, week before last.**
Q. Okay. Did you talk about this case at all?
A. **No.**
Q. Have you talked about this case at all with Mr. Andersen?
A. **He was trying to refresh --**
Q. And I don't want to know what you...
A. **I'm sorry.**
**What?**
Q. Is it your understanding that you're represented by the State of New Jersey's counsel?

120

A. **Yes.**
Q. Okay. And you said that you did talk to Mr. Andersen about this case, correct?
A. **The only conversation I had with him was he was trying to -- he asked me if I recall meeting with somebody regarding the 1905 Compact between the two states and I said, yeah, I recall that. And I may have said to him I thought it was an attorney from the State of Delaware. And he said do you remember the name. And I said, no, Bill, that was so far back, you know. And that was it. He didn't say anymore.**
Q. Okay. So just one conversation?
A. **Yes.**
Q. Okay. Thank you very much for your time.
I don't have any further questions.
A. **Thank you.**
**(Witness excused.)**
**(Deposition concluded at approximately 2:16 p.m.)**

121

CERTIFICATE

I, SILVIA P. WAGE, a Notary Public and Certified Shorthand Reporter of the State of New Jersey, do hereby certify that prior to the commencement of the examination, JAMES R. JOHNSON was duly sworn by me to testify to the truth, the whole truth and nothing but the truth.

I DO FURTHER CERTIFY that the foregoing is a verbatim transcript of the testimony as taken stenographically by and before me at the time, place and on the date hereinbefore set forth, to the best of my ability.

I DO FURTHER CERTIFY that I am neither a relative nor employee nor attorney nor counsel of any of the parties to this action, and that I am neither a relative nor employee of such attorney or counsel, and that I am not financially interested in the action.

SILVIA P. WAGE, CSR
Notary Number: 2097352
Notary Expiration: August 9, 2007
CSR Number: XI01827
Dated: November 3, 2006

LAWYER'S NOTES

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ACKNOWLEDGMENT OF DEPONENT

I,_____, do hereby certify that I have read the foregoing pages, 1 - 120 PGS, and that the same is a correct transcription of the answers given by me to the questions therein propounded, except for the corrections or changes in form or substance, if any, noted in the attached Errata Sheet.

_____

JAMES R. JOHNSON DATE

Subscribed and sworn to before me this day of , 19 .

My commission expires:

Notary Public



ERRATA

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IN THE SUPREME COURT
OF THE UNITED STATES

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STATE OF NEW JERSEY :
:
V. :
:
STATE OF DELAWARE : NO. 134, Original

\- - -

October 11, 2006

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Oral deposition of MARTIN J. McHUGH, held at the Bureau of Tidelands, 9 Ewing Street, Trenton, New Jersey, 08625 commencing at 9:34 a.m. on the above date, before Teresa M. Beaver, a Registered Professional Reporter and a Notary Public in the Commonwealth of Pennsylvania.

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- - -

INDEX

- - -


| WITNESS | PAGE NO. |
|---|---|
| MARTIN J. McHUGH | |
| By Mr. Attaway | 5 |


- - -

EXHIBITS

- - -


| NO. | DESCRIPTION | PAGE NO. |
|---|---|---|
| 1 | New Jersey Coastal Management Program 1980 Final Environmental Impact Statement | 41 |
| 2 | Memo dated 3/31/05 | 58 |
| 3 | Letter dated 4/19/05 | 58 |
| 4 | Letter dated 2/04/05 | 96 |


- - -



DEPOSITION SUPPORT INDEX

Direction to Witness Not to Answer

| Page | Line | Page | Line |
|---|---|---|---|
| None | | | |

Request For Production of Documents

| Page | Line | Page | Line |
|---|---|---|---|
| None | | | |

Stipulations

| Page | Line | Page | Line |
|---|---|---|---|
| None | | | |

Questions Marked

| Page | Line | Page | Line |
|---|---|---|---|
| None | | | |



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MARTIN J. McHUGH, after having been duly sworn, was examined and testified as follows:

- - -

EXAMINATION

- - -

BY MR. ATTAWAY:

Q. Good morning, Mr. McHugh.

A. Good morning.

Q. Thanks for coming today. My name is Scott Attaway and I represent the State of Delaware in this case, which is New Jersey versus Delaware, original nnmber 134, filed in the United States Supreme Court.

Before we begin, I just want to establish a few ground rules so the deposition goes smoothly.

First, if you don't hear a question, just say so and I'll repeat it. Second, if you don't understand a question, also let me know and I'll repeat it.

6

Because this is being taken down by a court reporter, I'll need your answers to be verbal as opposed to a nod of the head or a shake of the head; because the court reporter can't take down hand or facial gestures.

**A. Right.**

Q. And finally, be sure to let me finish my question before you start to answer; so the court reporter is not having to take down two people speaking at one time.

Do you understand the instructions I've just given?

**A. Yes, I do.**

Q. Is there any reason which you're aware that might impede your ability to testify truthfully; medications, for example?

**A. No.**

Q. Other than conversations with counsel, what did you do to prepare for your deposition today?

**A. Looked at a couple of old**

7

**documents that I either were copied on or was a part of, you know, preparing, finalizing.**

Q. Do you remember what those documents were?

**A. Letters to FERC and I can't remember what the other one was.**

Q. So, a letter to FERC from yourself?

**A. No, I don't think it was from me. It was something that was prepared by the department but, you know, that we had some input into.**

Q. Okay.

**A. Or that they used our comments on.**

Q. Who sent that letter from the department?

**A. Last name starts with a K. I can't remember how to -- I think. Koschek or something like that.**

Q. Other than counsel, did you talk to anyone to prepare for the deposition?

8

**A. No.**

Q. Have you read any of the pleadings in this case?

**A. No.**

Q. Have you read transcripts of any of the previous depositions that have been taken?

**A. No.**

Q. Did you meet with counsel to prepare for this deposition?

**A. Yes.**

Q. I don't want to know anything that was said during those conversations, but just how long did you meet and with whom?

**A. With counsel here sitting at the table; probably about for a half an hour.**

Q. Okay. Have you given testimony in any case before; either a deposition or live testimony in court?

**A. No.**

Q. Have you submitted an affidavit in the proceeding?

9

**A. Not that I can recall.**

Q. Just a little background. Let's start with your college education.

What was your college degree in?

**A. Economics and environmental studies from Rutgers University.**

Q. Any postgraduate studies?

**A. I went to Seton Hall Law School.**

Q. When did you graduate from Seton Hall?

**A. 1985.**

Q. Did you practice law after that?

**A. Yes, I did.**

Q. Where at?

**A. In-house attorney to DEP, for, I don't know, somewhere between four and five years.**

Q. Was that straight out of law school?

**A. Yes. And then after that I worked in the Attorney General's office**

10

for probably four years ago.
I'm not sure of the year.
Q. What were your duties in-house at DEP?
A. Well, at the time, there was a unit within DEP that was staffed mostly by attorneys called the Office of Regulatory Services which became the Division of Regulatory Affairs which basically serviced all the different programs within the department.
So, I was fortunate enough to have a chance to work with a number of those divisions representing them as kind of in-house counsel; not litigating anything but, you know, assisting the programs to promulgate rules, to handle real estate transactions, to negotiate settlements in air pollution, water pollution, hazardous waste site cases.
I represented the -- as in-house counsel, the Division of Fish and Wildlife for a couple of years; of those years that I was in-house counsel,

11

because of my background from my undergraduate work.
So, in every aspect of the Division of Fish and Wildlife, I represented whatever they were doing; whether it's regulations, hearings, you know, things like that.
Q. Okay.
A. Enforcement cases.
Q. And at the AIG's office, were you Deputy Attorney General?
A. Yes.
Q. What were your duties there?
A. I was in hazardous site litigation section and I negotiated settlements -- litigated cases, CERCLA cases, nonCERCLA state, hazardous site cases, probably some water pollution and most notably, natural resource damage, oil spill cases. That was kind of the primary thing.
Q. In your time as an attorney at DEP and as a Deputy Attorney General, did you have occasion ever to look at the

12

implications of the boundary between New Jersey and Delaware?
A. Not really, no.
Q. After -- I assume you left the Attorney General's office at some point? Because I think you're not there now?
A. Right.
Q. But I'll let you tell me what happened after that.
A. Well, we had a number of large successes in the oil spill case arena and I proposed that the department, as a whole, establish a program for the consistent approach to oil spills and hazardous sites to collect natural resource damages; since that's what we were doing in these cases, mostly, in addition to penalties.
So, beyond cleanup, we were collecting natural resource damages.
So, the department said, it's a good idea. We should be doing this on a regular basis and also I

13

propose that they should do it for hazardous waste sites because under the law we were, you know, it was something that we were supposed to be doing and so they said yes; it's a good idea. They said why don't you run the program, so I started a program.
I left the Attorney General's office. I came to work for the DEP as a nonattorney, you know, manager, of a new program which I established called the Office of Natural Resource Damages.
Q. Okay.
A. Which is today called the Office of Natural Resource Restoration.
And our job was to go to oil spills and look at, you know, large hazardous waste sites; both under CERCLA and under state law, to assess injuries to natural resources and help the department recover those damages for natural resource injuries.
Q. Okay. And what --

14

approximately what year did you establish the Office of Natural Resource Damages?
**A. I think it was around 1993 or '94.**
Q. What was your next job change after that?
**A. Well, because of my work in that unit, I came into contact a lot with the federal folks; NOAA and U.S. Fish and Wildlife Service.**
**And NOAA, National Oceanic and Atmospheric Administration, they are within the Department of Commerce -- we worked together on oil spill response and national resource damage cases.**
**And they asked if I would be interested in something called an IPA, which is essentially a loan program between the state and the federal government, where I would go and work for the federal government for a period of two years and assist them to help them establish kind of a natural resource damage program in the Great Lakes region.**

15

**So, the department approved of that, DEP approved of that. And the Commissioner Shin at the time was very supportive of it and he said go forth and help the midwest and so I was in Chicago, Illinois at the EPA offices for two years working on natural resource damage issues in the Great Lakes for NOAA.**
**I also worked a little bit to help New Jersey with some harbor issues.**
Q. All right. And the New York harbor area?
**A. Yeah.**
Q. After that, what happened?
**A. The assistant director's job became available, close to the end of my two years with NOAA, at Fish and Wildlife back in the state here at DEP and I applied for the assistant director's job because my two-year stint with NOAA was coming up and I was hired as assistant director.**
Q. What year was that?

16

**A. 2000. Was it 2000? I have to remember when my son was born; yeah, 2000.**
Q. How long were you assistant director of Fish and Wildlife?
**A. I think it was two years.**
Q. What were your duties there?
**A. I was in charge of the kind of the administrative side of the division, which is kind of a misnomer because I was also in charge of the Endangered Species Program and the Conservation Officer Program, Bureau of Law Enforcement.**
**So, my duties ranged from managing the budget, representing the director in many different things, overseeing Endangered Species Program, the Bureau of Law Enforcement program, the Land Use Program, the Environmental Review Program and that was it.**
Q. Okay.
**A. I'm pretty sure.**
Q. And you reported to the

17

director of Fish and Wildlife?
**A. Right, who was then Robert McDowell.**
Q. I take it the director of Fish and Wildlife was at the top of that division or bureau or whatever the proper term is?
**A. Right.**
Q. Who did the director report to?
**A. To the assistant commissioner for natural and historic resources.**
Q. And then the assistant commissioner reports to?
**A. The commissioner.**
Q. And there's one commissioner at DEP?
**A. Right.**
Q. How did the assistant commissioners get their jobs? Are they hired as employees or is it a political appointment?
**A. Some are appointed from the**

18

outside, some rise through the ranks. My current boss, Assistant Commissioner Skazel started out as a hazardous waste inspector. Actually, Jim Hall who was the assistant commissioner at the time, started out in forestry.

So, it depends.

Q. Are they appointed by the governor?

A. I think, I'm pretty sure, that -- I'm not clear. It depends. I'm not really sure how they all get appointed.

I think the commissioner has a large say in obviously, you know, the team; that is her cabinet basically or his cabinet.

Q. How many assistant commissioners are there in DEP?

A. Right now, I think there are six. I think I might be missing somebody; and there are two deputy commissioners.

Q. Okay. During the time

19

you've been at DEP, have there always been approximately six assistant commissioners?

A. No. In the course of my 21 years, it's been, depending on how the structure of the organization was, the organization has changed, you know, a couple of times.

Q. So, at one time were there more than six assistants?

A. There may have been more, there may have been less at different times during my 21 years.

Q. Okay. After 2002, what was your next job?

A. Well then the director's job became available as Director McDowell was retiring and I applied for that. And I was selected.

Q. That was in 2002?

A. Well, end of 2002, beginning of 2003.

Q. And was there another change after that or are you still director?

20

A. No. After this most recent January, I switched positions. I'm -- I left the director's job and I work directly for the assistant commissioner for compliance and enforcement; in his office.

Q. What are your duties there?

A. I coordinate large enforcement cases that kind of span different program areas; such as a case that would have an air pollution issue associated with it; a hazardous waste pollution, solid waste, you know, pesticides or land use.

My job is to kind of get all the programs kind of on one page and help them, you know, either be litigation support for the Attorney General's office or help negotiate a settlement in various cases; if that's an appropriate way we're going on a case.

Q. Okay.

A. I also help the assistant commissioner develop policies, implement

21

policies, new programs, review documents for him; those kinds of things.

Q. Okay. Are you still a member of the bar?

A. Yes. I'm a member of the bar but at the moment I am not practicing, so to speak; retired from the practice.

Q. Is your status active?

A. No, it's inactive. That's my status.

Q. When did you go from active to inactive?

A. I became inactive when I took the job at the natural -- for the Office of Natural Resource Damages when I started that program.

Q. Okay. And that will -- remind me again what year was that approximately?

A. That was approximately 1993.

Q. So, in all your jobs, starting in 1993, you haven't been practicing law for the department?

22

A. No.
Q. What is your understanding of the boundary between New Jersey and Delaware?
A. Well, from what I see on the map and from my experience, you know, the last 21 years, there is a portion of the Delaware River that is more within the jurisdiction of Delaware than the State of New Jersey; although the State of New Jersey does exert authority over certain issues there within that area.
Q. Okay.
A. I think it's up to the mean low water line that the Delaware jurisdiction kind of extends.
Q. Okay. When did you come to that understanding?
A. Well, I guess I first became aware of it -- I'm sure I first became aware of it at some point during my early tenure with the department; whether it be in a water pollution case or whatever, but I became more in contact with the

23

issue as I became assistant director for the Division of Fish and Wildlife, considering the fact that we manage natural resources that are migratory and come through there and that, you know, our law enforcement staff has to be on the river and has to, you know, check hunters and fishermen and things like that.
Q. Okay. Are you familiar with something called the 12 mile circle?
A. Yeah; that's the area that I assume that we're talking about. I guess I'm familiar with it in that way.
Q. Okay. What is your understanding of the 12 mile circle?
A. That there is a circle that is -- emanates from the State of Delaware at a certain point that touches the banks of the New Jersey side of the river and that, within that area, there is certain -- within that area, there are certain kind of agreed-upon jurisdictional issues that are within the

24

State of Delaware, that are with the State of Delaware.
And I'm not that familiar with exactly what those are.
Q. Okay. What is your understanding of the regulatory authority of the respective states within the 12 mile circle?
A. Well, as -- when I was assistant director, our enforcement staff was not enforcing the fish and wildlife laws within that circle; however, they were enforcing it on the banks of the State of New Jersey, I guess down to the mean low water line.
Q. Okay.
A. But beyond the circle, of course, we were enforcing those laws.
Q. Was Delaware enforcing fish and wildlife laws up to mean low water line on the New Jersey shore?
A. It's my understanding they were, yes.
Q. In your career at DEP, have

25

you ever heard anyone at DEP or with the State of New Jersey claim that Delaware lacked regulatory authority up to the mean low water line on the New Jersey shore?
A. With respect to fish and wildlife laws, no.
Q. With respect to any other laws?
A. No.
Q. Are you familiar with Delaware's coastal zone laws?
A. Not really.
Q. Are you familiar with New Jersey coastal zone laws?
A. Somewhat.
Q. Just very generally, what are those laws for New Jersey?
A. Well, you know, we have the Waterfront Development Act; we have the Coastal Zone Management Act. We have the Coastal Wetlands Law.
Any building that is going to take place in the coastal zone

26

requires various permits; under either CAFRA or -- CAFRA is Coastal Area Facilities Review Act or the waterfront development or both.

And any activity on the banks, you know, whether a bulkhead or boat ramp or things of those nature require certain permits.

Q. If the bulkhead or the boat ramp extended beyond the boundary line, what state would have regulatory authority in your understanding as a regulator?

A. Well, it was always my understanding that everywhere, as long as the dock or the -- whatever was being built was going into the waters from the shoreline, that we would have authority over.

Q. Was it your understanding that Delaware would have regulatory authority over the portion of the project extending beyond the boundary?

A. Extending beyond -- I'm not

27

sure I understand the question.

Q. If there is a project that began, let's say it's a pier or a wharf, that begins on the New Jersey shore and extends into the water but goes past the mean low water line into Delaware, in other words, it straddles the boundary, what is your understanding about the scope of Delaware's regulatory authority over the portion that lies in Delaware?

A. You know, I was not familiar with that whole issue. I was kind of surprised that Delaware did have authority over that; since it emanated from our shoreline.

Q. Was that an issue that you ever had occasion to address?

A. No. No.

Q. Okay. Did you ever talk to other people in the department that did address that issue?

A. With respect to that specific kind of morphing issue that you are talking about, no.

28

Q. Just didn't come up in the scope of your responsibilities?

A. The only way -- the only time it came up is when we were -- and I guess I became aware of it when we started dealing with the issue of the natural gas plant that, you know, the permit was being applied for and that we commented on, that we were part of the comment process on.

Q. That's Crown Landing that you are referring to?

A. Right, Crown Landing.

Q. What year did you first become aware of that project?

A. Maybe it was late 2004; maybe early 2005.

Q. Okay.

A. I don't remember.

Q. And how did you get involved in that?

A. Well, my staff, in the environmental review program, was -- as they do for all permits, that could

29

potentially have an impact on natural resources, was putting together comments, and in this particular case, I would assume it was some sort of environmental impact statement or some sort of permit or both, requirement.

And in all cases, you know, our staff -- to look at the impacts of natural resources and give our comments to land use program, which was kind of a rote thing.

Q. And then land use would take your comments and what would they do with them?

A. They would either pass them on, I assume in this case, or if it was just an internal case in New Jersey, they would take them into consideration and make a decision whether to grant or deny a permit or adjust conditions of a permit; because of our concerns for natural resources require changes to the project; those kinds of things.

Q. Okay. Were you familiar

30

with an interstate compact between New Jersey and Delaware that was entered in 1905?

**A. I'm not familiar with it, but I'm aware of it.**

Q. When did you first become aware of it?

**A. You know, I may have become aware of it at some point as an in-house counsel to DEP, but I guess I really became aware of it in this particular matter when we started hearing of the issue between the State of Delaware and New Jersey with respect to this particular application for a plant site.**

Q. What can you remember about your initial encounter with the compact as your case as in-house counsel?

**A. The main issue was, as I guess I was representing the division, was the issue of the enforcement of our fish and wildlife laws within that zone. That probably came up in that context.**

Q. Do you remember if it came

31

up in the context of any structure, such as a wharf that straddled the boundary?

**A. No.**

Q. Just the fish and wildlife laws?

**A. Right.**

Q. Could those laws conceivably be enforced on the wharf?

**A. Our fish and wildlife? I'm not sure I understand the question.**

Q. Let me rephrase it.

**A. Okay.**

Q. Could New Jersey's -- well, does New Jersey enforce its fish and wildlife laws on structures emanating from New Jersey?

**A. Yes.**

Q. And in what way?

**A. Well, I assume that in cases where the COs are going out to do water fowl checks, during water fowl season, which is beginning very soon --**

Q. What is a CO?

**A. Conservation officer.**

32

Q. Thanks.

**A. They are within the Bureau of Law Enforcement. They are basically our police force in the Division of Fish and Wildlife; they have full police powers to not only enforce the fish and wildlife laws, but speeding, everything else, you know, whatever a regular police officer would do; they have full police powers but their main job is to enforce fish and wildlife laws.**

**And in the context of a water fowl check, if somebody was coming in off of the water with, you know, ducks that they had taken during the season, they would be subject to, you know, on a dock, they'd be subject to a check by our conservation officers and if they were over their limit, they would be issued, you know, a ticket. And be a subject of an enforcement action.**

**The same would probably apply to whether it's a fin fisherman or a shell fisherman. I don't think there**

33

**are shellfish in that area, but I'm not quite sure.**

**And, you know, they would be subject to a check there.**

**So, yes, they would be doing that kind of work there on our wharfs.**

Q. Do you know how many wharfs there are within the 12 mile circle?

**A. I have no idea.**

Q. Any idea of how many wharfs within a 12 mile circle that cross the boundary?

**A. I do not know.**

Q. Do you have any knowledge at all of any enforcement incident such as the ones you described that have actually occurred on a wharf within a 12 mile circle?

**A. I have no direct knowledge.**

Q. Have you heard of the phrase riparian jurisdiction?

**A. Of course.**

Q. When did you first hear of it?

34

**A. In law school.**
Q. What is your understanding -- what was your understanding then of the scope of riparian jurisdiction?
**A. Well --**
MS. CHUDZIK: I'm going to interpose an objection in terms of he's here as a fact witness and certainly not as a legal expert.
To the extent it calls for a legal opinion, I object.
BY MR. ATTAWAY:
Q. I'm asking for your understanding as a regulator.
**A. As a regulator, my understanding is that the state has certain rights that are associated -- that have come from, way back when the state came into the union, that are associated with the riparian areas, in tidally flowed waterways, that they have jurisdiction over those waterways, as a result of the riparian rights that were**

35

**granted down from the King of England to, you know, to -- and were distributed amongst the states, so to speak.**
Q. So, the state has the riparian rights? Is that what you are saying?
**A. To regulate -- I don't want to finish your question, go ahead.**
Q. I just wanted to clarify. You were saying it's the state that hold the riparian rights?
**A. Yes; unless granted.**
Q. How would the state grant a riparian right?
**A. Well, we're in the building here, Tidelands Resource Council, I assume has jurisdiction over these, granting of these rights and they would either give a license or, you know, an actual grant of rights which I don't know if it occurs anymore, but they usually grant licenses to individuals to, you know, use the riparian area, so to speak, or build on them.**

36

Q. If someone had -- are those called riparian grants?
**A. I'm pretty sure, yeah, or tidelands resource grants maybe today.**
Q. If somebody had a tidelands resource grant, would they be able to do anything they wanted to on that land without getting further approvals?
**A. Well, most tidelands resource grants are pretty specifically written, I would imagine.**
**I haven't seen one in probably a long time but I'm sure they have specific conditions; it doesn't just give you full sway to do whatever you like.**
Q. So, if someone needed a permit form from Fish and Wildlife, for example, they would still have to get that even though they had a tidelands resource grant?
**A. For Fish and Wildlife? I'm not sure I understand.**
Q. Do you issue permits in the

37

Fish and Wildlife Department?
**A. Yeah, certain commercial fishing permits, we issue hunting licenses, we issue certain hunting permits for various game animals.**
Q. Okay. Did you, in your tenure at DEP, did you work on any other types of permits?
**A. I'm sure I did; many permits. I can't tell you exactly which programs. I'd have to really think about it.**
Q. So, predominantly fish and wildlife then?
**A. Well, air pollution -- excuse me -- air pollution permits; wetlands permits, NJPEDS permits, that's New Jersey Pollution Elimination Discharge System Permits.**
Q. How do you pronounce that acronym?
**A. NJPEDS.**
MS. CHUDZIK: Off the record.

38

- - -

(Whereupon, there was an off-the-record discussion.)

- - -

BY MR. ATTAWAY:

Q. If someone had a riparian grant from the Tidelands Resource Council, would they still have to obtain an air pollution permit or a wetlands permit, if those laws otherwise applied?

**A. I would assume yes, depending on the operation that they were seeking, you know, approval for to build.**

Q. In your understanding as a regulator, are air pollution permits and wetlands permits, are they riparian permits?

**A. No.**

Q. When you first learned about the 1905 compact, which I believe you said was probably during your term as in-house counsel, did you have occasion to read the compact?

**A. No.**

39

Q. You just talked about it and read about it?

**A. Just became aware of it.**

Q. What was your understanding of what the compact provided?

**A. That there was some sort of decision about how we were going to manage various resources within that 12 mile circle; because there are resources that migrate up and down the river.**

**The State of Delaware and New Jersey have jurisdiction over those resources and we needed to some way coordinate how we were going to do things within that circle; frankly, outside of that circle, too.**

**So, as things move throughout.**

Q. When you say resources, do you mean fish and wildlife?

**A. Water.**

Q. Water.

**A. Water, fish and wildlife, access, commerce, I would assume;**

40

**although I haven't read the compact.**

Q. Did you have any discussions about the impact the compact would have on regulation of a structure that straddled the boundary line?

**A. No.**

Q. Are you familiar with New Jersey's coastal management plan?

**A. I'm aware of it. I'm not familiar with it.**

Q. So, you've never -- have you ever read it?

**A. No.**

Q. What is the extent of your awareness of the coastal management plan?

**A. That it's a plan that basically sets forth goals and objectives for managing resources within the coastal areas to maximize sustainable use of those areas; to prevent, you know, destruction, to permit public access, those kinds of lofty objectives and goals. Regulate activities, those kinds of things.**

41

Q. Do you know when the coastal management plan was developed?

**A. I'm sure there are different iterations of it.**

**I think that the original plan came to being in the '70s some time.**

Q. I'd like to introduce one exhibit.

- - -

(Whereupon, the exhibit was marked McHugh-1 for identification.)

- - -

BY MR. ATTAWAY:

Q. I know it's a lot of pages. I'm only going to have a few questions.

**A. Very interesting.**

Q. If I ask you a question and you need to stop and read something more carefully, then you should take the time you need to give the best answer from the best of your knowledge.

I've introduced as Exhibit 1, excerpts of a voluminous document,

42

which is more than 500 pages, which is why I've excerpted it, it's the New Jersey Coastal Management Program, August, 1980, Final Environmental Impact Statement.

Mr. McHugh, have you seen this document?

**A. I probably have sitting on a shelf somewhere, yes.**

Q. With a thick spine?

**A. A very thick spine.**

Q. Do you know whether you've ever read parts of this?

**A. I don't believe I've ever read parts of it.**

Q. Let's turn to Page 20 of the report, which -- there's a Bates stamp in the lower right-hand corner, which I assume you're familiar with Bates stamps, given your background, Delaware 20382. There's a section at the bottom of the page that's entitled Seaward and Interstate Boundaries. It has two paragraphs. I'll give you a chance to

43

read those and let me know when you're ready for a question.

The second paragraph states "In most of Salem County, the Delaware/New Jersey state boundary is the mean low water line on the eastern (New Jersey) shore of the Delaware River. The New Jersey and Delaware coastal management agencies have discussed this issue and have concluded that any New Jersey project extending beyond mean low water must obtain coastal permits from both states. New Jersey and Delaware, therefore, will coordinate reviews of their proposed development that would span the interstate boundary to insure that no development is constructed unless it would be consistent with both state coastal management programs."

Have you ever read this passage before?

**A. No, I haven't.**

Q. Have you -- this middle sentence states that the New Jersey and

44

Delaware coastal management agencies have discussed the boundary issue and concluded that any project straddling the boundary would have to obtain coastal permits from both states.

Is that consistent with your understanding as a regulator at DEP?

**A. Consistent with my understanding of what?**

Q. Of the respective regulatory authority of New Jersey and Delaware over a project that straddled the boundary?

**A. Well, to be honest with you -- not that I wouldn't be since I'm on the record -- it's really the first that I've seen this in writing, or ever, and my past experience, working with the State of Delaware on various things, was that we would generally coordinate anywhere within the river with respect to natural resources.**

**So, it appears to me that this is just a general statement of that same desire to make sure that we**

45

**coordinate along the riverfront.**

**And I don't know if this has any kind of meaning beyond just a general statement that we should coordinate.**

Q. What about the middle sentence that says that "Any New Jersey project extending beyond mean low water must obtain coastal permits from both states"?

**A. Well, it looks like it's a policy that, at the time, Commissioner English would like to have in place; just as all of these policies that are probably set forth in this document, which I just looked at for the first time, are general statements of things that the State of New Jersey would like to do in order to obtain the funding, the grants through the federal coastal zone management program.**

**That's the whole purpose of this, I'm pretty sure, of this document.**

**We needed to establish the coastal zone program of our zone so that**

46

we could take advantage of the Federal Coastal Zone Management Act.
This is kind of a statement of general policies.
Q. Was the federal funding substantial?
A. I'm not sure what this -- what the federal funding levels are; but I'm sure that, you know, it's very helpful to our programs to manage natural resources and, you know, the coastal zones.
Q. You said the point of submitting the coastal management plan to the federal government was to get federal funding; correct?
A. I'm pretty sure that's what it's about.
That's one of the purposes of the coastal zone.
Q. Do you know what the other purposes would be?
A. Well, it's to set forth, you know, general statements of policy about

47

how we're going to handle things in the coastal zone area.
It's -- to kind of educate people about how the department does work in the coastal zone area.
In the beginning of this document it talks about all the different laws that apply within the coastal zone, waterfront development, the wetlands law, tidelands management, how that occurs, Hackensack Meadowlands Development Commission, which is in the coastal zone, which I forgot. And how things would go with respect to the green acres purchases within the area and, you know, probably about how certain local grants are given as a pass-through from the Federal Coastal Zone Management Act.
Q. Would you say that this was an important document for New Jersey?
A. Oh, yeah. As a statement of policies, I think it's a pretty important document, especially with respect to the -- especially, the need for funding

48

within the state for our various environmental programs in the coastal areas.
Q. So, would it have been important for this document to have been accurate in the representations made to the federal government?
A. In their statement of the general policies, I would imagine that the federal government would want to see it to be accurate, yes.
Q. I want to ask you a question or two about Pages 254 to 255, which are -- I've had yellow sheets placed between where there are missing pages, so the excerpting is clear.
A. Right.
Q. There's a passage at the bottom, this says liquefied natural gas; there are two paragraphs.
A. Okay.
Q. Mr. McHugh, the first paragraph under the heading liquefied natural gas, quotes some language from

49

the National Energy Plan?
A. Uh-huh.
Q. The second paragraph discusses liquefied natural gas or LNG terminals. Let me read that paragraph. "The New Jersey coastal program states that LNG terminals are discouraged unless they are constructed so as to neither unduly endanger human life nor property nor otherwise impair the public health, safety and welfare and comply with the coastal resource and development policies.
"Because the tinkering of LNG could pose potential risk to life and property adjacent to New Jersey's waterways, which also serve as boundaries with the states of Pennsylvania and Delaware along the Delaware River and the State of New York and the Port of New York and New Jersey, the state considers decisions concerning the citing of LNG terminals to be an interstate matter."
Have you had occasion to

50

read this passage before today?
A. No.
Q. Are you familiar with the policy that is discussed in this package, regarding the statement toward the end that the citing of LNG terminals is considered by New Jersey to be an interstate matter?
A. No. It's the first time I've seen that.
Q. You are aware of the Crown Landing -- proposed Crown Landing facility?
A. I'm aware of it.
Q. That's an LNG terminal; correct?
A. Yes.
Q. Did you have discussions with anyone regarding whether approval of the LNG terminal would be an interstate matter?
A. No.
Q. Let's turn to -- you can skip actually to the end of this excerpt,

51

533, Bates stamp Delaware 19043.
A. I'm sorry? It's in the --
Q. Go all the way to the end.
A. The very last --
Q. And then go back. That last segment, I misspoke, I'd like you to look at Pages 532 and 33, which is Appendix J, preparers of the New Jersey Coastal Management Program and Final Environmental Statement.
The first page lists some folks from NOAA. The second page lists folks from New Jersey and I want to ask you questions about whether you know those people or not.
A. Okay.
Q. Starting at the top, there's a David Kinsey, director listed. Do you know Mr. Kinsey?
A. No. I've heard of him but I don't know him.
Q. John Weingart?
A. Know him.
Q. You do?

52

A. Yes.
Q. What is his -- is he still with the department?
A. No, he is with the Highlands Commission, New Jersey Highlands Commission right now. I think he's the executive director.
Q. Do you know when he left the DEP?
A. It would be a guess, but I would say some time in the late '80s, early '90s. He was the division -- at the time that I knew him, he was the director of the Division of Coastal Resources.
Q. And Alan Campbell?
A. Don't know him.
Q. Jane Darden?
A. Don't know her.
Q. Adelle Gravitz?
A. Don't know her.
Q. Michael Hichman?
A. Nope.
Q. Richard Kantor?

53

A. I know Richard.
Q. And in what capacity?
A. I know that he was in the land use program. He was actually married to one of my employees when I was running the Office of Natural Resource Damages.
Q. When did you know him in the land use division?
A. Mostly at the time that I was running the Office of Natural Resource Damages.
Q. And that was starting in '94?
A. I think it was the end of '93, beginning of '94.
Q. Do you know what his position was before then?
A. No, I don't.
Q. Barbara Kauffman?
A. Don't know her.
Q. Stuart McKenzie?
A. No.
Q. David Stern?

54

A. The name sounds familiar but I don't know him.
Q. Saul Wiener?
A. No.
Q. Neal Yoskin?
A. I know Neal.
Q. And in what capacity?
A. He is outside counsel -- he's a private attorney representing various clients before the department.
Q. When did you first meet or become aware of Mr. Yoskin?
A. As in-house counsel to DEP, I probably came across him, but more recently, when I was assistant director for the Division of Fish and Wildlife.
Q. Okay. Did you just say he was outside counsel for DEP?
A. No. I meant to say he was a counsel for private clients, private, you know, outside attorney for private clients representing their interest before the department.
Q. That's what I thought you

55

said.
A. To clarify.
Q. That's what I thought you said the first time.
A. Yeah.
Q. So, you knew him more as a director. What about before then? What about when you were first joining the department?
A. I probably had enforcement matters or negotiations with him in various areas.
But I knew him.
Q. Was he a private attorney?
A. He was a private attorney at the time.
Q. And you started at the department in 1986?
A. '85.
Q. '85. And as best you can recall, he was a private attorney at that time?
A. I'm pretty sure, yeah.
Q. And representing clients

56

before the department?
A. Right. He may have been working in the Attorney General's Office or as in-house counsel previous to that but I'm not -- you know, I think he may have been. There have been a number of attorneys on the outside who started within the agency.
Q. The next paragraph says "Planning assistance was also provided by Chief Steven Whitney."
Do you know Mr. Whitney?
A. Yes.
Q. In what capacity?
A. I'm pretty sure he was -- this refers to him as chief but he was in charge of New Jersey's coastal management program at some point. And has retired.
Q. Did you ever work with him?
A. Tangentially, probably.
Q. I won't go through all these names. What about Ruth Ehinger?
A. She currently works in the department. I know Ruth.

57

Q. When did you first meet Ms. Ehinger?
A. Again, you know, having been with the department for 21 years, my recollection on when I met her is a little bit lacking, but I'm sure it was during the time I was in-house counsel. She's been around a while as well.
Q. Did you ever have occasion to work directly with her?
A. Only recently.
Q. How recent was that?
A. You know, in the last year, I've been working on some coastal, Atlantic coastal enforcement issues that she's been in meetings on.
Q. Atlantic?
A. Atlantic coastal issues; enforcement issues.
Q. Have you worked with her in connection with this case?
A. No.
Q. Have you had any discussions with her about it?

58

A. No.
Q. Have you had any discussions with her about BP's proposed Crown Landing project?
A. No.
MR. ATTAWAY: I think this would be a good time to take a break.
Before we do that, let me premark a couple of exhibits and maybe we could take a ten-minute break.
- - -
(Whereupon, the exhibit was marked McHugh-2 and 3 for identification.)
- - -
(Whereupon, there was a recess commencing at 10:34 a.m. and concluding at 10:41 p.m.)
- - -
BY MR. ATTAWAY:
Q. I've had marked as Exhibits McHugh-2 and McHugh-3 two letters on the

59

State of New Jersey DEP letterhead. The first one, Exhibit 2, is a memorandum from Martin J. McHugh to Ken Koschek dated March 31st, 2005.
And Exhibit 3 is a letter dated April 19th, 2005, from Ken Koschek to Federal Energy Regulatory Commission or FERC, F-E-R-C.
Have I correctly described those, in general?
A. Yes.
Q. I want to look at Exhibit 2 first.
This is a letter from you; correct?
A. Uh-huh, yes.
Q. And as I understand it, this provides comments, your comments to Mr. Koschek regarding the environmental and other impacts of the Crown Landing project; correct?
A. Yes.
Q. Just to lay some foundation, I think you've said you first became

60

aware of the proposed Crown Landing project in late 2004, early 2005 period?
A. Right.
Q. Does this letter refresh your recollection any? Is that still --
A. That's probably still -- maybe it was a little bit earlier in 2004, but I would say the fall of 2004.
Q. Did you write any memoranda or letters regarding the project prior to March 31st, 2005?
A. No.
Q. Did yon write any after this?
A. No.
Q. So, this is the only one?
A. Yes.
Q. On the first page of your letter, again, Exhibit 2, there's a section entitled citing of the proposed plant.
The first paragraph, the last sentence talks about impacts to natural resources.

61

A. Yes.
Q. What were the impacts to natural resources that you found problematic?
A. Well, let me start by saying that these are not my direct comments but kind of a culmination of all the comments of my environmental review staff, you know, working with the rest of our staff within the fish -- within the Division of Fish and Wildlife.
I want to make that clear.
Although I do support all of these comments and rely upon the staff that I did to submit these comments.
So, the concerns that we had were pretty significant, considering what was being proposed.
The concerns were with respect to migratory fishes, in particular how this would impact short-nosed sturgeon, Atlantic sturgeon and other migratory fishes; whether they be striped bass, herring, shad, whatever

62

is migrating through there.
Also, it's my recollection, looking at this, that we have bald eagle foraging habitat; and it's my understanding that there is bald eagle foraging habitat on the area where this facility is being proposed.
We had concerns about access to natural resources, which are important to the Division of Fish and Wildlife; whether it be access to shore line or access to waterways; and the potential for impeding that public access to those areas, for the purpose of fishing and other recreating or commercial fishing activity.
There were also issues with respect to the ballast, intake and the discharge of ballast; whether we'd be introducing evasives as well as whether we would be taking in fish larva within the ballast. Apparently there was some significant potential for the intake of ballast, considering the size of these

63

vessels.
Also, there was, you know, the dredging issues, dredging maintenance issues.
I think I mentioned the navigation channel that is also access, closing of a navigation area so that, you know, impeding commercial or recreational fishing boats.
All those kinds of issues.
General statement of the use of natural resources and not only just the use, but the health of those natural resources, which we were concerned about at the Division of Fish and Wildlife that are in that area.
Q. Thank you. Have your concerns been addressed by the Crown Landing project?
A. I don't know if they've been addressed. I know that they've been -- our concerns have been well aired up the chain in both DEP and obviously to FERC, the Federal Energy Regulatory Commission.

64

I don't know where the application is in the process, with respect to the natural gas plant. But I know that they are -- our concerns have been made, you know, everyone has been made aware of those concerns.
Q. To your knowledge, has Crown Landing filed documents with the department addressing these concerns?
A. After this letter was issued, this memo that I signed off on to Ken Koschek, and then it was -- a lot of these comments were referred to in this letter from the department to FERC, I --
Q. Just to be clear, that's Exhibit 3 that you are talking about?
A. Exhibit 3. I lost touch with the issue.
Our job was to put the issues on the table and make sure that they were aired.
Q. If proposals by Crown Landing were presented to the department to address these comments, would those

65

proposals go to you?
A. I'm no longer the director of Fish and Wildlife.
Q. Okay.
A. So -- no, they wouldn't go to me.
Q. Would they have gone to you during the time you were still director?
A. I would probably be made aware of those responses, because our staff would be involved in the development of the permits for -- and the commenting on the permits as they went through the process.
Q. And I think you said you left the director's position, was it January of '04?
A. Yes, January of '04.
Q. And this letter was written March 31st, '05 and you said the comments were incorporated in substance in Mr. Koschek's April 19th letter to FERC, which is Exhibit 3 here.
So, between April 19th, 2005

66

and the end of 2005 you were never made aware of any attempts by Crown Landing to address your concerns?

**A. I was aware that my staff was working with the Division of Land Use Regulation to address the ongoing issue.**

**This is a long, drawn out process, I would imagine, considering it's a complicated issue to cite a liquid natural gas plant.**

**So, I was aware that my staff was still working on it.**

Q. But I think you said if your staff had received proposals to address these comments, would you have been made aware of those proposals?

**A. I probably would have been made aware of them. I don't recall if that ever happened.**

Q. Just going to the second paragraph, or the last paragraph on the first page, maybe an easier way to describe it, the first sentence notes that "There appears to be significant

67

local opposition to the proposed plant due to the threats to public safety and loss of public use of the river."

Just taking those one at a time, what were the threats to public safety that were significant in your view?

**A. Well, from the point of view of the Division of Fish and Wildlife, the threats to public safety included potential contaminant issues associated with dredge materials; suspension of dredge materials and natural resources that would, you know, accumulate up the food chain and also the navigational issues associated with berthing such a large vessel and the closure of the waterways, obviously that's something that the Division of Fish and Wildlife was concerned with; the prevention of boating accidents or mishaps associated with the vessels that, you know, were either commercial or recreationally fishing or hunting on the river.**

68

**And I assume that's what that is referring to in the most part.**

Q. Okay. And the next sentence says, "Additional safety concerns are raised by the length of the pier, extending approximately 2000 feet into the Delaware River and adding an additional 1,500 foot homeland security buffer."

Explain the implications of having a 2000 foot pier plus an additional 1,500 foot homeland security buffer?

**A. Well, let me qualify my answer by the fact that I am not an expert on navigation or boating vessel traffic.**

**But our concern was that we were going to basically, if this was going to be built to this extent, as it was being proposed, that it was going to funnel traffic, boat traffic into a more narrow area on the river, which could, you know, result in bottleneck and**

69

**potential hazards for, you know, recreational, commercial fishing boaters.**

Q. Is there any other existing project on the Delaware River that has had similar implications?

**A. Similar to --**

Q. Similar to the ones that you raise here in the letter?

**A. All of the implications?**

Q. Well, the implications of blocking the boating traffic that you were just talking about.

**A. I can't think of any.**

Q. Anywhere else in New Jersey, on the Hudson River, for example?

**A. I can't think of any.**

Q. Is it fair to say that the scope of the project, in terms of the length that it would extend out into the Delaware River and its effect on navigation is much different in quality than any other project of which you're aware in New Jersey?

**A. That was a long statement;**

70

could you just repeat it? I don't want to mischaracterize.
Q. Sure. You said that you're not aware of any other projects that extend so far out into the river, whether it's the Delaware River or the Hudson River, that it would impede recreational and other boat traffic in the same way that this proposed project would impede such boat traffic; is that correct?
A. Yes. I'm not aware of any.
Q. Okay.
A. There may exist but I'm not aware of any.
Q. Toward the bottom of the page -- well, let me back up.
What is the 1,500 foot homeland security buffer?
A. My understanding, from staff was because of the nature of liquefied natural gas, and the hazards it presents, that we needed an additional buffer area to prevent potential terrorist threats and so that was my understanding of what

71

the 1,500 foot buffer was for homeland security.
Q. And when would that -- what is the buffer? What impact does it have on other boating traffic in the river?
A. Well, as I stated, it basically would again restrict the navigation area that you could use; if you placed that kind of a buffer in that area.
Q. So, does it mean that when one of these supertankers is either docking or leaving the proposed pier or while it's there, that boats basically can't pass up and down the channel because the buffer covers the navigable portion of the river?
A. I'm not sure if they can't pass the channel; because I'm not that familiar with exactly the logistics of the channel.
But I know from my recollection that we were concerned about the restrictions to the traffic.

72

Q. And those restrictions you thought were very significant?
A. My staff thought they were significant and I was relying upon my staff and yes, so, I signed the comments and I was forwarding those comments on, yes. I believe they would be restrictive.
Q. Toward the bottom of the page, it says "This closure of public water forcing recreational boaters into possible harms way in the federal channel, is unacceptable to the DFW," meaning I assume the Department of Fish and Wildlife?
A. Division of Fish and Wildlife.
Q. Division. Okay.
How would recreational boaters be forced into possible harms way under the -- by the proposed project?
A. Well, as I said, if you are going to restrict the navigation channel, depending on the time of year, when there

73

are recreational boaters out there, maybe the winter months wouldn't be something you'd be concerned about but during the time of year where fish are running or people are moving to where the fish are through the area, we would be concerned that recreational boaters would be forced into a navigation zone that is going to be shared by much larger vessels like tankers or other commercial large vessels; whether they be container ships or whatever.
Q. Do those vessels create a big wake?
A. I'm not an expert on vessels, large vessels, except to know that I would assume they create large wakes.
Q. I was just wondering why having a small boat in the same channel as the larger boats would be dangerous to the small boats? Is it because of the wake or is it because of collision possibilities?

74

A. **I would assume, I would imagine that it would be maybe both.**
Q. Or maybe getting run over if the bigger ship doesn't see them?
A. **Potentially.**
Q. Okay.
A. **Depending on the weather.**
Q. You mentioned that you were -- your concern was especially the time when the fish were running. Did I hear that correctly?
A. **Yes.**
Q. When do the fish run?
A. **It depends on what you're fishing for. Shad run in the spring. Herring run in the spring. Striped bass run, lately, most of the year, although they are kind of hauled up in their nursery areas in the river in the early -- or late winter.**
**So, also there's, you know, water fowling going on in the area, potentially.**
**So, I would say mostly from**

75

**the late winter on through the early part of the fall, you know, there would be concerns about recreational fishing and hunting as well as maybe commercial fishing.**
Q. Okay. So, more than half the year it sounds like?
A. **Right.**
Q. Just comparing the two paragraphs that we were discussing at the bottom of Page 1 of your letter with the two paragraphs and Mr. Koschek's letter, Exhibit 3, which are on Pages 1 and 2, is it fair to say that your two paragraphs were incorporated in substance, if not word for word, in Mr. Koschek's letter to FERC?
A. **It appears that our comments were generally taken by Mr. Koschek and reiterated in his letter of April 19th.**
Q. And on Page 3 of your letter, which is actually not numbered, but there's a Bates stamp on it?
A. **Right.**

76

Q. New Jersey 1077; there's a section called recreational boating access.
It looks to me that this is a little bit more detailed elaboration from what we were just talking about from Page 1 of your letter and you can tell me if you agree with that or not.
A. **Yes.**
Q. And then just looking at -- comparing those two paragraphs under the heading recreational boating access with the two paragraphs in Mr. Koschek's letter, Page 3, also titled recreational boating access, does it look like Mr. Koschek incorporated your comments, in substance if not word for word into his letter?
A. **Yes.**
Q. Just a couple more questions on this.
Looking at your letter, the recreational boating access portion on Page 3.

77

The middle states that "Delays of up to two to three hours may be encountered during the berthing of the LNG ship when it will be necessary to limit traffic up and down the river."
Does that mean that for two to three hours that no traffic could pass that portion of the river to go north or south?
A. **I don't think that's what it means. I think it means that some traffic might not be able to get up; depending on the restriction in the channel and then some traffic would he kind of waiting to pass through.**
Q. When you say restriction in the channel, do you mean that the -- if the ship were of a certain size that -- and it were restricted from navigating the deep portion of the channel, that it might thereby be restricted from passing?
A. **Right; yes.**
Q. So, this would delay or impede not only recreational traffic but

78

also commercial traffic carried in larger container ships and such?
**A. As it was proposed, what we were commenting on, we believed that the operation would impede, yes.**
Q. And you called this, in the first sentence of the second paragraph, a tremendous loss of public access to the Delaware River?
**A. Yes, we did.**
Q. And you mentioned that the -- and just to clarify, this letter comments on the draft, environmental impact statement that was released by FERC; is that correct?
**A. Yes.**
Q. This says "Mitigation for the tremendous loss of public access to the Delaware River was also not found in the DEIS."
Do you know whether Crown Landing has proposed any such mitigation?
**A. I do not know.**
Q. You're not aware of any?

79

**A. I'm not aware of any.**
Q. You likely would have become aware of any such proposal, as long as you were director; is that correct?
**A. Yes.**
Q. Okay.
**A. At some point in the process.**
Q. Okay. The bottom half of the first paragraph under recreational boating access states "Based on the proposed number of ships utilizing this facility, the river may be cumulatively blocked for up to an unacceptable 18 hours per week."
Actually, let me read the next sentence.
"It is expected that some of the blockage will occur during the weekend when recreational boating activity is highest."
What significance is 18 hours per week?
**A. I'm not sure what you mean, what significance.**
Q. What makes it unacceptable?
**A. Well, what we were stating was that it's a long time for boaters to be held up or inconvenienced from moving through the area at a time when there might be resources that they were either pursuing or trying to get to in the area.**
**And that it was a -- it was a burden on the public access.**
Q. Is there a lot of traffic up and down the Delaware River on this portion?
**A. According to my staff, there's, you know, there is significant traffic. I'm not personally familiar with it, though.**
Q. But that's your understanding, based on your staff's input?
**A. Right.**
Q. Do you know how much of the traffic proportionally is recreational versus commercial traffic?

81

**A. No, I don't.**
Q. Is it your understanding that a lot of ships travel up the river with commercial cargo?
**A. I'm aware of that, yes.**
Q. On Page 4 of your letter, at the very end it says "If there are any questions concerning these comments, feel free to contact Donald Wilkinson of my staff."
Who is Mr. Wilkinson?
**A. Mr. Wilkinson was the primary staff member who was in my environmental review program that was pulling together these comments from the rest of my staff in the Division of Fish and Wildlife.**
**And it was his responsibility to put together these comments for me to send on to land use, in this and many other land use matters.**
Q. And copied, there are a number of names. If you could just tell me briefly who those folks are and

82

whether they work under you or somewhere else?

A. Yes; Andrew Diadun, A. Diadun is Andrew Diadun. He is retired and he used to be in charge of the office of environmental review, where Mr. Wilkinson works.

K. Clark, is Kathy Clark. She is a biologist within the endangered species program in the Division of Fish and Wildlife; the endangered and nongame species program.

She is primarily an expert on eagles and avian species.

R. Allen, stands for Russell Allen. He is a biologist in the Divisions Bureau of Marine Fisheries and his area of expertise with respect to this and other matters in the Delaware are in dealing with marine fisheries, such as herring, shad, striped bass, American eagle.

And -- and sturgeon.

M. Boriek, stands for Mark

83

Boriek and he is with the Bureau of Fresh Water Fisheries and he would be interested in the fisheries issues associated with freshwater species.

And I think his area of concern or interest in this overlapped with Russell Allen's in the sturgeon area.

And of course there's Don Wilkinson.

Q. Right. Thank you.

Turning back to Page 2 of your letter, at the top there's a heading that's in bold titled dredging and pier issues?

A. Yes.

Q. To be clear, this is Bates stamped New Jersey 1076.

The first subheading under the dredging and pier issues is Intertidal Shallows Impacts. I'll just read the first couple of sentences.

"At the present time, the State of Delaware has characterized this

84

project as not being in compliance with Delaware's coastal regulations. Since the State of Delaware has not relinquished review of this phase of the project, we will not comment further, except to say that the DFW is concerned about the loss of" -- and then it goes on to list the number of concerns regarding natural resources.

And then the final sentence says "The construction of the plant must be tied to Delaware's approval of the berth."

How did you come to an understanding that the construction of the plant must be tied to Delaware's approval of the berth, and I gather that berth is referring to the pier, the pier where the ships are going to dock?

A. Well, my staff has always worked kind of in conjunction or coordination with the staffs of both Pennsylvania and Delaware, with respect to any natural resource issues; whether

85

they be in this particular area of the 12 miles that we are talking about or north or south of that.

And so, as in the past, in other issues, whether they be oil spills or restoration issues, regional restoration issues, you know, we're always trying to work with the other state's staff.

And so, that's the kind of the general background that I would assume was part of this whole effort to work with Delaware to kind of come up with a, you know, coordinated approach to this as we've done with oil spills, et cetera.

My general charge, in all of these cases, whether they be oil spills, regional restoration to the staff was, to always work with the other states.

So, Mr. Wilkinson was under -- was understanding -- I'm not sure how much his understanding of the agreement between Delaware and New Jersey

86

was at the time, but because there was an issue, we wanted to make sure that we were coordinating with Delaware before we, you know -- before we said one way or the other whether we would agree with this particular project.

Q. Okay.

A. So, that's kind of where this statement is coming from.

MR. ATTAWAY: Can you read back the last couple of sentences?

- - -

(Whereupon, the following portion of the record was read by the court reporter:

"ANSWER: So, Mr. Wilkinson was under -- was understanding -- I'm not sure how much his understanding of the agreement between Delaware and New Jersey was at the time, but because there was an issue, we wanted to make sure that we were coordinating with Delaware before we, you

87

know -- before we said one way or the other whether we would agree with this particular project.")

- - -

BY MR. ATTAWAY:

Q. You mentioned because there was an issue. What was the issue that you found at the time?

A. Well, the issue had come up at the time that, you know, whose authority was it to permit, I guess, the facility or, you know, whether it was a joint issue or not.

But our general work with other states on the river was to coordinate.

Q. Okay.

A. The only thing that we never really coordinated was, you know, the enforcement of marine fisheries or other wildlife laws within that 12 mile. That was within the jurisdiction of the State of Delaware.

Q. In what other ways did you

88

coordinate with Delaware in the past besides on fish and wildlife?

A. On oil spills, if there was an oil spill, we would work together to jointly assess the injury to damages, because of the nature of the spill. It could be in Delaware one day and New Jersey the other day or up the river or down the river and with, you know, with staff being the way they are -- in terms of limits on what they can do, you know, sometimes we would cover certain areas of the river and Delaware would cover certain areas of the river and Pennsylvania would cover certain areas of the river in oil spills so we could come to some kind of joint assessment and pursue the responsibilities for the damages to natural resources.

We have a long standing kind of relationship with not just Delaware but Pennsylvania, and also in the New York Harbor with New York on coordination with respect to port natural resource

89

issues such as this.

Q. And this project is the construction of a pier; is that correct?

A. Right.

Q. And --

A. It's more than just that; it's the whole operation that you just referred to.

Q. But the sentence in your memo says the construction of the plant must be tied to Delaware's approval of the berth of the actual structure.

How did you come to that understanding?

A. I'm not -- I don't quite recall that particular part of this memo, but my response would be based on my general charge to staff, that when there is an issue between the states, whether it's Delaware or Pennsylvania or New Jersey or New York, that, you know, we coordinate with that, with that state before we take a, you know, a position on anything that would impact resources that

90

the state shares, that New Jersey shares with that state.
In this particular matter, there was an issue as to the permitting of the structure and we were just trying to outline what our natural resource concerns were and I guess that is just a statement of -- I'm qualifying this again because it's been a while since I've looked at this, but I guess that's just a statement of the fact that there was an issue and that we wanted to make sure that we coordinated our position with Delaware.
Q. Okay. Thank you.
A little bit further down understand the dredging and pier issues, there's a subheading dredge material testing and it reads "The DFW realizes that this part of the project is in the State of Delaware and it may not be overseen by DEP's Office of Dredging and Sediment Technology."
How did you come to the

91

understanding that it may not -- the dredging may not be overseen by the DEP?
A. Because we were aware of the fact that Delaware has certain riparian rights associated with the 12-mile area and that when dredging goes, you know, dredging goes on within that 12-mile area, that's within Delaware's purview under the compact; as well.
Q. How did you develop that understanding of the meaning of the compact?
A. This has probably been developed through the agency for years. And I mean the agency in the Division of Fish and Wildlife; working with the State of Delaware on various other projects. Let me clarify that.
I'm not quite sure where it came from, but I think it's kind of a general statement of our, you know, in-house agency knowledge of how things work within that area.
Q. Okay. What is your

92

understanding of the extent of the dredging that would be required by the proposed Crown Landing project?
A. Again, my understanding derives from comments of the staff, but considering the size of the ship, the draft that it would take, the draft, you know, how much water it requires, and -- and the maintenance of the berth area, it would require a certain amount of dredging for a ship of that size to get from the navigation channel to the berth and then back. And to maneuver within that area.
Q. What size ships would be servicing this pier, if it were built?
A. What size ships would be servicing the pier?
Q. Yes.
A. I'd have to read.
Q. Maybe I can ask it another way.
A. Okay. I don't recall.
Q. The ships that would be

93

docking and unloading liquefied natural gas at Crown Landing are commonly known as supertankers; is that correct?
A. I wasn't aware of that but I know what a supertanker is.
Q. Well, these ships that would be docking here are really big ships?
A. Really big.
Q. Would you agree with that?
A. I would agree with that.
Q. All right.
A. If they are taking on 8,000 gallons of ballast water per ship, yes, they are very big.
Q. Are you aware of any other ships that currently traverse the Delaware River are of comparable size?
A. I don't know of any. I know that oil tankers do traverse the Delaware River; having been involved in oil spills. I don't know if they are considered supertankers. I don't think I've ever seen a supertanker so I don't have personal knowledge of that.

94

Q. Okay. Let's just look at Mr. Koschek's letter.

This is Exhibit 3 for the record.

At the bottom of that page, there is a heading, there's a site to some regulations and then it says "dredge material placement on land" and then about halfway down in the bottom paragraph it says "Coupled with the initial dredging and disposal of 800,000 cubic yards of dredged material this would cousume 3.2 million cubic yards or 40 percent of the available permitted capacity of the sole regional disposal facility, the Weeks Marine/Whites Basin facility."

Are you familiar with the facts described in this passage?

**A. Only as they are set forth here in this memo.**

Q. Do you have an understanding of the scope of dredging that would be required to build Crown Landing as

95

compared to other projects in the Delaware River, other dredging?

**A. As compared to other projects, I am not aware of, you know, how big this is -- this compares to other projects.**

**But based on our comments that we submitted on March 31st, and what is in this particular memo to FERC, it was a significant amount of dredging that was required to allow these vessels to come into berth.**

Q. Who in the department would be best placed to compare the dredging required for this project to compare the dredging required for other projects?

**A. I would imagine somebody from our dredging office. I can't recall what it's called.**

**I'm not sure who's in charge of that now, but whoever is -- whoever is overseeing dredging work along the Delaware River, I would say would be in a good position to make a comparison.**

96

Q. Okay. Further up on Page 5, there's a section called permitting.

**A. Uh-huh.**

Q. And it refers in the first sentence to a deficiency letter to Crown Landing on February 4th.

Do you recall having seen that letter?

**A. No, I don't think I saw this letter.**

Q. I think I have it here; I'd like to introduce I as Exhibit 4.

- - -

(Whereupon, the exhibit was marked McHugh-4 for identification.)

- - -

BY MR. ATTAWAY:

Q. Does this refresh your recollection?

**A. Yes, it does.**

Q. So, I will ask you again, have you seen this February 4th letter before?

97

**A. I saw this letter just briefly yesterday in my short preparation for this proceeding.**

Q. Do you know if your staff considered this letter in giving you input for your March 31st memorandum?

**A. Mr. Wilkinson is a very thorough employee and staffer and I am not sure of it, but I would imagine that he did see this.**

Q. I'm just going to ask you a question about Page 1. I know it's a long letter.

**A. Okay.**

Q. Just for the record, I should have done this when I introduced it.

This is a letter from David Risilia, project manager, Office of Dredging and Sediment Technology to Mr. David Blaha, environmental resources management.

It's a deficiency letter for waterfront development application and it

98

gives the file number and applicant as Crown Landing.

And I would also note that this letter doesn't have a letterhead or signature on it.

It does, however, have New Jersey Bates numbers and in a prior deposition, counsel assured me that this was the same letter that was filed at the Federal Energy Regulatory Commission.

I'm not asking you to believe or disbelieve me unless you have knowledge of that but I just wanted that on the record.

The third paragraph on Page 1 refers to Delaware's regulatory authority over this project.

I will give you a chance to read that short paragraph before I ask a question.

**A. Okay.**

Q. This short paragraphs states "The project site is located in the States of Delaware and New Jersey.

99

Accordingly, activities taking place from the mean low water line (MLWL) out shore are located in the State of Delaware and therefore are subject to Delaware coastal zone management regulations. Activities or associated impacts to New Jersey's coastal resources occurring from the MLWL landward are the snbject of this application."

Since you said earlier that you hadn't seen this letter personally, I think I know what your answer is going to be but I'll ask, have you read this paragraph before --

**A. No.**

Q. -- you reviewed this letter I think you said yesterday?

**A. Yeah, but yesterday, I hadn't seen this.**

Q. Okay. You said earlier that you're working understanding was that Delaware would have regulatory authority over projects located partially in Delaware and partially in New Jersey; is

100

that correct?

**A. Yes, that we would coordinate projects in that area.**

Q. And is this passage consistent with your working understanding?

**A. It actually goes beyond what I believe to be our respective authorities in that area.**

**I was always under the impression that we just generally coordinated with Delaware in that area and until this whole issue came to light, I didn't even know that there was a concern about, you know, or I wasn't completely aware of a concern associated with our respective authorities to wharf.**

**So, having first read this, our initial concern from the Division of Fish and Wildlife was the natural resource issues within the 12-mile zone and frankly, south and north of it. And that's what those -- that's what these memos were geared -- these comments, the**

101

**comments being incorporated were geared towards.**

**So, beyond that, I really didn't have an understanding of, you know, the main issue that this case surrounds.**

**The statement is also -- the last sentence, activities are associated impacts to New Jersey coastal resources, occurring from the mean low water line landward are the subject of this application. I'm not sure where the writer of this gets that from, but, you know, we are also concerned with the resources that occur in the waters, yon know, out into the Delaware zone and as in the past, oil spills, we coordinated on those issues as well.**

**So, you know, the Division of Fish and Wildlife was obviously coucerned with natural resource issues beyond the mean low water line.**

Q. Okay. Because the oil and fish and water fowl can travel?

A. Right.
Q. Through the water?
A. Right.
Q. Okay. Just give me a moment, please.
When the dispute surrounding the Crown Landing facility arose, did you at that time get a copy of the compact and read it?
A. No.
MR. ATTAWAY: I have no further questions.
- - -
(Whereupon, the deposition concluded at 11:33 a.m.)
- - -



CERTIFICATE

I hereby certify that the proceedings and evidence noted are contained fully and accurately in the notes taken by me on the deposition of the above matter, and that this is a correct transcript of the same.

---

Teresa M. Beaver, RPR

(The foregoing certification of this transcript does not apply to any reproduction of the same by any means, unless under the direct control and/or supervision of the certifying shorthand reporter.)



INSTRUCTIONS TO WITNESS

Please read your deposition over carefully and make any necessary corrections. You should state the reason in the appropriate space on the errata sheet for any corrections that is made.
After doing so, please sign the errata sheet and date it.
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ERRATA

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ACKNOWLEDGEMENT OF DEPONENT

I, _____, do hereby certify that I have read the foregoing pages, _____ and that the same is a correct transcription of the answers given by me to the questions therein propounded, except for the corrections or changes in form or substance, if any, noted in the attached Errata Sheet.

_____

DATE SIGNATURE

Subscribed and sworn to before me this _____ day of _____, 200__.

My commission expires:_____

Notary Public



LAWYER'S NOTES

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IN THE SUPREME COURT
OF THE UNITED STATES
- - -

STATE OF NEW JERSEY : NO. 134, Original
:
v. :
:
STATE OF DELAWARE :

- - -

OCTOBER 20, 2006

- - -

Oral deposition of BETH S. REDDY, taken pursuant to notice, was held at the offices of the Department of Environmental Protection, 9 Ewing Street, Trenton, NJ 08609, commencing at 10:00 a.m., on the above date, before Kimberly S. Gordon, a Registered Professional Reporter and Notary Public in the State of New Jersey.

- - -

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- - -

INDEX

- - -

Testimony of:
BETH S. REDDY

PAGE

By Mr. Walton 5, 101
By Ms. Balint 93

- - -

EXHIBITS

- - -

NO. DESCRIPTION PAGE

Reddy-1 Declaration 14
Reddy-2 40 C.F.R. Section 302.4 14
Reddy-3 40 C.F.R. Part 355 14
Reddy-4 N.J.A.C. 7:1E-1.4 20
Reddy-5 42 U.S.C.A. Section 11004 49
Reddy-6 42 U.S.C.A. Section 9603 54
Reddy-7 40 C.F.R. Section 302.6 55
*Reddy-8 Flash Fax dated 6/6/05 58
*Reddy-9 Flash Fax dated 12/29/05 62
Reddy-10 Enforcement Action 75
Reddy-11 DNREC Enforcement Action 78
* marked confidential



- - -

DEPOSITION SUPPORT INDEX

- - -

Direction to Witness Not to Answer
Page Line
None

Request for Production of Documents
Page Line
None

Stipulations
Page Line
None

Question Marked
Page Line
None



- - -

BETH S. REDDY, after having been duly sworn, was examined and testified as follows:

- - -

EXAMINATION

- - -

BY MR. WALTON:

Q. Good morning, Ms. Reddy. Could you just state your full name for the record?

**A. Beth S. Reddy.**

Q. And just for the record, when we came in this morning, I was set up in a conference room on the third floor here. And before Ellen arrived, Ms. Reddy came in and I introduced myself and then asked her who her attorney would be on the case. I just wanted to confirm that we didn't talk about any of the substance of the case at that time.

**A. Correct.**

Q. Thank you. Ms. Reddy, have you ever been deposed before?

6

A. No.
Q. Have you ever testified in a trial before?
A. No.
Q. This is a deposition, and the court reporter is going to take down everything you say. And just a few ground rules to start off with:
First, I'm a little soft-spoken at times. So if you can't hear me or don't understand a question, please let me know. You must speak clearly because the court reporter can only take down what you say, not nods of the head or uh-huhs or uh-uhs or those sort of things.
Remember that you are under oath. The court reporter swore you in when we started. And when you give an answer to one of my questions, please try to give full and complete answers to the question that I asked. Do you understand --
A. Yes.

7

Q. -- those instructions?
One other thing: For the court reporter's sake and for the sake of the transcript, please try to wait until I finish my question because it's hard to take down the words of counsel and your answers when we sort of speak over each other. Okay?
A. Okay.
Q. One last sort of introductory matter: Are you taking any medications or are you sick or is there anything that would impede you answering all the questions I ask today truthfully?
A. No.
Q. Let me just start out real quick and ask you about your educational history?
A. I have a degree in chemistry from Moravian College which I earned in 1981. I have a Master's degree in chemical engineering from Clarkson University which I received in 1984.
I became a Certified Public

8

Manager in 1991, which is a program run at that time through Rutgers and our Department of Personnel. And I'm a Certified Hazardous Materials Manager, a certification that I received in 2002.
Q. I'd like to talk about your certification as a Certified Hazardous Materials Manager. Can you tell me what that program is about?
A. It's a program that there's an institute for hazardous materials management that maintains the -- the word escapes me. They sort of establish the guidelines for what needs to be done in order to do that.
There's a testing process that you have to go through. There's an educational component that you have to have the education in order to take the test. And there's an ongoing education requirement for that that every five years you have to be re-certified.
And it covers all aspects of hazardous materials. It looks at federal

9

regulations that cover radiation, hazardous substances, petroleum, requirement for Environmental Impact Statements, doing due diligence inquiries at sites that are being sold or purchased or redeveloped, so it encompasses all aspects of hazardous materials.
Q. In that hazardous materials training, did you have training in CERCLA?
A. CERCLA is one of the things that they cover in the testing.
Q. Just for the clarity of the transcript, CERCLA stands for?
A. Comprehensive Environmental --
Q. Response and Liability Act?
A. -- Response -- there's another C in there.
MS. BALINT: Cleanup?
BY MR. WALTON:
Q. Response, Compensation and Liability Act?
A. I get so used to acronyms.

10

Q. Let me say it one more. Is CERCLA the Comprehensive Environmental Response, Compensation and Liability Act?
A. Yes.
Q. And from here on out, I'm going to refer to it as CERCLA. Okay?
A. Yes.
Q. In your training, did you also have in your hazardous materials training that we just discussed, did you have any training in the Emergency Planning and Community Right-to-Know law?
A. Yes.
Q. And what kind of training did you have in those two laws?
A. **Actually, the New Jersey Community Right-to-Know program which is delegated authority under -- but it's also called SARA, the Superfund Amendments and Reauthorization Act, because that's when the Community Right-to-Know program was added to that. It's like a sister program.**
**We reside right next to**

11

**them. I know a lot of people in there. I talk to them a lot about what their program entails, and actually, the last time that the department gave the training for the test I was the person who presented the module on Emergency Planning and Community Right-to-Know.**
Q. When you say the module on planning, could you just explain that for me?
A. **We run a training course for people who are planning on taking the exam. Each module covers a particular aspect of hazardous materials that is covered in the test. It may take, usually takes somewhere between 45 minutes and an hour and-a-half to present the material in a given module. They're pretty much broken down along the lines of federal regulations.**
Q. So you have taught, at least in that module, elements of the Emergency Planning and Community Right-to-Know law?
A. **Yes.**

12

Q. Have you done any teaching with respect to CERCLA requirements?
A. **No.**
Q. Are you familiar with CERCLA requirements, federal CERCLA requirements?
A. **Some of them, because we use the CERCLA list as part of our overall list in our program.**
Q. And when you say the CERCLA list, what do you mean by that?
A. **There's a list of hazardous chemicals that's contained in the federal regulations at 40 C.F.R. 302.4, which is incorporated into our overall list of hazardous substances for the state. So I have some knowledge of CERCLA through the use of that list and referring to it and, therefore, looking at the federal regulations.**
Q. Just to educate me a little bit on your CERCLA list: 302.4, when you talk about the overall list, that's the hazardous substances?

13

A. **That's the hazardous substances list for the State of New Jersey under the Spill Compensation and Control Act.**
Q. Just so I understand, the federal list is incorporated into New Jersey's list?
A. Yes.
Q. The 302.4 list?
A. Yes.
Q. And have you ever heard of the term extremely hazardous substances?
A. Yes.
Q. And tell me about what the differentiation between hazardous substances and extremely hazardous substances is.
A. **Extremely hazardous substances have additional notification requirements associated with them. It's a much smaller list than the hazardous substance list. I think it's about somewhere between four and 500 chemicals.**
Q. And that list comes from

what law, do you know?
**A. That's also promulgated under SARA 313. And I believe it's part of the EPCRA, Emergency Planning and Community Right-to-Know Act.**
Q. And I'll try to use that acronym. I'm not familiar with that. You called the Emergency Planning and Community Right-to-Know law, what did you refer to that as?
**A. EPCRA, Emergency Planning and Community Right-to-Know Act.**
Q. Thank you.
- - -
(Reddy-1 through Reddy-3 marked for identification.)
- - -
BY MR. WALTON:
Q. Just for the record, I have marked three exhibits. The first exhibit is the Declaration of Beth S. Reddy dated October 2, 2006, Bates stamped NJ06530 through 6535.
Reddy-2 is 40 C.F.R. Section



302.4, and in the middle of the page, it says Table, List of Hazardous Substances and Reportable Quantities. Ms. Reddy, do you agree with that?
**A. Yes, sir.**
Q. On the third one, Reddy-3, it's 40 C.F.R. Part 355, Appendix A.
Ms. Reddy, I'm going to refer you to Reddy No. 2, the document entitled C.F.R. Section 302.4, the one I described List of Hazardous Substances and Reportable Quantities. I believe this is what we were discussing previously about the list of substances under CERCLA that you discussed, and I believe you mentioned 302.4. Is this the list of hazardous substances?
**A. For CERCLA, yes.**
Q. And I'm going to send you over to Reddy-3. Is that the list of hazardous substances under EPCRA?
**A. Yes.**
MS. BALINT: Just for the record, it is the list of



extremely hazardous substances for EPCRA.
MR. WALTON: Pardon me, extremely hazardous substances. Thank you.
BY MR. WALTON:
Q. Just so I have it straight, -- and thank you, Ellen, for the help with the record -- with respect to Reddy-2, that's the list of hazardous substances under CERCLA?
**A. Yes.**
Q. And Reddy-3 is the list of extremely hazardous substances under EPCRA?
**A. Yes.**
Q. Now, do you know if the list of extremely hazardous substances under Reddy-3 are also included within 40 C.F.R. 302.4?
**A. I believe they are. The CERCLA list is, in a way, a compilation list. They put a lot of things in here from other laws into one, overall list.**



Q. Let me just switch and talk about sort of your program and your responsibilities. What is your official job title?
**A. My official job title? My official department personnel job title is Research Scientist I.**
Q. Is there another title you're commonly referred to?
**A. Yes. My functional job title is Section Chief.**
Q. Section Chief of what?
**A. Of the Engineering Review Section within the Bureau of Release Prevention.**
Q. And what are your job responsibilities generally?
**A. I am responsible for the management of the section of the program which reviews Discharge Prevention Containment and Countermeasures and Discharge Cleanup and Removal plans that are submitted to the department for approval.**

I assign the work, track that it's being completed, review things in a consistent manner and that we meet our timelines for review and approval and final dispensation of the documents. I'm also responsible for rule development for the program.

Q. When you say the program, is that New Jersey's program?

A. Right, the Discharge Prevention program.

Q. When you talk about the Discharge Prevention program, I assume when you make those rules and follow those guidelines you have to act in accordance with federal standards?

A. No.

Q. Give me an example.

A. The program is entirely based on state law.

Q. When you say the program is entirely based upon state law, what do you mean by that?

Let me put a sharper point



on my question. When you're basing your law, do you have to follow the requirements of CERCLA?

A. No.

Q. No requirement to follow CERCLA?

A. No.

Q. And no requirement to follow the mandates of EPCRA?

A. No.

Q. If someone submits a policy or plan to your particular program, an emergency planning document, are they required to follow state and federal law?

A. No.

Q. Is the applicant relieved of their responsibility to follow federal law in submitting plans or in emergency responses or notifications?

A. No.

Q. Can you expand on that a little bit?

A. We specifically state in our regulations that submitting and getting



approval from our plan does not exempt a facility from complying with any other state or federal regulations.

- - -

(Reddy-4 marked for identification.)

- - -

BY MR. WALTON:

Q. I'm going to show you a regulation marked Reddy-4. When you say under your regulations, I've just handed you something, at least a Westlaw cite. It's N.J.A.C. 7:1E-1.4. Is that a regulation that you followed in your program?

A. Yes.

Q. And can you just give me an explanation of what that group of regulations deals with?

MS. BALINT: Objection to the form of the question.

BY MR. WALTON:

Q. Can you tell me what this statute I've handed you, where it's



codified?

A. Just this particular --

Q. Yes.

A. As you stated, it's a New Jersey Administrative Code, Chapter 7, Title 1E.

Q. And I believe you were talking about state and federal requirements before. Is this the regulation you were referring to?

A. That states that they're not exempted from -- yes, this is the section of the regulation that states that.

Q. So just so I'm clear, an applicant or an applicant or someone who submits an emergency planning document of some kind, for example, a Discharge Cleanup and Removal plan or a Discharge Prevention Contaminant and Countermeasure plan, would still need to follow federal law?

A. Yes.

Q. I'm sorry to take us off track a little bit. I believe you said

you were a supervisor. Do you have people who work for you?

**A. Yes.**

Q. How many people do you supervise?

**A. I currently supervise eight people.**

Q. Just generally, do they all have the same job responsibilities? What are their job responsibilities?

**A. The majority of their job responsibilities entail reviewing and recommending for approval the plans that are submitted by our regulated community. We currently also have a large responsibility in the domestic security arena for chemical and petroleum plants within the state.**

MR. WALTON: Can I have that answer read back? I don't think I caught a word.

- - -

(The court reporter read the pertinent part of the record.)



- - -

BY MR. WALTON:

Q. Could you explain to me what you mean by a role in the domestic security arena?

**A. We have an Office of Homeland Security and Preparedness who has overall responsibility within the state. They've divided the critical infrastructure within the state up into 24 sectors. Two of those sectors, chemical and petroleum, are the responsibility of our bureau in terms of ensuring that they're meeting the best standards practices that have been adopted by the Office of Homeland Security for the state.**

**We go out and do inspections at those facilities to make sure that they've done security vulnerability, assessments and have addressed the security issues at the facility.**

Q. Beyond security issues, do you do similar inspections of sites for



other reasons?

**A. Overall, as part of our program, we do inspect the sites for compliance with the approved plans, compliance with the regulations to determine whether they are major facilities and should be regulated by us.**

Q. I'm just trying to put this together. When you say approved plans, what do you mean?

**A. When a facility receives approval of their Discharge Prevention Containment and Countermeasures plans, DPCC, and their Discharge Cleanup and Removal plan, DCR, they're good for three years.**

**During the interim two years when the approved plan is in place, we have a Field Verification Section which goes out and inspects the facility to ensure that things haven't changed and that they're still complying with what they've written in their plan.**

Q. Do you work with federal



regulatory agencies with your program?

**A. On an informal basis.**

Q. When you say on an informal basis, what does that mean?

**A. We have contacts within Region 2 for their SPCC program.**

Q. I'm sorry, I didn't mean to interrupt you. When you say Region 2, is that EPA Region 2?

**A. Yes, EPA Region 2.**

Q. I'm sorry to interrupt. Go ahead. What other contacts?

**A. That's mostly it, the SPCC program and the Facility Response Program, FRP, which are both under the Oil Pollution Act of 1990 regulations that were adopted by the federal government.**

**Those programs aren't delegateable, so we don't have any responsibility for those federal programs. But our program overlaps with theirs in terms of facilities that are regulated, so we try to coordinate our**

**work at times. They will inform us of things that they find, and we inform them of things we find.**

Q. When you say your programs overlap, could you explain that to me?

**A. The federal program deals specifically with oil, and they define oil to include all kinds of petroleum products, vegetable oils and animal fats and greases. The Discharge Prevention program within New Jersey covers petroleum, so strictly petroleum oils, no animal fats, no vegetable fats and then the list of about 1,500 chemicals and chemical categories.**

Q. Please forgive me if I'm incorrectly characterizing your prior testimony. I believe you said there were some programs that were delegateable and there were some programs that were non-delegateable. What did you mean by that?

**A. Under federal law, the National Pollution Discharge Elimination**



**System program is often delegated to a state agency to implement at the state level. The federal SPCC program cannot be delegated to a state program to implement and enforce.**

MS. BALINT: Max, I'm sorry, I'm just going to insert an objection to legal expert questions that we're getting into. Ms. Reddy has not been offered as a legal expert.

And we can do a few more of these. But any prolonged effort on this is beyond the scope of her being offered as a witness.

MR. WALTON: I'm just asking her understanding what she can answer to.

Can I have the last answer read back?

- - -

(The court reporter read the pertinent part of the record.)

- - -



BY MR. WALTON:

Q. Beyond the NPDES program, just your understanding, are there other programs that are delegated to the state?

**A. One I specifically know about is the RMP, Risk Management Plan program, which deals with extraordinarily hazardous substances.**

Q. Are there any others that you're aware of?

**A. Not that I'm aware of.**

Q. Just going back to your office, I believe you stated that your office reviews plans that are submitted, -- I'm going to try to use the appropriate terms -- the Discharge Cleanup and Removal plans and the Discharge Prevention Contaminant and Countermeasures plans. Is that correct?

**A. We generally just refer to them as the DPCC and DCR plans.**

Q. I'll try to use those terms. DPCC and DCR plans, does your office review those plans?



**A. Yes.**

Q. And those plans are submitted by whom?

**A. They're submitted by our regulated community, which is the major facilities within the State of New Jersey.**

Q. When you say a major facility, what's your understanding of what a major facility is?

**A. A major facility is established based on a threshold quantity of storage as established in our Spill Compensation and Control Act. For hazardous substances, that threshold is 20,000 gallons total aggregate. When you include petroleum and petroleum products, it's 200,000 gallons is the threshold.**

Q. Do you have an enforcement grant or is that all done through your office?

**A. We have two sections within the program.**

Q. Can you explain what those

30

two sections are?
**A. The Engineering Review Section is the section that I'm in charge of that I've already explained.**
**The other is our Field Verification Section. They go out and do periodic inspections, mostly annually, at all of our regulated facilities. They'll do other types of inspections such as if we come across a facility that we think may be above the threshold but has not submitted a plan; we'll inspect them to see if they're required to submit one.**
**And then they also do all of our enforcement. They write up Notices of Violation, follow through with our formal enforcement actions, do case management and settlement or work with the Attorney General's office on contested cases.**
Q. Do you know what police authority the other section has, if any?
**A. Outside of the general authority that we have within the DEP, we**

31

**have a right to go in and inspect at a given facility. The way we have it set up in our regulations it's during normal business hours or at any time that we feel a violation is occurring. The little cards we get with our badges say we have the authority to enforce any departmental regulation.**
Q. And when you say departmental regulation, that would be --
**A. That would be all the program regulations within the department, solid waste, hazardous waste, air, not that we would but it's sort of been delegated to all enforcement personnel that way.**
Q. I'm going to ask you to flip over to Reddy-1, which is your Declaration you filed in this case, and specifically Paragraph 7 to start with. Can you read that first sentence for me?
**A. I am aware that the portions of Logan Township, Oldman's Township, Penns Grove Borough, Carney's Point**

32

**Township, Pennsville Township and Elsinboro Township all front along a portion of the Delaware River within an area called the Twelve-Mile Circle.**
Q. What is your understanding of what the Twelve-Mile Circle is?
**A. It's the portion of New Jersey where the jurisdictional boundary between New Jersey and Delaware comes over to the waterline on the New Jersey side of the Delaware.**
Q. I'm going to make this a little easier for you. I'm not going to mark this as an exhibit but I'll just state for the record -- can we go off the record for a minute?
- - -
(A discussion off the record occurred.)
- - -
BY MR. WALTON:
Q. Ms. Reddy, I'm going to show you a document that's six pages. It's marked DE28987 through DE28992. I'll

33

represent to you that it's a map.
I'm going to point the boundary point marker, and this is the northern tip of Delaware. Now, going down, do you know, taking from the north, can you walk me through where these townships are located that you discussed in your affidavit?
**A. You mean the order they are down?**
Q. Yes.
**A. Quite frankly, no.**
Q. Would you be able to identify what facilities exist, and you can consult your affidavit, within the Twelve-Mile Circle that extend into Delaware?
**A. So specifically the ones that are along the waterfront?**
Q. Yes.
**A. Because within those townships, there are other major facilities that we regulate.**
Q. Correct. Just the ones that

cross over the mean low watermark and into Delaware territory?
**A. Logan Generating Station, which is in the Township of Logan.**
Q. If I represented to you that this is the Logan Generating Station on DE28987, would you have any reason to dispute that?
**A. No.**
Q. This water is Oldman's Creek, if that helps you. I'm going to go through the other ones. Let's go to the document marked DE28969. I will represent to you that on bere this is depicting the Delaware Memorial Bridge. Does that help you locate any facility?
**A. This is DuPont Deepwater or Chambers Works it's referred to as.**
Q. Just for the record, you're pointing to the area just north of the Delaware Memorial Bridge on this map?
**A. Yes.**
Q. And is there any other facility that you're aware of, a major



facility on this map?
**A. Sort of under the bridge is Conectiv Deepwater Generating Station.**
Q. Just south of the bridge?
**A. It kind of goes all the way but yes.**
Q. South but sort of under the bridge?
**A. Yes.**
Q. And going down, are you aware of any other facilities, major facilities within the Twelve-Mile Circle?
**A. Along the waterfront, no.**
Q. I just wanted to represent for the record this line here is the mean low watermark as it existed in 1934, the yellow marker that goes all the way down.
Just to clarify, those are the only three structures or major facilities that exist within the Twelve-Mile Circle?
**A. Yes.**
Q. Now, going back to the map just real quickly, the Logan Generating



Station which we pointed to here, if there was a vessel parked at that dock, would you agree that that would be in Delaware?
**A. Yes.**
Q. And anything that went beyond the mean low watermark of tbe Jersey shore, that would be in Delaware?
**A. Yes.**
Q. And if there was a contaminant hazardous substance and extremely hazardous substance that was spilled from a shipper off the dock, would that affect Delaware?
**A. Yes.**
Q. And I would assume the answer would be the same with DuPont if there was a ship docked at DuPont?
**A. Yes.**
Q. Let me ask a better question. If there was a ship docked at DuPont and there was a spill off the ship that was unloading or at the dock at the DuPont, I assume that would affect



Delaware?
**A. Yes.**
Q. And going on down to Conectiv, if there was a ship docked at the Conectiv dock and there was a spill of a hazardous substance or an extremely bazardous substance, that would affect Delaware?
**A. Yes.**
Q. Let's walk through the Keystone facilities. I believe you said that the Keystone facility was a major facility?
**A. Keystone?**
Q. Logan Generating Station, excuse me. You use a lot of acronyms. I always refer to this sort of as a slang term as Keystone. But it is called the Logan Generating Station, so my apologies for that.
Are there chemicals or substances, hazardous chemicals stored or produced or used at that facility?
**A. Yes.**

Q. How about DuPont Chambers Works, are there hazardous chemicals or substances stored or produced or used at that facility?

**A. Yes.**

Q. And how about the Conectiv property, are there hazardous chemicals or substances stored, produced or used at that facility?

**A. Yes.**

Q. And is that the reason that they have to file with your office DPCC and DCR plans?

**A. The threshold is based specifically on storage capacity, so it has to be that they store those hazardous substances.**

Q. And is it your understanding that they do store those hazardous substances?

**A. Yes.**

Q. And they do have to under, at least New Jersey regulations, have to file those plans because they store those



substances?

**A. Yes.**

Q. And where are those substances stored? Let's take the Logan Generating Station for the start. Again, they're not stored on the dock, are they?

**A. No.**

Q. All I'm looking for is they're stored in the facility on land. Is that correct?

**A. Yes.**

Q. And same with the DuPont facility; the substances are stored on land and they're not in the dock? Substances aren't stored on the dock that you're aware of?

**A. Not that I'm aware.**

Q. And how about with Conectiv, the hazardous substances are not stored on the dock at the Conectiv property?

**A. Correct.**

Q. So to the best of your knowledge, there are no hazardous substances stored in Delaware at any of



those three facilities?

**A. Correct.**

Q. And the reason that they have to file the plans with your office is because those facilities store those hazardous chemicals of a certain quantity?

**A. Yes.**

MR. WALTON: Can I stop for a minute?

MS. BALINT: Sure.

- - -

(A recess occurred.)

- - -

BY MR. WALTON:

Q. Just to go back to something that you testified earlier: When we talk about the Logan Generating Station, the DuPont facility at Chamber Works and the Conectiv properties, those entities must comply with federal law, correct?

**A. Yes.**

Q. It's sort of a process question: Under EPCRA, are you familiar



with the establishment of State Emergency Response Commissions or SERCs?

**A. Yes.**

Q. Can you explain what a SERC is and why it was created?

**A. SERCs have overall responsibility within the state for doing emergency planning for all kinds of emergencies. And they establish Local Emergency Planning Committees for planning at the local level for hazardous materials incidents. Actually, they're also used for natural disasters and various kinds of emergencies.**

**In New Jersey, the State Emergency Response Committee consists of the State Police, Office of Emergency Management, the Department of Environmental Protection, the Department of Health. They have open quarterly meetings where they discuss emergency planning issues for the state.**

**They've established that Local Emergency Planning Committees in**

**New Jersey will be established at the municipality level.**

Q. Now, do you have any participation in the -- I'm sorry, I call it the Local Emergency Planning Commission. I call them LEPCs. And for the State Emergency Response Commission, I call them SERCs. Is that the normal terminology for those?

**A. Yes.**

Q. With respect to SERCs or the SERC for New Jersey, do you have any involvement in that process or does your office have any involvement in the SERC process?

**A. We do have someone who attends the meetings. The primary responsibility under SERC within the department falls to our Emergency Response Group.**

Q. And how about with LEPCs?

**A. No.**

Q. Are you aware of who the LEPCs are for, and I'm going to go back



to Section 7 of your Declaration again, for Logan Township?

**A. You mean the specific person?**

Q. Not the person but what the local -- let me put a sharper point on my question. Are there districts where LEPCs are located? Are they assigned specific districts?

**A. Each municipality within New Jersey is required to have an LEPC.**

Q. So if you were a small town or a county, you each have an LEPC?

MS. BALINT: Objection to the form of the question. It's not what she said.

BY MR. WALTON:

Q. Just phrase it in your words. Let me ask the question again just so I make sure that I have it right. Is an LEPC used on a municipal level, set up on a municipal level?

**A. Yes.**

Q. And what breakdown of



municipality would be required to have an LEPC?

MS. BALINT: Objection to the form of the question. There's not a breakdown of the municipality. In New Jersey, a municipality is a specific local governmental unit.

MR. WALTON: I'll ask the witness.

BY MR. WALTON:

Q. Is a county a municipality?

**A. No.**

Q. So would a township be a municipality?

**A. Yes.**

Q. So LEPCs would not be set up for a county?

**A. They're not required to be set up for a county.**

Q. Are you aware of instances where they are set up for a county?

**A. Yes.**

Q. For my own edification, what



county might that be?

**A. Middlesex County has a specific unit at the county level. I believe Union County also has one.**

Q. Just going back, I'm just trying to get the process just right. Along the Twelve-Mile Circle, those who border Delaware on the river, each of the municipalities down the river within the Twelve-Mile Circle would have an LEPC?

**A. Yes.**

Q. And I'm just going to ask you because I don't know if you know. Do you know who the SERC is for Delaware or what agency functions as a SERC for Delaware?

**A. No, I don't.**

Q. And do you know of any LEPCs in Delaware --

**A. No.**

Q. -- that border the river?

I'd like to turn back to Reddy-2 and Reddy-3 again, if you don't mind. Once again, just so we can get it

straight, Reddy-2 is 40 C.F.R. 302.4.
And what is listed in 40 C.F.R. 302.4?
MS. BALINT: Objection to the question, asked and answered.
MR. WALTON: I'm just trying to clarify.
BY MR. WALTON:
Q. Go ahead. You can answer.
**A. It's the list of hazardous substances for CERCLA.**
Q. And Reddy-3 is the extremely hazardous snbstances under the Community Right-to-Know Act?
**A. Yes.**
Q. Do you know if there are reporting requirements under CERCLA?
Do you know if there are notification requirements under CERCLA?
**A. Yes.**
Q. Do you know if there's notification requirements under EPCRA?
**A. Yes.**
Q. Can you tell me your understanding of the notification



requirements under CERCLA?
**A. Under CERCLA, if there is a discharge of one of the substances on the list which exceeds the threshold quantity established within the list, it has to be reported to the National Response Center.**
Q. Let's talk about the National Response Center. So is that the facility needs to report it to the National Response Center?
**A. The person responsible for the discharge.**
Q. And what does the National Response Center then do with that once they bave a report?
**A. I know in the case of New Jersey they generally pass tbat report onto the state Communications Center.**
Q. Does that report go to your Enforcement Section, do you know?
**A. Not specifically.**
Q. Have you ever heard of the term Flash Fax from the National Response Center?



**A. No.**
Q. Do you know if the National Response Center notifies the New Jersey authority of emergency responders in writing or by telephone?
**A. Since those reports come into our Communications Center, I don't have any personal knowledge.**
Q. And what is your understanding of the reporting requirements under EPCRA?
**A. EPCRA has a couple of different reporting requirements. There is a yearly requirement to report everything that's been stored on site for the past year and then there's the requirement to report all releases to all media that have occurred in the past year for only a given subset of facilities, which I believe is also based on their storage or use of those compounds.**
Q. Do you know if there's any reporting requirements for emergency notifications?



**A. I believe there is, but I can't recall them currently.**
MR. WALTON: I'd like to mark this as Reddy-5.
- - -
(Reddy-5 marked for identification.)
- - -
MS. BALINT: I'm going to repeat my prior objection about the continued line of questioning into legal expertise and hope that it has some relevance to this case somewhere into the line of questioning.
BY MR. WALTON:
Q. I've handed you a document titled 42 U.S.C.A. 11004. Have you ever read this before?
**A. Not that I recall.**
Q. I'd like you to flip over to Section B. And could you read Section b(1) for me?
**A. Notice required under**

50

**subsection (a) of this section shall be given immediately after the release by the owner or operator of a facility (by such means as telephone, radio, or in person) to the community emergency coordinator for the Local Emergency Planning Committees, if established pursuant to Section 11001(c) of this title, for any area likely to be affected by the release and to the State Emergency Planning Commission of any state likely to be affected by the release.**

Q. That's enough. I believe you testified earlier, and I'm going to go back to my maps, I believe you testified earlier that Logan Generating Station, the end of the pier is in Delaware. Is that correct?

**A. Yes.**

Q. And under that subsection, it provided that the facility is a major facility under Subsection (a). Would you agree that under this section that Delaware is required to be notified of an

51

emergency release?

MS. BALINT: Objection to the form of the question.

BY MR. WALTON:

Q. You can answer.

MS. BALINT: I object on the basis that the question was too vague to answer. You really ought to make it more specific.

MR. WALTON: I'll ask another question.

BY MR. WALTON:

Q. If there is a ship that makes a release or the Keystone facility makes a release that's in the water or affects the water, would you agree that the State Emergency Planning Commission of Delaware would be required to be notified of that release?

MS. BALINT: Objection to the form of the question as it calls for a legal conclusion.

BY MR. WALTON:

Q. You can answer to the best

52

of your knowledge.

**A. Based on what I just read, yes.**

Q. And that would be the same for the Logan Generating Station?

**A. Yes.**

Q. And the Conectiv property?

**A. Yes.**

Q. And the DuPont facility?

**A. Yes.**

MS. BALINT: Just for the record, I repeat my objections for all those questions.

BY MR. WALTON:

Q. Are you aware of any penalty provisions regarding failure of a facility to notify an appropriate LEPC or a State Emergency Planning group?

**A. Under this, under the federal?**

Q. Under the federal.

**A. Under the federal, no.**

Q. Do you have penalty provisions for failure to notify in New

53

Jersey?

**A. Yes.**

Q. And what are those penalties?

**A. We have a requirement that the state be notified of certain discharges within 15 minutes of the person responsible knowing that the discharge occurred. So there are penalties for failure to notify at all. There are penalties to notify within 15 minutes. But the specific quantities I'd have to look up in our rules.**

Q. That's fair. Do you know if the New Jersey penalties are similar or the same as federal penalties?

**A. No.**

Q. I believe you testified earlier, and please correct me if I'm wrong, that certain releases of hazardous substances need to be reported to the National Response Center?

**A. Yes.**

Q. I'm going to just show you

this. I'll mark that Reddy-6.

- - -

(Reddy-6 marked for identification.)

- - -

BY MR. WALTON:

Q. Is that law, Paragraph (a), to the best of your knowledge the requirement to notify the National Response Center?

MS. BALINT: Objection to the form of the question. You need to establish a foundation for the question.

BY MR. WALTON:

Q. You can answer, if you understand it.

**A. It looks like it's the responsibility to notify the National Response Center under CERCLA.**

Q. And under CERCLA, do you know if there's any federal regulations that are promulgated under CERCLA regarding reporting of notifications?



**A. Yes.**

- - -

**(Reddy-7 marked for identification.)**

- - -

**BY MR. WALTON:**

Q. I've handed you a copy of something, 40 C.F.R. Section 302.6. And could you read Section (a) for me?

**A. Any person in charge of a vessel or an offshore or an onshore facility shall, as soon as he or she has knowledge of any release (other than a federally permitted release or application of a pesticide) of a hazardous substance from such vessel or facility in a quantity equal to or exceeding the reportable quantity determined by this part in any 24-hour period, immediately notify the National Response Center at 800-424-8802.**

Q. You don't have to read all the numbers. I'll spare you of that. So your understanding under this



notification requirement, and I just want to make sure I got it right: If there's a hazardous substance released above a reportable quantity as identified in Reddy-2, that list, would you agree that the National Response Center would need to be notified?

MS. BALINT: Objection to the form of the question. That regulation is what it is, and the witness's understanding of the regulation is irrelevant.

BY MR. WALTON:

Q. You can answer the question, if you understand it.

**A. Could you repeat it?**

- - -

**(The court reporter read the pertinent part of the record.)**

- - -

THE WITNESS: Yes.

BY MR. WALTON:

Q. Have you ever seen a response or a fax from the National



Response Center?

MS. BALINT: Objection to the form of the question.

MR. WALTON: I'll rephrase.

BY MR. WALTON:

Q. After the National Response Center is notified pursuant to 40 C.F.R. 302.6, do you know what happens next? What do they do?

**A. I know in the case of New Jersey they give that information over to our Communications Center. They enter that in our incident database, which is available through our departmental database to any person within the department to look at.**

MR. WALTON: I need to designate this portion of the transcript and this particular exhibit as confidential and so it will be marked confidential and the exhibit will remain confidential.

- - -

58

(Reddy-8 marked for identification.)

- - -

MR. WALTON: The exhibit has been marked Confidential, S.Ct.134, and the Bates Number is DE29834 through 29836.

MS. BALINT: Max, that number S.Ct.134, that's a separate confidentiality Bates stamp?

MR. WALTON: That is under the Case Management Order of Special Master. I have to mark it that way. Instead of doing it later, I was trying to designate the transcript now.

BY MR. WALTON:

Q. Ms. Reddy, have you ever seen a document like this before?

**A. Like this, yes.**

Q. And what is it?

**A. It's an incident report.**

Q. And up at the top, it says National Response Center - Flash Fax?

59

**A. Yes.**

Q. Does this refresh your recollection about what a Flash Fax is?

MS. BALINT: Objection to the form of the question. The witness never indicated that she had any idea what a Flash Fax was.

MR. WALTON: Exactly. She said she didn't know, so I offered it to refresh her recollection.

THE WITNESS: I'm saying I have seen similar documents, not necessarily this particular document.

BY MR. WALTON:

Q. I understand. But does it refresh your recollection as to what a Flash Fax or communication from the National Response Center might look like?

MS. BALINT: Same objection.

THE WITNESS: Like I said, I've seen the data that comes from the National Response Center. I don't know necessarily that it's

60

in this format.

BY MR. WALTON:

Q. That's a fair answer. I'm not -- and I understand. But this is similar to the data that comes from the National Response Center. Is that correct?

**A. Yes.**

Q. Now, if you look about halfway down the page, it says Incident Location.

**A. Yes.**

Q. It says 800 Billingsport Road, Gloncester. What does that mean? Where is Gloucester County?

**A. Gloucester County is along the Delaware aft Salem County.**

Q. And are there Incident Details on here on this fax?

**A. Yes.**

Q. And those Incident Details are kind of at the bottom of the page just above Damages?

**A. Yes.**

61

Q. I'd like you to flip over to DE29835. At the bottom, it says Notifications By, looks like NRC at the bottom. Do you see that?

**A. Yes.**

Q. And NRC would be the National Response Center?

**A. In this case, yes.**

Q. I'd like you to go down. It says Notifications By NRC. Now, is Delaware Emergency Management Agency listed?

**A. Yes.**

Q. And is Delaware State Police listed?

**A. Yes.**

Q. Is the Delaware Department of Natural Resource and Environmental Control listed?

**A. Yes.**

Q. So based upon this document, would you agree that the National Response Center notified Delaware on this occasion?

62

A. **Yes.**

- - -

**(Reddy-9 marked for identification.)**

- - -

MR. WALTON: Reddy-9 stays confidential.

BY MR. WALTON:

Q. I'm going to show you a document that's been marked DE29831. At the top, would you agree that it says National Response Center - Lash Fax in this case?

A. **Yes.**

Q. I believe that means Flash Fax but I think the letter got cut off. Could you go down to the Incident Location that's about halfway down the page?

A. **Yes.**

Q. And that's in Salem County, would you agree?

A. **Yes.**

Q. City, Penns Grove?

63

A. **Yes.**

Q. State, New Jersey?

A. **Yes.**

Q. And then the description of the incident just a little below that says caller is reporting an abandon (sic) 55-gallon drum against a bulkhead in a marina. I paraphrased that. Does that accurately reflect what was stated there?

MS. BALINT: Objection to the form of the question. The document says what it says, and what it says is not clear.

BY MR. WALTON:

Q. Could you read that for me?

A. **Caller is reporting an abandon (sic) 55-gallon drum at (sic) is up against a bulkhead in the marina. No material is releasing from E (sic) drum.**

Q. So I'm going to paraphrase that again. Would you agree that that basically says that there's a 55-gallon drum against the bulkhead in the marina?

A. **Yes.**

64

Q. And that would be in Penns Grove, New Jersey?

A. **That's what the document says.**

Q. I'd like you to flip over to Notifications By NRC, the second page. Would you agree that based upon this document the Delaware Emergency Management Agency was notified?

A. **Yes.**

Q. And the Delaware State Police were notified?

A. **Yes.**

Q. And the Delaware Department of Natural Resources and Environmental Control was notified?

A. **Yes.**

Q. So going back to my map over here -- Penns Grove, I always get confused. Penns Grove is the upper one on the river and Pennsville is the lower or is that reversed? Which one is more north, Penns Grove or Pennsville?

A. **I'm not certain.**

65

MS. BALINT: I just ought to put a note on the record that when Max has been referring to these maps he's really referring to large, aerial photographs.

MR. WALTON: That is correct. And the same Bates numbers I gave at the very beginning.

BY MR. WALTON:

Q. If I represented to you that on DE28988 and on DE28990 -- right now I cannot remember, but one is Pennsville or Penns Grove and one is Pennsville or Penns Grove. In either case, would the barrel described in Reddy-9, would that have been in the Delaware River in the Twelve-Mile Circle most likely?

MS. BALINT: Objection to the form of the question.

BY MR. WALTON:

Q. If you can answer, you can.

A. **I can't, because I don't know where the bulkhead is.**

66

Q. That's fair.
MR. WALTON: End of confidential portion.
BY MR. WALTON:
Q. Are you familiar with Delaware reporting requirements for hazardous substances released?
**A. No.**
Q. Do you know if Delaware has hazardous substances reporting release requirements either through CERCLA or either through programs delegated under EPCRA or other programs?
**A. I have no knowledge.**
Q. If there was a spill or release of a hazardous substance or an extremely hazardous substance, water were in the mean low waterline within the Twelve-Mile Circle, would you agree with me that Delaware law would apply?
MS. BALINT: Objection to the form of the question. It calls for a legal conclusion.
BY MR. WALTON:

67

Q. You can answer.
**A. It would seem so.**
Q. Does your office regulate what happens in Delaware?
**A. In what way?**
Q. In any way.
**A. We do have a requirement that notifications have to be made to the state if something happens outside of New Jersey but will impact New Jersey in terms of releases.**
Q. So that's a notification. But you don't attempt to regulate Delaware if I said affects New Jersey in some way?
**A. Are you referring to the river or the state?**
Q. I'm sorry, I don't understand.
MS. BALINT: Objection to the form of the question. If the witness doesn't understand it, it ought to be rephrased.
BY MR. WALTON:

68

Q. Does your office, besides the notification requirement that you just mentioned, attempt to regulate any other activity that occurs in Delaware?
**A. With the current activity that occurs there, no.**
Q. When you say occurs there, what do you mean?
**A. If there was active marine transfers occurring at any of the docks, we would require that they put a boom around that vessel before the new transfer occurred.**
Q. That's because it would be going into New Jersey?
**A. That would have a possibility of impacting New Jersey.**
Q. But other than that, you wouldn't attempt to regulate activities that occurred in Delaware?
**A. No.**
Q. Can I ask you to flip over to Reddy-1, please? We've talked a lot about this. I'll try to get through this

69

rather quickly.
Is it correct that your affidavit does not address federal reporting requirements under CERCLA or under EPCRA at the DuPont, Logan or Conectiv plans have, does not -- that was a terrible question. Let me rephrase.
Would you agree that your Declaration does not address Conectiv, Logan or DuPont's notification requirements under EPCRA or CERCLA. Is that correct?
**A. It would address them only in as far as they have consolidated their notification requirements into one policy or procedure that they're going to do at the facility and, therefore, have incorporated that into their plan.**
Q. But if there was a release that happened above a reportable quantity of either an extremely hazardous or hazardous substance, would you agree that the facilities would still be required to notify as required by federal law?

70

A. **Yes.**
Q. And that requirement is not discussed in your Declaration. Is that correct?
A. **Correct.**
Q. I believe you testified you didn't know about Delaware's reporting requirements. Is that correct?
A. **Yes.**
Q. And your Declaration does not address any Delaware reporting requirements. Is that correct?
A. **Correct.**
Q. And would you agree that even under the New Jersey program, and I'm going to direct your attention to Paragraph 14, even under the report for DuPont that is filed with your office, you say that DuPont is required to contact the Delaware Natural and Resource Environmental Control group?
A. **This is based on what DuPont has in their plan as opposed to my personal knowledge of what the**

71

**requirements are.**
Q. But in DuPont's plan that you reviewed, would you agree that there is at least a requirement in that plan that they are required to contact the National Response Center's hotline and the Delaware Natural Resource and Environmental Control department?
A. **Yes, they have listed that responsibility.**
Q. And would you agree if there is a release of a hazardous substance by any one of those facilities above a reportable quantity they would have to notify the National Response Center?
A. **Yes.**
Q. And do you know if the National Response Center notifies Delaware with respect to releases that occurred from those facilities?
A. **Based on the information that you provided today, that appears to be the case.**
Q. Can I ask you about

72

something a little off the subject? How do you keep track of sort of events, complaints, responses, enforcement actions within your office?
A. **I guess I'll deal with each separately since they are done slightly differently. For releases, there's a requirement that they be reported to our Communications Center. The Communications Center then has an electronic database that they enter that information into. It's part of our New Jersey Environmental Management System database, and anybody with access to that database has access to that information.**
Q. That's for releases?
A. **That's for releases, yes. For a major facility which has had a release which is reported to the Communications Center, they're required to do a 30-day follow-up report. That report comes into our bureau. It's reviewed by the Field Verification Section.**

73

**That data is entered into a separate database maintained by our program called Facility and Chemical Inventory Tracking System, FACITS. And we enter data into there as to what was affected by the discharge, i.e., water, land, what date it occurred, what equipment or processes were involved, what chemicals were discharged and the quantities.**
**Other programs within the department who may respond or have involvement with it keep their own data. I don't know how or where necessarily they do that. All of our inspections are recorded in the NJEMS database.**
Q. What database was that?
A. **New Jersey Environmental Management System; it's NJEMS. We just usually say NJEMS because it's quicker.**
**So the results of those inspections are recorded there, including any violations that are found. Then enforcement actions are also in that**

**database in terms of if we take something from a Notice of Violation up to a formal enforcement action, penalty amounts and whatnot. I believe those were the three things you asked for.**

Q. And are there similar, if you know, are there similar records kept from your Enforcement Section -- pardon me, let me lay a little foundation.

I believe at the beginning you testified you had a section; there was a separate Enforcement Section in your program. Is that correct?

**A. Yes.**

Q. And are there similar records kept for the Enforcement Section, do you know?

**A. Yes. We're basically one bureau, and we interact all the time with our field people.**

Q. So theirs would go into similar databases?

**A. The same database.**

Q. Have you or you caused your



staff to look for any documents pertaining to enforcement actions that occur at any facility along the river within the Twelve-Mile Circle?

**A. No.**

\- - -

**(Reddy-10 marked for identification.)**

\- - -

BY MR. WALTON:

Q. I'd just like you to look at this, and it's a document provided very recently by New Jersey. It's Bates stamped NJ06847 through NJ06850. Are you at all familiar with this enforcement action?

**A. No.**

Q. Do you know who in your office might have been involved in this enforcement action?

**A. In our office, no one.**

Q. Can you explain why?

**A. It's not our bureau. It's not our program.**



Q. So what program would this have been through?

**A. The Hazardous Waste Compliance and Enforcement.**

Q. Could you explain the difference between the two programs and what they deal with that are different?

**A. The Hazardous Waste program deals specifically with generators of hazardous waste as, I guess, defined under Resource Conservation and Recovery Act, RCRA.**

**And they do inspections at those facilities, make sure they're not storing things more than 90 days, if they're not permitted for that and enforce the RCRA regulations within New Jersey. So they're dealing with that particular program. We're working with the Spill Compensation and Control Act.**

Q. You deal with the Spill Compensation and Control Act. What was the act that this other group deals with?

**A. They do certain things under**



**solid waste. They do have some authority under certain sections of the Spill Act as well. And they do federal RCRA stuff.**

Q. Let's say that there was a spill of a hazardous substance or extremely hazardous substance at a facility. How would you determine which group would handle that issue?

**A. The first one would be whether it's a major facility or not. If it's not a major facility, we generally don't deal with it with our program.**

Q. So on this enforcement action dealing with Rhodia Pharma Solutions, Inc., this would not be considered a major facility likely?

**A. I haven't heard of them, so I doubt it.**

Q. If there was a spill even if it wasn't from a major facility and it was above a reportable quantity, would your office be notified?

**A. Specifically my program or do you mean the department?**

78

Q. Your program and/or the department.
**A. No. The department would be. Our program is not specifically.**
Q. When you say the department, just clarify for me what you mean by that?
**A. We have one central Communications Center to which all notifications go.**
- - -
**(Reddy-11 marked for identification.)**
- - -
BY MR. WALTON:
Q. I just had a document Bates stamped DE21809 through 21816 handed to Ms. Reddy. And I will represent to you that those are DNREC enforcement actions taken in the Delaware River.
And my question is: Do you have a similar list of enforcement actions, does your office or agency?
MS. BALINT: If you know.

79

BY MR. WALTON:
Q. If you know.
**A. As far as I know, we don't keep any list of actions taken specifically in the Delaware River or associated with the Delaware River.**
Q. As far as you know. So you wouldn't keep any record of events that occurred within the Twelve-Mile Circle?
MS. BALINT: Objection to the form of the question. It's my understanding that this document was created for the purpose of this litigation. And the foundation to your question represented it as a list that's kept by your department, which I think is an inaccurate foundation.
MR. WALTON: Could you read my question back again, please?
- - -
(The court reporter read the pertinent part of the record.)
- - -

80

THE WITNESS: We have it that all our enforcement actions are all in our database. They can be retrieved in any kind of way you want to do it. The general public can do it through our Web site even.
BY MR. WALTON:
Q. Do you have any personal knowledge of any enforcement actions that have taken place within the Twelve-Mile Circle by your office or your department?
**A. Our equivalent of the RMP program.**
Q. What's RMP?
**A. Risk Management Plan program, which in New Jersey it's called the Toxic Catastrophe Prevention Act program, or TCPA, recently took an action at DuPont which is currently being settled. They were fined $95,000 for violations of the requirements under TCPA.**
Q. And what are those

81

requirements?
**A. They have to deal with chemicals that if released cause instant death or incapacitation, so they require training of all operators who are involved with those kinds of chemicals. And they had a lot of people they hadn't trained in the past year, so it was a certain amount per each one of those people.**
**There are certain maintenance requirements. They have management of change requirements. So it was a lot of violations. It wasn't like one, big amount for one violation. It was a lot of things that added up to a large penalty.**
Q. To the best of your knowledge, were any of those violations related to anything that occurred in the Delaware River within the Twelve-Mile Circle?
**A. Within the Delaware, no.**
Q. I'm sorry, was that a no?

**A. Yes, that was a no.**
Q. From your personal knowledge, if something happens on a ship or a vessel in the Twelve-Mile Circle, you had a fire or release of a hazardous substance or anything, do you know if the Coast Guard is called?
**A. Yes.**
Q. And do you have any understanding of what the Coast Guard's protocols are for who gets notified about it?
**A. No.**
- - -
**(A recess occurred.)**
- - -
**BY MR. WALTON:**
Q. I'm going to refer you back to Reddy-10. I just wanted to clarify. Did you have any involvement in the Rhodia Pharmaceutical case?
**A. No.**
Q. Just some general questions: Are you involved in any way with coastal



zone consistency determinations?
**A. No.**
Q. Do you ever have occasion to review riparian rights or grants?
**A. No.**
Q. In your job or otherwise?
**A. No.**
Q. Have you ever reviewed the 1905 Compact?
**A. No.**
Q. Do you have any personal knowledge regarding police responses within the Twelve-Mile Circle?
**A. No.**
Q. Do you have any knowledge of fire responses in Delaware territory within the Twelve-Mile Circle?
**A. No.**
Q. Do you know if any area within the Twelve-Mile Circle is within any New Jersey fire district?
**A. No.**
Q. Do you know if any area within the Twelve-Mile Circle is within



any New Jersey police district?
**A. No.**
Q. Do you know if any area within the Twelve-Mile Circle is within any New Jersey emergency response district?
**A. That I'm not certain of.**
Q. Do you have any personal knowledge?
**A. Personal knowledge, no.**
Q. Do you know if there are any response boats for police, fire, emergency that are assigned to the area that's known as the Twelve-Mile Circle?
**A. No.**
Q. Does your office have any boats that could respond to an event or an emergency within the Twelve-Mile Circle?
**A. You mean specifically my bureau?**
Q. Yes.
**A. We have no boats.**
Q. And do you know of any other



bureau or department or designation, however you want to phrase it, that has boats that could respond to a fire or any other emergency within the Twelve-Mile Circle?
**A. There could, yes.**
Q. And who would those be?
**A. We have a Marine Police Unit within the state.**
Q. And where are they located, do you know?
**A. Specifically where they keep their equipment, I don't know.**
Q. From your personal knowledge, is there any other division besides the Marine Police Unit who would have a boat who could respond to emergencies within the Twelve-Mile Circle?
**A. I believe our emergency response people contract out for boats. And any others that are owned by the department are used for specific environmental purposes, not response.**

86

Q. When you say specific environmental purposes, what do you mean?
**A. Sampling in the ocean, getting biological water samples, things like that.**
Q. It's your understanding that there are other boats that are contracted out for particular uses or needs?
**A. It's my understanding that our emergency response people have contractors through whom they get what equipment is necessary for a given response.**
Q. Do you know if any of those contractors are assigned specifically to the area known as the Twelve-Mile Circle?
**A. I have no specific knowledge.**
Q. Any general knowledge?
**A. Generally that no, no one is assigned specifically anywhere as far as I know.**
Q. Do you know how many fire boats New Jersey has that patrol the

87

Delaware River, --
**A. No.**
Q. -- if any?
**A. No.**
Q. Have you personally gone down the Delaware River within the Twelve-Mile Circle ever?
**A. Actually out on the water?**
Q. Yes.
**A. Not that I can remember.**
Q. So you couldn't personally testify to what structures were out there?
**A. No.**
Q. I suppose then you couldn't testify to what outfalls or intakes are out there as well?
**A. Beyond what would be recorded on the general site plans that are required to be submitted with our plans, no.**
Q. And when you say with your plans, I just want to get my phraseology correct, that would be Discharge

88

Prevention Containment (sic), DPCC, and Discharge Cleanup and Removal plan. Is that correct?
**A. Yes.**
Q. I'd like to turn your attention to Reddy-1, which is your Declaration, if you recall. If I wanted to look up those plans that you referred to, specifically the DuPont, the Logan and the Conectiv plans, could I obtain a copy from your office?
**A. Say as a private citizen?**
Q. Yes.
**A. No.**
Q. Is there some sort of a confidential designation?
**A. Yes.**
Q. Could you explain just sort of the process or why it's given confidentiality?
**A. When the state passed their Open Public Records Act legislation a couple of years ago, the governor issued an Executive Order which specifically**

89

**exempted certain types of information from being available to the public. And the plans, the DPCC, DCR plans that my program receives, were specifically included in that exemption.**
Q. If someone violated their plan or their plan was insufficient in some way and some sort of enforcement action would have to be taken, could you sort of walk me through that process what would happen?
**A. If we go out and identify a violation, if the violation is something that's discovered during inspection, a Notice of Violation is written out on the spot. A copy is given to the facility. A copy is kept by the inspector. They bring that back to the office and record that in the database.**
**We have a grace period law which says certain violations are designated as being minor or not minor. If it's a minor violation, they're given a period of time in which they can**

90

correct the violation without a penalty.
So if it's minor, we'll wait until the time period they have is up, go out and re-inspect to make sure that they're now in compliance and then it's closed out. If it's not minor, it's raised to an Administrative Order and Notice of Civil Administrative Penalty Assessment.
Q. And then how did that process then go once that Administrative Order is issued?
A. It's issued with a deadline associated with it; this has to be corrected within this period of time and this is the amount of money that you have to pay. They have 20 days in which to appeal the order to say no, we didn't do it or we weren't that bad or whatever.
If they don't appeal, then when the time period is up within the document we, as before, go out, check, make sure that they're now in compliance, that they've paid their penalty and then

91

we close it out.
If they appeal, we'll go through a settlement process, try to sit down with them, work it out. If we can't do that, it gets turned over to the Attorney General's Office and a DAG is assigned and we go through the contested case process within the Office of Administrative Law.
Sometimes there will then also be, once the attorneys get involved, sometimes there's a settlement. Sometimes it goes all the way to there being a hearing in front of an administrative judge.
Q. When you get into this process, I'm not speaking either the minor violation or the major violation, when there's some action taken by your department, are those records then confidential under OPRA?
A. The records of our inspections and enforcement actions are not confidential.

92

Q. Appeals wouldn't be confidential?
A. Until the case is settled. I understand it is confidential. Once it's settled, then it becomes a public document.
Q. So with respect to the Logan, Conectiv, DuPont facilities, are you aware of any violations at those facilities?
A. Other than the one that I mentioned earlier with TCPA and DuPont?
Q. Other than the one you mentioned before.
A. I believe in the past we have issued some violations against DuPont. I don't recall specifically what they are. I'd have to go back and look it up. The other two, I don't remember there being any but that doesn't mean there hasn't been.
Q. But those would be accessible?
A. Yes.

93

Q. And based upon your knowledge, none of those occurred or none of those violations occurred with anything happening on a dock to the best of your knowledge?
A. Correct.
Q. With respect to the Keystone, DuPont and Conectiv facilities, just to be clear, is it your testimony that hazardous chemicals are produced, used or stored at those facilities?
A. Yes.
MR. WALTON: That's all I have.
MS. BALINT: I have a few points of clarification that I need to ask about.
- - -
EXAMINATION
- - -
BY MS. BALINT:
Q. Is one of the issues that the DPCC program requires a major facility to address the off site

94

consequences which could result from an incident at the facility?
A. Yes.
Q. Just for the record, what is an off site consequence?
A. Depending on what chemicals are stored at a given facility, there could be impacts to water, wetlands, vegetation, animals in the area, so that they have to look at specifically what's around their facility. And based on what they have on site, they determine what kinds of consequences there could be.
Q. And in what ways are the facilities required to address off site consequences?
A. They're required to map the area around the facility. They do a thousand feet around. It's like a buffer zone showing what's in the immediate area that might need to be addressed.
And then they have to do topographic maps covering environmental sensitive areas that cover an area as far

95

as the discharge could go or 15 miles, whichever is the smaller of the two. But a lot of them just go 15 miles because it's the easiest thing to figure out.
And we have a list of things that have to be mapped within that area that need to be addressed if there is a discharge. They use that information then to develop the response plan for the facility, on site and off site responses, with what equipment and personnel are necessary to deal with the given situation that they're looking at.
And so that they have to look at if it gets into the water which way is it going to go, where are we going to go to, either catch it or stop it, clean it up on land, where will it go, is it going to sink into the soil, are we going to need to do some digging, some neutralization, whatever. They incorporate that all into the plan and submit it to us.
Q. If a facility is located

96

adjacent to a state border, whether it be New York, Pennsylvania or Delaware, does the DPCC program exempt the mapping of the off site consequences beyond a state border?
A. Yes.
Q. You exempt it? You allow them not to map those?
A. No, we don't require them to map beyond the state border.
Q. Do you require them to plan for potential cleanup beyond a state border?
A. It's not specifically required, so they do what they need to do.
Q. For the three facilities we've been discussing today that are adjacent to the Delaware River, do their DPCC and DCR plans address off site consequences which could occur from the travel of spill pollutants into the Delaware River?
A. I believe they all address

97

within their mapping and whatnot seasonal sensitivity of the river, which would include things like the shad run, when the horseshoe crabs are going to be around and things like that because you have a different response in those situations than you might have at another time of the year, so they would have that in their plan.
Q. When a facility submits a DPCC or DCR plan to your bureau and your bureau is evaluating that plan, are there minimum regulatory requirements that your review requires?
A. We establish within our regulations what has to be in a plan and has to at least meet what's listed as being part of a plan.
Q. Does your bureau receive some plans which include additional policies or procedures that go above and beyond the DPCC minimum requirements?
A. Yes. And we sometimes receive plans that incorporate several

98

**programs, emergency response requirements within one document.**

Q. And are some of those additional policies or procedures the result of company policy?

**A. Sometimes, yes.**

Q. Are they sometimes the result of federal law requirements?

**A. Yes.**

Q. Is the plan acceptable to the DPCC program with those additional elements so long as the plan meets the DPCC regulatory minimums?

**A. Yes.**

Q. Earlier you discussed a recent TCPA enforcement action at the DuPont plant, the Toxic Catastrophe Prevention Act. Did any or all of those TCPA violations relate to the prevention of potential releases which could affect the Delaware River?

**A. I don't know that they would affect the Delaware River since the majority of what they deal with is gases**

99

**that go up into the air. I guess if it was raining it would affect the river but specifically probably not.**

Q. Depending on the wind conditions, could those gashes of emissions travel to Delaware air?

**A. Yes.**

Q. Does the DPCC program treat the major facilities that are located on the Delaware River within the Twelve-Mile Circle any differently than it treats other major facilities that are located along the Delaware River?

**A. No.**

Q. When you were discussing the various databases that the DPCC program records its data, you mentioned inspection data, violations data and enforcement action data that would be entered into the NJEMS database. Is that correct?

**A. Yes.**

Q. Are those subsets of data that you mentioned going into the NJEMS

100

the data that would be recorded by the Field Verification Section of your bureau?

**A. Both sections record information in NJEMS.**

Q. Right. But there's the Engineering Section of which you're the chief?

**A. Right.**

Q. And the other section is called what?

**A. Field Verification.**

Q. And the Field Verification Unit is tasked with the enforcement responsibilities for the section, for the bureau?

**A. Actually, it's whoever finds the violation is responsible for doing all the data entry, case management, whatnot. There are violations that are found during the plan review process, and those would also be recorded in NJEMS in the same way.**

Q. And all of the violations

101

that would be recorded would be shown publicly on NJEMS which is available over the Internet to the public?

**A. Yes.**

MS. BALINT: I have no further questions.

MR. WALTON: A couple of follow-ups just on that.

\- - -

EXAMINATION

\- - -

BY MR. WALTON:

Q. Start with the Enforcement Section which we were just talking about. Are you aware of any violation occurring on a dock or a pier within the Twelve-Mile Circle?

**A. No.**

Q. And when we talked about the facilities, counsel talked about the facilities and sometimes in their plans they have additional policies and procedures. For the DuPont facility, for the Keystone facility and for the

Conectiv facility, even if they put additional procedures into their plan, that doesn't exempt any of those facilities from following federal law, does it?

**A. No.**

Q. And going back to the DuPont and the air emissions, are you familiar with the notification requirements for air emissions for affected states?

**A. I guess it would be under what --**

Q. Under any --

**A. Because a lot of the chemicals that are in CERCLA, are gaseous, become air emissions. There's requirements for reporting exceedances of your permits received from the air program. There's gaseous things on our list that have to be notified for, so there could be all kinds of things that apply.**

Q. Let's just take the CERCLA piece for just right now. With respect



to that, if the air emissions affected Delaware, if there was an air emission above a reportable quantity under CERCLA, it would have to be reported to the National Response Center. Is that correct?

**A. Yes.**

Q. And the National Response Center would notify affected agencies. Is that correct?

**A. Yes.**

Q. So would it be likely that if an air emission, a hazardous substance was released and there was an air emission and it was going to affect Delaware that the National Response Center would notify Delaware emergency response authorities?

**A. It would seem so.**

MR. WALTON: Thank you. That's all I have.

MS. BALINT: We're done.

MR. WALTON: That concludes the deposition. Thank you.



CERTIFICATE

I HEREBY CERTIFY that the witness was duly sworn by me and that the deposition is a true record of the testimony given by the witness.

Kimberly S. Gordon, a
Registered Professional Reporter
and Notary Public
Dated: OCTOBER 25, 2006

(The foregoing certification of this transcript does not apply to any reproduction of the same by any means, unless under the direct control and/or supervision of the certifying reporter.)



LAWYER'S NOTES

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IN THE SUPREME COURT
OF THE UNITED STATES

* * *

STATE OF NEW JERSEY, : NO. 134, Original
Plaintiff, :
:
-vs- :
:
STATE OF DELAWARE, :
Defendant. :

* * *

Wednesday, October 4, 2006

* * *

Oral deposition of DAVID Q. RISILIA, held in the offices of NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION, BUREAU OF TIDELANDS, 9 Ewing Street, Trenton, New Jersey, on Wednesday, October 4, 2006, beginning at 9:36 a.m., before Kimberly A. Cahill, a Registered Professional Reporter and Notary Public in and for the State of New Jersey.

* * *

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INDEX

Testimony of: DAVID Q. RISILIA

By Mr. Attaway..... 5

EXHIBITS


| EXHIBIT NUMBER | DESCRIPTION | PAGE MARKED |
|---|---|---|
| Risilia-1 | 2/4/05 Deficiency Letter from Risilia to Blaha, NJ 01036-NJ 01067 | 67 |
| Risilia-2 | 4/19/05 Letter from Kosobek to Sikes, NJ 01081-NJ 01089 | 93 |
| Risilia-3 | Note and 4/12/05 Memo from Risilia to Kosobek, NJ 01068-NJ 01073 | 109 |
| Risilia-4 | 10/15/82 Letter from Moyer to DuPont, DUP0001021 | 129 |
| Risilia-5 | 5/4/01 Subaqueous Lands Permit to Chambers Works, DE19645-DE19649 | 129 |
| Risilia-6 | 4/7/04 Letter from Minner and McGreevey to Brownlee, DE25932 and DE25933 | 129 |
| Risilia-6A | Agenda and Attendee List, DE25974 and DE25975 | 129 |
| Risilia-7 | 3/1/05 Letter from Herr to Smit and Boehler with Subaqueous Lands Permit, DUP0001339-DUP0001343 | 129 |
| Risilia-8 | 9/24/91 Permit, NJ04403-NJ04409 | 142 |
| Risilia-9 | 9/7/94 Memo from Whitney to Distribution, DE27930-DE27935 | 152 |




DEPOSITION SUPPORT INDEX

Direction to Witness Not to Answer

| Page | Line | Page | Line | Page | Line |
|---|---|---|---|---|---|
| NONE | | | | | |

Request for Production of Documents

| Page | Line | Page | Line | Page | Line |
|---|---|---|---|---|---|
| 69 | 1 | 89 | 24 | | |

Stipulations

| Page | Line | Page | Line | Page | Line |
|---|---|---|---|---|---|
| NONE | | | | | |

Question Marked

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* * *

DAVID Q. RISILIA, after having been first duly sworn, was examined and testified as follows:

* * *

EXAMINATION

* * *

BY MR. ATTAWAY:

Q. Good morning, Mr. Risilia.

**A. Good morning.**

Q. My name is Scott Attaway and I represent the State of Delaware in this case, which is New Jersey versus Delaware, number 134, original, filed in the Supreme Court.

Before we begin, I just want to establish a few ground rules so that the deposition goes smoothly.

If you don't hear a question, please say so and I'll repeat it.

**A. Okay.**

Q. And if you don't understand a question, say so and I'll try to

6

rephrase it.
A. (Witness nods head.)
Q. And please give a verbal answer, because the court reporter can't take down a nod of the head.
A. Okay.
Q. And, also, be sure to let me finish my question before you start to answer so the court reporter will have an easier time taking down both of -- everything that each of us says.
A. Okay.
Q. Do you understand the instructions I've just given you?
A. Yes, I do.
Q. Okay.
Is there any reason of which you are aware that would prevent you from testifying truthfully today, medications, for example?
A. No, there is no reason.
Q. Okay.
Have you been deposed before?

7

A. Yes, I have.
Q. How many times?
A. One -- one time.
Q. Okay.
In what case was that?
A. It was a freshwater wetlands case that I was involved with at the land use regulation program. I don't remember the name of the case.
Q. Okay.
Do you remember what it was about?
A. It was about a wetland interpretation. A third party was appealing a wetland interpretation that I had performed.
Q. Okay.
And when did you testify?
A. I don't really recall. It had to be at least approximately nine years ago.
Q. Okay.
And did that -- did you testify in court after that, after the

8

deposition?
A. No, I did not.
Q. Did you give any other testimony in that case?
A. No, I didn't.
Q. Okay.
Other than conversations with counsel, what did you do to prepare for your deposition today?
A. For today's deposition? That's really it. I just was, you know, given instructions, general instructions, by counsel.
Q. Okay.
Did you review any documents in preparation for the deposition?
A. No.
Q. Have you read any pleadings in this case?
A. No, I have not.
Q. Did you talk to anyone else to prepare for the deposition besides counsel?
A. No.

9

Q. And when you spoke with your counsel -- I don't want to know anything about the substance of what was said, but just tell me, when you prepared, first of all, when you met with counsel.
A. I met with them on two occasions, yesterday and, I believe, earlier in the week, like Tuesday.
Q. Okay.
For about how long each time?
A. A couple hours on the first time and maybe an hour the second time.
Q. And who was there at the meeting? Again, I don't want to know what they said.
A. Barb Conklin and Eileen to my left.
Q. Okay.
At both meetings?
A. At the second meeting. At the first meeting, it was Eileen and Bill Anderson.
Q. Okay.

10

I just want to go over your background briefly --
**A. Sure.**
Q. -- before we get started.
Let's see. I guess we can start with your college education and go forward from there. So --
**A. Okay. I have a degree in biological science that I received from Rowan University in 1988.**
Q. And any postgraduate degrees?
**A. No.**
Q. Or studies?
**A. No.**
Q. After college, where did you work?
**A. I worked at -- I worked at the Department of Environmental Protection here in Trenton.**
Q. So straight out of college?
**A. Yes.**
Q. So when did you start at the DEP?

11

**A. I started at the DEP, I believe it was 1989.**
Q. And what was your title and job duties at that time?
**A. When I began in 1989, I believe I was an environmental specialist trainee and I worked -- I worked in the water resources program.**
Q. Okay.
And then after -- I assume you've had other positions in the department since then?
**A. Yes, I did.**
Q. What would be the next position that you had?
**A. After approximately two years, which probably would have been like around 1991, I transferred to the land use regulation program. I was an environmental specialist and I worked there for approximately nine -- nine or ten more years there.**
Q. What were your duties at land use regulation?

12

**A. As a project manager there, I was assigned and I evaluated projects under the Freshwater Wetlands Protection Act, the Stream Encroachment Act, the uses of coastal zone management under the Waterfront Development Act.**
Q. So the -- okay.
And what was your title in the land use regulation program?
**A. I believe it started out as an environmental specialist and then I went to a principal environmental specialist.**
Q. You mentioned a few of the coastal zone rules and laws. Was it your duty to read those laws and rules and implement them?
**A. Yes, it was.**
Q. Okay.
Starting approximately when?
**A. When I began there.**
Q. In 1991?
**A. Yes.**
Q. Okay.

13

And that would be the Waterfront Development Act, which you mentioned. What about the CAFRA? I think it's Coastal Area Facilities Review Act, if I've got that right?
**A. Yes, you do have that right. I -- I also worked under that act. The same governing rules apply for waterfront development and for CAFRA, which were the rules on coastal zones -- rules on coastal zone management.**
**So I did BP projects that were CAFRA applications as well as waterfront development applications, stream encroachment applications, and freshwater wetlands applications.**
Q. Okay.
So you said you were there for about nine or ten years starting in 1991. So I gather that in approximately 2001 or '2, you went to another position?
**A. Yes.**
Q. Okay.
Can you tell me about that?

14

A. Yes. I went to the Office of Dredging & Sediment Technology.
Q. And do you remember approximately when that was, what year?
A. It was about nine years ago, right after -- it would have probably been around 2000 -- yeah, right around -- it was probably around 2000, 2001.
Q. Okay.
A. Which would make it less than nine years.
Q. I thought you meant nine years after you started at land use, so -- which is what you said earlier.
A. Well, I worked at land use for nine years; and then when I went land use, I went directly to my present -- my present location, which is the Office of Dredging & Sediment Technology.
Q. Do you still have the same title now that you had when you joined the -- it's called the ODST. Right?
A. Correct.
Q. Okay.

15

A. Yes, I'm principal environmental specialist.
Q. And that was your title in 2001?
A. Yes, when I left land use regulation, it was.
Q. Okay.
And it's your title now as well?
A. Yes.
Q. As principal environmental specialist at ODST for the last five years, what have been your duties and responsibilities in that position?
A. Similar to my task and responsibilities at land use regulation, I was charged with the review of -- of projects, principally dredging projects, that were applications for projects that were submitted under the waterfront development rules or under CAFRA and also for federal projects that were submitted for federal consistency determinations.
Q. What is a federal

16

consistency determination?
A. It's a permit equivalent that is applicable to federal projects.
Q. When you say it's a permit equivalent, do you mean that it's a permit issued by the Department of Environmental Protection of New Jersey?
A. Well, it's not actually a permit. It is -- the Federal Government, I believe, has some sovereigning rights. They don't have to obtain permits, per se. They request consistency determinations, which is a finding that that federal activity would be consistent with the rules on coastal zone management.
So that's what a federal consistency is and that's --
Q. So are you in -- in assessing the federal consistency, are you assessing consistency with federal law of a particular project?
A. No.
Q. Okay.

17

I guess I'm just not following you, so can you try to explain again what you mean by federal consistency determination?
A. Okay. If the Federal Government is engaging in an activity that's occurring in state waters, for instance, they're dredging a federal channel that's in the State of New Jersey, the Federal Government needs to demonstrate that they are compliant with our rules on coastal zone management, which are the same rules that we use for waterfront development applications for the private sector, but because they're the Federal Government, they are not required to -- to apply for -- they don't pay a fee. They don't obtain a waterfront development permit.
They seek -- they get a -- if they are consistent, they get a federal consistency determination, which is a finding that they are consistent with the coastal zone management rules,

18

**N.J.A.C. 7:7E, et seq, which are the rules that govern waterfront development and CAFRA.**

Q. So is it fair to say that under that determination, while the Government wouldn't submit a permit application, you would effectively do the same analysis that you would do for a private party applying to do the same thing?

**A. Yes.**

Q. What is the difference between the land use regulation program and the Office of Dredging & Sediment Technology, which I -- I gather are both divisions within Department of Environmental Protection?

**A. We do -- both -- both offices do similar work, but the Office of Dredging & Sediment Technology, ODST, specializes in dredging projects. We exclusively review projects that involve dredging or port or maritime commerce facilities.**

19

**Whereas, land use regulation also deals with stream encroachment issues, freshwater wetland matters, and other marina activities that don't entail dredging.**

Q. Are you familiar with Delaware's coastal zone laws?

**A. No.**

Q. In the performance of your duties as a New Jersey regulator, do you interact with Delaware officials?

**A. Occasionally.**

Q. In what context has that happened?

**A. It occurred in -- I attended some oyster management meetings that were involving the lower estuary, and there were biologists from the State of Delaware there as well as New Jersey.**

Q. Anything else that you can recall?

**A. Yes. In the -- in prescoping meetings that were held for the BP LNG facility, there were members**

20

**of the State of Delaware present in some of those meetings.**

Q. You call these prescoping meetings. Can you explain what that means?

**A. As part of the -- the FERC process for seeking an application, the FERC has -- directs applicants to engage various regulatory agencies in -- in meetings in advance of the application.**

**And they -- they have these meetings in order to basically present the project before it's -- before it's formally applied for or during the early process of application.**

Q. Do you remember who you met with at -- from the State of Delaware?

**A. No, I don't.**

Q. About when would that have happened?

**A. I -- I don't recall for certain, but it had to be over two years ago.**

Q. How many meetings?

21

**A. What kind of meetings?**

Q. Prescoping meetings.

**A. I'm not certain, but there had to be at least -- I -- I -- at least three.**

Q. Were you present at each of those meetings?

**A. Yes.**

Q. Were there other meetings that you're aware of that you were not in attendance at?

**A. No, I'm not aware of meetings that I wasn't attending -- that I didn't attend.**

Q. What was the nature of Delaware's involvement in those prescoping meetings?

**A. As I recall, which was several years ago, I believe they had biologist staff there and people who administer their coastal zone rules, listening to the presentation of the applicant.**

Q. Did you speak with any of

22

these people from Delaware?
**A. I may have.**
Q. Who was it that you would have spoken to?
**A. If I had spoken to any of them, it would have probably been one of their fisheries biologists.**
Q. Can you recall his or her name?
**A. No, I don't recall.**
Q. Were there any discussions at that meeting about Delaware's regulatory jurisdiction over the BP project?
**A. No, there weren't.**
Q. When you say "Not a word," do you mean not at the meetings in which you were in attendance?
**A. Oh, I'm sorry. I said, no, there were not --**
Q. I thought you said "Not a word." If I misunderstood, please correct me.
**A. No, there were not. There**

23

**were no discussions.**
Q. Okay.
And when you say there were no discussions, I assume you mean no discussions at the meetings that you attended.
**A. Correct.**
Q. Were there small breakout groups? Were there small discussions that weren't in the full group of attendees?
**A. The meeting that I attended, one of the meetings was a fishery summit and that -- that -- it was represented by individuals from New Jersey and Delaware and their -- their -- and staff, like fisheries biologists.**
**So that was -- that was the meeting in which I recall Delaware being present.**
Q. Okay.
So is it fair to say that Delaware was interested in the environmental effects of the proposed BP

24

project?
**A. I don't know. I mean, I -- they -- they had staff there.**
Q. Their environmental staff were there?
**A. Correct.**
Q. Do you remember how many people were there from Delaware?
**A. I think there may have been two.**
Q. And do you remember the name of either person?
**A. No, I don't.**
Q. I gather that you're familiar with what the known as the 12 Mile Circle?
**A. Yes, I --**
Q. What is your understanding of the 12 Mile Circle?
**A. The extent of my understanding is that there's a circle that's circumscribed around the State of Delaware that comes up to New Jersey shore that -- that reaches the New Jersey**

25

**mean and low waterline.**
Q. How did you come to that understanding?
**A. Well, for one, it's depicted on maps, state maps. That's how I visually saw where the line was.**
**And then later, I have been -- been informed of it by -- by counsel.**
Q. When were you so informed by counsel?
**A. I don't remember the exact date, but sometime -- like, it had to be after -- after February of '05.**
Q. February of?
**A. 2005.**
Q. Before February 2005, were you aware of the 12 Mile Circle?
**A. No, I wasn't.**
**Can I -- can I elaborate on that?**
Q. Sure.
**A. I was aware -- prior to February 2005, I was aware that the Delaware state line was at the New Jersey**

26

mean low waterline, but I didn't really -- I didn't really know about the circle. I just knew that the state line had been -- was landward toward New Jersey.

Q. That brings us to my next question.

A. Okay.

Q. What is your understanding of the boundary between New Jersey and Delaware within the 12 Mile Circle?

A. It's really not -- my -- my understanding is limited, but I just understand that there is some -- a -- some charter that dates back into the 1800s that established this 12-mile radius.

And apparently everything on one side of that line is State of Delaware; and on the other side, it's the State of New Jersey.

Q. Do you know where the boundary lies between New Jersey and Delaware?

A. I only -- I don't know the

27

specifics of where the boundary lies. I -- I know -- I've just seen it on a map.

Q. Can you -- what is your understanding -- well, let me back up.

Is the boundary between New Jersey and Delaware within the 12 Mile Circle somewhere in the Delaware River?

A. Yes.

Q. Do you have an understanding of where in the Delaware River the boundary is?

A. Not really. It's a 12-mile radius, so that's a huge area. I mean, it's a pretty large area. I don't -- along -- and it's a radial line, so I don't know where that boundary is at along its entire breadth.

Q. So is it your understanding that the Delaware River flows in the shape of a circle?

A. No.

Q. You said earlier that your understanding was that the boundary between New Jersey and Delaware is in the

28

Delaware River somewhere.

Let me try asking again, do you know where in the Delaware River lies the boundary between New Jersey and Delaware?

A. At what discrete locale?

Q. Well, let's give an example. At the location of the BP project.

A. I -- I know that at the BP project -- or I believe, based on maps, that at the BP site, the Crown Landing site, that the -- the state line between New Jersey and Delaware lies at the mean low waterline.

I believe I said that earlier. I'm not --

Q. And that would be the mean low waterline on the New Jersey shore?

A. Correct.

Q. When did you come to that understanding?

A. I came to that understanding several years ago.

Q. Was it before or after BP

29

applied -- or before or after BP proposed its Crown Landing project?

MS. CONKLIN: I'm going to ask you to clarify the term "proposed."

BY MR. ATTAWAY:

Q. Well, let me just try the same question again.

When did you come to the understanding that the boundary between New Jersey and Delaware is at the mean low waterline on the New Jersey shore?

A. I initially came to understand that in approximately 2001.

Q. How did that come about?

A. I was involved in another project that -- in -- I was involved in a project called the DuPont Chambers Works facility.

Q. What was the nature of that project?

A. That was an environmental remediation project.

Q. What sort of remediation?

30

A. **There was contaminated material that had originated on the upland and had migrated waterward into the river.**
Q. And what sort of remediation was done to correct that?
A. **There was dredging performed and excavation.**
Q. How was the boundary between New Jersey and Delaware relevant to that remediation project?
A. **It was relevant in that apparently that area is also within the 12 Mile Circle and, therefore, the -- the State of Delaware's jurisdiction was at the mean low waterline of that locality.**
Q. Did you talk to Delaware officials in the course of reviewing the remediation project for Chamber Works?
A. **Yes.**
Q. Who did you talk to?
A. **I don't recall.**
Q. What was the nature of your discussions?

31

A. **I -- I inquired as to whether Delaware would -- had any interest in this project, because it was partially in the State of Delaware.**
Q. What was Delaware's response?
A. **They told me they had no interest in the project.**
Q. Did they say why?
A. **No.**
Q. You don't remember who told you that?
A. **Someone in their coastal management program.**
Q. Do you know if Delaware has ever issued a permit for any activities at the Chamber Works facility?
A. **The only thing I'm aware of is that they issued some kind of riparian instrument, but I'm not aware of any permits that were issued.**
Q. So you've been in the office of dredging for about five years; is that correct?

32

A. **Yeah.**
Q. Where geographically are the projects that you review in that position?
A. **The -- our office is regionally organized and I cover the Delaware River from Trenton to Cape May and from Cape May along the Eastern coast seaboard to approximately -- to Atlantic County.**
Q. Okay.
And -- so basically the Delaware River and the Atlantic coast; is that fair to say?
A. **And part of the Atlantic coast.**
Q. Part of the Atlantic coast. I don't know where Atlantic County is.
A. **Atlantic City would be --**
Q. Oh, okay. I know where that is.
A. **-- a good reference point.**
Q. So largely, speaking geographically, it looks like your duties

33

are focused in the Delaware River.
A. **Well, there's a significant amount of projects that I get that are on the Eastern seaboard, so I'm not limited to Delaware River.**
Q. Proportionally, is the greater focus of your efforts inside or outside of the 12 Mile Circle?
A. **Outside.**
Q. Is there a lot more development outside the 12 Mile Circle than inside?
A. **It just happens that most of the projects I get are outside of the 12 Mile Circle.**
Q. But you would get any project that involved dredging; is that correct?
A. **Within that geographic area, yes.**
Q. Within the office of dredging, can you just briefly describe the chain of command from yourself up to the top?

34

A. Yes. We have a chief. Her name is Suzanne Dietrick. She's my supervisor.
Q. So you report directly to Miss Dietrick?
A. Yes.
Q. How long has that been the case?
A. Since she became chief, which has been approximately four years.
Q. And before Miss Dietrick became chief, who did you report to?
A. Lawrence Baier, B-A-I-E-R.
Q. Was he also the chief?
A. Yes, preceded Suzanne Dietrick.
Q. I gather he was the chief when you came to ODST?
A. Correct.
Q. And when you came, you reported directly to him?
A. Yes, I did.
Q. Are there other people that report directly to the chief in ODST?

35

A. There are four other members of staff besides myself.
Q. Are they all, if I can remember your title -- was it principal environmental specialist?
A. I'm not aware of what each individual's title is.
Q. Do they perform similar duties or different duties?
A. Similar.
Q. Who are the other people in ODST?
A. Mark Davis; Jeff Thein, T-H-E-I-N; Gary Nickerson -- I'm sorry -- and myself, so a total of five including my section chief.
Q. Are you aware of an agreement between New Jersey and Delaware establishing the boundary between the states?
A. Can you be more specific?
Q. Are you aware of an interstate compact between New Jersey and Delaware that specifies that the boundary

36

between the states within the 12 Mile Circle shall be at the low watermark as it existed in 1934?
A. I'm aware that -- the instrument known as the Compact of 1905.
Q. This would be different. Are you aware of anything?
A. I'm only aware of the Compact of 1905 and that there is, I believe, a second Supreme Court ruling or finding that -- after 1905, but I haven't read that, so I'm -- I don't know the details of it.
Q. Are you familiar with the structures that exist in the Delaware River that extend from the New Jersey shoreline into Delaware territory?
A. I imagine there's thousands of them. I -- can you be more specific?
Q. What do you base that understanding on?
A. Well, did you say from New Jersey into Delaware?
Q. Right.

37

A. Oh, I'm sorry. I thought you meant from New Jersey into the river.
Q. In other words, similar to the proposed Crown Landing facility, it would be a structure -- for example, a wharf or a pier -- that starts on the upland in New Jersey and extends out in the water and crosses the boundary line and goes into Delaware beyond the mean low waterline.
A. I -- I understand now.
There is a cogeneration pier that's called, I believe, Keystone that's directly upriver of the Crown Landing BP site.
Q. Okay.
Did you have any involvement in issuing permits to Keystone?
A. No, I didn't.
Q. Any other structures that you know of?
A. Yes. I am aware of the DuPont Chambers Works facility that I spoke of earlier that resulted in a

38

**structure and a bulkhead that's in -- in the river.**
Q. When were those structures installed?
**A. The latter -- the DuPont facility?**
Q. Right.
**A. I believe the permit was issued in around 2001.**
Q. Do you know what that permit was for?
**A. Yes. That was for the remediation of contamination, the removal of contaminated soil and sediment and for the construction of a sheet pile bulkhead in the Delaware River. And there was some other upland cleanup also involved in that.**
Q. Which I assume would have been in New Jersey?
**A. Yes.**
Q. Not in Delaware?
Any other structures?
MS. CONKLIN: Counsel, I'm

39

sorry. I've lost my train of thought. Are we talking about in the entire Delaware River or --
MR. ATTAWAY: Within the 12 Mile Circle.
MS. CONKLIN: Thank you.
THE WITNESS: Thanks.
They're the only two projects that I'm aware of.
BY MR. ATTAWAY:
Q. So as far as you know, currently, there are two structures extending from New Jersey into Delaware within the 12 Mile Circle?
**A. Yes, to my knowledge.**
Q. Are you aware of any other structures that might have existed at a previous point in time, but no longer exist?
**A. There could be some derelict piers, but I don't have any direct knowledge of them.**
Q. In the context of your job as a regulator -- again, I know we've

40

gone over this ground a little bit, but -- I take it you have occasion to have an understanding of New Jersey's and Delaware's regulatory authority within the 12 Mile Circle.
**A. My understanding of the regulatory authority is limited to where the state boundaries are.**
Q. What is your understanding of the effect of the state boundary on each state's respective regulatory authority?
**A. Can you say that again?**
Q. Okay.
What is your understanding of the effect of the state boundary on Delaware's and New Jersey's regulatory authority?
**A. My understanding is that our regulations, the Coastal Zone Management Rules, start with jurisdiction; and jurisdictions are based on boundaries, so activities falling within given boundaries are subject to various, you**

41

**know -- the various regulations.**
Q. Is it your understanding that Delaware would have regulatory authority on its side of the boundary?
**A. I don't really -- yeah, I imagine. I don't really know how Delaware's Coastal Zone Management Rules are structured, but generally speaking, we -- we establish jurisdiction based on boundaries.**
Q. Okay.
And has that been your understanding throughout your tenure at DEP, both at the ODST and the Land Use Department?
**A. Generally, I have -- the projects that I've been involved with were always in New Jersey, with the exception of the DuPont Chambers Works and this project, so I have not encountered boundaries prior to that.**
**I'd like to clarify something, please?**
Q. Sure.

42

A. When I spoke of boundaries and jurisdictions, it's always been my understanding that jurisdictions are established based on a state limit.

But after I came to understand the Compact of 1905, it was brought to my attention that New Jersey's jurisdiction was beyond what was defined as the state boundary.

Q. Okay.

When did you first become aware of the Compact of 1905?

A. Sometime after February of 2005.

Q. Who brought that to your attention?

A. Our attorney -- our Attorney General's office.

Q. When did that occur?

A. Probably March or -- March or April of 2005.

Q. So what is your understanding of how the compact of the -- what is your understanding of the

43

effect the Compact has on New Jersey's jurisdiction within the 12 Mile Circle?

A. Well, I'm not a lawyer, and the Compact is a legal document, so in general terms, I understood or -- that it -- it establishes that New Jersey has -- have rights to govern activities that originate from its shoreline that enter into the -- that go within -- within and encompass the riparian areas.

Q. What is your understanding of the effect of the Compact on Delaware's regulatory authority within the 12 Mile Circle?

A. I have limited understanding of Delaware's interest in it.

Q. Please explain whatever the limits of your understanding are.

A. Well, in general, I understand the same thing applies to projects originating on the Delaware side of the river.

So if a project is located on -- on the opposite shoreline, like on

44

Wilmington, and it extends riverward, then I -- I believe that Delaware has jurisdiction over riparian areas that extend out from that shoreline.

Q. What is your understanding of the word "riparian"?

A. As I understand it, it -- it means areas flowed or formerly flowed by tide water that originate from a bank or a shoreline.

Q. When did you come to that understanding?

A. I don't -- I don't know exactly when.

Q. Was it recently?

A. No.

Q. Approximately what year?

A. When I began early in my career doing -- reviewing waterfront development permits.

Q. So riparian is part of the jargon that -- was riparian part of the jargon that you worked with at that time?

A. Yes.

45

Q. And in what context did the word "riparian" come up?

A. In the context of reviewing waterfront development permits, applicants are required to demonstrate that they have ownership of those riparian areas.

So, therefore, it's a requirement that the -- that an applicant showed that they have an instrument, which is a grant, lease, or license.

So we frequently use riparian -- in virtually all of our waterfront development permits, there is language and reference to the Bureau of Tidelands and riparian rights.

Q. So you mentioned riparian grants. Is that what you're referring to?

A. Riparian instruments, which include grants, leases, and licenses.

Q. Okay.

Are you or have you ever been involved in issuing the riparian

46

instruments?
A. **No, I don't get involved in that.**
Q. In reviewing the applications for a riparian instrument?
A. **No.**
Q. Who reviews and approves or denies an application for a riparian instrument?
A. **The Bureau of Tidelands.**
Q. So aside from the requirement that -- well, let me just make sure I understand you.
If I understand your testimony, you said that before you can issue or your department can issue a permit under the waterfront development law or CAFRA or the other wetlands laws, the applicant first must get a riparian instrument from the Bureau of Tidelands.
Did I understand that correctly or not?
A. **Not exactly.**
Q. Okay.

47

If you could clarify it for me, I'd appreciate it.
A. **A requirement of approval for waterfront development permits is that the applicant must have applied for and subsequently receive a riparian instrument from the Bureau of Tidelands.**
Q. Does that mean that the applicant has to -- the applicant could apply for a permit from your department with a tidelands application on file that had not yet been acted on. Is that what you're saying?
A. **That's correct.**
Q. Okay.
A. **Yes.**
Q. And then in order for your permit to be valid, the riparian instrument has to be granted.
A. **Yes.**
Q. And why is that?
A. **That's -- that's the way our laws are written.**
Q. As a regulator, I -- for the

48

past 15 years in New Jersey or perhaps longer, I gather you have an understanding of the logic behind that rule. If you do have an understanding, I'd like to hear it.
A. **That's the rule. I mean -- I -- I presume that it's basically designed to assure that someone owns the area in which the work is being authorized to occur.**
Q. So is the purpose of getting a riparian instrument to give the permit applicant property rights in the land on which the activities proposed in the permit application will be conducted?
MS. CONKLIN: Excuse me. I'm sorry. We're not establishing a foundation here for this question.
He -- he keeps saying that he knows that the law requires this, but now you're asking him what the -- what the law means and I'm going to have to object to

49

that.
Maybe -- you want to try and rephrase that?
MR. ATTAWAY: Okay.
BY MR. ATTAWAY:
Q. What right does the riparian instrument give the recipient?
A. **It gives them a right to conduct the authorized activity in the subject area.**
Q. The riparian instrument does.
A. **Yes.**
Q. Can they conduct an activity that would require a permit from your department without applying for a permit from your department?
A. **I don't understand that.**
Q. If an applicant has a riparian instrument, can they just go off and do anything they want on those -- on the lands covered by the riparian instrument?
A. **If the -- if it's a**

50

regulated activity pursuant to the waterfront development rules, then it would require a permit to be done.

Q. Okay.

For example, BP could get a riparian instrument for the lands involved, but would that, without more, authorize them under New Jersey's laws to build a proposed Crown Landing project?

A. No. They would also need a waterfront development permit and whatever other requisite state and -- and local permits are required.

Q. Okay.

Is it your understanding that there are multiple such permits that would be required?

A. In what case?

Q. In the BP case.

A. Yes.

Q. Are you familiar with the phrase "riparian rights"?

A. Just generally.

Q. And what is your

51

understanding?

A. Well, I've always -- I believe that riparian rights are clumped under the term of instruments, which is a lease, grant, or a license.

Q. What kind of right is a riparian right in your understanding as a regulator?

A. I don't administer activities. I don't administer the riparian instruments, so I'm not familiar with what kind of rights would be associated with an instrument.

I believe that they are listed in a specific instrument, whether it be a lease, license, or a grant, so the activities that are authorized under those instruments are subject to the Bureau of Tidelands and I don't -- we don't regularly see the final product of what comes out of a riparian instrument.

When I say "we," I mean our office, the Office of Dredging & --

Q. Right.

52

In reviewing and approving permits in the Land Use Division where you were formerly and in the ODST where you are currently, did you have occasion to assess the scope of someone's riparian rights in evaluating the permit application?

A. Occasionally.

Q. In what context?

A. For instance, if someone was proposing a pier or to dredge in the water, we would ask that they show us the footprint of their -- their -- of their instrument area, the leased or licensed area.

So there would be a depiction in the water or on a plan of this riparian area -- sometimes they refer to it as riparian rights area or riparian grant area -- and we would look at the activity within that area to be sure that the work was within the subject area.

Q. Aside from making sure that

53

the permit application concerned only the geographic areas that were covered by the riparian instrument, did you have any other occasion to look at or think about riparian rights?

A. Seldom. Principally what we looked at was the footprint of where the work was proposed with respect to that riparian instrument.

Q. In assessing the activities that were proposed in the permit application, did you ever have occasion to consider the intersection of those activities and -- and riparian rights, aside, again, from making sure that the activities are going to be conducted geographically within the scope of the riparian instrument?

A. There may have been an occasion where there was two property -- two properties abutting each other in the water that had dots that were either overlapping or near each other in which one party disputed the extent of the

54

riparian right of the other party.
And -- and we may have -- on occasion, I may have tried to look at the riparian language, but in most cases -- in all those cases, it was always referred to the Bureau of Tidelands for resolution.
Q. So when you say that one party with a wharf would perhaps dispute the riparian rights of another owner of shore land, do you mean that they would dispute the scope of their riparian instrument geographically?
A. Either the scope or the activity occurring within one of those areas.
Q. Have you ever heard the phrase "riparian jurisdiction"?
A. Yes.
Q. When did you first hear that?
A. I don't recall.
Q. Do you recall a year?
A. No.

55

Q. Was it recently?
A. No. I -- that's a term that, if I've heard it, it's been used intermingled with riparian grants or riparian claims or riparian rights, so, you know, I don't have a direct recall of that specific term.
Q. Is that a term that you work with regularly in your duties as a regulator?
A. Riparian jurisdiction? Not really, no.
Q. So is it fair to say that you might have heard the term once or twice, but it's not something that impacts your job in any real way?
And when I say "your job," I mean your day-to-day performance of your activities.
A. I don't know how to answer that question, because I believe riparian jurisdiction has been referred to in a broad manner with making other references to riparian claims or in areas owned by

56

the State, so I -- I don't have a -- there's not a clear distinction in where that term applied versus the other -- the other issues, the riparian instruments and riparian claims.
Q. What is your understanding of what the term means?
MS. CONKLIN: Which term?
MR. ATTAWAY: Riparian jurisdiction. Thanks.
THE WITNESS: I don't really -- I don't apply that, so I don't really have an opinion on what it means -- or an understanding, I should say, of what it means.
BY MR. ATTAWAY:
Q. You mentioned the 1905 Compact earlier, and I believe you said that it was brought to your attention in March or April of 2005.
Has your department -- well, okay. Has ODST ever relied on the 1905 Compact to assert that Delaware lacks jurisdiction to regulate a project that

57

begins in New Jersey and extends into Delaware?
MS. KELLY: I'm going to object to that. That's kind of vague and -- you're talking about his specific department?
MR. ATTAWAY: Yes.
MS. KELLY: Okay.
THE WITNESS: Can you ask me that again? Can you repeat that?
MR. ATTAWAY: Sure. I'd be happy to.
BY MR. ATTAWAY:
Q. Has ODST ever relied on the 1905 Compact to assert that Delaware lacks regulatory authority over a project extending from New Jersey into Delaware?
A. No.
Q. Do you know whether the DEP or anyone else in DEP has relied on the 1905 Compact to assert that Delaware lacks regulatory authority over a project that extends from New Jersey into Delaware?

58

A. **Well, I believe that the Division of Law has asserted -- asserted that through their lawsuit, and I believe the Bureau of Tidelands has made that assertion that the Compact -- that Delaware lacks jurisdiction to regulate a specific project.**

Q. I'll take those one at a time.

When did the Division of Law assert that Delaware lacked such authority?

A. **When they provided guidance back to me that included the Compact.**

Q. And that was in March or April of 2005, as far as you can recall?

A. **Yeah, I believe that's when it was.**

Q. What about the Bureau of Tidelands? When did they assert that Delaware lacks such jurisdiction?

A. **Approximately the same time.**

Q. Do you know whether the Division of Law or the Bureau of

59

Tidelands ever asserted that claim before March or April of 2005?

A. **I don't know.**

Q. You have no knowledge of -- you've never heard of such a claim.

MS. CONKLIN: Wait a minute. You just -- I'm sorry. Are we talking about his knowledge of when the Division of Law ever asserted this claim; is that the question?

MR. ATTAWAY: That is.

THE WITNESS: I -- I wouldn't -- you know, I'm not aware of when they have -- if they have done that in the past.

BY MR. ATTAWAY:

Q. Okay.

And you're similarly not aware whether or not the Bureau of Tidelands has asserted that Delaware lacks jurisdiction within the 12 Mile Circle in Delaware?

A. **I'm not aware.**

60

Q. Are you aware of any other New Jersey governmental entity that has made that claim?

A. **No.**

MR. ATTAWAY: This would be a good time to take a break for me.

MS. CONKLIN: Sure.

MR. ATTAWAY: If you guys are ready.

MS. CONKLIN: Sure.

* * *

(Whereupon, a recess was taken from 10:37 a.m. until 10:49 a.m.)

* * *

BY MR. ATTAWAY:

Q. I want to ask some questions about the Crown Landing project now.

Just --

MS. CONKLIN: Counsel, I'm terribly sorry, but when we talk about Crown Landing, we're also talking about the project known as

61

the -- also known as the BP project, the LNG project, which is currently pending before -- an application which is currently pending before DEP; correct?

MR. ATTAWAY: That's correct.

The BP project and Crown Landing project, I use interchangeably; but if there's one that you prefer to use, we can take one and stick with it.

THE WITNESS: No, we can just refer to it as the Crown Landing.

MR. ATTAWAY: Okay.

BY MR. ATTAWAY:

Q. So what is your understanding of the nature and scope of the Crown Landing project?

A. **Well, I understand that there's an application that's been pending since January 2005 and it's for a container facility to receive liquefied**

62

natural gas ships that are to make port there and off-load their contents, which is then distributed through several gas pipelines, into the gas pipeline system.

Q. Does part of the proposed project extend into Delaware?

A. Yes.

Q. What is your understanding of the portion of the project that extends into Delaware?

A. That there is a -- a pier proposed within that locality and that there's dredging in that location, and I understand that the ship would be -- would be docked there.

Q. How is the LNG off-loaded?

A. It's pumped off by cryogenic -- it's a liquid, so it's pumped off in -- into unloading arms that contain -- that would contain a cryogenic pipe and which the pipe makes landfall.

And then the -- the product is then pumped into tanks that would be -- or proposed to be located on the site.

63

Q. Describe the cryogenic unloading arms.

A. They're a mechanical arm, like a boom or a derrick. It's a mechanical arm that would extend out from the dock to the -- to the ship, and there is a connection that's made between the -- between the arm and the ship.

And then the material -- the -- the liquefied natural gas would be pumped up into the arms and then conveyed into the pipeline that would extend along the pier onto the land.

Q. Is there any processing equipment on the pier to enable this to happen?

A. I don't believe so.

Q. What -- just give me a description of what the portion of the pier will look like -- the portion that's used to unload the LNG.

A. It would be a linear structure, pile supported.

Q. Any structures on the end of

64

it?

A. There would be a -- a welded cryogenic pipeline with a concrete trough that would contain any spilled or lost product. That would extend along the length of the pier to the terminal end at which there would be those arms that I just described or derricks that are swung over to the ship, connecting the ship to the pier.

Q. So when the ship pulls up, it connects to the cryogenic arms?

A. Yes, as part of the unloading process, it would.

Q. How common is it to have the product spilled or lost, as you mentioned when you were talking about the concrete trough?

A. I don't know -- I don't believe that it is common. That's a safety precaution that the FERC is requiring of the -- of the applicant, Crown Landing.

Q. Okay.

65

So the gas is in the form of a liquid at that stage, so if any leaked out, it would still be in the form of a liquid; is that correct?

A. Yes.

Q. And would -- the plan is to contain it within the concrete trough?

A. The concrete trough is essentially -- acts as an aqueduct or viaduct. If material -- if liquefied natural gas spilled into it, it's a liquid and it would just flow by gravity in the containment trough to a sump, where it would be recovered and pumped into the tanks on -- that are located on shore.

Q. Where is the sump located?

A. At the -- the landside end of the pier.

Q. So the trough goes the full length of the pier?

A. As proposed, the -- the trough would -- yes, it would run the entire length of the pipeline.

66

**Now, I don't know if it goes the entire length of the pier, because at some point, the pipe might come off the pier.**

**Obviously, it does. It -- the trough actually would extend longer than the pipe -- longer than the pipe scope on the pier, because the trough would go onto shore.**

Q. So the concrete trough would be as long as the pier, plus enough to get it onto the upland?

**A. I believe so, yes.**

Q. And the theory is that the gas -- the spilled gas would flow in liquid form down the trough and then would be pumped in New Jersey on the shore into some tank?

**A. Yes.**

Q. Some sort of tank?

**A. Yes, generally.**

MR. ATTAWAY: We can go off the record.

* * *

67

(Whereupon, a discussion was held off the record.)

* * *

(Whereupon, a document was marked for identification as Risilia-1.)

* * *

BY MR. ATTAWAY:

Q. Okay, Mr. Risilia. You've had a chance to look at what we've just had marked as Risilia Exhibit No. 1?

**A. Yes.**

Q. And please describe your understanding of this document?

**A. The document appears to be a deficiency letter for the Crown Landing BP LNG application. It's dated February 4, 2005, but it's unsigned.**

Q. Is there a signed version?

**A. Yes.**

Q. Do you notice that this has what are called -- do you know what Bates numbers are? It's what the lawyers use to refer to documents that have been

68

numbered for a particular case.

Do you see that, in the lower right-hand corner, these are marked NJ, for New Jersey, and it's 1036 through 1067?

**A. Yes, I --**

Q. Is that correct?

**A. I see that.**

Q. This document, I'll represent to you, was produced to Delaware by New Jersey in discovery, and I realize that it doesn't have a signature, but it is the one that we were given by New Jersey.

Can you look at this letter and tell whether this is the letter that was sent?

**A. It appears to be, although the one -- the one I'm familiar with has the signatures -- has my signature.**

Q. Do you have a copy of that?

**A. I don't have it with me.**

Q. In your office?

**A. Yes.**

69

MR. ATTAWAY: Okay. Would you mind giving it to your counsel?

And I would ask New Jersey counsel to transmit to Delaware with Bates stamps the signed version of this letter.

I'll also represent to you that I went to the FERC web site and this letter is also produced there, and I believe Delaware has produced this in discovery with Delaware Bates numbers, but it's also unsigned and it doesn't have a letterhead.

That's my recollection. I think that's correct, but the record is what it is.

Okay. Well, if -- if after the deposition you discover that this letter is not the final -- doesn't have the same text as the signed one, I'd appreciate it if you would tell your counsel and

70

that counsel would let me know.
THE WITNESS: Okay. Sure.
MS. CONKLIN: Just for the record, we have no reason to believe that this is -- that there is any other form of this letter.
This is the final form of the letter that we are aware of that Mr. Risilia did actually issue, but I'm going to instruct -- instruct you, since you are the author of the letter, if you see something in there that is unfamiliar to you or causes you -- makes you pause, please let us know.
But to our knowledge, this was the letter that was actually sent out.
THE WITNESS: It could be that this letter was conveyed electronically initially --
MS. CONKLIN: Yes.
THE WITNESS: -- and

71

therefore you do not have the one that was signed.
MS. CONKLIN: But we will get it for Delaware and we will get it for you as well.
THE WITNESS: Because when we filed -- when we filed with FERC, it was done electronically, when we conveyed this letter to FERC. So that would account for it. It wasn't scanned. It was sent as a file.
MS. CONKLIN: Understood.
THE WITNESS: So that could be why it was not signed. I don't know for certain. I'm just --
MR. ATTAWAY: Yeah, it happens. Yeah --
THE WITNESS: -- offering a --
MR. ATTAWAY: Okay.
BY MR. ATTAWAY:
Q. So -- well, one of my questions was, was this filed at FERC?

72

And I think you just said that it was; is that correct?
**A. Yes.**
Q. And it's a letter from you dated February 4th, 2005 to Mr. David Blaha, Environmental Resources Management in Annapolis, Maryland.
Do I have that correct?
**A. Yes.**
Q. Who is Mr. David Blaha?
**A. He's the lead environmental consultant representing Crown Landing.**
Q. And his company is Environmental Resources Management, I gather from the letter?
**A. Yes.**
Q. Did you have frequent dealings with Environmental Resource Management?
**A. In the context of this application, I did, yes.**
Q. Yes. That's what I meant to ask. Thanks for the clarification.
It's a 32-page letter; is

73

that correct?
**A. Yes.**
Q. Would it he fair to say that a lot of work went into producing this letter?
**A. Yes.**
Q. And it's signed by you. Was it prepared exclusively by you?
**A. Yes.**
Q. Did you get input from anyone else?
**A. Yes.**
Q. From whom?
**A. From my Division of Fish & Wildlife, from our -- from the department's air program. I may have gotten comments -- editorial comments from my supervisor, who it went through, and other members of management who it went through before it was issued.**
Q. And your supervisor at the time was Miss Dietrick?
**A. Yes.**
Q. So you got comments from

74

Miss Dietrick on the letter before it went out?
A. **Yes.**
Q. And you just mentioned some other folks and I didn't catch it. I'm sorry.
Earlier, you mentioned fish and wildlife.
A. **Yes.**
Q. And then more recently you said something else.
A. **It went through the division -- I received comments from the Division of Fish & Wildlife and I received comments from our air program, which -- let me refer -- the bureau of -- I'm reading from page 28 of the document, 01063, the Bates number, and the program is the Bureau of Air Quality Planning.**
**There may be other agencies that provided comment to me as well. I --**
Q. Is it fair to say that this letter was widely circulated within DEP

75

before it was sent out and filed at FERC?
A. **Yes.**
Q. Was it reviewed by any counsel?
A. **No. Not to my knowledge.**
Q. Just looking at page 32, the last page of the document, there's a list at the bottom of -- it says C, colon. I assume these are people that were copied on the letter.
There's a Daniel Ryan, New Jersey DEP Special Assistant to the Commissioner.
Who is Mr. Ryan?
A. **He's employed by the department --**
Q. Oh, she?
A. **He. I'm sorry.**
Q. I'm sorry. It must be the jackhammer outside. Okay.
What is his -- I know it says special assistant. What does that mean?
A. **I believe he -- be works in**

76

**the Commissioner's office and assists the Commissioner. I don't know what his job duties entail.**
Q. Okay.
Do you know whether he's a lawyer?
A. **I don't know whether he is or is not.**
Q. Did he provide comments on this letter?
A. **No.**
Q. Did any of the Commissioners provide comments on the draft letter before it was sent out?
A. **Not to my knowledge.**
Q. Would comments have gone to someone else for insertion into the letter without your knowledge?
MS. CONKLIN: I'm sorry. I'm not -- I'm unclear about that.
You receive comments from people. You don't send comments to people. I'm -- could you rephrase that?

77

Could you rephrase your question?
MR. ATTAWAY: Sure.
MS. CONKLIN: Because he didn't say he sent comments out. He's been receiving comments.
MR. ATTAWAY: That's what I meant to say. Maybe I misspoke.
MS. CONKLIN: Yeah.
MR. ATTAWAY: Okay.
BY MR. ATTAWAY:
Q. Did you receive -- let me just back up.
You said that you're not aware that you received comments from any of the Commissioners; is that correct?
A. **That's what I said, and we only have one Commissioner. I mean, there are -- if you're making reference to Assistant Commissioners -- I don't --**
Q. How many Commissioners are there?
A. **There's only one Commissioner.**

78

Q. And how many Assistant Commissioners?
**A. There are numerous Commissioners.**
Q. Numerous? More than five?
**A. Probably. I don't know for certain. I know there is an Assistant Commissioner of the site remediation program that I work under, and I believe he reviewed this -- this before it was sent.**
Q. Who is the Assistant Commissioner for site remediation?
**A. Presently, it's Irene Kropp.**
Q. Is that the person that reviewed this?
**A. No.**
Q. Who was the Assistant Commissioner that reviewed this letter that you just mentioned?
**A. Joseph Seebode.**
Q. Did Mr. Seebode provide comments?
**A. Yes.**

79

Q. Did his comments concern in any way the scope of Delaware's regulatory authority over the project?
**A. No.**
Q. Turning to page 1 of the document, the third paragraph reads -- and I just want to read it into the record and I'd like you to either confirm that I read it correctly or correct me if I misread it -- it says, "The project site is located in the States of Delaware and New Jersey. Accordingly, activities taking place from the mean low waterline, open paren, capital MLWL, close paren, outshore are located in the State of Delaware and therefore are subject to Delaware Coastal Zone Management Regulations. Activities or associated impacts to New Jersey's coastal resources occurring from the MLWL landward are the subject of this application."
Did I read that correctly?
**A. Yes.**
Q. I believe you testified

80

earlier that you did not have an understanding of the scope of Delaware's regulatory authority within the 12 Mile Circle.
But if I'm reading this correctly, this letter signed by you says that anything beyond the mean low waterline is located in the State of Delaware and therefore is subject to Delaware coastal zone management regulations.
Is that your -- is the text in the letter -- does this refresh your recollection as to your understanding of Delaware's authority?
MS. CONKLIN: Pursuant to what?
MR. ATTAWAY: Well, as I recall, Mr. Risilia testified that he -- that he didn't have an understanding about whether Delaware had regulatory authority within the 12 Mile Circle.
MS. CONKLIN: He didn't --

81

well, whatever you think he testified to is -- I can't stop you from phrasing it that way. Go ahead.
MR. ATTAWAY: If he remembers -- you know, if he has a different recollection, he can say so.
THE WITNESS: I believe -- I'm sure that I testified that I was not aware of the scope of Delaware's regulation or authority within -- within New Jersey's -- or within 12 Mile Circle, but I was aware that -- that the -- the project was occurring in the State of Delaware.
MR. ATTAWAY: Okay.
BY MR. ATTAWAY:
Q. And you had said that your working assumption at that time was that anything within Delaware was subject to the jurisdiction of Delaware.
**A. That's -- yeah, that's**

82

**correct.**
Q. Okay.
And so this letter is consistent with that understanding.
**A. The understanding at that time, yes.**
Q. Turning to page 11 of the document, which for the record is Bates NJ 01046, there's a paragraph that's all in bold near the bottom of the page. And I'll give you a moment to read that. It's about three sentences.
(PAUSE)
THE WITNESS: Okay. I've read it.
BY MR. ATTAWAY:
Q. The last sentence states, "The applicants' response to this Rule may be limited to the portions of the pier located in New Jersey."
Let me just back up to lay a better foundation. It starts out -- it says, "This Rule requires" -- and it's referring to a rule under New Jersey

83

regulation -- New Jersey rule "requires that the length and width of a dock or pier be limited to only what is necessary for the proposed use."
And then the last sentence of that paragraph says, "The applicants' response to this Rule may be limited to the portions of the pier located in New Jersey."
I gather that's consistent with the statement we just looked at on page 1, that anything beyond mean low waterline would be subject to the regulation of Delaware and not New Jersey; is that correct?
**A. At the time of that writing, yes, it was my understanding.**
Q. When you sent the draft out for review, was the statement that we just discussed on page 1 in the draft that you sent?
**A. The statement in paragraph 3?**
Q. On page 1 -- yes, I'm sorry,

84

paragraph 3.
**A. Paragraph 3, page 1, yes, I believe that was in -- I mean, I believe that was unchanged.**
Q. Okay.
And, similarly, on page 11 is the statement that we just discussed.
Was that paragraph in the draft that you circulated internally to various people?
**A. I believe so.**
Q. And turning to page 13, there's a paragraph all in bold at the bottom of the page. It carries over to page 14.
I'm just going to ask you a question about the first sentence, so take your time to read as much as you would like for context and let me know when you're ready.
(PAUSE)
THE WITNESS: Okay. I'm ready.
BY MR. ATTAWAY:

85

Q. The first sentence of that passage states that the dredging associated with this project is located outside of New Jersey's tidal waters; however, impacts associated with, or stemming from, dredging work are subject to State purview via certain CZM rules.
What does CZM stand for?
**A. Coastal zone management.**
Q. And that's New Jersey's Coastal Zone Management Rules?
**A. Yes.**
Q. So is this paragraph taking the position that your department would review the dredging located outside of New Jersey because it would have effects inside New Jersey?
**A. This paragraph, as I understand it, it indicates that -- that the State of New Jersey could have regulatory concern about activities occurring outside of its state boundary.**
Q. Okay.
Did your draft letter --

86

your draft of this February 4th, 2005 letter, was that also sent to the Commissioner of DEP?

**A. I don't -- I don't recall transmitting it to the Commissioner.**

Q. Do you know if someone else did?

**A. I -- I have no -- no way of knowing.**

Q. Do you know if some people that you circulated the draft to then forwarded the draft on to additional persons for review?

**A. I have no means of knowing.**

Q. Well, were there any forwarding messages that you were copied on?

**A. I -- if I circulated the draft -- or when I circulated the draft, I believe I circulated a paper copy to Assistant Commissioner and to my supervisor.**

**But they -- but my supervisor had -- I'm pretty sure she had**

87

**an electronic copy. She could have -- she could have forwarded it to others that I would not be aware of.**

Q. Okay.

Do you have a draft -- the draft that you circulated for review?

**A. No.**

Q. What happened to it?

**A. It was probably thrown out.**

Q. Did you have an electronic draft?

**A. I don't know if I retained it, because I didn't want to confuse the final draft with -- the final letter with -- with previous drafts, so I -- I don't know that I still have that.**

Q. Did you use a computer to create the letter?

**A. Yes.**

Q. What software program?

**A. Microsoft Word.**

Q. And what is your document storage -- how is your document storage system configured in the sense, is it

88

capable of saving drafts so that you have successive versions?

**A. It's -- it's capable.**

Q. What is your practice? Do you save drafts of letters as a record so you can go back and see what you sent around to people before you made additional changes to the letter?

**A. My practice generally is to save the draft until the document is final and then get rid of the drafts.**

Q. And you circulated the draft not by e-mail, you said?

**A. I believe that I circulated a hard copy to my supervisor, Suzanne Dietrick, and I believe to Joe -- Assistant Commissioner Seebode.**

**Suzanne Dietrick -- because it was a large document and I was concerned about it getting lost, I believe I sent her an e-mail attachment of the document, too, that she may have reviewed on line, you know, or -- or -- or the hard copy.**

89

Q. In your e-mail, do you keep your sent messages?

**A. My sent messages.**

Q. Messages -- e-mail messages that you've sent?

**A. Yeah.**

Q. So would you still have a record of the -- a copy of the e-mail that you sent Miss Dietrick attaching the draft?

**A. I believe that I transmitted to Division of Law the e-mail log of all -- of all correspondence that had BP or LNG or Crown Landing attached to it, and I gave them everything I had.**

Q. So you no longer have possession of it?

**A. It may still be on the hard -- on the mainframe, but I don't -- I don't know if I have direct possession of it.**

Q. Okay.

**A. The department may.**

MR. ATTAWAY: All right.

90

I'd like to request from counsel a production of the draft of this letter by Mr. Risilia.
MS. CONKLIN: Any drafts of this?
MR. ATTAWAY: Yes.
MS. CONKLIN: Okay. We consider that privileged material, but you can make the request and we will respond in writing.
MR. ATTAWAY: Okay. What privilege are you asserting?
MS. CONKLIN: Advisory, consultative, and deliberative privilege.
MR. ATTAWAY: He just said he didn't send it to counsel.
MS. CONKLIN: No. It is an ongoing application. It is agency work and internal work on an application, advisory, consultative, and deliberative.
MR. ATTAWAY: All right. Well, we'll take that up later.

91

MS. CONKLIN: Exactly. Feel free.
BY MR. ATTAWAY:
Q. Was this letter ever transmitted to the Division of Law?
Let me clarify. Was this letter ever transmitted to the Division of Law either in draft or final form?
**A. Yes, I'm -- I'm quite certain the Division of Law received at least a hard final copy of this -- the letter that we're speaking of.**
Q. And when would they have received that?
**A. Presumably after it was sent, and I don't know the exact date.**
**I believe it was probably sent shortly after -- after the letter was sent to the applicant.**
Q. So within a few days?
**A. I don't really know the exact time frame of when it was transmitted to the Division of Law.**
Q. Would you have a record in

92

your documents of when that occurred?
**A. No, not if it was -- you know, if it was transmitted via paper copy, it would have gone interoffice mail, so I wouldn't -- that doesn't generate a record of transaction.**
Q. Did you transmit it to the Division of Law through interoffice mail?
**A. I don't recall if I did or not.**
Q. What is your practice with respect to letters that get filed at FERC in terms of sending a copy to the Division of Law?
**A. There isn't a set practice or policy that I'm aware of. We don't -- we don't get very many FERC -- projects that involve FERC, so there's no procedure that I'm aware of.**
Q. What type of documents do you as a matter of course send to the Division of Law?
**A. Projects that are either under litigation, such as, like, an**

93

**appeal to a denial or a -- a matter that has some legal -- that requires legal interpretation.**
Q. Okay.
MR. ATTAWAY: I'd like to mark Exhibit 2.
We can go off the record for a moment if you'd like.
* * *
(Whereupon, the above-mentioned document was marked for identification as Risilia-2.)
* * *
(PAUSE)
BY MR. ATTAWAY:
Q. I've had marked as Risilia Exhibit 2 a letter from Kenneth C. Koschek, K-O-S-C-H-E-K, to Magalie Salas, Secretary of the Federal Energy Regulatory Commission or FERC, dated April 19th, 2005.
And it's on letterhead of the State of New Jersey, Department of

94

Environmental Protection, Environmental Regulation, Office of Pollution Prevention and Right To Know.

Is that an accurate description of this document?

**A. Yes.**

Q. So the letter we were just looking at, Exhibit 1, was February 4th. This letter is two and a half months later, correct, April 19th, 2005?

**A. Yes.**

Q. Describe the Office of Permit Coordination and Environmental Review, which is -- which is in the first sentence of the letter.

**A. Describe their function?**

Q. Please.

**A. As I understand that office, they -- they act as a liaison between applicants and the department on projects that are multi -- have -- require multiple permits or oversight by multiple department programs.**

**So this -- the applicant,**

95

**Crown Landing BP, I believe, was going -- dealing with that office in trying to coordinate the application process.**

Q. If I understand you correctly, is the Office of Permit Coordination and Environmental Review an office that's set up to coordinate sort of larger projects that require multiple permits from various divisions within DEP?

**A. Yes, that's part of their function. I believe they also review documents. They review environmental impact statements that come in for large projects.**

Q. Do they have legal staff?

**A. I'm not aware if they do or not.**

Q. Who provides legal counsel to the Department of Environmental Protection?

**A. The Division of Law.**

Q. And that's within DEP?

**A. No. That's within the**

96

**Division of Law, which is under, what, Department of Law & Safety?**

**I'm not sure. You could ask my counsel to my left. But they are under a separate agency.**

Q. I can't make them answer any questions on the record --

MS. CONKLIN: We're not talking. You can't make us.

(PAUSE)

BY MR. ATTAWAY:

Q. I'd like to look at page 2 of this document. There's a paragraph -- it's the second full paragraph on the page, and it's under the heading "Dredging and Pier Issues, Intertidal Shallows Impacts."

**A. Okay.**

Q. The first sentence of that passage reads, "At the present time, the State of Delaware has characterized this project as not being in compliance with Delaware's Coastal Regulations."

Is that statement consistent

97

with the understanding that was set forth in the February 4th letter regarding Delaware's regulatory authority over the project to the extent it extends into Delaware?

**A. Well, I didn't make this statement. This was made by Ken Koscbek.**

Q. Okay.

**A. And -- could you restate your question?**

Q. Well, whether or not you wrote this, is that first sentence consistent with the understanding set forth in your letter of February 4th that Delaware would have regulatory authority over the Crown Landing project to the extent that it extends into Delaware?

**A. No. I think -- I think this is two different things being stated. The first sentence states -- I mean the document -- the sentence speaks for itself, but it says, the State of Delaware has characterized this project as not being in compliance with**

98

Delaware's coastal zone regulations.
And what I -- what's stated in the third paragraph of my February 4 letter is that we believe the project is -- at that time was located within Delaware and it was subject to their coastal zone management regulations.
This is saying -- the second letter is saying Delaware has found it not to be in compliance. I don't believe that was stated in the letter of February 4.
Q. Okay.
Did you provide any input on this letter?
A. Yes, I did.
MS. CONKLIN: And we're speaking about Risilia-2. Right?
MR. ATTAWAY: Yes, thank you for the clarification.
BY MR. ATTAWAY:
Q. Let me just back up a minute and ask something I should have asked a few questions ago.

99

Who is Kenneth Koschek?
A. He's a representative of the Office of Pollution Prevention and Right To Know. Actually --
Q. Where is he in the chain of command in the Office of Permit Coordination and Environmental Review or where was he at the time that this letter was written?
A. According to his signature on page 9 of the document, he is a supervising environmental specialist with the Office of Permit Coordination and Environmental Review, which I believe is a -- is under the purview of the office listed in the heading of the letter.
Q. Who did he report to at that time?
A. I don't know who his supervisor was.
Q. Just so I understand the organization of the DEP a little bit better, Mr. Koschek was in the Office of Permit Coordination and Environmental

100

Review, and that office is -- is in turn within another office which is entitled Office of Pollution Prevention and Right To Know; is that how the bureau is structured?
A. I believe that -- that it was a -- a subgroup within -- I think this is a -- an office -- he worked in an office that was part of a program or -- that was the larger program, the Office of Pollution Prevention and Right To Know.
Q. I don't want to belabor this, but just generally speaking, where in the hierarchy of DEP does the Office of Pollution Prevention and Right To Know exist?
A. I don't know where they -- where they are on a -- like, a regulatory flow chart or -- I'm not really sure. There's a lot of departments in the program.
Q. The Office of Permit Coordination, where were they in the

101

hierarchy?
A. I'm not sure where they are.
Q. Is it possible to say that it's a department that's above or below yours? "Yours," meaning the ODST?
MS. CONKLIN: I'm sorry. I am going to ask for clarification on that in terms of above and below.
In the context of reviewing the letter, in the context of reviewing an application? We need some context.
MR. ATTAWAY: Just in the context of the organization of the bureau -- of the DEP, rather.
If there -- if there were a flow chart, for example, would the Office of Permit Coordination and Environmental Review -- would it be above or below the ODST in the flow chart? Answer if you can.
THE WITNESS: I don't know.
BY MR. ATTAWAY:

102

Q. Have you ever seen a flow chart of the DEP?
**A. Yes.**
Q. Do you understand how the different offices or bureaus or whatever they're called in the DEP are structured?
**A. Generally.**
Q. So, generally speaking, would you consider the Office of Permit Coordination and Environmental Review a superior office to the ODST?
**A. Well, I do not recall the flow chart that may have shown their position, so I don't know if they are considered at a higher level or -- on the flow chart than our office would be.**
Q. Why were you providing input for this letter written by Ken Koschek of a different office from yours?
**A. Because he requested it.**
Q. Do you know why he requested it?
**A. I believe because he was charged with responding to the FERC draft**

103

**environmental impact statement, DEIS.**
Q. Turning back to page 5 of the letter --
**A. The April 19 letter?**
Q. Yes.
**A. Okay.**
Q. Thanks. I'll try to be clearer.
**A. That's fine.**
Q. -- there's a section that begins toward the top of the page called "Permitting," and I'm going to ask you a few questions about the first two of the three paragraphs within that section, so take your time to read.
**A. (Witness complies.)**
**Okay. I've read the first paragraph.**
Q. So the first paragraph refers to the February 4th letter that you wrote; is that correct?
**A. Yes.**
Q. And claims that that letter is attached.

104

**A. Yes.**
Q. Is that correct?
Is it -- now, the document that I have that was produced by New Jersey doesn't include the attachment.
Is it your understanding that the February 4th letter that you wrote was, in fact, attached in the transmission to FERC?
**A. I believe it was.**
Q. That it was?
**A. I believe that it was attached.**
Q. Okay.
The second paragraph states that the project that was proposed in the draft EIS that was released by FERC might be substantially different than the one proposed in the near future by the applicant, meaning Crown Landing, and that's, according to this letter, because the State of Delaware Coastal Zone Industrial Control Board decision to uphold the rejection of the Crown Landing

105

LNG in Delaware has a major impact on this project.
As I read this, is it consistent with your understanding that the reason -- well, does this passage, in your understanding, acknowledge at the time that Delaware had regulatory authority over the portion of the pier that was proposed to be in Delaware?
**A. I think the paragraph speaks for itself. I --**
Q. Well, I'm just asking for your understanding. You can answer "yes" or "no."
**A. So can you --**
Q. Does this passage acknowledge that Delaware has regulatory authority over the project?
MS. CONKLIN: Counsel, I'm going to object to the form of the question. It's calling for a legal conclusion.
MR. ATTAWAY: I'm not asking for his understanding of the law.

106

I'm asking for his understanding as a regulator.
MS. CONKLIN: But this is not his letter. So you're asking him to figure out what someone else was thinking.
But if you want to stay with that, go right ahead.
MR. ATTAWAY: Okay. I'm going to insist that he answer the question based on his understanding, whether or not he wrote this letter or not.
BY MR. ATTAWAY:
Q. Is it consistent -- okay. You -- let's back up.
Your February 4th letter stated rather clearly that Delaware had regulatory authority over the portion of the Crown Landing project extending into Delaware.
Are we on common ground there?
A. Yes.

107

Q. Okay.
Is the second paragraph on page 5 consistent with that statement in the February 4th letter?
**A. Generally.**
Q. And if New Jersey were contesting or if this letter were contesting Delaware's regulatory authority, then why would it make sense to state that Delaware has denied approval for the project and therefore the scope of the project might change in the future?
MS. CONKLIN: Again, I'm going to object to the form.
MR. ATTAWAY: Answer if you can.
THE WITNESS: Well, it's -- I think you're asking me to -- to advise you or to answer on legal strategy. It sounds that way as I understand it. I don't know -- I can't explain the rationale behind what happened.

108

MR. ATTAWAY: Let me try asking you a different way.
BY MR. ATTAWAY:
Q. Is this passage based on the understanding that Delaware would have regulatory authority over the project to the extent it extends into Delaware?
MS. CONKLIN: I'm going to object on foundation grounds. It's not his letter, so he doesn't know what the understanding is for this text.
BY MR. ATTAWAY:
Q. Mr. Risilia, you provided input for this letter, did you not?
**A. Parts of it, yes.**
Q. Did you provide input for this part?
**A. I don't recall specifically providing input under this second paragraph.**
Q. Okay.
MR. ATTAWAY: I would like to mark for identification Exhibit

109

3.
* * *
(Whereupon, the above-mentioned document was marked for identification as Risilia-3.)
* * *
(PAUSE)
BY MR. ATTAWAY:
Q. Mr. Risilia, I've had marked for -- as Exhibit 3 a memorandum from yourself to Ken Koschek, Office of Permit Coordination and Environmental Review, dated April 12th, 2005.
Have I described this correctly?
**A. Yes.**
Q. And it's Bates stamped, for the record, New Jersey 01068 through 01073.
**A. Mine is 01069 -- oh, I'm sorry. Oh, the -- there's a cover letter. Thank you.**
Q. I'm going to start with the

110

memorandum itself.
If you could read -- let's see. I want to compare this to Exhibit 2, and I'd like you to read the second and third paragraphs of the letter on page 1 and compare those paragraphs to the two paragraphs we were just discussing on page 5 of Exhibit 2.
And I think you'll see that they're identical?
MS. CONKLIN: Counsel, could you identify it by the NJ number at the bottom as well? Do we have NJ numbered pages of what we're supposed to be comparing?
MR. ATTAWAY: Okay. Compare NJ 01069 with NJ 01085.
THE WITNESS: Thank you.
And you would like me to look at which paragraphs?
MR. ATTAWAY: The second and third. The second paragraph begins, "As you are aware, the ODST issued a deficiency letter

111

attached."
(PAUSE)
THE WITNESS: Okay. I read it.
BY MR. ATTAWAY:
Q. Are the two paragraphs on New Jersey 1069 in substance the same as the two paragraphs on New Jersey 1085?
**A. They appear to be.**
Q. And New Jersey 1069 is the April 12th memorandum from David Risilia to Ken Koschek; correct?
**A. Yes.**
Q. And the two paragraphs on New Jersey 1085 are in the April 19th letter that Ken Koschek wrote to FERC; is that correct?
**A. Yes.**
Q. So it appears that Mr. Koschek took this language that you drafted seven days earlier and included it in the letter that he sent to FERC; is that correct?
**A. Yes.**

112

Q. So I'll go back to my original line of questioning with respect to the April 19th letter, let me ask it about your memorandum of April 12th, which is Exhibit 3.
In the statement on page 1, which is New Jersey 1069, it references Delaware's Coastal Zone Industrial Board's decision to reject the Crown Landing pier in Delaware.
Is that statement consistent with the February 4th statement in your letter that Delaware has regulatory authority over the Crown Landing project to the extent it is in Delaware?
**A. No.**
Q. They're not consistent.
**A. I believe that they're saying two different things.**
**The February 4 letter says that it appears that the project is located in Delaware and Delaware has jurisdiction.**
**The -- my memorandum of**

113

**April 12 states that the State of New Jersey decided to reject the LNG pier in Delaware, and I believe that was because there is a public announcement that State of Delaware had denied approval to Crown Landing.**
Q. Is there anything in your memorandum of April 12th, 2005 that says that Delaware lacks regulatory authority over that portion of the project that exists in Delaware?
**A. No, I don't -- we didn't address that. It talks about -- it says that they made a decision to reject it.**
Q. "They" meaning Delaware?
**A. The State of Delaware.**
Q. Likewise, in the April 19th letter, which is marked as Exhibit 2, is there anything in that letter from Mr. Koschek that denies the authority of Delaware to regulate the Crown Landing project to the extent that it extends into Delaware?
**A. No. This is in response to**

114

a draft EIS. It doesn't talk about -- it does not speak on state jurisdiction. It only -- to deny or approve -- it just states what's written in the text.

Q. It's correct, is it not, that your memorandum of April 12th and Mr. Koschek's letter of April 19th both refer to and attach the deficiency letter that you wrote on February 4th; is that correct?

A. Yeah, they both reference and -- yes, it is correct.

Q. Do either of the -- does the memorandum or the letter of April 19th reject or in any way retract the statement made in the February 4th letter that Delaware has regulatory jurisdiction over the project?

A. Not --

MS. KELLY: I'm going to object to the characterization as to the word "jurisdiction." I don't think that's what the letter states. I think it misstates the

115

letter.

I don't know if you want to rephrase that.

MR. ATTAWAY: Regulatory authority.

(PAUSE)

THE WITNESS: Can you ask that question again, please?

BY MR. ATTAWAY:

Q. The April 12th and April 19th letters both attach your February 4th letter; is that correct?

A. Yes.

Q. And neither the April 12th letter nor the April 19th letter refer to or disavow the statements made in your February 4th letter about Delaware's regulatory authority over the Crown Landing project; is that correct?

A. They're silent on it. They don't say anything to that effect.

Q. But the -- the memorandum and the letter both refer to Delaware's rejection of the permit application by

116

Delaware.

A. That's true.

Q. So why would -- well, we'll leave it at that.

Do you know if the statements in your February 4th letter were subsequently retracted by someone else?

A. Which statements?

Q. The -- okay.

Exhibit 1, page 1, the language is, "The project site is located in the States of Delaware and New Jersey. Accordingly, activities taking place from the mean low waterline outshore are located in the State of Delaware and therefore are subject to Delaware Coastal Zone Management Regulations."

A. Yes, those statements were -- that statement was later corrected in a subsequent letter that went to -- that went to Crown Landing, I believe.

Q. How did that come about?

A. When this letter was issued

117

on February 4, my program -- myself -- was not aware of the Compact of 1905 and the legal implications associated with the Compact.

So after transmitting this letter to the Division of Law and then the applicant reviewed our letter and they responded with a response of deficiency letter in which they -- they basically asked us to re-evaluate whether or not -- what the effect of the Compact of 1905 was.

And at that time -- or subsequent to their request, our office had been in communication with the Division of Law, and they advised us that -- that this -- this, in fact, needed to be corrected.

Q. When did that happen?

A. Exactly, I don't remember, but there was a letter that indicated when -- you know, when we retracted -- when we corrected our position on this. And I believe it was after -- it might

118

have been -- it was in 2005. It was probably June or July.
Q. Do you know who sent that letter and to whom it was sent?
A. I believe Suzanne Dietrick sent it.
Q. To?
A. I believe she sent it to -- well, actually, no, I'm -- I'm -- we're going back a little while.
I believe it might have been sent by Joe Seebode, who is Assistant Commissioner, and I think it was sent to the -- to the attorney or to someone from BP.
Q. And that's the same Assistant Commissioner that received your draft letter of February 4th; is that correct?
A. Yeah, that's correct.
Q. And he didn't comment in any way on your statement on page 1 of that letter that Delaware had regulatory authority over the project.

119

MS. CONKLIN: At what time are we talking about?
MR. ATTAWAY: Whenever he -- whenever Mr. Risilia sent the draft letter out that became the final letter of February 4th.
THE WITNESS: At the time that the February 4 letter was sent -- was circulated as a draft, he did not make comments on -- on the paragraph 3.
MR. ATTAWAY: Okay.
BY MR. ATTAWAY:
Q. But I think you said earlier that he did send some comments on other topics.
A. Yeah, I'm sure he did.
Q. Do you know that he did?
A. That he -- I just said I'm sure he did.
Q. Okay.
A. Yes.
Q. So what you're saying is that he did send comments to you on the

120

draft -- draft letter that became the February 4th letter.
A. He reviewed my draft and he made -- be made written comments on it that I either addressed or incorporated and put into the final letter.
Q. Okay.
And he sent those written comments to you?
A. Yes.
Q. Are you familiar with the coastal management plan in New Jersey?
A. Somewhat.
Q. Just tell me generally your understanding of what the coastal management plan is.
A. Well, it's administered by a separate program that I am not a member of; and the coastal management plan, I believe, is a -- a broad -- a broader plan that encompasses various elements of Coastal Zone Management Rules.
Q. You said it was administered by a different division, if I -- maybe

121

you used a different word hut, what -- what division --
A. There's another program -- there's a planning program within DEP that administers the coastal management plan.
Q. What's the name of that?
A. They've changed their names recently and I -- I am not sure. The -- its director is Ruth Ehinger. Its director, I believe, is Ruth Ehinger.
Q. Do you work with Miss Ehinger in your daily duties?
A. No.
Q. Or even on occasion?
A. Yes, on occasion.
Q. In what context?
A. Since her office is responsible for amendments to and updates to -- on the Coastal Zone Management Rules, we -- when I say "we," the Office of Dredging, myself included -- interact with them sometimes on language for new regulations.

122

Q. Okay.
Do you -- let me go back to the coastal management plan.
Do you know when the coastal management plan was adopted?
**A. No, I don't.**
Q. Have you ever seen it?
**A. I may have, but I don't recall it.**
Q. You don't recall ever reading New Jersey's coastal management plan?
**A. I may have seen -- I think I reviewed -- looked at various excerpts of it, but not really. I don't recall reading it in entirety.**
Q. Is it a big document?
**A. I don't know.**
Q. Do you remember the excerpts you reviewed?
**A. Not really. No, I don't.**
Q. Or when you would have reviewed them?
**A. No. I don't recall.**

123

Q. So you've been working in the coastal zone and administering the coastal zone rules for about 15 years?
**A. Yes.**
Q. Is that correct?
But you've never read the coastal management plan?
**A. The coastal management plan, as I understand it, is a planning document.**
**I -- my concentration has been in implementing the rules on coastal zone management. They're two different entities. One is different than the other.**
**The one that -- the rules that we apply, that we evaluate projects under are the CZM rules; and coastal management plan is a planning document, so I'm not really -- really familiar with the -- the planning document, no.**
Q. Okay.
So other than -- you said you've reviewed excerpts. Do you

124

remember in what context?
**A. I believe that I may have seen excerpts, because there may be references to that in the rationale section of the Coastal Zone Management Rules.**
**And I -- at times when we're trying to apply a rule, we'll look at the rationale to determine what kind of comments were generated in creating that rule or how -- or to get a broader understanding of the rule.**
**And that's where I would have looked at excerpts, but I have not reviewed the plan in a broad sense, in an overall sense.**
Q. I know you said you don't remember exactly when the coastal management plan was adopted, but do you remember the era?
**A. No. I presume -- I really don't know.**
Q. If I said the late '70s or early '80s, would that ring a bell at

125

all?
**A. The Coastal Zone Management Rules -- I mean, I -- I -- I don't know. I don't know when -- if it predated the rules -- I don't know if the plan predated the rules or the rules predated the plan, so I don't have a time context to put it in.**
Q. So that's more a function of Miss Ehinger's division to administer the coastal management plan?
**A. Yes.**
Q. Have you ever reviewed any excerpts of the coastal management plan pertaining to the boundary between Delaware and New Jersey?
**A. No.**
MR. ATTAWAY: I can't tell, Miss Conklin, if you're just -- it's just a spontaneous physical reaction or -- but often you shake your head "no" just before he answers "no," and you shake your head "yes" before he answers "yes"

126

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MS. CONKLIN: Well, I will certainly try and stop that, but --

MR. ATTAWAY: I gather you're just kind of thinking through it, but I've noticed some eye contact periodically and I'm just, you know, wondering, you know --

MS. CONKLIN: Well, what I'm wondering about is the foundation of your question, because you're assuming that there's something in the -- you're assuming that the plan contains something when he says he doesn't know anything about the plan other than excerpts that he has reviewed, and he doesn't recall the excerpts.

So I think I was probably reacting to the form of your question.

And in the future, I will

127

articulate my objection. Thank you for the correction.

BY MR. ATTAWAY:

Q. Do you know whether New Jersey or Delaware -- New Jersey has ever coordinated permit review of any project review with Delaware?

**A. If they've ever coordinated a permit review with the State of Delaware.**

Q. I can be clearer if -- with respect to a project similar or as -- as with the Crown Landing project, that starts on New Jersey shore and then extends beyond the boundary line and into Delaware.

Are you aware of any project that has that geographical characteristic on which -- with regard to which New Jersey has coordinated its review, its permitting review, with Delaware?

**A. As I mentioned -- as I indicated a while back, with the DuPont Chambers Works project, because it**

128

**occurred in New Jersey and in Delaware.**

Q. Right.

**A. There was coordination there. I called the State of Delaware and asked them if they were concerned and they wanted to issue a permit; and they told me, no, it's New Jersey's lead.**

**So that's -- that's the extent of my knowledge of coordination --**

Q. Okay.

**A. -- on permit.**

MR. ATTAWAY: Should we take a little break or --

MS. CONKLIN: Sure. How long do you have in mind? Do you want to break for lunch now or you want to do five more minutes?

I mean, when would you like to go for lunch? That's all.

MR. ATTAWAY: Well, I'm happy to take a short break and go for another 45 minutes or an hour and then --

MS. CONKLIN: Are you

129

comfortable with that, Dave?

MR. ATTAWAY: Yeah, it's entirely up to you.

MS. CONKLIN: I mean, if you're used to getting lunch at 12:00 --

THE WITNESS: I did have a very light breakfast.

MR. ATTAWAY: You should have lunch then. I don't want to inconvenience you at all.

MS. CONKLIN: Yeah -- we can go off the record, please.

* * *

(Whereupon, a discussion was held off the record.)

* * *

(Whereupon, a luncheon recess was taken from 12:05 p.m. until 1:00 p.m.)

* * *

(Whereupon, various documents were marked for identification as Risilia-4,

130

Risilia-5, Risilia-6, Risilia-6A, and Risilia-7, respectively.)

* * *

(PAUSE)

BY MR. ATTAWAY:

Q. Mr. Risilia, I've had exhibits marked 4, 5, 6, 6A, and 7. Have you had a chance to review those?

**A. Yeah. Mine aren't marked, but --**

Q. I'll go through them one at a time.

**A. Okay. That would be great.**

Q. Okay. Exhibit 4 is Bates stamped DuPont 1021.

**A. Okay. October 15th, 1982?**

Q. Right. Right. And this letter concerns Chamber Works; is that correct?

**A. It appears to, yes.**

Q. Would you agree that this shows that the State of Delaware issued a

131

permit to DuPont for its Chamber Works facility?

**A. It appears to be that way. I'm not familiar with what their permits look like.**

Q. Okay. And would that be consistent with the position taken in your February 4th, 2005 letter to Mr. Blaha, the portion from page 1 stating that Delaware has regulatory authority in the 12 Mile Circle?

**A. Back to my February 2005 --**

Q. I'm just asking if it's consistent -- Delaware issuing a permit in 1982, is that consistent with your statement in 2005 stating that Delaware has regulatory authority over projects in the 12 Mile Circle?

**A. I don't know if it's consistent. I -- I stated -- the letter of 2005 says we believe that the project was in Delaware's jurisdiction, and this is --**

132

Q. And that Delaware had regulatory authority therefor?

**A. Correct. And this appears to be some kind of letter that indicates that they've authorized maintenance dredging. The State of Delaware is authorizing maintenance dredging by -- it appears in this letter.**

Q. Okay. So moving on to what's been marked as Risilia-5, and this is -- it's Bates stamped Delaware 19645 through 649 -- and this is a subaqueous lands permit granted to DuPont Chamber Works. Date of issuance is May the 4th, 2001; is that correct?

**A. That's what it appears to be.**

Q. You mentioned earlier that in 2001, you contacted Delaware officials regarding environmental mediation at Chamber Works; correct?

**A. Yes, I did.**

Q. Would you agree that this

133

subaqueous lands permit issued by Delaware indicates that Delaware was exercising regulatory jurisdiction over the Chamber Works project?

MS. KELLY: Overbroad. You can answer.

THE WITNESS: I don't know about regulatory jurisdiction. This to me indicates that they are regulating or issuing an instrument to occupy an area, a water area, in the river.

MR. ATTAWAY: Okay.

BY MR. ATTAWAY:

Q. Moving on to what's been marked as Exhibit 6, this is Bates stamped Delaware 25932 to 933, and this is a letter -- it's dated April 7th, 2004 -- from the Governor of Delaware and the Governor of New Jersey, a joint letter, to the Acting Secretary of the Army at the Department of Defense at the Pentagon; is that correct?

**A. Yes.**

134

Q. This letter pertains to a nerve gas known as VX. Are you familiar with VX?
**A. Somewhat.**
Q. Now, this letter concerns DuPont's Chamber Works facility and a proposal to treat VX that had been stored in Indiana and then dump it into the Delaware River.
Have you -- before today, before seeing this letter, were you aware of this proposal at all?
**A. Yeah, I did read about it and hear about it on the news.**
Q. Okay.
Did you do any work on it as part of your job at Department of Environmental Protection?
**A. No.**
Q. Do you know who worked on it?
**A. No, I don't.**
Q. Do you know who within the DEP likely would have been assigned to

135

this type of project?
**A. If it involved a discharge to surface waters under the New Jersey PDS program, NJ PDS, then it would --**
Q. I'm sorry. What does PDS stand for?
**A. It's the pollution discharge elimination program, also known as NJPDES program, then someone who had jurisdiction or a project manager who would have been involved with the discharge or the regulation of the discharge may have been involved in that -- or would have -- you know, that would be the logical person who would review this.**
Q. Okay.
Turning to what's been marked as Exhibit 6A, Delaware 25974 and 75, this is an agenda or it's titled an agenda of a technical briefing meeting, treatment and disposal of neutralized VX at DuPont Chamber Works.
The meeting location is

136

Delaware DNREC office -- that's D-N-R-E-C -- in New Castle, Delaware on March 10th, 2004.
Do you see an attendance sheet attached to the --
**A. Yes.**
Q. -- agenda notice?
Toward the top, there are three names that have NJ DEP next to them, indicating that these three individuals attended this meeting.
Sam Wolfe, do you know Mr. Wolfe?
**A. Yes.**
Q. What is his area of expertise?
**A. He no longer works for the department.**
Q. At this time, in March 2004, what was his position within the department?
**A. I believe he worked -- I think he was an assistant to the Commissioner in the Commissioner's**

137

**office. I don't know his title.**
Q. Okay.
And Susan Rosenwinkel?
**A. Yes.**
Q. What was her -- at this time, what was her job title and responsibilities?
**A. I don't know her job title, but I believe she worked in the program that I mentioned earlier, the -- the NJPDES program, in the discharge to surface water section.**
Q. And Pilar Patterson, P-I-L-A-R Patterson?
**A. I don't know that person.**
Q. Okay.
Do you know whether New Jersey ever asserted that Delaware did not have jurisdiction to regulate the discharge of VX from the DuPont Chamber Works facility?
**A. I don't know that. I was not involved in this project whatsoever.**
Q. Okay.

138

But the Governors of the two states wrote a joint letter to the Army expressing their joint concerns with the discharge of VX into the Delaware River; is that correct?

**A. It appears to be, in the April 7th, '04 document.**

Q. Okay. Thank you.

Let's move to the last exhibit I've recently had marked number 7, and the Bates stamp range is DuPont 1339 through 1343.

Looking at DuPont 1340, this is a subaqueous lands permit granted to DuPont for dredging below the mean waterline within the State of Delaware adjacent to the Chamber Works facility, and it was issued March 7th, 2006.

Is -- did I read that correctly?

**A. Yes.**

Q. Or paraphrase would be more accurate, I guess.

**A. Yeah.**

139

Q. I wasn't trying to quote exactly.

Were you aware of this permit that was granted by Delaware?

**A. No.**

Q. Would you agree that the action by Delaware in issuing a permit here was consistent with your statement in your February 4th letter that Delaware has regulatory jurisdiction within the 12 Mile Circle, regulatory authority?

MS. KELLY: I have a foundation objection, but you can answer.

THE WITNESS: I don't know what you mean by "consistent."

BY MR. ATTAWAY:

Q. Well, your February 2005 letter said that Delaware had regulatory authority over the Crown Landing project to the extent that it extended into Delaware.

Do I have that correct?

**A. It said that -- my letter of 2004 says that activity below the mean low waterline are subject to Delaware's coastal zone management regulations.**

Q. Correct.

**A. And I don't know -- that's -- the coastal zone management regulation, that's the CZM rules.**

**This document talks about riparian areas, which are -- are different, so I don't know -- I don't know how the linkage -- what the linkage is throughout -- you know, between the two documents.**

Q. Earlier, you mentioned a project known as Keystone.

Are you familiar with any New Jersey permits issued for the Keystone project?

**A. All I know is that land use regulation issued a permit for the Keystone cogeneration facility, which includes a pier, but I did not work on that. I don't even know when it was issued.**

141

Q. Okay.

Just briefly describe your understanding of the nature and scope of the Keystone project.

**A. Again, I -- you know, I wasn't the project manager. I know there's a pier out there. It extends out into the river from -- it's adjacent to Crown Landing. It's directly upstream of the Crown Landing BP facility.**

**And the pier is used to receive coal -- I believe coal shipments via barge that are taken to the -- the landside facility, which is a cogeneration facility that, I believe, generates electric and steam and sells steam to other users in the area.**

Q. When in 1991 did you start in the Land Use Division?

**A. I think it may have been in the spring. I don't remember the month.**

MR. ATTAWAY: I'd like to mark another exhibit. This will be number 8.

142

* * *

(Whereupon, the above-mentioned document was marked for identification as Risilia-8.)

* * *

MR. ATTAWAY: Back on the record.

BY MR. ATTAWAY:

Q. Okay, Mr. Risilia. Marked as Exhibit 8 is a permit from State of New Jersey, Department of Environmental Protection, dated September 24th, 1991, issued to Keystone Cogeneration System, Incorporated; is that correct?

**A. Yes.**

Q. And the Bates stamp numbers are New Jersey 4403 to 09.

In the top of page 1, there's a number of boxes. It says "Issuing Division: Land Use Regulation Element."

Is that your division at that time?

143

**A.** Yes.

Q. Have you ever seen this permit?

**A.** No.

Q. Have you seen other permits that look similar?

**A. What do you mean by "look similar"?**

Q. In terms of the formatting. Like, are -- these permits, do they tend to be sort of boilerplate or are they all drafted individually for each project?

**A. The permit format that's shown on here is a boilerplate format in that the information is entered individually for each project, but the appearance of the permit page at that time -- it's somewhat changed now, but they're pretty mucb the same or were the same.**

Q. And throughout the remainder of the permit, does this type of language appear repeatedly in these types of permits?

144

**A. I didn't read every word of it, but they followed a similar format.**

Q. This says on page 1 that it's a waterfront development and wetlands type A permit. I think you testified earlier that waterfront development was the type of permits that you evaluated; is that correct?

**A. That's right.**

Q. Turn to page 5 of the permit, Bates stamp New Jersey 4408, please.

**A. (Witness complies.)**

Q. And at the top of the page there is a letter E and then 1, 2, 3, 4 under that. I'll give you a chance to review that.

(PAUSE)

THE WITNESS: Okay.

BY MR. ATTAWAY:

Q. I'll just read it. It says, "E, Prior to construction, the permit team must submit copies of all the permits or approvals listed below to the

145

element."

And the element is the land use regulation element; is that correct?

**A. It would be.**

Q. Okay.

Number 1 is New Jersey pollution discharge elimination system; number 2 is amendment to the area-wide water quality management plan; number 3, Delaware River Basin Commission approval; and, number 4, subaqueous land and coastal zone management, open paren, Delaware, close paren; is that correct?

**A. That's what it says.**

Q. So based on this, does it appear to you that this -- the validity of this permit was conditioned on the issuance of permits by Delaware?

**A. It was a condition of the permit.**

Q. Do you know of any other permits that had a similar condition?

**A.** No.

Q. I know you hadn't seen this

146

permit, but did you know that a condition of this type was included in the Keystone permit -- in the permit issued by New Jersey to Keystone?

**A. No, I didn't.**

Q. Do these permits undergo review by legal counsel at any time?

**A. At any time?**

Q. Yes.

MS. CONKLIN: I'm going to ask -- I'm going to object on the grounds of a lack of foundation.

I would -- I would suggest you can ask him about the permits that he's issued or if there's a general procedure for handling these permits, but we don't have a foundation that he knows about the general procedure other than the permits he handles.

So if you want to zero in on what he knows first, that would be helpful.

BY MR. ATTAWAY:

147

Q. Is it your understanding that permits issued by the -- the DEP are reviewed at any time by legal counsel?

**A. I believe I addressed that earlier and -- and I indicated, as I -- my understanding is that permits that go before legal counsel are permits that are either being appealed, because there were -- let me be more specific -- decisions, decisions that are reviewed by legal counsel are either permit decisions that were denied and they're therefore being appealed by the denied party or permits that have a dispute over a condition.**

**They are the ones that I -- that -- that I know in general go -- go through legal counsel.**

Q. Have you ever asked for counsel to review a permit that you've been working on?

**A. At what -- at what point?**

Q. At any point in your career at DEP.

**A. Yes.**

148

Q. How often does that happen?

**A. It happen -- not very frequently.**

Q. Do you recall the projects that you sought legal counsel on?

**A. Some of them.**

Q. And tell me whichever you can recall.

**A. I've worked on over a thousand. I -- I've worked on probably several thousand permit decisions over my tenure, so, you know, I can't recall specific instances, but in cases where I've denied -- denied a permit, you know, frequently, they have been assigned -- when a -- when a permit gets denied, it gets assigned -- if the denied party appeals the decision, it gets assigned to the Attorney General.**

**And then the Attorney General, DAG, typically approaches me and says, "This is my case. Can I see the permit?" And that's happened over the course of my career a number of times.**

149

Q. Okay.

Sir, you know an attorney at the law division named William Anderson; correct?

**A. Yes.**

Q. Have you ever spoken with him at any time about Delaware's regulatory authority over -- let me start this -- before February 2005, had you ever spoken with Mr. Anderson about Delaware's regulatory authority within the 12 Mile Circle?

**A. No, not that I can recall.**

Q. Do you know whether Mr. Anderson advised any applicants regarding Delaware's authority in the 12 Mile Circle?

MS. CONKLIN: I'm going to object to -- on foundation grounds.

MR. ATTAWAY: Well, he either knows or he doesn't. Your objection's noted.

MS. CONKLIN: I understand

150

that, but you're asking -- you're asking him something and you have no idea if he knows anything about it.

MR. ATTAWAY: Well, that's the point of asking the questions. Your objection's noted for the record.

Please answer if you can.

THE WITNESS: I don't know whom Bill may have advised --

MR. ATTAWAY: Okay.

BY MR. ATTAWAY:

Q. So you don't have any knowledge --

**A. -- in his capacity.**

Q. You don't have any knowledge that he ever advised any applicant as to the scope of Delaware's permitting authority.

**A. That's correct, I don't -- I don't have any knowledge.**

Q. Did you ever hear of a -- well, do you know whether New Jersey DEP

151

or any Delaware agency entered into negotiations about coordinating permit reviews of the respective states?

**A. No, I don't know if that occurred.**

Q. So you never heard anything about that, anything about any permit review coordination?

**A. The only permit coordination that I'm aware of is something called joint permit process meetings, which occur on a monthly basis in -- at land use regulation, in which other regulatory agencies besides DEP meet monthly to discuss different applications, consisting of the Army Corp, U.S. Fish & Wildlife Service, sometimes the National Marines Fishery Service, and other regulatory entities.**

**I don't know of any specific cases that I -- that I could -- that I'm aware of where Delaware attended those meetings.**

Q. Okay.

152

**A. Those coordination meetings.**

Q. Well, did Delaware attend the meetings that you're talking about, the joint --

**A. I was never at one where Delaware -- a joint permit process meeting where Delaware was there.**

Q. Okay.

MR. ATTAWAY: I'd like to mark for exhibit -- are we up to 9?

THE COURT REPORTER: Yes.

* * *

(Whereupon, the above-mentioned document was marked for identification as Risilia-9.)

* * *

(PAUSE)

THE WITNESS: Okay. I've reviewed it.

BY MR. ATTAWAY:

Q. I've had marked as Exhibit 9 a memorandum from -- it's got State of

153

New Jersey, Department of Environmental Protection & Energy letterhead.

The memorandum is to distribution, from Steven Whitney, manager. Date is July 7, 1994, and the subject is New Jersey/Delaware memorandum of agreement.

The Bates range is Delaware 27930 to 935.

Mr. Risilia, have you seen this document before today?

**A. No, I haven't.**

Q. Does it refresh your recollection as to any attempts between the states to coordinate permitting reviews?

**A. No, because I wasn't aware of it.**

Q. The distribution on the first page shows a number of names with NJ DEP after them. Do you recognize any of the names on that list?

**A. Yes.**

Q. Let's just start at the top.

154

John Weingart?
**A. Yes.**
Q. And what was his job title, if you know, at -- and/or responsibilities at the -- at the time?
**A. I believe he was the Director of Land Use Regulation program at -- at some point in time, approximately around this time.**
Q. Approximately, yeah, okay.
So he was the director of your department at that time?
**A. Of my program, yes.**
Q. Because you were at land use at that time?
**A. Yes.**
Q. Okay.
Martin Bierbaum?
**A. I recognize his name.**
Q. Do you recall what his responsibilities were at the time?
**A. No. He -- he was also working in the land use program.**
Q. Ernest Hahn?

155

**A. Yes, he also was in the -- in that program.**
Q. Land use?
**A. Yes.**
Q. Ruth Ehinger?
**A. Yes, Ruth Ehinger was one of the managers of the land -- at the land use regulation program at that time.**
Q. Theresa Fowler?
**A. I recognize her name, but I don't remember what her title or position was.**
Q. Do you remember what department she was in?
**A. I believe she was at land use.**
Q. Okay.
Dennis Hart?
**A. He was in another regulatory program. It might have been the water program. I'm not sure, but he wasn't in land use.**
Q. Bill O'Sullivan?
**A. I believe he might have been in the air program?**
Q. Tom Wells?
**A. Don't know.**
Q. The name is just not familiar?
**A. Yeah, it's not familiar.**
Q. And JoAnne Cubberly?
**A. JoAnne Cubberly was the -- I don't know if her title was director, but she was in charge of the Bureau of Tidelands.**
Q. So whether her title was director or manager or whatever, she was at the top of the Bureau of Tidelands; is that correct?
**A. Yes.**
Q. Okay.
**A. You know, actually --**
MS. CONKLIN: There's no question pending. Please --
THE WITNESS: I want to clarify what I said.
MS. CONKLIN: Go right ahead.

156

157

THE WITNESS: JoAnne Cubberly, at that date, I don't know whether she was Director of Tidelands. She did have a tenure as Director of the Bureau of Tidelands, but prior to that, she did have a position within tidelands.
But that was a lot of years ago and I don't know what her title was at that time.
BY MR. ATTAWAY:
Q. When did she -- assuming she left, when did she leave the position as the top of the Bureau of Tidelands, as you put it?
**A. I believe she retired last year.**
Q. Okay.
So she was at the top of the -- she was the highest person in the Bureau of Tidelands until last year, starting sometime previously that may or may not have included 1994, when this

158

memorandum was written; is that what you're saying?
**A. She was -- yeah, she was Director of the Bureau of Tidelands for a number of years, and I believe she retired last year.**
Q. Okay.
Do you know about how long she was with the Bureau?
**A. No, I don't -- I don't recall when she was appointed or started being director.**
Q. Okay.
So turning to page 2 of the draft memorandum of agreement, I want to direct your attention to the sentence at the bottom of the page -- and this is Delaware 27932 regarding Bates numbers -- and it says, "Both agencies recognize that each agency has the independent authority to approve or deny applications pursuant to its own regulations. DEP and DNREC will share applications under the following authorities."

159

And then it lists several divisions of the New Jersey DEP followed by several permitting functions of the Delaware equivalent.
**A. I think I lost where you are on that page. I'm sorry. Did you say 2 --**
Q. I was reading at the bottom of page 2, 27932.
**A. Okay. I found it.**
Q. Okay.
So does that language at the bottom of page 2 suggest that the persons contemplating this agreement considered Delaware to have permitting authority within the 12 Mile Circle?
MS. KELLY: I'm going to object. There's no foundation, because he's already testified that he's never seen this before. He would be purely speculating on that.
And I think it mischaracterizes -- taking pieces

160

out of context, it mischaracterizes, but -- what it says.
MR. ATTAWAY: Okay. You can still answer the question.
THE WITNESS: I can't speak for the persons that authored this. I don't know what their intentions were.
BY MR. ATTAWAY:
Q. Just looking at the document in general, would you agree that this document generally sets out procedures for sharing information between the Delaware and New Jersey agencies for projects within the 12 Mile Circle?
MS. KELLY: Just continue my objection.
THE WITNESS: I didn't see any references to the 12 Mile Circle in this document.
BY MR. ATTAWAY:
Q. Well, let's just say, along the Delaware River.

161

**A. So your question now is -- is -- can you rephrase that, please?**
Q. Would you agree that in general, this memorandum of agreement, draft memorandum of agreement, proposes procedures for the state agencies in Delaware and New Jersey to share information regarding their permitting processes along the Delaware River?
**A. Yeah, it appears that way.**
Q. Turning back to the memorandum, this -- and that's at Delaware 27930 -- the memorandum to which the draft memorandum of agreement is attached is from Steven Whitney, manager.
Do you know Mr. Whitney?
**A. Yes, I knew Mr. -- Steve Whitney.**
Q. Who is Mr. Whitney?
**A. He's a former manager of -- at land use regulation program who retired quite a few years ago, as I recall.**
Q. Did you work under him when

you were at land use?
A. **I don't recall if he -- I worked in two different bureaus at land use, and I don't recall if I was working under him at that time. I don't think I did.**
Q. Okay.
How many bureaus were encompassed within the land use regulation element, I think it was referred to in the Keystone permit?
A. **There were two bureaus. There was a coastal bureau and an inland bureau.**
Q. Which one were you assigned to?
A. **I worked in both of them.**
Q. Which one was Mr. Whitney the manager of?
A. **I believe he was the manager of the coastal bureau, but I don't know that I worked in the coastal bureau while he was manager.**
Q. Are you familiar with a



project known as Fort Mott?
A. **No.**
Q. No?
Are you familiar with Fort Mott?
A. **I've heard of Fort Mott, but I don't -- I know virtually nothing about it.**
Q. Okay.
So I take it that means you don't know anything about a permit issued by New Jersey to refurbish a pier at Fort Mott?
A. **No. I didn't work on that.**
Q. Okay.
A. **I don't recall -- recall that.**
Q. All right.
MR. ATTAWAY: I have no further questions.
MS. CONKLIN: Very good.
* * *
(Witness excused.)
* * *



(Whereupon, the examination concluded at 1:57 p.m.)
* * *



CERTIFICATE

I hereby certify that the witness was duly sworn by me and that the deposition is a true record of the testimony given by the witness.

_____
Kimberly A. Cahill, RMR, CSR
Dated: Wednesday, October 4, 2006

(The foregoing certification of this transcript does not apply to any reproduction of the same by any means, unless under the direct control and/or supervision of the certifying shorthand reporter.)

LAWYERS NOTES

| Page | Line | |
|---|---|---|
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IN THE SUPREME COURT
OF THE UNITED STATES
- - -

STATE OF NEW JERSEY : NO. 134, Original
:
v. :
:
STATE OF DELAWARE :
- - -

OCTOBER 20, 2006
- - -

Oral deposition of CARL W. WENTZELL, taken pursuant to notice, was held at the offices of the Department of Environmental Protection, 9 Ewing Street, Trenton, NJ 08609, commencing at 1:00 p.m., on the above date, before Kimberly S. Gordon, a Registered Professional Reporter and Notary Public in the State of New Jersey.

- - -

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INDEX

- - -

Testimony of:
CARL W. WENTZELL

| | PAGE |
|---|---|
| By Mr. Walton | 5, 64, 70 |
| By Ms. Balint | 61, 68 |

- - -

EXHIBITS

- - -

| NO. | DESCRIPTION | PAGE |
|---|---|---|
| Wentzell-1 | Phone Messages | 46 |
| Wentzell-2 | Diagram | 48 |
| Wentzell-3 | Affidavit | 51 |



- - -

DEPOSITION SUPPORT INDEX

- - -

Direction to Witness Not to Answer
Page Line
None

Request for Production of Documents
Page Line
None

Stipulations
Page Line
None

Question Marked
Page Line
None



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CARL W. WENTZELL, after having been duly sworn, was examined and testified as follows:

- - -

EXAMINATION

- - -

BY MR. WALTON:

Q. Good afternoon, Mr. Wentzell.

**A. Good afternoon.**

Q. My name is Max Walton. I'm an attorney for the State of Delaware in the case, in the original jurisdiction action New Jersey versus Delaware. New Jersey has sued Delaware regarding certain jurisdictional issues.

And I just wanted to ask you have you ever been deposed before?

**A. Yes.**

Q. How many times?

**A. I couldn't tell you.**

Q. Numerous?

**A. I'm a retired police**

6

officer.
Q. I understand. Have you ever given deposition testimony in a civil action before?
A. No.
Q. Have you ever testified in a civil trial before?
A. Yes.
Q. And could you just tell me about that civil trial?
A. It was an auto accident.
Q. Just because you haven't been deposed too many times in a civil action or given trial testimony in a civil action, I just want to sort of introduce the ground rules here.
Certainly, everything you say is going to be taken down by the court reporter next to us, so just make sure you verbalize any of your answers. Just remember you're under oath just like at trial. And please give full and complete answers to any question that I may ask.

7

And I always ask this question, it's a lawyerly question, but have you taken any medication or are you ill or is there anything that would affect your testimony or prohibit you from telling the truth today?
A. No, sir.
Q. Can you please give me your educational background?
A. I have a Bachelor's in Business Administration.
Q. From?
A. From Kennedy Western University.
Q. And do you have any postgraduate degrees?
A. No.
Q. Other certificate courses?
A. In my career field?
Q. Yes, sir.
A. Many, anything with the federal government dealing with emergency management, all the ICS 100, 200, 300, 402, 700, 800, just did 900 this morning.

8

I'm a certified evaluator for FEMA for nuclear plants where I go out and evaluate other nuclear sites.
Q. You used the term ICS, I believe?
A. Incident Command System.
Q. And you gave a lot of numbers there. But for those who are not as educated in such a field, could you please explain that?
A. New Jersey has come down with a ruling for emergency responders that they must comply with, be NIMS compliant which requires depending on your level of involvement which level of ICS you take. And Incident Command 100, 200, 300 and 400 are for emergency responders, and I've done everything but the 400.
Q. Again, you mentioned something else I wasn't familiar with, the NIMS requirement.
A. National Incident Management System.

9

Q. That's a federal program?
A. Yes.
Q. And I believe you also said you did some evaluations for FEMA?
A. Yes.
Q. Could you explain that, what your qualifications are, certifications are in that?
A. A nuclear evaluator, I go out to other nuclear facilities and evaluate the way a county, a state, a municipality respond to any nuclear incident. They are evaluated every two years by the federal government, and I serve with the feds to go out and be sure that one of these sites know what they're doing.
Q. So, when you let's say evaluate the Salem Nuclear Facility --
A. No, I cannot evaluate my own.
Q. That's your own facility?
A. That's mine.
Q. So, you would go out and

10

evaluate other nuclear facilities?
**A. Yes, sir.**
Q. And I suppose that I'll ask the question. I'm pretty sure that you've never done any of those in Delaware?
**A. No, sir, not in Delaware.**
Q. Just because I don't believe we have a nuclear reactor in Delaware.
**A. You don't. But you're an important part of the jurisdiction of PSE&G.**
Q. Explain that to me.
**A. New Castle and Kent County are within the ten-mile radius of Salem-Hope Creek Nuclear Power Plant.**
Q. So, what does that mean as far as nuclear response or Delaware's involvement in that?
**A. They have to train the counties and the municipalities within that ten-mile ring of being able to protect the citizens of their jurisdiction.**

11

Q. In the event --
**A. In the event of any kind of an incident at the nuclear power plant.**
Q. Beyond your nuclear capacity, where are you currently employed?
**A. I am employed with the County of Salem in New Jersey.**
Q. And what is your title?
**A. My title is Director of Emergency Services.**
Q. And where are you sort of in the chain of command? Are you the Chief of Emergency Services?
**A. Yes, sir.**
Q. And do you report to anyone?
**A. Freeholder Board.**
Q. I'm just trying --
**A. Governing body.**
Q. So, how many folks do you have working for you?
**A. On a daily basis?**
Q. Overall and on a daily basis.

12

**A. Daily, there's 12. If we're involved in an incident, there can be up to 120.**
Q. When you say you're involved in an incident, up to 120, could you give me an example of an incident?
**A. Any kind of an incident, man-made, nuclear, hazardous materials, severe weather, anything where I have to activate my Emergency Operating Center and bring staff in.**
Q. Let's talk about your Emergency Operating Center just for a minute so I can get an understanding. Your 12 people who are employed on a daily basis, excluding the time when there's an incident, what do they do?
**A. I have the Director of the Fire Academy, the Domestic Preparedness Planner, the Chief of Communications, my 9-1-1 dispatchers, my Operations and Training Officer and a maintenance man.**
Q. And I assume that everyone pretty much, except for the maintenance

13

person, is on staff 24 hours a day or on-call 24 hours a day?
**A. Correct.**
Q. Let's say that there's an incident, be it a fire, a nuclear accident, fire, whatever it may be. You say you can call in up to 120 people?
**A. Yes, sir.**
Q. Are they employees or are they volunteers?
**A. Both.**
Q. Can you explain that to me?
**A. If I activate my Emergency Operating Center, I pull in the majority of the department heads.**
Q. Let me stop you there. Those are the people that you named earlier?
**A. No, I'm talking about county department heads.**
Q. And they may be?
**A. Treasurer, Clerk of the Board, facilities management, roads and bridges, fire marshal, EMS officer,**

14

public works, ag, engineer.
Q. And if you pull those in, sort of what happens next in responding to an incident?
A. They come in. And in the Emergency Operating Center, depending on the situation, whatever I need I go to the respective department head and ask for those resources.
Q. And then I'm just trying to get the chain of command. So, let's say it's the fire marshal or I believe you said the ag person. They, I assume, would then have people underneath them to activate?
A. Correct.
Q. And are those paid staff or volunteer staff?
A. Both.
Q. And how do the volunteer staff sort of get involved in the process? I mean, when are they activated versus when are the paid people used?
A. It depends on the situation.

15

If I've got the department heads in the office and we don't need anybody from their department, they don't get activated. If there's a specific thing that we need, they activate their people through phone call, tone alert pagers, cell phones.
Q. And then they would respond to a particular incident?
A. Yes, sir.
Q. Let's say we had a fire, a rather large fire. Could you walk me through an incident command?
A. There's two ways of looking at that, the incident command there. There would be an on-scene commander set up with all the resources and assistance he needs to work from the scene. And if it's that large and there may be other requirements, the Emergency Operating Center would be activated and we'd work out of there also.
Q. When you say you work out of there also, what would you do?

16

A. Any resources that the incident commander on scene might need, line them up, have them respond to his location.
Q. And for those not quite as familiar with this field, could you give me an example of what those might be? What other resources might be pulled in from the off site command center?
A. Additional fire apparatus from in county or out of county, additional ambulances. Depending on the severity, we made need public works there for moving debris, law enforcement to keep the scene secure.
Q. I understand. That's very helpful. Thank you. When you call in other folks or other agencies, for example, police or fire, are there mutual aid agreements --
A. Yes, sir.
Q. -- between those?
And are they between the -- let me put a sharper point on my

17

question. Is there mutual aid agreements, for example, between police and fire?
A. Between police and --
Q. Police and fire. Or are they just between districts?
A. Their law enforcement has mutual aid with law enforcement. Fire has them with fire.
Q. So, I assume by what you said, -- and if I'm incorrect, please let me know -- I assume that there are fire districts?
A. Each municipality has their own fire but there are also fire districts, yes.
Q. And are there similar police districts?
A. No. Police is to their jurisdiction.
Q. And when you say to their jurisdiction --
A. Their municipality.
Q. I assume smaller

18

municipalities, are they covered by the New Jersey State Police in some instances?

**A. Yes, sir.**

Q. And in some instances, the municipalities have their own departments?

**A. Correct.**

Q. And those are funded through their own municipality?

**A. Correct.**

Q. With respect to the fire departments, is it arranged in sort of the same way?

**A. Yes.**

Q. Municipality has fire district and their funding is received from that municipality?

**A. Correct.**

Q. Is there funding received from state agencies to the particular fire municipalities, fire districts within the municipalities?

**A. Through grants.**

19

Q. But I guess the ultimate question I'm trying to get at is: Those are funded by the municipalities?

**A. Correct.**

Q. With the exception of grants or special projects or special funding?

**A. Yes, sir.**

Q. Can I talk to you about your 9-1-1 center for a moment?

**A. Yes, sir.**

Q. When a call comes into your 9-1-1 center -- first of all, let me ask this question: Are you in charge of the 9-1-1 center?

**A. Yes, sir, I am.**

Q. When a call comes into your 9-1-1 center, how does that call get processed?

**A. I'm not sure I understand what you're asking.**

Q. A call gets placed to the 9-1-1 center. Does a dispatcher handle the call?

**A. Yes, sir.**

20

Q. And are they logged in a computer system?

**A. Yes, sir.**

Q. And I would assume that sometimes you get calls for a police activity or police are needed, sometimes you get calls for fire needed, other emergency, --

**A. Yes, sir.**

Q. -- ambulance?

And is there anything else besides police, fire and ambulance?

**A. Emergency management.**

Q. When you say emergency management, just kind of can you explain what that means?

**A. Assistance on a motor vehicle accident. If there's a spill of gasoline, diesel fuel, chemicals, emergency management is brought in to handle that side of it.**

Q. For lack of a better term, hazmat?

**A. Hazmat, or the new word is**

21

**CBRNE.**

Q. Can you tell me what that means?

**A. Chemical, biological, radiological, nuclear explosives.**

Q. So, the dispatcher takes the call. How do they then determine who to call or to be the responder?

**A. They know where the call is coming from. The way the CAD system is set up when the call comes in it shows what police agency, what fire agency, what EMS agency is involved, covers that respective area. And after they get all the information, then they will dispatch the respective response unit.**

Q. When you talk about a CAD system, could you explain that to me?

**A. Computer-aided dispatch.**

Q. And let me give you my understanding and please correct me if I'm wrong. That will pinpoint the location of the call?

**A. Yes, sir.**

Q. And then they would be dispatched, assuming that the caller wants a response to that location, --
**A. Correct.**
Q. -- dispatched to that particular location?
And does the CAD system identify sort of what fire district?
**A. Yes.**
Q. And what police district?
**A. Yes, sir.**
Q. Are you familiar with the area known as the Twelve-Mile Circle?
**A. No, sir, not in that terminology.**
Q. What is your understanding of the boundary between New Jersey and Delaware in the Delaware River?
**A. Part of Salem County would be the middle of the river. And for the most part of Salem County, it's the low watermark.**
Q. And when you say for the most part, is there a part that it's not



the low watermark?
**A. Correct.**
Q. What part is that?
**A. The southern part of the county below -- part of Lower Alloway Creek Township, it is out in the center of the river.**
Q. And how far north does Salem County go? What's the adjoining county?
**A. Gloucester County.**
Q. And could you give me a landmark sort of where they split between Gloucester and Salem County?
**A. Logan Township and I believe it's Madhorse Creek. Don't hold me to that one, but I think it's the little body of water that runs right up alongside of Oldman's Township, between Oldman's and Logan Township.**
Q. If I showed you an overhead photo, do you think you could identify the boundary?
**A. Yes, sir.**
Q. I'm not going to mark this



as an exhibit because it's very large. Mr. Wentzell, I've laid out on this L-shaped table pictures, overhead photos of the Delaware River. The first photo is marked DE28987 through the last photo that's marked DE28992 on the table here.
Now, could you show me on the overhead photos where -- and if I represented to you on Picture 6 it's the tip of Artificial Island, could you give me the boundary?
**A. So, that's Artificial Island coming up this way?**
Q. That's correct.
**A. (Witness pointed.)**
Q. If I represented to you that's Oldman's Creek --
**A. Okay, yes, sir.**
Q. Salem County would go from the tip of Artificial Island north of the Delaware Memorial Bridge?
**A. Correct.**
Q. All the way up to --
**A. Oldman's Creek.**



Q. -- Oldman's Creek?
**A. Yes, sir.**
Q. In what we just described or what you showed me was the boundaries of Salem County --
MS. BALINT: Actually, when you identified the southern tip, you were talking about the tip of Artificial Island, and that's not the border of Salem County. Salem County proceeds further south.
BY MR. WALTON:
Q. I believe you testified earlier that the southern part of Salem County, the low watermark was not the border of the county?
**A. That's correct.**
Q. And based upon my maps, if I represented to you that the yellow line on the overhead photos was the border between the states, would you agree that the tip of Artificial Island essentially is the area where the low watermark boundary begins?

A. **Yes, sir.**
Q. So, within that area, you would be responsible for handling emergency calls?
A. **Yes, sir.**
Q. Now, when a call is logged into your CAD system -- and I'm sorry, I've already forgotten the acronym.
A. **Computer-aided dispatch.**
Q. Does it keep a record of where the particular emergency fire, police response, where they were sent?
A. **Yes, sir.**
Q. And how far back does that go, the recordkeeping for that?
A. **I'm not quite sure exactly how far back. It goes back a period of time.**
Q. Approximately at least through the '90s?
A. **No. I do not know.**
Q. Is it fair to say that it goes back just at least five years?
A. **Yes, sir.**



Q. Ten years?
A. **I honestly can't answer that.**
Q. But at least five years?
A. **Yes.**
Q. Now, we discussed the boundaries of Salem County up to Oldman's Creek?
A. **Yes, sir.**
Q. What is the next county north?
A. **Gloucester.**
Q. And do you have a counterpart in Gloucester County?
A. **Correct.**
Q. Do you know who that is?
A. **Tom Butts, B-U-T-T-S.**
Q. Now, we've gone over sort of what the boundary is between New Jersey and Delaware in the river?
A. **Yes, sir.**
Q. I believe you testified earlier that there were maps, excuse me, there were areas within particular fire



districts. Are there maps that show where the fire districts are located?
A. **Municipal boundary lines.**
Q. So, it's based upon the municipal boundary lines?
A. **Yes, sir.**
Q. So, a fire district wouldn't go beyond a municipal boundary line?
A. **A local one would not. Salem County is divided into three fire districts involving multiple municipalities.**
Q. Could you explain that to me, where they're located and sort of how that works?
A. **Salem County is divided into three fire districts, the riverfront being one.**
Q. When you say the riverfront, what do you mean?
A. **Oldman's Township, Carney's Point Township, Pennsville Township, Penns Grove, Salem City.**
Q. Could you give me those



again real quick?
A. **Oldman's Township, Carney's Point Township, Pennsville, Penns Grove and Salem City.**
Q. So, the river is one, the area adjoining the river is those towns and townships; that's one fire district?
A. **Not totally, because Elsinboro and Lower Alloway Creek is also part of, along the riverfront but they're a part of District 2.**
Q. And where on my map or on my overhead photo, where are Elsinboro and Lower Alloway Township?
A. **Artifical Island.**
Q. They're down at the very southern part?
A. **Correct.**
Q. I'm going to show you the map marked DE28992. Would Elsinboro Township be north or south of the tip of --
A. **North.**
Q. It would be in this area

30

just north of Artificial Island?
A. **Correct.**
Q. And Lower Alloway Township would be to the south?
A. **And adjoining to the nuclear power plant of Artificial Island.**
Q. So, it goes on down --
A. **Yes.**
Q. -- through Artificial Island?
Where is the other fire district? You said there were three fire districts in Salem County. Where are they located?
A. **District 2 would sweep on around to Quinton Township, Alloway Township and then the District 3 is more inland.**
Q. So, that's the upper, more inland areas?
A. **Correct.**
Q. Is there a map that sort of depicts all of this?
A. **No, sir, not into the**

31

**districts other than just looking at a county map and knowing each municipality has its own.**
Q. So, the municipality sort of boundaries would be that municipality's fire district?
A. **Correct.**
Q. And the overall fire district would be, would you agree, it's a territorial boundary sort of out to the river?
A. **Yes, sir.**
Q. Now, are you familiar with the, I'm pretty sure it's in Salem County, Fort Mott State Park?
A. **Yes, sir.**
Q. And are you familiar with the Conectiv Power Plant, I think it's changed names recently, just south of the Delaware Memorial Bridge?
A. **Yes, sir.**
Q. And are you familiar with the DuPont facility just north of the Delaware Memorial Bridge, --

32

A. **Yes, sir.**
Q. -- Chambers Works?
And are you familiar with the Keystone facility or the Logan Generating Station just north of Oldman's Creek?
A. **Yes, sir.**
Q. Please correct me if I'm wrong, but I believe it was your testimony that the boundary between Salem County and Delaware was the low watermark?
A. **Correct.**
Q. Has that always been your understanding?
A. **Except for the southern part of the county, yes.**
Q. And just so I don't get hung up on that every time, just know that I mean from the tip of Artificial Island north going forward.
We were talking about sort of recordkeeping a moment ago about how your CAD system sort of logs when calls

33

were made and how they go. Do you remember that?
A. **Correct.**
Q. And my question to you is: Are you aware in your computerized recordkeeping system of any fire that occurred on the Fort Mott pier?
A. **No, sir.**
Q. Are you aware of any fire that occurred on the Conectiv pier?
A. **No, sir.**
Q. And are you aware of any fire that occurred on the DuPont pier?
A. **No, sir.**
Q. And are you aware of any fire that occurred on the Keystone pier, Logan Generating Station?
A. **No, sir.**
Q. And when I refer to Keystone, I mean the Logan Generating Station. It was formerly called Keystone Cogeneration and I tend to confuse the names, so I apologize.
How long have you been in

34

your current position?
A. **Four years in my current position. I've been with the county and emergency management for over 20.**
Q. And what year did you start?
A. **1986.**
Q. So, in that time, you are aware of no fires on the Fort Mott --
A. **That's correct.**
Q. And DuPont?
A. **That's correct.**
Q. And Keystone?
A. **That's correct.**
Q. And Conectiv?
A. **Correct.**
Q. Now, I believe you said part of your responsibilities are sort of emergency management, hazardous materials, that sort of thing?
A. **Yes, sir.**
Q. Do you participate in any sort of safety programs or training programs or do you do any of those programs for businesses within the

35

municipality?
A. **Yes, sir, we do.**
Q. And what sort of businesses do you do that sort of training program for?
A. **We train annually with the nuclear power plant. We also interact with E.I. DuPont, Pedricktown Industrial Complex. And if someone asked for any training that we could provide, we'll deal with anybody.**
Q. What sort of training had you done for E.I. DuPont?
A. **Done for?**
Q. Done for or done with.
A. **Participated with them in emergency response exercises.**
Q. Could you explain to those less educated what those are?
A. **If they simulated a fire or a medical emergency or a release of any hazardous material, we work with them and assist them from the outside.**
Q. Have you actually been on

36

site?
A. **Yes.**
Q. And is that a pretty secure facility, the Chambersburg facility?
A. **Yes, sir.**
Q. From your personal knowledge, what sort of protections or security measures are taken at that facility?
A. **The entire facility is fenced in. They have a camera system on the whole fence line, plus they have 24-hour guards at the facility.**
Q. Now, have you ever been to the Conectiv facility?
A. **Yes, sir.**
Q. Do they have security measures?
A. **Again, it's all fenced in. I can't go any further than that on that when it's all fenced in. I believe they have security at the gate.**
Q. Fair enough. But you can't just drive in the Conectiv facility?

37

A. **No, you cannot.**
Q. How about on the Keystone facility or the Logan Generating Station?
A. **I've only been on that site one time since that is in Gloucester County, and I honestly cannot answer.**
Q. Fair enough. When you say you've been with the county for almost 20 years, approximately 20 years, have you been in the same sort of positions and sort of moved up the ladder?
A. **I started in emergency management and recently took over as the director of the program.**
Q. So, you've always been in this capacity?
A. **Yes, sir.**
Q. I'm going to take you back to those four piers that we discussed earlier. Are you aware of any arrests or police responses on the Fort Mott State Park?
A. **Yes.**
Q. Can you tell me about that?

**A. There was a murder incident a few years back on Fort Mott.**
Q. Was it on the location or was it on the dock?
**A. No, it was on the location.**
Q. It was on the location?
**A. Yes, sir.**
Q. I'm sorry, I should have put a sharper point on my question. Are you aware of any response or police activity or police responses on the pier?
**A. No, sir.**
Q. I'm going to move northward. Are you aware of any police responses on the Conectiv dock?
**A. No, sir.**
Q. Are you aware of any police responses on the DuPont dock?
**A. No, sir.**
Q. Are you aware of any police responses on the Keystone or Logan Generating --
**A. No, sir.**
Q. I'm going to go back and



sort of walk through my townships and make sure I got them all along the river. I believe you testified there was Oldman's Township?
**A. Correct.**
Q. Carney's Point?
**A. Correct.**
Q. Pennsville?
**A. Correct.**
Q. Penns Grove?
**A. Correct.**
Q. Salem City?
**A. Correct.**
Q. Elsinboro?
**A. Correct.**
Q. And Lower Alloway, just a little bit?
**A. Part of it, yes.**
Q. Now, are you aware of sort of the equipment or resources of those particular fire companies?
**A. Yes, sir.**
Q. And before I go there, is that sort of the full range along the



river?
**A. Yes, sir, it is.**
Q. Now, I'm going to walk you through. Oldman's Township, do they have an emergency response boat?
**A. No, sir.**
Q. Do they have a fire boat?
**A. No, sir.**
Q. Carney's Point Township?
**A. No, sir.**
Q. Neither a fire boat nor an emergency response boat?
**A. Correct.**
Q. Pennsville Township, I'll ask the question together, do they have an emergency response boat or a fire boat?
**A. No, sir.**
Q. Penns Grove, do they have an emergency response boat or a fire boat?
**A. No, sir.**
Q. Salem City, do they have an emergency response boat or a fire boat?
**A. No response boat. They have**



**a, they are manning a fire boat recently purchased by the county.**
Q. Purchased through --
**A. Homeland Security.**
Q. Just so I understand, when you say through Homeland Security, is that different from your office?
**A. It's another part of my office along with the Prosecutor's Office.**
Q. And is that a municipal piece or is that from a state grant?
**A. From a federal grant.**
Q. And when did they get that federal grant?
**A. For that fire boat, it was 2004.**
Q. And prior to 2004, did Salem City have any emergency response boat or a fire boat?
**A. They had an emergency response boat.**
Q. And what kind of boat was that?

A. **Just a small boat that could go out in the river and assist with a disabled vessel.**
Q. I'm going to move south of Salem City. Elsinboro Township, do they have an emergency response boat?
A. **No, sir.**
Q. Do they have a fire boat?
A. **No, sir.**
Q. And Lower Alloway Township, they have a boat, correct?
A. **They have a small response boat, yes.**
Q. Did I give a complete list of all the towns all the way down that adjoin the Twelve-Mile Circle?
A. **Yes, sir, you did.**
Q. And so the only response boats up until 2004 were Lower Alloway Township, a small response boat?
A. **Lower Alloway Creek.**
Q. My apologies. Lower Alloway Creek, small response boat?
A. **Yes, sir.**



Q. Salem City bad a small response boat also?
A. **Yes, sir. Pennsville Township had one at one point and then they don't have it anymore.**
Q. How come?
A. **Nobody wanted to man it, I guess. I don't know.**
Q. Do any of the police agencies for any of those towns have a response boat?
A. **Oldman's Township.**
Q. Why don't I walk --
A. **Oldman's Township is covered by New Jersey State Police, and of course, there is the New Jersey State Marine Bureau. But none of the other town law enforcement have a boat.**
Q. So, Oldman's Township is New Jersey State Police. Do you have any familiarity with the New Jersey State Police boat, --
A. **No.**
Q. -- what they have?



Do you know if the New Jersey State Police station a boat in Oldman's Township?
A. **No, sir.**
Q. You may have answered this and I apologize. Are those exclusively all the boats that would be used for policing within that area north of the tip of Artificial Island and the Delaware River?
A. **For policing?**
Q. Yes, sir.
A. **For law enforcement purposes?**
Q. Yes, sir.
A. **Would strictly be the New Jersey State Police Marine Bureau.**
Q. And they're out of Oldman's? They may or -- we don't know if --
A. **They do not have a boat stationed at Oldman's Township, no.**
Q. So, to your knowledge, in none of these municipalities there's a boat stationed in any of these for law



enforcement purposes?
A. **That's correct.**
Q. With that, I was reading your Declaration in this case and it talks about cell phone use. If somebody was on the water within the Twelve-Mile Circle and they called on their cell phone to 9-1-1, how would that work?
A. **If it hit our tower or a tower within Salem County, it would go to our 9-1-1 center. They would take the call and, depending on the situation, either dispatch a unit of ours. They would also transfer that call over to New Castle County and let them also be aware of what's going on.**
Q. How often does that happen that you transfer calls to New Castle County?
A. **Any type of call?**
Q. Speaking strictly water calls within the Twelve-Mile Circle.
A. **Not very often.**
Q. If you had a water call

though, would it be your policy to transfer it to New Castle County?
**A. Correct.**
Q. And because they have the boats to respond?
**A. No, because it's their jurisdiction.**

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**(Wentzell-1 marked for identification.)**

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**BY MR. WALTON:**
Q. I'm going to hand you something that you may or may not have seen. I've had the document marked Wentzell-1, and it's Delaware Bates stamp 26776, 26763 and 26809. I'll represent to you that these were produced by the 9-1-1 center in New Castle County.
And there's a phone message there that says Salem over on the right-hand side of the page. Do you see that?
**A. Yes, sir.**



Q. And a gentleman from the New Castle County 9-1-1 center testified that that means it was a call from your office or a referred call from your office?
**A. Okay, sir.**
Q. Do you have any reason to dispute that?
**A. No, sir.**
Q. If it was in New Castle County's jurisdiction, you would have referred the call to them?
**A. Yes, sir.**
Q. Are you aware of the response procedure for water calls or boat calls in the Delaware River within the Twelve-Mile Circle?
**A. No, sir, I'm not.**
Q. Do you know if there's a protocol set up by New Castle County or the Coast Guard regarding how boat responses or water responses are supposed to take place?
**A. No, sir.**

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**(Wentzell-2 marked for identification.)**

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**BY MR. WALTON:**
Q. Mr. Wentzell, I'm going to show you a document that's been marked Wentzell-2, Bates stamped DE26824. I will represent to you that this is the fire districts as provided by New Castle County. Actually, if you go into their 9-1-1 center, this is the map that's hanging up.
If you look to the right, it shows the water or the Delaware River on the right-hand side. Do you see that?
**A. Yes, sir.**
Q. Do you have any reason to dispute that New Castle County's fire districts go all the way to the low watermark?
**A. I do not dispute that.**
Q. And do you know which New Castle County fire districts have boats?
**A. No, sir.**



Q. Now, is it your policy that if it's in New Castle County that you refer the call to them?
**A. Yes, sir.**
Q. But if there was a response certainly that you could help out with or your agency could help out with even if it was in Delaware territory, I assume you would help out?
**A. Yes.**
Q. And I assume New Castle County would do the same for you?
**A. That's correct.**
Q. Is there a mutual aid agreement between your county and any New Castle County or state?
**A. Verbal.**
Q. I'll represent to you that they told me the same thing. So, if it's in Delaware's territory and there's an event and a New Castle County fire company or police responds and they need assistance, would they give you a call?
**A. Yes.**

50

Q. And then you would, I assume, dispatch whatever personnel that were needed to assist?
**A. That's correct.**
Q. Now, I know when we're fighting a fire or having a police response we don't worry about these things too much. But who would command, if there needed to be command decisions made, who would command that response assuming it was in Delaware territory?
**A. The lead agency in Delaware.**
Q. So, that would be Delaware and then they would get assistance from your agency?
**A. Correct.**
Q. So, your emergency responders would basically fall under their own hierarchy but would ultimately fall under the command of Delaware emergency responders?
**A. That is correct.**
Q. And would it be your understanding that Delaware's police,

51

emergency, fire responses for events in the Delaware River, sort of water were in the lower watermark, would Delaware have jurisdiction for boating accidents?
**A. Yes, sir.**
Q. Fires?
**A. Yes, sir.**
Q. Police?
**A. Yes, sir.**
Q. Any other event that occurred out there?
**A. Short of the U.S. Coast Guard taking over, yes.**
Q. Assuming the U.S. Coast Guard didn't take over?
**A. Yes, sir.**
Q. I guess that would go to police investigations too, drownings, something like that?
**A. Yes, sir.**

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**(Wentzell-3 marked for identification.)**

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52

**BY MR. WALTON:**
Q. Let's talk about your affidavit just for a minute. I'm going to try to summarize this just a little bit and please tell me if I'm making a mistake. I'm not trying to mischaracterize.
It's my understanding that if there's a call made from a land-based line in New Jersey that call would go to you?
**A. That's correct, unless it was our lines were tied up and then it would go to a different PSAP and it would be sent back to us.**
Q. Please explain the PSAP piece to me real quickly.
**A. Our 9-1-1 center is a PSAP, Public Assistance – I'm sorry, I can't finish it. Any 9-1-1 call made would go to our 9-1-1 center, unless all the lines were jammed up and then it would go to whichever tower it could grab, whether it be within New Jersey or whether it be**

53

**within Delaware. And they would take the call and then send it to us.**
Q. And I believe it's absolutely consistent with the way the gentleman from New Castle County testified. In other words, you would get a call and it would be routed to a particular tower; and whoever is available, if all the lines on one are busy, they would go to the other one to get an emergency response?
**A. That's correct.**
Q. Likely, the first tower, if the call was from a land-based line, would likely go to your office?
**A. That's correct.**
Q. And I assume you would dispatch emergency personnel to whatever was needed?
**A. That's correct.**
Q. Can I go back to my photo for a minute?
**A. Sure.**
Q. I'm going to use this just

54

because it's the most visual. I'm pointing to DE28987. We discussed that was the Keystone or Logan Generating Station.

**A. Yes, sir.**

Q. And that's the dock. So, if a call came in from the Keystone facility and there was a complaint relating to something happening on the end of the dock, for example, there was a problem on a ship that was more to the dock, you would send response vehicles?

**A. That's Gloucester County, sir.**

Q. Assuming it was in Salem County?

**A. Yes, I would.**

Q. And I'm just using this for illustrative purposes.

**A. Yes, I would.**

Q. It's on the end of the dock and you would send emergency services. And I assume that you would also call New Castle County?

55

**A. That's correct.**

Q. Because it's in their jurisdiction?

**A. Yes, sir.**

Q. And they have the fire boats?

**A. Yes, sir.**

Q. And so if your emergency responders responded to that fire, ultimately if it was out on the dock or the pier, they would be under the command of New Castle County emergency responders or personnel because it's in New Castle County?

**A. Upon their arrival, yes, until which time the chief of the responding agency would be in command until the others got there and then they would transfer command.**

Q. They would transfer command to the jurisdiction that it's in?

**A. That's correct.**

Q. And that would hold true for any response on a pier --

56

**A. That's correct.**

Q. -- that went into Delaware territory?

**A. That's correct.**

Q. Same thing with a cell phone. I used a land-based telephone call.

**A. Same thing.**

Q. It would be the same idea if it went to a response on a pier. New Castle County or the jurisdiction of New Castle County who would respond to that police incident, that fire incident, that emergency response incident, is it your testimony that they would be in command of that response?

**A. Once it was transferred from the local, yes.**

Q. And that would be the same for emergency medical services?

**A. Yes, sir.**

Q. And any other response that I might have forgotten?

**A. Yes, sir.**

57

Q. Are you familiar with something called a September Fest?

**A. Yes, sir.**

Q. What is that?

**A. It is something that Pennsville Township puts on that brings in vendors and rides for the kids and has a parade. It's just a party day.**

Q. Do you know if Pennsville has ever requested Delaware police forces to sort of monitor the river?

**A. Yes, sir, they have.**

Q. I'm sorry, they have requested?

**A. They have, yes, sir.**

Q. Because it's in Delaware's jurisdiction?

**A. They request them and the U.S. Coast Guard because of fireworks at night. And they notify both the Coast Guard and Delaware and have them have a boat in the water to protect the waterways.**

Q. Let's talk about calls to

the Coast Guard real quick. Let's say a call comes into your office regarding, it goes off the PSAP towers and it ends up in your call center. Is there a notification requirement to let the Coast Guard know of something that happens in the water?

**A. Again, we pass it to New Castle.**

Q. And then they contact --

**A. They would do that. We pass it to New Castle County and they would contact the Coast Guard.**

Q. Have you ever been down the Delaware River within the Twelve-Mile Circle on a boat?

**A. Yes, sir.**

Q. Could you testify to what structures existed out there?

MS. BALINT: From his own personal memory?

MR. WALTON: From his own personal memory.

THE WITNESS: It's been too



long.

BY MR. WALTON:

Q. So, as far as you know, there's really only the four facilities, the Fort Mott, the Conectiv --

**A. You're talking about piers from our shoreline?**

Q. Yes, sir.

**A. No, there's one in Penns Grove. Right off Main Street in Penns Grove there's a pier that's fenced off.**

Q. It's not used?

**A. It's not used. There's also one at PSE&G, nuclear power plant.**

Q. It's a little further south?

**A. Other than that, what you spoke about is, other than the one in Penns Grove, is correct. That's all of them.**

Q. With respect to the one in Penns Grove, are you aware of any fire on that pier?

**A. No, sir.**

Q. Are you aware of any police



responses that occurred on that pier?

**A. No, sir.**

Q. Are you aware of any emergency services being rendered on that pier?

**A. No, sir.**

Q. These are just sort of general questions. Have you ever reviewed riparian grants relating to the Delaware River?

**A. No, sir.**

Q. Do you know anything about riparian grants?

**A. No, sir.**

Q. Have you ever been involved in any coastal zone consistency determinations?

**A. No, sir.**

- - -

**(A recess occurred.)**

- - -

BY MR. WALTON:

Q. I'm sorry, I have forgotten the name of this county up here.



**A. The county is Gloucester. The municipality is Logan Township.**

Q. Do you know if they follow the same procedure as far as notifying New Castle County?

**A. No, I do not. I would assume but I do not know for sure.**

Q. And as far as any hazardous materials, contaminants, that sort of thing that would occur in the water within that Twelve-Mile Circle area, would it also be your testimony that would be Delaware's jurisdiction for those?

**A. Yes, sir, it would.**

MR. WALTON: That's all I have for right now.

MS. BALINT: I have probably just a couple.

- - -

EXAMINATION

- - -

BY MS. BALINT:

Q. Mr. Wentzell, if the Salem

9-1-1 center received a 9-1-1 call from a dock or pier extending from the New Jersey shore out into the Delaware River that involved a health, fire, police emergency, would the Salem 9-1-1 center dispatch New Jersey emergency responders to that incident?

**A. Yes, ma'am.**

Q. And you would also transfer the call to Delaware after you dispatched the New Jersey responders?

**A. We would transfer the call prior, and as soon as they got the information, they would transfer the call and dispatch at the same time.**

Q. Would you expect the Delaware emergency responders to be first responders on a call such as that?

**A. No, ma'am.**

Q. Why not?

**A. Because by the time they could get there, Lord knows what might happen. We could be there a lot quicker than they can come across the bridge and**



**get there.**

Q. Do you have any idea how long it might take a Delaware ambulance or police car to respond to the dock or pier at the DuPont plant? That's an easy one because it's right by the bridge.

**A. It would take approximately 20 minutes to a half an hour.**

Q. And would you expect New Jersey emergency responders to respond quicker?

**A. Yes, because DuPont has emergency responders on site. And it's a private pier at DuPont. They would respond in with their units and then ask for assistance if need be.**

Q. How about the Fort Mott pier?

**A. It would take them a good hour driving across the bridge to get to Fort Mott pier where we could have a unit there within 15 minutes.**

MS. BALINT: That's all I have.



MR. WALTON: Just a few follow-ups.

- - -

EXAMINATION

- - -

BY MR. WALTON:

Q. I believe you testified that you didn't know what the protocol was for responses, for boat responses in the Delaware River. Is that correct?

**A. That's correct.**

MS. BALINT: Objection. That's outside of the scope of any question that I asked.

MR. WALTON: It goes to the response time. I'll follow it up —

MS. BALINT: We were talking about land-based response.

MR. WALTON: But the testimony was how long would it take them to get there. And the Wilmington fire boats, I would like to ask him questions about



how fast would it take for the Wilmington fire boat to respond to the same pier because that would be a fire response to Fort Mott or a police response to Fort Mott. Because you limited it only to roads, it does not preclude me from asking the question about who could get there.

BY MR. WALTON:

Q. Now, so you don't know how quickly it would take for the Wilmington fire boat to respond?

**A. No, sir, I do not.**

Q. Or any of the other emergency, boating emergency response vehicles?

**A. No, sir, I do not.**

Q. And so it could be considerably less than the time frames that you stated?

**A. That's correct.**

Q. How far can fire hoses reach?

66

A. **That depends on the fire company. They have many hundreds of feet of hose.**
Q. Hundreds of feet of hose?
A. **Yes, sir.**
Q. How far can the spray go, sort of maximum out of the ones that you know of? The longest one, how far out could it go out of any of the townships?
A. **There are too many variables, depending on the hose size, the nozzle size. And it would be hard to say not knowing what they were using at that time.**
Q. Would it be difficult to reach over 1,000 feet?
A. **Oh, yes.**
Q. Would it be difficult to reach over 2,000 feet?
A. **Yes, sir.**
Q. If I represented to you that the dock at the Keystone or Logan facility was over 1,000 feet long, would it be difficult to put out a fire on the

67

end of that pier?
MS. BALINT: Objection to the form of the question.
BY MR. WALTON:
Q. You can answer, if you can understand it.
A. **If you're asking me do they have enough fire hose to get out there, I'd say yes, they do. They could not stand on land and throw it 1,000 feet.**
Q. Would it be difficult to fight the fire without water support for a fire at the end of that pier?
A. **Difficult to fight any fire without water support.**
Q. I mean water-based support on a boat, with a fire boat?
A. **I'm not sure what you're asking me there.**
Q. I'm sorry, I need to put a sharper point on my question. Assume that the Keystone pier is about 1,300 feet.
A. **Okay.**

68

Q. The pier is on fire and a boat is on fire at the end of the pier. Would it be difficult to fight that fire from land only?
A. **Very much.**
Q. And would you need support from the water side?
A. **Yes.**
MR. WALTON: That's all I have.
MS. BALINT: I have just one follow-up issue.
- - -
EXAMINATION
- - -
BY MS. BALINT:
Q. Are you aware of whether fire boses are capable of being interlocked with one other, like they can connect hoses to one other and lay a line of --
A. **Yes, ma'am.**
Q. -- multiple hoses?
A. **Yes, ma'am.**

69

Q. Are you aware of a limit on the length that those hoses can be connected?
A. **No, ma'am.**
Q. Is it your understanding that a fire truck, multiple fire trucks with sufficient quantities of hose could lay a line -- and by lay a line, I mean connect lines and lay them down -- that would extend to the end of any pier that you're aware of on the Delaware River?
A. **I don't know what Logan Fire Company has. But I would venture to say that they could reach the end of any pier into the Delaware, in Salem County and Keystone.**
Q. And certainly, if a single fire company didn't have sufficient hose, there would be mutual aid and more hose would be brought on another truck?
A. **That is correct.**
MS. BALINT: That's all I have.
- - -

EXAMINATION

- - -

BY MR. WALTON:

Q. And just to follow-up: And Delaware would respond to that fire?

A. Most likely.

MR. WALTON: That's all I have.

- - -

(Witness excused.)

(Deposition concluded at approximately 2:17 p.m.)

- - -



CERTIFICATE

I HEREBY CERTIFY that the witness was duly sworn by me and that the deposition is a true record of the testimony given by the witness.

Kimberly S. Gordon, a
Registered Professional Reporter
and Notary Public
Dated: OCTOBER 25, 2006

(The foregoing certification of this transcript does not apply to any reproduction of the same by any means, unless under the direct control and/or supervision of the certifying reporter.)



LAWYER'S NOTES

| PAGE | LINE | |
|---|---|---|
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IN THE
SUPREME COURT OF THE UNITED STATES

- - -

STATE OF NEW JERSEY :
v. :
STATE OF DELAWARE :

- - -

October 10, 2006

- - -

Oral deposition of Steven Whitney was held at the Offices of NJDEP, Bureau of Tidelands, 9 Ewing Street, Trenton, New Jersey, commencing at 9:30 a.m., on the above date, before Samantha A. Oakley, Certified Shorthand Reporter and Notary.

- - -

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- - -



- - -

INDEX

- - -

Testimony of: Steven Whitney


| | Page |
|---|---|
| By Mr. Attaway | 5 |


- - -

EXHIBITS

- - -


| NO. | DESCRIPTION | PAGE |
|---|---|---|
| Whitney-1 | Affidavit | 10 |
| Whitney-2 | NJ Coastal Management Program Bay and Ocean Shore Segment (Draft) | 50 |
| Whitney-3 | NJ Coastal Management Program Bay and Ocean Shore Segment (Final) | 50 |
| Whitney-4 | Options for NJ's Developed Coast | 65 |
| Whitney-5 | Proposed NJ Coastal Management Program and Draft Impact Statement | 80 |
| Whitney-6 | 1980 CMP | 80 |
| Whitney-7 | Permit | 103 |
| Whitney-8 | Letter | 114 |
| Whitney-9 | Subaqueous Lands Lease | 114 |
| Whitney-10 | Supplemental Approval | 114 |
| Whitney-11 | Supplemental Approval | 114 |
| Whitney-12 | Letter | 114 |
| Whitney-13 | Supplemental Approval | 114 |
| Whitney-14 | Letter | 114 |
| Whitney-15 | Letter | 114 |
| Whitney-16 | Subaqueous Lands Lease | 114 |
| Whitney-17 | Memorandum | 115 |
| Whitney-18 | Memorandum | 135 |
| Whitney-19 | Land Use Form | 139 |
| Whitney-20 | Permit Application | 139 |
| Whitney-21 | Permit | 144 |
| Whitney-22 | Memorandum | 152 |




- - -

DEPOSITION SUPPORT INDEX

- - -

Direction to Witness Not to Answer
Page Line Page Line Page Line
None

Request for Production of Documents
Page Line Page Line Page Line
None

Stipulations
Page Line Page Line Page Line
None

Question Marked
Page Line Page Line Page Line
None



Steven Whitney, after having been duly sworn, was examined and testified as follows:

- - -

ORAL EXAMINATION

- - -

BY MR. ATTAWAY:

Q. Good morning, Mr. Whitney.

**A. Good morning.**

Q. My name is Scott Attaway and I represent the State of Delaware in this case, which is New Jersey versus Delaware, number 134 original, and it's been filed in the Supreme Court of the United States by New Jersey. Before we begin, I just want to establish a few ground rules so that the deposition goes smoothly.

First, if you don't hear a question, please let me know and I'll repeat it. Second, if you don't understand a question, let me know and I'll try to clarify it. Also because this is being taken down by a court

6

reporter, I'll need you to provide a verbal response to any questions I ask. She can't really take down nods of the head or anything.

**A. I understand.**

Q. Finally, let me finish my question before you start to answer, again so the court reporter can take down what both of us says. Do you understand these instructions?

**A. Yes, I do.**

Q. Is there any reason which you are aware that might prevent you from testifying truthfully today, such as medications or anything else like that?

**A. No.**

Q. You're currently retired from the New Jersey Department of Environmental Protection?

**A. Yes.**

Q. Are you represented by counsel today?

**A. Yes.**

Q. Who is your counsel?

7

**A. Barbara Conklin and Bill Andersen.**

Q. Other than conversations with counsel, what did you do to prepare for your deposition today?

**A. Not much. Since I'm retired and live in Maine, I don't have access to any documents. So, basically, I did nothing except get a good night's sleep.**

Q. It sounds like a good preparation. So you didn't review any documents before coming here today?

**A. There's a couple of documents I reviewed yesterday regarding the 1978 Bay and Ocean Shore Segment document and the 1980 document, but just reviewed a couple small paragraphs, did not look at the document in any detail.**

Q. Have you read any of the pleadings in this case?

**A. No, I have not.**

Q. Did you talk to anyone else to prepare, other than counsel?

**A. No.**

8

Q. Did you meet or speak with counsel to prepare for the deposition? To be clear, I don't want to know the substance of anything you talked about with your counsel.

**A. Yes, I did.**

Q. When was that?

**A. That was yesterday.**

Q. For about how long?

**A. It was about an hour and a half.**

Q. Who did you meet with?

**A. I met with Barbara Conklin and Bill Andersen.**

Q. Have you given a deposition before?

**A. Yes, I have.**

Q. How many times?

**A. To the best of my recollection, I guess it was two or three times.**

Q. What were those cases about?

**A. They were about some court proceedings -- probably had to do --**

9

**again, this is recalling from memory, having to do with permit cases that I administered when I was in DEP.**

Q. Let's take them one at a time. What was the earliest case?

**A. Probably sometime in the early -- no, probably sometime in the late 1970s.**

Q. Do you remember what that case was about?

**A. No. I can only recall the setting but I can't recall the details.**

Q. Something about a permit?

**A. Yes.**

Q. A permit that you administered?

**A. Yes.**

Q. We'll get to that in a minute. What about the other two?

**A. Again, the same. I can recall settings, but I can't recall detail exactly what cases they were. They were probably having to do with permit cases.**

Q. Anything having to do with the boundary between New Jersey and Delaware?
**A. No.**
Q. Anything having to do with Delaware's authority in the Delaware River?
**A. No.**
Q. I'd like to mark as Exhibit-1 -- let me ask one question before I do. You provided an affidavit in this case, correct?
**A. Yes.**
Q. I'd like to mark that as Exhibit-1.
(Whereupon document was marked Whitney-1 for identification.)
BY MR. ATTAWAY:
Q. Mr. Whitney, is this the affidavit that you supplied in this case?
**A. Yes, it is.**
Q. In the affidavit you talk a fair bit about your background, so I just wanted to go through that briefly. In



paragraph 2 -- in paragraph 1 it says you retired from a 27-year career -- nice career -- at the Department of Enviroomental Protection between 1970 and 1997. Since 1997, have you done any work?
**A. Yes, I have.**
Q. What sort of work?
**A. I am an unpaid volunteer on the Deer Isle Memorial Ambulance Corps as an EMT, and for two summers since retirement I worked at an airport, Bar Harbor Airport, doing line service for both private and commercial aircraft.**
Q. Have you done any work for the State of New Jersey since 1997?
**A. No.**
Q. When I say State of New Jersey, I mean the Department of Environmental Protection.
**A. None.**
Q. Are you being paid for your work on this case?
**A. No.**



Q. Do you have an agreement to provide work on this case?
**A. No.**
Q. In Paragraph 2 it says from January 1975 to July 1979 you served as supervisor in the Office of Coastal Zone Management in the Division of Coastal Resources. Just briefly describe your duties there and the scope of the Office of Coastal Zone Management in the Division of Coastal Resources.
**A. The Office of Coastal Zone Management in the Division of Coastal Resources was an office at the time that was set up to administer the Coastal Area Facilities Review Act and some other regulatory laws. It was all done under the auspices of those laws as well as the Federal Coastal Zone Management Act.**
Q. You said the Coastal Area Facilities Review Act; is that CAFRA?
**A. Yes.**
Q. What were your duties in that office?



**A. During this period of time between 1975 and 1979?**
Q. Yes.
**A. I was basically in charge of the regulatory program that administered the permits under the Coastal Area Facilities Review Act, which calls for regulating major development in New Jersey's coastal zone. It does not include all development but major development such as residential units of 25 or more dwelling units, major commercial and industrial facilities.**
Q. Then in paragraph 4 it states that from 1979 to 1988 you served as Chief of the Bureau of Planning and Project Review also in the Division of Coastal Resources. What were your duties there?
**A. From that period of time it included an expanded regulatory program. The department underwent a reorganization, which for my responsibility it included not only CAFRA**

14

permits but there was a new office created that I supervised that dealt with CAFRA, coastal wetland permits and waterfront development permits all under one office.

Q. What is a waterfront development permit?

A. A waterfront development permit is a permit issued for any development below the mean high water line in tidal flow areas in the State of New Jersey.

Q. So the Waterfront Development Act applies only below mean low water -- mean high water?

A. Mean high water at that time.

Q. Then from June 1988 to July 1991 it says you served as Assistant Director of the Division of Coastal Resources. I take it that was something of a promotion? You went from chief of a bureau to assistant director?

A. I guess you would classify

15

it as a promotion. After working in the permit section for close to eight years, I really wanted a change because we were issuing 1500 permits a year. It got to the point it was no longer a challenge for me. So I was given a chance to become the assistant director in the Division of Coastal Resources dealing with more the planning side of coastal management instead of the regulatory side of coastal management.

Q. So more policy than implementation, perhaps?

A. Yes.

Q. Then finally it says that your last position at DEP before you retired between 1991 and 1997 was as Manager, Environmental Planning Coastal/Land Planning Group. Please tell me a little bit about that position and whether you would consider it a promotion.

A. I probably would not consider that a promotion. What happened

16

was within that period of time between 1988 or between 1991, around that time the department went through another reorganization where it went from an organization where each section of the department was organized under resource lines.

There was a division dealing with coastal issues. There was a division dealing with water issues, another division dealing with air quality issues. The new administration decided that they did not like that organization for the department, so they decided to reorganize the department under functional lines so that all the permits were combined under one agency, all planning was combined under one agency. So basically my duties shifted because of the reorganization but they basically stayed the same, which was overall responsibility for New Jersey's Coastal Planning Group.

Q. How was the DEP organized

17

before that?

A. Up until 1991 from 1971 when the department was first formed, the department was organized under resource lines. They may have had different names over time. There may have been some administrative changes with each one of the divisions. For example, the Division of Coastal Resources was known as Division of Marine Services.

Q. Division of?

A. Marine Services. And at the time Division of Marine Services had an enforcement arm that is today part of the State Police. At the time the Division of Marine Services -- it was a bureau or the Office of Marine Police that carried out enforcement actions on marine coastal waters.

I think it was in the late '70s the department decided to shift Marine Police into the State Police function, and during that time there was also some other changes which evolved in

18

**the Division of Coastal Resources, but it stayed within functional lines. It was recognized that there was a marine coastal element, a resource to protect, and it stayed that way up until 1991 where the department went through a major reorganization from resource-based to function-based.**

Q. So if I understand it correctly, before 1991 the department was organized more or less along the lines of, say, coastal resources, inland resources and various other subcategories and there might be individuals in those different divisions performing the same function such as planning or permitting but then after '91 it was organized I think you called it along functional lines?

**A. Yes.**

Q. So was it that planning got put in one division and permitting got put in one division, regardless of the geography or the nature of the lands or

19

waters within the state?

**A. Yes.**

Q. You said that you worked with CAFRA and the Waterfront Development Act and the Wetlands Act?

**A. Yes.**

Q. That was from the beginning of your tenure at DEP?

**A. No. From the beginning when I first came into the Department of Environmental Protection I was in the Bureau of Geology.**

Q. That was in 1970?

**A. In 1970. I worked in that bureau from 1970 to 1973 revising state topographic maps and working directly under the State topographic engineer.**

Q. After 1973?

**A. After 1973 I transferred to the commissioner's office and we were working at that time on developing tidelands maps that basically drew a line between privately-owned lands in the state and publically-owned lands.**

20

**And then in January 1975 I transferred from the commissioner's office to the Division of Coastal Resources and created the Division of Coastal Resources to administer the Coastal Area Facilities Review Act.**

Q. So starting in January 1975 you were administering and issuing permits under CAFRA?

**A. Yes.**

Q. And the Waterfront Development Act as well?

**A. No, not at that time. That didn't come into effect until later on.**

Q. Do you remember approximately when?

**A. I believe it was 1979.**

Q. You said in 1973 you were in the commissioner's office developing tideland maps to distinguish between privately-owned and publically-owned lands. In that position, did you have occasion to consider the boundary between New Jersey and Delaware?

21

**A. No.**

Q. Are you familiar with Delaware's coastal zone laws?

**A. Vaguely familiar with them in the sense that we have had meetings with staff from the State of Delaware's Coastal Management Program and we have discussed the fact that Delaware does have a coastal law that was passed prior to New Jersey passing its law and that its law tends to be different as far as regulating different facilities than the way New Jersey regulates its facilities.**

Q. When did you have those meetings with Delaware?

**A. Probably most of the meetings we had with staff was probably in the early 1990s.**

Q. That was in conjunction, I take it, because you mention it in your affidavit with the Draft Memorandum of Understanding, regarding coordination of permit review between the states?

**A. Yes.**

22

Q. What about before 1991?
**A. Before 1991, I had several meetings with Delaware's coastal management staff related to shore protection issues, coastal erosion issues, at various meetings one on one with Delaware as well as in conferences.**
Q. Did you discuss the boundary between New Jersey and Delaware in those meetings?
**A. In these previous meetings -- prior to the meetings in 1990?**
Q. We can take them one at a time, yes. In the pre-1991 meetings.
**A. Not that I recall.**
Q. Did you discuss in those pre-1991 meetings Delaware's regulatory authority within the Delaware River?
**A. No, I don't believe so.**
Q. You're familiar with what's known as the Twelve Mile Circle, correct?
**A. Yes.**
Q. What is your understanding

23

of the Twelve Mile Circle?
**A. My understanding is it's a boundary that was set by Supreme Court decision sometime in the 1930s that instead of having the boundary run down the channel or the center line of the Delaware River and Delaware Bay, the Twelve Mile Circle runs down basically the shoreline of the New Jersey side of the river for a length of 30 or 40 miles and then reaching a point jets back out into the center line of the channel or the river and continues down that center line to the Atlantic Ocean.**
Q. Thank you. When did you become aware of the location of the boundary within the Twelve Mile Circle?
**A. I first became aware in the period between 1970 and 1973 when I was working on revising the New Jersey State topographic maps. One of the maps covers that area, and I happened to notice the boundary and the oddity of the boundary and talked to the state topographic**

24

**engineer and he referenced the Supreme Court decision and some other documents related to the boundary.**
Q. What was your understanding in the 1970 to 1973 time -- when you were preparing the topographic maps, what was your understanding of Delaware and New Jersey's regulatory authority within the Twelve Mile Circle?
**A. I didn't have an understanding of it then because then I was only really concerned with revising topographic features, looking at topographic maps and just knew that the boundary was there and that it was not a mistake of some previous revision to the map, that that was the actual boundary.**
Q. Did you at some point come to an understanding of the regulatory authority of the respective states within the Twelve Mile Circle?
**A. Yes.**
Q. When did you come to that understanding?

25

**A. I guess it was in the late 1970s when I was reviewing one of the drafts of the Bay and Ocean Shore Segment of New Jersey's preparation for a document for federal coastal zone approval.**
Q. Did you say when you were reviewing a 1978 draft?
**A. Yes.**
Q. What was the understanding that you came to?
**A. Well, there was an understanding that there was this oddity for the boundary, that the boundary was the shoreline and because of that it may present some planning or regulatory problems in the future and that both New Jersey and Delaware should work to resolve those issues before finalizing the 1980 document for the Bay and Ocean Shore Segment.**
Q. You said that was your understanding in the late 1970s. Did that remain your understanding

subsequently?
A. **Yes.**
Q. Do you know whether New Jersey has ever contended that Delaware lacks the authority to regulate projects that extend from New Jersey into Delaware waters within the Twelve Mile Circle?
A. **No.**
Q. In your discussions with Delaware officials, has Delaware taken the position that it could regulate projects extending into Delaware from New Jersey within the Twelve Mile Circle?
A. **Yes.**
Q. When around -- when did that happen?
A. **Probably in the early 1990s when I was in contact with Sarah Cooksey to come up with a memorandum of agreemen between the two states and to try to resolve any future problems that that boundary may have.**
Q. What did Ms. Cooksey say about Delaware's regulatory authority



within the Twelve Mile Circle?
A. **I can't recall specifically, but I think it was the general understanding, at least from my part, that New Jersey had regulatory authority on the New Jersey side of the boundary and Delaware had regulatory authority on the Delaware side of the boundary and any project that would cross over that boundary would need to get approvals from both states in order for the project to go forward.**
Q. Are you familiar with the structures extending from the New Jersey shore into Delaware within the Twelve Mile Circle?
A. **Well -- am I familiar with them?**
Q. Are you familiar with any structures?
A. **I think there probably are some structures that cross that boundary, but I'm not familiar with each and every structure that there may be.**



Q. Do you recall ever working on a permit for a project that crossed into Delaware?
A. **I have a recollection, and I may be wrong, but I think there was at the time that I was head of the regulatory program there may have been one project in, I think, Penns Grove that may have extended from the upland -- some type of pier structure that extended from the upland and went into the Delaware area.**
Q. You said that's when you were the head of the regulatory department. Was that Chief of the Bureau of Planning and Project Review?
A. **Yes.**
Q. In the Division of Coastal Resources?
A. **Yes.**
Q. Did you work on a permit for Penns Grove?
A. **That's the only one -- again, it's a vague recollection. If we**



**checked the dates, it may -- that's the only one I remember. There was not much activity going on within that area.**
Q. How many permits did you work on in your tenure at DEP, approximately?
A. **It averaged out about 1500 a year. So over an eight-year period that would have been 12,000 permits.**
Q. If I understood you correctly, you have a vague recollection that there may have been one permit that affected the Delaware territory in the Twelve Mile Circle?
A. **Yes.**
Q. Have you heard of the word riparian?
A. **Yes.**
Q. What is your understanding of the meaning of riparian?
A. **You have to excuse me. I have been retired over 10 years.**
**Riparian, I think, is an old English term that has to do with the**

30

definition of the bank of a river or bank of a shore. The way it is used today riparian generally refers to any area below -- at least in New Jersey -- below the mean high water line. So riparian lands would be those lands that would be in public ownership below the mean high water line.

Q. Okay.

A. In other states that boundary between publically-owned land and privately-owned lands can vary depending on whether its mean high water line, mean low water line, mean low, low water line. So the boundary I know in some states varies depending whether it's mean high or low water.

Q. So when you were making the topographic maps in the '70s, I take it you were concerned with these riparian lands?

A. No. When making the state topographic maps, we were just drawing a general line delineating shorelines,

31

cultural features, but the scale was such it was not to the scale showing the boundary between publically-owned lands and privately-owned lands. Now, in 1973 and 1975 when we were producing the tidelands maps, those maps specifically showed the demarcation between publically-owned lands or private lands or showing the riparian boundary.

Q. Did you work with the Bureau of Tidelands in any way?

A. Yes.

Q. How did you work with them?

A. The way we worked, between 1973 and 1975 when we were producing the tidelands maps we were producing the maps for the Bureau of Tidelands that would allow the Bureau of Tidelands to determine where the line was between private and public lands.

Q. Did any of those maps depict the boundary between New Jersey and Delaware within the Twelve Mile Circle?

A. I do know that there were

32

maps produced for that area and they probably delineate the area between public and privately-owned lands, you know, showing the mean high water line, but I don't recall working on any of those maps in that area.

Q. So other people worked on other maps, you didn't do them all?

A. No, no, no. The program ran for many years. The period that I was involved, between 1973 and 1975, we were involved in coming up with the method for making those delineations and working on a special area in New Jersey known as the Hackensack Meadowlands, which has a unique set of circumstances for drawing tidelands or riparian boundaries. I left the program in 1975 and the tidelands mapping program continued for many years after that to map the rest of the state.

Q. Are you familiar with the phrase, riparian rights?

A. Yes.

Q. When did you become familiar

33

with that phrase?

A. I probably became familiar with that phrase in the period 1970 to 1973 when I was working in the Bureau of Geology when I was looking at the revision of the state topographic maps. The state topographic engineer required that we read quite a bit about riparian rights, lands and boundaries, everything related to generally of mapping issues.

Q. What is your understanding of the meaning of riparian rights?

A. Well, my general understanding is that those areas that are above the mean high water line fall in private ownership and those areas below the mean high water line fall into public ownership. So anyone wanting to build or occupy publically-owned lands would have to get some type of legal instrument from the State of New Jersey either as a lease, a grant or some other instrument in order to occupy those lands.

Q. Based on your understanding as a regulator, do riparian rights include anything in addition to those grants of land?

**A. Well, the way we viewed it before when I was head of the regulatory program before we would issue a waterfront development permit that required some type of riparian conveyance we would not issue the permit until there was some type of conveyance. So we worked closely with the Bureau of Tidelands to ensure that whatever conveyance that may be granted would be granted first before the issuance of one of our waterfront development permits.**

Q. So the grantee of a riparian grant would be required to get all applicable permits under CAFRA and Waterfront Development Act before it could actually develop the lands subject to a riparian grant; is that correct?

**A. Yes.**

Q. Are you familiar with the



phrase riparian jurisdiction?

**A. My understanding of riparian jurisdiction has to do, again, getting back to the fact that at least in the State of New Jersey riparian jurisdiction falls under the State of New Jersey. New Jersey has jurisdiction over all those areas below the mean high water line unless they had been previously conveyed in some way. That's my understanding of riparian jurisdiction.**

Q. Are you familiar with a compact, an interstate compact, between New Jersey and Delaware that was entered in 1905?

**A. I wasn't really familiar with that until just recently within the last year.**

Q. How did you become aware of the compact?

**A. Through discussions having to do with the affidavit the question came up was I familiar with the compact, and at the time I was not. Then I have**



**had some general discussions that there was a compact that had some other ramifications dealing with the boundary issues.**

Q. Do you know whether Delaware has exercised regulatory authority over projects extending from New Jersey into Delaware?

**A. Yes.**

Q. Can you explain your understanding? Take it one project at a time if that's helpful for you.

**A. The only one I'm aware of is, I guess, the case that led up to the filing of this proceeding with the Supreme Court that there was some liquid natural gas, LNG, facility that was being proposed mainly within New Jersey but having some structures extending into Delaware.**

Q. I'd like to turn back to your affidavit for a moment to paragraph 2, which is on page 74a. This paragraph discusses your involvement in preparation



of the New Jersey Coastal Management Program and Final Environmental Impact Statement; is that correct?

**A. Yes.**

Q. As I read it, there was an approval in 1978 for the Bay and Ocean Shore Segment and then in 1980 which covered the same areas but also some additional areas. Do I have that right?

**A. Yes.**

Q. Starting with the 1978 Coastal Management Plan and maybe we can abbreviate it to CMP, if that's okay with you?

**A. Yes.**

Q. It's a mouthful for me. Tell me the events that led up to the 1978 CMP such as when was it conceived and how long did it take? I'll probably have some follow-up questions. Just give me your general understanding.

**A. The CMP has its genesis in the Federal Coastal Management Act. New Jersey really didn't start getting active**

**In filing for a CMP approval with the federal government until after passage of CAFRA in 1973. In 1973 when that act was passed, CAFRA required the New Jersey Department of Environmental Protection to regulate major development according to the statute. It required the department to do an inventory of its coast, and it also required the department to come up with a plan for managing its coast.**

**New Jersey was aware of the Federal Coastal Management Act. If New Jersey could get federal approval then it could receive federal funds in order to help manage its coast.**

Q. Were those federal funds substantial?

**A. They averaged out when I was there to about $2 million a year, and most of those funds went to pay for staff in the planning and regulatory departments related to coastal matters.**

Q. Do you know the budgets for those departments -- the total budgets



for those departments during that time?

**A. No.**

Q. Do you think it was more than 2 million?

**A. Yes.**

Q. So is New Jersey required to develop a CMP and submit it to the federal government or was it an option?

**A. It's an option. It's a voluntary basis, but I believe every coastal state that was eligible, maybe excluding one state, was actively working on seeking federal approval.**

Q. The incentive was to get federal funding?

**A. Yes.**

Q. Any other incentives?

**A. Other incentives of national approval, national attention. There were other incentives of getting together on a regular basis to discuss and share problems that each state may have in coordinating those functions. It was very interesting in the process of**



**meeting with other states finding out what other state problems they may have or what solutions they may have to different issues related to managing the coast.**

Q. So by getting an approved coastal management plan New Jersey was able to meet with other states and discuss their coastal policies?

**A. Yes.**

Q. Was that a forum set up by the federal government or an agency of the federal government?

**A. Yes. Then it was the Office of Coastal Zone Management within the NOAA, National Oceanic and Atmospheric Administration, under the Department of Commerce.**

Q. So I take it the Coastal Management Plan, or the CMP, was a very important document for New Jersey?

**A. Yes.**

Q. It would be very important to be accurate in all the representations



New Jersey made to the federal government, correct?

**A. Yes.**

Q. Did New Jersey consult its legal counsel before submitting its CMP to the federal government?

**A. I'm pretty sure New Jersey did because the document was widely distributed throughout the state government for review both as a final draft document as well as sections that were circulated, but I'm not intimately aware. I don't remember seeing any documents submitting it to the department of -- but I don't remember submitting it to any DAGs, although I do remember meeting with DAGs relating to coastal matters.**

Q. In the process of developing the CMP?

**A. I'm not sure. I'm not sure.**

Q. When you say DAGs, you mean Deputy Attorneys General?

**A. Yes.**

42

Q. Just for the reporter and for the transcript.

So if the Department of Environmental Protection were to consult legal counsel, would the DAGs have been the legal counsel to consult or was there in-house counsel within the department or other counsel?

**A. Early on in the early 1970s there was in-house counsel. We did have a few lawyers in-house that looked at some of the original regulations that led up to CAFRA. And I do know that there was some in-house counsel related to the format and the proceedings that public hearings would take under CAFRA, but there was also -- we also relied heavily on Deputy Attorney Generals relating to permit matters and appeals relating to permit matters.**

Q. Did the department consult DAGs in the course of issuing permits?

**A. Yes.**

Q. Going back to your

43

affidavit, paragraph 5, I'll read it for the record. It says, "In these capacities..." and I believe that's referring back to Paragraph 4, your resume there that we went over earlier; I won't repeat it now. It says, "In these capacities I participated in the discussions with the Coastal Management Program regulatory and planning staffs about the New Jersey/Delaware boundary line and what effects it had on permit decision-making."

There's another sentence but I just want to look at this one first. As I read this, you participated in discussions with New Jersey and regulatory and planning staffs about the boundary lines between the states; is that correct?

**A. Yes.**

Q. What was the nature of those discussions?

**A. The nature of the discussions was that there is this**

44

**boundary that is not your usual boundary that we may have issues related to projects that would be -- that are proposed that would be on the upland and then extend on the New Jersey side and then extend into Delaware waters and that how best to coordinate those permit activities between the two states as well as whether the programs within those states are compatible, and if there were some parts of the programs that were not compatible how to work closely with our agency -- counter agency in Delaware to try to make those programs compatible, so you would not then unduly penalize a developer that is proposing a project that would be acceptable to both states but not be built because of some type of problems between the two state programs.**

Q. I see. In these discussions with CMP regulatory and planning staffs, was it the understanding that Delaware would have regulatory authority over the portion of the project that extended into

45

Delaware?

**A. Yes.**

Q. In these discussions of regulatory and planning staffs, who was involved in the discussions?

**A. Many people were involved. It had to do with not only program staff that worked for me but also program staff that worked in the regulatory section as well as other agencies throughout DEP. The reason being, New Jersey's Coastal Management Program does not just affect permit decisions or planning decisions related to CAFRA, waterfront development, coastal wetlands but it's a large umbrella.**

**Once the CMP was approved by the federal government, any activity that would take place within New Jersey be it a water issue, air quality issue, any resource issue, Parks and Forestry issue in New Jersey would have to be compatible with New Jersey's fairly approved coastal management program and be consistent with**

46

**the coastal regulations.**
**So it was a broad umbrella of reaching out throughout the Department of Environmental Protection of discussing this issue with them and then exploring the matter of whether we can come up with an agreement.**
Q. Do you remember the names of anyone who was involved -- you can start with those at the so-called top of the department.
**A. Some of the people I can immediately recall would have been Louis Nagy, who was then Assistant Commissioner for Natural Resources, Martin Bierbaum was my immediate supervisor.**
Q. Do you remember Mr. Bierbaum's title or can you paraphrase what his responsibilities would have been?
**A. Not offhand.**
Q. This time you were chief of the Bureau of Planning and Project Review for the Division of Coastal Resources.

47

I'm looking at Paragraph 4 of your affidavit. Actually we're talking about development of the 1978, so I may be wrong there. Would it be Paragraph 2, supervisor in the Office of Coastal Zone Management?
**A. Yes. Well, paragraph 5, in my mind, really refers to the last paragraph from July of 1991 to January of 1997. At that time -- that was after one of the reorganizations within DEP and this was under now functioning -- the department was under functional lines instead of resource lines.**
Q. So paragraph 5 when it says in these capacities you intend to refer just to the last sentence of Paragraph 4 and not to the entire Paragraph 4?
**A. I would say mostly related to 1991 to 1997, yes.**
Q. Fair enough. I know it was a while ago.
So besides Mr. Nagy and Mr. Bierbaum, who else was involved in the

48

discussions about the effect of the boundary on New Jersey and Delaware's regulatory authority?
**A. I can't recall. I dealt with many people, and I just can't recall. I can recall names but whether I met with a specific person or like, for instance, then chief of the regulatory section or one of the staff, I'm not quite sure whether we met with staff or met with chiefs to discuss specific issues.**
Q. There were you said many people before?
**A. Yes.**
Q. Can you quantify it? More than 10? More than 20? More than 50?
**A. Well, there was probably more than 10 agencies that we dealt with so...**
Q. When you say agency -- I'm sorry.
**A. Discrete functions within the Department of Environmental**

49

**Protection.**
Q. Agency, the way you're using it, is within the DEP not other departments in New Jersey?
**A. That's right.**
Q. I just wanted to get clear.
**A. So it's probably somewhere between 10 and 20 people that were in discussions related to the boundary issue.**
Q. Do you know if any of those people had a law degree?
**A. Within the Department of Environmental Protection at that time I don't believe anyone had a law degree.**
Q. These 10 to 20 people involved in the discussions were spread among 10 agencies you called them within DEP?
**A. Yes.**
Q. Do you know what the names of those agencies -- you don't have to name all 10 if you don't remember them but just to get an idea.

A. I don't specifically remember the names of the agencies. It had to do with water programs, air programs, land trust programs, coastal permitting programs, water and coastal planning programs and probably having to do with agencies related to Parks and Forestry as well.

Q. This boundary issue was one that was widely considered within DEP during that time during the late 1970s?

A. It was widely considered in the 1990s. During the '70s, I don't think there was really any activity -- there was no major discussions going on in the '70s between say 1979 and 1988 when I headed up the regulatory program.

MR. ATTAWAY: Shall we take a break, five or ten minutes?

(Whereupon a break was taken.)

(Whereupon documents were marked Whitney-2 and Whitney-3 for identification.)

BY MR. ATTAWAY:



Q. I'd like to introduce what we had marked Exhibit-2, a May 1978 Draft Environmental Impact Statement and Coastal Management Program for the Bay and Ocean Segment; is that correct, Mr. Whitney?

A. Yes.

Q. Then as Exhibit-3 is the final version of the same document, which is dated August 1978. It's on the third page of the exhibit.

Just briefly turning back to your declaration, paragraph 5, I wanted to clarify something about the discussion that we were having before the break. When the paragraph says, in these capacities you participated in discussions regarding the boundaries, this refers, as I understood your answer, primarily to the period 1991 to 1994?

A. Related to the agreement that was -- that we worked with with Delaware, yes but -- yes, between 1978 and 1990 I did help -- well, between 1978



and when this document was finalized, I did have input into this particular document from a regulatory point of view.

Q. Did you have any discussions in that late 1970s time period about the boundary between New Jersey and Delaware?

A. Yes.

Q. With whom did you have those discussions?

A. Well, we had discussions -- at the time I headed up the regulatory section which was a part of the office. There was another part of the office that had the planning section, and the planning section was mainly responsible for putting this document together. But as they were putting the document together they would consult with us over issues related to permitting issues as well as boundary issues because they knew there was this boundary issue and what experience we had with it from a regulatory point of view.

Q. When you say they, you say



the planning folks within DEP and tbey I take at that time they were spread out between a number of different agencies you talked with within DEP?

A. There's two questions. Yes, tbere was -- in your first part of the question is yes having to do with the planning staff. The second part of the question is, no, the planning staff that was responsible for putting this document together was within one of those resource lines within the Office of Coastal Zone Management. The office was split into a regulatory side as well as a planning side, and the planning element was responsible for writing most of the document but they relied upon input from other agencies as well as the other part of the office for input regarding the detail that's found in this document.

Q. So the planning department, was it within a particular division or agency in DEP?

A. It was within the then I

54

guess it was Division of Marine Services which then became the Division of Coastal Resources within the Office of Coastal Zone Management. That was the umbrella for both -- I believe then both the planning and regulatory side under the Division of Coastal Resources all having to do with CAFRA, coastal wetlands.

Q. You had discussions with them about the boundary between New Jersey and Delaware?

A. Yes.

Q. Do you remember who you spoke with?

A. It was probably with staff under David Kinsey. So it was probably John Weingart, Ed Linky. There was some other staff at the time. I don't really recall who wrote this particular section, but it may have been Darryl Caputo, Stewart McKenzie. I think it was Michael Hochman. I think that's his name, H-O-C-H-M-A-N.

Q. Darryl, I didn't get his

55

last name?

A. Caputo, C-A-P-U-T-O.

Q. Stewart McKenzie and Michael Hochman. When you said this section I think you're referring to a discussion we had off the record talking about the boundary section of the draft CMP?

A. Yes.

Q. What was Darryl Caputo's title and responsibilities at that time?

A. Darryl had the same title as Michael Hochman, as George McKenzie. They were staff under David Kinsey. They were charged with writing different sections of the document.

Q. What were their job responsibilities in general?

A. Well, they are planners -- environmental planners. I believe they all had master's degrees in environmental planning from the University of Pennsylvania.

Q. David Kinsey was their boss?

A. Yes.

56

Q. What was his title and responsibility?

A. I think he was chief then at that time Office of Coastal Zone Management. His overall responsibility was the development of this document as well as coastal regulations dealing with CAFRA, wetlands and waterfront development permits.

Q. Mr. Kinsey was primarily responsible for putting the draft CMP together?

A. Yes.

Q. And the final as well?

A. I believe so. The reason I hesitate -- yeah, David was still in the department at that time.

Q. Just to clarify, we're talking about the 1978 CMP right now?

A. Yes.

Q. If you turn to Exhibit-2, which is the draft 1978 CMP, I'll use the Bates numbers. This has been produced in discovery so on the lower right-hand

57

corner you will see some numbers that start with DE. I'm looking at DE23820. This is a letter from Rocco Ricci, Commissioner of the DEP at that time and it's to the US Department of Commerce to the Coastal Zone Management Department within NOAA; is that correct?

A. Yes.

Q. What involvement -- and this letter basically submits the draft CMP in 1978, correct?

A. Yes.

Q. What was Mr. Ricci's involvement in this report?

A. Rocco Ricci was then the commissioner of the Department of Environmental Protection so he had overall responsibility for all department functions.

Q. So was he involved in this in a hands-on way?

A. No.

Q. That would be David -- was it David Kinsey?

A. **Yes.**
Q. Anyone else besides Mr. Kinsey? I know you said a number of people had input but in terms of crafting the overall strategy and the overall document, was Mr. Kinsey in charge of that in full or were there other people?
A. **Well, he headed up an office of planners as well as a department in the sense that everyone within the department had input into the document on coming up with a plan, as well as policies as well as functions under this plan.**
Q. What was your understanding at this time about the effect of the boundary on New Jersey and Delaware's regulatory authority within the Twelve Mile Circle?
A. **My understanding at this time was that there was this oddity in the boundary and that there was a federal law, Federal Coastal Management Act and that there was a Delaware coastal law and**



**there was many New Jersey coastal laws and that it's quite possible that without looking at these laws in more detail there may be some conflict between the laws as far as what can or cannot occur across the boundary and that staff within both departments in both states, it would be nice for them to work together in order to try to make the boundary seamless under the dictates of the federal Coastal Zone Management Act.**
Q. So it was your understanding that New Jersey would have regulatory authority over the portion of a project that extended from the shore to the boundary and that Delaware would have regulatory authority over the portions of the project that extended beyond the boundary?
A. **Yes, that was my understanding then.**
Q. Was it the understanding of your colleagues in DEP?
A. **Yes.**



Q. Looking back at your affidavit, paragraph 2, it's the second half of that paragraph. It's kind of a long paragraph. I'll read part of it into the record. It says, "New Jersey's CMP was adopted in two segments. In 1978, New Jersey adopted a CMP for the Bay and Ocean Shore (1978 CMP). With respect to the area known as the Twelve Mile Circle, the 1978 CMP stated continued coordination and work toward appropriate agreements between the coastal management programs of the two states would be required to resolve potential conflicts between the coastal policies of New Jersey and Delaware (1978 CMP at 19)."
I'd like to turn to it's actually -- well, I think this is a cite to the final CMP, which we'll get to, but page 18 of the draft CMP states that, "Resolution of potential conflicts between the coastal policies of Delaware and New Jersey will require continued



coordination and work in the first year of program approval, toward appropriate agreements between the coastal management of both states, Salem County and affected municipalities." Did I read that correctly?
A. **Yes.**
Q. Does this refresh your understanding and that of your colleagues that Delaware would have regulatory authority over projects to the extent that they extended past the boundary?
A. **This paragraph I don't think really talked about -- I don't think at the time we were as much concerned with jurisdiction as the -- we were more concerned with the potential policy issues on both sides of the boundary. As it refers, it says within one year of program approval.**
**We submitted our Coastal Management Program in two steps, one in 1978 which dealt with the coastal area defined by CAFRA, and we knew that we**

62

would then have to do more work and we didn't have the time to do that work within the time frame we had to extend the boundary, which we did in 1980, to up the Delaware River to the added five in Trenton and then also include the New York Harbor area and the Hackensack Meadowlands.

We recognized there may be a potential policy conflict in this area and we pledged in this document that we would work to resolve those issues so when the 1980 document rolled around hopefully there would be some resolution of this conflict.

Q. Okay.

A. But at the time, I don't think we were as concerned -- I don't think we were really talking about regulatory issues and where the boundary issue is and who regulates on what side. I don't think that was the issue. The issue was the policies that Delaware and the policies that were evolving in New

63

Jersey whether those policies were compatible or incompatible and if they weren't compatible how could we set up a mechanism to try and resolve any incompatibilities there maybe.

Q. Let's turn to Exhibit-3, page 19. I'm just going to have one question about that and that is, is the language -- there are three paragraphs on that page and I'm looking at the middle one. Comparing that paragraph to the draft it's true, is it not, that the final has the same language that I just read from the draft 1978 CMP?

A. Yes.

Q. Thank you. At that time, as I understand it, your department wasn't focused so much on the effect of each state's regulatory authority?

A. That's correct.

Q. In developing the 1980 CMP did that issue receive more attention and focus?

A. I do know that -- again, I

64

didn't specifically work on that section, but I do know that there were some ongoing discussions within the planning group on trying to resolve that but how much time they spent on that, as well as other issues, I really don't know.

Q. Who in the planning group was discussing the effect of the boundary on the respective states' regulatory authority?

A. I don't know specifically who it was. Again, it was the planning group. I don't know who specifically worked on it within the planning group.

Q. The planning group as a whole you think?

A. They may have had meetings -- group meetings to discuss various issues and this may have been one of the issues. Again, that's speculation on my part. I'm not really sure. I do know that they did hold group meetings to discuss within the group and some testing issues that one person would bring up and

65

say here we have a problem or we have a particular issue related to this, how best collectively does the group see how it should be written and resolved?

Q. Were the CMP documents reviewed by any legal counsel?

A. I don't have any specific knowledge, but I'm pretty sure it was reviewed probably by the Attorney General's Office.

Q. I'd like to introduce Exhibit-4.

(Whereupon document was marked Whitney-4 for identification.)

BY MR. ATTAWAY:

Q. Again, this is an excerpt of a document. Take your time to review it and then I'll talk about what it is and then ask you a few questions.

A. (Witness reading.)

Q. You have had a chance to review it?

A. Yes.

Q. This is a document titled,

66

Options for New Jersey's Developed Coast. It's dated March 1979 from Department of Environmental Protection, Daniel O'Hern, Commissioner; is that correct?

**A. Yes.**

Q. Turning three pages in this document, for the record it doesn't have any Bates stamps. We received it from New Jersey yesterday without Bates stamps. There's a letter about four pages in from Daniel J. O'Hern, Commissioner. I gather that this letter is presenting the report. I'm basically introducing it's a one-page letter; is that correct?

**A. Yes.**

Q. The third paragraph down starts, Options for New Jersey's Developed Coast, which is the title of the document, is a preview of the second part of the state's Coastal Management Program being prepared under the federal Coastal Management Act. The first part for the Bay and Ocean Shore Segment

67

received federal approval in 1978. We have deliberately kept this report as short as possible. A significant amount of background material is included in a separate volume of Appendices which is also available from this department.

So I have excerpted this document. Again, it's a voluminous document when you count the report and the Appendices. If we turn in a few more pages, there's Appendix F which is entitled, Delaware-New Jersey and Interstate Coastal Management Along the Salem County Shoreline. This part of the report is paginated and it's page numbers 141 through 144. You have had a chance to read these four pages, Mr. Whitney?

**A. I have had a chance to skim read it, yes.**

Q. Fair enough. Maybe I should back up and say, have you seen this report before, Options for New Jersey's Developed Coast?

**A. Yes.**

68

Q. When did you see it?

**A. The first time I probably saw it was during the time of its preparation. I probably didn't see any drafts of this. I probably saw the final draft as it was presented.**

Q. Who prepared this?

**A. This was -- this, again, was prepared by the Office of Coastal Zone Management within the Department of Environmental Protection.**

Q. Who were the individuals you talked with preparing the Options report?

**A. I believe at this time it was David Kinsey still headed the office.**

Q. Were the three assistants that you named earlier still working under him involved in this report?

**A. I believe they were, in addition to other staff.**

Q. What is Mr. Kinsey doing now, if you know?

**A. I believe he's a consultant living in New Jersey.**

69

Q. Do you know when he left the employment of the state?

**A. It was sometime I believe in the early 1980s, sometime in the 1980s.**

Q. Rather than read large portions of this document into the record I would just like to paraphrase certain parts of it and ask if you agree or disagree and get any clarifications. As I read the first page of Appendix F, page 141 of the Appendix, the first paragraph talks about the boundary within the Twelve Mile Circle and references the Supreme Court's decision in New Jersey versus Delaware in 1933, correct?

**A. Yes.**

Q. It says 1933 but for the record, I think it was 1934, but it's probably not material for our discussion today. The gist of this is to say that Delaware's coastal zone laws would apply to any project crossing from New Jersey into Delaware within the Twelve Mile Circle; is that correct?

70

A. **Yes.**
Q. And about halfway down there's a paragraph that goes into some detail about the content of what it calls the State of Delaware's stringent Coastal Zone Act; is that correct?
A. **Yes.**
Q. While you were at DEP, did you have occasion to consider the details of Delaware's Coastal Zone Act?
A. **Yes. I was aware that Delaware's Coastal Zone Act is different than New Jersey's Coastal Zone Act, at least from our perspective. The major difference being that New Jersey's Coastal Zone Act, or CAFRA, basically allows any project in the state to be considered for review and that the department would review the project for its effects upon the environment and then decide whether the project should or should not be approved, whereas Delaware's Coastal Zone Act basically prohibits some activities within its**

71

**coastal zone without any consideration for review by a department on whether the project should or should not be sited in Delaware's coastal zone.**
Q. Without review by you said the department, which department?
A. **The department in Delaware.**
Q. The Delaware equivalent of the New Jersey DEP?
A. **Yes, DNREC.**
Q. Delaware Natural Resources -- I can't remember the rest off the top of my head.
The last paragraph on page 141, which is one sentence long states, "Consequently, under Delaware law, some types of activities would be prohibited from locating along the Delaware River in Salem County, while other facilities desiring to locate along the river would need to obtain permit approval from the State of Delaware." Is that consistent with your understanding at the time?
A. **Yes.**

72

Q. Do you know why the report singles out Salem County?
A. **No, I don't.**
Q. Were you involved with any discussions during this time period about the liquified natural gas unloading facility --
A. **No.**
Q. -- to be located within the Twelve Mile Circle?
A. **No.**
Q. At any time period at DEP?
A. **Within this area?**
Q. Yes.
A. **No.**
Q. What about other areas?
A. **There were some discussions related to several types of petroleum-type of facilities for the Raritan Bay/New York Harbor area.**
Q. Are you aware of any discussions about liquified natural gas facilities within the Twelve Mile Circle -- discussions by others in which you

73

were not involved?
A. **No.**
Q. Turning to page 141, this is figure 11 and it shows the New Jersey Delaware boundary as it goes up the Delaware Bay and then at the bottom of what's termed Elsinboro on the map it shifts over from roughly the middle of the river to the New Jersey shore; is that correct?
A. **Yes.**
Q. The bottom of the Twelve Mile Circle?
A. **Yes.**
Q. Turning to page 143 this first paragraph discusses in some detail Delaware's Underwater Lands Act; is that correct?
A. **Yes.**
Q. It sets out five different situations -- five different examples of a project that would require approval under Delaware's Underwater Lands Act, correct?

74

A. **Yes.**
Q. The first sentence, the second half of that sentence states, Projects involving the use of public submerged lands -- I'm sorry. Let me read the whole sentence.
"Because the State of Delaware exercises jurisdiction along the Salem County shoreline from the mean low water line waterward, projects involving the use of public submerged lands would require approval under Delaware's Underwater Lands Act." Did I read that correctly?
A. **Yes.**
Q. And this is consistent with your understanding at the time; is that correct?
A. **Yes.**
Q. The second paragraph, rather than reading it, I'll paraphrase. It appears to me to state that New Jersey's jurisdiction is limited to what is called "a narrow strip of tideland between the

75

mean high water line and mean low water line in Salem County"; is that correct?
A. **Yes.**
Q. Is that your understanding at the time of the extent of New Jersey's regulatory authority in this geographic area?
A. **For those areas within the -- below the mean high water line but New Jersey had jurisdiction upland in some areas under the Coastal Facilities Review Act and Coastal Wetlands Act.**
Q. But no jurisdiction beyond the boundary between Delaware and New Jersey?
A. **That's correct.**
Q. Do you know how -- we looked at this map on page 142 at the spot where the boundary changes from roughly the middle of the river to the New Jersey shore, is that in Salem County?
A. **Yes, it is.**
Q. Do you know how far up Salem County goes? It's not exactly clear on

76

this map.
A. **I believe the boundary line, it's a darker line, and I believe it's this line that runs between Oldmans Township and Logan Township. I believe that's the boundary line between Gloucester and Salem counties.**
Q. At the point where the Delaware-Pennsylvania boundary crosses the Delaware River, is that still in Salem County or is that in Gloucester County?
A. **I believe that's Gloucester County.**
Q. Would you say it's the case that Salem County borders most of the land territory within the Twelve Mile Circle?
A. **Yes.**
Q. So that's probably why the report focuses on Salem County I would presume.
A. **I would assume so, yes.**
Q. Halfway down on 143 there's

77

a title that says, "Delaware Jurisdiction in Salem County". Then there are two headings. The first one is Delaware Coastal Zone Act. The first sentence there says, "Since the Delaware Coastal Zone Act took effect in 1971, no activity has taken place along the Salem County shoreline which would come under the jurisdiction of the Act." Did I read that correctly?
A. **Yes.**
Q. Is that consistent with your understanding at the time?
A. **Yes.**
Q. So while New Jersey was aware that Delaware had the Coastal Zone Act, it was of the opinion that there was no activity proposed to extend from New Jersey into Delaware that would implicate the Delaware Coastal Zone Act, correct?
A. **At this time, correct.**
Q. The carryover paragraph at the bottom of 143 is entitled Delaware Underwater Lands Act. Toward the bottom

78

of the page there is a sentence that states, "The only experience with the Delaware Underwater Lands Act and development in New Jersey was in 1971 when Delaware granted a lease to the Dupont Chambers Works in Deepwater to use subaqueous lands in the Delaware River."

I'll just read the next sentence for context. "DuPont received of the lease to dredge, fill and bulkhead the area to locate an oil tank."

Were you aware of Delaware's issuance of this lease in 1971?

**A. No.**

Q. The question may have been unclear. Were you aware at any time during your tenure at DEP that Delaware in 1971 had issued this lease?

**A. Yes.**

Q. When did you become aware of that?

**A. I think I first became aware of that when I read this document.**

Q. So today?

79

**A. No. I read this document -- I was aware of this document when it was first published in 1979.**

Q. I'm sorry. I misremembered your answer.

Delaware's issuance of the lease under the Subaqueous Lands Act was consistent with your understanding of the scope of its regulatory authority within the Twelve Mile Circle at that time, correct?

**A. Yes.**

Q. Moving to page 144 states -- there's a reference to a Delaware Coastal Management Program discussion draft September 1978. Are you familiar with that document?

**A. No.**

Q. So you don't recall ever having heard of it during your time?

**A. I recall hearing of it because almost every state submitted a draft Coastal Management Program to the federal government for approval but I never read the document.**

80

Q. I'd like to introduce two more exhibits and these are going to be the draft and final 1980 CMP.

(Whereupon documents were marked White-5 and Whitney-6 for identification.)

BY MR. ATTAWAY:

Q. What we have had marked as Exhibit-5 is the May 1980 draft CMP. It says on the first page it was prepared by State of New Jersey, Department of Environmental Protection, Division of Coastal Resources, also by the US Department of Commerce. I'm turning to the following page which is Bates stamped DE24185. This is a one-page letter like the previous CMP from the commissioner submitting what's called proposed New Jersey Coastal Management Program and Draft Environmental Impact Statement; is that correct?

**A. Yes.**

Q. The penultimate paragraph

81

refers to public meetings we have held during the past five years. Is that consistent with your recollection?

**A. Yes.**

Q. So the preparing of this document was a long and arduous process, correct?

**A. Yes.**

Q. It involved a lot of people, a lot of resources?

**A. Yes.**

Q. And took, based on this letter, at least five years?

**A. That's correct.**

Q. Or maybe longer. You said when CAFRA was passed in 1973 that initiated the development of the Coastal Management Plan?

**A. That's correct.**

Q. I'd like you to turn to page 4 of the actual document after the tables, and it's Bates stamped DE24199 for clarity. About halfway down the lower half of the page it states, "The

82

first step toward continuing the Coastal Management Program into the more developed portions of the state was publication of Options for New Jersey's Developed Coast in March 1979."

Is that consistent with your understanding? Just to be clear, Options for New Jersey's Developed Coast in 1979 is Exhibit-4 that we were just discussing before, the 1980 draft; is that correct?

**A. Yes.**

Q. The Options report is the report that had all of the language about the Delaware and New Jersey boundary and the regulatory authority of each state, correct?

**A. Yes.**

Q. Turning to page 18 of the report or I should say the draft 1980 CMP, this is the section on the boundaries which begins on page 17, correct?

**A. Yes.**

Q. The last two paragraphs of

83

page 18 of this section, they're entitled Seaward and Interstate Boundaries and the final paragraph it states, "In most of Salem County, the Delaware-New Jersey State boundary is the mean low water line on the eastern (New Jersey) shore of the Delaware River. The New Jersey and Delaware Coastal Management agencies have discussed this issue and have concluded that any New Jersey project extending beyond mean low water must obtain coast permits from both states." That is consistent with your understanding of the states' respective regulatory authority at that time, correct?

**A. Yes.**

Q. We read language in the draft and final 1978 reports that talked about coordination of permit reviews. Do you remember that language that we talked about?

**A. Yes.**

Q. Would you say that this language in the 1980 report is much

84

stronger in asserting the scope of each states' regulatory authority within the Twelve Mile Circle?

**A. I would say that this document makes it clearer regarding the two programs on which programs would regulate what functions.**

Q. So it's clearer in stating that Delaware laws would apply to any projects extending from New Jersey past the boundary line into Delaware, correct?

**A. Well, it's clear -- it basically says it's clear that we would coordinate the reviews, but it doesn't specifically mention where the jurisdictions end or begin in each state.**

Q. But it does say that, "Any New Jersey project extending beyond mean low water must obtain coastal permits from both states?"

**A. Yes.**

Q. That can only be premised on the judgment that Delaware has regulatory authority over the project to the extent

85

that it extends into Delaware; is that correct?

**A. I assume that assumption is there, yes.**

Q. Thank you. Turning to page 426, which I excerpted this exhibit – I don't think I said that earlier. It's Bates Delaware 24620. This is Appendix I and it's a -- I'm sorry. It goes a little bit onto the second page. Appendix entitled, Preparers of the Proposed New Jersey Coastal Management Program and Draft Environmental Statement. It lists the people who were involved in preparing the draft 1980 CMP; is that correct, Mr. Whitney?

**A. Yes.**

Q. The first name is one that you mentioned before, David Kinsey, acting director at the time?

**A. Yes.**

Q. And then below there are a number of names from the Bureau of Coastal Planning and Development some of

86

whom you mentioned earlier. Do you recognize all these names?
**A. Yes.**
Q. Do you know which of these people would have had the primary authority for drafting the language on the boundaries in the CMP?
**A. No, I do not. At this time it was probably written by someone within the Bureau of Coastal Planning and Development, probably someone on the planning staff. I don't recall who may have been assigned the task of writing that particular section.**
Q. Toward the end of the list there is Neil Yoskin?
**A. That's correct.**
Q. It looks like he was an attorney. Do you know what his responsibilities were in the Bureau of Coastal Planning?
**A. He was basically a staff attorney within the planning section.**
Q. Was he employed as an

87

attorney or was he in another function and simply had a law degree?
**A. I'm not sure what his title was.**
Q. Then the last paragraph says, Planning assistance was also provided by and then it lists, you, Chief Steven Whitney and a number of other names, including Ruth Ehinger?
**A. Ehinger.**
Q. What was her involvement in the CMP process?
**A. The names referred here under the -- they're all employed by the Bureau of Coastal Project Review having to do with issuing permits, and the staff was consulted on the draft of the main document. The main document was prepared by the Bureau of Coastal Planning and Development and the Bureau of Coastal Project Review had input into that document.**
Q. Did you ever talk to Ms. Ehinger about the boundary issues between

88

Delaware and New Jersey within the Twelve Mile Circle?
**A. I don't believe so because at the time when this document was being prepared Ruth Ehinger had worked in a different section of the coast. Our bureau was divided into two or I think I recall three sections. There may have been more. No, I believe there was three at the time. There was one section that was known as the northern coastal area, which included Monmouth and Ocean counties. Another one included southern which included Atlantic, Salem, Cape May and Salem counties. Then there was another section that included Gloucester, Camden, Mercer as well as the Hackensack Meadowlands areas. I believe at the time Ruth worked in the Monmouth/Ocean area. So I don't think I ever discussed with her any boundary issues because this area was outside of her jurisdiction at the time.**
Q. Do you know if she ever

89

discussed these boundary issues with anyone else?
**A. She may have. I'm not sure.**
Q. The very last page of the excerpt, which I believe is the last page of the CMP as well, DE6422 lists a number of public hearings and states public comments will be accepted until July 7, 1980. Is it fair to say that -- there are four public hearings listed here. Do you know if those were held?
**A. I believe they were held, yes.**
Q. Were other hearings held?
**A. I'm not sure.**
Q. Do you know what the turnout was to these public hearings?
**A. In some areas -- I believe in Toms River and in Trenton there was a pretty good turnout. I think there was a lesser turnout in Jersey City and Camden.**
Q. The public comments, there's a July 7, 1980 deadline for written public comments. Did the DEP receive

comments?
A. **Yes.**
Q. How many comments?
A. **I don't recall.**
Q. More than 100?
A. **I don't recall.**
Q. Let's turn to what's been marked as Exhibit-6, which is the August 1980 final Environmental Impact Statement and New Jersey's Coastal Management Program. You have had a chance at least skim through this excerpt; is that correct?
A. **Yes.**
Q. If it's okay with you I will start asking a few questions about this and if you need to stop and read something, you can obviously do that. Let's turn to page 20, which is Bates stamped DE20382. This concerns, again, the boundary section of the report. I'll ask you to refer back to the draft. There's a paragraph that begins, "In most of Salem County the Delaware-New Jersey



state boundary is mean low water line on the eastern (New Jersey) shore of the Delaware River." Then it talks about the New Jersey and Delaware agencies having discussed the issue and concluded that any New Jersey project extending beyond mean low water would have to obtain permits from both states.
I just want you to compare that paragrapb with the similar paragraph on page 18 of the draft 1980 report and tell me if they're the same or if they're not tell me what the difference is.
A. **As far as I can see, they're identical.**
Q. So the final report contained exactly the same language with respect to the Delaware-New Jersey boundary as did the draft even after the agency received public comments, correct?
A. **Yes.**
Q. I'd like to turn now to Exhibit-6. Still it's the 1980 final CMP. There's Appendix H, which I have



provided in the excerpt. It starts at DE18925. The first few pages are the table of contents and the list of commentors.
MS. CONKLIN: I'm officially lost. We're on exhibit --
MR. ATTAWAY: Keep going.
MS. CONKLIN: Thank you.
MR. ATTAWAY: You're welcome.
BY MR. ATTAWAY:
Q. Starting at page 419 of the report there's a list of commentors and it goes from 419 through 423, correct? It's an eight-page list of commentors on the draft report or the draft CMP?
A. **Yes.**
Q. Continuing on, there's page 499 – I apologize. It's a little hard to read but this is the way it is in tbe original. This is a summary of comments by interested parties and the response by the New Jersey DEP. There are two columns on this page. If you look on the



right side there's a number 392, which I believe this is comment number 392 or issue number 392. It's from Salem County.
It says, "Salem County..." -- the comment is from the Salem County Planning Board. It says that, "Salem County is strongly opposed to the statement in this revision that any project in the area must be consistent with both Delaware's and New Jersey's coastal programs and obtain permits from two states."
The New Jersey DEP response is, "This disagreement is noted, but DEP has found no other solution available by administrative action to address the peculiar N.J.-Delaware boundary in Salem County where the Delaware State line reaches to low tide on the New Jersey shore." Were you familiar with this comment at the time the CMP was being developed?
A. **No.**

94

Q. This comment shows that Salem County objected to the statement in the draft CMP, the draft 1980 CMP, that any project crossing in the Delaware would have to get permits from both states, correct?

**A. Yes.**

Q. And New Jersey DEP's response that there is no other solution to this issue is consistent with your understanding of the respective states' regulatory authority in the Twelve Mile Circle at that time, correct?

**A. It basically states that there is no administrative action to address the particular issue. That doesn't mean there could be something -- some other action that might be available.**

Q. In a cooperative sense do you mean?

**A. In a cooperative -- something beyond the capability of the Bureau of Coastal Planning and**

95

**Development within the Department of Environmental Protection of coming up with some type of administrative remedy at the state level.**

Q. But this statement is consistent with your understanding at the time that Delaware could apply its coastal zone laws to a project that extended the boundary into Delaware, correct?

**A. Yes.**

Q. Turn back in the excerpts to page 254. There's a section starting on 254 entitled, Liquified Natural Gas that carries over to 255. Just take a moment and read that. It's about two paragraphs long.

**A. (Witness reading.)**

Q. The first paragraph quotes some language from the National Energy Plan and then the second paragraph and final paragraph in this section states that, "The New Jersey Coastal Program states that LNG terminals are discouraged

96

unless they are constructed as to neither unduly endanger human life nor property nor otherwise impair the public health, safety and welfare and comply with the coastal resource and development policy. Because the tankering of LNG could pose potential risk to life and property adjacent to New Jersey's waterways, which also serve as boundaries along the states of Pennsylvania and Delaware along the Delaware River and the state of New York and the Port of New York and New Jersey, the state considers decisions concerning the siting of LNG terminals to be an interstate matter."

Is that consistent with your understanding of the respective states' regulatory authority in the Twelve Mile Circle?

**A. Yes.**

Q. I know I asked you earlier but does this refresh your recollection at all as to whether you had any discussions about LNG terminals? For the

97

record, LNG is liquified natural gas.

**A. Yeah, I did not have any -- I don't believe I have ever had discussions with LNG facilities.**

Q. Do you know how this passage would have gotten into the CMP?

**A. It was developed probably jointly by the planning staff. I think the department then had an office or the State of New Jersey had an Office of Energy Policy as well as the federal Coastal Zone Management staff. But I don't believe I was ever involved in any of the discussions.**

Q. Do you know whether there was an amendment process for the New Jersey CMP?

**A. Yes, there is.**

Q. What is that process?

**A. Under the federal Coastal Zone Management Act anytime New Jersey wants to amend its particular program it must petition the federal government with the amendments and with arguments for the**

98

**amendment, why the program should be amended. Then it subsequently has to be approved by the federal government.**

Q. Has New Jersey ever used that procedure to amend its CMP?

MS. CONKLIN: Obviously, we're talking about during the time he was present and employed at DEP, right?

BY MR. ATTAWAY:

Q. At any time during your knowledge.

MS. CONKLIN: I'm going to object on the basis of foundation. If he left the agency in 1997?

THE WITNESS: Yes.

MS. CONKLIN: How about we break it into two parts?

MR. ATTAWAY: This is a foundational question. I'm asking him if he knows whether New Jersey has ever used the CMP process -- the CMP amendment process.

THE WITNESS: When I was in

99

the department we did use it I believe on several occasions to make minor amendments to New Jersey's Coastal Management Program, yes.

BY MR. ATTAWAY:

Q. On approximately how many occasions?

**A. That, I don't recall. Technically any amendment that's made such as revisions in coastal regulations must be presented to the federal government for review and approval.**

Q. So anytime New Jersey revised its regulations it would have to seek and receive approval for amendment of its coastal management plan?

**A. Yes, and I'm not sure whether it was any amendment or any major amendments because I know anytime we made an amendment to a regulation we would submit those revisions to the federal government. Now, which ones required approval by the federal government and**

100

**which ones did not I'm not sure. But they were informed of all of the amendments, or most of the amendments they knew of.**

Q. Did New Jersey ever seek to amend its coastal management plan to remove the statements about Delaware's regulatory authority within the Twelve Mile Circle?

**A. I don't recall.**

Q. Do you recall whether anyone at DEP ever suggested that that occur?

**A. No.**

Q. Are you familiar with the Delaware River and Bay Authority?

**A. Yes.**

Q. What's your understanding generally?

**A. It's an agency that has jurisdiction over certain activities within all of the Delaware River and Bay. It has independent authority.**

Q. Is there a compact between Delaware and New Jersey concerning the

101

Delaware River and Bay Authority?

**A. I'm not sure. I don't know.**

Q. Are you familiar with a 1962 compact between Delaware and New Jersey --

**A. No, I'm not.**

Q. -- establishing the Delaware River and Bay Authority?

**A. No. I know the agency exists and that we have had dealings with them over permit matters and other planning matters, but I'm not familiar with the genesis of that agency.**

Q. Anything concerning the boundary between New Jersey and Delaware?

**A. No.**

Q. The application of Delaware's regulatory laws to projects extending from New Jersey?

**A. Under the Delaware River and Bay Authority?**

Q. Right.

A. No.

Q. Now would probably be a good

time to break for lunch.
(Whereupon a break was taken.)
BY MR. ATTAWAY:
Q. I have another question about your affidavit, paragraph 3. I'm going to ask you a question about the last sentence but feel free to read the whole thing if you want to for context.
**A. (Witness reading.)**
Q. That sentence, "Further, during my term of service with the DEP, to my knowledge, New Jersey never adopted any regulation requiring any person seeking to construct an improvement appurtenant to the New Jersey side of the River to obtain any permit of approval from the State of Delaware." Is that still your understanding?
**A. That is my understanding, yes.**
Q. Did New Jersey ever issue a permit requiring anyone to first get a permit from Delaware?
**A. Not that I recall because**



**when I was in charge of the permitting staff I don't remember -- I don't remember any particular requirement of any permits that were issued requiring that the applicant get a permit from Delaware. There's some vague recollection of a pier that was approved that's within that area. I don't know if it was Salem or even Gloucester County; it's very fuzzy.**
**(Whereupon document was marked Whitney-7 for identification.)**
BY MR. ATTAWAY:
Q. Let me know when you have had enough time to review Exhibit-7.
**A. I have.**
Q. This is a permit issued by State of New Jersey, Department of Environmental Protection, dated September 24, 1991 to Keystone Cogeneration System, Incorporated. Mr. Whitney, have you seen this permit before?
**A. I saw it for the first time**



**yesterday.**
Q. Yesterday?
**A. Yes.**
Q. It says this was issued by the Land Use Regulation Element?
**A. Yes.**
Q. How is that division, or element, how is that related to your position at DEP?
**A. This was after the department's reorganization where we went from resource lines to functional lines. At this time I was serving under a different assistant commissioner than the permitting section. So it was a different part of the department.**
Q. If you could turn to page 5 of the permit and the Bates stamp on that page for the record is New Jersey 4408. At the top of the page it says, Terms and Conditions continued, and the letter e. is what I want to focus on, particularly e.4. Would you agree that this language makes the Keystone permit conditioned on



the issuance of a permit by Delaware?
**A. Yes.**
Q. Does this refresh your recollection in any way about this permit and New Jersey's permit conditioned on approval by Delaware?
**A. No. Like I said, I was not involved in the issuance of this permit and I only saw it the first time as of yesterday.**
Q. Fair enough. Just another question or two about this. This was signed by Ruth Ehinger, looking at page 6. Her name is printed underneath the signature line. It gives her title as manager Bureau of Coastal Regulation. I gather from this that she was in charge of issuing this permit and other similar types of permits; is that correct?
**A. That's correct but that is not her signature.**
Q. Do you know whose signature that is?
**A. It looks like Bob Tudor --**

106

Robert Tudor.
Q. T-U-D-O-R?
A. Yes.
Q. What was his position?
A. At this time in '91 I believe Bob may have been Ruth Ehinger's immediate supervisor. If not immediate but a supervisor. I know Bob was then director of the division or assistant commissioner at that time.
Q. In the hierarchy of the division, can you start at the top and list the titles? I assume assistant commissioner would be the top of the division; is that correct?
A. Not of the division. I believe at the time there was the commissioner.
Q. When you say division, you mean the Department of Environmental Protection?
A. No.
Q. Which division?
A. Starting at the top there's

107

the commissioner. Then under the commissioner there are several assistant commissioners. Then under each commissioner there are several divisions, so there would be division directors. Then under division directors there would be bureaus or offices, and over time they were either considered -- the heads of those offices were considered to be managers, bureau chiefs, something along the lines like that.
Q. So Tudor was perhaps the director or above that the assistant commissioner?
A. Yes.
Q. For the Bureau of Coastal Regulation?
A. Yes.
Q. And the assistant commissioner reports to whom?
A. The commissioner.
Q. There's one commissioner of DEP, right?
A. Yes.

108

Q. So it would go, the commissioner of DEP and then assistant commissioner of a particular function and then below that would be the director?
A. Yes. Below that would be manager or bureau chief.
Q. Are manager and bureau chief synonyms?
A. Over the history of the department that I'm aware they were very similar, yes.
Q. Your title in the 1980 CMP it lists you as chief of -- I forget what bureau.
A. Coastal Project Review.
Q. That was equivalent to being a manager?
A. Yes.
Q. Equivalent to Ms. Ehinger's position here?
A. Yes.
Q. Do you know who would have done the work on drafting the Keystone permit?

109

A. According to this document, it looks like it was prepared by William Berns and David Fanz.
Q. Where do you see that?
A. It would be the second page.
Q. What were their titles and responsibilities at this time?
A. They would be staff within the bureau that would review and prepare the document for signature by the manager. I don't know how detailed you want to get as far as civil service functions.
Q. We can go a little ways into that.
A. When I was there, underneath the bureau position you would have had such positions along the lines of environmental specialist. That would be in a series of an assistant environmental specialist, senior environmental specialist, principal and supervising environmental specialist. Then you may have had some other titles -- geology

titles or engineer, assistant engineer, senior engineer, principal.
A lot of the time the bureaus were arranged that under each bureau there may have been sections that were then supervised by a supervising environmental specialist or supervising engineer, depending on what function they may have had. Under those people would have been a hierarchy of principal, senior and assistant positions.
Q. Okay. Do you know how long Mr. Berns and Mr. Fanz stayed with the DEP?
A. No, I do not.
Q. Can you remember a subsequent point in time when they were still with DEP?
A. No. I'm unfamiliar with Mr. Berns. I'm unfamiliar with David Fanz. I don't believe I ever supervised them in any capacity.
Q. How would they have gone about determining whether to condition



this permit on the issuance of permits by Delaware?
A. I have no idea.
Q. Who would they have gone to for advice on resolving an issue that came up in a permit drafting process?
A. I assume they would have taken it up to their immediate supervisor.
Q. Ms. Ehinger?
A. It could be a supervisor below.
Q. Intermediate?
A. Or it could be directly to Ms. Ehinger.
Q. You know Mr. William Andersen, correct?
A. Yes.
Q. He was in the room all morning?
A. Yes.
Q. Are you aware whether he ever advised permit applicants as to the scope of Delaware's regulatory authority



within the Twelve Mile Circle?
A. No.
Q. No knowledge one way or the other?
A. No knowledge.
Q. Do you know that Mr. Andersen submitted an affidavit in this case?
A. No.
Q. You haven't seen or read that affidavit?
A. That's correct.
Q. Are you aware of anyone else at the department that advised permit applicants as to the scope of Delaware's permitting authority?
A. Regarding this particular permit or --
Q. Regarding any permit for let's say that a proposed project like the Keystone project initiated in New Jersey but then extended out into the water beyond the boundary, do you know of anyone at DEP having advised a permit



applicant as to the scope of Delaware's regulatory authority over that project?
A. In what time frame?
Q. In any time frame while you were at the department.
A. I don't recall any connections -- any connection like that. The main reason, a lot of times we relied upon the Attorney General's Office in most cases when a particular permit application was appealed. And then the Attorney General's Office would represent the Department of Environmental Protection in the proceedings. I do know that in the past if there was some legal matter related to a permit application that we were unsure of we would contact a DAG for advice, but I don't recall any case where we dealt with a DAG or any other legal staff regarding the boundary issue.
Q. Thank you.
MR. ATTAWAY: Why don't we go off the record and mark some

documents?
(Whereupon documents were marked Whitney-8 through Whitney-16 for identification.)
BY MR. ATTAWAY:
Q. Mr. Whitney, I have just had marked exhibits 8 through 16, a number of documents from the State of Delaware all pertaining to permits issued to Keystone by the State of Delaware. Is that basically a correct description of these documents?
**A. Yes.**
Q. Have you seen any of these permits before?
**A. No.**
Q. Were you aware of any permits that Delaware issued to Keystone?
**A. No.**
Q. Would you agree that these nine documents are consistent with your understanding that you stated earlier that Delaware had regulatory authority over projects extending from New Jersey



into Delaware?
**A. Yes.**
Q. Thanks. I'd like to move on. Let's move on to the memorandum of understanding that you mentioned earlier. We may as well go ahead and introduce that as Exhibit-17.
(Whereupon document was marked Whitney-17 for identification.)
BY MR. ATTAWAY:
Q. Before I ask you a question about this, and I'll give you time to review it, I want to look at paragraphs 5 and 6 of your declaration. Take time to review the MOA and let me know when you're ready to continue.
**A. Okay.**
Q. Looking at paragraph 5 of your affidavit this references discussions with the Coastal Management Program regulatory and planning staffs about the New Jersey-Delaware boundary line and what it effects it had on permit decision-making. It also mentions other



discussions and conferences with Delaware staff addressing this same topic. I understand from our previous discussion that this is primarily focused on the time period from 1991 to 1994; is that correct?
**A. Yes.**
Q. Tell me generally about how the memorandum of understanding came about. First, you can explain what it is. I'm not asking any questions about the document itself yet but just the process leading up to it.
**A. The process leading up to it took -- well, the impetus comes from the Federal Coastal Zone Management Act which basically says any state that has an approved coastal management program should strive to improve its program. By the 1980s, one of the things that we identified and may have been a forgotten improvement item was the boundary issue between Delaware and New Jersey and that it would be beneficial to both Delaware**



**and New Jersey's coastal management programs that we would try to come up with some type of agreement that would involve issues over the boundary and projects that would straddle the boundary itself as well as any activity that would affect the resources of the Delaware River and the Delaware Bay.**
**So we had applied for permission to get funding from the federal government to work on a memorandum of agreement with the State of Delaware to come up with an agreement that would basically look at the Delaware as a whole resource and try to coordinate our efforts so we would better protect the national interest and our interstate interest -- intrastate interest where the Delaware River and Delaware Bay of...**
Q. Who initiated the process of discussing these matters?
**A. I don't recall. This may have come out of an ongoing program known as the Delaware Estuary Program whereby I**

118

believe at the same time staff and agencies from both New Jersey and Delaware and Pennsylvania were looking at how best to manage the resources of the Delaware Estuary. I think one of the things we were talking about was coordinating planning regulatory efforts among all the agencies, not only at the state level but county and municipal levels in order to carry out the plan that would protect the resources of this area. And I think that jogged the memory somewhat, I don't know if it was either Delaware or New Jersey, that this might be something to work on to improve.

Q. What part did the boundary issue play in initiating this process?

A. The boundary was an element probably weighted more than other elements when you look at such things as wetlands issues or water quality issues or air issues, but the boundary itself was a major issue because we knew that there would be -- probably would be in

119

the future some projects that would straddle this boundary and that it would require closer coordination of one project than say a project that might generally affect a particular resource.

Q. You mentioned applying for federal funding for this process. Is that the DEP applied for federal funding?

A. Yes.

Q. When was that?

A. Probably somewhere in 1990 or '91 that we started the process. It was all part of the annual federal Coastal Zone Management grant that the state receives. Every year we have to apply for and designate how that money will be used both in a regulatory fashion as well as a planning fashion.

Q. In the application documents to the federal government was the boundary issue mentioned in New Jersey's application?

A. I don't recall.

Q. Did you participate in

120

preparing that application?

A. Yes.

Q. Would the application be in your files?

A. That, I don't know. I don't know how presently DEP purges files and what documents it keeps, which ones it doesn't keep.

Q. When you left the department in 1997, was this application in your possession, in your files?

A. It was -- it was probably in the files within the section that I was head of, yes, but again, how long those documents are saved -- I'm not really sure exactly if applications are saved on a five-year, ten-year basis or whatever.

Q. Did DEP receive federal funding to pursue the memorandum of agreement with Delaware?

A. Yes.

Q. Was the funding sought specifically for this memorandum of agreement?

121

A. No. The funding was -- the memorandum of agreement was a part of planning task that the planning section would hopefully pursue within a certain time frame.

Q. Let's turn to the memorandum of agreement. There's a draft what's been introduced as Exhibit-17. There's a cover memorandum to distribution from Steven Whitney, manager, and attached is a draft of the memorandum of agreement between New Jersey Department of Environmental Protection and Delaware Department of Natural Resources and Environmental Control. The cover memorandum is dated July 7, 1994. Your affidavit in paragraph 6 says that this draft was in the works between 1991 and 1994. When did you produce a first draft of the memorandum?

A. I honestly don't recall.

Q. Was it before 1994?

A. I have no -- we had several drafts prior to July 1994.

122

Q. You got comments and suggestions back from various people within the DEP and also from Delaware?
**A. Yes.**
Q. I'm looking at the cover memorandum. The second paragraph says, "A few representatives of NJDEP and DNREC have reviewed previous drafts. I would appreciate it if you would now provide us with your comments and suggestions." Do you remember who the representatives of DEP and DNREC were that you mention here?
**A. I believe -- I know we talked to Sarah Cooksey from DNREC. I believe at the time she headed the coastal program. I know we talked to Ernie Hahn -- Ernest Hahn, Ruth Ehinger, Tom Wells. And I know I discussed it with both Martin Bierbaum and John Weingart.**
Q. In those discussions, was it always understood that Delaware would have regulatory authority over projects that straddled the boundary with

123

Delaware?
**A. Yes.**
Q. Did anyone comment that that was incorrect, that Delaware lacked regulatory authority over projects that extended into Delaware?
**A. No.**
Q. The bottom of the cover memorandum -- well, the "To" line on the memorandum at the top says distribution colon, so I assume the above reference is a shorthand for the list of approximately 10 names, although I haven't counted them, at the bottom? It's 10?
**A. 11. Close.**
Q. You mention Sarah Cooksey. She's at the top. Bob Tudor, it says USEPA. When we were looking at the Keystone permit, is that the same Bob Tudor that you said signed for Ruth Ehinger?
**A. Yes.**
Q. He moved from DEP to EPA?
**A. Yes. Bob was heading up the**

124

**Delaware National Estuary program.**
Q. When did he move from DEP to USEPA?
**A. I don't recall.**
Q. Do you remember ever discussing the boundary issue with Mr. Tudor?
**A. No, I don't recall specifically discussing the boundary issue with him. Coordination issues, yes but...**
Q. John Weingart you mentioned earlier. What was his title and responsibilities?
**A. I believe at this time John Weingart was the assistant commissioner, or I should say an assistant commissioner.**
Q. Do you remember what bureau or division or whatever the proper term is?
**A. No, I do not.**
Q. Martin Bierbaum, what was his title?

125

**A. He was my immediate supervisor.**
Q. Ernest Hahn?
**A. Ernest Hahn at the time headed one of the regulatory programs within DEP.**
Q. Are you able to remember which one?
**A. No.**
Q. Ruth Ehinger, do you know what her title and responsibilities were in 1994?
**A. No, but she did head one of the regulatory sections as well.**
Q. Was it Land Use?
**A. It may have been; I don't recall.**
Q. Theresa Fowler?
**A. She headed one of the regulatory programs within Water.**
Q. Dennis Hart?
**A. He headed a regulatory program within water as well.**
Q. Bill O'Sullivan?

126

A. He headed one of the regulatory programs in air quality.
Q. Tom wells?
A. He was in charge of the Green Acres program.
Q. Very briefly, what is the Green Acres program?
A. The Green Acres program is a program set up by legislation that allows the State of New Jersey on a voluntary basis to purchase lands for conservation or recreational purposes.
Q. And JoAnne Cubberly?
A. JoAnne headed the Bureau of Tidelands. I believe that was the name of the bureau at that time.
Q. That's the bureau that would issue riparian grants?
A. Yes.
Q. Do you know when she became the head of the Bureau of Tidelands?
A. No, I do not.
Q. Do you know about how long she kept that position?

127

A. No, I don't.
Q. Turning to the memorandum of agreement as opposed to the cover memorandum that we were just talking about. The bottom of page 2 says, "Both agencies recognize that each agency has the independent authority to approve or deny applications pursuant to its own regulations." I think you said earlier that the working understanding of everyone involved in this was that Delaware did have regulatory authority over projects that straddled the boundary?
A. Yes.
Q. Let's go back to your affidavit, paragraph 8, please. The first sentence of paragraph 8 says, "However, during the review process of the draft MOA within DEP, objections were raised." What were those objections and who raised them?
A. They were raised by the different regulatory agencies that we

128

shared this memorandum of agreement with. Their main concern was either delaying the review process or creating a process whereby Delaware would have veto power over a permit process. At the time when this memorandum of agreement was being prepared there was an emphasis by the then administration to speed up the permit decision-making process. The administration had promised that DEP would be more responsive and make decisions more quickly than in the past.
A lot of the heads of the different programs were feeling pressure to issue decisions in a timely manner and they felt that this agreement would somehow jeopardize that time frame as well as somehow allow the agency to lose its independent permit decision making to other agencies outside of DEP.
Q. So if I understand you correctly, the thinking was that by entering into this cooperative agreement there could be a process whereby say if

129

Delaware didn't meet its deadline or come through with some interim decision that it would stop New Jersey from acting further based on the agreement between them; is that fair to say?
A. Yes.
Q. When you say there were concerns about giving a veto to Delaware as to projects which otherwise would have met New Jersey's standards, that's not talking about Delaware's independent regulatory authority over a project that straddled the boundary, is it?
A. No. I think they were more concerned that somehow an agency would be interjecting itself into their permit decision making and would have a veto or overruling process within their decision making.
Q. Over New Jersey's own permitting process?
A. Yes.
Q. But it's also true that even if the agencies were completely

130

separate -- in other words, if the memorandum of agreement was never consummated -- that Delaware would still have the independent right to regulate the project, correct?

MS. CONKLIN: I'm going to object to that because I think it's calling for a legal conclusion.

BY MR. ATTAWAY:

Q. I'm just asking for your understanding as a regulator.

MS. CONKLIN: You can answer the question based on your understanding as a regulator.

THE WITNESS: It was my understanding that a project that would require -- that started in New Jersey and then maybe extended out into the State of Delaware would need to get permits from both states and that a project could not go forward until an applicant has secured approvals

131

both from Delaware and New Jersey.

We saw it that way simplistically because that's the way we looked at permits not only between states but also within different agencies and governments within New Jersey. For instance, in New Jersey's coastal zone a major development would have to get a CAFRA permit, but that's not the only permit major development would usually have to get. They usually have to get some type -- sometimes county approvals or some municipal approvals, and there was some legal discussions for a while that municipal approvals may be excerpt by state approvals in the sense if an applicant could go to the state and get state approval, then regardless of what the municipality, whether approved to or denied, the state approval would stand and the project would

132

go forward.

It was always our understanding within DEP that an applicant had to get green lights all the way down, had to get state approvals, county approvals and municipal approvals before it could proceed.

BY MR. ATTAWAY:

Q. So in that sense the state and local authorities in New Jersey in a way had a veto power over the project just as Delaware had a veto power over the project if it didn't issue a permit, correct?

A. Yes.

Q. But that's not the kind of veto that you were talking about in paragraph 8, is that right?

A. **The concern was the veto power had to do with somehow an agency outside the Department of Environmental Protection and in another state could have some type of mechanism -- legal**

133

**mechanism whereby they could come inside the decision-making process within the Department of Environmental Protection for those permits that are mentioned here and have some legal precedent to halt or deny a permit by the New Jersey Department of Environmental Protection in issuing its permit.**

Q. Just to clarify, the veto power that you mention here was a veto power over how New Jersey conducted its own permitting processes but it didn't have anything to do with functional veto that Delaware would have if it decided not to approve the Delaware portion of the project?

A. **That's correct.**

Q. Was this draft memorandum or a prior version of it ever reviewed by legal counsel?

A. **I don't recall.**

Q. The last sentence of paragraph 8 of your affidavit says, "As a result, in 1994, New Jersey abandoned

134

efforts to reach an agreement on these maters." Could you talk a little bit about the abandonment process?

**A. The different agencies that were reviewing this felt strongly. They had strong opinions about this memorandum of agreement and they refused to sign off on it. So as a result we met with them and tried to assure them that we could put in language or whatever, revise the memo in such a way that they would be satisfied. And we couldn't reach any agreement on any language and raised it enough in the department so that it was discussed at a higher level than just the manager or the assistant director level. There was no agreement reached at that level either, so basically the agreement just died.**

Q. Did anyone at that higher level of review raise any objections over as to Delaware's regulatory authority?

**A. I don't recall.**

Q. Do you know after the MOA

135

was abandoned, did New Jersey ever continue to condition permits -- New Jersey permits on the issuance of Delaware permits?

**A. I don't know.**

MR. ATTAWAY: I'd like to mark Exhibit-18.

(Whereupon document was marked Whitney-18 for identification.)

BY MR. ATTAWAY:

Q. Unfortunately, I'm going to ask you to read the smudge part. This is the best copy that we were able to come up with.

**A. (Witness reading.) Okay.**

Q. Marked as Exhibit-18 is a letter dated January 8, 1995 from Dan Saunders to Gregory A. Marshall, Director. It's on letterhead of State of New Jersey, DEP, Division of Parks and Forestry, Historic Preservation Office. This letter concerns a pier -- rehabilitation of a pier at Fort Mott. Mr. Whitney, are you familiar with Fort

136

Mott generally and the pier specifically?

**A. I am familiar with Fort Mott generally and I am not that familiar with the pier at all.**

Q. Are you aware that the pier at Fort Mott was rehabilitated in the 1990s?

**A. No.**

Q. In 1995 when this letter was written, your position was please remind me?

**A. I was within another part of the department. Gregory Marshall as director was director of the Division of Parks and Forestry under one assistant commissioner and I was in another part under another assistant commissioner.**

Q. Who is Dan Saunders?

**A. I don't know. I believe he worked in the Historic Preservation Office.**

Q. It says Dorothy Guzzo, administrator. Do you know who she was?

**A. No.**

137

Q. Then a couple more names on the second page. It's copied to Carl Nordstrom and Indrek Ojamaa. Do you know either of those people?

**A. I know Carl. I believe at the time Carl was the assistant director of the Division of Parks and Forestry.**

Q. On the first page of this two-page letter is a middle paragraph that's unfortunately smudged. I'll try to read it starting at the second sentence. "The pier, which is essentially a timber grillage filled with rock and sand was constructed before the Supreme Court decision establishing the Delaware State line at the mean low water line of the New Jersey coast. Our working assumption has been that the pier itself, which is above the low water line is in New Jersey. However, the rehabilitation of the pier will be accomplished by building new structure around the existing pier. The new structure will, therefore, be in the

State of Delaware."
Would you say that this passage was written based on the understanding that Delaware would have regulatory authority over the portion of rehabilitation that occurred in Delaware?
**A. No. I'm not sure. This is written by someone within the Historic Preservation Office. That is in a different section of the department than the waterfront development permits or riparian sections. So I don't know if this person had an understanding of where the boundary is -- well, it appears that the person has an understanding where the boundary is, but I don't know if they really had a clear understanding of the jurisdiction issues as contained -- as spelled out in the coastal management program.**
Q. Okay.
MR. ATTAWAY: I'd like to mark for identification two more exhibits. Maybe we should take a



five or ten-minute break. Is that all right with you?
MS. CONKLIN: Sure.
(Whereupon a break was taken.)
(Whereupon documents were marked Whitney-19 and Whitney-20 for identification.)
BY MR. ATTAWAY:
Q. I have introduced exhibits 19 and 20. Exhibit-19 is an application by the New Jersey Department of Environmental Protection, Division of Parks and Forestry to the State of New Jersey, Department of Environmental Protection, Land Use Regulation Program. So essentially this is an application by a division of DEP to DEP to rehabilitate the Fort Mott pier; is that correct, Mr. Whitney?
**A. Yes.**
Q. And this is Bates stamped, for the record, New Jersey 5423 through 5439. On page 5424 there's a line that says, other and then typewritten is State



- Delaware Department of Natural Resources and Environmental Control, Federal US Army Corps of Engineers. Does this indicate, Mr. Whitney, that the DEP was stating that it was also applying to Delaware for a permit for the rehabilitation?
**A. I don't know. I have never seen this permit before and I have never seen this form before. This is interesting. On the face of it, I would say that that's what it looks like.**
Q. Then on 5425 it's signed by Carl Nordstrom, Deputy Director. I think you said earlier he was Deputy Director of Parks and Forestry?
**A. Parks and Forestry, yes. I was unaware that he at sometime moved from Parks and Forestry to Land Use Regulation.**
Q. Is he -- I think he is signing as the applicant. As I read this on page 5423 the applicant is Division of Parks and Forestry and the division



applied to is Land Use. Does that seem right? It confused me for a long time.
**A. Yes, signature of applicant, okay.**
Q. Then on page 5428 there's a line that says, permits required at the top and one of the permits required says Delaware Subaqueous Lands Permit. Again, does this appear that Mr. Nordstrom was indicating that the Division of Parks and Forestry was also applying to Delaware for a permit for this project?
**A. It indicates that Mr. Nordstrom acknowledged two other permits are required, but I don't know if this signifies that he had applied or was applying.**
Q. Fair enough. Thank you. On page 5431 toward the bottom of the page there's a number 25. It says, list of other certifications or approvals/denials received from other federal, state or local agencies for work described in this application. One of the listings is

142

Delaware Department of Natural Resources and Environmental Control Subaqueous Lands Project and it says the status is pending.

So based on the face of this, does this indicate that Mr. Nordstrom had on behalf of the Division of Parks and Forestry applied to Delaware for a permit?

**A. Yes.**

Q. One more along these lines, New Jersey 5434. There's a number 7. It says, have you discussed this project with any representative of local, state or federal regulatory agency and the yes box is checked. In the name of agency line, DNREC is listed here. So based on the face of this, is this consistent with the other three mentions of Delaware's regulatory authority over this project?

**A. Yes.**

Q. Just to summarize, this permit from New Jersey DEP, Division of Parks and Forestry, to New Jersey DEP,

143

Land Use Regulations has four mentions in the permit application of Delaware's regulatory authority over the project, correct?

**A. That's correct.**

Q. Let's move on to Exhibit-20. This is the application that the State of New Jersey DEP, Division of Parks and Forestry, made to State of Delaware specifically to the Delaware Department of Natural Resources and Environmental Control, or DNREC. This is Bates stamped DE1914 through 1970. If I'm doing my math correctly, 70 minus 14, approximately a 56-page application made to Delaware?

**A. Yes.**

Q. Were you aware of this permit before today?

**A. No.**

Q. Or permit application rather?

**A. No.**

Q. I'd like to introduce one

144

more exhibit.

(Whereupon document was marked Whitney-21 for identification.)

BY MR. ATTAWAY:

Q. Let me know when you have had a chance to review it and we'll continue.

**A. (Witness reading.) Okay.**

Q. Exhibit-21 is the permit issued by State of New Jersey DEP Land Use Regulation Division issued on January 24, 1996 for the Fort Mott rehabilitation. The first page says toward the bottom prepared by Bruce Stoneback. Mr. Whitney, did you know Mr. Stoneback?

**A. No.**

Q. Have you seen this permit before?

**A. No.**

Q. Were you aware that New Jersey had issued a permit for the Fort Mott project?

**A. No.**

145

Q. Turning to page 2 of the permit there are some administrative conditions. Number 2 says, "The following project aspects are subject to approval of the State of Delaware: a) installation of floating ferry mooring associated pilings, and b) removal of rip-rap against the crib structure below mean low water." Did I read that correctly?

**A. Yes.**

Q. Would you say that this is consistent with the understanding that you had throughout your tenure at DEP that Delaware would have regulatory authority over projects that straddled the boundary and extended to Delaware?

**A. Yes.**

Q. On the last page, which is page 3, there's a signature. The printed name under the line says Ruth Ehinger. The signature appears to be a different name. Do you recognize that signature?

**A. I believe that is the**

146

**signature of Kevin Broderick.**
Q. Who is Mr. Broderick?
**A. I think Kevin is one of the supervisors within the Bureau of Coastal Regulation.**
Q. What was his relation to Ms. Ehinger employment wise?
**A. Kevin reported to Ruth Ehinger or reports to.**
Q. I'm going to circle back a little bit to the memorandum of understanding. We talked about JoAnne Cubberly, who is listed on the end of the distribution list on the memorandum of agreement. You said she was director of Bureau of Tidelands at that time, correct?
**A. JoAnne Cubberly was the burean chief or manager.**
Q. I said director. Sorry. But she had the top position in that bureau at that time; is that correct?
**A. I believe she did, yes.**
Q. In the discussions internal

147

to New Jersey about the Delaware-New Jersey boundary line and the regulatory authority of various states, did you talk to other people in the Bureau of Tidelands?
**A. I don't recall who we talked to within the Bureau of Tidelands, whether it was JoAnne Cubberly or someone that worked within the bureau.**
Q. But you talked to someone in the bureau about these issues raised in the memorandum of understanding?
**A. Yes.**
Q. Obviously, Ms. Cubberly was copied on distribution?
**A. Yes.**
Q. When you worked at DEP, did you know Martin McHugh?
**A. The name is familiar but no recollection of what Mr. McHugh did within the department.**
Q. David Resilla (ph)?
**A. No.**
Q. Susanne Deitrich?

148

**A. No.**
Q. You mentioned Mr. Broderick. Did you deal with him on any regular basis when you were at DEP?
**A. Yes. Kevin did work in the Bureau of Coastal Project Review, and I headed that office. He was one of the project reviewers between 1979 and 1988.**
Q. How about after 1988 when I think you had a shift in your duties, you were assistant director of the Division of Coastal Resources?
**A. Yes.**
Q. Did you have dealings with Mr. Broderick after that?
**A. Not directly. Again, we were within the department but under different lines of function. So I believe he was still working in the regulatory program -- one of the regulatory programs.**
Q. Richard Castagna?
**A. Yes.**
Q. When did you first meet Mr.

149

Castagna?
**A. I believe I first met him when he was working in the Bureau of Tidelands for JoAnne Cubberly.**
Q. So he worked under Ms. Cubberly?
**A. Yes.**
Q. What time period was that?
**A. I'm unsure of the dates. It was probably the late '80s, early '90s.**
Q. After the late '80s or early '90s, what were Mr. Castagna's duties at that time?
**A. I believe when I left JoAnne Cubberly was still the chief of the Bureau of Tidelands.**
Q. So she was chief until 1997?
**A. Yes.**
Q. Starting at least as early as 1991, is that fair to say?
**A. I don't recall.**
Q. But at least in '94 when you copied her on your distribution memo?
**A. Yes.**

150

Q. Did Mr. Castagna work under her at that time?
**A. I'm not sure.**
Q. Are you familiar with the Crown Landing project proposed by BP?
**A. No.**
Q. What's your understanding of what this case is about?
**A. My understanding, what little that I read of it, which was a press release by the Department of Environmental Protection, has to do generally with the issue of jurisdiction between the State of New Jersey and the State of Delaware over -- for projects on or near the Delaware boundary in that -- in the arc.**
Q. In the Twelve Mile Circle?
**A. Yes, Twelve Mile Circle.**
Q. You said earlier that you haven't done any work for New Jersey on this case. Have you advised them in any way regarding this litigation?
**A. I have not been paid for any**

151

**work. I was first contacted by Bill Andersen I guess it was over a year ago, it may have been early summer, asking me if I remember any memorandums or any work I had done with my name on it. I told him I have vague recollections of some work.**
Q. I know I asked you earlier and you said you're not being paid by New Jersey. I assume that means you're not being paid by anyone else for your work here today or otherwise in this case, correct?
**A. That's correct.**
Q. Have you spoken with any or met with anyone from BP, in other words, British Petroleum?
**A. No.**
Q. Give me a minute. I might be done.
One or two questions about the draft MOA, 1994, Exhibit-17. Who drafted this?
**A. Who drafted this particular**

152

**memorandum of agreement?**
Q. Yes.
**A. I don't recall.**
Q. Who did the first draft?
**A. I believe it was probably me that did the first draft. I was thinking about that over the last year. I couldn't recall if the first draft was done by Delaware or done by New Jersey and if it was done by New Jersey, who. But it's quite possible I may have done the first draft.**
Q. I do have one more exhibit then and probably not very many questions.
(Whereupon document was marked Whitney-22 for identification.)
BY MR. ATTAWAY:
Q. I think I'm only going to ask you about the first page, the cover memorandum.
**A. Okay.**
Q. This is a memorandum from -- this meaning what's been marked as

153

Exhibit-22 is a memorandum from Sarah Cooksey to several people within DNREC dated July 27, 1994, which is shortly after the memo that you transmitted to DNREC, correct, to Ms. Cooksey and others? The first paragraph says, "Some time ago New Jersey and Delaware Coastal Programs decided that we could work together better on interstate issues and decide to try to take a step in that direction by developing an MOA. New Jersey has had the lead on this and has sent me a copy of a draft MOA." Does this refresh your recollection in any way about who took the lead or created the first draft of the document?
**A. Yes, it does. Thank you. I guess we were the ones that took the lead.**
MR. ATTAWAY: Thank you. No further questions.
(Witness excused.)
(Deposition concluded at approximately 2:50 p.m.)

CERTIFICATE

I HEREBY CERTIFY that the witness was duly sworn by me and that the deposition is a true record of the testimony given by the witness.

Samantha A. Oakley
Certified Shorthand Reporter
Date: October 10, 2006

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LAWYER'S NOTES

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**No. 134, Original**

IN THE
Supreme Court of the United States

STATE OF NEW JERSEY,
*Plaintiff,*

v.

STATE OF DELAWARE,
*Defendant.*

# DELAWARE'S APPENDIX ON CROSS-MOTIONS FOR SUMMARY JUDGMENT

**VOLUME 2 (Pages 811 – 1524)**


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December 22, 2006

**TABLE OF CONTENTS**
**VOLUME 2**

**PAGE**

Acts, Votes and Proceedings, Correspondence, Reports, Resolutions of the 47th New Jersey General Assembly, Trenton (Nov. 7, 1820 - Apr. 16, 1929) ..... 811

Letter from Jacob Stout to the Delaware General Assembly (Jan. 5, 1821) ..... 857

*New Jersey v. Delaware*, No. 1, Original (Plaintiff's Exhibit No. 37) 1821 N.J. Laws p. 6 (Nov. 21, 1821) ..... 859

*New Jersey v. Delaware*, No. 1, Original (Plaintiff's Exhibit No. 38) 1823 N.J. Laws p. 36 (extract) (Nov. 28, 1822) ..... 861

*New Jersey v. Delaware*, No. 1, Original (Plaintiff's Exhibit No. 162) "Delaware Laws Relating to New Jersey Delaware Boundary Dispute" (1852 - 1927) ..... 863

Compact between the State of New Jersey and the State of New York, 4 Stat. 708 (1834) ..... 885

*New Jersey v. Delaware*, No. 1, Original (Plaintiff's Exhibit No. 39) 1846 N.J. Laws Apr. 10, 1846) ..... 889

Commissioners of the State of New Jersey, Report on Lands Under Water (1864) ..... 891

Opinion Concerning Riparian Rights, Hon. George M. Robeson, Attorney General of New Jersey (Mar. 15, 1867) ..... 905

An Act for the Protection of Fishermen (Mar. 28, 1871) ..... 913

Third Annual Report of the Commissioners of Fisheries of the State of New Jersey (1872) ..... 917

Correspondence between Joel Parker, Governor of New Jersey and James Ponder, Governor of Delaware (May 1872) ..... 927

Journal of the Senate of the State of New Jersey, pp. 46-49 (Jan. 14, 1873) ..... 933

Journal of the Senate of the State of New Jersey, pp. 504-07 (Mar. 5, 1873) ..... 937

Supplement to An Act for the Protection of Fishermen (Feb. 19, 1873) ..... 943

Journal of the Senate of the State of New Jersey, pp. 1134-37 (Feb. 27, 1873) ..... 945

Journal of the Senate of the State of New Jersey, pp. 514-15 (Mar. 5, 1873) ..... 949

Journal of the Senate of the State of New Jersey, pp. 554-55 (Mar. 10, 1873) ..... 951

Journal of the Senate of the State of New Jersey, pp. 590-91 (Mar. 12, 1873) ..... 953

Letter from the Attorney General of New Jersey (Oct. 2, 1873) ..... 955

Delaware Commissioners' Decision on the Fishery Question (July 2, 1874) ..... 963

Report of the Governor to Legislature, Joseph D. Bedle,
Governor of New Jersey (Mar. 2, 1876) ..... 983

Seventh Annual Report of the Commissioners of Fisheries of the State of New Jersey
(1876) ..... 987

15 Del. Laws chs. 501-04 (1877) ..... 993

*New Jersey v. Delaware*, No. 1, Original (Plaintiff's Exhibit No. 40) 1881 N.J. Laws
p. 367 (Feb. 7, 1881) ..... 999

Report on the Dividing Line between the Delaware River and Bay, John P. Stockton
(Aug. 12, 1885 - Jan. 3, 1888) ..... 1003

Annual Report of the Commissioners of Fisheries of the State of New Jersey
(Dec. 31, 1885) ..... 1011

Annual Report of John P. Stockton, Attorney General of New Jersey (Jan. 3, 1888) ..... 1017

Final Report of New Jersey State Geologist (1888) ..... 1041

Letter from Suther Hewitt to Geo Bates (Sept. 23, 1898) ..... 1053

Opinion, H. H. Ward, Attorney General of Delaware (Feb. 14, 1901) ..... 1055

*New Jersey-Delaware Boundary Suit*, New York Times at 6 (Apr. 9, 1901) ..... 1063

John Hunn, Governor of Delaware, Message to Delaware General Assembly and Joint Resolution of the Delaware General Assembly (Jan. 31, 1903) ..... 1065

Letter from Franklin Murphy, Governor of New Jersey, to the New Jersey Legislature (Mar. 3, 1903) ..... 1081

Minutes of the New Jersey General Assembly, pp. 422-25 (Mar. 3, 1903) ..... 1085

Journal of the Senate of the State of New Jersey, pp. 234-35 (Mar. 3, 1903) ..... 1091

Journal of the Senate of the State of New Jersey, pp. 237-38 (Mar. 3, 1903) ..... 1093

*To Fix State Boundary Line*, Newark Evening News (Mar. 4, 1903) ..... 1097

*Delaware Fishermen Don't Ask Jerseymen to be Kept Off River*, The Evening Journal, at 1 (Mar. 4, 1903) ..... 1099

Journal of the Senate of the State of Delaware, pp. 896-903 (Mar. 16, 1903) ..... 1103

Minutes of the New Jersey General Assembly, pp. 549-50 (Mar. 16, 1903) ..... 1109

*Delaware and Jersey's Pact*, Newark Evening News (Mar. 17, 1903) ..... 1113

*Pages Deliberately Left Blank* ..... 1115

Letter from Commissioners of the State of Delaware to Commissioners of the State of New Jersey (Mar. 28, 1903) ..... 1117

Letter from Herbert H. Ward, Attorney General of Delaware, to George H. Bates (Apr. 1903) ..... 1121

Letter from the Attorney General of New Jersey to George H. Bates (Apr. 2, 1903) ..... 1123

Letter to John Hunn, Governor of Delaware (Apr. 6, 1903) ..... 1125

Letter from Herbert H. Ward, Attorney General of Delaware, to George H. Bates (May 1903) ..... 1127

Letter from Herbert H. Ward, Attorney General of Delaware, to George H. Bates (May 1903) ..... 1129

Letter to Herbert H. Ward, Attorney General of Delaware (June 9, 1903) ..... 1131

Opening Statement on Behalf of Complainant by the Attorney-General of New Jersey, *New Jersey v. Delaware*, No. 1 Original (Nov. 7, 1903) ..... 1133

Letter from Herbert H. Ward, Attorney General of Delaware, to Francis Rawle (Apr. 23, 1904) ..... 1149

Letter from Herbert H. Ward, Attorney General of Delaware, to Robert H. McCarter (Apr. 23, 1904) ..... 1151

Letter to Judge William C. Spruance (Nov. 23, 1904) ..... 1153

*King James Deed Shown Delaware Jersey Dispute*, Trenton Times (Feb. 4, 1905) ..... 1159

Letter from Herbert H. Ward, Attorney General of Delaware, to George H. Bates (Feb. 11, 1905) ..... 1163

*Plan to Settle the Boundary Dispute*, Evening Journal (Feb. 11, 1905) ..... 1165

24 Del. Laws ch. 216 (1905) ..... 1169

Joint Resolution of the New Jersey Senate and General Assembly Appointing Governor Edward C. Stokes, Attorney General Robert H. McCarter, Franklin Murpby, and Chauncy G. Parker Commissioners of the State of New Jersey (Feb. 14, 1905) ..... 1171

Compact between the State of New Jersey and the State of Delaware, H.R. Doc. No. 43 (approved by the Delaware Legislature, Mar. 20, 1905) ..... 1173

Letter from Robert H. McCarter, Attorney General of New Jersey, to Edward C. Stokes, Governor of New Jersey (Mar. 8, 1906) ..... 1177

Compact between the State of New Jersey and the State of Delaware, S. Doc. No. 260 (approved by the New Jersey Legislature, Mar. 21, 1905) ..... 1179

S. 4975, 59th Cong. (1906) (ratified) (Mar. 13, 1906) ..... 1190

Letter from Joseph L. Cahall, Secretary of State, Delaware, to Hiram R. Burton (Dec. 21, 1905) ..... 1197

Letters from John B. Avis, Secretary, New Jersey Commissioners, to W. H. Hayes (Dec.13, 1905 - Dec. 19, 1905) ..... 1198

Letter from Robert H. McCarter, Attorney General of New Jersey, to Joseph L. Cahall, Secretary of State, Delaware (May 9, 1905) ..... 1214

Report on New Jersey and Delaware Fisheries of the Commissioners of the State of New Jersey (1905) ..... 1216

Letter from John B. Avis, Secretary, New Jersey Commission, to Joseph L. Cahall, Secretary of State, Delaware (Aug. 7, 1905) ..... 1219

Letter from William S. Hilles, Secretary, Delaware Commissioners, to Hiram R. Burton, U.S. House of Representatives (Mar. 14, 1906) ..... 1221

Letter from John B. Avis, Secretary, New Jersey Commissioners, to E. C. Stokes, Governor of New Jersey (Dec. 19, 1905) ..... 1223

Resolution of Delaware and New Jersey Commissions (Dec. 15, 1905) ..... 1225

Letter from Robert H. Richards, Attorney General of Delaware, to Hiram Burton, U.S. House of Representatives (Jan. 19, 1907) ..... 1227

Telegram from Congressman Loudenslager to E. C. Stokes, Governor of New Jersey (Mar. 14, 1906) ..... 1229

Notes re: phone call with Congressman Loudenslager (Undated) ..... 1231

Letter from E. C. Stokes, Governor of New Jersey, to Congressman Loudenslager (Mar. 14, 1906) ..... 1233

Letter from William J. Bradley to Alexander B. Cooper, President Delaware & New Jersey Fisheries Compact Commission (Mar. 19, 1906) ..... 1235

Letters between Geo H. Bates and Robert H. McCarter (Mar. 22, 1906 - Mar. 23, 1906) ..... 1239

Letter to Alexander B. Cooper, Esq. (Mar. 24, 1906) ..... 1242

Letter from Alexander B. Cooper to Walter H. Hayes, Esq. (May 2, 1906) ..... 1246

Letter from Robert H. Richards, Attorney General of Delaware, to the Chairman of the Judiciary Committee, U.S. House of Representatives (Jan. 19, 1907) ..... 1248

Letter from John B. Avis, New Jersey State Senator, to Walter H. Hayes, Secretary, Delaware Commissioners (June 18, 1906) ..... 1253

Letter from Francis Rawle to Robert H. Richards, Attorney General of Delaware (Jan. 16, 1906) ..... 1255

Letter from Robert H. Richards, Attorney General of Delaware, to George H. Bates (Jan. 17, 1906) ..... 1257

Letter from George Bates to Robert H. McCarter, Attorney General of New Jersey (Feb. 22, 1906) ..... 1259

Letter to Robert H. Richards, Attorney General of Delaware (Feb. 22, 1906) ..... 1261

Letter from J. C. Sandford, Major, Corps of Engineers, to Brig. Gen. A. Mackenzie, Chief of Engineers, U.S.A. (Mar. 10, 1906) ..... 1263

Letter and attachment from J. C. Sandford, Major, Corps of Engineers, to Brig. Gen. A. Mackenzie, Chief of Engineers, U.S.A. (Mar. 16, 1906) ..... 1267

Letter from William H. Taft, Secretary of War, to Robert Bacon, U.S. Secretary of State (Mar. 27, 1906) ..... 1273

Letter from Robert Bacon, U.S. Secretary of State, to William H. Taft, Secretary of War, (Mar. 29, 1906) ..... 1275

Letter from Edward C. Stokes, Governor of New Jersey, to Elihu Root, U.S. Secretary of State (Apr. 2, 1906) ..... 1277

Letter from J. C. Sandford, Major, Corps of Engineers, to Edward C. Stokes, Governor of New Jersey (Dec. 20, 1906) ..... 1279

Letter from C. B. F. Flagler, Major, Corps of Engineers, to Edward C. Stokes, Governor of New Jersey (May 11, 1907) ..... 1283

Letter from the Secretary to Edward C. Stokes, Governor of New Jersey, to C. B. F. Flagler, Major, Corps of Engineers (May 23, 1907) ..... 1287

Letter from C. B. F. Flagler, Major, Corps of Engineers to the Secretary to Edward C. Stokes, Governor of New Jersey (May 25, 1907) ..... 1289

Telegram from J. Frank Allee to Walter H. Hayes (Mar. 14, 1906) ..... 1291

**Pages 1293-1834: Documents Relating to the Joint Fisheries Commission 1905-1908**

Letter from Alexander B. Cooper, President, and William S. Hilles, Delaware Commissioners, to Robert H. Richards, Attorney General of Delaware (Jan. 19, 1907) ..... 1293

Letter from Robert H. McCarter, Attorney General of New Jersey, to Edward C. Stokes, Governor of New Jersey (Jan. 9, 1906) ..... 1295

Letter from John B. Avis, New Jersey State Senator, to Walter H. Hayes, Secretary, Delaware Commissioners (Jan. 9, 1907) ..... 1297

Letter from Senator William J. Bradley, New Jersey to Alexander B. Cooper, President, Delaware Commissioners (Jan. 9, 1907) ..... 1299

Letter from John B. Avis, New Jersey State Senator, to Walter H. Hayes, Secretary, Delaware Commissioners (Jan. 7, 1907) ..... 1301

Report of the Proceedings of the Public Meetings Held by the Commissioners of the State of Delaware (Delaware-New Jersey Fisheries Compact) ..... 1303

Plaintiff's Exhibit No. 161

# NEW JERSEY-DELAWARE BOUNDARY

*Messages, Proclamations and Correspondence of the Governors, and Minutes, Reports, Proceedings and Acts of the Legislature, of the State of New Jersey 1820-1929.*

*N. J. Laws* 1820, *p.* 205.

AN ACT concerning the boundaries and jurisdiction of this state in the bay of Delaware.

1. BE IT ENACTED *by the Council and General Assembly of this state, and it is hereby enacted by the authority of the same*, That the governor be, and he hereby is, authorized, empowered and directed to appoint three commissioners on the part of this state, who shall be entitled to a reasonable compensation, to meet commissioners appointed by the competent authority of the state of Delaware, should the state of Delaware think proper to appoint such commissioners; which said commissioners of the state of New-Jersey and of the state of Delaware, when so met, shall have full power and authority to make and conclude an agreement between the said states of New-Jersey and Delaware, defining their respective boundaries, jurisdiction, rights to islands, subaqueous soil, fisheries and products of the river and bay of Delaware, southeasterly of the circular boundary between the states of Delaware and Pennsylvania.

2. *And be it enacted*, That the agreement so made by the commissioners, shall not be binding on the state of New-Jersey, until ratified and confirmed by the legislatures of the states of New-Jersey and Delaware, respectively.

3. *And be it enacted*, That the governor of this state transmit to the governor of the state of Delaware, a copy

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PLAINTIFFS EXHIBIT NO. 2 184

of this act, and request him to communicate it to the legislature of that state.

A. Passed November 7, 1820.

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*Votes and Proceedings of the Forty-Seventh General Assembly of the State of New Jersey, Trenton, 1822,* pp. 110-112.

Mr. Elmer, from the committee to whom was referred a communication from his excellency the Governor, covering a correspondence with the secretary at war respecting the island in the Delaware bay called the Pea-Patch, respectfully reports,

That it appears by the documents submitted to them, and from other information upon which your committee rely, that in the year 1813, the United States having determined to erect fortifications for the defence of the Delaware bay and river, selected the Pea-Patch as a position suitable for that purpose. This island lies within the jurisdictional limits of New-Jersey, and was at that time in the peaceable occupation of one of our citizens, claiming under a grant of the West-Jersey proprietors, made in 1784. No application, however, was made on the subject to the authorities of this state, but military possession was taken by the United States officers, and the occupant dispossessed. The district attorney of Delaware, and other legal characters in that state and Pennsylvania, it seems, were consulted; who being of opinion that the title to the soil and territory was in the state of Delaware, the Legislature of the latter state made a cession, and under that title the United States took possession and commenced constructing a fort. The individual dispossessed instituted a suit against the engineer, which is now pending before the circuit court of the United States.

PLAINTIFFS EXHIBIT NO. 161.



A difference unhappily exists between New-Jersey and Delaware relative to their boundary, and their respective rights in the river and bay of Delaware; and this difference is not limited to the Pea-Patch, but embraces other subjects of dispute. In the year 1820 the Legislature of this state, having been made acquainted with the (p. 111) facts above mentioned, and with the circumstance that a suit was pending; actuated by a desire to effect a speedy and amicable settlement of the controversy, as well in relation to this particular subject as to all other questions growing out of the disputed boundary, passed an act for the appointment of commissioners, to meet commissioners to be appointed on the part of Delaware with full powers to make and conclude an agreement between the two states, defining their respective boundaries, jurisdiction, rights to islands, &c. in the river and bay of Delaware To this overture the state of Delaware did not think proper to accede, nor was any answer ever returned to the proposal.

In the year 1821, the Legislature of this state passed an act (among other things) to authorize and empower the Governor to appropriate a certain sum of money at his discretion to prosecute or defend to final issue or judgment any suit or suits which he might deem necessary for trying or finally determining the jurisdictional line between the two states. The attempt to effect an amicable settlement having failed, it was believed that the pending suit afforded a favorable opportunity of obtaining the decision of an impartial and enlightened judicial tribunal. The United States claiming under Delaware and the former occupant under this state the jurisdictional line will fairly come in question—this must inevitably happen unless the plaintiff should fail on account of some technical defect in his ittle. It would therefore be manifestly unsafe to leave this question of jurisdiction to be tried and determined in an action brought solely by an in-

PLAINTIFFS EXHIBIT NO. 161
4

dividual, free from all control or interference of the state. Though the state would not be concluded by such a trial and decision, yet its rights might be greatly prejudiced by the action being brought to trial without all the advantage which might arise from a direct interference by employing counsel, and taking the management and control of the suit.

The Secretary at War under the direction of the President now asks for a cession from this state for the purpose of further strengthening the title of the United States, and of enabling them the better to resist the claim of our citizen.

Your committee are decidedly of opinion that were the subject freed from the danger of affecting as well the rights of our citizen, who has been deprived in the manner stated of his possession, as the question of boundary between this state and Delaware, the required cession ought to be unhesitatingly made. The position is deemed by the Secretary at War a very valuable one, not only as it regards the defence of the state of New-Jersey, but the country bordering on the Delaware. Whatever opinion we might be disposed to entertain on this point as individuals, it would certainly be yielded to the decision of the distinguished officers composing the board of engineers, approved as that has been by the able and enlightened head of the war department. New-Jersey has at all times evinced a sincere desire to afford every facility to the measures of the general government, and your committee are well aware that the present is a time when we are peculiarly called on to encourage by all proper means (p. 112) the laudable effort to arrange and complete a well digested system of defence. Your committee, however, are of opinion that taking into view all the circumstances, it will be most prudent and consist better with the dignity and interests of the state, to delay a cession of the island in question.

PLAINTIFFS EXHIBIT NO. 161


No injury can result from such a course. The works commenced will not be interrupted in their progress, and in the meantime the controversy existing between this state and Delaware may be settled by a judicial decision and the claim of our citizen decided in the same manner. The general government will duly appreciate the motives by which we have been governed, and cannot impute to this state any desire to obstruct or delay the completion of the fort now erecting. In the event of a determination adverse to our claim, no cession will be necessary, and should the contrary as we confidently believe be the result, we can then with more propriety transfer our right in the manner requested, and at the same time protect the interests of the individual claimant. Your committee therefore respectfully propose that the documents referred to them be recommended to the consideration of the next Legislature.

By order of the committee,

LUCIUS Q. C. ELMER, Chairman.

Which report was read and ordered to lie on the table.

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*Votes and Proceedings of the Fiftieth General Assembly of the State of New Jersey.*

(P. 174)

FRIDAY—December 9 1825

Nine o'clock the House met

Mr. Pennington, from the committee to whom was referred a communication from the Governor, with a letter from the Secretary of War, respecting the island in the Delaware river called the Pea Patch,

*Reported,* That the committee have had the subject referred to them under consideration, and that it appears, from the minutes of this House and the journals of Council, that, in the session of 1822, the then Secretary of

War, under the direction of the President of the United States, made a similar application to the legislature for a cession to the general government of the right of this state to the land in question, when it was deemed by the legislature not prudent and advisable, for the reasons stated in a report made by a committee of this House, and afterwards agreed to by both branches of the legislature, to delay making the cession required.

The committee cannot but consider it a subject of very serious regret, that a state of things exists to cause delay in making the cession, especially as the position is considered by the Secretary of War essentially connected with the defence of this state, as well as other parts of the Union. But, unhappily, the same circumstances which formerly existed, and which induced the legislature to delay making the cession still continue, and it would *now*, as *then*, be manifestly unsafe to the important right of the state for the legislature to withdraw their interference and control over the suit which is now pending, at leave the disputed question of *boundary* between New-Jersey and Delaware, to be tried and decided in an action, in which an individual will then be the sole plaintiff against the officer of the United States, who entered and took possession of the island, under a claim of title derived by the United States from the state of Delaware; when, on the trial of the action, the claims of the latter state, in opposition to what New-Jersey considers its just rights, will be insisted on and endeavoured to be maintained, both by the general government and the state of Delaware.

If any arrangement can hereafter be made between the parties concerned, by which the question of boundary between the states of New-Jersey and Delaware shall be prevented from being drawn in question on the trial of the action which is now pending, or by which it shall become unnecessary to bring that action to trial for the purpose of deciding on the claims of the individual who

PLAINTIFFS EXHIBIT NO. 161


has been dispossessed; in either of these events, the committee would respectfully recommend that the cession required should be made.

The committee, however, at present recommend that the subject be referred to the consideration of the next legislature.

SAMUEL PENNINGTON,
Chairman of committee.

(P. 175) Which report was read, and agreed to.

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*N. J. Laws* 1872, *p.* 115.

A Proclamation by the Governor of New Jersey.

Whereas, citizens of New Jersey, while pursuing the occupation of fishing in the river Delaware, on the eastern side of said river, and within the jurisdiction of this state, have recently been arrested by persons claiming to act under the laws and authority of the State of Delaware, and taken as prisoners out of this state.

And whereas, the business of those so arrested has been seriously interrupted, and the like business of many other citizens will be disturbed should similar aggressions upon the authority and jurisdiction of this state be continued.

And whereas, disputes in relation to jurisdiction between states should be submitted to the legal tribunal created with especial reference to such disagreements, and should not be permitted to result in a collision of opposing local authorities, or in individual retaliation.

Therefore, I hereby give notice and proclaim that the State of New Jersey claims jurisdiction over that part of the river Delaware, between the States of Delaware and New Jersey, which is easterly of the middle line of said river, and further claims that all persons who conform to the fishing laws of the State of New Jersey, have the right

to fish on the eastern side of said river, without permission or license of any other state.

And I notify and warn all persons not to molest, disturb, arrest, or attempt to arrest, without lawful process issued by some legal authority in this state, any citizen of New Jersey at any place within her jurisdiction.

And I exhort the people of this state, if any illegal arrest or interference be attempted, to refrain from acts of violence, assuring them that every effort will be made to have the questions involved determined by the proper legal tribunal.

Given at the Executive Chamber, at Trenton,
[L. S.] this eighth day of May, A. D. one thousand eight hundred and seventy-two.

JOEL PARKER.

Attest:

JNO. A. HALL, *Private Secretary.*

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*Documents of the Ninety-seventh Legislature of the State of New Jersey, Printed by order of the Legislature, Jersey City, 1873*, pp. 3-9.

## CORRESPONDENCE.

STATE OF NEW JERSEY,
EXECUTIVE DEPARTMENT,
TRENTON, May 9, 1872.

*His Excellency James Ponder, Governor of the State of Delaware:—*

SIR:—I have received information that W. W. Prichett, a constable residing at Wilmington, in the State of Delaware, accompanied by an armd *posse*, on the second day

PLAINTIFFS EXHIBIT NO. 161


of May instant, embarked on the steam-tug Falcon, proceeded to the eastern portion of the river Delaware, and there arrested twenty-two citizens of New Jersey, while engaged in the business of fishing, and carried them as prisoners to Delaware. I am further informed that the arrests were made by advice of the Attorney-General of Delaware, under the claim that the place of arrest was within the jurisdiction of that State, and because the persons arrested were there pursuing this business without the license of Delaware.

I am aware that a grant by the State of Delaware to the United States of "Pea Patch Island" was, in the year 1848, decided by the arbitrator, chosen by the United States and Mr. Humphrey, to be valid. New Jersey was not a party to that litigation; nor was she represented by counsel. This State has never considered that the opinion of the arbitrator in that submission decided, even incidentally, the boundary and jurisdiction of the respective States. Neither before that opinion, nor since, until now, has Delaware made the practical claim, from the effects of which many respectable and industrious citizens of this State are suffering. This is the first time that an attempt has been made by the authorities of Delaware to interrupt the business of fishing on the eastern side of the river.

Being confident that the State of Delaware does not desire that proceedings, such as those herein complained of, should be continued any further than to assert her claim and put it in course of judicial determination; and this State being anxious to submit the question to the proper legal tribunal at as early a period as practicable, I trust that the authorities of Delaware will abstain from further attempts to practically enforce her claim of jurisdiction, until a decision of the Supreme Court of the United States shall settle the controversy.

PLAINTIFFS EXHIBIT NO. 161



faithfully executed." The act in regard to fishing in the Delaware waters being a law upon our statute book, I have no power, as the Executive of this State, to suspend its execution for an instant.

The spirit of comity which dictated your communication affords me much gratification, and I regret exceedingly that you did not commence the correspondence before issuing your proclamation. The rights of the State of Delaware are too well known for us to fear a judicial investigation, and her citizens can have no objection to a legal trial of the entire question, before the proper tribunal, for final adjudication and settlement. I would much prefer an amicable adjustment; but the constitution gives me no power to agree upon or appoint an arbitrator. Probably your Excellency can suggest some plan by which the affair can be arranged.

With the same spirit which dictated your communication, I would respectfully suggest that your Excellency advise the citizens of New Jersey to refrain from fishing in said waters within the jurisdiction of the State of Delaware, unless they conform to the laws of this State until the question of jurisdiction can be judicially determined.

I have not issued a counter proclamation, for the reason that it might be the means of stirring up contention and strife between the citizens of the neighboring States, when they should live in peace and harmony with each other, as they have in the past.

Hoping that the friendly relations heretofore existing between New Jersey and Delaware may long continue, and that the question may be settled in a satisfactory manner at an early day,

I am, very respectfully,

Your obedient servant,

JAMES PONDER.

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PLAINTIFFS EXHIBIT NO. 161



STATE OF NEW JERSEY,
EXECUTIVE DEPARTMENT,
TRENTON, May 22, 1872.

*His Excellency James Ponder, Governor of the State of Delaware:—*

SIR:—Your reply to my letter of the 9th inst. has been received.

The communication of your Excellency claims that the State of Delaware has exclusive jurisdiction over the waters of the Delaware river to low-water mark on the New Jersey side, within what is called the twelve-mile circle. In other words, it is insisted that the State of Delaware has such title to the territory, embracing some twenty-four miles in length of the river, as to exclude the people of New Jersey from fishing on the eastern side thereof, unless they obtain the permission of Delaware.

The State of New Jersey denies that Delaware has jurisdiction over any part of the waters of the river east of the middle line, and insists that her citizens have the legal right to fish on the New Jersey side of the river without the license of Delaware, either within or without the so-called circle. The question involved is one of great importance, and I agree with your Excellency that it should be settled at an early day.

It seems that the State of Delaware bases her claim to exclusive jurisdiction over the waters of the river within the twelve mile circle upon the decision of the arbitrator in the Pea Patch case, and also upon the original grants. As the communication of your Excellency emphatically states these two grounds of confidence in the claim of Delaware, it is proper that I should briefly notice them.

The submission in the Pea Patch case was between the Secretary of War, acting for the United States, and James Humphrey, and the question submitted was whether the

PLAINTIFFS EXHIBIT NO. 164


United States or Mr. Humphrey had title to the land of that island.

The award in that case has never been considered authority binding on any but the parties to the submission.

In his decision, the arbitrator states that "he is fully aware that his opinion is of no authority whatever, except for the single purpose as to which the agreement of the parties has made it conclusive, that is, the question of title *between them.*"

The award, therefore, does not amount to judicial authority, and is only the opinion of an able lawyer antagonistic to the opinions of other able lawyers contemporaneous with the arbitrator, and in conflict with the charge of Judge Baldwin, in a case tried in the United States Circuit Court involving the same question. It certainly cannot conclude either Delaware or New Jersey on the question of jurisdiction. The disputed jurisdiction of States can be settled only by treaty, or by the decision of the Supreme Court of the United States.

Even if the award in the Pea Patch case be considered judicial authority, it does not decide the question of the right of the respective States to *jurisdiction upon the waters* of the Delaware.

The opinion of the arbitrator only determined the *title to land not covered by water.* The question raised by the arrest of which New Jersey complains, relates not to title to land which is *jus-privatum,* but to jurisdiction on navigable water, which is *jus-publicum.*

The further claim of the State of Delaware to jurisdiction over the waters of the river within the twelve mile circle up to the Jersey shore, is founded on the ancient grants. A careful examination of these has led me to a conclusion different from that of your Excellency.

Two years before the Duke of York executed his grant to William Penn for the New Castle Circle, the Duke, who

PLAINTIFFS EXHIBIT NO. 161



had derived his title to the territory and government of New Jersey from the crown, granted to the proprietors the territory and government of West Jersey, annexing to the grant these words: "and also the free use of all bays, rivers and waters *leading unto* or lying between the said premises, for navigation, free trade, *fishing*, or otherwise."

Long before the feoffment to William Penn of any part of Delaware, Penn, claiming to be one of the proprietors of West Jersey, with other proprietors, gave a system of government to the people who had colonized there, in the form of "concessions and agreements," in which he guaranteed "that all the inhabitants within the said province of West Jersey have the *liberty of fishing in the Delaware river.*"

The deed from the Duke of York to William Penn, for the twelve mile circle, was executed before the Duke had title thereto, and no conveyance was afterwards made to Penn. The right of government of Delaware was never granted to Penn by the King or the Duke. The right of government, and the *regalia* thereto attached, including the public rights of navigation and fishing, were in the crown when the declaration of American Independence was proclaimed. The King held the great rivers in trust for his subjects, and when the States achieved their independence, the rights of the King over navigable waters, including the right of fishing, vested in the States in trust for the people; and where a river separated two States, each, under the law of nations, took jurisdiction to the middle of the stream.

It is true that Penn based his claim to the present State of Delaware upon the feoffments from the Duke of York, but through her legislation, Delaware has, in a solemn manner, denied the validity of these feoffments, under one of which the claim for the whole of the river for twenty-four miles is now made. Near the close of the last

PLAINTIFFS EXHIBIT NO. 161



century, her legislature, against the protest of the Penn heirs, denied that Penn ever had title, and derived the right of the State to soil and sovereignty from the crown, upon the treaty of peace with Great Britain in 1783.

For more than two hundred years the people of New Jersey have enjoyed, uninterruptedly, the right of fishing on the eastern side of the Delaware river. The invasion of what I believe to be the jurisdiction of New Jersey, the arrest of her citizens while engaged in fishing on her public waters, the taking of the persons arrested as prisoners to another State and compelling them to pay a license fee, the sudden and serious interruption of the business of a large number of the people, without notice to them or to the authorities of this State, were proceedings so unusual that I deemed it proper and necessary promptly to issue the proclamation, a copy of which I sent you, as an official claim of the rights of this State, in protest against the arrest of her citizens that had been made, and also as a means of preventing breaches of the peace, by giving assurance to those immediately interested that the controversy would be settled amicably by legal action.

I have considered the suggestion made by your Excellency to issue a proclamation, requesting citizens of this State to cease fishing on the waters on the New Jersey side of the river pending the decision of the legal question of jurisdiction, and after reflection, I have concluded that it would be so disastrous to the livelihood of a large class of men who depend on the occupation of fishing for subsistence, and so abruptly deny them a public right which they and their ancestors have enjoyed for two centuries, that it would be neither just nor wise to take that course. It appears to me that the jurisdiction of Delaware, as now claimed, but in no wise asserted, over the locality in question, by her law of 1871, should not be insisted upon in such a way as to produce these consequences. In my former communication I did not intend to suggest that the

PLAINTIFFS EXHIBIT NO. 161



Governor of a State had power to suspend a law, for it appears to me that the question was simply whether the Delaware authorities might not, pending a legal controversy, allow a question of jurisdiction, which her law of 1871 does not assert, to remain practically as it was found by that law. I regreat exceedingly that notice was not given the authorities of this State, soon after the passage of the law of 1871, that Delaware would claim to enforce its provisions on the eastern side of the river, within the twelve mile circle, so that the question could have been decided before the commencement of the fishing season of 1872, and thus the arrest of industrious and peaceable citizens, and the interruption of their business have been avoided.

It is to be regretted that the legislature of our States are not in session, so that commissions to negotiate and settle the whole question might be authorized. But as this cannot now be done, I am much gratified with your ready acquiescence in the proposition to submit it to judicial decision. The mode of such submission can doubtless he arranged by the law officers of the respective States, and I will at once refer that part of the communication of your Excellency to the Attorney General of this State. I suppose a case can be made, and the facts agreed upon.

I join your Excellency in the hope that the question may soon be settled in a satisfactory manner, and that the friendly relations which have always existed between the States of Delaware and New Jersey may continue uninterrupted.

Very respectfully,

Your obedient servant,

JOEL PARKER.

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PLAINTIFFS EXHIBIT NO. 462

18

*N. J. Laws* 1873, *p.* 20.

## CHAPTER XCVIII.

An Act for the Settlement of the Territorial Limits and Jurisdiction of the State of New Jersey and the State of Delaware.

1. BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey*, That the governor shall, by and with the advice and consent of the senate, appoint three commissioners, who shall have full powers on the part of the state of New Jersey, to meet three commissioners appointed or to be appointed under or by virtue of a law of the state of Delaware, to negotiate and agree respecting the territorial limits and jurisdiction of the state of New Jersey and the state of Delaware, and if by death, resignation, or otherwise, a vacancy do happen among those appointed by the state of New Jersey, the governor or person administering the government of this state, is hereby authorized to supply the same.

2. *And be it enacted*, That the said commissioners on the part of the state of New Jersey, or a major part of them, shall have full power and authority to agree upon, settle and determine the limits of territory and jurisdiction between the said states, as to them may seem just; and their agreement in the premises in writing, signed and sealed by the said commissioners of both, or a majority of them, respectively, if made on or before the first day of January next, shall become binding on the state of New Jersey, when confirmed by the respective legislatures of the state of Delaware and of the state of New Jersey, and the congress of the United States shall consent thereto.

3. *And be it enacted*, That the said commissioners shall meet at such time and place as they may agree upon; and that the expenses and disbursements of the said commissioners for surveys, if any shall be necessary, for maps

PLAINTIFFS EXHIBIT NO. 161



and copies of maps, of documents of any kind that may be deemed useful, and for any other purpose which shall aid them in the discharge of their duties, and a reasonable compensation for their services, shall be ascertained and allowed by the governor, and paid by the treasurer, on the governor's warrant, out of any moneys in the treasury not otherwise appropriated.

4. *And be is enacted,* That the governor shall transmit to the governor of the state of Delaware a copy of this act.

5. *And be it enacted,* That this act shall take effect immediately.

Approved February 26, 1873.

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*N. J. Laws* 1873, *p.* 40.

## CHAPTER CLXI.

A Supplement to the act approved February twenty-sixth, one thousand eight hundred and seventy-three, entitled "An Act for the settlement of the Territorial Limits and Jurisdiction of the State of New Jersey and the State of Delaware."

WHEREAS, it appears that the state of Delaware has in some measure modified the original joint resolution passed by the legislature of that state, with respect to the subject of difference between the state of New Jersey and that state, and thereby declined to submit to commissioners any question as to the title claimed by said state to a part of the Delaware river, but has authorized the submission of the question whether the citizens of New Jersey have the right to fish in that part of the Delaware river claimed by the state of Delaware and the nature and extent of that right; *and whereas,* it is expedient to settle at this time so much of the difference between the said states as may be settled amicably, therefore;

PLAINTIFFS EXHIBIT NO. 161



1. BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey,* That the commissioners already appointed under the act to which this is a supplement and their successors shall have power to settle so much of the difference between this state and said state of Delaware as the said state of Delaware has submitted, or may from time to itme hereafter submit; *provided, however,* that nothing in this act contained shall be construed to, or to authorize said commissioners by any act or agreement to affect any other claim or jurisdiction of New Jersey in or over the whole or any part of the Delaware river or the soil thereof, notwithstanding the settlement of the said fishery question.

2. *And be it enacted,* That if the said state of Delaware shall hereafter give more enlarged powers to its commissioners, the said commissioners of this state and their successors may act upon and exercise every of the powers given in this act, or the act to which this is a supplement, to the extent of the submission under such enlarged powers so to be given by said state of Delaware.

3. *And be it enacted,* That the said commissioners and their successors shall remain charged with the matters mentioned in the said act to which this is a supplement, until the same shall be finally settled under the powers by said act given, and such as shall be given by said state of Delaware or otherwise, notwithstanding the agreement contemplated by said act to which this is a supplement, may not be made on or before the first day of January next, and that any agreement made under this act or the act to which this is a supplement, shall be submitted to the legislature of this state, and be ratified and confirmed by this state in the manner prescribed by the act to which this is a supplement, and be consented to by congress before the same shall be finally binding on this state.

PLAINTIFFS EXHIBIT NO. 161



4. *And be it enacted*, That a copy of this act shall be transmitted to the governor of Delaware, and that the same shall take effect immediately.

Approved March 11, 1873.

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*Documents of the One Hundredth Legislature of the State of New Jersey, Printed by order of the Legislature, Jersey City, 1876*, pp. 3-4.

## REPORT.

STATE OF NEW JERSEY,
EXECUTIVE DEPARTMENT,
TRENTON, MARCH 22, 1876.

*To the Legislature:—*

In reply to the concurrent resolution requesting me to communicate what action, if any, has been had by the commissioners of the States of Delaware and New Jersey, in relation to the dispute concerning fisheries in the Delaware river, I respectfully submit herewith copies of correspondence between the commissioners of this State and myself, and to which I refer for the information desired.

I have received no official notification of an abandonment of the commission by the Legislature of Delaware, but the published laws of that State show that on the 26th day of March, A. D. 1875, a joint resolution was passed relieving the Delaware commissioners from further duty.

This is greatly to be regretted, for no other legislation can be had in that State until next year, as its Legislature meets only biennially.

Every effort, however, within the scope of executive duty, will be made with the authorities of Delaware tending to an eventual settlement, and also, in the meantime,

PLAINTIFFS EXHIBIT NO.
22

to prevent any personal conflicts between the citizens of each State arising out of the questions involved.

I would also suggest that power be conferred, in case negotiations cannot be resumed, to bring the case before the Supreme Court of the United States as provided in the Federal Constitution.

Respectfully,

J. D. BEDLE.

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STATE OF NEW JERSEY,
EXECUTIVE DEPARTMENT,
TRENTON, MARCH 7, 1876.

*To Honorable A. Browning, Courtland Parker and Albert H. Slape, Commissioners:—*

DEAR SIRS:—The Legislature has passed a concurrent resolution, of which the enclosed is a copy, and the first section of which requests information as to the action had by you with like commissioners of the State of Delaware upon the matters of difference referred to in the acts under which you were appointed. I will be glad to have you communicate to me, in writing, the exact status of the negotiations, with such other information as will enable me to accurately answer the resolution.

Yours respectfully,

J. D. BEDLE.

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PLAINTIFFS EXHIBIT NO. 161

23

CAMDEN, March 22d, 1876.

*To His Excellency, Joseph D. Bedle, Governor of New Jersey:—*

DEAR SIR:—In answer to your letter of the 7th instant, addressed to Messrs. Parker, Slape and myself, as commissioners on the part of New Jersey, in conjunction with commissioners on the part of the State of Delaware, to determine the question of jurisdiction over the Delaware river, or bay, within a circuit of twelve miles around New Castle, in that State, I beg leave to state, that sometime after the several appointments of the joint commission, the commissioners met on several occasions in the city of Philadelphia. After having, on those occasions, discussed to some extent the questions involved, it was agreed that the Delaware commissioners should agree upon, have printed and served on us, a statement of the case on their part; to which we in turn, in like manner, were to submit a statement on our part.

Some considerable time after this arrangement, at a meeting of the joint commission in Philadelphia, we were served with their statement. To prepare a proper reply to this, required no inconsiderable time and investigation. Before it was accomplished, the State of Delaware very unexpectedly to us, and as advised, to them also, revoked their commission. This terminated, or at least suspended, all further proceedings; and so the matter remains to this present.

Very truly your obedient servant,

A. BROWNING.

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PLAINTIFFS EXHIBIT NO. [illegible]

24

*N. J. Laws* 1876, *p.* 418.

NUMBER II.

Joint resolution relative to the rights of the State of New Jersey in that part of the Delaware river which runs between the States of Delaware and New Jersey:

WHEREAS, the State of Delaware now claims to own the bed and to have exclusive jurisdiction, from shore to shore, of a portion of the Delaware river, extending from the boundary line between the States of Pennsylvania and Delaware, for some distance below the town of New Castle; and has lately endeavored to exercise jurisdiction co-extensive with said claim, and whereas, this state always claimed and now doth claim to own the bed of said river to the middle thereof, so far as said river lies between this state and the state of Delaware, and to be entitled to exclusive jurisdiction, (subject to the constitution of the United States and the acts of congress made in pursuance thereof) over its half of said river and hath always, heretofore exercised jurisdiction accordingly: and, *whereas*, it is desirable and necessary that the rights of this state, as between it and the State of Delaware, in and to said river shall be definitely, finally and conclusively settled; and, *whereas*, the efforts heretofore made to settle said matters of difference by consultation and agreement between the said differing states have proved ineffectual, therefore:

1. BE IT RESOLVED *by the Senate and General Assembly of the State of New Jersey*, That the governor of this state be, and he is hereby authorized to cause to be instituted and prosecuted, in the supreme court of the United States, a suit in equity, or an action at law, by the State of New Jersey against the State of Delaware, to ascertain, determine and settle the true territorial boundary line between said states and the extent of the

PLAINTIFFS EXHIBIT NO. 161



jurisdiction of each of said states in and on said river and for that purpose the Governor shall have power to employ, on behalf of this state, counsel to assist the Attorney General in the commencement and prosecution of said suit, or action, and the expenses necessarily and reasonably attending the commencement and prosecution of said suit, or action, on bills certified by the Governor, shall be paid out of any moneys in the treasury not otherwise appropriated.

2. *And be it further resolved,* That this resolution shall take effect immediately.

Approved March 30, 1876.

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*Minutes of the Votes and Proceedings of the One Hundred and Twenty-seventh General Assembly of the State of New Jersey, Trenton, 1903,* pp. 422-424.

(March 3, 1903.)

A message was received from the Governor by the hand of his Secretary, and was read as follows:

STATE OF NEW JERSEY,
EXECUTIVE DEPARTMENT,
TRENTON, March 3d, 1903.

*To the Legislature:*

In the year 1871 the Legislature of the State of Delaware passed an act entitled "An act for the protection of fishermen," in and by the terms of which it sought to prohibit non-residents from catching fish in the Delaware river or bay within the limits of the State of Delaware without obtaining a license therefor from the State of Delaware. Subsequently certain residents of this State were arrested by the authorities of Delaware while fishing on the easterly side of the Delaware river, for alleged

violation of this act, the State of Delaware alleging that her title extended to low-water mark on the New Jersey shore of said river, and not to the middle thereof or the mutual boundary line between the two States. In the year 1877 the State of New Jersey filed its bill in the Supreme Court of the United States against the State of Delaware to enjoin Delaware from enforcing the provisions of the above mentioned law against citizens of New Jersey and to have the boundary line between the two States defined. A preliminary injunction was granted by the Supreme Court to the State of New Jersey. Under authority of both Legislatures a commission of distinguished citizens of each State was appointed for the purpose of adjusting the controversy, if possible, but their efforts came to naught. The suit then remained in *statu quo* for nearly twenty-five years, until about a year ago, when the State of Delaware filed its answer to the bill of complaint of the State of New Jersey and has served notice of its intention to insist upon a disposition of the case. The Attorney-General has been for several months in friendly communication with the Attorney-General of Delaware with reference to this suit, with a view to an amicable settlement of the controversy if possible. These conferences finally reached a point where the respective Attorney-Generals thought it wise to bring the matter to the attention of the Governor of Delaware and myself. Last week, accompanied by the Attorney-General, I attended a conference in Philadelphia at which the Governor of Delaware, the Attorney-General of Delaware and the special counsel of the State of Delaware in this litigation were present. The discussion was most harmonious, and I am very hopeful that the matter can be adjusted without the continuance of litigation, the labor and expense of which would be very great, the means of securing the necessary evidence extremely difficult and the decision impossible to forecast with accuracy. As a result of

PLAINTIFFS EXHIBIT NO. 161



this conference the House of Representatives of Delaware has passed a joint resolution, which I am informed will be concurred in by the Senate, constituting the Governor, the Attorney-General and the special counsel of that State in this litigation commissioners to confer with like commissioners to be appointed by the State of New Jersey for the purpose of framing a compact or agreement between the said States, to be submitted to the respective Legislatures looking to an amicable termination of this litigation. This matter is one of great importance to the southern section of our State and its fishery interests, and it should be adjusted as speedily as possible. I recommend that the Legislature, by joint resolution, appoint three commissioners to meet and confer with the Delaware commissioners, in the hope that the whole matter may be reported back almost immediately to the respective Legislatures of the two States, both of which are now in session, and receive their approval.

Respectfully,

FRANKLIN MURPHY,

*Governor.*

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*N. J. Laws* 1903, *p.* 39.

JOINT RESOLUTION No. I.

Joint Resolution relating to the boundary controversy between the states of New Jersey and Delaware.

BE IT RESOLVED *by the Senate and General Assembly of the State of New Jersey:*

I. Franklin Murphy, governor, Thomas N. McCarter, attorney-general, and Edward C. Stokes be and they hereby are appointed and constituted commissioners of the state of New Jersey to confer with like commissioners representing the state of Delaware for the purpose of

PLAINTIFFS EXHIBIT NO. 164.



framing a compact or agreement between the said states and legislation consequent thereon, to be submitted to the legislatures of said two states for action thereon, looking to the amicable termination of the suit between said states now pending in the supreme court of the United States and the final adjustment of all controversies relating to the boundary line between said states and to their respective rights in the Delaware river.

Approved March 5, 1903.

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*Minutes of the Votes and Proceedings of the One Hundred and Twenty-Seventh General Assembly of the State of New Jersey, Trenton, 1903*, pp. 549-550. (*March 16, 1903.*)

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STATE OF NEW JERSEY,
EXECUTIVE DEPARTMENT,
TRENTON, March 17th, 1903.

*To the House of Assembly:*

I have the honor to transmit herewith the report of the Commissioners appointed to confer with like Commissioners from the State of Delaware upon the boundary line between the States of New Jersey and Delaware.

Respectfully,
FRANKLIN MURPHY,
*Governor.*

*To the Senate and General Assembly of the State of New Jersey:*

The undersigned Commissioners, appointed by joint resolution of the Legislature, approved March 5th, 1903, to meet with similarly appointed Commissioners from the

PLAINTIFFS EXHIBIT NO. 161



State of Delaware, to frame a compact, or agreement, between the said States, and legislation consequent thereon, to be submitted to the Legislatures of said two States, for action thereon, looking to the amicable termination of the suit between said States now pending in the Supreme Court of the United States, and final adjustment of all controversies relating to the boundary line between said States, and to their respective rights in the Delaware River, hereby report that on Thursday, the 12th day of March, and again on Saturday, the 14th day of March, 1903, they met for the purposes aforesaid in the City of Philadelphia, with the Commissioners on the part of the State of Delaware, who were John Hunn, Governor of Delaware, Herbert H. Ward, Attorney-General of Delaware, and the Hon. George H. Bates; that after a thorough consideration of all the differences between the two States an agreement was reached and a compact prepared, subject to ratification by the Legislatures of the respective States, and the consent and approval of Congress. The compact received the unanimous endorsement of all the Commissioners from both States. It is herewith submitted as part of a proposed act, which, it is strongly recommended, should be enacted by the Legislature of this State at its present session. Your Commissioners feel that while it was not found practicable to settle the exact geographical boundary line between the two States, nevertheless every interest of the State of New Jersey has been protected, all its riparian, fishery and other rights and jurisdiction thoroughly safeguarded and every question of practical difficulty between the two States settled for all time. At the same time the interests of our sister State of Delaware have been amply safeguarded in a manner acceptable to the Commissioners from that State.

PLAINTIFFS EXHIBIT NO. 161



In witness whereof your Commissioners have hereunto set their hands this sixteenth day of March, nineteen hundred and three.

FRANKLIN MURPHY,
THOS. N. MCCARTER,
EDWARD C. STOKES.

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*N. J. Laws of* 1903, *p.* 515.

CHAPTER 243.

An Act to ratify and confirm a compact or agreement between the states of New Jersey and Delaware respecting the Delaware river, and to authorize the execution thereof.

WHEREAS, By joint resolution of the legislature of the state of New Jersey, approved March fifth, nineteen hundred and three, Franklin Murphy, Thomas N. McCarter and Edward C. Stokes were appointed to represent the said state as commissioners to confer with like commissioners to be appointed on the part of the state of Delaware for the purpose of framing an agreement or compact between the said states respecting certain controversies between them concerning the Delaware river, lying between the said states, and their respective rights therein; and

WHEREAS, By joint resolution of the general assembly of the state of Delaware, approved March nineteen hundred and three, John Hunn, Herbert H. Ward and George H. Bates were appointed to represent the said state as commissioners to confer with the commissioners of the state of New Jersey for the purpose before recited; and

WHEREAS, The commissioners of the said two states, having duly conferred as directed by said resolution, have

PLAINTIFFS EXHIBIT NO. 161



framed and submitted to this legislature a proposed compact or agreement between the said states; and

WHEREAS, The compact or agreement so framed and submitted is in the words following, that is to say:

COMPACT BETWEEN THE STATE OF NEW JERSEY AND THE STATE OF DELAWARE RELATING TO THE BOUNDARY CONTROVERSY BETWEEN SAID STATES.

* * * * * * * * * *

(Text of Compact given in Plaintiff's Exhibit No. 53; U. S. Stat. L., Vol. 34, Pt. 1, Ch. 394, p. 858.)

* * * * * * * * * *

(p. 520) THEREFORE,

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. The foregoing compact or agreement, and every clause, matter and thing therein contained, be and the same is hereby adopted, ratified and confirmed as and for the act and deed of the state of New Jersey, and the commissioners of the said state are hereby authorized and empowered on its behalf to execute the same in duplicate, and to deliver one copy thereof to the commissioners of the state of Delaware.

2. It shall be the duty of the governor, at or before the next session of congress of the United States, to transmit a duly certified copy of this act to the president of the United States, with the request that it be communicated to congress for its action thereon.

3. This act shall take effect immediately.

Approved April 8, 1903.

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PLAINTIFFS EXHIBIT NO. 1654
32

(p. 653) JOINT RESOLUTIONS.

Joint Resolution No. 1.

Joint Resolution relating to the boundary controversy between the States of New Jersey and Delaware.

BE IT RESOLVED *by the Senate and General Assembly of the State of New Jersey:*

Edward C. Stokes, Governor, Robert H. McCarter, Attorney-General, Franklin Murphy and Chauncey G. Parker, be and they hereby are appointed and constituted commissioners of the State of New Jersey to confer with like commissioners representing the State of Delaware for the purpose of framing a compact or agreement between the said states and legislation consequent thereon to be submitted to the legislatures of said two states for action thereon, looking to the amicable termination of the suit between said states now pending in the Supreme Court of the United States and the final adjustment of all controversies relating to the boundary line between said states and to their respective rights in the Delaware river and bay.

This joint resolution shall take effect immediately.

Approved February 14, 1905.

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PLAINTIFFS EXHIBIT NO. 161

33

*Minutes of the Votes and Proceedings of the One Hundred and Twenty-Ninth General Assembly of the State of New Jersey, Trenton, 1905, pp. 456-461, (March 1, 1905)*

A message was received from the Governor by the hands of his Secretary, as follows:

EXECUTIVE DEPARTMENT,
TRENTON, March 1st, 1905.

*To the Speaker and Members of the House of Assembly:*

I herewith transmit the report of the action of the Commissioners appointed under Joint Resolution of the State of New Jersey, approved February 14th, 1905, and the Commissioners representing the State of Delaware, for the purpose of framing a compact between the said States and legislative action thereon, looking to an amicable termination of the suit between the two States now pending in the Supreme Court of the United States and a final adjustment of all controversy relating to the boundary line between this State and Delaware, and to their respective rights in the Delaware river and bay.

This report, covering the compact agreed upon by the Commissioners of the States of New Jersey and Delaware, and a proposed bill to make the same effective, is respectfully submitted for your consideration and action.

E. C. STOKES.

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PLAINTIFFS EXHIBIT NO. 161

34

AN ACT to ratify and confirm a compact or agreement between the states of New Jersey and Delaware respecting the Delaware river and bay and to authorize the execution thereof.

(Recites all of Chapter 243, N. J. Pamphlet Laws 1903, pp. 515-520. For text see that Act *supra* in this Exhibit, and also Plaintiff's Exhibit No. 53; 34 U. S. Stat. L. Pt. 1, Ch. 394, p. 585.)

*Therefore,* BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

Section 1. The foregoing compact or agreement, and every clause, matter and thing therein contained be, and the same is hereby adopted, ratified and confirmed as and for the act and deed of the state of New Jersey, and the commissioners of the said state are hereby authorized and empowered on its behalf to execute the same in duplicate, and to deliver one copy thereof to the commissioners of the state of Delaware.

Section 2. It shall be the duty of the governor at or before the next session of the congress of the United States, to transmit a duly certified copy of this act to the president of the United States, with the request that it be communicated to congress for its action thereon.

Section 3. This act shall take effect immediately.

The Governor's message was then taken up, which, together with the accompanying report, was, on motion of Mr. Duffield, referred to the Committee on Judiciary.

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PLAINTIFFS EXHIBIT NO. 161.



*Laws of New Jersey* 1905, *Pages* 563, 67, 462.

(Page 67) CHAPTER 42.

An Act to ratify and confirm a compact or agreement between the States of New Jersey and Delaware respecting the Delaware river and bay, and to authorize the execution thereof.

WHEREAS, by joint resolution of the Legislature of the State of New Jersey, approved February fourteenth, one thousand nine hundred and five, Edward C. Stokes, Governor; Robert H. McCarter, Attorney-General; Franklin Murphy and Chauncey G. Parker were appointed and constituted commissioners of the State of New Jersey to confer with like commissioners representing the State of Delaware for the purpose of framing a compact or agreement between the said States and legislation consequent thereon, to be submitted to the Legislatures of the said two States for action thereon looking to the amicable termination of the suit between said two States now pending in the Supreme Court of the United States, and the final adjustment of all controversies relating to the boundary line between said States and to their respective rights in the Delaware river and bay; and

WHEREAS, by like joint resolution of the General Assembly of the State of Delaware, approved February thirteenth, one thousand nine hundred and five, Preston Lea, Governor; Robert H. Richards, Attorney-General; Herbert H. Ward and George H. Bates were appointed to represent the said State as commissioners to confer with the commissioners of the State of New Jersey for the purpose before recited; and

WHEREAS, the commissioners of the said two States, having duly conferred as directed by said resolutions, have framed and submitted to this Legislature a proposed compact or agreement between the said States; and

PLAINTIFFS EXHIBIT NO. 161



WHEREAS, the compact or agreement so framed and submitted is in the words following, that is to say:

COMPACT BETWEEN THE STATE OF NEW JERSEY AND THE STATE OF DELAWARE RELATING TO THE BOUNDARY CONTROVERSY BETWEEN SAID STATES.

(Here follows the compact as given in Plaintiff's Exhibit 53; 34 U. S. Stat. L. Pt. 1, Ch. 394, p. 858.)

Therefore,

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. The foregoing contract or agreement, and every clause, matter and thing therein contained, be and the same is hereby adopted, ratified and confirmed as and for the act and deed of the State of New Jersey, and the commissioners of the said State are hereby authorized and empowered on its behalf to execute the same in duplicate, and to deliver one copy thereof to the commissioners of the State of Delaware.

2. It shall be the duty of the Governor, at or before the next session of the Congress of the United States, to transmit a duly certified copy of this act to the President of the United States, with the request that it be communicated to Congress for its action thereon.

3. This act shall take effect immediately.

Approved March 21, 1905.

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PLAINTIFFS EXHIBIT NO. 161



(Page 462) CHAPTER 239.

An Act appointing three commissioners on the part of the State of New Jersey to confer with three commissioners to be appointed on the part of the State of Delaware, in accordance with the provisions of the compact between the States of New Jersey and Delaware respecting the Delaware river and bay, defining their duties and powers and appropriating money to pay the necessary expenses thereof.

WHEREAS, The Legislature of the State of New Jersey has passed an act entitled "An act to ratify and confirm a compact or agreement between the States of New Jersey and Delaware respecting the Delaware river and bay and to authorize the execution thereof," which act has received the approval of the Governor of the State of New Jersey, and the Legislature of the State of Delaware has passed an act of the same title and of the same purport, which act has received the approval of the Governor of the State of Delaware; and

WHEREAS, Said compact or agreement between said two States has been duly signed and executed in duplicate originals by Edward C. Stokes, Robert H. McCarter, Franklin Murphy and Chauncey G. Parker, commissioners on the part of the State of New Jersey, and by Preston Lea, Robert H. Richards, Herbert H. Ward and George H. Bates, commissioners on the part of the State of Delaware, one of which duplicate originals has been retained by said commissioners of Delaware, to be delivered to the Governor of that State, and the other of which duplicate originals has been retained by the commissioners of New Jersey, to be delivered to the Governor of that State; and

WHEREAS, It is provided and agreed by said compact or agreement between said States, among other things, as follows:

PLAINTIFFS EXHIBIT NO. 164

38

(Here follows Articles IV and V of the Compact given in Plaintiff's Exhibit No. 53; 34 U. S. Stat. L. Pt. 1, Ch. 394, p. 858.)

(Page 464)

Now, Therefore, in pursuance of the terms of said compact:

Be It Enacted by the Senate and General Assembly of the State of New Jersey:

1. William J. Bradley, James Strimple and John Boyd Avis, be and they are hereby appointed commissioners on the part of the State of New Jersey to confer with like commissioners appointed or to be appointed by the Legislature of the State of Delaware, to do and perform all the duties, acts, matters and things required and stipulated in the said compact or agreement hereinabove mentioned, to be by them done and performed. That in and upon said commissioners are hereby vested and conferred all powers and authorities necessary and convenient for the full and complete performance of all the duties, acts, matters and things by this act imposed upon them. Said New Jersey commissioners shall fill any vacancies occurring in the membership of said New Jersey commission by the selection of some other suitable citizen or citizens of the State of New Jersey.

2. Said commissioners shall, on or about the first day of June, anno domini nineteen hundred and five, organize by the election from their number of a president and a secretary. The president so elected shall be the presiding officer at all separate meetings of said commissioners, and the general executive head of said commission. The secretary so elected shall conduct the correspondence of said commission under its direction, and keep a record of all the meetings, acts and proceedings of said New Jersey commissioners and of all meetings, acts and proceedings of the joint commissioners in the performance of the duties,

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PLAINTIFFS EXHIBIT NO. 161



acts, matters and things stipulated for in the said compact. Said New Jersey commissioners shall have power to cause the production of books, papers and other things, and to summon before themselves, or before the said joint commission, witnesses, experts and otherwise, the testimony of which, in the opinion of said commissioners, shall be material to enable them to justly and fully perform the duties on them hereby imposed. All witnesses may be summoned upon warrants therefor signed by the president of said New Jersey commission, and shall be paid, for attendance and mileage, the fees usually paid in the State of New Jersey for the attendance of witnesses at the trial of civil causes in the circuit Courts of said State. The attendance of witnesses before said New Jersey commission, or before said joint commission, may be compelled by attachments issued by said New Jersey commission to the sheriff of any county in the State of New Jersey. Said attachments shall be signed by the president of said New Jersey commission and countersigned by the secretary thereof, and shall be executed and returned by the sheriff to whom the same shall be directed. Each of said commissioners shall have power and authority to administer oaths or affirmations to witnesses appearing before them or before said joint commission.

3. The sum of two thousand dollars is hereby appropriated out of the moneys in the treasury of this State, not otherwise appropriated, to pay the necessary expenses attendant upon the execution of the duties of said commissioners. Said moneys shall be drawn from the State treasury from time to time as occasion shall require, upon the warrant of the comptroller drawn upon the State treasurer upon the certificate, in writing, to said comptroller, signed by the president and countersigned by the secretary of said New Jersey commission, giving the details of such expenditures made, or to be made, as aforesaid.

PLAINTIFFS EXHIBIT NO. 161



4. This act shall take effect immediately.

Approved May 11, 1905.

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## Report of New Jersey Commissioners on New Jersey and Delaware Fisheries. Trenton, 1907.

The commissioners appointed on the part of the State of New Jersey by an act of the Legislature, approved May eleventh, one thousand nine hundred and five, to confer with like commissioners appointed by the General Assembly of Delaware for the purpose of drafting uniform laws to regulate the catching and taking of fish in the Delaware river and bay between said two States, and also to ascertain the dividing line between said river and bay upon each of the shores of the said two States where said dividing line extended shall intersect the same, and at the joint expense of said States erect a suitable monument to mark the said dividing line, do respectfully report to the Legislature as follows:

That, in accordance with the provisions of said act of the Legislature, they did, on the twenty-ninth day of May, one thousand nine hundred and five, meet, and after being duly qualified, according to law, did organize by the election of William J. Bradley president and John Boyd Avis secretary, and at once entered upon the performance of their duties. A large number of printed notices were prepared and mailed to prominent fishermen and others throughout the State, soliciting information upon the subject-matter before the commission; a public meeting was held in Pennsgrove, New Jersey, and a large number of fishermen from different sections of the State were represented. With their aid and suggestions, and with the aid of full copies of the fishing laws heretofore

PLAINTIFFS EXHIBIT NO. 161


in existence in this State, the commissioners, after due and careful consideration, drafted an outline of a bill providing for uniform laws in accordance with the information and data thus obtained. They also communicated with the commissioners on the part of the State of Delaware, to wit, Alexander B. Cooper, William S. Hillis and Walter Hayes, and arranged for meetings of the joint commission in the city of Philadelphia.

On the fifth day of December, one thousand nine hundred and five, the first joint meeting was held in the city of Philadelphia, and organization of the joint commission was effected by electing Alexander B. Cooper president and John Boyd Avis secretary. The matters committed to the joint commission were taken up thoroughly, discussed and a mode of procedure agreed upon. Meetings of the joint commissioners and the respective State commissioners were held from time to time until the sixteenth day of January, one thousand nine hundred and seven, upon which last-named date a bill providing for uniform laws to regulate the catching and taking of fish in the Delaware river and bay between the said two States was presented to the joint commission, and after full discussion, amendment and consideration, was agreed upon. A copy of the bill heretofore submitted to the Legislature of the State of New Jersey, signed by all the commissioners on behalf of both States, to take such action thereon as provided in "The act to ratify and confirm the compact and agreement between the States of New Jersey and Delaware, respecting the Delaware river and bay, and to authorize the execution thereof," approved.

Owing to the slight differences in procedure in the two States it was found necessary to make some changes in relation thereto in the act to be adopted by the State of Delaware. With the exception of these slight changes in the matter of procedure, so as to adapt the bills to the

PLAINTIFFS EXHIBIT NO.
42

system in force in each of the respective States, the said bills are alike and provide uniform laws for the catching and taking of fish in the waters of the Delaware river and bay between the said two States. The commissioners on the part of this State and the commissioners on the part of the State of Delaware have submitted the bills for uniform laws as so drawn to the Attorney-Generals of the respective States and have received opinions from them, respectively, approving said laws. The provisions of the bill, in the judgment of the commissioners, are in accord with the prevailing opinions of the fishermen of this State and those interested in the preservation and taking of fish in said waters, as expressed and shown from the testimony taken by the commissioners at the various meetings held and from such other sources as have been available to the commissioners.

In view of the undoubted fact of the gradual disappearance of the shad from said waters and the almost total disappearance of the valuable sturgeon industries, the commissioners have been especially industrious to ascertain what protection shall be given to these fish and industries. They have been unable to discover any cause or causes for the present conditions, excepting the menhaden fishing as heretofore carried on and the pollution of the waters, and they have endeavored to guard against the total extinction of these valuable fish in the provisions of the bill herewith submitted.

Another duty imposed by the General Assembly upon the commissioners was to ascertain and mark the dividing line between the Delaware river and bay. They examined many persons, captains, pilots and others familiar with the waters, United States government maps, and on the twenty-second day of June, one thousand nine hundred and six, the commission boarded the tug "Taurus" and went down the Delaware river to ascertain the dividing line between it and the Delaware bay. They found no

PLAINTIFFS EXHIBIT NO. 461


little difficulty in doing that, as the character of the soil was so spongy and marshy that it was almost impossible to select suitable places for erecting the monument. After a thorough and careful inspection, however, of both sides of said river and bay, and in view of the information above mentioned, they determined that a monument should be erected on the New Jersey shore at or near the mouth of Hope creek and that a similar monument should be erected on the Delaware shore at or near Linton Point, and that a straight line drawn through the center of said monuments across the body of water intervening should be the line dividing Delaware river from Delaware bay, and thereupon they determined to acquire title in the State of New Jersey to a sufficient quantity of land upon which said monument is to be erected on the New Jersey shore, and instructed the secretary to ascertain if such title could be obtained. They have arranged with the owner of said land to convey to the State of New Jersey a sufficient quantity thereof upon which said monument is to be erected.

On the thirty-first day of October, one thousand nine hundred and six, the commission entered into a contract with William Davidson, of the city of Wilmington, a competent and trustworthy dealer in and manufacturer of monuments, to erect two suitable monuments, one on the New Jersey shore, at the point above designated, and one on the Delaware shore at the point above designated. The cost of the erection of and inscription on both these monuments amounts to $370. The contract was awarded to said Davidson, as he was the lowest bidder for the same in response to proposals therefor submitted by the commission.

In addition, the joint commission has provided that the said monuments shall be erected under the supervision and direction of a competent inspector, employed for that purpose by the joint commission, and subject

PLAINTIFFS EXHIBIT NO. 161


to his approval. These monuments are precisely alike in size and manner of erection. Each is eight feet four inches high, one foot six inches square at the base, tapering to one foot square near the top and then beveled to a point at least four inches above the top. One side of each of said monuments is to be polished, and each of said monuments is to be set up on a concrete foundation three feet deep, said concrete to be laid on good timber or stone slab bottom. Each concrete foundation is to be at least four feet square at the bottom, to continue at that size six inches in height, to taper on all sizes to the top of the concrete, which shall be at least two feet six inches square. Each of said monuments is to be of Brandywine granite, and on the polished side of the monument to be erected on the New Jersey shore is to be the following inscription:

"MOUTH OF DELAWARE RIVER.

"A straight line drawn from the center of this monument to the center of a similar monument erected at or near Liston Point on the Delaware shore is the dividing line between the Delaware river and bay, ascertained June twenty-second, one thousand nine hundred and six, in pursuance of uniform acts of the Legislatures of the State of New Jersey and the State of Delaware, approved A. D. one thousand nine hundred and five.

"WILLIAM J. BRADLEY,
"JOHN BOYD AVIS,
"JAMES STRIMPLE,
*"Commissioners of New Jersey.*

"ALEXANDER B. COOPER,
"WILLIAM S. HILLIS,
"WALTER H. HAYES,
*"Commissioners of Delaware."*

DE07028

PLAINTIFFS EXHIBIT NO. 151


And on the polished side of the monument to be erected on the Delaware shore is to be the following inscription:

"MOUTH OF DELAWARE RIVER.

"A straight line drawn from the center of this monument to the center of a similar monument erected at or near Hope creek on the New Jersey shore is the dividing line between the Delaware river and bay, ascertained June twenty-second, A. D. one thousand nine hundred and five, in pursuance of uniform acts of the Legislatures of the State of New Jersey and the State of Delaware, approved A. D. one thousand nine hundred and five.

"ALEXANDER B. COOPER,
"WILLIAM S. HILLIS,
"WALTER H. HAYES,
*"Commissioners of Delaware.*

"WILLIAM J. BRADLEY,
"JOHN BOYD AVIS,
"JAMES STRIMPLE,
*"Commissioners of New Jersey."*

It will be necessary for the commissioners to hereafter draw from the State Treasury out of the funds appropriated an amount sufficient to pay for one-half the cost of making, erection and inspection of said monuments and other expenses.

W. J. BRADLEY,
JOHN BOYD AVIS,
JAMES STRIMPLE,
*Commissioners of the State of New Jersey.*

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DE07029

PLAINTIFFS EXHIBIT NO.
46

*Laws of New Jersey, 1927, Page 806.*

JOINT RESOLUTION No. 4

Joint Resolution relating to the boundary controversy between the State of New Jersey and the State of Delaware.

Be It Resolved by the Senate and General Assembly of the State of New Jersey:

1. That Walter H. Bacon, J. Forman Sinnickson, Joseph N. Fowler, August J. Meerwald and J. Gilbert Borton, be and they are hereby appointed and constituted commissioners of the State of New Jersey to confer with like commissioners representing the State of Delaware, for the purpose of framing a compact or agreement between the said States and legislation consequent thereon, to be submitted to the Legislature of said two States for action thereon, looking to the final adjustment of all controversies relating to the boundary line between said States and to the respective rights in the Delaware River and Bay. The said commissioners shall report at the present or some subsequent session of the Legislature.

2. That there is hereby appropriated out of any moneys in the Treasury of the State not otherwise appropriated, the sum of two thousand dollars ($2,000.00), to defray the travelling and necessary expenses of the commissioners while engaged on the matters herein referred to. Said appropriation shall be immediately available upon the approval of this joint resolution, and shall continue in force as long as the said commissioners are engaged on said matter, and shall be paid by the State Treasurer from time to time on vouchers submitted by the commissioners and signed by at least three commissioners.

3. This joint resolution shall take effect immediately.

Approved March 28, 1927.

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PLAINTIFFS EXHIBIT NO. 161



*Journal of the Eighty-fifth Senate of the State of New Jersey, Trenton, 1929. p. 1022.*

Mr. McAllister offered the report of the New Jersey-Delaware Boundary Line Commissioners, dated April 16th, 1929, and moved that same be spread in full on the Journal.

Which motion was adopted.

*To the Senate and General Assembly of the State of New Jersey:*

By the terms of Joint Resolution No. 4, approved March 28, 1927, the undersigned were,

> "appointed and constituted Commissioners of the State of New Jersey to confer with like Commissionters representing the State of Delaware, for the purpose of framing a compact or agreement between the said States and legislation consequent thereon, to be submitted to the Legislature of said two States for action thereon, looking to the final adjustment of all controversies relating to the boundary line between said States and to their respective rights in the Delaware River and Bay."

The said Commissioners were directed to report at the then present or some subsequent session of the Legislature.

A similar resolution was adopted by the Delaware Legislature and Commissioners appointed thereunder, and subsequently the Joint Commission met, organized and held two sessions without definite result.

Afterwards, two members of the Delaware Commission died, two resigned, and at the 1929 session of the Delaware Legislature the Governor was authorized to appoint a new Commission.

PLAINTIFFS EXHIBIT NO. 161



There have been two meetings of the Joint Commission, as now constituted, one in Wilmington and one in Bridgeton, without reaching an agreement.

Your Commission respectfully recommends that the matter of the boundary line controversy between the two States be referred to the Attorney-General to the end that appropriate action be taken in the Supreme Court of the United States to fix and determine the boundary line between New Jersey and Delaware from the Pennsylvania line, through the Delaware River and Bay, to the Atlantic Ocean.

The Delaware Commissioners have given assurance that they will make a similar recommendation to the Governor of Delaware.

Respectfully submitted, April 16, 1929.

WALTER H. BACON,
J. FORMAN SINNICKSON,
JOSEPH N. FOWLER,
AUGUSTUS J. MEERWALD,
J. GILBERT BORTON,
*Commissioners.*

*(See Plaintiff's Exhibit No. 5, N. J. J. R. 25, P. L. 1929, p. 834.)*

To the General Assembly of the State of Delaware.

I lay before the General Assembly, for their consideration, a communication from the Governor of the State of New Jersey, and also an act passed by the Legislature of that State on the 9th of November last entitled "An act concerning the boundaries and jurisdiction of this State in the Bay of Delaware": By which act it will be seen that the State of New Jersey proposes that Commissioners shall be appointed by that State and by this State of Delaware, "to make and conclude an agreement between the said States defining their respective boundaries, jurisdiction, rights to islands, subaqueous soil, fisheries and products of the River and Bay of Delaware, South Easterly of the circular boundary between the State of Delaware and Pennsylvania"

Dover 5th Jan. 1821

Jacob Stout

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Volume Page

Exec Papers
Governor's Messages
1821

Plaintiff's Exhibit No. 37

New Jersey Laws 1821, page 6.

A further Supplement to the act, entitled "An act to preserve and support the jurisdiction of this State," passed December third, one thousand eight hundred and seven.

Sec. 1. BE IT ENACTED *by the Council and General Assembly of this State, and it is hereby enacted by the authority of the same,* That the boundary lines of the counties of Salem, Cumberland and Cape May, are hereby declared to be the main ship channel in the river and bay of Delaware adjoining said counties respectively.

Sec. 2. *And be it enacted,* That the sum of two thousand dollars be appropriated, under the direction of the Governor of this state, for the time being, who is hereby authorized and empowered, at his discretion, to prosecute or defend, to final issue or judgment, any suit, or suits, which he may deem necessary for trying, or finally determining the jurisdictional line between this state and and the state of Delaware, and for defending the common and exclusive rights of the citizens of this state to the natural oyster banks within the same.

Sec. 3. *And be it enacted,* That if the state of Delaware shall, at any time before the first day of May next, empower commissioners to enter into a friendly negotiation with the state of New-Jersey, for the settlement of the aforesaid jurisdictional line, it shall, in that case, be lawful for the Governor, or person administering the government of the state, on receiving due notice thereof, to appoint commissioners for that purpose, agreeably to an act passed November seventh, one thousand eight hundred and twenty, entitled "An act concerning the boundaries and jurisdiction of this state in the bay of Delaware," and that he be also empowered to stay proceedings at law, if he deem it expedient, while such negotiations are pending.

A. Passed November 21, 1821.

Plaintiff's Exhibit No. 38

New Jersey Laws 1851, (extract) page 31

4. *And be it enacted*, That the northern bounds of the county of Salem, shall be taken and deemed to be as follows: to extend from the middle of the channel at the mouth of Oldman's Creek in the main ship channel of the River Delaware, striking the same at a right angle, and the southern bounds extending from said ship channel along the Cumberland line, to the middle of the channel at the mouth of Stow creek.

5. *And be it enacted*, That the northerly bounds of the county of Cumberland, shall be taken and deemed to extend from the middle of the channel at the mouth of Stow-creek, to the main ship channel in the river Delaware, striking the same at a right angle, and the southern bounds shall be taken and deemed to extend, from opposite the middle of the mouth of West's creek, to the main ship channel in Delaware Bay, making a right angle therewith.

6. *And be it enacted*, That the line of partition between the counties of Cumberland and Cape-May, shall be taken and deemed to be as follows, to wit: to begin at the place where the waters of Mill or Hickman's creek fall into the channel of Tuckahoe river, at the boundary line of Gloucester county, and running thence directly into the mouth of said creek, continuing the same course by a line of marked trees, (which by the present position of the compass is south, fifty-seven degrees, and about thirty minutes west) until it strikes Hughes' on the lower mill-pond, on West or Jesse's creek, thence down the middle of the ancient watercourses thereof, until it falls into Delaware Bay, and thence continue a due south-west course until it strikes the line of said counties, at the ship channel of the said bay.

C. Passed November 28, 1822.

Plaintiff's Exhibit No. 162

**Delaware Laws Relating to New Jersey-Delaware Boundary Dispute**

*Revised Statutes of Delaware*, 1852, *pp.* 2-3.

CHAPTER 1.

OF SOVEREIGNTY; JURISDICTION AND LIMITS.

SEC. 1. The jurisdiction and sovereignty of the State extend to all places within the boundaries thereof, subject only to such rights of concurrent jurisdiction as have been, or may be, granted over any places ceded by the State to the United States.

SEC. 2. The limits of the State are declared to be the divisional lines between it and Maryland, run and marked by commissioners, and approved on the 11th of January, 1769; the circular line between it and Pennsylvania, surveyed and marked in 1701, under a warrant issued by William Penn in pursuance of the feoffment from the duke of York, dated August 24, 1682, as the same has been held, occupied and recognized by the said States respectively, ever since that time; low water mark on the eastern side of the river Delaware, within the twelve mile circle from New Castle; and the middle of the bay below said circle.

SEC. 3. The State shall be divided into three counties, New Castle, Kent and Sussex.

SEC. 4. The dividing line between New Castle and Kent counties shall be, as heretofore established, from the mouth of Duck Creek westwardly through the "Thoroughfare" north of Bombay Hook Island, and up said creek "to the mouth of a branch issuing from the main branch of Duck Creek, and opposite part of Enoch Jones' land on the Kent side, and Richard Nash's land on the New Castle side; and running from thence up the said

PLAINTIFFS EXHIBIT NO. 162



branch on the several courses thereof westwardly six hundred and two perches, to a white oak corner tree of Benjamin Hazle and Richard Hollet's lands at the head of said branch; from thence continued due west one thousand seven hundred and eight perches, till it intersects the tangent or divisional line between these counties and Maryland, where the same crosses the Cypress branch."

SEC. 5. The dividing line between Kent and Sussex counties shall be "up the Mispillion creek continued from a fork thereof at the junction of the Tan-trough branch and Beaver-dam branch, running up the Tan-trough branch with the several courses thereof, eight hundred and eight perches to the head thereof; thence south-westwardly to a small fork of a small branch of the river Nanticoke; thence down said branch to the southward end of a beaver-dam, on the west side of a beaver-pond, the original temporary division between Kent, Sussex and Maryland; and from thence due west two thousand eight hundred sixty and four perches to the north and south or tangent line between Delaware and Maryland."

SEC. 6. New Castle county shall be divided into ten hundreds, namely: Brandywine, Christiana, Wilmington, Mill Creek, White Clay Creek, Pencader, New Castle, Red Lion, Saint Georges, and Appoquinimink.

SEC. 7. Kent county shall be divided into six hundreds, namely: Duck Creek, Little Creek, Dover, Murderkill, Milford and Mispillion.

SEC. 8. Sussex county shall be divided into ten hundreds, namely: Cedar Creek, Broadkiln, Nanticoke, North West Fork, Broad Creek, Little Creek, Dagsborough, Baltimore, Indian River, and Lewes and Rehoboth.

PLAINTIFFS EXHIBIT NO. 162

*Laws of Delaware*, 1873, *Vol.* 14, *Pt.* 2, *pp.* 668-669, 674, 680.

## RESOLUTIONS.

## CHAPTER 583.

**Joint Resolution with respect to the subject of difference between the State of New Jersey and this State.**

WHEREAS it appears by the message of His Excellency the Governor, and the documents accompanying the same, that the State of New Jersey makes claim for her citizens of the right to fish in that part of the waters of the Delaware within the limits of the "twelve mile circle" and eastward of the channel of said river, thus denying the exclusive jurisdiction of this State over the said waters within the said circle, a jurisdiction never doubted in Delaware, nor questioned elsewhere with confidence until now, so far as this General Assembly is informed;

AND WHEREAS His Excellency the Governor of New Jersey, in his correspondence with the Governor of this State, has suggested that the question of exclusive jurisdiction, and of authority involved in the claim maintained by that State, be settled by resort to legal proceedings, which this Legislature have respectfully declined to adopt, believing that the question can be more appropriately settled and justice done otherwise, and as hereinafter provided for;

AND WHEREAS it is of the utmost importance that no questions of sovereign title or rights should exist between States;

AND WHEREAS in this case such do exist they should be set-setled as becomes the high parties; therefor,

*Be it resolved by the Senate and House of Representatives of the State of Delaware in General Assembly met,* That the whole subject of controversy be submitted to the decision of six commissioners, three to be appointed by the legislature of each State, and that their decision shall be final.

PLAINTIFFS EXHIBIT NO.
4

*Resolved,* That said decision be submitted in writing, upon parchment, under the hands of the said commissioners, to this Legislature, and to that of the State of New Jersey, and be entered upon the Journal of each House of the General Assembly of each State as a perpetual memorial of the end of the aforesaid controversy; and that similar certificates be made and delivered to the Governor of each State, to be placed among the executive archives; and further, that each State, through its Governor, make proclamation for six months in the newspapers printed within its borders of the aforesaid decision, to the end that full public information thereof may be given.

*Resolved,* That Joseph P. Comegys, of Kent county, William G. Whitely, of New Castle county, and Edward L. Martin, of Sussex county, be appointed commissioners on the part of this State for the purpose aforesaid. That they be at once notified by the Speaker of the Senate of such their appointment, and in case at the end of five days from such notice either of them has not accepted said appointment, that another from the same county be appointed in his place.

*Resolved,* That a copy of the foregoing preamble and resolutions, duly certified, be forwarded by the Governor to the Governor of New Jersey, with a request that they be laid before the Legislature, that the aforesaid controversy shall be settled during the present session of the Legislature of each State.

*Resolved,* That the said commissioners shall each receive for his services hereunder the sum of five hundred dollars, to be paid by the State Treasurer, on the certificate of the Speaker of the Senate that the said services have been performed.

*Adopted at Dover, January* 30, 1873.

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PLAINTIFFS EXHIBIT NO. 162
5

## CHAPTER 593.

Joint Resolutions supplementary to those passed on the 30th of January last respecting the Fishery question with New Jersey.

To avoid all questions or debate as to the extent of the powers conferred upon the commissioners appointed by this State under the resolutions adopted on the 30th day of January last, and on those to be appointed by the State of New Jersey according to the suggestions therein,

*Resolved by the Senate and House of Representatives of the State of Delaware in General Assembly met,* That no question was intended to be submitted by the said resolutions respecting the *title* of this State to the River Delaware and the soil thereof, within the limits of the "twelve miles circle," but only whether, notwithstanding such title, the citizens of New Jersey have the right to fish in said river within that circle, and if so the nature and extent of that right; and the said commissioners are to consider that no other question but that here mentioned is submitted to them, this State refusing to allow her aforesaid title to be drawn in question by said commissioners, or in any other manner.

*Resolved,* That a copy of the foregoing, duly certified, be forwarded by the Governor to the Governor of New Jersey.

*Adopted at Dover, February* 14, 1873.

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## CHAPTER 594.

Joint Resolution supplementary to the Joint Resolution with respect to the subject of difference between the State of New Jersey and this State.

*Resolved by the Senate and House of Representatives of the State of Delaware in General Assembly met,* That all

PLAINTIFFS EXHIBIT NO. 112


of the preamble to the "Joint Resolution with respect to the subject of difference between the State of New Jersey and this State," adopted on the 30th ultimo, after the words "so far as this General Assembly is informed," be and the same is hereby stricken out, and in lieu thereof these words shall be substituted, and the said preamble shall be read and construed and published according to the change made:

"AND WHEREAS it is important that the said question should be at once settled, so that there shall be no conflict of claim hereafter."

*Adopted at Dover, February* 19, 1873.

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## CHAPTER 605.

**Joint Resolution in Reference to the Fishery Question.**

*Resolved by the Senate and House of Representatives of the State of Delaware in General Assembly met:*

1st. That any and all laws of the State requiring a license to fish for shad within the waters of this State be and the same are hereby suspended pending the negotiations between the commissioners appointed by this State and the State of New Jersey for the settlement of the fishery question.

2d. That upon determination of the questions submitted to the said commissioners favorable to the claim of this State, the commissioners appointed on the part of this State are hereby authorized to make such a compromise or settlement as will secure to the people of the State of Delaware and the people of the State of New Jersey the mutual right of fishery in the Delaware Bay and in that part of the Delaware River lying between the two States.

*Adopted at Dover, April* 8, 1873.

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PLAINTIFFS EXHIBIT NO. 152

7.

*Laws of Delaware* 1877, *Vol.* 15, *Part* 2, *pp.* 641-642.

## RESOLUTIONS.

### CHAPTER 504.

**Joint Resolutions relative to the rights of the State of Delaware, in a certain part of the Delaware river which runs between the States of Delaware and New Jersey.**

WHEREAS, The State of Delaware claims to own the bed and to have exclusive jurisdiction (subject to the constitution of the United States and the acts of Congress made in pursuance thereof) over that portion of the Delaware river which is included within a circle of twelve miles radius, taking the court house in the city of New Castle as a central point—and

WHEREAS, The State of New Jersey disputes the validity of such claim, and asserts, upon her part, jurisdiction and ownership over that part of the same area on the east side of the channel of said river—and

WHEREAS, Legally authorized commissioners have heretofore held frequent conferences and consultations which have failed to result in any satisfactory determination of the points in dispute—and

WHEREAS, It has officially come to the knowledge of this General Assembly, through a properly certified copy of a joint resolution, adopted by "the Senate and General Assembly of the State of New Jersey," March 30th, 1876, that the Governor of said State is authorized to cause to be instituted and prosecuted, in the Supreme Court of the United States, a suit in equity or an action at law, by the State of New Jersey against the State of Delaware, to ascertain, determine, and settle the true territorial boundary line beween said States, and the extent of the jurisdiction of each of said States in and on said river, and—

WHEREAS, As the State of Delaware was the first to give her assent to the Constitution of the United States which

provides the arbiter of the Supreme Court for the decision of controversies between States, so she will promptly accept the gage of contest in that august tribunal tendered her by her sister State; Therefore,

*Be it resolved by the Senate and House of Representatives of the State of Delaware in General Assembly met,* That the Attorney General be, and he is, hereby, authorized and directed, to cause his appearance, in behalf of this State, to be promptly entered upon the record of the said suit in the Supreme Court of the United States, whenever the same shall be commenced by the State of New Jersey. And be it further resolved, that the Governor be, and he is, hereby, authorized to employ, in behalf of the State, additional counsel to assist the Attorney General in the defence of the said suit.

*Resolved,* That the Governor of this State be, and he is, hereby, requested to transmit to the Governor of New Jersey, a certified copy of the foregoing preamble and resolntions.

*Adopted at Dover, January* 26, 1877.

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*Revised Statutes of Delaware,* 1852, *pp.* 3-4, *as Amended to* 1893, *pp.* 3-4.

SOVEREIGNTY, JURISDICTION AND LIMITS.
CHAP. 1. CHAP. 548, VOL. 19.

SEC. 1. The jurisdiction and sovereignty of the State extend to all places within the boundaries thereof, subject only to such rights of concurrent jurisdiction as have been, or may be, granted over any places ceded by the State to the United States.

SEC. 2. The limits of the State are declared to be the divisional lines between it and Maryland, run and marked by commissioners, and approved on the 11th of January,

1769; the circular line between it and Pennsylvania, surveyed and marked in 1701, under a warrant issued by William Penn in pursuance of the feoffment from the duke of York, dated August 24, 1682, as the same has been held, occupied and recognized by the said States respectively, ever since that time; low water mark on the eastern side of the river Delaware, within the twelve mile circle from New Castle; and the middle of the bay below said circle.

CHAPTER 548. VOL. 19. LAWS OF DELAWARE.

AN ACT TO PROTECT THE MARKS OF THE BOUNDARIES OF THIS STATE.

SECTION 1. That if any person shall willfully deface, mutilate, damage, displace, or remove any stone or monument placed or fixed under authority of this State to mark any boundary line of this State, such person shall be deemed guilty of a misdemeanor, and upon conviction thereof shall forfeit and pay to the State a sum not exceeding one thousand dollars, (one-half of which shall be for the use of and paid to the informer) and shall be imprisoned for a term not exceeding one year.

Passed at Dover, April 27, 1893.

SEC. 3. The State shall be divided into three counties—New Castle, Kent and Sussex.

SEC. 4. The dividing line between New Castle and Kent counties shall be, as heretofore established, from the mouth of Duck Creek westwardly through the "Thoroughfare" north of Bombay Hook Island, and up said creek "to the mouth of a branch issuing from the main branch of Duck Creek, and opposite part of Enoch Jones' land on the Kent side, and Richard Nash's land on the New Castle side; and running from thence up the said branch on the several courses thereof westwardly six hundred and two perches, to a white oak corner tree of Benjamin Hazle and Richard Hollet's lands at the head of said branch;

from thence continued due west one thousand seven hundred and eight perches, till it intersects the tangent or divisional line between these counties and Maryland, where the same crosses the Cypress branch."

SEC. 5. The dividing line between Kent and Sussex counties shall be "up the Mispillion creek continued from a fork thereof at the junction of the Tan-trough branch and Beaver Dam branch, running up the Tan-trough branch with the several courses thereof, eight hundred and eight perches to the head thereof; thence southwestwardly to a small fork of a small branch of the river Nanticoke; thence down said branch to the southward end of a beaver-dam, on the west side of a beaver-pond, the original temporary division between Kent, Sussex and Maryland; and from thence due west two thousand eight hundred sixty and four perches to the north and south or tangent line between Delaware and Maryland."

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*Joint Resolution relating to the controversy concerning the boundary line between the States of New Jersey and Delaware.*

Whereas, the Governor has communicated to the General Assembly a report of the Attorney General respecting the present condition of the litigation pending in the Supreme Court of the United States between this State and the State of New Jersey, concerning the boundary between said States, and has thereon recommended action by this General Assembly in that behalf;

And Whereas, this General Assembly is desirous to maintain the claims of this State set forth in the Joint Resolution passed January 28, 1877, to exclusive jurisdiction over that portion of the Delaware river which is included within the circle of twelve miles radius, taking the Court House in the City of New Castle as a central point; Therefore,

PLAINTIFFS EXHIBIT NO. 12

*Laws of Delaware.* 1901, *p.* 78.

## CHAPTER 46.

Of the Revenues of the State.

AN ACT to appropriate money for payment of disbursements made or to be made in the defense of the action of the State of New Jersey against the State of Delaware, pending in the Supreme Court of the United States.

Be it enacted by the Senate and House of Representatives of the State of Delaware in General Assembly met, (three-fourths of all the members elected to each House concurring therein):

Section 1. That the sum of one thousand dollars is hereby appropriated to meet the necessary expenses and disbursements, made or to be made, in the defense of the suit pending in the Supreme Court of the United States, wherein the State of New Jersey is complainant and the State of Delaware is defendant. And the Governor is hereby authorized, from time to time, to draw his warrant or warrants upon the State Treasurer for the said sum or any part or parts thereof upon the certificate of the Attorney-General that such disbursements have been made or are proper to be made.

Approved March 9, A. D. 1901.

PLAINTIFFS EXHIBIT NO. 162

11

Be it Resolved by the Senate and House of Representatives of the State of Delaware in General Assembly met:

That the Attorney General and such of the special counsel heretofore appointed to assist him as are now free to act in said behalf, he and they are hereby instructed to maintain the defense of said suit, and they are hereby authorized to take such steps therefor as may be necessary.

JAS. V. McCOMMONS,
Speaker of the House of Representatives.

PHILIP L. CANNON,
President of the Senate.

Approved this the 26th day of February, A. D. 1901.

JOHN HUNN,
Governor.

STATE OF DELAWARE.

OFFICE OF SECRETARY OF STATE.

I, CALEB R. LAYTON, Secretary of State of the State of Delaware, do hereby certify that the above and foregoing is a true and correct copy of the Joint Resolution relating to the controversy concerning the boundary line between the States of New Jersey and Delaware, approved February 26th, A. D. 1901, as the same appears on file in this office.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Great Seal of the (SEAL) State, at Dover, this twenty-sixth day of February, in the year of our Lord one thousand nine hundred and one.

CALEB R. LAYTON,
Secretary of State.

PLAINTIFF'S EXHIBIT NO. 162



*Laws of Delaware*, 1905, *Vol.* 23, *Pt.* 2, *pp.* 462, *Appendix pp.* 2-6, *pp.* 12-20.

## RESOLUTIONS.

## CHAPTER 216.

**Joint Resolution relating to the Boundary controversy between the States of New Jersey and Delaware.**

*Be it resolved by the Senate and House of Representatives of the State of Delaware in General Assembly met:*

That Preston Lea, Governor, Robert H. Richards, Attorney General, Herbert H. Ward and George H. Bates, special counsel, be and they hereby are appointed and constituted Commissioners of the State of Delaware to confer with like commissioners representing the State of New Jersey, for the purpose of framing a compact or agreement between the said states and legislation consequent thereon, to be submitted to the legislatures of said two states for action thereon, looking to the amicable termination of the suit between said states now pending in the Supreme Court of the United States and the final adjustment of all controversies relating to the boundary line between said states and to their respective rights in the Delaware River and Bay.

Approved, February 13, A. D. 1905.

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PLAINTIFFS EXHIBIT NO. 162



## APPENDIX.

## COMPACT BETWEEN THE STATE OF NEW JERSEY AND THE STATE OF DELAWARE, RELATING TO THE BOUNDARY CONTROVERSY BETWEEN SAID STATES.

(Here follows the compact as recited, including signatures, in Plaintiff's Exhibit No. 53; 34 U. S. Stat. L. Pt. 1, Ch. 394, p. 858.)

## CHAPTER 5.

OF SOVEREIGNTY, JURISDICTION AND LIMITS.

**AN ACT to Ratify and Confirm a Compact or Agreement between the States of New Jersey and Delaware respecting the Delaware River and Bay and to authorize the execution thereof.**

Whereas By joint resolution of the Legislature of the State of New Jersey, approved February 14th 1905, Edward C. Stokes, Governor, Robert H. McCarter, Attorney General, Franklin Murphy and Chauncey G. Parker, were appointed and constituted Commissioners of the State of New Jersey to confer with like Commissioners representing the State of Delaware for the purpose of framing a compact or agreement between the said States and legislation thereon, to be submitted to the legislatures of the said two States for action thereon, looking to the amicable termination of the suit between said two States now pending in the Supreme Court of the United States, and the final adjustment of all controversies relating to the boundary line between said States and to their respective rights in the Delaware River and Bay;

And Whereas By like joint resolution of the General Assembly of the State of Delaware approved February 13th 1905, Preston Lea, Governor, Robert H. Richards, Attorney General, Herbert H. Ward and George H. Bates were appointed to represent the said State as Commission-

ers to confer with the Commissioners of the State of New Jersey, for the purpose before recited;

And Whereas The Commissioners of the said two States having duly conferred as directed by said resolutions, have framed and submitted to this General Assembly a proposed compact or agreement between the said States;

And Whereas The compact or agreement so framed and submitted is in the words following, that is to say:

"Compact between the State of New Jersey and the State of Delaware relating to the boundary controversy between said States.

(Here follows the compact, without signatures, as recited in Plaintiff's Exhibit No. 53; 34 U. S. Stat. L. Pt. 1, Ch. 394, p. 858.)

*Therefore, be it enacted by the Senate and House of Representatives of the State of Delaware in General Assembly met:*

Section 1. The foregoing compact or agreement, and every clause, matter and thing therein contained, be, and the same is, hereby adopted, ratified and confirmed as and for the act and deed of the State of Delaware, and the Commissioners of the said State are hereby authorized and empowered, on its behalf, to execute the same in duplicate, and to deliver one copy thereof to the Commissioners of the State of New Jersey.

Section 2. It shall be the duty of the Governor, at or before the next session of Congress of the United States, to transmit a duly certified copy of this Act to the President of the United States, with the request that it be communicated to Congress for its action thereon.

Approved March 20, A. D. 1905.

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PLAINTIFFS EXHIBIT NO. 162



## CHAPTER 6.

OF SOVEREIGNTY, JURISDICTION AND LIMITS.

AN ACT appointing Three Commissioners on the part of the State of Delaware, to confer with Three Commissioners to be appointed on the part of the State of New Jersey, in accordance with the provisions of the Compact between the States of New Jersey and Delaware respecting the Delaware River and Bay, defining their duties and powers and appropriating money to pay the necessary expenses thereof.

Whereas The Senate and House of Representatives of the State of Delaware in General Assembly met have passed an act entitled "An Act to Ratify and Confirm a Compact or Agreement between the States of New Jersey and Delaware respecting the Delaware River and Bay, and to authorize the execution thereof," which act hath received the approval of the Governor of the State of Delaware; and the Legislature of the State of New Jersey hath passed an act of the same title and of the same purport, which act hath received the approval of the Governor of the State of New Jersey;

And Whereas The said Compact or Agreement between said two states hath been duly signed and executed in duplicate originals by Edward C. Stokes, Robert H. McCarter, Franklin Murphey and Chauncey G. Parker, Commissioners on the part of the State of New Jersey, and by Preston Lea, Robert H. Richards, Herbert H. Ward and George H. Bates, Commissioners on the part of the State of Delaware, one of which duplicate originals hath been retained by said Commissioners of Delaware to be delivered to the Governor of that State and the other of which duplicate originals hath been retained by the Commissioners of New Jersey to be delivered to the Governor of that State;

And Whereas It is provided and agreed by said compact or agreement between said States, among other things, as follows:

PLAINTIFFS EXHIBIT NO. 162



"Article IV. Immediately upon the execution hereof the Legislature of the State of New Jersey shall appoint three Commissioners to confer with three Commissioners to be immediately appointed by the General Assembly of the State of Delaware for the purpose of drafting uniform laws to regulate the catching and taking of fish in the Delaware River and Bay between said two States, which said Commissioners for each State respectively shall, within two years from the date of their appointment, report to the Legislature of each of said States the proposed laws so framed and recommended by said joint commission. Upon the adoption and passage of said laws so recommended by the respective Legislatures of said two States said laws shall constitute the sole laws for the regulation of the taking and catching of fish in the said river and bay between said States. Said laws shall remain in force until altered, amended or repealed by concurrent legislation of the said two States. Said Commissioners shall also ascertain the dividing line between said river and bay, and upon each of the shores of said two States, where said dividing line extended shall intersect the same, shall, at the joint expense of said States, erect a suitable monument to mark the said dividing line. Said dividing line between said monuments shall be the division line between the said river and bay for the interpretation of and for all purposes of this compact, and of the concurrent legislation provided for therein.

The faith of said contracting States is hereby pledged to the enactment of said laws so recommended by said commissioners, or to such concurrent legislation as may seem judicious and proper in the premises to the respective Legislatures thereof.

Each State shall have and exercise exclusive jurisdiction within said river to arrest, try and punish its own inhabitants for violation of the concurrent legislation relating to fishery herein provided for."

"Article V. All laws of said States relating to the regulation of fisheries in the Delaware River not inconsistent with the right of common fishery hereinabove mentioned, shall continue in force in said respective States until the enactment of said concurrent legislation as herein provided."

Now Therefore, In pursuance of the terms of said Compact,

*Be it enacted by the Senate and House of Representatives of the State of Delaware in General Assembly met:*

Section 1. That Alexander B. Cooper, William S. Hillis and Walter H. Hayes be and they are hereby appointed Commissioners on the part of the State of Delaware, to confer with like Commissioners appointed or to be appointed by the Legislature of the State of New Jersey, to do and perform all the duties, acts, matters and things required and stipulated in the said Compact or Agreement hereinabove mentioned, to be by them done and performed. That in and upon said Commissioners are hereby vested and conferred all powers and authorities necessary and convenient for the full and complete performance of all the duties, acts, matters and things by this Act imposed upon them. Said Delaware Commissioners shall fill any vacancies occuring in the membership of said Delaware Commission by the selection of some other suitable citizen or citizens of the State of Delaware.

Section 2. Said Commissioners shall, on or before the first day of June, A. D. 1905, organize by the election from their number of a president and a secretary. The president so elected shall be the presiding officer at all separate meetings of said Commissioners, and the general executive head of said commission. The Secretary so elected shall conduct the correspondence of said commission under its direction and keep a record of all the meetings, acts and proceedings of said Delaware Commissioners and of all meetings, acts and proceedings

of the joint commissioners in the performance of the duties, acts, matters and things stipulated for in the said compact.

Said Delaware Commissioners shall have power to cause the production of books, papers and other things, and to summon before themselves, or before the said joint Commission, witnesses, expert and otherwise, the testimony of which, in the opinion of said Commissioners, shall be material to enable them to justly and fully perform the duties on them hereby imposed. All witnesses may be summoned upon warrants therefor signed by the President of said Delaware Commission, and shall be paid, for attendance and mileage, the fees usually paid in the State of Delaware for the attendance of witnesses at the trial of civil causes in the Superior Court of said State. The attendance of witnesses before said Delaware Commission or before said joint commission may be compelled by attachments issued by said Delaware Commission to the Sheriff of any County in the State of Delaware; said attachments shall be signed by the President of said Delaware Commission and countersigned by the Secretary thereof, and shall be executed and returned by the Sheriff to whom the same shall be directed. Each of said Commissioners shall have power and authority to administer oaths or affirmations to witnesses appearing before them or before said joint commission.

Section 3. The sum of fifteen hundred dollars is hereby appropriated out of the monies in the Treasury of this State, not otherwise appropriated, to pay the necessary expenses attendant upon the execution of the duties of said Commissioners. Said monies shall be drawn from the said the Treasury, from time to time as occasion shall demand, upon the warrant of the Governor of this State drawn upon the State Treasnrer, upon the certificate in writing to said Governor signed by the President and countersigned by the Secretary of said Delaware Com-

mission, giving the details of such expenditures made or to be made as aforesaid.

Approved, March 23, A. D. 1905.

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*Laws of Delaware* 1927, *Vol.* 35, *p.* 644.

RESOLUTIONS.

CHAPTER 243.

HOUSE JOINT RESOLUTION

*Be it resolved by the Senate and House of Representatives of the State of Delaware in General Assembly met:*

Sec. 1. That Robert H. Richards, William S. Hilles, Charles W. Cullen, William M. Short and William F. Cummins be and they hereby are appointed and constituted Commissioners of the State of Delaware to confer with like Commissioners representing the State of New Jersey, for the purpose of framing a compact or agreement between the said States and legislation consequent thereon, to be submitted to the Legislatures of said two States for action thereon, looking to the final adjustment of all controversies relating to the boundary line between said States and to their respective rights in the Delaware River and Bay. The said Commissioners shall report at the present or some subsequent Session of the Legislature.

Sec. 2. That there is hereby appropriated out of any moneys in the Treasury of the State not otherwise appropriated, the sum of Two Thousand Dollars ($2,000.00), to defray the traveling and necessary expenses of the Commissioners while engaged on the matters herein referred to. Said appropriation shall be immediately available upon the approval of this Joint Resolution, and shall continue in force as long as the said Commissioners are engaged on said matter, and shall be paid by the State

PLAINTIFF'S EXHIBIT NO. 152
21

Treasurer from time to time on vouchers submitted by the Commissioners and signed by at least three Commissioners.

Approved March 2, A. D. 1927.

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*Laws of Delaware* 1927. *Vol. XXXV, pp.* 550, 556.

## CHAPTER 261.

OF THE REVENUES OF THE STATE.

AN ACT MAKING APPROPRIATIONS FOR THE EXPENSES OF THE STATE GOVERNMENT OTHER THAN LEGISLATIVE EXPENSES FOR THE FISCAL YEAR ENDING ON MONDAY IMMEDIATELY PRECEDING THE SECOND TUESDAY OF JANUARY, IN THE YEAR OF OUR LORD ONE THOUSAND NINE HUNDRED AND FOUR.

*Be it enacted by the Senate and House of Representatives of the State of Delaware in General Assembly met, (with the concurrence of three-fourths of all the members elected to each House of the General Assembly):*

Section 1. That the several amounts named in this Act, or so much thereof as may be necessary, are hereby appropriated and authorized to be paid out of the Treasury of this State to the respective public officers and for the several purposes specified for the current fiscal year ending on Monday immediately preceding the second Tuesday of January in the year of our Lord one thousand and four; provided, however, that all parts or portions of the several sums appropriated by this Act which, on said Monday immediately preceding said second Tuesday of January, A. D. 1904, shall not have been paid out of the Treasury shall be converted back into the General Fund of the Treasury. The said several sums hereby appropriated are as follows, viz.:

PLAINTIFFS EXHIBIT NO. 162
22

(p. 556) For to provide for the defense of the suit of the State against the State of New Jersey in the matter of the boundary dispute between the two States, pending in the United States Supreme Court, ten thousand dollars, to be drawn by the warrant of the Governor on the State Treasurer, and to be placed at the disposal of the Attorney General.

*Approved March 23, A. D. 1903.*

STATUTE I.

June 28, 1834.

CHAP. CXXV.—*An Act in reference to pre-emption rights in the south-eastern district of Louisiana.* (a)

Register of land office to issue patents in conformity with acts of April 5, 1832, ch. 65, and June 15, 1832, ch. 140.

*Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled*, That the pre-emption rights granted by the register and receiver of the land office at New Orleans, to certain individuals claiming the same, in the south-eastern land district of Louisiana, under the act of Congress approved fifth April, eighteen hundred and thirty-two, entitled "An act supplementary to the several laws for the sale of public lands," and the act approved fifteenth June, eighteen hundred and thirty-two, entitled "An act to authorize the inhabitants of the state of Louisiana to enter the back lands," be, and they are hereby, confirmed; and the register of the land office is hereby directed to issue patent certificates accordingly.

Re-survey on Bayou St. Vincent confirmed.

SEC. 2. *And be it further enacted*, That the re-survey made under the supervision of the surveyor general of Louisiana, of certain lands on the bayou St. Vincent, in sections designated as numbers one hundred and ten and one hundred and forty-three, in township thirteen of range fourteen east, situate in the south-eastern district of Louisiana, and which re-survey purports to include the improvements of the actual settlers within its limits, claiming the right of pre-emption thereto under the act of fifth April, eighteen hundred and thirty-two, aforesaid, be, and the same is hereby, confirmed; and payments may be made and patents issued in accordance therewith.

1832, ch. 65.

APPROVED, June 28, 1834.

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STATUTE I.

June 28, 1834.

CHAP. CXXVI.—*An Act giving the consent of Congress to an agreement or compact entered into between the state of New York and the state of New Jersey, respecting the territorial limits and jurisdiction of said states.* (b)

WHEREAS commissioners duly appointed on the part of the state of New York, and commissioners duly appointed on the part of the state

(a) See notes of acts which have been passed relative to pre-emption of public lands, vol. iv. p. 420.

(b) The decisions of the Supreme Court upon the compacts between states have been:—

The compact of 1789, between Virginia and Kentucky, was valid under that provision of the constitution which declares, that "no state shall, without the consent of Congress, enter into agreement or compact with another state, or with a foreign power:" no particular mode, in which that consent must be given, having been prescribed by the constitution; and Congress having consented to the admission of Kentucky into the Union, as a sovereign state, upon the conditions in the compact. Green v. Biddle, 8 Wheat. 1; 5 Cond. Rep. 389.

The compact is not invalid upon the ground of its surrendering rights of sovereignty, which are inalienable. *Ibid.*

To bring a case within the protection of the seventh article in the compact between Virginia and Kentucky, it must be shown that the title to the land asserted, is derived from the laws of Virginia, prior to the separation of the two states. Lessee of Fisher v. Cockerell, 5 Peters, 248.

The construction of a compact between the states of Virginia and Pennsylvania, is not to be settled by the laws or decisions of either of those states, but by the compact itself. Marlatt v. Silk et al., 11 Peters, 1.

The decision of a question of the construction of such a compact, is not to be attested from the decisions of either state, but is one of an international character. *Ibid.*

It is a part of the general right of sovereignty, belonging to independent nations, to establish and fix the disputed boundaries between the respective limits; and the boundaries so established and fixed by compact between nations, become conclusive upon all the subjects and citizens thereof, and bind their rights; and are to be treated, to all intents and purposes, as the real boundaries. This right is expressly recognised to exist in the states of the Union, by the constitution of the United States; and is guarded in its exercise by a single limitation or restriction, only, requiring the consent of Congress. *Ibid.*

The compact between New Jersey and Pennsylvania, recognises the right of fishery in riparian owners on the Delaware. Bennet v. Boggs, Baldwin's C. C. R. 60.

The plaintiffs, in the circuit court of West Tennessee, instituted an ejectment for a tract of land held under a Virginia military land warrant, situate south of a line called Mathews' line, and south of Walker's line; the latter being the established boundaries between the states of Kentucky and Tennessee, as fixed by a compact between those states, made in 1820; by which compact, although the jurisdiction over the territory to the south of Walker's line, was acknowledged to belong to Tennessee, the titles to lands held under Virginia military land warrants, &c.; and grants from Kentucky, as far south as "Mathews' line," were declared to be confirmed: the state of Kentucky having, before the com-

of New Jersey, for the purpose of agreeing upon and settling the jurisdiction and territorial limits of the two states, have executed certain articles, which are contained in the words following, viz:

Articles of agreement.

Agreement made and entered into by and between Benjamin F. Butler, Peter Augustus Jay and Henry Seymour, commissioners duly appointed on the part and behalf of the state of New York, in pursuance of an act of the legislature of the said state, entitled "An act concerning the territorial limits and jurisdiction of the state of New York and the state of New Jersey, passed January 18th, 1833, of the one part; and Theodore Frelinghuysen, James Parker, and Lucius Q. C. Elmer, commissioners duly appointed on the part and behalf of the state of New Jersey, in pursuance of an act of the legislature of the said state, entitled "An act for the settlement of the territorial limits and jurisdiction between the states of New Jersey and New York," passed February 6th, 1833, of the other part.

ARTICLE FIRST. The boundary line between the two states of New York and New Jersey, from a point in the middle of Hudson river, opposite the point on the west shore thereof, in the forty-first degree of north latitude, as heretofore ascertained and marked, to the main sea, shall be the middle of the said river, of the Bay of New York, of the waters between Staten Island and New Jersey, and of Raritan Bay, to the main sea; except as hereinafter otherwise particularly mentioned.

ARTICLE SECOND. The state of New York shall retain its present jurisdiction of and over Bedlow's and Ellis's islands; and shall also retain exclusive jurisdiction of and over the other islands lying in the waters above mentioned and now under the jurisdiction of that state.

ARTICLE THIRD. The state of New York shall have and enjoy exclusive jurisdiction of and over all the waters of the bay of New York; and of and over all the waters of Hudson river lying west of Manhattan Island

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pact, claimed the right to the soil, as well as the jurisdiction over the territory, and having granted lands in the same. The compact of 1820 was confirmed by Congress. The defendants in the ejectment claimed the lands under titles emanating from the state of North Carolina, in 1786, 1794, 1795; before the formation of the state of Tennessee; and grants from the state of Tennessee, in 1809, 1811, 1813, 1814, in which the lands claimed by the defendants were situated, according to the boundary of the state of Tennessee, declared and established at a time when the state of Tennessee became one of the states of the United States. The circuit court instructed the jury that the state of Tennessee, by sanctioning the compact, admitted, in the most solemn form, that the lands in dispute were not within her jurisdiction, nor within the jurisdiction of North Carolina, at the time they were granted; and that, consequently, the titles are subject to the compact: Held, by the Supreme Court, that the instructions of the circuit court were entirely correct. Poole v. Fleeger, 11 Peters, 185.

The seventh article of the compact between Virginia and Kentucky declares "all private rights and interests of lands within the said district (Kentucky,) derived from the laws of Virginia, prior to such separation, shall remain valid and secure under the laws of the proposed state, and shall be determined by the laws now existing in this state (Virginia)." Whatever course of legislation, by Kentucky, would be sanctioned by the principles and practice of Virginia, should be regarded as an unaffected compliance with the compact. Such are all reasonable quieting statutes. Hawkins v. Barney's Lessee, 5 Peters, 457.

From as early a date as the year 1705, Virginia has never been without an act of limitation; and no class of laws is more universally sanctioned by the practice of nations, and the consent of mankind, than those laws which give peace and confidence to the actual possessor and titles of the soil. Such laws have frequently passed in review before the Supreme Court; and occasions have occurred in which they have been particularly noticed, as laws not to be impeached on the ground of violating private rights. It is impossible to take any reasonable exception to the course of legislation pursued by Kentucky on this subject. She has in fact literally complied with the compact in its most rigid construction. For she adopted the very statute of Virginia in the first instance, and literally gave her citizens the full benefit of twenty years to prosecute their suits, before she enacted the law now under consideration. As to the exceptions and provisoes, and savings in such statutes, they must necessarily be left, in all cases, to the wisdom or discretion of the legislative power. *Ibid.*

It is not to be questioned, that laws limiting the time of bringing suits constitute a part of the lex fori of every country; the laws for administering justice, one of the most sacred and important of sovereign rights and duties, and a restriction upon which must materially affect both legislative and judicial independence. It can scarcely be supposed that Kentucky would have consented to accept a limited and crippled sovereignty; nor is it doing justice to Virginia to believe that she would have wished to reduce Kentucky to a state of vassalage. Yet it would be difficult, if the literal and rigid construction necessary to exclude her from passing the limitation act were adopted, to assign her a position higher than that of a dependent on Virginia. *Ibid.*

The limitation act of the state of Kentucky, commonly known by the epithet of "the seven years law," does not violate the compact between the state of Virginia and the state of Kentucky. *Ibid.*

Articles of agreement.

and to the south of the mouth of Spuytenduyvel creek; and of and over the lands covered by the said waters to the low water-mark on the westerly or New Jersey side thereof; subject to the following rights of property and of jurisdiction of the state of New Jersey, that is to say:

1. The state of New Jersey shall have the exclusive right of property in and to the land under water lying west of the middle of the bay of New York, and west of the middle of that part of the Hudson river which lies between Manhattan island and New Jersey.

2. The state of New Jersey shall have the exclusive jurisdiction of and over the wharves, docks, and improvements, made and to be made on the shore of the said state: and of and over all vessels aground on said shore, or fastened to any such wharf or dock; except that the said vessels shall be subject to the quarantine or health laws, and laws in relation to passengers, of the state of New York, which now exist or which may hereafter be passed.

3. The state of New Jersey shall have the exclusive right of regulating the fisheries on the westerly side of the middle of the said waters, *Provided*, That the navigation be not obstructed or hindered.

ARTICLE FOURTH. The state of New York shall have exclusive jurisdiction of and over the waters of the Kill Van Kull between Staten Island and New Jersey to the westernmost end of Shooter's Island in respect to such quarantine laws, and laws relating to passengers, as now exist or may hereafter be passed under the authority of that state, and for executing the same; and the said state shall also have exclusive jurisdiction, for the like purposes of and over the waters of the sound from the westernmost end of Sohooter's Island to Woodbridge creek, as to all vessels bound to any port in the said state of New York.

ARTICLE FIFTH. The state of New Jersey shall have and enjoy exclusive jurisdiction of and over all the waters of the sound between Staten Island and New Jersey lying south of Woodbridge creek, and of and over all the waters of Raritan bay lying westward of a line drawn from the lighthouse at Prince's bay to the mouth of Mattavan creek; subject to the following rights of property and of jurisdiction of the state of New York, that is to say:

1. The state of New York shall have the exclusive right of property in and to the land under water lying between the middle of the said waters and Staten Island.

2. The state of New York shall have the exclusive jurisdiction of and over the wharves, docks and improvements made and to be made on the shore of Staten Island, and of and over all vessels aground on said shore, or fastened to any such wharf or dock; except that the said vessels shall be subject to the quarantine or health laws, and laws in relation to passengers of the state of New Jersey, which now exist or which may hereafter be passed.

3. The state of New York shall have the exclusive right of regulating the fisheries between the shore of Staten Island and the middle of the said waters: *Provided*, That the navigation of the said waters be not obstructed or hindered.

ARTICLE SIXTH. Criminal process, issued under the authority of the state of New Jersey, against any person accused of an offence committed within that state; or committed on board of any vessel being under the exclusive jurisdiction of that state as aforesaid; or committed against the regulations made or to be made by that state in relation to the fisheries mentioned in the third article; and also civil process issued under the authority of the state of New Jersey against any person domiciled in that state, or against property taken out of that state to evade the laws thereof; may be served upon any of the said waters within the exclusive jurisdiction of the state of New York, unless such person or property shall be on board a vessel aground upon, or fastened to, the shore of the state of

New York, or fastened to a wharf adjoining thereto, or unless such person shall be under arrest, or such property shall be under seizure, by virtue of process or authority of the state of New York. Articles of agreement.

Article Seventh. Criminal process issued under the authority of the state of New York against any person accused of an offence committed within that state, or committed on board of any vessel being under the exclusive jurisdiction of that state as aforesaid, or committed against the regulations made or to be made by that state in relation to the fisheries mentioned in the fifth article; and also civil process issued under the authority of the state of New York against any person domiciled in that state, or against property taken out of that state, to evade the laws thereof, may be served upon any of the said waters within the exclusive jurisdiction of the state of New Jersey, unless such person or property shall be on board a vessel aground upon or fastened to the shore of the state of New Jersey, or fastened to a wharf adjoining thereto, or unless such person shall be under arrest, or such property shall be under seizure, by virtue of process or authority of the state of New Jersey.

Article Eighth. This agreement shall become binding on the two states when confirmed by the legislatures thereof, respectively, and when approved by the Congress of the United States.

Done in four parts (two of which are retained by the commissioners of New York, to be delivered to the governor of that state, and the other two of which are retained by the commissioners of New Jersey, to be delivered to the governor of that state,) at the city of New York this sixteenth day of September, in the year of our Lord one thousand eight hundred and thirty-three and of the independence of the United States the fifty-eighth.

B. F. Butler,
Peter Augustus Jay,
Henry Seymour,
Theo. Frelinghuysen,
James Parker,
Lucius Q. C. Elmer.

And whereas the said agreement has been confirmed by the legislatures of the said states of New York and New Jersey, respectively,—therefore,

*Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled*, That the consent of the Congress of the United States is hereby given to the said agreement, and to each and every part and article thereof, *Provided*, That nothing therein contained shall be construed to impair or in any manner affect, any right of jurisdiction of the United States in and over the islands or waters which form the subject of the said agreement. Consent of Congress given to the agreement. Proviso.

Approved, June 28, 1834.

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Statute I.

June 30, 1834.

Chap. CXXVIII.—*An Act to amend an act entitled "An act to annex a part of the state of New Jersey to the collection district of New York; to remove the office of collector of Niagara to Lewistown; to make Cape St. Vincent, in the district of Sackett's Harbour, a port of delivery; and out of the districts of Miami and Mississippi, to make two new districts, to be called the districts of Sandusky and Teche, and for other purposes."*

*Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled*, That there shall be paid, annually, to the collector of the port of Franklin, in the district of Teche, in lieu of all demands against the government of the United States for house rent, storage, and so forth, the sum of two hundred and fifty dollars. Vol. ii. 657. Annual pay of the collector of the district of Teche.

Approved, June 30, 1834.

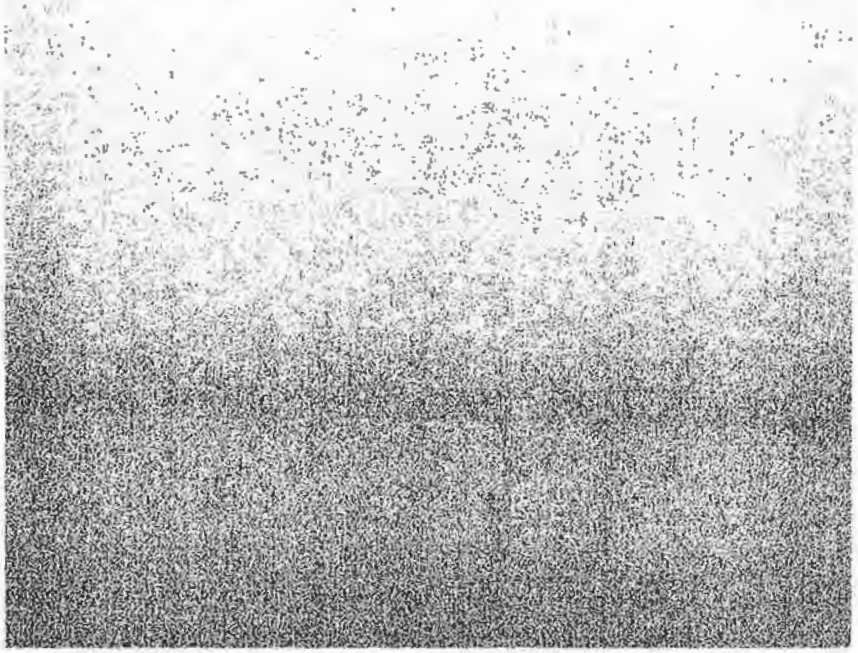
Plaintiff's Exhibit No. 39

New Jersey Laws, 1846. Approved April 10, 1846. (2 Comp. Stat. 1709).

An Act to define the boundary lines of Salem, Cumberland and Cape May.

(Harr. 4. L. 6. 171. Rev. 1877 p. 203)

61. Boundaries of Salem, Cumberland and Cape May counties. Sec. 1. That the boundary lines of the counties of Salem, Cumberland and Cape May, are hereby declared to be the main ship channel in the river and bay of Delaware adjoining said counties respectively. (Rev. 1877, p. 203)



REPORT OF THE COMMISSIONERS

ON

# Lands Under Water,

1849.

OPINIONS OF

Messrs. PARKER, ZABRISKIE, FRELINGHUYSEN & BROWNING.

1864.

NOTES OF CHARGE OF CHIEF JUSTICE GRIER,

BELL vs. COLES,

Act Appointing Commissioners, 1864.

SYNOPSIS OF

ALL GRANTS OF LAND UNDER WATER

MADE BY THE

STATE OF NEW JERSEY.

JERSEY CITY:
PRINTED BY JOHN H. LYON.
1865.

DE21273

## OPINION OF CORTLANDT PARKER, Esq.

### Statement.

In compliance with a resolution, asking whether the legislature has the right to sell and dispose of the lands under water, adjoining the shore, to others than riparian owners, or to appropriate the same to any other purposes, against or inconsistent with the rights of such owners, except for public uses, and what are such public uses?—the following opinions were presented to the Legislature:

Certain gentlemen, friends of a bill now before the New Jersey Senate, No. 154, have submitted to me the following questions:

1. Has the State the right to dispose of lands under water, except to owners of the adjoining shore?

2. Has the State the right to appropriate them to any but public use without the consent of such owners? If not,

3. To what public uses, and on what terms, may they be appropriated?

### Opinion.

By "lands under water," I mean lands lying below low water mark or tidal waters. Much of such land in this State lies next the shore of Hudson river and New York bay, and is of great value because of its neighborhood to the great emporium of the continent. It is understood that the inquiry into the rights of the legislature respecting this class of real estate, originated in certain propositions now before them, respecting these lands, and what I now say must be understood principally to apply to them.

#### I.

It is now fully settled that the property in land below high-water mark in New Jersey belongs to the State. The earlier opinion placed it in the proprietors. But it was first decided by our Supreme Court (Arnold *v.* Mundy, 1 Halst., 1), and then by the Supreme Court of the United States (Martin *v.* Waddell, 15 Peters, 367), that such property was an incident of Government: that the "surrender" by the lords proprietors vested this royalty in the crown, and that on the Revolution it passed to the State, as its successor in the rightful administration of government and law. Those decisions have since been carefully followed, Gough *v.* Bell, 1 Zabriskie, 158; 2 Zabriskie, 441; 3 Zabriskie, 324. State *v.* Jersey City, 1 Dutch, 528.

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II.

In the application of this doctrine a difference has been made in New Jersey according to circumstances, and the character of the property in question. A peculiar common law has been recognized by the highest courts of the State. Common law comprises customs "whereof the memory of man runneth not to the contrary,"—and the first year of King Richard I. is the established date of this memory. But it has been decided, first by our Supreme Court (2 Zab., 441), and then by the Court of Errors (3 Zab., 624), that there was a peculiar common law in this State, applicable to this subject, deducible from ordinary usage, received opinions popularly and at the bar, and implied admissions in legislative acts; and that by this, if a shore owner took possession, and actually reclaimed land down to low-water mark, it became his, so that he could sue, if need be, for trespass, should any one enter thereon. And in the much contested suit of Gough *v.* Bell, judgment was rendered for plaintiff, so far as regarded lands lying between high-water and low-water mark which had been reclaimed by the labor of the claimant.

III.

It is to be observed that even this result was not reached without much diversity on the subject discussed, though the judges of the court of Errors and Appeals agreed in the decision of the particular case. Justice Randolph, in the Supreme Court, and other justices in the court of appeals, earnestly denied the existence of such common law as was alleged by their associates, and maintained that the common law of England must rule, that by it the State was absolute owner of all lands below high-water, and could prosecute for nuisance and abate anything done thereon without its permission to improve, dock out or reclaim any land below high-water mark; and that she could, likewise, without regard to the shore owner, sell or otherwise dispose of such land. The reasoning in favor of this view of the matter is very cogent. All jurists unite in the declaration, since Martin *vs.* Waddell, that the property in all lands below high-water belongs to the State, who, as sovereign, holds and is bound to hold or dispose of them for the benefit of all her citizens. There may be good reasons, having regard to public policy, why upland owners should have the right to reclaim, to build wharves, or otherwise "improve." That result might have been attained by act of the Legislature. To decide that the ancient common law was overridden by usage, opinion, and obscure or questionable statutory implication was establishing a precedent possibly hazardous in the future.

IV.

As I understand them, so far only do the decision of our courts go. The owner of the upland has the privilege of reclaiming and improving down to low-water mark. His title ends at high-water. The rest is simply a privilege, which, if he exercises it, confers a right to defend his possession by ordinary action at law. Whether the State, if she dispose of any land under water beyond him, must respect his privilege and provide for compensation, if it be taken or invaded for public use, or whether any grantee of the State takes subject to such compensation, are questions left undecided. Nor do I suppose these decisions settled what the law is, if a riparian owner fills up and improves, below low-water mark. But it is settled, and very clearly, that the property to such land not only belongs to the State, but that "it may be granted by the State to a stranger, at any time before it is actually reclaimed and annexed to the upland." (Judge Elmer in State *vs.* Jersey City, 1 Dutcher, 528). "In that matter," said the learned judge, "I concur myself with the opinion expressed by Judge Randolph," in 2 Zabriskie, 491; and Chief Justice Green, and Justices Ogden and Haines concurred in the decision, without any dissent from the opinion delivered.



The views of Judge Randolph referred to, are very decided, and most ably presented. The owners' "rights," he says, "are circumscribed by his boundary, which is the high-water line; any filling up or erection below that amounts either to a nuisance or purprestura, (encroachment). If it interferes with the public rights of navigation and fishing, it is a nuisance which may at once be abated, or the individual committing it indicted and convicted. Any building, or encroachment, or intrusion below high-water, though not amounting to a nuisance, is a purprestura, which the state may demolish or seize at pleasure, or proceedings in chancery may be taken to prevent the wrong."

The State *vs.* Jersey City, was decided in 1856. In September, 1858, the subject was reviewed by Mr. Justice Grier, of the Supreme Court of the United States, in an ejectment brought in the circuit court for the district of New Jersey, by Mary Bell against those who claimed under the decision of our Court of Errors in Gough *vs.* Bell. The controversy regarded the same land, and the plaintiff's claim was based upon the title rejected there, viz: An act of the Legislature vesting the lands under water in front of the riparian owner. The court directed the jury to find for the plaintiff for the land covered by water in November, 1836, (the date of the act), and not reclaimed by natural or factitious accretion. Judge Grier delivered an elaborate charge to the jury, laying down several propositions, among them the following:

1. In East Jersey the shores of navigable rivers and arms of the sea when the tide ebbs and flows, which includes all between high water and low water mark, belongs to the sovereign or people of New Jersey, and not to the riparian owners.

2. A boundary to, or upon, or along a navigable river, bay, &c., extends to high water mark only.

3. By the common law, a riparian owner acquired a title to all land added by gradual accretion, and, by the custom of New Jersey also, to land added by factitious accretion, or reclaimed from the sea by filling in by himself so long as the title to the shore remains as a mere prerogative right in the sovereign or people of the State for common or public use.

4. The Legislature of New Jersey, as the agents and representatives of the sovereign people, may grant and alien land under navigable rivers, bays, and arms of the sea.

5. The erection of a dock or wharf by a riparian owner on the soil of the State, without any special license or grant from the Legislature, will not confer on him a title to the land on which it is erected as against the State, except where the land has been reclaimed from the sea by his labor.

6. The license to make land added by reclaiming it, to erect docks adjoining, is necessarily revoked by a grant of the land to an individual.

7. The Legislature representing both the State, which holds the legal title by prerogative, and the people who have its use in common have the absolute title, and may, by legislative acts, vest it in an individual.

8 The numerous acts of Assembly of this State concerning these public rivers, bays, &c., brought to our notice by counsel, as well as discordant dicta and opinions of many able and learned judges and lawyers, clearly demonstrate that there is no well known and established customary laws on this subject, peculiar to this State, with the exception of that stated (see Point numbered 3 above), which has been adjudicated by the Supreme Court and Court of Appeals in a suit between these parties.

The jury were therefore instructed to find a verdict giving the plaintiff the land covered by water in November, 1836, and not reclaimed by natural or factitious accretion. The Long Dock, the court said, did not come within that category, except so far as it was at that time converted into solid ground or reclaimed by filling up from the dominion of the sea or waters of the bay or river.

## V.

I have been induced to set forth this decision of the United States Circuit Court at greator length, because it is not reported, and therefore not widely known, and because it is the only decision, except that in the State vs. Jersey City, governing the exact point of inquiry, viz.: the right of the State in lands covered by water. With these several authorities before me, there is no doubt upon the subject. Such lands belong to the State, and the Legislature has the right to sell and dispose of them, though adjoining the shore, to any one. And it would seem clearly established by the opinions of Judge Randolph, Judge Elmer, and Judge Grier, above referred to, that the Legislature may grant for private use, and without compensation made to any riparian proprietor.

## VI.

But certainly, a grant for public uses and upon reasonable compensation, would be within the power, if it be not indeed the duty of the Legislature, and in making such grant they have the right to regard the general interest of the State, and if they can, increase its revenue.



The claim of compensation is based on two grounds: first, the asserted customary right spoken of by Chief Justice Green, in Gough vs. Bell, and said to belong to all shore owners, of reclaiming and wharfing. Second, the statutes of March 18, 1851, authorizing the owners of lands upon tide waters to build wharves in front of the same.

The customary right is rather a privilege, respected when exercised, proceeding by implied license from the State, than an appurtenance to the soil. In default of its exercise, it is annulled, as held by Judge Grier, "ipso facto," by the grant of the State to another person. Before its exercise, the shore owner has little more than the simple privilege of access and egress. Fishery he has none, more than any other citizen, for the legislature has long made grants of such lands, by way of lease, for shell fishery. And it is difficult to see why his right of access should exist as an easement over the soil of the State, any more than on any other neighboring proprietor. Nor can it be soundly argued that the act referred to vests any rights. On the contrary, it confesses those of the State. The act provides that it shall be lawful for such owners to build docks on the shore in front of their lands, and WHEN SO BUILT UPON, OR IMPROVED, to appropriate the same to their own exclusive use. To build farther than low water license is necessary, to be sought and obtained as regulated in the act. All this is but a public law, repealable at the will of the legislature, conferring no right which they cannot, without compensation, take away, just as, without compensation, it is given. And to prevent all doubt on this point, (Sec. 8) it is expressly enacted that nothing in the act shall authorize any shore owner to extend an improvement over lands below low-water mark, the title to which, or any easement therein, by grant from the State or otherwise, may be vested in any other person than such shore owner. And nothing therein shall, before any improvement be actually made by virtue thereof, prevent the State from appropriating to public uses the lands lying under water in the same manner as could be done before the passage of the act, and any board of freeholders may require a wharf authorized below low water [illegible] as a public wharf, open to all, at established rates of toll.

True, if a shore owner accepts the privilege and uses it, the State may be bound to pay for what they take from him, but until he does he has nothing but the State's license, which the State, like every other licensor, may revoke.

But should the State, enlightened by science and experience, conceive it to be its duty, instead of leaving so important a matter to the whims of shore owners, and the scarcely less variable opinions of county boards, to appoint commissioners authorized to establish a permanent and correct water-line, deepen the channel, fill up and reclaim the flats, build wharves, and lease or sell the property thus rescued from the sea, creating a commercial city, where it finds useless sand, and, perhaps, at farthest, a shad fishery, and, while it pours the benefits of commerce around, procure a revenue which would decrease, perhaps destroy, taxation, who can say that the legislature's hands are tied, and that with or without compensation given for the asserted

privilege of the shore owner, the flats must remain, or the profits belong only to him?

As far back as 1824 (Comp. 74), the legislature exercised the right of gaining profit from such lands by leasing them for oyster beds. This was disposing of them to individuals for rent. It did not interfere with navigation, the great public use for which the State holds them. As little will it interfere with—nay—it will promote navigation interests, if the State should use these shallows, make them what now they are not, avennes for passage out to the channel, and thus create a commerce, which in their present state they tempt, but really prevent.

CORTLANDT PARKER.

Newark, March 21st, 1864.

## OPINION OF A. O. ZABRISKIE, ESQ.,

*In relation to the Rights of the State in Lands under Water and of the Shore Owners thereof, &c.*

Hon. Theodore F. Randolph:

Sir—You ask my opinion as to what right the State of New Jersey has to the lands in the State covered by tide waters below high water mark? What right or interest the owner of lands above and adjoining high water mark, usually called the shore owner, has in such lands under water, and for what public uses the State has the right to appropriate such lands?

By the laws of New Jersey, the legal title to all lands covered by tide waters below ordinary high water mark is in the State. This was so determined and settled after a long contest in the thoroughly considered case of Bell and Gough, in the Court of Errors, by the opinion of the majority of the court, and I think it may be considered settled. This decision was not the point of the case, but is found in dicta of the judges. The point in dispute between the parties and decided was, that the title held by the State was subject to the right of shore owner to fill in, reclaim, and appropriate the lands in front of and adjoining his lands. This was held to be the local common law in New Jersey, established by usage different from the common law of England, and the last decision of the Supreme Court and the nearly unanimous decision of the Court of Errors affirmed this doctrine; and their judgment established the title of Gough's landlord, who had reclaimed the land in dispute from the tide water against Mary Bell, who held by a conveyance of the land from the State. The first decision in the Supreme Court, delivered by Justice Randolph, which held that the common law rule of England prevailed, and that the shore owner had no right of any kind in the lands under water in front of him, or to reclaim the same, was overruled by the Supreme Court on the second argument there, and also in the Court of Errors.

To the second part of your inquiry, as to what right the shore owner has in such lands in front of him, I answer, that in the words of the Chief Justice in the Supreme Court, in Gough *vs.* Bell (2 Zab. 462), "there has undoubtedly existed, from a very early period, rights of the riparian proprietors, which have been recognized by the legislature, inconsistent with the idea of that exclusive property in the State sactioned by the common law." (p. 469.) "But in the absence of legislative restriction, when no nuisance is created, the riparian proprietor may appropriate the shore between high and low water

mark to his own use. The custom of making such appropriation, long enjoyed and universally acquiesced in, constitutes a local common law which this court will recognize, and which it would be alike unsafe and unwise to disregard." This doctrine was confirmed by the decision in Bell *vs.* Gough, the same case, in the Court of Errors (3 Zab. 629), in which some of the judges expressly, and nearly all impliedly, held that the shore owner is entitled, besides this right of filling in, to other rights of adjacency to the water, of which the State could not even, as the law stood then, deprive them. This was also the opinion of Justice Grier, in the Circuit Court of the United States, expressed in an ejectment between the same parties for that part of the lands granted by the State to Mrs. Bell's father, which were still covered by tide waters. I am of opinion that, before the wharf law, the shore owner in New Jersey had a vested and indefeasible right in the lands in front of him covered by tide waters, consisting of the right of filling, reclaiming and adjacency to such waters, of which the State could not deprive him, except for public uses, and then upon compensation; and that no fisheries, wharves, docks, ferry landing, then held in New Jersey, could be taken by the State, nor the lands in front of such docks, wharves and ferry landings, sold or filled in and reclaimed by or under the State, so as to cut off the owners of such docks, wharves and landings from access to the water, without compensation, and then only for public purposes. And that the shore, when unimproved, was entitled to the same protection.

The wharf act of March 18th, 1852, which was passed immediately after the last decision in Gough *vs.* Bell in the Supreme Court, was intended to settle and quiet the rights of the shore owners in lands under water in front of them. It had been the general impression in the state that the title to the shore to low water mark was vested absolutely in the shore owner. These decisions had disturbed them, and left their rights somewhat vague and indefinite.

That act gave to every shore owner the right to reclaim the lands under water in front of him, so far as did not interfere with navigation, requiring beyond low water a license from the freeholders, which they were *required* to grant if it did not conflict with the public right of navigation.

I am of opinion that this act left the legal title to the lands below high water in the state, subject to the rights before existing, and to those in and by said act granted to the shore owner. That the act vested in the shore owner as property appurtenant to his land the right or easement of reclaiming and appropriating the lands in front of him, so as not to injure navigation, to be exercised at the pleasure of the shore owner to low water, but beyond that only upon license from the county freeholders, to be granted upon their being satisfied that it would not injure navigation. This act was not an act to regulate the building of wharves, which, like other public regulations, may be changed, but it was an act to authorize the owners to build wharves. It gave to and vested in them these rights, leaving the title to remain in the state, and the use as a highway in the public until reclaimed.

It was intended in this manner and to this extent, to confirm the rights supposed to exist in the shore owner before the decision in Gough *vs.* Bell. That it was the intention to grant and vest rights is clear from the provision in the eighth section, which provides that nothing in this act shall restrain the State before reclamation made from appropriating such lands under water to public use as it could before. This was a useless reservation if no right vested, and the State could at any time appropriate these lands for any purpose. On the faith of this act strips of land along the shore, themselves of no value, have been sold at large prices, for the right of reclaiming existing before and confirmed and defined by this act. And the Supreme Court has held that the strip could be assessed for taxation at the value given to it by the right to lands under water appurtenant thereto.



And I am of opinion that these rights declared and vested by this statute, like all other rights vested in and appurtenant to land, either by common or statute law, cannot be divested except for public use.

In answer to the third question, for what public uses can the state by general principles of law or the provision in the statute, appropriate these lands,—I am of opinion that the words in the wharf act must receive the well-settled construction given to them in political and judicial discussions and decisions as to the exercise of the right of eminent domain. The right by eminent domain to take away property necessary for the use of the government in fulfilling its duties and discharging its functions, is an acknowledged right. By the federal, and most state constitutions, it is to be taken on compensation only.

The only property that can be taken is that which itself the government needs or intends to use. It can take any shore and lands, for a fort, custom house, light house, or any other public purpose for which it is useful, but it cannot take my house and lands to make an advantageous barter for another man's land, which it has occasion to use for such public object. They may take my horse and forage for the army, but they cannot take them from me to sell for raising money to pay the officers of government; that must be done by taxation, a different power from the right of eminent domain. The meaning of these words were well settled before their introduction in the wharf act, and that meaning must be given to them there.

I am of opinion, therefore, that the State has no right to take the right of the shore owner in lands under water, vested in him, and sell the same to raise money for the support of the State Government, and this is not the public purpose for which the power is reserved.

A. O. ZABRISKIE.

DATED, March 21, 1864.

## OPINION OF Hon. F. T. FRELINGHUYSEN.

*To the Senate of New Jersey:*

In compliance with your resolution asking my opinion whether "the legislature has the right to sell and dispose of the lands under water adjoining the shore to others than riparian owners, or to appropriate the same to any other purposes, against or inconsistent with the rights of such owners, except for public uses, and what are such public uses?" I respectfully submit the following opinion:

The resolution involves the consideration of the respective rights of the State and of the shore owner as to lands under water, and the inquiry is confined to no locality, but as all parts of New Jersey are subject to the same general laws, it embraces the entire State.

A very general statement of the State's title to the lands under water is this:

The English possessions in this country are held to have vested in the crown. Charles II. granted to the Duke of York, for the purpose of establishing here a colony, the territory now New Jersey, with all the rights of government. The territory and the governmental rights became by succeeding grants vested in proprietors, who subsequently, in 1702, surrendered the governmental rights to the crown. The lands under water, where the tide ebbs and flows, and the lands between ordinary high and low-water marks were, according to the common law of England, regalities or governmental rights, which passed to the Duke of York, and were by his grantees surrendered to the crown, and existed in the sovereign of England at the time of the American Revolution: and when the people of New Jersey took the reins of government, the sovereignty, the prerogatives, and regalities, which before belonged either to the crown or parliament, vested in the State, and as against the proprietors (whose claim of title to lands over which the tide ebbs and flows depended entirely on the grant from the British crown), the State became and is the owner of such lands.

The inquiry of the resolution divides itself into three branches:

I. Considering the term *shore* as used in its popular signification, and as meaning the "termination of land adjacent to the sea," or ordinary high-water mark, has the State the right to dispose of lands below that high-water mark, and above low-water mark?

II. Considering the term *shore* as used in its legal sense, as "the lands between the limits of ordinary high and low-water mark" (the wharf act of 1851, sec. xi., 2 Zab., 455), has the State the right to dispose of lands below ordinary low-water mark to others than the riparian owners?

III. Can the State take lands under tide-water for public use, and what is meant and intended by the term "public use?"

I. Can the State dispose of lands below ordinary high-water mark?

It is adjudicated in New Jersey, that when the shore owner reclaims or improves the shore adjoining his lands so as to carry high-water mark further out, that he has title to the lands so reclaimed, that his title extends to *actual* high-water mark, and that the lands reclaimed cannot be granted away by the State, and that they cannot be taken for public uses without adequate compensation.

Gough *vs.* Bell, 2 Zab. 441—Bell *vs.* Gough, 3 Zab. 624.

The inquiry remains: Can the State dispose of the lands below high-water mark which have not been so reclaimed?

The question involves an immense amount of valuable property. The tide-waters which constitute the boundaries of, and which intersect, the State are of great extent. In all our large towns this property is now valuable, and becoming more so, for wharves and piers. Along the fresh waters of the Delaware, and the numerous creeks opening from it, where the tide ebbs and flows, are extended flats and meadows, in some places overflowed by the tide, and in other places secured from it by embankments constructed and kept in repair by the mud and earth excavated from the land below high-water mark. In many places contiguous to piers running out into the water, and resting on piles, are large structures, under which the tide ebbs and flows. Ship and boat yards, fisheries, beds for planting oysters, are to be found in various parts of the State, located both on the shore and below low-water mark, which give employment and afford very considerable incomes to a large number of our citizens.

There are also bathing places, with large establishments attached thereto, which are the resort of multitudes. Many expensive villa residences, valuable for the incidents of their adjacency to the water, are to be found on our tide-waters. And prominent in this catalogue are the lands under the shoal waters of the Hudson and New York bay, which are increasing in value from their proximity to the commercial metropolis of the country.

By the common law, the title of the owner of land bounded by the sea, or navigable river, where the tide ebbs and flows, extends only to ordinary high-water mark. And below high-water mark the title is in the State. "Hale de jure maris," art. I, chap. 4; Arnold *vs.* Mundys, 1 Hal. 67; Martin *vs.* Waddell, 16 Pet., 367. This common law rule, unmodified, would work a serious revolution in what the people have considered the rights of the shore owner.

The common law *has* been modified by long usage and custom, recognized by our courts, by the legislature, and by a general statute. Custom and usage, in this State, give the shore owner the right to wharf out, to erect piers and ferries, to have and convey fisheries and meadows below high-water mark. Various statutes have been passed, not creating, but recognizing these rights. The statute ratifying the agreement made in 1783, between this State and Pennsylvania (Nixon's Digest, 824), together with the act of 13th June, 1799 (Pat., 416, sec. 9), and act of 26th November, 1808 (Bloomfield, 204), act found



in Revenue Laws, 65 and 659—show that fisheries were subject to private ownership. In den. ex den. Bispham *v.* Rice, a fishery was recovered in ejectment. Bennett *v.* Boggs (Baldwin R. 60) recognized the right of fishery in riparian owners.

The numerous meadow acts are not grants of the property of the State, but acts conferring additional power, by means of common regulations, to those possessed of rights equivalent to ownership, to improve their own property, and this is property below high-water mark. Docks and wharves and piers have been, from the earliest settlement of New Jersey, built out into tide-water and held as private property by the riparian owner, and yet the first act giving any authority to do so was February 28, 1839. The right existed by custom.

Chief Justice Kirkpatrick, in Arnold *v.* Mundy, says: "The intermediate space between high and low-water mark may be exclusively appropriated by the owners of the adjoining land, by building docks, wharves, storehouses, and other structures, which exclude the reflow of water." Chief Justice Green, in Gough *v.* Bell (2 Zab. 461), says: "Notwithstanding the acknowledged title of the State, in her sovereign capacity, to the soil of navigable rivers below high-water mark, there has undoubtedly existed, from a very early period, rights of the riparian proprietors, which have been recognized by the legislature, inconsistent with the idea of that exclusive property in the State sanctioned by the rule of the common law." And again, in 2 Zab., 464, the chief justice says: "There is, I conceive, unquestionably, in New Jersey, a local common law affecting the title of riparian proprietors upon tide waters, and conferring upon them rights and privileges unknown to the common law of England." Justice Elmer, in his very able opinion in Bell *v.* Gough (3 Zab. 669), says: "I am of opinion that there is satisfactory evidence that the doctrines of the common law of England, in regard to the shores of tide rivers, have been materially changed in this State, by a common usage recognized as lawful by the legislature and the courts. And that, by the common law of New Jersey, the owners of land bounding on such rivers have an absolute and exclusive right to wharf out, and otherwise reclaim and improve the adjoining shore, to the ordinary low water line, and to the use of the same for fisheries, and all other lawful purposes not obstructing the navigation."

Justice Carpenter, in 2 Zab. 480, expresses similar views. The common law in regard to shores has in fact been modified in most of the Atlantic States. Chief Justice Green, 2 Zab. 469. Justice Carpenter, 478. Justice Elmer, 3 Zab. 669.

The adjudication referred to, viz: That where the riparian owner reclaims land below *original* high water mark, he has title to *actual* high water mark, is a modification of the common law of England.

Some of the judges in Gough *vs.* Bell, who did not adopt the doctrine of a local common law, did hold that the common law of England gave the riparian owner, as appurtenant to his upland freehold, all the rights incident to his adjacency to the sea, of which he could not be deprived even for a public use without compensation.

The decisions of the Supreme Court of the United States, in Martin

*vs.* Waddell, and of the Supreme Court of New Jersey, in Arnold *vs.* Mundy, have been much considered by our courts; and it has been held by some of the judges that these cases reaffirm the English common law rule, that the rights of the riparian owner are limited by high water mark. Other of our judges insist that in Martin *vs.* Waddell, the plaintiff claimed no right as an owner of the upland, but claimed only under the grant from the crown through the East Jersey proprietors. And that as against the crown and its grantees, the common law rule was of course not modified by any local common law of New Jersey. And that while the plaintiff in Arnold *vs* Mundy did claim as an owner of the upland as well as under a grant from the proprietors, yet no allusion was made to the local custom of New Jersey, and the main stress of the case was the proprietary grant.

It is worthy of remark, that in the three arguments of Gough *vs.* Bell, all the Judges of the Supreme Court and of the Court of Errors, with one exception, either from one view of the subject or another, were found voting in favor of the riparian right and against the State grant. It is a matter of little importance whether we conclude that the title is in the reparian owner to low water mark, or whether we conclude that, as appurtenant to his freehold, he has rights in the land under water to low water mark, of which he cannot be deprived. The latter conclusion is the right one, and the more advantageous to both the State and to the riparian owner.

In this condition of the law the Legislature of New Jersey interposed and affirmed what was in fact the usage and custom (whether it was or was not the common law of the State), and by an act approved March 18th, 1851, declared it lawful for the owners of land on tide waters in any way to improve the shore between high and low water mark, and when so improved to appropriate the same to his own exclusive use; and declared it lawful for the owner of lands on tide water to build docks, wharves and piers, beyond the limits of ordinary low water, in such manner as not to interfere with navigation, and according to a license which it made the duty of the chosen freeholders to grant. Under the authority of this law of New Jersey affirmatory of an existing usage, and understanding of the rights of the shore owner, during the last thirteen years many improvements have been made, and much property conveyed at advanced prices. Whether this act *vests* such a right in the shore owner as would be unaffected by the repeal of the act, is a question I do not deem necessary now to consider; for even if the statute was looked upon as a mere regulation, the riparian owner would rest his right upon what some of the judges call "the local common law of the State," or he would rest it upon what other judges call the common law rights of the riparian owner in the adjacent shore and waters.

I thus conclude that the riparian owner has, subject to the State's regulation, a right to improve the lands between high and low water mark, and that one claiming under a grant from the State cannot deprive him of such right; that, until improved, the shore between high and low water mark is subject to be used by the public, as any other part of the waters.



To have reached any other conclusion would have been contrary to the established usage of the State, and to the statute affirmatory thereof, and it would have been contrary to both of the diverse course of reasoning adopted by the Court of Errors in Gough *vs.* Bell, and would have tended to unsettle rights which it is very questionable whether it is even the pecuniary interest of the State to disturb. The Senate, probably, in making the inquiry by resolution, as to their right of disposing of lands under water adjoining the shore, intended to use the word *shore* in its legal, and not in its popular signification; and to seek information as to their right to dispose of lands below *low* water mark.

The consideration of the riparian owner's rights to lands above *low* water mark seemed, however, necessary to the proper consideration of the second inquiry.

II. Has the State the right to dispose of lands under water adjoining the *shore*, that is, beyond low water mark, to others than the riparian owner that such lands lie in front of?

Chief Justice Green, in Gough *vs.* Bell, 2 Zab. 461, says: "The claim of New Jersey to land flowed by the tide is in no sense *proprietary*. The only title which the State claims to the soil is by virtue of its sovereignty, for the protection of the public or common right; and where the soil of navigable rivers is permanently appropriated, without prejudice to the public rights, and where the State tacitly acquiesces in such appropriation, there would seem to be but little reason in her setting up a title as proprietor of the soil for no public use."

Justice Carpenter holds in the same case that the shore owner has a right to appropriate beyond low water mark.

Justice Elmer, 3 Zab. 658, says, "that it is the common understanding, as well in West as in East Jersey, that the owner of land on navigable waters has a right to reclaim the land down to and even beyond low water." Justices Nevius, Ogden and Potts, in Gough *vs.* Bell, in 3 Zab. 624, held that while the title was limited to high water mark, yet the riparian owner had a vested right in the advantages arising from his lands adjoining the sea.

Chief Justice Taney, in Martin *vs.* Waddell, says: "The men who first settled this country would not have been expected to encounter the many hardships of the New World, and people the banks of its bays and rivers, if the land under water at their very door was liable to be immediately appropriated by another as private property, and the settler upon the first land thereby excluded from its enjoyment, and unable to take a shell-fish from its bottom, or fasten there a stake, or even bathe in its waters, without becoming a trespasser upon the rights of another."

Justice McLean, in Bowman's devisees *vs.* Waltham, 2 McLean, C. C. R. 376, says: "The State cannot directly or indirectly divest him (the riparian owner) of any of these rights, except by the constitutional exercise of the power to appropriate private property for public purposes, and any act of the State, short of such an appropriation, which attempts to transfer any of these rights to another without

the consent of the proprietor, is inoperative and void, and can afford no justification to the grantee against an action of trespass."

Lord Hale says: "If A hath a ripa or bank of the port, the king may not grant a right to land upon that bank or ripa without his consent."

Justice Potts says: "The doctrine that the Legislature may interpose new owners between the riparian owner and the navigable waters would certainly be received with equal surprise and consternation." 3 Zab. 677.

But without quoting further dicta of our courts, it is manifest that if the riparian owner has by virtue of the local custom, affirmed by the statute of 1851, or by virtue of the common law of adjacency to the sea (as some of the Judges hold), the right to reclaim down to or have docks down at low water mark, then no one can have a right to cut him off from the sea. The right to have a dock cannot exist in one, and the right to have another dock in front of such dock exist in another.

Mary Bell, having failed to establish her right under the State's grant against the riparian owner, where he had reclaimed the land, brought an ejectment under the same grant in the Circuit Court of the United States, for lands in front of the lands so reclaimed, and Justice Grier, of the Supreme Court of the United States, suffered her to recover under the grant, but distinctly stated that her grant would give her no right to interfere in any manner with the rights which the owner of the upland had by reason of his lands adjoining tide water. A grant to others than the riparian owner might prevent the riparian owner from reclaiming the land, but would not authorize the grantee to reclaim and so cut the riparian owner off from the water.

On this second point the conclusion is that the State has the title to the lands under water, and can regulate the manner in which the riparian owner shall use the rights that his position gives him, or the State can prevent his reclaiming lands below low water mark, or the State can permit and license him to reclaim only on terms, and for compensation, but cannot sever his adjacency to the water.

III. The other inquiry of the resolution is, Whether the State can take lands under tide-water for public use, and what is meant by "public use?"

The statute affirmatory of the local custom of the State, passed in 1851 (viz.: section 8, Nixon's Digest, 872), provided "that nothing therein contained shall, before any improvements be actually made by virtue thereof, prevent the State from appropriating to public use the lands lying under water, in the same manner as could be done before the passage of the act."

Whatever other effect, therefore, the passage of the act may have, there is nothing in its passage that prevents the unimproved lands from being taken for a public use.

As to the inquiry, Whether such lands could be taken prior to the statute, for public use, Justice Carpenter remarks, 2 Zab., 474: "If the riparian proprietor has any peculiar rights from his *position*, however derived, I think it may be assumed that they are within the protection given by the Constitution, of which he can be divested, even for public use, only after due compensation." Justices Nevius and Potts, while they limited the title of the riparian owner to *high* water mark, held similar language as to what they considered his rights in navigable water appurtenant to his freehold in the adjoining shore. 3 Zab., 681, 685.



The opinion of Justice McLean, of the Supreme Court of the United States, I have quoted.

But this question will probably become of little importance when we consider what is meant in the statute by "public use." Property is taken for public use when it is taken to be appropriated and devoted to the use of the public, as is the case where lands are taken for a railroad, canal, highway, arsenal, &c. The public uses to which this land might be devoted are public wharves, piers, fortificatons, &c.

The property of every citizen is subject to be taken for such public use on just compensation being made therefor. Taking the property of one citizen and giving or selling it to another to raise a revenue, is not taking it for a public use.

Justice Carpenter, in 2 Zab., 474, remarks: "Such legislation would be repugnant to the first principles of justice, and has been held void not merely upon the special provisions of constitutional law, but upon those great fundamental principles which support all government and property."

The conclusions arrived at are as follows:

I. That the State, as the sovereign, has, in the sea and in navigable rivers, where the tide ebbs and flows, the title up to ordinary high-water mark; that in lands reclaimed, the title is in the riparian owner, and the title of the State limited to *actual* high water mark. That the riparian owner has (whether by local custom, ripened into a local common law, and affirmed by the statute of 1851, or by the common law right of enjoying the advantages arising from the fact that his upland freehold adjoins the water) the right, under State regulations (in the language of the statutes), to appropriate to his exclusive use the shore between ordinary high and low-water mark. And that, until so appropriated by improvements, it is subject to be used by the public the same as any other part of the waters.

II. That the State cannot authorize another than the riparian owner to interpose between him and tide-water, and thus destroy the advantage which the fact of the riparian owner adjoining tide-water gives him; that the docks and wharves in this State cannot be destroyed by others than their owners building docks and wharves in front of them; that the riparian owner cannot be deprived of his right to have his freehold front on the nation's highway; that the State, having the title, and, as sovereign, holding the navigable waters for the public, may *prohibit* the riparian owner *from reclaiming lands* beyond low-water mark: or the State may confer upon him *that right for compensation* or otherwise.

III. That the State cannot take the shore between high and low-water mark for public use, without giving compensation; that the

public uses for which the rights of the riparian owner are (on compensation being given) subject, are only such public uses to which the identical property taken shall be appropriated and devoted. Taking the property and granting it to an individual, or taking it and making sale of it for revenue, is not a taking for public use, and is not lawful.

FRED'K T. FRELINGHUYSEN,
*Attorney-General.*

## OPINION OF Hon. A. BROWNING.

### STATEMENT.

A bill is now pending in the legislature of New Jersey, called Senate Bill, No. 29, having for its object the creation of a private corporation, with authority, without compensation to the State, to reclaim and dispose of, as the property of said corporation, all the lands under water, in Communipaw bay, southerly of the Central Railroad of New Jersey.

This bay lies adjacent to the fast land of New Jersey, nearly opposite the city of New York. It is some five or six miles in length, by about a mile and a quarter in mean width, measuring from the shore out to the deeper waters of the Hudson river; and the water, according to the latest coast survey, is from one to six feet deep at low tide; consequently, from seven to thirteen feet at high tide.

The peculiar character of this bill gave rise to the introduction of another—called Senate Bill, No. 154—having for its object the appointment of commissioners to examine into and report to the legislature, at its next session, as to the extent and value of these lands, and the best means of rendering them available to the State.

The deliberations upon these incongruous bills have, necessarily, incited inquiry as to the legal rights of the State and of the riparian proprietors to these submerged lands; touching which, the friends of the latter bill—No. 154—have submitted to me, for opinion, the following questions:

1. Has the State the right to dispose of these lands, except to the owners of the adjoining shore?
2. Has the State the right to appropriate them to any but a public use without the consent of such owners? and
3. If not, what are the public uses to which they may be appropriated?

### OPINION.

I shall confine my opinion to those lands in Communipaw bay, which lie beyond low-water mark, as distinguished from the shore, which is alternately bare and covered with water, by the ebbing and flowing of the tides. I do this because, if the shore may be considered as included in the inquiry, it is so small a part of the subject matter, as not materially to affect it; and because the question of title to the *shore*, may still be considered unsettled in this State.

The Bay of New York, of which the bay in question is a part, is the boundary between the States of New York and New Jersey; and, without tracing the anterior title, it may be assumed as a fact, based

on well settled principles of international law, that at the close of the Revolution the jurisdiction over those waters, and the lands under them, resulted to those States. But whether the title to the lands was in the States, or in the riparian proprietors, is a question which lies at the foundation of the present inquiry.

As to how far into the bay the jurisdiction of each State extended, or where the proper boundary between them was? is a question which would here necessarily arise, if it had not been already settled by compact. By an agreement those States, bearing date of September 16th, 1833, subsequently ratified by their respective legislatures, and approved of by Congress, it was agreed, in substance, that "the State of New York should have and enjoy exclusive jurisdiction of and over all the waters of the bay of New York, and of and over all the lands covered by the said waters, to the low-water mark on the westerly or Jersey side thereof: Provided, "that the State of New Jersey should have the exclusive right of property in and to the land under the water to the middle of the bay of New York;" and should have "the exclusive jurisdiction of and over the wharves, docks and improvements, made and to be made on the shore of the said State and of and over all vessels aground on said shore, or fastened to any such wharf or dock;" and should "have the exclusive right of regulating the fisheries" to the middle of the bay, not obstructing navigation. (Nix. Dig. 862).

It will be perceived that, by this peculiar compact, New Jersey has ceded to, or acknowledged to exist in New York exclusive jurisdiction over both the waters of New York bay and the lands under them, up to the Jersey shore; reserving to herself a naked title, or "right of property," only to the lands under the water; with a limited right of "regulating" the fisheries on those lands, to the middle of the bay. That is, New York is extended, or acknowledged to extend to the Jersey shore; and New Jersey, either by acknowledgment or cession, becomes simply the owner of certain lands under water, in the State of New York.

The lands in question are a part of the lands thus held by New Jersey. What are the limits to legislation, assigned by this compact to those States, respectively, is a matter between them—not easily determined—and not between New Jersey and these shore owners. I shall, therefore, consider the question submitted, without reference to it: as if the jurisdiction of New Jersey extended to the middle of the bay; and assuming that her legislation will not be interfered with by New York.

By the Constitution of the United States, Congress has power "to regulate commerce with foreign nations, and among the several States." (Art. i, Sec. 8.) This power has been held by the Supreme Court of the United States to be exclusive—impliedly prohibiting all legislation on the subject by the States. (Passengers' Case, 7 How. 283). But whether exclusive or not, it is a conceded power, which draws to it, as necessary to its exercise, the right to preserve the navigable waters of the country, which are the main channels of commerce, both foreign and domestic. Still, as Congress has, heretofore, permitted the States, not only to construct wharves and piers out into these waters, but to bridge them, and even to dam up the smaller ones, without interference, I shall, also, consider the questions submitted without reference to this power in Congress.



Again, by an act of the legislature of this State, approved March 18th, 1851, the owners of lands bounding on navigable streams, are authorized to reclaim the shore, in front of them, to low-water mark, at pleasure; and to build docks, wharves and piers beyond, by permision of the board of chosen freeholders of the county in which the lands lie. But, as this is a public law, *permissive*, only, in its character, and repealable at pleasure; and when repealed, would leave riparian rights exactly where they stood before its enactment, except as to improvements then made, I shall also consider the questions submitted without regard to this act.

Having thus limited the inquiry to lands in the bay, beyond low-water mark, without regard to the compact between the States, or the power in Congress to regulate commerce, or the wharf act, I proceed to answer:—Premising, in advance, that the questions submitted do not involve the private rights between adjoining proprietors, or mere matters of public policy, but the *powers* of the government over the public domain.

1. In the first place, the lands are under the navigable waters of the State, beyond low-water mark; and it cannot be denied that by the common law of England, anterior to the American Revolution, the legal title to such lands was in the king, or reigning sovereign, who, in contemplation of law, was the universal occupant, and the fountain from which all titles to lands were derived. And nothing is now more authoritatively settled, than that by the Revolution, and consequent establishment of New Jersey as an independent State or sovereignty, she became vested with all the title to such lands within her territory, which, prior to that event, had been in the crown. Thus, that title became vested in the State of New Jersey, where it must still remain, unless she has since parted with it, which is not pretended (1 Halsted 1.—4 Wash. c. c. 371, Bald. 60.—16 Peters, 367.—1 Zab., 156.—2 Zab., 441.—3 Zab., 524.—1 Dutch, 526). It is equally clear from these authorities, that the title of the riparian proprietors stops where that of the State begins. There is no commingling of ownership—no *divisum imperium*. The titles are distinct; and the line of partition is a definite one; at the upper or lower margin of the river.

2. The legal title to those lands being in the State of New Jersey, and her jurisdiction extending to them, the right of the State to dispose of them at pleasure, would seem to follow as a necessary consequence. For where property and dominion unite in the same hands, the right of disposal becomes an incident. At least, that is the general rule; and they who would limit the right must point out the principle or authority on which they claim its limitation.

Prior to Magna Charta, the king of England not only held the title to the lands under the navigable waters of his kingdom, but exercised the right of disposing of them to so great an extent as to call for its

restraint in that BARONIAL PLATFORM of English liberty. The title still continued in the king, who has since held, as trustee only, for his subjects; and the right of disposal has been confined to parliament. It will not be questioned that it has, and does exist in that body. Parliament, undoubtedly, has the power. How, and when to exercise it, are questions only of policy and justice. And I think, without entering into any elaborate argument to prove it, that when the title of the king and the powers of parliament became united in New Jersey, as a sovereign and independent State, her legislature acquired the same absolute powers over her public domain; and that it still has them, except so far forth as they are limited by our own constitution, or that of the United States.

3. The Constitution of the United States prohibits the States passing any "law impairing the obligation of contracts." (Art 1, Sec. 10.) And our State Constitution imposes the same prohibition on the legislature, with the additional one, "that private property shall not be taken for public use, without just compensation." (Art. I, pl. 16). Would the disposition of the submerged lands in question, without the consent of the shore owners, and without compensation, come within either of these prohibitions?

I am not able to perceive any contract between the State of New Jersey and these shore owners, of any kind; much less a contract to the effect that the State will not dispose of those lands, or reclaim them herself; or, that if sold or reclaimed, that they shall have the privilege of purchasing or reclaiming. No such contract has been made in terms, and I do not see how any such can be implied. They are not the grantees of the State—certainly not the immediate grantees; and, in my judgment, those under whom they claim, were not. But if they could be so considered, where is the COVENANT REAL, or anything in the nature of such covenant, to pass with the lands, and bind the State, in the hands of their assignees?

If the power of the State to dispose of these lands is limited by the Constitution, it must be by that clause prohibiting the taking of "private property for public use, without just compensation." Two things are necessary to bring the shore owners within this clause of the Constitution. They must have a "PRIVATE PROPERTY"—not a common right or privilege; and the thing injured must be "TAKEN"—not consequently damaged. Mr. Sedgwick, in his treatise on Statutory and Constitutional Law, says: "It seems to be settled that, to entitle the owner to protection under this clause, the property must be actually taken in the physical sense of the word; and that the proprietor is not entitled to claim remuneration for indirect or consequential damages, no matter how serious, or how clearly or unquestionably resulting from the exercise of the power of eminent domain." (pp. 519 and '20). The cases cited, I think, fully sustain the text.

As then the sale, or other disposition of the lands in question, will, in no sense, TAKE the bank or shore, unless the proprietors have a "private property" in the bay, the injury to them, however serious, would necessarily be consequential, and not, therefore, within the protection of this clause of the Constitution. Hence the inquiry is



reduced to this single question—have the shore owners a "private property" in the bay, beyond low-water mark?

In considering this question, it is important to keep in mind the distinction between private property and common or public rights, such as the rights of navigation and fishing. These may be very important, and much more valuable to the riparian proprietor than to others more remote. But they are public rights, common to all. However justly entitled to be regarded in wise and prudent legislation, they do not come under the protection of the Constitution.

We have already seen that the title to the lands in question is in the State. If, then, these proprietors have any property in them, it must be as an APPURTENANT to their ownership of the bank or shore. They and the State are owners of adjoining lands. The title of each is distinct. How, then, does the property of one become an appurtenant to that of the other? One piece of land is not an appurtenant of an adjoining piece, simply because one is covered by navigable water, and the other not; or, because one is the bed of a navigable stream and the other the bank. As to the matter of appurtenance, the bed could as well draw or extract property from the bank as the bank from the bed.

The decisions of the courts, both in England and this country, are remarkably uniform on this point. "In regard to navigable streams," (says Mr. Redfield in his treatise on railways,) "it seems to be a conceded point that the owner of land adjoining the stream has NO PROPERTY in the bed of the stream; and hence that the legislature in England may give permission to a railway company to so construct their road, as to interfere with, and alter the bed of such a stream, to the damage of any owner of adjoining land in regard to flowage or otherwise, even to the hindrance of accustomed navigation, without compensation; and that the railway company in constructing their road within the provisions of the act, do not become liable to an action for damages to any such proprietor of adjoining land." He adds, "The same point has been often decided in this country. In tide waters and navigable lakes, the rights of the owners of land adjoining such waters in the stream, are subservient to the public rights, and are consequently subject to legislative control; and any loss the owner of such land may thereby sustain is damnum absque injuria." (pp. 165-6.)

It thus seems to me that, both upon principle and authority, the shore owners in question have no "private property" in the bay fronting them, and are not, therefore, protected by the Constitution. Hence, as between them and the State, the result to which I have arrived is, that the lands in question are the absolute property of the State, and that she has the power to dispose of them in any way that her sense of justice and sound policy dictates.

In my opinion, therefore, the first and second questions submitted should be answered in the affirmative; and thus, any answer to the third becomes unnecessary.

A. BROWNING.

Dated, Camden, March 19th, 1864.
For Messrs. Cobb and others.

# OPINION

CONCERNING

# RIPARIAN RIGHTS,

BY

Hon. GEORGE M. ROBESON,

Attorney-General of New Jersey.

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Presented to the Senate, and Ordered Printed.

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# OPINION.

*To the Senate of the State of New Jersey:*

By your authority, the following questions have been presented for my opinion, viz:

"Has the Legislature the right to sell and dispose of the lands under water adjoining the shore to others than riparian owners, or to appropriate the same to any purposes against or inconsistent with the rights of such owners, except for public uses, and what are such public uses?"

These questions are understood to relate to the lands covered by the navigable waters which bound the eastern portion of our State upon the shores of which the tide ebbs and flows. They may be stated in substance as follows:

1. Does the State own the "lands under water" adjoining the shore of these tidal waters? If so, then—

2. Has the Legislature the right to grant them for money to any person other than the riparian owners? If this may be done, then—

3. Has the riparian owners any private right which must be regarded by the State and its grantees in the use to which the lands are put; and to what extent are they limited by them? If they are limited to public uses, then—

4. What classes of uses are for this purpose considered public; and what are the qualities which give them their public nature; and upon what terms may the lands be used for the several classes of public uses respectively?

The form of the questions submitted would certainly admit of direct answers without an examination of several of these points, but I have felt that by so treating it, I should fail to answer the real meaning of your inquiry, and I have therefore stated them as above for the better understanding of the extent of the questions, and of the

effect of the answers. I have used certain terms in their strict legal significations, and to prevent confusion, the term "riparian owner" must be understood to mean, the owner of the bank above high water mark; the word "shore," the land between high and low water mark, upon which the tide ebbs and flows; and "lands under water,' the lands covered by water lying below low water mark.

The first question as I have stated it, need not detain us. The State does own "the lands under water" adjoining the "shore" of these tidal waters. This question is *res adjudicata*, authoritatively settled in our own and in the Federal courts; and though the lands were formerly claimed on behalf of the proprietors, the fact that the *title* is in the State is not now seriously disputed by any one. 1 *Halsted*, 1; 15 *Peters*, 367; (*Gough* v. *Bell*, 1 *Zab.* 158, 2 *Zab.* 441, 3 *Zab.* 624); 1 *Dutch.* 428.

The answer to the second question. as to the absolute right of the Legislature to grant these lands to any person other than the "riparian owner," seems to me to be equally clear. A simple brief of the title of the State, viewed in the light of settled principles, will serve to illustrate it.

In the year 1664, what is now the State of New Jersey, was granted by Charles II. of England, to his brother, then Duke of York. Under the terms of the grant, the Duke of York was invested, not only with the right of property in the soil of the country included in the description, but also with the powers and rights of government over it, carrying with them all the prerogatives of sovereignty.

The royal title to the things granted, whatever may be thought of the principles upon which it was first assumed, and afterwards maintained, is the same title under which we hold all our real property: and must of course be considered good.

These things were of two general classes, the rights of property, which passed under the grant of the land, and the sovereignty, with its accompanying rights, which passed under the grant of government. The title to the soil of the tidal waters of the country, where the tide ebbs and flows, was by the common law of England in the King, as one of the "*Jura Regalia*" or rights of the Crown, by reason of and for the exercise of sovereignty; and as such, it passed to the Duke of York, not under the grant of the property, but under the grant of the government.

The Duke of York afterward granted all his rights, both of property and government in East Jersey, to Berkley and Cartaret, who, in turn, transferred them to the proprietors. In the year 1702, the proprietors surrendered to Queen Anne all the rights of government held by them, reserving, however, the rights of property. The title to the soil of the tidal waters was not within the reservation, but passed by the surrender of the government. Thus, while the title to the uplands of East Jersey remained in the proprietors and their grantees, the title to the soil of the tidal waters passed again to the Crown of England.



Since Magna Charta, however, the title in the Crown by reason of sovereignty, was held in trust for the whole people, for the purposes of common defence and public safety, subject to certain common rights, including that of navigation. Held under these restrictions, the King could grant only for public uses, but Parliament, representing the people, could, in the exercise of their unlimited power of government, with the assent of the King, dispose of the land absolutely.

When, by means of successful revolution, New Jersey, with her sister States, had cast off the authority of England, the control of these waters, with the title to the soil under them, vested with the other sovereign rights, in the sovereignty of the State—as they had previously been in the crown of England—for the benefit of the people, for the same great public purposes, and subject to the same common rights.

The actual title then being in the sovereignty of the State, and the usufruct, or right to the benefit in the people, the control of the lands, and the right and the power of disposing of them, is in the Legislature, which represents at once the sovereignty and the people—subject, however, to the restrictions of the Federal and State constitution, and to the obligations of that natural law which lies at the foundation of all government. Thus uniting in themselves every element of title in these lands—dominion and property, possession and use—the naked power of the Legislature to sell and grant them to any person, natural or artificial, whether it be to the owner of adjoining land or to a stranger, cannot, I think, be successfully denied.

But the grantee of the State will, of course, take the lands with all the servitudes and limitations as to use, to which they were subject in the hands of the State, by reason of any easement or right in or over them vested in any other person; and therefore the question remains: "Has the "riparian owner" any private rights which must be regarded by the State in the use to which these lands are put

and if he has, to what extent are the State and its grantees limited by them?

I have purposely used the expression "*private* rights," because (within the limits of constitutional restriction) the Legislature has the power to regulate the "*common* rights" of the public; and any right which is to limit the action of the State in regard to the use of their own lands, must be a *private* property right, and as such, under the protection of organic or constitutional law. The common rights of air and prospect, of fishing and internal navigation, are not the subjects of compensation or damages to individuals; but, subject to the legislative control, they may be regulated and restricted, and, perhaps, destroyed for the public benefit.

Has the "riparian owner" in East Jersey then, by reason of his ownership of the upland, any private rights in or over the lands in front of him covered by tidal waters, and owned by the State?

This question, involving in its decision interests the most weighty, is not directly settled; but the principles which must govern its solution have been the subject of consideration, and, to some extent, of judicial decision in the highest courts of the State. It is the conflict, between the inferences from these decisions and the strict principles of the common law of England, which has surrounded the question with difficulty.

If it is to be settled by the common law of England, it cannot be denied that the land of the "riparian owner" extends only to the high water line on the "shore" of tidal waters, and that his *property* rights are limited by his boundaries. We have already seen that the title to the lands below high water line—though derived through the same person as the title to those lying above that line—had its origin in a different right, and is governed by different principles. The one was held as private property, the other as a sovereign prerogative, for the purposes of government; and there is certainly nothing in this situation which would enlarge the limits of the private estate, and give to the owner any special rights in the domain of the sovereign adjacent to it.

But it is authoritatively and finally settled that the common law of New Jersey differs, in some material respects, from that of England in relation to this question.

The case of *Gough* vs. *Bell*, before referred to, the leading case on the subject in our State, was three times argued in our courts, and during its progress no less than eight justices of our Supreme Court



and two of the judges of the Court of Errors delivered w opinions upon the questions involved. The particular point decided was merely that, where the "riparian owner" had ac reclaimed the land in front of him over which the tide flow docking out and filling in, thus pushing the high water line fo he had, by the common law of New Jersey, in the land thus re from the sea, a title under which he could recover in an ac trespass against the person to whom the same land had been quently granted by the Legislature of the State.

Of the fourteen judges who, in the Supreme Court and Co Errors, voted on this case, Justice Randolph alone maintain application of the English law, and denied the title of the "ri owner" even to the land actually reclaimed by him; the other united in recognizing his title, though they differed to some ex to the principles upon which it rested; two of them held that common law of New Jersey, the title of the "riparian owne tended by virtue of his *grant*, to low water, instead of being rest as by the common law of England to the high water line. But t jority of the Court of Errors, as well as of the justices of the Su Court, rested their decision upon the ground substantially that, the naked title to the land below high water line was in the yet the "riparian owner," under the local common law, estab by immemorial usage of the people, and recognized by repeated lative enactment, had, in the absence of legislative restricti right, by reason of his adjacency to the tidal water, to establ connection of his land with the water, by docking out and reclo the "shore" in front of him, over which the tide ebbed and flo

This, then, is the common law of New Jersey, as established courts of last resort.

It may be said that this case established only the single fa Gough's landlord had title to the wharf which he had built, as a Mrs. Bell, who was the heir of a grantee of the State; but I t must be admitted that, in addition to this, the case establishe the legal force in New Jersey of the principle upon which necessarily dependent. This principle seems to have been fully nized and affirmed by the Legislature in the passage of the g wharf act of 1857 (Nixon's Digest, p. 910), and I have been th ticular in stating it as a clear foundation for the legitimate dedu therefrom.

The settled rights of "riparian owners" on the tidal wa

East Jersey rest upon this case, and they are directly adjudicated and established only to this extent; but assuming as we are bound to do, the law of this case to be the law of New Jersey, then it must follow, directly and of necessity, that the "riparian owner," who has, in derogation of the original law, the right, by reason of his adjacency to the tidal waters, to encroach upon, take possession of and fill up the "shore" belonging to the State as far as low water line, for the purpose of establishing a connection with the water, must have some right to the enjoyment of the water, which he is thus allowed to reach. If his right upon the "shore" was his by virtue of his grant which extended his line to low water, this inference would perhaps not follow, for then his right might still be said to be limited by his boundary and to carry no inference beyond it; but the very fact that the local common law of the State, takes in his favor, this departure from the principles of the English common law, and allows him to advance, over land to which he has no title, to the water beyond it, presupposes that his rights are not limited, in this respect, by his boundaries, but that, by this very local common law, they extend to and are to be exercised and enjoyed upon the water which he is thus permitted to reach.

And these rights of the "riparian owner" are not *common* rights, for they do not belong to his neighbor, who lies behind him on the main land, nor are they mere rights of adjacency to land belonging to the State, for mere adjacency to a mud flat belonging to the State lying inland would give no right in or over it; they are therefore *private* rights of the "riparian owner" in the lands of the State lying in front of him beyond the "shore;" which rights are his by the local common law of the State by reason of his adjacency. It must be admitted, indeed, that these rights, extending beyond the "shore," while they are not in accordance with the common law, and the current of decision in many of the States, are not directly established here. They rest in opinion only, and are dependant upon the strict inference from the principles upon which the judgment in *Gough* vs. *Bell* seems to be founded; but they cannot be gainsayed by a mere reiteration of the common law of England, or a recital of the decisions of other States; the simple answer remains, such is the common law of New Jersey.

The view taken seems, as has been said, to be sanctioned by the passage of the wharf act of 1851 (*Nixon's Digest* 910) which recognizes the right of the "riparian owner" to reclaim and cross the



"shore" and provides terms upon which he shall be permitted t
vance beyond it; and the case of the *State* vs. *Jersey City*, (1 *Du*
525) decided by the Supreme Court as late as 1856, assumes tha
owners of lands adjoining the "shore" have water rights whic
of taxable value. These rights beyond the "shore" are how
rights of enjoyment only, and not of encroachment, except so f
they are exercised by license under the general wharf act, or
special grant from the legislature; they arise not from the mer
jacency of the State's land *as land*, but from its adjacency as
*covered by navigable water;* and they consist only in the enjoyment
peculiarly as such, and are confined to uses naturally incident
the right to occupy the shore, such as the right of passage and
ing, of egress and ingress to and from, and the general use o
docks and wharves which the "riparian owner" may have
structed. Any pretence of a right to encroach is at once destroye
a grant of the land by the State.

Such rights are not inconsistent with the ownership of the
by any other person, nor with the use of it and the water c
ing it, for any purpose which does not materially injure or de
them. The absolute right of the State to grant to a stranger
firmed by the Supreme Court (1 *Dutcher*, 525), and by Judge C
before whom, in the Circuit Court of the United States, in 1853
old controversy of *Gough and Bell* arose in a new form; and the
granted may be used without compensation for any public or pr
purpose, not inconsistent with these rights of enjoyment in the
parian owner;" rights which carry with them neither ownership
session nor exclusive use. I am not unmindful of the fact tha
wharf act of 1851, above referred to, has been thought to opera
a grant to the "riparian owner" of an exclusive use in these la
but I am not able to see how this view is justified under the p
sions of the act, nor why it may not be repealed at the will o
Legislature, as far at least as relates to privileges to be enjoy
special license from the freeholders, not yet acted upon.

The rights of the "riparian owners," however, to the extent
anteed by the local common law, are rights of *private property*
may not be destroyed, or materially injured, for mere private purp
with or without compensation. Governments were instituted fo
protection of private property, and may not be perverted to it
struction; any attempt, therefore, to take away or destroy the p
erty of one man for the private benefit of another, by an exerti

legislative power, would be void, as inconsistent with the purposes of government and contrary to natural law.

But all governments are possessed of the power to appropriate the private property within their jurisdiction for public use, by virtue of what is called the right of "eminent domain," which consists in the right to appropriate, to the necessities, of government the property of the citizen, for whose benefit government was established and is maintained. "Public uses" are such as accomplish the direct purposes of government, and thus benefit the whole people without reference to individuals or classes. Government is established not to give rights but to protect them; human life with all its natural relations is the gift of Heaven; liberty is an inherent right of man, and private property should be the reward of personal exertion; government bestows none of these; its immediate object is to provide for their safety and enjoyment.

"Public uses," then, for which we may invoke the power of "eminent domain," are not such as serve merely to increase the wealth of a state, they are rather those which tend to insure the safety of the government, the liberty of the citizen, the security of life and property, and to provide those great facilities of inter-communication and intercourse which are necessary or valuable for their enjoyment; thus we include among these uses, together with fortifications, arsenals, post roads and the like, the protection of the great interests of commerce and the construction and improvement of the great highways of internal intercourse and trade.

Confined within these limits, "public uses" will be seen to divide themselves naturally into two great classes, the one comprising the essential interests of governmental strength and public safety, upon which the government itself acts directly; and the other, those objects, which more remotely affecting the public welfare, are usually committed to the conduct of private enterprise, under the regulating supervision of the government.

To this division I shall again call your attention, for though it is rarely considered in the application of the power of "eminent domain," it should not be lost sight of in examining the subject before us.

"Riparian rights," in common with every other kind of property in the State, are liable to be impaired or taken for public uses, by virtue of this superior authority which resides in the government, to be exercised for the common benefit of the whole people; all property is held under these conditions, and, but for the restricti
our constitution, might have been taken for these "public uses"
ont compensation.

Consequential injuries to property are not the subjects of com
tion or damages from persons acting immediately in behalf of the
for the public benefit, and clothed with the immunity of the sove
Injuries of this kind are those which affect the property
person by reason of something done on the property of anot
where a man building a dam on his own land, overflows the pr
of another; thus if the "riparian owner" had no right in these
of the State, any injury to his land on the upland from the pub
by the State of its own property would be a consequential inj
the upland, and not the subject of compensation; but these ri
the "riparian owner" in the "lands under water" are them
property, and their destruction is a direct and not a consequen
jury.

The rights of the "riparian owner" to the enjoyment of the
domain lying in front of him, are then rights of *private* pro
which cannot be taken without compensation for ordinary "
uses." I use the expression ordinary public uses, because
riparian rights are, I think, in their very nature themselve
ject to that class of "public uses" which have been spoken
the peculiar objects of direct governmental action. The log
to the lands covered by tidal waters was held by the cro
England, as a prerogative of sovereignty for the very purpo
public defence and safety, for these very ends the trusteeship
public domain existed, and it was in this essential quality
differed from an ordinary right of property; the title to the la
question came to the sovereignty of the State of New Jersey f
same purpose, and, to the extent that it is in the sovereign
governed by the same principles; the conclusion then is reaso
if not absolutely imperative, that any local common law, growi
of a modification of the common law, in relation to the public do
to suit the conditions and exigencies of a new colony, and the
ing of a new empire, grew into recognition, always subject t
great governmental prerogatives exercised for the purposes of
mon defence and public safety; and that the "riparian rights"
first recognized by the local common law, and have since been
tained, expressly subject to them. Thus it follows, that these
over the property of the State are held, subject, as a conditi

their existence, to the use of the public domain for the governmental purposes of defence and public safety; and the use of this domain for such purposes would be in no sense a "taking" of them.

But for the extinguishing of "riparian rights" for the benefit of any of that class of "public uses" which, while they are public in the sense that they ultimately benefit the community, yet are the subjects of private enterprise, and the sources of private profit, the power of "eminent domain" must be resorted to.

The conclusion then is, that the legal title to these "lands under water" is in the State of New Jersey, as part of the public domain.

That the "riparian owner" has rights over them, growing out of his adjacency to the navigable waters by which they are covered; these, however, are rights of enjoyment only, and not of possession or encroachment; and will prevent the free use of the lands only for purposes inconsistent with them.

That the Legislature, at once the representatives of the sovereignty of the State and of the people, may grant these lands to any person, but the grantee will take them subject to the rights of the "riparian owner."

That these rights, are rights of private property and cannot be taken for private uses.

That in their nature they are themselves subject to the right of navigation and the great public uses for defence and public safety, (fortifications, arsenals, break-water and light-houses, are examples of this class of "public uses").

That they may be taken for other "public uses," upon compensation rendered, (turnpikes, railroads, canals, ferries, public basins, docks and wharves, are examples of these other "public uses").

These lands, then, are the public domain; the riparian rights over them are private property. The State may use its public domain for its great governmental purposes, without compensation for the "riparian rights," which are themselves subject to these purposes.

The Legislature may grant it to whomsoever they will.

If the grantee be the "riparian owner," he may use it as he pleases, for he will unite in himself at once the State's title and his own restricting rights.

If the State grant to a stranger, the grantee may use it, without compensation to the "riparian owner," for any purpose, public or private, not inconsistent with such owner's rights of enjoyment, but he may not destroy these rights for mere private purposes.

If it is desired to authorize individuals or corporations to make use



of the public domain for public purposes, the "riparian rig
be taken and extinguished by the exercise of the right of em
main, upon compensation rendered.

The Legislature is the judge of the necessity of taking
property for "public uses" by virtue of the power of "em
main," but must exercise this discretion within the legal limit
uses. In the exercise of its power the distinction betwee
domain" and "eminent domain" must not be lost sight of.
mer is the right of the State in its own property, and may be
or disposed of for money; the latter is the power of the St
the property of the private citizen; this is a part of the so
and may not be sold or bartered. It is only to be used for
mon benefit, and can be granted to the purchaser of the "p
main" only to enable him to use it for public purposes.

These are the legal principles upon which this subject re
think, they are at once consistent with the interests of the S
the rights of private property. If the "riparian owner"
improve the State's lands in front of him, he may do so, a
advantage than a stranger, for he owns already a valuable
and should he purchase of the State, he may use for any pur

If he is unable or unwilling to purchase, then the State may
the more enterprising stranger, who will use them for any p
public purposes, which do not interfere with the rights of the
owner," while for public purposes, which may so interfere, t
of "eminent domain" may be invoked to extinguish the r
rights, for reasonable compensation. Thus the "riparian o
fairly compensated for all he may justly claim as propert
the same time, the progress of public improvement is not im
the will of the timid or the selfish. It would not be wise,
were just, to disregard the rights of the "riparian owner,"
of a stranger, for the State's grantee becomes himself the
owner," and if the value of his grant may be destroyed in
subsequent Legislature, the disposable value of the "public
will be sensibly lessened. I am called upon however, only
the absolute rights of the State as they seem to me to exist,
tions of policy in their exercise are solely for the judgme
Legislature, and they will be guided only by those consi
which should govern the representatives of a just, though
sive people, dealing with their own citizens.

GEO. M. ROBE

March 15th, 1867. *Attorney*

OF THE GENERAL POLICE.

Stock to be advertised at public sale.

SECTION 4. In case said stock is not claimed and all just charges are [not] in accordance with this act satisfied within thirty days, the person having said stock in charge shall advertise the same at public sale, by not less than three written or printed notices, posted for at least ten days previous to said sale in three conspicuous places in the district in which said stock was taken up, at the expiration of which time they shall proceed to sell the same, the proceeds of which sale, after deducting all just charges, shall be deposited with some justice of the peace in said county, who shall hold the same for one year, if no sooner claimed by some person who shall prove to his satisfaction that they are the real owner of said stock; if not so claimed, it shall be subject to and paid over on the order of the clerk of the school district in which said stock was taken up, to be devoted to the school purposes of said district.

Proceeds of sale shall be deposited with some Justice of the Peace, and if not claimed, paid over to Clerk of School Dist.

*Passed at Dover, March* 28, 1871.

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## CHAPTER 72.

AN ACT for the Protection of Fishermen.

*Be it enacted by the Senate and House of Representatives of the State of Delaware in General Assembly met:* That

Unlawful for non-resident to catch fish without license.

SECTION 1. It shall be unlawful for any person, not being a citizen of this State, to catch or take fish of any kind in Delaware bay or river, or any of the creeks emptying into the same within the limits of this State, without first obtaining from the Clerk of the Peace of one of the counties a license therefor, which license shall be granted on paying to the Clerk, for the use of the State, twenty dollars, and shall be in force for one year from its date, and shall be confined to one boat or vessel named therein: *Provided* that transient vessels may catch fish for their own immediate use. If any master of a boat or vessel, or other person, shall violate this section, he shall be deemed guilty of a misdemeanor, and shall pay to the State a fine of fifty dollars, and the boat or vessel used in such violation of the law, with all her tackle, apparel and furniture, and all her implements for fishing, gill-net or seine, or any contrivance for taking fish, and anything so taken shall be forfeited and may be seized and de-

Fee for license, $20 for one year.

Proviso.

Violation of this act a misdemeanor.

Penalty.

DE14627

tained for trial by any officer or person. Such trial may be had before any justice of the peace, and if condemned, the property seized shall be sold by his order, and the proceeds, deducting costs and charges, be equally divided among the captors: *Provided* that an appeal shall be allowed from the judgment of the justice, if applied for within ten days, to the Court of General Sessions of the Peace and Jail Delivery, on security being given by bond and sufficient surety, in the full value of the property condemned, conditioned to be void if such judgment be reversed by said court. Upon such appeal a jury trial shall be had on the issue whether the boat or vessel seized has been used in violation of this chapter, and if it be found in the affirmative, the court shall affirm the judgment of the justice; otherwise such judgment shall be reversed and the property seized shall thereupon be sold or released accordingly. The Attorney General shall appear for the captors and defend the appeal. Any justice of the peace shall, upon affidavit made that a boat or vessel is violating this chapter, issue his warrant to the sheriff or constable, commanding them, or either of them, to seize and detain such boat or vessel, and any sheriff or constable shall also have power under this act to make said seizure and detention without warrant, and in the performance of his said duty may, if necessary, summon a *posse comitatus*, armed with fire-arms and ammunition, and use the same, if forced to do so, in execution of the law, and if maiming or death follows such use of arms, it shall be considered justifiable, and the officer and his posse be free from legal responsibility. He may also require the assistance and use of any other boat or vessel, they receiving compensation as hereafter provided. It shall not be necessary that the affidavit shall state the name of the vessel, or of her master; such names may be inserted in the proceedings after the seizure. The sheriff or constable shall be entitled to five dollars per day, and each person summoned by him, and rendering him aid, two dollars per day, and for each boat he may require for his assistance a just compensation, to be paid out of any property seized and condemned, or if not condemned, the officer or officers will be paid by the State. If any owner, master, or person belonging to, or on board of any boat or vessel, shall oppose or resist the sheriff or other person in the execution of such warrant, or shall resist any lawful seizure of such boat, vessel, or other property, such person shall be deemed guilty of a misdemeanor, and shall pay to the State a fine of one hundred dollars. It shall be the duty of the Attorney General to cause any person indicted under this chapter, and who is out of the State, to be demanded and brought to trial.

Trial before Justice of the Peace.

Appeal, when.

Jury trial.

Attorney-General.

Justice to issue warrant.

*Posse Comitatus.*

May require assistance.

Fees of Sheriff and constable.

Penalty for resisting officer.

Attorney-General's duty.

DE14628

OF THE GENERAL POLICE.

Unlawful to catch fish and put them on board of a vessel.

SECTION 2. It shall be unlawful for any person, not being a citizen of this State, to catch or take fish in any river, creek, or pond within this State, and put them on board of any boat or vessel not wholly belonging to and owned by citizens of this State, and the violation of this section shall subject the party offending to the same forfeitures and penalties, to be prosecuted in the same way, as is provided in Section 1 of this chapter.

Gill seine or net.

SECTION 3. It shall be unlawful for any person to lay out, float, or set any gill-seine or net, or any contrivance to catch shad, nearer than one mile from the shore, or mouth of any river or creek within the limits of the State, after the fifteenth day of June in each year, under the same penalties and forfeitures of Section 1 of this chapter.

Penalty against Sheriff for neglect or refusal.

SECTION 4. If any sheriff or constable refuses or neglects to serve the warrant issued by the magistrate for the execution of this law, or if any or all the posse he may summon to his assistance refuse to aid him, it shall be considered a misdemeanor, and he or they shall forfeit and pay to and for the use of the State the sum of ten dollars, to be collected as other fines and penalties are collected, and if any boat or boats shall refuse to render the assistance the sheriff or constable or other person may demand, they, or each of them shall forfeit and pay the sum of five dollars, and forfeit the protection of this law.

Citizen shall not get out a license for non-resident

SECTION 5. It shall be unlawful for any citizen of this State to get out a license for a citizen of another State, or in any way or manner combine with a citizen of another State to enable him or them to evade this law directly or indirectly, either by becoming a partner or assuming the ownership of nets, seines or boats, and giving to the citizen or citizens of another State the control of, or profits arising from the fishing of said citizen or citizens of another State, and in case a citizen of this State should so evade the law, it shall be considered a misdemeanor, and he shall forfeit and pay the sum of one hundred dollars, to be collected as other fines and forfeitures are collected, one-half of which shall go to the State and the other half to the informer after its collection.

License to be produced

SECTION 6. Every person who shall fish in the waters of this State, not a citizen thereof, shall, on demand of any justice of the peace, sheriff, deputy sheriff, constable, or citizen within this State, produce the license thereof, and unless he shall do so, it shall be presumptive evidence that he has no license, and he shall be proceeded against as though he had none; but if, when arrested and proceedings advanced, it shall be found he has a license, but refused to show it on the above demand, he shall be fined five dollars for such refusal, to be collected as other fines and forfeitures.

DE14629

## OF THE GENERAL POLICE.

Shad not to be taken or sold between certain times

SECTION 7. It shall be unlawful for any person to have in his or her possession, or expose for sale, any shad caught in the River Delaware or its tributaries, within the jurisdiction of this State, above the southern point of Reedy Island, between the eleventh day of June and the tenth day of August in any year, under a penalty of five dollars for each and every shad so had in possession or exposed for sale, to be recovered in an action of debt, with costs of suit, by any person or persons in his or their names, before any justice of the peace in the county, or where the defendant resides or lives; and in all prosecutions or proceedings under this act it shall not be necessary to file any statement of demand or to comply with the formalities required in penal actions, and in all such actions both parties may be sworn. One-half of said penalty shall be paid to the informer.

Seine or net of a less mesh than ten inches prohibited.

SECTION 8. It shall be unlawful for any person to make use of any gill-seine of a less mesh than ten inches for the purpose of catching fish in the River Delaware, within the jurisdiction of this State, above the southern point of Reedy Island, between the tenth day of June and the tenth day of August in any year, and he, she, or they so offending shall forfeit or pay the sum of one hundred dollars, together with costs of suit, for each and every offense, and one-half of said penalty shall be paid to the informer.

Nets, &c., not allowed between sunset on Saturday and midnight of Sunday.

SECTION 9. It shall be unlawful for any person to cast, draw, fasten, or otherwise make use of any net, trap, device, or contrivance for the purpose of catching fish in the River Delaware, or of the bay thereof, within the jurisdiction of this State, between the hours of sunset on Saturday and midnight of Sunday, throughout the year, and he, she, or they, so offending, shall forfeit and pay the sum of fifty dollars, together with costs of suit, for each and every offense, and one-half of said penalty shall be paid to the informer.

Fines for the use of the State.

SECTION 10. All fines and penalties collected under this act, after deducting the amounts due to the informer and the costs of the suit, shall be paid to the State Treasurer for the use of the State.

*Passed at Dover, March 28, 1871.*

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# THIRD ANNUAL REPORT

OF THE

# Commissioners of Fisheries,

OF THE

## STATE OF NEW JERSEY,

*For the Year 1872.*

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TRENTON, N. J.:
THE STATE GAZETTE—MURPHY & BECHTEL, BOOK AND JOB PRINTERS.

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# REPORT.

*To His Excellency Joel Parker, Governor of New Jersey:*

SIR:—The undersigned, Commissioners of Fisheries of the S
of New Jersey, respectfully present this their third annual repor

The main propositions made in our last report to your predece
having been approved by you, were submitted to the Honor
Legislature of our State, and promptly acted upon, the mem
of that body, without a dissenting vote, passing the modificatio
existing laws as suggested by your Commissioners. By an
approved by you February 28, 1872, the clause requiring the
currence of Pennsylvania in such parts of the bill approved M
15, 1871, as conflicted with the compact of 1783, was repealed,
given to your Commissioners and their assistants the power
to protect the fisheries and enforce the laws. The section decla
the mode in which fish baskets, and other equally fatal fixed engin
destruction, should be destroyed, was slightly modified and n
concurrent with the new law passed by the Pennsylvania Legisla
during its previous session. The experiments of the Commissio
of Fisheries in Connecticut having shown beyond all doubt, tha
means of artificial propagation our nearly exhausted streams c
be replenished with shad, by an act approved April 4, 1872, $3
were appropriated for the purpose of propagating shad in the D
ware river, provided a similar amount, for the same purpose
appropriated by the Legislature of Pennsylvania during its
session. A concurrent act was promptly passed in Pennsylv
but being encumbered with other matters, some of which did
meet the approval of the Governor of that Commonwealth, he ref
his approval, and the bill failed to become a law. This was n
to be regretted, as upon the passage of this bill, aid of the
valuable character was at once voluntarily offered to your Com
sioners from various quarters, which, had the requisite appropria
been made by Pennsylvania, would have been gladly accepted,
would have greatly furthered the work. We would especially
the kindness of the Trenton Water Power Company, who, thro
Mr. Charles Hewitt, offered to place at the disposal of your Com
sioners the ground upon which the work of propagation coul
carried on.

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It is noteworthy that the great interest in fish culture which has engaged public attention within the last decade, so far from diminishing has steadily increased, and bearing its legitimate fruits by its practical application to the restocking of our rivers and lakes depleted, and in some instances nearly exhausted, of valuable varieties of fishes, which were formerly so plentiful as to [illegible]

[illegible] years [illegible] in the head waters of the Savannah river [illegible] Alabama, where it is said they now abound. They [illegible] also to abound in the Onachita river, in Arkansas, the past few years. When and by whom they were placed in the last named river does not yet appear.

In 1867, that prince of fish culturists, Seth Green, of Mumford, New York, by a process strictly his own, began the hatching of shad by the million, and turning them into the Connecticut and Hudson rivers, where in due time they returned in numbers seven-fold greater than at any time in fifty years, and the prices ruling proportionately less.

In the summer of 1871, Green took the fry of ova hatched in the Hudson, and planted them in the Sacramento river, in California.

In the same year he placed a number in the Genessee river, and as young shad six and seven inches in length were taken the past season at the mouth of that river, it is *prima facie* evidence that they hybernated in lake Ontario, and did not run to salt water as shad usually do.

During the past summer nearly a million of shad fry have been distributed in the head waters of the Alleghany, the White river, at Indianapolis, the Mississippi, at St. Pauls, and the Platte river, at Denver.

The black bass, as stated in a previous report, transported in the tank of a locomotive from the Ohio to the Potomac river, where, during the rebellion, as little fishing was done, they multiplied greatly, have since been carried from that river and put into the Susquehanna, Schuylkill and Delaware, where they are said to be increasing rapidly.

From these successful plantings, we feel warranted in recommending their introduction into every lake, pond and stream in our State, not already abounding in valuable fishes, such as the speckled trout, on which they would prey.

At a meeting of the Commissioners of Fisheries of the various States held in Boston, June 25, 1872, it was decided that the efforts of the present year should be mainly directed to the introduction of sal[illegible] at once made by Prof. S. F. Baird, and it is [illegible] Commissioners.



One-quarter of a million will be taken in charge by your Com[illegible] sioner in charge of non-tidal waters, and when hatched, placed in Delaware river.

For the propagation of salmon, the king of fishes, this stream [illegible] sesses unequalled advantages. Not a dam or impediment of any [illegible] which cannot be readily surmounted by them exists within the [illegible] district of the State. Ample spawning grounds are found in the u[illegible] portion, below the Lackawaxen dam, and this structure will be re[illegible] of advantage than otherwise to our citizens, by retaining these f[illegible] within our own boundaries. The salmon, when hatched, wil[illegible] placed in a tributary of the river, where they will pass thr[illegible] the stages known as parr and smolt. As has been found by repe[illegible] experiment, a portion will then go to sea, returning as grilse, w[illegible] the remainder will not leave until the ensuing season, when all[illegible] depart, and soon return as salmon.

From its vicinity to the fish-farm, at which the spawn wil[illegible] hatched, the pureness of its water, and freedom from predatory fi[illegible] the Musconetcong creek, at the reach where it divides Hunte[illegible] and Warren counties, has been chosen for the temporary sojour[illegible] the salmon.

A few spawn, (about six thousand) of the Sacramento salmon [illegible] been received from California, which have hatched, and are now d[illegible] well in the hatching-house at Troutdale, near Bloomsbury, [illegible] These are, however, intended for the Susquehanna river, to w[illegible] they will be sent in January, 1873. They are the result of the [illegible] periments made by the Rev. Mr. Stone, now stationed upon [illegible] McCloud river, California, by order of Prof. Baird, and it is c[illegible] dently expected that in future, spawn in unlimited numbers ma[illegible] derived from this source. The Sacramento salmon, (S. quinnat[illegible] habit streams whose average temperature is far higher than th[illegible] any other waters in which the members of other species of salmo[illegible] can exist, and is therefore more peculiarly adapted to our sout[illegible] rivers.

The take of the fisheries of the Raritan river has not been e[illegible] that of either 1870 or 1871. Four smelt nets and five shad s[illegible] have been in operation, though with but small success. These a[illegible] located below Boundbrook, the dam of the Delaware and Ra[illegible] Canal Company, near that place, completely preventing the asce[illegible] any anadromous fishes above that point. The so-called fish-w[illegible] the dam is of no possible use, and at the time when most nee[illegible] i.e., when the water is low, is entirely closed. We have bee[illegible] informed by an employee of the company that the worthlessness o[illegible] fish-way is well known, shad and other fishes having been freque[illegible] seen by himself and others, endeavoring, without success, to as[illegible] through it to the upper waters of the river. The question of [illegible] ways is a serious and as yet undecided one, there being bu[illegible] known through which it is even *claimed* that shad can ascend.

salmon, alewife, and ordinary fresh water fishes can be easily led over any ordinary dam, but the shad, far more timorous, require special and careful means to induce them to make the ascent.

No improvement has taken place in the cat-fish fishery, formerly a lucrative branch of industry, near the city of New Brunswick, the waste material discharged upon their spawning grounds from the gas works, india rubber, and other factories, having, it is feared, entirely driven them away. It is believed by your Commissioners that no spawning grounds for the shad exist in the Raritan river; but that the stream is supplied with young through the Delaware and Raritan Canal. These fishes are received into the feeder at Bull's Island, upon the Delaware; a large percentage are destroyed by passing through the locks, and many are killed by the mills at Lambertville, eleven wheels being supplied by the feeder, many of which have, during the past season, been in operation both night and day. Of those which escape part are again discharged into the Delaware at Bordentown, while the remainder pass through the canal to its outlet at New Brunswick; by this means is the Raritan stocked. The number observed in both canal and feeder during the present season has been greatly in excess of that of any previous one. It is feared that the substitution of a permanent dam for the temporary one formerly existing at Bull's Island, will have the effect of driving a still greater number of young shad into the feeder. A fish guard placed at the mouth would probably be of benefit. No direct injurious effect upon the fisheries is anticipated from the dam itself, as a passage one hundred and twenty feet in width will be left open in the centre through which shad can readily ascend.

Some work has been done during the past season upon Wells' Falls, below Lambertville, but nothing affecting the fishing interest has transpired. The extreme low water during the month of April and May caused a marked difference in the catch above and below Scudder's Falls. During the day the shad collected below the falls in large numbers, their great timidity causing them to remain until after dark before attempting the ascent of the shute. Fishing below was, therefore, much more successful than above the falls, as may be seen by the following table:

BELOW.

| *Name of Fishery.* | *Length of Net.* | *Catch.* |
|---|---|---|
| Taylor's Point, | 200 fathoms, | 7,000 |
| Swamptown, | 140 " | 5,000 |
| Long Bar, | 140 " | 4,000 |
| Emily's Island, | 200 " | 6,000 S. |
| Smith's Island, | 120 " | 7,000 S. |
| Moon Point, | 200 " | 6,000 |
| White's Island, | 100 " | no returns. |



ABOVE.

| *Name of Fishery.* | *Length of Net.* | *Catch.* |
|---|---|---|
| Keeler's Island, | 150 fathoms, | 900 |
| Hole in the Wall, | 75 " | 300 |
| Sand Gully, | 90 " | 1,700 |
| Lowlands, | 140 " | 1,659 |
| | 1,555 | 39,559 |

Not to weary your Excellency with minute tabular statem might state that the number of fisheries in operation in or the counties of Mercer, Hunterdon, Warren and Sussex is for The average length being 100 fathoms. Allowing twenty- to be taken per fathom, which, from careful examination of nous reports from our wardens we believe to be correct, 120,400 shad as the catch of the season of 1872. The which they were sold varied from fifteen to forty cents. ing thirty cents as a mean, we have $36,120. As freque were made by parties owning private nets, and allowed by courtesy, and as numbers of shad were taken in the small sucker nets, from which no reports have been received, it is that the value of the entire catch above Trenton falls, w the large sum of $40,000. This, by artificial impregnatio be readily quadrupled without involving the fishermen in ac expense.

We take pleasure in announcing that through the act energetic measures taken by the wardens, fish baskets, brus and other fixed engines of destruction, have entirely disa from the Delaware river, within the jurisdiction of your sioners. Some opposition was made, and even violence, threatened by their proprietors, but sober second thoughts them the uselessness of opposing the law. Above the St however, numbers have been in operation, but as the dam a waxen presents an almost insurmountable barrier to the a anadromous fishes but little injury is done by them. The r been that the number of young shad seen descending the r been greatly in excess of that of any previous year, no imp being offered to their downward passage to the sea.

Your attention is especially called to a new and ingenious fatal method of capturing fishes, which has lately prevailed extent in the northern counties of our State. From the per tem with which it has been pursued, and the completenes arrangements, requiring apparatus involving some expense, lieved it is pursued rather by an organized company than by in enterprise. Cartridges of giant powder, a new and most explosive agent, are sunk to the bottom of the lake or stre or fifteen cartridges being frequently used,) and simultane

ploded by means of electricity. The result is the instant destruction of every living inhabitant of the waters within the radius of the force of the concussion. Not only are fishes killed, but also, as was shown by experiment in water owned by one of your Commissioners, turtles and aquatic insects, the latter valuable as food for our fishes. Even the eel, the most tenacious of life of our fishes, were instantly killed. The finer and more valuable fishes were taken and disposed of in our city markets, while the coarser varieties and smaller specimens were discarded. We have been informed that at least a ton of these rejected fishes, many of which would have, in a few years, afforded good and cheap food, were seen at one time at the outlet of the lake. Unfortunately, no law at present exists upon our statute book by which this wasteful process can be stopped, but it is hoped that this defect will be removed during the ensuing year. If not, speedy and utter extinction of our valuable food fishes in river, lake and sea will inevitably follow. Thus far in our State, only our purely fresh water fishes have thus been destroyed, but if allowed to be pursued with impunity, our herring, shad and other anadromous fishes will undoubtedly fall victims, and their rapid disappearance can be readily foreseen.

Another means of taking fishes which should at once be checked, is that of poisoning them with cocculus indicus (fish berries.) These are pounded into a pulp with water, mixed with dough, moulded into pellets, and thrown by handsful into a stream. The pellets are greedily devoured by the fishes. The first effect is a species of delirium or intoxication, speedily followed by death. We have been unable to positively ascertain any case in which death has followed in the human species from eating fishes captured by this means; but may not some of those cases of poisoning from fish food which are reported from time to time, possibly arise from this cause? The berries are, as is well known, poisonous to animals, as has been proven by the experiments of Orfila upon dogs, and it is important that even the *possibility* of danger from this cause be provided against. The ostensible object for which the fishes, mostly chub, (*Semotilis corporalis*) are taken, is as bait for other fishes upon the set lines; but we have every reason to believe that the larger specimens not unfrequently find their way to our markets. As an indication of the extent to which this method of taking fishes is employed, we might state that at least 200 lbs. of fish berries are annually sold in Belvidere alone. We had supposed that this method of fishing was prohibited by law, in our, as in adjacent States, but find that we were mistaken. A law prohibiting the capture of fishes with any device save net, line or spear, would cover this as well as the previously mentioned evil.

On entering upon their duties, your Commissioners learned that laws the most wholesome and stringent had been enacted and supplemented from time to time, for the regulating of fishing in the river Delaware, within the joint jurisdiction of Pennsylvania and New Jersey, but with no practical provision for their enforcement. To



accomplish this object they recommended the appointment of Wardens for this special duty, and under the authority of the a March 15, 1871 and February 28, 1872, your Excellency appo nine wardens, one for each of the counties fronting on the Delaware, viz: Sussex, Warren, Hunterdon, Mercer, Burlin Camden, Gloucester, Salem and Cumberland.

By the terms of the act of March 15, 1871, the said wardens to be furnished, at the expense of the State, with such applian in the judgment of the Commissioners having charge of that d ment should be deemed necessary. Whereupon the wardens four first named counties were to apply to the Commissioner in c of the northern department, and those of the five last named co to Commissioner Howell, in charge of the southern department

The water front of the southern department is considerably one hundred miles. Apart from the numerous established fisheries, a table of which is given in our first annual repor reach of the river is fished by over eight hundred drift nets, on of which number hail from New Jersey, the remainder from the of Pennsylvania and Delaware.

The latter class of fishermen are nomadic in their way of fi On the first appearance of the shad in the upper bay they int them with their nets of four hundred and fifty fathoms in l stretched across the channels. When later in the season the have succeeded in reaching the upper parts of the river, thei are reduced in length to from one hundred to three hundred fa thus endeavoring to keep pace with the successive runs of s

In view of the fact that the chief theatre of drift net fishi between the shores of Delaware and New Jersey, it was dee the highest importance by your Commissioners that the fishing of these two States should be in accord.

To accomplish this object, with the approval of your prede and furnished by him with a letter to the Governor of Del they visited Dover March 9, 1871. For the history of that vi its results, we respectfully refer you to our second annual Suffice it to say, the object of our visit was fully attained by the poration of three important measures in a bill then in co preparation, viz: a close time was established between Saturday and twelve o'clock Sunday night. The use of seines of less mesh than ten inches between the tenth of Ju the tenth of August, was prohibited. This last provisio in lieu of our bill, which prohibited the use of all seines mesh than ten inches within the period last mentioned, a made in the interest of the blue fish and tailor-fish fish The season for taking these fish commencing about the time th fishing ceases. Selling shad out of season was also interdicte The requirements that residents should pay five dollars a non-residents should pay twenty dollars for fishing in the Del

within their jurisdiction, was a discrimination over which your Commissioners had certainly no control.

It is true, the bill first introduced in the New Jersey Senate required drift-net men to pay five cents per fathom on their nets, on the equitable ground that as shoremen paid a tax on their fisheries as for real estate, and on their appliances as for personal property, so drift-net men should pay a consideration for the important privilege they enjoyed. A strong opposition, however, being made to it by this class of fishermen, and it appearing to be strictly a question of revenue, the obnoxious measure was stricken out, and it was the reprint of our bill thus altered, and which had just passed the New Jersey Senate that the Commissioners bore with them to Dover.

On the question of State bounds, of course, your Commissioners had no authority to treat. In view, however, of the difficulties likely to arise from the existing nature of the case, and as the readiest means of averting them, they did suggest that an agreement be be entered into between the two States similar to that now existing between Pennsylvania and New Jersey. This seemed to meet with favor, but the near approach of the adjournment of their Legislature precluded any steps being taken toward the consummation of so desirable an object.

The recent difficulty between the two States grew out of the attempt of Delaware to put into practical exercise her claim to exclusive jurisdiction over the entire breadth of the river within a circle the radius of which is twelve miles, measured from the court house at New Castle, by arresting certain New Jersey fishermen while fishing in the eastern or New Jersey channel, but within the said circle, without having first obtained license from Delaware.

It was a matter of sincere regret to your Commissioners that anything should have occurred to disturb the harmony existing between these two States, whose mutual interest at the present time demands entire sympathy and cordial co-operation.

It is, then, with infinite satisfaction that the Commissioners have learned that your Excellencies have agreed to refer the whole matter to your respective Legislatures for adjustment. With the legislation of Pennsylvania, Delaware and New Jersey in accord and properly enforced, we may hope confidently for the most beneficial results to the fishing interests of the river Delaware.

It gives us pleasure to be able to say, from information derived from the reports of the fish wardens, that the catch of shad and herring the past year, generally, has been in excess of the year before, and that the laws have been, with few exceptions, observed by our own fishermen, and realizing the fact, that these laws are intended for their good, acquiesce in their importance. It would appear, however, that a class of fishermen, chiefly from the purlieus of the city of Philadelphia, has given no little trouble. Collected in considerable force, they have defied our wardens, who were unable to meet the sudden emergency, either with suitable appliances or



sufficient force. When the extent of the reach assigned warden, and that much of the illegal fishing is done at ni considered, the office of warden will be held to be no sinecu

Unhappily, through the failure on the part of Pennsyl appoint special officers to enforce the law, our wardens had t onus of the duty upon themselves. A difficulty in the way o also confronted them.

Under the compact both States have jurisdiction from s in Article 2nd we find this language: "but that all capital a offences, trespasses or damages committed on said river, the investigation and determination thereof shall be exclusivel in the State wherein the offender or person charged with suc shall be first apprehended, arrested or prosecuted."

The conclusion arrived at by the foregoing languege, is: offender with his net stretched far over both sides of mid- can be arrested only by an officer of that State to which he to be nearest when arrested.

There being then no special officers from whom our warde receive co-operation, the Commissioner having charge of the department, waited upon His Honor the Mayor of the city delphia, and afterwards addressed to him the following lett

WOODBURY, N. J., June 19,

*His Honor Mayor Stokely, Philadelphia:*

DEAR SIR:—My call yesterday upon your honor may req ther explanation than the evident pressure of your duties p me to make at the time.

By the withholding of the Executive signature to the bi by both branches of your Legislature, Pennsylvania has a no Commissioners to look after her important fishing interes river Delaware. The New Jersey Fishing Commissioners, their special wardens, are endeavoring to enforce the exis current and salutary fishing laws of the two States. To they have had these laws now in force printed on a sheet lation among the fishermen, and for the guidance of the w the discharge of their duties. By their efforts, much illeg has been prevented, but a number of lawless men from have, (and still continue to do so,) defied our officers, and and in numbers for that purpose. As an instance, on Sun 26th, ult., Mr. Frederick Shinder, First Warden of Camde N. J., arrested two men from your city, while fishing in vi the Sunday close time, in the channel between Petty's Islan Jersey shore. He was set upon by a number of persons there evidently for that purpose, his assistants maltreated boat and men carried over to the city, where I believe the b held. The difficulty of identification prevented him, as it other wardens, from bringing the offenders to justice.

To prevent a repetition of such occurrences, which may lead to ious results, and for the better enforcement of the fishing laws, I constrained to wait upon your honor and obtain your aid, which ought could be rendered through your efficient harbor police pro- ly, to whom most of the fishermen are doubtlessly known.

This, with the enforcement of ordinance of 1858, prohibiting sale shad out of season, would have a salutary effect, and result even- lly in a large increase of this valuable food for the people. The dy sale of shad thus taken, is a powerful incentive to the infrac- n of the law. The importance of this subject is my apology for ing trespassed on your time yesterday, while occupied by your portant official duties.

With great respect, I am truly yours,

BENJAMIN P. HOWELL,

*Commissioner, &c.*

What steps were taken on the part of the city authorities either to press illegal fishing, or the vending of shad out of season, your missioners are unable to say.

As the bulk of the shad taken in the tidal portion of the Delaware to her great metropolis, Philadelphia, it behooves Pennsylvania to point fishery commissioners to took after her fishing interest.

N. D. Carman, Fish Warden of Burlington county, in his report, s, till the real object of his office was understood he was received dly by the fishermen. An appeal, however, to their intelligence l sense of justice soon secured for him better treatment, and the mission on their part of the necessity and importance of the legal trictions. In this county are five shad fisheries, employing eighty- ee men. Length of seines, seven hundred and eighty fathoms; rage depth, twenty-five feet; mesh, five inches. These fisheries rented and fished by non-residents, who manifested an unwilling- s to impart information. He did not succeed in ascertaining the ount of their catch the past season.

The number of drift nets from this county is 132, men 264, length nets from one hundred to one hundred and thirty fathoms, depth m 20 to 30 feet, mesh 5 to 5 1-8 inches, catch for the season 500 1,800 shad per net.

Owing to the clearness of the waters above Rancocas Creek little ing can be done in the day time.

Anchoring or staking of nets, prohibited by law, has been done asionally only.

Crosswick Creek has a clear passage for fish of ten miles. Its ters are several degrees colder than those of the river. It has eral tributaries in which trout and other fishes formerly abounded. ousands of the fry of shad are received into this creek from the er above, through the Delaware and Raritan feeder and canal.



Thousands die from injuries received while in the locks and contact with vessels.

Will not the canal company put an apron or screen acro mouth of the feeder, and thus divert the shad fry from it?

On the 25th of May last, a tow boat brought up thirteen f boats with all kinds of appliances for fishing, as drag nets, gill fyke nets, and lay-out lines, with 1,500 hooks to a line. By visitors every breeding stream was robbed of its inhabitants a fry left to perish.

Black's Creek, formerly well stocked with fish, has become less as a fishing place, from robbery during breeding seaso from defilement of its waters by gas tar.

One hundred acres of marsh attached to Biddle's Island, miles by ½ mile of the waters of English Creek having been b in as in ponds, two of the best breeding grounds for perch, catfi we presume he might have added for herring, have thus been dest Rancocas Creek, a broad, deep and beautiful stream, noted f clearness of its water, unobstructed for twenty miles, a resort earlier run of shad, because of the higher temperature of its w also a noted breeding ground. Here, too, the same compl made against these small meshed summer nets.

The bass, and other new and valuable fishes, could be intr here. The fishermen complain also of the practice resorte these summer net visitors of mowing off the so-called channe at low water, to bait the ground, and to facilitate the drawi their nets, thus depriving the fishes of their natural aliment, young of shad, herring and other fishes, of a refuge fro enemies, of which the striped bass or rockfish is the greatest.

Fishermen from Delaware, it is said on credible authority, (October 19th), engaged in fishing for young shad, the la which are salted down and sold as herring. Similar compla recently made by citizens of Pennsylvania, residing on the s the Delaware, to Col. Worral, late Commissioner of Fisheries State, but whose commission expired January 7, 1872, by lim

Mr. Carman advocates the idea of a time being establishe all may alike commence fishing operations, thus securing equal distribution of the shad through the whole length of t It would certainly be of great advantage to the dwellers a upper portion of the stream, but would be a very unpopular with those who have so long enjoyed a sort of monopoly of in the bay and lower part of the river by the obstructiv seines.

The same advantage may be attained, and be more abid strict observance of the Sunday close time, which, when has constantly proved beneficial by the increased catch at t fisheries for several days together in the early part of the week.

Mr. F. Shindle, First Warden of Camden county, re

number of gilling seines going out from his county to be about thirty, length of seine while fishing opposite its shore from one hundred to two hundred fathoms, depth from 40 to 50 feet, size of mesh 5 inches, catch to each net the past season from 1,000 to 2,000 shad. At the large shore fishery, Hugg & Howell, below Gloucester City, the catch has been quite good, better than for several years.

From what he can gather from the fishermen themselves, the legal restrictions are deemed proper and beneficial, and the law generally observed. Some have said that the increased catch on Monday paid better than if they had fished during the Sunday close time, as they had done heretofore.

As stated in another place, the Philadelphians were the only ones who caused him trouble. They boasted that no Jersey law could prevent their fishing in the Delaware. On one occasion they attacked Mr. Shindle, took his boat and men, beat them, threw one man overboard, and took the boat to the city, but afterwards stealthily restored it.

Having identified the leaders of the gang, he has instituted legal proceedings against them, and hopes that they will receive their merited punishment.

The State should provide the wardens with a small steam tug, well manned and equipped, by which means all such illegal acts would soon be suppressed.

H. V. Heritage, First Warden of Gloucester county, reports 83 gilling seines now in his county, length of seine from one hundred to three hundred fathoms, depth clear of float lines about 20 feet, 5-inch mesh.

The sentiment among the better class of these fishermen is favorable to the law, which has been, by them, well observed during the past season.

From the difficulty in reaching the length of his district, by reason of strong adverse tides, and the character of the fishermen from the opposite State, he and the warden from Camden county, were supplied on two occasions with a tugboat. Threatening demonstrations were made within his district, after the season had expired, on several occasions, by the same men who had given his colleague, Mr. Shindle, so much trouble. On the night of June 11th, he seized a net found fishing out of season, and within the bounds of Howell's fishery. The men escaped. The net, in accordance with law, was forfeited by two justices of the peace, and by their order was sold. On another occasion he detected three men fishing with a gilling seine after the expiration of the shad season. He made complaint before a magistrate and had them arrested. They were released on bail to appear at the September term. He went before the grand jury and made oath that, to the best of his knowledge and belief, they were fishing with a shad gilling seine. By law no seine of a larger mesh than three inches is allowed below the falls at Trenton, between the tenth of June and the tenth of



July. Shad gilling seines have a mesh of five inches. Satisf his nearness to the net that it was of that description, but as not swear positively to the size of the mesh, the grand jury f bill, and the supposed offenders escaped trial and *possible* ment. Those fishing in his county being all non-residents, e the Howell's two fisheries, he has not been able to ascertain th for the season. At Howell's two fisheries, employing 70 m seine 450 fathoms, the catch of shad the past season wa against 45,000 the season before; which excess may be ass typical of the increase at the other shore fisheries in the The same may be said of herring. At Howell's it was 1 1872 against 6,000 only in 1871, which was unusually poo tax paid by Howell's was $130. That by the others not asce

James S. Hannah, Fish Warden of Salem county, repor shore fisheries in Salem county, viz: at Helmo Cove, Carn and Salem Cove. They are fished by non-residents. He c of their unwillingness to impart information, or the catch o past season, and other statistics; much, however, may be fou lated in first report.

One hundred and eighty-five shad gilling seines go out fro county. Average length of nets while fishing in the ba fathoms; when fishing higher up in the river they are re about 325 fathoms. Total catch of these nets the past se 250,000 shad. Price, about 20 cents. Cost of boat and sei

Number of drift herring nets not ascertained. The catch ring was about 150,000. Price, $5 per thousand.

Within his jurisdiction the regular sturgeon fishing is don person, who employs five nets and boats. Fishes from M August 15th. Total catch in that time, 2,250. Price, $1 To this add 750 taken by shad fishermen (shad gill nets mention the large number caught by the shore nets. He c of the great destruction of young fish at certain seasons of by the shore seines (small meshed summer nets.) He says haul them ashore by the thousand, where they are left to pe that the stench arising from them is a nuisance. That the be required by law to restore them, when thus taken, at once native element. Some of the drift net men think gilling ne be limited by law to 300 fathoms, but he is not prepared to the opinion of the majority of them.

Till section 2d of the act of March, 1871, goes into e small-meshed summer nets are allowed, while the eleven-inch nets are prohibited, which should be reversed.

Representing the wishes of fishermen of Salem county, he the hope that steps will be taken to have the question of jur over the waters of the Delaware fronting on Salem county, speedily as possible.

Mr. James Logue, First Warden of Cumberland county the number of gilling seines from his county to be 21.

length, 450 fathoms. Depth, 30 feet. Mesh, 5 inches. Average catch to the net the past season, about 1,000; being an increase of that for 1871, but under that of 1870. Price, the past year, about 35 cents. They commence fishing about the 18th of March.

In Cohansey creek are three regular shore fisheries. Average catch of each the past year, was about seven hundred shad. Ten or twelve gilling seines of thirty fathoms in length and twenty feet deep, and five-inch mesh. Outfit in boat and net, $35 each. Average catch of shad each, four hundred. Price, thirty-five cents. Commence to fish about April 1st. There has been a yearly decrease of shad. Laws for their protection are greatly to be desired. Besides shad, there are large numbers of rock-fish, cat-fish and perch, taken by those seines. Two men to each boat. Cost of outfit, from $25 to $100.

During the past season no cases of infraction of the laws regulating fishing, applicable to his county, have come to his knowledge, nor a single shad exposed for sale out of season.

The acts which relate to the river within the concurrent jurisdiction of Pennsylvania and New Jersey, do not apply to Cumberland county, but they are approved of by the fishermen, and should be amended so as to be so applicable.

From the foregoing synopsis of the reports of the Fish Wardens, we have the gratifying intelligence that during the past season there have been comparatively but few instances of infraction of the fishing laws by citizens of our own State, and that there is a growing sentiment to the effect that these laws are proper and beneficial, and have their approval.

Until the visit of your Commissioners, in March, 1871, Delaware and New Jersey had never legislated in unison upon this subject—that our own acts had heretofore related almost solely to that portion of the river lying within the concurrent jurisdiction of Pennsylvania and New Jersey. Now that Delaware has legislated in conformity with this joint legislation of Pennsylvania and New Jersey, it remains for the latter to apply some farther legislation, as well to that part of the river lying between her shores and those of Delaware.

With the prospect of a speedy and amicable settlement of the vexed question of jurisdiction with Delaware, it is hoped that the Legislature of Pennsylvania, at its ensuing session, will appoint Commissioners, when we will have the assurance that the three States will act in perfect accord in regard to the fishing interest of this noble river in its entire length.

In conclusion, your Commissioners would state that the following work has been accomplished:

1st. The enforcement of the previous existing fishing laws, which, until the past season, had been broken with impunity by the fishermen of our State.



2d. The entire abolition of fish-racks, weirs, and other fi
gines of destruction to the young fishes.

3d. The appointment of an efficient fish police.

4th. Arrangements made for the introduction of a valua
(the salmon) into our waters, without expense to the State.

Hoping that the work thus far done, and that contemplat
meet with your approval, we remain,

Your Excellency's most obedient servants,

B. P. HOWELL, M. D., *Woodbury*, .

J. H. SLACK, M. D., *Bloomsbury*, N

New Jersey State Archives
Commissioners of Fisheries Annual Reports
1872

# REPORT

OF THE

CORRESPONDENCE BETWEEN

# Govs. Parker and Ponder.

TO THE LEGISLATURE—SESSION OF 1873.

TRENTON, N. J.:
THE STATE GAZETTE—MURPHY & BECHTEL, BOOK AND JOB PRINTERS.
1873

DE13911

# CORRESPONDENCE.

STATE OF NEW JERSEY,
EXECUTIVE DEPARTMENT,
TRENTON, May 9, 1872.

*His Excellency James Ponder, Governor of the State of Delaware:*

SIR—I have received information that W. W. Prichett, a constable residing at Wilmington, in the State of Delaware, accompanied by an armed *posse*, on the second day of May instant, embarked on the steam-tug Falcon, proceeded to the eastern portion of the river Delaware, and there arrested twenty-two citizens of New Jersey, while engaged in the business of fishing, and carried them as prisoners to Delaware. I am further informed that the arrests were made by advice of the Attorney General of Delaware, under the claim that the place of arrest was within the jurisdiction of that State, and because the persons arrested were there pursuing this business without the license of Delaware.

I am aware that a grant by the State of Delaware to the United States of "Pea Patch Island" was, in the year 1848, decided by the arbitrator, chosen by the United States and Mr. Humphrey, to be valid. New Jersey was not a party to that litigation; nor was she represented by counsel. This State has never considered that the opinion of the arbitrator in that submission decided, even incidentally, the boundary and jurisdiction of the respective States. Neither before that opinion, nor since, until now, has Delaware made the practical claim, from the effects of which many respectable and industrious citizens of this State are suffering. This is the first time that an attempt has been made by the authorities of Delaware to interrupt the business of fishing on the eastern side of the river.

Being confident that the State of Delaware does not desire that proceedings, such as those herein complained of, should be continued any further than to assert her claim and put it in course of judicial determination; and this State being anxious to submit the question to the proper legal tribunal at as early a period as practicable, I trust that the authorities of Delaware will abstain from further attempts to practically enforce her claim of jurisdiction, until a decision of the Supreme Court of the United States shall settle the controversy.

Believing that the arrest of citizens of New Jersey, made as hereinbefore stated, was an infringement upon the rightful authority and jurisdiction of this State, I have issued a proclamation (a copy of which I herewith send you,) which, while it asserts the claim of New Jersey to jurisdiction over the eastern half of the Delaware river, and warns all persons to refrain from arresting any persons there without legal process from the proper authority in this State, and from molesting or disturbing

citizens there in pursuit of a lawful occupation, also calls upon all citizens of New Jersey to abstain from acts of violence.

Trusting that the spirit of comity which dictates this will so be met by your Excellency that the public peace may not be disturbed, and that the question may be submitted to judicial decision,

I am, very respectfully,

Your obedient servant,

JOEL PARKER.

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STATE OF DELAWARE,
OFFICE SECRETARY OF STATE
DOVER, DEL., May 14, 1872.

*His Excellency Joel Parker, Governor of the State of New Jersey:*

SIR—I am in receipt of your communication of the 9th inst., enclosing your proclamation in reference to fishing in the river Delaware.

The act of General Assembly of the State of Delaware, requiring all persons to procure license before engaging in the business of fishing in the Delaware river within the limits of this State, was passed in 1871, at the suggestion and request of the fish commissioners of New Jersey, Messrs. Howell and Slack, who attended the session of the legislature, bringing letters of introduction from your predecessor, ex-Governor Randolph. Anterior to this time, the legislature of New Jersey had passed an act more stringent in its provisions than our present law, and the said commissioners desired the passage of a similar enactment by the legislature of Delaware. But the committee to whom the matter was referred, differing from the said commissioners after several conferences, finally modified their bill to meet the approbation of all parties; and the said bill so modified, was afterwards enacted as our present law. The reasons which actuated the legislature in the passage of said act, were founded solely in a feeling of courtesy and amity to the State of New Jersey, and the act was passed for the purpose of aiding the propagation of certain fish which were fast becoming extinct. It is certainly, therefore, entirely unexpected, and much to be regretted that the controversy arising under this act should be between the States of New Jersey and Delaware, as to their respective powers over said waters. The State of Delaware does not regard the question as to her jurisdiction over the said river and bay, as claimed by her, as an open question. The jurisdiction thus claimed is exclusive over the waters of said river to low water mark, on the eastern side of said river, within the twelve mile circle from New Castle, and is regarded by said State as paramount to any which may be claimed by any other State. This opinion is founded not only upon the original grants, but also upon the decision made by the arbitrator in the case of the United States, concerning Pea Patch Island, to which you refer.

in your communication. Whether New Jersey was or was not a party to that litigation, or whether or not she was represented by counsel, we apprehend, does not affect the principle, that the decision confirmed the title of the State of Delaware to the property in question as complete and valid.

The constitution of this State renders it obligatory upon the Governor that "he shall take care that the laws be faithfully executed." The act in regard to fishing in the Delaware waters being a law upon our statute book, I have no power, as the Executive of this State, to suspend its execution for an instant.

The spirit of comity which dictated your communication affords me much gratification, and I regret, exceedingly, that you did not commence the correspondence before issuing your proclamation. The rights of the State of Delaware are too well known for me to fear a judicial investigation, and her citizens can have no objection to a legal trial of the entire question, before the proper tribunal, for final adjudication and settlement. I would much prefer an amicable adjustment; but the constitution gives me no power to agree upon or appoint an arbitrator. Probably your Excellency can suggest some plan by which the affair can be arranged.

With the same spirit which dictated your communication, I would respectfully suggest that your Excellency advise the citizens of New Jersey to refrain from fishing in said waters, within the jurisdiction of the State of Delaware, unless they conform to the laws of this State, until the question of jurisdiction can be judicially determined.

I have not issued a counter proclamation, for the reason that it might be the means of stirring up contention and strife between the citizens of the neighboring States, when they should live in peace and harmony with each other, as they have in the past.

Hoping that the friendly relations heretofore existing between New Jersey and Delaware may long continue, and that the question may be settled in a satisfactory manner, at an early day,

I am, very respectfully,

Your obedient servant,

JAMES PONDER.

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STATE OF NEW JERSEY,
EXECUTIVE DEPARTMENT,
TRENTON, May 22, 1872.

*His Excellency James Ponder, Governor of the State of Delaware:*

SIR—Your reply to my letter of the 9th inst. has been received.

The communication of your Excellency claims that the State of Delaware has exclusive jurisdiction over the waters of the Delaware river to low water mark on the New Jersey side, within what is called the twelve mile circle. In other words, it is

insisted that the State of Delaware has such title to the territory, embracing some twenty-four miles in length of the river, as to exclude the people of New Jersey from fishing on the eastern side thereof, unless they obtain the permission of Delaware.

The State of New Jersey denies that Delaware has jurisdiction over any part of the waters of the river east of the middle line, and insists that her citizens have the legal right to fish on the New Jersey side of the river without the license of Delaware, either within or without the so-called circle. The question involved is one of great importance, and I agree with your Excellency that it should be settled at an early day.

It seems that the State of Delaware bases her claim to exclusive jurisdiction over the waters of the river within the twelve mile circle upon the decision of the arbitrator in the Pea Patch case, and also upon the original grants. As the communication of your Excellency emphatically states these two grounds of confidence in the claim of Delaware, it is proper that I should briefly notice them.

The submission in the Pea Patch case was between the Secretary of War, acting for the United States, and James Humphrey, and the question submitted was whether the United States or Mr. Humphrey had title to the land of that island.

The award in that case has never been considered authority binding on any but the parties to the submission.

In his decision, the arbitrator states that "he is fully aware that his opinion is of no authority whatever, except for the single purpose as to which the agreement of the parties has made it conclusive, that is, the question of title *between them.*"

The award, therefore, does not amount to judicial authority, and is only the opinion of an able lawyer antagonistic to the opinions of other able lawyers contemporaneous with the arbitrator, and in conflict with the charge of Judge Baldwin, in a case tried in the United States Circuit Court involving the same question. It certainly cannot conclude either Delaware or New Jersey on the question of jurisdiction. The disputed jurisdiction of States can be settled only by treaty, or by the decision of the Supreme Court of the United States.

Even if the award in the Pea Patch case be considered judicial authority, it does not decide the question of the right of the respective States to *jurisdiction upon the waters* of the Delaware.

The opinion of the arbitrator only determined the *title to land not covered by water.* The question raised by the arrest of which New Jersey complains, relates not to title to land which is *jus-privatum,* but to jurisdiction on navigable waters, which is *jus-publicum.*

The further claim of the State of Delaware to jurisdiction over the waters of the river within the twelve mile circle up to the Jersey shore, is founded on the ancient grants. A careful examination of these has led me to a conclusion different from that of your Excellency.

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her citizens that had been made, and also as a means of preventing breaches of the peace, by giving assurance to those immediately interested that the controversy would be settled amicably by legal action.

I have considered the suggestion made by your Excellency to issue a proclamation, requesting citizens of this State to cease fishing on the waters on the New Jersey side of the river pending the decision of the legal question of jurisdiction, and after reflection, I have concluded that it would be so disastrous to the livelihood of a large class of men who depend on the occupation of fishing for subsistence, and so abruptly deny them a public right which they and their ancestors have enjoyed for two centuries, that it would be neither just nor wise to take that course. It appears to me that the jurisdiction of Delaware, as now claimed, but in no wise asserted, over the locality in question, by her law of 1871, should not be insisted upon in such a way as to produce these consequences. In my former communication, I did not intend to suggest that the Governor of a State had power to suspend a law, for it appears to me that the question was simply whether the Delaware authorities might not, pending a legal controversy, allow a question of jurisdiction, which her law of 1871 does not assert, to remain practically as it was found by that law. I regret, exceedingly, that notice was not given the authorities of this State, soon after the passage of the law of 1871, that Delaware would claim to enforce its provisions on the eastern side of the river, within the twelve mile circle, so that the question could have been decided before the commencement of the fishing season of 1872, and thus the arrest of industrious and peaceable citizens, and the interruption of their business, have been avoided.

It is to be regretted that the legislature of our States are not in session, so that commissions to negotiate and settle the whole question might be authorized. But as this cannot now be done, I am much gratified with your ready acquiescence in the proposition to submit it to judicial decision. The mode of such submission can doubtless be arranged by the law officers of the respective States, and I will at once refer that part of the communication of your Excellency to the Attorney General of this State. I suppose a case can be made, and the facts agreed upon.

I join your Excellency in the hope that the question may soon be settled in a satisfactory manner, and that the friendly relations which have always existed between the States of Delaware and New Jersey may continue uninterrupted.

Very respectfully,

Your obedient servant,

JOEL PARKER.

## FISHERIES.

The Commissioners of Fisheries recommend that laws be passed to prevent the taking of fish by poison, the explosion of cartridges of giant-powder, or by any other enginery of destruction, and recognizing the seine, line, and spear as the only lawful modes of taking fish from the waters of this State.

A quarter of a million of salmon spawn have been procured without expense to the State, for the purpose of stocking our rivers with that delicious fish. It is believed that salmon will thrive in our waters. They are more vigorous and less timid than shad, and the dams which cross many of our rivers will not be an insurmountable obstacle to their ascending the stream.

Experiments in other States prove that rivers can be replenished with shad by means of artificial propagation. On the fourth day of April last the Legislature of this State passed an act appropriating the sum of three thousand dollars for the purpose of propagating shad in the river Delaware, to be expended under the direction of the Commissioners of Fisheries, provided the Legislature of the State of Pennsylvania should appropriate a like sum for the same object. Pennsylvania having failed to pass a similar law the money has not been drawn. The increase of this valuable fish, even to the number formerly found in that river, would cheapen food and give employment to thousands of our people.

During the last fishing season the fish-wardens were zealous in the discharge of their duties. Through their exertions fish-baskets, racks, brush-weirs, and other fixed means of catching fish have almost disappeared from this side of the river. They report the catch of fish larger than that of the previous year. They found very little opposition to the fishing laws among our own people, but some were resisted in the execution of those laws by a few residents of Philadelphia, who with violence assaulted the officers sent to arrest them. Efforts have been made to bring to justice the guilty parties.

It is hoped that the Legislature of Pennsylvania will, at its present session, pass such laws as will aid New Jersey in protecting and augmenting the common fishing interest of the two States in the Delaware. As the city of Philadelphia is the market to which nearly all the fish caught in that river are taken, it would seem to be the true policy of her people to use their influence to have an efficient code of fishing laws in each bordering State.

In the month of May last I received information that twenty-two citizens of New Jersey, while engaged in fishing in the river Delaware east of the middle thereof and nearly opposite the boundary line of the counties of Salem and Gloucester, were arrested and taken as prisoners out of this State. Upon obtaining an authentic statement of the facts from the fish commissioner, who resides in the southern part of the State, from which it appeared that the fishermen were arrested by persons claiming to be officers acting under authority of laws of the State of Delaware, and that they were arraigned before a magistrate in the city of Wilmington charged with the violation of the the fishing law of Delaware, by fishing in the locality before mentioned without the license of that State, I issued a proclamation claiming for the State of New Jersey jurisdiction over the river east of the middle line, declaring that persons conforming to the fishing laws of this State have the right to fish there, and warning all persons not to arrest any citizen of New Jersey within her jurisdiction unless by virtue of her lawful process. This prompt action by proclamation was taken because the arrests had interrupted and threatened to destroy the business of a large number of our citizens who were accustomed to pursue the avocation of fishing in that part of the river, and whose livelihood depended upon their uninterrupted enjoyment of the fishing season. Otherwise I would have opened a correspondence with His Excellency the Governor of the State of Delaware before issuing a proclamation.

On the day that my proclamation issued I wrote to the Governor of Delaware and enclosed a copy. A correspondence followed, which with my proclamation before referred to, are herewith submitted. It will be seen that His Excellency Governor Ponder claims for his State exclusive and paramount jurisdiction over the waters of the Delaware river to low water mark on the eastern side, within a circle, the radius of which is twelve miles as measured from New Castle as a centre, and also the right to demand and collect a license fee for fishing therein. My absolute denial of the legality of this claim and the reasons given to sustain the position taken in my proclamation, are fully stated in the correspondence.

It is not my purpose, nor would it be proper under the circumstances, to discuss in this communication to the Legislature the questions at issue. Subsequent to the correspondence and growing out of the same, I had a conference with His Excellency, the Governor of Delaware, at which the Attorney Generals of both the States were present, and which, after a free interchange of views, resulted in a agreement that no further arrests should be made under the fishing law of Delaware east of the middle of the river, and that we would recommend to the Legislatures of our respective States the appointment of commissioners to agree what the jurisdiction of each State

should be in the Delaware, the soil and islands thereof, and the right of each to the products thereof, the same to be valid if confirmed by the States. I therefore recommend that an act be passed as speedily as possible, providing for the appointment of three commissioners on the part of the State of New Jersey to meet a similar commission to be appointed on the part of the State of Delaware, for the purpose aforesaid. It is hoped that a settlement of the question will soon be consummated, in a manner satisfactory to the people of both States, and that the friendly relations that have always existed between them will be continued.

## CONSTITUTIONAL AMENDMENTS.

The present constitution of the State of New Jersey was adopted nearly thirty years ago. The convention by which it was framed was composed of able men, among whom were many distinguished jurists, and the work which came from their hands was thought to be as good as human wisdom could devise; but experience proves that with increasing population, wealth and enterprise, and with new subjects of legislation constantly arising, some amendments to our organic law are needed.

It will be admitted by all reflecting persons that there should be such radical reform in our system of legislation as cannot be secured under the present constitution. The necessity of providing every possible safeguard to secure the Legislature against imposition is obvious, if we consider that when an act has been certified as passed, by the signature of the presiding officers of each House, approved by the Governor and filed in the office of the Secretary of State, it becomes law, the exemplification of which under the Great Seal of the State is conclusive evidence as to its existence and contents, and that no evidence to prove that the act signed varies from the act voted upon is admissible in a court of law. So important are the interests affected by legislation, that in view of the decision of our Supreme Court on the subject we owe it to the public and to the fair fame of the State that such constitutional checks should be provided as will prevent the possibility of fraud or interpolation.

Haste in legislation is a great evil which requires correction. The brief session to which the Legislature is now virtually limited by the constitution, does not give opportunity for the proper consideration of the business which under the present system is brought before it. If all bills were presented on the first day of the session the time would scarcely suffice, but a large majority are introduced at so late a period that it is impossible even to read them with the deliberation necessary to a full knowledge of their contents, much less to discuss their provisions. That part of our constitution which limits the pay of members of the Legislature to a mere pittance after the period of forty days is unwise as well as a standing imputation upon the honor of the representatives of the people in every Legislature that assembles under it. It should be stricken out, and a reasonable annual salary paid, without limit as to the duration of the session. If legislation be necessary, sufficient time to deliberate and act understandingly should be given. Either the session should be longer or the business less.



But this is not the only or the most important change required to prevent hasty legislation. Other amendments to the constitution may be made that will enable the Legislature thoroughly to examine and discuss every measure brought before it, without extending the session beyond the period heretofore usual in this State. The constitution should require general laws, and forbid the enactment of all special or private laws embracing subjects where general laws can be made applicable. This would dispense with at least nine-tenths of the business brought before the Legislature under the present system. The general public laws passed at the last session are contained in about one hundred pages of the printed volume, while the special and private laws occupy over twelve hundred and fifty pages of the same book. If made comprehensive and liberal, why should not cities, towns, corporations of all kinds, and associations of individuals organize and act under general laws? Those heretofore passed in this State have not answered the desired object because the constitution permits special legislation on the same subjects, and so long as this is permitted there will be those who will seek such legislation.

Should it be deemed advisable not to provide for general laws, haste in legislation could be prevented by a constitutional amendment requiring the preamble of every private or special bill containing the substance of its important provisions to be published, and the bill itself filed in the office of the Secretary of State, for public information on or before the first day of the session; and providing further that if a bill pass without these requirements having been observed, it shall be held void, and of no effect by any court of competent jurisdiction before which its validity shall be questioned, upon certificate of the Secretary of State that the same was not filed as above stated in his office. This would give employment to the Legislature at the commencement of the session, enable each member to inform himself of the contents and ascertain the merits of each bill before being called upon to vote upon it, and prevent the sudden

New Jersey State Archives
Senate Journal - Governor's Annual Address
January 14, 1875



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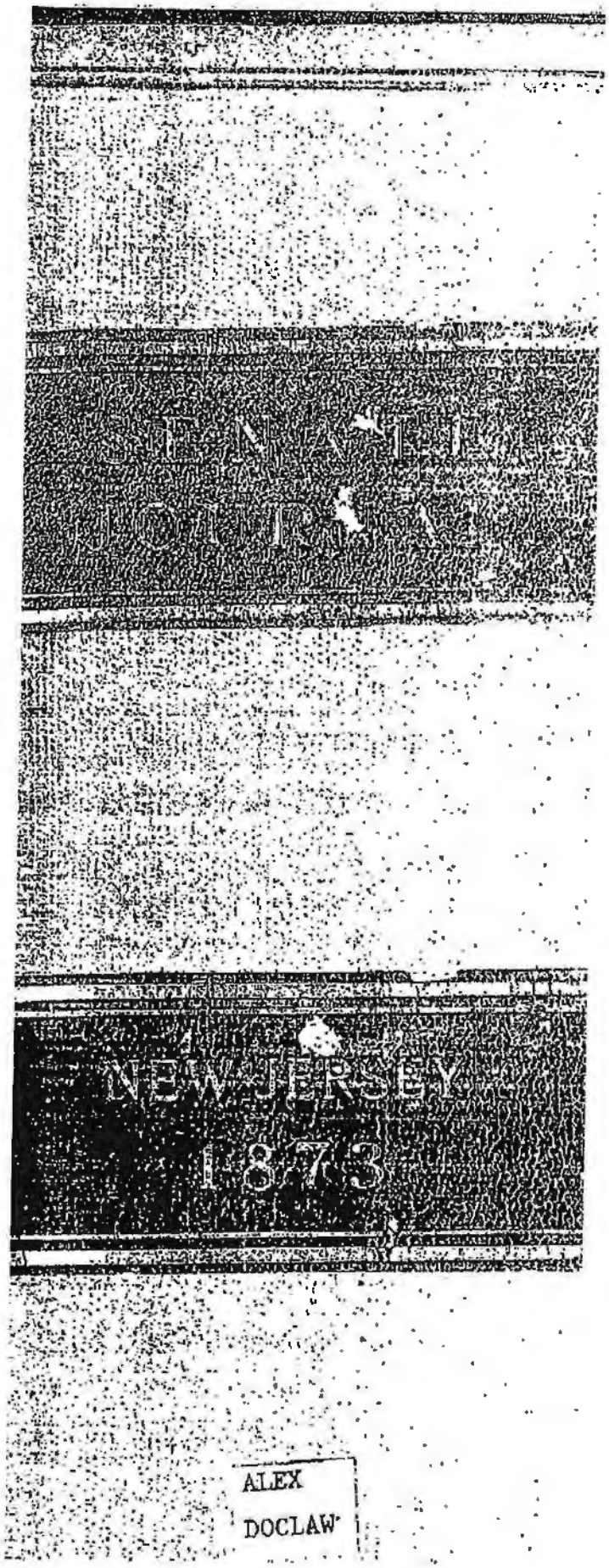


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A further supplement to the act entitled "An act for the better enforcement in Maurice river cove and Delaware bay of the act entitled 'An act for the preservation of clams and oysters,'" approved April 14, 1846, and of the supplements thereto,

Senate bill, No. 120, entitled

A further supplement to an act entitled "An act to regulate fees," revision approved April 15, 1846,

And delivered the following bill which originated in the Senate to the Secretary of State, to be filed in his office without my signature, viz:

Senate bill, No. 74, entitled

An act to establish districts courts in the city of Newark.

JOEL PARKER.

The following communication was also received from His Excellency, the Governor, by the hands of his Private Secretary:

EXECUTIVE DEPARTMENT,
STATE OF NEW JERSEY,
TRENTON, March 5, 1873.

*To the Legislature:*

Since the passage of the act entitled "An act for the settlement of the territorial limits and jurisdiction of the State of New Jersey and the State of Delaware," approved by me February 26, 1873,

I have received a copy of joint resolutions passed by the Legislature of Delaware, on the 30th day of January, 1873, and also, a copy of a supplementary joint resolution, passed on the 14th day of February, 1873,

The latter is amendatory of the former resolutions.

It will be seen by these joint resolutions, that the Legislature of Delaware, have not invested the commissioners on the part of that State with powers as broad as those with which our commissioners are clothed.

On account of the restrictions imposed upon the commissioners of Delaware, by the joint resolutions referred to (copies of which are herewith transmitted), and the doubt which exists as to the propriety under our act of the commissioners from New Jersey, entering upon negotiations in reference to only a part of the subject matter of difference, additional legislation on your part is necessary.

The important practical question which interests most of our citizens is the right of fishing in the river Delaware, its nature and extent, and I trust you will pass as speedily as possible a supplementary act, that will enable our commissioners to convene with those of Delaware to negotiate upon that question before the fishing season commences,

JOEL PARKER.

The communication was read and referred to the special committee having said subject under consideration, together with the accompanying joint resolutions, passed by the Legislature of the State of Delaware, viz.:

Joint Resolution with respect to the subject of difference between the State of New Jersey and this State.

WHEREAS, It appears by the message of His Excellency, the Governor, and the documents accompanying the same, that the State of New Jersey makes claim for her citizens of the right to fish in that part of the waters of the Delaware within the limits of the "twelve mile circle," and eastward of the channel of said river, thus denying the exclusive jurisdiction of this State over the said water within the said circle, a jurisdiction never doubted in Delaware, nor questioned elsewhere with confidence until now, so far as this General Assembly is informed;

AND WHEREAS, It is important that the said question should be at once settled, so that there shall be no conflict of claim hereafter; therefore;

*Be it resolved, by the Senate and House of Representatives of the State of Delaware in General Assembly met*, That the whole subject of controversy be submitted to the decision of six commissioners, three to be appointed by the Legislature of each State, and that their decision shall be final.

*Resolved*, That said decision shall be submitted in writing, upon parchment, under the hands of the said commissioners, to this Legislature, and to that of the State of New Jersey, and be entered upon the journal of each House of the General Assembly of each State, as a perpetual memorial of the end of the aforesaid controversy, and that a similar certificate be made and delivered to the Governor of each State, to be placed among the executive archives; and further, that each State, through its Governor, make proclamation for six months in the newspapers printed within its borders, of the aforesaid decision—to the end that full public information thereof may be given.

*Resolved*, That Joseph P. Comegys, of Kent county, William

G. Whitely, of New Castle county, and Edward L. Martin, of Sussex county, be appointed commissioners upon the part of this State for the purpose aforesaid; that they be at once notified by the Speaker of the Senate of such—their appointment; and in case at the end of five days from such notice, either of them has not accepted said appointment, another from the same county be appointed in his place.

*Resolved*, That a copy of the foregoing preamble and resolutions, duly certified, be forwarded by the Governor to the Governor of New Jersey, with the request that they be laid before the Legislature of that State; it being the wish of this Legislature that the aforesaid controversy shall be settled during the present session of the Legislature of each State.

*Resolved*, That the said commissioners shall each receive for his services hereunder the sum of five hundred dollars, to be paid by the State Treasurer, on the certificate of the Speaker of the Senate that the said services have been performed.

Adopted at Dover, January 30, 1873, amended February 19, 1873.

ALLEN VOORHEES LESLEY,
*Speaker of the Senate.*

JOSEPH BURCHENAL,
*Speaker House of Representatives.*

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EXECUTIVE DEPARTMENT.

I, John H. Paynter, Secretary of the State of Delaware, do hereby certify that the above and foregoing is a true copy of the preamble and resolutions entitled "Joint Resolution with respect to the subject of difference between the State of New Jersey and this State," adopted at Dover, January 30, 1873, and amended February 19, 1873, the same having been compared by me with the original roll now on file in this office.

In testimony whereof, I have hereunto set my hand and official seal, at Dover, this 24th day of February, A. D. [L. S.] one thousand eight hundred and seventy-three.

JOHN H. PAYNTER,
*Secretary of State.*

(2)

To avoid all questions on debate, as to the extent of the powers conferred upon the commissioners appointed by this State, under the resolutions adopted on the 30th day of January

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last, and on those to be appointed by the State of New Jersey according to the suggestions herein.

*Resolved by the Senate and House of Representatives of the State of Delaware in General Assembly met,* That no question was intended to be submitted by the said resolutions respecting the title of this State to the river Delaware and the soil thereof within the limits of the "twelve mile circle," but only whether notwithstanding such title, the citizens of New Jersey have the right to fish in said river within that circle, and if so, the nature and extent of that right, and the said commissioners are to consider that no other question but that here mentioned is submitted to them; this State refusing to allow her aforesaid title to be drawn in question by said commissioners, or in any other manner.

*Resolved,* That a copy of the foregoing, duly certified, be forwarded by the Governor, to the Governor of New Jersey.

Adopted at Dover, February 14, 1873.

ALLEN VOORHEES LESLEY,
*Speaker of the Senate.*

JOSEPH BURCHENAL,
*Speaker of the House of Representatives.*

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EXECUTIVE DEPARTMENT.

I, John H. Paynter, Secretary of State of the State of Delaware, do hereby certify that the above foregoing is a true copy of the resolutions entitled "Joint resolutions supplemental to those passed on the 30th of January last, respecting the fishing question with New Jersey," adopted February 14, 1873, the same having been compared by me with the original roll now on on file in this office.

In testimony whereof I have hereunto set my hand and official seal at Dover, this 26th day of February, A. D., one thou- [L. S.] sand eight hundred and seventy-three.

JOHN H. PAYNTER.
*Secretary of State.*

Assembly bill, No. 66, entitled

An act to restore Ezekiel M. Pritchard, Thomas Edmondson, Frederick A. Goetz, Thomas A. Gross, Isaiah J. Hutton and Edward L. McWilliams to the rights of suffrage and other rights,

Was read for the first time by its title, ordered to have a

OF THE GENERAL POLICE.

SECTION 22. All acts and parts of acts inconsistent herewith are hereby repealed. Inconsistent acts repealed.

SECTION 23. That this act shall go into effect on the first day of September, A. D. 1873, and that persons keeping inns or taverns, or restaurants, whose license expire before the sitting of the Court of General Sessions of the Peace and Jail Delivery in the respective counties of the State in the months of October and November, A. D. 1873, and persons desiring to keep inns or taverns, or restaurants, shall have the right to obtain a fractional license under the present law, which shall expire at the time of the sitting of the court aforesaid. Act to go into effect 1st of September, A. D. 1873. Fractional licenses.

*Passed at Dover, April* 10, 1873.

## CHAPTER 419.

FOR THE PROTECTION OF FISH, OYSTERS AND GAME.

A Supplement to the act entitled, "An Act for the Protection of Fishermen." Current volume 84.

*Be it enacted by the Senate and House of Representatives of the State of Delaware in General Assembly met:*

SECTION 1. That it shall be unlawful for any person not being a citizen of this State, under this act, to use more than three hundred fathoms of gill-net or seine, and any person who may violate this section shall be deemed guilty of a misdemeanor, and shall pay to the State a fine of twenty-five dollars for every such violation. Non-resident not to use more than 300 fathom of seine. Misdemeanor. Fine.

SECTION 2. That the Governor be and he is hereby authorized to appoint five commissioners, who shall be appointed in and for and shall reside in the County of New Castle, in the towns of Port Penn, Delaware City, New Castle, Wilmington and Claymont, one in each place; and the appointment shall be made and vacancies filled by the Governor for and during the period of two years. The said commissioners are hereby authorized and required to take cognizance of all violations of the act to which this is a supplement, to arrest any and every offender against the aforesaid law, to seize and detain the boat or boats of said Commissioners. Appointment made and vacancies filled by Governor. Duties of commissioners.

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offender, and are hereby invested with all the powers, privileges and remunerations of the sheriff and constables enumerated in the act aforesaid.

Section 9, Chapter 72, Volume 14, amended.

SECTION 3. That section nine be amended by striking out, in the fifth line, the word "sunset" and inserting in lieu thereof the word "eight."

SECTION 4. That section two (2) and section five (5) be stricken out of the bill to which this [is] a supplement.

*Passed at Dover, February* 19, 1873.

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## CHAPTER 420.

### FOR THE PROTECTION OF TERRAPINS.

Vol. 13-415. AN ACT to amend an act entitled, "An act for the Protection of Terrapin in Indian River and Rehoboth Bay and waters adjacent thereto."

Section 1, Chap. 435, Volume 13, amended.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Delaware in General Assembly met,* That chapter four hundred and thirty-five, volume thirteen of the laws of the State of Delaware, passed at Dover, March 16, 1869, be and the same is hereby amended in the first section thereof by inserting, after the words "dispose of" and before the word "any," in the fifth line of said section, the following words: "or any person or persons buying or receiving;" and by striking out the word "four," in the seventh line of said section, and inserting in lieu thereof the word "six;" and by striking out the word "four," in the tenth line of said section, and inserting in lieu thereof the word "six;" and also by striking out the word "ten," in the fourteenth line of said first section, and inserting in lieu thereof the word "fifteen."

*Passed at Dover, April* 8, 1873.

Antonio C. Gonzales,
Thomas P. Okie, Jr.,
John White,
Charles T. Henry,
William M. Berger,
Lucius W. How,
Albert Van Wagner,
Frederick R. Anderson,
William H. Meeks,
A. D. Mellick, Jr.,
Ludwig R. Miller,
George W. Browne,
Arthur W. Knapp,
Washington I. Jaques,
Andrew W. Kent,
Henry Schmidt,
Francis P. Burke.

TENNESSEE.

R. Dudley Frazer.

VIRGINIA.

Hill Carter.

PENNSYLVANIA.

Edward D. Ledyard,
Henry Reed,
Charles P. Clarke,
Robert P. D. Echert,
Asa J. Fish,
Charles F. Corson.

[L. S.] JOEL PARKER.

Attest:

JOHN A. HALL,

*Private Secretary.*

Mr. Irick moved that the rules be suspended, which require nominations to be referred to the Judiciary Committee.

Which motion was agreed to.

Upon the question, will the Senate advise and consent to the foregoing nominations? the yeas and nays were ordered, taken, and resulted as follows:

In the affirmative, were



Messrs. Banghart, Beesley, Cutler, Edsall, Havens, Hendrickson, Hewitt, Hopkins, Irick, Jarrard, MacPherson, Moore, Newkirk, Sheppard, Stone, Taylor (President), Williams, Wood—18.

In the negative—none.

On motion of Mr. Williams, the Executive Session then arose.

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THURSDAY, February 27, 1873.

Under the direction of the President, the Secretary called the Senate, when the following Senators appeared and answered the call:

Messrs. Banghart, Cortnish, Cutler, Edsall, Havens, Hendrickson, Hewitt, Irick, Jarrard, Lydecker, MacPherson, Sewell, Stone, Taylor (President), Williams, Wood—16.

The President laid before the Senate a sealed communication from the Governor, endorsed "nominations."

Mr. Williams moved that the seal of said communication be broken by the President, and that it be read by the Secretary.

Which was agreed to.

And the Secretary read as follows:

STATE OF NEW JERSEY,
EXECUTIVE CHAMBER,
TRENTON, February 27, 1873.

HON. JOHN W. TAYLOR, *President of the Senate:*

SIR:—I hereby nominate for appointment, with the advice and consent of the Senate,

For Major General of Militia, Gershom Mott, of the county of Burlington, in place of General Theodore Runyon, resigned.

For Commissioners to negotiate and agree respecting the territorial limits and jurisdiction of the State of New Jersey and the State of Delaware,

Abraham Browning, of the county of Camden,
Cortlandt Parker, " " Essex,
Albert H. Slape, " " Salem.

For Judge of the Court of Errors and Appeals,

Caleb S. Green, of the county of Mercer, for the unexpired term of Charles S. Olden, resigned.

For Prosecutor of the Pleas for the county of Atlantic,

Albert H. Slape.

For Prosecutor of the Pleas for the county of Cape May,

James R. Hoagland.

For Commissioner of Sinking Fund,

Barker Gummere, of the county of Mercer, (now filling unexpired term of Charles S. Olden,) for full term, to commence April 8, 1873.

For Trustees of the Normal School,

First District—Richard M. Acton, of the county of Salem.

Second District—Thomas D. Armstrong, of the county of Burlington.

Third District—Robert Allen, Jr., of the county of Monmouth.

Fourth District—Rynear H. Veghte, of the county of Somerset.

Fifth District—John M. Howe, of the county of Passaic.

Sixth District—William A. Whitehead, two years; William H. Steele, one year.

Seventh District—Charles K. Imbrie.

For Visitors of the Agricultural College,

First District—Ghalkley Albertson, of the county of Camden, to succeed James Mecum, who declines a re-nomination; term to commence 3d of April, A. D., 1873.

Second District—William R. MacIlvaine, of the county of Mercer.

Third District—William A. Newell, of the county of Monmouth, for unexpired term of James Bishop, resigned.

Henry R. How, of the county of Middlesex, to succeed William H. Hendrickson, who declines re-nomination; term to commence April 3d, 1873.

Fourth District—William H. Janeway, of the county of Somerset.

Seventh District—Abraham H. Duryee, Peter Hendrickson.

For Commissioners of Pilotage,

David Cox, of the county of Hudson, re-appointed; George W. Johnson, of the county of Monmouth, (now filling vacancy) in place of Charles S. Bogge, resigned, for full term.



For Harbor Master for Elizabeth and Elizabeth Creek,

John P. Bonnell, of the county of Union, re-appointed.

For Commissioners to take acknowledgment and proof of deeds in other States,

Edward J. Jones—Massachusetts,
David E. Swan—New York.

[L. S.] Signed, JOEL PARKER.

Attest:

JOHN A. HALL,
*Private Secretary.*

Mr. Williams moved that the usual reference be dispensed with, and action be taken on all the foregoing nominations at once,

Which motion was agreed to.

Upon the question, will the Senate advise and consent to the nomination of Gershom Mott, of Burlington county, for Major-General of Militia? the yeas and nays were taken with the following result:

In the affirmative, were

Messrs. Banghart, Cornish, Cutler, Edsall, Havens, Hendrickson, Hewitt, Irick, Jarrard, Lydecker, MacPherson, Sewell, Stone, Taylor, (President), Williams, Wood —16.

In the negative—none.

Upon the question, will the Senate advise and consent to the foregoing nominations for Commissioners to negotiate and agree respecting the territorial limits and jurisdiction of the State of New Jersey and the State of Delaware? the yeas and nays were taken with the following result:

In the affirmative, were

Messrs. Banghart, Cornish, Cutler, Edsall, Havens, Hendrickson, Hewitt, Irick, Jarrard, Lydecker, MacPherson, Sewell, Taylor (President), Williams, Wood—15.

In the negative—none.

Upon the question, will the Senate advise and consent to the nomination of Caleb S. Green, of the county of Mercer, for Judge of the Court of Errors and Appeals? the yeas and nays were taken, with the following result:

New Jersey State Archives
Senate Journal
Feb. 27, 1873

DE02825

Mr. Moore presented a communication from George H. Cook, secretary of the State Board of Agriculture, inviting the members of the Senate to attend a meeting of the said board in the Assembly Chamber this evening,

Which was read and the invitation accepted.

Mr. Hopkins, of the special Committee relative to the boundaries between the States of New Jersey and Delaware, reported by introducing

Senate bill, No. 336, entitled

A supplement to the act approved February twenty-sixth, one thousand eight hundred and seventy-three, entitled "An act for the settlement of the territorial limits and jurisdiction of the State of New Jersey and the State of Delaware,

Which was read for the first time by its title, ordered to have a second reading, and to be printed without reference.

Mr. Stone, (for the President) on leave, introduced

Senate bill, No. 337, entitled

A further supplement to the act entitled "An act constituting a public road board for laying out, constructing, appropriating, improving and maintaining public carriage roads in the county of Essex," approved March 31, 1869,

Which was read for the first time by its title, ordered to have a second reading, and referred to the Committee on Municipal Corporations.

The same Senator, (for the President), on leave, introduced

Senate bill, No. 338, entitled

An act to authorize the election of commissioners of streets, avenues and public squares, in the township of Caldwell, county of Essex,

Which was read for the first time by its title, ordered to have a second reading, and referred to the Committee on Municipal Corporations.

Mr. Hopkins, Chairman of the Committee on Railroads, Canals and Turnpikes, reported

Assembly bill, No. 65, entitled

An act to incorporate the North and South Jersey Railway Company,

Assembly bill, No. 107, entitled



An act to incorporate the North Elizabeth Horse Railroad Company,

Both with amendments.

The amendments made by the committee to

Assembly bill, No. 171, entitled

An act to authorize Benjamin Fish and George S. Green, to construct a railroad track in the city of Trenton,

Were read, concurred in, and ordered to be engrossed, and the bill to have a third reading.

Assembly bill, No. 177, entitled

An act for the instruction and maintenance of indigent deaf and dumb, blind and feeble-minded persons, inhabitants of this State,

Was taken up, read a second time, considered by sections agreed to, and ordered to have a third reading.

Under a suspension of the rules, said bill was taken up and read a third time.

Upon the question, shall this Assembly bill pass? it was decided as follows:

In the affirmative, were

Messrs. Beesley, Cornish, Cutler, Edsall, Havens, Hendrickson, Hewitt, Jarrard, MacPherson, Moore, Newkirk, Sewell, Sheppard, Stone, Taylor (President), Wood—16.

In the negative—none.

Under the direction of the President, the Secretary carried said bill to the House of Assembly, and informed them that the Senate had passed the same without amendment.

Assembly bill, No. 193, entitled

An act to incorporate the Hoboken Widow and Orphans' Aid Association,

Was taken up, read a second time, considered by sections, agreed to, and ordered to have a third reading.

Under a suspension of the rules, said bill was taken up and read a third time.

Upon the question, shall this Assembly bill pass? it was decided as follows:

In the affirmative, were

New Jersey [illegible]
Union Journal
March 5, 1873

DE02827

Senate bill, No. 48, entitled

An act to incorporate the New Egypt and Whitings Railroad Company,

Also, the amendments made in the Senate to the following bills:

Assembly bill, No. 171, entitled

An act to authorize Benjamin Fish and George S. Green to construct a railroad track in the city of Trenton,

Assembly bill, No. 196, entitled

An act to incorporate the Newton Land Company,

Severally as correctly engrossed.

Senate bill, No. 336, entitled

A supplement to an act approved February 26, 1873, entitled "An act for the settlement of the territorial limits and jurisdiction of the State of New Jersey and the State of Delaware,"

Was taken up and read a third time.

Upon the question, shall this engrossed bill pass? it was decided as follows:

In the affirmative, were

Messrs. Cutler, Edsall, Havens, Hendrickson, Hewitt, Hopkins, Jarrard, Lydecker, MacPherson, Moore, Newkirk, Sewell, Sheppard, Stone, Taylor (President), Williams, Wood—17.

In the negative—none.

Under the direction of the President, the Secretary carried said bill to the House of Assembly, and informed them that the Senate had passed the same, and requested their concurrence therein.

Mr. Havens, Chairman of the Committee on Miscellaneous Corporations, reported

Assembly bill, No. 423, entitled

An act to incorporate the Star Pottery Company,

Without amendment.

Mr. Stone, Chairman of the Committee on Revision and Amendment of the Laws, reported

Senate bill, No. 340, entitled

A further supplement to the act entitled "An act to facilitate



judicial proceedings in the county of Union," approved February 25, 1867,

Senate bill, No. 344, entitled

A supplement to the act entitled "An act for the better securing the property of married women,"

Both without amendment.

And Assembly bill, No. 170, entitled

A supplement to act entitled "An act for the better preservation of the early records of the State of New Jersey," approved April 6, 1871,

With amendment,

Assembly bill, No. 320, entitled

An act for the relief of Anna Butler,

Was taken up and read a second time, considered by sections, agreed to, and ordered to have a third reading.

Under a suspension of the rules, said bill was taken up and read a third time.

Upon the question, shall this Assembly bill pass? it was decided as follows:

In the affirmative, were

Messrs. Beesley, Cutler, Havens, Hendrickson, Hewitt, Hopkins, Lydecker, MacPherson, Moore, Newkirk, Sewell, Sheppard, Stone, Taylor (President), Williams, Wood—16,

In the negative—none.

Under the direction of the President, the Secretary carried said bill to the House of Assembly, and informed them that the Senate had passed the same without amendment.

Assembly bill, No. 340, entitled

An act to incorporate the New Jersey Spring and Manufacturing Works,

Was taken up and read a second time, considered by sections, agreed to, and ordered to have a third reading.

Under a suspension of the rules, said bill was taken up and read a third time.

Upon the question, shall this Assembly bill pass? it was decided as follows:

In the affirmative, were

New Jersey State Archives
Senate Journal
March 10, 1873

*Mr. President*—I have this day approved and signed the following bills, which originated in the Senate, and have delivered the same to the Secretary of State to be filed in his office:

Senate bill, No. 59, entitled

An act to incorporate the National State Trust Company of New Jersey,

Senate bill, No. 80, entitled

An act to extend the charter of the Cape Island Gas Company,

Senate bill, No. 93, entitled

A further supplement to the act entitled "An act to create a new township in the county of Union, to be called the township of Cranford," approved March 14, 1871,

Senate bill, No. 107, entitled

An act to incorporate the Public Hall Association of the city of Rahway,

Senate bill, No. 109, entitled

An act to incorporate the Long Branch Association,

Senate bill, No. 110, entitled

An act to incorporate the Toms River Cranberry and Fruit Company,

Senate bill, No. 173, entitled

An act to incorporate the Sisters of Charity of St. Elizabeth,

Senate bill, No. 174, entitled

Supplement to an act entitled "An act to incorporate the Hospital of Saint Barnabas," approved February 13, 1867,

Senate bill, No. 175, entitled

An act to prevent the cancellation of lost mortgages,

Senate bill, No. 176, entitled

A further supplement to an act entitled "An act to facilitate entries of satisfaction on the records of judgments," approved April 20, 1820,

Senate bill, No. 184, entitled

A supplement to the act entitled "An act to complete the geological survey of this State," approved March 30, 1864,

Senate bill, No. 246, entitled

An act to repeal an act entitled "An act to divide Deerfield township, in the county of Cumberland, into four road districts,



and to provide for raising money, and for the election of overseers in the same,

Senate bill, No. 336, entitled

A supplement to the act approved February twenty-sixth, one thousand eight hundred and seventy-three, entitled "An act for the settlement of the territorial limits and jurisdiction of the State of New Jersey and the State of Delaware,"

Senate bill, No. 94, entitled

An act to incorporate "The New Brunswick and Elizabeth Railroad Company,"

JOEL PARKER.

Mr. Hopkins, on leave, introduced

Senate joint resolution, No. 2, entitled

Joint resolution in relation to reports made to the Governor and Legislature for the fiscal year ending October 31, 1872,

Which was read for the first time by its title, ordered to have a second reading, and referred to the Committee on Miscellaneous Business.

Mr. Stone, on leave, introduced

Senate bill, No. 865, entitled

An act for altering the seat of government in this State.

Which was read for the first time by its title, ordered to have a second reading, and referred to the Committee on the Revision of the Laws.

Mr. Jarrard, on leave, introduced

Senate bill, No. 356, entitled

A further supplement to an act entitled "An act concerning taxes," approved April 14, 1846,

Which was read for the first time by its title, ordered to have a second reading, and referred to the Committee on Finance.

The same Senator, on leave, introduced

Senate bill, No. 367, entitled

An act authorizing the inhabitants of the township of Woodbridge, in the county of Middlesex, to purchase land and erect a a town hall, and to issue bonds therefor,

Which was read for the first time by its title, ordered to have a second reading, and referred to the Committee on Municipal Corporations.

New Jersey State Archives
Senate Journal
March 12, 1873

State of New Jersey

Attorney General's Office,

Jersey City
Trenton Oct 2 1873

My dear Sir

I caught sight in the Sun yesterday of your son; & suppose that his return has been so prompt that he did not receive the letter which I wrote to you suggesting what might be proceeded in London.

I am sure that a thorough investigation of the Penn title will show that he had no claim as against the crown to the government of Delaware.

This alone is enough to put our title to the middle of the Delaware by revolution of 76.

But I think Penn had no title to the soil as against the ~~Delaware~~ Crown & of course none to the soil of the River.

Mr Clement's investigations as far as I have seen their result go to the one point that of the circle as not a complete one as intended to be described in the deed to Penn from Duke of York, - but whether the circular-line went into the river or not his investigations do not determine. -

Thanks we

MG 399 1/4 Wayne letter oct. 2, 1873 #1

must rely on the invalidity of the supposed grant of Charles II to Duke of York which Sergeant put the Pea patch case upon

We cannot Establish this invalidity it seems to me without a most thorough search in England.

I regret you son did not get the letter I sent to you

I have had a talk with Hobson an several times about their investigations conducted in London

He knows a good deal about Colonial history & has taken a good deal of interest in the case & has looked into the "State of the Question" pretty well.

He has satisfied me that the expense of staying in London need not be very great & it has struck me that he might be relied on to make the investigation

It would be an exceedingly good thing for the State if this investigation could be made promptly

Your reputation & that of Browning & Slade are

MG 399 1/4 Wayne letter oct 3 1873 #2

certainly involved in the matter & if we can establish the title of the State to the Delaware – if you will have the investigation abroad made thoroughly.

You have ample power to go to any necessary expense & really, expense in a matter of this kind is as nothing. The point is to establish the right of the State though it be expensive to do so.

It appears to me that if Dan shall be esteemed competent to make the investigation abroad, I think he is, we can do it cheaply through Levi.

He has a taste for such matters & is studious & thorough on such a subject.

I merely suggest Dan as one person who may conduct the investigation. It would be good for Levi & be of the greatest benefit to him aside from all employment it would give him & his remuneration which need not be great. His expenses only need be advanced. He remunerated as an after consideration.

But by all means

MG 399
114 Warfield Letter - Oct 2, 1873 #3

whenever it is to be done — it should be done at once I am sure. I am willing to give the best instructions I can to whoever undertakes it & to direct his plaudn before he starts. It is as important a matter as we have ever had in the State.

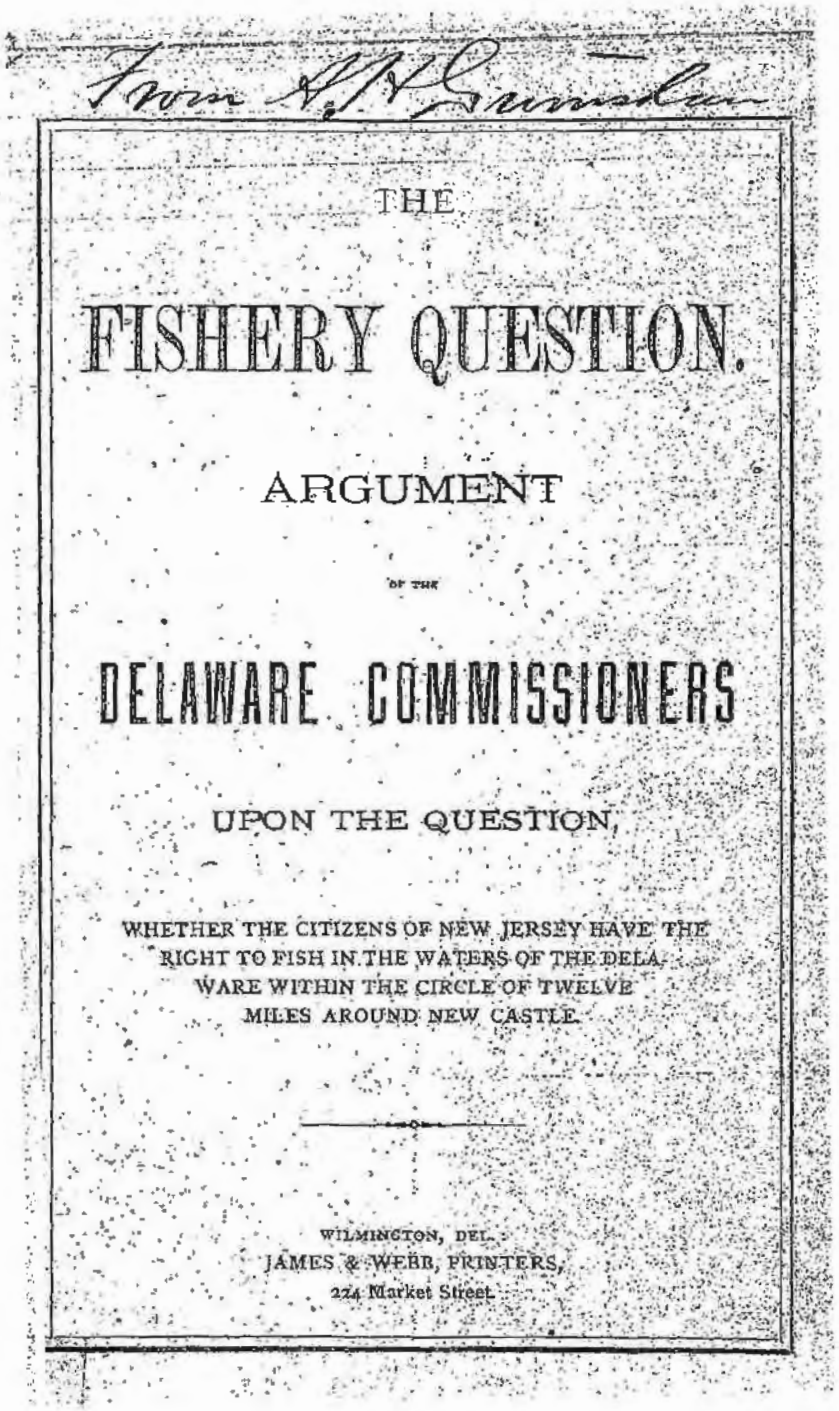
Yrs truly
Robt Gilchrist

Cortlandt Parker Esq

Atty Gen. Gilchrist
Recd Oct 3. 1873

DE21342

MG 399 Wayne Letter OCT 2, 1873 #4
1/4



From A. P. Swineburn

THE

# FISHERY QUESTION.

## ARGUMENT

OF THE

## DELAWARE COMMISSIONERS

UPON THE QUESTION,

WHETHER THE CITIZENS OF NEW JERSEY HAVE THE RIGHT TO FISH IN THE WATERS OF THE DELAWARE WITHIN THE CIRCLE OF TWELVE MILES AROUND NEW CASTLE.

WILMINGTON, DEL.
JAMES & WEBB, PRINTERS,
224 Market Street.

DE13917

# THE FISHERY QUESTION.

The question submitted for our decision is, in itself, not a common one; but its solution, as we conceive, depends upon another question which, although not within the scope of our authority to decide, yet necessarily enters into the present discussion: we refer to the title of the State of Delaware to that part of the Delaware River contained within a circle of twelve miles around the town of New Castle. And as commissioners on the part of that State, we may say that it is a most gratifying though not unexpected fact, duly appreciated by the authorities and people of Delaware, that the State of New Jersey should have, so promptly, responded to the suggestion of her ancient sister for the settlement of a claim so nearly affecting her sensibilities as an independent member of the family of States; and we may also express our personal gratification that she has selected, as her representatives in this commission, such distinguished lawyers and gentlemen as those with whom we are to deliberate.

In order to a proper understanding of the title of the State of Delaware to the River, and its soil or bottom within the twelve miles circle around New Castle, it will be found useful to look behind the charters from the Duke of York to William Penn, under which, and other *indicia* of ownership, the State of Delaware holds her territory:

Without entering upon any examination of the question, who first discovered the River Delaware, and the lands bordering upon it, it is sufficient for the purpose of this discussion to state the uncontroverted fact, that the Duke of York acquired title by patent from his brother Charles II of England to all the land lying between the River St. Croix (the boundary between what is now the State of Maine and the Province of New Brunswick) and the east side of the Delaware Bay and

DE13918

River, on the 12th day of March 1664, in the 16th year of that monarch's reign; and soon afterwards entered upon the occupancy and enjoyment of his grant—the Dutch who held New York, and a large part also of the tract granted to him (including what is now New Jersey,) having surrendered their possession to his forces under the command of his Deputy Governor, Sir Richard Nicholls. So soon as the agents of the Duke and the King's servants felt that the territory belonging to him at the centre and within the defined limits of his patent, was secure to him, they, acting under his authority, dispatched a force under the command of Sir Robert Carr for the reduction of the settlement and territory within and upon the Bay and River Delaware, occupied by the Dutch as a dependency of their principal seat of authority and jurisdiction at New York. The instructions under which Carr sailed emanated from the commissioners of King Charles and the Duke's agents jointly; the forces employed, though subject to the superior authority of the King, were in reality the Duke's, for the protection of his transatlantic demesnes; and they were officered by those either directly in his employment, or holding their possessions under him. The outlying territory upon the Delaware had been settled and treated by the Proprietors of New Netherlands, the Dutch, as an appendage of their chief seat of power within that colony, at New York; and when the surrender of the fort at that place was made by Peter Stuyvesant, the Dutch Governor, to the Duke's deputy Sir Richard Nicholls and the King's commissioners acting with him for its reduction, the dependencies of the chief colony passed with them. This at least was the view taken by them; and on the 1st of October 1664 the forces sent from New York having arrived before the town of New Castle (called by the Dutch New Amstel,) surrender of the place and the territory connected with it was demanded, and was soon afterwards yielded. Formal possession was then taken, and the English authority under the Duke was established. Shortly afterward, grants of land began to be made in Delaware by the courts established under the English rule, as they had been before made by Directors Kieffit, and Governor Stuyvesant representing the Dutch power at

New York; and subsequently and until the grant to Penn, hereafter mentioned, they were made by Sir Richard Nicholls Sir Edmund Andros or Sir Francis Lovelace, all deputy Governors of the Duke under his patent of 1664. Between the period of the 12th of March 1664, the date of the patent, and the 29th day of June 1774, and whilst the war between the States General of Holland and England was going on, the Dutch repossessed themselves of the territory surrendered to the English, and continued for a short time to hold and govern it: but the war having ended in their defeat, the English recovered dominion and sovereignty, and the Duke of York became reinstated in his rights and property by another charter from his brother the King, dated the day last mentioned. It is not necessary to inquire particularly why this latter charter was made; but a reason can be found in the fact that the capture by the Dutch of the New York colony and its dependency upon the Delaware, re-invested them with the absolute title to the lands wrested from them by the English, and thus annulled all charters or documents conveying any title to parts of the territory, which had been made or issued by English authority. At the close of that war, the English, supporting the Duke's title, and acting under his authority as proprietor and owner, re-entered upon his possessions, never to be again disturbed until the war of the Revolution in 1776.———This recital gives us a view of the case essential to a proper understanding of subsequent events; and informs us how it was that the Duke of York assumed authority to make the charter of feoffment to William Penn of the 24th of August 1682, and a prior lease to him for ten thousand years of the circular territory—hereafter to be adduced in the more formal statement of the Delaware title,—

Another piece of history:—

In the year 1680 and on the 14th day of the month of June, William Penn applied to the Privy Council of Charles II for a Patent of Territory bordering upon the river Delaware; his object being to thus obtain payment of debts owing by the King to his late father Admiral Sir William Penn and himself. In his application he stated that he would accept the grant as

payment of said debts, or at least in part payment. It was referred to the Board of Trade and Plantations, who submitted it to the agents of Lord Baltimore in England and to the Duke of York, in order that they might, if they chose, suggest objections to it, if there were any. The former contented themselves with requiring that, in case his request should be granted, the limits of his patent on the south should not be allowed to go below the Susquehanna Fort and a line east and west of it. There was, at that time but slight knowledge of latitude and longitude in those parts. The Duke however, was more particular; and while he did not resist the proposed grant, yet required that the lower line should be at the distance of twenty or thirty miles from his colony of New Castle. Upon a reference of the Duke's requirements to Penn, he stated his objections, alleging that if he were confined to a southern limit so far from New Castle, he would not have sufficient of the River for the benefit of his patent, and suggesting twelve English miles north of New Castle. The Duke, through his agent, Sir John Werden, so far receded as to consent that the limit suggested by himself need not be observed, provided Penn was kept at a proper distance from his property, he not insisting upon any specific limit. The parties not being able themselves to agree upon the precise boundary between them, and the Privy Council being naturally, as we suppose, unwilling to decide a question of such importance to the Duke as owner of the colony of New Castle, or as it was also called Delaware, the question of the limit of the proposed Patent was referred to the Lord Chief Justice North, who made his report or decision, establishing that part of the southern boundary abutting upon the Duke's territory according to the suggestion of Penn. And thus was the separating line between Pennsylvania and Delaware determined, and thus it now remains. To verify this account of the twelve miles circle boundary, the undersigned refer to the Patent of Pennsylvania to be found set out in the Colonial Records of that Province, collected and published by authority of the Legislature of what is now the Commonwealth of Pennsylvania, in Volume one, at pages lx, x, xi, xii, xiii, xiv, xv, xvi, xvii, & xviii, of the Introduc-

tion; and to the application aforesaid of Penn for his Patent and the documents connected therewith above referred to, to be found in Hazard's Pennsylvania Register, Volume one, at pages 269, 270, 271, 273, 274. For the sake of more easy and satisfactory examination of these *documents*, we have thought proper to copy them into this brief. In their order, in point of time, they are as follows :—

(Note. Between the period of William Penn's application for a tract of land in America and the date of the Charter, considerable time elapsed, and numerous difficulties occurred, respecting the boundaries to be embraced by that instrument, on account of prior grants to the Duke of York and Lord Baltimore. The proceedings relating to them are the documents above referred to.)

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"*Extract of the proceedings of the Lords of the Committee of his Majesty's most honorable Privy Council, for the affairs of Trade and Plantation.*

IN THE COUNCIL CHAMBER, Monday, the Fourteenth of June, 1680.

PRESENT ;

Lord President, . . . . . Bishop of London.
Duke of Albemarle, . . . . . Mr. Secretary Jenkins.
Sir John Chicheley.

The Petition of William Penn referred by an order from the Earl of Sunderland, of the first instant, is read, praying in consideration of debts due to him, or his father, from the crown, to grant him letters patent for a tract of land in *America*, North of *Maryland*; on the East bounded with *Delaware* River; on the West limited as *Maryland*; and Northward to extend as far as plantable; whereupon Mr. Penn is called in and being asked what extent he will be contented with, northerly, declares himself satisfied with three degrees to the northward, and that he is willing, in lieu of such a grant to remit his debt due to him from his Majesty, or some part of it, and to stay for the remainder until his Majesty shall be in a better condi-

But I am further to offer unto your Lordships, that there are several *Dutch* and *Swedish* plantations, which have been under the *English* government, that lie scattered on the *westward* of *Delaware* river, and some of (them?) perhaps within the bounds of *Mr. Penn's* petition, and have, for a long time, either acknowledged the protection of his Royal Highness, who took them from the *Dutch*, upon the conquest of *New York*, or of the *Lord Baltimore*, near whose borders they are settled; and how far *Mr. Penn's* grant may, in this consideration, concern his neighbors, is most humbly submitted to your Lordships.

---

*Report of Mr. Penn's Patent.*

MAY IT PLEASE YOUR MAJESTY,

In obedience to your Majesty's order, signified unto us by the Earl of *Sunderland*, on the first of *June* last, we had prepared the draught of a charter, constituting *William Penn Esq:* absolute proprietary of a tract of land in *America*, therein mentioned, which we humbly present to your majesty, for your royal approbation, leaving also the naming of the said province to your Majesty, which is most humbly submitted."

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We have now and here, as we conceive, an explanation of (what has not before been understood, at least in these times, and which seems to have escaped the researches of those who so ably and successfully conducted, in behalf of the Government of the United States, the celebrated "Pea Patch case,") the authority under which the Duke of York assumed to grant to William Penn, first his lease of ten thousand years aforesaid of the town of New Castle and territory and river around and about the same; his subsequent deed or charter of Feoffment for the same premises; and, upon the day of the date of the latter, another charter of Feoffment for all the land bordering

upon the river and bay of Delaware down to Cape Henlopen, then forming the extreme eastern projection of Fenwick's Island, which is the end, at the sea, of the east and west line between Delaware and Maryland. The country thus conveyed to Penn, was the same that had been wrested from the Dutch as a dependency of New York, or the patent of 1664, and was the Duke's own land, as much as the country from the St. Croix to the eastern side of the Delaware river and bay, granted to him by his brother the King, whose heir presumptive he was. His claim was no secret or unadmitted one; it had been enjoyed by him in virtue of the conquest of the Dutch; had been garrisoned and governed as other parts of his territory were; and was recognized by the Royal authority, through the Privy Council of his majesty, as above shown, as belonging to him, and him only. Though the circle had not before been established or known as bounding the Duke upon the north, yet the patent of Penn for his colony or province of Pennsylvania, contains a description of that line; thus recognizing the Duke's right that far north of his colony of New Castle or Delaware. It has been, in all the controversies about the Pea Patch Island, asserted by those who claimed against the Delaware title, that the Duke of York had no right to the territory of Delaware, when he granted it to Penn; whereas we respectfully submit that the foregoing facts establish, in this case, that he had a title at that time and a good one; at least the only person or power who could dispute it, the King of England, admitted it by and through the proceedings of his Privy Council, in relation to the boundaries to be assigned to Mr. Penn. Nor was there ever any serious question of his right made by any valid authority under the English government. After the date of his Deed of Feoffment to Penn, all the land grants in Delaware, issued under the authority of that Deed, were in Penn's name, or that of his heirs.

The Duke of York being thus the undisputed proprietor and owner of the Delaware colony, and having the full possession thereof, by his indenture of lease aforesaid, dated the 21st day of August 1680, granted the territory within the cir-

cle and the river and the soil thereof within it also, to William Penn for the term of ten thousand years, and afterwards by his charter of Feoffment dated the 24th day of August 1680, conveyed, enfeoffed and assured the same to him in fee simple; and, on the same last mentioned day, he conveyed to him by another Feoffment, all the before mentioned land south of the circle and down to Cape Henlopen at Fenwick's Island. Formal possession was given and taken by Penn under these deeds; the agents and attorneys of the Duke named in the charters, John Moll and Ephraim Harman, making formal livery of seisin, not only of the dry land but of the river and its soil, and Penn receiving it in person. The manner of this is set forth in the record of the Pea Patch case, to which reference is here made, the formal evidence thereof not being necessary, as we conceive, to be produced. Afterwards, and on the 22nd day of March 1683, not quite seven months from the Feoffment to Penn, King Charles II, made a formal grant of all the same territory including the river and its soil, within the circle of twelve miles radius around New Castle, to his brother the Duke. We thus have the Royal authority, supporting the Duke, to Penn. This grant or charter is in the following words.

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*King Charles the Second's Grant of the Town of New Castle, and the Three Lower Counties, to the Duke of York.*

Charles, by the Grace of God, King of *England, Scotland, France,* and *Ireland,* defender of the Faith etc. To all to whom these presents shall come, *Greeting*: KNOW ye, that we, for divers good causes and considerations us thereunto moving, have, of our especial grace, certain knowledge, and meer motion, given and granted, and by these presents, for us, our heirs and successors, do give and grant unto our dearest Brother James, Duke of *York,* his heirs and assigns, all that the Town of *New Castle,* otherwise called *Delaware,* and Fort therein or thereunto belonging, situate, lying and being between *Maryland* and *New Jersey,* in *America*; and all that tract of land lying within the compass or circle of

perfection whatsoever to the contrary in any wise, notwithstanding, although express mention of the true yearly value or certainty of the premises, or any of them, or of any other gifts or grants by us, or by any of our progenitors heretofore made to the said James, *Duke of York*, in these presents is not made, or any statute, act, ordinance, provision, proclamation or restriction heretofore had, made, enacted or provided, or any other matter, cause or thing whatsoever, to the contrary thereof in any wise notwithstanding. In WITNESS whereof, we have caused these our letters to be made Patents: Witness OUR SELF, at *Westminster*, the Twenty-second day of *March*, in the Thirty-fifth year of our reign.

*Votes of Assembly, Penna., Vol. 3. p. 590, 591.*

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The original document itself, then in the possession of the family of the Penn agents in America, and also three several exemplified copies thereof in due form, were all before the Arbitrator in the Pea Patch case, as appears by the report of the trial, among the Archives of the Government.

Now, laying out of view all the above stated facts with respect to the ownership of the Duke of York at the time of his lease and feoffments to Penn, and admitting for a moment that there are no such facts, yet we contend, that by the plain rules of law and equity, the grant from the King to the Duke, enured to the benefit of Penn; and whether by estoppel of the Duke, or as a trust in his hands for Penn's benefit, makes no difference whatever. It is a familiar rule of *equity* that where one sells land to another, himself having at the time no title, if he afterwards acquire it, it shall enure to the benefit of his grantee—the grantor being held to be a trustee of the land for the benefit of his grantee, and being such, he may be compelled to a conveyance of the legal title, like any other Trustee. Again, *at law*, under such circumstances, the grantor having by

his act of conveyance by deed, asserted title in himself, is not allowed afterward to set up his acquired title against his alienee: in other words he is said to be *estopped* to deny his purchaser's title ; and thus that purchaser is said to have a legal title, and has such a title; by *estoppel*. This is especially true of a *feoffment*, which operates to convey the legal title, and does not depend for that effect upon the covenant of warranty. To speak more strictly, his title is *preserved* by the estoppel. These principles are too familiar to require any formal illustration.

William Penn, and those claiming under him the Province of Pennsylvania and the "three lower counties upon Delaware" as they were called, claimed the property within them, and exercised jurisdiction over the entire territory without question, until the Revolution destroyed the relations existing between those proprietaries and the inhabitants; exercised without interruption exclusive control, as owners of the property or *corpus* of the whole territory conveyed by the Duke ; and there never was any disturbance of his right to legislate for the country, except for one short period during the reign of William and Mary (successors of the Duke who ascended the throne as James II. and abandoned it in 1688 after a short reign of three years,) when he fell into disgrace from his supposed attachment to the fortunes of his late master, and was deprived of his governing authority, under the pretence that he neglected his duties as Proprietor and Governor ; but he was soon afterward, restored to it, and held it, as it was held after him by those to whom the proprietorship of the country passed, without any interference until the colonies asserted their independence. During all this long period of ninety four years, extending from the reign of Charles II. through five reigns and part of a sixth, the Penns legislated through their council and assemblies (there were two of the latter after the secession in 1701 of the counties comprising Delaware) for the inhabitants of his Province of Pennsylvania and the said counties; and yet so far as anything appears to the contrary, there never was any serious question of his or their right in any quarter. This would seem to be irrefragable proof that Penn's title to the

lands within his Patent and Deeds of feoffment was perfect: especially when the additional fact is considered, that all the enactments of his legislature which (it must not be omitted to say) ran in his name with the advice and consent of his council and assemblies respectively, were submitted to the home government for approval: if disapproved they became inoperative. How can the thought be entertained for a moment, that the title of Penn was not considered perfect at home; when, had it not been, he would have been a mere usurper and liable to be dealt with as such!

Having arrived at the conclusion that the Penn title was perfect, as an assurance, at law and in equity, it may be interesting to inquire why it was that the charter of Charles II was not made to Penn instead of the Duke of York: though the circumstance that it was not, has no effect, in our opinion, upon the main question. In the deeds of feoffment there is a covenant for further assurance, which entitled Penn to call upon the Duke at any time, within the period of seven years fixed as the limit of its operation, for a performance. This was doubtless known to the King; and to put his brother in a situation to make it, he invested him with the legal title, which technically was in the crown, in virtue of the conquest by its forces acting under the Duke's orders. Besides, it was more seemly that the Duke should perfect Penn's title, rather than the King, with whom there was no contract.

It being thus shown, as we think, that the Duke of York had a good title to the twelve miles' circle at the time of his feoffment to Penn, at least as good as anything short of the possession of the actual muniments of a prepared legal title can be, or if he had not, that the charter of Charles II to him, supplied him with the means of making such title, it remains to inquire whether such title (the estoppel through the King's charter to the Duke, working upon his feoffment to Penn, to clothe the latter with the entire legal estate) can be assailed with success by the State of New Jersey, so as to invest her citizens with any right within the river circumscribed by the circle, except that of navigation, which is recognized and protected by the commercial clause of the Federal Constitution.

It may safely be admitted that in the colonial times, the whole territory in America claimed by Great Britain, was so far vested in the crown, that the common rights of navigation and fishery existed in every part of it for all her subjects within its several divisions; or at least for all of them within a division, or colony, with respect to such division. No doubt therefore, the subjects of the crown inhabiting within the limits of the patent to the Duke of York, dated 1664, and the subsequent confirmation of it in 1674, which Patent embraces New Jersey, were entitled to every common right which subjects of the crown anywhere could enjoy; and the Delaware River, being within the King's Dominions in America, there was a common right of piscary in all the King's subjects who inhabited within those parts.

In the case of Martin v. Waddell (16 Peters U. S. S. Ct. R. page 369), it was decided by the Supreme Court of the United States, that the limits of the Duke of York's Patent from Charles II only extended westward to the eastern side or edge of the Delaware Bay and River; in other words that it was bounded by the edge of the water where it touched the shore of the land granted, and did not extend into the stream itself. That question may, therefore, be considered closed. And it follows, necessarily, that the inhabitants of that territory could have no right of fishing in the bay or river by virtue of the Patent. When, then, if ever, were such rights acquired? If it be answered that all the King's subjects had a common right of fishing in the royal domain, and if such answer be admitted to be sufficient, yet upon the severance of the colonies from the crown by the war of the Revolution, each of those colonies became the sole owner and proprietor of the territory within its limits to the same extent precisely as all independent states are.

Now if a navigable river or stream form a boundary between two nations or states, it is admitted that both hold *ad filum aquæ;* provided the boundaries of neither extend beyond the margin. But if the boundaries of one do go beyond such margin, they are valid boundaries to the extent to which they reach. Applying this doctrine to the case before us, and how

does the matter stand? The boundaries of the Duke with reference to his colony of New Castle, were by the terms of the Royal Charter to him, made to extend in every direction twelve miles distant from the town; and they would unquestionably be considered to include the land of New Jersey within the circle, but for the prior grant of that land to the Duke by the charter of 1664, confirmed by that of 1674. When the separation from the crown took place, each colony, by force of the Declaration of Independence, and the success of the arms of the colonists, became as entirely independent as any state or nation in the universe, and clothed with every attribute and power of sovereignty, including the royalties theretofore held and enjoyed by the crown. But for the effect of the feoffment to Penn therefore, made perfect by way of estoppel by the royal charter to the Duke of York of the 22nd of March 1683, Delaware and New Jersey would each have held the Bay and river Delaware flowing between them to the channel, and *filum aquæ*; and the inhabitants of each would have been entitled to, and enjoyed the right to fish within their several limits; that is, each upon his side of the channel. By such effect however, the limits of each colony were precisely such as belonged to each before that event; and consequently Delaware became entitled to claim and hold all the bed of the river within the twelve miles circle; and by the law of nations, each being bounded by the waters below the circle, they severally became entitled to extend their jurisdiction to the channel thereof; and the piscary rights followed their several titles, and did not extend beyond their respective boundaries. If, therefore, stress should be laid upon the fact that common of fishing in all the waters within the King's domain, was in all his subjects; yet when the treaty of peace of 1783 was made, each several colony became her own proprietor to the exclusion of any common right in any others by reason of their former relation to the crown of Great Britain. The common right after that was confined to the *public of the new state*, and excluded all other people. Upon this principle the states have acted ever since,—all the fisheries in every part of the country within state limits being held by the courts, and recognized by the public

of the country at large, as the property exclusively of those states respectively. Now, should it be contended and established that the people of New Jersey were accustomed to fish within the circle prior to the Revolution; that circumstance would not invest them with any right to do so afterward, each of the states, after the separation from England, becoming seised of all her territory within her chartered or accustomed limits as her entire sovereign estate, to the exclusion of every claim founded upon a prior ownership or sovereignty of the whole. This is a plain principle of public law, needing no citation of authority to support it. A claim by New Jersey therefore, of the right of her citizens to fish in the circle, must be shown independent of ante-revolutionary usage or right.

As a summary or statement of points arising out of the forsgoing, the undersigned present the following:—

I. The Dutch, either as the city of Amsterdam, or the States General, were in possession of, or exercised dominion over, and governed as a province or colony, that part of America called New Netherlands, which embraced New England, New York, the Islands about them, New Jersey, and that part of the western shore of the Delaware Bay and River, now comprising the State of Delaware, or the most eastern part of it, for many years before they were surrendered by them to the English. They granted the lands within them as proprietors and owners, and exercised all other acts of sovereignty. Plenary evidence upon this point is to be found.

1st. In the first four volumes of "Documents relating to the Colonial History of New York." Its place is indicated by the title *Delaware* in the General index in vol. 5.

2nd. In an ancient record of the Recorder's Office of Kent County Delaware, called the "York Book of Records of the State of Delaware" which from the 1st to the 32nd page inclusive, is taken np with Dutch grants of land within what is now the State and the county of New Castle, the first of which was made in 1646 by William Kieft, styling himself "Director General and Council in behalf of the High and Mighty Lords,

the States General of the United Netherlands, His Highness of Orange, and the Honorable Gentlemen the Directors of the privileged West India company residing in New Netherlands."

II. The Duke of York had title to the colony of New Castle, and the land and river bed within the twelve miles circle, and the country south, all within the State of Delaware, before and on the 24th of August 1682, on which day he granted it to William Penn by a Deed of feoffment.

1st. By the aforesaid Colonial History of New York.

2nd. By the fact that his Governors, Sir Richard Nicholls, Sir Edmund Andros, and Sir Francis Lovelace, made grants of land there; which follow those made by the Dutch previously. The first is dated 20th of June 1665, and they continue up to the time of the grant to Penn.

3rd. That as proprietor of the New Castle colony, he was consulted by the crown, about the limits of Penn's proposed patent, of Pennsylvania. This appears by the correspondence between his secretary Sir John Werden and the Sec'y Blaythwaite, of the Privy Council of King Charles, above quoted; also indirectly by the evidence hereiuafter given of validity of Penn's title.

III. By the Deed of feoffment from the Duke of York to William Penn of the 24th of August 1682, and the livery of seisin accompanying it, Penn became the proprietor and owner within the circle of all the dry land on the western side of the river, and of the river and its soil or bed. See the Deed in vol. 1. Del. Laws, appendix. The language of the Deed shows, conclusively, as we respectfully submit, what was meant to be conveyed: and the livery is confirmatory of the construction given to the language. It was by delivery of New Castle through the possession of the Fort there, and by turf and twig at the centre of the Colony, and representative of the dry land, and of the water and soil of the river, as representing such river and its bed. The form of livery appears by the evidence in the "Pea Patch case" before Mr. Sergeant.

IV. But if Penn's title was not complete under the feoffment from the Duke of York, it became so, at law and in equity by the charter of Charles II. to the Duke, dated 26th March

1683, above set forth—the words of description in which are identical with those in the feoffment.

1st. Because Penn being enfeoffed by the Duke, and a legal estate being thereby created in him, the Duke was estopped from setting up a claim, under the charter of '83, against his prior deed. Hence Penn's title became complete *at law* by estoppel; which ran with the land.

Shep. Touch. 204, 210:—Co. Litt. 9,*a*, 49,*a*. Plow: 423. Rawle on Cov. for title, 405: also the whole of Chap. ix. and the authorities cited there. Kent's Comm. vol. 4. page 98. Trevinian *v.* Lawrence 1. Salk. 276: S. C. 6 Mod. 258. Palmer *v.* Ekins, 2nd Ld. Raym. 1551.

2nd. Because *in equity* where one sells land having no title, and afterwards acquires the ownership, the newly acquired right enures to the benefit of his alienee.

3rd. Also because in equity such a grantor is held to be a trustee for his grantee. He may be compelled to convey to his grantee, under a covenant for further assurance, any title he may have acquired since the conveyance.

Penn *v.* Baltimore, 1 Ves. sr. page 454.
Kildare *v.* Eustace, 1 Vern. 439.
Burgess *v.* Wheate, 1 Eden 223.
2 Sim. & Stuart 519.
Rawle on Cov. for title. Chap. VI.

4th. Penn's title, though questioned sometimes in the the courts, as in the case of Penn v. Baltimore in chancery, and oftener in the Privy Council of reigns following that of Charles II, was never overthrown or weakened. On the contrary, the decision of Lord Hardwicke, in the above case, admits it; and the doubts suggested concerning its validity, in the controversies before the Privy Council, never went to the extent of any steps to establish a title superior to his. We refer to the Pea Patch case and the arguments of the counsel of the U. S. and the evidence shown by them, to establish this point.

5th. All statutes enacted in the colonies during the English rule were subject to supervision by the crown, and were not to become laws if disapproved of in six months from their



DE13933

passage. The statutes enacted by Penn and his deputies, and those who succeeded him, assisted by the Provincial council and the separate assemblies, were never disapproved for want of authority, during any reign—thus establishing a recognition of his and their power to pass them.

The whole system of political administration under which Pennsylvania and the three counties now composing Delaware, were governed, up to the time of the Revolution, was the fruit of Penn's jurisdiction and authority derived in the case of Pennsylvania from the King's charter of 1681. It is impossible to conceive such a state of things existing in an empire so well governed as that of Great Britain, without a conviction that the right of the actor must have been recognized as valid. A usurpation of authority cannot be imagined; for intercourse with the home government was so frequent as to preclude such an idea. Besides it was well known that Penn was governing Pennsylvania and the three counties under a claim of proprietorship and sovereignty, for he was deprived of the *sovereign* function for near two years during the reign of William and Mary when Benjamin Fletcher governed in his stead; but he was not disturbed in his propriety or ownership of the territory, and his government was restored to him on the 20th of August 1694 by the King and Queen. For the evidence upon this point, the undersigned point to the legislative records of Pennsylvania and Delaware, and Vol. 1 of the Colonial records of Pennsylvania, pages 312 and 437.

The undersigned, also refer, upon all the points presented to the Pea Patch case, and particularly to the arguments of the counsel of the United States, and the authorities, records, muniments, testimony and other the evidences in favor of the Delaware title adduced by them. Though the case itself is not technically authority, yet the positions assumed and points made and the reasoning employed in support of them by those counsel and the decision reached by the distinguished arbitrator, the late Honorable John Sergeant, are believed to be unassailable.

JOSEPH P. COMEGYS,
WILLIAM G. WHITELEY,
EDWARD L. MARTIN.

JULY 2, 1874.

DE Public Archives

Legislative Papers 1875

Jan - Mar Reports

Barcode 391054

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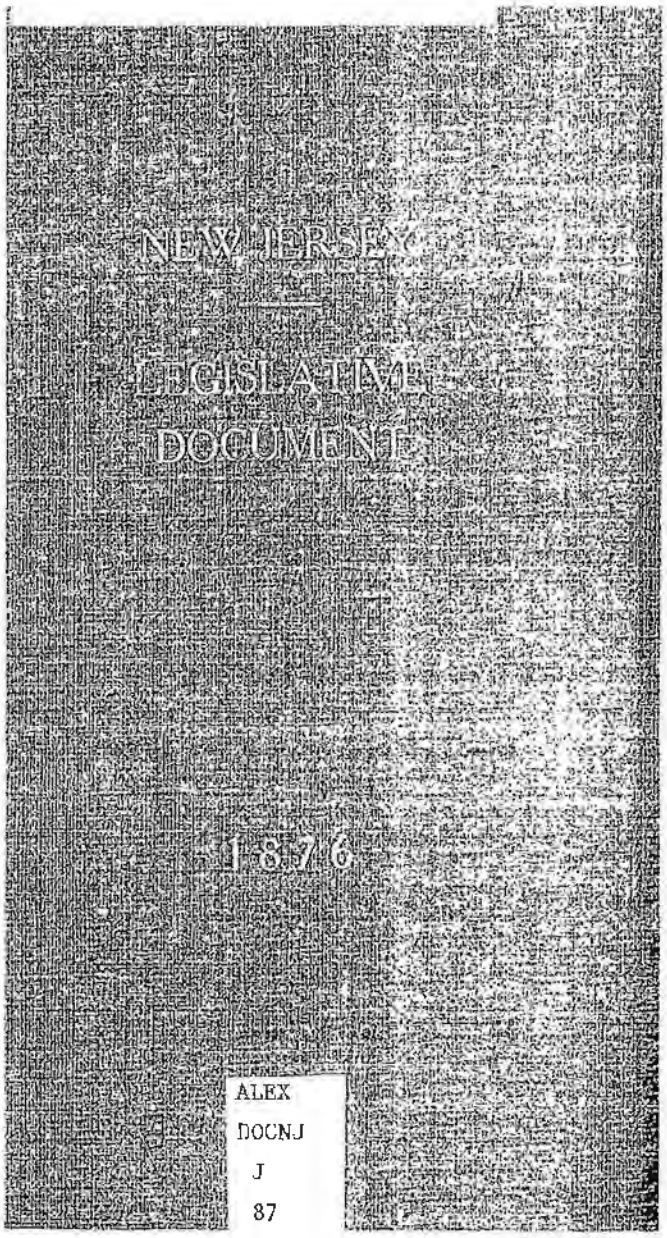


DE13936

# REPORT.

STATE OF NEW JERSEY,
EXECUTIVE DEPARTMENT,
TRENTON, March 23, 1876.

In response to a resolution requesting me to communicate any action, if any, has been had by the commissioners of the States of Delaware and New Jersey, in relation to the dispute concerning [illegible] in the Delaware river, I respectfully submit herewith copies of correspondence between the commissioners of this State and myself, and to which I refer for the information desired.

I have received no official notification of an abandonment of the commission by the Legislature of Delaware, but the published laws of that State show that on the 26th day of March, A. D. 1875, a joint resolution was passed relieving the Delaware commissioners from further duty.

This is greatly to be regretted, for no other legislation can be had in that State until next year, as its Legislature meets only biennially.

Every effort, however, within the scope of executive duty, will be made with the authorities of Delaware tending to an eventual settlement, and also, in the meantime, to prevent any personal conflicts between the citizens of each State arising out of the questions involved.

I would also suggest that power be conferred, in case negotiations cannot be resumed, to bring the case before the Supreme Court of the United States as provided in the Federal Constitution.

Respectfully,

J. D. BEDLE.

DE13937

STATE OF NEW JERSEY,
EXECUTIVE DEPARTMENT,
TRENTON, March 7, 1876.

*To Honorable A. Browning, Courtland Parker and Alfred M. Slape, Commissioners:—*

DEAR SIRS:—The Legislature has passed a concurrent resolution, of which the enclosed is a copy, and the first section of which requests information as to the action had by you with like commissioners of the State of Delaware upon the matters of difference referred to in the acts under which you were appointed. I will be glad to have you communicate to me, in writing, the exact status of the negotiations, with such other information as will enable me to accurately answer the resolution.

Yours respectfully,

J. D. BEDLE.

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CAMDEN, March 9th, 1876.

*To His Excellency, Joseph D. Bedle, Governor of New Jersey.*

DEAR SIR:—In answer to your letter of the 7th instant, addressed to Messrs. Parker, Slape and myself, as commissioners on the part of New Jersey, in conjunction with commissioners on the part of the State of Delaware, to determine the question of jurisdiction over the Delaware river, or bay, within a circuit of twelve miles around New Castle, in that State, I beg leave to state, that sometime after the several appointments of the joint commission, the commissioners met on several occasions in the city of Philadelphia. After having, on those occasions, discussed to some extent the questions involved, it was agreed that the Delaware commissioners should agree upon, have printed and served on us, a statement of the case on their part, to which we in turn, in like manner, were to submit a statement on our part.

Some considerable time after this arrangement, at a meeting of the joint commission in Philadelphia, we were served with their statement. To prepare a proper reply to this, required no inconsiderable time and investigation. Before it was accomplished, the State of Delaware very unexpectedly to us, and as advised, to them also, revoked their commission. This terminated, or at least suspended, all further proceedings; and so the matter remains to this present.

Very truly your obedient servant

# SEVENTH ANNUAL

# REPORT

OF THE

# Commissioners of Fisheries,

OF THE

# STATE OF NEW JERSEY,

FOR THE YEAR

1876.

TRENTON, N. J.:
JOHN L. MURPHY, STATE GAZETTE PRINTING HOUSE.
1876

GARDNER A. STURTEVANT LIBRARY
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RUTGERS COLLEGE
NEW BRUNSWICK, N.J.

# REPORT.

*Joseph D. Bedle, Governor of the State of New*

the honor of presenting to you the seventh
Commissioners of Fisheries of the State of New
we beg leave to reproduce the act under which
heries of the State were first appointed. (See
bsequently, by legislative enactment, provision
appointment of a third Commissioner, and that
or the three should continue five years.
ners have, in the performance of their duties
from time to time inspected the bay and river
, and have suggested such legislation as to their
the observation and knowledge derived from
with the important interests under considera-
onducive to private and public good.
, in many instances, have been accepted and
legal enactments. In others, they have failed
ting interests. We find legislation in regard
a variance in adjoining counties. This stric-
ly to that over the bays, or, rather, sounds
the subject of just complaint with those who
, or are dependent upon, the supply of fish
sounds. We therefore respectfully suggest
eneral character be enacted, to give the neces-
fostering care over, the fishing interests in

to call the attention of your Excellency to the
of the laws regulating fishing in the river
river once abounded in the choicest varieties
anadromous fishes, but has been greatly
late years, by causes repeatedly presented in the
missioners. Riparian to the States of Pennsyl-

vania, Delaware and New Jersey, each of these States is to a greater or less degree interested in the fishing of this great river and bay.

As between Pennsylvania and New Jersey, the laws regulating its fisheries have always been concurrent, and indispensably so, because each of these States, under the compact of seventeen hundred and eighty-three, exercises jurisdiction over the entire surface of the river, from shore to shore, and from the northwest corner of New Jersey to where the northern or circular boundary of the State of Delaware touches the same.

Delaware, also, in 1871, enacted laws regulating her fisheries in the river Delaware, in entire harmony with those of Pennsylvania and New Jersey; but, unfortunately, owing to her claim of exclusive jurisdiction over the entire surface of the river within the famous "Twelve Mile Circle," the laws of the two States over that area remain, at present, in abeyance. Consequently, illegal fishing has been carried on without let or hindrance, greatly to the injury of the fishing interests of these three States. It is greatly to be desired that this mooted question be speedily and definitely settled.

The concurrent laws of Pennsylvania and New Jersey, of 1808 and 1809, have been so frequently supplemented by acts supplied to meet arising contingencies, that they have become exceedingly complicated and obscure.

To remedy this evil, your Commissioners met the Commissioners of Fisheries of Pennsylvania, at Philadelphia, last winter, and, after careful consideration, prepared a draft of a proposed law, intended to take the place of the conflicting statutes now cumbering our books. This law, with some verbal corrections, and a copy of the address to the Legislatures of the two States, as signed by the Commissioners, are appended to this report (see Appendix B), and we respectfully urge that speedy action should be taken thereon. The different sections, except the twenty-fourth, are all re-enactments of existing laws, with slight verbal changes. We have only left out obsolete and useless law. No new restrictions have been placed on any class of fishermen. We were at great pains to explain this matter to the Joint Fishery Committee of the last Legislature, and are ready at any time to give such further information as to the operation of existing laws as the Legislature may require. It is important that the law should be passed substantially as presented, for the reason that it requires the joint action of the States, and, as prepared, has the concurrence of all the Fish Commissioners. We do not believe that any new regulations are required. It will suffice if these old ones can be made plain, so that all may understand.

In reference to the shore fisheries, so-called, it is proper to report a strong feeling in favor of general restrictive legislation, as above stated. Pounds, weirs, and other stationary apparatus for the capture of fish, should be prohibited in all such waters, except so far as



same may from time to time be licensed by the Commissioners Fisheries, and, when thus licensed, should be used subject to the rections prescribed by the Commissioners. It is unwise and racticable to attempt to do away with these structures altogether, we have accordingly prepared a draft of a proposed law, modafter one drawn by the experienced Commissioners of Massaetts, providing for the use of such apparatus when duly licensed. ppend a copy of said law to this report (see Appendix C), and ectfully ask for it the consideration of the Legislature.

a meeting of the Commissioners of all the States, at Philadelin October last, Dr. Edmunds, of Vermont, and Dr. Hudson, Connecticut, with one of your Commissioners, were appointed to are a report as to legislation required for the protection of shore ies on the whole coast. The Committee will procure statistics, is hoped that the collation of facts and the comparison of will be of advantage to all the States interested.

om the following reports of the Fish Wardens, it will be found he shad fishing in the Delaware was less remunerative the past than the preceding one. The season, as has been the case for ber of years, was very cold and backward. The shad entered y in considerable numbers, but were there intercepted by an number of drift nets. This large accession to the number of e due to two causes: the vast number of unemployed men, expectation that there would be an extraordinary demand, ry high prices, for the fishes of our river to supply food for tudes drawn to Philadelphia by the Centennial Exposition. tanding the largely increased number of nets, and the fact engths were extended to their utmost capacity, the aggre- for the season is admitted to be far less than usual.

venience, the State is divided into two departments, viz: rn or Tidal department, and the Northern or Non-Tidal

## I. THE SOUTHERN DEPARTMENT.

### CUMBERLAND COUNTY.

gue Esq., Warden for Cumberland County, reports the drift nets the past season to be thirty-four, against fifteen on of 1875. The fishermen add to the length of their , the average length this year being over five hundred scribes the greater number of nets, and their increased extraordinary catch of the year before. No such ded the efforts of the fishermen this season. The early good both in quantity and quality, but the latter part proved an almost total failure. The average catch was

about sixteen hundred per net, against two thousand five hundred for 1875. The price was about twenty-five dollars per hundred.

In the Cohansey, the number of nets was fourteen, and the total catch four thousand five hundred, against twenty-one nets and a total catch of six thousand the year before, which is a small catch for the Cohansey.

During the season three schooners were engaged in sturgeon fishing at the headwaters at Bay Side. They took between fifteen hundred and two thousand sturgeons, but we could not ascertain where they came from.

The Warden had some difficulty with the fishermen in the Cohansey. He discovered several fishing within the weekly or Sunday close time, one of whom was arrested and fined under the Vice and Immorality act, as an example for the benefit of other violators of the law. This step effectfully checked the unlawful practice for the season.

He has neither seen nor heard of the black bass placed in the waters of the county the previous Fall, although he has made diligent inquiry concerning them.

### SALEM COUNTY.

James S. Hannah, the Warden for Salem County, reports the same number of shore nets (three), as last year. The one at Carney's Point operates a seine of six hundred fathoms, and employs thirty men, using, in addition, a horse. Expenses, sixty-six dollars per diem. The catch, during the past season, has been but 3,000 shad and 200,000 herring, and did not meet expenses by four hundred dollars.

The party who, last year (1875), fished at Helm's Cove, the last season fished at Ridgway's fishery. He used a net of three hundred fathoms, and employed a crew of thirteen men. Having fished twenty-six days, at an expense of thirty dollars per day, he caught but 2,000 shad and 130,000 herring, failing to meet expenses.

There went out from Salem county about one hundred and twenty-five shad drift-nets, owned and fished by residents, and about one hundred of the same kind, owned and fished by non-residents, making a total of two hundred and twenty-five, against one hundred and seventy of the previous season. The Warden ascribes this increase of drift-nets to the obnoxious "license" law of the State of Delaware, which discriminates between her citizens and non-residents, by imposing a tax of five dollars on the former, and twenty dollars on the latter, thus driving her citizens, and also non-residents, to outside of the river to avoid the payment of the said tax. These drift-nets range from 325 to 600 fathoms in length, and are sunk twenty feet below the float line. (This not only saves expense in the web or net, but also places the net out of harm by vessels of considerable



[illegible] over them, and the result also proves that the shad [illegible] the bottom in the deep waters of the river and the bay). [illegible] of the meshes is from 4⅛ to 5⅛ inches in length. The nets of [illegible] size have proven the most successful, inasmuch as the shad [illegible] past two seasons, having been larger than usual, were not [illegible] breast their heads far enough through the smaller meshes to [illegible]. This fact is worthy of note, and augurs well for the close [illegible] which the shad have free access to the spawning grounds [illegible] to the sea, to return again the following season of increased [illegible].

[illegible]tch for the season by the drift-nets of both classes, above [illegible], was about 246,233, to which must be added 5,000 taken [illegible] nets. Thus we have a total catch for the season of 251,233, [illegible]45,000 last year—a decrease of 93,767 shad, with, at least, [illegible] more than usual from this county alone. The price aver- [illegible] eighteen dollars per hundred.

[illegible]ze of the shad has been uniformly large, and the quality [illegible]last. Especially was this the case with those caught in [illegible]y, and in the early part of the season.

[illegible]ing catch was largely in excess of that of the previous [illegible] the exact numbers taken, or the amount received, the [illegible] no means of ascertaining, as they were disposed of [illegible] market could be found, and at various prices.

[illegible]th of sturgeon was also greater than that of the previous [illegible] This particular kind of fishing is becoming more and more [illegible] every year, and in consequence of this fact the Warden [illegible]s to ascertain the number taken, nor the amount received. [illegible]settled question of boundary within the "Twelve Mile [illegible]" between the States of Delaware and New Jersey, continues [illegible] cause of complaint with the fishermen. The Warden [illegible] while there was scarcely a violation of the law relating to [illegible]y close time, by citizens or non-residents of his county [illegible] outside of that "inevitable circle," within it the law is [illegible]ntinually by lawless men from Philadelphia, Chester, and, [illegible] places all along the shore of the Delaware, and from the [illegible]ore in our own State, who are well posted in the unsettled [illegible] affairs and in the want of power on the part of the [illegible] enforce the law. He has counted twenty nets fishing [illegible] circle" of a Sunday, and yet powerless to prevent them. [illegible]ions, he says, are both injurious to the fishing interests [illegible] Delaware, and demoralizing in their effects upon the [illegible] along the shores. There can be no valid reason why [illegible] men should override all law, both human and divine, [illegible] classes are held to a strict accountability, both by public [illegible] legislative enactments. The Warden further says of [illegible] effects of violating the Sunday close time, what has [illegible]ntly held up and insisted upon in the reports of your

Commissioners, that the fishermen, in past years, when the law was respected, looked forward to Monday as being the best day in the week to catch shad; but, during the past season, that day was but little better than any other, on account of the Sunday nets breaking up the schools of shad.

These few lines speak volumes in behalf of the importance of the observance of the close times established by law. At the shore fisheries it has been observed, ever since the drift nets were introduced, that when the Sunday close time was even partially respected, the catch, not only on Monday, but also on Tuesday and Wednesday, was much larger, all things being equal, than on the remaining three days of the week, for the simple reason that during those thirty hours large schools of shad had uninterruptedly made their way into the upper reaches of the river. And we hail it as a most auspicious sign of a better time coming, when the fishermen themselves begin to see that what too many of them have hitherto considered an unwarrantable restriction on the "poor man's rights," is really, as it was intended to be, to his ultimate real benefit.

On the 15th of November, 1875, the Warden assisted in planting fifty black bass in Salem creek, below the dam, at Shamptown, and forty-nine in Alloway creek, below the dam, at Allowaytown, since which time he has neither seen nor heard from them. They will undoubtedly show themselves by another year. Wherever placed, without an exception, we believe they have multiplied rapidly.

### GLOUCESTER COUNTY.

Helms V. Heritage, the Warden of Gloucester county, reports five shore fisheries in operation during the last season, all fished by Philadelphians. The catch was not nearly so great as was that of last year though the shad were larger, some weighing seven pounds. The average weight was from four to five pounds. So scarce were the shad that at some shore fisheries the crews were discharged, and the nets taken out and put away before the close time of the legal fishing season, viz., the tenth of June.

Of drift-nets there were about two hundred and fifty, varying in length from two to six hundred fathoms. These nets did pretty well while fishing in the bay, in the early part of the season.

The observance of the weekly close time, from sunset Saturday to twelve o'clock Sunday night, was better than was the case the previous season, except by some Philadelphians. No violations of law after the season closed came to his knowledge. Neither was he able to get an account of the aggregate catch of shad by the two classes of fishermen.

### CAMDEN COUNTY.

No report was received from the Warden of Camden county.



### BURLINGTON COUNTY.

[illegible]horn Thorn, the Warden of Burlington county, reports one [illegible] and four drift-nets in operation during the past season in [illegible]nty, against seventy-five in use the year before. From Bor[illegible], Fieldsborough and Florence, he reports thirty-six nets, [illegible]verage length of sixty-five fathoms, and an average catch [illegible] hundred and seventy-five shad. The price was forty dollars [illegible]red. Size of mesh, 5¼ inches.

[illegible] Burlington, Shedekers, Edgewater and Beverly, thirty-one [illegible]th an average length of one hundred fathoms, and a catch of [illegible]rice, thirty-five dollars per hundred. Size of mesh, 5¼ inches. [illegible] Delano, Riverside, Bridgeborough and Riverton, thirty-seven [illegible] an average length of one hundred and forty fathoms and [illegible]o depth. The catch was 1,800, which were sold at thir[illegible]ars per hundred. Pennsylvania also sent out from her [illegible]rresponding number of nets.

[illegible]e fisheries of this county were as follows:

[illegible]Cove there was a seine of one hundred and six fathoms [illegible]and thirty feet in depth, operated by a crew of twelve [illegible] in use from April 10th to June 6th, and yielded [illegible] the amount of $1,300.

[illegible]y's Cove there was a seine of one hundred and seventy[illegible]s in length and twenty-four feet in depth, operated by a [illegible]lve men. The daily hauls were ten, and was fished from [illegible] June 6th. Gross receipts, $1,600.

[illegible]oint there was a seine of one hundred and eighty fath[illegible]s and thirty feet in depth, operated by a crew of twelve [illegible] hauls, eleven; fished from April 12th to June 6th; [illegible]$1,500.

[illegible]int—Seine two hundred and fifty fathoms long and [illegible]eet deep. Crew, thirty men; daily hauls, nine; fished [illegible] to June 6th; gross receipts, $5,000.

[illegible]and—Seine one hundred and eighty-two fathoms; [illegible]forty feet. Crew, thirty-four; daily hauls, ten; fished [illegible]h to June 6th; gross receipts, $8,000; profits, $1,800.

[illegible]—Seine one hundred and sixty fathoms; depth, [illegible]ew, sixteen; daily hauls, ten; fished from April 18th [illegible] gross receipts, $3,500; profits, $900.

[illegible]nt—Seine one hundred and six fathoms; depth, twen[illegible]. Crew, thirteen; daily hauls, eleven; fished from [illegible] June 4th; gross receipts, $1,200.

[illegible]int—Seine one hundred and sixty fathoms; depth, [illegible]ew, twenty; daily hauls, ten; fished from April 18th [illegible] receipts, $3,000.

[illegible] Cove—Seine one hundred and thirty fathoms; depth, [illegible]. Crew, eight; daily hauls, nine; catch, 5,000; aver[illegible]ss receipts, $1,125.

New Jersey State Archives
Commissioners of Fisheries Annual Reports
1876

# LAWS

OF THE

# STATE OF DELAWARE,

PASSED AT A SESSION

OF THE

# GENERAL ASSEMBLY,

COMMENCED AND HELD AT DOVER,

ON TUESDAY, THE FIFTH DAY OF JANUARY,

A. D. 1875,

AND OF THE

INDEPENDENCE OF THE UNITED STATES,

THE NINETY-NINTH.

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VOL. 15.—PART 1.

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WILMINGTON, DELAWARE:
JAMES & WEBB, PRINTERS,
1875.

DE00029

RESOLUTIONS.

same as follows, to wit: Two hundred and sixty (260) copies to the House of Representatives, one hundred and twenty (120) copies to the Senate, seventy (70) copies to the State auditor, and fifty copies to each of the prothonotaries of the several counties. How distributed.

*Resolved*, That the clerks of the two Houses of this General Assembly, be and they are hereby directed to omit the said State Auditor's Report from publication in connection with their journals. Clerks of the two houses to exclude said Report from publication in journals.

*Adopted at Dover, January 19, 1877.*

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## CHAPTER 501.

Joint Resolution for the appointment of a joint committee to which shall be referred the report of the Delaware State Centennial Commission.

*Resolved by the Senate and House of Representatives of the State of Delaware in General Assembly met*, That the report of "The Delaware State Centennial Commission" be referred to a joint committee of three on the part of the House, and two on the part of the Senate. Joint committee on Report of "The Delaware State Centennial Commission."

*Adopted at Dover, January 23, 1877.*

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## CHAPTER 502.

Joint Resolution directing the State Treasurer to pay to Joseph P. Comegys and Leander F. Riddle, the sum of eleven hundred and fifty-one dollars and nine cents ($1,151 09.):

*Resolved by the Senate and House of Representatives of the State of Delaware in General Assembly met*, That the State

DE00030

RESOLUTIONS.

State Treasurer to pay $1151, as additional appropriation for expenses of State Centennial Commission.

treasurer be and he is hereby directed to pay to Joseph P. Comegys and Leander F. Riddle, the sum of eleven hundred and fifty-one dollars and nine cents, ($1,151 09,) balance due from the State, as an additional appropriation to defray the* Centennial Commission of this State.

*Adopted at Dover, January 14, 1877.*

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## CHAPTER 503.

Joint Resolutions on Federal relations.

Preamble.

WHEREAS, the unsettled and threatening attitude of public opinion upon the Presidential contest, has made it expedient and in comity with the harmony of an American citizenship, and the tranquility of political loyalty to the Constitution of these United States, to adopt measures for the preservation of those vital qualities in good government, therefore,

The congressional bill appealing a joint commission for the decision of the Presidential election, approved.

*Be it resolved by the Senate and House of Representatives of the State of Delaware in General Assembly met*, That they do approve and cordially endorse the bill, reported as the fruit of the deliberation of the joint committee of the National Congress for the peaceful settlement of the existing Presidential difficulties, as a fair course of equal law.

The Senators and Representatives from Delaware requested to support it.

*Resolved*, That the representatives from this State in the Congress of the United States be, and they hereby are, respectfully and earnestly requested to give a cordial and united support to this broad and liberal measure, to the end that the great and absorbing question of Presidential succession may be decided in the interests of justice, liberty and peace.

Copy of resolution to be sent them.

*And be it further resolved*, That a copy of the foregoing preamble and resolutions be transmitted to our Senators and Representative in Congress, with a request that they be presented to the Senate and House of Representatives.

*Adopted at Dover, January 25, 1877.*

*So amended.



RESOLUTIONS.

## CHAPTER 504.

Joint Resolutions relative to the rights of the State of Delaware, in a certain part of the Delaware river which runs between the States of Delaware and New Jersey.

Preamble.

WHEREAS, The State of Delaware claims to own the bed and to have exclusive jurisdiction (subject to the constitution of the United States and the acts of Congress made in pursuance thereof) over that portion of the Delaware river which is included within a circle of twelve miles radius, taking the court house in the city of New Castle as a central point—and

WHEREAS, The State of New Jersey disputes the validity of such claim, and asserts, upon her part, jurisdiction and ownership over that part of the same area on the east side of the channel of said river—and

WHEREAS, Legally authorized commissioners have heretofore held frequent conferences and consultations which have failed to result in any satisfactory determination of the points in dispute—and

WHEREAS, It has officially come to the knowledge of this General Assembly, through a properly certified copy of a joint resolution, adopted by "the Senate and General Assembly of the State of New Jersey," March 30th, 1876, that the Governor of said State is authorized to cause to be instituted and prosecuted, in the Supreme Court of the United States, a suit in equity or an action at law, by the State of New Jersey against the State of Delaware, to ascertain, determine, and settle the true territorial boundary line between said States, and the extent of the jurisdiction of each of said States in and on said river, and—

WHEREAS, As the State of Delaware was the first to give her assent to the Constitution of the United States which provides the arbiter* of the Supreme Court for the decision of controversies between States, so she will promptly accept the gage of contest in that august tribunal tendered her by her sister State; Therefore,

Attorney General to appear for Delaware, whenever suit shall be commenced by New Jersey in U. S. Supreme Court.

*Be it resolved by the Senate and House of Representatives of the State of Delaware in General Assembly met*, That the Attorney General be, and he is, hereby, authorized and directed,

*So enrolled.

to cause his appearance, in behalf of this State, to be promptly entered upon the record of the said suit in the Supreme Court of the United States, whenever the same shall be commenced by the State of New Jersey. And be it further resolved, that the Governor be, and he is, hereby, authorized to employ, in behalf of the State, additional counsel to assist the Attorney General in the defence of the said suit.

Governor may employ additional counsel to assist Attorney General.

*Resolved*, That the Governor of this State be, and he is, hereby, requested to transmit to the Governor of New Jersey, a certified copy of the foregoing preamble and resolutions.

Governor to send certified copy of resolutions to the Governor of New Jersey.

*Adopted at Dover, January 26, 1877.*

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## CHAPTER 505.

Joint Resolution inviting Rev. J. H. Caldwell to preach a sermon before the General Assembly.

*Resolved by the Senate and House of Representatives of the State of Delaware in General Assembly met,*

That Rev. J. H. Caldwell be, and he is, hereby, invited to preach a sermon in the M. E. church, before the members of this General Assembly, at such time as he may designate, and as shall suit their convenience.

Invitation to Rev. J. H. Caldwell.

*Adopted at Dover, February 6, 1877.*

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## CHAPTER 506.

Joint Resolution to pay William Reynolds four hundred dollars in full, for services as Adjutant General of the State.

*Resolved by the Senate and House of Representatives of the State of Delaware in General Assembly met,*

That the State Treasurer be, and he is, hereby, directed to pay William Reynolds the sum of four hundred dollars in full for services to the State as Adjutant General.

State Treasurer to pay Reynolds the Adjutant General.

*Adopted at Dover, February 7, 1877.*





## CHAPTER 507.

Joint Resolution in relation to new business, after Monday, the 26th inst.

*Resolved by the Senate and House of Representatives of the State of Delaware in General Assembly met,*

That no new business will be received by either branch of this General Assembly after Monday, the 26th inst.

Exclusion of new business.

*Adopted at Dover, February 16, 1877.*

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## CHAPTER 508.

Joint Resolution inviting Mr. Cæsar A. Rodney to read an historical paper before the General Assembly.

*Be it resolved by the Senate and House of Representatives of the State of Delaware in General Assembly met,*

That a joint committee of one on the part of the Senate, and one on the part of the House of Representatives, be appointed to invite Mr. Cæsar A. Rodney to read his history of the 1st Delaware Regiment of the Revolutionary war, before the General Assembly, on such evening as will be convenient.

Joint committee to invite Cæsar A. Rodney to read a certain historical paper.

*Adopted at Dover, February 19, 1877.*

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## CHAPTER 509.

Joint Resolution appointing directors for the Farmers Bank of the State of Delaware.

*Resolved by the Senate and House of Representatives of the State of Delaware in General Assembly met,*

That the following persons be, and they are, hereby, appointed directors of the Farmers Bank of the State of Dela-

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Volume _____ Page ____

Laws of DE
Vol 15

Plaintiff's Exhibit No. 21 C

New Jersey Laws 1881, page 357.

SPECIAL PUBLIC ACTS

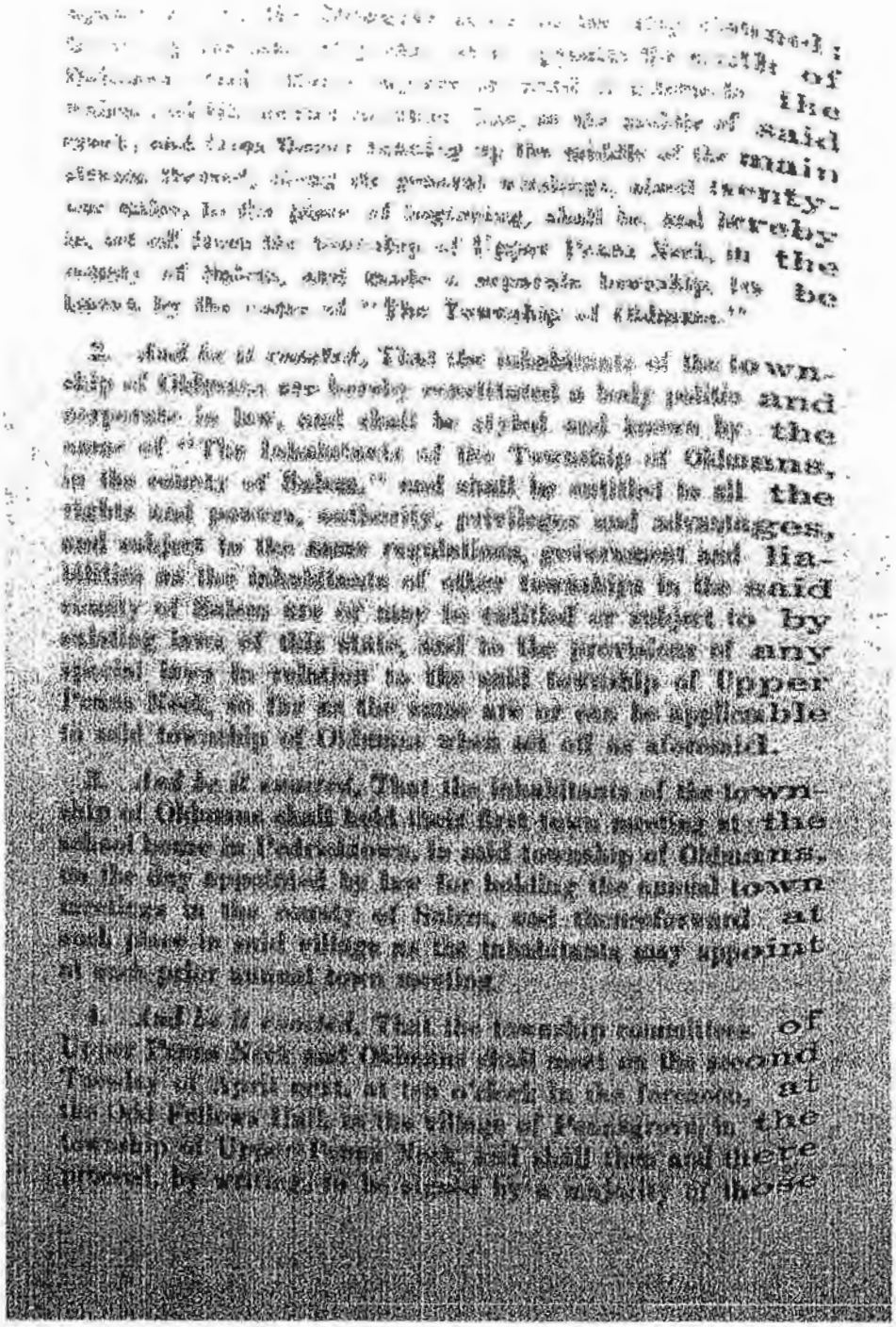
Passed by the

ONE HUNDRED AND FIFTH LEGISLATURE.

## CHAPTER VII.

**An Act for the division of the township of Upper Penns Neck, county of Salem, and to create a new township of the same, to be known as Oldmans township.**

1. *Be it enacted by the Senate and General Assembly of the State of New Jersey*, That all that part of the township of Upper Penns Neck, in the county of Salem, lying within the following boundaries, to wit: Beginning at the middle of Oldmans creek, being the east corner of said township and corner to Pilesgrove township, and running along said township line until it intersects the middle of the Courses Landing road; thence down the middle thereof to a public road from the Pilesgrove line near Atwood's house; thence down the middle thereof, (1) north, fifty-two and three-quarter degrees west, thirty-seven chains, seventy-five links; (2) north, twenty-three degrees, forty minutes west, thirty-seven chains, twenty-five links; (3) north, thirty and one-half degrees west, seventy-one chains, seventy-five links; (4) north, thirty-nine degrees, forty minutes west, seven chains, twelve links; (5) north, thirty-three and one-half degrees west, nine chains, to a public road leading from Perkintown to the forked hickory; thence north, fifteen degrees west, about one and a half miles to the Delaware river railroad, where it intersects Wood Duck Run, and from thence running down the middle of the main stream thereof, along its general windings to the Delaware river, being about one mile; thence



proceed to allot such lands between the said townships, and the persons and property on them or else, in proportion to the taxable property and valuation, as valued and assessed by the assessors, making the respective limits of said townships, at the last assessment; and may adjourn the said meetings from time to time, and to such time and place as a majority of those present may think proper; and the township of Oldtowne shall be liable to pay their just proportion of the debts, if any there be; and if any of the members of the said committees shall neglect to meet at aforesaid, those present may proceed to make such division, or the decision of a majority of them shall be final and conclusive.

5. *And be it enacted*, That all paupers who may be chargeable to the said township of Upper Penns Neck at the time this act goes into operation shall thereafter be chargeable to and supported by that township within the bounds of which they acquire their settlements respectively, or in which the paupers may reside at the time of acquiring their respective settlements.

6. *And be it enacted*, That nothing in this act shall be so construed as to impair or in anywise affect the right of the said township of Oldtowne, or, in, or to any portion of the surplus revenue of the United States government to which the said township may now, or at any time hereafter, be entitled to the distribution of the surplus revenue of the income.

7. *And be it enacted*, That nothing in this act shall be so construed as to interfere with the officers now elected in that part of the township set off and called Oldtowne, but with the justices of the peace and commissioners to take acknowledgements of deeds, until they shall expire by their own limitation.

8. *And be it enacted*, That nothing in this act contained shall be construed to impair or in anywise affect the right

of the said township of Oshtemo to any portion of the state school fund to which the said township may now or at any time hereafter be entitled in the distribution of said moneys.

3. *And be it enacted*, That the inhabitants of the township of Oshtemo shall hold their first township meeting at the time and place hereinbefore set forth, and at the first township election William H. Federk shall be the judge of election, and Joseph W. Cooper and Alexander Justice, inspectors of election; and in case of the absence of one or more of them the vacancy shall be filled by the electors present as in other township elections, and a majority of such inspectors and judge shall appoint a clerk of said election.

10. *And be it enacted*, That this act shall take effect immediately.

Approved February 7, 1851. 24/

NEW JERSEY

ATTORNEY-GENERAL'S OFFICE

REPORT ON THE DIVIDING LINE
BETWEEN THE DELAWARE RIVER AND BAY,
AUGUST 12th, 1885.

# REPORT

OF

# JOHN P. STOCKTON,

ATTORNEY GENERAL OF NEW JERSEY,

ON THE

## Dividing Line between the Delaware River and Bay,

AUGUST 12th, 1885.

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*Hon. Leon Abbett:*

GOVERNOR—I enclose herewith a copy of the correspondence which took place between the Hon. John H. Paynter, Attorney General of Delaware, and myself, in reference to the division line between the Delaware River and Bay.

You will see that we have both reached the same conclusion on the authority of the United States Coast Survey and the report of Prof. Mitchell, who has made special study of the subject. It is fortunate that a question which involves such important interests should be capable of a solution so conclusive and satisfactory.

You will recall that at the time of the conference between the Governors and Attorneys General of Delaware and New Jersey in Philadelphia, the boats and nets of citizens of our State had been seized by Delaware under the charge that they had violated the statute law of Delaware by fishing within the limits of that State.

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An injunction of the Supreme Court of the United States was at the time in force commanding and enjoining the State of Delaware, its officers and agents to desist and refrain from arresting, imprisoning, trying, fining, or in any manner punishing or seizing, holding or selling any property of any citizen or resident of New Jersey for fishing in the River Delaware, as they had theretofore been accustomed to do, until the said Court should make other order to the contrary.

The authorities of Delaware insisted that the law of Delaware had been violated by the parties arrested, because the fishing was done within the limits of Delaware, in Delaware bay, and, therefore, not within the territory covered by the injunction of the Supreme Court of the United States, which applied only to the river. The Governor of Delaware, at the conference, proposed that the proper location of the dividing line between the river and the bay, for the pur-

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poses of this injunction, should be referred to the Attorneys General of the respective States, and agreed that during the pendency of the injunction no citizen of New Jersey should be molested for fishing above the line so to be located. That line, as you will see by the correspondence, has now been established as a line drawn from Cohansey light to Bombay Hook Point. This question is therefore definitely settled, as long as the injunction shall remain in force. This agreement, of course, surrenders no right of any citizen of New Jersey, but is simply a construction of the expression "Delaware River," as used in the injunction, so that no question could thereafter arise as to the extent of the territory protected by the court.

I also report that, in accordance with an agreement made at the same time, all the proceedings against the boats and nets, as well as citizens of New Jersey, in reference to this matter, have been discontinued. The boats and nets had previously been restored to their owners in New Jersey by the United States Marshal, by virtue of writs of replevin and other proceedings, instituted by me, under your direction.

It is proper for me to say that Mr. C. G. Garrison, of Camden, visited Delaware on several occasions, procured valuable information and conducted under my direction the above proceedings to a successful result. I am also indebted to Mr. A. H. Slape for valuable information and counsel in the matter.

The position of the fishery question in Delaware Bay, below the line which has been fixed as a division line, remains unchanged.

The authorities of Delaware, while claiming that the boundary of the State of Delaware was the middle of the channel, and that the operation of their laws was confined only by that limit, stated that no citizen of New Jersey would be molested for fishing in any part of the bay beyond the Delaware side of the channel.

The statutes of Delaware prohibit the taking of running fish within these limits, although there should be no interference with the soil. The statute law of New Jersey protects oyster beds within her territorial limits, because they are attached to the soil, of which she is the proprietor.

It has been held that the statute of New Jersey prohibiting citizens of another State from coming upon the lands under water belonging to the State, and subverting the soil and interfering with the property there found, is not a violation of that clause of the Constitution of the United States which ordains that the citizen of each State shall be entitled to all the privileges and immunities of citizens in the several States.

Whether any State has the right to claim the exclusive privilege of taking running fish in the great navigable rivers, bays and seas within the *fauces terræ*, is a question of great doubt and delicacy.

In *Denham v. Lamphere*, 3 *Gray*, 268, Chief Justice Shaw held, that an act to regulate the time and manner of taking fish within the territorial limits of the State was within the authority of the State legislature, and binding on citizens of other States, and on vessels enrolled and licensed as fishing vessels under the laws of the United States. He said, however, "It has been contended, and with some plausibility,

that any act of the State which should give to our own inhabitants a right of fishing in the sea *within our own territorial limits*, and prohibit the same to citizens of other States, or allow them to participate in it only on the payment of some tax or duty, would be obnoxious to Section 2, Article 4th, of the Constitution. * * * In deciding this case, therefore, on the ground that the act on which it is founded makes no discrimination, in its prohibitions, between the inhabitants of other States and those of this commonwealth, we wish not to be understood as implying that, if the law had been otherwise, it would have been unconstitutional. Until it has been directly determined by the Supreme Court of the United States that such a law, appropriating the coast fisheries within the territorial limits of the State to the inhabitants of the commonwealth, is repugnant to the Constitution of the United States and void, it must be deemed an open question, to be decided by the competent tribunals when it arises."

This was not, however, a matter which either the Executive of Delaware or of New Jersey could legally regulate, and they did not attempt to do so. It is a question, which, when it arises, must be determined on constitutional grounds by the tribunals established for that purpose, or be settled by the States by a treaty, with the consent of Congress.

No legal right, or supposed legal right of any citizen of New Jersey has been surrendered or compromised by the conference, but simply defined the territorial limits over which the injunction operated for the protection of New Jersey citizens, and more clearly established their rights in points not covered by the injunction.

I am very respectfully, your obedient servant,

JOHN P. STOCKTON,
Attorney General.

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STATE OF NEW JERSEY,
OFFICE OF ATTORNEY GENERAL.
TRENTON, July 7th, 1885.

*Hon. John H. Paynter, Attorney General of Delaware, Georgetown, Del.:*

MY DEAR SIR:—Since my letter to you under date of June 18th I have received two communications from Prof. J. E. Hilgard, one under date of June 23rd and the other July 2nd. The high authority of Prof. Hilgard which is confirmed by Prof. Mitchell you will observe adopts a line from Cohansey Light to Bombay Hook Point as the dividing line between the river and bay.

By reference to Prof. Mitchell's paper on the Estuary of the Delaware, Appendix 8, Report 1883, of the United States Coast Survey, you will find the reasons given for the opinion he entertained then as well as now.

By reference to sheet No. 2 of the chart of the Delaware Bay and River founded upon a trigonometrical survey under the directions of F. H. Hassler and A. D. Bache, superintendent of the Coast Survey of the United States published in 1848, you will find the conditions on which the judgment of the distinguished authorities above referred to are founded.

The chart of the estuary of the Delaware accompanying the United States coast survey for 1883, exhibits what Prof. Mitchell calls the submerged delta where the stream splits into numerous channels.

I had collected various authorities on this question, but an examination of the charts of the coast survey satisfied me that there could be no authority so conclusive and satisfactory as that derived from the opinion of the specialists alluded to founded upon the results of the scientific surveys, in their possession.

This matter has been referred to us under the impression that we would come to a speedy decision, and I would therefore thank you to advise me at your earliest convenience, whether you

DE13942

agree with me that it is proper for us to accept the decision of the scientific authorities, referred to and a copy of whose communications I enclose to you.

I have the honor to remain yours very truly,

JOHN P. STOCKTON,
Attorney General of New Jersey.

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U. S. COAST AND GEODETIC SURVEY OFFICE,
WASHINGTON, June 28, 1885.

*Hon. John P. Stockton, Attorney General New Jersey, Trenton, N. J.:*

MY DEAR SIR—In reply to your inquiry as to the dividing line between Delaware Bay and Delaware River, I should be disposed to place it as high as Bombay Hook Point and Cohansey Light. In this I am guided by my general judgment and experience, without being able to assign any definite reason for not placing it at a line from Ben Davis Point to Goose Point, or from Arnold's Point to Bombay Hook Light.

My colleague, Henry Mitchell, has made so special a study of the estuary of the Delaware that I have preferred to refer the question to him, and will send you his reply as soon as received.

Very truly yours,

J. E. HILGARD, Supt.

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U. S. COAST AND GEODETIC SURVEY,
OLD PRODUCE EXCHANGE, 29 June, 1885.

DEAR CHIEF—In the same sense that we speak of the mouth of the Ganges as lying at the extremity of the Sunderbunds, so the mouth of the Delaware lies just below Bombay Hook. Both of these rivers have submerged deltas beyond their mouth.

In my report, which I have not at hand, I have given the number of nautical miles below League Island, at which the break in the law of sectional area occurs, I think, 47. I should stick to this point as the *head of the bay*.

Very truly yours,

H. MITCHELL.

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U. S. COAST AND GEODETIC SURVEY OFFICE,
WASHINGTON, July 2, 1885.

MY DEAR SIR—I send you herewith Mr. Mitchell's reply, which means a line from Cohansey Light to Bombay Hook Point. You see that he applies rather erudite considerations to the questions, while in reality its present application depends upon the actual relative level of land and water. Since I have, from the obvious considerations, reached the same conclusion as Mitchell from those relating to the formation of the bay, it would appear that there are very good grounds for adopting the conclusion we have both reached. I hope that it will commend itself to your judgment.

I remain very truly yours,

J. E. HILGARD, Supt.

*To Hon. John P. Stockton, Attorney General of New Jersey:*

P. S.—Let me show you a consideration which has some weight with me. The sailing lines (which are practically the mid-channel lines) on the opposite sides of the Joe Flogger Shoal diverge from a point on the line proposed. This is the beginning of the spread.

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JOHN H. PAYNTER, ATTORNEY-AT-LAW,
SOLICITOR IN CHANCERY.
GEORGETOWN, Del., July 28, 1885.

*Hon. John P. Stockton, Attorney General of New Jersey:*

DEAR SIR—My delay in answering yours of the 7th inst., is due to a desire to acquire all the information within my reach, as to the question referred to us, than to any carelessness on my part. There is considerable diversity of opinion among the pilots, sailors and river-men in our State, as to the question in dispute, and such difference has embarrassed me in coming to a definite conclusion. I supposed at first that this class of people would agree as to the exact spot where the Delaware river ends, and the Delaware Bay commences; but in consultation with different persons, likely to know, I discovered that it was a mooted question, which could not be settled in any other way than by scientific research or reference. The several points suggested to me as the head of the bay and the mouth of the river are as follows:

1st. A straight line from Ben Davis' Point to Goose Point.

2d. A straight line from Cohansey Light to Bombay Hook Point.

3d. Bombay Hook Light.

4th. Liston's Tree, now called Liston Point.

5th. The lower end of Reedy Island.

6th. Fort Delaware.

The last named place, however, has not been strenuously urged by any one making pretensions as an expert. The lower end of Reedy Island seems to be the favorite location for the divisional line with the people residing in that vicinity, whilst Bombay Hook and Liston's Point have more advocates among the pilots and river sailors. These reasons are not as erudite as those of Superintendent Hilgard and Professor Mitchell; but I I consider it due to them as well as yourself to give their most important reasons for their conclusions. The advocates of Reedy Island say that has been considered by the people of that vicinity as the head of the bay "from the time the memory of man runneth not to the contrary"—that the residents opposite have always considered they lived on the bay shore—that they are of opinion that the charts so designate—that they have been informed and believe that the government issues two sets of licenses to tug-boats, one for the river as far as Reedy Island, and the other for the river and bay; this fact being verified by most of the vessels being towed to Reedy Island and then cast loose. that Reedy Island is a distinctive point, whilst Bombay Hook is not; the latter not being an Island, but only a part of the Delaware shore with a small creek running behind it from Smyrna Creek to Leipsic Creek, the former being really an Island nearly a mile from the Delaware shore, containing about one hundred acres, with a light house thereon, and a channel between it and said shore, besides being the most prominent Harbor on the Delaware between the breakwater and Philadelphia—that the bay at this point immediately widens to six or seven miles, whilst a few miles above it is not more than one and a half to two miles wide, the bay at this place being as wide as it is ten miles below at Bombay Hook—that there is much more to designate Fort Delaware as the head of the bay than Bombay Hook; but it is within the twelve-mile circle, the radius extending nearly to the lower end of Reedy Island, and that the language of our statute defining our sovereignty, jurisdiction and limits, (Revised Code of Delaware, 1874, Chap. 1, Sec. 2,) after running the lines between this State and Maryland and Pennsylvania, in speaking of the line between Delaware and New Jersey, says: "low water mark on the eastern side of the River Delaware within the twelve-mile circle from New Castle; *and the middle of the bay below said circle*," implying (if not saying in express words) that all below said circle is the bay. Most of the pilots are of the opinion that the river ends at Bombay Hook, as at that point the bay narrows as well as the channel; but some of this class contend that the lower end of Reedy Island is the proper divisional line. Another class of river sailors popularly called shallop men, are clear that the head of the bay is Liston's Tree, that being the point they were accustomed to steer to as such, and that they were informed during boyhood by the sailors of a former generation that this old land mark designated the bay's head. None of these opinions are given from a scientific standpoint, but are formed more from tradition, custom and implication than of any knowledge of the peculiar formation of the bay and river. I give you the reasons for what they are worth, but have desired information from some scientific source, that the question might be placed beyond dispute. Like yourself, I regard the charts of the Coast Survey, or the opinions of officers and scientists connected with this branch of the Government service as of the highest authority. The letters of Superintendent Hilgard and Prof. Mitchell, (copies of which you kindly furnished me) seem conclusive on the point, and their reasons are especially cogent, not only from the fact that they are founded upon the formation of the banks and shores, as well as the bed of the waters, but also the fact of the opinions emanating from such distinguished gentlemen, who have made the estuary of the Delaware and of other rivers a special study, entitles them to the highest consideration. They both agree that the bay commences and the river ends at a straight line from Cohansey Light to Bombay Hook Point, and it would be unreasonable to contend for a divisional line contrary to the decision of such distinguished scientific authorities, upon the more cursory opinions of rivermen or persons living in the vicinity of the place in dispute, who base their beliefs upon nothing stronger than tradition or implication. The actual relative level of land and water, and the fact of the sailing (which are practically the mid-channel lines) on the opposite sides of the Joe Flogger shoal, diverging from a point on this line, spoken of by Superintendent

DE13944

Hilgard, coupled with his statement that this is the beginning of the spread, and also the theory of Prof. Mitchell as to the submerged delta, are far more weighty reasons than traditional statements without regard to scientific causes or geodetic surveys. I am, therefore, of opinion that it would be proper for us to accept the decision of the scientific authorities referred to, a copy of whose communications are in my possession. I will further state that an atlas of the State of Delaware from actual surveys by and under the direction of D. C. Beers, published by Pomeroy & Beers, in 1868, indicates the point named by Supt. Hilgard and Prof. Mitchell as the divisional line between the bay and river.

Yours very truly,

JOHN H. PAYNTER,
Attorney General of Delaware.

# REPORT

OF THE

# COMMISSIONERS OF FISHERIES

OF

# NEW JERSEY.

1884-1885.

TRENTON, N. J.:
JOHN L. MURPHY, STATE PRINTER.
1885.

Compliments of

William Wright.

State Fish Commissioner.

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OF THE

# REPORT.

DECEMBER 31st, 1885.

*Leon Abbett, Governor of New Jersey:*

Commissioners of Fisheries herewith present their report from the date of the last report to January 1st, 1886.

## SHAD FISHERIES.

earliest days in the history of New Jersey, the shad has ed as the most important and most profitable fish e waters of the State, and although the shad fishing ed to a brief period, the value of the catch is invariably ny other species of fish, and more money is invested in than is devoted to the capture of any other single variety A comparison of the wardens' reports of 1884 and 1885 former years shows that while the number of fishermen nual catch has not appreciably decreased in the last two ; that the work of policing and restocking the Dela- tary waters has been productive of positive benefit. to believe that the steady decline which the fishermen observed in the last twenty years, has reached its lowest the exercise of constant vigilance by the wardens, policing the river, will be the means of bringing about bundance of shad in the Delaware. No appropriation ry for the season of 1886, as the balance in the Commis- is ample for the work intended, as further experiments propagation are not immediately contemplated. The are disposed to concentrate their efforts during the pon the enforcement of existing protective laws, and the tion of violators, not only on the Delaware river, but of the State, believing that protection is as important and that more importance should be attached to pre- disturbance of the fish in the natural work of increase. of increasing the opportunity for the fish to run up the dding fishing from sunset on Saturday evening to mid- onday night, or adding one day to the present law on

this point, was discussed by the Commissioners last spring and the
owners of many of the fisheries were consulted in regard to it. With-
out exception, shore fishermen and gillers said that if another day
was taken from the fishing week it would cripple the industry by
driving fishermen from the State. They said that it would be
unprofitable to keep up the large plants and hard to induce the men
to remain if the season was further abbreviated. While this argu-
ment on the part of the fishermen seems perfectly natural from a
business point of view, it appears to the minds of the Commissioners
that it would perhaps be better for all concerned if the fishing days
were so arranged that the fish could have at least twelve hours more of
immunity, and they recommend the extension of the close period to
12 o'clock on Monday night. This they feel will give the shad
ample time to reach the spawning ground, and will be much better
than adding another close day in the middle of the week.

That efficient work has been done by the State officers in prevent
ing violations of the shad laws on the Delaware river is shown by
the lack of complaints and the few arrests that were made last year.
The import of the law, and the severity of the penalty, was taught
in a number of cases in previous years, and the lesson sunk so deeply
that few fishermen had the temerity to attempt illegal fishing, with
the prospect of arrest and confiscation of their boats and nets. The
necessity of vigilant and constant policing during the shad season
scarcely exists in any other river in this State than the Delaware.
Other rivers are so hopelessly polluted that it is extremely doubtful
if shad fishing can ever be made profitable in them again.

The shad fishing of the Passaic river appears to be a thing of the
past, owing to the pollution of the river by the sewage of two great
cities and the refuse of numerous chemical works, gas houses, oil
refineries and fertilizer manufactories. The Passaic at one time was
second only to the Delaware for the production of shad for New Jersey
markets, and a dozen fisheries were situated on its banks, but they
have entirely disappeared and there is now seldom one shad
hauled during any season above the mouth of the river. The catch
in seines and fykes in Newark bay is frequently large enough to
encourage the fishermen along the Bergen county shore to maintain a
score of fyke nets, and they find a ready sale for the fish in the
markets of Newark and Jersey City. The average annual catch for
the last five years is roughly estimated at fifty thousand (50,000) shad
in the Hackensack and Passaic rivers and Newark bay. The Hack-
ensack river fishing has visibly improved during the last two years.
Fishermen along Newark bay, and both rivers emptying into it,
complain loudly of the pollution of the water by the refuse from the
oil refineries along the Kill von Kull. They claim that the oily and
foul-smelling brown scum which frequently covers the greater part of
the surface of the bay prevents shad and other food fishes from
ascending the river. The shad fishing in the Raritan river is said



appreciably improved in the last three years, which is probably
planting of young fish from the Delaware on several occasions
Brunswick.

difficulty of procuring accurate statistics of the annual catch
will be apparent to every one who is familiar with the matter
into consideration the immense expanse of river, the num-
gillers and the many avenues they have for disposing of their
Their voluntary statements have heretofore been accepted and
may have had private reasons for exaggerating or curtailing
ports. The wardens faithfully endeavored to obtain a correct
in both years covered by this report and their success may
from the fact that eight districts in five counties along the
returned, in 1884, a total catch of one million nine hun-
eight thousand nine hundred and twenty-eight (1,908,928)
in 1885 seven of the same districts showed a total catch of
five hundred and eight thousand eight hundred and sixty-
508,868). Both of these reports probably fall far below the
sult. The season of 1885 was remarkable for two things,
and the unusual size of its shad. Active fishing was
for three weeks longer than usual and yet the fishermen
season with a better balance in their favor than they did the
year. Seven, eight and even eight and one-half pound
frequently displayed and the general run of fish was the
seen on the river. The prices obtained for the shad were
satisfactory and the market was never overstocked during
In the height of the season the United States steamer
spent several weeks at Gloucester City and other points
river, taking spawning fish from the shore fisheries, hatching
stripped from them and turning millions of young shad into
every day. The Lookout, another government steamer, was
the same work at Burlington and Lambertville for several
the total output of young fish by the government during
was reported as twenty million (20,000,000).

complications arose during the season of 1885 between the
fishermen and the authorities of the State of Delaware,
ber of fishermen were arrested and their boats and nets
for alleged trespass on the rights of Delaware fisher-
lation of Delaware laws. An injunction of the Supreme
the United States was obtained, commanding and enjoining
of Delaware, its officers and agents, to desist from arresting,
, fining, trying, or in any manner punishing or seizing,
selling any property of any citizen or resident of the
New Jersey for fishing in the river Delaware. While this
was in force, and the Governors and Attorneys-General of
States were conferring about the matter, the boats and nets of
of New Jersey were seized by Delaware under the charge

that they had violated the statute law of Delaware by fishing within the limits of that State.

The Delaware authorities insisted that the law had been violated by the parties arrested because they fished within the limits of the State in Delaware bay, and therefore not within the territory covered by the injunction. The Governor of Delaware proposed at the conference, that the proper location of the dividing line between the river and the bay, for the purposes of the injunction, should be referred to the Attorneys-General of the respective States, and agreed that, during the pendency of the injunction, no citizen of New Jersey should be molested for fishing above the line so located.

Attorney-General Stockton, of New Jersey, and Attorney-General Paynter, of Delaware, with the aid of Professors Mitchell and Hilgard and Messrs. C. G. Garrison and A. H. Slape, of counsel for this State, decided that the dividing line between the river and the bay should be drawn from Cohansey Light to Bombay Hook Point. This agreement surrendered no right of any citizen of New Jersey, but was simply a construction of the term "Delaware river" as used in the injunction, so that no question could thereafter arise as to the extent of the territory protected by the court. The proceedings against the boats and nets were dropped by mutual agreement. The property was previously restored to the owner by the United States Marshal, by virtue of writs of replevin and other proceedings instituted by Attorney-General Stockton.

During the coming shad season the Commissioners will adopt a method which will insure an accurate report of all the details of the fisheries of the State. Blank forms will be distributed before the opening of the shad season, with instructions to the wardens which will aid them in securing detailed reports each day or week of the catch of shad and other fish, of the number of men employed, the amount of net used and the value of the catch.

By the order of the Commissioners a shad hatchery was established at Lower Black's Eddy, on the Delaware river, on June 1st, 1885, under the charge of Mr. R. B. Reading, an experienced fish culturist. Operations were continued until July 4th, and in the short space of time intervening three million four hundred and forty-five thousand (3,445,000) shad were hatched and turned into the Delaware river. Two hundred thousand (200,000) eggs were turned over to J. Frank Ellis to be hatched in the U. S. Fish Commission Car, No. 3, and placed in the upper reaches of the same river. Mr. Reading, in his report to the Commissioners, substantially says:

"Taking into consideration the lateness of the season, the unprecedented run of shad in May, which seemed to exhaust the run, and the bad weather in the early part of June, our operations have been in every way successful, and I take pride in being able to report that for the amount of money to which we were limited in our expenses our success seems most gratifying, and the result must be of vast benefit



shad-fishing of the Delaware river. The largest part of the ... hatched in the Seth Green boxes, and where we have such ... current of water as can be had in the Delaware river, they ... best results. About eight hundred thousand (800,000) shad ... hatched in McDonald jars, which also give good results, although ... shad do not seem to be as strong as those hatched in the ... where the water is of the same temperature as their natural ... grounds."

... expense for securing and hatching the eggs for the forty-... demonstrated the possibility of hatching nearly seven thou-... (0) shad for one dollar ($1), or seventy (70) for one cent.

## COAST FISHERIES.

...stry is a very important item in the economy of the State. ...d estuaries along the coast of New Jersey annually fur-...ough to place the State sixth in the list of fish producers, ...mployment to between four and five thousand people. In ...ly good years the value of the catch has reached consider-...ne million dollars ($1,000,000) exclusive of oysters and ...n the worst of seasons it has aggregated at least one mil-... ($1,000,000).

...portance of this industry will be seen in the fact that over ... dollars ($1,000,000) is invested in the apparatus for prose-...and that over one hundred thousand dollars ($100,000) ...ts are annually used. The two seasons covered by this ... been unusually poor in results, and the decline of the ... almost invariably been attributed to the reckless work of ... fishers, who are known to destroy millions of pounds ...ne fish in their pursuit of material for making oil and ...ck. This, however, is the least part of the evil that they do, as ... on the highest authority that the wholesale capture of ... is driving from our coast the fish that depend upon them ...ce. Almost all of the salt water species prey upon men-... the natural result of depleting their stock of food is to ... in seek it elsewhere. Blue fish are especially valuable to ...hermen, and in 1880 the catch was valued at nearly one ...nd dollars ($100,000). Last year, it is claimed, the ... not reach one-seventh of that amount, and the blame is ...menden fishermen. Weak fish were also scarce during ... 1884, while sea bass and other bottom fish were more ... than usual and aided in bringing up the total figures of ... did not satisfy the fishermen who had invested their ... fykes and pounds. Mackerel were phenomenally ...ear, and the catch in Delaware bay and along the New ... anything in the recollection of the oldest fisher-

New Jersey State Archives
Commissioners of Fisheries Annual Reports
1884 - 1885

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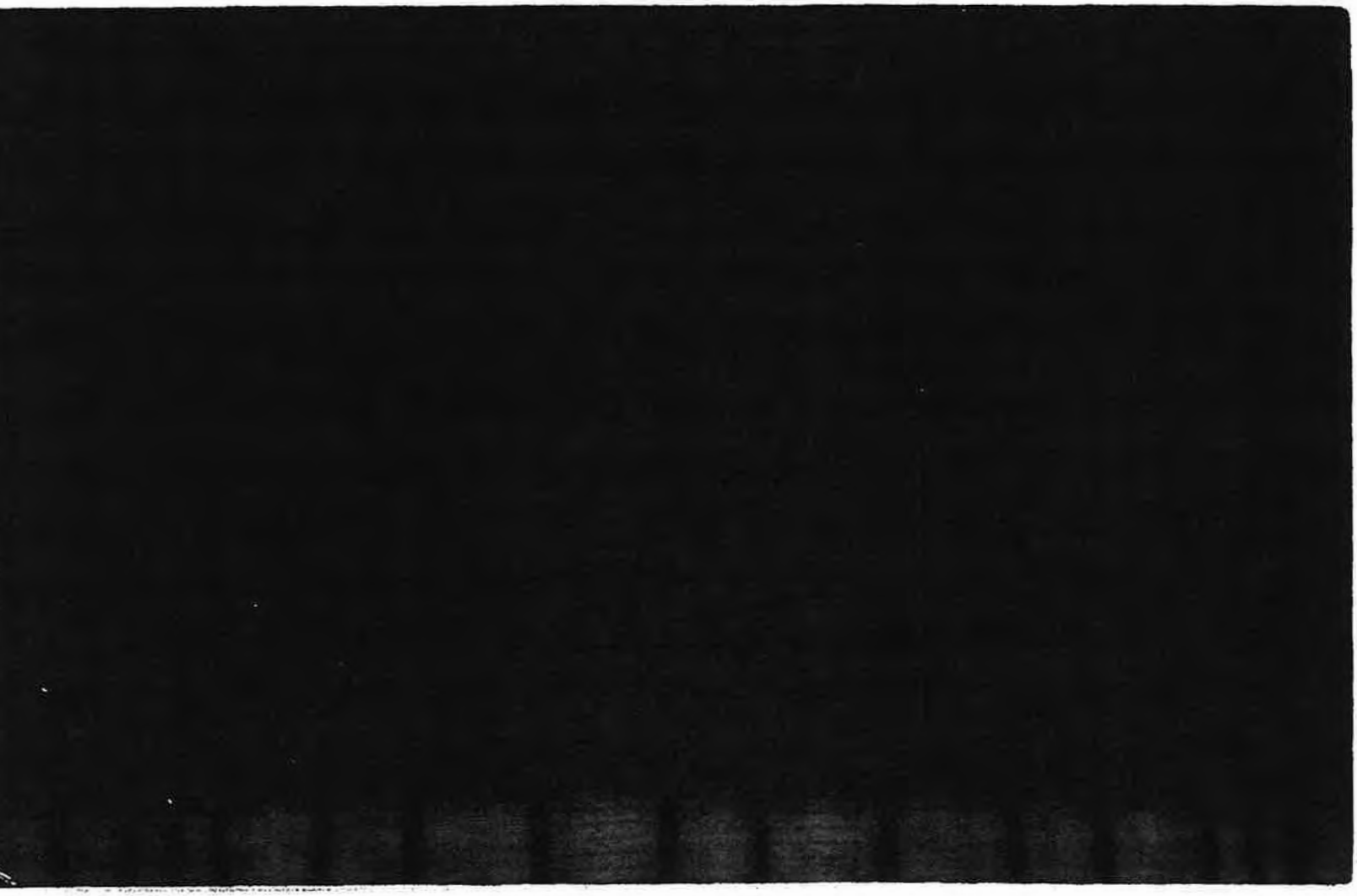

# ANNUAL REPORT

OF THE

# ATTORNEY GENERAL

OF THE

# STATE OF NEW JERSEY,

FOR THE YEAR 1887.

TRENTON, N. J.
NAAR, DAY & NAAR, BOOK AND JOB PRINTERS.
1888.

DE17051

# Attorney General's Report.

State of New Jersey,
Office of Attorney General,
Trenton, January 3, 1888.

Hon. Robert S. Green,

*Governor of the State of New Jersey:*

Governor:—I have the honor to make the following report, embracing such portions of the business of the Attorney General's office as it seems proper should be communicated to you at this time. The matters embraced in the report are in addition to the ordinary duties required to be performed in the Attorney General's office.

## Railroad Taxation.

The legal business of the Attorney General's office during the year, 1887, has been heavier than at any period in its history.

The opinion of the Supreme Court, delivered in February, 1886, declaring that the Railroad Tax Act of 1884 was unconstitutional, left the finances of the State in a deplorably unsettled condition. Thirty-four of the railroad companies of the State had refused the payment of the taxes assessed against them on the ground that the act of 1884

was unconstitutional, and had instituted suits for the purpose of having that question decided. The result of the decision of the Supreme Court was to prevent the State from collecting any of the taxes then due from any of those corporations, and imposed upon the State the liability of being compelled to return to the other railroad companies an enormous amount of money which had already been received by it on account of the taxes for that year. That court, having decided that the law was unconstitutional, left all other questions which had been argued at great length, and many of which were of great importance, both to the State and to the railroad companies, undecided. So long as the opinion of the Supreme Court, that the Railroad Tax Act of 1884 was unconstitutional remained unchallenged, no further progress could be made in the collection of the revenues of the State. Nothing could be done until the opinion of that court was reviewed by the court of last resort. In the meantime the whole of the annual tax due to the State from the various railroad companies for the year 1885 had fallen due, but notwithstanding the fact that the Supreme Court had declared the Railroad Tax Act of 1884 to be unconstitutional, the payment of a portion of those taxes was enforced by the State, by appropriate legal proceedings, as a prerequisite to the institution of suits by the various railroad companies for the purpose of testing the legality of the taxes for that year. Thirty-nine companies instituted suits against the State for the purpose of having the taxes assessed against them for the year 1885 declared void; so that before any steps could be taken to have the judgment of the Supreme Court reviewed by the Court of Errors, there were between

seventy and eighty suits pending against the State, brought by the various railroad companies.

As speedily as possible a review of the judgment of the Supreme Court was had in the Court of Errors, and that review resulted in the reversal of the judgment of the court below, and the declaration that the Railroad Tax Act of 1884 was constitutional.

That being the only question decided by the Supreme Court when the cases were originally before that tribunal, it necessarily was the only matter considered and passed upon by the Court of Errors. The burden, therefore, was thrown upon the State of having all of the thirty-four cases, which had been removed to the Court of Errors, returned by that court into the Supreme Court for further consideration, with the exception of four cases—those of the Morris and Essex Railroad Company, the Morris Canal and Banking Company, the Paterson and Ramapo Railroad Company, and the Paterson and Hudson River Railroad Company—which were retained by the Court of Errors for the purpose of considering the legality of the claim put forward by those several companies to the effect that they were each entitled to be protected from the operation of the Railroad Tax Act of 1884, by irrepealable contracts contained in their respective charters. These four cases, it will be seen, presented fundamental questions of vast moment, involving an annual revenue to the State of over one hundred thousand dollars.

The case of the Morris and Essex railroad, after elaborate argument, was decided against the State, the judgment of the Court of Errors being founded on a decision of the United States Supreme Court, in a case where the Morris

and Essex Railroad Company was the plaintiff and the Commissioner of Railroad Taxation of the State of New Jersey was defendant; that decision being that the Morris and Essex Railroad Company had an irrepealable contract with the State on the matter of taxation, by force of a supplement to its charter, passed in 1865. This decision was not controverted, but it was insisted before the Court of Errors by the counsel for the State that the Delaware, Lackawanna and Western Railroad Company, which was the lessee of the Morris and Essex Railroad Company, was not entitled to the same exemption from taxation which had been originally granted by the State to its lessor, but was liable to taxation under the Railroad Tax Act of 1884.

The other three cases have since been argued in the Court of Errors, and decision thereon is now pending.

After the Court of Errors had remitted all of the cases, with the exception of the four already specified, to the Supreme Court, a large number of questions of vital importance, both to the State and to the railroad companies still remained to be determined,—the most important of those questions being the construction to be given to the various sections of the act; the legality of the methods and of the proceedings of the State Board; the correctness of the valuations placed by them; upon the vast mass of railroad property in the State, the legality and correctness of the valuations of the franchises of the various companies, and the right of the State to tax property used in interstate commerce. These same questions were also involved in the suits brought by the thirty seven companies to test the validity of the taxes assessed against them for the year 1885. It is obvious that these questions embraced the

whole field of taxation, and the labor thrown upon the office of the Attorney General, in preparing thorough and exhaustive briefs on each of these questions, was enormous. All of the questions still remaining undetermined, were carefully considered and elaborately and thoroughly argued in the Supreme Court from time to time, both orally and on briefs; the foundation of the arguments being many thousands of printed pages of testimony, taken for the purpose of throwing light on the various questions still in issue. All these questions were finally decided by the Supreme Court in favor of the State, with the exception of some few restrictions upon the action of the State Board in the taxing of property used in interstate transportation.

Both the State and the various railroad companies, being dissatisfied with the views expressed by the Supreme Court on the question of interstate commerce, have taken steps to have the same reviewed by the higher courts, and this question, before it is finally determined, will, in all probability, go to the Supreme Court of the United States for its decision.

Besides disposing of all the cases which involved the taxes assessed for the year 1884, the thirty-eight cases involving the taxes for the year 1885 have all been determined in favor of the State during the present year, and judgment entered in each case. Besides that, large amounts of arrears in taxes, extending over a period of ten years, have been in litigation, between the State and the Central Railroad Company of New Jersey; and after a long struggle a determination has been reached in those cases which will probably result in the payment by that company

to the State of the whole of the amount of such arrears in the course of a few days.

The decision of the Court of Errors in the Morris and Essex case having been that its lessee, the Delaware, Lackawanna and Western Railroad Company, was entitled to the tax exemption originally granted by the State to the Morris and Essex railroad, and that this railroad could not legally be taxed under the general laws of the State, even in the hands of a lessee company, an investigation was ordered by the legislature to be made by the State officers for the purpose of ascertaining whether the Morris and Essex Railroad Company had, since its incorporation, annually paid to the State of New Jersey the full amount of taxes which it was required to pay by the terms of its charter contract. That investigation has been made and the result was a report to the legislature that large amounts of taxes were due and owing from that corporation to the State. The effect of this report was the introduction into the legislature of a bill to repeal the charter of that company. The effect of the introduction of that bill (although it was never passed by the legislature) was to cause the payment by that company of a large amount of taxes which the State claimed was due and owing to it, and also an agreement between that company and the State to arbitrate the question of arrears of taxes found to be due by the report to the legislature above referred to. The report was based upon an examination of the books of the company, made on behalf of the State by Mr. Richard F. Stevens, an expert accountant. Mr. Stevens was subsequently employed by the Congressional Committee, appointed to investigate the affairs of the Union Pacific Railroad

Company, and this employment necessitated his presence in California for a period of several months, making it impossible to begin the taking of testimony under the agreement to arbitrate, until his return to this State, which occurred in the latter part of October last; and since that time the office of the Attorney General has been diligently engaged in taking testimony in that matter in support of the claim of the State. The evidence is being taken as rapidly as possible, and every effort is being made to press this matter to a speedy conclusion.

Various railroad companies have also sued out writs of certiorari to review the taxes assessed against their property for the year 1886. These cases raise questions not yet passed upon by the courts, and the time for their argument has not yet been reached. A hearing in those cases will take place before the Supreme Court at the coming February Term.

I enclose herewith a copy of an act amendatory of the existing law which was prepared by me and introduced into the House of Assembly at the last session of the legislature.

Its object was simply to correct certain imperfections in the existing law, and obviate as far as possible the delay in the collection of the taxes consequent, under the present system, upon continuous and protracted litigation. The bill was not objected to by any one, so far as I am informed, but failed to pass on account of complications which arose in reference to other questions connected with the system of taxation, on which there was a diversity of opinion. These contested propositions became incorporated into the bill in the House, and in the process of legislation retarded



DE17058

the consideration of the unobjectionable portions until too late for the separate consideration of the proposed amendments.

I think this bill should become a law.

## MISCELLANEOUS CORPORATIONS.

The Comptroller has placed in my hands for collection, from time to time, the taxes due from delinquent corporations, assessed by the State Board of Assessors by way of a franchise tax or license fee, under and by virtue of an act entitled "An act to provide for the imposition of State taxes upon certain corporations, and for the collection thereof," approved April 18, 1884.

It was ascertained, upon investigation, that many of these corporations either had failed to commence or ceased to do business within or without the State, while others had become defunct or insolvent, so that it was concluded best to apply to the Court of Chancery, by petition, in the name of the State, for an injunction to restrain them from the exercise of any franchise or the transaction of any business within the State until they respectively paid the tax, &c.

Petitions were accordingly prepared and served. Many of the corporations suffered an injunction to issue by default, while others appeared and filed answers, alleging that the act was unconstitutional or that they were not liable to be taxed under it.

The American Glucose Company, with a capital stock of over thirteen millions of dollars, against whom a tax had been assessed to the amount of $13,322, contested the validity of the act. The Chancellor, after an argument,

held the act to be constitutional, and said if this company was not liable the act would not apply to any company. An appeal was taken to the Court of Errors and Appeals, where the decision of the Chancellor was affirmed, in 1887, at the June Term of said court.

In the case of The Society for Useful Manufactures, the Chancellor dismissed the petition on the ground that said company possessed an irrepealable contract on the subject of taxation.

In the cases of the Faure Electric Light Company, the New York File Sharpening Company, the National Underground Electric Company, the Middlesex Land Company and the Cape May Ocean Pier Company, the Chancellor dismissed the petitions on the ground that these companies had done nothing under their franchises, consequently were not liable to taxation under said act on their mere franchises.

The Western Union Telegraph Company paid their tax under protest, and then prosecuted a writ of certiorari out of the Supreme Court to set the same aside as illegal, alleging, first, because of its operation upon a franchise granted by the United States, and used for its purpose and benefit; second, because it is a tax upon interstate commerce, and in violation of the constitution of the United States.

This case is still pending, and undoubtedly will be carried to the United States Supreme Court before the same is finally settled.

The list of delinquent corporations placed in my hands for the year 1884 contained one hundred and seventy-six

in number, against which an aggregate tax had been assessed, amounting to $91,574.94.

The delinquent list for 1885 contained two hundred and sixty-four in number, against which an aggregate tax had been assessed amounting to $116,914.32.

The delinquent list of 1886 contained three hundred and thirty-five in number, against which an aggregate tax had been assessed amounting to $126,191.03.

The delinquent list for 1887, I am informed, will contain a much larger number than in any previous year.

These taxes are assessed annually against the respective corporations by the State Board of Assessors, and range all the way from $1 to $5,000, consequently, the list of delinquents is increased from year to year by reason of the formation of new companies as well as by reason of the failure or abandonment of those already in existence; so that while it appears as if a large amount of tax was accumulating which should be collected, yet, in fact, the list is collected every year as closely as possible.

In view of the constant changes, which this class of corporations undergo, it would seem necessary to adopt some step to prevent the necessity of assessing or proceeding to collect a worthless tax. It is suggested that the act could be so amended as to permit the Board to exercise its discretion in assessing corporations which have failed to commence or ceased to do business, with power to cancel all assessments heretofore or hereafter made against such corporations, where no good result can be attained by carrying such a tax on the books of the State.

The act might be improved by other amendments, as it is imperfect in other particulars.

## THE BRIDGE OVER ARTHUR'S KILL.

After consulting with you, on the 25th of June I filed an information in the Court of Chancery for the purpose of enjoining the Staten Island Rapid Transit Company and the Baltimore and New York Railroad Company from taking possession of the lands of the State and appropriating them to their own use, without asking the consent of the State or Riparian Commission, or making compensation for the lands so taken.

The injunction was granted as prayed for in the information, but the case was subsequently removed to the Circuit Court of the United States, and was argued before Mr. Justice Bradley, on final hearing.

Mr. Barker Gummere and Mr. Cortlandt Parker assisted me, and ably presented the case on behalf of the State. Mr. Keasby, Mr. Cowen and Mr. McFarland appeared on the part of the defendant corporations.

The decision was adverse to the State: the court holding that an act of Congress authorizing the said companies to build a bridge over the Arthur's Kill was sufficient authority to justify the corporations in doing the acts complained of by the Attorney General. From this decision I have directed an appeal to be taken to the Supreme Court of the United States, and have instituted other proceedings in order that the court in the last resort may fully comprehend the gravity of the situation. Vital questions of constitutional law and fundamental doctrines concerning the tenure by which private property is held in this country are among the issues involved in the controversy. No more important case has ever been before our courts.

It was insisted by the counsel for informant that the State of New Jersey is seized and possessed of and entitled to an estate in fee simple absolute, in the soil covered by the waters of the Arthur Kill and being within the boundaries of said State, subject only to the easement of navigation and the power of regulating such navigation ceded by the State to the general government by the Constitution of the United States; and that neither the right to exercise the easement of navigation or the power to regulate commerce, embraced the power to take the private property of the State, without compensation for a purpose which obstructed navigation.

Chief Justice Waite, in delivering the opinion of the court in the case of *McCready v. Virginia*, simply announced what had been the uniform ruling of the courts. He said:

"The principle has long been settled in this court, that each State owns the beds of all tide waters within its jurisdiction, unless they have been granted away. In like manner, the States own the tide waters themselves and the fish in them, so far as they are capable of ownership while running. For this purpose the State represents its people, and the ownership is that of the people in their united sovereignty. The title thus held is subject to the paramount rights of *navigation*, the regulations of which, in respect to foreign and interstate commerce, has been granted to the United States. There has been, however, no such grant of power over the fisheries. These remain under the *exclusive* control of the State, which has, consequently, the right in its discretion to appropriate its tide waters and *their beds* to be used by its people as a common

for taking and cultivating fish, so far as it may be done without obstructing navigation." Such an appropriation is, in effect, nothing more than a regulation of the use by the people of their common property. The right which the people of the State thus acquire comes not from their citizenship alone, but from their citizenship and property combined. It is, in fact, a *property right* and not a mere privilege and immunity of citizenship. * * * Following, then, this salutary rule, and looking only to the particular right which is here asserted, we think we may safely hold that the citizens of one State are not invested by this clause of the Constitution [Article 4, Sec. 2,] with an interest in the common property of the citizens of another State. * * * * The planting of oysters in the soil covered by water, owned in common by the people of the State, is not different in principle from that of planting corn upon dry land held in the same way. Both are for the purposes of cultivation and profit; and if the State, in the regulation of its public domain, can grant to its own citizens the *exclusive* right of dry land, we see no reason why it may not do the same thing in respect to such as are covered by water. And as *all concede* that a *State may grant* to one of its citizens the *exclusive* use of a part of the common property, the conclusion would seem to follow, that it might, by appropriate legislation, confine the use of the whole to its own people alone."

Chancellor Kent says, "It is admitted that the grant to Congress to regulate commerce on the navigable waters of the several States contains no cession of territory or of public or private property." *1 Kent Comm., 439; Caulfield v. Coryell, 4 Washington C. C. Rep., 371.*

The right of the general government to take private property by virtue of its power of eminent domain for its own purposes was not questioned by me in the argument.

The right of Congress to authorize an agent, under the theory that it was for a public purpose, to take the property of the State on making compensation was not denied, as it was unnecessary to the argument.

It was claimed, however, that as the act did not, in terms, authorize it, it should not be presumed by the court that Congress intended to confer the power on a corporation of the State of New Jersey and a foreign corporation, to violate the laws of the State by building a bridge to another State which would be a serious obstruction to navigation; and as an incidental power thereto, to take the land which the State held in fee simple without making compensation therefor.

The bill had been passed by Congress under the declarations made by eminent lawyers that it contained *no such powers* and that a construction which gave the bill such an operation made it unconstitutional.

Senator Hoar, who is admitted to have no superior as a constitutional lawyer in the Senate, took this view of the bill. He spoke as follows during the debate which occurred on the passage of the bill in the Senate:

"It is conceded that the power exists in the United States to authorize the dealing with navigable waters as it sees fit. It may authorize the extension of a wharf from Boston harbor, and it may authorize the taking of land by eminent domain for that purpose, if that be a matter of general public interest. It may authorize the crossing of the Mississippi river. That is one thing it may do.

"There is another thing which Congress may do. It may authorize the crossing of the entire continent for purposes of interstate commerce with a railroad, and confer eminent domain. That is a separate thing which it may do. But it cannot take away the power from New Jersey to control its corporations. If a corporation whose charter New Jersey created, and whose charter it may alter or repeal, as I assume it can the charter of this corporation, undertakes to go into a business of interstate commerce, to build a railroad across Pennsylvania, or anywhere else, New Jersey may stop it, and that is in the control of New Jersey, notwithstanding all the authority which Congress may have given it.

"In the next place, if it be necessary to take New Jersey soil to come down to the line of navigable water on one side, and the bridge cannot be built without that, the control of that proceeding is solely within the power of the New Jersey legislature, unless the Congress of the United States, in addition to its license to cross or occupy or to interfere with the waters of the navigable streams, have added the authority to come down to the bank, and have added the authority to exercise eminent domain under national power conferred upon it for that purpose.

"That does not appear in this bill. We have simply said that a New Jersey corporation may cross this navigable stream, and that is all. A great deal is necessary to put this thing out of the control of New Jersey. New Jersey may destroy this New Jersey corporation. It may say that it shall exist only on condition that it shall not exercise the power to interfere with this navigable stream; but in the absence of any such thing, unless New Jersey has



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conferred the power of eminent domain to put one end of this structure upon her soil, this bill, it seems to me, is nugatory. That is the proposition I make."

Under such circumstances it became my imperative duty to the State, and an absolute obligation arising from the trust which my position as Attorney General of the State imposed, that I should take such proceedings as the practice of the courts permitted to protect and defend the rights and dignity of the State.

## STATE BOARD OF HEALTH.

Other matters, some of them of grave importance to the interests of the State, have required the attention of the Attorney General's office. Prominent among these was a suit brought by the Newark and South Orange Horse Railroad Company against the State Board of Health, to recover the sum of $20,000, the allegdd value of a large number of horses belonging to that company and which had been destroyed by the agents of the Board as being infected with glanders; the foundation of the suit being the alleged want of power on the part of the State to authorize the destruction of private property without making compensation for it. It will be seen that this case involved the question of the constitutionality of the various acts of the legislature creating the State Board of Health and defining its powers. The importance of this branch of the State government is at this day so thoroughly understood, that the absolute necessity of resisting an attack upon it which, if successful, will destroy its existence, must be apparent to every one. Careful attention, therefore,

was given to the preparation of this case, and it was thoroughly argued on the part of the State at the last November Term of the Supreme Court. A decision has not yet been reached.

The law of Congress, passed at its last session, for the purpose of preventing the spread of pleuro-pneumonia in cattle, and its effect upon the legislation of this State on the same subject, have received the careful consideration of this office, and such advice given to the members of the State Board of Health in the matter as will, it is believed, result in producing harmonious action by the agents of the Federal government and the Board in the endeavor to eradicate this disease.

## FISHING IN THE DELAWARE RIVER AND BAY.

Under date of August 12, 1885, I made a report in reference to the dividing line between the Delaware river and bay.

An injunction of the Supreme Court of the United States was at the time in force commanding and enjoining the State of Delaware, its officers and agents, to desist and refrain from arresting, imprisoning, trying, fining, or in any manner punishing, or seizing, holding or selling any property of, any citizen or resident of New Jersey for fishing in the river Delaware, as they had theretofore been accustomed to do, until the said court should make other order to the contrary.

The line was then established as a line drawn from Cohansey Light to Bombay Hook Point. It was definitely settled by agreement that as long as the injunction should

be in force there should be no interference on the part of Delaware with the citizens of New Jersey fishing above that line in the Delaware river.

This agreement has not, to my knowledge, been violated, and I have not heard of any complaint on the part of our citizens in reference to any alleged interference with their rights in the river Delaware above the dividing line. My attention has been called, however, by communications sent to me by you as well as from other sources to the continued effort on the part of Delaware to enforce the statutes of that State, which prohibit the taking of running fish within its territorial limits, against the citizens of New Jersey below the dividing line—in Delaware bay.

In the report of August 19, 1885, I stated to the Governor that the authorities of Delaware, while claiming that the boundary of the State of Delaware was the middle of the channel, and that the operation of their laws was confined only by that limit, had agreed that no citizen of New Jersey should be molested for fishing in any part of the bay beyond the Delaware side of the channel.

The report then proceeded to state the exact point of difference between the States as follows:

"The statutes of Delaware prohibit the taking of running fish within these limits, although there should be no interference with the soil. The statute law of New Jersey protects oyster beds within her territorial limits, because they are attached to the soil, of which she is the proprietor.

"It has been held that the statute of New Jersey prohibiting citizens of another State from coming upon the lands under water belonging to the State, and subverting the soil and interfering with the property there found, is

not a violation of that clause of the Constitution of the United States which ordains that the citizens of each State shall be entitled to all the privileges and immunities of citizens in the several States.

"Whether any State has the right to claim the exclusive privilege of taking running fish in the great navigable rivers, bays and seas within the *fauces terræ*, is a question of great doubt and delicacy.

"In *Dunham v. Lamphere, 3 Gray, 268*, Chief Justice Shaw held, that an act to regulate the time and manner of taking fish within the territorial limits of the State was within the authority of the State legislature, and binding on citizens of other States, and on vessels enrolled and licensed as fishing vessels under the laws of the United States. He said, however, 'It has been contended, and with some plausibility, that any act of the State which should give to our own inhabitants a right of fishing in the sea *within our own territorial limits*, and prohibit the same to citizens of other States, or allow them to participate in it only on the payment of some tax or duty, would be obnoxious to Section 2, Article 4th, of the Constitution. * * * In deciding this case, therefore, on the ground that the act on which it is founded makes no discrimination, in its prohibitions, between the inhabitants of other States and those of this commonwealth, we wish not to be understood as implying that, if the law had been otherwise, it would have been unconstitutional. Until it has been directly determined by the Supreme Court of the United States that such a law, appropriating the coast fisheries within the territorial limits of the State to the inhabitants of the commonwealth, is repugnant to the Constitution of the United

States and void, it must be deemed an open question, to be decided by the competent tribunals when it arises.'

"This was not, however, a matter which either the Executive of Delaware or of New Jersey could legally regulate, and they did not attempt to do so. It is a question, which, when it arises, must be determined on constitutional grounds by the tribunals established for that purpose, or be settled by the States by a treaty, with the consent of Congress."

I have examined the decisions which have taken place since the above report was made, and I am still of the opinion that it is very unwise for either New Jersey or Delaware to attempt to prohibit the citizens of either State from taking running fish in any part of the bay. I have no doubt that it is the common interest of the fishermen of the two States to preserve the fishing in the waters which divide the States for their mutual benefit.

I recommend that a commission be appointed, with power to confer with a similar commission, which may be appointed by the State of Delaware, in reference to this important subject.

All which matters are respectfully submitted.

JOHN P. STOCKTON,
*Attorney General.*

Extract from

FIRST ANNUAL MESSAGE

OF HIS EXCELLENCY

# ROBERT S. GREEN,

GOVERNOR OF NEW JERSEY,

TO THE

Legislature--Session of 1888.

DIFFERENCES WITH THE STATE OF DELAWARE.

I refer to the report of the Attorney General for a detailed statement of the points in difference between New Jersey and the State of Delaware. It has led to litigation, the obtaining of an injunction, various conferences and agreements, but the source of the difficulty remains and gives rise to acts on the part of citizens and officers which are considered as invasions on the rights of others. The question involved has never been settled by the Supreme Court of the United States. I adopt the suggestion of the Attorney General, and recommend that a commission be appointed with power to confer with a similar commission which may be appointed by the State of Delaware, to settle these serious disputes.

SHORE FISHERIES.

Serious complaint has been made of late years of the decrease in the food fish which formerly furnished a cheap and excellent article of diet. This is charged to the depredations of menhaden fishermen, who swarm our shores with their steamers and purse nets. The subject was carefully examined by a committee of the United States Senate, who reported a law in 1884 to regulate this kind of fishing. Under the opinion of the Attorney General and the committees of the United States Senate the States are powerless to make effective laws to protect our coast. The injury is not only one by which the supply of food is decreased, but it is destructive of a large deserving industry, that of the shoremen who formerly supplied the market with edible fish.

It is competent for Congress to enact the proper laws to regulate the catching of fish within three miles of our coast, and I recommend that our Senators and Representatives be requested to use their best efforts to secure the passage of the same.

DE H.S. Box 12
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GEOLOGICAL SURVEY OF NEW JERSEY.

# FINAL REPORT

OF THE

# STATE GEOLOGIST.

## VOL. I.

TOPOGRAPHY.
MAGNETISM.
CLIMATE.

TRENTON, N. J.:
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1888.

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# PHYSICAL DESCRIPTION OF NEW JERSEY.

BY C. CLARKSON VERMEULE, C.E.

## GEOGRAPHICAL POSITION.

The northernmost point of the State is Tri-States rock, at the forks of the Delaware and Navesink rivers, just south of Port Jervis, New York. It is in latitude 41 deg. 21 min. 22.6 sec., and longitude 74 deg. 41 min. 40.7 sec. The most easterly point is in the middle of the Hudson river nearly opposite Hastings, New York, and due east from the terminal monument of the State line on the west bank of the river. This point is in latitude 40 deg. 59 min. 50.1 sec., and longtitude 73 deg. 52 min. 39 sec. Cape May is the southernmost point of land, and lies in latitude 38 deg. 55 min. 40 sec., and longitude 74 deg. 56 min. 40 sec. In the middle of the Delaware river, just above Pea-patch island, and in latitude 39 deg. 37 min. 00 sec., and longitude 75 deg. 35 min. 00 sec., lies the most westerly point.

The extreme length of the State from Tri-States rock to Cape May is 166 miles, and its narrowest part is at a line drawn from Trenton to Great Beds light-house, in Raritan bay, which is 33½ miles long. The portion lying north of this line is nearly square, measuring about 55 miles from northwest to southeast, and 65 miles from the New York line southwest to the Delaware river. The Delaware forms the northwest and southwest boundaries of this square, the New York and New Jersey line between Tri-States rock and the Hudson the northeast side and the Hudson river, New York bay, Kill van Kull and Arthur Kill the southeast side. This line makes a natural dividing line between northern and southern New Jersey, and marks a decided change in topographic and other physical features. Southern New Jersey measures 36½ miles in width from Bordentown to the seashore, and gradually increases to 57 miles from opposite Chester, Pennsylvania, to Great Egg Harbor inlet. Its length from Raritan bay to Delaware bay is just about 100 miles. Excepting on the above-described line from Trenton to South Amboy, this portion of the State is surrounded by water.

DE21390

## BOUNDARIES.

New Jersey is bounded for a distance of 108 miles on the north and east by the State of New York; for 137 miles on the east by the Atlantic ocean; for 78 miles on the south and west by the State of Delaware, and for a distance of 164 miles on the west by the State of Pennsylvania. Her total frontier measures 487 miles, of which all but 48 miles is defined by natural boundaries—rivers, bays and the ocean.

This area was first constituted and named as a distinct colony or province in the year 1664, when it was sold by James, Duke of York (afterward King James II.) to Lord Berkeley and Sir George Carteret. In the deeds of lease and release, dated respectively 23d and 24th of June, 1664, it is described as "That tract of land adjacent to New England, and lying and being to the west of Long Island and Manhitas Island; and bounded on the east, part by the main sea, and part by Hudson's River; and hath upon the west, Delaware Bay or River; and extendeth southward to the main ocean, as far as Cape May, at the mouth of Delaware Bay; and to the northward as far as the northernmost branch of the said bay or river Delaware, which is in 41 deg. 40 min. of latitude; and crosses over, thence, in a straight line, to Hudson's River, in 41 deg. of latitude; which said tract of land is hereafter to be called Nova Cæsarea, or New Jersey."*

This description led to long controversies as to the location of the northern boundary, for subsequent examination showed that there was no important fork of the river Delaware near latitude 41 deg. 40 min. The eastern extremity of the boundary was first determined to be at the mouth of Tappan creek, afterwards it was claimed that it properly began opposite the mouth of Spuyten Duyvil creek, and still other claims were presented for its location at various points between these extremes. The western end of the boundary was proposed by some to be fixed at the head of Delaware bay, and by various others at the mouths of the Lehigh, the Navesink, the Popaxtun and the Mohawk branches of Delaware river, and at the lower end of Minisink island. Many attempts were made to reconcile these conflicting claims and to ascertain and mark the line.

The commission appointed in 1787, to determine the northern

* Learning & Spicer, p. 10.

DE21391

boundary, decided that this description had been based on the map shown on next page, the errors of which account for the vagueness of the description. This map was published shortly before the above grant was made, and it may be noted that it bears a marked resemblance to one published by Van der Donck in his "Description of the New Netherlands as it now is," 1656. It is reproduced because of its interest as the map by which the boundaries of the State were first described, and also as showing what important difficulties may arise from erroneous maps. It will be noticed that its latitudes are about one-quarter of a degree too great at the northern boundary.

This grant clearly includes Staten Island. This, however, was early claimed as a part of New York and her title to it was finally confirmed by the action of the Legislatures of the two States and of the Congress of the United States, in 1834.

Various commissions have been appointed since 1718 to fix different portions of the State boundaries, but the work is still incomplete. The work of these commissions is given in detail further on. For the benefit of those who have no need to follow out these details, the following brief descriptions of the State boundaries are given, as near as at present known.

### TERRITORIAL BOUNDARIES.

Beginning at Tri-States rock, at the forks of the Delaware and Navesink rivers, the line between New York and New Jersey runs southeast, changing its course slightly at the end of each mile, so that at Greenwood lake it swerves southward 2,415 feet from a straight line, joining its two ends, so continuing to the terminal monument on the west bank of Hudson river opposite Hastings. The line is marked by a granite monument at each highway and railroad crossing, and also at the end of each mile as measured from the bank of the Hudson; thence the line runs east to the middle of Hudson river, and theo down the middle of the said river and New York bay to a point midway between the headlands of Constable Hook, New Jersey, and Bay Ridge, Long Island; thence westerly along the middle of Kill van Kull (to the northward of Shooter's island*), and down the middle of Arthur Kill to a point at the mouth of said Arthur Kill. From here it follows a straight line to Great Beds light; thence on a straight line toward Waacake light until it inter-

* So accepted, but open to question.

DE21392

Milliaria Germanica Communia
Wieskottine
Groot Esopus
Cleyne Esopus
Wappinges
Waranawankongs
Kaes Eylant
COLONIE
VAN
Tappaans
DE HEER NEDER
HORST
Nieuw Amsterdam
Sanhicans
Lacus
Zuydt Rivier
Port May
Godyns Bay
Sauwan
Matovancons
Aquauachuques
Ermomex
Naraticons
Nieuw
Port May
Baradegat
Eyerhaven
Caep May
Zuydt Rivier
C. Cornelius
NOVI BELGII

DE21393

sects a line from United States Coast and Geodetic Survey station "Morgan 2" through Romer Stone beacon; and thence on the same line until it intersects a line drawn from Sandy Hook beacon to United States Coast and Geodetic Survey station "Oriental Hotel," on Coney Island; thence on a line at right angles to this last-mentioned line to the open ocean. Down the coast the boundary is a line three geographical miles from the coast line until we reach a line drawn through the middle of Delaware bay; thence up the middle of the bay and river* to the line between Pennsylvania and Delaware. The line between New Jersey and Pennsylvania follows thence up the middle of the Delaware, leaving the several islands of said river to the State nearest which they lie, to Tri-States rock, the place of beginning.

### LIMITS OF JURISDICTION.

The above bounds limit the property rights of the State. In some cases they coincide with the jurisdictional limits, and in other cases they do not. The limits of jurisdiction follow the line from Tri-States rock to the Hudson river as described above; thence due east to the middle of said river, and following the middle of the river to a point opposite the mouth of Spuyten Duyvil creek; thence westward to low-water mark on the western shore of the Hudson. Jurisdiction is limited by low-water mark of the western shore from this point southward along the river and New York bay to Kill van Kull, and changes as the shore line is changed by improvements. Continuing, the limits follow the north shore of Kill van Kull and the west shore of Arthur Kill to the mouth of Woodbridge creek; thence crossing the Kill and following low-water mark of the Staten Island shore around to Prince's Bay light-house. From here they follow a line drawn from Prince's Bay light-house to the mouth of Matawan creek, until said line intersects the previously-described line of territorial limits drawn through the middle of Raritan bay; thence along said line to the ocean, and down the coast to a point midway between the Delaware capes. From here New Jersey claims jurisdiction to the middle of Delaware bay and river as far up as the line between Delaware and Pennsylvania. From this point northward to Tri-States rock the States of New Jersey and Pennsylvania

* This is New Jersey's claim. It has been disputed by the State of Delaware. See Revised Code of Delaware, 1874, chap. 1, sec. 2.

DE21394

exercise joint jurisdiction over the waters of the Delaware river, offences being tried in that State which first apprehends the offender.

The right to regulate fisheries extends to the property limits so far as the question has been settled by inter-state compacts.

The above description embodies the best understanding which can be reached of the results of the various inter-state commissions. The territorial boundary through New York bay and across Newark bay from the head of Kill van Kull to the head of Arthur Kill has not yet been settled with proper definiteness; and, as before stated, no agreement has been reached with Delaware as to the boundary between that State and New Jersey. For the use of those wishing to pursue the subject further, the results of the various boundary agreements are outlined below.

### NORTHERN BOUNDARY BETWEEN NEW JERSEY AND NEW YORK.

The following is on record in the office of the Secretary of State of New Jersey, Book F 2 of Deeds, p. 435:

"By His Excellency Lewis Morris, Esq., Captain General and Governor in Chief of His Majesty's Province of New Jersey and Territories thereon depending in America, and Vice Admiral in the same, &c.

"I do hereby certify that sometime in or about, as I believe, the year 1685 or 1686, Colonel Thomas Dongan then Governor of New York with some of the gentlemen of the Council of New York and others, met with Gawen Lawrie then Governor of New Jersey and some of the gentlemen of the Council of New Jersey and others, at a place nigh which stood afterwards the house of Col. William Merret on the west side of Hudson's River, where an observation was there made of the latitude, and marked with a pen knife on a beech tree standing by a small run or spring of water that runs down on the north side of the place where, I think, Merret's house afterwards stood. Some time early in the beginning of the year 1691, I went and re-marked the said tree, but do not remember what was the latitude that was marked thereon. They went afterwards to a house to the southward of a place called Verdrietige Hook, and from thence southerly to a farmer's house to the northward of the Tapan meadow, at the bottom of the Bay. I cannot particularly remember whether observations were made at one or both these places, but I was told they then did agree that the mouth of Tapan Creek, should be the point of partition on Hudson's River, between the Province of New York and that of New Jersey.

"LEWIS MORRIS.

DE21395

the Oriental Hotel, on Coney Island, New York; then southeasterly, at right angles with the last-mentioned line, to the main sea.

"*Third.* The monumental marks by which said boundary line shall be hereafter known and recognized, are hereby declared to be as follows:

"1. The 'Great Beds light-house.'

"2. A permanent monument marked 'State Boundary Line New York and New Jersey,' and to be placed at the intersection of the line drawn from the 'Great Beds light-house' to 'Wanckaack or Wilson's beacon,' Monmouth county, New Jersey, and the line drawn from 'Morgan No. 2' triangulation point, U. S. Coast and Geodetic Survey, in Middlesex county, New Jersey, to 'Romer stone beacon.'

"3. Eight buoys or spindles, to be marked like the permanent monument above mentioned, and placed at suitable intervening points along the line from the said permanent monument to the 'Romer stone beacon.'

"4. The 'Romer stone beacon.'

"*Fourth.* The maps accompanying and filed with this agreement, showing the location of the above-described boundary line between the state of New York and the state of New Jersey, in Raritan bay to the main sea, and of the monumental marks by which it is marked, and to be marked, duly authenticated and attested by the signatures of the said commissioners, and placed on file in the offices of the secretaries of state of the respective states, shall constitute the permanent and authentic records of said boundary line, and are hereby adopted by the parties hereto and made part of this agreement.

"In witness whereof, the said commissioners have hereto set their hands and seals in duplicate, this 12th day of October, in the year of our Lord 1887.

| | | | |
|---|---|---|---|
| " M. W. HAZELTINE, | [L.S.] | GEO. H. COOK, | [L. S.] |
| " ROBERT MOORE, | [L.S.] | ROBERT C. BACOT, | [L. S.] |
| " G. C. HANUS, Lieut. U.S.N., | [L.S.] | A. B. STONEY, | [L. S.]"* |

### THE BOUNDARY SEAWARD.

The question as to how far the jurisdiction of the State extends seaward is not well defined. The territorial limits may be regarded as extending three geographical miles from the coast line. †

### BOUNDARY BETWEEN NEW JERSEY AND DELAWARE.

Uncertainty as to the limits of territory and jurisdiction of these two States has led to serious and sometimes violent disputes, chiefly as

* Report of the Proceedings of the New Jersey Boundary Commission, etc., 1887.

† Gould on Waters, sec. 4.



DE21396

to the fisheries. A statute of Delaware defines its limits to be "low-water mark on the eastern side of the river Delaware within the twelve-mile circle from New Castle, and the middle of the bay below said circle." *

The following sets forth the claim of New Jersey, conflicting with the first clause of the above:

"Joint Resolution relative to the rights of the state of New Jersey in that part of the Delaware river which runs between the states of Delaware and New Jersey. †

"Approved March 30, 1876.

"WHEREAS, The state of Delaware now claims to own the bed and to have exclusive jurisdiction, from shore to shore, of a portion of the Delaware river, extending from the boundary line between the states of Pennsylvania and Delaware, for some distance below the town of New Castle; and has lately endeavored to exercise jurisdiction co-extensive with said claim; *and whereas*, this state always claimed and now doth claim to own the bed of said river to the middle thereof, so far as said river lies between this state and the state of Delaware, and to be entitled to exclusive jurisdiction (subject to the constitution of the United States and the acts of congress made in pursuance thereof) over its half of said river, and hath always heretofore exercised jurisdiction accordingly; *and whereas*, it is desirable and necessary that the rights of this state, as between it and the state of Delaware, in and to said river, shall be definitely, finally and conclusively settled; *and whereas*, the efforts heretofore made to settle said matters of difference by consultation and agreement between the said differing states, have proved ineffectual; therefore,

"SEC. 1. That the governor of this state be and is hereby authorized to cause to be instituted and prosecuted, in the supreme court of the United States, a suit in equity, or an action at law, by the state of New Jersey against the state of Delaware, to ascertain, determine and settle the true territorial boundary line between said states, and the extent of the jurisdiction of each of said states in and on said river, and for that purpose the governor shall have power to employ, on behalf of this state, counsel to assist the attorney-general in the commencement and prosecution of said suit, or action, and the expenses necessarily and reasonably attending the commencement and prosecution of said suit, or action, on bills certified by the governor, shall be paid out of any moneys in the treasury not otherwise appropriated."

Previous to this, however, in 1873, an act was passed authorizing the Governor to appoint three commissioners with full power and

* Revised Code of Delaware, 1874, chap. I, sec. 2.

† Revision of 1877, p. 1185.

DE21397

authority to agree upon, settle and determine the limits of territory and jurisdiction between the States; the Legislature of Delaware having passed a joint resolution authorizing the appointment of commissioners to meet with them, Delaware refused afterwards to submit the question as to the title claimed by that State to the bed of the Delaware river to the commission, and nothing was accomplished.

An injunction of the Supreme Court of the United States having been obtained, "commanding and enjoining the State of Delaware, its officers and agents, to desist and refrain from arresting, imprisoning, trying, fining or in any manner punishing or seizing, holding or selling any property of any citizen of New Jersey for fishing in the river Delaware, as they had heretofore been accustomed to do, until the said court should make other order to the contrary," the Attorneys-General of the two States agreed that for the purposes of this injunction the head of Delaware bay should be considered to be a line drawn from Cohansey light-house to Bombay Hook Point.

Although, as we have seen, the claims of the two States conflict as to limits in the Delaware river, from the Pennsylvania and Delaware line to the foot of Reedy island, there seems to be an agreement that below Reedy island the middle of the bay is the territorial line. The Attorney-General of New Jersey holds this to mean the middle line between low-water marks of the opposite shores. He states, however, in his report to the Governor for the year 1887, that his attention has been called to the continued effort on the part of Delaware to enforce the statutes of that State which prohibit the taking of running fish within its territorial limits, against the citizens of New Jersey, in Delaware bay.

In a report submitted to the Governor August 12th, 1885, on this dividing line, the Attorney-General states as follows:

> "The authorities of Delaware, while claiming that the boundary of the State of Delaware was the middle of the channel, and that the operation of their laws was confined only by that limit, had agreed that no citizen of New Jersey should be molested for fishing in any part of the bay beyond the Delaware side of the channel."

The report then proceeded to state the exact point of difference between the States as follows:

> "The statutes of Delaware prohibit the taking of running fish within these limits, although there should be no interference with the

soil. The statute law of New Jersey protects oyster beds within her territorial limits, because they are attached to the soil, of which she is the proprietor.

"It has been held that the statute of New Jersey prohibiting citizens of another State from coming upon the lands under water belonging to the State, and subverting the soil and interfering with the property there found, is not a violation of that clause of the Constitution of the United States which ordains that the citizens of each State shall be entitled to all the privileges and immunities of citizens in the several States.

"Whether any State has the right to claim the exclusive privilege of taking running fish in the great navigable rivers, bays and seas within the *fauces terræ*, is a question of great doubt and delicacy."

He closes the report submitted on this matter, for 1887, as follows:

"I have examined the decisions which have taken place since the above report was made, and I am still of the opinion that it is very unwise for either New Jersey or Delaware to attempt to prohibit the citizens of either State from taking running fish in any part of the bay. I have no doubt that it is the common interest of the fishermen of the two States to preserve the fishing in the waters which divide the States, for their mutual benefit.

"I recommend that a commission be appointed, with power to confer with a similar commission which may be appointed by the State of Delaware, in reference to this important subject."*

### BOUNDARY BETWEEN NEW JERSEY AND PENNSYLVANIA.

In an opinion by Judge Elmer, of the New Jersey Supreme Court, it is stated that "the river Delaware was never within the jurisdiction either of this State or Pennsylvania until, by the Revolution, the rights of the Crown were extinguished, and each State then held to the middle. Under these circumstances, the agreement between the two States, adopted in 1783, provided that the two States should have concurrent jurisdiction in and upon the water of that river."†

The results of this commission of 1783 are given in the following act:

* Annual Report of the Attorney-General of the State of New Jersey, for the year 1887.

† State *v.* Babcock, 1 Vr. 29.

DE21399

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THE LAW ASSOCIATION OF PHILADELPHIA,
ROOM 600 CITY HALL,
PHILADELPHIA, Sept 23/98

Geo H Bates, Esq

Dear Mr Bate:

I just have picked up a pamphlet by Thomas Kays on the Jurisdiction of the State of New Jersey over the Fishing Territory of the State and its authority to Protect and regulate the Fisheries of the State and especially of the Delaware River.

Prepared at the request of the Commissioners of Fisheries March 10, 1888.

Yours truly
Luther E. Hewitt
per M. N. K.



DE17177

# MESSAGE OF THE GOVERNOR

TO THE GENERAL ASSEMBLY

AND

# OPINION OF THE ATTORNEY GENERAL

OF THE STATE OF DELAWARE,

In relation to the Suit pending in the United States Supreme Court between the States of Delaware and New Jersey.

# MESSAGE OF THE GOVERNOR.

To the Senate and House of Representatives of the State of Delaware in General Assembly met:

I have received and herewith transmit for your information a communication from the Attorney General relating to the suit now pending in the Supreme Court of the United States, between the States of New Jersey and Delaware. It is unnecessary for me to enlarge upon the importance of this report. The unanimity with which the people of this State, through various General Assemblies and Executives, have always defended the integrity of the jurisdiction, territory and sovereignty of this State in this controversy, constitutes a just guide for present action. I cannot bring myself to believe that the present generation of Delawareans will, wheo properly advised on the subject, find themselves less sensitive and earnest in maintaining the rights of the State than the generations which have preceded us. It would seem that if the controversy is ever to be settled finally, it could not be placed in a position of greater advantage than to embrace the present opportunity to have it forever set at rest by the decision of that tribunal which, under the Federal Constitution, is competent to sit in judgment between sovereign States. From personal conference with the Attorney General and counsel who have heretofore represented the State in this litigation, and from such investigation of the case as I have been able to make, I believe that the interests of the State have been carefully guarded



DE02711

past; and that such interests will be fully protected in the
by such of the existing counsel for the State as are now living
are now free to act in her behalf, together with the Attorney
al of the State.

herefore recommend that the General Assembly renew its
ation of purpose, not to abandon the vindication of its sover-
ight and title to the territory which immemorially has been
ded to be a part of its domain, and that it shall make such
ion for the further defense thereof against what must be con-
d the unfounded pretensions of the State of New Jersey, as
mport with the honor, dignity and best interests of the State.

JOHN HUNN,
*Governor.*

# ATTORNEY GENERAL'S OPINION.

WILMINGTON, DELAWARE, February 14th, 1901.

TO HIS EXCELLENCY,
JOHN HUNN,
*Governor of the State of Delaware.*

DEAR SIR:

It becomes my official duty to direct your attention to th
litigation which has long been pending in the Supreme Court of th
United States, between the States of New Jersey and Delaware
This litigation grew out of legislation in our State, prohibiting per
sons who were not citizens of Delaware from fishing within certai
limits which were claimed to be within the exclusive jurisdiction o
our State, and over which limits the jurisdiction of our State has
from time immemorial, been asserted and maintained.

The Act in question was passed on March 28th, 1871, bein
Chapter 72 of Volume 14, Laws of Delaware, and such parts o
which as are now in force can be found on page 467, &c., of th
Revised Code as published in 1893. The jurisdiction in questio
is that claimed by the State of Delaware over the waters of th
Delaware River to low water mark on the New Jersey shore, withi
the limits of the twelve mile circle having its center at the Cour
House at New Castle, and an arc of which circle constitutes th
Northern boundary of this State.

The enforcement of the provisions of the Act of March 28th

71, by the arrest of citizens of New Jersey engaged in fishing hin that portion of the Delaware River lying within the twelve e circle, was promptly opposed by the authorities of that State, h a claim of jurisdiction over said river east of the middle line, l of the legal right of her citizens to fish on the New Jersey re of the river without the license of Delaware, either within or hout the said circle.

During the year 1872, the then Executives of the two States had tain correspondence and conferences over this controversy, the lt of which was their recommendation to the legislatures of their pective States that commissioners should be appointed on the t of each to settle the matter in dispute. Upon such recommdation, a joint commission, consisting of three members from n State, was appointed by legislative authority, and the General embly of this State suspended the law of 1871, pending the otiations between such commissioners.

These joint commissioners having failed to reach a satisfactory s of settlement of the matter in controversy, the commissioners this State reported to the Executive, in 1874, their failure to re at a satisfactory settlement of the matter in dispute, and vered a statement asserting and vindicating the claim and title Delaware. On March 26th, 1875, the General Assembly of this e adopted a joint resolution, declaring that the commissioners he part of this State having fully performed their duties and rted the results of their labors, were relieved of further duty ch commissioners. This joint resolution appears in Chapter Volume 15, Laws of Delaware. The effect of this resolution to abrogate the authority of such commissioners, to terminate negotiations, and to revive the suspended license laws. Such se laws were thereafter enforced by the authorities of this State the original conditions resulting therefrom recurred. As the t of this state of affairs, New Jersey, in pursuance of leave



granted on March 13th, 1877, filed a Bill in Equity in the Supre Court of the United States to restrain the State of Delaware fr the exercise of its jurisdiction.

Prior to the filing of said Bill in Equity, your predecess Honorable John P. Cochran, then Governor of the State Delaware, on the second day of January, 1877, addressed a delivered to the General Assembly his message, in the course which he recited the foregoing historical facts and informed t General Assembly of the purpose, as communicated to him by t Governor of New Jersey, of said State to commence proceedi in the Supreme Court of the United States. In concluding discussion of the subject, Governor Cochran said:

> "If this proceeding shall be taken by New Jersey, it will be incumbent upon the General Assembly at its present session, to make adequate provision for the proper vindication of that rightful claim of title and jurisdiction which, I believe, has never before been denied by New Jersey, but which, on the contrary, is based upon original and incontestable grants, and has been uninterruptedly asserted and maintained by the State of Delaware for the space of nigh two centuries, and I would respectfully recommend that such legislation be had as will meet all exigencies likely to arise, pending the litigation."

As a result of this message of Governor Cochran, the Gene Assembly, on the twenty-sixth day of January, 1877, adopted joi resolutions, reciting the claim of this State to the ownership a exclusive jurisdiction of that portion of the Delaware River whi is included within a circle of twelve miles radius, taking the Co House in the City of New Castle as a central point, and declarin

> "That the Attorney General be, and he is, hereby, authorized and directed, to cause his appearance, in behalf of this State, to be promptly entered upon the record of the said suit in the Supreme Court of the United States, whenever the same shall be commenced by the State of New Jersey. And be it further resolved, that the Governor be, and he is, hereby, authorized to employ in behalf

of the State, additional counsel to assist the Attorney General in the defense of the said suit."

'hese resolutions are contained in Chapter 504, Volume 15, 's of Delaware.

n pursuance of said resolutions and authority, the Governor sequently, from time to time, appointed Messrs. Thomas F. ard, George Gray, and George H. Bates, as counsel to repre- the State in this cause. Subsequently, Mr. Bayard withdrew n his position as counsel, upon his appointment as Secretary of e of the United States. Mr. George Gray has since been ap- nted United States Circuit Judge. Of the original counsel in cause, Mr. George H. Bates now remains.

t a very recent date, I have received communications from Clerk of the Supreme Court of the United States, from the norable Samuel H. Grey, Attorney General for the State of Jersey, and from the Honorable George H. Bates, the special nsel for the State of Delaware, calling my attention to the cause communicating to me the order of the Supreme Court that the e before it should be forthwith proceeded with. Upon a con- nce with Messrs. Gray and Bates, and upon the examination of ecord of the cause, it appears that the State of Delaware must the next step in the action, by filing its Answer to the Bill of plaint of New Jersey. Inasmuch as the State of New Jersey not heretofore been pressing its suit against this State, under itten agreement of counsel filed in the cause, no Answer for the e of Delaware has heretofore been filed. Further delay is now racticable on account of the determination of the Supreme rt to bring the case to a final determination.

he action of counsel for this State hitherto seems to me to have characterized by good judgment and discretion. So long as representatives of the State of New Jersey seemed disinclined ress the claims of that State, those of Delaware were content to



let the matter rest, while they kept themselves prepared at any ti to make formal defense to the suit when it should be seriou prosecuted. Now that the court has insisted that the case shall proceeded with, and the matter has been called to my official tention, I find the case in such condition as will enable those w represent this State to meet promptly the claims set up by the St of New Jersey in its Bill of Complaint.

In the opinion of eminent jurists, upon whose judgment the St of Delaware has a right to rely, the title and jurisdiction of this St to and over the disputed territory is unimpeachable.

The question of jurisdiction and title involved in the present li gation is not a new one. It was submitted to an extended inve gation which, though not conducted by a court of record, w eminently judicial in its character, and is entitled to be consider as almost in rank of judicial precedents by reason of the circu stances which surround it, and the high character of the Arbitra who decided it.

This case was to determine the title to the Pea Patch Islan which had been acquired by the United States under cession fr the State of Delaware, for the purpose of erecting a fort there The title of the United States, as derived from the State of De ware, was impeached by an individual of New Jersey, who clain under the title of New Jersey, so that, although the States were directly parties to the proceeding, the title and jurisdiction of respective States to so much of the river as is included in the tw mile circle to low water mark on the New Jersey shore, was exact point involved in the litigation.

After many years of dispute, an amicable arrangement was ente into between the United States Government and the New Jer claimant for the decision of the controversy by the Honorable J Sergeant, of Philadelphia, who was then recognized as one of leaders of the Bar in the United States. The case was heard

delphia, in Independence Hall, and was argued by Messrs. M. Clayton and James A. Bayard on behalf of the Delaware and Messrs. George M. Bibb and John H. Eaton for the New claimant. The character of the counsel involved was suffi- guarantee for the thoroughness of the argument, and the de- of the Arbitration was thus characterized at the time:

"As the well reasoned opinion of a very able lawyer—whose greater distinction in his profession has made him insolicitous about judicial station—and as having been framed after full and careful public argument before him for many days together by other able lawyers, it is far more authoritative than any opinion merely professional, and has all the intrinsic weight of the highest judicial opinion. It can scarcely be reversed in any case which may again involve the question of this boundary, and will take its place, of course, among the most enduring historical monuments of the States of New Jersey and Delaware."

Arbitrator, Mr. Sergeant, decided in favor of the title and tion of Delaware on every point. He found, as a matter of hat upon the paper title the original property was not in New but that it was in the State of Delaware, and that that State t, by any act or default of her own, parted with or lost her that no evidence had been adduced to establish a single e of the exercise by New Jersey of jurisdiction over that part river and islands, and that there was no reason to believe ere was one; that, "on the part of Delaware, the evidence and complete of the exercise of the jurisdiction over that the river and islands as far back as evidence can be expected

trial took place in January, 1848. In the course of this he Honorable Kensey Johns, then above eighty-eight years who had been Chief Justice of Delaware for thirty-eight nd afterwards Chancellor of the State, testified that:

"It has always been considered and held by the courts,



public officers and lawyers of Delaware, as far as my memory reaches, that the title and jurisdiction of the State of Delaware, extended to a circle of twelve miles around New Castle, to low water mark on the New Jersey shore. I have never heard the title and jurisdiction of the State of Delaware, over that part of the River Delaware, doubted by any court, public officer or lawyer in Delaware, on any occasion whatever. Within my knowledge and remembrance, writs have been often issued out of the courts of Delaware, to seize vessels and persons on all parts of the River Delaware, within the circle to low water mark on the New Jersey shore, and no dispute, question, or plea was ever made or suggested, within my memory, before any court in Delaware, against the title of Delaware over all such parts;" again,—"The State of Delaware, for the whole period of my remembrance, and as far back as my researches extend, has claimed and exercised jurisdiction over the Delaware River and soil thereof, within the circle to low water mark on the Jersey shore, and the State has never failed to exercise this jurisdiction when called upon or asked to do so."

At the time of the passage of the Act of 1871, and during th controversy resulting therefrom, Governor Cochran asked ti opinion of Chief Justice Gilpin upon the general questions raise in the controversy attending the execution of that Act, and in th course of that opinion, the Chief Justice used this language:

"I entertain no doubt that the limits and jurisdiction of this State extend within the twelve mile circle about New Castle to low water mark on the Jersey shore, and below or south of the circle, thence by the channel of the Bay to the Ocean; and that this is so, I think there can be no serious question."

The Commissioners for the State of Delaware above referred t who were appointed by a joint resolution of the General Assembl of January 30th, 1873, were Joseph P. Comegys, afterwards Chi Justice of the State, and the most profound student of our earl history, William G. Whiteley, afterwards an Associate Judge this State, and Edward L. Martin, afterwards a member of Con gress from this State. These Commissioners, after an exhaustiv

stigation of ancient documents, and of all data available at that , which bore on the question, including some of the records of privy council which had not been considered in the Pea Patch found and reached the conclusion that the original title to the within the twelve mile circle was valid, and could not be ailed with success by the State of New Jersey so as to invest citizens with any right within the river circumscribed by the e, except that of navigation, which is recognized and protected he commercial clause of the Federal Constitution." And that laware became entitled to claim and hold all the bed of the within the twelve mile circle."

asmuch as the controversy involves territory always heretofore dfastly claimed and defended by the State, and in view of the e mentioned legal opinions, I am of the opinion that the cause pending in the Supreme Court should be defended by the e.

uring the long period in which this case has been pending, sel heretofore employed by the State have, with diligence and prepared themselves to meet the claim of the State of New ey whenever called upon to do so, and to that end, have exded much time and labor in the preparation of the case of the e of Delaware, and in the collection of documents and investion of historical and legal authorities. This preparation is now able, and will be continued and extended in the trial of the in the Supreme Court.

view, however, of the lapse of time since the commencement he above mentioned suit in the Supreme Court, and since the eral Assembly of the State has acted in relation to this conersy, and in view of the importance to the State of a vigorous nse of its jurisdiction, territory and sovereignty, and in view he fact that under the direction of the Supreme Court, New ey must now press the claims which she has so long permitted



to slumber, I deem it expedient to advise you of the propriety your communicating to the General Assembly the past history a present condition of this important controversy and litigation the information of its members and of the people of the State.

I would suggest that you send to the General Assembly a m sage, embodying the facts set forth in this report, and that recommend the passage of a joint resolution by this General sembly, which shall reiterate the authority of this State to defe said action to its termination, and renew its statement of confide in the position hetetofore assumed in this controversy by this Sta

H. H. WARD,

*Attorney General*

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Volume
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NJ vs DE Suit exhibits
"Message of The Governor"
: TO GA + opinion of the
Att Gen
BC 150881

ersey-Delaware Boundary Suit.
rk Times (1857-Current file); Apr 9, 1901; ProQuest Historical Newspapers The New York Times (1851 - 2001)

# w Jersey-Delaware Boundary Suit.

ASHINGTON, April 8.—Upon motion eorge H. Bates, the State of Delaware given until the first Monday in the term of the United States Supreme rt to file an answer or a demurrer in proceedings between that State and State of New Jersey. The case involves inter-State boundary line in Delaware and grew out of a dispute in regard to er fishing rights. The case was dock- in 1877, and is the oldest one on the ket. It has been allowed to rest because States appeared to be satisfied with status quo, Attorney General Grey present in the interest of the State of Jersey, and indicated a purpose to s the case.

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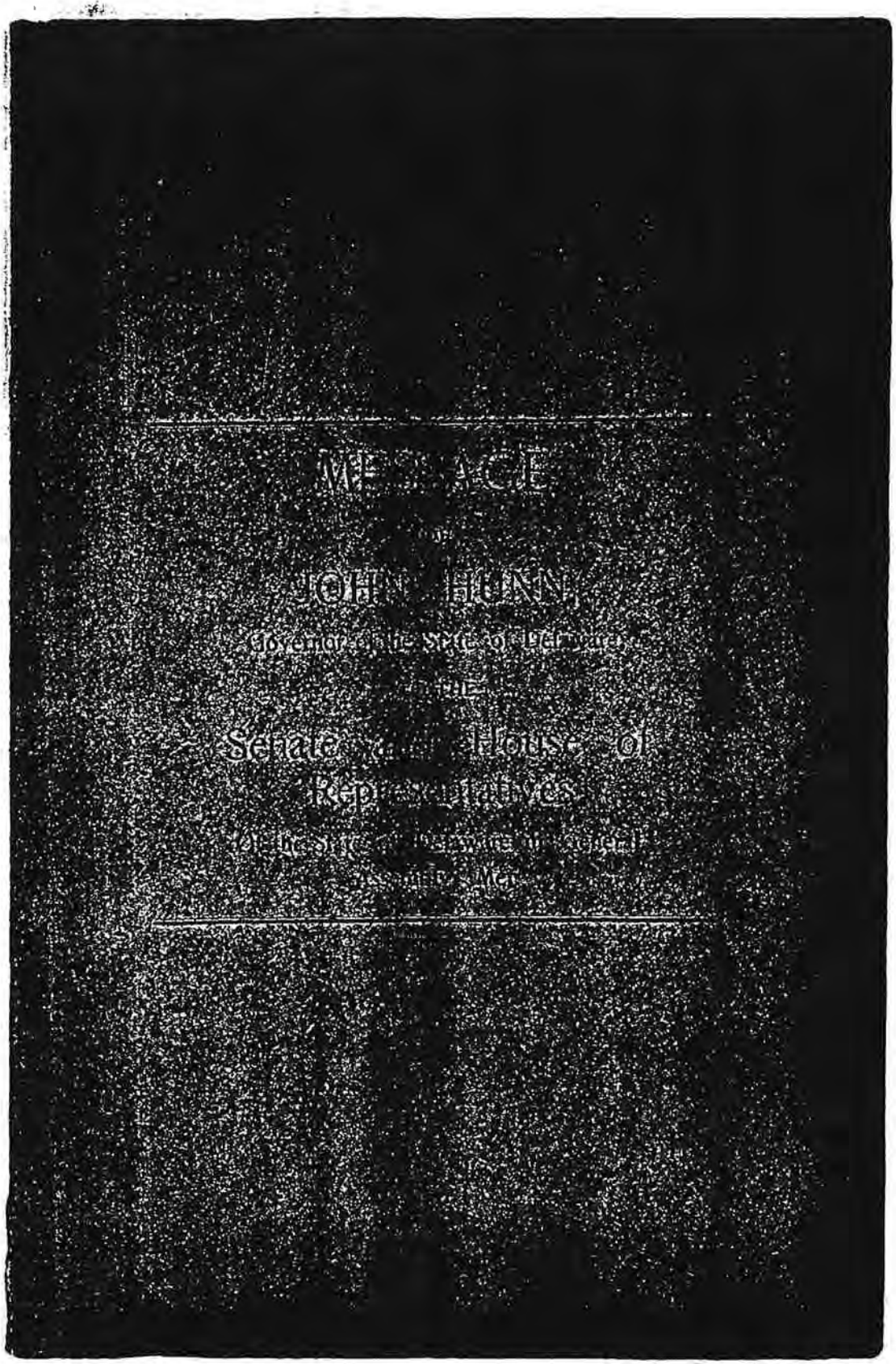

MESSAGE
JOHN HUNN
Governor of the State of Maryland
TO THE
Senate and House of
Representatives

DE17014

# GOVERNOR'S MESSAGE

AND

# JOINT RESOLUTION

Relating to the Suit and Controversary, now Pending in the Supreme Court of the United States, between the States of New Jersey and Delaware.

# Governor's Message.

*To the Senate and House of Representatives of the State of Delaware in General Assembly met:*

I herewith transmit for your information an official communication from the Attorney General to the Governor, relating to the suit now pending between the States of New Jersey and Delaware in the Supreme Court of the United States.

As set forth in said communication, I have, in my Message upon this subject at the last General Assembly, expressed the opinion that the above mentioned case involved interests of the highest value and importance to this State, concerning as it does the territorial limits and jurisdiction thereof. The last General Assembly, by its joint resolution referred to in the accompanying communication of the Attorney General, authorized the vigorous defense of the rights of the State in this behalf. At the same time, it is entirely appropriate and fitting that the chosen representatives of the people now gathered in General Assembly in this State, should consider any just suggestion of the settlement of this long standing controversy with our neighboring State, upon terms which may be wholly consistent with the dignity, rights and interest of this State.

In accordance, therefore, with the suggestion of the Attorney General, I now recommend that the Senate and House of Representatives do appoint a special joint committee to consider and advise with the Attorney General and special counsel for this State concerning the proper disposition of the said territorial controversy between this State and the State of New Jersey.

JOHN HUNN, GOVERNOR.

WILMINGTON, DELAWARE, JANUARY 31, 1903.

To HIS EXCELLENCY,

JOHN HUNN, GOVERNOR OF THE STATE OF DELAWARE:

DEAR SIR:—

It becomes my official duty again to direct your attention to the litigation which has long been pending in the Supreme Court of the United States, between the States of New Jersey and Delaware, concerning which I addressed you in February, 1901. This litigation, as I then stated, grew out of legislation in our State, prohibiting persons who were not citizens of Delaware from fishing within certain limits which were claimed to be within the exclusive jurisdiction of our State, and over which limits the jurisdiction of our State has, from time immemorial, been asserted and maintained.

The Act in question was passed on March 28th, 1871, being Chapter 72 of Volume 14, Laws of Delaware, and such parts of which as are now in force can be found on page 467, &c., of the Revised Code as published in 1893. The jurisdiction in question is that claimed by the State of Delaware over the waters of the DelawareRiver to low water mark on the New Jersey shore, within the limits of the twelve miles circle having its center at the Court House at New Castle, and an arc of which circle constitutes the Northern Boundary of this State.

The enforcement of the provisions of the Act of March 28th, 1871, by the arrest of citizens of New Jersey engaged in fishing within that portion of the Delaware River lying within the twelve mile circle, was promptly opposed by the authorities of that State, with a claim of jurisdiction over said river East of the middle line,

and of the legal right of her citizens to fish on the New Jersey shore of the river without the license of Delaware, either within or without the said circle.

During the year 1872, the then Executives of the two States had certain correspondence and conferences over this controversy, the result of which was their recommendation to the legislatures of their respective states that commissioners should be appointed on the part of each to settle the matter in dispute. Upon such recommendation, a joint commission, consisting of three members from each state, was appointed by legislative authority, and the General Assembly of this State suspended the law of 1871, pending the negotiations between such commissioners.

These joint commissioners having failed to reach a satisfactory basis of settlement of the matter in controversy, the commissioners from this State reported to the Executive, in 1874, their failure to arrive at a satisfactory settlement of the matter in dispute, and delivered a statement asserting and vindicating the claim and title of Delaware. On March 26th, 1875, the General Assembly of this State adopted a joint resolution, declaring that the commissioners on the part of this State having fully performed their duties and reported the results of their labors, were relieved of further duty as such commissioners. This joint resolution appears in Chapter 249, Volume 12, Laws of Delaware. The effect of this resolution was to abrogate the authority of such commissioners, to terminate their negotiations, and to revive the suspended license laws. Such license laws were thereafter enforced by the authorities of this State and the original conditions resulting therefrom recurred. As the result of this state of affairs, New Jersey, in pursuance of leave granted, on March 18th, 1877, filed a Bill in Equity in the Supreme Court of the United States to restrain the State of Delaware from the exercise of its jurisdiction.

Prior to the filing of said Bill in Equity, your predecessor, Honorable John P. Cochran, then Governor of the State of Delaware, on the second day of January, 1877, addressed and delivered to the General Assembly his Message, in the course of which he recited the foregoing historical facts and informed the General Assembly of the purpose, as communicated to him by the Governor of New Jersey, of said State to commence proceedings in the Supreme Court of the United States. In concluding his discussion of the subject, Governor Cochran said:

> "If this proceeding shall be taken by New Jersey, it will be incumbent upon the General Assembly at its present session, to make adequate provision for the proper vindication of that rightful claim of title and jurisdiction which, I believe, has never before been denied by New Jersey, but, which, on the contrary, is uninterruptedly asserted and maintained by the State of Delaware for the space of nigh two centuries, and I would respectfully recommend that such legislation be had as will meet all exigencies likely to arise, pending the litigation."

As a result of this message of Governor Cochran, the General Assembly, on the twenty-sixth day of January, 1877, adopted joint resolutions, reciting the claim of this State to the ownership and exclusive jurisdiction of that portion of the Delaware River which is included within a circle of twelve miles radius, taking the Court House in the City of New Castle as a central point, and declaring,

> "That the Attorney General be, and he is, hereby authorized and directed to cause his appearance, in behalf of this State, to be promptly entered upon the Record of the said suit in the Supreme Court of the United States, whenever the same shall be commenced by the State of New Jersey. And be it further resolved, that the Governor be, and he is, hereby, authorized to employ, in behalf of the State, additional Counsel to assist the Attorney General in the defense of the said suit."

These resolutions are contained in Chapter 504, Volume 15, Laws of Delaware.

In pursuance of said resolutions, and authority, the Governor subsequently, from time to time, appointed Messrs. Thomas F. Bayard, George Gray and George H. Bates, as Counsel to represent the State in this cause. Subsequently, Mr. Bayard withdrew from his position as Counsel, upon his appointment as Secretary of State of the United States. Mr. George Gray has since been appointed United States Circuit Judge. Of the original Counsel in the cause, Mr. George H. Bates now remains.

In February 1901 I received communications from the Clerk of the Supreme Court of the United States, from the Honorable Samuel H. Grey, then Attorney General for the State of New Jersey, and from the Honorable George H. Bates, the special Counsel for the State of Delaware, calling my attention to the cause, and communicating to me the order of the Supreme Court that the cause before it should be forthwith proceeded with. Upon a conference with Messrs. Grey and Bates; and upon the examination of the record of the cause, it appeared that the State of Delaware must take the next step in the action, by filing its answer to the Bill of Complaint of New Jersey. Inasmuch as the State of New Jersey had not heretofore been pressing its suit against this State, under a written agreement of Counsel filed in the cause, no Answer for the State of Delaware had heretofore been filed.

On February, 14th, 1901, I addressed you, reciting the history of the controversy, and suggesting that you send to the General Assembly a Message, embodying the facts set forth in said report, and that you recommend the passage of a joint resolution by the General Assembly then in session, which should reiterate the authority of this State to defend said action to its termination,

and renew its statement of confidence in the position heretofore assumed in said controversay by this State. Thereupon, you sent the following Message to the Senate and House of Representatives :—

"I have received and herewith transmit for your information a communication from the Attorney-General relating to the suit now pending in the Supreme Court of the United States, between the States of New Jersey and Delaware. It is unnecessary for me to enlarge upon the importance of this report. The unanimity with which the people of this State, through various General Assemblies and Executives, have always defended the integrity of the jurisdiction, territory, and sovereignty of this State in this controversy, constitutes a just guide for present action. I cannot bring myself to believe that the present generation of Delawareans will, when properly advised on the subject, find themselves less sensitive and earnest in maintaining the rights of the State than the generations which have preceded us. It would seem that if the controversy is ever to be settled finally, it could not be placed in a position of greater advantage than to embrace the present opportunity to have it forever set at rest by the decision of that tribunal which, under the Federal Constitution, is competent to sit in judgment between sovereign states. From personal conference with the Attorney-General and Counsel who have heretofore represented the State in this litigation, and from such investigation of the case as I have been able to make, I believe that the interests of the State have been carefully guarded in the past; and that such interests will be fully protected in the future by such of the existing counsel for the State as are now living and as are now free to act in her behalf, together with the Attorney-General of the State.

"I therefore recommend that the General Assembly renew its declaration of purpose, not to abandon the vindication of its sovereign right and title to the territory which im-

memorially has been conceded to be a part of its domain, and that it shall make such provision for the further defense thereof against what must be considered the unfounded pretensions of the State of New Jersey, as will comport with the honor, dignity and best interests of the State."

Acting upon the suggestion of this Message, the Senate and House of Representatives adopted the joint resolution, which was approved February 26th, 1901, and which appears at page 531, Volume 22, Laws of Delaware. This Resolution, after reciting that said General Assembly was desirious to maintain the claims of this State set forth in the joint Resolution passed January 26th, 1877, to exclusive jurisdiction over that portion of the Delaware River which is included within the circle of twelve miles radius, taking the Court House in the City of New Castle as a central point, declared :—

"That the Attorney General and such of the special counsel heretofore appointed to assist him as are now free to act in said behalf, be and they are hereby instructed to maintain the defense of said suit, and they are hereby authorized to take such steps therefor as may be necessary."

In due course the Answer of the State of Delaware was prepared and duly filed in the Supreme Court of the United States, and a copy of which Answer I herewith send you. Issue has been joined upon by the pleadings by the State of New Jersey. The case has, therefore, now arrived at the stage when proof may be produced. No testimony has been taken. The preparation and presentation of this testimony, both on the part of New Jersey and upon the part of the State of Delaware will entail the production of ancient original documents, which are distributed probably mainly between London, England, and Albany, N. Y. There may be some few records in the archives of the various

counties of this State—chiefly New Castle County. The proper production of this testimony will entail very considerably expense.

Owing somewhat to the expiration of the term of the Hon. Samuel H. Grey, late Attorney General for the State of New Jersey, and the succession of the Honorable Thomas M. McCarter, present Attorney General for said State, and the necessity which Mr. McCarter found himself under to familiarize himself with the case, the actual taking of testimony has not begun. There has recently come from the Supreme Court of the United States an intimation that the case must advance.

On the 27th inst. there was a conference between the Attorney Generals of New Jersey and Delaware, together with the Honorable George H. Bates, associate counsel for the State of Delaware, for the purpose of expediting the progress of the cause. Upon a full consideration at this conference of the difficulties and probable cost of the production of proof upon each side of the controversy to sustain the allegations in the Bill and Answer, and upon a somewhat careful consideration of the history and bearing of the controversy upon the citizens of the two States interested in the cause, it was agreed between counsel for the two States to again make an attempt to equitably determine and settle the rights of Delaware and New Jersey to the disputed territory, and if possible to adjust all differences between the two States arising out of Delaware's territorial claim, in a manner satisfactory to both States.

In my former official communication to to you, under date of February 14th, 1901, certain reasons were set forth which justified confidence in the validity and strength of the claim of the State of Delaware to the territory in question. The very labor-

ions and critical examination of ancient documents and reprints thereof, made by the Attorney General and Mr. Bates, Associate Counsel for Delaware, which preceded the preparation of the somewhat voluminous Answer of the State which was filed in the said cause, has greatly strengthened the belief and reliance of counsel for this State upon the justice of her claim. Notwithstanding this well grounded hope that the State of Delaware would be ultimately successful in the suit now depending in the Supreme Court of the United States, yet if the entire controversy between the two States can be settled out of court in a manner creditable and satisfactory to both States, it would seem the part of good reason to attempt to make such a settlement.

At the conference above mentioned, between counsel for the two States, it was agreed that the Attorneys General and associate counsel of the respective States should confer with the executive and legislative authorities of Delaware and New Jersey respectively, in order to ascertain the sentiment of the said authorities of the two States concerning the settlement of the cause upon lines to be hereafter determined.

In view of the foregoing, I would therefore advise you to send to the General Assembly a Message, recommending the appointment of a special joint committee of the Senate and House of Representatives to consider and advise with the Attorney General and special counsel for this State concerning the proper disposition of the said territorial controversy between this State and the State of New Jersey.

I remain, yours very truly,

HERBERT H. WARD,
ATTORNEY GENERAL.

# JOINT RESOLUTION

# JOINT RESOLUTION

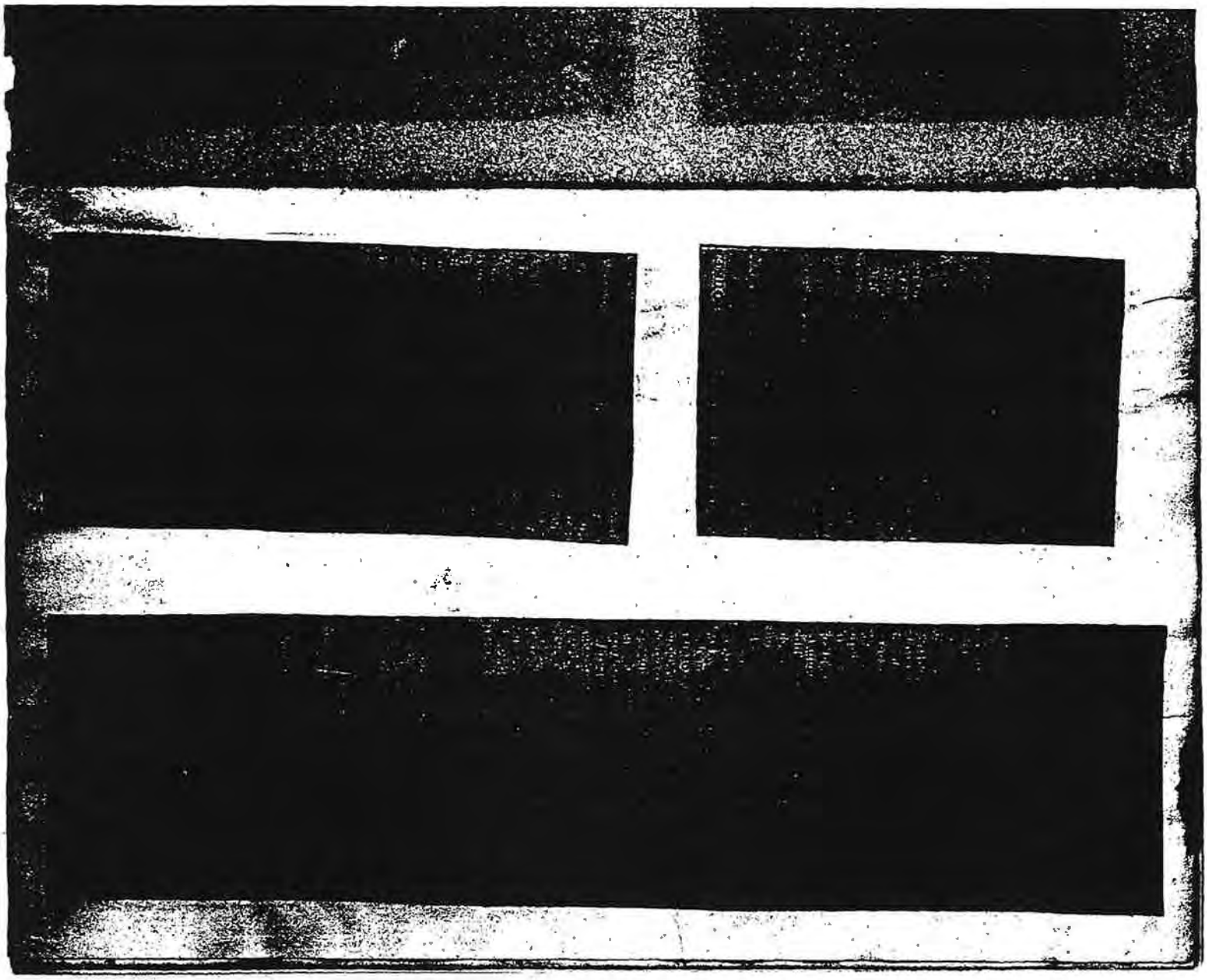
## Relating to the Suit and Controversy Now Pending in the Supreme Court of the United States Between the States of New Jersey and Delaware.

WHEREAS, this General Assembly has received from the Governor a Message accompanied by a communication from the Attorney General, relating to the litigation and controversy now pending in the Supreme Court of the United States, between the State of New Jersey and the State of Delaware, concerning the boundary between said States;

AND WHEREAS, upon the advice of said Attorney General, the Governor has recommended to the Senate and House of Representatives in General Assembly met, to appoint a special joint committee to consider and advise with the Attorney General and special counsel for this State, concerning the proper disposition of the said territorial controversy between this State and the State of New Jersey;

THEREFORE, BE IT RESOLVED by the Senate and House of Representatives of the State of Delaware in General Assembly met, that a joint committee of three members on the part of the Senate, and three members on the part of the House of Representatives be appointed to consider and advise with the Attorney General and special counsel for this State concerning the proper disposition of the territorial controversy between this State and the State of New Jersey, now pending in a cause in which the State of New Jersey is complainant and the said State of Delaware is defendant, in the Supreme Court of the United States.

From the Collections of the Historical Society of Delaware, 505 Market St., Wilmington, DE 19801
302-655-7161 www.hsd.org



DE H.S. Box 12
Removed from Gn. Binder

Trenton, N. J. March 3rd 1903.

To the Legislature:-

In the year 1871 the legislature of the State of Delaware passed an act entitled "An Act for the protection of fishermen", in and by the terms of which it sought to prohibit non-residents from catching fish in the Delaware river or bay within the limits of the State of Delaware without obtaining a license therefor from the State of Delaware. Subsequently certain residents of this state were arrested by the authorities of Delaware, while fishing on the Easterly side of the Delaware river, for alleged violation of this act, the State of Delaware alleging that her title extended to low water mark on the New Jersey shore of said river and not to the middle thereof or the natural boundary line between the two states. In the year 1877 the State of New Jersey filed its bill in the Supreme Court of the United States against the State of Delaware to enjoin Delaware from enforcing the provisions of the above mentioned law against citizens of New Jersey and to have the boundary line between the two states defined. A preliminary injunction was granted by the Supreme Court to the State of New Jersey. Under authority of both legislatures

224

a commission of distinguished citizens of each state was appointed for the purpose of adjusting the controversy, if possible, but their efforts came to naught. The suit then remained in statu quo for nearly twenty five years until about a year ago when the State of Delaware filed its answer to the bill of complaint of the State of New Jersey and has served notice of its intention to insist upon a disposition of the case. The Attorney General has been for several months in friendly communication with the Attorney General of Delaware with reference to this suit, with a view to an amicable settlement of the controversy, if possible. These conferences finally reached a point where the respective Attorney Generals thought it wise to bring the matter to the attention of the Governor of Delaware and myself. Last week, accompanied by the Attorney General, I attended a conference in Philadelphia at which the Governor of Delaware, the Attorney General of Delaware and the Special Counsel of the State of Delaware in this litigation, were present. The discussion was most harmonious and I am very hopeful that the matter can be adjusted without the continuance of the litigation, the labor and expense of which would be very great, the means of

securing the necessary evidence extremely difficult and the decision impossible to forecast with accuracy. As a result of this conference the House of Assembly of Delaware has passed a Joint Resolution, which I am informed will be concurred in by the Senate, constituting the Governor, the Attorney General and the Special Counsel of that state in this litigation, commissioners to confer with like commissioners to be appointed by the State of New Jersey for the purpose of framing a compact or agreement between the said states, to be submitted to the respective legislatures looking to an amicable termination of this litigation. This matter is one of great importance to the southern section of our state and its fishery interests and it should be adjusted as speedily as possible. I recommend that the Legislature, by joint resolution, appoint three commissioners to meet and confer with the Delaware commissioners, in the hope that the whole matter may be reported back almost immediately to the respective legislatures of the two states, both of which are now in session, and receive their approval.

Respectfully,

Frank Hague Murphy

Governor.

Mr. Hall, Chairman of the Committee on Public Health, reported

Senate Bill No. 68, entitled "An act to amend an act entitled 'An act to establish a sanatorium for persons afflicted with tuberculous diseases, and to provide for the selection of a site and the erection of buildings therefor, and the government thereof,'" approved April third, one thousand eight hundred and ninety-two,

Senate Bill No. 69, entitled "A supplement to an act entitled 'An act to establish a sanatorium for persons afflicted with tuberculous diseases, and to provide for the selection of a site and the erection of buildings therefor, and the government thereof,'" approved April third, one thousand nine hundred and two,

Senate Bill No. 130, entitled "A supplement to an act entitled 'An act to regulate the manufacture of flour and meal-food products,'" approved April sixteenth, one thousand eight hundred and ninety-six,

Favorably, without amendment.

Mr. Elvins, Chairman of the Committee on Towns and Townships, reported

Senate Bill No. 84, entitled "An act to consolidate with and annex to the town of Phillipsburg, in the county of Warren, a certain part of the township of Lopatcong, in said county,"

Favorably, with amendment, which amendment was adopted.

A message was received from the Governor by the hand of his Secretary, and was read as follows:

STATE OF NEW JERSEY,
EXECUTIVE DEPARTMENT,
TRENTON, March 3d, 1903.

*To the Legislature:*

In the year 1871 the Legislature of the State of Delaware passed an act entitled "An act for the protection of fishermen," in and by the terms of which it sought to prohibit non-residents from catching fish in the Delaware river or bay within the limits of the State of Delaware without obtaining a license therefor from the State of Delaware. Subsequently certain residents of this State were arrested by the authorities of Delaware while fishing on the easterly side of the Delaware river, for alleged violation of this act, the State of Delaware alleging that her title extended to low-water mark on the New Jersey shore of said

DE02759

river, and not to the middle thereof or the mutual boundary line between the two States. In the year 1877 the State of New Jersey filed its bill in the Supreme Court of the United States against the State of Delaware to enjoin Delaware from enforcing the provisions of the above mentioned law against citizens of New Jersey and to have the boundary line between the two States defined. A preliminary injunction was granted by the Supreme Court to the State of New Jersey. Under authority of both Legislatures a commission of distinguished citizens of each State was appointed for the purpose of adjusting the controversy, if possible, but their efforts came to naught. The suit then remained in *statu quo* for nearly twenty-five years, until about a year ago, when the State of Delaware filed its answer to the bill of complaint of the State of New Jersey and has served notice of its intention to insist upon a disposition of the case. The Attorney-General has been for several months in friendly communication with the Attorney-General of Delaware with reference to this suit, with a view to an amicable settlement of the controversy if possible. These conferences finally reached a point where the respective Attorney-Generals thought it wise to bring the matter to the attention of the Governor of Delaware and myself. Last week, accompanied by the Attorney-General, I attended a conference in Philadelphia at which the Governor of Delaware, the Attorney-General of Delaware and the special counsel of the State of Delaware in this litigation were present. The discussion was most harmonious, and I am very hopeful that the matter can be adjusted without the continuance of litigation, the labor and expense of which would be very great, the means of securing the necessary evidence extremely difficult and the decision impossible to forecast with accuracy. As a result of this conference the House of Representatives of Delaware has passed a joint resolution, which I am informed will be concurred in by the Senate, constituting the Governor, the Attorney-General and the special counsel of that State in this litigation commissioners to confer with like commissioners to be appointed by the State of New Jersey for the purpose of framing a compact or agreement between the said States, to be submitted to the respective Legislatures looking to an amicable termination of this litigation. This matter is one of great importance to the southern section of our State and its fishery interests, and it should be adjusted as speedily as possible. I recommend that the Legislature, by joint resolution, appoint three commissioners to meet and confer with the Delaware commissioners, in the hope that

the whole matter may be reported back almost immediately to the respective Legislatures of the two States, both of which are now in session, and receive their approval.

Respectfully,

FRANKLIN MURPHY,
*Governor.*

Mr. Boyd moved that the message from the Governor be spread at length upon the minutes of the House,

Which motion was carried.

Mr. Boyd, on leave, introduced

Assembly Joint Resolution No. 2, entitled "Joint resolution relating to the boundary controversy between the states of New Jersey and Delaware."

On motion of Mr. Boyd, the rules were suspended, and

Assembly Joint Resolution No. 2, entitled "Joint resolution relating to the boundary controversy between the states of New Jersey and Delaware,"

Was taken up, read a second time, considered by sections, agreed to, and ordered to have a third reading, without reference.

On motion of Mr. Boyd, the rules were suspended, and

Assembly Joint Resolution No. 2, entitled "Joint resolution relating to the boundary controversy between the states of New Jersey and Delaware,"

Was taken up, and, under suspension of the rules, was read for the third time by its title and passed by the following vote:

In the affirmative were—

Messrs. Avis, Ayers, Boyd, Brown R. W., Brown W. T., Buck, Cannon, Colby, Colclough, Cook, Coyne, Cresse, Dalrymple, Duff, Elvins, Fielder, Gannon, Gibbs, Gnichtel, Gulick, Hall, Harris, Harrison, Hillery, Horner (Speaker), Howe, Howland, Iliff, Jackson, Keasler, Kelly, Leavitt, Lehlbach, Lord, Loveridge, McDonald, McGlennon, Miller, Montgomery, Newcorn, Pettersen, Posten, Schmidt, Schumann, Scovel, Sharwell, Shedaker, Stalter, Stillwell, Swackhamer, Treacy, Van Blarcom, Weismann, Wildrick, Willever, Williams—56.

In the negative—None.

Ordered, that the Speaker sign the said resolution, and that the Clerk carry it to the Senate and inform the Senate that the House of Assembly has passed the same, and requests its concurrence therein.

Mr. Boyd moved that the rules be suspended, and that

Assembly Joint Resolution No. 2, entitled "Joint resolution relating to the boundary-controversy between the states of New Jersey and Delaware,"

Be sent to the Senate at once,

Which motion was carried.

Mr. Miller, on leave, by request, introduced

Assembly Bill No. 270, entitled "A supplement to an act entitled 'An act concerning corporations (Revision 1896),'" approved April twenty-first, one thousand eight hundred and ninety-six,

Which was read for the first time by its title, ordered to have a second reading, and referred to the Committee on Corporations.

Mr. Lord, Chairman of the Committee on Militia, reported

Assembly Bill No. 156, entitled "An act to provide for the acceptance of sites for and the erection and equipment of a company armory in cities, towns, boroughs, townships and all other municipalities of this state wherein is or hereafter shall be located the headquarters of a company of the national guard of this state,"

Favorably with amendment, which amendment was adopted.

On motion of Mr. McDonald,

Assembly Bill No. 122, entitled "A supplement to an act entitled 'An act to protect bathers in the waters along the coast in this state,'" approved March twenty-third, one thousand nine hundred,

Was taken up, and, under suspension of the rules, was read a third time by its title, and passed by the following vote:

In the affirmative were—

Messrs. Avis, Ayers, Boyd, Brown R. W., Brown W. T., Buck, Cannon, Colby, Colclough, Cook, Coyne, Cresse, Dalrymple, Duff, Elvins, Fielder, Gannon, Gibbs, Gnichtel, Gulick, Hall, Harris, Harrison, Hillery, Horner (Speaker), Howe, Howland, Iliff, Jackson, Keasler, Kelly, Leavitt, Lehlbach, Lord, Loveridge, McDonald, McGlennon, Miller, Montgomery, Newcorn, Pettersen, Posten, Schmidt, Schumann, Scovel, Sharwell, Shedaker, Stalter, Stillwell, Swackhamer, Treacy, Van Blarcom, Weismann, Wildrick, Willever, Williams—56.

In the negative—None.

DE02762

New Jersey State Archives
Minutes of the Assembly
3/3/1903

DE02763

In the affirmative were—

Messrs. Bacheller, Bradley, Childs, Cross, Gebhardt, Haines, Hand, Lee, Martin, McKee, Shinn, Strong, Welsh—13.

In the negative—none.

The Secretary was directed by the President to carry said bill to the House of Assembly and inform that body that the Senate has passed the same, without amendment.

Assembly Bill No. 49, entitled "An act for the relief of Joseph M. Delacy,"

Was taken up and read a third time.

Upon the question, "Shall this Assembly bill pass?" it was decided as follows:

In the affirmative were—

Messrs. Bacheller, Childs, Cross, Gebhardt, Haines, Hutchinson (President), Lee, McKee, Shinn, Strong, Welsh—11.

In the negative was—

Mr. Martin—1.

The Secretary was directed by the President to carry said bill to the House of Assembly and inform that body that the Senate has passed the same, without amendment.

The following message was received from the House of Assembly by the hands of its Clerk:

STATE OF NEW JERSEY,
ASSEMBLY CHAMBER,
March 3d, 1903.

*Mr. President:*

I am directed by the House of Assembly to inform the Senate that the House of Assembly has passed the following Joint Resolution:

Assembly Joint Resolution No. 2, entitled "Joint resolution relating to the boundary controversy between the states of New Jersey and Delaware,"

In which the concurrence of the Senate is requested.

JAMES PARKER,
*Clerk of the House of Assembly.*

Assembly Joint Resolution No. 2, entitled "Joint resolution relating to the boundary controversy between the states of New Jersey and Delaware,"

Was read for the first time by its title, ordered to have a second reading, and referred to the Committee on Judiciary.

DE02764

Mr. Wakelee, Chairman of the Committee on Judiciary, reported

Assembly Joint Resolution No. 2, entitled "Joint resolution relating to the boundary controversy between the states of New Jersey and Delaware,"

Without amendment.

The rules were suspended and

Assembly Joint Resolution No. 2, entitled "Joint resolution relating to the boundary controversy between the states of New Jersey and Delaware,"

Was taken up, read a second time, considered by sections, agreed to, ordered to have a third reading and,

Under a suspension of the rules, said joint resolution was taken up and read a third time, without reprinting.

Upon the question, "Shall this joint resolution pass?" it was decided as follows:

In the affirmative were—

Messrs. Bacheller, Brown, Childs, Cross, Gebhardt, Haines, Hand, Hutchinson (President), Lee, Martin, McKee, Minch, Shinn, Strong, Wakelee, Welsh—16.

In the negative—None.

The rules were suspended and the Secretary was directed by the President to carry said joint resolution to the House of Assembly at once, and inform that body that the Senate has passed the same without amendment.

Senate Bill No. 160, entitled "A supplement to an act entitled 'An act concerning disorderly persons'" (Revision of 1898), approved June fourteenth, one thousand eight hundred and ninety-eight,

Was taken up and read a third time.

Upon the question, "Shall this Printed bill pass?" it was decided as follows:

In the affirmative were—

Messrs. Bacheller, Brown, Childs, Cross, Haines, Hand, Hutchinson (President), Lee, Martin, McKee, Minch, Shinn, Strong—13.

In the negative were—

Messrs. Gebhardt, Wakelee—2.

The Secretary was directed by the President to carry said bill to the House of Assembly and inform that body that the Senate has passed the same, and requests its concurrence therein.

Senate Bill No. 24, entitled "An act providing for the appointment of clerks of police boards in cities of this state,"

Senate Bill No. 72, entitled "A supplement to an act entitled 'An act relating to courts having criminal jurisdiction and regulating proceedings in criminal cases (Revision of 1898),'" approved June fourteenth, one thousand eight hundred and ninety-eight,

Senate Bill No. 158, entitled "An act granting the consent of the state of New Jersey to the acquisition by condemnation, purchase, grant or otherwise by the United States of a tract or tracts of land in the city of Atlantic City for the purpose of erecting buildings thereon,"

Senate Bill No. 165, entitled "A supplement to an act entitled 'An act respecting the orphans' court and relating to the powers and duties of the ordinary and the orphans' court and surrogates'" (Revision of 1898), approved June fourteenth, one thousand eight hundred and ninety-eight,

And

Senate Bill No. 175, entitled, "An act to amend an act entitled 'A general act relating to boroughs'" (Revision of 1897), approved April twenty-fourth, one thousand eight hundred and ninety-seven,

Were severally taken up, read a second time, considered by sections, agreed to, ordered to be printed and to have a third reading.

Assembly Bill No. 42, entitled "A further supplement to an act entitled 'An act respecting the court of chancery,'" approved March twenty-seventh, one thousand eight hundred and seventy-five,

Assembly Bill No. 81, entitled "Supplement to an act entitled 'An act providing for the formation, establishment and government of towns,'" approved March seventh, one thousand eight hundred and ninety-five,

And

Assembly Bill No. 169, entitled "Supplement to an act entitled 'A general act relating to boroughs'" (Revision 1897),

Were severally taken up, read a second time, considered by sections, agreed to and ordered to have a third reading.

In accordance with the direction of the President, the Secretary carried the following Joint Resolution to the House of Assembly, informed it that the Senate had passed the same and requests its concurrence therein:

DE02766

Assembly Joint Resolution No. 2, entitled "Joint resolution relating to the boundary controversy between the states of New Jersey and Delaware,"

On motion of Mr. Wakelee, the Senate then adjourned.

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WEDNESDAY, March 4th, 1903.

At 11 o'clock the Senate met.

The session was opened by prayer by the Rev. Jos. McNulty, Woodbridge, N. J.

Under the direction of the President, the Secretary called the Senate, when the following Senators appeared and answered the call:

Messrs. Bacheller, Bradley, Brown, Childs, Cross, Ferrell, Gebhardt, Haines, Hand, Hutchinson (President), Lee, Martin, McKee, Minch, Shinn, Strimple, Strong, Wakelee, Welsh—19.

Journal of Tuesday March 3d, was read and approved.

Mr. McKee, on leave, introduced

Senate Bill No. 217, entitled "Supplement to an act entitled 'An act to authorize the formation of gaslight corporations and regulate the same,'" approved April twenty-first, one thousand eight hundred and seventy-six,

Which was read for the first time by its title, ordered to have a second reading, and referred to the Committee on Corporations.

The same Senator, on leave, introduced

Senate Bill No. 218, entitled "An act to regulate the practice of osteopathy in the state of New Jersey, and to provide for a state board of osteopathic examiners, and to license osteopaths to practice in this state, and punish persons violating the provisions of this act,"

Which was read for the first time by its title, ordered to have a second reading, and referred to the Committee on Public Health.

The same Senator, on leave, introduced

New Jersey State Archives
Journal of the Senate
3/3/1903

DE02768

# TRUST'S IN PERIL

## hat Which Aided ation Appears Senate.

### THER MEASURES

*Staff Correspondent.*

ch 4.—Senator Shinn, of
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tions of Frederick M.
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manager of the State
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of the Palisades com-

bill to compel the trial
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etorted that chambers
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Camden, which now
ill passed by a vote of

passed by the Senate

# TO FIX STATE BOUNDARY LINE

## Message from Governor as to Delaware Dispute Acted Upon by Legislature.

### COMMISSION TO MOVE AT ONCE

*Special from a Staff Correspondent.*

TRENTON, March 4.—Record time was made by the Legislature yesterday afternoon in passing a resolution through both houses authorizing Governor Murphy, Attorney-General Thomas N. McCarter and Chancery Clerk Edward C. Stokes to negotiate for a treaty with Delaware to put an end to the boundary dispute in Delaware Bay.

The necessity for action on the part of the Legislature was brought to the attention of the lawmakers by a special message sent to the House and Senate late in the afternoon by the Governor, reviewing the entire situation.

The message was as follows:

**The Governor's Message.**

"In the year 1871 the Legislature of the State of Delaware passed an act entitled 'An act for the protection of fishermen,' in and by the terms of which it sought to prohibit non-residents from catching fish in the Delaware River or bay within the limits of the State of Delaware without obtaining a license therefor from the State of Delaware.

"Subsequently certain residents of this State were arrested by the authorities of Delaware while fishing on the easterly side of the Delaware River, for alleged violation of this act, the State of Delaware alleging that her title extended to low water mark on the New Jersey shore of said river and not to the middle there of or the mutual boundary line between the two States.

"In the year 1877 the State of New Jersey filed its bill in the Supreme Court of the United States against the State of Delaware to enjoin Delaware from enforcing the provisions of the above mentioned law against citizens of New Jersey and to have the boundary line between the two States defined.

"A preliminary injunction was granted by the Supreme Court to the State of New Jersey. Under authority of both Legislatures a commission of distinguished citizens of each State was appointed for the purpose of adjusting the controversy if possible, but their efforts came to naught. The suit then remained in statu quo for nearly twenty-five years until about a year ago, when the State of Delaware filed its answer to the bill of complaint of the State of New Jersey and has served notice of its intention to insist upon a disposition of the case.

"The attorney-general has been for several months in friendly communication with the attorney-general of Delaware with reference to this suit, with a view to an amicable settlement of the controversy if possible. These conferences finally reached a point where the respective attorney-generals thought it wise to bring the matter to the attention of the Governor of Delaware and myself.

"Last week, accompanied by the attorney-general, I attended a conference in Philadelphia, at which the Governor of Delaware, the attorney-general of Delaware and the special counsel of the State of Delaware in this litigation were present.

"The discussion was most harmonious, and I am very hopeful that the matter can be adjusted without the continuance of the litigation, the labor and expense of which would be very great, the means of securing the necessary evidence ex-

# EACH MEMBER GETS MACHINE

## Republican Senators in Caucus Decide to Give $40,000 for 81 Voting Devices.

### PRIMARY REFORM BILL'S FATE

*Special from a Staff Correspondent.*

TRENTON, March 4.—After holding up the primary reform bill in committee for five weeks, the Republican Senators met in caucus yesterday afternoon and decided that it was time to do something about it. What they decided to do was to keep the bill in committee another week and ask the members of the commission that drafted the act to come into the caucus and explain what the bill is and what it is for. Although the measure has been under discussion for more than a year, the desirability and necessity for a law to purify the State of primary scandals in both parties has been demanded by the press, pulpit, party leaders and people in every part of the State, and the general scope and plan of the proposed law has been publicly known for at least two months, the Senators, it is understood, expressed in caucus profound ignorance of the meaning of the measure and decided that until they knew more about it they would not be justified in allowing the bill to get before the Senate.

Besides their action regarding the primary bill, the Republican Senators voted in caucus to pass Senator Wakelee's voting machine bill and to appropriate about $40,000 to the State voting machine commission for the purchase of machines. This amount, it was figured out by some of the caucus statisticians and mathematicians, would just about buy eighty-one machines, or one for each member of the Legislature, and their proposition is to have the machines allotted to the counties for trial in proportion to the number of lawmakers in each county. Thus, Essex will have twelve machines to scatter among the 18 voting districts in the county, while Cape May, Sussex and the other counties with one Assemblyman will have two machines to a county.

The Senators refused to discuss the details of their momentous caucus or the reasons that actuated their decision on the voting machine and primary measures, but it is understood that the plan to buy a few machines this year was born of a desire to avoid possible trouble and extravagance by taking a step at a time. One reason said to have been advanced for not buying enough machines at one time to make their general use at elections practicable at once was that while voting machines have proved entirely satisfactory and successful in every city and State where they have been tried, including something like sixty cities in New York State, it was feared there might be something in the politics or climate of New Jersey that would interfere with their successful operation here.

Incidentally, it was suggested, there was a wish on the part of some party men to know just how badly the use of the machines in elections would harmonize or interfere with the operations of the county political machines before the State was committed beyond reprisal to the new manner of voting.

It was also suggested after the caucus that the known opposition of some of the party bosses and machine leaders in the Republican camp to the proposed

# MORRIS CANAL BILL DELAYED

## Abandonment Measure Is Withheld Till Next Week. Wants Changes.

### INSISTS ON MORE SAFEGUARDS

*By Telegraph from a Staff Correspondent.*

TRENTON, March 4.—A renewal of the effort to obtain legislative sanction for the abandonment of the Morris Canal is to be made in the closing days of the present session. An abandonment bill has been prepared and was to have been introduced in the House to-day, but a member of the Essex delegation, who was to have introduced the measure, insisted on some changes at the last minute, and it was agreed to let it go over until next week.

It is understood that the Lehigh Valley Railroad Company, the lessees of the canal, are not at all anxious for abandonment this year, and that the plan is being waged by Newark Republican leaders and officials, and the Lackawanna Railroad Company, who are interested in getting the canal out of the way, so that the grade crossings along the Lackawanna in Newark can be abolished.

What terms are to be suggested for abandonment have not been disclosed. The general impression is that the Lehigh is taking an independent stand in the matter, believing that the anxiety of the Lackawanna and of Newark to get the canal out of the way is sufficiently intense so that almost any terms asked for can be had.

"The Lehigh is going to use Newark to pull its chestnuts out of the fire," is the way many lawmakers are sizing up the situation.

A fight over the bill is inevitable when it comes up. The Lehigh is not willing to abandon the canal unless it retains enormously valuable water rights in Lake Hopatcong and Greenwood Lake, and Morris County residents, especially property owners at Lake Hopatcong, are organized to fight any such gift of water rights. The Lehigh, it is understood, believes that Newark and the Lackawanna are so impatient over the delay in track depression that they will be willing to get rid of the canal on almost any terms.

There was a general air of mystery around the State house corridors this morning. Among those who bustled from House to Senate and held conferences in corners and offices were Robert H. McCarter, counsel for the Lehigh Valley; W. H. Ross, of the Lackawanna; Major Carl Lentz and President Winton C. Garrison, of the Newark Board of Works. All disclaimed that their presence was in any way connected with the canal question. Yesterday, as told in the NEWS, the Newark Board of Works Street Committee adopted resolutions, offered by Mr. Garrison, advocating the canal's abandonment.

Senator Bachelier to-day denied that he was to father the talked of bill.

"All I can tell you about it is that I wont introduce it," he said.

No member of the Essex House delegation would admit that he was to stand sponsor for the abandonment scheme. It is understood that the reason the bill was not introduced to-day was that the Essex Assemblyman who was to introduce it refused to do so unless the water and other rights of the State and of individuals were better safeguarded than in the original measure.

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## …THAT HAVE PASSED HOUSE

**Is One Authorizing …leas Judge to Sit …uvenile Court.**

*…ll Correspondent.*

…rch 4.—Without debate or …ness yesterday afternoon …abrants bill, authorizing … Court of Common Pleas …ille court, invested with … to commit to reform … institutions, to place …r to suspend sentence or …ers under sixteen years … minor offences. The bill …udge Skinner, of Essex, … apply especially to that … the Juvenile courts will … every county.

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of Delaware in this litigation were present.

"The discussion was most harmonious, and I am very hopeful that the matter can be adjusted without the continuance of the litigation, the labor and expense of which would be very great, the means of securing the necessary evidence extremely difficult and the decision impossible to forecast with accuracy. As a result of this conference the House of Representatives of Delaware has passed a joint resolution, which I am informed will be concurred in by the Senate, constituting the Governor, the attorney-general and the special counsel of that State in this litigation, commissioners to confer with like commissioners to be appointed by the State of New Jersey for the purpose of framing a compact or agreement between the said States, to be submitted to the respective Legislatures looking to an amicable termination of this litigation.

"This matter is one of great importance to the southern section of our State and its fishery interests, and it should be adjusted as speedily as possible.

"I recommend that the Legislature, by joint resolution, appoint three commissioners to meet and confer with the Delaware commissioners, in the hope that the whole matter may be reported back almost immediately to the respective Legislatures of the two States, both of which are now in session, and receive their approval."

**Joint Resolution Rushed Through.**

Immediately after the reading of the message in the House a joint resolution was introduced by Majority Leader Boyd appointing the commission for the conference with the Delaware officials. It was rushed through three readings under suspension of the rules and sent immediately to the Senate, where the same record time was made. Within half an hour after the receipt of the message the joint resolution had passed both houses and been delivered to the executive.

A conference is to be had between the two State commissions this week, if possible, with the idea of reaching a compromise at once and having bills ready to present to the Legislatures of both States for a settlement of the controversy some time next week.

## SPLITS VILLAGE AND TOWNSHIP ELECTIONS

**Assemblyman Williams Introduces Repealer of His Own Law Governing South Orange.**

*By Telegraph from a Staff Correspondent.*

TRENTON, March 4.—A plan to divorce the township and village elections in South Orange, Essex County, is incorporated in a bill introduced in the House this week by Assemblyman Williams. South Orange Village is a part of the township of the same name. Residents of the village vote for both village and township officers. Until 1901 the elections were held separately. In that year Mr. Williams-has passed a law consolidating the elections. The idea of the law was that, by having the village and township elections at the same time, the commuters, who take a live interest in village affairs and none at all in township matters, would vote for both sets of officers, and the township would be made Republican. The plan did not work out as expected, and the township committee is still Democratic.

The only explanation given by Mr. Williams of his new bill, to repeal his own law of 1901, is that there is a complication in local affairs there, and that local Republicans want the repealer. The combined election, if not interfered with, will be held next Tuesday. A South Orange Republican, who was at the State house yesterday, said the repealer was not wanted by the people of that place, either in the township or village. A delegation of South Orangeites is expected in Trenton Monday to oppose the bill at a hearing.

monize or interfere with the operations of the county political machines before the State was committed beyond reprisal to the new manner of voting.

It was also suggested after the caucus that the known opposition of some of the party bosses and machine leaders in the Republican camp to the proposed purification of primary methods had had as much to do with the dismemberation of the Senators to do anything with the primary bill previously as the determination of Governor Murphy to have the law put on the books and the reproach to the State offered by recent primary scandals wiped out had to do with yesterday's action.

In accordance with the caucus decision of the members of the commission that drew up the bill, Chancery Clerk Edward C. Stokes, County Counsel Joseph L. Munn, of Essex, and Corporation Counsel George L. Record, of Jersey City, will be invited to attend another caucus of the majority Senators Monday night, and tell them all about the measure, and why there is any reason for having the Legislature brave the displeasure of the machine bosses in the party by trying to pass it this year.

## AMENDS AND ADVANCES VOTING MACHINE BILL

**Senate Also Passes Ball and Chain for Tramps Measure Among Others.**

*Special from a Staff Correspondent.*

TRENTON, March 4.—In accordance with the decision reached at the Republican caucus the Senate Committee on Appropriations yesterday afternoon reported favorably the Wakeloo voting machine bill, with an amendment requiring the machines bought by the State to be set up in the polling places by the contractors, who are also to give instructions to the election officers in operating them. The bill and amendment were adopted and passed on second reading.

The Senate passed Senate bills as follows:

Incorporating the borough of Demarest, Bergen County.

Allowing ball and chain to be used on tramps sentenced to hard labor under the vagrancy act.

House bills passed by the Senate were:

Fixing a license fee of $5 a year for practising architects, to be paid to the State board of architects.

Allowing widows of Union soldiers and sailors to be admitted to the Vineland Soldiers' Home.

Requiring the use of barrels of standard size in shipping cranberries.

Authorizing Hudson freeholders to issue bonds to meet deficiency in appropriation for court expenses.

Giving a pension of $50 a month to Joseph Delacey, a State prison employe, injured in an accident at that institution several years ago.

## BATCH OF NEW BILLS BEFORE LEGISLATURE

**House to Date Has Nearly 500 Measures and the Senate More Than 200.**

*Special from a Staff Correspondent.*

TRENTON, March 4.—Although the time limit set by the House two weeks ago for the introduction of bills expired last Tuesday, there has been no let-up this week in the number of new measures introduced, and the members introducing them seem as confident of their passage as though the time limit had never been set. With those introduced yesterday there are now 272 bills before the House and 216 before the Senate. Some of those presented yesterday were:

Senator Bradley—Authorizes gas companies to maintain pipes in public streets for the purpose of conveying gas through one municipality to another.

Senator Lee—Increasing the salary of the prosecutor of the pleas in Burlington and Atlantic counties to $3,000 a year.

Mr. Leavitt—Allows Mercer County to issue additional bonds for the erection of its new courthouse.

is understood that the reason the bill was not introduced to-day was that the Essex Assemblyman who was to introduce it refused to do so unless the water and other rights of the State and of individuals were better safeguarded than in the original measure.

## SUBSTITUTE BILL FOR MEDICAL ACT CHANGES

**Assemblyman Williams Offers It After Withdrawing His More Stringent Measure.**

*Special from a Staff Correspondent.*

TRENTON, March 4.—To placate the druggists, opticians, Christian Scientists and others who have been up in arms against some of its provisions, Mr. Williams, of Essex, withdrew from the House files yesterday afternoon his bill changing the act to regulate the medical practice, and introduced a new measure whose provisions are less stringent.

Under the old act now in force the use of a medical title or hanging out of a sign, use of advertising, etc., by any person not a properly registered physician, is considered prima facie evidence of a violation of the law. The Williams bill, as introduced originally, proposed that any advertising, sign, etc., indicating the practice of medicine or surgery by a person not licensed should be sufficient ground for indictment and punishment.

The united influence of faith healers, massage manipulators, Christian Scientists, bonesetters and others of this ilk was at once directed against the proposed amendment, as calculated to lead to their prosecution and put them out of business. Druggists and opticians also objected to the change as being likely to make trouble for them.

A committee of the State Board of Medical Examiners, headed by Dr. C. A. Groves, of East Orange, visited the State house yesterday, and after a conference with Mr. Williams agreed to a new bill, leaving the provision referred to as it now stands. This bill, introduced later in the afternoon, also exempts from its provisions and restrictions "registered pharmacists of the State of New Jersey actually engaged in the practice of pharmacy."

An effort was made by the opticians to secure exemption from the restrictions of the law, but the board of examiners refused to make such a concession until the men who fit eyeglasses elevate the standard of their calling and establish a system of examination and registry to keep out the quacks.

The first sections of the original bill are unchanged in the new one, the amendments proposed to the present act being intended to raise the grade, educationally and professionally, of licentiates. One of these amendments will enable the board of examiners to admit practitioners of experience from other States. Under the present law, it is asserted, the board cannot pass an applicant for license on examination if he has been practising twenty years or longer, for the reason that his course of study at that time would not comply with present requirements.

## STATE OFFICIALS DINED.

**Supreme Court Justices to Be Governor's Next Guests—Correspondents' Dinner March 17.**

*Special from a Staff Correspondent.*

TRENTON, March 4.—About forty heads of State departments, members of State boards and other officials and Republican leaders were the guests of Governor Murphy in the fourth of the series of Tuesday night dinners at the temporary executive mansion last night. As has been the rule at the preceding dinners, political lines were not drawn, politics was ignored and the few toasts and speeches were of an entirely informal nature.

Next Tuesday night the Governor is to entertain the justices of the Supreme Court at dinner. Because of this arrangement the date for the annual banquet of the Legislative Correspondents' Club, which was set for that date, has been changed to the night of St. Patrick's



DE04425

TWENTIETH YEAR. WILMINGTON, DE

# DELAWARE FISHERMEN DON'T ASK JERSEYMEN TO BE KEPT OFF RIVER

## At a Public Meeting Held in Delaware City Last Evening, the Matter Was Discussed

## Sentiment Was in Favor of Allowing Men From Both States to Fish in Delaware

## Delaware Men Do Not Want New Jersey to Place Officers on the River

The fishermen of Delaware City, Port Penn and New Castle met the commission appointed by the Legislature in Central Hall, Delaware City, last night to learn what the fishermen wanted regarding a settlement in reference to the boundary of Delaware river between this State and New Jersey.

The meeting was the outcome of an overture of the New Jersey authorities, who wish to settle the disputes constantly occurring between fishermen of the two States. The State of New Jersey claims an imaginary boundary in the middle of the river and because Delaware fishermen have not acceded to their laws they have been arrested.

### History of Trouble.

The whole trouble arises from the twelve mile circle from the old Court House at New Castle, which covers the whole of the Delaware river as far down as Port Penn. Delaware claims the river to the low tide mark on the Jersey shore. Under the grant of the Duke of York to William Penn in 1681 the twelve mile circle was established from the fort in New Castle which stood about where the Court House now stands. This circle took in a portion of New Jersey. In the adoption of the constitution of the United States the portion of land lying beyond the Delaware river was conceded to New Jersey.

The question of fishing in the waters of the Delaware at this point was later settled by the Jerseymen paying an annual fee of $20 and the Delawareans $5 for the right to fish in the river. The Jerseymen

what he thought about allowing the fishermen of both States to use the river where they wanted to said: "Every man who fishes for a living should go where he can catch the most fish and I think if the river were thrown open to both Delaware and New Jersey fishermen to go where they want there would be no trouble."

The general impression of all the fishermen was that the river be conceded to Delaware, but that an agreement be made that fishermen from both States should cast their nets wherever they wanted, but that they should camp upon their own shores, but that no Jersey authorities be placed in the river and that all cases be tried before Delaware courts, as the water is part of the State and that the game warden's duty was only to prevent Sunday fishing and the close of the season.

### Much Money Involved.

The fishing industry within the boundary of the twelve mile circle in Delaware is a large one. There are about 105 boats within the circle and each of them earns about $50 a month during the shad season.

Governor Hunn was to have been at the conference, but his going to Washington prevented him from being there. Many were disappointed as it was rumored about the town that he would be there and many people attended the meeting solely to see him.

The meeting was an enthusiastic one and the fishermen all expressed themselves as well pleased with the outcome. Some of those who took part in the meeting were F. J. Rinen, William Gibeson, Thomas Neal, John J. O'Neil, George Jones, Henry Tangend, Charles Bowen, John Bowen, Frederick Tungin, Delaware City; Oliver Kershaw, Robert Carpenter and Frank Hickman, Port Penn; George Postles, New Castle.

The Attorney-General expressed himself as well pleased with the meeting and thinks he knows the wants of the fishermen, which he will respect in the conference with the New Jersey authorities.

# TESTING OLD FIRE ENGINE

### New Property of Elkton Company, But Formerly Belonged to Washington Fire Company.

The engine of the Singerly Fire Company, No. 1, of Elkton, which has been repaired by the Remington Machine Company was given a trial this morning at Third street bridge, the water being gotten from the Christiana river.

# ALLEE LOOKED FRIGHTENED AS HE TOOK OATH

## Presiding Officer Had to Quell Noisy Delaware Delegation

## ADDICKS WATCHES FROM GALLERY

### Smiles With the Air of Proprietorship Upon the New Senator After the Oath of Office Has Been Administered.

Washington, March 4.—With J. Edward Addicks seated triumphantly in the Senators' private gallery, surrounded by his henchmen from the Delaware Legislature, and smiling with the air of a proprietor upon J. Frank Allee, that gentleman and L. Heisler Ball were sworn in yesterday as Senators of the United States.

The ceremony was brief, but it attracted more attention than is usual on similar occasions.

Before either Senator Allee or Senator Ball had appeared in the Senate chamber, Addicks and the Delaware Legislators and all the others who had come here to witness the ceremony filed into the galleries. Addicks led the delegation, which numbered more than 100 men.

Fifty found seats in the private gallery and the others were shown into a public gallery, where, for lack of seats, most of them were compelled to stand against the wall.

### Delaware Noise Stops Teller.

The noise they made caused a suspension of business in the Senate. Senator Teller was talking, but he stopped and looked with amazement at the crowd of heavy men from Delaware filing into the galleries. When they were all seated Senator Teller went on with his speech.

Governor Hunn was brought into the chamber by Representative Ball. His hair was closely cropped and his big black mustache and air of embarrassment gave him the appearance of a heavy-weight pugilist in his best clothes.

Few of the Senators know him, but so great was the interest aroused by his appearance that it was not long before his name had been passed around both sides of the chamber.

Senator Hanna was the first to hurry over to where he sat and extend a warm greeting. As he grasped Hunn's hands with

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The Evening Journal, 3/14/03, p. 1

the Delaware at this point was later settled by the Jerseymen paying an annual fee of $2, and the Delawareans $1 for the right to fish in the river. The Jerseymen claiming they were being wronged made a strong objection to the fee, the outcome of which was, the Superior Court placed an injunction upon the river and as a consequence Delaware lost much money from the fees, which have not been collected since that time and the question arose regarding the boundary between the two States in the middle of the river.

It was at the suggestion of the New Jersey authorities that a commission of three men be appointed including the Governor, the Attorney-General and another person to arbitrate and make an amicable settlement if possible.

It was to this end that the meeting was held in Delaware City last night, it being selected as about the centre of the disputed territory.

Attorney-General Ward and George H. Bates, two of the Delaware Commission went there to learn what the fishermen thought of a settlement and to get their views upon the situation generally.

T. Bayard Heisel was elected chairman of the meeting and William Townsend, secretary. Mr. Ward was the first speaker and he made a statement explaining the objects of the meeting. He said that Attorney-General McCortle, of New Jersey, seemed to admit a compact between the two States and agreed that each State hold a meeting and get the sentiment of the people and hold a conference of the commission to see if a compact could be drawn of mutual advantage to both States.

In closing his talk Mr. Ward said: "If a compact cannot be made to be of advantage to Delaware fishermen, then we do not want to make one, we want enlightenment on the subject, so that we may talk intelligently to the New Jersey Commission."

### Fishermen Give Views.

Then followed a general discussion in which several of the fishermen took part, explaining how they fished and the courses they took.

William Anderson, New Castle County Fish Commissioner, in a short talk, explained to the commission that both sides of the river were now used by Delaware fishermen in catching shad and that the best sturgeon fishing was on the Eastern or Jersey shore.

Joseph Anderson, a brother of the Fish Commissioner was asked regarding the arrest of his men and damage to his boat and tackle by New Jersey authorities. He said: "My men were fishing on the Delaware side of the river, but the New Jersey authorities claimed they were in midstream and arrested them. I, as a citizen of the State of Delaware, do not believe they had the right to arrest the men and action in the case is still pending. If the claim of Delaware to the river is sustained I shall sue to recover $500 damage done my boats by the Jersey officers." He further said:

"As there is no one here from the two lower counties, I do not think it would be wise for us to give away property which they have the right to dispose of, or fix the jurisdiction for them."

### No Objection to Jerseymen.

Mr. Postles, of New Castle, who asked

paired by the Remington Machine Company was given a trial this morning at Third street bridge, the water being gotten from the Christiana river.

The engine is an old one and was formerly the property of the Washington Fire Company, but was sold twelve years ago. Despite its age the engine is still a good one and was considered the best in the city for many years. It still compares favorably with the engines of more modern make.

There were several veteran members of the Washington Company present at the test to again see the old engine, which they knew so well, throw water and they were not disappointed as the test was thoroughly satisfactory and the engine will be shipped to Elkton shortly.

# PUSHING WORK ON NEW RAILROAD BUILDINGS

## Will Rush Them to Completion to Make Room for Elevated

Work upon the new shops of the Pennsylvania railroad at Todd's Cut will be pushed with all haste so as to get the buildings of the company in this city out of the way of the construction of the elevated road, which they are now hindering.

It is the intention of the company to complete the power house first and this will be followed by the new mill. The next building to be finished will be the blacksmith shop and the freight car repair department will be next finished. While the work on these buildings is progressing the round house will be constructed and it is the belief that it will be finished by the first of June. The round house is an immense building and work upon its foundation has gone on all winter. It will accommodate many more engines than the present structure and is specially designed to meet the requirements of the big engines, recently introduced on the Delaware road, which have caused so much trouble at the old round house.

The buildings will be finished in the rotation where the ground space is most badly needed here for the erection of the elevated.

The contractors are experiencing much trouble in securing good laborers and the construction of the buildings will be retarded to a certain extent from this cause.

Work on all the buildings is now going on by the different contractors and the scene at Todd's Cut is a busy one, there being several hundred laborers employed there.

### Dockstader Denies Report.

W. L. Dockstader denied the report which was current last night that he had abandoned his intention of erecting his Market street playhouse. He said there was positively no ground for such a report and that the place would be opened next September.

name and took [illegible] of the chamber.

Senator Hanna was the first [illegible] over to where he sat and [illegible] greeting. As he arose to [illegible] Hanna the Delaware Governor towered above the man from Ohio in a way that made the latter look insignificant.

### Allee Looks Frightened.

A few moments later J. Frank Allee entered. He looked frightened and embarrassed. His statement that he never expected to be elected a United States Senator was fully borne out by his demeanour.

Senator Hanna asked a suspension of business until two new Senators from Delaware could be placed. And when he had made his point he took Allee by the arm and led him down the centre aisle to the President's desk. They were followed by Senator Aldrich and Senator Ball.

Senator Frye administered the oath, and after having sworn the new members to support the flag and the Constitution and several other things he hesitated a few moments, trying to remember the last sentences. The men from Delaware in the galleries thought he was going to make Allee swear he would not resign. There was a sigh of relief when the oath was finished without the interpolation of any new conditions.

### Delaware Visitors Applaud.

As the two new Senators were marched down the aisle the Delaware men applauded vigorously, and they broke forth in applause again after Allee and Ball had been sworn in and conducted to seats.

When Senator Teller, who still held the floor, resumed his speech with the statement that he also felt like applauding the renewal of Delaware's representation in the Senate the Delaware men again applauded. This time they were checked by Senator Frye, who said that while the applause had been all right up to that point it must not be continued.

After this the Delaware men remained silent in the gallery and wondered as the minutes went by why Allee did not get up and address the Senate. They also wondered why the Senators appeared to have forgotten that there was such a person as Mr. Allee in the Senate chamber, and why it was that Senator Ball, who is known there, could walk easily about addressing first one man and then another with apparent familiarity.

### Day a Great One for Delaware.

It was all so wonderful to the men from Delaware that they got tired of it very quickly and retired from the gallery, making almost as much noise as they went out as they did when they came in.

In the corridor they were joined by Allee and Ball and were shown about the Capitol, attracting much attention everywhere. Tonight the whole delegation was entertained at dinner at the Arlington by Senator Allee.

It was a great day for Delaware, when for the first time in four years the State was again represented by two members in the United States Senate and the only circumstance that marred the occasion was the fact that it made so little impression on the Senate.

When the Delaware men arrived in Washington in the morning they were met at the station by Senator Ball and J. Edward Addicks, National Committeeman



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The Evening Journal, 3/14/03, p. 1

# STATE OF DELAWARE.

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# JOURNAL of the SENATE

AT A SESSION OF THE

# GENERAL ASSEMBLY

CONVENED AND HELD AT DOVER, ON TUESDAY, THE SIXTH DAY OF JANUARY, IN THE YEAR OF OUR LORD ONE THOUSAND NINE HUNDRED AND THREE, AND OF THE INDEPENDENCE OF THE UNITED STATES, THE ONE HUNDRED AND TWENTY-SEVENTH.

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1903.
CHRONICLE POWER PRINT,
MILFORD, DEL.

DE04487

Monday, March 16, 1903—10.30 o'clock A. M.

Senate met pursuant to adjournment.

Prayer by the Chaplain.

Roll called. Members present—Messrs. Brasure, Clements, Conner, Groves, Harrington, Jefferson, Latta, McNulty, Moore, D. O., Moore, T. C., Pennewill, Smith, Sparks, Stirling, Wright, Mr. President pro tempore, Mr. President.

On motion of Mr. Pennewill, the reading of the Journal was dispensed with.

Mr. Sparks asked that

House Joint Resolution No. 23, entitled:

"Joint resolution appointing Directors for the Farmers' Bank of the State of Delaware, for the branch at Wilmington,"

Be read.

Mr. Sparks moved that the joint resolution be adopted.

On the question, "Shall the joint resolution pass the Senate?"

The yeas and nays were ordered, which, being taken, were as follows:

Yeas—Messrs. Brasure, Clements, Conner, Groves, Harrington, Jefferson, Latta, McNulty, Moore, D. O., Moore, T. C., Pennewill, Smith, Sparks, Stirling, Wright, Mr. President pro tempore.



Nays—None.

So the question was decided in the affirmative,

And the joint resolution having received the required constitutional majority,

Was declared Adopted.

Ordered that the House be informed thereof, and the joint resolution returned to that body.

Mr. Hodgson, Clerk of the House, being admitted, informed the Senate that the House had non-concurred in the following Senate bill:

Senate Bill No. 68, entitled:

"An act to amend Chapter 36, Volume 21, of the Laws of Delaware, entitled, 'An act providing for a uniform system of registration of all qualified voters in this State.'"

Mr. President directed the following communication read:

To the Senate and House of Representatives of the State of Delaware, in General Assembly met.

We, the undersigned Commissioners, appointed by joint resolution of your Honorable Bodies, to confer with Commissioners appointed in behalf of the State of New Jersey, to frame a compact or agreement between the said States and legislation consequent thereon to be submitted to the Legislatures of said two States for action thereon, looking to the amicable termination of the suit between said States now pending in the Supreme Court of the United States, and the final adjustment of all controversies relating to the boundary line between said States, and to their respective rights in the Delaware River, respectfully report as follows:

That on Thursday, the 12th day of March, A. D. one thousand nine hundred and three, the Commissioners of the State of Delaware met, in the City of Philadelphia, in the State of Pennsyl-

cumin, Franklin Murphy, Thomas N. McCarter and Edward C. Stokes, the duly accredited Commissioners of the State of New Jersey, for the purpose of performing the duties imposed upon them under said Commission. Further conferences between the said Commissioners and Committees thereof were held in the same city on Friday and Saturday, the thirteenth and fourteenth days of March, A. D. one thousand nine hundred and three. The Delaware Commissioners have annexed hereto and further submit, as their report, a draft of the compact framed by said joint Commissioners, covering the subject submitted to their consideration, so far as any agreement could be reached by said joint Commissioners.

They also herewith report the form of an act, uniform with one prepared for the State of New Jersey, to ratify and confirm said compact and to authorize its execution.

All of which is respectfully submitted this sixteenth day of March, in the year of our Lord one thousand nine hundred and three.

JOHN HUNN.
HERBERT H. WARD.
GEO. H. BATES.

## COMPACT BETWEEN THE STATE OF NEW JERSEY AND THE STATE OF DELAWARE RELATING TO THE BOUNDARY CONTROVERSY BETWEEN SAID STATES.

Whereas a controversy hath heretofore existed between the States of New Jersey and Delaware, relative to the jurisdiction of such portion o the Delaware River as is included within the circle of twelve-mile radius, an arc of which constitutes the northern boundary of the State of Delaware, and it is the mutual desire of said State to so settle and determine such controversy as to prevent future complications arising therefrom:

And whereas, There is now pending in the Supreme Court of the United States a cause wherein the said State of New Jersey is the complainant and the said State of Delaware is the defendant, in which cause an injunction has been issued against the



State of Delaware restraining the execution of certain Statutes of the State of Delaware relating to fisheries in said river, which said litigation hath been pending for twenty-five years and upwards:

And whereas, or the purpose of adjusting the differences between the said two States arising out of said conflict of jurisdiction, Franklin Murphy, Thomas N. McCarter and Edward C. Stokes have been appointed Commissioners on the part of the State of New Jersey, by joint resolution of the Legislature of said State, and John Hunn, Herbert H. Ward and George H. Bates have been appointed Commissioners on the part of the State of Delaware by joint resolution of the General Assembly of said State, to frame a compact, or agreement, between the said States, and legislation consequent thereon, to be submitted to the Legislature of said two States for action thereon, looking to the amicable termination of said suit between said States now pending in the Supreme Court of the United States, and the final adjustment o all controversies relating to the boundary line between said States, and to their respective rights in the Delaware River;

Now, therefore, the said State of New Jersey, by its Commissioners above named, and the said State of Delaware by its Commissioners above named, do hereby make and enter into a compact, or agreement between said States, as follows:

Article I. Criminal process issued under the authority of the State of New Jersey against any person accused of an offense committed upon the soil of said State, or upon the eastern half of said Delaware River, or committed on board of any vessel being under the exclusive jurisdiction of that State, and also civil process issued under the authority of the State of New Jersey against any person domiciled in that State, or against property taken out of that State to evade the laws thereof, may be served upon any portion of the Delaware River between said States, rom low water mark on the New Jersey shore to low water mark on the Delaware shore, except upon Reedy and Pea Patch Islands, unless said person or property shall be on board a vessel aground upon or fastened to the shore of the State of

Delaware, or the shores of said islands, or fastened to a wharf adjoining thereto, or unless such person shall be under arrest, or such property shall be under seizure by virtue of process or authority of the State of Delaware.

Article II. Criminal process issued under the authority of the State of Delaware against any person accused of an offence committed upon the soil of said State, or upon the western half of said Delaware River, or committed on board of any vessel being under the exclusive jurisdiction of that State, and also civil process issued under the authority of the State of Delaware against any person domiciled in that State, or against property taken out of that State to evade the laws thereof, may be served upon any portion of the Delaware River between said States from low water mark on the Delaware shore to low water mark on the New Jersey shore, unless said person, or property, shall be on board a vessel aground upon or fastened to the shore of the State of New Jersey, or fastened to a wharf adjoining thereto, or unless such person shall be under arrest, or such property shall be under seizure by virtue of process or authority of the State of New Jersey.

Article III. The inhabitants of the said States of Delaware and New Jersey shall have and enjoy a common right of fishery throughout, in and over the waters of said river between the low water marks on each side of said river between the said States, except so far as either State may have heretofore granted valid and subsisting private rights of fishery.

Article IV. Immediately upon the execution hereof the Legislature of the State of New Jersey shall appoint three Commissioners to confer with three Commissioners to be immediately appointed by the General Assembly of the State of Delaware for the purpose of drafting uniform laws to regulate the catching and taking of fish in the Delaware River between said two States, which said Commissioners for each State respectively shall, within two years from the date of their appointment, report to the Legislature of each of said States the proposed laws so framed and recommended by said joint Commission. Upon the adoption and passage of said laws so recommended, or of



other concurrent legislation for the regulation of said common right of fishery, by the respective Legislatures of said two States, said laws shall constitute the sole laws for the regulation of the taking and catching of fish in the said river between said States. Said laws shall remain in force until altered, amended or repealed by concurrent legislation of the said two States.

The faith of the said contracting States is hereby pledged to the enactment of said laws so recommended by said Commissioners, or of such concurrent legislation as may seem judicious and proper in the premises to the respective Legislatures thereof.

Each State shall have and exercise exclusive jurisdiction to arrest, try and punish its own inhabitants for violation of the concurrent legislation relating to the regulation of the right of common fishery herein provided for.

Article V. All laws of said States relating to the regulation of fisheries in the Delaware River not inconsistent with the right of common fishery hereinabove mentioned, shall continue in force in said respective States until the enactment of said concurrent legislation as herein provided.

Article VI. Nothing herein contained shall affect the planting, catching or taking of oysters, clams or other shell fish, or interfere with the oyster industry as now or hereafter carried on under the laws of either State.

Article VII. Each State may on its own side of the river continue to exercise riparian jurisdiction of every kind and nature, and to make grants, leases and conveyances of riparian lands and rights under the laws of the respective States.

Article VIII. Nothing herein contained shall affect the territorial limits, rights or jurisdiction of either State of, in or over the Delaware River, or the ownership of the sub-aqueous soil thereof, except as herein expressly set forth.

Article IX. This agreement shall be executed by the said

Commissioners, when authorized to do so by the Legislatures of the said States. It shall thereupon be submitted to Congress for its consent and approval. Upon the ratification thereof by Congress it shall be and become binding in perpetuity upon both of said States; and thereupon the suit now pending in the Supreme Court of the United States, in which the State of New Jersey is complainant and the State of Delaware is defendant, shall be discontinued without costs to either party and without prejudice. Pending the ratification hereof by Congress said suit shall remain in statu quo.

Done in two parts (one of which is retained by the Commissioners of Delaware, to be delivered to the Governor of that State, and the other one of which is retained by the Commissioners of New Jersey, to be delivered to the Governor of that State) this day of , in the year of our Lord, one thousand nine hundred and three.

Mr. Sparks moved the communication be accepted, spread upon the Journal, and referred to the Special Committee on Boundary.

Which motion Prevailed.

Mr. Hodgson, Clerk of the House, being admitted, informed the Senate that

House Bill No. 70

Had been enrolled and signed by the Speaker of the House, and presented the same to the Senate for the signature of the President, entitled:

"An act to reincorporate the Commissioners of Rehoboth."

And presented the same to the Senate.

Mr. Smith, in pursuance of previous notice, asked leave to introduce a bill,

Senate Bill No. 131, entitled:



"An act to ratify and confirm a compact, or agreement, between the States of New Jersey and Delaware respecting the Delaware River, and to authorize the execution thereof."

And the bill was read a second time, by its title, and

Referred to the Committee on Boundary—a special committee.

On motion of Mr. Sparks,

House Bill No. 220, entitled:

"An act in relation to the Ferris Industrial School."

Was read a first and second time, and

Referred to the Committee on Finance.

On motion of Mr. McNulty,

House Bill, No. 260, entitled:

"An act to amend Chapter 418, Volume 14, Laws of Delaware, changing the time and manner when applicants for the sale of intoxicating liquors shall make oath to such application."

Was read a first time.

And further on his motion, the bill was read a second time, by its title, and

Referred to the Committee on Revised Statutes.

On motion of Mr. Smith,

House Bill No. 311, entitled:

"An act authorizing the Mayor and Council of New Castle to borrow a sum of money not exceeding twenty-five thousand dollars, for the permanent and substantial improvement of the City of New Castle."

Was read a first and second time, and

ler, Montgomery, Newcorn, Pettersen, Posten, Roberts, Schumann, Scovel, Sharwell, Shedaker, Treacy, Weismann, Wildrick, Willever—45.

The Speaker thereupon declared the amendment lost.

The Committee Substitute for

Assembly Bill No. 195, entitled "An act to consolidate with and annex to the city of Newark, in the county of Essex, the territory embraced within the bounds of the town of Irvington, in the county of Essex, provided a majority of the votes cast in said town upon the question of such annexation and consolidation shall be in favor thereof, and to provide for the submission of the said question to the voters of said town,"

Was then read a second time, considered by sections, agreed to, ordered to be printed, and to have a third reading.

A message was received from the Governor by the hand of his Secretary, and was read as follows:

STATE OF NEW JERSEY,
EXECUTIVE DEPARTMENT,
TRENTON, March 17th, 1903.

*To the House of Assembly:*

I have the honor to transmit herewith the report of the Commissioners appointed to confer with like Commissioners from the State of Delaware upon the boundary line between the States of New Jersey and Delaware.

Respectfully,
FRANKLIN MURPHY,
*Governor.*

*To the Senate and General Assembly of the State of New Jersey:*

The undersigned Commissioners, appointed by joint resolution of the Legislature, approved March 5th, 1903, to meet with similarly appointed Commissioners from the State of Delaware, to frame a compact, or agreement, between the said States, and legislation consequent thereon, to be submitted to the Legislatures of said two States, for action thereon, looking to the amicable termination of the suit between said States now pending in the Supreme Court of the United States, and final adjustment of all controversies relating to the boundary line between said States, and to their respective rights in the Delaware River, hereby report that on Thursday, the 12th day of March, and again on Saturday, the 14th day of March, 1903, they met for the purposes aforesaid in the City of Philadelphia, with the Commissioners on the part of

the State of Delaware, who were John Hunn, Governor of Delaware, Herbert H. Ward, Attorney-General of Delaware, and the Hon. George H. Bates; that after a thorough consideration of all the differences between the two States an agreement was reached and a compact prepared, subject to ratification by the Legislatures of the respective States, and the consent and approval of Congress. The compact received the unanimous endorsement of all the Commissioners from both States. It is herewith submitted as part of a proposed act, which, it is strongly recommended, should be enacted by the Legislature of this State at its present session. Your Commissioners feel that while it was not found practicable to settle the exact geographical boundary line between the two States, nevertheless every interest of the State of New Jersey has been protected, all its riparian, fishery and other rights and jurisdiction thoroughly safeguarded and every question of practical difficulty between the two States settled for all time. At the same time the interests of our sister State of Delaware have been amply safeguarded in a manner acceptable to the Commissioners from that State.

In witness whereof your Commissioners have hereunto set their hands this sixteenth day of March, nineteen hundred and three.

FRANKLIN MURPHY,
THOS. N. MCCARTER,
EDWARD C. STOKES.

The Governor's message was then taken up.

Mr. Boyd moved that the Governor's message be spread at length upon the minutes of the House, and that it be referred to the Committee on Judiciary,

Which motion was carried.

Mr. Shedaker offered the following resolution, which was read and adopted:

*Resolved* (the Senate concurring), That the Governor be requested to return to the house, in which it originated

Assembly Bill No. 87, entitled "A supplement to an act entitled 'An act to establish standard packages for cranberries,'" approved March twenty-third, one thousand eight hundred and eighty-eight,
eighty-eight.

A message was received from the Senate, by the hands of its Secretary, as follows:

New Jersey State Archives
Minutes of the Assembly
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# DELAWARE AND JERSEY'S PACT

## Text of Proposed Treaty, Which Gives Equal Fishery Rights and Joint Jurisdiction.

## BOTH LEGISLATURES HAVE IT

*Special from a Staff Correspondent.*

TRENTON, March 17.—A compact proposed to be enacted into treaty by the agreement of the legislatures of New Jersey and Delaware, to put an end to the fishery wars and litigation over the boundary line between the two States in Delaware Bay, was submitted to the Legislature last night in the form of a report from the special commission appointed by the Legislature two weeks ago for the purpose of settling the boundary dispute. This commission, which was composed of Governor Murphy, Chancery Clerk Edward C. Stokes and Attorney-General Thomas N. McCarter, conferred in Philadelphia with a commission from Delaware, consisting of Governor John Hunn, Attorney-General Herbert H. Ward and George H. Bates. A copy of the treaty bill was submitted to the Delaware Legislature yesterday.

No effort was made by the joint commission to establish the actual boundary line in the bay, and the treaty proposes to give joint jurisdiction and equal fishery rights to the inhabitants of the two States from shore to shore.

The text of the proposed treaty is as follows:

"Whereas, a controversy hath existed between the States of New Jersey and Delaware relative to the jurisdiction of such portion of the Delaware River as is included within the circle of twelve-mile radius, an arc of which constitutes the northern boundary of the State of Delaware.

"Article I. provides that criminal process issued under the authority of the State of New Jersey against a person accused of an offence committed upon the soil of said State or upon the eastern half of the Delaware River or committed on board of a vessel under the jurisdiction of that State, and civic process issued out of New Jersey against any person domiciled in that State may be served upon any portion of the Delaware River between the said States from low-water mark on the New Jersey shore to low-water mark on the Delaware shore, except upon Reedy and Pea Patch islands, unless said person or property shall be on board a vessel aground upon or fastened to the shore of the State of Delaware or to a wharf adjoining thereto, or unless such persons shall be under arrest or such property shall be under seizure by virtue of process or authority of the State of Delaware.

"Article II. That criminal process issued under the authority of the State of Delaware against any person accused of an offence committed upon the soil of said State or upon the western part of the Delaware River, or committed under the jurisdiction of that State, also civil process issued under the authority of Delaware against a person domiciled in that State, or against property taken out of that State, may be served upon any portion of the Delaware River between the said States from low water mark on the Delaware River to the low water mark on the New Jersey shore, unless said person or property shall be on board a vessel aground upon or fastened to the shore of New Jersey or fastened to a wharf adjoining thereto, unless such person shall be under arrest or such property shall be

nature, and to make grants, leases and conveyances of riparian lands and rights under the laws of the respective States.

"Article VIII. Nothing herein contained shall affect the territorial limits, rights of jurisdiction of either State, in or over the Delaware River or the ownership of the subaqueous soil thereof, except as herein set forth.

"Article IX. This agreement shall be executed by the said commissioners, when authorized to do so by the legislatures of both States. It shall thereupon be submitted to Congress for its consent and approval. Upon the ratification by Congress it shall be and become binding in perpetuity upon both States and the suit now pending in the United States Supreme Court shall be discontinued."

# DELAWARE TO CONTINUE BOUNDARY LINE FIGHT

### Bill in To-day Appropriates $10,000 to Carry Dispute in United States Supreme Court.

*Special Dispatch to the EVENING NEWS.*

DOVER, Del., March 17.—The Delaware Legislature will adjourn finally to-morrow. Promptly at noon to-day and in accordance with the resolution providing for adjournment, Lieutenant-Governor Cannon in the Senate shut off the consideration of all business, except action on appropriations. The Senate to-day killed the $500,000 street loan for Wilmington. This bill passed the House.

In view of the bill providing for a settlement of the New Jersey and Delaware fisheries boundary dispute having been unfavorably reported by the committee this morning, another bill was introduced carrying an appropriation of $10,000 for the commissioners and the attorney-general to continue the dispute in the United States Supreme Court.

## TEACHERS ON TO TRENTON.

### Governor Will Give a Hearing on Proposition to Have State Pay Retirement Fund Expenses.

A party of teachers and other educators of this city will go to Trenton to-morrow afternoon, where they will be accorded a hearing by Governor Franklin Murphy, the House Committee on Education and the Committee on Appropriations. The delegation will lay before the Governor and the two committees its reasons for believing the administrative expenses of the State Teachers' Retirement Fund should be paid by the State.

Last week Governor Murphy announced that he would not sign the bill providing that the State should administer the fund. This created considerable feeling among the teachers all over the State, and the result was that the members of the joint legislative committee of the Teachers' Retirement Fund issued a circular letter asking the teachers of every municipality in the State to send a representative to the conference at Trenton. The Governor promised to give them a hearing and appointed the time.

Mrs. Fannie W. Smith, president of the Essex County Teachers' Guild, received one of the circular letters from the State association and took the matter up and issued a formal letter to every school in Newark, asking the teaching staff of the institution to send at least one delegate to Trenton to-morrow. Mrs. Smith suggested that the expenses of the delegate be met by all the teachers in the school. In most cases this is being done. President Charles W. Menk, of the Board of Education, has excused the teachers from school so that they can catch the 2:44 train from the Market Street Depot. Dr. Addison B. Poland, superintendent of schools, who is a member of the retirement fund, expects to accompany the teachers to Trenton.

The Educational Association is also evincing much interest in the conference of the teachers with the Governor and its

# FIGHT ON R. R. MERGER PLAN

## Senator Gebhardt Insists on Amending Lehigh Bill and Refuses Substitute.

## LOBBYISTS FOR MEASURE HIT

*By Telegraph from a Staff Correspondent.*

TRENTON, March 17.—All the morning session of the Senate was taken up with a running fight over the Lehigh Valley merger bill, which allows the New Jersey Lehigh railroads to be assimilated with the Lehigh Valley company incorporated in Pennsylvania. Senator Gebhardt led the fight on the bill, insisting on amendments to protect the State's interests and prevent increases in freight and passenger tariffs. The bill was still under discussion at recess, and the fight will be continued this afternoon.

When the bill came up on third reading the Hunterdon Senator offered an amendment making it unlawful for the Lehigh company to charge higher passenger and freight rates than at present existing. Senator Bachelier, who introduced the bill, asked the reason for such an amendment, and the Hunterdon member explained that after such a merger was consummated the State and the courts would not have the same control as at present. He referred to the recent increase in freight rates by coal-carrying companies, and declared there was no reason for such increase.

As business increased the railroads, he said, could afford to decrease the rates. He thought that the amendment was reasonable and fair and that the railroads affected ought to be willing to accept it. He was not asking to have rates reduced.

President Hutchinson asked if the amendment in case of a reduction would prevent the Lehigh from increasing its rates over such reduction. Mr. Gebhardt replied that the rates could not be increased over the present rates at any time and if reduced could be raised to the rates now in vogue.

Mr. Hudspeth thought the amendment would be unjust. He had made a thorough investigation and searched the law with relation to the bill. He recognized his responsibility as a representative of a great county and to assist in procuring proper legislation. He considered the bill proper legislation. The amendment, he thought, was unjust [illegible] interfere with the business of a great [illegible] corporation.

The Hudson man characterized the amendment as an attempt to render the proposed legislation impotent and impracticable.

The merger, said Hudspeth, should stand or fall on its merits and not be made impotent by unfair and discriminating amendments. No other road in the State, he pointed out, was subject to such restriction as proposed. All freight and passenger rates were covered effectually by the railroad charters and the general railroad laws. To burden the Lehigh with such a requirement and exempt rival roads would be to stifle competition. Mr. Hudspeth denied that the merger would affect the jurisdiction of the New Jersey courts over the company.

Senator Strong declared there was no hidden purpose in the bill, and opposed the amendment.

Senator Lee said he was unable to understand why the amendments should not prevail. If this Legislature gives the corporation the power to combine, the people should have some rights, and be protected against the constant increase in the

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"Each State to have and exercise exclusive jurisdiction to arrest, try and punish its own inhabitants for violations of the legislation relating to the regulation of the right of common fishery.

"Article V. All laws of said States relating to the regulation of fisheries in the Delaware River not inconsistent with the right of common fishery, shall continue in force in said respective States until the enactment of concurrent legislation.

"Article VI. Nothing herein contained to interfere with the oyster industry, as now or hereafter carried on under the laws of either State.

"Article VII. Each State fee its own side of the river, to continue to exercise riparian jurisdiction of every kind and

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### Governor Will Give a Hearing on Proposition to Have State Pay Retirement Fund Expenses.

A party of teachers and other educators of this city will go to Trenton to-morrow afternoon, where they will be accorded a hearing by Governor Franklin Murphy, the House Committee on Education and the Committee on Appropriations. The delegation will lay before the Governor and the two committees its reasons for believing the administrative expenses of the State Teachers' Retirement Fund should be paid by the State.

Last week Governor Murphy announced that he would not sign the bill providing that the State should administer the fund. This created considerable feeling among the teachers all over the State, and the result was that the members of the joint legislative committee of the Teachers' Retirement Fund issued a circular letter asking the teachers of every municipality in the State to send a representative to the conference at Trenton. The Governor promised to give them a hearing and appointed the time.

Mrs. Fannie W. Smith, president of the Essex County Teachers' Guild, received one of the circular letters from the State association and took the matter up and issued a formal letter to every school in Newark, asking the teaching staff of the institution to send at least one delegate to Trenton to-morrow. Mrs. Smith suggested that the expenses of the delegate be met by all the teachers in the school. In most cases this is being done. President Charles W. Menk, of the Board of Education, has excused the teachers from school so that they can catch the 2:04 train from the Market Street Depot. Dr. Addison B. Poland, superintendent of schools, who is a member of the retirement fund, expects to accompany the teachers to Trenton.

The Educational Association is also evincing much interest in the conference of the teachers with the Governor and its outcome. At first the legislative committee of the society planned to send several delegates from the association, but later it was deemed more advisable to write a letter to the Governor stating that the society approved of the clerical expenses of the retirement fund being paid by the State, and asking him to reconsider his decision and sign the bill.

Some of the teachers who will go from Newark are Mrs. Georgia B. Crater, Lawrence Street; Mrs. Fannie W. Smith and Miss Emma L. Hutchings, Dawton Street; Miss S. Emily Potter, Washington Street; Miss Anna E. Fussell, South Tenth Street; Miss Sarah N. Brannum, South Eighth Street; Miss M. Augusta Sweasy, Marshall Street; Miss Grace M. Duffy, Morton Street; Miss Ida E. Smith, William Street; Mrs. Addie B. Whittemore, Chestnut Street; Miss Almeda M. Olds, Washington Street; Miss Helena McClelland, Fifteenth Avenue, and Miss Annie M. Eagles, Central Avenue.

### Leaves $100 to Eighth Avenue Church

A bequest of $100 to the Eighth Avenue Methodist Episcopal Church is made in the will of the late Anna Augusta Jacobus, and to Rev. Frederick Bloom, a former pastor, and to Rev. Wesley Martin, the present pastor, is left $50 each. The will is dated March 4, last, and the executor is Silas Van Cleve. The witnesses were George R. Kent, John H. Baldwin and Horace F. Baldwin.

will be continued this afternoon.

When the bill come up on third reading the Hunterdon Senator offered an amendment making it unlawful for the Lehigh company to charge higher passenger and freight rates than at present existing. Senator Bachelier, who introduced the bill, asked the reason for such an amendment, and the Hunterdon member explained that after such a merger was consummated the State and the courts would not have the same control as at present. He referred to the recent increase in freight rates by coal-carrying companies, and declared there was no reason for such increase.

As business increased the railroads, he said, could afford to decrease the rates. He thought that the amendment was reasonable and fair and that the railroads affected ought to be willing to accept it. He was not asking to have rates reduced.

President Hutchinson asked if the amendment in case of a reduction would prevent the Lehigh from increasing its rates over such reduction. Mr. Gebhardt replied that the rates could not be increased over the present rates at any time and if reduced could be raised to the rates now in vogue.

Mr. Hudspeth thought the amendment would be unjust. He had made a thorough investigation and searched the law with relation to the bill. He recognized his responsibility as a representative of a great county and to assist in procuring proper legislation. He considered the bill proper legislation. The amendment, he thought, was unfair and would seriously interfere with the business of a great corporation.

The Hudson man characterized the amendment as an attempt to render the proposed legislation impotent and impracticable.

The merger, said Hudspeth, should stand or fall on its merits and not be made impotent by unfair and discriminating amendments. No other road in the State, he pointed out, was subject to such restriction as proposed. All freight and passenger rates were covered effectually by the railroad charters and the general railroad laws. To burden the Lehigh with such a requirement and exempt rival roads would be to stifle competition. Mr. Hudspeth denied that the merger would affect the jurisdiction of the New Jersey courts over the company.

Senator Strong declared there was no hidden purpose in the bill, and opposed the amendment.

Senator Lee said he was unable to understand why the amendments should not prevail. If this Legislature gives the corporation the power to combine, the people should have some rights, and be protected against the constant increase in the freight rates which the various companies see fit to impose from time to time.

A barrel of cement, he said, can be shipped to Europe for one-half the rate that it costs to send the same from Atlantic City to Philadelphia since the Pennsylvania Railroad acquired control of the Reading, all opposition having been removed.

"There may be some very honorable men favorable to this bill," declared Mr. Lee, "but there are some very bad people lobbying for it."

As a substitute for the Gebhardt amendment, Senator Hudspeth offered one providing that the merger should not interfere with the jurisdiction or authority of the courts. This was opposed by Mr. Gebhardt, who declared its offer to be an admission that the bill was not right and needed amendment.

### Holmes Sent to Jail.

*Special Dispatch to the EVENING NEWS.*

FREEHOLD, March 17.—For two years past Michael Hallerin, a farmer of Matawan, has been terrorized by tramps. They would make their headquarters in his barn, milk his cows, steal his eggs and fruit and kill his chickens. They seemed a vicious lot, and Hallerin was afraid to interfere in their depredations. This morning two tramps were arrested in the Hallerin barn and brought here by Deputy Sheriff Close. Later they were given ninety days each in jail.

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## BRIGHT GREEN PARROT WITH YELLOW HEAD SOUGHT LIBERTY THIS MORNING

A green parrot that had a topknot of golden-yellow feathers is missing to-day from the home of Charles Goldsand, at 272 green. Jaeger wanted to know if there had been any objections of late to the color of the parrot's topknot, but was


## The Bacillus of Catarrh

may not, as yet, have been officially discovered and catalogued; but, all the same, it can be hunted down, and absolutely ex-


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Dover, Delaware,

March 28th 1903.

Gentlemen:

After the adjournment of the meetings of the Joint Commission on the New Jersey-Delaware boundary controversy, we communicated to the General Assembly the result of our conferences with you. The bill prepared for submission to the Legislatures of both States was introduced and considered and it was made to appear to both houses that it represented the conclusions as to which it was found practicable to reach an agreement on the part of the commissioners of the two States. The scope and effect of the proposed measure were clearly made known by us before the committees, in personal conference with members and in a public hearing in which by invitation the subject was explained and our views expressed by the Attorney General on our behalf.

The result was that the bill not only failed of passage, but it encountered so vigorous an opposition that we are satisfied that its enactment would be impossible under any circumstances by this Legislature.

Upon careful consideration of the public opinion of the people of the State, we are also satisfied that the opposition to the measure which developed in the Legislature was the reflection of a sentiment among the people of the State unalterably opposed to the surrender directly or indirectly of the title and jurisdiction which the State of Delaware claims to and over the soil and waters

of the Delaware River within the twelve mile circle.

We believe that this sentiment is so strong that it will be satisfied with nothing short of a final and conclusive settlement of the questions involved in the pending suit, and therefore that it is for the interest of both States that the case be proceeded with and the whole subject disposed of by the only tribunal which can settle the controversy.

Regretting that the situation and the nature of the controversy were such as to involve failure of our joint efforts to reach a settlement out of court, and with the most cordial expression of the satisfaction which we have personally derived from our conferences with you, and of our appreciation of your courtesy, we are,

With great respect,

Your obedient servants,

John Nunn
Herbert H. Ward
Geo. P. Bates
Commissioners of the State of Delaware.

To/
Hon. Franklin Murphy
Hon. Thomas N. McCarter
Hon. Edward C. Stokes
Commissioners of the State of New Jersey.

Governor Franklin Murphy
Correspondence Box 10 Folder 260
New Jersey- Delaware Boundary Controversy, March-April 1903
New Jersey State Archives



DE27272

*Office of the Attorney General*

*Delaware*

HERBERT H. WARD,
ATTORNEY GENERAL.
ROBERT H. RICHARDS,
DEPUTY ATTORNEY GENERAL.

*Wilmington, Del.* April 22nd 1908.

Wm. George H. Bates,
2028 Walnut Street,
Philadelphia.

Dear Mr. Bates:

I enclose you letter from McCarter, received this day. I have advised him that we shall not, under the circumstances, press his brother into the motion on Monday next, and have suggested that we fix Monday the 18th of May on which to make this motion. As I understand it, the court sits through the month of May. Kindly return McCarter's letter, after reading. He sent an acceptance of the notice which we sent him. I have suggested that we will, under the circumstances, send his brother a new notice, rather than to have a continuance of the old notice for his acceptance, and that his brother write me if the 18th of May will suit.

Yours very truly,

H. H. Ward.

From the collections of the Historical Society of Delaware, 505 Market St., Wilmington, DE 19801
302-655-7161 www.hsd.org

# STATE OF NEW JERSEY

OFFICE OF THE ATTORNEY GENERAL

Newark, April 2,1903

Dear Sir:-

I enclose herewith my check for $16.75 in the Delaware boundary matter. The charge is very reasonable.

Our Legislature passed the boundary bill before adjournment, and I think every effort should be exhausted, either now or at some future time, to get the Delaware House of Assembly to concur in the bill, so that our work may not go for naught. It is too sensible and practical a solution of this difficulty for both states not to carry into effect.

Very truly yours,

Attorney General.

George H. Bates, Esq.,
3002 Lehigh Avenue,
Philadelphia, Pa.

x

From the collections of the Historical Society of Delaware, 505 Market St., Wilmington, DE 19801
302-655-7161 www.hsd.org



DE17279

April 6th 1903.

My dear Governor:

On consultation this afternoon, Mr. Ward and I agreed that it is desirable for us to send to the New Jersey Commissioners a formal notification of the failure of our Legislature to pass the Bill, and such an expression of opinion with regard to the sentiment on the subject as will aid us in pressing for immediate arrangements for a trial of the cause, which we both think should now proceed as rapidly as possible.

I enclose what we have drawn up for that purpose, signed by us both, and if you approve of it will you at your early convenience add your signature where your initials are marked in pencil and return it to me as early as possible (to-morrow if you can) to #3003 Lehigh Avenue, Philadelphia, so that I can forward it without any further delay. I have just caught Mr. Ward here on his way to Georgetown this afternoon.

Very sincerely yours,

DE17281

**DE H.S.**
**Box 7 File 8**

Office of the Attorney General

Delaware

HERBERT H. WARD.
ATTORNEY GENERAL
ROBERT H. RICHARDS.
DEPUTY ATTORNEY GENERAL.

Wilmington, Del. May 2nd 1911.

Hon. George H. Bodine,
[illegible] Lehigh Avenue,
Philadelphia.

Dear Sir:

I am this morning in receipt of a letter from Thomas F. McCarter enclosing acceptance of notice of motion in the Supreme Court on May 11th. He says that his brother has not yet taken office, and will not until the 10th inst. He says, however, that he will have to attend to the matter on May 11th. I have asked him to fix a day next week when you and I, he and his brother may get together to consider the substance of the motion.

Yours very truly,

H. H. Ward.

DE17298

**DE H.S.**
**Box 7 File 8**

Office of the Attorney General,

Delaware.

HERBERT H. WARD
ATTORNEY GENERAL.
ROBERT H. RICHARDS.
DEPUTY ATTORNEY GENERAL.

Wilmington, Del. May 6th 1908.

Hon. George H. Bible,
3018 Lehigh Avenue,
Philadelphia.

Dear Sir:

I have today received the following letter from Mr. McCarter:

"The engagements of my brother and myself are such that we cannot well arrange for a conference, such as you suggest, this week. One or both of us will certainly be in Washington next Monday and it may be that we can have a conference that morning before the session of court. My brother's attitude about the case seems to be that as the matter has peacefully slept for twenty five years it is a little hard to force it on him in the first few weeks of his administration. There would seem to be some fairness in this proposition."

I think we should have a conference.

Very truly yours,

H. H. Ward.

From the collections of the Historical Society of Delaware, 505 Market St., Wilmington, DE 19801
302-655-7161 www.hsd.org

3008 Lehigh Ave.

Philadelphia, June 9. 1905.

Hon. H. H. Ward,

Attorney General, Wilmington, Del.

My dear sir,

As the result of a two or three months search, at times discouraging, I had a great find for today. I have ascertained the whereabouts of and have seen and examined the original royal grant, the confirmment and the two leases from the Duke of York to Wm. Penn, the very ones which were put in evidence in the Pea Patch case (see pp. 8-13). I will tell you all about it when I see you which ought to be very soon, as there a lot of things needing attention, at once. I was not able to stop on my way back from Washington, and since that have waited until you did not seem to be in court. We need an undisturbed hour or two, and I will meet you either here or in Wilmington, either day or evening. I wish you would call me up on telephone, before court tomorrow morning, if possible so that we may have an understanding. I would have called you today if I had had any idea that I could get you at your office.

I have a copy of the order as entered and presume you received one as that was the promise. Rawle notified me in a letter addressed to us both that he had received one. It differs in immaterial points from the one suggested but you will doubtless agree with me that it is satisfactory.

For reasons which I will explain to you I advise that we keep absolutely to ourselves the fact of our having the original charter available. I have been studying its relation to the case and am sure it will play a large part in the New Jersey calculations.

Very truly yours,

From the collections of the Historical Society of Delaware, 505 Market St., Wilmington, DE 19801
302-655-7161 www.hsd.org

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SUPREME COURT OF THE UNITED STATES

October Term, 1904

No. 1. ORIGINAL.

THE STATE OF NEW JERSEY,

Complainant,

vs.

THE STATE OF DELAWARE,

Defendant.

Office of Commissioner, 328 Chestnut Street, Philadelphia,

November 7, 1903, at 10.45 A.M.

Robert H. McCarter, Esq., Attorney-General of New Jersey

and Howard W. Hayes, Esq., for the complainant;

George H. Bates, Esq., of Wilmington for the defendant.

OPENING STATEMENT ON BEHALF OF COMPLAINANT BY THE

ATTORNEY-GENERAL OF NEW JERSEY.

The importance and unusual character of this suit makes it proper that a brief explanation of its purposes and object should be made at this time. It is not a

DE03459

a common-place affair for a sovereign state to be summoned into court and required to answer the complaint of a suitor, and the dignity of such a controversy is increased when the complaining party is also a state. The framers of the federal constitution, with characteristic foresight, provided a forum for such a suit and appreciating the importance of litigation of this character opened the doors of the Supreme Court of the United States for the high parties litigant. It is to that high but peaceful tribunal that the State of New Jersey, feeling itself aggrieved, has confidently appealed. The State of Delaware, with equal confidence in the court, has willingly accepted the gage and filed its answer setting up its side of the controversy.

The suit concerns the title to so much of the Delaware river or bay as lies between what is commonly known and designated as the States of New Jersey and Delaware, or rather, to be more precise, the issue involves a determination as to whom the valuable right of fishing in that body of water belongs.

The citizens of New Jersey resident on the shore of, or near the water, have been, until the grievance in this cause complained of, accustomed from time immemorial, to fish in the waters of the Delaware without the slightest molestation from the State of Delaware. The right so to do has become a

valuable property right. Improvements to enable them to avail themselves of that right have from time to time been erected at great expense, and laws in recognition thereof have frequently been enacted by the legislature of New Jersey. Disregarding the history anterior to the American Revolution it is safe to say that for a period of nearly one hundred years thereafter this right was freely exercised and enjoyed by residents of New Jersey without molestation or even a suggestion from the State of Delaware that it was not lawful. Without considering the question of the statute of limitations, surely a strong presumption arises from the uninterrupted exercise for so long a time of this valuable right.

In the year 1871, however, the Legislature of Delaware passed an act making it unlawful for citizens of New Jersey to further pursue their time-worn practice of fishing in the Delaware without first securing an annual license from the State of Delaware at a cost of twenty dollars, and imposing a penalty for violation of confiscation of vessels with their tackle and appliances, and arrest of the persons. This act being immediately followed by the arrest of New Jersey fishermen, the Governor of New Jersey issued a proclamation protesting against the enforcement of this law by the State of Delaware and claiming for New Jersey jurisdiction over that

part of the River Delaware East of the middle line thereof, and for its citizens the free and untrammeled right (so long as they conformed to the laws of New Jersey) to fish on the Eastern side of the River. A correspondence between the Governors of Delaware and New Jersey ensued which resulted in the appointment of a Commission of three distinguished men from each state to negotiate and if possible settle the question as to the extent of the right of the citizens of New Jersey to fish in the Delaware River. While this Commission was still deliberating the Delaware members were, by Joint Resolution of the Legislature of that State, relieved of further duty thereunder, and the announcement was made that the State of Delaware proposed to enforce the license law above referred to: whereupon the State of New Jersey, on the 15th of March, 1877, was granted leave by the Supreme Court to file its Bill of complaint in that court and to issue a subpoena to the State of Delaware requiring it to answer. An application, on notice, was subsequently made to the court for a preliminary injunction which on the twenty seventh of March next thereafter issued, restraining the State of Delaware, its officers, agents and servants from imposing any tax, assessment or imposition whatsoever, by way of license fee or otherwise, upon any citizen or resident of the State of New Jersey, or from requiring them, or any of them, to take a license from or

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under the State of Delaware for right or authority to fish in the River Delaware, as they have heretofore been accustomed to do, and from arresting, imprisoning, trying, fining or in any manner punishing or seizing, holding or selling any property of any citizen or resident of New Jersey for fishing in said river. This injunction was promptly served and is still in effect. The subpoena to answer, together with an order that the State of Delaware answer the bill of complaint on or before the second Monday of October, 1877, were at once served, but not being complied with, the counsel of the respective States stipulated early in May, 1892, that the status quo continue until the complainant by sixty days notice shall require the defendant to plead, answer or demur to the bill, or the defendant shall voluntarily plead, answer or demur thereto. The cause slept in this situation - one that was obviously entirely satisfactory to New Jersey - for over five years, when the Supreme Court, on its own motion, directed that the suit proceed, whereupon an answer was duly filed by Delaware, to which New Jersey has interposed a replication, and on the first day of June, 1903, the cause was referred to FRANCIS RAWLE, Esquire, who was appointed commissioner with the powers of a master in chancery "to take and return the testimony in this cause, together with findings of fact and conclusions

of law."

It is not our purpose at this time - if it were otherwise proper - to felicitate the parties to this suit upon the choice that has been cordially made by their respective Attorneys General for the person who shall perform the profoundly important duties outlined in this order, but rather to thus introduce the subject to the Master, and to ascertain his views of the conduct of the case, so that in presenting its evidence and proofs the complainant may, so far as possible, conform thereto.

A few words may profitably be spent in adverting to the claims of the two States, as set up in their pleadings.

On the twelfth of March, 1663-64, Charles II, King of England, in Council by Patent to his Brother the Duke of York, conveyed a large quantity of land, including what is now the State of New Jersey. The Westerly boundary of the land was thus described: "and all the lands from the West side of Connecticut to the East side of Delaware Bay." The Duke of York, his heirs, deputies, &c., were, by the same Patent, also bestowed with "full and absolute power and authority to correct, punish, pardon, govern and rule all such the subjects of us,

our heirs and successors, as shall from time to time adventure themselves into any the parts or places aforesaid x x x x x x x according to such laws, orders, ordinances, directions and instruments as by our said dearest brother, or his assigns, shall be established x x x x x x " .

The Duke of York, on June 24, 1664, by his deed of lease and release granted the present State of New Jersey to Berkeley and Carteret, describing the territory as being "all that tract of land x x x x hath upon the west, Delaware Bay or River." No right of government was attempted to be granted in this conveyance, but Berkely and Carteret undoubtedly undertook the government of the Province, and their right so to do was subsequently recognized by the King. The subsequent war between Holland and England gave opportunity for the Dutch to take possession of both New Jersey and Delaware, but upon the treaty of peace being concluded the North American Provinces, including these two states, were ceded to the Crown of England, whereupon Charles II, in order to confirm the title of his Brother, regranted on the twenty ninth of June, 1674, to the Duke of York, the land now known as New Jersey, using the identical language of his former Patent. On the same day the Duke of York, by lease and release, granted Eastern New Jersey (not including the portion abutting upon Delaware Bay) to Car-

7.

vest. The King, by a letter written about the same time, fully recognized the property and governmental rights of Carteret. Subsequently, by the well known Quinti-partite deed, West Jersey, including that portion bounding on Delaware Bay, became vested in four persons, among whom was William Penn, but no right of government passed. After numerous persons by mesne conveyances had become seized of numerous tracts in West Jersey, these grantees, including Penn, of the Quinti-partite deed, on or about March 3, 1676, executed the famous well known "Concessions and Agreements" to the inhabitants of West Jersey, whereby, among other privileges, there was granted "that all the inhabitants within the Province of West Jersey have the liberty of fishing in Delaware River or on the sea-coast."

On the 16th of August, 1680, the Duke of York conveyed to Billinge, Penn, Lawry, Lucas, Eldridge and Warner, West Jersey and "also the free use of all bays, rivers and waters leading into or lying between the said premises, or any of them, in the said parts of America, for navigation, free trade, fishing or otherwise." The Proprietors of both East and West Jersey by deed dated April 15, 1702, surrendered to QUEEN ANNE all powers of government acquired by them from the Duke of York from Charles the Second, so that such right

was vested in the Crown at the time of the American Revolution and passed to the State of New Jersey, with all the other property rights appertaining thereto, including the bed of the Delaware River East of the middle line thereof, and the State of New Jersey, since the fourth day of July, 1776, has possessed and enjoyed as of right the bed to the East half of the river, and its inhabitants have also legally enjoyed the right in common with the inhabitants of the State of Delaware to fish in the waters thereof. It is this right thus acquired that the bill of complaint seeks to protect. The proprietors of West Jersey have always believed and claimed themselves to be the owners of the Islands in Delaware Bay and River East of the centre line thereof. The tide in those waters ebbs and flows far above the locus in quo. Most if not all of such Islands are held under titles emanating from New Jersey. Shad fisheries have grown within that territory to enormous proportions, and by the common and statute law of New Jersey are transferable by deed, and have always been held under titles from the New Jersey Proprietors. Statutes of New Jersey have from time immemorial regulated oyster fisheries within the same boundaries and the courts of that state have uniformly imposed penalties created thereby.

The basis for the tardily asserted claim of Delaware

will be but briefly adverted to. On the twenty fourth of August, 1682, (eighteen years after his conveyance of New Jersey) the Duke of York, then having no grant from the King, by deed of feoffment containing a covenant of further assurance conveyed to William Penn and his heirs a "tract of land lying within the compass or circle of twelve miles" about New Castle "situate upon the River Delaware." The Town of New Castle is located in the Northerly part of Delaware about five miles west of low water mark on the New Jersey side of Delaware Bay. By virtue of this description the State of Delaware claims as part of its territory all the waters of Delaware Bay lying within such a circle drawn with New Castle as its centre. Reference to a map with a circle so drawn upon it shows that it includes not only all the waters within its circumference of Delaware Bay, but also a greater part of Salem County in New Jersey. Delaware, however, generously makes no claim to anything but the Bay and the land thereunder. Delaware fortifies its title by the claim that Charles the Second, on March the twenty second, 1683, seven months after the feoffment of the Duke of York to Penn, last above referred to, by Letters Patent granted the Town of New Castle , and the premises lying within the twelve mile circle, to the Duke of York, and the contention therefore is that by virtue of the covenant for further assurance contained in the Duke's feoffment the title

thus acquired enured to the Duke's grantee. The fact of the legal issue of this patent will be contested by the complainant and the contention made that whether legally issued or not it was ineffectual to transfer to Delaware the ownership and control of the Delaware River and Bay.

Without further particularizing, New Jersey will rely on its anterior and well established title and on the acquiesence by Delaware in the claims arising thereunder by New Jersey and its citizens. Such claim to the centre of the river accords with the situation between Pennsylvania and New Jersey and harmonizes with the general rule where a navigable stream separates two states - a rule that impresses one as being both consonant with equity and based on common sense.

MR. MC CARTER: We feel that it will be a part of our case and tend to elucidation of the somewhat mystic subject that is now to be investigated to have the Commissioner and the Court enlightened by the views of English lawyers, learned in the ancient common law and the proper construction of some of these ancient documents, to testify in that line. I am not able to say at this moment - speaking entirely frankly and

candidly - whether or not that evidence would be strictly rebuttal or not. I will assume, for the purpose of this suggestion, that it is not; although I am not clear that it would be. It is, I think, agreed by us all that at some stage of this controversy --of the taking of evidence, at least, in this controversy - it will be necessary for the counsel, and I hope the Commissioner, to go to England for the purpose of putting in some evidence that can only be procured there; and I suggest for the consideration of counsel, and also of the Commissioner, that we now agree, or as soon as we can, that the taking of any expert evidence of the character that I have suggested, whether it be strictly rebuttal or not, be deferred until such time as it will suit both the complainant and the defendant to go to England. It is quite evident, I think, that the defendant, of course, won't be able to go there until our main case is closed. We have still to the end of January to do that. It would seem an unnecessary trouble and hardship to require us in midwinter, in the midst of active practice, to all go abroad or to send over there - some of us go at least - and take such testimony as we might need in the lines indicated and then come back here and let the defendant take up its case and then all go over a second time, after the defendants are ready to take such evidence as they may desire.

12.

in that line or otherwise, in England; and I therefore suggest to my friend Mr. Bates and to the Commissioner, the propriety of our agreeing that either side, at a time that will be mutually agreeable to both the Commissioner and the respective counsel, be permitted without regard to strict rules of rebuttal as against direct evidence, to take the evidence that we desire in England - say next June, or such time when we are all more or less at leisure, and we will thereby avoid making two trips abroad.

Mr. Attorney-General Yard, on the only occasion that I have had the pleasure of meeting him, made the significant remark to me that this was a large suit, and one which should not becomingly be tried on lines of sharp practice. I realise the more I get into it the entire truth and strength of that statement; and while I am -

MR. BATES: The Supreme Court has stated practically the same thing in the Rhode Island and Massachusetts case.

MR. MC CARTER: And while I appreciate that the case must be governed along the lines of the great rules of evidence that complainant's main case must be presented and then the defendant put in its main case and if the defendant have any rebuttal properly so-called it should then follow - yet I think that in view of all the circumstances, the suggestion I make



DE03471

is not perhaps unwarranted and will conduce to our mutual convenience and will not work the slightest injustice or hardship to any side. I regret very much that Mr. Ward has not been able to be here to-day, and am glad to hear Mr. Bates assurance that he does not misunderstand the situation.

THE COMMISSIONER: I feel that this is something more than mere litigation. The parties are sovereign states, and they are represented by their respective attorneys-general. The questions at issue are public questions. Perhaps there is a sense in which we all sit as commissioners to adjust rights between contesting states. While, of course, the taking of testimony must proceed in an orderly way, I should have no doubt that it would be proper - particularly when taking documentary evidence the existence and nature of which is known in advance to both parties, or can if desired be made known in advance to both parties - it could properly be taken at such times as can be agreed upon by counsel, without regard to whether it is necessarily a part of the complainant's case in chief or rebuttal testimony. If counsel for the parties agree in the taking of testimony - and particularly documentary testimony - I see no reason why it should not be taken in accordance with such stipulation as counsel may make.

MR. BATES: I have inferred that we would ask the Com-



DE03472

missioner to take testimony at some other points than this, on both sides; because it would undoubtedly be more convenien to you and possibly might be convenient for us at New Castle or Wilmington, a saving of expense in bringing witnesses and all that sort of thing.

THE COMMISSIONER: I think there is no doubt that the Commissioner ought to meet at any point in any of the three states which the counsel who has the burden of taking the testimony indicates is suitable. Ordinarily, we would meet here; but if it suits the counsel, I should think we would meet in any one of the three states,or elsewhere.

MR. BATES: I judge, from what I have seen of your New Jersey publications, that you must have over there a very lar number of London records - copies of exemplifications; and we have none.

MR. MC CARTER: Yes. Do you think there would be any trouble about our arranging to take that English testimony?

MR. BATES: I was just going to say we had been a littl puzzled to know exactly -- we expected that someone would have to go to London to look up some matter; and I did not know, quite, when it would be convenient to do it; because we could not either of us go away pending the time that you were taking testimony, and then after our time comes in we [illegible]

THE COMMISSIONER: And you must close the 1st. of June.

MR. BATES: Yes.

THE COMMISSIONER: So that summaries are rebuttal.

MR. BATES: I understand the suggestion of Mr. McCarter and having it down in writing to show Ward will enable me to talk the matter over with him, and then we will be prepared to talk it over with both of you when we meet next time.

---

Adjourned to meet Wednesday, November 11, 1903, at 10.30 A.M., at the office of the Attorney-General, State House, Trenton, New Jersey.



DE03474

Office of the Attorney General

Delaware

HERBERT H. WARD,
ATTORNEY GENERAL.

ROBERT H. RICHARDS,
DEPUTY ATTORNEY GENERAL.

Wilmington, Del April 23rd 1904.

Hon. Francis Rawle,

325 Chestnut Street,

Philadelphia.

My dear Mr. Rawle:

I have personally been so engrossed with court work, both private and official, since the New Jersey side of the case was closed that we have been unable to fix a date to begin the taking of testimony for Delaware. I have, however, an arrangement with Mr. McCarter that the time limit shall be extended under orders made by you, in accordance with the Supreme Court rule under which you were appointed, so that we will not be prejudiced by our delay. Mr. Bates and I are preparing a minute of our order [illegible] endeavoring to make it so exhaustive as to enable us to put in our proof with great rapidity when once we start. I have asked Mr. McCarter to hold himself in readiness, so far as other engagements are concerned, to devote considerable time during the two weeks beginning with the 9th day of May to the taking of our testimony. Until that time I will be practically all the time kept at Dover, in my official work.

I write you this so that you may understand why we have not yet taken testimony. If your own time during some part of the two weeks beginning with the 9th of May can be devoted to this case we will greatly appreciate it.

Yours very truly,

Attorney General.

From the collections of the Historical Society of Delaware, 505 Market St., Wilmington, DE 19801
302-655-7161 www.hsd.org

Office of the Attorney General,
Delaware

HERBERT H. WARD,
ATTORNEY GENERAL.
ROBERT H. RICHARDS,
DEPUTY ATTORNEY GENERAL.

Wilmington, Del. April 25, 1904.

Hon. Robert H. McCarter,
Attorney General,
Newark, N. J.

My dear Sir:

My court work took up so much of my time since I last saw you that we have been unable to fix a date, until now the time has arrived when I must go to Dover. I will probably be kept there for two weeks.

We hope, in the interval between the 9th and the 23rd of May to introduce a considerable [illegible] our case. We are getting the same fully digested [illegible] we can put it in quite rapidly and are having [illegible] duplicate copies made, so that you can [illegible] a good deal of our case as we introduce [illegible] bear in mind that we may want [illegible] weeks beginning with the 9th of [illegible]

[illegible] General.

DE21684

**DE H.S.**
**Box 7 File 10**

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HISTORICAL SOCIETY OF DELAWARE
Delaware Street
Wilmington, DE 19801

Nov.25, 1.

Hon.Wm.C.Spruance,

Wilmington,Del.

My dear Judge,

The enclosed Memorandum will,I think,explain itself. Mr.Ward and I are anxious to have your testimony on the points suggested or as many of them as possible. I shall make it a point to see you in a few days,but have thought that it would save your time to give you an opportunity to consider the subject in advance. I have talked to Judge Gray about the ~~subject~~ matter and he authorized me to say that he would be able to testify as desired.

I regret the necessity of trespassing at all upon your time, but feel sure that you will ~~sustain~~ feel an interest in sustaining the contentions of the State.

Very truly yours,

Same letter to Hon. Ignatius C. Grubb, Wilmington, Del.
" " " " Edward G. Bradford. " "
" " " Benjamin Nields, Esq. " "
Each Enclosing copy guaranteed.

[illegible]

vs.[illegible].

In the brief of the boundary suit between New Jersey and Delaware, the main question involved, being the jurisdiction claimed by Delaware over the river Delaware within the 12-mile circle, we desire to put in evidence the testimony of members of the Bench and Bar of Delaware in New Castle County of the same character as that which was produced with so much effect by Messrs. Bayard and Clayton in the Pea Patch case from the elder Chancellor Johns, Chief-Justice Booth, Mr. Rodgers, and others. If you have not recently looked over that case we would be glad to have you do so. An excellent abstract of the testimony is published in the appendix to Wirt Wallace's U.S.C.C. Reports and reprinted in the last or next to the last volume of Federal Cases. Doubtless the service of civil process from the state courts on the river has been less frequent in our time than during the practice of the witnesses in the Pea Patch case. This is due, without question, to the disuse of the writ of capias in ordinary civil cases. Nevertheless, it would seem that we can legitimately put in evidence, an impressive body of traditionary knowledge and expert legal and official opinion, not to speak of the uniform custom of serving admiralty process anywhere on the river within the circle. The legal testimony on the latter point will be supplemented to the fullest extent by that of probably every living clerk, marshall, or deputy marshall of the U.S. Admiralty Court.

We also wish to put in expert legal testimony, with respect to

(2)

the original titles under which land is held in Delaware and as to the validity of W.s Penn title under the Duke of York.

This is intended to outline the points on which we desire testimony from from all the Judges, State and Federal, sitting within the county as well as that of some of the leading members of the Bar.

Points which we would like to establish by such testimony are:

1. That it has always been considered by the courts, public officers and lawyers of Delaware, that her title extended within the 12-mile circle around New Castle to low water water mark on the New Jersey shore. That writs have often been issued out of her courts for the service of process on vessels or persons in all parts of the Delaware river within the circle and that no dispute was ever made before any court against the title and jurisdiction of Delaware over all such parts.

2. That under writs and process issued out of the U.S. Admiralty Courts of the Delaware district, vessels have been seized in any and all parts of the river within the circle.

3. The practice of the court in New Castle County, as known to you, either from your practice, personal observation of practice, the records of the court, or the traditions of the court and bar with respect to the service of process issuing out of criminal courts of Delaware upon persons found on the Delaware river within the 12-mile circle. That such process has been served wherever necessary on persons found at any point on the said river within the circle.

4. That Delaware has always claimed jurisdiction and title over



DE18285

the Delaware River and soil thereof within the circle to low water mark on the New Jersey shore, and has exercised that jurisdiction when called upon or asked to do so. Also that our citizens have always fished and fowled on the river and used it within the circle under claim of right existing within the state.

4. That lands in ~~f~~ Delaware are generally held under the title of William Penn and his heirs and that lawyers tracing title for the plaintiff in trespass or ejectment back to the original claim, incepted or began their title with the Penn grants. That the Penn title under the Duke of York was the true title to the lands and waters in Delaware. That any exceptions were confined to deeds or grants from the aborigines, of the Dutch government at New Amsterdam, or the English governor, under the Duke of York, at New York, before the conveyance to Penn, or grant from Delaware, after its independence.

6. That prior to the passage of laws abolishing imprisonment for debt, it was customary for sheriffs and deputy sheriffs of New Castle County to serve writs of capias ad respondendum on persons found on boats or vessels down the Delaware River at any point within the circle west of low water mark on the New Jersey shore. This is intended to cover any knowledge derived from your own practice as a lawyer, your observations of practice of others, records of the court, or the traditions of the court and bar.

7. Any personal knowledge of particular cases.

Historical Society of Delaware
Bates Collection
Box 7

## OD GIVES TO POLICE

—George E. Wood, t, suspected of the Williams, the young g, who was found ds sleigh Thursday ysville, surrendered lice last night. The ority as yet haines.

to have been the Hanna to drive him grandmother, Mrs aikam, was sounded politeness is manifest home inquiry at sent house alleged it he has not been nday, when he and children went away, or their apartment

have since learned, oon in the at the Plainfield on Monich he and his fam- nd his movements to Thursday morn- re to hire a convey- rs. Pollock's farm. ing days he is said daily to the farm was seen boarding at Millington Stacanna Railroad, on o, soon after the is to have been com-

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### in Trenton.

ame as Henry Wood, d at the American He was tall and ears of age. He re- me day. Inquiries at e that he George H. The police say a H. Wood was com- m from this city a for robbery.

## ES MOVE E CONFAB

be made by the uncil for a confer- bers of the Manu- loyers' Association the council for the g the present "open idea of the confer- ciples understand- the trouble with a

## ARE HELD OF YOUNG GIRL

Direct Wire. Charges of murd ard E. Jondy, Wil- iam Catherine Boyd- s today, a few hours an Doran, 11 years er Court, Bayonne, ital. It is charged responsible for an d Miss Van Doren's g refused to accept

### ton School.

claus received the the best record for sence of tardy

The heading to this column was designed by George Radcliffe, the cartoonist for the Trenton Times. The cigarette smoke was introduced by the designer just to give an artistic flue. Very few cartoonists smoke.

The one hundredth anniversary exhibition of the Academy of Fine Arts of Philadelphia, is open free on every Sunday from 1 to 5 and on Tuesdays and Fridays from 9 to 5 p. m.

The subject for composition for next Tuesday is "The Church Door."

The Trenton Times ordered some designs for decorative title headings to several its departments and yesterday accepted a number of drawings by pupils of the illustration classes. Among those accepted were drawings by Mrs. Long, Mrs. E. C. Richardson, Miss Lottie VanDerveer, Miss Lena Lynde, Miss Christina Arend, and Frank Green. These designs will be used next week.

Miss VanDerveer designed an advertisement for the Bee Hive Bargain Store, which will be used in newspaper advertising.

C. Bawley reads a striking and artistic drawing of the building occupied by Harrington & Co., opticians.

The painting done by Miss Mumford in the studio of the famous and late Mr. Whistler, has arrived at the school. This posthumous gift from James D. Tantum, M. D., is one that is gratefully appreciated by the students and will have a lasting influence in the school. Many of the students think that Whistler himself did some of the work on this notable painting.

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Some lovely and interesting examples of Chinese and Japanese embroidery are shown in the classes in design. The things were brought from Japan by the owner, one of the students.

## KING JAMES DEED SHOWN DELAWARE JERSEY DISPUTE

By Publishers' Press Direct Wire.

Wilmington, Feb. 4.—At the hearing in the Delaware-New Jersey boundary dispute yesterday Colonel J. Harry Rogers of New Castle, Del., was the principal witness. He produced a deed of the original grant of the twelve mile circle from King James to William Penn. The deed has been handed down by Colonel Rogers's ancestors.

## WARNS CHURCHES OF SOCIAL PERIL

In announcing a new series of sermons on "Modern Social Problems," the Rev. Alfred W. Wishart made some significant comments to the members of the Central Baptist Church last evening.

The discussion of these problems is to commence with a sermon tomorrow evening on "The Social Peril of the Church," when Mr. Wishart will give his views on the perils of organized Christianity arising from modern political and industrial tendencies. This sermon, he said, would be followed by a series of discourses on the "Hebrew Prophets as Social Reformers," to be succeeded by a series on the historical attitude of the church toward social problems.

"Not until one has surveyed the past," said Mr. Wishart, "is one prepared to cope with the grave issues confronting modern Christianity." Among other things Mr. Wishart said last evening:

"Notwithstanding the revivals of religion in various parts of Christendom, it must be apparent to every thoughtful observer of our times that the existing social order is on the brink of revolutionary changes. The present power-possessing and privilege-holding classes are menaced by a rising tide of social reform which will transform society. Nothing less than the reconstruction of political and industrial organizations is demanded in Europe and in this country. In spite of the misrepresentations of social reform movements in France, Italy, Germany and other European countries, the facts are slowly coming to be understood in the United States.

### DR. HALL'S VIEWS.

"Meanwhile another disturbing feature of the struggle between the classes has been recognized. The Rev. Dr. Thomas C. Hall, professor of theology in Union Theological Seminary, a man of commanding influence, recently published an article on "Socialism as a Rival of Organized Christianity," in which he frankly confesses that 'feudal Roman Catholicism and individualistic Protestantism are not able to cope with the dangers that beset modern society.' This fact constitutes, in my judgment, the real religious peril of the hour. The equality of man,' exclaims Disraeli in Tancred, 'can only be accomplished by the sovereignty of God. The longing for fraternity can never be satisfied but under the sway of a common Father.'

### DANGEROUS RIVAL.

"Let the modern Christian Church settle down quietly to a blind acquiescence in things as they are; let her ministers refuse to become moral guides in economics and in politics, as well as in religion; let them be silenced from the transgressions of the nation, and deaf to the cry of the multitude, and no man can contemplate the future, under such conditions, with any other emotion than that of despair. The hunger for a wider distribution of the fruits of labor and the envious ambition for power to wreak revenge on the privileged classes are passions that animate far too many.

"But certain it is that the workingman will be detached in increasing numbers from the churches if the ideal of modern religion is stripped of its economic and political elements. With rare exceptions, the advocates for social progress are propagating their opinions outside the church. The feeling spreads that the church is the friend of the established order and the refuge of the power-possessing class. Ignorant of the splendid services which organized Christianity has rendered to the cause of the slave, the poor and the weak, and minimizing the value of her labors today. Able writers and eloquent speakers who have the ears of the multitude are gradually leading the masses to turn from the church as an effete, octogenarian and servile institution."

## HENRY W. GREEN IS URGED FOR BERTHS

(Continued from Page 1.)

of this city. Mr. Green's grandfather and father were Chancery Reporters in their respective days. Mr. Green is president of the Lawrenceville school and a trustee of Princeton University. It is likely that he will have the backing of the Princeton influence, which is apt to count with the Chancellor, who is himself a Princeton alumnus and has a son a professor in the university.

### OTHER CANDIDATES.

Another very likely candidate is Deputy Supreme Court Clerk Charles M. Codding, who hails from the Chancellor's home county, Union. Mr. Codding is very close personally to former Governor Foster M. Voorhees, who studied law with Chancellor Magie and afterwards, when he had been elected Governor, named his old preceptor as Chancellor. In addition Mr. Codding has the support of many of the Republican leaders of the state.

The name of John M. Dickinson, son of that ate General Dickinson, has also been presented to the Chancellor as a candidate for the place. Mr. Dickinson is a law partner of Judge G. D. W. Vroom, the Supreme Court reporter, but inasmuch as he is a Democrat, it is not considered probable that he will be named.

Others whose names have been spoken of in connection with the place are former Speaker Benjamin F. Jones of Essex county, Stephen C. Cook of this city, Edmund Wilson of Red Bank, Assemblyman Harry S. Scovel of Camden and Senator John G. Horner of Burlington county. It is possible that the chancellor will make the appointment next Tuesday.

## NOT SO COLD AS MANY FOLK BELIEVE

"This weather is twice as cold as last winter," and the statements are being made just now and there's every chance that a lively argument will result. For the general information of persons interested in weather the Times presents these official figures furnished by E. R. Cook and showing the mean and minimum temperatures of January 1904 and 1905, and December 1903 and 1904:

January, 1904—Mean temperature, 21 degrees; minimum, 4 degrees below zero.

January, 1905—Mean temperature, 31 degrees; minimum, 1 degree above zero.

December, 1903—Mean temperature, 34 degrees; minimum, 10 degrees above zero.

December, 1904—Mean temperature, 32 degrees; minimum, 11 degrees above zero.

These statistics show that the weather of December and January of the preceding year was colder than in the same months just passed.

## TRINITY METHODISTS AID FAMILY IN DISTRESS

The Rev. C. H. Miller and members of the Trinity M. E. Church will look after the immediate wants of the family of Joseph Riehl, 64 Rose street.

The family has been found to be in dire want. The Rev. Mr. Elder states that he knows Mr. Riehl to be a worthy man who has had considerable trouble.

A GUARANTEED CURE FOR PILES
Itching, Blind, Bleeding, Protruding Piles. DRUGGISTS refund money if PAZO OINTMENT fails to cure, 6 to 14 days. 50c

## PATRICK CONNELLY IS BURIED TODAY

### Many Persons Attend Services in Sacred Heart Church—Other Deaths.

The funeral of Patrick Connelly was held this morning at 8 o'clock from his late home, 186 Lamberton street, with solemn requiem high mass at 8 o'clock at the Church of the Sacred Heart.

The Rev. Father Hagel celebrated the mass and he was assisted by Father McKean as deacon and Father Capon as sub-deacon. Father Reddan was in the sanctuary.

Mr. Connelly's funeral was one of the largest ever held in the Church of the Sacred Heart, and besides a host of friends delegations were present at the services from the Holy Name and Sacred Heart Societies of the parish.

Mr. Connelly died Wednesday. He was 82 years of age and was one of the best known men of South Trenton.

Interment was made at St. John's cemetery under the direction of Thomas Crawford, Jr. The bearers were: John McQuade, Martin Fretts, Michael McDonough, James Hogan, Martin Keegan and Timothy Connelly.

## FUNERALS

### Mrs. Christina Koch.

The funeral of Katie Koch, wife of Christian Koch and daughter of Mary and the late John Cook, was held this morning at 8:30 o'clock from her late home, 128 Klarg avenue, with requiem high mass at 9:30 o'clock at St. Joseph's Church.

The services were attended by delegations from Trenton Council, No. 26, O. of U. J. Bavarian Society, Onalaska Tribe, No. 114, I. O. R. M.; Bobepperman Section, B. W. V.

Mrs. Koch died Tuesday. She was 48 years of age. Interment was made at Lady of Lourdes cemetery under the direction of Frank Ulirich.

### Mrs. Jane Hollingshead.

The funeral services of Jane Hollingshead were held last evening at the home of Harry M. Fisher, her son-in-law, 466 Calhoun street, and were conducted by the Rev. C. H. Elder of Trinity Methodist Episcopal Church. Mrs. Hollingshead was a member of Trinity Church. She was the mother of Mrs. William H. Schenck. She leaves six daughters. She was the widow of Samuel Hollingshead and was 84 years of age. Services were held at Kingston Methodist Episcopal Church this morning at 10 o'clock. Interment was at Kingston cemetery, under the direction of Poulson & Coleman.

### Mrs. Ira Cross.

Mrs. Mary E. Cross, 48 years of age, died yesterday at her home at Crosswicks. She was the wife of Ira Cross and was widely known in her home town. The funeral will be held Monday afternoon from her late home. Interment will be in Crosswicks under the direction of W. J. Seal of Crosswicks.

### William R. Boss.

William R. Boss, one of the best-known residents of the old Chambersburg district, died yesterday after an illness of a few weeks. Death was due to a complication of diseases. Mr. Boss was an engineer in the Roebling plant and had been connected with the firm for many years. He was a well-known member of South Trenton Lodge and South Trenton Encampment, I. O. O. F., and of the In-and-Out Club. He

## WICOFF'S GO TO

Counsel in the against Lincoln summing up this Court just before adjournment and tinued this afternoon made the closing and this afternoon is pleading for th Judge Bergen and he is thought reached this even

Mr. Wicoff is s he alleges is the deeds of a sale of a farm he leased ton at Cranbury, lays claim to the dated 1828.

### HURLEY CA

The case of Co against the Trentlantic Railroad w day afternoon u when it will be co Reed.

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tever CLOTHING We Have Goes at Half Price
ome in and see if we can fit and suit you. The price won't prevent you from buying.

Furniture Exposition of Grand Rapids
sferred to Trenton!
better parts—the choicest selections—the cream, as it were, of the handsomest Furniture
d can produce. Mr. Brand is acknowledged to be an expert in Furniture buying, and he is
imself proud this season. Never did we receive such gorgeousness, such elegant taste for
a home furnishing—never such an opportunity to please the public in low prices. The
adership for fine Furniture is safe this year; there's little fear of any of our competitors
ing us in the race for supremacy. The greater part will be sold while our first anniversary
s place. Little regard is paid for profits. We want to sell, and sell we will.

EXTENSION TABLES
Of solid oak, polish finish—either style of plain, fancy

HALL RACKS

Bring in your Sales Slips if you have any dated January 12.
We'll pay you cash for them—just exactly the amount of money you spent to make that purchase. The "Lucky 1 sy" has been selected for February and everybody has an equal chance of securing their money back. February has but 28 jealous days and if you happen to strike the right date, your goods will cost you nothing.
In DECEMBER it was the 6th
In JANUARY it was the 30th
In FEBRUARY it will be? ? ?

BIG MONEY SAVINGS IN SM
Economize when you can—take advantage of opportu
Here's where you save—half in some cases—third in o
15c box Garmond's Toilet Talcum Powder, for 8c
24 papers of Hair Pins, for 9c
3 5c large Shell Hair Pins, for 9c
Large box of Hair Pins, worth 25c, for 9c
Aluminum Hair Pins, box quantity, 2 doz. for 9c
Unbreakable Lace Pins, all colors, 2 cards for 9c
3 5c cards Toilet Pins, black and white, 9c
10 papers American Pins for 9c
4 papers Pins, containing 1,600 Pins, 9c
12c Knobs and Vegetable Brushes, 9c
2 boxes Chinese Tracing Wax, 9c
2 Asbestos Iron Holders, 9c
Shell and Amber Back Combs, worth 15c, 9c
Shell and Amber Side Combs.
Silk Crocheted Tidying Black and wh
Stocked Pearl Buttons, w
30-yd. spool Sewing Silk,
Bolton-Hole Twist, 4 s
3 pieces 5c Dress Binding
Angora Dress Binding, p
4 spools Basting Cotton,
1 doz. extra quality Hat
and Black, wo
2 papers Best American
Unbreakable Fine Combs

...ose last Tuesday. He was tall and ...n, and about 25 years of age. He remained in this city one day. Inquiries at ...e other hotels found that no George H. ...ood had registered. The police say a ...an named George H. Wood was committed to State Prison from this city a ...mber of years ago for robbery.

# ABOR MAKES MOVE FOR PEACE CONFAB

An effort is to be made by the ...ilding Trades Council for a conference between members of the Manufacturers and Employers Association ...d a committee of the council for the ...rpose of discussing the present "open ...op" matter. The idea of the conference is to have a complete understanding of both sides of the trouble with a ...w of adjustment.

## THREE PERSONS ARE HELD FOR DEATH OF YOUNG GIRL

Publishers' Press Direct Wire.
...rsey City, Feb. 4.—On charges of manslaughter, Dr. Sigmund E. Sondy, William C. Bowen and Mrs. Catherine Botsford were arrested here today, a few hours ...ore Miss Annie Van Doren, 18 years ... of No. 12 Schuyler Court, Bayonne, ..., in Christ Hospital. It is charged three persons are responsible for an ...rtion which caused Miss Van Doren's ...th. Judge Manning refused to accept ...

### Charles Skelton School.

...iss Blackman's class received the ...uary banner for the best record for ...ndance and absence of tardy ...ks.

...ment for the Dry Five Bargain Store, which will be used in newspaper advertising.

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**Whatever CLOTHING We Have Goes at Half Price**

Come in and see if we can fit and suit you. The price won't prevent you from buying.

## The Furniture Exposition of Grand Rapids Transferred to Trenton!

The better parts—the choicest selections—the cream, as it were, of the handsomest Furniture the world can produce. Mr. Brand is acknowledged to be an expert in Furniture buying, and he is doing himself proud this season. Never did we receive such gorgeousness, such elegant taste for beauty in home furnishing—never such an opportunity to please the public in low prices. The Brand leadership for fine Furniture is safe this year; there's little fear of any of our competitors outstripping us in the race for supremacy. The greater part will be sold while our first anniversary sale takes place. Little regard is paid for profits. We want to sell, and sell we will.

**EXTENSION TABLES**

Of solid oak, polish finish—either style of plain, fancy or pedestal bases.

| | |
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| $8.00 Extension Tables, | $5.00 |
| 9.50 Extension Tables, | 6.00 |
| 12.00 Extension Tables, | 8.00 |
| 15.50 Extension Tables, | 9.50 |

**HALL RACKS From $5.75**

COUCH




DE16695

TT
Feb. 4, 1905
"King James' Deed Shows
Delaware Jersey Dispute"



DE16696

From the collections of the Historical Society of Delaware, 505 Market St., Wilmington, DE 19801
302-655-7161 www.hsd.org

HERBERT H. WARD
ANDREW C. OBER
Long Distance Telephone 13-87

February 11th 1905.

Hon. George H. Bates,
3002 Lehigh Avenue,
Philadelphia.

Dear Mr. Bates:

Our General Assembly yesterday passed a joint resolution of precisely similar terms to that of two years ago, with the addition of the words "and bay" at the end, appointing Governor Lea, Attorney General Richards, yourself and myself as commissioners to confer with the commissioners of New Jersey to frame a compact settling the boundary dispute. Inasmuch as our General Assembly may adjourn by the first of March, it is important that we should get promptly to work as a joint commission to frame this compact and get it returned in proper shape to our General Assembly, so that we may not be caught in the closing hours with it on our hands as we were caught two years ago. I have notified Attorney General McCarter of the passing of this resolution. New Jersey passed its resolution on Tuesday of this week.

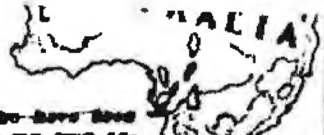
I suppose the primary thing will be to secure a place for our meetings. The place where we met before was very convenient and central. Have you any idea whether we can secure the same place again ? If not, I presume we can sit in the room in the United States Court House where we took our testimony for several days. Kindly give me your ideas on this subject at once. I think the sentiment of the General Assembly is at present very favorable to the adoption of any reasonable agreement between the two states.

Yours very truly,

H. H. Ward

Consul General to Australia, writes:
*Peruna Medicine Co., Columbus, Ohio:*

*Gentlemen:—"The use of your Peruna as a remedy or cure for catarrh by many of my friends who have been benefited by the same, as well as my own experience as to its efficacy and good tonic properties causes me to recommend it to all persons, and you are at liberty to use this endorsement and my photograph if it will give any force to same."—James M. Morgan.*




will also prove a more [illegible] of ailments.

If you do not derive prompt and satisfactory results from the use of Peruna, write at once to Dr. Hartman, giving a full statement of your case and he will be pleased to give you his valuable advice gratis.

Peruna can be purchased at any first-class drug store for $1.00 per bottle.

Address Dr. Hartman, President of The Hartman Sanitarium, Columbus, O.

John G. Gray in this city for several days.

Miss [illegible] will sing at a [illegible] to be given by the Crescent Glee Club on February [illegible] at St. John's Parish House. She will be accompanied by [illegible] August Wegler.

[illegible] Leslie Barker is visiting his parents in [illegible].

### Townsend

Special to The Evening Journal.

Townsend, Feb. 11.—Mrs. W. T. [illegible] was a Middletown visitor Thursday.

[illegible] has returned to her home in Wilmington after a visit with relatives here.

John [illegible] spent Thursday in Wilmington.

Mrs. Retta Bradley has returned home after spending several days with relatives in Philadelphia and Camden.

Miss [illegible] Holden of [illegible] is spending several days as the guest of Miss Mary Manes.

Miss Agnes Atwell of near town is spending the week with Miss Lucy Beardsley.

Mrs. Robert Wilson spent Thursday with relatives in Middletown.

Superintendent A. R. Spaid of New Castle county schools was a recent visitor at the public school here.

Mrs. Richard Hodson and sons, Reynolds and Paul, have returned home from a visit with her sister, Mrs. James Wilson, in Smyrna.

Mrs. Harvey Taylor spent Friday as the guest of her parents, Mr. and Mrs. J. [illegible], of Middletown.

Mrs. Edward Graves and son Alfred, spent Wednesday with her parents, Mr. and Mrs. Alfred Green, of Middletown.

Mr. and Mrs. William Wright were Wilmington visitors on Thursday.

George M. Gutten, of Philadelphia, is visiting his family here.

George Watts visited friends in Middletown on Friday.

W. T. Devalinger, who has been sick at his home on Main street, is very much improved.

### To Address Odd Fellows.

W. C. Jason, president of Delaware State College, will address the Odd Fellows at Odd Fellows' Temple, 10th and Orange streets, February 12, 1905, at 2.30 p. m.

Remember the F. O. E. ball, Feb. 15.

### IT IS SERIOUS.

Some Wilmington People Fail to Realize the Seriousness

The constant aching of a bad back
The weariness, the tired feeling
The pains and aches of kidney ills
Are serious—if neglected
[illegible]
A Wilmington [illegible]

[illegible]

# PLAN TO SETTLE THE BOUNDARY DISPUTE

## Legislature Adopts Joint Resolution Looking to an Amicable Adjustment

Special to The Evening Journal.

Dover, Feb. 11.—In order to settle the long standing boundary dispute over Delaware and New Jersey's fishing grounds, the Legislature yesterday passed a joint resolution which will give New Jersey an opportunity to amicably settle the controversy.

The resolution, which was submitted by Ex-Attorney General Ward during his address to the members of the General Assembly yesterday, reads:

"Be it Resolved, by the Senate and House of Representatives of the State of Delaware in General Assembly met:

"That Preston Lea, Governor; Robert H. Richards, attorney-general, and George H. Bates, special counsel, be and they are hereby appointed and constituted Commissioners of the State of Delaware to confer with like commissioners representing the State of New Jersey, for the purpose of framing a compact or agreement between the said States and legislation consequent thereon, looking to the amicable termination of the suit between said States now pending in the Supreme Court of the United States and the final adjustment of all controversies relating to the boundary line between said States and to their respective rights in Delaware river and bay."

The resolution passed both Houses, and will be sent to Governor Lea for his approval.

Both States have been obliged to spend large sums of money in the struggle to decide the eastern boundary of William Penn's twelve-mile circle from the city of New Castle, and now that an expenditure of $[illegible] confronts the State of Delaware, decisive action will be taken.

The dispute will cost more than it is worth, so far as immediate results are concerned. New Jersey has carried the fight to the United States Supreme Court in her contention to secure control of the Eastern channel of the Delaware for her fishermen. Francis Rawle, Jr., of Philadelphia, is taking testimony in the case, which has been in dispute since 18[illegible]. He recently heard a number of prominent witnesses in Wilmington.

### SIGNAL TOWER BURNED

Sparks From a Passing Locomotive Set Fire to Structure.

[illegible]

### Adam's Stolen Rib.

In one of the many and varied comments on the creation of woman in the Talmud the Emperor Hadrian is introduced as conversing with Rabbi Gamaliel on several religious [illegible]. With the object of casting ridicule on the Bible, Hadrian exclaimed, "Why, your God is represented [illegible] as a thief! He surprised Adam in his sleep and robbed him of one of his ribs."

The rabbi's daughter, who was present, craves permission to reply to the emperor. This is granted her. "But first let me implore thy [illegible] protection, puissant sire!" she [illegible]. "A grave outrage has been perpetrated on our house." "What has caused it? [illegible] any harm on the [illegible] of a friend?" asked the sovereign.

"Under cover of the night an audacious thief broke into our house, took a silver flagon from our closet and left a golden one in its stead." "What a welcome thief!" cries Hadrian. "Would that such robbers might visit my palace every day!" "And was not the Creator even such a thief as this," archly rejoins the blushing damsel, "who deprived Adam of a rib and in lieu thereof gave him a loving, lovely bride?"

### "Dixie."

No other song has ever touched the hearts of all the people of this land as "Dixie" touches them. During the war "John Brown's Body" swept the heartstrings of the north and their brave "boys in blue." The war has passed and the song is passing, is already much of a memory. But "Dixie" is more vibrant with life today than it was when it cheered the lean and hungry legions that were battling for the "lost cause." It has not only survived the war, but since then it has conquered the conquerors and echoes in the hearts of those that loved the blue as in the hearts of those that loved the gray. It has the magic of the "Marseillaise" in it. But it is without its clarion-call that excited the red blood of strife. It is gay, sweet, serene, indefatigable. It may not be great music, but it has the quality of all that counts in this world—survival—and it is one of those ballads of a nation that the very wise man reckoned as more powerful than laws.—Indianapolis News.

### When They Registered "And Lady."

"Some weeks ago I had an opportunity of inspecting the hotel register of a Niagara Falls hotel of the years 18[illegible]," said a Milwaukee man. "Even at that time the falls seem to have been a favorite resort for [illegible] [illegible] at that time.

"The [illegible] [illegible]

DE04431

Even. Journal, 2/11/05, p.5

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Evening Journal

2/11/1905

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# LAWS

OF THE 521

# STATE OF DELAWARE,

PASSED AT A

SPECIAL SESSION OF THE GENERAL ASSEMBLY

COMMENCED AND HELD AT DOVER,

ON THURSDAY, DECEMBER 29TH, A. D. 1904

AND

IN THE YEAR OF THE INDEPENDENCE OF THE UNITED STATES THE ONE HUNDRED AND TWENTY-NINTH.

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PUBLISHED BY AUTHORITY.

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VOLUME XXIII—PART I.

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1905:
THE DELAWAREAN PRINT,
DOVER, DEL.

DE04492

RESOLUTIONS.

## CHAPTER 216.

**Joint Resolution relating to the Boundary controversy between the States of New Jersey and Delaware.**

*Be it resolved by the Senate and House of Representatives of the State of Delaware in General Assembly met:*

Appointment of Commissioners of State of Delaware to frame a compact with Commissioners of New Jersey.

That Preston Lea, Governor, Robert H. Richards, Attorney General, Herbert H. Ward and George H. Bates, special counsel, be and they hereby are appointed and constituted Commissioners of the State of Delaware to confer with like commissioners representing the State of New Jersey, for the purpose of framing a compact or agreement between the said states and legislation consequent thereon, to be submitted to the legislatures of said two states for action thereon, looking to the amicable termination of the suit between said states now pending in the Supreme Court of the United States and the final adjustment of all controversies relating to the boundary line between said states and to their respective rights in the Delaware River and Bay.

Approved, February 13, A. D. 1905.

PLAINTIFFS EXHIBIT NO. 161



(p. 653) JOINT RESOLUTIONS.

Joint Resolution No. 1.

Joint Resolution relating to the boundary controversy between the States of New Jersey and Delaware.

BE IT RESOLVED *by the Senate and General Assembly of the State of New Jersey:*

Edward C. Stokes, Governor, Robert H. McCarter, Attorney-General, Franklin Murphy and Chauncey G. Parker, be and they hereby are appointed and constituted commissioners of the State of New Jersey to confer with like commissioners representing the State of Delaware for the purpose of framing a compact or agreement between the said states and legislation consequent thereon to be submitted to the legislatures of said two states for action thereon, looking to the amicable termination of the suit between said states now pending in the Supreme Court of the United States and the final adjustment of all controversies relating to the boundary line between said states and to their respective rights in the Delaware river and bay.

This joint resolution shall take effect immediately.

Approved February 14, 1905.

PLAINTIFFS EXHIBIT NO.

33

*Minutes of the Votes and Proceedings of the One Hundred and Twenty-Ninth General Assembly of the State of New Jersey, Trenton, 1905, pp. 456-461, (March 1, 1905)*

A message was received from the Governor by the hands of his Secretary, as follows:

EXECUTIVE DEPARTMENT,
TRENTON, March 1st, 1905.

*To the Speaker and Members of the House of Assembly:*

I herewith transmit the report of the action of the Commissioners appointed under Joint Resolution of the State of New Jersey, approved February 14th, 1905, and the Commissioners representing the State of Delaware, for the purpose of framing a compact between the said States and legislative action thereon, looking to an amicable termination of the suit between the two States now pending in the Supreme Court of the United States and a final adjustment of all controversy relating to the boundary line between this State and Delaware, and to their respective rights in the Delaware river and bay.

This report, covering the compact agreed upon by the Commissioners of the States of New Jersey and Delaware, and a proposed bill to make the same effective, is respectfully submitted for your consideration and action.

E. C. STOKES.

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59TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { DOCUMENT No. 43.

# AGREEMENT BETWEEN THE STATES OF NEW JERSEY AND DELAWARE.

## MESSAGE

FROM THE

# PRESIDENT OF THE UNITED STATES,

TRANSMITTING

**A CERTIFIED COPY OF AN ACT TO RATIFY AND CONFIRM A CERTAIN COMPACT OR AGREEMENT BETWEEN THE STATES OF NEW JERSEY AND DELAWARE.**

DECEMBER 5, 1905.—Read; referred to the Committee on the Judiciary and ordered to be printed.

*To the Senate and House of Representatives:*

I transmit herewith, for action by the Congress thereon, a certified copy of an act passed by the general assembly of the State of Delaware entitled "An act to ratify and confirm a compact or agreement between the States of New Jersey and Delaware respecting the Delaware River and Bay and to authorize the execution thereof," which was submitted to me by Hon. Preston Lea, governor of the State of Delaware, in pursuance of the mandate of the law.

THEODORE ROOSEVELT.

THE WHITE HOUSE, *December 5, 1905.*

STATE OF DELAWARE, EXECUTIVE DEPARTMENT.
*Dover, Del., November 9, 1905.*

DEAR SIR: Pursuant to the mandate of the law I have the honor of transmitting to you a certified copy of an act entitled "An act to ratify and confirm a compact or agreement between the States of New Jersey and Delaware respecting the Delaware River and Bay and to authorize the execution thereof," and respectfully request that said act be communicated to Congress for its action thereon.

*Respectfully, yours,*

PRESTON LEA,
*Governor.*

To His Excellency THEODORE ROOSEVELT,
*President.*

DE00025

AN ACT to ratify and confirm a compact or agreement between the States of New Jersey and Delaware respecting the Delaware River and Bay and to authorize the execution thereof.

Whereas by joint resolution of the legislature of the State of New Jersey, approved February 14th, 1905, Edward C. Stokes, governor, Robert H. McCarter, attorney-general, Franklin Murphy, and Chauncey G. Parker were appointed and constituted commissioners of the State of New Jersey to confer with like commissioners representing the State of Delaware for the purpose of framing a compact or agreement between the said States and legislation thereon, to be submitted to the legislatures of the said two States for action thereon, looking to the amicable termination of the suit between said two States now pending in the Supreme Court of the United States, and the final adjustment of all controversies relating to the boundary line between said States and to their respective rights in the Delaware River and Bay; and

Whereas by like joint resolution of the general assembly of the State of Delaware, approved February 13, 1905, Preston Lea, governor; Robert H. Richards, attorney-general; Herbert H. Ward, and George H. Bates were appointed to represent the said State as commissioners to confer with the commissioners of the State of New Jersey, for the purpose before recited; and

Whereas the commissioners of the said two States, having duly conferred as directed by said resolutions, have framed and submitted to this general assembly a proposed compact or agreement between the said States; and

Whereas the compact or agreement so framed and submitted is in the words following, that is to say:

COMPACT BETWEEN THE STATE OF NEW JERSEY AND THE STATE OF DELAWARE RELATING TO THE BOUNDARY CONTROVERSY BETWEEN SAID STATES.

1. Whereas a controversy hath heretofore existed between the States of New Jersey and Delaware relative to the jurisdiction of such portion of the Delaware River as is included within the circle of twelve-mile radius, an arc of which constitutes the northern boundary of the State of Delaware, and it is the mutual desire of said States to so settle and determine such controversy as to prevent future complications arising therefrom; and

Whereas there is now pending in the Supreme Court of the United States a cause wherein the said State of New Jersey is the complainant and the said State of Delaware is the defendant, in which cause an injunction has been issued against the State of Delaware restraining the execution of certain statutes of the State of Delaware relating to fisheries in said river, which said litigation hath been pending for twenty-seven years and upwards; and

Whereas for the purpose of adjusting the differences between the said two States arising out of said conflict of jurisdiction, Edward C. Stokes, Robert H. McCarter, Franklin Murphy, and Chauncey G. Parker have been appointed commissioners on the part of the State of New Jersey by joint resolution of the legislature of said State, and Preston Lea, Robert H. Richards, Herbert H. Ward, and George H. Bates have been appointed commissioners on the part of the State



of Delaware by joint resolution of the general assembly o
State, to frame a compact or agreement between the said Stat
legislation consequent thereon, to be submitted to the legislatu
said two States for action thereon, looking to the amicable te
tion of said suit between said States now pending in the Supreme
of the United States, and the final adjustment of all controver
lating to the boundary line between said States, and to their res
rights in the Delaware River and Bay: Now therefore,

The said State of New Jersey, by its commissioners above
and the said State of Delaware, by its commissioners above nam
hereby make and enter into a compact or agreement between said
as follows:

ARTICLE I. Criminal process issued under the authority of th
of New Jersey against any person accused of an offence com
upon the soil of said State, or upon the eastern half of said De
River, or committed on board of any vessel being under the ex
jurisdiction of that State, and also civil process issued und
authority of the State of New Jersey against any person domi
that State, or against property taken out of that State to eva
laws thereof, may be served upon any portion of the Delaware
between said States from low-water mark on the New Jersey s
low-water mark on the Delaware shore, except upon Reedy a
Patch islands, unless said person or property shall be on board
sel aground upon or fastened to the shore of the State of Delaw
the shores of said islands, or fastened to a wharf adjoining the
unless such person shall be under arrest or such property s
under seizure by virtue of process or authority of the State of De

ARTICLE II. Criminal process issued under the authority
State of Delaware against any person accused of an offence com
upon the soil of said State, or upon the western half of said De
River, or committed on board of any vessel being under the ex
jurisdiction of that State, and also civil process issued under
thority of the State of Delaware against any person domiciled
State, or against property taken out of that State to evade t
thereof, may be served upon any portion of the Delaware River
said States from low-water mark on the Delaware shore to low
mark on the New Jersey shore, unless said person or proper
be on board a vessel aground upon or fastened to the shore of th
of New Jersey, or fastened to a wharf adjoining thereto, or unl
person shall be under arrest or such property shall be under
by virtue of process or authority of the State of New Jersey.

ARTICLE III. The inhabitants of the said States of Delaw
New Jersey shall have and enjoy a common right of fishery th
out, in, and over the waters of said river between low-water m
each side of said river between the said States, except so far a
State may have heretofore granted valid and subsisting privat
of fishery.

ARTICLE IV. Immediately upon the execution hereof the
ture of the State of New Jersey shall appoint three commissi
confer with three commissioners to be immediately appointed
general assembly of the State of Delaware for the purpose of
uniform laws to regulate the catching and taking of fish in th
ware River and Bay between said two States, which said
sioners for each State, respectively, shall, within two years f

date of their appointment, report to the legislature of each of said States the proposed laws so framed and recommended by said joint commission. Upon the adoption and passage of said laws so recommended by the respective legislatures of said two States said laws shall constitute the sole laws for the regulation of the taking and catching of fish in the said river and bay between said States. Said laws shall remain in force until altered, amended, or repealed by concurrent legislation of the said two States. Said commissioners shall also ascertain the dividing line between said river and bay, and upon each of the shores of said two States where said dividing line extended shall intersect the same, shall, at the joint expense of said States, erect a suitable monument to mark the said dividing line. Said dividing line between said monuments shall be the division line between the said river and bay for the interpretation of and for all purposes of this compact, and of the concurrent legislation provided for therein.

The faith of the said contracting States is hereby pledged to the enactment of said laws so recommended by said commissioners, or to such concurrent legislation as may seem judicious and proper in the premises to the respective legislatures thereof.

Each State shall have and exercise exclusive jurisdiction within said river to arrest, try, and punish its own inhabitants for violation of the concurrent legislation relating to fishery herein provided for.

ARTICLE V. All laws of said States relating to the regulation of fisheries in the Delaware River not inconsistent with the right of common fishery hereinabove mentioned shall continue in force in said respective States until the enactment of said concurrent legislation as herein provided.

ARTICLE VI. Nothing herein contained shall affect the planting, catching, or taking of oysters, clams, or other shell fish, or interfere with the oyster industry as now or hereafter carried on under the laws of either State.

ARTICLE VII. Each State may, on its own side of the river, continue to exercise riparian jurisdiction of every kind and nature, and to make grants, leases, and conveyances of riparian lands and rights under the laws of the respective States.

ARTICLE VIII. Nothing herein contained shall affect the territorial limits, rights, or jurisdiction of either State of, in, or over the Delaware River, or the ownership of the subaqueous soil thereof, except as herein expressly set forth.

ARTICLE IX. This agreement shall be executed by the said commissioners when authorized to do so by the legislatures of the said States. It shall thereupon be submitted to Congress for its consent and approval. Upon the ratification thereof by Congress it shall be and become binding in perpetuity upon both of said States; and thereupon the suit now pending in the Supreme Court of the United States, in which the State of New Jersey is complainant and the State of Delaware is defendant, shall be discontinued without costs to either party and without prejudice. Pending the ratification hereof by Congress said suit shall remain in statu quo.

Done in two parts (one of which is retained by the commissioners of Delaware, to be delivered to the governor of that State, and the other one of which is retained by the commissioners of New Jersey, to be delivered to the governor of that State) this —— day of ——, in the year of our Lord one thousand nine hundred and five.



*Therefore, Be it enacted by the senate and house of represen*
*the State of Delaware in general assembly met:*

SECTION 1. The foregoing compact or agreement, and eve
matter, and thing therein contained, be, and the same is hereby,
ratified, and confirmed as and for the act and deed of the State
ware, and the commissioners of the said State are hereby a
and empowered, on its behalf, to execute the same in duplics
deliver one copy thereof to the commissioners of the Stat
Jersey.

SECTION 2. It shall be the duty of the governor, at or b
next session of Congress of the United States, to transmit a
tified copy of this act to the President of the United States,
request that it be communicated to Congress for its action th

Passed at Dover the seventeenth day of March, A. D. 190

ISAAC T. PARKER,
*President of the*
WM. D. DENNEY,
*Speaker of the*

Approved this the twentieth day of March, A. D. 1905.

PRESTON L
*Go*

STATE OF DELAWARE.

OFFICE OF SECRETARY OF STATE.

I, Joseph L. Cahall, secretary of state of the State of Del
hereby certify that the above and foregoing is a true and cor
of "An act to ratify and confirm a compact or agreement be
States of New Jersey and Delaware respecting the Delaware
Bay, and to authorize the execution thereof," approved M
A. D. 1905, as the same appears on file in this office.

In testimony whereof I have hereunto set my hand and off
at Dover, this thirtieth day of October, in the year of our
thousand nine hundred and five.

[SEAL.] JOSEPH L. CAHA
*Secretary of*

(44)

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Volume Page

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Pamphlet collection
Boundaries
c. 1900
Box 2

57th Congress, House of Representatives Agreement Between the States of New Jersey & Delaware 1903

DE00028

# STATE OF NEW JERSEY

OFFICE OF THE ATTORNEY GENERAL

ROBERT H. McCARTER
ATTORNEY GENERAL
EDWARD D. DUFFIELD
ASSISTANT ATTORNEY GENERAL

Trenton, N. J., March 6, 1906.

His Excellency, Edward C. Stokes,

Governor of New Jersey.

My dear Governor:-

I write to remind you of the importance of sending at once to Congress, pursuant to the provisions of the law of last winter, to which I have previously directed your attention, a copy of the proceedings taken by our Legislature in the New Jersey-Delaware matter. Not knowing whether you have already done this, I take this means of reminding you of the situation.

I saw by the paper this morning that the Supreme Court yesterday announced a suspension of the case for sixty days only, and it is therefore of the very greatest importance that all our energies be directed to securing Congressional action at once, so that the treaty between the States of New Jersey and Delaware will have been ratified by Congress by that time.

Very respectfully yours,

Robert H. McCarter

Attorney General.

625



DE02739

New Jersey State Archives
Governor Stokes Papers
Box 22 Folder 855

59TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 260.

# AGREEMENT BETWEEN THE STATES OF NEW JERSEY AND DELAWARE.

## MESSAGE

FROM THE

## PRESIDENT OF THE UNITED STATES,

TRANSMITTING

A COPY OF AN ACT ENTITLED "AN ACT TO RATIFY AND CONFIRM A COMPACT OR AGREEMENT BETWEEN THE STATES OF NEW JERSEY AND DELAWARE RESPECTING THE DELAWARE RIVER AND BAY, AND TO AUTHORIZE THE EXECUTION THEREOF."

MARCH 9, 1906.—Read; referred to the Committee on the Judiciary, and ordered to be printed.

*To the Senate and House of Representatives:*

In compliance with the request of the governor of the State of New Jersey, I transmit herewith, for the action of the Congress thereon, a certified copy of an act of the legislature of the State of New Jersey, entitled "An act to ratify and confirm a compact or agreement between the States of New Jersey and Delaware respecting the Delaware River and Bay, and to authorize the execution thereof."

THEODORE ROOSEVELT.

THE WHITE HOUSE, *March 9, 1906.*

STATE OF NEW JERSEY, EXECUTIVE DEPARTMENT,
*Trenton, N. J., March 7, 1906.*

SIR: I beg to inclose herewith a certified copy of an act of the legislature of the State of New Jersey known as chapter 42 of the laws of 1905, by the second section of which it is made the duty of the governor of this State to transmit a duly certified copy of the act in question to the President of the United States, with the request that it be communicated to Congress for its action thereon. As the matter referred to in this act of our legislature is of considerable public interest, both

DE00014

to the State of New Jersey and the State of Delaware, I will esteem it a favor if you will kindly communicate to Congress the fact that a certified copy of this act has been brought to your attention at your earliest opportunity.

I am, with great respect, very truly yours,

E. C. STOKES,
*Governor of New Jersey.*

The PRESIDENT,
*Washington, D. C.*

---

STATE OF NEW JERSEY.

CHAPTER 42. AN ACT to ratify and confirm a compact or agreement between the States of New Jersey and Delaware respecting the Delaware River and Bay, and to authorize the execution thereof.

Whereas by joint resolution of the legislature of the State of New Jersey, approved February fourteenth, nineteen hundred and five, Edward C. Stokes, governor; Robert H. McCarter, attorney-general; Franklin Murphy, and Chauncey G. Parker were appointed and constituted commissioners of the State of New Jersey to confer with like commissioners representing the State of Delaware for the purpose of framing a compact or agreement between the said States and legislation consequent thereon, to be submitted to the legislatures of the said two States for action thereon looking to the amicable termination of the suit between said two States now pending in the Supreme Court of the United States, and the final adjustment of all controversies relating to the boundary line between said States and to their respective rights in the Delaware River and Bay; and

Whereas by like joint resolution of the general assembly of the State of Delaware, approved February thirteenth, nineteen hundred and five, Preston Lea, governor; Robert H. Richards, attorney-general; Herbert H. Ward, and George H. Bates were appointed to represent the said State as commissioners to confer with the commissioners of the State of New Jersey for the purpose before recited; and

Whereas the commissioners of the said two States, having duly conferred as directed by said resolutions, have framed and submitted to this legislature a proposed compact or agreement between the said States; and

Whereas the compact or agreement so framed and submitted is in the words following—that is to say:

COMPACT BETWEEN THE STATE OF NEW JERSEY AND THE STATE OF DELAWARE RELATIVE TO THE BOUNDARY CONTROVERSY BETWEEN SAID STATES.

Whereas a controversy hath heretofore existed between the States of New Jersey and Delaware relative to the jurisdiction of such portion of the Delaware River as is included within the circle of twelve miles radius, an arc of which constitutes the northern boundary of the State of Delaware, and it is the mutual desire of said States to so settle and determine such controversy as to prevent future complications arising therefrom; and

Whereas there is now pending in the Supreme Court of the United States a cause wherein the said State of New Jersey is the complainant and the said State of Delaware is the defendant, in which cause an injunction has been issued against the State of Delaware restraining the execution of certain statutes of the State of Delaware relating to fisheries in said river, which said litigation hath been pending for twenty-seven years and upward; and

Whereas for the purpose of adjusting the differences between the said two States arising out of said conflict of jurisdiction, Edward C. Stokes, Robert H. McCarter, Franklin Murphy, and Chauncey G. Parker have been appointed commissioners on the part of the State of New Jersey by joint resolution of the legislature of said State, and Preston Lea, Robert H. Richards, Herbert H. Ward, and George H. Bates have been appointed commissioners on the part of the State of Delaware, by joint resolution of the general assembly of said State, to frame a compact or agreement between the said States and legislation consequent thereon, to be submitted to the legislatures of said two States for action thereon, looking to the amicable termination of the said suit between said States now pending in the Supreme Court of the United States and the final adjustment of all controversies relating to the boundary line between said States, and to their respective rights in the Delaware River and Bay;

Now, therefore, the said State of New Jersey, by its commissioners above named, and the said State of Delaware, by its commissioners above named, do hereby make and enter into a compact or agreement between said States as follows:

ARTICLE I. Criminal process issued under the authority of the State of New Jersey against any person accused of an offense committed upon the soil of said State, or upon the eastern half of said Delaware River, or committed on board of any vessel being under the exclusive jurisdiction of that State, and also civil process issued under the authority of the State of New Jersey against any person domiciled in that State, or against property taken out of that State to evade the laws thereof, may be served upon any portion of the Delaware River between said States from low-water mark on the New Jersey shore to low-water mark on the Delaware shore, except upon Reedy and Pea Patch islands, unless said person or property shall be on board a vessel aground upon or fastened to the shore of the State of Delaware, or the shores of said islands, or fastened to a wharf adjoining thereto, or unless such person shall be under arrest or such property shall be under seizure by virtue of process or authority of the State of Delaware.

ARTICLE II. Criminal process issued under the authority of the State of Delaware against any person accused of an offense committed upon the soil of said State, or upon the western half of said Delaware River, or committed on board of any vessel being under the exclusive jurisdiction of that State, and also civil process issued under the authority of the State of Delaware against any person domiciled in that State, or against property taken out of that State to evade the laws thereof, may be served upon any portion of the Delaware River between said States from low-water mark on the Delaware shore to low-water mark on the New Jersey shore, unless said person or property shall be on board a vessel aground upon or fastened to the shore of the State of New Jersey, or fastened to a wharf adjoining thereto, or unless such person shall be under arrest, or such property shall be under seizure by virtue of process or authority of the State of New Jersey.

ARTICLE III. The inhabitants of the said States of Delaware and New Jersey shall have and enjoy a common right of fishery throughout, in and over the waters of said river between the low-water marks on each side of said river between the said States, except so far as either State may have heretofore granted valid and subsisting private rights of fishery.

ARTICLE IV. Immediately upon the execution hereof the legislature of the State of New Jersey shall appoint three commissioners to confer with three commissioners to be immediately appointed by the general assembly of the State of Delaware for the purpose of drafting uniform laws to regulate the catching and taking of fish in the Delaware river and bay between said two States, which said commissioners for each State respectively shall, within two years from the date of their appointment, report to the legislature of each of said States the proposed laws so framed and recommended by said joint commission. Upon the adoption and passage of said laws so recommended by the respective legislatures of said two States, said laws shall constitute the sole laws for the regulation of the taking and catching of fish in the said river and bay between said States. Said laws shall remain in force until altered, amended, or repealed by concurrent legislation of the said two States. Said commissioners shall also ascertain the dividing line between said river and bay, and upon each of the shores of said two States, where said dividing line extended shall intersect the same, shall, at the joint expense of said States, erect a suitable monument to mark the said dividing line. Said dividing line between said monuments shall be the division line between the said river and bay for the interpretation of and for all purposes of this compact and of the concurrent legislation provided for therein.

The faith of the said contracting States is hereby pledged to the enactment of said laws so recommended by said commissioners, or to such concurrent legislation as may seem judicious and proper in the premises to the respective legislatures thereof.

Each State shall have and exercise exclusive jurisdiction within said river to arrest, try, and punish its own inhabitants for violations of the concurrent legislation relating to fishery herein provided for.

ARTICLE V. All laws of said States relating to the regulation of fisheries in the Delaware River not inconsistent with the right of common fishery hereinabove mentioned shall continue in force in said respective States until the enactment of said concurrent legislation as herein provided.

ARTICLE VI. Nothing herein contained shall affect the planting, catching, or taking of oysters, clams, or other shellfish, or interfere with the oyster industry as now or hereafter carried on under the laws of either State.

ARTICLE VII. Each State may, on its own side of the river, continue to exercise riparian jurisdiction of every kind and nature, and to make grants, leases, and conveyances of riparian lands and rights under the laws of the respective States.

DE00016

ARTICLE VIII. Nothing herein contained shall affect the territorial limits, rights, or jurisdiction of either State of, in, or over the Delaware River, or the ownership of the subaqueous soil thereof, except as herein expressly set forth.

ARTICLE IX. This agreement shall be executed by the said commissioners when authorized to do so by the legislature of the said States. It shall thereupon be submitted to Congress for its consent and approval. Upon the ratification thereof by Congress it shall be and become binding in perpetuity upon both of said States; and thereupon the suit now pending in the Supreme Court of the United States, in which the State of New Jersey is complainant and the State of Delaware is defendant, shall be discontinued, without costs to either party and without prejudice. Pending the ratification hereof by Congress said suit shall remain in statu quo.

Done in two parts (one of which is retained by the commissioners of Delaware, to be delivered to the governor of that State, and the other one of which is retained by the commissioners of New Jersey, to be delivered to the governor of that State) this —— day of ——, in the year of our Lord one thousand nine hundred and five.

Therefore, *Be it enacted by the Senate and General Assembly of the State of New Jersey:*

1. The foregoing compact or agreement, and every clause, matter, and thing therein contained, be, and the same is hereby, adopted, ratified, and confirmed as and for the act and deed of the State of New Jersey, and the commissioners of the said State are hereby authorized and empowered on its behalf to execute the same in duplicate, and to deliver one copy thereof to the commissioners of the State of Delaware.

2. It shall be the duty of the governor, at or before the next session of the Congress of the United States, to transmit a duly certified copy of this act to the President of the United States, with the request that it be communicated to Congress for its action thereon.

3. This act shall take effect immediately.

Approved March 21, 1905.

STATE OF NEW JERSEY.

DEPARTMENT OF STATE.

I, S. D. Dickinson, secretary of state of the State of New Jersey, do hereby certify that the foregoing is a true copy of an act passed by the legislature of this State and approved by the governor the 21st day of March, A. D. 1906, as taken from and compared with the original now on file in my office.

In testimony whereof I have hereunto set my hand and affixed my official seal at Trenton this 7th day of March, 1906.

[SEAL.] S. D. DICKINSON, *Secretary of State.*

STATE OF NEW JERSEY.

I, Edward C. Stokes, governor of the State of New Jersey, do hereby certify that S. D. Dickinson, esq., who hath signed the annexed certificate, and whose official seal is thereto annexed, was, at the doing thereof, and now is, secretary of state of the State of New Jersey, duly appointed, commissioned, and sworn, and that full faith and credit are to be given to his official attestations; that the said signature is in the proper handwriting of the said S. D. Dickinson, and the seal his seal of office, and that the said certificate is in due form of law and by the proper officer.

In testimony whereof I have hereunto set my hand and caused the great seal of the State of New Jersey to be hereunto affixed, at the city of Trenton, in said State, this seventh day of March, in the year of our Lord one thousand nine hundred and six, and of the independence of the United States the one hundred and thirtieth.

[SEAL.] E. C. STOKES.

By the governor:

S. D. DICKINSON,
*Secretary of State.*

NO. 974 2 x + P. 6a
See for marked text.



A bill (H. R. 10914) granting an increase of pension to John Hamilton;

A bill (H. R. 7770) granting an increase of pension to Burgess Cole;

A bill (H. R. 11745) granting an increase of pension to James D. Billingsley;

A bill (H. R. 12280) granting an increase of pension to Joseph C. Grissom;

A bill (H. R. 12501) granting an increase of pension to J. Frederick Edgell;

A bill (H. R. 15611) granting an increase of pension to William Clough;

A bill (H. R. 13643) granting an increase of pension to Davis W. Hatch; and

A bill (H. R. 7890) granting an increase of pension to John E. Ball.

Mr. BULKELEY, from the Committee on Military Affairs, to whom was referred the joint resolution (S. R. 51) authorizing the Secretary of War to award the Congressional medal of honor to Peter R. Cupp, submitted an adverse report thereon; which was agreed to, and the joint resolution was postponed indefinitely.

He also, from the same committee, to whom was referred the bill (S. 2174) authorizing the Secretary of War to procure medals for the members or the legal heirs of the deceased members of the Worth Infantry and York Rifles, who were the first fully armed and equipped soldiers to do active service in response to President Lincoln's call for 75,000 volunteers, and for other purposes, submitted an adverse report thereon; which was agreed to, and the bill was postponed indefinitely.

Mr. LA FOLLETTE, from the Committee on Pensions, to whom were referred the following bills, reported them severally without amendment, and submitted reports thereon:

A bill (H. R. 1977) granting a pension to Emma C. Anderson;

A bill (H. R. 1967) granting an increase of pension to Joseph Baker;

A bill (H. R. 1908) granting an increase of pension to John Monroe;

A bill (H. R. 3225) granting an increase of pension to William R. Philbrick;

A bill (H. R. 1440) granting an increase of pension to Matilda H. Lawton;

A bill (H. R. 1460) granting an increase of pension to Charles W. Reneil; and

A bill (H. R. 10886) granting an increase of pension to Martha S. Campbell.

Mr. BRANDEGEE. I am directed by the Committee on Forest Reservations and the Protection of Game to submit a written report to accompany House joint resolution No. 82, for a report, etc., upon the preservation of Niagara Falls, heretofore reported by me.

The VICE-PRESIDENT. The report will be received and printed.

Mr. BRANDEGEE. I am directed by the Committee on Forest Reservations and the Protection of Game, to whom the subject was referred, to report an original bill.

The bill (S. 4953) for the purpose of acquiring national forest reserves in the Appalachian Mountains and White Mountains, to be known as the Appalachian Forest Reserve and the White Mountain Forest Reserve, respectively, was read twice by its title.

The VICE-PRESIDENT. The bill will be placed on the Calendar.

Mr. BRANDEGEE, from the Committee on Forest Reservations and the Protection of Game, to whom was referred the bill (S. 24) for the purchase of a national forest reserve in the White Mountains, to be known as the "National White Mountain Forest Reserve," reported adversely thereon, and the bill was postponed indefinitely.

He also, from the same committee, to whom was referred the bill (S. 493) for the purchase of a national forest reserve in the Southern Appalachian Mountains, to be known as the "National Appalachian Forest Reserve," reported adversely thereon, and the bill was postponed indefinitely.

Mr. FOSTER, from the Committee on Commerce, to whom was referred the amendment submitted by Mr. FULTON on the 13th ultimo, proposing to appropriate $400,000 for continuing the improvement at the mouth of Columbia River, intended to be proposed to the sundry civil appropriation bill, reported it with an amendment, and moved that it be printed, and, with the accompanying paper, referred to the Committee on Appropriations; which was agreed to.

Mr. MORGAN, from the Committee on Public Health and National Quarantine, to whom was referred the bill (S. 1830) making appropriation for the removal of the quarantine station at San Diego, Cal., and to acquire a new site, and for other purposes, reported it with amendments.

IMPROVEMENT OF MOUTH OF COLUMBIA RIVER.

Mr. FOSTER. I am directed by the Committee on Commerce, to whom the subject was referred, to report a bill (S. 4952) making an appropriation for the improvement of the mouth of the Columbia River; to which I call the attention of the Senator from Oregon [Mr. FULTON].

Mr. FULTON. Mr. President, as that bill carries an emergency appropriation, as the proposition is very strongly indorsed by the Engineering Department, and as the bill has been reported unanimously by the Committee on Commerce, I ask unanimous consent that it may be given immediate consideration.

The VICE-PRESIDENT. The Senator from Oregon asks unanimous consent for the present consideration of the bill just reported. Is there objection?

There being no objection, the bill was read the first time by its title, and the second time at length, as follows:

*Be it enacted, etc.*, That the sum of $400,000 be, and is hereby, appropriated, to be paid out of any money in the Treasury not otherwise appropriated, to be immediately available, and to be expended under the direction of the Secretary of War and the supervision of the Chief of Engineers, for continuing the improvement at the mouth of the Columbia River, Oregon and Washington, in accordance with the existing project.

The VICE-PRESIDENT. Is there objection to the present consideration of the bill?

There being no objection, the Senate, as in Committee of the Whole, proceeded to consider the bill.

The bill was reported to the Senate without amendment, ordered to be engrossed for a third reading, read the third time, and passed.

BILLS INTRODUCED.

Mr. FRYE introduced a bill (S. 4954) authorizing Capt. Ejnar Mikkelsen to act as master of an American vessel; which was read twice by its title, and referred to the Committee on Commerce.

Mr. BLACKBURN introduced a bill (S. 4955) for the relief of N. G. Pettit; which was read twice by its title, and referred to the Committee on Claims.

He also introduced a bill (S. 4956) to provide for the purchase of a site and the erection of a building thereon at Versailles, in the State of Kentucky; which was read twice by its title, and referred to the Committee on Public Buildings and Grounds.

Mr. GALLINGER introduced a bill (S. 4957) to correct the military record of Alexander J. MacDonald; which was read twice by its title, and referred to the Committee on Military Affairs.

Mr. ALGER introduced a bill (S. 4958) granting an increase of pension to William W. Duffield; which was read twice by its title, and referred to the Committee on Pensions.

Mr. PENROSE introduced a bill (S. 4959) to further the administration of justice; which was read twice by its title, and referred to the Committee on the Judiciary.

He also introduced a bill (S. 4960) to provide for the cancellation of certificates of naturalization fraudulently procured or improperly issued, and prescribing a penalty for the use of such canceled certificate or issuing a duplicate thereof; which was read twice by its title, and referred to the Committee on the Judiciary.

He also introduced a bill (S. 4961) granting an increase of pension to William Ickes; which was read twice by its title, and, with the accompanying papers, referred to the Committee on Pensions.

He also introduced a bill (S. 4962) to correct the military record of Jacob Rockwell; which was read twice by its title, and referred to the Committee on Military Affairs.

He also introduced a bill (S. 4963) to correct the military record of John Reighard; which was read twice by its title, and referred to the Committee on Military Affairs.

He also introduced a bill (S. 4964) for the relief of Thomas F. Walter; which was read twice by its title, and referred to the Committee on Military Affairs.

He also introduced a bill (S. 4965) authorizing the appointment of Harold L. Jackson, a captain on the retired list of the Army, as a major on the retired list of the Army; which was read twice by its title, and referred to the Committee on Military Affairs.

He also introduced a bill (S. 4966) providing for the promotion of assistant paymasters in the Navy; which was read twice by its title, and referred to the Committee on Naval Affairs.

He also introduced a bill (S. 4967) to establish additional aids to navigation in Delaware Bay and River; which was read twice by its title, and referred to the Committee on Commerce.

DE00018

Mr. ELKINS introduced a bill (S. 4968) to fix the time of holding the circuit and district courts for the northern district of West Virginia; which was read twice by its title, and, with the accompanying paper, referred to the Committee on the Judiciary.

Mr. LODGE introduced a bill (S. 4969) granting permission to Rear-Admiral C. H. Davis, United States Navy, to accept a silver cup and salver and silver punch bowl and cups tendered to him by the British and Russian ambassadors, respectively, in the name of their Governments; which was read twice by its title, and, with the accompanying paper, referred to the Committee on Foreign Relations.

He also introduced a bill (S. 4970) to amend section 3 of chapter 1140 of the United States Statutes at Large; which was read twice by its title, and referred to the Committee on the Judiciary.

He also (by request) introduced a bill (S. 4971) for the relief of certain claimants under the Geneva award; which was read twice by its title, and referred to the Committee on Finance.

Mr. PERKINS introduced a bill (S. 4972) granting an increase of pension to Sarah E. Hull; which was read twice by its title, and referred to the Committee on Pensions.

Mr. DICK. I introduce a bill for the senior Senator from Nebraska [Mr. MILLARD], who is detained in his committee room.

The bill (S. 4973) for the relief of Albert H. Raynolds was read twice by its title, and, with the accompanying papers, referred to the Committee on Indian Affairs.

Mr. CLAY introduced a bill (S. 4974) to execute the findings of the Court of Claims in the case of the estate of William M. Vaughan; which was read twice by its title, and referred to the Committee on Claims.

Mr. KEAN introduced a bill (S. 4975) giving the consent of Congress to an agreement or compact entered into between the State of New Jersey and the State of Delaware respecting the territorial limits and jurisdiction of said States; which was read twice by its title, and referred to the Committee on the Judiciary.

### AMENDMENTS TO BILLS.

Mr. SMOOT submitted an amendment proposing to appropriate $10,500 for the support and civilization of the Kaibab Indians in Utah, etc., intended to be proposed by him to the Indian appropriation bill; which was referred to the Committee on Indian Affairs, and ordered to be printed.

Mr. PENROSE submitted an amendment providing that officers of the Marine Corps with creditable records who served during the civil war and were retired prior to 1904, shall receive the full benefit of the act approved April 23, 1904, etc., intended to be proposed by him to the naval appropriation bill; which was referred to the Committee on Naval Affairs, and ordered to be printed.

Mr. ELKINS submitted eight amendments intended to be proposed by him to the bill (H. R. 12987) to amend an act entitled "An act to regulate commerce," approved February 4, 1887, and all acts amendatory thereof, and to enlarge the powers of the Interstate Commerce Commission; which were ordered to lie on the table, and be printed.

Mr. PERKINS submitted an amendment proposing to appropriate $10,000 for the eradication of pear blight in the State of California, intended to be proposed by him to the agricultural appropriation bill; which was referred to the Committee on Agriculture and Forestry, and ordered to be printed.

He also submitted an amendment proposing to appropriate $5,000 for the investigation of the hop industry of the Pacific coast, with special reference to growing, airing, and handling crops, intended to be proposed by him to the agricultural appropriation bill; which was referred to the Committee on Agriculture and Forestry, and ordered to be printed.

He also submitted an amendment proposing to appropriate $5,000 for the erection of a permanent rostrum in the national cemetery at the Presidio of San Francisco, Cal., for the convenience of the members of the Grand Army of the Republic, etc., intended to be proposed by him to the Army appropriation bill; which was referred to the Committee on Military Affairs, and ordered to be printed.

He also submitted an amendment proposing to appropriate $25,000 for the improvement of the grounds within the Presidio and other military reservations on the bay of San Francisco, intended to be proposed to the Army appropriation bill; which was referred to the Committee on Military Affairs, and ordered to be printed.

### POSTAGE ON CERTAIN PERIODICAL PUBLICATIONS.

Mr. STONE. A few days ago I gave notice that on Wednesday, the 14th instant, after the routine morning business, I would ask permission of the Senate to call up the resolution instructing the Committee on Post-Offices and Post-Roads to ascertain and determine whether the construction of the Post-Office Department of the law as to postage on certain publications of alumni of colleges as second-class matter, etc., is correct, etc., for the purpose of submitting some remarks thereon. I now ask unanimous consent that the time be changed from Wednesday, the 14th, to Thursday, the 15th.

The VICE-PRESIDENT. Without objection, the request of the Senator from Missouri is granted.

### REGULATION OF RAILROAD RATES.

Mr. RAYNER. I desire to give notice that on Wednesday, the 14th instant, after the routine morning business, I shall ask leave to submit some remarks on the bill H. R. 12987, known as the "railroad rate bill."

### DELAWARE RIVER AND BAY.

The VICE-PRESIDENT laid before the Senate the following message from the President of the United States; which was read, and, on motion of Mr. KEAN, was, with the accompanying papers, referred to the Committee on the Judiciary, and ordered to be printed:

*To the Senate and House of Representatives:*

In compliance with the request of the governor of the State of New Jersey, I transmit herewith, for the action of the Congress thereon, a certified copy of an act of the legislature of the State of New Jersey, entitled "An act to ratify and confirm a compact or agreement between the States of New Jersey and Delaware respecting the Delaware River and Bay, and to authorize the execution thereof."

THEODORE ROOSEVELT.

THE WHITE HOUSE, March 5, 1906.

### BOYDEN BILL REFERRED.

H. R. 15331. An act making appropriations for the current and contingent expenses of the Indian Department, for fulfilling treaty stipulations with various Indian tribes, and for other purposes, for the fiscal year ending June 30, 1907, was read twice by its title, and referred to the Committee on Indian Affairs.

### PRESIDENTIAL APPROVALS.

A message from the President of the United States, by Mr. B. F. BARNES, one of his secretaries, announced that the President had approved and signed the following acts:

On March 7, 1906:

S. 587. An act granting a pension to Mary J. Chenoweth;

S. 1738. An act granting a pension to Lena S. Penn;

S. 2377. An act granting a pension to Clara T. Leathers;

S. 8. An act granting an increase of pension to William M. Hall;

S. 75. An act granting an increase of pension to Urial J. Streeter;

S. 77. An act granting an increase of pension to Granville P. Mason;

S. 78. An act granting an increase of pension to Mary E. Blethen;

S. 79. An act granting an increase of pension to James F. Tilton;

S. 121. An act granting an increase of pension to John Cook;

S. 124. An act granting an increase of pension to Curtis B. McIntosh;

S. 125. An act granting an increase of pension to John E. Hadsall;

S. 127. An act granting an increase of pension to Anthony H. Crawford;

S. 136. An act granting an increase of pension to Sebastian Landner;

S. 139. An act granting an increase of pension to Frederick Le Hundra;

S. 176. An act granting an increase of pension to Benjamin F. Marsh;

S. 181. An act granting an increase of pension to Francis E. Stevens;

S. 196. An act granting an increase of pension to George P. Howe;

S. 201. An act granting an increase of pension to Lyman E. Farrand;

S. 207. An act granting an increase of pension to Marion F. Howe;

S. 213. An act granting an increase of pension to John M. Doorsch;

S. 476. An act granting an increase of pension to Emily Peterson;

S. 506. An act granting an increase of pension to James Wilson;

S. 533. An act granting an increase of pension to Francis M. Munson;

S. 566. An act granting an increase of pension to George Wiley;

DE00019

Mr. MORGAN. If an objection will carry that joint resolution over, Mr. President, I must object.

The VICE-PRESIDENT. Under objection, the joint resolution will lie over without prejudice.

BATTLE MOUNTAIN SANITARIUM RESERVE.

The bill (H. R. 15035) to set apart certain lands in the State of South Dakota, to be known as the Battle Mountain Sanitarium Reserve, was announced as next in order.

The bill was read.

Mr. ALLISON. Let that bill go over without prejudice.

The VICE-PRESIDENT. Under objection, the bill will lie over without prejudice.

PENALTY FOR CERTAIN OFFENSES IN THE DISTRICT.

The bill (S. 2877) increasing the penalty for certain offenses in the District of Columbia was announced as next in order.

Mr. GALLINGER. Let that bill go over. The other House acted on a similar bill yesterday and passed it with certain amendments, and doubtless it will soon be before the Senate.

The VICE-PRESIDENT. On the objection of the Senator from New Hampshire, the bill will lie over without prejudice.

JAMES A. RUSSELL.

The bill (S. 502) for the relief of James A. Russell was considered as in Committee of the Whole. It proposes to appropriate $100 to pay James A. Russell for transporting the mail on route No. 6531, from New Smyrna to Indian River, Florida, from January 1 to March 31, 1901.

The bill was reported to the Senate without amendment, ordered to be engrossed for a third reading, read the third time, and passed.

RIGHTS UNDER BERING SEA ARBITRATION AWARD.

The bill (S. 2286) to confer jurisdiction upon the circuit court of the United States for the ninth circuit to determine in equity the rights of American citizens under the award of the Bering Sea arbitration at Paris, and to render judgment thereon, was announced as next in order.

Mr. NELSON. Let that bill go over, Mr. President.

The VICE-PRESIDENT. Under objection, the bill will lie over.

KIOWA, ETC., INDIAN RESERVATIONS IN OKLAHOMA.

The bill (H. R. 431) to open for settlement 505,000 acres of land in the Kiowa, Comanche, and Apache Indian reservations, in Oklahoma Territory, was considered as in Committee of the Whole.

Mr. SPOONER. I desire to inquire whether the bill is recommended by the Secretary of the Interior? There is no report with it, except one of five lines. It is a House bill, however, and I suppose it is all right.

The bill was reported to the Senate without amendment, ordered to a third reading, read the third time, and passed.

MONUMENT TO JOHN PAUL JONES.

The bill (S. 635) for the erection of a monument to the memory of John Paul Jones was considered as in Committee of the Whole.

It proposes to appropriate $50,000 for the erection, in the city of Washington, D. C., of a statue to the memory of John Paul Jones; and for the purpose of procuring and erecting the statue, with a suitable pedestal, and for the preparation of a site.

The bill was reported to the Senate without amendment, ordered to be engrossed for a third reading, read the third time, and passed.

MONUMENT TO DOROTHEA-LYNDE DIX.

The joint resolution (S. R. 1) for the erection of a monument to the memory of Dorothea Lynde Dix, was considered as in Committee of the Whole.

It proposes to appropriate $10,000 for the purpose of preparing and improving a site and erecting and completing the erection of a monument to the memory of Dorothea Lynde Dix on the property now owned by The National Dorothea Dix Memorial Association at Hampden.

The joint resolution was reported to the Senate without amendment, ordered to be engrossed for a third reading, read the third time, and passed.

Mr. FRYE. I do not think there is any necessity for a preamble being in the bill.

Mr. GALLINGER. Let the preamble be stricken out.

The VICE-PRESIDENT. Without objection, the preamble will be stricken out.

SITE FOR STATUE OF HENRY WADSWORTH LONGFELLOW.

The joint resolution (S. R. 20) directing the selection of a site for the erection of a bronze statue in Washington, D. C., in honor of the late Henry Wadsworth Longfellow, was considered as in Committee of the Whole.

The joint resolution was reported from the Committee on the Library with an amendment to strike out all after the resolving clause and insert:

That the chairman of the Committee on the Library of the Senate, the chairman of the Committee on the Library of the House of Representatives, the Secretary of War, and the president of the Longfellow National Memorial Association are hereby created a commission to select and prepare a site on property belonging to the United States in the city of Washington, other than the grounds of the Capitol or Library of Congress, and erect thereon a suitable pedestal for a statue in bronze of the late Henry Wadsworth Longfellow, to be provided by the Longfellow National Memorial Association.

SEC. 2. That for the preparation of the site so selected and the erection of the pedestal the sum of $4,000, or so much thereof as may be necessary, is hereby appropriated, out of any money in the Treasury not otherwise appropriated: *Provided*, That the design for said statue shall be approved by the commission herein created.

The amendment was agreed to.

The joint resolution was reported to the Senate as amended, and the amendment was concurred in.

The joint resolution was ordered to be engrossed for a third reading, read the third time, and passed.

PROPOSED GENERAL BRIDGE LAW.

The bill (H. R. 6009) to regulate the construction of bridges over navigable waters was considered as in Committee of the Whole.

The bill had been reported from the Committee on Commerce with an amendment, to insert after line 18, on page 2, the following as a new section:

SEC. 3. That all railroad companies desiring the use of any railroad bridge built in accordance with the provisions of this act shall be entitled to equal rights and privileges relative to the passage of railway trains or cars over the same and over the approaches thereto upon payment of a reasonable compensation for such use; and in case of any disagreement between the parties in regard to the terms of such use or the sums to be paid all matters at issue shall be determined by the Secretary of War upon hearing the allegations and proofs submitted to him.

The amendment was agreed to.

Mr. GALLINGER. It strikes me that it would be well to transpose sections 6 and 7, so as to make the repealing clause the last section. I make that motion.

The amendment was agreed to.

The bill was reported to the Senate as amended, and the amendments were concurred in.

The amendments were ordered to be engrossed and the bill to be read a third time.

The bill was read the third time, and passed.

PUBLIC BUILDING AT EUREKA, CAL.

The bill (S. 1851) to provide for the purchase of a site and the erection of a public building at Eureka, Cal., was considered as in Committee of the Whole.

The bill had been reported from the Committee on Public Buildings and Grounds with an amendment, to strike out all after the enacting clause and insert:

That the Secretary of the Treasury be, and he is hereby, authorized and directed to acquire, by purchase, condemnation, or otherwise, a site and cause to be erected thereon a suitable building, including fireproof vaults, heating and ventilating apparatus, elevators, and approaches, for the use and accommodation of the United States post-office and other Government offices in the city of Eureka, State of California, the cost of said site and building, including said vaults, heating and ventilating apparatus, elevators, and approaches, complete, not to exceed the sum of $175,000.

Proposals for the sale of land suitable for said site shall be invited by public advertisement in one or more of the newspapers of said city of largest circulation for at least twenty days prior to the date specified in said advertisement for the opening of said proposals.

The building shall be unexposed to danger from fire by an open space of at least 40 feet on each side, including streets and alleys.

The amendment was agreed to.

The bill was reported to the Senate as amended, and the amendment was concurred in.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

NEW JERSEY-DELAWARE TERRITORIAL LIMITS.

Mr. KNOX. I ask unanimous consent, out of order, to make a report. I am directed by the Committee on the Judiciary, to whom was referred the bill (S. 4975) giving the consent of Congress to an agreement or compact entered into between the State of New Jersey and the State of Delaware respecting the territorial limits and jurisdiction of said States, to report it favorably with amendments to the preamble.

Mr. KEAN. I ask unanimous consent for the present consideration of the bill just reported.

The VICE-PRESIDENT. The Senator from New Jersey asks unanimous consent for the present consideration of the bill just reported. Is there objection?

Mr. GALLINGER. I think we had better proceed with the Calendar.

The VICE-PRESIDENT. There is objection.

Mr. KEAN. Allow me to say to the Senator that this is an

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important matter. It concerns only the States of New Jersey and Delaware, and the bill proposes to settle a lawsuit which has been going on for more than sixty years. It will take but a moment.

Mr. GALLINGER. It being important, of course I withdraw my objection and will let the bill be considered.

By unanimous consent the Senate, as in Committee of the Whole, proceeded to consider the bill.

The bill was reported to the Senate without amendment, ordered to be engrossed for a third reading, read the third time, and passed.

The amendments of the Committee on the Judiciary to the preamble were, on page 6, line 9 of the preamble, after the word "this," to insert "twenty-first;" in the same line, after the word "of," to insert "March;" in line 10 to strike out the word "and;" in the same line, after the word "five," to strike out the semicolon and insert a period; and to strike out lines 11, 12, and 13 and to insert:

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| EDWARD C. STOKES. | PRESTON LEA. |
| ROBERT H. MCCARTER. | ROBERT H. RICHARDS. |
| FRANKLIN MURPHY. | HERBERT H. WARD. |
| CHAUNCEY G. PARKER. | GEORGE H. BATES. |

And whereas the said agreement has been confirmed by the legislatures of the said States of New Jersey and Delaware, respectively: Therefore—

So as to make the preamble and bill read:

Whereas commissioners duly appointed on the part of the State of New Jersey and commissioners duly appointed on the part of the State of Delaware, for the purpose of agreeing upon and settling the jurisdiction and territorial limits of the two States have executed certain articles, which are contained in the words following, namely:

"First. Whereas a controversy hath heretofore existed between the States of New Jersey and Delaware relative to the jurisdiction of such portion of the Delaware River as is included within the circle of Fiddle radius, an arc of which constitutes the northern boundary of the State of Delaware, and it is the mutual desire of said States to so settle and determine such controversy as to prevent future complications arising therefrom; and

"Whereas there is now pending in the Supreme Court of the United States a cause wherein the said State of New Jersey is the complainant and the said State of Delaware is the defendant, in which cause an injunction has been issued against the State of Delaware restraining the execution of certain statutes of the State of Delaware relating to fisheries in said river, which said litigation hath been pending for twenty-seven years and upwards; and

"Whereas for the purpose of adjusting the differences between the said two States arising out of said conflict of jurisdiction, Edward C. Stokes, Robert H. McCarter, Franklin Murphy, and Chauncey G. Parker have been appointed commissioners on the part of the State of New Jersey by joint resolution of the legislature of said State, and Preston Lea, Robert H. Richards, Herbert H. Ward, and George H. Bates have been appointed commissioners on the part of the State of Delaware by joint resolution of the general assembly of said State, to frame a compact or agreement between the said States and legislation consequent thereon, to be submitted to the legislatures of said two States for action thereon, looking to the amicable termination of said suit between said States now pending in the Supreme Court of the United States, and the final adjustment of all controversies relating to the boundary line between said States, and to their respective rights in the Delaware River and Bay: Now, therefore,

"The said State of New Jersey, by its commissioners above named, and the said State of Delaware, by its commissioners above named, do hereby make and enter into a compact or agreement between said States as follows:

"ARTICLE I. Criminal process issued under the authority of the State of New Jersey against any person accused of an offense committed upon the soil of said State, or upon the eastern half of said Delaware River, or committed on board of any vessel being under the exclusive jurisdiction of that State, and also civil process issued under the authority of the State of New Jersey against any person domiciled in that State, or against property taken out of that State to evade the laws thereof, may be served upon any portion of the Delaware River between said States from low-water mark on the Delaware shore to low-water mark on the Delaware shore, except upon Reedy and Pea Patch islands, unless said person or property shall be on board a vessel aground upon or fastened to the shore of the State of Delaware, or the shores of said islands, or fastened to a wharf adjoining thereto, or unless such person shall be under arrest or such property shall be under seizure by virtue of process or authority of the State of Delaware.

"ART. II. Criminal process issued under the authority of the State of Delaware against any person accused of an offense committed upon the soil of said State, or upon the western half of said Delaware River, or committed on board of any vessel being under the exclusive jurisdiction of that State, and also civil process issued under the authority of the State of Delaware against any person domiciled in that State, or against property taken out of that State to evade the laws thereof, may be served upon any portion of the Delaware River between said States from low-water mark on the Delaware shore to low-water mark on the New Jersey shore, unless said person or property shall be on board a vessel aground upon or fastened to the shore of the State of New Jersey, or fastened to a wharf adjoining thereto, or unless such person shall be under arrest or such property shall be under seizure by virtue of process or authority of the State of New Jersey.

"ART. III. The inhabitants of the said States of Delaware and New Jersey shall have and enjoy a common right of fishery throughout, in, and over the waters of said river between low-water marks on each side of said river between the said States, except so far as either State may have heretofore granted valid and subsisting private rights of fishery.

"ART. IV. Immediately upon the execution hereof the legislature of the State of New Jersey shall appoint three commissioners to confer with three commissioners to be immediately appointed by the general assembly of the State of Delaware for the purpose of drafting uniform laws to regulate the catching and taking of fish in the Delaware River and Bay between said two States, which said commissioners for each State, respectively, shall, within two years, from the date of their appointment, report to the legislature of each of said States the proposed laws so framed and recommended by said joint commission. Upon the adoption and passage of said laws as recommended by the respective legislatures of said two States said laws shall constitute the sole laws for the regulation of the taking and catching of fish in the said river and bay between said States. Said laws shall remain in force until altered, amended, or repealed by concurrent legislation of the said two States. Said commissioners shall also ascertain the dividing line between said river and bay, and upon each of the shores of said two States where said dividing line extended shall intersect the same, shall, at the joint expense of said States, erect a suitable monument to mark the said dividing line. Said dividing line between said monuments shall be the division line between the said river and bay for the interpretation of and for all purposes of this compact, and of the concurrent legislation provided for herein.

"The faith of the said contracting States is hereby pledged to the enactment of said laws so recommended by said commissioners, or to such concurrent legislation as may seem judicious and proper in the premises to the respective legislatures thereof.

"Each State shall have and exercise exclusive jurisdiction within said river to arrest, try, and punish its own inhabitants for violation of the concurrent legislation relating to fishery herein provided for.

"ART. V. All laws of said States relating to the regulation of fisheries in the Delaware River not inconsistent with the right of common fishery hereinabove mentioned shall continue in force in said respective States until the enactment of said concurrent legislation as herein provided.

"ART. VI. Nothing herein contained shall affect the planting, catching, or taking of oysters, clams, or other shellfish, or interfere with the oyster industry as now or hereafter carried on under the laws of either State.

"ART. VII. Each State may, on its own side of the river, continue to exercise riparian jurisdiction of every kind and nature, and to make grants, leases, and conveyances of riparian lands and rights under the laws of the respective States.

"ART. VIII. Nothing herein contained shall affect the territorial limits, rights, or jurisdiction of either State of, in, or over the Delaware River, or the ownership of the subaqueous soil thereof, except as herein expressly set forth.

"ART. IX. This agreement shall be executed by the said commissioners which authorized to do so by the legislatures of the said States. It shall thereupon be submitted to Congress for its consent and approval. Upon the ratification thereof by Congress it shall be and become binding in perpetuity upon both of said States; and thereupon the suit now pending in the Supreme Court of the United States, in which the State of New Jersey is complainant and the State of Delaware is defendant, shall be discontinued without costs to either party and without prejudice. Pending the ratification hereof by Congress said suit shall remain in statu quo.

"Done in two parts (one of which is retained by the commissioners of Delaware, to be delivered to the governor of that State, and the other one of which is retained by the commissioners of New Jersey, to be delivered to the governor of that State) this 21st day of March, in the year of our Lord 1905.

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| EDWARD C. STOKES. | PRESTON LEA. |
| ROBERT H. MCCARTER. | ROBERT H. RICHARDS. |
| FRANKLIN MURPHY. | HERBERT H. WARD. |
| CHAUNCEY G. PARKER. | GEO. H. BATES. |

And whereas the said agreement has been confirmed by the legislatures of the said States of New Jersey and Delaware, respectively: Therefore

*Be it enacted, etc.*, That the consent of the Congress of the United States is hereby given to the said agreement and to each and every part and article thereof: *Provided*, That nothing therein contained shall be construed to impair or in any manner affect any right or jurisdiction of the United States in and over the islands or waters which form the subject of the said agreement.

The amendments were agreed to.

The preamble as amended was agreed to.

### LAND IN HOT SPRINGS, ARK.

The bill (S. 4434) ceding a parcel or strip of land to the city of Hot Springs, Ark., for use as a public street, was considered as in Committee of the Whole.

The bill was reported to the Senate without amendment, ordered to be engrossed for a third reading, read the third time, and passed.

### PRIVATE SALMON HATCHERIES IN ALASKA.

The bill (S. 1459) to encourage private salmon hatcheries in Alaska was announced as the next business in order on the Calendar.

Mr. PERKINS. I ask that the bill go over without prejudice, retaining its relative place on the Calendar.

The VICE-PRESIDENT. It is so ordered.

### BONDS AND OATHS OF SHIPPING COMMISSIONERS.

The bill (S. 4339) to amend section 4502 of the Revised Statutes of the United States, relating to bonds and oaths of shipping commissioners, was considered as in Committee of the Whole. It proposes to amend the section so as to read as follows:

SEC. 4502. Every shipping commissioner so appointed shall give bond to the United States, conditioned for the faithful performance of the duties of his office, for a sum, in the discretion of the Secretary of Commerce and Labor, of not less than $3,000, in such form and with such security as the Secretary of Commerce and Labor shall direct and approve; and shall take and subscribe the oath prescribed by section 1757 of the Revised Statutes before entering upon the duties of his office: *Provided*, That nothing in this section shall be construed to affect in any respect the liability of principal or sureties on any bond heretofore given by any shipping commissioner.

The bill was reported to the Senate without amendment, ordered to be engrossed for a third reading, read the third time, and passed.

S. 4138. An act granting an increase of pension to Frank D. Smith;
S. 2340. An act granting an increase of pension to George L. Jaquith;
S. 2346. An act granting an increase of pension to John W. Reed;
S. 2363. An act granting an increase of pension to George W. Fidel;
S. 2363. An act granting an increase of pension to Garrett Rourke;
S. 2735. An act granting a pension to Marcelino S. Groff;
S. 2548. An act granting an increase of pension to Jesse M. Furman;
S. 2472. An act granting an increase of pension to Charles L. Noggle;
S. 2406. An act granting an increase of pension to Thomas Millikan;
S. 2701. An act granting an increase of pension to John L. Clark;
S. 2352. An act granting an increase of pension to Ashley A. Youmans;
S. 4182. An act granting an increase of pension to Margaret Hallett;
S. 4159. An act granting an increase of pension to Mary P. Johannes;
S. 4151. An act granting an increase of pension to John Connor;
S. 4100. An act granting an increase of pension to Carlton A. Wheeler;
S. 1908. An act granting an increase of pension to Francesco Del Gindice;
S. 1623. An act granting an increase of pension to Peter Shipman;
S. 784. An act granting an increase of pension to George L. Cooley;
S. 772. An act granting a pension to Jerusha Hayward Brown;
S. 726. An act granting an increase of pension to William M. Smith;
S. 716. An act granting an increase of pension to Theodore H. Hanson;
S. 4331. An act granting an increase of pension to John T. McGarraugh;
S. 4319. An act granting an increase of pension to Frederick G. Sturm;
S. 4230. An act granting a pension to Aurelia Cotten;
S. 4236. An act granting an increase of pension to Thomas J. Davies;
S. 4227. An act granting a pension to John H. McKenzie;
S. 2344. An act granting an increase of pension to Albert C. Andrews;
S. 2216. An act granting an increase of pension to David W. Magee;
S. 2250. An act granting an increase of pension to John Rauch;
S. 2182. An act granting an increase of pension to John J. Buffington;
S. 2169. An act granting an increase of pension to Isaac B. Hewett;
S. 2142. An act granting an increase of pension to Adelle D. Irwin;
S. 2153. An act granting an increase of pension to Helen B. Read;
S. 2103. An act granting an increase of pension to Lorin R. Bingham;
S. 2098. An act granting an increase of pension to Nathaniel R. Kent;
S. 2090. An act granting a pension to Ruth F. Bennett;
S. 2090. An act granting an increase of pension to Sarah E. Adams;
S. 2091. An act granting an increase of pension to John P. Bambush;
S. 1927. An act granting an increase of pension to John H. Odenheimer;
S. 1427. An act granting an increase of pension to William F. Davis;
S. 1470. An act granting an increase of pension to Sarah A. Tyler;
S. 1230. An act granting an increase of pension to Eurene Gaskill;
S. 1223. An act granting an increase of pension to Julia L. Plimpton;
S. 1227. An act granting an increase of pension to Henry J. Patterson;
S. 4187. An act granting an increase of pension to Nathaniel E. Skelton;
S. 1113. An act granting an increase of pension to James M. Fernald;
S. 1534. An act granting an increase of pension to Frederick W. Partridge;
S. 1024. An act granting an increase of pension to Peter Bess;
S. 1011. An act granting an increase of pension to John E. Woodsum;
S. 1665. An act granting an increase of pension to John C. Estes;
S. 4220. An act to authorize the sale and disposition of surplus or unallotted lands of the diminished Colville Indian Reservation, in the State of Washington, and for other purposes;
S. 2050. An act granting an increase of pension to Joseph B. Stines;
S. 2982. An act granting an increase of pension to Samuel M. Johnson;
S. 4007. An act granting an increase of pension to Julius T. Williamson;
S. 4096. An act granting an increase of pension to Norman W. Lombard;
S. 4020. An act granting an increase of pension to Henry C. Johnson;
S. 1133. An act granting an increase of pension to Albert S. Blake;
S. 4037. An act granting an increase of pension to Frederick Zimmerman;
S. 4636. An act granting an increase of pension to Henry R. Pease;
S. 4595. An act granting an increase of pension to Amos McManus;
S. 4507. An act granting an increase of pension to Joseph Chandler, jr.;
S. 4496. An act granting an increase of pension to Alphonso Brooks;
S. 4422. An act granting an increase of pension to Lindsay Kirby;
S. 1978. An act granting an increase of pension to Thomas Edsall; and
S. 2044. An act granting a pension to Solomon F. Wehr.

## SENATE BILLS AND RESOLUTIONS REFERRED.

Under clause 2 of Rule XXIV, Senate bills and joint resolutions of the following titles were taken from the Speaker's table and referred to their appropriate committees as indicated below:

S. 4513. An act to authorize the Mobile Railway and Dock Company to construct and maintain bridges across Dog River and Fowl River in Mobile County, State of Alabama—to the Committee on Interstate and Foreign Commerce.

S. R. 1. Joint resolution for the erection of a monument to the memory of Dorothea Lynde Dix—to the Committee on the Library.

S. R. 20. Joint resolution directing the selection of a site for the erection of a bronze statue in Washington, D. C., in honor of the late Henry Wadsworth Longfellow—to the Committee on the Library.

S. 503. An act to reimburse James M. McGee for expenses incurred in the burial of Mary J. De Lange—to the Committee on Claims.

S. 581. An act authorizing and directing the Secretary of War to condemn and turn over to the State of Idaho two Krapp field guns captured from the enemy by the First Regiment Idaho Volunteer Infantry at the battle of Santa Ana, Philippine Islands, February 5, 1899—to the Committee on Military Affairs.

S. 582. An act to provide for the purchase of a site and the erection of a public building thereon at Denver, in the State of Colorado—to the Committee on Public Buildings and Grounds.

S. 685. An act for the erection of a monument to the memory of John Paul Jones—to the Committee on the Library.

S. 1683. An act to provide for the purchase of a site and the erection of a public building thereon in the city of Kearney, State of Nebraska—to the Committee on Public Buildings and Grounds.

S. 1802. An act to regulate the use by the public of reservoir sites located upon the public lands of the United States—to the Committee on the Public Lands.

S. 1331. An act to provide for the purchase of a site and the erection of a public building at Eureka, Cal.—to the Committee on Public Buildings and Grounds.

S. 2206. An act authorizing the Joint Committee on the Li-

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brary to purchase a bust of President Zachary Taylor—to the Committee on the Library.

S. 2270. An act for the relief of Nicola Masino, of the District of Columbia—to the Committee on the District of Columbia.

S. 2286. An act to confer jurisdiction upon the circuit court of the United States for the ninth circuit to determine in equity the rights of American citizens under the award of the Bering Sea arbitration of Paris and to render judgment thereon—to the Committee on the Judiciary.

S. 4170. An act to amend an act approved March 3, 1891, entitled "An act making appropriations to supply deficiencies in the appropriations for the fiscal year ending June 30, 1891, and for prior years, and for other purposes"—to the Committee on the District of Columbia.

S. 4190. An act to amend an act entitled "An act to amend section 2455 of the Revised Statutes of the United States," approved February 26, 1895—to the Committee on the Public Lands.

S. 4302. An act to amend the provision in an act approved March 3, 1899, imposing a charge for tuition on nonresident pupils in the public schools of the District of Columbia—to the Committee on the District of Columbia.

S. 4434. An act ceding a parcel or strip of land to the city of Hot Springs, Ark., for use as a public street—to the Committee on the Public Lands.

S. 4975. An act giving the consent of Congress to an agreement or compact entered into between the State of New Jersey and the State of Delaware respecting the territorial limits and jurisdiction of said States—to the Committee on the Judiciary.

S. 535. An act to amend and reenact section 1 of chapter 77 of volume 27 of the United States Statutes at Large, being "An act to provide for a term of the United States circuit and district court at Evanston, Wyo.," approved May 22, 1892—to the Committee on the Judiciary.

Senate concurrent resolution No. 17:

*Resolved by the Senate (the House of Representatives concurring)*, That there be printed 4,750 copies of the "Report on the Japanese naval medical and sanitary features of the Russo-Japanese war to the Surgeon-General, United States Navy, by Surg. William C. Braisted, United States Navy," the same to include the illustrations, of which 1,250 copies shall be for the use of the Senate, 2,500 copies shall be for the use of the House of Representatives, and 1,000 copies for the use of the Bureau of Medicine and Surgery of the Navy Department—

To the Committee on Printing.

## MESSAGES FROM THE PRESIDENT.

The SPEAKER laid before the House the following message from the President:

*To the House of Representatives:*

In compliance with the resolution of the House of Representatives of the 13th instant (the Senate concurring), I return herewith House bill No. 8404, "An act granting an increase of pension to David A. Jones."

THEODORE ROOSEVELT.

THE WHITE HOUSE, *March 14, 1906.*

Mr. LOUDENSLAGER. Mr. Speaker, I move that the message be referred to the Committee on Pensions.

The SPEAKER. The gentleman from New Jersey moves that the message be referred to the Committee on Pensions.

The question was taken, and the motion was adopted.

The SPEAKER also laid before the House the following message from the President, which was read, ordered to be printed, and referred to the Committee on Claims:

*The Senate and House of Representatives:*

I transmit herewith for the consideration of Congress a report by the Secretary of State, recommending a claim of the owners of the British steamship *Lindisfarne*, amounting to $125.11, for demurrage to that vessel while undergoing repairs necessitated by a collision with the U. S. Army transport Crook in New York Harbor on May 31, 1900.

THEODORE ROOSEVELT.

THE WHITE HOUSE, *March 14, 1906.*

## R. L. VASQUEZ.

Mr. CASSEL. Mr. Speaker, I offer the following report by resolution from the Committee on Accounts, and move that it be adopted.

The SPEAKER. The Clerk will report the resolution.

The Clerk read as follows:

House resolution No. 351.

*Resolved*, That the Clerk of the House is hereby authorized and directed to pay, out of the contingent fund of the House, to R. L. Vasquez the sum of $67.83, being the amount of clerk-hire allowance due the late Representative George A. Castor from February 1 to the date of his death, February 19, 1906.

The question was taken, and the resolution was agreed to.

Mr. LITTAUER. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; and accordingly (at 4 o'clock and 56 minutes p. m.) the House adjourned to meet to-morrow, at 12 o'clock noon.

## EXECUTIVE COMMUNICATIONS.

Under clause 2 of Rule XXIV, the following executive communications were taken from the Speaker's table and referred as follows:

A letter from the Secretary of the Treasury, transmitting a copy of a letter from the Secretary of Commerce and Labor submitting an estimate of appropriation for a relief light-vessel for the exclusive use of the twelfth light-house district—to the Committee on Interstate and Foreign Commerce, and ordered to be printed.

A letter from the Secretary of War, transmitting, with a copy of a letter from the Chief of Ordnance, a report of tests of iron and steel and other materials for industrial purposes at Watertown Arsenal—to the Committee on Manufactures.

## REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS.

Under clause 2 of Rule XXII, bills and resolutions of the following titles were severally reported from committees, delivered to the Clerk, and referred to the several Calendars therein named, as follows:

Mr. FLETCHER, from the Committee on Military Affairs, to which was referred the bill of the House (H. R. 15435) to empower the Secretary of War to convey to the city of Minneapolis certain lands in exchange for other lands to be used for flowage purposes, reported the same without amendment, accompanied by a report (No. 2280); which said bill and report were referred to the Committee of the Whole House on the state of the Union.

Mr. ADAMS of Pennsylvania, from the Committee on Foreign Affairs, to which was referred the bill of the Senate (S. 1345) to provide for the reorganization of the consular service of the United States, reported the same with amendment, accompanied by a report (No. 2281); which said bill and report were referred to the Committee of the Whole House on the state of the Union.

Mr. BARTHOLDT, from the Committee on Public Buildings and Grounds, to which was referred the bill of the Senate (S. 2501) to withhold from sale a portion of Fort Brady Military Reservation, at Sault Ste. Marie, Mich., reported the same without amendment, accompanied by a report (No. 2282); which said bill and report were referred to the Committee of the Whole House on the state of the Union.

Mr. LACEY, from the Committee on the Public Lands, to which was referred the bill of the House (H. R. 15513) to declare and enforce the forfeiture provided by section 4 of the act of Congress approved March 3, 1875, entitled "An act granting to railroads the right of way through the public lands of the United States," reported the same without amendment, accompanied by a report (No. 2283); which said bill and report were referred to the Committee of the Whole House on the state of the Union.

Mr. PRINCE, from the Committee on Banking and Currency, to which was referred the bill of the House (H. R. 8124) to amend section 5136 of the Revised Statutes of the United States permitting national banking associations to make loans on real estate as security, and limiting the amount of such loans, reported the same with amendment, accompanied by a report (No. 2284); which said bill and report were referred to the House Calendar.

Mr. TYNDALL, from the Committee on the Public Lands, to which was referred the bill of the Senate (S. 2292) for the relief of certain entrymen and settlers within the limits of the Northern Pacific Railway land grant, reported the same with amendment, accompanied by a report (No. 2285); which said bill and report were referred to the House Calendar.

Mr. LACEY, from the Committee on the Public Lands, to which was referred the House joint resolution (H. J. Res. 117) extending the time for opening to public entry the unallotted lands on the ceded portion of the Shoshone or Wind Indian Reservation, in Wyoming, reported the same without amendment, accompanied by a report (No. 2286); which joint resolution and report were referred to the House Calendar.

## PUBLIC BILLS, RESOLUTIONS, AND MEMORIALS.

Under clause 3 of Rule XXII, bills, resolutions, and memorials of the following titles were introduced and severally referred, as follows:

By Mr. DEEMER: A bill (H. R. 16726) providing for the erection of a public building at Lock Haven, Clinton County, Pa.—to the Committee on Public Buildings and Grounds.

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Comments:
Attached is the Senate Document that you requested. Following the document are Congressional record pages dealing with the introduction of a related bill, its referral to a Senate committee, the bill's consideration and passage by the Senate, and its referral to a House committee. I've marked the relevant text.

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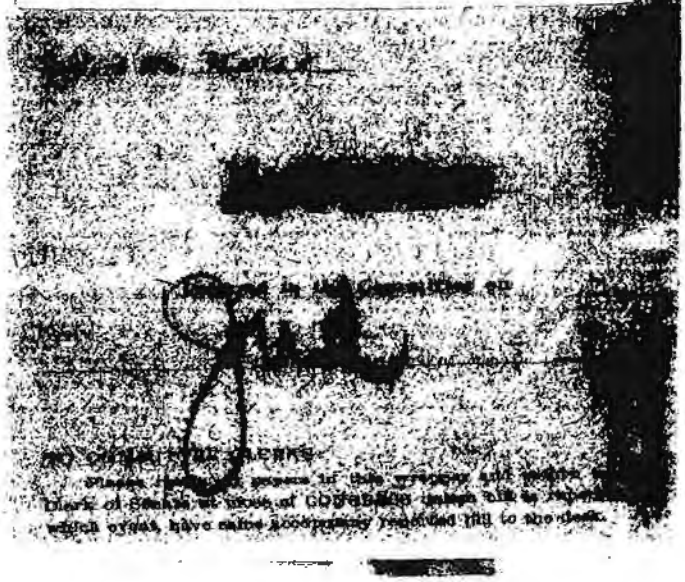
59TH CONGRESS, 1ST SESSION. } **S. 4975.**

# A BILL

Giving the consent of Congress to an agreement or compact entered into between the State of New Jersey and the State of Delaware respecting the territorial limits and jurisdiction of said States.

By Mr. KEAN.

MARCH 9, 1906.—Read twice and referred to the Committee on the Judiciary.



REPRODUCED AT THE NATIONAL ARCHIVES

59TH CONGRESS, 1ST SESSION.

# S. 4975.

IN THE HOUSE OF REPRESENTATIVES.

MARCH 14, 1906.

Referred to the Committee on the Judiciary.

# AN ACT

Giving the consent of Congress to an agreement or compact entered into between the State of New Jersey and the State of Delaware respecting the territorial limits and jurisdiction of said States.

Whereas commissioners duly appointed on the part of the State of New Jersey and commissioners duly appointed on the part of the State of Delaware, for the purpose of agreeing upon and settling the jurisdiction and territorial limits of the two States, have executed certain articles, which are contained in the words following, namely:

"First. Whereas a controversy hath heretofore existed between the States of New Jersey and Delaware relative to the jurisdiction of such portion of the Delaware River as is included within the circle of twelve-mile radius, an arc of which constitutes the northern boundary of the State of Delaware, and it is the mutual desire of said States to so settle and determine such controversy as to prevent future complications arising therefrom; and

"Whereas there is now pending in the Supreme Court of the United States a cause wherein the said State of New

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Jersey is the complainant and the said State of Delaware is the defendant, in which cause an injunction has been issued against the State of Delaware restraining the execution of certain statutes of the State of Delaware relating to fisheries in said river, which said litigation hath been pending for twenty-seven years and upwards; and

"Whereas for the purpose of adjusting the differences between the said two States arising out of said conflict of jurisdiction, Edward C. Stokes, Robert H. McCarter, Franklin Murphy, and Chauncey G. Parker have been appointed commissioners on the part of the State of New Jersey by joint resolution of the legislature of said State, and Preston Lea, Robert H. Richards, Herbert H. Ward, and George H. Bates have been appointed commissioners on the part of the State of Delaware by joint resolution of the general assembly of said State, to frame a compact or agreement between the said States and legislation consequent thereon, to be submitted to the legislatures of said two States for action thereon, looking to the amicable termination of said suit between said States now pending in the Supreme Court of the United States, and the final adjustment of all controversies relating to the boundary line between said States, and to their respective rights in the Delaware River and Bay: Now therefore,

"The said State of New Jersey, by its commissioners above named, and the said State of Delaware, by its commissioners above named, do hereby make and enter into a compact or agreement between said States as follows:

"ARTICLE I. Criminal process issued under the authority of the State of New Jersey against any person accused of an offense committed upon the soil of said State, or upon the eastern half of said Delaware River, or committed on board of any vessel being under the exclusive jurisdiction of that

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State, and also civil process issued under the authority of the State of New Jersey against any person domiciled in that State, or against property taken out of that State to evade the laws thereof, may be served upon any portion of the Delaware River between said States from low-water mark on the New Jersey shore to low-water mark on the Delaware shore, except upon Reedy and Pea Patch islands, unless said person or property shall be on board a vessel aground upon or fastened to the shore of the State of Delaware, or the shores of said islands, or fastened to a wharf adjoining thereto, or unless such person shall be under arrest or such property shall be under seizure by virtue of process or authority of the State of Delaware.

"ART. II. Criminal process issued under the authority of the State of Delaware against any person accused of an offense committed upon the soil of said State, or upon the western half of said Delaware River, or committed on board of any vessel being under the exclusive jurisdiction of that State, and also civil process issued under the authority of the State of Delaware against any person domiciled in that State, or against property taken out of that State to evade the laws thereof, may be served upon any portion of the Delaware River between said States from low-water mark on the Delaware shore to low-water mark on the New Jersey shore, unless said person or property shall be on board a vessel aground upon or fastened to the shore of the State of New Jersey, or fastened to a wharf adjoining thereto, or unless such person shall be under arrest or such property shall be under seizure by virtue of process or authority of the State of New Jersey.

"ART. III. The inhabitants of the said States of Delaware and New Jersey shall have and enjoy a common right

of fishery throughout, in, and over the waters of said river between low-water marks on each side of said river between the said States, except so far as either State may have heretofore granted valid and subsisting private rights of fishery.

"ART. IV. Immediately upon the execution hereof the legislature of the State of New Jersey shall appoint three commissioners to confer with three commissioners to be immediately appointed by the general assembly of the State of Delaware for the purpose of drafting uniform laws to regulate the catching and taking of fish in the Delaware River and Bay between said two States, which said commissioners for each State, respectively, shall, within two years from the date of their appointment, report to the legislature of each of said States the proposed laws so framed and recommended by said joint commission. Upon the adoption and passage of said laws so recommended by the respective legislatures of said two States said laws shall constitute the sole laws for the regulation of the taking and catching of fish in the said river and bay between said States. Said laws shall remain in force until altered, amended, or repealed by concurrent legislation of the said two States. Said commissioners shall also ascertain the dividing line between said river and bay, and upon each of the shores of said two States where said dividing line extended shall intersect the same, shall, at the joint expense of said States, erect a suitable monument to mark the said dividing line. Said dividing line between said monuments shall be the division line between the said river and bay for the interpretation of and for all purposes of this compact, and of the concurrent legislation provided for therein.

"The faith of the said contracting States is hereby pledged to the enactment of said laws so recommended by

REPRODUCED AT THE NATIONAL ARCHIVES



said commissioners, or to such concurrent legislation as may seem judicious and proper in the premises to the respective legislatures thereof.

"Each State shall have and exercise exclusive jurisdiction within said river to arrest, try, and punish its own inhabitants for violation of the concurrent legislation relating to fishery herein provided for.

"ART. V. All laws of said States relating to the regulation of fisheries in the Delaware River not inconsistent with the right of common fishery hereinabove mentioned shall continue in force in said respective States until the enactment of said concurrent legislation as herein provided.

"Art. VI. Nothing herein contained shall affect the planting, catching, or taking of oysters, clams, or other shell fish, or interfere with the oyster industry as now or hereafter carried on under the laws of either State.

"ART. VII. Each State may, on its own side of the river, continue to exercise riparian jurisdiction of every kind and nature, and to make grants, leases, and conveyances of riparian lands and rights under the laws of the respective States.

"ART. VIII. Nothing herein contained shall affect the territorial limits, rights, or jurisdiction of either State of, in, or over the Delaware River, or the ownership of the subaqueous soil thereof, except as herein expressly set forth.

"ART. IX. This agreement shall be executed by the said commissioners when authorized to do so by the legislatnres of the said States. It shall thereupon be submitted to Congress for its consent and approval. Upon the ratification thereof by Congress it shall be and become binding in perpetuity upon both of said States; and thereupon the suit now pending in the Supreme Court of the United States, in which the

REPRODUCED AT THE NATIONAL ARCHIVES



State of New Jersey is complainant and the State of Delaware is defendant, shall be discontinued without costs to either party and without prejudice. Pending the ratification hereof by Congress said suit shall remain in statu quo.

"Done in two parts (one of which is retained by the commissioners of Delaware, to be delivered to the governor of that State, and the other one of which is retained by the commissioners of New Jersey, to be delivered to the governor of that State) this twenty-first day of March, in the year of our Lord one thousand nine hundred and five."

| | |
|---|---|
| EDWARD C. STOKES, | PRESTON LEA, |
| ROBERT H. MCCARTER, | ROBERT H. RICHARDS, |
| FRANKLIN MURPHY, | HERBERT H. WARD, |
| CHAUNCEY G. PARKER, | GEO. H. BATES. |

And whereas the said agreement has been confirmed by the legislatures of the said States of New Jersey and Delaware, respectively: Therefore

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the consent of the Congress of the United States is hereby given to the said agreement and to each and every part and article thereof: *Provided,* That nothing therein contained shall be construed to impair or in any manner affect any right or jurisdiction of the United States in and over the islands or waters which form the subject of the said agreement.

Passed the Senate March 13, 1906.

Attest: CHARLES G. BENNETT,
*Secretary,*

By H. M. ROSE,
*Assistant Secretary.*

[redacted]

[redacted] of State

DOVER, DEL.

[redacted]

December 21st, 1904.

Hon. Hiram R. Burton,

Washington, D. C.

Dear Sir:-

I am directed by the Governor to send the within copy of the resolution adopted by the Delaware and New Jersey Commissions, pursuant to the request of said Commissions, and respectfully request that you act therein in accordance with said request.

Respectfully yours,

[redacted]

Secretary of State.

DE18295

COPY.

"Mr. Hilles offered the following resolu t ion:"

"Resolved that the Governor of the State of Delaware and the Governor of the State of New Jersey are requested to ask Congress to defer the ratification of the Compact entered into between the State of Delaware and State of New Jersey until the commission shall make further request."

"This resolution was adopted after discussion as to agreement on joint fishing laws, the members of the commission believing that it would be well to defer action on the compact until some understanding could be arrived at on this subject by the members of the two commissions."

The above resolution was adopted at a joint meeting of the Delaware and New Jersey Commissions, appointed by the General Assembly of the State of Delaware and the Legislature of the State of New Jersey, by acts approved March 23rd, 1905 and May 11th, 1905, respectively, at a meeting held at the "University Club" No. 1510 Walnut Street, Philadelphia, Friday, December 15th, 1905.

John Boyd Avis,

Secretary.

State of New Jersey,

Assembly Chamber,

Woodbury, Trenton, December 19, 1905

W. H. Hayes, Esq.,

907 Market Street,

Wilmington, Del.

Dear Sir:-

I send to you enclosed, a copy of the resolution, memorandum and certificate which I have forwarded to Governor Lea and Governor Stokes. I have also mailed to you, under separate cover, a copy of the New Jersey Game Laws. You will find the laws relating to the Delaware River between pages 95 and 127.

Yours respec'y.

John Boyd Dow

DE16074

Mr. Hillas offered the following resolution:"

" Resolved that the governor of the State of Delaware and the Governor of the State of New Jersey are requested to ask Congress to defer the ratification of the Compact entered into between the State of Delaware and State of New Jersey until the commission shall make further request.

" This resolution was adopted after discussion as to agreement on joint fishing laws, the members of the commission believing that it would be well to defer action on the compact until some understanding could be arrived at on this subject by the members of the two commissions."

The above resolution was adopted at a joint meeting of the Delaware and New Jersey Commissions, appointed by the General Assembly of the State of Delaware and the Legislature of the State of New Jersey, by acts approved March 23rd, 1905 and May 11th, 1905, respectively, at a meeting held at the "University Club" No. 1510 Walnut Street, Philadelphia, Pa., December 15th, 1905.

John Boyd Ayres
Secretary.

DE16075

State of New Jersey,

Assembly Chamber,

Woodbury, Trenton, December 13, 1905

Walter H. Hayes, Sec'y,

907 Market Street,

Wilmington, Del.

Dear Sir:-

I have received your letter fixing the University Club, 1510 Walnut Street as the place, and Friday, December the 15th instant, at two thirty P. M. as the time for holding the conference between the Delaware and New Jersey Commissioners under the compact recently agreed to.

The New Jersey Commission expect to be present at the time and place fixed.

Yours respec'y.

J. Lloyd Ware

DE16076

Jan 16, 1907

An Act providing Uniform Laws to Regulate the Catching and Taking of Fish in the Delaware River and Bay Between the State of Delaware and the State of New Jersey, Including the Ascertainment of the Dividing Line Between said River and Bay.

WHEREAS, by virtue of Article IV of the Compact or Agreement entitled a "Compact Between the State of New Jersey and the State of Delaware, Relating to the Boundary Controversy Between said States", which was ratified and confirmed by an Act of the Legislature of the State of New Jersey, approved March 21, 1905, and by an Act of the General Assembly of the State of Delaware, approved March 20, 1905, The State of New Jersey by an Act of the Legislature thereof, approved May 11th, 1908, appointed William J. Bradley, James Shrimple and John Boyd Avis, Commissioners on the part of the State of New Jersey to confer with like Commissioners [illegible] to be appointed by the General Assembly of the State of [illegible] to be [illegible] by [illegible], 1909, [illegible]

[illegible] confer with the said Commissioners on the part of [illegible]

[illegible] and

WHEREAS, the said Commissioners of the said [illegible] duly [illegible] for that purpose, have [illegible] and [illegible] to regulate the catching and taking of fish in the Delaware River and Bay, between the said states, and have also ascertained and [illegible]

DE16078

and Delaware Bay, and have, upon each of the shores of the said two states where said dividing line extended intersects the same, erected a suitable monument to mark said dividing line, in pursuance of the duties imposed upon them by law; therefore

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

Section 1. That the provisions of this Act shall affect and apply only to the catching and taking of fish in the waters of the Delaware River and Bay lying between the States of Delaware and New Jersey.

Section 2. That the inhabitants of the States of Delaware and New Jersey shall have and enjoy a common right of fishery throughout, in and over the waters of said river between low water marks on each side of said river between said states, except so far as either state may have heretofore granted valid and subsisting private rights of fishery.

Section 3. That nothing herein contained shall affect the territorial limits, rights or jurisdiction of either of said states in, to or over the Delaware River, or the ownership of the [illegible] except as expressly [illegible] nor shall anything herein contained affect in any way the planting, catching or taking of oysters, clams, or other shell fish, or interfere with the oyster industry, as now or hereafter carried on under the laws of either of said states.

Section 4. That hereafter, it shall be lawful for any person to catch and take, from the waters aforesaid, fish of any character (except shell fish) with any net, hook and line, or other appliances; provided the meshes of any net shall not be less than two and one half inches long stretched measure, and except as hereinafter provided.

Section 1. That hereafter it shall be unlawful for any person to catch and take, or to attempt to catch and take, shad from the waters aforesaid with a seine or net of any character, the meshes of which shall be less than five and one quarter inches stretched measure. It shall also be unlawful for any person to catch and take, or to attempt to catch and take, any shad from the said waters in any manner whatsoever between the hours of twelve o'clock noon of every Saturday and twelve o'clock midnight of the Sunday next ensuing, and also between the fifth day of June in each and every year and the first day of March then next ensuing. It shall also be unlawful for any person at any time to set, place or use a net of any kind, except a trotting net, for the purpose of catching and taking shad within one half mile of the mouth of any river, creek or tributary running into the said waters.

Section 2. That hereafter it shall be unlawful for any person to catch and take, or attempt to catch and take, [redacted] whatsoever, between the hours of twelve o'clock noon of every Saturday and twelve o'clock midnight of the Sunday next ensuing. It shall also be unlawful for any person to catch and take, or to attempt to catch and take, rock in any manner whatever, between the fifteenth day of May and the tenth day of August of each and every year.

Section 3. That hereafter it shall be unlawful for any person to catch and take, or attempt to catch and take, rock

DE16080

the meshes of which shall be less than two and one half inches stretched measure. It shall also be unlawful for any person to catch and take, or to attempt to catch and take, any rock fish in any manner whatsoever between the hours of twelve o'clock noon of every Saturday and twelve o'clock midnight of the Sunday next ensuing. It shall also be unlawful for any person to catch and take, or to attempt to catch and take, from the waters aforesaid, in any manner whatever, any rock fish weighing more than twenty pounds or measuring less than ten inches in length; and should any such fish weighing over twenty pounds, or measuring less than ten inches in length, be caught, it shall be immediately returned to the waters uninjured.

Section 6. That hereafter it shall be unlawful for any person to catch and take, or to attempt to catch and take, from the waters aforesaid, any sturgeon with a net of any character, the meshes of which shall be less than thirteen inches stretched measure. It shall also be unlawful for any person to catch and take, or to attempt to catch and take, any sturgeon under five feet in length; and any such sturgeon under five feet [illegible] shall be immediately returned to the [illegible]

[illegible] shall also be unlawful for any person [illegible] to catch and take, or to attempt to catch and take, sturgeon from the waters aforesaid, with a net of any character, between the hours of twelve o'clock noon of every Saturday and twelve o'clock midnight of the Sunday next ensuing.

Section 8. That hereafter it shall be unlawful for any person to catch and take, or to attempt to catch and take, from the waters aforesaid, any trout with a net of any character, the meshes of which shall be less than two and one half inches stretched measure. It shall also be unlawful for any person to catch and take, or to attempt to catch and take, any trout

DE16081

from the waters aforesaid, with a net of any character, between the hours of twelve o'clock noon of every Saturday and twelve o'clock midnight of the Sunday next ensuing.

Section 10. That hereafter it shall be unlawful for any person to catch and take, or to attempt to catch and take, fish of any kind with a net of any character which is anchored, staked or fastened down in any way in said waters, across the same, or any part thereof, or at right angles with the shore line thereof, or across the mouth of any river, creek or stream emptying into the waters aforesaid.

Section 11. That hereafter it shall be unlawful for any persons by boat, anchor, dredge, or otherwise, in the waters aforesaid, to wilfully and without reasonable cause, interfere with, break, damage or destroy any drift net or gill seine being lawfully used for the taking of any fish herein provided.

Section 12. That hereafter it shall be unlawful for any person wilfully to put or place in the waters aforesaid any explosive substance whatever, or any drug or poisoned [illegible] for the purpose of catching and taking [illegible] the fish, or to allow any lime, coal or gas [illegible] saw dust, tan bark, cocculus indicus (otherwise known as fish berries), lime, refuse from gas houses, oil tanks or vessels, or any other deleterious, destructive or poisonous substances to be turned into or allowed to run into any of the waters aforesaid in quantities sufficient to destroy or impair fish life or disturb the habits of fish inhabiting the same. Any person violating any of the provisions of this Section shall upon conviction, forfeit and pay a fine of [illegible] hundred Dollars together with costs, for each offence.

Section 13. That hereafter it shall be [illegible]

DE16082

of any kind or description from the waters aforesaid by a net of any character on the Sabbath Day, commonly called Sunday.

Section 14. That hereafter it shall be unlawful for any person to catch and take, or to attempt to catch and take, fish of any kind from the waters aforesaid with a set line, or to have, use, or set or maintain in the waters aforesaid, for the purpose of catching and taking fish of any kind, any fish basket, eel weir, fyke net, pound net, wing-wall, wing-dams, or any other device, excepting in the manner and with the means in this Act provided; provided however, that it shall be lawful to catch and take eels at any time by means of wicker eel baskets anchored on the bottom and by means of eel weirs from the fifteenth day of September to the last day of October, both dates inclusive, and provided further, that it shall be lawful to catch and take catfish by means of pot or pots, basket or baskets, of whatever material the same may be constructed, without any wing or wings; the entrance to said pots or baskets shall not be more than six inches in diameter, and the outside diameter thereof shall not exceed fifteen inches; said pots or baskets when set shall be directly on the bottom and shall not be set nearer than fifty feet from each other.

Section 15. That hereafter it shall be unlawful for any person to sell, expose for sale, or have in possession, any fish caught and taken in violation of the provisions of this Act.

Section 16. That hereafter it shall be unlawful for any person to take or attempt to take white or yellow perch from the waters aforesaid with a net of any character, or by means of any contrivance whatsoever, excepting in the manner commonly known as angling with hand line or with rod and line.

Section 17. Any person or persons violating any of the provisions of Sections four, six, nine, thirteen and fifteen of this act shall forfeit and pay a fine of Twenty Dollars, together with costs of suit, for each offence; and any person or persons violating any of the provisions of Sections five, seven, eight, ten, eleven, twelve and fourteen of this act shall forfeit and pay a fine of One hundred Dollars, together with costs of suit for each offence.

Section 18. That it shall be unlawful for any [illegible] to catch and take, or to attempt to catch and take, in the said Delaware River or Delaware Bay, with purse [illegible] operated by [illegible]

DE16084

whatsoever; provided, however, that this Section shall not apply to the catching and taking of menhaden, sharks, porpoises and herring-hogs, by the crews of vessels licensed as provided for in this Section. It shall be the duty of the Collector of Oyster Revenue, upon the payment to him annually of the sum of One hundred Dollars ($100.00) for each and every vessel or boat, to issue a license to such vessel or boat to catch and take menhaden, sharks, porpoises and herring-hogs in the waters of the Delaware Bay as far north as a straight line drawn from the center of the mouth of Mahon's River to the nearest point opposite on the New Jersey shore from the first day of June until the thirty first day of August, inclusive, of each year, and so to the time or times. The said money so received for said license shall be paid over to the State Treasurer for the use of the state.

Section 19. It shall be unlawful for any person to have in his possession or to bring into this state any fish generally known as edible or food fish that has been caught and taken from the waters of the Delaware Bay or River, within the bounds aforesaid, for the purpose of extracting oil therefrom, or of converting the same into fertilizer, and it shall also be unlawful for any person to extract oil, or to convert, or in any manner assist in extracting oil from, or in converting such fish into fertilizer.

Section 20. That each of the said states of Delaware and New Jersey shall also have concurrent jurisdiction over all offences and violations of this Act committed, or attempted to be committed, by any person who is not an inhabitant of either of said states.

Section 21. The Governor of the State of Delaware shall, when and as requested by the Governor of the State of New Jersey, issue a commission or commissions to such person

or persons as may be named to him by the Governor of the State of New Jersey, which shall authorize the person or persons to whom they are directed to arrest the inhabitants of either the State of Delaware or the State of New Jersey for any violation of this Act, provided, however, that if the person so arrested shall be an inhabitant of the State of Delaware, such person shall be forthwith taken to the State of Delaware for trial and punishment. The Governor of this State may, at any time, and shall, when and as requested by the Governor of the State of New Jersey, revoke the said commission, or any of them. The compensation of the person or persons to whom such commission or commissions may be directed shall be paid wholly by the State of New Jersey.

The Governor of the State of New Jersey shall, when and as requested by the Governor of the State of Delaware, issue a commission or commissions to such person or persons as may be named to him by the Governor of the State of Delaware, which shall authorize the person or persons to whom they are directed to arrest the inhabitants of either the State of Delaware or the State of New Jersey, for any violation of this Act, provided, however, that if the person so arrested shall be an inhabitant of the State of New Jersey, such person shall be forthwith taken to the State of New Jersey for trial and punishment. The Governor of the State of New Jersey may, at any time, and shall, when and as requested by the Governor of the State of Delaware, revoke the said commissions, or any of them. The compensation of the person or persons to whom such commission or commissions may be directed shall be paid wholly by the State of Delaware.

Nothing contained in this Section shall be so construed as to prevent the arrest of any inhabitant of the State of

DE16086

New Jersey by any other officer or person having authority under the laws of the said State of New Jersey to make arrests for the violation of the provisions of this Act.

Section 23. That the dividing line between the Delaware River and the Delaware Bay is and shall be a straight line drawn through and from the centre of the monument erected by the Commissioners on the part of the State of Delaware aforesaid, at a point at or near what is called Liston's Point on the Delaware Shore of said waters, to and through the centre of the like monument erected by the Commissioners on the part of the State of New Jersey, aforesaid, at or near the mouth of what is called Hope Creek on the New Jersey shore of said waters. The said dividing line between said monuments shall be the division line between the said river and bay for the implementation of and for all purposes of the said Compact between the State of New Jersey and the State of Delaware and of the concurrent and uniform legislation provided for therein.

Section 24. The provisions of this Act shall be enforced in accordance with the provisions of an Act entitled "An Act to provide a uniform procedure for the enforcement of laws relating to fish, game and birds, and for the imposition of penalties for violations thereof," approved March 27, 1933, P.L. and the supplements thereto and acts amendatory thereof.

Section 25. That all laws, or parts of laws, inconsistent with the provisions of this Act, be and the same are hereby repealed.

DE16087

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Volume _____ Page _____

KCr 0914.1
Delaware Commissions
DE-NJ Fisheries Compact
General Files 1905-1907
Folder # 3 - Legislation

# STATE OF NEW JERSEY

OFFICE OF THE ATTORNEY GENERAL

Trenton, N. J. May 9th 1905.

Hon. Joseph L. Cahall,

Secretary of State,

Dover, Del.

Dear Sir:-

Your letter of the 28th ult., addressed to the Secretary of State of the State of New Jersey, informing him of the fact that the Commissioners recently appointed by the State of Delaware, to meet with a similar commission appointed from New Jersey, had organized and were ready to meet with the New Jersey Commission, has been handed over by the Secretary of State to me. I beg to state to you that our legislature, pursuant to law, just before its adjournment, appointed William J. Bradley, John Boyd Avis and James Strimple, Commissioners. I will at once communicate with Senator Bradley and announce the fact that your commission has organized and suggest that similar action be taken by our commission, and that a meeting of the two commissions be arranged for. I am,

With great respect,

Your obedient servant,

Robert Hall McCarter

Attorney General.

DE Public Archives

0914.1

DE Commissioners

Fisheries Compact

1905 - 1907

Brians

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DE04440

1903

# Report of New Jersey Commissioners on New Jersey and Delaware Fisheries.

The commissioners appointed on the part of the State of New Jersey by an act of the Legislature, approved May eleventh, one thousand nine hundred and five, to confer with like commissioners appointed by the General Assembly of Delaware for the purpose of drafting uniform laws to regulate the catching and taking of fish in the Delaware river and bay between said two States, and also to ascertain the dividing line between said river and bay upon each of the shores of the said two States where said dividing line extended shall intersect the same, and at the joint expense of said States erect a suitable monument to mark the said dividing line, do respectfully report to the Legislature as follows:

That, in accordance with the provisions of said act of the Legislature, they did, on the twenty-ninth day of May, one thousand nine hundred and five, meet, and after being duly qualified, according to law, did organize by the election of William J. Bradley president and John Boyd Avis secretary, and at once entered upon the performance of their duties. A large number of printed notices were prepared and mailed to prominent fishermen and others throughout the State, soliciting information upon the subject-matter before the commission; a public meeting was held in Pennsgrove, New Jersey, and a large number of fishermen from different sections of the State were represented. With their aid and suggestions, and with the aid of full copies of the fishing laws heretofore in existence in this State, the commissioners, after due and careful consideration, drafted an outline of a bill providing for uniform laws in accordance with the information and data thus obtained. They also communicated with the commissioners on the part of the State of Delaware, to wit, Alexander B. Cooper, William S. Hillis and Walter Hayes, and arranged for meetings of the joint commission in the city of Philadelphia.

(3)



DE05976

On the fifth day of December, one thousand nine hundred and five, the first joint meeting was held in the city of Philadelphia, and organization of the joint commission was effected by electing Alexander B. Cooper president and John Boyd Avis secretary. The matters committed to the joint commission were taken up thoroughly, discussed and a mode of procedure agreed upon. Meetings of the joint commissioners and the respective State commissioners were held from time to time until the sixteenth day of January, one thousand nine hundred and seven, upon which last-named date a bill, providing for uniform laws to regulate the catching and taking of fish in the Delaware river and bay between the said two States was presented to the joint commission, and after full discussion, amendment and consideration, was agreed upon. A copy of the bill heretofore submitted to the Legislature of the State of New Jersey, signed by all the commissioners on behalf of both States, to take such action thereon as provided in "The act to ratify and confirm the compact and agreement between the States of New Jersey and Delaware, respecting the Delaware river and bay, and to authorize the execution thereof," approved.

Owing to the slight differences in procedure in the two States it was found necessary to make some changes in relation thereto in the act to be adopted by the State of Delaware. With the exception of these slight changes in the matter of procedure, so as to adapt the bills to the system in force in each of the respective States, the said bills are alike and provide uniform laws for the catching and taking of fish in the waters of the Delaware river and bay between the said two States. The commissioners on the part of this State and the commissioners on the part of the State of Delaware have submitted the bills for uniform laws as so drawn to the Attorney-Generals of the respective States and have received opinions from them, respectively, approving said laws. The provisions of the bill, in the judgment of the commissioners, are in accord with the prevailing opinions of the fishermen of this State and those interested in the preservation and taking of fish in said waters, as expressed and shown from the testimony taken by the commissioners at the various meetings held and from such other sources as have been available to the commissioners.

In view of the undoubted fact of the gradual disappearance of the shad from said waters and the almost total disappearance of valuable sturgeon industries, the commissioners have been



especially industrious to ascertain what protection shall be given to these fish and industries. They have been unable to discover any cause or causes for the present conditions, excepting the non-haden fishing as heretofore carried on and the pollution of the waters, and they have endeavored to guard against the total extinction of these valuable fish in the provisions of the bill herewith submitted.

Another duty imposed by the General Assembly upon the commissioners was to ascertain and mark the dividing line between the Delaware river and bay. They examined many persons, captains, pilots and others familiar with the waters, United States government maps, and on the twenty-second day of June, one thousand nine hundred and six, the commission boarded the tug "Taurus" and went down the Delaware river to ascertain the dividing line between it and the Delaware bay. They found no little difficulty in doing that, as the character of the soil was so spongy and marshy that it was almost impossible to select suitable places for erecting the monument. After a thorough and careful inspection, however, of both sides of said river and bay, and in view of the information above mentioned, they determined that a monument should be erected on the New Jersey shore at or near the mouth of Hope creek and that a similar monument should be erected on the Delaware shore at or near Linton Point, and that a straight line drawn through the center of said monuments across the body of water intervening should be the line dividing Delaware river from Delaware bay, and thereupon they determined to acquire title in the State of New Jersey to a sufficient quantity of land upon which said monument is to be erected on the New Jersey shore, and instructed the secretary to ascertain if such title could be obtained. They have arranged with the owner of said land to convey to the State of New Jersey a sufficient quantity thereof upon which said monument is to be erected.

On the thirty-first day of October, one thousand nine hundred and six, the commission entered into a contract with William Davidson, of the city of Wilmington, a competent and trustworthy dealer in and manufacturer of monuments, to erect two suitable monuments, one on the New Jersey shore, at the point above designated, and one on the Delaware shore at the point above designated. The cost of the erection of and inscription on both the monuments amounts to $370. The contract was awarded to said

Davidson, as he was the lowest bidder for the same in response to proposals therefor submitted by the commission.

In addition, the joint commission has provided that the said monuments shall be erected under the supervision and direction of a competent inspector, employed for that purpose by the joint commission, and subject to his approval. These monuments are precisely alike in size and manner of erection. Each is eight feet four inches high, one foot six inches square at the base, tapering to one foot square near the top and then beveled to a point at least four inches above the top. One side of each of said monuments is to be polished, and each of said monuments is to be set up on a concrete foundation three feet deep, said concrete to be laid on good timber or stone slab bottom. Each concrete foundation is to be at least four feet square at the bottom, to continue at that size six inches in height, to taper on all sides to the top of the concrete, which shall be at least two feet six inches square. Each of said monuments is to be of Brandywine granite, and on the polished side of the monument to be erected on the New Jersey shore is to be the following inscription:

"MOUTH OF DELAWARE RIVER.

"A straight line drawn from the center of this monument to the center of a similar monument erected at or near Liston Point on the Delaware shore is the dividing line between the Delaware river and bay, ascertained June twenty-second, one thousand nine hundred and six, in pursuance of uniform acts of the Legislatures of the State of New Jersey and the State of Delaware, approved A. D. one thousand nine hundred and five.

"WILLIAM J. BRADLEY,
"JOHN BOYD AVIS,
"JAMES STRIMPLE,
*"Commissioners of New Jersey.*

"ALEXANDER B. COOPER,
"WILLIAM S. HILLIS,
"WALTER H. HAYES,
*"Commissioners of Delaware."*



And on the polished side of the monument to be erected on the Delaware shore is to be the following inscription:

"MOUTH OF DELAWARE RIVER.

"A straight line drawn from the center of this monument to the center of a similar monument erected at or near Hope creek on the New Jersey shore is the dividing line between the Delaware river and bay, ascertained June twenty-second, A. D. one thousand nine hundred and five, in pursuance of uniform acts of the Legislatures of the State of New Jersey and the State of Delaware, approved A. D. one thousand nine hundred and five.

"ALEXANDER B. COOPER,
"WILLIAM S. HILLIS,
"WALTER H. HAYES,
*"Commissioners of Delaware.*

"WILLIAM J. BRADLEY,
"JOHN BOYD AVIS,
"JAMES STRIMPLE,
*"Commissioners of New Jersey."*

It will be necessary for the commissioners to hereafter draw from the State Treasury out of the funds appropriated an amount sufficient to pay for one-half the cost of making, erection and inspection of said monuments and other expenses.

W. J. BRADLEY,
JOHN BOYD AVIS,
JAMES STRIMPLE.
*Commissioners of the State of New Jersey.*

State of Delaware,

Office of Secretary of State
DOVER, DEL.

JOSEPH L. CAHALL,
SECRETARY.

COPY.

Woodbury, N. J.,

August 7, 1905.

Hon. Joseph L. Cahall,

Dover, Delaware.

Dear Sir:-

Your letter addressed to Gov. E. C. Stokes has been forwarded to me for reply. The names of the New Jersey Commissioners are Senator W. J. Bradley, Camden, Senator J. Strimple, Pedricktown, N. J. , and myself. We have organized by the election of Senator Bradley as President, and I was elected Secretary. We shall be very glad to receive any communication from the Delaware Commission, and will make arrangements for a meeting at any time that they think advisable. Our plans were to gain as much knowledge as we can of Jersey Fishermen, before holding a joint meeting. If the Delaware Commission feel, however, that it is best for us to meet early in joint session, we shall be glad to do so.

Yours very truly,

John Boyd Avis,

Secy. New Jersey Commission.

0914.1

DE Commissioners

Fisheries Compact

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WILLIAM S. HILLES. WALTER H. HAYES,
SECRETARY.

DELAWARE COMMISSIONERS,
(DELAWARE-NEW JERSEY FISHERIES COMPACT)
907 MARKET STREET,
WILMINGTON, DEL.

Wilmington, Del., March, 14, 1906.

Hiram R. Burton,
House of Representatives,
Washington, D. C.

Dear Doctor:-

The New Jersey Commissioners and the Delaware Commissioners comtemplated under the Compact between these two States and who were appointed under said Compact, and additional Legislation of both States for the purpose of drawing uniform fishing laws to be enacted by both states in regard to fishing in the Delaware River and Bay, met and organized on December 15, 1905 by the election of Hon. Alexander B. Cooper of Delaware, President and the Hon. J. Boyd Avis of New Jersey, Secretary.

At that meeting a resolution was unanimously adopted in reference to the ratification of the Compact, by Congress.

I inclose you a certified extract from the minutes of that meeting. Under the laws the Secretary of the Delaware Commission and the Secretary of the New Jersey Commission are both required to keep the minutes of the meeting of the Joint Commission.

Secretary.

ALEXANDER B. ODDORER, PRESIDENT. WILLIAM E. HILLES. WALTER H. HAYES, SECRETARY.

# DELAWARE COMMISSIONERS,

(DELAWARE-NEW JERSEY FISHERIES COMPACT)

907 MARKET STREET,

WILMINGTON, DEL.

Mr. Hilles offered the following Resolution:

[redacted]

This Resolution was adopted after discussion as to agreement on joint fishing laws, the members of the commission believing that it would be well to defer action on the compact until some understanding could be arrived at on this subject by the members of the two Commissions.

I, Walter H. Hayes Secretary of the Delaware Commissioners, (Delaware-New Jersey Fisheries Compact) hereby certify that the above and foregoing is a true copy of a portion of the [redacted] of the Delaware Commissioners [redacted] of a meeting of the joint Commission of the two States [redacted] ember 15th A. D. 1908.

Walter H. Hayes
Secretary.

DE18305

State of New Jersey,

Assembly Chamber,

Woodbury, Trenton, December 19, 1905

Hon. E. C. Stokes,

Trenton, N. J.

Dear Governor:-

I send enclosed, a copy of the resolution and minute adopted by the Delaware and New Jersey Commission in joint session last Friday.

The desire of the Commission is that a request be made to either the President or other persons who may have the charge and control of this compact, to hold the matter up for a short period.

I will see you about the matter in a few days.

Yours respec'y.

John Dryden

785

New Jersey State Archives
Governor Stokes Papers
Box 22 Folder 855

" Mr. Hillies offered the following resolution:"

Resolved that the governor of the State of Delaware and the Governor of the State of New Jersey are requested to ask Congress to defer the ratification of the Compact entered into between the State of Delaware and State of New Jersey until the commission shall make further request.

This resolution was adopted after discussion as to agreement on joint fishing laws, the members of the Commission believing that it would be well to defer action on the compact until some understanding could be arrived at on this subject by the members of the two commissions.

The above resolution was adopted at a joint meeting of the Delaware and New Jersey Commissions, appointed by the General Assembly of the State of Delaware and the Legislature of the State of New Jersey, by acts approved March 23rd, 1905 and May 11th, 1905, respectively, at a meeting held at the "University Club" No. 1510 Walnut Street, Philadelphia, Friday, December 15th, 1905.

John Biggs Dis
Secretary.



DE16728

New Jersey State Archives
Governor Stokes Papers
Box 22 Folder 855



DE16729

REPRODUCED AT THE NATIONAL ARCHIVES

Wilmington, Delaware, January 19, 1907.

Hon. Hiram R. Burton, Esq.,
House of Representatives,
Washington, D. C.

My dear Sir:

The time has now come when it is necessary that the Compact now pending in Congress for ratification be finally ratified by the passage of the Act which is now in the House of Representatives and, as I understand it, is in the hands of the Judiciary Committee of the House. The passage of said Act, ratifying said Compact, was delayed upon your request and such request by you was made in accordance with my letter of March 16th, 1906 and in accordance with letters to you from Members of the Fishery Commission of the State of Delaware. The reason for these requests for delay was in order that it might be ascertained whether the Joint Commission representing the States of New Jersey and Delaware could agree upon a uniform fishing law. My personal judgment at the time was that the ratification of this Compact should not be delayed for the above stated reason, and that the State was in honor bound to procure the

REPRODUCED AT THE NATIONAL ARCHIVES



ratification of the Compact without any delay. I joined in the request, however, to you to delay such ratification by the House of Representatives in deference to the views and desires of the Members of the Delaware Fishery Commission. On June 8, 1906 I wrote your letter setting forth in extenso the reasons why the passage of the Bill to ratify the Compact should be accomplished before the adjournment of Congress. The chief reason for ~~delay~~ action at that time was that the Supreme Court had only agreed to postpone proceedings in the case of the State of New Jersey vs. the State of Delaware until the Ninth of October, 1906, which date would arrive before the re-assembling of Congress. The Compact, however, was not ratified by the last Session of Congress and it required all the efforts of Counsel from this State and from the State of New Jersey to secure a further postponement of the proceedings in the above stated cause. The Supreme Court, however, did finally postpone proceedings in the case until the First of February, A.D.1907 for the purpose of permitting Congress to ratify this Compact, and in taking this action the Supreme Court gave Counsel to understand that no further postponement could be expected but that the case must be finally disposed of.

Rather than run the risk of any further opposition to the ratification of this Compact by the Fishery Commission of this State, I have delayed any attempt to have the above mentioned Act passed by the House of Representatives earlier in the present Session and have been urging the Fishery Commission to finally finish their work and notify me

Form No. 165.

# THE WESTERN UNION TELEGRAPH COMPANY.

INCORPORATED

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ROBERT C. CLOWRY, President and General Manager.

**RECEIVED** at

5 Ny Ui Ds 18 Dh

Washington D.C., Mch 14, '06

Hon E.C.Stoken,

Delaware Commissioners with Attorney wire Burton to hold up consideration of agreement charge bad faith. Wire me fully.

H.C.Loudenslager.

540 P.M.

6755

New Jersey State Archives
Governor Stokes Papers
Box 12, Folder 675

Congressman Loudenslager 'phones me that Burton, Congressman from Delaware and Bates, are at Washington claiming that the Commissioners passed a resolution which provided that certain suits should be disposed of before Congress took any action. A copy of these resolutions is there signed certified to by the Delaware Secretary of the Commission. What are these suits and what resolution was passed. Won't you go down to Washington and see Senator Kean and Congressman Loudenslager as Senator Kean and Senator Allen have agreed to hold up the bill until further information is given.

Ask if he wants to talk to the Governor. He does not understand the thing at all.

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New Jersey State Archives
Governor Stokes Papers
Box 12 Folder 675



DE16738

March 7th, 1908.

Hon. H. C. Loudenslager,

House of Representatives,

Washington, D. C.

Delaware and New Jersey represented by respective commissioners, agreed upon a compact for the settlement of long standing disputes as to fishing and other rights, and cessation of litigation concerning the same. The legislature of both states ratified the compact agreed upon by their commissioners. The consent of Congress is nec-

675

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essary as provided for in the pending bill. There was no bad faith on our part. Have written.

(Signed) E. C. Stokes.



DE16739

New Jersey State Archives
Governor Stokes Papers
Box 12 Folder 675



DE16740

HOTEL MORTON
ATLANTIC CITY

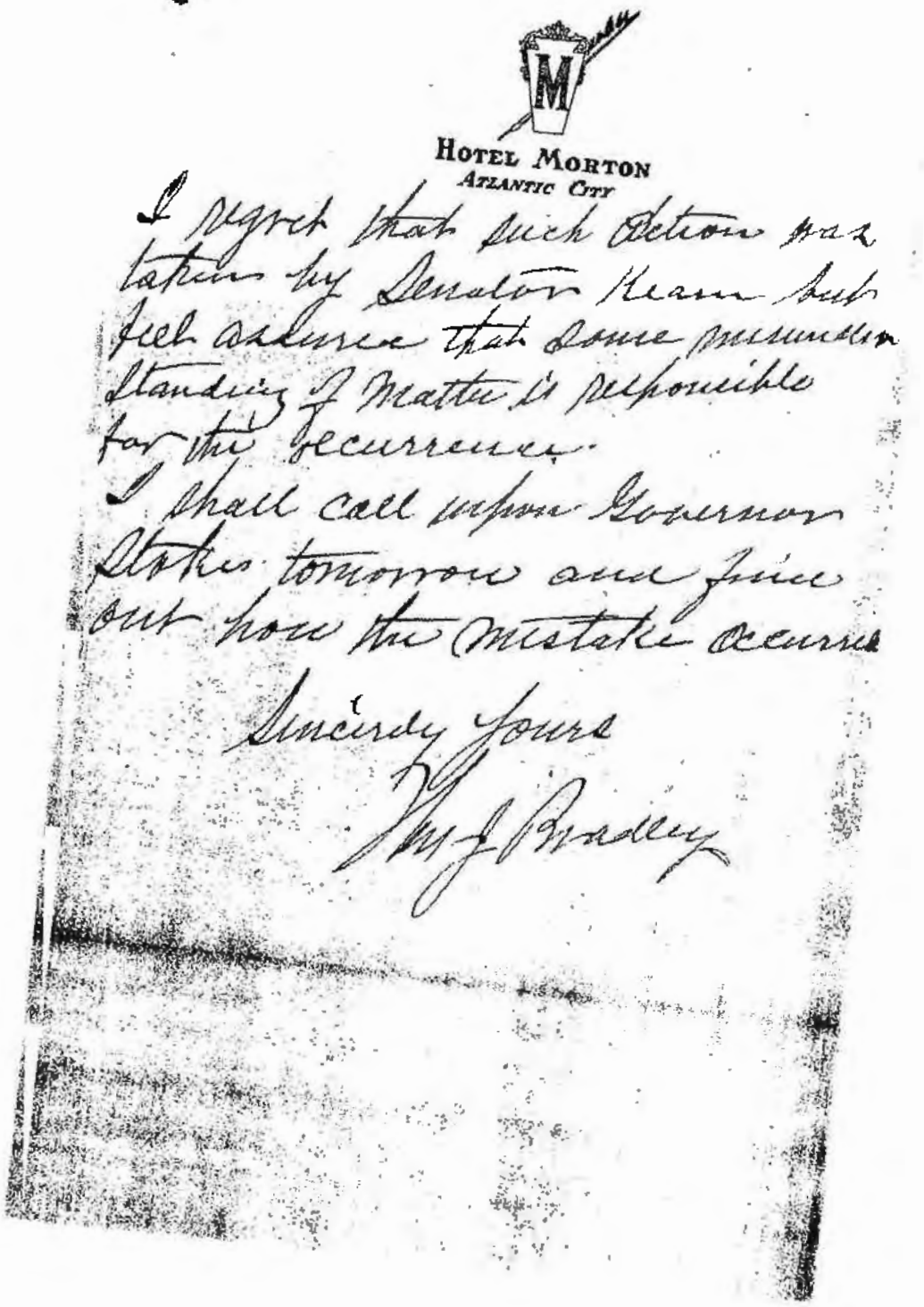
March 19th 1906

Hon Alexander B Cooper
Pres Del & Sch. Fisheries Compact Commission

My dear Sir

I am in receipt of your favor of March 17th calling my attention to the action of Senator Kean in having a bill passed giving consent of Congress to the compact entered into between the States of New Jersey & Delaware in relation to that boundary question &c. Mr Ariel Notified Governor Stokes of the action of the Joint Committee requesting that Nothing be done by Congress until we had agreed upon Uniform Fishing laws I have written to Senator Kean and Congressman Loudenslager requesting that nothing further be done until Delaware & New Jersey agree to Uniform Fishing Laws

DE16091



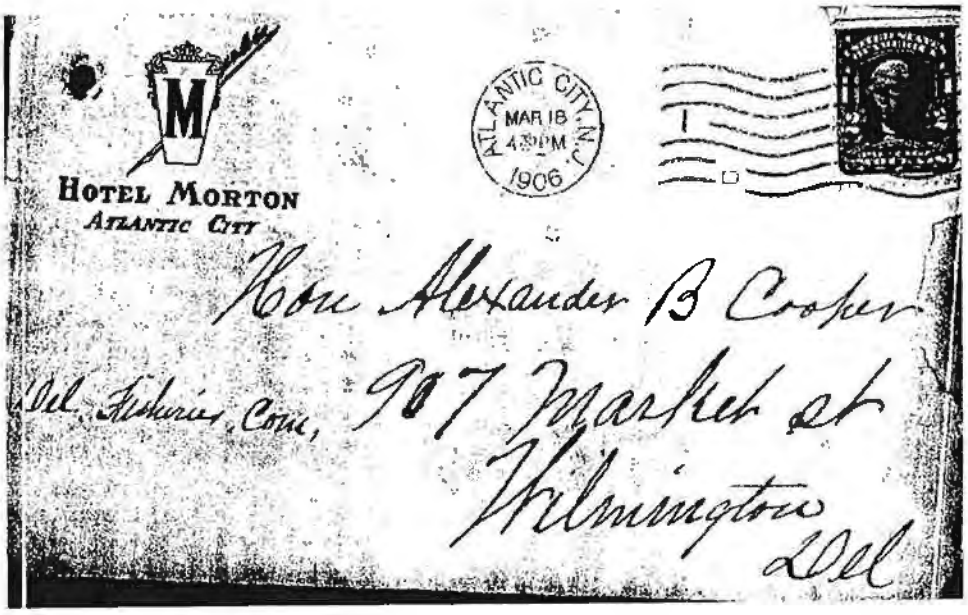
HOTEL MORTON
ATLANTIC CITY

I regret that such action was taken by Senator Kean but such address that some misunderstanding of matter is responsible for the occurrence.

I shall call upon Governor Stokes tomorrow and find out how the mistake occurred

Sincerely Yours

Wm J Bradley


HOTEL MORTON
ATLANTIC CITY
ATLANTIC CITY, N.J.
MAR 18
4 PM
1906
Hon Alexander B Cooper
Del. Fisheries Com.
907 Market st
Wilmington
Del

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DE Public Archives

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DE Commissioners

Fisheries compact

General Files

1905 - 1907

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GEO. H. BATES
3002 Lemon Ave.

PHILADELPHIA, March 22, 1906

Hon. Robert H. McCarter.

My dear sir -

It seems necessary that we should speedily have a conference to determine what action, joint or separate, is required to make clear to the Supreme Court the necessity of acceeding to our joint request. On returning from Wilmington last week I was on the point of writing you about several matters, having had an understanding with Atty. Gen. Richards that I would confer with you on the particular subject above mentioned. I was interrupted in my purpose by the unexpected information that Senator Kean, acting under what advice I know not, had abused the confidence of the Senate, in the absence of anyone from Delaware, by procuring the passage of a bill by unanimous consent, obtainable only by what was in fact, however intended, very sharp practice. The refusal of Senator Kean to have the bill recalled, upon the return to Washington of Senator Allee, would seem to justify the belief that the absence of the latter was purposely taken advantage of, and was, to say the least, inconsistent with the spirit of courtesy and fair dealing which has hitherto characterized the relations of representatives of both states.

The fact that the Governor of Delaware had requested delay in congressional action and the Governor of New Jersey had been asked to do so by representatives of both states having the business in charge would seem to have justified all concerned in assuming that the fairness and courtesy hitherto observed might still be relied on. But aside from this, in such a matter, it might reasonably have been assumed that those who represent Delaware, either before the Court or in Congress, would be advised and consulted as to any such proposed action, as that of which

DE18162

Senator Kean, so far as the record shows thus far, is the author.

I deprecate the introduction into the business of any such incident, and would regret a necessity for its public discussion. I believe that you and I can meet speedily, we can arrange for a definite and satisfactory understanding with the Court. It is clear that there must be a fuller statement of the situation presented on April 9th, when the criminal docket is to be gone over for the express purpose of explanations from counsel in this and other cases. Such statement we should have in print and supplement it by any required verbal explanations.

I will meet you at any convenient point, but it ought to be very soon.

Very truly yours,

[Copy of telegram, received by telephone.]

Newark, N.J. Mch. 23. 1906.

To Geo. H. Bates, 3002 Lehigh Ave. Phila. Pa.

Will meet you at Bellevue-Stratford Saturday morning at 10.30 o'clock

Robert H. McCarter.

**DE H.S.**
**Box 7 File 2**

March 24. 6.

Alexander B. Cooper, Esq.

Dear Aleck,

I have been delayed, from day to day, in writing you. I found the situation at Washington unsatisfactory, but succeeded, at least, in arresting the efforts to shove the bill through both houses, post haste. It was put through the Senate by unanimous consent obtained by Senator Kean, I have no doubt, by producing the impression, if not actually representing, that it was a mere perfunctory matter. Mr Allee was absent and could undoubtedly have obtained the recall of the bill, upon a statement that, if present, he would have objected and that he and Kean had an understanding that the bill was to rest undisturbed, by agreement of both states. When I met Kean and Allee together the former would not agree to move, himself, for the recall of the bill and Allee would not insist on it. This satisfied me that the one intentionally called the matter up in the way he did: and that the other either did not understand or did not care about the effect upon Delaware. He did seem sensitive to probable criticism at home of which I made a plain suggestion. This point, if you can get it brought home to him by one of his political friends, I think may yet wake him up. Can you not accomplish this through Walter Hayes. Anyone can see that Allee cannot escape the most lively and even bitter criticism if this bill now gets through the House, since it was in the Senate that it could have been most effectually delayed. Dr. Burton put this view strongly to Allee and if the matter gets into public discussion in Delaware (as it is pretty sure to do unless Allee retrieves his blunder) the conduct of the two men will be in marked contrast.

Dr. B. was very efficient and secured the hanging up of the bill in the Judiciary committee of the House, to which it is referred.

DE18169

I am in correspondence with McCarter and invoking his cooperation in having the Court suspend the proceedings indefinitely. I believe,however, that New Jersey people are using the action of the Court to push the bill through,and that they all ignore the action of your commission and theirs. I know that Gov. Stokes was doing this and doubt if he acted upon your request to him and Gov. Lea. I will do the best I can with McCarter but fear that he is among those behind Kean;at least if he is not Kean prevaricated.

While I am doing what I can,I trust you will pull every string within your reach. Some points which occur to me I venture to suggest.

1. Try to have it made apparent to Allee that he cannot escape responsibility for the surreptitious passage of the bill in his absence,unless he insists on its recall,and,if Kean prevents his doing this by unanimous consent,then by putting himself on record in open Senate as to the way in which its passage was secured. As I said Hayes ought to be able to secure this.

2. Try to impress Richards with the gravity of the situation and the importance of securing present non-action by Congress. He was very weak-kneed but I understood from you that you had made some impression on him. Do get all the pressure upon him that you can arrange for,both from yourself and others;and let me know,as soon as possible,how he talks. He and Mr McCarter and I were to meet this morning,but the meeting was called off because of illness in McCarter's family. I would like you to see Richards and let me know the result before he and I meet McCarter,which will be soon.

3. Won't you see Judge Gray and get him fully informed of the situation and then ascertain what he advises. He was too much occupied,when I saw him, to get his mind on it. If you get him advised of the facts I am sure he will help us in any way he can,-certainly by advice. If you could get from him a letter to you or me,personal in form,but which he would permit us to show to anyone required to act officially upon the matter,it would be of great value.

4. Dr. Burton asked from me(and I promised to prepare it) a statement of

the whole matter so far as its present status is concerned. I am to give him this in such form as to be embodied by him in any statement he may wish, or be called on to make, either before the committee or in the House. Now, I want you, if you will, to send me within a day or two, a memo. (pencil will do,) of points to be suggested to him, so as to insure against my omitting anything of importance.

5. I think Handy can render great service in influencing members of the Judiciary committee with whom he served in the House. Can you see him and put him in possession of the facts necessary for him to act intelligently? I will also write to him, but I am under some pressure just now and it would help me very much if you will post Handy, which you can do verbally with less labor than I can do it in writing at length.

Let me hear from you soon. I am sorry to bother you so much but time is everything. If you can get a tolerably leisure day you could cover all these points.

Very truly yours,

Thanks for the newspapers. I am treasuring them up.

**DE H.S.**
**Box 7 File 2**

ALEXANDER B. COOPER,
PRESIDENT.

WILLIAM S. HILLES.

WALTER H. HAYES,
SECRETARY.

DELAWARE COMMISSIONERS,
(DELAWARE-NEW JERSEY FISHERIES COMPACT)
907 MARKET STREET,
WILMINGTON, DEL.

Wilmington, Del., May 2, 1906.

Walter H. Hayes, Esq.,
1025 Market St.,
Wilmington, Del.

Dear Sir:-

A meeting of the Joint commission (Delaware-New Jersey Fisheries compact) is hereby called to meet at the University Club, 1516 Walnut Street, Philadelphia, Pa., on Tuesday the 8th day of May 1906, at 2.30 o'clock P. M.

Alex. B. Cooper
President.

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DE Commissioners
Fisheries compact

1905-1907

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State of Delaware,

Office of Attorney General

[redacted]

Wilmington, Delaware, Jan. 19, 1907.

To the

Chairman of the Judiciary Committee,

House of Representatives,

Washington, D. C.

Dear Sir:

At the first Session of this Congress a Bill was passed by the Senate to ratify a Compact which had previously been signed and agreed to by the States of New Jersey and Delaware. The object and purpose of this Compact was to settle certain matters concerning fisheries which had been the cause of the litigation for years pending in the Supreme Court of the United States between the two States. This Compact was passed by the Legislature of the State of Delaware and also by the Legislature of the State of New Jersey and, in accordance with the Acts of the respective Legislatures, the Commissioners from each State, of whom I had the honor to be one, on the part of the State of Delaware, signed and formally executed the Compact which had been agreed to by the respective Legislatures. This Compact provided that it should be ratified by

DE18312

[redacted] of the United States. It does not purport to settle any [redacted]ism of the boundary line between the two States, but on the other hand, expressly provides that the boundary line between the two States shall not in any wise be affected by the Compact. The Governors of the two States upon the assembling of the First Session of the present Congress transmitted a copy of the Compact to the President of the United States, requesting that he submit the same to Congress for ratification. The matter was transmitted to the President by a separate communication from each of the Governors with a separate specific request that he submit the Compact to Congress for ratification. The President acting in accordance with the two requests, submitted the Compact to Congress by a Message to the Senate, as I am informed. A Bill was drawn to ratify the said Compact and introduced in the Senate by Senator Kean of New Jersey, and immediately passed the Senate. The Bill was then transmitted to the Hpuse of Representatives and referred to your Committee, as I am informed. About this time a Joint Commission appointed by the Governors of New jersey and Delaware for the purpose of drafting a uniform fishing law, to carry out the provisions of said Compact, joined in a request to me and to the Governors of each of the said States, [redacted] the ratification of the Compact be delayed until it could be ascerta[redacted] whether the said Joint Commission could agree upon such uniform fish[redacted] laws. At the time of this request, my judgment was that the ratifi[redacted]

of the Compact should not be delayed for this or any other reason. As I viewed the matter, each State was in honor bound to secure, if possible a speedy ratification of the Compact by Congress, and I further was of opinion that neither State could defend after having, through its appropriate executive, requested the President of the United States to call upon Congress to ratify this Compact, subsequently to make requests to Congress itself to delay such ratification. Notwithstanding my personal views upon the subject, out of deference to the request of the Joint Fishery Commission, I joined in a request to Congressman Burton of this State for a delay of the passage of the Act to ratify said Compact. Pursuant to the requests thus made, Congressman Burton, I am informed, made a request of your Committee that the Bill to ratify said Compact should be held up by said Committee and should not be reported to Congress until a further communication from him. The request made of Congressman Burton to ask for a delay of the ratification of this Compact was on or about March 15th, 1906. At the time I joined in such request, I was led to believe by the Fishery Commission that they would be able to ascertain whether they could agree upon uniform fishing laws within a few weeks and that the Compact could be ratified by the last Session of the present Congress. Subsequently I was informed by some Member of Members of said Commission that they felt satisfied that they could agree but had not at that time agreed upon the law itself. Shortly before the adjournment of the last Session of the present Congress, to-wit, on [redacted]

#4.

1906, I wrote Congressman Burton a long letter setting forth the reasons why, in my judgment, the Compact should be ratified at once. In that letter I suggested to Congressman Burton, as in the fact, that the consideration involved in the matter [illegible] to assume all responsibilities for his action in the matter. Congressman Burton at that time, both verbally and by letter, gave me to understand that he would withdraw any objection that he had made and bring about the ratification of the Compact before the adjournment of the last Session of Congress. I did not know that he had failed to do this until after Congress had adjourned, when he wrote me, after the adjournment of Congress stating reasons why he did not care to withdraw his opposition to this measure. Not only was he at that time advised to bring about the ratification of the Compact by myself, but he was also so advised by the Governor of this State.

I am writing to-day a letter to Congressman Burton requesting him to press at once for the passage of the Bill to ratify this Compact, advising him that we had great difficulty in securing a further postponement of the proceedings in the case of the State of New Jersey vs. the State of Delaware by the Supreme Court when we last appeared before that Court on October 9th, and that the Court clearly intimated that the delay which they then granted until the First of February, 1907 for the express purpose of giving Congress a further opportunity to ratify this Compact, would not be again extended.

I enclose herewith a copy of my letter to Congressman Burton and also a copy of all enclosures which were contained in my letter to him.

It will appear from the statements contained in my letter to Congressman Burton that the Governor of this State desires the [redacted] of this Compact, that the present Legislature so desired, that of course the last Legislature, which agreed to the Compact, so desired, and that the majority of the people of this State by their vote at the last election was in favor of this agreement between the two States.

It will, therefore, clearly appear, in case Congressman Burton should further oppose the passage of the Bill ratifying this Compact, that such action would be contrary to the wish of the present State Government of this State and contrary to the wishes of a majority of the people of this State.

I do not know what attitude Congressman Burton will now take in the matter. I do not desire to incur any further opposition from him in the matter. I do, however, desire to state to you as the Chairman of the Committee having charge of the Bill in question, that in my opinion this Bill should be passed by the House of Representatives at once, and I further state that such is the opinion of the Governor of this State.

I remain,

Yours very truly,

Robert H. Richards

Attorney General.

DE18316

THE SENATE OF NEW JERSEY

June 18, 1906.

Walter H. Hayes, Sec'y,
907 Market Street,
Wilmington, Del.

Dear Sir:-

I have received your letter fixing Friday, the 22nd day of June for the trip down the Bay.

After consultation with Senator Bradley, we have made arrangements to meet you, leaving Philadelphia on the 8.32 train, arriving at Wilmington at 9.10.

We hope to have all the Commissioners present, but will have no guests.

We think it will be a good time to go over the provisions of the joint fishing law and if possible, hope we can arrive at a definite conclusion, so that the compact may be approved by Congress, with the consent and approval of the Delaware Commissioners.

Yours truly,

John Dey Mac

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Fisheries Compact

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FRANCIS RAWLE
HENRY C. ESLING
JOSEPH S. LOVERING

LAW OFFICES
328 CHESTNUT STREET
BROWN BROTHERS BUILDING
PHILADELPHIA

COPY.

THE STATE OF NEW JERSEY,
Complainant,
vs.
THE STATE OF DELAWARE.

SUPREME COURT OF THE
UNITED STATES.

January 16th, 1906.

Hon. Robert H. Richards,
Attorney General of Delaware.

Dear Sir:-

Counsel for both parties have expressed their acquiescence in my suggestion of a meeting. I will therefore, if you please, fix Friday, February 2nd, 1906, at three o'clock at this office. Please let me know if that will suit you.

Yours very truly,

Francis Rawle

From the collections of the Historical Society of Delaware, 505 Market St., Wilmington, DE 19801
302-655-7161 www.hsd.org

State of Delaware,

Office of Attorney General

ROBERT H. RICHARDS,
ATTORNEY GENERAL.
DANIEL O. HASTINGS,
DEPUTY ATTORNEY GENERAL.

Wilmington, Del., Jan. 17, 1906.

Hon. George H. Bates,

3002 LeHigh Avenue,

Philadelphia, Pa.

My dear Sir:

I am in receipt of a letter to-day from Mr. Rawle in which he fixes Friday, February 2nd, at three o'clock P. M., at his office, as the time and place for the meeting of Counsel concerned in the case of the State of New Jersey vs. the State of Delaware, with the Master appointed in said case. This date is entirely satisfactory to me and also to Mr. Ward and I have so advised Mr. Rawle. I further advised Mr. Rawle that I felt confident that the date would be satisfactory to you, but that I would communicate with you. If the date is not satisfactory, will you immediately communicate with Mr. Rawle in relation to the matter and oblige,

Yours very truly,

Robt H Richards

1/18. Ackgd saying that date is satisfactory, also requesting him to secure some copies of last Pamphlet Del laws.

From the collections of the Historical Society of Delaware, 505 Market St., Wilmington, DE 19801
302-655-7161 www.hsd.org

**DE H.S.**
**Box 7 File 2**

GEO. H. BATES
3002 LEHIGH AVE.

PHILADELPHIA Feb. 22, 1906

Hon. Robert H. McCarter,

My dear Mr. McCarter:-

Mr Rawle and I were both in the Court at Washington on Monday and Mr. Rawle filed his report of which he is sending you a copy, as neither counsel Mr. Richards appeared, we did nothing further, but Mr. McKenney had a little talk with the Chief Justice and he said that it would not be necessary to call the matter to the attention of the Court that day, as no one from New Jersey was present. He suggested that if we were agreed as to what order should be entered, it could be done next Monday.

I have drawn a short stipulation which seems to me to cover all that is necessary, and having shown it to Mr Rawle, I enclose a copy herewith in the form which expresses Mr. Rawle's thought on the subject as well as my own. It is designed to leave the matter in statu quo until counsel desire to stir the Court up on the subject.

If this is satisfactory to you, please sign it and return it to me so that I can receive it on Saturday and I will undertake to see that an order is entered in accordance with the stipulation, if the Court agree to it, as I have no doubt they will.

I am sending a copy by this mail to my colleagues in Wilmington and hope to hear from you all on Saturday.

If you want to consult with me about the matter tomorrow, you can call me up on the telephone. My number is Tioga 27-58 L.

Very truly yours

As the time is so short I wish you would telephone me tomorrow morning if you receive this, so that I can send it to the printer at once. He closes Saturday at noon.

From the collections of the Historical Society of Delaware, 505 Market St., Wilmington, DE 19801
302-655-7161 www.hsd.org

Feb. 28, 1906.

Hon. Robert H. Richards,

Dear Mr Richards:-

Mr Rawle and I were both in the Court at Washington on Monday and Mr Rawle filed his report of which he is sending you a copy. As neither you nor Mr McCarter were present we did nothing further, but Mr McKenney had a little talk with the Chief Justice, and he said that it would not be necessary to call the matter to the attention of the Court that day, as no one from New Jersey was present. He suggested that if we were agreed as to what order should be entered, it could be done next Monday.

The enclosed stipulation covers all that Mr Rawle thinks necessary and leaves the matter in statu quo, subject to future action of counsel. If satisfactory to you and Ward, please sign and return it so that I can receive it on Saturday, and I will arrange for the entry of the order in the terms of the stipulation, if agreeable to the Court. I am sending a copy to Mr McCarter and hope to hear from you all on Saturday. As you and Mr Ward are so near together and I am hurried, I send one copy for you both to look over, and as the time is short, I wish you would telephone to me tomorrow morning, if you receive this, so that I can give it to the printer at once.

very truly yours

From the collections of the Historical Society of Delaware, 505 Market St, Wilmington, DE 19801
302-655-7161 www.hsd.org

Engineer Office,U.S.Army,
815 Witherspoon Building,
Philadelphia,Pa. March 10,1906

Brig.Gen.A.Mackenzie,
Chief of Engineers,U.S.A.,
Washington,D.C.

Generals-

Referring to the question as to whether or not the United States will have a clear title to the artificial island now under construction on Dan Baker and Stony Point shoals,Delaware River,when this island shall have been completed,I have the honor to report that I have today had a conference on this subject with Governor Stokes,of New Jersey. The island lies in the lower part of the Delaware River between New Jersey and Delaware. While it is nearer to the New Jersey shore than to the Delaware shore,it is within the circle of 12 miles radius drawn from New Castle,Del.,as a center,within which circle the State of Delaware claims to own the bottom of the Delaware River,thus claiming within this circle the ownership of the river bottom up to the New Jersey shore. The question of the legality of this claim has never been settled. Governor Stokes suggests that if the Secretary of War were to write him a letter suggesting that the Legislature of New Jersey pass an act ceding to the United States title to the river bottom on which this island is constructed "so far as the interests of the State of New Jersey may appear", hewould bring the matter promptly to the notice of the State Legislature,which is now in session; and that, if a similar letter were written to the Governor of Delaware,the same action would probably be taken at the proper time. The New Jersey Legislature will,it is presumed,adjourn in about 4 weeks; hence he considers it advisable that prompt action be taken. The Delaware Legislature is not now in session, but prior action on the part of the New Jersey Legislature will, it is thought, favorably impress the Delaware Legislature and assist in the passage of such an act by the latter.

Very respectfully,
Your obedient servant,
J.C.Sanford,
Major,Corps of Engineers.

1st indorsement
War Department,
Office of the Chief of Engineers,
Washington, March 20,1906

1. Respectfully submitted to the Secretary of War:

2. In carrying out the improvement of the Delaware River under authority of Congress,it was necessary to construct a bulkhead around portions of what are locally known as "Dan Baker" and "Stony Point" shoals, so as to form a basin within which to deposit the material dredged from the channel. When completed this area will be in the form of an island,which it is important should be under the possession and control of the Federal Government. This area is in the bed of the river between the States of New Jersey and Delaware,but nearer the New Jersey shore,and consequently belongs to one of the two States mentioned. It is understood that there is acontention between the two States as to the ownership of the bed of the Delaware River,and that a suit to settle the question is now pending in the Supreme Court of the United States.

3. I have the honor to recommend that letters be addressed to the Governors of the two States,requesting that the matter be laid before the respective legislatures with a view to securing such action as may

be necessary to vest in the United States title to that part of the river bottom on which the aforesaid island is constructed.

4. Two maps with description of the submerged land desired are herewith.

A. Mackenzie,
58654 Brig.Gen.,Chief of Engineers,U.S.Army.

Two copies of inclo.3 with two copies of inclo.2 attached.

Chief Clerk,
War Department, Mar.20, 1906

W.D.Letter 3/27 to Sec.of State, L.B. 13 page 251

Rec'd Office Chief of Engrs. Mar. 27, 1906

Major Sanford to note and return. O.C.of E. 28th Mch. '06.

58654 & inclo. 4

Noted by Major Sanford and respectfully returned to Chief of Engineers,U.S.A.

Inclo.4 herewith.

Mch.31/06.

New Jersey State Archives

Engineer Office, U. S. Army

813 Witherspoon Building

Philadelphia, Pa., March 16, 1906.

Brig. gen. A. Mackenzie,

Chief of Engineers, U. S. A.,

Washington, D. C.

General:

As directed by your telegram of the 12th instant, I have the honor to submit inclosed tracing and description of submerged land on Dan Baker and Stony Point Shoals covering the site of the artificial island under construction for the deposit of material dredged from Delaware River.

Very respectfully,

Your obedient servant,

J. C. Sanford,

Major, Corps of Engineers.

(2 Inclos.,tracing in sep.roll)

New Jersey State Archives

DESCRIPTION OF SUBMERGED LAND IN DELAWARE RIVER PROPOSED TO BE CEDED TO UNITED STATES. BY THE STATES OF NEW JERSEY AND DELAWARE.

---

Location of said land with reference to the United States Engineer Department triangulation of the Delaware River.

Beginning at a point A in said land distant four thousand three hundred and fifteen feet from triangulation Station Stony Point on a line South sixty-five(65) degrees, forty-one(41) minutes West therefrom; this point A being also North sixty-two(62) degrees, fifty(50)minutes and twenty-six(26)seconds West, ten thousand eight hundred fifteen and nine-tenths(10815.9)feet from triangulation Station Hope; thence from A North seven(7)degrees and thirty-three(33)minutes West,two thousand and six and two tenths(2006.2)feet to B; thence North five(5)degrees and forty-seven(47)minutes West, three hundred eighty-two and six-tenths(382.6)feet to C; thence from C,North three(3)degrees fifty-three (53) minutes West, eight thousand one hundred and fifty-five (8155) feet to D; thence from D, North seven(7)degrees forty-nine(49)minutes and twenty(20)seconds West, four thousand five hundred and nineteen (4519)feet to E; the beginning of a curve the degree of which is thirty (30)degrees eleven(11) minutes and twenty-five(25)seconds and which covers a central angle of one hundred and fifty-two(152)degrees four (4)minutes and ten(10)seconds to F. The bearing and length of the chord from E to F is North eighty-three(83)degrees fifty-one (51)minutes and twenty-five(25)seconds West;three hundred and seventy-two and six-tenths (372.6)feet. Point E is also South eighty-three(83)degrees fifty-two(52)minutes and forty-five(45)seconds West, two thousand eight hundred twelve and seventy-six hundredths(2812.76)feet from triangulation

Station Alloway Creek; thence from F South twenty(20)degrees six(6) minutes and thirty(30)seconds West,one thousand one hundred and five (1105)feet to G; thence from G south eleven(11) degrees thirty-one(31) minutes West, six hundred and eighty-three(683)feet to H; thence from H South four(4)degrees twenty(20)minutes and ten(10)seconds West, six-thousand seven hundred and forty-seven(6747)feet to K; thence from K South seven(7)degrees seventeen (17)minutes and thirty(30)seconds East, two thousand nine hundred twenty-two and six-tenths(2922.6)feet to M; thence from M along a fifty-nine(59)minute curve, covering a central angle of twenty-five(25)degrees and twenty-eight(28)minutes to N. The bearing and length of the chord from M to N is South twenty(20)degrees and three(3)minutes East, two thousand five hundred and sixty-eight and four-tenths(2568.4)feet; thence from N South thirty-two(32)degrees forty-seven(47)minutesEast,one thousand eight hundred nine and eight-tenths (1809.8)feet to O; thence from O along a sixteen(16)degree twenty-five (25)minutes and thirty-six(36)seconds curve, covering a central angle of one hundred and fifty-four(154)degrees and forty-six(46)minutes to A, the place of beginning. The bearing and length of the chord from O to A, the place of beginning, is North sixty-nine(69)degrees and fifty (50)minutes East,six hundred and eighty-three and one-tenth (683.1) feet.

New Jersey State Archives



DE16706

War Department,

11255 Washington. March 27, 1906

Dear Sir:

In carrying out the improvement of the Delaware River under authority of Congress,it was found necessary to construct a bulkhead around portions of what are locally known as "Dan Baker" and"Stony Point" shoals, so as to form a basin within which to deposit the material dredged from the channel. When completed,this area will be in the form of an island, which it is important should be under the possession and control of the Federal Government. It appears from a report of the engineer authorities that the area is in the bed of the river between the States of New Jersey and Delaware, but nearer the New Jersey shore, and consequently belongs to one of the two States mentioned.

In view of the foregoing, the War Department will appreciate the good offices of the Department of State in requesting the Governors of the States of New Jersey and Delaware to lay the matter before the Legislatures of their respective States at the earliest practicable date, with a view to securing such action as may be necessary to vest in the United States a title to that part of the river bottom on which the aforesaid island is constructed. Maps in duplicate and description of the submerged land desired are forwarded herewith, for transmission to the Governors.

Very respectfully,

Wm. H. Taft,
Secretary of War.

The Honorable,
The Secretary of State.

Inclos: copy of 2 & 3 of 58654 Engrs.in duplicate.

DE16707

New Jersey State Archives

Department of State,

Washington, March 29, 1906

The Honorable
The Secretary of War .
Sir:

I have the honor to acknowledge the receipt of your letter of the 27th inst.,asking that the Governors of Delaware and New Jersey be requested to lay before the Legislatures of their respective States the desire of the Federal Government to secure title to submerged land in the Delaware River on which an island will be formed in the construction of a bulkhead around portions of Dan Baker and Stony Point shoals.

The substance of your letter, together with the maps and descriptions of the submerged land, has to-day been sent to the Governors of Delaware and New Jersey, and they have been requested to lay the matter before the respective Legislatures at the earliest practicable moment.

I have the honor to be Sir,
Your obedient servant,
Robert Bacon,
Acting Secretary.

Major Sanford. To note and return.

Office C. of E.
31 st Mch.'06.

Noted by Major Sanford and respectfully returned to the Chief of Engineers.

2d Apl. 1906.

DE16709

New Jersey State Archives
Governor Stokes Papers
Box 22 Folder 855

State of New Jersey

Executive Department April 2, 1906

Hon. Elihu Root,

Secretary of State,

Washington, D. C.

My dear Sir:

I have the honor to acknowledge the receipt of your favor of March twenty-ninthconcerning the proposed improvement in the Delaware River under authority of Congress, which requires the construction of a bulkhead around portions of water known as "Dan Baker" and "Stony Point" shoals and the necessary acquisition of title to the section of land under water by the United States Government.

I have referred your letter to the legislature with the request that they join with Delaware in ceding to the United States the title to that section of the river necessary for the contemplated improvement.

Very sincerely yours,

E. C. Stokes.

DE16711

New Jersey State Archives
Governor Stokes Papers
Box 22 Folder 855

# Engineer Office, U. S. Army

315 Widener Building

Philadelphia, Pa., Dec. 20, 1906.

His Excellency,

Hon. E. C. Stokes,

Governor of New Jersey,

Trenton, N. J.

Sir:

I have the honor to acknowledge the receipt of your letter of the 10th inst. in reply to mine of the 30th ult. in which I spoke of the desirability of cession to the United States by the New Jersey legislature of the necessary title to submerged land in the Delaware River on which an island will be formed in the construction of a bulkhead around portions of Dam Baker and Stony Point shoal. I can see some ways in which my letter appeared confusing, especially as you did not receive the maps nor description of the submerged land referred to by the Acting Secretary of State in the letter of which I inclosed a copy. In one respect also, my letter of November 30, 1906, might have been somewhat clearer. The last two lines of this letter uses these words: "in accordance with your request as stated in your letter of April 2, 1906, to the Secretary of State". It would probably have been clearer had it read: "in accordance with your request to the New Jersey Legislature as stated in your letter of April 2, 1906, to the Secretary of State".

In order to explain the status of the matter, as well as I can, from the records that I have, I inclose the following copies of correspondence:

DE16713

1st. My letter of March 10, 1906, to the Chief of Engineers, with indorsements (the conference spoken of was at the luncheon given by Dr. Dixon, Commissioner of Health, State of Pennsylvania, at the Philadelphia Club, this city, at which time you very kindly suggested to me a practicable method by which the United States might secure undisputable title to the submerged land in question).

2nd. Telegram dated March 12, 1906, of the Chief of Engineers, U. S. Army.

3rd. My letter dated March 16, 1906, to the Chief of Engineers.

4th. Letter dated March 27, 1906, of the Secretary of War to the Secretary of State.

5th Reply of the Secretary of State to above letter.

6th Yourletter of April 2, 1906, to the Secretary of War.

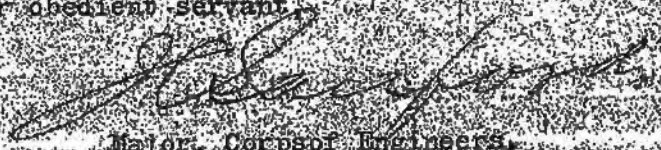
The above carries the correspondence so far as I have record of it, up to my letter to you of the 30th ult. A copy of the map and description sent to the Chief of Engineers with my letter of March 16, 1906, is also sent you herewith, the description being inclosed and the map being sent under separate roll.

When I visited Washington last week, the Chief of Engineers inquired particularly as to the status of this matter, and appeared to be greatly interested in obtaining the cession of title from the states of New Jersey and Delaware. He was much pleased at the suggestion which you made me in November, 1905, as described in my above mentioned letter of March 10, 1906. I informed him of having written to you and to the secretary to the Governor of Delaware on the 30th ult. I am sure that he will most highly appreciate your

calling the attention of the Legislature to this matter at its next session, as you very kindly offer to do in your letter of the 10th inst.

Very respectfully,

Your obedient servant,



Major, Corps of Engineers.

(6 inclosures, map in sep. roll)

New Jersey State Archives
Governor Stokes Papers
Box 22. Folder 855

# Engineer Office, U. S. Army

315 Weightman Building

Philadelphia, Pa., May 11, 1907.

To Governor E. C. Stokes,
of the State of New Jersey,
Trenton, N. J.

Sir:-

Under date of March 29, 1907, you gave your approval to an Act passed by the Legislature of the State of New Jersey, entitled:

"An Act authorizing the Governor to cede to the United States certain lands under water in the Delaware River for the purpose of aiding in the improvement of said river".

The Act authorizes and directs the Governor of the State to "cede jurisdiction over and convey to the United States all the right, title and interest of this State in and to certain submerged land in the Delaware River, between the States of Delaware and New Jersey". The location of said lands with reference to the United States Engineer Department triangulation of the river, is particularly described in the Act.

A copy of this Act certified by the Secretary of State of New Jersey, has been filed in the office of the Chief of Engineers, U.S.Army, at Washington, and a copy of same is on file in this office.

The matter of proposed conveyance of these lands to the United States was laid before the Legislature of New Jersey by you at the request of the Department of State in a letter to you dated March 29, 1906, the lands being needed by the General Government

DE16717

in carrying on the work of improvement of the Delaware River.

In compliance with instructions of the Chief of Engineers, U. S. Army, given in accordance with directions of the Acting Secretary of War, application is hereby made to you as Governor of the State of New Jersey, for the formal conveyance which the above referred to Act authorizes and directs you to execute.

Very respectfully,

Your obedient servant,

Major, Corps of Engineers.

DE16718

New Jersey State Archives
Governor Stokes Papers
Box 22 Folder 855

DE16719

STATE OF NEW JERSEY,
EXECUTIVE DEPARTMENT.

(Copy)

May 28, 1907.

Major C. B. F. Flagler,

Engineer Office, U. S. Army,

315 Witherspoon Building,

Philadelphia, Pa.

My dear Sir:

I beg to hand you herewith an indenture in proper form, signed and witnessed, ceding certain submerged lands in the Delaware River between the State of Delaware and New Jersey to the Federal Government. Will you please acknowledge receipt?

Yours very truly,

Secretary to the Governor.

DE16720

New Jersey State Archives
Governor Stokes Papers
Box 22 Folder 855

# Engineer Office, U. S. Army

815 Witherspoon Building

Philadelphia, Pa., May 25, 1907.

Mr. E. W. Gray,
Secretary to the Governor,
State of New Jersey,
Trenton, N. J.

Dear Sir:

I have to acknowledge the receipt of your letter dated the 23rd instant, inclosing an indenture signed by the Governor of your State, ceding certain submerged lands in the Delaware River between the States of Delaware and New Jersey to the United States, sent for file in the Office of the Chief of Engineers, U. S. Army, War Department, as requested in my letter of May 11.

Very respectfully,

Major, Corps of Engineers.

DE16722

New Jersey State Archives
Governor Stokes Paper
Box 22 Folder 855

POSTAL TELEGRAPH COMMERCIAL CABLES

CLARENCE H. MACKAY, PRESIDENT.

# TELEGRAM

The Postal Telegraph-Cable Company (Incorporated) transmits and delivers this message subject to the terms and conditions printed on the back of this blank.

55-P. A.B/RJ Gov Rs 2 145P

Received at News Bldg., 511 Market St.
(WHERE ANY REPLY SHOULD BE SENT.)
Wilmington, Del.

Washington D.C 3-14-08

Walter H.Hayes

Wilm.-el.

See Kean joint resolution in full on yesterdays congressional record passed senate yesterday

J.Frank Allee.

DE04443

DE Public Archives

0914.1

DE Commissioners
Fisheries Compact

Brian's
338631

REPRODUCED AT THE NATIONAL ARCHIVES

B. Cooper, President  William S. Hilles,  Walter H. Hayes, Secretary.

D E L A W A R E  C O M M I S S I O N E R S ,

(Delaware-New Jersey Fisheries Compact)

904 Market Street,

Wilmington, Delaware.

January 19, 1907.

Honorable Robert H. Richards,

Attorney General,

Wilmington, Delaware.

Dear Sir:

We enclose a copy of a resolution, passed by the Joint Commission (Delaware-New Jersey Fisheries Compact) on January 16th, 1907.

In view of t is resolution, the Delaware Commissioners have no further request to make of Congress in the matter, for delay or otherwise.

Yours very truly,

(Sgd.) Alex. B. Cooper

(Sgd.) Wm. S. Hilles.

DE18310

REPRODUCED AT THE NATIONAL ARCHIVES

WHEREAS the Joint Commission (Delaware-New Jersey Fisheries Compact) did, on the Fifteenth day of December, A. D. 1905, adopt the following resolution:

"RESOLVED, That the Governor of the State of Delaware and the Governor of the State of New Jersey are requested to ask Congress to defer the ratification of the Compact entered into between the State of Delaware and the State of New Jersey until the Commission shall make further request"; and

WHEREAS, said Congress has deferred final action of the ratification of said Compact:

NOW, THEREFORE, BE IT RESOLVED by the said Joint Commission this Sixteenth day of January, A. D. 1907, that the Governor of the State of Delaware and the Governor of the State of New Jersey are hereby notified that said Joint Commission has this day agreed upon the uniform laws to regulate the catching and taking of fish in the Delaware River and Bay between the states of Delaware and New Jersey.

# STATE OF NEW JERSEY

OFFICE OF THE ATTORNEY GENERAL

ROBERT H. McCARTER
ATTORNEY GENERAL
EDWARD D. DUFFIELD
ASSISTANT ATTORNEY GENERAL

Trenton, N. J. Jan. 9th 1906.

675

To his Excellency, Edward C. Stokes,

Governor of the State of New Jersey.

Sir:-

I beg to call your attention to the fact that by the provisions of section 2 of Chapter 42 of the laws of 1905, it is made the duty of the Governor, at or before the next session of Congress after the approval of said act, and being the present session of Congress, to transmit a duly certified copy of said act to the President of the United States, with the request that it be communicated to Congress for its action thereon. As you know, a similar act was passed by the Legislature of the State of Delaware at or about the time of the approval of the foregoing act, and I am informed by Senator Keen that pursuant to the provisions of the Delaware act the Governor of the State of Delaware has duly forwarded to the President of the United States a certified copy of the Delaware act, which, in turn, has been brought to the attention of Congress by the President in connection with a special message. I beg respectfully to suggest that you transmit at once to the President a certified copy of Chapter 42 of the laws of 1905 for similar action by him. Very truly yours,

Robert H. McCarter

New Jersey State Archives
Governor Stokes Papers
Box 22 Folder 85T



DE16731

THE SENATE OF NEW JERSEY

Woodbury, January 9, 1907.

Walter H. Hayes, Esq.,
907 Market Street,
Wilmington, Del.

My dear Mr. Hayes:-

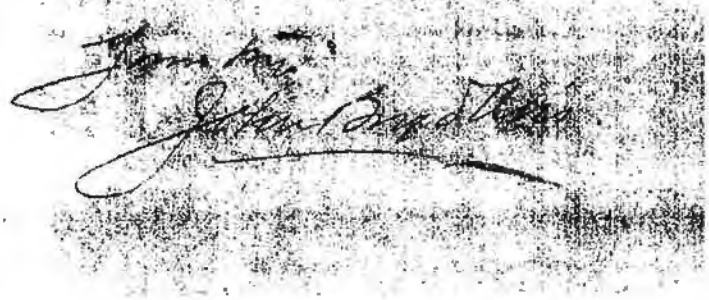
I send enclosed, a draft of a bill to be submitted to our Legislature on the question of fishing in the Delaware River, between New Jersey and Delaware.

Senator Bradley and I have not yet had an opportunity to submit this matter to the Attorney-General and have made arrangements for a meeting with him on next Monday evening, so that this draft is subject to correction upon legal matters.

I think I have also neglected to attach to it a provision that the act shall become operative when a similar act is passed by the State of Delaware. Generally speaking, however, this expresses the agreements, as I understand it, made bwteen our relative commissions.

As soon as we have had a meeting with the Attorney-General, I will forward to you a complete draft of the proposed law.

Yours truly,



DE16154

DE Public Archives

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DE Commissioners

Fisheries Compact

1905 - 1907

Brimls

338631

DE16155

STATE OF NEW JERSEY
SENATE CHAMBER
WM. J. BRADLEY
PRESIDENT

Camden Jan 9th 1907

Hon Alex B Cooper

Pres't Del Fisheries Commission

My dear Sir

Replying to your letter of Jan 6th relative to the Amendments to the Oyster fishing laws I beg to say that Senator Avis has forwarded to day a copy to Mr Hayes. We desire you to examine the same and see if they meet with the approval of your Commission We hope to have a meeting with our Attorney General relative to the title &c not later than next Monday evening and will immediately communicate with your Commissioners

I trust we may be able to adjust every thing in a few days

With kind regards

I am Yours truly Wm J Bradley

Pres't N J Commission



DE16156

DE Public Archives

0914.1

DE Commissioner
Fisheries Compact

Brians
338631



DE16157

THE SENATE OF NEW JERSEY

Woodbury, January 7, 1907

Hon. Walter H. Hayes,

907 Market Street,

Wilmington, Del,

Dear Sir:-

I have prepared the bill to be introduced in the Legislature relative to the fishing laws between Delaware and New Jersey and have not yet had the opportunity to submit it to our Attorney General. I should like to do this before I send you a copy. I expect to see Mr. McCarter to-morrow and will let you hear from me as early as possible.

I am sorry that the matter has been delayed, but I could not attend to it sooner.

Yours very truly,

John Bo

DE16150

DE Public Archives

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RE Commissioners

Fisheries Compact

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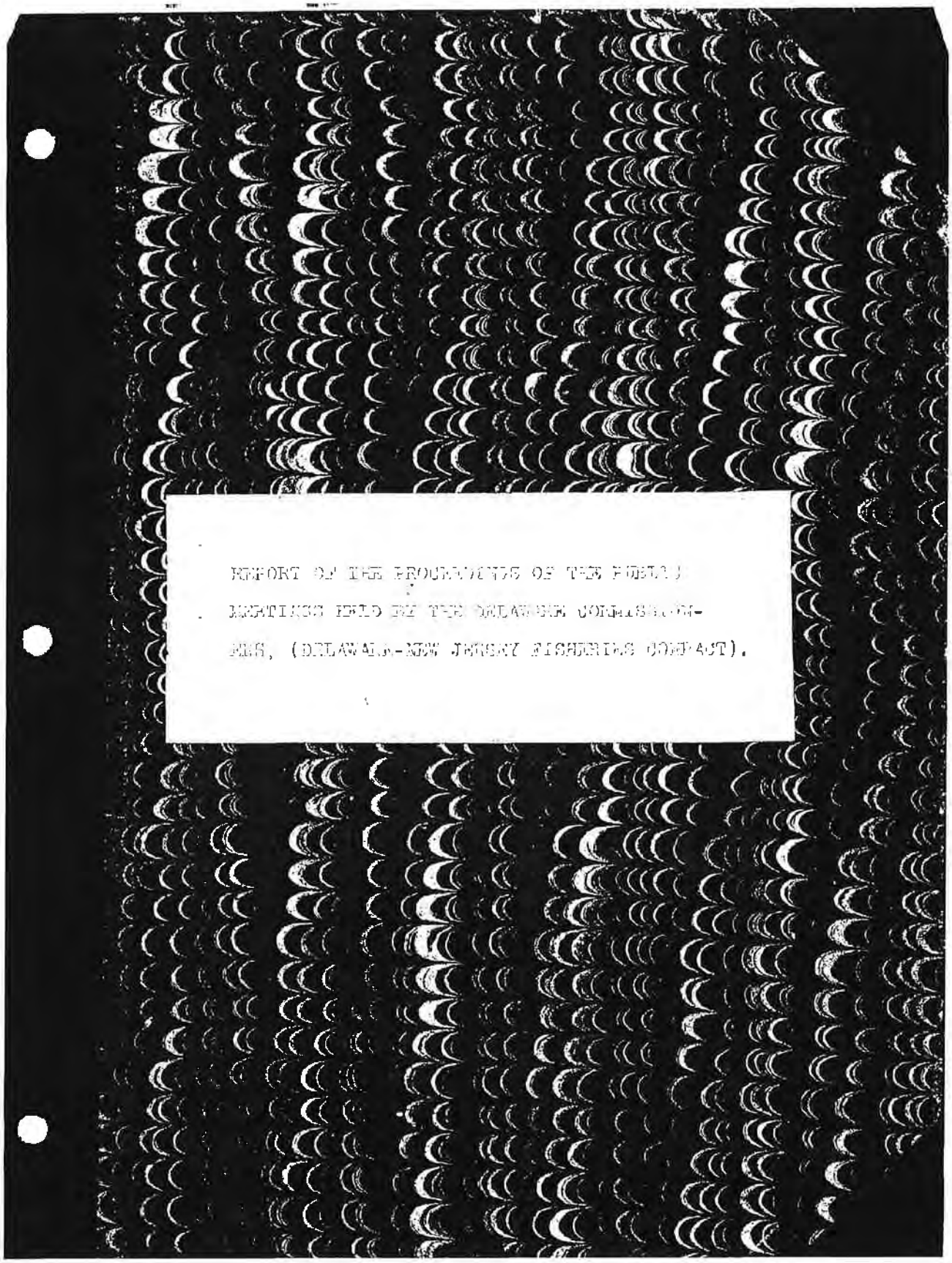

REPORT OF THE PROCEEDINGS OF THE PUBLIC MEETINGS HELD BY THE DELAWARE COMMISSION-ER, (DELAWARE-NEW JERSEY FISHERIES COMPACT).

DE04885

THOMAS G. GUYER,
COURT STENOGRAPHER,
826 MARKET STREET,
WILMINGTON, DEL.



New Castle, Delaware,

March 14th, 1906.

7.30 o'clock p. m.

Meeting held on the above date at the Town Hall Building for the purpose of receiving expression of opinion on the part of local fishermen relative to the proposed laws governing fishing in the Delaware River and Bay.

PRESENT:

Alexander B. Cooper, Esq.,

William S. Hillee, Esq.,

Commissioners.

- - - - - - - - - - - - -

MR. ALEXANDER B. COOPER: Under the present law shad and herring cannot be caught in the State of Delaware between the tenth of June and the tenth of August. In New Jersey the law is between the fifteenth of June and the tenth of August for shad and the twenty-fifth of June and August tenth for herring.

What have you gentlemen to say in reference to that point ? Is that provision of law, that shad shall not be caught between June tenth and August tenth, satisfactory to the fishermen who are here present ?

MR. GEORGE PUSTILL: I would like to see it

made the first of June instead of the tenth of June.

MR. ALEXANDER B. COOPER: From June first to August tenth ?

MR. GEORGE PUSTILL: Yes, sir.

MR. WILLIAM PEDRICK: I should think it would be better for the shad industry if all would stop fishing from the first day of June. Up the river they claim that the fish are caught up below, and that they can fish up the river further until July. I think the law should be that all shad fishing should stop on the first day of June. That would give the shad a chance to get up the river further and spawn, and we would all get better results in the following year, because if we have to stop here the first day of June and those people above do not stop until the fifteenth of June, it cuts us short and gives them the privilege of fishing fifteen days longer than we can. That would give the fish a chance to go up the river and spawn, that is, if they would stop fishing the first of June.

MR. WILLIAM S. HILLES: We have nothing to do, practically, with the fishery laws as far as they relate to Pennsylvania and that part of the Delaware River north

of the boundary line of Delaware. Would your suggestion hold in the event they should not make a similar provision up there in Pennsylvania, that is, would you be willing that the fishing season should close here on the first of June and that it should continue in Pennsylvania until the fifteenth, say ?

MR. WILLIAM PEDRICK: Yes, sir.

MR. GEORGE PUSTILL: Couldn't the Commission frame a joint law for the three states ?

MR. WILLIAM S. HILLES: It can as between New Jersey and Delaware.

MR. JOSEPH ANDERSON: (of Delaware City): The closed season for shad fishing is now the fifteenth of June in New Jersey, but I understand from the reading of extracts from our laws that it is the tenth of June here. Of course, for the protection of the fishing interests, the states should unite in closing the fishing season at the same time. I think it would be selfish to permit New Jersey to fish fifteen days after we are compelled to cease fishing.

MR. ALEXANDER B. COOPER: Understand, these suggestions to-night are for the purpose of incorporating

them into a law which will be passed by the Legislature of the State of New Jersey as well as by the Legislature of the State of Delaware. It will be the same law in New Jersey as it is in Delaware.

MR. JOSEPH ANDERSON: I understand that after you get beyond the jurisdiction of the State of Delaware, which is the twelve mile circle, we have no voice whatever in the enactment of any law, and if we are going to allow these men up beyond that distance permission to catch fish, I think we ought to have the same right to fish here, because the shad do not spawn below that limit, or very seldom do so. They go beyond that limit to spawn. The spawning of fish is beyond that limit, that is, beyond the twelve mile circle. If you want to protect the interests of the shad industry in the Delaware River--if we do not catch them all here, we have some other fish which you will hear about later--I think we had better have an open season to the extent that no man can catch shad until the first day of April. For the preservation of the fishing interests of the combined states, I think that ought to be done. Then you will get more fish up to the head of the river for

spawning purposes and thereby continue the fish family. If you catch all the old fish you will have no young ones.

MR. WILLIAM S. HILLES: What time of the year do shad spawn ? What is the spawning season ?

MR. JOSEPH ANDERSON: In the month of May. As soon as the temperature of the water gets to sixty degrees the fish spawn, and they will not spawn until that time.

MR. CHARLES LANCASTER: I am in favor (and I believe all the fishermen I have talked with agree with me) of a closed season commencing on the first day of June, because the fish that we catch,say, during the latter part of May and the first of June, are in bad condition. They are what we call spawners or runners, and there are a great many fish destroyed after the first of June in this locality as well as up the river by the catching of those fish. In speaking of the law, I think we should allow the fishermen up the river a little longer time, because I have lived up the river and have fished some little up that way myself, and I know that the fish up there are in better condition later in the season than they are down in this section.

MR. ALEXANDER B. COOPER: Do you know what the Pennsylvania law is ?

MR. CHARLES LANCASTER: No, sir; I do not. I think the first of June is ample time. We are all done down here before the first of June. Once in a while there are a few that will come this way.

MR. ALEXANDER B. COOPER: You think that the fishing for shad ought to stop here on the first of June, even though it should continue after that time in Pennsylvania ? Of course, we have nothing whatever to do with the Pennsylvania jurisdiction.

MR. CHARLES LANCASTER: I should say fix the time for the Delaware fishermen as of the first of June; that is, of course, with the understanding that this law is to be the same as the New Jersey law.

MR. WILLIAM PEDRICK: How can the state of New Jersey enact a law that will govern only a portion of her bay and river and then permit the balance of the state to fish ?

MR. ALEXANDER B. COOPER: That is a question which the Legislatures of the two states have decided by entering into this compact.

MR. JOSEPH H. KING: I think the shad fishing ought to cease on the first of June.

MR. ALEXANDER B. COOPER: Mr. Anderson of Delaware City suggested that he thought we should not begin the season for catching shad before the first of April. What do you think of that suggestion ?

MR. GEORGE PUSTILL: I think we ought to be able to catch them as long as we are able to fish. If we can start the tenth of March, we ought to be allowed to catch them at that time.

MR. JOSEPH ANDERSON: I know from the early catching of fish in other fishing interests that we have almost annihilated the fishing that is worth more money than any other fish in the rivers, and that is the sturgeon fishing. If we had had a beginning season and had not been permitted to fish for sturgeon before the first of May, enough sturgeon would have gotten to the head of the river and spawned to have kept our river stocked from now clear on as long as time lasted; but we have almost annihilated them. Here it is the first fish that goes up to spawn that counts.

MR. ALEXANDER B. COOPER: What is the opinion of the meeting with reference to not beginning fishing

until the first of April ?

MR. WILLIAM PEDRICK: If we start on the fifteenth of March it does not give us a very long season, but if we start on the first of April it makes it a kind of a short season here, and we claim a short season is no good. I don't think there ought to be any restriction as to when we should start, but I think the restriction ought to apply as to when we should stop.

MR. WILLIAM S. HILLES: Would the first of March be early enough ?

MR. WILLIAM PEDRICK: The first of March would be early enough.

MR. WILLIAM S. HILLES: No one fishes for shad in the fall, do they , in this locality ?

MR. WILLIAM PEDRICK: February twenty-second is the earliest time I have ever known people to catch shad here.

MR. WILLIAM S. HILLES: The first of March would not do harm to anybody?

MR. WILLIAM PEDRICK: No, sir. The weather would be cool, and it would not harm anyone.

MR. JOSEPH ANDERSON: We are acting and trying to frame laws to govern the whole state of Delaware, and

that means clear to the capes, if I understand it. Then I will call back all that I have said in reference to the beginning of the fishing season as of April first. Our neighbors in Kent and Sussex Counties have got to catch all the fish there are to be caught down there by the first of April, because they have passed there by that time. We must be a little generous towards our neighbors in Kent and Sussex Counties.

A FISHERMAN: I have seen the largest fish ever caught in this neighborhood caught on the fourteenth day of February.

MR. GEORGE PUSTILL: I think it would be a good idea to make the time as of the first of March. I do not think we have any starting point in the law now.

MR. ALEXANDER B. COOPER: Yes, we have. We have the tenth of August. Then, in your opinion, the season ought to be from June first to March first, that is, the closed season ?

MR. GEORGE PUSTILL: Yes, sir; that would be my idea.

MR. ALBERT PEDRICK: It ought to be from March first to June first. That is my opinion.

MR. ALEXANDER B. COOPER: Would you say the

same thing as to herring ?

MR. JOSEPH ANDERSON: I do not think they need any open season or closed season. I think they are very prolific. Sometimes they are worth but a very small amount of money. Of course, scarcity advances the prices, always.

MR. ALEXANDER B. COOPER: Do I understand by that it is now your opinion that you would have no time fixed as to the beginning of the catching of herring ?

MR. JOSEPH ANDERSON: I do not think there is any needed. There is nobody here interested in it.

MR. ALEXANDER B. COOPER: You want to catch them just as you please ?

MR. JOSEPH ANDERSON: To catch them just as we please.

MR. ALEXANDER B. COOPER: Is that the opinion of the meeting ?

(No vote was taken, and no voices were heard either pro or con.)

I would prefer to have the matter settled by voting. Those in favor of not enacting any law in reference to herring will vote aye.

(Motion unanimously carried.)

The next point is, that under the present law no shad or herring can be caught nearer than one mile from the mouth of any river or creek within the state. What have you to say about that ?

MR. JOSEPH ANDERSON: I think it would be a good idea to leave that out, so far as New Castle County is concerned, because, otherwise, we could not fish at all. That law was enacted to protect the small creeks in Kent and Sussex Counties.

MR. ALEXANDER B. COOPER: What is the feeling about that law, that it shall remain in, or shall we keep it out ?

MR. JOSEPH ANDERSON: Cut that out altogether. It is a selfish law.

MR. GEORGE PUSTILL: I say to cut it out.

(A number of other gentlemen present also expressed the desire that this law should be cut out.)

MR. ALEXANDER B. COOPER: The next point is, under the present law, that no person can have in their possession or expose for sale any shad caught in the Delaware river or its tributaries above the southern point of Reedy Island between the tenth of June and the

tenth of August. What have you to say about that ?

(A number of gentlemen present expressed the belief that this matter was sufficiently covered.)

I think that is sufficiently covered.

The next point is, no gill seine shall be of a less mesh than ten inches for catching fish in the Delaware river ~~xxiii~~ above the southern point of Reedy Island from the tenth of June to the tenth of August. What have you to say about that ?

MR. GEORGE PUSTILL: Five and one-half inch mesh is the largest net used.

MR. ALEXANDER B. COOPER: Five and one-half inch mesh stretched, you mean, of course ?

MR. GEORGE PUSTILL: Yes. There are no shad nets under five inches.

MR. ALEXANDER B. COOPER: How would it do to make it not less than five inches ?

MR. JOSEPH ANDERSON: I do not think it would be wise to meddle with the size of the mesh at all, because you will fish for trout with meshes two and one-half inches. I don't think it would be wise to make any such law. I think the fish will regulate the size of the mesh. A man can't catch shad with anything less

than a five inch mesh . It will not gill him; it will not even tangle him. A fisherman knows enough to know what size mesh to use. Fishermen are now having their meshes made five and one-half inches. They used to be five inches. They want the mesh larger and larger because the fish are getting larger.

MR. ALEXANDER B. COOPER: And that is regardless of the size of the shad ?

MR. GOERGE PURSTIL: Yes, sir.

MR. ALEXANDER B. COOPER: The size of the meshes of the net under this law is two and five-eighth inches ?

MR. JOSEPH ANDERSON: That was to govern the herring fishing, I think. I know in Kent and Sussex Counties the haul seineshave a two inch mesh, because I have seen many of them.

MR. WILLIAM S. HILLES: Is it a good or a bad law to have the mesh two and five-eighth inches ?

MR. GEORGE PUSTILL: I think it is small enough, that is, a two and five-eighth inch mesh.

MR. CHARLES LANCASTER: It doesn:t effect the people here, but it effects the people down below.

A FISHERMAN: They fish with a two inch mesh

all the way from Leipsic creek down.

MR. ALEXANDER B. COOPER: Is it the feeling of this meeting that there shall be no fishing in the Delaware Bay and River with a mesh less than two and five-eighth inches ? If not, what size shall it be, to control the general fishing ? That means, for any net or seine.

MR. GEORGE PUSTILL: I think a fish caught in a net with a mesh less than two and five-eighth inches is not fit to eat or sell, and that a two and five-eighthsinch mesh would be a good mesh for all general fishing.

MR. ALBERT PEDRICK: I am of the same opinion, that the mesh should be two and five-eighths inches.

MR. GEORGE PUSTILL: Lots of people fish with a mesh less than two and five-eighth inches. They ought not to do it, because they destroy quite a good many of our fish.

MR. ALEXANDER B. COOPER: The next point is the time of fishing. From eight o'clock Saturday to midnight of Sunday in Delaware, and from sunset on Saturday until twelve o'clock, midnight, in New Jersey. What have you to say about that ?

MR. GEORGE PUSTILL: My idea is that if you can make a joint law and stop fishing at twelve o'clock Saturday noon and not start again until four o'clock on Monday morning, and likewise all through the week stop at four o'clock in the afternoon and start at seven o'clock in the evening, it would be a good thing.

MR. CHARLES LANCASTER: I think the fishing would be better if we stopped at seven o'clock in the evening and started at four o'clock in the morning every day during the week. That would do away with the question of the up river fishermen in reference to their complaint of not getting any fish. They are complaining now in the papers, and say that they would like to have another day closed besides Sunday as regards the lower part of the river and bay. That would not be of any use, however, because at the present time, when we have a Sunday rest, Monday is a big catch, but Tuesday is the poorest catch of the week. So that the extra efforts of the men on Monday would be the same way after a rest in the middle of the week. Say, Wednesday was a closed day. Thursday would be a big catch, but on Friday there would be no fish. If the fish could rest every night, it would distribute them along the Delaware river much

better than they could be distributed in any other way.

MR. JOSEPH ANDERSON: If the fishermen, in the interest of fishing and for the benefit of the fish themselves, were to quit fishing on Saturday night at sundown and not begin again until Monday morning at sunrise, you would then know whether anybody fishes, or not; because it would take twenty men and twenty boats to guard this river if the time was any earlier than that, to find out whether a man is fishing, or not. Twenty boats cannot patrol this river and bay. You must remember your limits take you clear down to the capes. They catch shad clear down to the capes. They are catching them now at Rowe's. How will you know whether they are fishing, or not ? It gives an advantage to a man who does not care for God, man or fish. Sunrise is daylight, and you can see whether a man is robbing, or not.

MR. GEORGE PUSTILL: He means to do away with night fishing.

MR. ALEXANDER B. COOPER: I understand your idea is practically to do away with the night fishing ?

MR. CHARLES LANCASTER: And to fish until twelve o'clock on Saturday ?

MR. WILLIAM PEDRICK: My idea about that is, I think it would be a good idea to stop on Saturday at twelve o'clock, andthen stop every day at sundown and start again at twelve o'clock at night. That would give everybody a chance. A man can go out here at twelve o;clock at night andfish until sundown the next night. If he does that, he has got fishing enough. If he stopped at twelve o'clock on Saturday, and then through the week stopped at sundown and started in at twelve o'clock midnight, it would give both the men and the fish a rest. That four o'clock business will cut a great deal of a disadvantage to many of us.

MR. ALEXANDER B. COOPER: I understand the first proposition is to close at twelve o'clock on Saturday, noon, and open up again at four o'clock on Monday morning.

(Upon motion being put on this proposition, it was unanimously carried.)

A FISHERMAN: I think it would be a good idea to let it go the way it is.

MR. ALEXANDER B. COOPER: The next proposition, as I understand it, is to close at seven o'clock in the evening and open up again at four o'clock in the morning, during the week days.

(Upon motion being put on this proposition, it was unanimously carried.)

The next point is as to the length of the shad net.

MR. WILLIAM PEDRICK: I think the law should be that a man should not be allowed to fish over fifty pounds of line.

MR. JOSEPH ANDERSON: I think you ought to let him fish two miles of net, if he wants to, and if he can take care of it.

MR. GEORGE PUSTILL: I do not think there ought to be any restriction as to the length of net. It ought to be all they are able to buy and pay for, even if that is two miles in length.

MR. CHARLES LANCASTER: I think a man ought to be able to fish all the net his boat will hold.

MR. JOSEPH ANDERSON: I think Maryland has such a law that you cannot fish over so many fathoms in a net. They put them in pieces, and when the warden comes along they untie the knots. They don't say how many nets you shall fish.

MR. ALEXANDER B. COOPER: Is it the sense of this meeting that there shall be no limit as to the length of

nets ?

(Upon motion being put on this proposition, it was unanimously carried.)

The next point is in reference to the casting of nets, that is, how far you shall cast ahead of another man who is already out.

MR. JOSEPH ANDERSON: I think I should have a right to cast my net just as close as I can get without getting into him. That is my opinion.

MR. WILLIAM FEDRICK: I think that should be out out. I am not going to measure the distance when I go out to fish, and I think I have a right to put my net where I please, so long as I do not put it in another man's boat .

MR. ALEXANDER B. COOPER: Is it the sense of this meeting that there shall be no law concerning the casting of nets ?

(Upon motion being put on this proposition, it was unanimously carried.)

The next point is, whether or not there shall be a penalty attached for wilful interference with nets already cast in the water, either by boat, person, or otherwise ?

MR. WILLIAM S. HILLES: The point is whether or not it would be wise to put in a provision which would prevent launches and boats of other kinds from running over your nets /and making a penalty for doing so.

MR. JOSEPH ANDERSON: I do not think we can enact a law here in our state to grant us the privilege of laying off five hundred or one thousand fathoms of net and blocking the channel and then say a man shall not run over the net.

MR. WILLIAM S. HILLES: That is not the question at all. The question is not what we can do. The question is what you gentlemen want us to try to do; and we are here for that purpose; not to determine what we can do or cannot do. That is our business, and the business of the courts when they pass upon this law. What do you gentlemen want put in this law for your protection? That is what we are here for.

MR. CHARLES LANCASTER: I think the law as it stands is all right.

MR. ALEXANDER B. COOPER: Are there any other suggestions in reference to the law concerning shad fishing ?

(No further suggestions were offered.)

The next point is in reference to mammoose fishing--young sturgeon. What have you to say about that matter ?

MR. JOSEPH ANDERSON: In reference to that matter, I think the law ought to be extended; that is, the length of the fish ought to be at least six feet, and that no one ought to be permitted to catch fish for sturgeon with a net smaller than a fourteen inch mesh. That would be for the protection of the fish. There is no man who knows more than I do whatit means to catch the young fish and destroy them. I think there ought to be a penalty put in the law of ten dollars for every mammoose that is destroyed by any man. Of course, these men who fish for shad catch the mammoose, that is, the young sturgeon. They will get into the shad nets, and the fishermen have got to get them out. They are not fishing for sturgeon; they are fishing for shad; so let them take the fish out and return it to the water again and be fined if they bring them ashore. That would be for the protection of the fish. There is not a fish that swims in the high seas, or in any river, that has got as much value in him as the sturgeon. They are worth one hundred dollars apiece when they

have matured. They contain about two buckets of roe—from two to two and a half buckets, and they are worth one hundred dollars apiece. There isn't any shad that is worth any such money, according to his pounds.

MR. ALEXANDER B. COOPER: Is the fishing for sturgeon a profitable business, so far as the Delaware River is concerned now ?

MR. JOSEPH ANDERSON: Since we have been destroying young fish so much here, they are fishing now with a ten inch mesh for sturgeon. After the shad fishing closes , these sturgeon are caught up. Some men have beenknown to catch as high as one hundred of these fish in a day. I have seen sturgeon brought into Delaware City during this last year that were less than three feet in length. I know that to be a fact, because I measured them; but to keep from being in hot water with my neighbor I had to keep my tongue between my teeth and grit my teeth together because I was just that much enraged. There is no man that knows more than I do what that means to me. I have got a property worth more than three thousand dollars, and it doesn't pay me to fish it, because the fish are destroyed, that is, our sturgeon are being destroyed. The mesh—they

are commonly called a sccse--is a sturgeon, as has been settled by scientists. It doesn't make any difference what any other man says, they are sturgeon.

MR. WILLIAM S. HILLES: Your idea would be not to permit the catching of any sturgeon under six feet in length ?

MR. JOSEPH ANDERSON: Not under six feet in length, and the size of the mesh to be not less than fourteen inches. If the mesh is smaller than that you catch the smaller fish. New Jersey has a law which says a ten inch mesh. That is what our law means when it says a ten inch mesh, as was read by your Chairman. Mr. Pentill here thinks a six feet sturgeon is very large. I have handled twenty-five hundred sturgeon in one season, and I have measured the small fish, and a six feet sturgeon will not dress over thirty pounds; so he ought to be permitted to go until he reaches maturity.

MR. ALEXANDER B. COOPER: The New Jersey law provides that no sturgeon under four feet shall be taken and the size of the mesh shall be ten inches, and they have the same season as they have for shad, sunset Saturday to twelve o'clock on Sunday night.

Is it the sense of this meeting that no sturgeon should be caught of less than six feet in length ?

(Upon motion being put on this proposition, it was unanimously carried.)

The next point is as to the size of the mesh for sturgeon fishing.

Is it the sense of this meeting that the mesh shall not be less than fourteen inches, stretched ?

(Upon motion being put on this proposition, it was unanimously carried.)

The next point is in reference to the closed season for sturgeon fishing.

MR. JOSEPH ANDERSON: The size of the mesh regulatesthe closed season, because we let the small ones all go by.

MR. WILLIAM S. HILLES: Is there anything to be gained by regulating the season for sturgeon fishing ?

MR. JOSEPH ANDERSON: I have had men fishing for three weeks, and we have not caught any; so we ought to be allowed to catch them, if we can catch them, in July.

MR. WILLIAM S. HILLES: Would you make the same hours as you did in relation to the shad fishing ?

MR. JOSEPH ANDERSON: That would be a good thing to make the law the same as to the shad fishing.

MR. ALEXANDER B. COOPER: As to the Sunday fishing ?

MR. JOSEPH ANDERSON: I do not mean to bar us from the week night fishing.

MR. ALEXANDER B. COOPER: From twelve o'clock on Saturday until four o'clock Sunday morning ?

MR. JOSEPH ANDERSON: Or sunrise. We had a closed season, and we went to the Legislature and had it madeinto an open season.

MR. WILLIAM S. HILLES: Would it not be wise to have a closed season for a number of years, in view of the fact that thereis not much sturgeon fishing now ?

A FISHERMAN: It would be, if you passed a law which applied to both Delaware and New Jersey.

MR. JOSEPH ANDERSON: I do not think it would be a good thing. I have got about twenty-five hundred dollars worth of nets on hand, and that would be all dead stock to me.

MR. ALEXANDER B. COOPER: Is it the sense of this meeting that there shall be a closed season for

sturgeon fishing, absolutely prohibiting sturgeon fishing for that length of time ?

(No expressions of opinion were made either way relative to this proposition.)

Have you anything to say with reference to fishing for trout ?

MR. JOSEPH ANDERSON: A seine with a two and five-eighth inch mesh will regulate that.

MR. ALEXANDER B. COOPER: You do not want any closed season except as regards the Sunday provision ?

MR. JOSEPH ANDERSON: We do not catch trout up here.

MR. GEORGE PUSTILL: We have already got a closed season in New Castle County for trout and bass.

MR. ALEXANDER B. COOPER: What have you to say about the carp fishing ? The present law prohibits fishing for carp during the months of May, June and July.

MR. GEORGE PUSTILL: Where is the boundary, at the south point of the Appoquinimink River ?

MR. ALEXANDER B. COOPER: There was an Act passed by the last Legislature giving people the right to catch carp from the south point of the Appoquinimink River.

MR. JOSEPH ANDERSON: This commission is only instructed to enact laws for the river and bay, and not for its tributaries.

MR. ALEXANDER B. COOPER: This says the Delaware River and Bay, or any of the tributaries. This includes them all. Do you want any further legislation with reference to carp fishing in the Delaware River or Bay ?

MR. GEORGE PUSTILL: I think there ought to be a joint law making a three months closed season in each state.

MR. ALEXANDER B. COOPER: What months ?

MR. GEORGE PUSTILL: May, June, July and August--make it four months.

MR. ALEXANDER B. COOPER: That is what it is at present, north of this point. It is stated by the Act of the last Legislature to be south of the Appoquinimink River during the months of July and August.

MR. GEORGE PUSTILL: I think four months would be a good closed season.

MR. ALEXANDER B. COOPER: Throughout the bay and river ?

MR. GEORGE PUSTILL: Yes, sir; for the protection

of the fish. That is the reason these people got this Act passed at the last Legislature, so that they could catch them and stock their ponds with them. I should think if you would make a state law having a closed season for four months, that it would be a good thing.

MR. JOSEPH ANDERSON: New Jersey has no closed season for carp fishing. They fish the whole season round. They fish over there and pound them.

MR. GEORGE PUSTILL: They have a closed season.

MR. ALEXANDER B. COOPER: Is it the sense of this meeting to make May, June, July and August a closed season for carp fishing ?

(Upon motion being put on this proposition, it was unanimously carried.)

What about the size of the mesh ? Is it to be the same as the other ?

MR. GEORGE PUSTILL: No size ought to be stated. Nothing less than two and five-eighth inches will cover it.

MR. ALEXANDER B. COOPER: Is there anything further you can suggest about any other kind of fishing, or anything else upon this general subject ? I have a note made here of rock fish, cat fish, and eels.

They have a law in New Jersey bearing upon all these. Is there any legislation necessary concerning the rock fish ?

MR. JOSEPH ANDERSON: I think there is a law in regard to rock fish, that you cannot catch them beyond a certain size.

MR. ALEXANDER B. COOPER: Will a two and five-eight inch mesh do for them ?

MR. JOSEPH ANDERSON: You can catch rock fish with a shad net.

MR. GEORGE PUSTILL: There is already a law regarding the catching of big rock fish.

MR. JOSEPH ANDERSON: There is a law concerning the catching of spawn rock weighing over twenty pounds.

MR. WILLIAM B. HILLES: Ought there to be a limit concerning the size of rock fish to be caught ?

MR. JOSEPH ANDERSON: Yes, sir; for the protection of the rock fish. A two and five-eighth inch mesh, I think, is a very good mesh. Anything smaller than that is too small to catch; that is, anything that will go through that size mesh.

MR. ALEXANDER B. COOPER: Do you want any closed season on the rock fish ? In New Jersey a man

cannot fish for them between the fifteenth day of June and the fifteenth day of August in each year. Is there any necessity for a closed season in Delaware ?

MR. GEORGE PUSTILL: You may catch one or two, maybe, along in a week or so, but it is very seldom you catch any in those months, that is, during June, July and August.

MR. JOSEPH ANDERSON: You catch them sometimes in Kent Countywith a net and haul seine.

MR. ALEXANDER B. COOPER: Do you think there ought to be any closed season? Is it the sense of this meeting that there should be no closed season for rock fishing ?

(Upon motion being put on this proposition, it was unanimously carried.)

MR. JOSEPH ANDERSON: I think there ought to be a law prohibiting the catching of rock fish weighing over twenty pounds.

MR. WILLIAM PEDRICK: There ought to be a law as to the limit of the size of the rock fish to be caught, because I have seen rock fish come in here weighing from twenty-five to thirty to forty pounds, when they should have been cast into the river.

MR. JOSEPH ANDERSON: I once caught a rock fish that weighed seventy-five pounds, and I sold it for seventy-five cents.

MR. ALEXANDER B. COOPER: Your suggestion is that theyought not to weigh over twenty pounds ?

MR. JOSEPH ANDERSON: Yes, sir.

MR. CHARLES LANCASTER: I haven't anything to say in relation to this subject, except to state that I once caught a large rock fish opposite New Castle, probably eight or ten years ago, which was fully as large as Mr. Anderson has stated, that is, seventy-five pounds--it might have been a little more and it might have been a little less--and we took it into the boat and examined it closely and found that it was pretty near ready to spawn, so we put it overboard again and let it go. I think there ought to be a law to protect the fish when they are about to spawn, both the male and the female, because one is of no good without the other. I think the fish that weigh anywhere from twenty to twenty-five pounds ought to be protected. They ought not to be allowed to be taken from the water at any time.

MR. ALEXANDER B. COOPER: Is it the sense of this meeting that the limit on the weight of rock fish be

be caught should be twenty pounds ?

(Upon motion being put on this proposition, it was unanimously carried.)

MR. WILLIAM DEAKYNE: I do not think I have anything to say. I am not a practical fisherman, except with a hook and line.

MR. WILLIAM S. HILLES: We would like to get the sentiment of this meeting about these oil fish boats, that is the menhaden fishing boats, the business that is carried on about the capes. What have you to say about allowing the menhaden boats to fish within three miles of the Delaware capes ?

MR. JOSEPH ANDERSON: I think these fishermen should not be permitted to enter our capes, and should be compelled to keep away three miles from the shore. Of course, we cannot regulate them beyond that distance of three miles from the coast, but they should not be permitted to fish within that distance because they are destroying more food fish than you have any idea of. They arecatching shad, they are catching trout, they are catching rock and they are catching whatever kind of fish they can get in their nets, and they just put the whole business right in the pot

and boil them all up together and make fertilizer of them.

MR. ALEXANDER B. COOPER: I know they have caught pretty good mackerel, because I have had some of them.

MR. JOSEPH ANDERSON: They should not to be permitted to enter within our capes, and there ought to be a pretty heavy fine imposed on them. They will pay the fine, and it ought to be made very heavy. It ought to be put at about ten thousand dollars.

MR. GEORGE PUSTILL: I think Mr. Anderson's suggestion is a very good one. I do not think there are any fishermen who object to that.

MR. ALEXANDER B. COOPER: Is it the sense of this meeting that the menhaden fishing question should be taken care of as outlined by Mr. Anderson ?

(Upon motion being put on this proposition, it was unanimously carried.)

MR. GEORGE PUSTILL: There is another suggestion in the interest of the fishermen, and that is in regard to these pound fishermen along the Jersey coast. They are doing more injury to the fish than anything else. They have pounds up there along the Jersey coast for miles, and vessels can hardly get up the Atlantic coast

for them. I think that is a very important matter for our Delaware Commissioners to look into.

MR. ALEXANDER B. COOPER: You mean within the bay ?

MR. GEORGE PUSTILL: In the ocean, away down along the Atlantic coast.

MR. ALEXANDER B. COOPER: They have a pretty severe law in New Jersey.

MR. JOSEPH ANDERSON: I think we ought to have a law similar to the New Jersey law, as to our Delaware Bay and River. I know there are pounds on the Delaware Bay, and that they are fishing every day, whether it is against the law, or not. Probably our Chairman can tell us whether it is against the law, or not.

MR. GEORGE PUSTILL: There are more on the Atlantic coast by ten to one than there are on the Delaware Bay, and they do more injury to the fish than anything else.

MR. WILLIAM S.HILLES: The sentiment of this meeting is then that there ought not to be any pounds introduced in the Delaware Bay ?

MR.JOSEPH ANDERSON: At Bower's they stake the shad nets; they don't drift them at all.

MR. ALEXANDER B. COOPER: Is it the sense of this meeting that there shall be no pounds or other similar devices ?

(Upon motion being put on this proposition, it was unanimously carried.)

MR. GEORGE PUSTILL: How far does the jurisdiction of the Commissioners of New jersey extend ?

MR. ALEXANDER B. COOPER: From the Delaware Bay and River to three miles at sea.

MR. CHARLES LANCASTER: It seems to me to be the corner-stone of this whole thing, the migrating of fish, and there are more fish destroyed on the coast as the fish are migrating than anywheres else. The shad and all fish that migrate are caught in these traps, these permanent traps set both night and day, and which employ less men. They are all outside of the river and bay. They are along the coast.

MR. ALEXANDER B. COOPER: Both states joining together can make a law covering the coast of New Jersey and the coast of Delaware.

MR. JOSEPH ANDERSON: I would suggest that it would be made as against the law to anchor any net, of any kind. That would be for the protection of the

fishing interests. You gentleman may wonder why I say "anchor". Along our coast, between the capes, and as far as our jurisdiction runs south, they arefishing for all manner of fish with not only fish pounds but with nets anchored, day in and day out, and night in and night out, and sometimes they are not attended for three days in succession on account of high winds. They also fish for sturgeon in that way. We want to look after the sturgeon interest. We want to get them into the bay, if possible. I know that men come from the state of New York and that they come from the state of New Jersey and that they fish our coast for sturgeon in that way. Let them go beyond the three mile limit, and they can anchor the nets all they please. Let them stay outside of that limit.

MR. ALEXANDER B. COOPER: They have quite a rigid law in New Jersey concerning that very thing.

MR. JOSEPH ANDERSON: I know that they are permitted now, and I know one firm in Ocean City, Maryland, and another firm at Rehoboth that has as high as twenty nets anchored out there—twenty sturgeon nets. We are not asking for a law to prohibit them from using drifting nets, but to stop them from anchoring

their nets so the fish cannot get up the bay.

MR. GEORGE PUSTILL: That includes all nets and traps, according to Mr. Anderson's suggestion.

MR. JOSEPH ANDERSON: A pound net is different from an anchored net. These sturgeon nets are anchored at each end to hold them in place.

MR. ALEXANDER B. COOPER: It it the sense of this meeting not to allow the anchoring or fastening of any net ?

(Upon motion being put on this proposition, it was unanimously carried.)

It is part of the duty of this joint Commission of New Jersey and Delaware to locate and fix monuments at the mouth of the Delaware River. The Commission would very much like to hear you tell us, as near as you can, where the mouth of the Delaware River is, or where what you consider is the mouth of the Delaware River is located.

MR. JOSEPH ANDERSON: I would suggest that you fix a stone every one hundred feet, beginning at the twelve mile circle, and going all along the low water mark of New Jersey, clean down to Stony Point,

and put the final stone of the twelve mile circle—

MR. ALEXANDER B. COOPER: At the mouth of the river on the Jersey shore; and where would you put it on the Delaware side ?

MR. JOSEPH ANDERSON: Twelve miles distant. I don't know how far that would measure. Do not let them have any jurisdiction so far as enacting or enforcing the law is concerned.

MR. GEORGE PUSTILL: I agree with Mr. Anderson in that suggestion.

MR. CHARLES LANCASTER: It seems to me that that would be a question for another body than the fishermen.

MR. GEORGE PUSTILL: The Government Inspector terms it at Dan Baker.

MR. ALEXANDER B. COOPER: How far is that from Stony Point ?

MR. GEORGE PUSTILL: It is right at Stony Point, about two miles below Reedy Island.

MR. JOSEPH ANDERSON: If these stones are put there, does that mean, according to this compact, that New Jersey has the privilege to control our river all the way across and take our citizens where

they please ?

MR. ALEXANDER E. COOPER: No, it does not mean that at all. This compact, so far as jurisdiction is concerned, whether wise or unwise, gives them the right to serve process upon citizens of their own state to the low water mark on the Delaware shore, and we have the right to serve process against citizens of our state violating the law to the low water mark on the New Jersey shore.

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CHAS. G. GUYER,
COURT STENOGRAPHER,
826 MARKET STREET,
WILMINGTON, DEL.



Delaware City, Delaware,

March 16th, 1906.

8.00 o'clock p. m.

Meeting held on the above date at Mulligan's Hall, for the purpose of receiving expression of opinion on the part of local fishermen relative to the proposed laws governing fishing in the Delaware River and Bay.

PRESENT:

Alexander B. Cooper, Esq.,

William S. Hilles, Esq.,

Commissioners.

MR. ALEXANDER B. COOPER: You are all aware that under the present law shad and herring cannot be caught in the state of Delaware between the tenth day of June and the tenth day of August. Is that satisfactory to the fishermen of Delaware City ? I may say that at the meeting in New Castle they thought that the shad fishing should not begin before the first of March, and that it should terminate on the first day of June, believing that after that date the fish were getting ready to spawn. What dates are agreeable to you ? That is, whether we shall retain the dates as they now are, or whether they shall be changed in conformity with the

sense of the meeting at New Castle ? What is your idea ?

MR. LEONARD YOUNG: What is the matter with the laws which we have at present ? The laws we now have suit me. I believe they are just as good as any other laws you can make. The trouble is, there are some of the fishermen who work in this way: They are getting a little bit too old, and they can't fish the four tides. You know, there are four tides in the twenty-four hours.

MR. ALEXANDER B. COOPER: The question is whether we shall prohibit any fishing from the tenth of August until the first of March; in other words, making the season for fishing from March first to June first instead of to June tenth, as at present.

MR. LEONARD YOUNG: That is allright, because you don't catch anything anyhow before or after those dates.

MR. ALEXANDER B. COOPER: You don't catch anything before the first of March ?

MR. LEONARD YOUNG: No, sir; you don't catch anything in the shape of shad.

MR. ALEXANDER B. COOPER: In order to get the sense of this meeting , I shall ask all those in favor of

the season beginning on the first of March and ending on the first of June, to so signify. Is that the sense of this meeting ?

(The motion was carried, there being only one dissenting vote.)

MR. FRANK LABOUBE: If you start before the first of March you will go out there and you will not catch anything. We most commence our fishing about the twenty-fifth of March.

MR. ALEXANDER B. COOPER: You don't have to go out unless you want to. That is only in view of an early spring, or an early run of the fish.

MR. FRANK LABOUBE: Make the end of the season later. Let it be near about the same it is now--say the tenth of June.

MR. ALEXANDER B. COOPER: You would prefer the tenth of June instead of the first of June ?

MR. FRANK LABOUBE: Yes, sir. Our laws are good enough as we have them now, I think. That is, they suit me all right. Of course, I don't know how they suit other people.

MR. ALEXANDER B. COOPER: The next point is, under the provisions of our law no shad or herring can

be caught nearer than one mile from the mouth of any river or creek within the state.

I may suggest, so as to get the opinion of the fishermen here present, that at the meeting in New Castle they suggested that that ought to be stricken out; that we ought not to have any law which confines you in limits of that kind.

MR. LEONARD YOUNG: If that was the case here we could not fish any net.

MR. FRANK HICKMAN: There are lots of people and lots of fishermen who have been fishing for a good many years around here, and I have been fishing for twenty years , and if you restrict them and make them go off one mile from shore, there are lots of those men who cannot fish, because they cannot go to the expense of rigging up that kind of a net. As Mr. Young has just said, there are lots of them that can't fish any kind of a net, if you put that restriction upon them. There are also another class of fishermen, what we call dippers. If they are not able to buy a new net they will go out and buy some second-hand net of some kind, and they will rig that net up and fish with it right close to the shore. If you are going to drive the

fishermen away one mile from shore, you are merely giving the man with the large haul seine a chance to fish his net. That is the whole trouble. The man with the large net wants that space in the river all to himself. I say make no restriction. Restrict no one. If they want to lay off on the mud, let them lay there--give them that privilege.

MR. WILLIAM GIBASON: I think it would be a grave mistake to put a restriction of that kind upon the fishermen. There is a creek right close to the place where I live, and there the river is very narrow between Reedy Island and Port Penn. They can't go off a mile from shore there. If they do, they will go on the island. I have seen that space entirely filled during the fishing season. When it happened to be blowing hard they could not get outside, and they would all go in. I think it would be a grave mistake to pass a law restricting the fishermen to anything like that.

MR. WILLIAM S. MILLER: That is the law as it is now. We want to know whether you want it to stay in that way.

MR. WILLIAM GIBASON: There is the Augustine Creek, the Blackbird Creek, the Appoquinimink Creek, and

all the way down on that shore there are creeks within almost a mile of the nets where they are drifting along; and it is all flats inside of that. I think that is one thing that ought not to be put in the law. There are some haul seiners along the beach that have two or three hundred fathoms of haul seine, and they want to keep all of us out that they can keep out so as to keep that space for themselves. I say let them lay where they please and also let the giller do the same. If the haul seiners do not want to go out there, let them stay in close to the shore. That is a mean law, in my opinion. It is just like a fellow who has found an apple tree with a whole lot of good apples on. He says to himself, "I hope nobody will find that tree but me." I think that is the way with the haul seiners, "I hope nobody will find it but me."

MR. JOSEPH ANDERSON: That law was enacted for the benefit of the fishermen in Kent and Sussex Counties, and we, in New Castle County, did not know there was such a law enacted as would effect us in our fishing. We have been fishing under that law without knowing it. We are just awakening up to the fact that we have been fishing under that law. You will probably, when you

have your meetings in Kent and Sussex Counties, have that thing to come up against as in competition with New Castle County. If such does come up, I would suggest that there be a compromise in reference to the threeCounties. If Kent and Sussex Counties want such a law as not to fish within a mile of the streams flowing into the Delaware Bay, give it to them and let the line be from Bombay Hook to the Breakwater. Let them have that privilege if they want it. The object of that law was this:

In all of these small streams we have nothing to prohibit a man from fishing by staking. They don't drift there. They stake their nets. There is nothing to prohibit them from staking their nets within a mile of these streams; that is, I mean, there is a law which prohibits nets from being staked within a mile from the outside of these streams so as to allow the fish to go up these small rivers or streams, and up those rivers or streams they do not drift their nets, but stake them. That is what that law was passed for. I would move that we have that law stricken out entirely and to allow every man the privilege of fishing in all the waters within the state of Delaware clear down to the capes.

(Upon the seconding of the motion, it was unanimously carried.)

MR. ALEXANDER B. COOPER: The next question is in reference to the size of themesh in the seine. I may say here that the fishing laws of the state of Delaware have been very much confused. They have been amended from time to time (by whom I do not know) and amendments have been put in the wrong places. Therefore, at present, they are very much confused. The present law is a ten inch mesh. That was,evidently, intended for sturgeons but it is in the shad fishing part of the law. The sense of the meeting at New Castle the other night was that no gill seine should have a mesh of less than five inches, that is, stretched, of course.

MR. LEONARD YOUNG: That is a gill net for shad ?

MR. ALEXANDER B. COOPER: Yes; of not less than five inches. How does that strike you ?

MR. LEONARD YOUNG: That is all right. That suits me.

MR. ALEXANDER B. COOPER: Is it the sense of this meeting that the mesh of the shad net shall not be less than

five inches ?

(Upon motion being put on this proposition, it was unanimously carried.)

The next question is as to the length of the net. The sense of the meeting at New Castle was that they should be privileged to fish all they wanted to. We have a provision in the law limiting it to three hundred fathoms for non-residents, but nothing as regards residents. Is it the sense of this meeting that the length of the net shall not be limited ?

MR. LEONARD YOUNG: I say to let them fish all they please.

MR. ALEXANDER B. COOPER: Is that the sense of this meeting ?

(The motion being put on this proposition, it was unanimously carried.)

Next comes the question as to the closed season, with reference to fishing from Saturday until Monday morning. The present law is from eight o'clock on Saturday until midnight of Sunday. The law of New Jersey is from sunset on Saturday until midnight Sunday. Our law was the same as the law in New Jersey, but it was amended to eight o'clock on Saturday instead of

sunset. At the meeting in New Castle it was there resolved that they should stop fishing on Saturday at twelve o'clock noon and not begin again until Monday morning at four o'clock. What is your feeling about that ?

MR. LEONARD YOUNG: I would say to have the same law as we have at present.

MR. ALEXANDER B. COOPER: Your idea is not to change it ?

MR. LEONARD YOUNG: To have the same law tat we have now, from eight o'clock on Saturday until midnight Sunday.

MR. ALEXANDER B. COOPER: You want it to remain just the same ?

MR. LEONARD YOUNG: Yes, sir.

MR. WILLIAM S. HILLES: This is an important matter, and we would like to have a full expression of opinion.

MR. LEONARD YOUNG: If we stop at that time they will fish over at the other place in thesame way they are now fishing.

MR. ALEXANDER B. COOPER: No, they will not. This is for the purpose of drafting a uniform law, that is, the same law to apply to New Jersey and to the state of Delaware, and the same penalties for violations to be

applied.

MR. FRANK NICKMAN: It is an entirely different proposition as regards fishing here and fishing at New Castle. New Castle is not troubled with Jerseymen and people from Chester and from Philadelphia. All our creeks down here, that the gentleman just named, are rammed and jammed full of Chester men, Philadelphians, New Castle people, Wilmington people and Jerseymen, and also with people from Marcus Hook. From all up the river they come down here to get the Bay fishing. They use big nets when they come down here, and when they go back up home after the season is closed down here, they divide those large nets up into two nets, because they haven't the room up there. If you should restrict us until four o'clock on Monday morning, there are eight thousand boats and there would be eight thousand nets all laying off at one place at four o'clock. Now, if thatis so, where are they all going to fish ? That is the question. If we go out from our home at Port Penn, they will come out of the creek and they go right over to the westward to drift--they would all go over to the westward to drift at four o'clock in the morning. When we start

and get down to Ray's ditch there will be two or three hundred more, and also those coming out of Blackbird Creek and Augustine Creek, and some out from Collins, and so you see there will be a tremendous number of nets all to be stretched at four o'clock in the morning. The consequence will be nobody will get any fish , and I will be into some other man and some other man will be into me. As I say, consequently we would get no fish. I say, let them fish up until Sunday morning, and then when Sunday night is through let them start fishing again, because the season down this way is very short. Whatever fishing is done we have to do within a short time. The fishing is different down here from what it is at New Castle. We have got to contend with fresh water and salt water. If there is a run of shad that comes on, what will they do ? Ninety-nine times out of a hundred it will be on Saturday that the fish will come up the bay in large numbers. Very nearly every time it will be on a Saturday , and if that water is salt those fish will go right straight to Philadelphia. So if you restrict us and not permit us to go out there and fish when the fish are coming up, they get by us. When Monday

morning comes around they have gone by, and when we go out there the fish are gone, and they have gone up to New Castle and they have gone to Philadelphia, and they go into those big haul seines which you will find in the neighborhood of Philadelphia. I say start the season on the first of April and then close the season on the twenty-second of May. You have got a very small space of time within which to catch fish, and after you take into consideration the fact that men have five hundred dollars invested in nets, I think we ought to be allowed to catch them when they are coming up. There are men here who have gotten five hundred dollars invested in nets, and you can very readily see the small space of time thesemen have in which to get their money out of those nets . So that if you say a man can't fish from dinner time on Saturday until four o'clock the next Monday morning, you are still shortening the time within which he can get a return from his investment in nets. Monday is the best day in the week. His time is limited, and if you restrict him, he would not have a chance to fish when he ought to.

MR. ALEXANDER B. COOPER: What hour would be satisfactory to you ?

MR. FRANK HICKMAN: If a man wants to fish up to twelve o'clock Saturday night, I say let him either dry his net then or keep it on his boat, and when twelve o'clock midnight of Sunday arrives, let him go to fishing again, if he wants to.

MR. R. S. YEARSLEY: I am in perfect accord with the remarks just made by the gentleman. You say we shall begin fishing on Monday morning at four o'clock, and shall quit fishing on Saturday at eight o'clock ?

MR. ALEXANDER B. COOPER: The present law is that you shall stop fishing at eight o'clock on Saturday and begin again at midnight on Sunday. The suggestion at the meeting in New Castle the other evening was to close the fishing at twelve o'clock, noon, on Saturday, and not to start again until four o'clock on Monday morning.

MR. R. S. YEARSLEY: I have been fishing ever since I have been knee high to a grass hopper, and for the last two years I can say that I have made one-third of my success in fishing on Saturday. Why did I do it ? These up river fellows fish down the Bay, and some of them come down here and they are

fishing during the day and night during the week days, one right after the other, and when Saturday comes along I go down and they go home. Then I have a chance to catch some fish. It may probably be blowing a little heavy, and I go down there and I catch a lot of fish. I have made one-third of my spring fishing, I might say, in those two days, and paid for my net and cleared myself and had the balance of my time and catch clear. I would suggest that we begin at twelve o'clock on Sunday night and fish until dark on Saturday.

MR. ALEXANDER B. COOPER: The same as under the present law ?

MR. R. S. YEARSLEY: Yes, sir; just as it stands now, from eight o'clock Saturday until midnight Sunday.

MR. JOSEPH ANDERSON: The last speaker said that he generally made his best catches on Saturday. That has been the experience of men ever since I have been fishing. I have always made it a point to fish on Saturday. I generally allowed to leave my net on the boat, and when I left it on the boat I left it there so as to be ready to go to fishing as early as possible on

Monday. I wanted to be in the best position I could to make the best of it. I have always made some of my best catches on Saturday. I would suggest that the laws which are at present on the records be continued. I put that in the form of a motion.

MR. ALEXANDER H. COOPER: Is it the sense of this meeting that the present law, which is from eight o'clock on Saturday night until midnight on Sunday, be continued ?

(Upon motion being put on this proposition, it was unanimously carried.)

There was another suggestion made, in view of what was considered the scarcity of the shad in the river. That suggestion was adopted in New Castle the other evening, and was to the effect that there should be a sort of closing hours in the week days; that is, that they should stop fishing at seven o'clock at night and not begin again until four o'clock in the morning, that to apply to every night in the week except Sunday. That would practically stop the night fishing. Have you any suggestions to make in reference to that matter ?

MR. J. A. JORDAN: I have been fishing ever since 1858, and I have never missed a spring's fishing

that I know of. I don't think we want any limited time like that for fishing. When the shad come here we want to have the privilege of going after them whenever we feel like going after them, and whenever it is suitable for us to go, and whenever we feel able to go and the weather will permit us to go, except on Sundays.

MR. ALEXANDER B. COOPER: In justice to the men who suggested this at New Castle, I will say that it was made upon the ground of preserving the fish; that is, allowing them a little more time in view of their getting scarce.

MR. J. A. JORDAN: It takes all of our time now to get out clear. We have to fish here all the time to get out of the expense of our net, and if we are going to be limited as totime that way, it will not be worth while to bother about investing in nets. I don't think we want any better law than the present one.

MR. R. H. YEARSLEY: You say from four o'clock in the morning to seven o'clock in the evening ?

MR. ALEXANDER B. COOPER: From seven o'clock in the evening until four o'clock in the morning as the closed part of the fishing day.

MR. R. H. YEARSLEY: We have about twenty boats from this city, and we all have a place to lay off; and there are three or four close shore fishermen. We all know that some fish all night, and some will go out at one o'clock and some want to go later. I am a middle aged man and I like to fish from one o'clock. There are some men who are older than I am who will go out at three or four o'clock. Let them go whenever they please. There is another set that we call the dippers. They want to go out at six or seven o'clock. Let them go. If we make this law so as to make us all go down there and start at one time, there will be a great big mix-up there, and there will not be room enough for us all to fish in. At sometime in the morning when they are all out, it would be impossible to fish. We could not begin to fish. We would be all mixed up, and there would be a terrible time there and nobody would be able to fish. Those fellows who want to fish get up early and go to fishing. They attend to their business. They donot walk up and down the streets an lay around until seven or eight o'clock, too tired to fish. That may suit them. Who made that suggestion ? If he had been a fisherman, he would not

have said anything of the kind. It is the man who does the fishing that is to be considered in this matter. It is not the fellow who sits around the barroom and around on the tables and around the stores. Those are not the shad fishermen. It is the snap shot, the steam launch, and the net; those are the things that produce the fish.

MR. FRANK HICKMAN: At our place we have a very bad place to fish in, because the Government has taken it all up with buoys. I refer to Port Penn. We cannot lay out directly from our village. We cannot row directly out from there and lay off, but we must go down the river three or four miles before we can stretch a net, because if we laid a net off in the night or day opposite our village, we would have to pull it up to clear the buoys there. Then there is Ray's ditch, and Blackbird creek, and Appoquinimink creek, they are all right there. They are all full of nets, Philadelphia people , Jersey people, Delaware City people, and New Castle people, they are all piled in there ready to start at four o'clock. If the rest are all there, of course, our men are going to be there also, and these men from these different

creeks are going to be there; and who is going to get any fishing ? If you put any restriction on it, the men down there will go out when they get ready and go fishing. Like enough they will wait until I come down, and then again they may not. If you restrict it until four o'clock, they cannot go and I cannot go until that time, and when we all get there we will all be in a huddle, and nobody will get any fish. My idea is to let a man start when he pleases. That is my idea. Then when he gets a fill of fishing, let him go home. Let the Jerseymen look out for themselves. They fish night and day down there. In the spring of the year if you come down to our place and look out there on the river it looks like the city of Philadelphia lighted up. They fish night and day. They fish every tide. While one man sleeps the other two fish. We don't want to make any laws in this state, at least, I do not, that are going to restrict us to a certain number of hours for fishing, because, if we do, we can't afford to rig our nets; we can't afford to pay for them; that is, we can't catch enough fish to pay for them.
We have good fishermen at Port Penn who have a great deal of money invested in nets. The highest catch at our

town last season was 1716 shad, which were shipped to Philadelphia. They were caught because that man was given all the time he wanted to catch them in. That man is a good fisherman, an A-1 man. He caught 1716 shad. Suppose you restricted him to a certain number of hours to have caught those fish. Could he have done it ? No, sir; he couldn't. Therefore, if you make such a law as this, that man could not rig a net; he could not afford to rig a net at all, because there would be too much money invested in it in comparison with the amount of money he would get out of it. That man has got a boat that cost him three hundred and seventy-five dollars. The catch around there went on down from 1716 shad--I am talking from actual facts now--all the way down from 1716 shad to none. Now, how about the poor devil that catches five and six and seven hundred, and he had to pay one hundred and fifty dollars for a shad net ? He would not have rigged that net this spring. He would have had to go out on the farm and husk corn, or plant corn, or something else of that kind, to make a living. When you restrict any set of fishermen to a certain number

of hours within which to fish, they are left, because, as I say, our season starts about the first of April and ends about the twenty-second of May. You can figure up yourself the amount of time the fishermen have, and the amount of money they have invested in their nets, to find out how they are going to get out of it and to make a living for themselves.

MR. ALEXANDER B. COOPER: There seems to be a sentiment in opposition to the closed part of the week day fishing. I will, therefore, put the question before you in this manner: All those who are opposed to any closed hours during the week days, and are in favor of allowing free andopen fishing during the week days, will so signify by saying aye.

(Upon the seconding of the motion made it was unanimously carried.)

There was another question which was brought up, and that was as to whether or not there should be any provision in the law with reference to the distances of the nets apart; that is, whether a man should be allowed to cast his net in ahead of another man, or not. Do you want any provision in reference to that, or will

you take your chances on it ?

MR. WILLIAM GIBASON: I commenced fishing when I was a boy, and I never heard of such a thing as that before in all my life. Sometimes xxxx you have got to go wherever you can. The tide may be pretty near gone, and there may be three or four fishermen there, and we all have got to go to fishing and get our fish inside of an hour. If we had to be put a couple of hundred of fathoms apart, some of us would not get in at all. If you put a space of a quarter of a mile between each one, the greater portion of them would get left. If you make a prescribed time as to when I shall lay off my net, say so many minutes, and then another fellow comes along and he lays his net off, and if I rig up my net and he rigs up his net, and I put ten pound of lead to the one hundred fathoms and he puts six pounds of lead to the one hundred fathoms, his net will drift faster than mine; and then along comes the patrol man, and he sees that this other fellow is getting too close to me, has he got a right and is he going to arrest him ? If you set a certain limit of time as regards the laying off of nets, you

have got to make a law that will compel people to rig their nets all alike.

MR. ALEXANDER B. COOPER: The point is as to the casting in of the nets; not what becomes of them after you get them in. That is, if I cast my net out along here, whether or not another fisherman--and for instance the tide was running ebb--could put his net right in ahead of me, twenty feet, for instance, in order to prevent the shad getting into my net ? What provision do you want made for that ? I understand from the sense of this meeting that you are opposed to anything like that, and that you desire to put your nets in where you please. Is that the sense of this meeting ?

(Upon the putting of this proposition, the motion was unanimously carried.)

There was another question which came up. Our law is not very explicit, or very full, about the matter, but they have a very stringent law in New Jersey about it. That matter is as regards the pound fishing, the anchoring of nets, andthe catching of shad by contrivances of that kind other than the usual drift net. Have

you anything to say about that ? In New Jersey the general law in reference to that is as follows:

(Here reads section of New Jersey law.)

MR. WILLIAM S. HILLES: The question is, whereor or not there ought to be a law prohibiting the use of that kind of contrivance in the Delaware River and Bay.

MR. LEONARD YOUNG: The large haul seines up the river kill more fish than anything else. They pull the small fish ashore and they walk on them while they are getting the large fish out.

MR. ALEXANDER B. COOPER: I should think that place at Gloucester would do that.

MR. LEONARD YOUNG: Yes; and they do it at Washington Park, too.

MR. ALEXANDER B. COOPER: They work their seines there by steam, do they not?

MR. LEONARD YOUNG: Yes. It is hauled in by steam.

MR. ALEXANDER B. COOPER: Has anybody anything to suggest either in favor or against anything of that kind ? It seems to be a measure for the protection

of those who are regularly fishing with drift gill nets.

MR. R. H. YEARSLEY: I can't get it into my head why Jersey has any right to make laws for this Delaware River.

MR. ALEXANDER B. COOPER: That is their law at present.

MR. R. H. YEARSLEY: There is no Jersey river.

MR. ALEXANDER B. COOPER: The New Jersey Legislature has entered into this compact, and it is under this compact that we are now acting. Is there anything further you want to say about the pound fishing ?

MR. JOSEPH ANDERSON: I think pound fishing, and all such fishing, ought to be prohibited within the waters of the state of Delaware, that is, within its jurisdiction, the Delaware River and Bay; and I would make a motion that it be inserted in the law.

MR. ALEXANDER B. COOPER: That there be no pound fishing permitted ?

MR. JOSEPH ANDERSON: That there be no pound fishing or stake net fishing permitted of any description.

(Upon the seconding and putting of the motion, it was unanimously carried.)

MR. ALEXANDER B. COOPER: The next point is in reference to herring. Have you anything to say about the fishing for herring ? It was suggested at the meeting in New Castle that the herring fishing could take care of itself. Is it the sense of this meeting that no provision be made in reference to herring fishing ?

(Upon motion being put on this proposition, it was unanimously carried.)

The next point in order is carp fishing. The present law of Delaware is that you cannot fish for carp during the months of May, June, July and August. Is that satisfactory ? The fishermen at New Castle were in favor of letting the law remain as it is, May, June, July and August for carp fishing.

MR. R. S. YEARSLEY: That is all right. They are no good during that time, anyway.

MR. ALEXANDER B. COOPER: Is it the sense of this meeting that the law shall remain as it is in reference to carp fishing ?

(Upon motion being put on this proposition, it was unanimously carried.)

The next point was as to the mesh of the net for carp, and that was two and five-eighths inches. Is that satisfactory ? As a matter of fact, our present law is, you cannot fish for anything with less than a two and five-eighths inch mesh. Is it the sense of this meeting that the law should stand as it now is ?

MR. FRANK HICKMAN: Does that mean that that is the smallest mesh you can fish for any kind of fish with ?

MR. ALEXANDER B. COOPER: For any kind of fish.

MR. FRANK HICKMAN: Then what are you going to do with the eel ?

MR. ALEXANDER B. COOPER: Do you fish for them with a net ?

MR. FRANK HICKMAN: That is one of the biggest fishing industries we have here . They fish for them with baskets and they fish for them with nets, that is, with fike nets. You take a string of nets and bait them and go out in the river and sink them.

MR. ALEXANDER B. COOPER: That is intended to apply to the gill seine and drift net.

Is it the sense of this meeting that the size of the mesh of the gill net shall be not less than two and

five-eighths inches ?

(Upon motion being put on this proposition, it was unanimously carried.)

The next point is as to sturgeon fishing . It was suggested at New Castle, and carried there as the sense of the fishermen, under the head of sturgeon and mammoose, that no sturgeon of any kind should be caught that were less than six feet in length. That was for the preservation of the sturgeon. I do not think there are many of them around.

MR. FRANK LABOUBE: If you make the law that they shall be six feet in length, you might as well make it a closed season for a length of time.

MR. ALEXANDER B. COOPER: It was suggested at the meeting the other night and carried that none less than six feet should be caught. That was supposed to be for the purpose of preserving the younger sturgeon.

MR. FRANK LABOUBE: A sturgeon measuring six feet would dress from fifty to seventy-five pounds, that is, some of them. I had a sturgeon in my net which was six feet long--I am saying now, if I had

such a fish, and he would come up alongside of my boat there, he would look like a mile long to me. If he had twenty-five or thirty dollars worth of roe in him, I would throw two big hooks into him so as tokeep him from making trouble, and then I would scoop him into the boat, and he wouldprobably die, because after having gotten him in there and measured him I found he was five to six inches under six feet, and would, therefore, throw him overboard again. He would probably die from the wounds he would receive. I think a four foot fish is a medium size. That would be my idea.

MR. JOSEPH ANDERSON: The gentleman said that a fish which measured six feet would be a large fish, a large cow fish. I was the gentleman who made that motion in New Castle. I have been fishing for sturgeon for many years, and probably fished for them before he was born, and know as more about a sturgeon, I expect, or as much as the average man that ever fished for them, and I know the size of a sturgeon, and how it will weigh, for I have handled as high as twenty-five hundred sturgeon in one year, more than the gentleman himself ever caught, and I know that I have measured many sturgeon

and butchered them all, many sturgeon measuring six feet in length, and they have netted twenty-five pounds in weight. I measured some sturgeon last year, and the reason I put that motion was for the protection of our young fish. I measured some sturgeon on our wharf down here last year. There were thirteen sturgeon there. There were sturgeon there that measured seven feet long. I bought the fish from the man after they were butchered and paid him ten cents a pound for them right there, and there wasn't a sturgeon in that lot that weighed thirty-five pounds, not one in the whole bunch. The gentleman just left the room, the one to whom I refer. A sturgeon to weigh seventy pounds will have to measure eight feet in length, and I will wager from one hundred to five hundred dollars—and I can get the money backed up at any time—to any man, and I dare him to take it up. I have measured them as long as eleven and twelve feet, but the average length of the sturgeon is nine feet. A sturgeon does not spawn until it is seven years old, and it will then measure from eight to nine feet in length. Those men are young in the business. They have been catching

sturgeon only a few years. They have not learned it all as yet. They have got a good bit to learn. I would suggest, for the protection of the sturgeon interest, that there is more money in the sturgeon than in any other fish that swims, and for the protection of the fish, I would move that it be unlawful for any man to catch a sturgeon that measures less than six feet in length. You will find the same thing to contend with in New Jersey, when you come to it.

MR. FRANK NICKMAN: I am not quite as old a man as the gentleman who just addressed you, and have not handled as many fish as he has, but I have caught sturgeon, and I have caught a good many of them; and furthermore, I have not only caught sturgeon, but I have cleaned and sold the fish in the Dock street fish market; and I beg to differ with the gentleman, because I have butchered fish that did not measure six feet, and yet they weighed over one hundred and fifty pounds. Those thirteen fish that he spoke of, whether they were what we call "sulkers", or not, I do not know, fish that had the spawn taken from them and had no meat on their back bone. I have seen them with a whiskey barrel full of roe in them, and after they spawn that roe

there is no meat left on them. I have seen a thousand fish less than six feet in length that have dressed one hundred and fifty pounds, and I remember one particular fish that dressed one hundred and sixty-five pounds. When you go to saying six feet, you are going to make a law restricting the rights of the fishermen, because it is not worth while to rig up a net, and you had better make it a closed season. I have gone out there and fished for ten days and two weeks, and never had a strike, let alone catch a fish. If you are going to make the size of the mesh fourteen to sixteen inches to catch six feet fish, you are going to make a law that will prevent any fishing at all, because you will not catch the fish.

MR. R. H. YEARSLEY: I have caught sturgeon with a ten inch mesh, and I have caught them just as well as he could with a fourteen inch mesh. Mr. Anderson, I think, is just a little off when he says a fish has got to be seven feet long to dress seventy-five pounds. I think there is a little difference there. I think a fish averaging five feet in length will dress from forty-five to fifty pounds; that is what

we call the buck. Of course, we catch moose in those small nets. I have got a new net, brand new last summer, and have not fished it very much, and I have caught very few small fish, and some big ones, and just about got my net out. Next year I will not be able to use it, just because this gentleman wants to make the mesh fourteen inches. He has got a lot of nets with fourteen inch mesh, and he wants me to fish with a fourteen inch mesh. I have got to make my mesh suit him, because he wants to catch all the big fish, and I want to catch what comes along.

MR. WILLIAM S. HILLES: What is your idea as to the smallest size sturgeon that should be caught ?

MR. R. H. YEARSLEY: Four feet. A sturgeon that measures four feet will dress from thirty-five to forty pounds right along. A five feet sturgeon will dress from forty-five to fifty pounds. That is, the bucks. I saw a buck last summer that dressed over two hundred pounds, and I know he wouldn't measure six feet. He was naturally fat.

MR. WILLIAM S. HILLES: What was the size of the mesh ?

MR. R. H. YEARSLEY: That was caught in a ten

inch mesh, but I don't suppose a ten inch mesh would suit this gentleman. However, that is my idea. There are no nets in Port Penn that have a fourteen inch mesh. I have got nets down there, and there are lots of others down there that have bought nets, bought them last summer, and if you want to give us a limited mesh with which to catch the fish, we will have to stop.

MR. FRANK HICKMAN: Professor Rider of the University says that little sturgeon will spawn.

MR. JOSEPH ANDERSON: I expect I have perused professor Rider's statement on the propagation of sturgeon about as much as anyman in the room, and I have probably been interested in the sturgeon industry as much as any man in the room, as far as this section is concerned, and in regard to the size of the mesh I do not ever recollect of suggesting or stating that I had a number of nets that were of an exact size. I do not recollect just what size those meshes are at all. I am perfectly willing to compromise to a less size mesh. For instance, at New Castle I suggested a fourteen inch mesh, and I am willing to compromise it by lessening it to thirteen inches; but when

you come to fishing with a ten inch mesh, you necessarily catch all those small fish, and you will catch fish so small that they are not fit to be brought ashore for market; they are good enough for the market, but you are catching up all of our young fish, and finally we will have no fish at all left in the river to fish for; and it will not pay any man to fish for them. They will see it themselves when it is too late. It is too late after you have killed off all the young to expect old ones afterwards.

MR. R. H. YEARSLEY: I think myself that it is somewhat of a mistake in placing that measurement upon the fish, because some of them are very short in length, and yet they weigh like everything when they are fat. The only way you can do Brother Anderson any good is to shut him down for two or three years the same as everybody else, and then I think his business will start up again. I have caught as high as fifty fish a day, that is, my partner and myself, and there have been lots of fish in among that lot six feet long. I know they would average six feet long. You talk about a cow fish when she is spawning, she is

sickly. They are not any bigger around than that (indicating about eight inches). They are great long thin things, and are not fit for anything. Some of them die, and some of them pick up again. He has got her goods and gone to market, and you are not going to eat them, nor is anybody else going to eat them. All this talk about a big mesh will not do any good now, because they are not out here to get, unless he shuts down for a few years.

MR. ALEXANDER B. COOPER: There seems to be a conflict of opinion, and the first question I will put this way: Those who are in favor of a closed season of two years will so signify by voting aye.

(Motion lost.)

I will begin with the smaller fish and go up. Those who are opposed to catching sturgeon of a length less than four feet, will so signify by voting aye.

(Upon motion being put on this proposition, it was carried.)

Those who are in favor of increasing the length of the fish to six feet will say aye.

(Upon motion being put on this proposition,

it was lost, there being but one affirmative vote.)

As to the size of the mesh, it ranges from ten to fourteen inches. Those in favor of a ten inch mesh will signify the same by voting aye—that being the lowest size.

(Upon motion being put on this proposition, it was carried.)

Is there anyone who is in favor of making the mesh larger than ten inches ? If so, they will please stand up.

(Mr. Joseph Anderson here stood up.)

The next matter is as to trout and rock fishing. Have you anything to say about that matter, so far as concerns the size of the mesh ? You voted that that should be the smallest size mesh used, the two and five-eighth inch mesh, and that would apply to trout and rock fish, unless you want some particular provision for those. As to the size of the rock caught, there was a suggestion made at New Castle and carried that no rock fish weighing over twenty pounds should be caught. What have you to say about that ?

MR. JOSEPH ANDERSON: I would suggest that there be a penalty of twenty-five dollars in each case where a man fishes a net for sturgeon with a mesh of less than ten inches. Then we will catch them all. I put that in the form of a motion.

MR. AMOS COLLINS: Suppose a man catches a sturgeon in his shad net which is only about a five inch mesh ? He can't take that sturgeon out of his shad net, because it is not a ten inch mesh net.

MR. ALEXANDER B. COOPER: He is fishing for shad then.

MR. AMOS COLLINS: According to Mr. Anderson's idea he has got to fish a ten inch mesh for sturgeon.

MR. ALEXANDER B. COOPER: If he accidentally catches a sturgeon in a shad net, or a shad in a sturgeon net, it doesn't make much difference.

(Upon motion being put on this proposition, it was carried.)

Is it the sense of this meeting that no rock fish shall be caught weighing over twenty pounds, and that a penalty shall be imposed ?

(Upon motion being put on this proposition,

it was unanimously carried. )

The next point is as to the menhaden fishing business. I do not know that you are so directly interested in that, although you ought to be. In reference to the menhaded fishermen, they are patrolling our coast and are also coming inside of the Bay now, as I understand, and it is claimed that they are catching great numbers of food fish, and I guess that claim is made with a great deal of correctness.

MR. JOSEPH ANDERSON: Probably the gentlemen will agree with me in this matter, even though they did not agree with me on the sturgeon fishing question. The menhaden fishermen are a very destructive set of fishermen. There isn't any branch of the fishing business that is more destructive to the food fish than the menhaden fishing. They catch all manner of fish in their nets, all manner of food fish, and they put them into the pot andboil them up and make fertilizer and oil out of them. I think such a business should be kept out of our waters and prohibited by law, and that the penalty should be made very heavy.

MR. ALEXANDER B. COOPER: In that connection I would say the New Jersey law is very severe against it.

MR. JOHN YEARSLEY: I had a brother-in-law who fished for the menhaden fisheries for twenty years, and he told me that they caught all kinds of fish and put them right in the press, that it didn't make any difference whether they were sheep head, trout, black fish, or blue fish, whatever came along went into the press. He said at one time he saw a sheep head that weighed fifteen hundred pounds go into the press. I think they ought to be kept outside of the Bay. When they come up the Bay, and along in close quarters, they catch just that many more than they would if they were outside. I think they ought to be prohibited first and last.

MR. ALEXANDER B. COOPER: Is it the sense of this meeting that menhaden fishing in the Delaware Bay and River should be prohibited ?

(Upon motion being put on this proposition, it was unanimously carried.)

We have a law in reference to sharks, porpoises

and herring hogs. I don't suppose you care much about that.

Now, with reference to cat fish and eels, what have you to say ?

MR. JOSEPH ANDERSON: I would suggest that they be permitted to fish with any kind of a net that they can catch them with, regardless of size of mesh.

MR. FRANK HICKMAN: That is my idea in regard to eels, because that has gotten to be quite an industry with us down at my place. They fish for them with both baskets and nets. They go out in the river, bait them, set them, and let them set over night, and they make a good living at it. So far as I am concerned we want no laws to stop them fishing in any way they please, so far as eels are concerned.

MR. ALEXANDER B. COOPER: Is it the sense of this meeting that no law be enacted with reference to cat fish and eels ?

(Upon motion being put on this proposition, it was unanimously carried.)

Are there any other suggestions that any of you gentlemen would like to make in regard to fishing

of any character —any kind of fish ?

There was one question that was taken up the other evening, and that is this: Do you want any legislation with reference to willful interference with drift nets ? For instance, such as launches and boats willfully running into your nets. Do you want a law to make them get out of your way ? Do you want any law of that kind ?

MR. JOHN YEARSLEY: We can't do anything with that, so far as vessels, and things of that kind are concerned. They are bound to run the channel, and if we go out into the channel they are bound to run over our nets.

MR. ALEXANDER B. COOPER: Is it the sense of this meeting that nothing be done with that matter ?

MR. R. S. YEARSLEY: Sometimes we don,t fish the channel, but in coming up to Delaware City some of these fellows who work on the tug boats will come out there and run over your net. They will say, "If you don't get out of the way we will run over you, damn you." They will tell you they will run over you and over your net. If we could get anything in the way of a law to

govern that matter, I think it would be one of the best things that ever happened. When we are in their way in the channel we can get out.

MR. FRANK HICKMAN: If the Government gives a license to these people to ply the Delaware River and Bay, what law couldyou gentlemen make to stop them ?

MR. ALEXANDER B. COOPER: This suggestion does not contemplate that at all. It contemplated a willful and malicious interference with your nets. If a vessel is coming up the channel from the ocean, of course, she cannot go out of her channel. That is not willful interference; that is interference that is necessary. But it is where it is malicious and willful, where it is maliciously and willfully done, that is all this refers to.

MR. R. S. YEARSLEY: If a sailing vessel comes along, and the wind is blowing, and she is going before the wind, and you have got your net out there, and probably the bar will be on one side of you, and you dare not let her go the other way, because her boom will go over your mast-head, then what are you going to do ?

MR. ALEXANDER B. COOPER: That is not a willful or malicious interference. If I come down in my naptha launch and I see your net right ahead of me, and by my turning out one hundred yards I can escape your net, but I still rush on and rush right through your net, that is what I call willful interference.

Is it the sense of this meeting that no legislation of that kind shall be had ?

(Upon motion being put on this proposition, there were but two votes, one in the affirmative and one in the negative.)

Are there any further suggestions which you have to make in reference to fishing ?

MR. FRANK HICKMAN: What are you going to do with non-residents ?

MR. ALEXANDER B. COOPER: You cannot make a law discriminating against non-residents. That has not only been decided over and over again by the courts, but it is a constitutional provision of the United States that any citizen of any other state has the same privileges and immunities in any other state that he has in his own state. He comes into your state and subjects

himself to the same laws you are subject to. If you put a license on a non-resident, you have got to put a license on yourselves.

MR. R. H. YEARSLEY: We have a law against Sunday fishing, which is right, and Sunday fishing should be stopped. I do not like the idea if I go out fishing next Sunday and I should happen to get over a little bit too far on the other side, of a Jerseyman coming out and getting me.

MR. ALEXANDER B. COOPER: He cannot do it under this law. There is a clause in this compact which gives the state of Delaware exclusive jurisdiction and power to arrest her own inhabitants for violation of the fishing laws, and the state of New Jersey has the same power with reference to her inhabitants.

MR. R. H. YEARSLEY: Suppose one of us should go over there, or they should come over here. If I am going to be arrested, I want to be arrested by my own people and in my own state.

MR. ALEXANDER B. COOPER: That is the only power they have to arrest their own citizens. They have no right under this compact to arrest a Delawarean.

They can arrest a Jerseyman, but they cannot arrest a Delawarean, and a Delawarean can arrest a Delawarean but cannot arrest a Jerseyman.

MR. AMOS COLLINS: Doesn't it say in this compact between the two states that a Jerseyman can follow a citizen of the state of Delaware to low water mark ?

MR. ALEXANDER B. COOPER: A New Jerseyman can follow a native of New Jersey to low water mark of this state, and a Delawarean can follow a Delawarean to low water mark in the state of New Jersey.

MR. JOSEPH ANDERSON: It pertains to men violating the laws of the state of Delaware, whether they be fishermen, or whoever they may be. It doesn't say fishermen.

MR. R. R. YEARSLEY: Then who will arrest the men who are neither Jerseymen or Delawareans ? Nobody can arrest them, under that compact.

MR. ALEXANDER B. COOPER: That will not be a part of the uniform fishing laws.

There is one thing more the Commission would like to be advised about, and it is a matter that appears to me, and I think to the rest of my brothers

on the Commission, to be a pretty hard thing to locate precisely, and that is, where is the mouth of the Delaware River ? We are called upon (and whether it be in an arbitrary way or in any other way) to erect monuments at the mouth of the Delaware River. I would like to know from you gentlemen what you understand to be the mouth of the Delaware River.

MR. JOHN YEARSLEY: Reedy Island lighthouse.

MR. ALEXANDER B. COOPER: How far is the Reedy Island lighthouse from the mouth of the Appoquinimink Creek ?

MR. JOHN YEARSLEY: Three miles. The Reedy Island lighthouse is down at the lower end of Reedy Island. Stony Point is a little below that place. Some of the smaller tug boats are only allowdd to run to the Reedy Island lighthouse, by their license. Reedy Island lighthouse is the head of the Bay.

MR. ALEXANDER B. COOPER: Where does it strike the Jersey shore ?

MR. JOHN YEARSLEY: Just a little above Stony Point.

MR. ALEXANDER B. COOPER: Where would it strike the Delaware shore ?

MR. JOHN YEARSLEY: About Port Penn.

MR. ALEXANDER B. COOPER: Is it the sense of this meeting that the mouth of the Delaware River should be located, as near as it can be ascertained by measurements or otherwise, upon what we call the twelve mile circle ?

(Upon motion being put on this proposition, it was unanimously adopted.)

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CHAS. G. GUYER,
COURT STENOGRAPHER,
826 MARKET STREET,
WILMINGTON, DEL.



Lewes, Delaware,

April 13th, 1906.

8.00 o'clock p. m.

Meeting held on the above date at the Town Hall Building for the purpose of receiving expression of opinion on the part of local fishermen relative to the proposed laws governing fishing in the Delaware River and Bay.

PRESENT:

Alexander B. Cooper, Esq.,

William S. Hilles, Esq.,

Walter H. Hayes, Esq.,

Commissioners.

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MR. ALEXANDER B. COOPER: This meeting was called for the purpose of receiving information as to what you desire concerning the changing of our present laws or creating new laws relative to fishing in the Delaware Bay and River. Under the present law shad and herring cannot be caught in the state of Delaware between the tenth day of June

and the tenth day of August. At our meeting in New Castle the expression of opinion was to the effect that shad fishing should not begin before the first of March, and that it should terminate on the first day of June.

MR. SAMUEL E. PRETTYMAN: We don't start to catch shad here before March tenth. The first shad caught this year was on March twenty-ninth.

MR. WILLIAM S. HILLES: What is the size of the mesh used ?

MR. SAMUEL E. PRETTYMAN: Five and a quarter inch mesh, stretched .

MR. ALEXANDER B. COOPER: How do the present laws in reference to day fishing suit you ? That is, to stop about sun down on Saturday and start again about midnight on Sunday ? The Legislature of 1905 passed a law appointing Mr. Hilles, Mr. Hayes and myself Commissioners for this state, and the state of New Jersey, at the last session of its Legislature, appointedsimilar Commissioners; the object of such appointment being for the two Commissioners to confer with the fishermen of the two states and to draft uniform laws as between the two states in connection with the compact which they had entered into

in reference to the boundary question. New Jersey's closed season is from sunset Saturday evening until twelve o'clock Sunday night. Our law is from eight o'clock Saturday evening until midnight Sunday. Some of the fishermen up our way have various ideas about that. They want to protect the shad as much as they can. Some say to stop at twelve o'clock Saturday noon and start again at twelve Monday noon; while others say to stop every day in the week at seven o'clock in the evening and begin again the next morning at four o'clock.

MR. SAMUEL E. PRETTYMAN: That would give them a night's sleep. That would not do for us down here. We have got to go five miles to get the fish, and the water is so clear around here that we have to fish at night. We do the biggest part of our fishing at night.

MR. ALEXANDER B. COOPER: The way the law is now suits you fishermen down here ?

MR. SAMUEL E. PRETTYMEN: Yes. The fish that we would catch in the day time wouldn't amount to anything.

MR. WALTER H. HAYES: Do you want the size of the mesh changed ?

MR. SAMUEL E. PRETTYMAN: No, sir.

MR. ALEXANDER B. COOPER: Five and a half inch mesh stretched is what you want ?

MR. SAMUEL E. PRETTYMAN: Yes, sir; five and a half inch mesh stretched. A five and a half inch mesh stretched down here is just as good as a five and a quarter inch mesh up there. Their nets up there don't slime like ours do down here. The sea nettles and the marshes is what causes the sliming.

MR. ALEXANDER B. COOPER: There isn't much competition down here among the fishermen ?

MR. SAMUEL E. PRETTYMAN: No.

MR. ALEXANDER B. COOPER: You don't care much about the length of the nets, or anything of that kind ?

MR. SAMUEL E. PRETTYMAN: No, sir.

MR. WALTER H. HAYES: It doesn't make any difference how close you get to the net of the other fellow ?

MR. SAMUEL E. PRETTYMAN: No, sir; I don't think so.

MR. ALEXANDER B. COOPER: Are you troubled with carp down here ?

MR. SAMUEL E. PRETTYMAN: No, sir. We don't see

any here.

MR. ALEXANDER B. COOPER: What do you think about pound fishing ?

MR. SAMUEL E. PRETTYMAN: It is all right.

MR. ALEXANDER B. COOPER: Up at New Castle and Delaware City there was some considerable difference of opinion as to the size of sturgeon that should be caught. Their general idea was not to allow them to be caught of a less length than four feet. In New Jersey the length is three feet. The size of the mesh wanted was ten inches. The old gentleman Anderson wanted the length to be six feet.

MR. WILLIAM S. HILLES: Is there any sturgeon fishing down here ?

MR. SAMUEL E. PRETTYMAN: They fish a little for them off Rehoboth .

MR. WILLIAM S. HILLES: I mean, is there any sturgeon fishing in this district ?

MR. SAMUEL E. PRETTYMAN: There hasn:t been any sturgeon fishing since Kershaw left here. There has been some fishing off Rehoboth, but I mean out here in the

bay. Rehoboth is out on the ocean. In our bay they drift for them, while at Rehoboth they stake for them; stake their nets to catch them.

MR. WALTER H. HAYES: Where does the bay begin, and where does the river commence ?

MR. HARRY W. LYONS: Just about Reedy Point.

MR. WALTER H. HAYES: The lower end ?

MR. HARRY W. LYONS: Yes.

MR. WALTER H. HAYES: How would the lower end of Reedy Island strike Stony Point ?

MR. HARRY W. LYONS: The lower end is just above Stony Point.

MR. WALTER H. HAYES: The people in New Jersey think that about Stony Point is the mouth of the river.

MR. HARRY W. LYONS: That is about right. I have always understood the mouth of the river was right below Reedy Island.

MR. WALTER H. HAYES: By putting that on the twelve mile circle it would put it just a little north of Appoquinimink Creek, which is not much further down than the point of Reedy Island ?

MR. HARRY W. LYONS: No, sir; it is all pretty much on a line there. There is not much difference.

MR. ALEXANDER B. COOPER: I do not suppose you have much of what we call devices or tricks for catching fish down here. You are not bothered much with them.

MR. SAMUEL E. PRETTYMAN: No, sir.

MR. ALEXANDER B. COOPER: The size of the mesh for trout and rock fish was two and five-eighths inches and that no rock fish should be caught weighing over twenty pounds.

MR. SAMUEL E. PRETTYMAN: Not over twenty pounds?

MR. ALEXANDER B. COOPER: Not over twenty pounds.

MR. SAMUEL E. PRETTYMAN: There are more rock fish weighing under twenty pounds that are spawning than there are over twenty pounds.

MR. ALEXANDER B. COOPER: You can catch as many as you please under that weight.

MR. SAMUEL E. PRETTYMAN: You will find very few of them that weigh over twenty pounds.

MR. ALEXANDER B. COOPER: Cat fish, eels, and

those things, they don't interest you much down here ?

MR. SAMUEL E. PRETTYMAN: No.

MR. ALEXANDER B. COOPER: How about the menhaden fishing ?

MR. SAMUEL E. PRETTYMAN: We don't catch these.

MR. ALEXANDER B. COOPER: What is the feeling about that industry down here ? Do they catch them or fish in the bay ?

MR. SAMUEL E. PRETTYMAN: Yes, sir; they fish in the bay and pay a license for it. They pay one hundred dollars a boat.

MR. ALEXANDER B. COOPER: How many boats ?

MR. SAMUEL E. PRETTYMAN: Twenty-two this season. They haven't caught any here yet. I think they had eleven or twelve licenses last year. They only fished last season with eleven boats in the bay. They go outside and in the bay, too.

MR. WILLIAM S. MILLER: Do they catch any food fish ?

MR. SAMUEL E. PRETTYMAN: It is very seldom they catch any food fish. They didn't catch enough food fish

last season to eat.

MR. ALEXANDER B. COOPER: What kind do they catch when they do catch them ?

MR. SAMUEL E. PRETTYMAN: Mackerel, trout and blue fish. More blue fish than anything else, but they don't get a whole lot of fish.

MR. HARRY W. LYONS: We have gone to them time and time again to get food fish, but we couldn't get any from them.

MR. ALEXANDER B. COOPER: You don't think they hurt the food fish ?

MR. HARRY W. LYONS: I do not think so. We have just as many fish here now as we ever had.

MR. SAMUEL E. PRETTYMAN: We have had to lay on the beach two or three hours at a time so that these menhaden fish could get off there so that we could catch the trout.

MR. WALTER H. HAYES: Is there any decrease in the number of fish now from what there were ten years ago ?

MR. SAMUEL E. PRETTYMAN: There are not as many fish now as there were ten years ago; nothing like as many.

MR. WALTER H. HAYES: Do you get as many in a haul as you used to ?

MR. SAMUEL E. PRETTYMAN: No, sir. Ten or twelve years ago one haul would give you all you wanted, while now you have got to make a number of hauls.

MR. HARRY W. LYONS: How long has it been since we have been getting these big trout off the breakwater ?

MR. SAMUEL E. PRETTYMAN: Ever since I was a boy.

MR. HARRY W. LYONS: Don't you get more than you used to ?

MR. SAMUEL E. PRETTYMAN: No, sir.

MR. WALTER H. HAYES: Are there any lobsters down here ?

MR. SAMUEL E. PRETTYMAN: There were more lobsters here last year than there have been for a number of years.

MR. WALTER H. HAYES: There is no protection for them ?

MR. SAMUEL E. PRETTYMAN: No protection for them.

MR. WALTER H. HAYES: Ought there to be ?

MR. SAMUEL E.PRETTYMAN: There ought to be, of course, but there is not.

MR. WALTER H. HAYES: What size ought they be compelled to throw back ? How small ?

MR. SAMUEL E. PRETTYMAN: I think they have a regular size. The law says you shall only catch the regular size, and you must throw the small ones back.

MR. WALTER H. HAYES: No, there has never been any law in regard to them.

MR. WILLIAM S. HILLES: How big ought a lobster to be ?

MR. SAMUEL E. PRETTYMAN: They weigh two, three, four or five pounds apiece. A one pound lobster is plenty small enough. The principal part of the meat of the lobster is in his claws.

MR. ALEXANDERR. COOPER: You mean not to catch them less than one pound in weight ?

MR. SAMUEL E. PRETTYMAN: Yes, sir.

MR. WILLIAM S. HILLES: What is the causeof the disappearance of the sheep head ?

MR. SAMUEL E. PRETTYMAN: I think the cause of the disappearance of the sheep head is the blowing up of the wrecks by dynamite.

MR. ALEXANDER B. COOPER: You gentlemen, Mr. Loafland, Mr. Lyons, Mr. Prettyman, Mr. Maule, Mr. Thompson and Mr. Waples, are all of the opinion that the menhaden fishermen do not catch any food fish ?

MR. SAMUEL E. PRETTYMAN: No, sir.

MR. CHARLES H. MAULE: No, sir.

MR. WILLIAM LOAFLAND: No, sir.

MR. ALEXANDER B. COOPER: Do they fish more on the outside than they do on the inside ?

MR. SAMUEL E. PRETTYMAN: Yes, sir. They do all their principal fishing on the outside, that is, outside of the bay.

MR. ALEXANDER B. COOPER: When they come on the inside, how far do they come up ?

MR. SAMUEL E. PRETTYMAN: Up as far as the Ledge horose on the Jersey side, west of the Flogger. They go anywheres they can get a school of fish. Then they put this net around them and drag them to the boat.

MR. CHARLES H. MAULE: They do not catch any food fish ?

MR. SAMUEL E. PRETTYMAN: What food fish they

catch wouldn't amount to anything. I will bet they didn't catch a barrel of food fish during all of last season.

MR. WILLIAM LOAFLAND: They wouldn't get a barrel of oil out of one hundred barrels of trout.

MR. WILLIAM S. HILLES: What do they do with the oil ?

MR. HARRY W. LYONS: They make paint out of it.

MR. ALEXANDER B. COOPER: Is that the principal use to which they put it , the making of linseed oil ?

MR. HARRY W. LYONS: Yes, sir; I think so. You can go to any paint store and buy a quart of linseed oil, and just as soon as you put anything hot into it you will smell the fish right away.

MR. ALEXANDER B. COOPER: How many menhaden fish would it take to make a barrel of oil ?

MR. SAMUEL Z. PRETTYMAN: About two thousand to the barrel. These people are very particular about their fish. They won't catch edible fish if they can help it. Of course, sometimes they get in with the moss bonkers, and they can't help but get a few of them. If they do come in with afew food fish, say four or five barrels, they won't

allow the men to come up here with them and sell them, but they eat them right there at their factory.

MR. WALTER H. HAYES: What size mesh do they use ?

MR. SAMUEL E. PRETTYMAN: All the way from one inch to two and a half inches.

MR. WALTER H. HAYES: How many men are on the boats ?

MR. SAMUEL E. PRETTYMAN: When they are running five or six hundred feet there are fifteen to thirty men to a boat-- a double crew.

MR. WILLIAM S. HILLES: Are there any other laws you want to cover the fishing down here ?

MR. SAMUEL E. PRETTYMAN: No, sir.

MR. WILLIAM S. HILLES: Where is the next fishing done above here ?

MR. SAMUEL E. PRETTYMAN: Slaughter's Beach, Milford.

MR. ALEXANDER H. COOPER: How far from Milford ?

MR. SAMUEL E. PRETTYMAN: About twelve miles, or about fourteen miles from here.

MR. WILLIAM S. HILLES: And the next place above that is what ?

MR. SAMUEL E. PRETTYMAN: Kitt's Hammock. There are twenty-five or thirty fishermen there, and they fish all the way up from there to a place called Big Stone. Trout is the principal part of their fishing.

MR. ALEXANDER B. COOPER: We have a law now which saysthat no one can fish for shad within a mile of the mouth of any creek.

MR. SAMUEL E. PRETTYMAN: I don't know what the reason of that is, unless it is to permit them to go into the creeks to spawn.

MR. ALEXANDER B. COOPER: They have a law now in New Jersey against fishing with baskets, fike nets, pound nets, dip nets, etc., or any illegal devices for catching fish. In Delaware there is some such law, but not to that extent. That does not effect you people down here. Is there much pound fishing here in the bay, or the catching of fish by devices of all sorts ? There are one or two that I know of in the Delaware river for private purposes by private parties.

MR. SAMUEL E. PRETTYMAN: That is above Duck Creek.

MR. ALEXANDER B. COOPER: Along about in the neighborhood of Port Penn. But that does not affect you people down here ?

MR. SAMUEL E. PRETTYMAN: No, sir.

MR. ALEXANDER B. COOPER: You have no trouble down here with your nets being run down by boats ?

MR. SAMUEL E. PRETTYMAN: No, sir.

MR. WALTER H. HAYES: What do you think about making a closed season for sturgeon for two or three years ? That would bring them back.

MR. SAMUEL E. PRETTYMAN: From off the pier day before yesterday I saw sturgeon jumping. I saw them jumping clear out of the water six or eight feet. Then I have seen them off the Hawk's Nest; that is, this side of Reedy Bar. There isn't anybody down here that fishes for them. If you don't fish for them you certainly can't get them.

MR. WALTER H. HAYES: What about letting them go for a while so that they can propagate ?

MR. SAMUEL E. PRETTYMAN: There were more young sturgeon last spring than I ever saw before.

MR. WILLIAM S. HILLES: How far off shore is your pound net ?

MR. SAMUEL E. PRETTYMAN: From one-half to five-eights of a mile. It has to be one-half mile off. Then the leaders reach out from that.

MR. ALEXANDER B. COOPER: Do you express the sentiment of a majority of the fishermen of this locality ?

MR. SAMUEL E. PRETTYMAN: There are about twenty or thirty fishermen here, and I think I know the sentiment of them all. The opinions I have expressed are in accordance with their sentiments. I asked my men what they thought of it, and they said it suited them as it was. You should not catch mammoose in the Delaware bay under four feet during the sturgeon season, which is from the twenty-fifth of this month until--I don't know how late they catch them, but until the last of June, I think.

MR. ALEXANDER B. COOPER: From the first of march until the first of June I think is the open season.

MR. SAMUEL E. PRETTYMAN: They turn them out

here in August. I got a letter the other day from a Fish Commissioner named Gibbs. He was going to send me down twenty-five or thirty thousand to put out in Broadkill Creek.

MR. WALTER H. HAYES: Is there any closed season for lobsters ?

MR. SAMUEL E. PRETTYMAN: The last season was a good season.

MR. ALEXANDER B. COOPER: How many do you catch in a season ?

MR. SAMUEL E. PRETTYMAN: You can catch them in season whenever you have got bait. They will take care of themselves. They are just like the black fish.

MR. WILLIAM S. HILLES: What kind of bait do you use for lobsters ?

MR. SAMUEL E. PRETTYMAN: Menn bonkers, skate sides, stingaree sides, --so you can tie it up in the pot. You have got to tie it or they will take their claws and pull it out. There were more lobsters here last season than I have known for years. If anybody would go out there to the breakwater and fish for lobsters for a business

I believe they could get plenty of them. We had to leave one place out there one day while fishing and go to another place because they kept taking the bait off.

MR. ALEXANDER B. COOPER: There are no lobsters on the other side of thebay ?

MR. HARRY W. LYONS: I never heard of any.

MR. ALEXANDER B. COOPER: They come around the stone pile?

MR. HARRY W. LYONS: Yes, sir.

MR. SAMUEL F. PRETTYMAN: There is money in lobster fishing. You can get from twelve to eighteen cents a pound for them. Every one of those lobster pots are worth one dollar apiece. I think the menhaden fish factories are a benefit to the fishermen of this town. We get all our second-hand net from them. The seine net people have gone into a trust now. All the seine we used to get we bought in New York, but now we have got to buy it in Baltimore.

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Dover, Delaware,

April 14th, 1906,

11.00 o'clock a. m.

Meeting held on the above date at the Levy Court Room for the purpose of receiving expression of opinion on the part of local fishermen relative to the proposed laws governing fishing in the Delaware River and Bay.

PRESENT:

Alexander B. Cooper, Esq.,

William S. Hilles, Esq.,

Walter H. Hayes, Esq.,

Commissioners.

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MR. ALEXANDER B. COOPER: The object of calling this meeting is for the purpose of getting the views of you gentlemen as to perfecting the laws for all kinds of fishing in the Delaware river and bay. Do you desire any change in the laws as they are at present ? One

of the first fish considered by the fishermen up the river was shad. We are not speaking of Jones' Creek, or River, but more particularly of the bay fishing. Do you care about any legislation in reference to shad ?

MR. ALEXANDER MINNER: Gentlemen of the Commission, I have a common interest with my fellowman in fishing, although I have no pecuniary interest in it. I am from Bowers Beach . We saw the advertisement that you sent to Bowers Beach, but we did not just exactly understand altogether what the nature of it was, although we did understand that there was an effort being made towards the creation of uniform laws as between this state and the state of New Jersey. I do know a good bit about the fishing interests, and our people simply suggested to me that I should come along with Mr. Short and come here. Mr. Short has an interest in the matter, and they suggested that I should come along with him and see what was wanted and answer

any questions and give any information that we might possibly be able to give.

So far as the shad industry, or shad fishing, is concerned in our neighborhood, we have quite a few who fish for shad; but I must say that their success has been very poor this spring so far.

As to a uniform law, that is, a law that will protect the Delaware fishermen as well as the New Jersey fishermen, I think myself (and as we have always understood it) that so far as making it uniform, it should be made so as not to allow non-residents, as we so term them, to come on our shore to fish, and not to allow our men to go to some other state to fish, for instance, New Jersey, or, as the case may be. I believe there ought to be a division line. So far as we are concerned, it don't hurt us much. We don't have such a great deal of it. We used to have a great deal of trouble with sturgeon fishing, but that industry is about played out with us, and we do not have any sturgeon fishing down there with us now. That is confined more particularly to up the river. I have always believed,

and I still believe, that what is known as the ship's channel would be a very good division for us, that is, to go up as far as Ship John, for instance. Then you come to the mouth of the river; that is, where the bay and the river meet. What would satisfy us, perhaps wouldn't satisfy those people up the river, and I have no doubt you have heard different views expressed up with you. From whatI can glean from our fishermen, they think the ship's channel would be a good dividing line, and our men would stay on their side and the New Jersey fishermen would have to abide by the same decision and stay on their side.

As to the shad fishing which you speak of, we fish for shad when there are any to catch.

MR. WILLIAM S. HILLER: When does your season begin ?

MR. ALEXANDER MINNER: As I understand it, about the twentieth of March, or the twenty-fifth of March.

MR. ~~GEORGE WRIGHT~~ Robert Knight: The twenty-fifth of March.

MR. ALEXANDER MINNER: At the time of the

creation of the first shad law, the Honorable James B. Corney was one of the most interested and very best men we ever had so far as trying to protect the interest of the shad and oysters in this state. If I recollect right, he dictated and I wrote, perhaps, the very first act. I know I met him on several different occasions, and I used to go out to his place and we talked the matter over and we formulated, or rather he formulated a shad law. In those days people fished just where they pleased, when they pleased and at any time they pleased, with any kind of net they pleased, or contraptions, or whatever it might be, and he got it into his head (and he was right) that certain obstructions, thatis, certain nets called stake nets—if you know what I mean by stake nets—were placed around the mouthsof Jones and Murderkill rivers, and that it was wrong to have them so placed. You understand, the head waters of Murderkill were right up to Mr. Corsey:s mill. So we formulated that law and it was passed by the Legislature.

MR. ALEXANDER B. COOPER: About what year was

that ?

MR. ALEXANDER MINNER: I think it has been as long as twenty years ago. Maybe along in the early 80's, anyway.

MR. ALEXANDER B. COOPER: I think that was about 1883.

MR. ALEXANDER MINNER: Somewheres about that time.

MR. ALEXANDERB. COOPER: He had some special action taken in relation to the stocking of that pond.

MR. ALEXANDER MINNER: Yes, sir; that is right. It was about that time. That law has been changed a little, but none to hurt. The first law was that they should not go nearer than a mile of the mouth of the creek withthese ocntractions, and then afterwards it was changed to a half mile from the mouths of either one of those creeks, that these nets should not be put there any closer than that (I refer to the stake nets), and that the float nets should not be nearer than a mile. They cannot go within a mile of any ordinary creek or river with a gill net or floating net. They cannot go

any nearer than that anyway.

MR. ALEXANDER B. COOPER: There is a law now that you cannot fish with a gill seine nearer than a mile of the mouth of the creeks or rivers.

MR. ALEXANDER MINNER: That is the law now, as I understand it, and they cannot put out these stake nets in the bay within less than a half mile of either one of those creeks.

MR. ALEXANDER B. COOPER: Is that what you call a pound net ?

MR. ALEXANDER MINNER: No, sir.

MR. ALEXANDER B. COOPER: Something like a weir ?

MR. ALEXANDER MINNER: No, sir. It is a long seine net with the same kind of seine, but just staked out on stakes. Mr. Corsey, of course, he broke up those obstructions, so that from twelve o'clock on Saturday until twelve o'clock Monday morning, or rather midnight Sunday the fish had an opportunity to go up these creeks to spawn. You are fully aware that a shad will go back to where it sprang from. Wherever they spawn, they will go back to. After Mr. Corsey

got this matter straightened up, got it as he wanted it, he turned his attention over to the propagation of shad, in which he was very much interested. He went to those shad hatcheries and insisted on having plenty of shad supplied him. They were furnished him, and right up behind his mill he would turn them out into Murderkill and Jones', that is, down at the head waters of Jones'. He insisted on getting them and he got a great many of them, and he kept at it continually, so that by not letting up on it the consequence was we had lots of shad. That was the result eight years ago. On the twenty-ninth day of March eight years ago down at our place the fishermen who were fishing off from our shore caught between twenty-eight and twenty-nine hundred shad. I don't know that I could give you the exact number they have caught this year, but I will venture to say that every fisherman we have there, all combined, have not caught one thousand shad this year up to the present time. This same hatching arrangement goes on, but we have not had a man who would persist in the matter as Mr. Corsey did; we have not had such a

man since Mr. Corsey died. I believe if we could have the same interest taken in it as was taken by Mr. Corsey, our shad would be just as plentiful and our shad would be protected.

MR. WALTER H. HAYES: You mean if you could get the fish spawn you would have just as many shad as you used to have ?

MR. ALEXANDER MINNER: I do, yes. Then in addition to this law, Mr. Corsey had a fish policeman—not a fish commissioner, but a fish policeman, you understand, whose duties extended from Blackbird Creek to Milford, or perhaps Mispillion Creek, I think. That officer is still in existence, and the consequence now is, so far as Bowers beach is concerned and the people who fished there, you do not know of any violations at all. The people have always tried to live up to that law. But our fish are scarce, and there is no other reason for such scarcity that I know of except the simple reason that we do not get as many shad to turn out into the head waters.

MR. WALTER H. HAYES: Have you tried the Government this year ?

MR. ALEXANDER MINNER: You know the nature of the shad is that it takes from three to four to five years for them to get large enough to use. They go out a little mysteriously, but they go out, and I have seen them in the fall of the year after they have been turned out in the spring or in the summer, and I have seen shad down about the mouth of the creek that long (indicating about three or four inches), nice little shad, maybe four or five inches long. Then they would be going for the deep water, for the sea. That is all I can say to you about the matter, except to say that the nets used at our place are the same as those usually used.

MR. WALTER H. HAYES: What size mesh do you use for shad ?

MR. ALEXANDER MINNER: Five and a half inches stretched.

MR. ALEXANDER B. COOPER: What have you to say about the closed season ? This propagation of shad is a very important matter and ought to be attended to, and the mesh you have spoken of concurs

with the size of the mesh used by our fishermen up our way, at New Castle.

MR. ALEXANDER MINNER: I believe that if there is a scarcity of shad with us there may also be a scarcity at New Castle with the fishermen there; but that is not altogether the case. That is my notion about the shad: If we have lots of these shad fry turned into our head waters, then the shad will come back when they are large enough to eat; and they want to come back to spawn at the same place they started from. If they turn out lots of them about New Castle and up the river, I believe that our shadwill be much more numerous. When they come in the mouth of the bay at the capes they keep in deep water; they don't come in on the low flats, and they generally hunt for these streams to go up and spawn. That is the reason why our men can't catch them. Our men don't go out to drift any further than one or two miles in the bay. These stake nets are out, and a great many of them, when the tide runs off the flats, you can wade out to with hip boots on.

MR. WILLIAM S. HILLES: Are the stake nets used to any extent ?

MR. ALEXANDER MINNER: They are used more than drift nets.

MR. WALTER H. HAYES: All along the shore down here, or only at Bowers'?

MR. ALEXANDER MINNER: All along the shore. I think they extend from the beach at Lewes to the mouth of Mispillion. That is about twenty miles.

MR. WILLIAM S. HILLES: You say the present law requires that they should be kept one-half mile from any stream ?

MR. ALEXANDER MINNER: Yes, sir.

MR. WILLIAM S. HILLES: Is that far enough away from the mouth of the streams ?

MR. ALEXANDER MINNER: That is far enough, yes, sir. I understand this part of it , and Mr. Corsey understood the same thing. You take the mouth of the St. Jones' going up towards the Hammock. When you take a mile on the beach and a mile from the mouth of of St. Jones' on the beach, it is a mile the other way,

and our people here, if they have a little stake net, for instance, just want it for family use. It is a long ways for them to have to go to it. That matter was thoroughly discussed and considered and Mr. Corsey was perfectly willing that one-half mile would be satisfactory ; and that after it was tried and it was not found satisfactory, it would be made satisfactory, provided this police fisherman saw that they didn't violate the law.

MR. ALEXANDER B. COOPER: That was concerning the stake net ?

MR. ALEXANDER MINNER: And the gill net in the same way. They can't go any closer than a half mile anyway, because there are obstructions. They can't go any closer than that even if they wanted to.

MR. ALEXANDER B. COOPER: The fishermen up with us are pretty generally of the opinion that the shad season ought to open March first and close on June first.

MR. ALEXANDER MINNER: That would suit our people, because our people will quit as soon as the trout season comes on. They will quit the shad business

as soon as the trout come.

MR. ~~C. GEORGE WRIGHT~~ Robert Knight: Our fishing always closes May first, so far as the shad is concerned.

MR. ALEXANDERMINNER: If a person wanted to go in the Murderkill or Jones River, they want a little net, and they cannot float more than fifty or sixty fathoms of net in the river. He has got to go a half mile from the mouth of the river even if he goes in the river; that is, in order to give the fish an opportunity so that they can get in there, and if they get in there they are more likely to keep up in the river until they strike fresh water, where they spawn.

MR. ALEXANDER R. COOPER: What have you to say about closing on Saturday and beginning again on Monday? Some say twelve o'clock Saturday until twelve o'clock Sunday; some say from sunset Saturday until twelve o'clock Sunday night, and some say not until four o'clock on Monday morning.

MR. ~~C. GEORGE WRIGHT~~ Robert Knight: Of course, different times will suit different places.

MR. ALEXANDER MINNER: So far as we are concerned down at Bowers peach, if there was no law touching

that part of the matter, the fishermen would respect it because they want to rest. If they get the fish early Saturday morning, they have got to get them to market.

MR. ALEXANDER B. COOPER: The New Jersey law is from sunset Saturday until twelve o'clock Sunday night. What do you think about closing part of the fishing time during the week ? Some fishermen with us say that it would be a good thing to close every night at seven o'clock and open up again the next morning.

MR. ~~C. George Wright~~ Robert Knight: That would be very much against us here in the bay, but so far as the river is concerned, I think it would be beneficial. Here in the bay we only cover a small portion of the water, while up there they cover the whole river. Fishing in a twenty mile scope, and they going up in deep water, we do not disturb their passage up, except what few come in on the flats; whereas, up the river they do. They drift across from one channel to the other and they obstruct the passage of the fish. Here we do not obstruct very much outside of a mile from shore.

MR. ALEXANDER B. COOPER: Would it suit you to fish right straight along during the week and close at twelve o'clock Saturday night, opening up again at twelve o'clock Sunday night ?

MR. ~~C. GEORGE WRIGHT~~ Robert Knight: Yes, sir. We never fish any after twelve o'clock on Saturday, because we can't do anything with the fish.

MR. WILLIAM G. HILLES: Do you mean twelve o'clock Saturday noon or Saturday night ?

MR. ~~C. GEORGE WRIGHT~~ Robert Knight: Twelve o'clock Saturday noon.

MR. ALEXANDER MINNER: We don't want to fish after that.

MR. ALEXANDER B. COOPER: Are you interested in carp ?

MR. ALEXANDER MINNER: Not much.

MR. ALEXANDER B. COOPER: You are not troubled with them as much as we are ?

MR. ALEXANDER MINNER: No, sir.

MR. ALEXANDER B. COOPER: Are you interested in sturgeon ?

MR. ALEXANDER MINNER: Yes, sir. The sturgeon industry used to pay us well at one time.

MR. WILLIAM S. HILLES: What ought we to do to build up the sturgeon industry ?

MR. ALEXANDER MINNER: I do not know of anything else except you propagate them the same as you do shad.

MR. WALTER E. HAYES: How about a closed season for two or three years ?

MR. ~~C. GEORGE WRIGHT~~ Robert Knight: I don't see where that would benefit the state of New Jersey, or Delaware, or Pennsylvania. I think the proper thing to do would be to go to Washington and get a national law passed, having its effect start with these southern states. They start to catch them in Florida, Georgia, South Carolina and Virginia, and they catch them before they get here. Just the same with the shad. They haul them right up. While the shad are coming up the southern coast they are caught all the way up before they get here which is their spawning ground. If we make a closed season here, and these parties still catch them in the other states, I can't see how that

would benefit us. I can't see how you could obtain any benefit except by getting a national law passed, and getting all the states to have a closed season. I cannot see how it would benefit the state of Delaware or the state of New Jersey by making a closed sturgeon law and at the same time permit these other states to catch them.

MR. ALEXANDER B. COOPER: What have you to say about mammoose ? The fishermen up our way think no sturgeon less than four feet in length should be caught. That is the present law in New Jersey. Our law is three feet.

MR. ~~C. GEORGE WRIGHT~~ Robert Wright: I would like to see a law passed that no sturgeon should be caught until it was of age and of proper size. Three feet or four feet is not the proper size for a sturgeon. That is very small. A sturgeon is not a large fish, but they are very long. I have seen them as long as eleven feet.

MR. ALEXANDER B. COOPER: One or two or three fishermen wanted to make the length six feet, but the

general sentiment up our way seemed to be about four feet.

MR. ~~C. GEORGE WRIGHT:~~ Robert Knight That is too small.

MR. ALEXANDER MINNER: When a sturgeon reaches six feet in length, the principal part of that sturgeon is the roe. The roe is what pays. It is not the flesh. Of course, the flesh sells, but it is the roe that pays nicely.

MR. WILLIAM S. HILLES: How old are sturgeon when they begin to spawn ?

MR. ALEXANDER MINNER: I don't know.

MR. WILLIAM S. HILLES: How large are they ?

MR. ~~C. GEORGE WRIGHT:~~ Robert knight I think about nine years before they get their full growth.

MR. ALEXANDER MINNER: They are about five or six feet long when they begin to spawn.

MR. ~~C. GEORGE WRIGHT:~~ Robert knight They are longer than that. There are two different species of sturgeon. The roe sturgeon is chunky, while the other is not very thick. I have caught them where they measured, I suppose, seven or eight or maybe nine feet, and the roe was no

good, because the fish was too small.

MR. ALEXANDER B. COOPER: About four feet would be a fair length ?

MR. ~~C. GEORGE WRIGHT:~~ Robert Knight No, six; it is not by any means. It will not pay us to catch so many of these little ones. A four foot sturgeon is not any good except for the flesh. That is not the particular part of the sturgeon. The roe is the principal part of the sturgeon. A four foot sturgeon is no good except for the flesh.

MR. WALTER H. HAYES: What size sturgeon mesh would you say should be used ?

MR. ~~C. GEORGE WRIGHT:~~ Robert Knight When I fished I used a thirteen inch not stretched mesh. Some use fourteen, some use twelve, but I used a thirteen inch stretched mesh.

MR. ALEXANDER MINNER: That would be about an eight inch square mesh ?

MR. ~~C. GEORGE WRIGHT:~~ Robert Knight No. That would be about six and one-half inches. When they were wet they would draw up considerably. I used a net from fourteen to fourteen and a half inches, that is a

stretched mesh, and then in boiling it it would draw it down to about thirteen inches.

MR. ALEXANDER B. COOPER: How about trout, rock fish, and those things ?

MR. ALEXANDER MINNER: Those are the principal fish.

MR. ALEXANDER B. COOPER: What do you think about the size of the mesh ? Do you think it should be from two and a half to two and five-eighths inch stretched ?

MR. ~~C. UPCHURCH~~ Robert Knight: I have been fishing thirty-one years, nearly all my life. You take the trout in the spring--and what I mean by in the spring is the first of May, and along there--we generally have schools of them in here, coming up to spawn. If you fish anything larger than an inch mesh you catch lots of fish that are no good to you. What I mean by that is, you gill so many, and when you gill them you destroy the value of them. I would like to see a law passed that would give you from the twentieth of April to the first of September to use an inch mesh,

and then from the first of September until the twentieth of April a larger mesh.

MR. ALEXANDER B. COOPER: Do you mean an inch mesh stretched ?

MR. ~~C. GEORGE WRIGHT~~ Robert Knight: No, sir; two inches stretched, or an inch square mesh.

MR. ALEXANDER MINNER: You mean the bag of the net ? Of course, you can have larger nets ?

MR. ~~C. GEORGE WRIGHT~~ Robert Knight: Yes. If I understand the gentlemen rightly, you can use as large as you like.

MR. ALEXANDER B. COOPER: But not smaller than two and a half or two and five-eights inches ?

MR. ~~C. GEORGE WRIGHT~~ Robert Knight: A two inch stretched mesh should be used from the twentieth of April until the first of September, and then if I had any suggestion to make, I would suggest a three inch mesh; that is, a stretched mesh. When I speak of mesh I mean stretched mesh.

MR. WILLIAM G. HILLES: Why do you fix those two sizes ?

MR. ALEXANDER MINNER: When these fish come in

the bay, they come in in the month of May. That is their spawning month. Those fish, by the first of September, will be getting, probably, that length, about five inches, and they will gill in an inch mesh, but before the first of September they will go through an inch mesh and will not gill at all. The twentieth of September, or it may be a little sooner--of course, they might do it a little before, or they might not--but right at the first of September they will gill in an inch mesh, and you will catch lots of them.

MR. WILLIAM S. HILLES: Lots of small fish, you mean?

MR. ~~C. GEORGE WRIGHT.~~ Robert Knight Lots of small fish, yes, sir. I would want a two inch stretched mesh for trout from the twentieth of April until the first of September, and then a three inch stretched mesh the balance of the season.

MR. ALEXANDER MINNER: And that includes the rock fish andthe perch?

MR. ~~C. GEORGE WRIGHT.~~ Robert Knight That includes rock and

perch. That gives the little fish a chance to grow.

MR. ALEXANDER MINNER: Between this time is the trout season, and then there is the rock and other fish.

MR. ~~G. GEORGE WRIGHT:~~ Robert Knight We do not get any rock or perch after October. The rock and perch fishing begins with the fishing here.

MR. WALTER E. HAYES: That is when you would have your three inch stretched mesh ?

MR. ~~G. GEORGE WRIGHT:~~ Robert Knight Yes, sir.

MR. ALEXANDER B. COOPER: What would you make the size of the rock fish ?

MR. ~~G. GEORGE WRIGHT:~~ Robert Knight Do you mean the size of the mesh ?

MR. ALEXANDER B. COOPER: The size of the fish.

MR. ~~G. GEORGE WRIGHT:~~ Robert Knight You limit the size of the mesh and that will limit the size of the fish.

MR. ALEXANDER B. COOPER: A great many of the fishermen say that they should not be caught if weighing more than twenty pounds; that is, not to catch any larger ones.

MR. ~~C. GEORGE WRIGHT~~ Robert Knight That is all right.

MR. WALTER R. HAYES: There are not many caught larger than that ?

MR. ~~C. GEORGE WRIGHT~~ Robert Knight No, sir; that is, what we call mother rocks we let go.

MR. WILLIAM S. HILLES: Is that a good weight for the mother rocks to be let go ?

MR. ~~C. GEORGE WRIGHT~~ Robert Knight I have caught them weighing as high as ninety pounds, but I think they spawn when they are smaller than that; that is, I think they spawn when they are as small as ten pounds.

MR. WILLIAM S. HILLES: They do spawn after they get over twenty pounds ?

MR. ~~C. GEORGE WRIGHT~~ Robert Knight Yes, sir; and they spawn at ten pounds.

MR. ALEXANDER B. COOPER: There is only one other matter that occurs to me in reference to the general subject before us. Do you people wish to say anything about the menhaden fishing in the bay ? Do they bother you any ?

MR. ~~C. GEORGE WRIGHT~~ Robert Knight No, sir; they don't

bother us any if they don't catch the food fish.

MR. ALEXANDER B. COOPER: Do they catch the food fish ?

MR. ~~C. GEORGE WRIGHT:~~ Robert Knight I am unable to say.

MR. ALEXANDER B. COOPER: Do they fish up as far as Bowers Beach ?

MR. ~~C. GEORGE WRIGHT:~~ Robert Knight I have see them fishing up as far as the Cross Ledge Light.

MR. ALEXANDER B. COOPER: That is a little below Bowers' ?

MR. ~~C. GEORGE WRIGHT:~~ Robert Knight Above.

MR. ALEXANDER MINNER: I would like to say a little something in regard to this menhaden fishing. When I was Oyster Revenue Collector this law for licensing boats for menhaden fishing was passed.

MR. WLATER H. HAYES: When was that?

MR. ALEXANDER MINNER: I was appointedRevenue Collector in 1891,and the law was passed in 1893. It was during the first Legislature that passed the law that Iwas appointed Revenue Collector. I will give you my reasons for saying what I do. I was under the

impression that the menhaden fishing was detrimental to our food fishing. I was under the impression that they caught whole lots of edible fish; and , in fact, there was a party that came here from Lewes, to the Legislature, when it was in session, and protested against this fishing for menhaden fish and the fish factories at Lewes. I was a little inclined to be with them. There came here some parties who were interested in menhaden fishing, and they wanted a compromise, and in that compromise they were willing to pay the state quite a good revenue, as I understand, and as an inducement to allow them to fish they agreed on one hundred dollars revenue from each steamer that was engaged in the business. Some of the men around here were opposed to their fishing for menhaden in view of the fact that they thought it destroyed the food fish, and I guess, in order to try to win me over to this resolution which they offered before the Legislature, they said that the collector of Revenue—it was a percentage office then—being the same person to collect this revenue, that is, the oyster revenue, could collect that revenue. Of course,

when I saw it was ten dollars for me for each and every vessel that was licensed, that caused me to think that they might think it would make me keep my mouth shut.

Luce Brothers and F. S. Brown Company,

I think they have consolidated, if I am not mistaken. They are down at Lewes now, and I think they are all together; but they had two large factories, and they had several boats employed in the menhaden fishing. The resolution was passed; it went through the legislature, anyway, and one of the Luce Brothers came to my place. He wanted to license his boats, and he came to my place. I said to him that if he had told me who he was and what his business was I would just simply have said to him that he could have sent me his check for the license, or if he had notified me I would have come down. He said, "I have come up here because I wanted to see you and talk with you. I want to ask you to come down. I want you to know, and I want you to see for yourself." So he licensed two boats, I think, that day. Yes, he gave me a check for two hundred dollars, and I told him that just as soon as I could get the papers,

the blank licenses for them, I would send him his licenses. Anyway, he gave me a check for two hundred dollars for two boats, the names of the boats and the names of the captains, and so on. He says, "I want youto come down." I promised him that I would come in August. They commenced fishing sometime along in July. I guess they don't commence much before July, but I said, "I will come down in August, and I will call on you." In August I went down. S. S. Brown Company licensed two boats that year. I thinkthe first year there were four steamers licensed and they paid the state a revenue of four hundred dollars. I went down there. At first I thought I would go out on their steamers with them and see them fish, and see what they caught, but I didn't. I didn't go out with them, but I stayed on land for a couple of days, and at night when they would come in I would go to their boats where they were unloading and examine their fish. I did the same thing the next year. I was Collector for four years, and, infact, collected from them for two years. I was there for two years

and I examined their boats; that is, the fish. I would stay there and see them lift them out and put them into their cars that were on the track which ran to their factory, and I did not, all the time that I was there and around there, see any more fish, that is, food fish, than what they had men on those boats and at the factory to eat. They told me, that is their head man, their boss at the factory told me, that whenever there was any edible fish, trout or blue fish or sheep head, or any kind of food fish which they caught in the sea, if there were more than they really wanted for their men, the men who worked for them, that they would send them up to the town of Lewes and give them to the people there; but it was very seldom that they ever had to send any up. The last year I was there the Government at Washington sent an inspector and the inspector was aboard of one of those boats for over two weeks, and I had a private talk with that inspector andhe told me that such was the case, that they did not bother the edible fish; that is, they did not catch many of them. He said,

"Of course, there were a few." Menhaden fish are something that other fish don't want to bother with. They are fish that swim up on the water. That is the way they find the schools of them, you know. They work in the water, and they go around them, and it is very few edible fish that they destroy.

MR. WALTER H. HAYES: How deep a net do they use ?

MR. ALEXANDER MINNER: I couldn't tell you that, but it is a tremendous net.

MR. ~~C. GEORGE WRIGHT~~ Robert Knight: They fish from six to seven hundred mesh.

MR. JOHN R. SHORTS: Six hundred meshes deep.

MR. ALEXANDER MINNER: That is the report that was brought to me.

MR. ALEXANDER B. COOPER: Some of their seines were one hundred feet deep, about eleven thousand meshes, one thousand and four feet long, seven hundred and fifteen meshes, two and one-eighth to two and one-quarter inch mesh stretched, and cost about nine hundred dollars rigged.

What kind of fish do they principally catch of the food fish ?

MR. ALEXANDER MINNER: Trout and blue fish. That is what they told me.

MR. WALTER H. HAYES: And some snapping mackerel ?

MR. ALEXANDER MINNER: That is what we call blue fish. And some sheep head, and some sea croakers.

MR. ALEXANDER B. COOPER: The sheep head are pretty nearly all gone, are they not ?

MR. ALEXANDER MINNER: There are not many sheep head left. That pretty well convinces me that they did not get as many edible fish as a person might suppose they would. They used to come up in the bay, but they do not come into the bay so much now.

MR. WILLIAM S. MILLER: Do the trout feed on these menhaden ?

MR. ALEXANDER MINNER: No, sir.

MR. WALTER H. HAYES: But the blue fish do.

MR. ALEXANDER B. COOPER: And the shark does.

MR. ALEXANDER MINNER: The sharks do. The blue fish will drive them. They are afraid of the blue fish,

yes, sir.

MR. WILLIAM S. HILLES: Are there any pound nets around here ?

MR. ALEXANDER MINNER: No, sir.

MR. WILLIAM S. HILLES: Do you use those at all ?

MR. ALEXANDER MINNER: Where are there any pound nets, Mr. Wright ?

MR. ~~G. GEORGE WRIGHT:~~ Robert Knight I don't know of any on our side.

MR. ALEXANDER MINNER: I don't know of any on our side, but on the New Jersey side, abreast of us, they use pound nets. They don't use pound nets with us . I don't know of any between our place and Lewes.

MR. ~~G. GEORGE WRIGHT:~~ Robert Knight I think Charlie Schubert has one just below the cove here on Reedy Island. If there is any on the Delaware river shore they are up above Smyrna Creek. I think Charlie Schubert has one there in Appoquinimink cove.

MR. WILLIAM S. HILLES: Are they good or

bad things for the fishermen in general ?

MR. ~~GEORGE WRIGHT~~ Robert Knight: I am unable to say, because I am not positive as regards them .

MR. ALEXANDER MINNER: I do not know anything about a pound net. I have seen them, and that is about all. I don't know whether they are destructive, or whether they are an advantage, or what they are.

MR. WILLIAM S. HILLES: We have rather a two fold task before us, as I understand it. The first is to frame such laws as will enable the fishermen to catch the fish profitably in their business, and the second is to preserve the fish.

MR. ALEXANDER MINNER: That is what I understand.

MR. ALEXANDER B. COOPER: And the third is, or might be said to be to give the other fellow a fair chance.

MR. ALEXANDER MINNER: While I think of it, I want to call your attention to another matter. Some two or three years, or, I guess, six or eight years ago—perhaps Mr. Hayes is familiar with it; I

don't know but what he may have been in the Legislature here at the time as an attorney if not as a member, although I believe he was here in the Legislature--

MR. WALTER H. HAYES: In 1899 I was Attorney.

MR. ALEXANDER MINNER: Maybe it might have been before that time. Anyway, there was a change made in our nets, that is, in our trout fishing nets, and they made it two and five-eights inches stretched mesh. Some of the fishermen had procured nets of that dimension. I am speaking of our people down there with us at Bowers. Others had not procured such nets, and they were using the old nets with the small mesh. They were using them and they were ignorant of the fact that the law had been changed. The State Fish Commissioner, who was Mr. Anderson, under Governor Hunn when he was Governor, sent an advertisement or a notice down there and had it stuck up where the people could see it, the tenor of such notice being that they were violating the law fishing with a net having a mesh under this size of mesh. About all of those nets down there, or nearly all of them were

under that size mesh, and here it was in March, right at the latter part of March and right when they were about to go to fishing, and some of them had ordered new nets and stretched them in order to get them ready, when this notice was sent down. It naturally put the boys to thinking, and it stirred them up and worried them considerably. There was no Legislature in session at the time, or any body of that kind, and nothing could be done. I suggested to some of them, "Boys, I don't see any other way out of this in the world except to go to some of the authorities, go to the Attorney General or go to the Governor, and see if they will not step in between you and the law and give you a little leeway." So Mr. Alloway, a man who was interested in fishing, and myself, went over to see Governor Hunn and we stated the matter to him. He says, "Boys, I see you are in a hole. I will say this much to you, being it is so close to your fishing season and you have got these nets and it is going to cost you a good bit to get other nets, and some of you not

being able to get them, I will see the Fish Commissioner, and I will also see the Attorney General and state the facts to them, and I do not believe that they will have any objection to your going on fishing this spring; but bear in mind the thing must be either changed at the next Legislature, or you have got to change your nets, either one thing or the other. I will only bridge this over for the time being and help you out." I went back and I told them, and they went on fishing that spring, and there was nothing said. At the last Legislature which was in session they got them to change the law.

MR. ALEXANDER B. COOPER: They reduced it to two inches ?

MR. ALEXANDER MINNER: Yes, sir; reduced it to two inches. I want to say this to you gentlemen: That I was talking with some of the men at our place after the notice was received and was hung up in the postoffice one evening this week,and the question that was foremost in their minds then was, What do these Commissioners propose to do ? I simply said this to them: "Men, you have got your notice. You know

just what kind of a scrape you got into a year or two ago. You have got your notice, and you are interested in fishing. The thing for you to do is to go and see these men. These men are commissioned to do a certain thing, and the best thing you can do is to go and meet them. They invited you; they requested you to be present. Go to them and hear what they have to say, and they will tell you all about it. Don't let this thing go by and nobody go there and say anything to them. They don't know what you wish done. If you do not go there, and they do something you do not like, you cannot blame anybody else but yourselves. The best thing you can do is to go." So they wanted to come here. Some of them suggested that I should come here, and Mr. Shorts said he would bring me. So I told them I would come. We were naturally talking about fishing, and this matter of a two and five-eights inch stretched mesh was brought up, and one of the men remarked, "Here is another one that had one of those nets."

MR. WALTER H. HAYES: Two and five-eights inches ?

MR. ALEXANDER MINGER: Yes, sir; two and five-eights inches. I heard several of the men speaking about it, that they saw him make a haul with that net last spring and when he pulled his net ashore there was a trout in every mesh, or in pretty nearly every mesh--the thing was just completely blocked. I will tell you gentlemen, and I argue this, that I think those fishermen will bear me out in saying that I do not believe it can be successfully contradicted--and if old Mr. Corsey was here he would bear me out--that if you will take a mesh that is large enough for a trout to gill himself, and as was stated a little while ago there are certain schools of trout that will come in--sometimes you will come across a school of trout that are a little under size, and then you will come across schools that are larger; but you take one of those large meshes that will gill a trout; his nose is sharp and he goes in for it, and pretty nearly every other mesh in the net is filled with a trout, and those trout that you have got in there, there is no possible chance, hardly, for a small fish, if

there are any, to get through these meshes and escape. Hence they all get in a bag and you pull them right in.

MR. WALTER H. HAYES: You get the meshes full and then you catch those that are not in the mesh ?

MR. ALEXANDER MINNER: Yes, sir. Mr. Shorts told me in coming along this morning that he had twenty-five bushels at one time last spring that were gilled, and they were wasted. I know if he was to go down anywheres along this shore, and a fisherman would tell him, "There are five or ten bushels of fish that were gilled, and you may have them for five or ten cents a bushel", he would hardly have them, because they are mashed. The gill is torn out. This throat piece is broken, and they are bloody, and by the time you get them into the market they are no good.

MR. JOSEPH L. BONSALL: They usually smell and nobody wants them.

MR. WALTER H. HAYES: It is the larger net that does that ?

MR. ALEXANDER MINNER: Yes.

MR. WILLIAM S. MILLER: Where is the dividing line as between the mesh that is going to catch them

in that way and the mesh that is going to let the little fellow go ?

MR. ALEXANDER MINNER: You take an inch square mesh or a two inch stretched mesh, and put that out, and you don't have many gilled fish. You don't have so many small fish unless you happen to strike a school of small fish.

MR. ALEXANDER B. COOPER: Your nets now are almost all one inch square or two inches stretched mesh ?

MR. ALEXANDER MINNER: Yes, sir.

MR. ~~G. GEORGE WRIGHT~~ Robert Enright: If a man wants to use a larger one, of course he can do so, but he will not do it more than one season, I will guarantee.

MR. WALTER H. HAYES: Do you gentlemen, Mr. Minner, Mr. Wright and Mr. Shorts represent the fishermen down in this section, and do you have authority to speak for them generally ?

MR. MINNER: Mr. Shorts and myself at the request of the men who fish at Bowers', came over here. They requested that Mr. Shorts should bring me here. He has got more nets than any other man

downthere, and, of ocurse, he is pecuniarily interested in it; while I, as I told you a while ago, have only a common interest in it. I like fishing, and I like to see the boys catch them,and I go with them sometimes when the weather is warm.

MR. WALTER H. HAYES: The statements made by you are the views of your fishermen ?

MR. ALEXANDER MINNER: Yes, sir; those are the views of the fishermen there.

MR. ALEXANDER B. COOPER: How many fishermen are there around in that neighborhood ?

MR. ALEXANDER MINNER: Do you mean to say all?

MR. ALEXANDER B. COOPER: The individual fishermen.

MR. ALEXANDER MINNER: I should think there would be fifty men at our place.

MR. ALEXANDER B. COOPER: That fish with net, not with hook and line.

MR. ALEXANDER MINNER: Fully fifty.

MR. ~~C. GEORGE WRIGHT~~ Robert Knight: I can safely say there are twenty-five at Kitt's Hammock.

MR. WILLIAM S. HILLES: Is there any change that occurs to any of you in the law as it now stands in relation to any of these fish, excepting those you have mentioned ?

MR. ALEXANDER MINNER: I do not know of anything.

MR. WILLIAM S. HILLES: Looking at it from the stand point that a fisherman would look at it.

MR. ALEXANDER MINNER: I do not know of any.

MR. WILLIAM S. HILLES: No law for the protection of the fish ? Do you want any protection in our law concerning the perch ?

MR. ALEXANDER MINNER: Mr. Wright spoke about the first of September. What size mesh did you say ?

MR. ~~G. GEORGE WRIGHT:~~ Robert Knight Three inch.

MR. ALEXANDER MINNER: I think that would be the greatest protection. The size of the mesh would protect the perch and the rock fish.

MR. ~~G. GEORGE WRIGHT:~~ Robert Knight I should want that to include the waters of the creeks, rivers and bays.

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MR. WALTER B. HAYES: We have gotnothing to do with the creeks.

MR. ALEXANDER MINNER: If you protect the bay that certainly does protect our rivers, so far as fish are concerned.

MR. ALEXANDER B. COOPER: Do you know of anything else regarding the fish or fishing here, other than what has been stated ?

MR. ALEXANDER MINNER: I do not.

MR. ~~C. GEORGE WRIGHT~~ Robert Wright: We want a small mesh net from the twentieth of April to the twentieth of September, and a three inch mesh from the twentieth of September until the twentieth of April, and if you see fit, give us the privilege of using an inch mesh if we want to between september and April.

MR. WILLIAM S. HILLES: Ought there to be any season during which the trout ought to be protected absolutely ?

MR. ~~C. GEORGE WRIGHT~~ Robert Wright: I think not.

MR. ALEXANDER MINNER: He comes in April and leaves in September or October, and thatis the last we see

of him until the next season.

MR. ALEXANDER B. COOPER: He is like all the fish, he takes care of himself?

MR. ~~C. GEORGE WRIGHT~~ Robert Knight: Yes. Of course, the perch and rock are with us the whole year. That is, they do not stay in the bay, but they stay in the creeks and rivers, and they catch quite a good many in the creeks. I know we do catch them in the bay with an inch mesh.

MR. WALTER H. HAYES: Where do you say the bay ends up here ?

MR. ~~C. GEORGE WRIGHT~~ Robert Knight: Reedy Island.

MR. WALTER H. HAYES: The lower end of Reedy Island ?

MR. ALEXANDER B. COOPER: Suppose a monument was put up at Stony Point, and there was one put up just immediately northof the mouth of Appoquinimink Creek. How close would that be to the mouth of the river ?

MR. ~~C. GEORGE WRIGHT~~ Robert Knight: That would be all right. That would be near enough.

MR. ALEXANDER B. COOPER: That would not be very far below the lower end of Reedy Island ?

MR. ~~C. GEORGE WRIGHT:~~ Robert Knight No, sir. That would be somewheres about abreast of what we call Dan Baker buoy.

MR. WALTER N. HAYES: Do you know anything about a new island over on Stony Point on the Jersey shore where the Government in dumping in there ?

MR. ~~C. GEORGE WRIGHT:~~ Robert Knight No, sir. I remember over at Alloway's Creek there is.

MR. WALTER N. HAYES: There is an island there over a mile long and three-quarters of a mile wide.

MR. ~~C. GEORGE WRIGHT:~~ Robert Knight No, sir. Those parties there could best form a line in the river to suit themselves. What will suit us here would not suit them there, probably.

MR. ALEXANDER MINNER: When we went before the Legislature to change the size of the mesh for fishing , that is, to a two inch stretched mesh, we mentioned particularly that we did not want to interfere with the New Castle fishermen, because we thought that might be against us.

MR. ALEXANDER E. COOPER: Your principal fishing here is trout and rock and those fish ?

MR. ~~C. GEORGE WRIGHT~~ Robert Knight: Yes, sir. The principal fishing here is trout. Of course, we catch other fish.

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CHAS. G. GUYER,
COURT STENOGRAPHER,
826 MARKET STREET,
WILMINGTON, DEL.

Wilmington, Delaware,

April 26th, 1906.

4.00 o'clock p. m.

Meeting held on the above date at the County Court House, in Levy Court Room, for the purpose of receiving expression of opinion on the part of local and menhaden fishermen relative to the proposed laws governing fishing in the Delaware River and Bay.

PRESENT:

Alexander B. Cooper, Esq.,

Walter H. Hayes, Esq.,

Commissioners.

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Walter E. Hathaway, Esq.,

Robert Penington, Esq.,

Appearing on behalf of American Fisheries Company.

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MR. ALEXANDER B. COOPER: What is your connection, Mr. Hathaway, with the menhaden companies ?

MR. WALTER E. HATHAWAY: I am secretary of the Fisheries Company and a member of the bar of Lancaster County, Virginia. I represent that company here to-day, professionally.

MR. ALEXANDER B. COOPER: You are connected personally with the industry itself, I presume ?

MR. WALTER E. HATHAWAY: Yes, sir; I am secretary of the company.

MR. ALEXANDER B. COOPER: Of what company ?

MR. WALTER E. HATHAWAY: Of the American Fisheries Company, the company which represents the most of the menhaden fisheries along the Atlantic coast.

MR. ALEXANDER B. COOPER: That includes Luce Brothers and others ?

MR. WALTER E. HATHAWAY: Yes.

MR. ALEXANDER B. COOPER: I understand you desire to be heard on the menhaden fishing matter ?

MR. WALTER E. HATHAWAY: Yes, sir; and if there are any matters which you desire to ask questions upon, either now or as we go along, I should be very glad to answer them.

MR. ALEXANDER B. COOPER: Of course, the principal matter for our investigation is with reference to the charge which has been made, as you are very well aware of, that the menhaden fishermen destroy a great many food fish. That, it seems to me, is the principal point upon which we desire to hear you. If there is anything else which you wish to state as you go along, of course, you are privileged to state it.

MR. WALTER E. HATHAWAY: I will state my position first. I am secretary of the Fisheries Company, and the Fisheries Company represents largely now the people engaged in the menhaden fishing on the Atlantic coast outside of the Chesapeake Bay. Our people operate forty steamers and we own and operate a plant in Delaware, at Lewes. We are, technically, a New Jersey corporation, but as far as Delaware is concerned, we are, really, to a very

large extent, a Delaware institution, because Lupe Brothers and the other people who formerly operated there are in the Fisheries Company. The Fisheries Company has become the owner of all the plants at Lewes, and, I believe, all in the State of Delaware. We employ down there each season at the plant on shore about two hundred and fifty men, all of whom, or the majority of them, are citizens of the State of Delaware.

MR. WALTER H. HAYES: How long is the menhaden fishing season ?

MR. WALTER E. HATHAWAY: The season usually begins about the middle of May and lasts until about the middle of November. It varies a little, according to conditions. We never operate, or I have never known our company to operate earlier than the middle of May.

MR. WALTER H. HAYES: I see by a resolution of our legislature that you are licensed from the twentieth of May to the twentieth of November.

MR. WALTER E. HATHAWAY: I really did not recollect that; but, however, that is practically the time. We fish about twelve steamers there, and these steamers gen-

erally fish there entirely.

MR. ALEXANDER B. COOPER: You mean off the coast of Delaware ?

MR. WALTER E. HATHAWAY: Yes, sir; nearly all of them fish off the coast of Delaware, but they deliver their fish to the plant at Lewes principally. We work on those steamers here some three hundred men, making the total number of men employed on account of the enterprise in the State of Delaware between five and six hundred. It would be useless for me to tell you, but it is a fact both there and at other places, that a very large percentage of the money gotten out of the menhaden business has gone into the hands of the people who did the work and not into the hands of the stockholders. The company has been fairly prosperous for two years out of five of its existence, and the other three years it has simply been able to meet expenses. Therefore, the industry is primarily a benefit to the town of Lewes and to the State of Delaware.

MR. ALEXANDER B. COOPER: Do you pay any compensation to the town of Lewes ?

MR. WALTER E. HATHAWAY: The only compensation is, the land belongs to the town of Lewes and the company leases it.

MR. ROBERT PENINGTON: They pay twelve hundred dollars a year and they have an arrangement with the town of Lewes by which they use their water. That has only been in effect this year.

MR. ALEXANDER B. COOPER: That is an entirely satisfactory revenue, is it not ?

MR. ROBERT PENINGTON: The mayor of Lewes has said that the revenue derived from the Fisheries Company is sufficient to pay the interest on the bonded indebtedness of the town.

MR. ALEXANDER B. COOPER: The amount of that revenue is twelve hundred dollars ?

MR. ROBERT PENINGTON: Twelve hundred dollars in addition to the water rent. The water use, of course, is operated upon some basis. I do not remember whether that is paid locally or to the state and then accounted for afterwards; that is, so far as the State of Delaware is

directly concerned in this industry.

MR. WALTER H. HAYES: About what is the value of your property in Delaware ?

MR. WALTER E. HATHAWAY: I would say now, from a very rough estimate of the value-- of course, I wouldn't like to be bound by this--but my own opinion is about from two hundred to two hundred and fifty thousand dollars. I have not looked the matter up. That is, I mean the factory and the plant and the piers and the other investments there.

MR. ALEXANDER B. COOPER: That does not include the vessels ?

MR. WALTER E. HATHAWAY: That does not include the vessels. The twelve vessels, I should say, were worth on an average of from twenty to twenty-five thousand dollars apiece, the average vessel being at least twenty thousand dollars, and probably a little over that. The most of them are vessels of an improved character. I can see no reason why any intelligent man in the state of Delaware should oppose us or our industry, unless we carry with it an injury to somebody else. We are,

certainly, a benefit to that town. We are, certainly, a benefit to the people who work there, and certainly we are a benefit to the state of Delaware to the extent that we have a very important industry within the state. Those things go without saying. If we injure anybody , or other people, or a large number, or property in a greater proportion than we benefit, necessarily it is a matter that the state of Delaware would have a right to look into and, necessarily, ought to look into; but how could we work an injury to anybody in the state of Delaware unless we destroy food fish, either by taking them andgrinding them into fertilizer (which would be an extravagant use of one of the blessings of the Almighty), or drivingthem away in some way ?

This question which we have up here now has been asked in nearly everyone of the Atlantic seaboard states, commencing about thirty years ago in Maine, and from its inception in North Carolina last year, where our company got the worst of it. There have been legislative enactments proposed and passed in these various states; in the New England states first, and

then following on down the coast from time to time. But the result of all that is this: The state of Massachusetts prohibits fishing in Buzzards Bay-- I am referring now entirely to the menhaden steamers operated exactly as we operate here--and in two other small bodies of water, the names of which I do not just remember now. A bill was proposed in the last Massachusetts legislature by somebody to prohibit fishing in Boston Bay, but it was defeated by a unanimous vote. A bill was proposed and passed the lower House of the Massachusetts Legislature--and it may or may not pass the Senate, as opportunity to get to it may or may not present itself--prohibiting fishing in those other inland waters, but it was not a matter that we were interested inparticularly, because we probably would not have fished in those little waters through the fishing season there at all.

In Maine there is no prohibition whatever, either against residents or non-residents.

In Connecticut there is practically no prohibition.

In Massachusetts there is no prohibition or license of any kind, except Buzzards Bay is prohibited.

In Rhode Island there is no prohibition.

In New York there is no prohibition except around inside of Sandy Hook and up around Coney Island, and in that part of the waters of New York; that is, in the waters around Coney Island fishing is prohibited.

In New Jersey there is no prohibition, but a license is required, each license varying from one to two hundred dollars per steamer for a season, which embraces the men. That is, on the basis of one hundred dollars for steamers under and up to one hundred tons net. Above that, and up to two hundred tons net, it increases; and over two hundred tons net it is two hundred dollars. Above that it is no higher.

Last winter there was quite a hue and cry raised in New Jersey, as there has been more or less at every Legislature, and as I fear there will be until the end of time in New Jersey, and especially so long as there is still an opportunity to pull some fellow's leg in defending it. This matter was taken up by

Governor Stokes in his message. He took the bull by the horns and sent that in in his message. The result of that recommendation by the Governor was that the Legislature authorized the appointment of a Commission by the Governor, which Commission was appointed. These are facts. Not facts I am stating myself, but facts that anybody will bear out. That Commission was practically packed against us. I do not mean to say that they took any undue advantage of us or of our industry, but the Commission was composed of Mr. Shriner, who had been the ex-officer in control, the game warden at large, and who instituted proceedings against certain people in this line further back, and Mr. Crawford, who was secretary of the Essex County Game Club, and who, by his own statement, was opposed to menhaden fishing, and Senator Shinn, who represented a district that did not contain over one thousand people, and who said that we were destroying the food fish industry. Then, back of this proposition or of this prosecution or investigation in New Jersey were the seaside resorts, claiming that we destroyed food fish, that we took away

the natural food of the food fish, thereby driving them away from the coast, and we were, to that extent, datrimental to the boarding house and hotel keepers.

The first meeting we had was at Cape May, and that was before an organization composed of the Mayors and representatives of the municipalities on the seacoast of the state of New Jersey from Sandy Hook down to Cape May. Those people were practically a unit against our industry, as it appeared from the way they started out when we went there. They never made any report whatever, however. The matter was finallytaken up, and when it came to a question of whether they would report for or against us--although no final action on this thing was taken--I presumed they were unanimously against us. Mayor Stoey of Atlantic City, who was president of the association named, after hearing our statement at that meeting said (showing that if those people started out loaded against us they changed their views), "Why, you can report them more of a benefit to us there than otherwise." That was the Commission created and appointed by Governor Stoken of New Jersey, inspired by a resolution of the New Jersey

Senate in January of last year, I think--I have forgotten the exact date--which held its investigation during the months of February and March. If you gentlemen will read that report it will show you the conclusion that these people there came to on that point.

Then came the next Legislature and a bill passed the Senate but did not pass the House, the term being too short for it to pass the House. So, as a result of that, nothing was done whatever, and the law remained just the same as it had always remained, that we be not permitted to catch food fish. You will find there the bill that they proposed and which passed the New Jersey Senate, I believe, by a unanimous vote, but did not passthe House, that is, it did not get out of the Committee in time, to the effect that we be prohibited, under penalty, from grinding up and making into fertilizer food fish. We were not unfavorable to any provision of that kind, because, coming down to the facts, while running over this and of it further in the state of Maryland, there is no fishing except on the Atlantic seaboard. So there is no provision for or against. The

state of Maryland prohibits fishing, of course, in the Chesapeake Bay, but as the menhaden go very seldom above the Potomac River, it is a matter of very little importance, because there would be very little fishing done in the Chesapeake Bay above that point.

In the state of Virginia there is a prohibition against non-residents, but gives permission to a resident to fish upon the payment of a license fee of one hundred dollars.

North Carolina has a prohibition of the same kind as Virginia.

MR. WALTER H. HAYES: What is the size of the mesh used ?

MR. WALTER E. HATHAWAY: The usual size depends upon the locality. In this locality we fish with a two to two and a quarter inch mesh. Then further south they use a smaller mesh, because the fish are smaller. North of Cape Cod they do fish with as much as a three inch mesh.

The result of these various investigations has come to this: In several of the states they collect a

revenue from this industry, New Jersey and Virginia being the only ones charging a license tax. I am leaving Delaware out of this discussion now. Two or three of the other states have prohibited purse net fishing in small bodies of water, which practically includes streams of water like Buzzards Bay, Raritan Bay and the bay on the opposite side of the Sound, the name of which I forget now. In both Virginia and North Carolina they have the same prohibition. The state of South Carolina prohibits non-residents taking fish in the state altogether, though a member of the Legislature recently wrote us that they never intended that for menhaden, and he did not consider, from a construction of the law, that it did apply to the menhaden, and that we could go ahead and fish in South Carolina, as the law did not apply to menhaden. We catch a few fish in South Carolina, or rather the Cape Fear Fisheries Company does, in which company we are interested.

These matters have been investigated by the different states and by the United States. I will come back to the food fish question.

The United States Government some years ago made an investigation. This was in 1894, I think. I will be glad to give you a copy of the result of that investigation, and if you gentlemen will take it and read it carefully it will give you a good bit more information than I will have the time to give you now. But briefly going over that: The conditions were absolutely the same; that is, in other words, this business has been improved as almost every other business has from year to year, but along the line of taking fish there is practically no difference except the seines are bigger and the steamers are a little bigger, and the matter of procuring is very much improved, and so on, being such improvements as have taken place within the last twenty years. This report is by Mr. Hugh M. Smith of the Division of Statistics and Methods of the Fisheries of the United States.

What I wanted to say was that this Commission was placed on two steamers, one of which fished on the Atlantic coast mainly and the other fished in the Chesapeake Bay mainly, with instructions to investigate

every haul and find out exactly how many food fish were taken during the time they were on board.

The steamer "Arizona" belonged to the Fisheries Company (which is the same company that is now being represented here), and if you refer to page 10 you will find that the steamer "Arizona", during that season of 1894, caught in the Delaware Bay--that is coming close home to you--five million nine hundred and thirty-five thousand five hundred menhaden. Then if you will follow that column down you will find they caught sixteen alewives--beingof practically no food value--ninety-four blue fish, two hundred and twenty-six butter-fish, eight bonito, one drum, one pompano, one sea-robin, one hundred and sixty-six sharks, eighteen skates--if I have got the line right--twenty-five weak fish, eight Spanish mackerel and no shad.

MR. ALEXANDER B. COOPER: That represents the catch for the season ?

MR. WALTER E. HATHAWAY: That represents the

entire catch in the Delaware Bay for the season beginning May sixteenth, 1894. It would be an absolutely safe assertion that the experience of every single fisherman for food fish in the Delaware Bay would be practically the same, and would be to the effect that the sharks destroy more food fish than anything else. In going down that line of fish caught you will notice that the sharks were the principal fish. One hundred and sixty-six sharks caught, the only food fish of which a greater number was caught being the butter-fish. One hundred and sixty-six sharks, in all probablity, destroy in a year more weak fish and blue fish than that steamer would catch in a thousand years, if each year was comparable to this year that we are now referring to. I will state this one fact, that the one hundred and sixty-six sharks that were destroyed by the "Arizona" in the Delaware Bay that year would, in all human probablity, have destroyed more fish, blue fish and weak fish, and fish upon which the shark principally feed, than that steamer could have caught in one thousand years had she been able to run a thousand

years from that year fishing in the Delaware Bay, under similar conditions, because, you know, it is reported from all sources that one shark can destroy an enormous quantity of fish in one year. The investigation shows right here that the blue fish mainly, but both the weak fish and blue fish are destroyed by sharks and other fish on the Atlantic coast, and that their number are very much greater, and many fold greater, than those that are caught by these vessels. One shark in the Delaware Bay would catch more fish in one night, more food fish in one night than one of these steamers would catch in a whole season's work. Ofcourse, she fished in other places besides the Delaware Bay, and she caught in all six million of menhaden, nearly; in other words, that out of the six million of menhaden there were less than five hundred food fish caught-- I am only guessing at that now, without taking the time to count it up--leaving the sharks out there were less than five hundred food fish caught, not nearly enough, gentlemen, to supply food to the crewson that steamer alone.

MR. ALEXANDER B. COOPER: How do you account for that ?

MR. WALTER E. HATHAWAY: In two or three ways. One way is that it is a well-known fact that fish of different varieties do not herd together unless one is feeding upon the other. For instance, the blue fish is the only fish that feeds upon menhaden to any extent whatever,as far as we know--I am not counting sharks now, because I do not think they could be counted as food fish; and another thing is--while we do not know very much about Delaware--in recent years we have caught quite a number of drum in the state of New Jersey at the request of the Fish and Game Commission of that state, it being a fact that in recent years the drums have destroyed in the inland bays north of Atlantic and around Atlantic more oysters in value this year than were ever known to be destroyed before.

MR. ALEXANDER B. COOPER: Do you mean catch them if they are there ?

MR. WALTER E. HATHAWAY: They asked us to.

Under the law of New Jersey the drum is one of the fish which it is against the law to catch with a net, but the Fish and Game Commission of the state of New Jersey requested us, whenever we could find schools of drum, to take them.

MR. ALEXANDER E. COOPER: Do you mean to catch them independent of menhaden ?

MR. WALTER E. HATHAWAY: Yes, sir. In the deep water, in the ocean water, all classes of school fish will school up, and when they get into the bays they scatter out. We could catch weak fish on the Atlantic Ocean, or we could catch blue fish, or we could catch mackerel, or we could catch drum.

MR. ALEXANDER E. COOPER: As I understand you, you find them in different schools ?

MR. WALTER E. HATHAWAY: Entirely. It is one of the rules of nature that fish of a different variety and class will not go together except when one is preying upon the other. When we catch blue fish, we would catch them while they would be preying upon the menhaden. The menhaden goes in shallow water, usually

in big schools, in from ten to twelve to fourteen feet of water, almost usually, to the bottom, and in that water in which they are you find only here and there a scattered food fish.

We would be perfectly willing, and we are perfectly willing, at any time, to give this Commission , or any representative Commission, the privilege of going, and we invite you to go, on board of any steamer at Lewes, at any time, either known or unknown to us, and investigate the matter for yourselves; and if you find that these steamers catch a sufficient quantity of food fish to be detrimental to the food fish industry, then we will make no objection to the laws that you propose; but all we ask is that when you do investigate or you do visit the steamer, that we have an opportunity given us to have an entry made in the log of the steamer of the time and what work was done.

MR. ALEXANDER B. COOPER: How do you account for the great decrease in the quantity of food fish ?

MR. WALTER E. HATHAWAY: In the first place I would not agree with your premises that there was a

decrease in the quantity of food fish. I would not say as to Delaware, but I am speaking generally. As a matter of fact, the quantity of food fish taken each year on the Atlantic coast from Florida to Maine has increased more rapidly than the consumption. I appreciate the fact, of course, that the consumption has increased enormously.

I understand the principal fishing industry on the Delaware river is shad .

MR. WALTER H. HAYES: Only in certain seasons. The trout and rock fish come on later.

MR. WALTER E.HATHAWAY: We will take the shad first. Running down the column under Delaware Bay you will see that not a rock or striped bass, not a perch and not a shad was taken, and that only twenty-fivetrout were taken by that steamer that year, and out of a catch of six million of menhaden in the Delaware Bay. In the first place, we do not begin fishing until the latter part, or the middle, of May, at which time the shad season is practically over. That is, the spawning season is over.

MR. WALTER H. HAYES: The fishing season is over.

MR. WALTER E. HATHAWAY: Yes, virtually over. You will observe over here in the other column that in the Chesapeake Bay the steamer "J. W. Hawkins", on page 11, the second from the last column, caught in the Chesapeake Bay six million two hundred and sixty-three thousand and five menhaden and eight shad. That fishing began that year on the seventh of May.

MR. ALEXANDER B. COOPER: You have no report of the "Hawkins" on the Delaware ?

MR. WALTER E. HATHAWAY: The "Hawkins" didn't fish in the Delaware.

MR. ALEXANDER B. COOPER: She didn't fish there at all ?

MR. WALTER E. HATHAWAY: Not that year. The only part of the United States in which shad are ever caught by the purse seines is in the waters of the state of Maine, and they are there caught mixed with menhaden, though you will observe that the "Hawkins" that year did catch, in the state of Maine, seventeen hundred

and ninety-nine shad. You will observe that she caught eight shad in the Chesapeake Bay and that she caught one shad in New Jersey. It is a peculiar thing that the shad has to come to this coast to spawn, beginning away down as low as St. Johns river and working up the coast until they get to the Connecticut river, at least, and will school in the latter part of July or August. Up in Maine some twelve or fourteen years ago a menhaden steamer went out to catch a lot of fish. The captain got his eye on them and he caught enough shad in that one setting to load two steamers. They sold a good many of them and gave a good many of them away, and cooked up the balance, because they were too much spoiled to use for food fish. We never heard of anything like that down here, and when I first heard of it, I didn't believe it, but I investigated it for myself, for my own satisfaction, and I foundthat something over twenty-five hundred to three thousand pounds of white shad were taken in one purse net in the waters about one hundred and twenty-five miles northeast of Portland, Maine.

Nobody ever saw them school down here. They school after they have gone there, after they have gone through this spawning season. They do not spawn there, but if they do, it is to a very limited extent, as a captain of one of the steamers told me that it was, probably, to have a good time if they did go up there.

There have been orders given to the captains of the seine steamers fishing for the Fisheries Company since it was organized in 1900, never to set upon food fish knowing them to be food fish of any kind. Of course, what fish are caught mixed up with the menhaden are picked out. One or two men are put in the hold of the steamer and the fish are dipped up by the barrel, and at each dip of the barrel the food fish are picked out. Last year our general manager put a keg on board one of the steamers and asked them to pick him out a keg of blue fish, or of big weak fish. That was done over a month and a half before the season ended, and they returned the keg not half full --and it was a small keg that wouldn't hold but about one-quarter as much as a commonfish barrel--

stating that they did not catch enough to fill it. That was on one of the largest fish steamers in the world.

MR. WALTER H. HAYES: How much fish oil do you get out of food fish ?

MR. WALTER E. HATHAWAY: Practically none. There has been no test made; that is, there has never been any definite test made, because, so far as I know, there never has been food fish enough ground up anywhere to test it. I do not say that food fish have not been caught this year up to now. Five and one-half millions of herring have been ground up in the Chesapeake Bay for fertilizer this year so far, although it is against the law of the state for anybody to grind up food fish. If that was not done, the fish wouldn't be of any value to anybody. They are caught with a purse seine, and they pay one dollar and fifty cents a thousand for them and grind them up. There would be absolutely no market for them otherwise. They have packed and salted and sold all they could sell, but notwithstanding that, up to the twentieth of this month five and one-half millions of

herring have been ground up that they caughtin two counties, the counties of Lancaster and Northumberland, in Virginia. In the county of Northumberland over four and one-half millions of herring have been ground up this season into fertilizer. Those people there have ground them up notwithstanding it is against the law; but they have done that, and everybody lets it go on. They have ground up more fish in the limited area of one county having a population of about ten thousand people than the Fisheries Company with its forty steamers and three million dollars has ground up since it has been in existence on the Atlantic coast from Maine down to Savannah. We have not tried to catch food fish, although we can catch food fish. The captain of one of our steamers told us last winter that he believed he had seen in the Atlantic Ocean, off in the neighborhoodof Atlantic City, and about twelve to fourteen miles off shore, enough weak fish travelling south to load every steamer the Fisheries Company had at that time duringlast year. Of course, this only goes to show you in what enormous quantities they comeand go.

This investigation and the investigations of the other states have shown positively that these people do not catch, together with the menhaden catches, food fish in quantities sufficient to feed the crews on the steamers. We carry salt cod fish on everyone of the steamers, and on some of the steamers on the eastern end of Long Island we have quite a number of Catholics, and we have fish on Friday, and four times out of five it is salt fish gotten from Gloucester or Boston. There are not enough food fish caught to supply the fish dinners on Friday for the people employed there, only on an average of one out of three or four or five. We buy a quantity of salt mackerel and cod and haddock in Boston and Gloucester as food.

If there is any investigation you want to make on that point, we should be glad to have you make it. If we had anything to conceal, or anything to hide, or if we wanted to hold back anything, we could not do it very well, at least, when we give you a perfect free invitation, and extend to you an invitation to investigate that matter with your own eyes on board of any one of

our steamers. And invitation will be extended to you for any time you see fit next summer. We will be glad to have you make this investigation, because we have been harassed, and we have been put to expense and trouble and we have had grafters at us from one state to another on this very question, when we are absolutely innocent. It is a right and just proposition for a guilty man to have to pay, but when an innocent man has to go to the trouble of defending himself over and over again, it gets very tiresome.

There is no oil, practically, in any food fish. There are no food fish that can be taken in any quantity which will produce over from one-half a pint to two quarts of oil to the thousand fish.

MR. WALTER H. HAYES: How many menhaden are there to the barrel of oil ?

MR. WALTER E. HATHAWAY: I could not answer that to save my life, only in this way:

MR. WALTER H: HAYES: They told us down at Lewes that it was nearly two thousand .

MR. WALTER E. HATHAWAY: Two thousand fish

cannot make a barrel of oil. The largest quantity of oil ever gotten from menhadon was twenty-three gallons to the one thousand fish, and they were caught in the Penobscot Bay, in Maine; and that is so old a story that every fisherman knows about it and remembers it. Twenty-three gallons to the thousand, that would be, practically, two thousand to the barrel.

We have made this year (and it has been a very poor season) one hundred and thirty-nine tons of acidulated scrap in the factory at North Carolina this season. That means a catch of about one and one-quarter million fish. The usual amount of oil made during the average season of purse net fishing in Delaware will run from five to seven gallons to the thousand fish, or from seven to ten thousand fish to the barrel of oil. In the Chesapeake Bay the average there to the thousand fish will not run over from three to four gallons, but generally from two to two and a half to three gallons to the thousand feet, if the fish are in good order. We make practically no oil south of Chesapeake Bay and north of Cape Cod. In other words, if the fish caught

anywheres north of Cape Cod are worth two thousand, the fish caught south of Cape Hatteras would be worth three thousand. They only produce from one-half a pint to two and a half to three quarts of oil to the thousand, under varying conditions, therefore, making, I believe, by that basis, less than one gallon to the thousand.

MR. ALEXANDER B. COOPER: You fish rather near to shore, don't you ? What scope have you outside of a school of menhaden ?

MR. WALTER E. HATHAWAY: That will depend very much upon the menhaden, but these nets will cover, roughly speaking, from one and a half to two acres, when brought around.

MR. WALTER H. HAYES: How deep do they go ?

MR. WALTER E. HATHAWAY: They run from twenty-five to forty feet deep, and, of course, they will touch the bottom in shallow water.

MR. ALEXANDER B. COOPER: You have some deeper than that ?

MR. WALTER E. HATHAWAY: Yes, sir; but the average would run about that size. Unlike the other

fish that school the menhaden travel close to shore. I think that is largely due to the fact that it is the most timid and helpless of all fish. It is a prey to everything in the fish world. As far as anybody knows, menhaden do not feed upon fish, but upon the silt that comes from the bottom and comes down from the land. It is one of the things in nature that the fertility of the soil is constantly being washed down into the ocean by rains and snows, and the menhaden are fed by that silt and infinite animalculae matter, and when they are caught and turned into fertilizer, that matter goes back to the soil; in other words, it goes from whence it came .

MR. WALTER H. HAYES: Why don't the menhaden go further up these streams ?

MR. WALTER E. HATHAWAY: They have never been known to go into fresh water, only here and there a scattered fish and in limited quantities. These statistics will show later on that menhaden are caught near the shore. Take the steamer "Arizona": One mile from shore, three million five hundred and twenty-five

thousand five hundred menhaden caught in less than one mile of shore—all these being caught, practically, on the Atlantic coast. You will find that on page 13. Between one and two miles, nothing less, seven million and fifty-seven thousand five hundred menhaden caught. Between two and three miles, nearly two million caught. Between three and five miles, nearly four million caught. Five miles and over five miles, nearly five million caught. In other words, about one-third of the catch of that steamer that year was within the three miles limit. The menhaden goes in shore, while other fish, in their migratory periods usually go off shore anywhere from three to twenty miles.

That brings up again the question about the three mile limit. As a lawyer, I do not believe that the state of Delaware, or any other state, has a right, if the question was thoroughly investigated, to control its sea coast beyond low water mark. However, I will not take up that question here.

MR. WALTER H. HAYES: We do not go outside of the bay.

MR. WALTER E. HATHAWAY: You would not be bothered with that question, then, as you are confined to the Delaware Bay; but this case of the Buzzards Bay was taken up to the United States Court and that court decided that the state of Massachusetts had a right, in Buzzards Bay, to regulate menhaden fishing, and to impose a penalty for catching fish with a purse net; but insofar as the other cases are concerned, they were practically inland waters, because they were small waters and were almost surrounded by land. It might be a very different proposition as to the Delaware and Chesapeake Bays.

MR. ALEXANDER B. COOPER: Both the Buzzards Bay and Raritan Bay. The one in New Jersey had absolute territorial jurisdiction, and also the one in Massachusetts.

MR. WALTER E. HATHAWAY: I am inclined to think so too(although I have forgotten), outside of the general principals of common law .

Then there is another point, and that is a matter of very great interest to the state of Delaware, and probably more to the state of Delaware--I am speaking in a general and broader sense--than any other state in the whole union.

The sources of organic ammonia in commercial fertilizers are two, alone (efforts are being made to get organic ammonia from the refuse of the cities , but every concern that has engaged in it up to this time have gone to the wall, and it is still in its experimental stage), from the offal from the packing houses in the west, blood and bone, and from the offal of the menhaden fish. They bear a proportion to each other of about two hundred and twenty-five thousand tons produced by the beef trust to seventy-five thousand tons produced by the fishing scrap. I will tell you, this question involves you to a much greater extent than you have any idea. Swift and Company have recently increased their capital stock, and have gone into the food fish business, having established at Cape Ann and Gloucester two very large plants for the purpose of

handling and taking their food fish and supplying them to their customers at certain times. Swift and Company have also made investigations into this menhaden proposition on account of the profits in the fertilizer end of the business. If the menhaden was out out, either by law or by act of nature, then the source of organic ammonia, a most essential element in every trucking community like yours, would be dependent absolutely upon the beef trust, and it would be an easy matter within a very short time for them to combine, whether under a strict operating agreement, or otherwise, and to put up the price of organic ammonia from three to five dollars a ton. They cannot do it now. We are the one element outside interfering with the increasing in price of organic ammonia to five dollars a ton to the farmers of the state of Delaware. It would be one of the heaviest taxes you could levy on your state, if you opened the door for such action on their part. It would soon have every farming and trucking community in the United States in its seine, and every farmer in this state would be included therein.

It is not a question of loss of fish, but it is a question of far greater importance than that to every farmer in your state, and if each one thoroughly understood this situation he would see at once that the industry which we operate down there, and the other industries located elsewhere by our company, keep the price of organic ammonia down to where it is to-day--if either of you have ever paid any attention to the various increases in it.

Out of the seventy-five thousand tons of fertilizer made from the fish caught, we make about fifty thousand tons and the other people make the remaining twenty-five thousand tons of scrap fertilizer. Then there is the oil. That amounted last year to less than five thousand tons, most of which was sold in New England.

This is a very important industry, and a far reaching one. I have been told that it enters very largely into what is called linseed oil, and that after it is refined it can be used both as cod liver oil and olive oil. It dont taste quite as good, but then neither one of them are very nice to the taste.

The only other question is, whether or not, by catching the menhaden, we take away from the food fish its food, and thereby limit the quantity of food fish. I have heard it argued that sheep head have left certain parts of the New Jersey coast, that striped bass and rock could not be found, that perch could not be found, and that our catching of menhaden did that. Any man knows that sheep head and perch and the striped bass were never known to feed on the menhaden. I wouldn't be afraid to bet a hat that no man ever found a menhaden in the stomach of these fish. The menhaden is a type of fish that swims on top of the water entirely, and these other fish mentioned are nearly all bottom fish. The blue fish eat the menhaden, and they are the only fish that we would catch that you would probably denote as a food fish. The shad do not eat menhaden, but the white fish and the blue fish do eat menhaden. It has been stated by the scientists of the United States Government that the blue fish alone on the coast of New Jersey probably destroyed three hundred times as many menhaden each season as the

fishing steamers caught. That the blue fish alone on the coast of New Jersey probably destroyed three hundred times as many menhaden each season as all the fishing steamers combined caught on that coast. That was a statement made by a government official. When you consider the fact that the waters are alive with blue fish--for a blue fish is one of the strangest things that ever a man tried to fathom--that fifteen years ago blue fish were unknown in the Chesapeake Bay, but for the last five years they have been caught in large quantities. Menhaden have been taken at the rate of from two hundred to two hundred and fifty million a year out of the Chesapeake Bay for the last twenty-five years, and during the first half of that time blue fish were not known there, but during the last half of that time they have been there and have been taken in large quantities. Your blue fish have disappeared on the inland waters of New Jersey, according to the idea of fishermen whose judgments are good, but they say that the blue fish have been just as abundant in deep water from Cape Henlopen up as they ever were before ; in fact, more so than

they ever were before; that has reference to last season. They did not come in shore, because the waters of the Atlantic Ocean over this territory have been practically alive with what they call white bait, or white fish, about that long (indicating about six inches.) They have become so numerous that there are now three or four fishing industries at Montauk and Neapeague. They catch them in the month of May and put them in pens from the seines, and sometimes two-thirds of the catch are put in these pens out in the ocean and taken out from time to time so as to keep the price high enough . There is an agreement between all the fishermen up there . These fish are fed from the middle to the last of May until as late as September, and then are brought up in large quantities. Last year we had ten thousand barrels penned and kept alive in sufficient condition that they could be marketed--that is, these little white bait. Fishermen can testify to the fact, and, especially, Captain Castro, the hero of last summer (who has been a fisherman all his life) has stated that last season he had seen more blue fish in the Atlantic Ocean from Sandy

Hook to Cape May than he had ever before seen in his life. He said they had fished for three days without being able to catch a blue fish; that then for thirty-six hours there was a storm, when they could not fish, but that immediately after that they caught fish enough to load his boat in about eight or ten hours.

The weak fish have been exceedingly abundant on the New Jersey coast, in fact, so much so thatMr. France, for his entire shipment during the month of July last, only averaged two dollars and twelve cents a barrel for weak fish in the Fulton street market, New York, and he paid for the barrel and the ice--there being three hundred pounds of fish to the barrel.

Another thing can be said in attempting to explain these things, and that is about the mackerel. More mackerel have been seen between Cape Hatteras and Cape Charles this year than there was ever known before, and the number of loaded scows every day loaded down, coming into the market in Boston with this year's catch of mackerel is unprecedented, and proves that the fish are not decreasing in number.

They say we are destroying the menhaden. The menhaden industry has gone on for thirty years or more, and with increased quantities all the time. About five hundred million have been taken on the Atlantic coast in the year 1891. In the year 1892 the catch was only two hundred and fifty million. The next year and the year following that it was about seven hundred and fifty million. The largest catch of menhaden ever known in its history was made in 1903. Since then they have not been caught in any such quantity. The natural feeding ground of the menhaden is from Cape Hatteras to Cape Cod. Above that is spawning ground and below that is spawning ground. From Cape Charles to Sandy Hook the catch varies nearly the same as it does anywheres else on the Atlantic coast. The Delaware Bay and the immediate sea coast to the Delaware Bay has been one of the most valuable fishing grounds on the Atlantic coast, having stood constant fishing with good results.

MR. ALEXANDER B. COOPER: You are speaking of these fish being abundant. I recollect one season when

a party of New Castle shad fishermen caught quite a number of elegant salmon, but I have never heard of one being caught since.

MR. WALTER E. HATHAWAY: Salmon have been known at times to be on the coast further north of here, but now they are not. Blue fish were caught on the coast of Ireland some thirty years ago, but since then they have not been known.

Another point, the herring factories are in the United States, largely--in some states more than others. The New England states have been more active in that line than the states further south. The herring fishing has been examined and investigated, and they have statistics in both England and the continent countries of Europe for four hundred years, and the herring practically disappeared from the coast of Norway for a period of fifty years some one hundred and odd years ago. There were few, but in no quantities, though, that would come and go away.

There is no rule or no regulation that any man knows of except this: The total production of the food

fish in the civilized world has increased in greater proportion than the population of man. That is in the broad; that is not as to any particular locality. You can lay it down as an absolute fact that no device or agency that man has ever been able to discover or invent can materially destroy or diminish the deep sea fish, when not caught upon its spawning ground. It is absolutely impossible:

You take the Delaware Bay and compare it with the Atlantic Ocean. These menhaden go along the Atlantic coast from Portland, Maine, down to the Savannah river, and there is a vast difference in the temperature of the water there in that territory as compared with the warmer waters from which these fish come. They go away in the fall, but nobody knows where. We have attempted to make an investigation to find out where they go to. There have been theories of all kinds. Fish have been caught ready to spawn in Maine as early as the latter part of July and as late, in lower Virginia, as the first of December. The menhaden certainly spawn, in limited quantities, on the Atlantic coast, but not in fresh water.

A gentleman told me the other day that he had been in the fish business all of his lifetime, and that he had seen young menhaden twelve miles up the Mississippi river in the state of Louisiana. I think he must have been mistaken, because nobody else ever saw them. I asked a gentleman not long ago (who had been a menhaden fisherman for forty years, of one kind and another), "What do you know about menhaden as to its breeding and spawning grounds and its methods of propagating ?" He looked at me in a kind of a quizzing way and said, "I don't know a damned thing." That old gentleman was a very intelligent man, and he had been in this business all of his lifetime, since he had been a man. However, the accepted theory is that the menhaden spawn somewhares in the warm waters of the South America or Caribbean Sea. Nobody ever saw menhaden in the waters of the Delaware Bay under that length (indicating about four inches). I have been acquainted with this industry, more or less, ever since I was a very small boy--just as much acquainted with it as I am with anything else--and I have seen many of those fish in the Chesapeake Bay, these little fish, along about

the latter part of July or August. They have come up further north after that time, and they have appeared further south as early as June, or the latter part of May. They are certainly as much as sixmonths old. Where do they come from ? Nobody ever saw them in cold water. These fish were evidently spawned sometime about the month of December, or January, somewheres in the southern waters, and came up here.

The result of all these various things is this: That no intelligent investigating commission, in any state, would interfere with an industry in which a large amount of money was invested and in which quite a number of people obtain employment at lucrative wages, unless there was some special reason for it. If anybody can suggest any reason that will stand the test of investigation, that will stand the test of common sense, that will stand the test of common judgment, and which will show we do any damage whatever to any interests in the stateof Delaware--except,I believe, as regards the factories down at Lewes we have a kick coming from some people in that locality--I would like to hear it.

As regards the Government investigation, I think it showed that less than one-tenth of one percent. of the total catch in numbers was food fish. However, it is an absolutely safe assertion and a man can bet his clothes on it, if he wanted to, that during the season not one percent. of the fish caught would be food fish, and those that were caught were consumed as food there by the fishing crews, or the men on the shore, or by being given away to friends. If we should catch them we do not grind them up. We use what we can andthen give the balance away, or we sell them, if we have them in any quantity. If we had any large quantities we would find a market for them, but never having had such quantities we have not resorted to the finding of such a market.

That being the situation, the effect of it is that we do benefit the state of Delaware, and we do benefit the town and the people there--and we, of course, aim to benefit ourselves, but, as a matter of fact, we have benefited the neighborhood more than we have ourselves.

I suggest that there can be no reason that I know

of, or that can be devised that will meet intelligent investigation, where we do any harm or any injury to anybody. We do not take food fish except in limited quantities, and in such limited quantities as would not interfere in any way with the supply. We do not destroy the menhaden so as to diminish the menhaden, taking the Atlantic coast as a whole, or taking the Delaware Bay, because, as I said a little while ago, the run is more regular here than perhaps at any other place on the Atlantic coast, and the supply is practically the same year in and yearout, and has been so for years. The biggest year ever known was in 1903. The biggest and most profitable catch of menhaden ever known in the history of the fishing industry, taking the whole territory, was in the year 1903.

MR. ALEXANDER B. COOPER: How far up the bay do they come ?

MR. WALTER E. NATHAWAY: Up the Delaware Bay ?

MR. ALEXANDER B. COOPER: Yes.

MR. WALTER E. NATHAWAY: I cannot answer that question.

MR. WALTER H. HAYES: We were informed by the fishermen down the state that they fished up to the Cross Ledge.

MR. WALTER E. HATHAWAY: I cannot answer that question. I never did know. I do not know, but I would assume, that as a general rule the fishing would not be profitable over half the distance there. I never asked that question and I never found out. I know in the Chesapeake Bay there is no fishing above the Potomac River, and there are practically no fish above that point.

We court the fullest investigation as to the facts. I have stated to you that we have a report here of an investigation made by the United States Government. We have another pamphlet which is practically a re-statement of what I have been saying to you. From that report, or rather, we have that report of the New Jersey Commission which is more in point, and as Mr. Crawford stated, when he had finally agreed that he would report on one point, in making a reply to my remark, "You have changed your views from what they were at first ?", "Well, I will tell you. I will illustrate by a story.

A friend of mine was going to an insane asylum many years ago and he saw a man whom he know was crazy, and he thought he would humor him. He says, 'It is a fine horse you have got ?' He says, 'This is no horse.' 'What is it ?' 'It is just a hobby.'" Then he said, "The difference between riding a hobby and being insane is that when a man has got a hobby he can get off, he has got some chance." He had been before the New Jersey legislature five different sessions opposing the menhaden fishing, and it had been a kind of a hobby with him; but after he had investigated the matter he was free to say that we did not catch food fish, and the evidence showed that we did not, unless we purposely went out for them, and if a bill would be passed to prohibit us from taking food fish in any quantities, except sufficient quantities to supply food, within the territorial juriadiction of the state of New Jersey, as they claimed, the three mile limit, that he was perfectly willing to agree to the present law, or the new law.

MR. ALEXANDER B. COOPER: Coming right down to the point: I understand you gentlemen would not

object to a law prohibiting the catching of food fish ?

MR. WALTER E. HATHAWAY: No, sir. We make no objection to a law regarding the catching of food fish, but we would like to have that law so drawn that a small number could be taken, whatever would be needed for food purposes, and that we should be obliged to throw the balance overboard; but it would look like a mighty foolish proposition to throw a few food fish overboard when the folks on board were anxious to eat them.

You will observe in the drafting of this law here which the New Jersey people were going to pass, but, as I say, did not, at page 15--

MR. ALEXANDER B. COOPER: Why is it that the food fish are becoming so scarce ?

MR. WALTER E. HATHAWAY: There are many reasons that can be assigned for that.

Section 6 of that Act says, "The provisions in the first section of this Act shall not apply to any persons employed on any steamer or other vessel engaged in taking menhaden, taking sufficient food fish for their

own consumption and those immediately dependent upon them."

Let there be some such provision as that.

MR. ALEXANDER B. COOPER: Was that Act passed ?

MR. WALTER E. HATHAWAY: No, sir. It passed the Senate, but failed to pass the other House.

MR. WALTER H. HAYES: Have you been up in New Jersey before the Legislature ?

MR. WALTER E. HATHAWAY: Yes.

MR. WALTER H. HAYES: Then you have met Senator Bradley, the president of the Senate ?

MR. WALTER E. HATHAWAY: Yes, sir.

MR. WALTER H. HAYES: Did you see both members of the New Jersey joint compact ?

MR. WALTER E. HATHAWAY: Yes. I am a little surprised at that being the case. I did not know they were even on this Commission. I met one of these gentlemen and I saw the other one, but they were not present at any of these meetings. We held two or three meetings, or three or four meetings, in Trenton, in the state house, two in the Senate chamber and one

in the room of the Fish and Game Committee of the House; but neither of these gentlemen were present, and I did not know that they were on this Commission.

MR. WALTER E. HAYES: What I was getting at is this: Unless you appeared before that Commission, and we were to go to them with the statement you have made before us, they might take exception to it. I was going to suggest to you that you get in communication with Senator William J. Bradley first, of Camden, New Jersey, and Mr. J. Boyd Avis, of Woodbury, who is secretary of the New Jersey Commission.

MR. WALTER E. HATHAWAY: I am very much obliged to you gentlemen for having given me as much time as you have. I might still not be able to put this matter before you in a better light than I have. It is purely a business proposition. We have got nothing in the world to conceal. Some people think we do not want people to go over our plants, go through our plants. Nobody in the world will make any objection, at any time, to their going through our plants, unless they make themselves a nuisance. We would

be glad to have them. We are conducting an absolutely legitimate business, as legitimate a business as we know how to conduct, and we are beneficial to the people engaged in it here to a more or less extent. Quite a number of people work on these steamers, and while all of them are not Delaware people, we employ quite a number of Delaware people. We are the sole shield between the farmers of your state and the other states--especially the four states that need ammonia in the fertilizers more than they do in the interior--and the beef trust. If you eliminate us, just as certain as I am talking to you, and as certain as we are living men, the price of organic ammonia will advance from three to five dollars a ton in less than one year's time.

MR. WALTER H. HAYES: What effect would it have upon your company if the taking of the menhaden was prohibited in the Delaware Bay ?

MR. WALTER E. HATHAWAY: It would practically break up our industry at Lewes. I would not say, but I assume it would be a very serious blow. Not nearly the entire catch used at the Breakwater

is taken in the Delaware Bay. Here is the position: Say that the steamer "Hawkins" caught that year about five millions of fish in the Delaware Bay; say the average catch of twelve steamers was from three to four million--which I assume would be about right--say that the Fisheries Company caught in each year in the Delaware Bay from thirty-five to forty millions of fish, and say we handle at the plant at the Breakwater from seventy-five to one hundred millions. I should make the rough guess that one-third to one-fourth of those fish were caught in what you might call the Delaware Bay, either directly in the Delaware Bay or near around its mouth, so that the tide might carry you in and out. Now, then, if they were taken away from us, if that was cut out, we would be deprived of from one-half to one-third, or from one-quarter to one-third of the business, and, necessarily, the profit would be all gone. While that factory has been more successful, perhaps, than any other factory the company operates, taking it year in and year out, I do not think the company could operate the plant without the Delaware Bay.

That in my opinion. If a bill was passed by the joint Legislatures of the state of Delaware and the state of New Jersey prphibiting fishing in the Delaware Bay and it became a law, so far as I was concerned I would say at once to tear the thing down and get away, because I am absolutely certain it would not be profitable to operate it with fish caught outside, unless we violated the law and put the two states to a whole lot of trouble in keeping up with us--all of which could be done, but which we would not want to do.

MR. ALEXANDER B. COOPER: If the Commission should signify their intention of taking a trip down there sometime during the summer, how would we reach you ?

MR. ROBERT PENINGTON: Just tell me.

MR. WALTER E. HATHAWAY: If you will just advise Mr. Penington at any time you decide to come, we would prefer it. Some gentlemen suggested that if the Commission would let us know we would arrange for them to go on such steamers as would not take food fish at that time.

MR. WALTER H. HAYES: That is what the public would say .

MR. WALTER E. HATHAWAY: How the deuce can we, or any other human being, tell what is in that two or two and a half acres of water where the menhaden fish are?

MR. ALEXANDER B. COOPER: I did not want to see you go into a school of food fish. All I want to see you do is to go into a pretty large school of menhaden and see what the result is with one of your large nets.

MR. WALTER E. HATHAWAY: You can use your own judgment about that. We would prefer to give you a letter to the superintendent down there instructing the superintendant to introduce you to the captain of whatever steamer you may select, sothat you can be shown proper courtesy and attention. It would be more of a matter of common courtesy to you gentlemen, and it would be more pleasant to you. Some steamers are much more pleasant than others. However, if you prefer it otherwise, we will extend an invitation to you to go on any steamer you may select, and you are welcome to stay on there as

long as you please. We would be very glad to have you.

MR. ALEXANDER B. COOPER: I can see how people at home in these local fishing districts, ignorant of the menhaden fish and their habits, would throw up their hands at quantities of fish like that—as this book says, one hundred feet deep and seven or eight or nine hundred fathoms long—they would throw their hands up with horror and say, "Why, they can't help but catch food fish." That would appear so to many men who did not know to the contrary.

MR. WALTER E. HATHAWAY: A fellow says, "There is no use to tell me that. You can't tell those things to me. Some of these nets are one hundred feet deep, and cover, probably, three acres of water. You can't put them out in the Atlantic Ocean anywheres and not catch food fish." If they had to put them out anywhere and had to make a living from the food fish they would catch, they would feel as though they were up a tree. I cannot account for that, except on the ground that fish, like all other wild things,

segregate according to their species, and also that the feeding ground for different classes of fish are very different. You might find sometimes a few bottom fish when you catch the menhaden, but the top fish you would never find, except a few fish like the blue fish and white fish , and a great quantity of sharks. Quite a number of sharks are caught, especially in the summer. The catching of the sharks is a benefit to the other fish.

MR. ALEXANDER B. COOPER: We have to-day probably ten to twelve to twenty fish where we used to have one hundred. We have these oil tankers, which did not use to come up, throwing out their surplus, or waste water, or whatever you chose to call it. I havehad shad on my table at New Castle that tasted of oil. I met a man--quite an intelligent man--a doctor from Philadelphia, and we were talking about the shad fishing and about the scarcity of fish. He spoke about the fishing for the menhaden. He was not speaking against them at all. I do not think he was speaking of them at all, but hemade the remark, I think, that in his opinion the whole trouble was

this: "You take the Atlantic coast, beginning away down at North Carolina, and all the way up they have these pound nets, and all that sort of thing, and they catch the fish before they can come in to spawn."

MR. WALTER E. HATHAWAY: There is no question in the world but that that is an intelligent solution of the fishing problem in the United States. That matter was taken up and a bill was proposed by the representative from Rhode Island, some twelve or fourteen years ago, in Congress, but it never got out of the Committee. One of the chief oppositions then, and in the future, would come from the southern states, especially; not that it was not an intelligent idea to regulate the fish being taken by general laws, but as regards the state rights, that the United States ought not to assume any further powers. States like Tennessee and Louisiana would oppose it violently.

MR. ALEXANDER B. COOPER: All along the New Jersey shore they have pound nets and these other contraptions.

MR. ROBERT PENINGTON: On page 22 of this pamphlet, concerning the menhaden industry, will be found practically all the literature on this subject that we have. If there is any other you want, you can have it--all the reports of the Fish Commission, and everything.

MR. WALTER E. HATHAWAY: One of these reports pays particular attention to pound net fishing, and condemns it; whereas, in their investigation of the menhaden industry they say it does not harm the food fish. I have that report, if you wish to have it.

MR. ROBERT PENINGTON: There is also a list of the fish caught at--

MR. ALEXANDER B. COOPER: How were they caught ?

MR. ROBERT PENINGTON: By pound nets.

MR. WALTER E. HATHAWAY: The wholequestion can be summed up practically in this shape. In ancient times, at the beginning of this country, fish were caught with hook and line and small haul seines. As time increased and as the people increased in number, the fish were caught by appliances of different kind from

time to time. The quantity caught in the old days was so small that it would not begin to compare at all with what is caught now. Thousands of barrels are caught now where thousands of fish were caught then. The substance of it is that it is all up with the hook and line fisherman, and they will have to go out of business, practically. It is just the same idea as if a man was to undertake to use the old hand scythe for cutting wheat.

Fish to-day in the New York and Boston markets are cheaper per pound than they were years ago, and they form a larger proportion of the food of human beings.

MR. ALEXANDER B. COOPER: I never saw the price of the shad so high. Shad, in Delaware, in 1883, sold for five cents apiece.

MR. WALTER E. HATHAWAY: I went with my father once to a wharf down near where I was born in Virginia and we bought one hundred shad for five dollars and fifty cents. Last month I saw shad sold at that same wharf for one dollar and ten cents apiece.

MR. ALEXANDER B. COOPER: You were buying by the who esa

wholesale, by the one hundred?

MR. WALTER E. HATHAWAY: I was going to say that since then I have been down there. I was down there last week and shad were then selling at from twenty to twenty-five cents for the roe and twelve cents for the buck.

MR. ALEXANDER B. COOPER: Retail ?

MR. WALTER E. HATHAWAY: No, sir; locally, at the wharf. But here is the point: In the old days, when they could be bought at from five to eight cents apiece--I am talking now of that section -- probably the whole catch of shad would not amount to as much as I have seen shipped at one time from that wharf, off the mouth of the Rappahannock River in recent years. I am absolutely certain, in the whole county, twenty-five years ago, they did not catch as many as I have seen shipped at one time within the last ten days. They have been more plentiful, but not to the same extent. The shad breeds in fresh water alone, and when caught in the quantities

in which they are caught, they may be finally destroyed. I cannot say about that.

MR. WALTER H. HAYES: There is one thing, and that is, the hatching boat has not been here for several years. She is here this year right by the river.

MR. WALTER E. HATHAWAY: That question ought to be very carefully investigated. If the states would investigate that thing more, it would be beneficial. About thirty years ago the United States Government sent striped bass and rock fish over to the Pacific coast. They spent five thousand dollars in the doing of that. Before that striped bass had not been caught on the Pacific coast, and were not known. Since then there have been over thirty thousand rock fish marketed contiguous to where those little fish were put, and the quantity is much larger.

I have received a letter from Doctor Smith in the last two or three weeks upon that very point. He had just returned from propagating new species in new waters. All those things can be done here. It is a

matter worthy of some investigation.

If there is any matter or question you may desire to have information upon, and it is within our power to furnish it, we will be very glad to do so, and to give you all the facts in connection therewith.

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(220)

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Volume _____ Page _____

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Fisheries Impact
Minute Books
1905 - 1908

Report of the Proceedings of Public Meetings
3/14/1906 - 4/26/1906

**No. 134, Original**

IN THE
Supreme Court of the United States

STATE OF NEW JERSEY,
*Plaintiff*,

v.

STATE OF DELAWARE,
*Defendant*.

# DELAWARE'S APPENDIX ON CROSS-MOTIONS FOR SUMMARY JUDGMENT

**VOLUME 3 (1525 – 2280)**


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**TABLE OF CONTENTS**
**VOLUME 3**

**PAGE**

Delaware Commissioners Delaware - New Jersey Fisheries Compact Minute Book, 1905 - 1908 (Apr. 1, 1905-1908) ..... 1525

Letter from Alexander B. Cooper, President, Delaware Commissioners, to Senator William J. Bradley, New Jersey (Jan. 5, 1907) ..... 1733

Letter from Alexander B. Cooper, President, Delaware Commissioners, to Walter H. Hayes, Secretary, Delaware Commissioners (Oct. 2, 1906) ..... 1735

Letter from Alexander B. Cooper, President, Delaware Commissioners, to Walter H. Hayes, Secretary, Delaware Commissioners (Jan. 8, 1907) ..... 1737

Letter from Alexander B. Cooper, President, Delaware Commissioners, to Walter H. Hayes, Secretary, Delaware Commissioners (Jan. 14, 1907) ..... 1739

Letter from Robert H. McCarter, Attorney General of New Jersey, to R. Wayne Parker, U.S. House of Representatives (Jan. 15, 1907) ..... 1740

Report of Delaware Commissioners on Delaware and New Jersey Fisheries Compact; Preliminary Report of the Commission for the Investigation of Salt Water Fishing; and Facts Concerning the Menhaden Industry Along the Atlantic Coast (Feb. 2, 1907, Mar. 12, 1906, and Undated) ..... 1741

Letter from Alexander B. Cooper, President, Delaware Commissioners, to Walter H. Hayes, Secretary, Delaware Commissioners (Sept. 26, 1907) ..... 1770

Letter from Alexander B. Cooper, President, Delaware Commissioners, to Walter H. Hayes, Secretary, Delaware Commissioners (May 4, 1908) ..... 1772

Report of Inspector J. H. Avis (Aug. 11, 1908) ..... 1774

Letter from John B. Avis, New Jersey State Senator, to Walter H. Hayes, Secretary, Delaware Commissioners (July 2, 1907) ..... 1779

Letter from Percey Warren Green, Attorney General of Delaware, to S. Rusling Leap, New Jersey State Senator (Feb. 20, 1935) ..... 1780

Letter from Clarence A. Southerland to C. Douglass Buck, Governor of Delaware (May 1, 1935) ..... 1783

Letter from Percey Warren Green, Attorney General of Delaware, to Dr. George H. Ryden, Archives Commission (Oct. 8, 1937) ..... 1784

Description of Boundary Line in Delaware Bay between Delaware and New Jersey, Proposal B ..... 1786

Description of Boundary Line in Delaware Bay between Delaware and New Jersey, Proposal A ..... 1787

Discussion of the Boundary Line in Delaware Bay hetween Delaware and New Jersey ..... 1788

Chronological List of Delaware Boundary Commissions ..... 1791

Agreement between Commissioners of the State of Delaware and Commissioners of the State of New Jersey (Oct. 1, 1906) ..... 1795

Laws of the State of Delaware Relating to Fishing in the Delaware River and Bay (1871 - 1905) ..... 1799

Letter from John B. Avis, New Jersey State Senator, to Walter H. Hayes, Secretary, Delaware Commissioners (June 4, 1908) ..... 1816

Letter from John B. Avis, New Jersey State Senator, to Walter H. Hayes, Secretary, Delaware Commissioners (June 27, 1908) ..... 1818

Letter from John B. Avis, New Jersey State Senator, to Walter H. Hayes, Secretary, Delaware Commissioners (July 8, 1908) ..... 1820

Letter from John B. Avis, New Jersey State Senator, to Walter H. Hayes, Secretary, Delaware Commissioners (July 17, 1908) ..... 1823

Letter from John B. Avis, New Jersey State Senator, to Walter H. Hayes, Secretary, Delaware Commissioners (July 21, 1908) ..... 1825

Letter from John B. Avis, New Jersey State Senator, to Walter H. Hayes, Secretary, Delaware Commissioners (Aug. 14, 1908) ..... 1827

Letter from Alexander B. Cooper, President, Delaware Commissioners, to Walter H. Hayes, Secretary, Delaware Commissioners (Aug. 28, 1908).....1829

Joint Resolution of the New Jersey General Assembly (May 6, 1929).....1831

Brief on Behalf of the Informant-Respondent, by Robert H. McCarter, Attorney General of New Jersey, *Hudson County Water Co. v. McCarter*, No. 184 (U.S. filed Feb. 25, 1907).....1835

Letter from Alexander B. Cooper, President, Delaware Commissioners, to Walter H. Hayes, Secretary, Delaware Commissioners (Feb. 28, 1907).....1871

Letter from Alexander B. Cooper, President, Delaware Commissioners, to Walter H. Hayes, Secretary, Delaware Commissioners (Mar. 2, 1907).....1873

Letter to Walter H. Hayes, Secretary, Delaware Commissioners (Mar. 7, 1907).....1876

24 Del. Laws ch. 146 (1906-07).....1879

**Pages 1891 – 2024: Documents Relating to the Joint Fisheries Commission 1914-1939**

Letter from John W. Wescott, Attorney General of New Jersey, to Herbert H. Ward (July 3, 1914).....1891

House Joint Resolution of the Delaware General Assembly (Feb. 3, 1915).....1896
Legislative History of New Jersey - Delaware Compact.....1897

33 Del. Laws ch. 193 (1923).....1901

New Jersey Board of Fish and Game Commissioners, Historical Chronology, July 1, 1922 - June 30, 1931).....1917

Letter from George S. Silzer, Governor of New Jersey, to William D. Denney, Governor of Delaware (Apr. 4, 1924).....1921

Letter from William D. Denney, Governor of Delaware, to Edward I. Edward, Governor of New Jersey (Mar. 12, 1921).....1924

Letter from William D. Denney, Governor of Delaware, to George S. Silzer, Governor of New Jersey (Feb. 25, 1924).....1926

Telegram from William D. Denney, Governor of Delaware, to George S. Silzer, Governor of New Jersey (Feb. 25, 1924) ..... 1928

Letter from George S. Silzer, Governor of New Jersey, to William D. Denney, Governor of Delaware (Feb. 26, 1924) ..... 1930

Letter from William D. Denney, Governor of Delaware, to George S. Silzer, Governor of New Jersey (Mar. 13, 1924) ..... 1932

Letter from George S. Silzer, Governor of New Jersey, to William A. Logue (Mar. 25, 1924) ..... 1935

Letter from Jere E. Chambers to George S. Silzer, Governor of New Jersey (Mar. 31, 1924) ..... 1937

Letter from J. M. Stratton, Protector, New Jersey Board of Fish and Game Commissioners, to George S. Silzer, Governor of New Jersey (Mar. 31, 1924) ..... 1939

Act to Amend Chapter 74 of the Revised Code of Delaware (Undated) ..... 1944

Letter from Harris Samonisky to Robert P. Robinson, Governor of Delaware (Apr. 4, 1927) ..... 1947

Letter from Harris Samonisky to Robert P. Robinson, Governor of Delaware (Apr. 4, 1927) ..... 1949

Memorandum Relative to Controversy Respecting Fishing in the Delaware River (May 6, 1938) ..... 1953

Letter from H. J. Burlington to Mr. Solan (May 24, 1938) ..... 1956

Letter from B. S. Quadling and C. J. Gehring, Fortescue Captains' Association, Inc., to A. Harry Moore, Governor of New Jersey (May 27, 1938) ..... 1959

Letter from Thelma A. Parkinson to A. Harry Moore, Governor of New Jersey (June 1, 1938) ..... 1961

Editor, *Fisherman Complains*, Evening News (Undated) ..... 1963

Letter to David T. Wilentz, Attorney General of New Jersey (June 15, 1938) ..... 1965

Appointment of P. Warren Green as a Member of Delaware Commission to Study Uniform Laws Relative to Fishing (June 23, 1938) ..... 1968

Letter from Richard C. McMullen, Governor of Delaware, to P. Warren Green, Attorney General of Delaware (June 17, 1938) ..... 1971

Letter from P. Warren Green, Attorney General of Delaware, to Charles L. Terry, Secretary of State, Delaware (June 28, 1938) ..... 1973

Letter from New Jersey Board of Fish and Game Commissioners, to A. Harry Moore, Governor of New Jersey (June 6, 1938) ..... 1977

Letter from Richard C. McMullen, Governor of Delaware, to P. Warren Green, Attorney General of Delaware (June 24, 1938) ..... 1979

Letter from A. Harry Moore, Governor of New Jersey, to Richard C. McMullen, Governor of Delaware (June 29, 1938) ..... 1981

Letter from Charles L. Terry, Secretary of State, Delaware, to P. W. Green, Attorney General of Delaware (Aug. 5, 1938) ..... 1983

Letter from P. W. Green, Attorney General of Delaware, to Charles L. Terry, Secretary of State, Delaware (Aug. 9, 1938) ..... 1985

Letter from Percey Warren Green, Attorney General of Delaware, to Delaware Game and Fish Commission (Aug. 18, 1938) ..... 1987

Letter from George C. Warren, New Jersey Board of Fish and Game Commissioners, to A. Harry Moore, Governor of New Jersey (Feb. 14, 1939) ..... 1992

Final Report of the New Jersey Board of Fish and Game Commissioners (Feb. 14, 1939) ..... 1997

Letter from John Solan to Chas Besore (Undated) ..... 2001

S. 201, State of New Jersey (introduced, Feb. 27, 1939) ..... 2003

Letter from Attorney General of Delaware to Delaware Board of Game and Fish Commissioners (Sept. 11, 1940) ..... 2017

Letter from Walter H. Bacon, Esq. to George S. Silzer, Governor of New Jersey (Dec. 7, 1925) ..... 2025

Walter H. Bacon, New Jersey-Delaware Boundary Line (Dec. 7, 1925) ..... 2026

Letter from George S. Silzer, Governor of New Jersey, to Edward L. Katzenbach, Attorney General of New Jersey (Dec. 30, 1925) ..... 2045

Letter from Edward L. Katzenbach, Attorney General of New Jersey, to George S. Silzer, Governor of New Jersey (Jan. 4, 1926) ..... 2046

Letter from George S. Silzer, Governor of New Jersey, to Robert P. Robinson, Governor of Delaware (Dec. 29, 1925) ..... 2047

Third Annual Message of New Jersey Governor George S. Silzer to the Legislature of New Jersey (transcript at 14-15) (Jan. 12, 1926) ..... 2050

Letter from George S. Silzer, Governor of New Jersey, to Robert P. Robinson, Governor of Delaware (Jan. 18, 1926) ..... 2054

35 Del. Laws ch. 243 (1927) ..... 2055

Journal of the Senate of the State of New Jersey, pp. 812-14 (Mar. 17, 1927) ..... 2057

Letter from Clarence A. Southerland, Attorney General of Delaware, to Robert P. Robinson, Governor of Delaware (Dec. 26, 1928) ..... 2061

Letter from Commissioners of the State of Delaware to C. Douglass Buck, Governor of Delaware (Apr. 29, 1929) ..... 2063

Letter from Robert H. Richards to Walter H. Bacon (Dec. 27, 1928) ..... 2069

Letter from Robert H. Richards to Robert P. Robinson, Governor of Delaware (Dec. 27, 1928) ..... 2071

Letter from Robert H. Richards to Robert P. Robinson, Governor of Delaware (Dec. 27, 1928) ..... 2073

Letter from Robert P. Robinson, Governor of Delaware, to Capt. Jas. W. Wilcutts (Dec. 28, 1928) ..... 2075

Letter from Robert P. Robinson, Governor of Delaware, to Robert H. Richards (Dec. 28, 1928) ..... 2077

Letter from William A. Stevens, Attorney General of New Jersey, to Morgan F. Larson, Governor of New Jersey (June 21, 1929) ..... 2079

William A. Stevens, Attorney General of New Jersey, Report Concerning Delaware River Diversion Case, Beach Pollution Case, New Jersey-Delaware Boundary Case (June 21, 1929) ..... 2081

*Delaware Gets Wharfage on Jersey Shore*, Evening Journal, at 1 (Feb. 6. 1934) ..... 2095

Letter from Duane E. Minard to S. Rusling Leap, New Jersey State Senator (May 2, 1934) ..... 2098

Letter from Duane E. Minard to S. Rusling Leap, New Jersey State Senator (July 20, 1934) ..... 2101

Letter from Clarence A. Southerland to P. Warren Green, Attorney General of Delaware (Feb. 12, 1935) ..... 2105

*U.S. Supreme Court Finally Fixes Del.-Jersey Boundary*, Evening Journal, at 25 (June 4, 1935) ..... 2108

Letter from Clarence A. Southerland to Percey Warren Green, Attorney General of Delaware (Apr. 18, 1935) ..... 2111

Letter from Duane E. Minard to Clarence A. Southerland (Apr. 17, 1935) ..... 2112

Letter from Percey Warren Green, Attorney General of Delaware, to Clarence A. Southerland (Apr. 29, 1935) ..... 2114

Letter from Clarence A. Southerland to Percey Warren Green, Attorney General of Delaware (July 3, 1935) ..... 2116

Letter from Percey Warren Green, Attorney General of Delaware, to Richard C. McMullen, Governor of Delaware (Dec. 27, 1938) ..... 2132

40 Del. Laws ch. 119 (1935) ..... 2137

Letter from Harold G. Hoffman, Governor of New Jersey, to C. Douglass Buck, Governor of Delaware (Apr. 16, 1935) ..... 2141

Letter from S. Rusling Leap, New Jersey State Senator, to Percey Warren Green, Attorney General of Delaware (Feb. 7, 1935) ..... 2147

Letter from Percey Warren Green, Attorney General of Delaware, to Clarence A. Southerland (Feb. 8, 1935) ..... 2149

Letter from S. Rusling Leap, New Jersey State Senator, to Percey Warren Green, Attorney General of Delaware (Feb. 11, 1935) ..... 2152

Letter from S. Rusling Leap, New Jersey State Senator, to Percey Warren Green, Attorney General of Delaware (Mar. 1, 1935) ..... 2154

Letter from S. Rusling Leap, New Jersey State Senator, to Percey Warren Green, Attorney General of Delaware (Apr. 5, 1935) ..... 2155

Letter from Percey Warren Green, Attorney General of Delaware, to S. Rusling Leap, New Jersey State Senator (Apr. 6, 1935) ..... 2157

40 Del. Laws ch. 179 (1935) ..... 2159

House Substitute for House Bill No. 164 (Del. 1935) (Apr. 12, 1935) ..... 2164

Letter from C. Douglass Buck, Governor of Delaware, to Robert H. Richards (Apr. 24, 1935) ..... 2167

Letter from S. Rusling Leap, New Jersey State Senator, to Percey Warren Green, Attorney General of Delaware (May 17, 1935) ..... 2169

Letter from Percey Warren Green, Attorney General of Delaware, to S. Rusling Leap, New Jersey State Senator (May 18, 1935) ..... 2171

Letter from Percey Warren Green, Attorney General of Delaware, to C. Douglass Buck, Governor of Delaware (June 10, 1935) ..... 2173

Letter from Clarence A. Southerland to C. Douglass Buck, Governor of Delaware (July 8, 1935) ..... 2175

Letter from Secretary to C. Douglass Buck, Governor of Delaware, to Percey Warren Green, Attorney General of Delaware (July 11, 1935) ..... 2177

Letter from Clarence A. Southerland to Bella A. Stroud, Secretary to C. Douglass Buck, Governor of Delaware (July 15, 1935) ..... 2179

Letter from Clarence A. Southerland to Percey Warren Green, Attorney General of Delaware (Sept. 23, 1935) ..... 2181

Letter from Percey Warren Green, Attorney General of Delaware, to John C. H. Lee, Lieut. Col., Corps of Engineers, U. S. Engineer Office (Sept. 24, 1935) ..... 2185

Letter from John C. H. Lee, Lieut. Col., Corps of Engineers, U.S. Engineers Office, to Percey Warren Green, Attorney General of Delaware (Sept. 26, 1935) ..... 2186

Letter from Percey Warren Green, Attorney General of Delaware, to John C. H. Lee, Lieut. Col., Corps of Engineers, U. S. Engineer Office (Oct. 1, 1935) ..... 2187

Letter from Percey Warren Green, Attorney General of Delaware, to C. Douglass Buck, Governor of Delaware (Oct. 3, 1935) ..... 2188

Letter from Percey Warren Green, Attorney General of Delaware, to Clarence A. Southerland (Oct. 17, 1935) ..... 2189

Letter from T. G. Hilliard to Percey Warren Green, Attorney General of Delaware (Oct. 28, 1935) ..... 2191

Letter from Percey Warren Green, Attorney General of Delaware, to T. G. Hilliard (Nov. 9, 1935) ..... 2193

Letter from T. G. Hilliard to Percey Warren Green, Attorney General of Delaware (Sept. 24, 1936) ..... 2195

Letter from T. G. Hilliard to Percey Warren Green, Attorney General of Delaware (Oct. 7, 1936) ..... 2197

Letter from Percey Warren Green, Attorney General of Delaware, to C. R. Mudge (Feb. 11, 1937) ..... 2199

Letter from Edward W. Cooch, Lieut. Governor of Delaware, to Percey Warren Green, Attorney General of Delaware (Mar. 9, 1937) ..... 2201

Report of Commissioners, State of Delaware (Mar. 4, 1937) ..... 2202

Reply Brief of Defendant on Exceptions to Report of Special Master, *New Jersey v. Delaware*, Nos. 13 & 19, Original.....2207

Stipulated Record Testimony, *New Jersey v. Delaware*, No. 13, Original.....2253

Riparian Grant A.....2261

Riparian Grants B & C.....2263

Diagram.....2267

Riparian Grant H.....2269

Riparian Grants P & Q.....2273

Riparian Grant V.....2277

Legislative Grant 1c.....2279

# DELAWARE COMMISSIONERS

# DE-NJ FISHERIES COMPACT

# MINUTE BOOK 1905-1908

907 Market Street,

Wilmington, Delaware, April 1,1905.

PRESENT:

Alexander B. Cooper, Walter H. Hayes and William S. Hilles, the Commissioners named in an Act of the General Assembly of the State of Delaware, approved March 23rd, A.D. 1905, entitled "An Act to appoint three Commissioners on the part of the State of Delaware, to confer with three Commissioners to be appointed on the part of the State of New Jersey, in accordance with the provisions of the compact between the States of New Jersey and Delaware, respecting the Delaware River and Bay, defining their duties and powers and appropriating money to pay the expenses thereof.

On motion of Mr. William S. Hilles, Alexander B. Cooper, Esquire, was elected Temporary Chairman, and on a similar motion Walter H. Hayes, Esquire was elected Temporary Secretary. Whereupon the Temporary Chairman declared that a Temporary Organization had been effected, and the Secretary then read the above entitled Act in the words, letters and figures following, to wit:

An Act appointing Three Commissioners on the part of the State of Delaware, to confer with Three Commissioners to be appointed on the part of the State of New Jersey, in accordance with the provisions of the compact between the States of New Jersey and Delaware respecting the Delaware River and Bay, defining their duties and powers and appropriating money to pay the necessary expenses thereof.

Whereas the Senate and House of Representatives of the State of Delaware in General Assembly met have passed an act entitled "An Act to Ratify and Confirm a Compact or Agreement between the states of New Jersey and Delaware, respecting the Delaware River and Bay, and to authorize the execution thereof," which act hath received the approval of the Governor of the State of Delaware; and the Legislature of the State of New Jersey hath passed an act of the same title and of the same purport, which act hath received the approval of the Governor of the State of New Jersey;

And Whereas the said Compact or agreement between said two states hath been duly signed and executed in duplicate originals by Edward C. Stokes, Robert H. McCarter, Franklin Murphey and Chauncey G. Parker, commissioners on the part of the State of New Jersey, and by Preston Lea, Robert H. Richards, Herbert H. Ward and George H. Bates,

commissioners on the part of the State of Delaware, one of which duplicate originals hath been retained by said Commissioners of Delaware to be delivered to the Governor of that State and the other of which duplicate originals hath been retained by the Commissioners of New Jersey to be delivered to the Governor of that State;

And Whereas, it is provided and agreed by said compact or agreement between said States, among other things, as follows:

"Article IV. Immediately upon the execution hereof the Legislature of the State of New Jersey shall appoint three Commissioners to confer with three Commissioners to be immediately appointed by the General Assembly of the State of Delaware for the purpose of drafting uniform laws to regulate the catching and taking of fish in the Delaware River and Bay between said two State, which said Commissioners for each State respectively shall, within two years from the date of their appointment, report to the Legislature of each of said States the proposed laws so framed and recommended by said joint Commission. Upon the adoption and passage of said laws so recommended by the respective Legislature of said two States said laws shall constitute

the sole laws for the regulation of the taking and catching of fish in the said river and Bay between said States. Said laws shall remain in force until altered, amended or repealed by concurrent legislation of the said two States. Said commissioners shall also ascertain the dividing line between said river and Bay, and upon each of the shores of said two States, where said dividing line extended shall intersect the same, shall, at the joint expense of said States, erect a suitable monument to mark the said dividing line. Said dividing line between said monuments shall be the division line between the said river and Bay for the interpretation of and for all purposes of this compact, and of the concurrent legislation provided for therein.

The faith of said contracting States is hereby pledged to the enactment of said laws so recommended by said commissioners, or to such concurrent legislation as may seem judicious and proper in the premises to the respective Legislatures thereof.

Each state shall have and exercise exclusive jurisdiction within said river to arrest, try and punish its own inhabitants for violation of the concurrent legislation relating to fishery herein provided for."

"Article V. All laws of said States relating to the regulation of fisheries in the Delaware river not inconsistent with the right of common fishery hereinabove mentioned, shall continue in force in said respective States until the enactment of said concurrent legislation as herein provided."

Now Therefore, in pursuance of the terms of said Compact,

Be It Enacted by the Senate and House of Representatives of the State of Delaware, in General Assembly met

Section 1. That Alexander B. Cooper, William S. Hilles and Walter H. Hayes, be and they are hereby appointed Commissioners on the part of the State of Delaware, to confer with like Commissioners appointed or to be appointed by the Legislature of the State of New Jersey, to do and perform all the duties, acts, matters and things required and stipulated in the said Compact or Agreement hereinabove mentioned, to be by them done and performed. That in and upon said Commissioners are hreeby vested and conferred all powers and authorities necessary and convenient for the full and complete performance of all the duties, acts,matters and things by this Act imposed upon them. Said Dela-

ware Commissioners shall fill any vacancies occurring in the membership of said Delaware Commission, by the selection of some other suitable citizen or citizens of the State of Delaware.

Section 2. Said Commissioners shall, on or before the first day of June A.D. 1905, organize by the election from their number of a president and secretary. The presedent so elected shall be the presiding officer at all separate meetings of said commissioners, and the general executive head of said commission. The Secretary so elected shall conduct the correspondence of said commission under its direction and keep a record of all the meetings, acts and proceedings of said Delaware Commissioners and of all meetings, acts and proceedings of the joint commissioners in the performance of the duties, acts matters and things stipulated for the said compact.

Said Delaware Commissioners shall have power to cause the production of books, papers and other things, and to summon before themselves, or before the said joint Commission, witnesses, expert and otherwise, the testimony of which, in the opinion of said Commissioners, shall be material to enable them to justly and fully perform the duties on them hereby imposed. All witnesses may be summoned upon warrants therefor signed by the President of

said Delaware Commission, and shall be paid for attendance and mileage, the fees usually paid in the State of Delaware for the attendance of witnesses at the trial of civil causes in the Superior Court of said State. The attendance of witnesses before said Delaware Commission or before said joint Commission may be compelled by attachments issued by said Delaware Commission to the Sheriff of any County in the State of Delaware; said attachments shall be signed by the President of said Delaware Commission, and countersigned by the Secretary thereof, and shall be executed and returned by the Sheriff to whom the same shall be directed. Each of said Commissioners shall have power and authority to administer oaths or affirmations to witnesses appearing before them or before said joint commission.

Section 3. The sum of fifteen hundred dollars is hereby appropriated out of the monies in the Treasury of this State, not otherwise appropriated, to pay the necessary expenses attendant upon the execution of the duties of said Commissioners. Said monies shall be drawn from the said Treasury, from time to time as occasion shall demand, upon the warrant of the Governor of this State drawn upon the State Treasurer, upon the certificate in writing to said Governor signed by the President and countersigned by the Secretary of said Delaware Commission,

giving the details of such expenditures made or to be made as aforesaid.

Passed at Dover, Del.,

March 21, A. D. 1905.

Wm. D. Denney,

Speaker of the House of Representatives.

Isaac T. Parker,

President of the Senate,

Approved this the twenty-third day of March A.D.1905.

Preston Lea,

Governor.

Each of the said Commissioners took and subscribed the Constitutional oath, each of which oaths is in the words, letters and figures following, viz:-

State of Delaware, }
New Castle County. } ss.

BE IT REMEMBERED, That on this First day of April, A. D. nineteen hundred and five, personally came before me, Clifford V. Manneering, a Notary Public for the County and State aforesaid, Alexander B. Cooper, who being by me duly sworn according to law, says: I do solemnly swear that I will support the Constitution of the United States and the Constitution of the State of Delaware, and that I will faithfully discharge the duties of the office of Delaware Commissioner under the Act of Assembly approved the twenty third day of March, A. D. 1905, according to the best of my ability. So help me God.

Sworn to and Subscribed before me the day and year aforesaid. }

Alex. B. Cooper

Clifford V. Manneering
Notary Public.



DE04687

State of Delaware, )
New Castle County. ) ss.

BE IT REMEMBERED, That on this First day of April, A. D. nineteen hundred and five, personally came before me, Clifford V. Manneering, a Notary Public for the County and State aforesaid, Walter H. Hayes, who being by me duly sworn according to law, says: I do solemnly swear that I will support the Constitution of the United States and the Constitution of the State of Delaware, and that I will faithfully discharge the duties of the office of Delaware Commissioner under the Act of Assembly approved the twenty third day of March, A. D. 1905, according to the best of my ability. So help me God.

Sworn to and Subscribed before me the day and year aforesaid. ) Walter H Hayes

Clifford V Manneering
Notary Public.

State of Delaware, }
New Castle County. } ss.

BE IT REMEMBERED, That on this First day of April, A. D. nineteen hundred and five, personally came before me, Clifford V. Mannering, a Notary Public for the County and State aforesaid, William S. Hilles, who being by me duly sworn according to law, says: I do solemnly swear that I will support the Constitution of the United States and the Constitution of the State of Delaware, and that I will faithfully discharge the duties of the office of Delaware Commissioner under the Act of Assembly approved the twenty third day of March, A. D. 1905, according to the best of my ability. So help me God.

Sworn to and Subscribed before me the day and year aforesaid. } Wm. S. Hilles

Clifford V. Mannering
Notary Public.

On motion of Mr. Hilles, duly seconded, it was resolved that the Commissioners proceed to effect a permanent organization. Alexander B. Cooper Esquire, was then nominated and unanimously elected President of said Commission, and Walter H. Hayes, Esquire, was nominated and unanimously elected Secretary of said Commission. On motion of Mr. Hilles, duly seconded, the name of "Delaware Commissioners (Dealware-New Jersey Fisheries Compact)" was adopted for the name of this body.

Upon motion of Mr. Hilles, duly seconded, it was resolved that the Secretary procure necessary books, papers, stationery, postage and other supplies. Upon motion, duly seconded it was resolved that the Secretary is hereby instructed to notify the Governor of the organization of this Commission.

Mr. Hilles moved that no money be paid ~~in~~ out for any purpose by this Commission, except by check, signed by the President and countersigned by the Secretary, and that the Equitable Guarantee and Trust Company, be designated as the depository bank of the commissioners, which motion, being duly seconded, was unanimously adopted.

Upon motion of Mr. Hayes, duly seconded, it was resolved that the following form of certificate be used, in certifying in writing to the Governor, for the purpose of obtaining the necessary money to pay the expenses of the Commissioners, viz:-

No._____

Wilmington, Delaware, 190__

To the Governor of the State of Delaware:

The Delaware Commissioners (Delaware-New Jersey Fisheries Compact), hereby certify that they have occasion, at this time, to use the sum of

dollars, for the following expenditures, made or to be made, by them, viz:

President.

Countersigned

Secretary.

Mr. Hilles moved that these Commissioners shall meet upon the call of the President, in writing, at such time and place as he shall therein specify, whenever occasion shall require a meeting, which motion, duly seconded, was unanimously adopted.

On motion, duly seconded, the meeting adjourned.

Secretary.



DE04692

907 Market Street.

Wilmington, Delaware, Nov., 9, 1905.

11 o'clock A.M.

The Commissioners met pursuant to the following notice in writing, of the President, viz:-

"October 8, 1905.

A meeting of the Delaware Commissioners (Delaware-New Jersey Fisheries Compact), will be held at the office of the Commissioners, 907 Market street, in this city on Thursday, November 9, 1905, at 11 o'clock A.M."

PRESENT: Messrs Cooper, Hilles and Hayes.

Minutes of the last meeting were read and approved.

Secretary presented bills of Charles M. Smith, Printing and Stationery Company, amounting to $41.75; of Joseph L. Cahall, Secretary of State, amounting to $4.00, and his own bill for postage, amounting to $1.00, making total amount $46.75.

On motion of Mr. Hilles, the bills were allowed as correct, and a requisition for $46.75 was directed to be made on the Governor.

Upon his further motion the Secretary was directed to pay the above bills upon the receipt of the money from the State Treasurer.

Mr. Hilles moved that the Secretary communicate with the New Jersey Commissioners for the purpose of securing a conference or meeting with them, to discuss the question whether or not the several Commissioners shall act until Congress of the United States had approved of the Compact, which motion being duly seconded, was adopted unanimously.

Mr. Hayes moved that Mr. Hilles be requested to see the Attorney General and obtain his official opinion for the use of this Commission, on the questions:

1.- Whether the sum of Fifteen Hundred Dollars appropriated by the Legislature for the use of this Commission, came under the provisions of the General Appropriation Bill for the year 1905.

2.- Whether or not this Commission has power to take any official action in reference to the objects for which it was appointed, before the approval of the Delaware-New Jersey Compact by Congress.

Which motion, being duly seconded, was unanimously adopted.

On motion the Commission adjourned, to meet when called together in writing, by the President.

Secretary.

1510 Walnut Street, Philadelphia, Pa.

December 15, 1905,

2.30 P.M.

PRESENT:

Hon. William J. Bradley, and Hon. J. Boyd Avis, Commissioners of the State of New Jersey; Hon. A. B. Cooper, William S. Hilles and Walter H. Hayes, Commissioners of the State of Delaware.

Mr. Bradley called meeting to order and moved that A. B. Cooper, be Chairman of the Joint Commission, which motion being duly seconded, was put by Mr. Bradley and unanimously adopted.

Mr. Hilles moved that Mr. Avis be the Secretary of the Joint Commission, which motion being duly seconded, was adopted. Mr. Avis was declared Secretary of the Joint Commission.

The Compact, as printed in the Laws of Delaware and the Laws of New Jersey, the several Acts of the Legislature of the State of New Jersey, and the several Acts of Assembly, were read by each party and found to be substantially correct.

Secretary Bradley called attention to the fact that an Island on the New Jersey shore about three miles long and fifteen hundred feet in width near Stony Point and Alloway Creek, and stated that it was not mentioned in the Compact or any of the Acts of the Legislature or Assembly.

The matter was considered by the Commissions and further consideration of it was postponed.

Mr. Hilles offered the following Resolution:

RESOLVED THAT the Governor of the State of Delaware and the Governor of the State of New Jersey are requested to ask Congress to defer the ratification of the Compact entered into between the State of Delaware and State of New Jersey until the commission shall make further request.

This Resolution was adopted after discussion as to agreement on joint fishing laws, the members of the commission believing that it would be well to defer action on the compact until some understanding could be arrived at on this subject by the members of the two Commissions.

Mr. Avis moved that Mr. Hilles be the Committee upon rules, to report at the next meeting of the Joint Commission, which motion being duly seconded, was adopted.

Mr. Hilles moved that when the Joint Commission adjourn, it be to meet at the call of the Chairman, who shall call a meeting of the Joint Commission upon the request of the President of either said Commissions.

On motion of Mr. Hilles, Joint Commission adjourned.

Walter W. Haggerty

Secretary for Delaware Commission.

907 Market Street.

Wilmington, Delaware, April 4, 1906.

2 o'clock P. M.

The Commissioners met pursuant to the following notice in writing, of the President, viz:-

"April 3, 1906.

A meeting of the Delaware Commissioners (Delaware-New Jersey Fisheries Compact), will be held at the office of the Commissioners, 907 Market Street, in this city on the 4th day of April, 1906, at 2 o'clock P. M."

PRESENT: Messrs Cooper, Hilles and Hayes.

The President stated the object of the meeting was to consider the advisibilityofholding public meetings in Kent and Sussex County's and other places.

After discussion on motion of Mr. Hilles, it was decided to hold a public meeting in the Town of Lewes on Friday the 13th day of April at 8 o'clock P. M. and in Dover on Saturday morning at 10 o'clock A. M.

Mr. Hayes moved, that the re quisition be drawn on the Governor for $200 for the purpose of paying the costs of public meetings at Newcastle, Delaware City, Lewes and Dover,

for typewriting copies of existing laws and traveling expenses of the Commissioners &c., which motion, seconded by Mr. Hilles prevailed.

On motion of Mr. Hilles duly seconded, it was decided that a check be drawn in favor of Walter H. Hayes for the sum of forty dollars($40) to pay the expenses of the Commissioners, Stenographer &c., in attending Lewes and Dover public meetings.

On motion the meeting adjourned.

Walter H. Hayes
Secretary.

907 Market Street.

Wilmington, Delaware, May 2, 1906.

11 o'clock A. M.

The Commissioners met pursuant to the following notice in writing of the President, viz:-

"April 30, 1906.

A meeting of the Delaware Commissioners (Delaware New-Jersey Fisheries Compact), will be held at the office of the Commissioners, 907 Market Street, in this City on the 2nd day of May 1906, at 11 o'clock A. M. "

Present: Messrs Cooper, Hilles and Hayes.

The minutes of the two previous meetings were read and approved. The President stated that Public meetings had been held in New Castle on March 14th 1906, in Delaware City, March 16th, 1906, in Lewes April 13th, 1906, and in Dover, April 14th, 1906, and at the office of the Commissioners in Wilmington on April 26, 1906.

The four first mentioned meetings, were meetings principally of Fishermen, and much interest was manifested therein by the Fishermen of the State, that the meetings had been successful and that the information furnished by the Fishermen, at their meetings would aid greatly in the matter of drafting the proposed laws for regulating the taking and

catching of fish in the Delaware River and Bay.

That the last mentioned meeting was held at the request of the parties engaged in the menhaden fishing in the Delaware Bay ~~and River~~ and was addressed by Mr. Walter E. Hatheway on behalf of the American Fishery Company of which Company he was the Secretary. That all the proceedings of said meetings had been taken in shorthand by Mr. Charles G. Guyer and were reduced to typewriting, a copy of the report of which meetings had been furnished each of the Commissioners and that there was filed with the Secretary a full and complete report of all the proceedin s of said meetings.

The question of where the boundary should be fixed between the Bay and the River was discussed and the Commissioners decided to call the matter to the attention of the Joint meeting on May the 8th next.

The President submitted the following bills,
Florence Preston, making four typewritten copies of existing laws in relating to fishing in the Bay and River, $5.
P. J. Mulligan, Hall rent for meeting at Delaware City $5.
Bennett Lancasters rent for Hall meeting at New Castle $1.50.
The Bross-Willard Printing Company, printing posters of the Delaware City and New Castle Meetings, $3.50.
Mercantile Printing Company, printing posters of the Lewes and Dover meetings, $4.60.
Charles G. Guyer, for paper and backing on which to write and bind the typewritten copies of laws, $3.05, and Charles G.

Guyer for stenographic services at the above mentioned Public meetings and for his expenses to New Castle and Delaware City $123.50.

Mr. Hayes reported that the expenses of the Commissioners and Stenographer in attending the Lewes and Dover meetings were $33.49, made up as follows;
Railroad expenses from Wilmington and return, $26.14, Telegram $.50, Hotel at Lewes, $6 and four lunches at Dover $.85 which had been paid by him out of the funds of the Commission as directed at the last meeting.

On motion of Mr. Hilles duly seconded the above bills were approved and ordered paid and the President and Secretary were instructed to draw checks to the order of the respective praties for the respective amounts.

The President was requested to ascertain the probable cost of a suitable monument to be placed on the Delaware shore indicating the boundary between the River and Bay.

On motion adjourned.

Harry W. Hayes
Secretary.

1516 Walnut Street, Philadelphia, Pa.

May 8th, 1906,

2.30 P. M.

PRESENT: Hon. William J. Bradley, and Hon. J. Boyd Avis, Commissioners of the State of New Jersey; Hon. A. B. Cooper, William S. Hilles and Walter H. Hayes, Commissioners of the State of Delaware.

President Cooper of the JointCommission, called the meeting to order. The minutes of the last meeting were read and approved.

Mr. Hilles, Committee on rules, reported that he had considered the matter of rules and concluded that no rules were required, except a standing rule in relation to the manner of calling meetings of the Joint Commission; he reported further that the motion adopted at the last Joint meeting as follows;

"That when the Joint Commission adjourned, it be to meet at the call of the chairman, who may on his own initative call a meeting of the Joint Commission and shall call such meeting upon the request of said Commissioners,"

was favored by him as a standing rule and so reported it from the said Committee.

On motion of Mr. Hayes, duly seconded by Senator Bradley the report of the Committee on rules was adopted.

The President laid before the Commission the matter of the ratification of the Compact. The President stated

that a Joint Resolution of Congress had been presented to the Senate of the United States, ratifying said Compact, and had been adopted by the Senate and sent to the House of Representatives. Upon receiveing information of the above facts, the Delaware Commission had communicated with Congressman Burton from Delaware and secured his aid and the aid of Senator Allee, to have further action on the ratification, postponed, that in this, Congressman Loudenslager of New Jersey had assisted Congressman Burton. That he, the President had immediately communicated with Senator Bradley of the New Jersey Commission, who heartily concurred in the action taken by the Delaware Commission and as he understood it, Senator Bradley expressed the opinion of the New Jersey Commissioners. That bearing upon the ratification of the Compact by Congress was the disposition of the case of the State of New Jersey vs. the State of Delaware, pending in the Supreme Court of the United States which case now stands continued until the first day of October Term next of said Supreme Court, at which, from present information, the case must be finally disposed of.

The commission then decided that it was most important that uniform fishing laws for the Delaware Bay and River should be agreed upon, if possible, before Congress adjourns.

Mr. Hayes, called attention to the matter of the monuments to be erected on the Delaware and New Jersey shores marking the boundary line between the Bay and the River and stated that the time was getting short for the erection of

said monuments. The President produced photographs of the monument erected at New Castle on the site of Old Fort Casimer and stated that he had made effort to ascertain the probable cost of two monuments somewhat larger but of the same material to be erected, one on the Delaware shore and one on the New Jersey shore and stated that the contractor, Mr. Hunter, would take the contract to furnish, finish and erect the two monuments for $500.

There was considerable discussion as to where the Joint Commission would fix the boundary line between the Bay and the River and the Joint Commission finally decided to go upon the lands in that neighborhood on or about June first.

Mr Hilles invited the Joint Commission to be his guests on his yacht down the River and Bay, which invitation was accepted.

The New Jersey Commissioners through Senator Bradley, reported that they had received all the information they could on the subject of the laws to be drawn and President Cooper on behalf of the Delaware Commission reported the same. The provisions of Delaware existing law and existing New Jersey law in relation to fishing in the river and Bay were compared and found to differ very little. The commission them discussed at length the matter of the uniform laws and the procedure to enforce them and decided that each commission draft a law and that they be submitted to a meeting of the Joint Commission as soon as possible.

President Cooper stated the views of the Delaware Fishermen as gathered from the meetings held by that Commission and Senator's Avis and Bradley stated the views of the New Jersey Fishermen which they had gained by similar methods. These views were found to be practicably harmonious, except in relation to stake nets and menhaden fishing.

On motion adjourned.

Walter N. Haag
Secretary.



DE04706

Friday, June 22nd, 1906.

All the Delaware Commissioners, accompanied by President William J. Bradley and Secretary J. Boyd Avis of the New Jersey Commission, met at Delaware City and proceeded on the tug-boat Taurus down the River to ascertain and fix the boundary line between the Delaware River and the Delaware Bay. After landing on the Delaware shore at several points and on the Jersey shore near the mouth of Hope Creek, it was finally decided by the Joint Commission that a monument should be erected on the Delaware Shore at or near Liston's Point, and that a similar monument should be erected on the Jersey shore near the mouth of said Creek and that a straight line drawn through the centre of said monument across the body of water intervening, should be the line dividing the Delaware River from the Delaware Bay.

It was further agreed by the Joint Commission that the uniform laws should be drafted at once and immediately thereafter, steps should be taken to erect the above mentioned monuments with their proper inscriptions.

The Commissioners returned to Wilmington at Six o'clock.

-30-

The Commission by a unanimous vote adopted a resolution expressing its thanks to the Wilmington City Railway Company, Mr. Samuel S. Hoff Superintendent thereof, The Wilmington New Castle and Southern Railway Company and Mr. Chauncy P. Holcomb Superintendent thereof, for their respective kindness and courtesy in transporting their Commission to and from Delaware City.

Secretary.

907 Market Street,

Wilmington Del., Sept., 4, 1906.

The Commissioners met pursuant to the following notice in writing, of the President, viz:

907 Market Street,

City.

Dear Sir:-

Your prompt attendance, at a meeting of the Del. & N. J. Commissioners &c, to be held at my office to-morrow, (Tuesday) at 11o'clk. A. M. is hereby requested.

Yours truly,

Alex. B. Cooper,

Sept. 3. 1906. Pres.

PRESENT: Messrs. Cooper, Hilles and Hayes.

Minutes of the meetings of April 4, May 2nd, and June 22nd, were read and approved.

President Cooper reported an interview between him and Robert Pennington, Esq., Attorney for the Fisheries Company, in reference to the proposed legislation in reference to the menhaden fishing and stated that he had received the following letter from Mr. Pennington which was read and ordered filed:

August 21, 1906.

Alexander B. Cooper, Esquire,

907 Market Street,

Wilmington, Delaware.

Dear Sir:

In reply to your inquiry as to the effect upon the catch of fish by The Fisheries Company in the event of the season closing on September 1st, I beg to advise you that I submitted your inquiry to the General Manager of The Fisheries Company and I am to-day in receipt of a letter from him in which he states that if the season were closed on September 1st it would mean that there would be no profitable fishing in Delaware Bay. It would, of course, mean the closing of the Lewes Plant. Take the present season for an instance; we have not as yet caught any fish in Delaware Bay and it would not be necessary for us to license any boats for that purpose but as evidence of our desire to be fair to the State of Delaware, we have instructed eight of the steamers to take out licenses for fishing in Delaware Bay. These licenses cost $100.00 each and the fish caught thus far will not pay for the licenses. We are in hopes, however, that during the month of September the fish on their way South from Maine may strike in the Bay and we will be able to recoup our losses. The Lewes plant has been running all summer but the fish have all been caught in Long Island Sound and along the North Jersey coast. We have kept the Lewes plant running for the reason that citizens of that Town have shown a kindly disposition towards our company and we desire to reciprocate by keeping that profitable industry running there as long as possible. In order to do this it has been necessary for us to close down our plant at Crab Island, Little Egg Harbor, New Jersey. I think that you and the other Commissioners are convinced that The Fisheries Company under its present management intends to meet your wished and our only request is that you take into consideration the fact that the profits of a very large industry are absolutely at your mercy and that if you were to stop the fishing in September you would do something that no other State on the Atlantic Coast has ever thought of doing.

If you desire any more facts or any more information I will gladly furnish the same.

Yours truly,

Robert Penington,
General Counsel.

-33-

A rough draft of the uniform Fishing Laws as drawn by the Commission was presented and discussed.

On motion of Mr. Hilles, it was decided that when this meeting adjourned, it adjourn to meet Tuesday September 11th, 1906 at 2.30 P. M.

Mr. Hayes reported that he had written Mr. Albert W. Cummings the following letter in reference to land at Listons Point viz:

Wilmington, Del., July 19, 1906.

Mr. Albert W. Cummings,

Morning News Office,

Wilmington, Del.

Dear Sir:-

The above Commission is charged with the duty, among other things, of ascertaining and fixing the line dividing the Delaware Bay from the Delaware River, and also with the duty of erecting on the Delaware Shore at said dividing point, a suitable monument to mark it. The Commission has investigated the matter and has tentatively fixed upon a point at or near Liston's Point. The Commission deem it advisable to secure title to the State of Delaware for a small piece of ground upon which said monument will be erected. We are informed that you are one of the owners of the land at Liston's Point. Will you please give me such information as will enable the Commission to investigate the title of said land and let me know whether or not the land can be purchased or acquired of the State.

I should think a piece of land not more than Twenty-five feet square with the right of going to and fro for the purpose of erecting, repairing and keeping in condition of said monument would be all that would be required.

Yours respectfully,
Walter H. Hayes.

And stated that Mr. Cummings had informed him the land belonged to him and his sister and he did not think there would be any difficulty in acquiring the land.

Mr. Hilles moved that the Secretary ascertain from bidders in Wilmington, Smyrna and New Castle, the cost of constructing and erecting on a good cement foundation, two monuments of Brandywine Granite with an inscription thereon in letters, said monument to be one foot and six inches square at the base tapering to one foot square at the top, to be eight feet and four inches high with the top bevelled to a point; the inscription to include about 450 letters. The concrete foundation to be about three feet deep and laid on good plank bottom, which motion being duly seconded it was adopted. Mr Hayes moved that a requisition be drawn on the Governor for $73.85 to pay bills and expenses of trip down the River to mark the boundary between the Bay and the River, said bill being as follows;

Charter of Tug Taurus $45, A. L. Ainscow's bill for lunch &c., $28.85, which motion being duly seconded was adopted.

Upon motion the Commission then adjourned.

Walter H Hayes
Secretary.

907 Market Street,

Wilmington, Del., Sept. 11, 1906.

2.30 P. M.

PRESENT: Messrs. Cooper, Hilles and Hayes.

The Commission met pursuant to adjournment and discussed and prepared uniform laws.

Adjourned to meet September 12, at 2.30 P. M.

Walter H. Hayes

Secretary.

907 Market Street,

2.30 P. M.

PRESENT: Messrs. Cooper, Hilles and Hayes.

The Commission met pursuant to the adjournment and finished draft of uniform laws .

On motion adjourned to meet September 15th at 10 o'clock A. M.

Walter H. Hayes

Secretary.

907 Market Street,

Wilmington, Del., Sept 13, 1906.

10 o'clock A. M.

PRESENT: Messrs. Cooper, Hilles and Hayes.

The Commission met pursuant to the adjournment. The President submitted to the Commission, typewritten copies of the uniform law drawn by the Commission and stated that the Commission, after working diligently during the summer months had finally accomplished its work in the matter of drawing the law.

Upon motion of Mr. Hilles duly seconded, it was resolved that a copy of said laws be furnished to each member of the Commission, one to the Attorney General for his opinion and one mailed to each member of the New Jersey Commission

It was ordered by the Commission that the law be spread upon the minutes of this meeting.

On motion adjourned to meet at the call of the chair.

The above draft of laws is in the words, letters and figures following, viz:

Walter H. Hayes, Esq.
Comm.

An Act Providing Uniform Laws to Regulate the Catching and Taking of Fish in the Delaware River and Bay Between the State of Delaware and the State of New Jersey, Including the Ascertainment of the Dividing Line Between said River and Bay.

CHAS. G. GUYER,
COURT STENOGRAPHER,
826 MARKET STREET,
WILMINGTON, DEL.

98

An Act Providing Uniform Laws to Regulate the Catching and Taking of Fish in the Delaware River and Bay, Between the State of Delaware and the State of New Jersey, Including the Ascertainment of the Dividing Line Between said River and Bay.

WHEREAS, by virtue of Article IV of the Compact or Agreement entitled a "Compact Between the State of New Jersey and the State of Delaware, Relating to the Boundary Controversy Between said States", which was ratified and confirmed by an Act of the General Assembly of the State of Delaware, approved March 20th, 1905, and by an Act of the Legislature of the State of New Jersey, approved March 21st, 1905, the State of Delaware by an Act of the General Assembly thereof, approved March 23rd, 1905, appointed Alexander B. Cooper, William S. Hilles and Walter H. Hayes, Commissioners on the part of the State of Delaware, to confer with like Commissioners appointed, or to be appointed, by the Legislature of the State of New Jersey, to do and perform all the duties, acts, matters and things required and stipulated in the

said Compact or Agreement; and

WHEREAS, by a similar Act of the Legislature of the State of New Jersey, approved May 11th, 1905, William J. Bradley, John Boyd Avis and James Strimple were appointed like Commissioners, on the part of the State of New Jersey, to confer with the said Commissioners on the part of the State of Delaware, and to do and perform the duties aforesaid; and

WHEREAS, each of the said Commissions have been duly organized as provided and required by law; and

WHEREAS, the said Commissioners of the said respective states, in joint meeting held for that purpose, have agreed upon uniform laws to regulate the catching and taking of fish in the Delaware River and Bay between the said states, and have also ascertained the dividing line between the said Delaware River and Delaware Bay, and have, upon each of the shores of the said two states where said dividing line extended intersects the

same, erected a suitable monument to mark said dividing line, in pursuance of the duties imposed upon them by law; therefore

BE IT ENACTED by the Senate and House of Representatives of the State of Delaware in General Assembly met:

Section 1. That the provisions of this Act shall effect and apply only to the catching and taking of fish in the waters of the Delaware River and Bay lying between the States of Delaware and New Jersey.

Section 2. That the inhabitants of the States of Delaware and New Jersey, shall have and enjoy a common right of fishery throughout, in and over the waters of said river, between low water marks on each side of said river between the said states, except so far as either state may have heretofore granted valid and subsisting private rights of fishery.

Section 3. That nothing herein contained shall

affect the territorial limits, rights or jurisdiction of either of said states, of, in or over the Delaware River, or the ownership of the subaqueous soil thereof, except as is expressly set forth in said Compact between the said states; nor shall anything herein contained affect in any way the planting, catching or taking of oysters, clams, or other shell fish, or interfere with the oyster industry, as now or hereafter carried on under the laws of either of said states.

Section 4. That hereafter it shall be lawful for any person to catch and take, from the waters aforesaid, fish of any character (except shell fish) with any net, hook and line, or other appliances; provided the meshes of any net shall not be less than two and one-half inches long stretched measure, and except as hereinafter provided.

Section 5. That hereafter it shall be unlawful for any person to catch and take, or to attempt to catch and take, shad from the waters aforesaid with a seine or

net of any character, the meshes of which shall be less than five and one-half inches stretched measure. It shall also be unlawful for any person to catch and take, or to attempt to catch and take, any shad from the said waters, in any manner whatsoever, between the hours of twelve o'clock noon of every Saturday and twelve o'clock midnight of the Sunday next ensuing, and also between the first day of June in each and every year and the first day of March thence next ensuing. It shall also be unlawful for any person at any time to set, place or use a net of any kind, for the purpose of catching and taking shad within one-half mile of the mouth of any river, creek or stream emptying into the said waters.

Section 6. That hereafter it shall be unlawful for any person to catch and take, or to attempt to catch and take, carp from the waters aforesaid with a seine or net of any character, the meshes of which shall be less than two and one-half inches stretched measure. It shall also be unlawful for any person to catch and take, or to

attempt to catch and take, from the said waters any carp in any manner whatsoever, between the hours of twelve o'clock noon of every Saturday and twelve o'clock midnight of the Sunday next ensuing. It shall also be unlawful for any person to catch and take, or to attempt to catch and take, any carp in any manner whatever during the months of May, June, July and August of each and every year.

Section 7. That hereafter it shall be unlawful for any person to catch and take, or to attempt to catch and take, rock fish from the waters aforesaid with a seine or net of any kind, the meshes of which shall be less than two and one-half inches stretched measure. It shall also be unlawful for any person to catch and take, or to attempt to catch and take, any rock fish in any manner whatsoever between the hours of twelve o'clock noon of every Saturday and twelve o'clock midnight of the Sunday next ensuing. It shall also be unlawful for any person to catch and take, or to attempt to catch and take, from the waters aforesaid, in any manner whatever, any rock

fish weighing more than twenty pounds or measuring less than eight inches in length; and should any such fish weighing over twenty pounds, or measuring less than eight inches in length, be caught, it shall be immediately returned to the waters uninjured.

Section 8. That hereafter it shall be unlawful for any person to catch and take, or to attempt to catch and take, from the waters aforesaid, any sturgeon with a net of any character, the meshes of which shall be less than thirteen inches stretched measure. It shall also be unlawful for any person to catch and take, or to attempt to catch and take, any sturgeon under five feet in length, and if any such sturgeon under five feet in length should be caught it shall be immediately returned to the waters uninjured. It shall also be unlawful for any person to catch and take, or to attempt to catch and take, sturgeon from the waters aforesaid, with a net of any character, between the hours of twelve o'clock noon of every Saturday and twelve o'clock midnight of the Sunday next ensuing.

-45-

Section 9. That hereafter it shall be unlawful for any person to catch and take, or to attempt to catch and take, from the waters aforesaid, any trout with a net of any character, the meshes of which shall be less than two and one-half inches stretched measure. It shall also be unlawful for any person to catch and take, or to attempt to catch and take, any trout from the waters aforesaid, with a net of any character, between the hours of twelve o'clock noon of every Saturday and twelve o'clock midnight of the Sunday next ensuing.

Section 10. That hereafter it shall be unlawful for any person to catch and take, or to attempt to catch and take, fish of any kind with a net of any character which is anchored, staked or fastened down in any way in said waters, across the same, or any part thereof, or at right angles with the shore line thereof, or across the mouth of any river, creek or stream emptying into the waters aforesaid.

Section 11. That hereafter it shall be unlawful

for any person by boat, anchor, dredge, or otherwise, in the waters aforesaid, to wilfully interfere with, break, or damage or destroy any drift net or gill seine being lawfully used for the taking of any fish as herein provided.

Section 12. That hereafter it shall be unlawful for any person wilfully to put or place in the waters aforesaid any explosive substance whatever, or any drug or poisoned bait for the purpose of catching and taking, killing or injuring the fish, or to allow any dye stuff, coal or gas tar, coal oil, saw dust, tan bark, cocculus-indicus (otherwise known as fish berries), lime, refuse from gas houses, oil tanks or vessels, or any other deleterious, destructive or poisonous substance, to be turned into or allowed to run into any of the waters aforesaid in quantities sufficient to destroy or impair fish life or disturb the habits of fish inhabiting the same. Any person violating any of the provisions of this Section shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than

two hundred dollars nor more than one thousand dollars, or shall be imprisoned not less than two months nor more than one year, or both, in the discretion of the court.

Section 13. That hereafter it shall be unlawful for any person to catch and take, or to attempt to catch and take, fish of any kind or description from the waters aforesaid by a net of any character on the Sabbath Day, commonly called Sunday.

Section 14. That hereafter it shall be unlawful for any person to catch and take, or to attempt to catch and take, fish of any kind from the waters aforesaid with a set line, or to have, use, erect or maintain in the waters aforesaid, for the purpose of catching and taking fish of any kind (except carp, cat fish or eels), any fish basket, eel weir, fyke net, pound net, shore net, drift net, dip net, wing-wall, wing-dams, or any other device, excepting in the manner and with the means in this Act provided.

Section 15. That hereafter it shall be unlawful

for any person to sell, expose for sale, or have in possession, any fish caught and taken in violation of the provisions of this Act.

Section 16. Every violation of any of the provisions of this Act shall be deemed a misdemeanor, and upon conviction thereof, where no other specific penalty is herein provided, each offender shall pay to the State of Delaware a fine of not less than twenty-five dollars nor more than two hundred dollars, and costs of prosecution, and in default of payment thereof, shall be committed to the county jail, or workhouse, for a period of not less than ten days nor more than six months.

Section 17. Any and every boat, vessel, net, trap, pot, pound, set line, fyke, weir, or other property used by any person for the unlawful taking of, or attempting to take, any fish in the waters aforesaid, in violation of the provisions of this Act, shall be forfeited to the State of Delaware, together with the

tackle, apparel and furniture of said boat or vessel, and all other apparatus and implements so unlawfully used; and the same shall be seized and detained by the sheriff, officer, or any county constable, or authorized deputy or deputies, until sold or discharged, as hereinafter provided. Upon the conviction of any such person, as aforesaid, the court shall, in addition to the sentence pronounced against such person, enter an order and judgment of forfeiture against said property so unlawfully used and shall order the sheriff of the county to at once seize the same wheresoever it may be found, who shall, thereupon, advertise and sell the same at public auction, for cash, to the highest and best bidder for the same, after giving at least ten days notice by advertisements posted in at least ten public places of the county, of the time and place of said sale; the proceeds of said sale, after deducting all costs, charges and expenses, shall be paid by the said sheriff to the State Treasurer for the use of the State. In the event that the said person, so charged

-57-

as aforesaid, shall be acquitted, the said property shall be forthwith returned to the person in whose custody it was, at the time it was so seized and taken as aforesaid.

Section 18. Any Justice of the Peace, or other committing officer, shall, upon affidavit made that any person, boat, vessel, or other appliance or apparatus hereinbefore enumerated, is, are, or have been violating, or used in violation of, this Act, issue his warrant to the sheriff, county constable, or officer, of said county, authorized to make such arrest, command - ing him to arrest such person and to seize and detain such property for hearing, trial, or other proceeding under this Act. The said sheriff, constable or officer, may, if necessary, summon to his aid the posse comitatus, and may acquire the assistance and use of any other boat, vessel, or other means, by paying, or tendering, just compensation. It shall not be necessary that the affidavit shall state the name of the boat or vessel, or describe with particularity the property to be seized.

-67-

Section 19: That the costs, charges and expenses of any proceeding for the violation of the provisions of this Act, shall be taxed and allowed as follows:

To any sheriff, constable, or officer, for each day actually engaged in seizing the said property, five dollars ($5.00);

To every person summoned by and rendering aid to such sheriff or constable, for each day actually engaged in assisting in seizing said property, two dollars ($2.00);

To every Justice of the Peace, sheriff, constable, officer, witness, or other person performing service under this Act and not herein specifically mentioned, the same fees as are now provided by law for similar services. Said costs, charges and expenses shall be paid by the officer making the sale out of the proceeds thereof; or if the property be not so sold, then by the State Treasurer upon the certificate of the court or Justice of the Peace, or committing officer,

before whom the proceedings were had.

Section 20. That it shall be unlawful for any person to catch and take, or to attempt to catch and take, from the said Delaware River or Delaware Bay, with purse or shirred nets operated by or from steam or other vessels, fish of any kind whatsoever; provided, however, that this Section shall not apply to the catching and taking of menhaden, sharks, porpoises and herring-hogs, by the crews of vessels, licensed as provided for in this Section. It shall be the duty of the Collector of Oyster Revenue, upon the payment to him annually of the sum of one hundred dollars ($100.00) for each and every vessel or boat, to issue a license to such vessel or boat to catch and take menhaden, sharks, porpoises and herring-hogs in the waters of the Delaware Bay as far north as a straight line drawn from the centre of the mouth of Mahon's River to the nearest point opposite on the New Jersey shore from the first day of June until the thirty-first day of August, inclusive, of each year, and at no other time or times. The said

-37-

money so received for said license shall be paid over to the State Treasurer for the use of the state.

Section 21. It shall be unlawful for any person to have in his possession or to bring into this state any fish, generally known as edible or food fish, that has been caught and taken from the waters of the Delaware Bay or River, for the purpose of extracting oil therefrom, or of converting said fish into fertilizer; and it shall also be unlawful for any person to extract oil, or to convert, or in any manner assist in extracting oil from, or in converting such fish into fertilizer.

Section 22. That any Fish Commissioner, Collector of Oyster Revenue, Sheriff, Constable, or any officer may, upon view, arrest any person violating any of the provisions of this Act without warrant or writ issued for such purpose.

Section 23. That all prosecutions for the violation of any of the provisions of this Act, unless

otherwise herein specifically provided, shall be had in like manner, under similar process and proceeding, under the same restrictions and with the same privileges and rights and before the same court or officer as is now, or shall hereafter be, provided by the laws of the State of Delaware for other misdemeanors.

Section 24. That each of the said States of Delaware and New Jersey shall have concurrent jurisdiction over all offenses and violations of this Act committed, or attempted to be committed, by any person who is not an inhabitant of either of said states.

Section 25. The Governor of the State of Delaware shall, when and as requested by the Governor of the State of New Jersey, issue a commission or commissions to such person or persons as may be named to him by the Governor of the State of New Jersey, which shall authorize the person or persons to whom the same are directed to arrest the inhabitants of either the State of Delaware or the State of New Jersey for

any violation of this Act, provided, however, that if the person so arrested shall be an inhabitant of the State of Delaware, such person shall be forthwith taken to the State of Delaware for trial and punishment. The Governor of this state may, at any time, and shall, when and as requested by the Governor of the State of New Jersey, revoke the said commissions, or any of them. The compensation of the person or persons to whom such commission or commissions may be directed shall be paid wholly by the State of New Jersey.

The Governor of the State of New Jersey shall, when and as requested by the Governor of the State of Delaware, issue a commission or commissions to such person or persons as may be named to him by the Governor of the State of Delaware, which shall authorize the person or persons to whom the same are directed to arrest the inhabitants of either the State of Delaware or the State of New Jersey for any violation of this Act, provided, however, that if the person so arrested shall be an inhabitant of the State of New Jersey, such person

shall be forthwith taken to the State of New Jersey for trial and punishment. The Governor of the State of New Jersey may, at any time, and shall, when and as requested by the Governor of the State of Delaware, revoke the said commissions, or any of them. The compensation of the person or persons to whom such commission or commissions may be directed shall be paid wholly by the State of Delaware.

Nothing contained in this Section shall be so construed as to prevent the arrest of any inhabitant of the State of Delaware by any other officer or person having authority under the laws of the said State of Delaware to make arrests for the violation of the provisions of this Act.

Section 26. That the dividing line between the Delaware River and the Delaware Bay is and shall be a straight line drawn through and from the centre of the monument erected by the Commissioners on the part of the State of Delaware, aforesaid, at a point at

or near what is called Listen's Point on the Delaware shore of said river, to and through the centre of the like monument erected by the Commissioners on the part of the State of New Jersey, aforesaid, at or near the mouth of what is called Hope Creek on the New Jersey shore of said river. The said dividing line between said monuments shall be the division line between the said river and bay for the interpretation of and for all purposes of the said Compact between the State of New Jersey and the State of Delaware and of the concurrent and uniform legislation provided for therein.

Section 27. That all laws, or parts of laws, inconsistent with the provisions of this Act, be and the same are hereby repealed.

-38-

Walter N. Haegen
Secretary

1516 Walnut Street, Philadelphia, Pa.,

October 5, 1906.

2.30 P. M.

Present: Honorable William J. Bradley, Honorable J. Boyd Avis, Commissioners of the State of New Jersey, Honorable A. B. Cooper, William S. Hilles and Walter H. Hayes Commissioners of the State of Delaware.

President Cooper of the Joint Commission called the meeting to order. The minutes of May 8th, 1906 and June 22nd, 1906, were read after correction approved.

On motion of Senator Bradley, duly seconded, it was decided to consider, first, the question of the two monuments to be erected. Mr. Hayes, Secretary of the Delaware Commission reported that on September 14th 1906, he had sent proposals to several monument makers which proposals were as follows, viz:

Dear Sir:-

The above Commission is charged with the duty among other things of erecting on the Delaware shore at a point to be selected by them, near Liston's Point, a monument marking the boundary between the Delaware Bay and the Delaware River. A similar Commission of the State of New Jersey is charged with a like duty of erecting a similar monument on the New Jersey shore near the mouth of Hopes Creek. This Commission has determined that its monument will be of the following

dimensions; a shaft of Brandywine granite 8 feet 4 inches high, 1 ft. and 6 inches square at the base tapering to 1 ft. square near the top and thence bevelled to a point. One side of it is to be polished and it will have about 450 letters cut in the stone. The monument is to be built on a concrete foundation about 3 ft. deep, laid on good timber or stone slab bottom.

The Commission request you to submit to it in writing a bid for erecting the Delaware monument and also a bid for erecting the New Jersey monument.

Please send your bid as speedily as possible to the undersigned, 1025 Market Street, Wilmington, Delaware.

Yours respectfully,

Walter H. Hayes

Secretary.

That in reply thereto he had received five bids, one bidder proposing to build and set up said two monuments for the sum of $370.00, another bidder proposed to do the same work for One thousand dollars ($1000.00), another bidder proposed to do the same work for $975.00, another bidder proposed to do the same work for the sum of $1100.00 and the other bidder proposed to do the same work for $943.60.

Each of the bids were presented and read to the Commission. After discussion, Mr. Hilles moved that the bid

of William J. Davidson to furnish and set up said two monuments for the sum of $370.00, be accepted and that the contract be awarded him for the same by the Joint Commission which motion being duly seconded by Senator Bradley, was unanimously adopted.

President Cooper presented to the Commission the following inscription to be put upon the monument upon the Delaware shore:

MOUTH OF THE DELAWARE RIVER.

A straight line drawn from the centre of this monument, to the centre of a similar monument, erected near the mouth of Hope Creek, on the New Jersey shore, is the dividing line between the Delaware River and Bay.

Erected September A. D. 1906, in pursuance of uniform acts of the Legislatures of the State of Delaware and the State of New Jersey, approved A. D. 1905.

Alexander B. Cooper,
William S. Hilles,
Walter H. Hayes,
Commissioners of Delaware
William J. Bradley,
J. Boyd Avis,
James Strimple,
Commissioners of New Jersey.

Mr. Hayes moved that the inscription be adopted and that the inscription on the monument on the New Jersey shore be the same in substance having only the names of the State transposed and the names of the Commissioners transposed, which motion being duly seconded was unanimously adopted. It being the understanding of the Commission that the date in the inscription of the erection of the monument was subject to change.

Mr. Hilles moved that Senator Avis be a committee of one to procure for the Joint Commission, a competent inspector who should inspect the work of erecting said monument which motion being duly seconded was unanimously adopted.

The drafts of uniform laws submitted by the Delaware and the New Jersey Commissioners were taken up and discussed. After consideration of the same for some time the Commission adjourned to meet Wednesday, October 10th, 1906, at 2.30 P. M.

Walter H. Hayes
Secretary.

Philadelphia, Broad Street Station,

October 10th, 1906.

2.30 P. M.

PRESENT: Honorable William J. Bradley, Honorable J. Boyd Avis Commissioners of the State of New Jersey, Honorable A. B. Cooper, Walter H. Hayes Commissioners of the State of Delaware.

President Cooper of the Joint Commission called the meeting to order.

Mr. Hayes submitted that a form of contract to be executed by the Commissioners and William J. Davidson for the furnishing and erecting of two monuments. After discussion it was decided that the contract as submitted, should be altered by providing that the date to be inserted in the inscription on the monuments should be June 22nd, 1906; that the concrete foundation should be four feet square at the bottom and continuing that size for six inches and it should taper from thence to the top, so as to leave the top two feet and six inches square.

Mr. Hayes was directed to draw contracts in accordance with the correction.

A draft of uniform fishing laws submitted by the Delaware Commissioners was then taken up and after discussion the following changes were made viz:



DE04741

That there should be no fishing for perch with nets, that shad nets should not be less than five and one quarter inches streatched measure, that the close season for shad should begin June 6th each year, that the close season for carp should be from May 10th to August 31st inclusive of both dates, that the size of the mesh of carp nets should not be less than two and one half inches.

Section 11 of said act was amended by inserting in the third line thereof after the word wilfully and before the word interfere, the words "and without reasonable cause".

Provisions in reference to fishing for eels and catfish were agreed upon. The provision in reference to sturgeon were practically agreed upon, the New Jersey Commissioner however, desiring to consult Mr. Strimple on the matter as he was engaged in the sturgeon fishing business.

It was decided that a new section should be added to the law providing that the same should not take effect until both States had passed the law.

It was agreed that the Commissioners of New Jersey should drew the act to be presented to their Legislature and send a copy of the same as soon as possible to the Delaware Commission.

That with ~~in~~ the above changes in the law there is practical agreement between the Commissioners on the subject, the only point remaining open is in reference to the sturgeon fishing.

On motion the Commission adjourned.

Secretary.



DE04743

907 Market St., Wilmington, Del.
October 25, 1906.
10 o'clock A.M.

The Commissioners met pursuant to the following notice in writing, of the President, viz:

907 Market Street,
City.

Dear Sir:-

Your prompt attendance, at a meeting of the Del. & N. J. Commissioners &c, to be held at my office to-morrow, (Thursday) at 10 o'clock A. M. is hereby requested.

Yours truly,
Alex. B. Cooper,
Oct 24, 1906. Pres.

PRESENT: Messrs. Cooper, Hilles and Hayes.

President Cooper called the meeting to order. The minutes of the meetings of September 4th, 11th, 12th and 15th were read and approved.

The Secretary stated that he had mailed copies of the draft of the Uniform Fishing Laws to each member of the New Jersey Commission and Attorney General Richards on September 19th last stated that he had requested from the Attorney General his opinion in writing as to the validity of said draft.

The President reported that there had been two meetings of the Joint Commission held in Philadelphia on October 5th and October 10th. The Secretary reported that he had received the following bids for the monuments, viz:

New Castle, Sept., 18, 1906.

Delaware Commissioners,

Wilmington, Del.

Dear Sirs:-

Your letter of the 14th received. I estimate the monument of Brandywine granite to be erected near Liston's Point, Del., at five Hundred and fifty dollars $550.00

Dimensions 8 ft. 4 in. high 1 ft. 6 in. at base tapering to 1 ft. at top one side polished balance rock pitched, about 450 letters cut in stone placed in position on concrete foundation about 3 ft deep with stone slab bottom.

I estimate a similar monument and foundation at five hundred and fifth dollars $550.00 placed in position near Hopes Creek N. J.

Yours respectfully,

Wm. J. Hunter.

Laurel, Del. , Sept., 18, 1906.

Mr. Walter H. Hayes,

Secretary of Delaware Commissioners,

Wilmington, Del.

Dear Sir:-

In reply to your letter of 14th, we submit the following estimate for monument marking the boundary line between Delaware Bay and Delaware River at or near Liston's Point of Brandywine Granite the shaft to be 8 ft. 4 inches high 1 foot 6 inches square at base tapering to 1 foot square at top, erected on concrete foundation 3 feet deep laid on a stone slab. One side to be polished with 450 letters cut on it for the sum of $495.00 and will make the one for the New

Jersey Shore at or near Hopes Creek same as above for the sum of $975.00 for the two (2) jobs.

Hoping to receivedthe contract.

Yours respectfully,

Davis & Bro.

Wilmington, Del., Sept. 19, 1906.

Walter H. Hayes, Esq.,

1025 Market St.,

City.

Dear Sir:

In regards to your letter of the 14th instant asking prices on two Brandywine Granite Monuments. I will give you the following prices:

I will agree to furnish and set complete on concrete foundation, about 3' deep, laid on good timber or stone slab bottom, one Monument to be of Brandywine Granite at Liston's point, or at a point to be selected near there for the sum of One Hundred Seventy-five, ($175.00) Dollars.

---

I will agree to furnish and set as the one above on concrete foundation, about 3' deep, laid on good timber or stone slab bottom, one Monument to be of Brandywine Granite at Hopes Creek near the mouth, for the sum of One Hundred

Ninety-five, ($195.00) Dollars.

One monument to be set on the Delaware shore and the other to be set on the Jersey shore, each to be 8 ft. 4 In. high, 1 ft. 6 in. square at the base tapering to 1 ft. square near the top and thence beveled to a point. One side of each Monument to be polished, and will cut about 450 letters on each, to be cut in.

I am prepared to get out the above in a reasonable length of time and will assure you perfectly satisfactory work.

Trusting the above will meet your favor, also thank you in advance for your esteemed order, I remain,

Yours very truly,

WM. DAVIDSON.

Wilmington, Del., 9 - 21 - 06.

Mr. Walter H. Hayes,

Secretary Delaware Commissioners,

Wilmington, Del.

Dear Sir:-

In reply to your favor of Sept. 14th., asking our price on monument to be erected at designated point, we will quote you a price of $1000.00 for the work on both sides of river or $500.00 for one side.

Dimensions as follows. 8-4x 1-6 x 1-6 tapering to 1-0 x 1-0 beveled to point. Monument to be erected on concrete foundation 3' deep, laid on timber or slab bottom.

The 450 letters to be cut in this stone as well as the work on same will be done with pneumatic tools so far as practical thus assuring the commission as good asjob as can be obtained.

Any consideration shown at the hands of the commission, will be appreciated by,

Yours very respectfully,

R. M. Wks.,

Hunter & Ackley.

Wilmington, Del., Oct. 5, 1906.

Delaware Commissioners, Fisheries Compact.

Mr. Walter H. Hayes, Sect.

Gentlemen:-

I will furnish complete monument, erected as per your specification at or near Liston's Point, Del., including 450 letters for the sum of four hundred and fifty two ($452.00) dollars.

I will erect the same stone other conditions similar

for the New Jersey Commission for the sum of four hundred and ninety ($490.00) dollars.

Yours truly,

Abraham L. Tyre.

which had been laid before the Joint Commission at its meeting of October 5th and that the contract for making and erecting said monuments had been awarded to William J. Davidson in accordance with his proposal, he being the lowest and best bidder.

He also reported that a contract had been drawn by him and mailed to the New Jersey Commissioners to be executed by them. Upon motion of Mr. Hilles it was resolved that checks be drawn in favor of Charles Warner Company for $45.00 and A. L. Ainscow for $28.85 to pay the expenses of the Commission on the trip down the Bay on June 22nd, last.

The Secretary reported he had received communications from Robert Penington, Counsel for the Fisheries Company, in reference to the menhaden fishing which were ordered filed, one being an invitation to visit the factory of the Company at Lewes which had been accepted for October 25th, 1906 and reported further that he had been notified by Mr. Penington, that the boat on which the trip was to be made had been

storm-staid at Sandy Hook, so that the trip was postponed.

Mr. Hilles moved that the Secretary be instructed to procure from the owners a deed for a piece of ground 10 ft. square near Liston's point on which the Delaware monument is to be erected and that the title of the same be taken to the State of Delaware, said land not to cost more than $5.00.

The President presented a letter that he had received from James Strimple dated October 18th, 1906 which was ordered filed.

On motion the Commission adjourned.

Willard H Hoop

Secretary.

907 Market Street,

Wilmington, Delaware, Jan. 11, 1907.

2 o'clock P. M.

The Commissioners met pursuant to the following notice in writing of the President viz:

Dear Sir:-

Your prompt attendance, at a meeting of the Del. & N. J. Commissioners &c, to be held at my office to-morrow, (Friday) at 2 o'Clk. P. M. is hereby requested.

Yours truly,

Alex. B. Cooper,

Jan. 10, 1907. Pres.

PRESENT: Messrs. Cooper, Hilles and Hayes.

President Cooper called the meeting to order. The minutes of the meeting of October 25th, 1906, were read and approved.

The Secretary reported that the contract between the Commissioners and William J. Davidson for the erection of the monuments had been duly executed and that the same reads as follows:

This agreement made, in triplicate originals, this Thirty-first day of October, A. D. 1906, between Alexander B. Cooper, William S. Hilles, Walter H. Hayes, Commissioners appointed by the State of Delaware, William J. Bradley, J. Boyd Avis and James Strimple, Commissioners

Appointed by the State of New Jersey, parties of the first part, hereinafter called Commissioners and William J. Davidson of the City of Wilmington, New Castle County and State of Delaware, party of the second part, hereinafter called Contractor:

Witnesseth that said Contractor hereby covenants, promises and agrees to and with said Commissioners to manufacture, make and set up two monuments or shafts of Brandywine Granite, each of said monuments or shafts to be eight feet four inches high, one foot and six inches square at the base tapering to one foot square near the top and thence bevelled to a point at least four inches above the top square. One side of each of said monuments to be polished; to set up each of said monuments on a concrete foundation, three feet deep, said concrete to be laid on good timber or stone slab bottom, each of said concrete foundations to be at least four feet square at the bottom, to continue at that size for six inches in height then to taper on all sides to the top of the concrete which shall be at least two feet and six inches square; to erect and set up one of said monuments on the Delaware shore near Liston's Point at a place to be selected by said Commissioners; to erect the other of said monuments on the New Jersey shore near the mouth of Hope

Creek at a place to be selected by said Commissioners; to cut on the polished side of said monument to be erected on the Delaware shore the following inscription:

MOUTH OF THE DELAWARE RIVER.

A straight line drawn from the centre of this monument, to the centre of a similar monument, erected near the mouth of Hope Creek, on the New Jersey shore, is the dividing line between the Delaware River and Bay.

Ascertained June 22nd, A. D. 1906, in pursuance of uniform acts of the Legislatures of the State of Delaware and the State of New Jersey, approved A. D. 1905.

Alexander B. Cooper,
William S. Hilles,
Walter H. Hayes,
Commissioners of Delaware.
William J. Bradley,
John Boyd Avis,
James Strimple,
Commissioners of New Jersey.

To cut on the polished side of said monument to be erected on the New Jersey shore the following inscription:

MOUTH OF THE DELAWARE RIVER.

A straight line drawn from the centre of this monument, to the centre of a similar monument, erected near Liston's Point, on the Delaware shore, is the dividing line between the Delaware River and Bay.

Ascertained June 22nd, A. D. 1906, in pursuance

of uniform acts of the Legislature of the State of Delaware and the State of New Jersey, approved A. D. 1905.

William J. Bradley,
John Boyd Avis,
James Strimple,
Commissioners of New Jersey.
Alexander B. Cooper,
William S. Hilles,
Walter H. Hayes,
Commissioners of Delaware.

That the words "mouth of the Delaware River" in each of said inscriptions shall be made of letters two inches in length and all other words in each of said inscriptions shall be made with letters or figures one inch in length:

That said monuments shall be finished and erected in a good workmanlike manner under the supervision and direction of a competent inspector employed for that purpose by said Commissioners and subject to his approval.

Said Contractor further promises, covenants and agrees to and with said Commissioners, that both of said monuments shall be finished and erected as aforesaid, complete in all respects on or before the first day of March A. D. 1907.

The said Commissioners hereby covenant, promise and agree to and with said Contractor to pay him for the furnishing and erecting said two monuments as aforesaid, the sum of Three hundred and seventy dollars ($370.00) upon the

furnishing and erecting of said two monuments and upon the certificate in writing of the inspector hereinbefore mentioned; that the same have been furnished, made and erected in a good workmanlike manner in accordance with the terms of this agreement.

In witness whereof the said parties hereto have set their hands and seals the day and year first above written.

Signed, sealed and delivered in the presence of Alex. B. Cooper, Jr. as to Cooper, Hayes and Hilles.

Alex B. Cooper (SEAL)
Wm. S. Hilles (SEAL)
Walter H. Hayes (SEAL)

Commissioners of the State of Delaware.

Geo. W. Bradley as to
Virginia Andrews as to
Cyrus Jarman as to

Wm. J. Bradley (SEAL)
John Boyd Avis (SEAL)
James Strimple (SEAL)

Commissioners of the State of New Jersey.

George N. Davis

William Davidson (SEAL)

The Secretary also reported that he was still engaged in acquiring the title to the land upon which the Delaware monument is to be erected.

The Secretary also reported that on or about November 27th, 1906, he sent a postal card to Secretary Avis of the New Jersey Commission requesting a copy of their law and on December 6, 1906, he wrote Secretary Avis a letter as follows:

Wilmington, Del., December 6, 1906.

Honorable J. Boyd Avis,

Woodbury, N. J.

Dear Sir:-

The Delaware Commissioners are waiting for a copy of the Act that the New Jersey Commissioners proposes to submit to your legislature in reference to the Uniform Fishing Laws.

You would greatly oblige us by furnishing the same as agreed, not later than next week. Our legislature meets on the first day of January.

Messrs. Hilles, Cooper and myself will be engaged in the trial of cases from the 15th of December up to the meeting of the Legislature. We wish to draw our report and submit the same to the Legislature when it meets.

Hoping you will be able to furnish us the copy, I remain

Yours respectfully,

Secretary.

Receiving no answer to these communications, on December 26th he telephoned Mr. Avis who said he had been engaged otherwise but expected the Jersey act completed the following week and would send a copy thereof to the Delaware Commissioners.

January 9, 1907, he received from Secretary Avis, a letter which reads as follows:

Woodbury, January 7, 1907.

Hon. Walter H. Hayes,

907 Market Street,

Wilmington, Del.

Dear Sir:-

I have prepared the bill to be introduced in the Legislature relative to the fishing laws between Delaware and New Jersey and have not yet had the opportunity to submit it to out Attorney General. I should like to do this before I send you a copy. I expect to see Mr. McCarter tomorrow and will let you hear from me as early as possible.

I am sorry that the matter has been delayed, but I could not attend to it sooner.

Yours very truly,

John Boyd Avis.

Before answering the same on January 11, 1907, he received from Secretary Avis, the following letter:

Woodbury, January 9, 1907.

Walter H. Hayes, Esq.,

907 Market Street,

Wilmington, Del.

My dear Mr. Hayes:-

I send enclosed, a draft of a bill to be sub mitted to our Legislature on the question of fishing in the Delaware River, between New Jersey and Delaware.

Senator Bradley and I have not yet had an opportunity to submit this matter to the Attorney-General and have made arrangements for a meeting with him on next Monday evening, so that this draft is subject to correction upon legal matters.

I think I have also neglected to attach to it a provision that the act shall become operative when a similar act is passed by the State of Delaware. Generally speaking, however, this expresses the agreements, as I understand it, made between our relative commissions.

As soon as we have had a meeting with the Attorney-General, I will forward to you a complete draft of the proposed law.

Yours truly,

John Boyd Avis.

with a copy of the proposed Jersey act enclosed which reads as follows:

An Act providing Uniform Laws to Regulate the Catching and Taking of Fish in the Delaware River and Bay Between the State of Delaware and the State of New Jersey, including the Ascertainment of the Dividing Line Between said River and Bay.

WHEREAS, by virtue of Article IV of the Compact or Agreement entitled a "Compact Between the State of New Jer-



DE04758

sey and the State of Delaware, Relating to the Boundary Controversy Between said States", which was ratified and confirmed by an Act of the Legislature of the State of New Jersey, approved March 21, 1905, and by an Act of the General Assembly of the State of Delaware, approved March 20, 1905, The State of New Jersey by an Act of the Legislature thereof, approved May 11th, 1905, appointed William J. Bradley, James Strimple and John Boyd Avis, Commissioners on the part of the State of New Jersey to confer with like Commissioners appointed, or to be appointed, by the General Assembly of the State of Delaware, to do and perform all the duties, acts, matters and things required and stipulated in the said Compact or Agreement; and

WHEREAS, by a similar Act of the General Assembly of the State of Delaware, approved March 23rd, 1905, Alexander B. Cooper, William S. Hilles and Walter H. Hayes were appointed like Commissioners, on the part of the State of Delaware, to confer with the said Commissioners on the part of the State of New Jersey, and to do and perform the duties aforesaid; and

WHEREAS, each of the said Commissions have been duly organized as provided and required by law; and

WHEREAS, the said Commissioners of the said respective states, in joint meeting held for that purpose, have agreed

upon uniform laws to regulate the catching and taking of fish in the Delaware River and Bay between the said states, and have also ascertained the dividing line between the said Delaware Riverand Delaware Bay, and have, upon each of the shores of the said two states where said dividing line extended intersects the same, erected a suitable monument to mark said dividing line, in pursuance of the duties imposed upon them by law; therefore

BE IT ENACTED By the Senate and General Assembly of the State of New Jersey:

Section 1. That the provisions of this Act shall affect and apply only to the catching and taking of fish in the waters of the Delaware River and Bay lying between the States of Delaware and New Jersey.

Section 2. That the inhabitants of the States of Delaware and New Jersey shall have and enjoy a common right of fishery throughout, in and over the waters of said river between low water marks on each side of said river between said states, except so far as either state may have heretofore granted valid and subsisting private rights of fishery.

Section 3. That nothing herein contained shall affect the territorial limits, rights or jurisdiction of either of said states of, in or over the Delaware River, or the ownership of the subaqueous soil thereof, except as is expressly set forth in said Compact between the said states;

nor shall anything herein contained affect in any way, the planting, catching or taking of oysters, clams, or other shell fish, or interfere with the oyster industry, as now or hereafter carried on under the laws of either of said states.

Section 4. That hereafter, it shall be lawful for any person to catch and take, from the waters aforesaid, fish of any character (except shell fish) with any net, hook and line, or other appliances; provided the meshes of any net shall not be less than two and one half inches long stretched measure, and except as hereinafter provided.

Section 5. That hereafter it shall be unlawful for any person to catch and take, or to attempt to catch and take, shad from the waters aforesaid with a seine or net of any character; the meshes of which shall be less than five and one quarter inches stretched measure. It shall also be unlawful for any person to catch and take, or to attempt to catch and take, any shad from the said waters in any manner whatsoever between the hours of twelve o'clock noon of every Saturday and twelve o'clock midnight of the Sunday next ensuing, and also between the Fifth day of June in each and every year and the First day of March then next ensuing. It shall also be unlawful for any person at any time to set, place or use a net of any kind, except, a drifting net, for the purpose of catching and taking shad within one half mile

of the mouth of any river, creek or stream emptying into the said waters.

Section 6. That hereafter it shall be unlawful for any person to catch and take, or attempt to catch and take, carp from the waters aforesaid with a seine or net of any character, the meshes of which shall be less than two and one half inches stretched measure. It shall also be unlawful for any person to catch and take, or to attempt to catch and take, from the said waters any carp in any manner whatsoever, between the hours of twelve o'clock noon of every Saturday and twelve o'clock midnight of the Sunday next ensuing. It shall also be unlawful for any person to catch and take, or to attempt to catch and take, any cary in any manner whatever, between the Tenth day of May and the Tenth day of August of each and every year.

Section 7. That hereafter it shall be unlawful for any person to catch and take, or attempt to catch and take, rock fish from the waters aforesaid with a seine or net of any kind, the meshes of which shall be less than two and one half inches stretched measure. It shall also be unlawful for any person to catch and take, or to attempt to catch and take, any rock fish in any manner whatsoever between the hours of twelve o'clock noon of every Saturday and twelve o'clock midnight of the Sunday next ensuing. It shall also be unlawful for any person to catch and take, or to attempt

to catch and take, from the waters aforesaid, in any manner whatever, any rock fish weighing more than twenty pounds or measuring less than ten inches in length; and should any such fish weighing over twenty pounds, or measuring less than ten inches in length, be caught, it shall be immediately returned to the waters uninjured.

Section 8. That hereafter it shall be unlawful for any person to catch and take, or to attempt to catch and take, from the waters aforesaid, any sturgeon with a net of any character, the meshes of which shall be less than thirteen inches stretched measure. It shall also be unlawful for any person to catch and take, or to attempt to catch and take, any sturgeon under five feet in length, and if any such sturgeon under five feet in length should be caught it shall be immediately returned to the waters uninjured. It shall also be unlawful for any person to catch and take, or to attempt to catch and take, sturgeon from the waters aforesaid, with a net of any character, between the hours of twelve o'clock noon of every Saturday and twelve o'clock micnight of the Sunday next ensuing.

Section 9. That hereafter it shall be unlawful for any person to catch and take, or to attempt to catch and take, from the waters aforesaid, any trout with a net of any character, the meshes of which shall be less than two and

one half inches stretched measure. It shall also be unlawful for any person to catch and take, or to attempt to catch and take, any trout from the waters aforesiad, with a net of any character, between the hours of twelve o'clock noon of every Saturday and twelve o'clock midnight of the Sunday next onsuing.

Section 10. That hereafter it shall be unlawful for any person to catch and take, or to attempt to catch and take, fish of any kind with a net of any character which is anchored, staked or fastened down in any way in said waters, across the same, or any part thereof, or at right angles with the shore line thereof, or across the mouth of any river, creek or stream emptying into the waters aforesaid.

Section 11. That hereafter it shall be unlawful for any persons by boat, anchor, dredge, or otherwise, in the waters aforesaid, to wilfully and without reasonable cause, interfere with, break, damage or destroy and drift net or gill seine being lawfully used for the taking of any fish herein provided.

Section 12. That hereafter it shall be unlawful for any person wilfully to put or place in the waters aforesaid any explosive substance whatever, or any drug or poisoned bait for the purpose of catching and taking, killing or injuring the fish, or to allow any dye stuff, coal or gas tar, coal oil, saw dust, tan bark, coculus indicus (otherwise

known as fish berries), lime, refuse from gas houses, oil tanks or vessels, or any other deleterious, destructive or poisonous substance to be turned into or allowed to run into any of the waters aforesaid in quantities sufficient to destroy or impair fish life or disturb the habits of fish inhabiting the same. Any person violating any of the provisions of this Section shall, upon conviction, forfeit and pay a fine of Hundred Dollars together with costs, for each offence.

Section 13. That hereafter it shall be unlawful for any person to catch and take, or to attempt to catch and take, fish of any kind or description from the waters aforesaid by a net of any character on the Sabbath Day, commonly called Sunday.

Section 14. That hereafter it shall be unlawful for any person to catch and take, or to attempt to catch and take, fish of any kind from the waters aforesaid with a set line, or to have, use, erect or maintain in the waters aforesaid, for the purpose of catching and taking fish of any kind, any fish basket, eel weir, fyke net, pound net, wing-wall, wing-dams, or any other device, excepting in the manner and with the means in this Act provided: provided however that it shall be lawful to catch and take eels at any time by means of wicker eel baskets anchored on the bottom and by means of eel weirs from the Fifteenth day of September to

the last day of October, both dates inclusive, and provided further, that it shall be lawful to catch and take cat fish by means of pot or pots, basket or baskets, of whatever material the same may be constructed, without any wing or wings; the entrance to said pots or baskets shall not be more than six inches in diameter, and the outside diameter thereof shall not exceed fifteen inches; said pots or baskets when set shall be directly on the bottom and shall not be set nearer than fifty feet from each other.

Section 15. That hereafter it shall be unlawful for any person to sell, expose for sale, or have in possession, any fish caught and taken in violation of the provisions of this Act.

Section 16. That hereafter it shall be unlawful for any person to take or attempt to take white or yellow perch from the waters aforesaid with a net of any character, or by means of any contrivance whatsoever, excepting in the manner commonly known as angling with hand line or with rod and line.

Section 17. Any person or persons violating any of the provisions of Sections four, six, nine, thirteen and fifteen of this act shall forfeit and pay a fine of Twenty





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Dollars, together with costs of suit, for each offence; and any person or persons violating any of the provisions of Sections five, seven, eight, ten, eleven, twelve and fourteen of this act shall forfeit and pay a fine of One Hundred Dollars, together with costs of suit for each offence.

Section 13. That it shall be unlawful for any person to catch and take, or to attempt to catch and take, from the said Delaware River or Delaware Bay, with purse or seined nets operated by or from steam or other vessels, fish of any kind whatsoever; provided, however, that this Section shall not apply to the catching and taking of menhaden, sharks, porpoises and herring-hogs, by the crews of vessels licensed as provided for in this Section. It shall be the duty of the Collector of Oyster Revenue, upon the payment to him annually of the sum of One hundred Dollars ($100.00) for each and every vessel or boat, to issue a license to such vessel or boat to catch and take menhaden, sharks, porpoises and herring-hogs, in the waters of the Delaware Bay as far north as a straight line drawn from the centre of the mouth of Mahon's River to the nearest point opposite on the New Jersey shore from the first day of June until the thirty-first day of August, inclusive, of each year, and at no other time or times. The said money so received for said license shall be paid over to the State Treasurer for the use of the state.

Section 19. It shall be unlawful for any person to have in his possession or to bring into this state any fish generally known as edible or food fish that has been caught and taken from the waters of the Delaware Bay or River, within the bounds aforesaid, for the purpose of extracting oil therefrom, or of converting said fish into fertilizer; and it shall also be unlawful for any person to extract oil, or to convert, or in any manner assist in extracting oil from, or in converting such fish into fertilizer.

Section 20. That each of the said states of Delaware and New Jersey shall have concurrent jurisdiction over all offences and violations of this act committed, or attempted to be commited, by and person who is not an inhabitant of either of said states.

Section 21. The Governor of the State of Delaware shall, when and as requested by the Governor of the State of New Jersey, issue a commission or commissions to such person or persons as may be named to him by the Governor of the State of New Jersey, which shall authorize the person or persons to whom the same are directed to arrest the inhabitants of either the State of Delaware or the State of New Jersey for any violation of this Act, provided, however, that if the person so arrested shall be an inhabitant of the State of Delaware, such person shall be forthwith taken to the State of Delaware for trial and punishment. The Governor

of this State may, at any time, and shall, when and as requested by the Governor of the State of New Jersey, revoke the said commissions, or any of them. The compensation of the person or persons to whom such commission or commissions may be directed shall be paid wholly by the State of New Jersey.

The Governor of the State of New Jersey shall, when and as requested by the Governor of the State of Delaware, issue a commission or commissions to such person or persons as may be named to him by the Governor of the State of Delaware, which shall authorize the person or persons to whom the same are directed to arrest the inhabitants of either the State of Delaware or the State of New Jersey, for any violation of this Act, provided, however, that if the person so arrested shall be an inhabitant of the State of New Jersey, such person shall be forthwith taken to the State of New Jersey for trial and punishment. The Governor of the State of New Jersey may, at any time, and shall, when and as requested by the Governor of the State of Delaware, revoke the said commissions, or any of them. The compensation of the person or persons to whom such commission or commissions may be directed shall be paid wholly by the State of Delaware.

Nothing contained in this Section shall be so con-

strued as to prevent the arrest of any inhabitant of the State of New Jersey by any other officer or person having authority under the laws of the said State of New Jersey to make arrests for the violation of the provisions of this Act.

Section 22. That the dividing line between the Delaware River and the Delaware Bay is and shall be a straight line drawn through and from the centre of the monument erected by the Commissioners on the part of the State of Delaware aforesaid, at a point at or near what is called Liston's Point on the Delaware Shore of said waters, to and through the centre of the like monument erected by the Commissioners on the part of the States of New Jersey, aforesaid, at or near the mouth of what is called Hope Creek on the New Jersey shore of said waters. The said dividing line between said monuments shall be the division line between the said river and bay for the interpretation of and for all purposes of the said Compact between the State of New Jersey and the State of Delaware and of the concurrent and uniform legislation provided for therein.

Section 23. The provisions of this Act shall be enforced in accordance with the provisions of an Act entitled "An Act to privide a uniform procedure for the enforcement of all laws relating to fish, game and birds, and for the recovery of penalties for violations thereof," approved

March 29, 1897, and the supplements thereto and acts amendatory thereof.

Section 24. That all laws, or parts of laws, inconsistent with the provisions of this Act, be and the same are hereby repealed.

The President reported that soon after the meeting of the Joint Commission on October 10, 1906, when the uniform laws had been agreed upon, the Delaware Commissioners became anxious to have in due form, the law to present to the Legislature of Delaware which met on January First, 1907. To that end he had instructed the Secretary to correspond with the Jersey Commission and that the Secretary had done so.

The Delaware Commissioners failing to receive any reply to their communications became embarrassed as to what to do in the matter, that he, as President of the Joint Commission wrote Honorable William J. Bradley of the New Jersey Commission on January 5, 1907, as follows, viz:

January 5, 1907.

Hon. William J. Bradley,

Pres. N. J. Com.&c.

Dear Senator:

The Del. Commission have been waiting, since our last joint meeting in Phila. Oct. 17 1906, for the N. J.

amendments to the comtemplated uniform fishing law, between Del. and N. J. but as yet have not received them. Our secretary Mr. Hayes informs me that under the direction of our commission he has written several times to your secretary Senator Avis, but was unable to hear from him, until last Saturday, when he reached him over the telephone. He then said he would submit them this week, but they have not yet been received. I respectfully call your attention to the necessity of speedy action in the matter. Our legislature is now in session, sixty days is the paid limit, and the bill and our report should be presented as soon as possible, to enable it to act promptly.

The monuments I understand are nearly completed and ready for erection.

Will you please give it your attention.

With regards to yourself and Senator Avis,

I am very truly yours,

Alex. B. Cooper

Pres . Joint Com.

That on January 10, 1907, he received in reply thereto from President Bradley, the following letter viz:

Camden, Jan. 9th, 1907.

Hon. Alex B. Cooper:

President, Del. Fisheries Commission.

My Dear Sir:-

Replying to your letter of Jan. 6, relative to the amendments to the uniform fishing laws I beg to say that Senator Avis has forwarded to day a copy to Mr. Hayes. We desire you to examine the same and see if they meet with the approval of your Commission. We hope to have a meeting with our Attorney General relative to the title &c not later than next Monday evening and will immediately communicate with your commissioners.

I trust we may be able to adjust every thing in a few days.

With kind regards

I am

Truly yours,

Wm. J. Bradley

Pres. N. J. Commission.

Thereupon the Secretary presented a rough draft of the Jersey law as received from Secretary Avis which was taken up and compared with the provisions of the law as heretofore agreed upon by the joint commission, it being found that the New Jersey draft differed in several respects substantially. From the law as heretofore agreed upon it was decided to request the President of the Joint Commission to call a meeting thereof in Philadelphia on Wednesday the 16th

day of January 1907 at 2.30 P. M. at the University Club, 1516 Walnut Street,

On motion of Mr. Hilles it was ordered that a requisition be drawn on the Governor for the sum of $52.00 to pay the bill of Charles C. Guyer, for stenographic services and a patent backing, which motion being seconded was adopted.

On motion the commission adjourned.

William H. Harper
Secretary.

1516 Walnut Street, Philadelphia, Pa.

Jan. 16, 1907.

2.30 P. M.

Present; Honorable William J. Bradley, Honorable J. Boyd Avis and Honorable James Strimple Commissioners of the State of New Jersey, Honorable A. B. Cooper, William S. Hilles and Walter H. Hayes, Commissioners of the State of Delaware.

President Cooper of the Joint Commission called the meeting to order. The minutes of October 5, 1906 and Oct. 10, 1906 were read and approved.

Mr. Strimple called attention to statements made to him about the position of the monument to be erected on the New Jersey shore.

After discussion it was decided that the matter should be left as provided in the contract for the erection of the same.

Mr. Avis reported the advice he had received from the Attorney General of the State of NewJersey as follows;

1. As to title.

2. As to appointment of special officers.

3. As to the concurrent jurisdiction over non residents of other states.

After discussion it was decided to strike all mention, out of the title of the proposed law, of the proposed boundary line between the bay and river. Also to omit that section of the Act concerning the said boundary.

The Commission then took up the draft of laws submitted by the New Jersey Commissioners and the one submitted by the Delaware Commissioners and after full discussion agreed upon the law which was ordered by the Commission to be drawn in due form for presentation to the several legislatures and submitted to the Joint Commission on Thursday the 24th day of January 1907, at 2.30 P. M.

Mr. Hayes offered the following resolution;

WHEREAS the Joint Commission (Delaware-New Jersey Fisheries Compact) did on the 15th day of December A. D. 1905 adopt the following Resolution;

"RESOLVED THAT the Governor of the State of Delaware and the Governor of the State of New Jersey are requested to ask Congress to defer the ratification of the Compact entered into between the State of Delaware and State of New Jersey until the commission shall make further request."

AND WHEREAS said Congress has deferred final action on the ratification of said compact.

NOW THEREFOR BE IT RESOLVED by the said Joint Commission this 16th day of January A. D. 1907, that the Governor of the State of Delaware and the Governor of the State of New Jersey are hereby notified that said Joint

Commission has this day agreed upon the uniform laws to regulate the catching and taking of fish in the Delaware River and Bay between the state of Delaware and New Jersey; which being duly seconded was, after full discussion unanimously adopted and the Secretary's were instructed to forward said Governors a copy thereof duly certified by them.

Mr. Avis moved that the Commission adjourn to meet at 1516 Walnut Street, Philadelphia, Thursday January 24th, 1907 at 2.30 P. M. which motion prevailed.

Secretary.



DE04777

1516 Walnut Street, Philadelphia, Pa.

January 24, 1907,

2.30 P.M.

The Commission met pursuant to adjournment.

PRESENT: Honorable William J. Bradley, Honorable J. Boyd Avis and Honorable James Stimple, Commissioners of the State of New Jersey, Honorable William S. Hilles and Walter K. Hayes, Commissioners of the State of Delaware.

The Delaware Commissioners announced that President Cooper was detained at home by sickness.

Mr. Hayes moved that the Honorable William J. Bradley act as President of the Joint Commission in the absence of President Cooper, which motion being duly seconded was unanimously adopted.

Mr. Bradley then presided during the meeting.

The Delaware Commissioners and the New Jersey Commissioners presented on behalf of each state, final drafts of the uniform Acts to be submitted to the Legislatures of the respective States to regulate the catching and taking of fish in the Delaware River and Bay &c.

The two acts were then read and approved and several amendments were made unanimously to each one.

The Delaware Act as thus finally approved is in the words, letters and figures as follows, viz:



DE04778

An Act Providing Uniform Laws to Regulate the Catching and Taking of Fish in the Delaware River and Bay Between the State of Delaware and the State of New Jersey.

WHEREAS, by virtue of Article IV of the Compact or Agreement entitled a "Compact Between the State of New Jersey and the State of Delaware, Relating to the Boundary Controversy Between said States", which was ratified and confirmed by an Act of the General Assembly of the State of Delaware, approved March 20th, 1905, and by an Act of the Legislature of the State of New Jersey, approved March 21st, 1905, the State of Delaware by an Act of the General Assembly thereof, approved March 23rd, 1905, appointed Alexander B. Cooper, William S. Hilles and Walter H. Hayes, Commissioners on the part of the State of Delaware to confer with like Commissioners appointed, or to be appointed, by the Legislature of the State of New Jersey, to do and perform all the duties, acts, matters and things required and stipulated in the said Compact or Agreement; and

WHEREAS, by a similar Act of the Legislature of the State of New Jersey, approved May 11th, 1905, William J. Bradley, John Boyd Avis and James Strimple were appointed like Commissioners, on the part of the State of New Jersey,

to confer with the said Commissioners on the part of the State of Delaware, and to do and perform the duties aforesaid; and

WHEREAS, each of the said Commissions have been duly organized as provided and required by law; and

WHEREAS, the said Commissioners of the said respective states, in joint meeting held for that purpose, have agreed upon uniform laws to regulate the catching and taking of fish in the Delaware River and Bay between the said states, and have also ascertained the dividing line between the said Delaware River and Delaware Bay, and have, upon each of the shores of the said two states where said dividing line extended intersects the same, provided for the erection of a suitable monument to mark said dividing line, in pursuance of the duties imposed upon them by law; therefore,

BE IT ENACTED by the Senate and House of Representatives of the State of Delaware in General Assembly met:

Section 1. That the provisions of this Act shall affect and apply only to the catching and taking of fish

in the waters of the Delaware River and Bay lying between the States of Delaware and New Jersey.

Section 2. That the inhabitants of the States of Delaware and New Jersey shall have and enjoy a common right of fishery throughout, in and over the waters of said river between low water marks on each side of said river between the said states, except so far as either state may have heretofore granted valid and subsisting private rights of fishery.

Section 3. That nothing herein contained shall affect the territorial limits, rights or jurisdiction of either of said states of, in or over the Delaware River, or the ownership of the subaqueous soil thereof, except as is expressly set forth in said Compact between the said states; nor shall anything herein contained affect in any way the planting, catching or taking of oysters, clams, or other shell fish, or interfere with the oyster industry, as now or hereafter carried on under the laws of either of said states.

Section 4. That hereafter it shall be lawful for any person to catch and take, from the waters aforesaid, fish of any character (except shell fish) with any net, hook and line, or other appliances; provided the meshes of

any net shall not be less than two and one-half inches long stretched measure, and except as hereinafter provided.

Section 5. That hereafter it shall be unalwful for any person to catch and take, or to attempt to catch and take, shad from the waters aforesaid with a seine or net of any character, the meshes of which shall be less than five and one-quarter inches stretched measure. It shall also be unlawful for any person to catch and take, or to attempt to catch and take, any shad from the said waters in any manner whatsoever between the hours of twelve o'clock noon of every Saturday and twleve o'clock midnight of the Sunday next ensuing, and also between the fifth day of June in each year and the first day of March thence next ensuing. It shall also be unlawful for any person at any time to set, place or use a net of any kind, except a drifting net, for the purpose of catching and taking shad within one-half mile of the mouth of any river, creek or stream emptying into the said waters.

Section 6. That hereafter it shall be unlawful for any person to catch and take, or to attempt to catch and take, carp from the waters aforesaid with a seine or net of any character, the meshes of which shall be less than two

and one-half inches stretched measure. It shall also be unlawful for any person to catch and take, or to attempt to catch and take, from the said waters any carp in any manner whatsoever, between the hours of twelve o'clock noon of every Saturday and twelve o'clock midnight of the Sunday next ensuing. It shall also be unlawful for any person to catch and take, or to attempt to catch and take, from the waters aforesaid, any carp weighing less than one pound, and should any such fish be caught, it shall be immediately returned to the waters uninjured. It shall also be unlawful for any person to catch and take, or to attempt to catch and take, any carp in any manner whatever between the first day of May and the tenth day of August of each and every year.

Section 7 . That hereafter it shall be unlawful for any person to catch and take, or to attempt to catch and take, rock fish from the waters aforesaid with a seine or net of any kind, the meshes of which shall be less than two and one-half inches stretched measure. It shall also be unlawful for any person to catch and take, or to attempt to catch and take, any rock fish in any manner whatsoever between the hours of twelve o'clock noon of every Saturday and twelve o'clock midnight of the Sunday next ensuing. It shall also be unlawful for any person to catch and take, or to attempt to catch and take, from the waters aforesaid, in

any manner whatever, any rock fish weighing more than twenty pounds or measuring less than ten inches in length; and should any such fish weighing over twenty pounds, or measuring less than ten inches in length, be caught, it shall be immediately returned to the waters uninjured.

Section 8. That hereafter it shall be unlawful for any person to catch and take, or to attempt to catch and take, from the waters aforesaid, any sturgeon or mamoose with a net of any character, the meshes of which shall be less than thirteen inches stretched measure. It shall also be unlawful for any person to catch and take, or to attempt to catch and take, any sturgeon or mamoose under six feet in length, and if any such sturgeon or mamoose under six feet in length should be caught it shall be immediately returned to the waters uninjured. It shall also be unlawful for any person to catch and take, or to attempt to catch and take, sturgeon or mamoose from the waters aforesaid, in any manner whatever, between the hours of twelve o'clock noon of every Saturday and twelve o'clock midnight of the Sunday next ensuing, and also between the firsh day of July in each and every year and the first day of March thence next ensuing.

Section 9. That hereafter it shall be unlawful for any person to catch and take, or to attempt to catch and

take, from the waters aforesaid, any trout or weak fish with a net of any character, the meshes of which shall be less than two and one-half inches stretched measure. It shall also be unlawful for any person to catch and take, or to attempt to catch and take, any trout or weak fish from the waters aforesaid, with a net of any character, between the hours of twelve o'clock noon of every Saturday and twelve o'clock midnight of the Sunday next ensuing.

Section 10. That hereafter it shall be unlawful for any person to catch and take, or to attempt to catch and take, fish of any kind with a net of any character which is anchored, staked or fastened down in any way across the said waters, or any part thereof, or at right angles with the shore line thereof, or across the mouth of any river, creek or stream emptying into the waters aforesaid.

Section 11. That hereafter it shall be unlawful for any person by boat, anchor, dredge, or otherwise, in the waters aforesaid, to wilfully and without reasonable cause, interfere with, break, damage or destroy any drift net or gill sine being lawfully used for the taking of any fish as herein provided.

Section 12. That hereafter it shall be unlawful for any person wilfully to put or place in the waters aforesaid

any explosive substance whatever, or any drug or poisoned bait for the purpose of catching and taking, killing or injuring the fish, or to allow any dye stuff, coal or gas tar, coal oil, saw dust, tan bark, coculusindicus (otherwise known as fish berries), lime, refuse from gas houses, oil tanks or vessels, or any other deleterious, destructive or poisonous substance to be turned into or allowed to run into any of the waters aforesaid, in quantities sufficient to destroy or impair fish life or disturb the habits of fish inhabiting the same. Any person violating any of the provisions of this Section shall be deemed guilty of a misdemeanor, and upon conviction thereof shall forfeit and pay a fine of not more than five thousand dollars, or shall be imprisoned not more than one year, or both, in the discretion of the court.

Section 13. That hereafter it shall be unlawful for any person to catch and take, or to attempt to catch and take, fish of any kind or description from the waters aforesaid by a net of any character on the Sabbath Day, commonly called Sunday.

Section 14. That hereafter it shall be unlawful for any person to catch and take, or to attempt to catch and take, fish of any kind from the waters aforesaid with a set

line, or to have, use, erect or maintain in the waters aforesaid, for the purpose of catching and taking fish of any kind (except cat fish, eels and suckers), any fish basket, eel weir, fyke net, pound net, shore net, dip net, cast net, wing-wall, wing-dams, or any other device, excepting in the manner and with the means in this Act provided. Provided,, that nothing contained in this section shall prevent the catching and taking of carp with shore nets, dip nets or cast nets.

Section 15. That hereafter it shall be unlawful for any person to sell, expose for sale, or have in possession, any fish caught and taken in violation of the provisions of this Act.

Section 16. Every violation of any of the provisions of this Act shall be deemed a misdemeanor, and upon conviction thereof, where no other specific penalty is herein provided, each offender shall forfeit and pay to the State of Delaware a fine of not less than twenty dollars nor more than two hundred dollars, and costs of prosecution, and in default of payment thereof shall be committed to the county jail, or work house, for a period of not less than ten days nor more than ninety days, or until such fine and costs are paid.

Section 17. Any and every boat, vessel, net, trap, pot, pound, set line, fyke, weir, or other property used by any person for the unlawful taking of, or attempting to take, any fish in the waters aforesaid, in violation of the provisions of this Act, shall be forfeited to the State of Delaware, together with the tackle, apparel and furniture of said boat or vessel, and all other apparatus and implements so unlawfully used; and the same shall be seized and detained by the sheriff, officer, or any county constable, or authorized deputy or deputies, until sold or discharged, as hereinafter provided. Upon the conviction of any such person, as aforesaid, the court shall, in addition to the sentence pronounced against such person, enter an order and judgment of forfeiture against said property so unlawfully used and shall order the sheriff of the county to at once seize the same wheresoever it may be found, who shall, thereupon, advertise and sell the same at public auction, for cash, to the highest and best bidder for the same, after giving at least ten days notice by advertisements posted in at least ten public places of the county, of the time and place of said sale; the proceeds of said sale, after deducting all costs, charges and expenses, shall be paid by the said sheriff to the State Treasurer for the use of the state. In the event that the said person, so charged as aforesaid, shall be acquitted, the said property shall be forthwith re-

turned to the person in whose custody it was at the time it was so seized and taken as aforesaid.

Section 18. Any Justice of the Peace, or other committing officer, shall, upon affidavit made that any person, boat, vessel, or other appliance or apparatus hereinbefore enumerated, is, are or have been violating, or used in violation of, this Act, issue his warrant to the sheriff, county constable, or officer, of the county, authorized to make such arrest, commanding him to arrest such person and to seize and detain such property for hearing, trial, or other proceeding under this Act. The said sheriff, constable or officer, may, if necessary, summon to his aid the posse comitatus, and may require the assistance and use of any other boat, vessel, or other means, by paying, or tendering, just compensation. It shall not be necessary that the affidavit shall state the name of the boat or vessel, or describe with particularity the property to be seized.

Section 19. That the costs, charges and expenses of any proceeding for the violation of the provisions of this Act, shall be taxed and allowed as follows:

To any sheriff, constable, or officer, for each day actually engaged in seizing the said property, five dollars ($5.00);

To every person summoned by and rendering aid to such sheriff or constable, for each day actually engaged in assisting in seizing said property, two dollars ($2.00);

To every Justice of the Peace, sheriff, constable, officer, witness, or other person performing service under this Act and not herein specifically mentioned, the same fees as are now provided by law for similar services. Said costs, charges and expenses shall be paid by the officer making the sale out of the proceeds thereof; or if the property be not so sold, then by the State Treasurer upon the certificate of the court or Justice of the Peace, or committing officer, before whom the proceedings were had.

That the General Assembly shall appropriate at least the sum of two hundred dollars per annum for the purpose of paying the costs and charges incurred under the provisions of this Act.

Section 20. That it shall be unlawful for any person to catch and take, or to attempt to catch and take, from the said Delaware River or Delaware Bay, with purse or shirred nets operated by or from steam or other vessels, fish of any kind whatsoever; provided, however, that this section shall not apply to the catching and taking of menhaden, sharks, porpoises and herring-hogs, by the crews of vessels licensed as provided for in this section. It shall be the duty of the Collector of Oyster Revenue, upon the

payment to him annually of the sum of one hundred dollars ($100.00) for each and every vessel or boat, to issue a license to such vessel or boat to catch and take menhaden, sharks, porpoises and herring-hogs in the waters of the Delaware Bay as far north as a straight line drawn from the centre of the mouth of Mahon's River to the nearest point opposite on the New Jersey shore from the first day of June until the thirty-first day of August, inclusive, of each year, and at no other time or times. The said money so received for said license shall be piad over to the State Treasurer for the use of the state.

Section 21. It shall be unlawful for any person to hafe in his possession or to bring into this state any fish generally known as edible or food fish that has been caught and taken from the waters of the Delaware Bay or River within the bounds aforesaid, for the purpose of extracting oil therefrom, or of converting said fish into fertilizer; and it shall also be unlawful for any person to extract oil, or to convert, or in any manner assist in extracting oil from, or in converting such fish into fertilizer.

Section 22. That any Fish Commissioner, Collector of Oyster Revenue, Sheriff, Constable, or any officer may, upon view, arrest any person violating any of the provisions

of this Act without warrant or writ issued for such purpose.

Section 23. That all prosecutions for the violation of any of the provisions of this Act, unless otherwise herein specially provided, shall be had in like manner, under similar process and proceeding, under the same restrictions and with the same privileges and rights and before the same court or officer as is now, or shall hereafter be, provided by the laws of the State of Delaware for other misdemeanors, or violations of this law.

Section 24. That each of the said States of Delaware and New Jersey shall also have concurrent jurisdiction over all offenses and violations of this Act committed, or attempted to be committed, by and person who is not an inhabitant of either of said states.

Section. 25. The Governor of the State of Delaware shall, when and as requested by the Governor of the State of New Jersey, issue a commission or commissions to such person or persons as may be named to him by the Governor of the State of New Jersey, which shall authorize the person or persons to whom the same are directed to arrest the inhabitants of either the State of Delaware or the State of New Jersey for any violation of this Act, provided, however, that if the person so arrested shall be an inhabitant of

the State of Delaware, such person shall be forthwith taken to the State of Delaware for trial and punishment. The Governor of this State may, at any time, and shall, when and as requested by the Governor of the State of New Jersey, revoke the said commissioners, or any of them. The compensation of the person or persons to whom such commission or commissions may be directed shall be paid wholly by the State of New Jersey.

The Governor of the State of New Jersey shall, when and as requested by the Governor of the State of Delaware, issue a commission or commissions to such person or persons as may be named to him by the Governor of the State of Delaware, which shall authorize the person or persons to whom the same are directed to arrest the inhabitants of either the State of Delaware or the State of New Jersey for any violation of this Act, provided, however, that if the person so arrested shall be an inhabitant of the State of New Jersey, such person shall be forthwith taken to the State of New Jersey for trial and punishment. The Governor of the State of New Jersey may, at any time, and shall, when and as requested by the Governor of the State of Delaware, revoke the said commissions, or any of them. The compensation of the person or persons to whom such commission or commissions may be directed shall be paid wholly by the State of Delaware.

Nothing contained in this section shall be so construed as to prevent the arrest of any inhabitant of the State of Delaware by and other officer or person having authority under the laws of the said state of Delaware to make arrests for the violation of the provisions of this Act.

Section 26. This Act shall not become operative until the Legislature of the State of New Jersey shall have passed, and the Governor of that State shall have approved of a similar law, agreed upon by the Commission, as recited in the preamble of this Act.

Section 27. That all laws, or parts of laws, inconsistent with the provisions of this Act, be and the same are hereby repealed.

We, the undersigned, Alexander B. Cooper, William S. Hilles and Walter H. Hayes, Commissioners on the part of the State of Delaware, William J. Bradley, J. Boyd Avis and James Strimple, Commissioners on the part of the State of New Jersey, do this 16th day of January, A. D. 1907, hereby certify that the above and foregoing Act has been prepared by us as required by law, and that we hereby approve the same.

Alex. B. Cooper

Wm. S. Hilles

Walter H. Hayes

Commissioners of the State of Delaware.

Wm. J. Bradley

J. Strimple

John Boyd Avis

Commissioners of the State of New Jersey.

The New Jersey Act so approved, is in the words, letters and figures as follows, viz:

An Act providing Uniform Laws to Regulate the Catching and Taking of Fish in the Delaware River and Bay Between the State of Delaware and the State of New Jersey.

WHEREAS, by virtue of Article IV of the Compact or Agreement entitled a "Compact Between the State of New Jersey and the State of Delaware, Relating to the Boundary Controversy Between said States", which was ratified and confirmed by an Act of the Legislature of the State of New Jersey, approved March 21, 1905, and by an Act of the GeneralAssembly of the State of Delaware, approved March 20, 1905, the State of New Jersey by an Act of the Legislature thereof, approved May 11th, 1905, appointed William J. Bradley, James Strimple and John Boyd Avis, Commissioners on the part of the State of New Jersey to confer with like Commissioners appointed, or to be appointed, by the General Assembly of the State of Delaware, to do and perform all the duties, acts, matters and things required and stipulated in the said Compact or Agreement; and

WHEREAS, by a similar Act of the General Assembly of the State of Delaware, approved March 23rd, 1905, Alexander B. Cooper, William S. Hilles and Walter H. Hayes were appointed like Commissioners, on the part of the State of

Delaware, to confer with the said Commissioners on the part of the State of New Jersey, and to do and perform the duties aforesaid; and

WHEREAS, each of the said Commissions have been duly organized as provided and required by law; and

WHEREAS, the said Commissioners of the said respective states, in joint meeting held for that purpose, have agreed upon uniform laws to regulate the catching and taking of fish in the Delaware River and Bay between the said states, and have also ascertained the dividing line between the said Delaware River and Delaware Bay, and have, upon each of the shores of the said ~~tow~~ two states where said dividing line extended intersects the same, provided for the erection of a suitable monument to mark said dividing line, in pursuance of the duties imposed upon them by law; therfore

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

Section 1. That the provisions of this Act shall affect and apply only to the catching and taking of fish in the waters of the Delaware River and Bay lying between the States of Delaware and New Jersey.

Section 2. That the inhabitants of the States of Delaware and New Jersey shall have and enjoy a common right

of fishery, throughout, in and over the waters of said river between low water marks on each side of said river between said states, except so far as either state may have heretofore granted valid and subsisting private rights of fishery.

Section 3. That nothing herein contained shall affect the territorial limits, rights or jurisdiction of either of said states or, in or over the Delaware River, or the ownership of the subaqueous soil thereof, except as is expressly set forth in said Compact between the said states; nor shall anything herein contained affect in any way the planting, catching or taking of oysters, clams, or other shell fish, or interfere with the oyster industry, as now or hereafter carried on under the laws of either of said states.

Section 4. That hereafter, it shall be lawful for any person to catch and take, from the waters aforesaid, fish of any character, (except shell fish) with any net, hook and line, or other appliances; provided the meshes of any net shall not be less than two and one half inches long stretched measure, and except as hereinafter provided.

Section 5. That hereafter it shall be unlawful for any person to catch and take, or to attempt to catch and take, shad from the waters aforesaid with a seine or net of any character, the meshes of which shall be less than five

and one quarter inches stretched measure. It shall also be unlawful for any person to catch and take, or to attempt to catch and take, any shad from the said waters in any manner whatsoever between the hours of twelve o'clock noon of every Saturday and twelve o'clock midnight of the Sunday next ensuing, and also between the Fifth day of June in each and every year and the First day of March thence next ensuing. It shall also be unlawful for any person at any time to set, place or use a net of any kind, except a drifting net, for the purpose of catching and taking shad within one half mile of the mouth of any river, creek or stream emptying into the said waters.

Section 6. That hereafter it shall be unlawful for any person to catch and take, or to attempt to catch and take, carp from the waters aforesaid with a seine or net of any character, the meshes of which shall be less than two and one half inches stretched measure. It shall also be unlawful for any person to catch and take, or to attempt to catch and take, from the said waters any carp in any manner whatsoever, between the hours of twelve o'clock noon of every Saturday and twelve o'clock midnight of the Sunday next ensuing. It shall also be unlawful for any person to catch and take, or to attempt to catch and take, from the waters aforesaid, any carp weighing less than one pound; and



DE04799

should any such fish be caught, it shall be immediately returned to the waters uninjured. It shall also be unlawful for any person to catch and take, or to attempt to catch and take, any carp in any manner whatever between the first day of May and the tenth day of August of each and every year.

Section 7. That hereafter it shall be unlawful for any person to catch and take, or to attempt to catch and take, rock fish from the waters aforesaid with a seine or net of any kind, the meshes of which shall be less than two and one half inches stretched measure. It shall also be unlawful for any person to catch and take, or to attempt to catch and take, any rock fish in any manner whatsoever between the hours of twelve o'clock noon of every Saturday and twelve o'clock midnight of the Sunday next ensuing. It shall also be unlawful for any person to catch and take, or to attempt to catch and take, from the waters aforesaid, in any manner whatever, any rock fish weighing more than twenty pounds or measuring less than ten inches in lenght; and should any such fish weighing over twenty pounds, or measuring less than ten inches in lenght, be caught, it shall be immediately returned to the waters uninjured.

Section 8. That hereafter it shall be unlawful for any person to catch and take, or to attempt to catch and take, from the waters aforesaid, any sturgeon or mamoose

with a net of any character, the meshes of which shall be less than thirteen inches, stretched measure. It shall also be unlawful for any person to catch and take, or to attempt to catch and take, any sturgeon or mamoose under six feet in length, and if any such sturgeon or mamoose under six feet in length, should be caught it shall be immediately returned to the waters uninjured. It shall also be unlawful for any person to catch and take or attempt to catch and take, sturgeon or mamoose from the waters aforesaid, in any manner whatever, between the hours of twelve o'clock noon of every Saturday and Twelve o'clock midnight of the Sunday next ensuing, and also between the first day of July in each and every year and the first day of March thence next ensuing.

Section 9. That hereafter it shall be unlawful for any person to catch and take, or to attempt to catch and take, from the waters aforesaid, any trout or weak fish with a net of any character, meshes of which shall be less than two and one half inches stretched measure. It shall also be unlawful for any person to catch and take, or to attempt to catch and take, any trout or weak fish from the waters aforesaid, with a net of any character, between the hours of twelve o'clock noon of every Saturday and twelve o'clock midnight of the Sunday next ensuing.

Section 10. That hereafter it shall be unlawful for

any person to catch and take, or to attempt to catch and take, fish of any kind with a net of any character which is anchored, staked of fastened down in any way across the said waters or any part thereof, or at right angles with the shore line thereof, or across the mouth of any river, creek or stream emptying into the waters aforesaid.

Section 11. That hereafter it shall be unlawful for any persons by boat, anchor, dredge, or otherwise, in the waters aforesaid, to wilfully and without reasonable cause, interfere with, break, damage or destroy any drift net or gill seine being lawfully used for the taking of any fish as herein provided.

Section 12. That hereafter it shall be unlawful for any person wilfully to put or place in the waters aforesaid any explosive substance whatever, or any drug or poisoned bait for the purpose of catching and taking, killing or injuring the fish, of to allow any dye stuff, coal or gas tar, coal oil, saw dust, tan bark, cocculusindicus (otherwise known as fish berries), lime, refuse from gas houses, oil tanks or vessels, or any other deleterious, destructive or poisonous substance to be turned into or allowed to run into any of the waters aforesaid, in quantities sufficient to destroy or impair fish life or distnnb the habits of fish inhabiting the same. Any person violating any of the pro-

visions of this Section shall be deemed guilty of a misdemeanor, and upon conviction thereof shall forfeit and pay a fine of not more than five thousand dollars, or shall be imprisoned not more than one year, or both, in the discretion of the court.

Section 13. That hereafter it shall be unlawful for any person to catch and take, or to attempt to catch and take, fish of any kind or desdription from the waters aforesaid by a net of any character on the Sabbath Day, commonly called Sunday.

Section 14. That hereafter it shall be unlawful for any person to catch and take, or to attempt to catch and take, fish of any kind from the waters aforesaid with a set line, or to have, use, erect or maintain in the waters aforesaid, for the purpose of catching and taking fish of any kind (except cat fish, eels and suckers), any fish basket, eel weir, fyke net, pound net, shore net, dip net, cast net, wing-wall, wing-dams, or any other device, excepting in the manner and with the means in this Act provided. Provided, that nothing contained in this section shall prevent the catching and taking of carp with shore nets, dip nets or cast nets.

Section. 15. That hereafter it shall be unlawful for any person to sell, expose for sale, or have in possession, any fish caught and taken in violation of the provisions of

this Act.

Section 16. Any person or persons violating any of the provisions of this act in all cases where no other specific penalty is herein provided, shall forfeit and pay a fine of not less than twenty dollars nor more than two hundred dollars and costs of prosecution, and in default of payment thereof shall be committed to the county jail or workhouse for a period of not less than ten days nor more than ninety days, or until such fine and costs are paid.

Section 17. Any and every boat, vessel, net, trap, pot, pound, set line, fyke, weir, or other property used by any person for the unlawful taking of, or attempting to take any fish in the waters aforesaid, in violation of the provisions of this Act, shall be forfeited to the State of New Jersey, together with the tackle, apparel and furniture of said boat or vessel and all other apparatus and implements so unlawfully used; and the same shall be seized and detained by the sheriff, officer, any constable or any fish and game warden of the state or authorized deputy or deputies, until sold or discharged, as hereinafter provided. Upon the conviction of any such person, as aforesaid, the court shall, in addition to the sentence pronounced against such person, enter an order and judgment of forfeiture against said property so unlawfully used and shall order the sheriff of the county or any fish and game warden of the state to

at once seize the same wheresoever it may be found, who shall thereupon, advertise and sell the same at public auction, for cash, to the highest and best bidder for the same, after giving at least ten days notice by advertisements posted in at least ten public places of the county, of the time and place of said sale; the proceeds of said sale, after deducting all costs, charges and expenses, shall be paid by the said sheriff or fish and game warden to the Board of Fish and Game Commissioners for the use of said commission according to law. In the event that the said person, so charged as aforesaid, shall be acquitted, the said property shall be forthwith returned to the person in whose custody it was at the time it was so seized and taken as aforesaid.

Section 18. Any Justice of the Peace, or other officer legally qualified by law, shall, upon affidavit made that any person, boat, vessel, or other appliance or apparatus hereinbefore enumerated, is, are or have been violating, or used in violation of, this Act, issue his warrant to the sheriff orany constable of the county, or any fish and game warden of the state authorized to make such arrest, commanding him to arrest such person and to seize and detain such property for hearing, trial or other proceeding under this Act. The said sheriff, constable, officer, or fish and game warden, may, if necessary, summon to his aid the posse

comitatus, and may acquire the assistance and use of any other boat, vessel, or other means, by paying, or tendering, just compensation. It shall not be necessary that the affidavit shall state the name of the boat or vessel, or describe with particularity the property to be seized.

Section 19. That it shall be unlawful for any person to catch and take, or to attempt to catch and take, from the said Delaware River or Delaware Bay, with purse or shirred nets operated by or from steam or other vessels, fish of any kind whatsoever, provided, however, that this section shall not apply to the catching and taking of menhaden, sharks, porpoises and herring-hogs, by the crews of vessels licensed as provided for in this section. It shall be the duty of the Fish and Game Commission of the State, upon the payment to it annually of the sum of one hundred dollars ($100.00) for each and every vessel or boat, to issue a license to such vessel or boat to catch and take menhaden, sharks, porpoises and herring-hogs in the waters of the Delaware Bay as far north as a straight line drawn from the centre of the mouth of Mahon's River to the nearest point opposite on the New Jersey shore from the first day of June until the thirty-first day of August, inclusive, of each year, and at no other time or times. The said money so received for said license shall be paid over to the Fish and Game Commission of the State forthe use of said Commission

as provided by law.

Section 20. It shall be unlawful for any person to have in his possession or to bring into this state any fish generally known as edible or food fish that has been caught and taken from the waters of the Delaware Bay or River within the bounds aforesaid, for the purpose of extracting oil therefrom, or of converting said fish into fertilizer; and it shall also be unlawful for any person to extract oil, or to convert, or in any manner assist in extracting oil from or in converting such fish into fertilizer.

Section 21. That any Fish Commissioner, Fish and Game warden, sheriff, constable, or any officer may, upon view, arrest any person violating any of the provisions of this Act without warrant or writ issued for such purpose.

Section 22. That each of the said states of Delaware and New Jersey shall also have concurrent jufisdiction over all offences and violations of this Act committed or attempted to be committed, by any person who is not an inhabitant of either of said states.

Section 23. The Governor of the State of Delaware shall, when and as requested by the Governor of the State of New Jersey, issue a commission or commissions to such person or persons as may be named to him by the Governor of the State of New Jersey, which shall authorize the person or persons to whom the same are directed to arrest the inhabitants of either State of Delaware or the State of New Jersey

for any violation of this Act, provided, however, that if the person so arrested shall be an inhabitant of the State of Delaware, such person shall be forthwith taken to the State of Delaware for trial and punishment. The Governor of the State of Delaware at any time, shall, when and as requested by the Governor of this state, revoke the said commission, or any of them. The compensation of the person or persons to whom such commission or commissions may be directed shall be paid wholly by the State of New Jersey.

The Governor of the State of New Jersey shall, when and as requested by the Governor of the State of Delaware, issue a commission or commissions to such person or persons as may be named to him by the Governor of the State of Delaware, which shall authorize the person or persons to whom the same are directed to arrest the inhabitants of either the State of Delaware or the State of New Jersey, for any violation of this act, provided, however, that if the person so arrested shall be an inhabitant of the State of New Jersey, such person shall be forthwith taken to the State of New Jersey for trial and punishment. The Governor of this state may, at any time, and shall, when and as requested by the Governor of the State of Delaware, revoke the said commissions, or any of them. The compensation of the person or persons to whom such commission or commissions may

be directed shall be paid wholly by the State of Delaware.

Nothing contained in this Section shall be so construed as to prevent the arrest of any inhabitant of the State of New Jersey by any other officer or person having authority under the laws of the said State of New Jersey to make arrests for the violation of the provisions of this Act.

Section . 24. The provisions of this Act where the offense is designated as a misdemeanor shall be enforced in accordance with the provisions of the Statutes of the State relating to misdemeanors and in all other cases shall be enforced in accordance with the provisions of an Act entitled "An Act to provide a uniform procedure for the enforcement of all laws relating to fish, game and birds, and for the recovery of penalties for violations thereof," approved March 29th, 1897, and the supplements thereto and acts amendatory thereof.

Section 25. This Act shall take effect immediately but shall not become operative until the Legislature of the State of Delaware shall have passed, and the Governor of that State shall have approved of a similar law, agreed upon by the Commission, as recited in the preamble of this Act.

Section 26. That all laws, or parts of laws, inconsistent with the provisions of this Act, be and the same are hereby repealed.

We, the undersigned, William J. Bradley, J. Boyd Avis and James Strimple, Commissioners on the part of the State of New Jersey, Alexander B. Cooper, William S. Hilles and Walter H. Hayes, Commissioners on the part of the State of Delaware, do this 16th day of January, A. D. 1907, hereby certify that the above and foregoing Act has been prepared by us as required by law, and that we hereby approve the same.

Wm. J. Bradley

Jas. Strimple

John Boyd Avis

Commissioners of the State of New Jersey.

Alex B. Cooper

Wm. S. Hilles

Walter H. Hayes

Commissioners of the State of Delaware.

Each draft was then certified by the Commissioners present and taken by the New Jersey Commissioners for the certificate of President Cooper.

On motion the Commission adjourned.

Walter H. Hayes
Secretary.

907 Market Street,

Wilmington, Delaware, Jan 26, 1907.

10.30 A. M.

The Commission met pursuant to the following notice in writing of the President viz:

Dear Sir:-

Your prompt attendance, at a meeting of the Del. & N. J. Commissioners &c., to be held at my office to-morrow, (Saturday) January 26th, 1907 at 10.30 o'clock A. M., is hereby requested.

Yours truly,

Alexander B. Cooper,

President.

Jan 25, 1907.

Present; Messrs.Cooper, Hilles and Hayes.

President Cooper called the meeting to order. The minutes of the meeting of January 11th were read and approved.

The Secretary reported that meetings of the Joint Commission had been held in Philadelphia on January 16th & 24th, 1907 at which the draft of uniform acts in reference to fishing in the Delaware River and Bay, had been unanimously agreed upon by the Joint Commission.

That duly certified copies of said original drafts of acts had been exchanged by the Delaware Commissioners and New Jersey Commissioners.

That he had in his possesssion, a duly certified copy of the New Jersey Act and also of the Delaware Act.

The Commission then proceeded to draw up its report to the General Assembly which report being dictated in short-hand, was left with the stenographer to be written out on the typewriter as soon as possible.

On motion the Commission adjourned.

Secretary.

907 Market Street,

Wilmington, Delaware, Feb. 2, 1907.

10.30 A. M.

The Commission met pursuant to the following notice in writing of the President viz:

Dear Sir:

Your prompt attendance, at a meeting of the Del. & N. J. Commissioners &c. to be held at my office to-morrow, (Saturday) February 2, 1907, at 10.30 o'clock A. M. is hereby requested.

Yours truly,

Alexander B. Cooper,

President.

Feb. 1, 1907.

Present: Messrs Cooper and Hayes.

The minutes of January 26th were read and approved.

The President submitted the report drawn to be submitted to the General Assembly; the report was read, corrected approved and signed. It is in the words, letters and figures following, viz:

~~It was moved that the Secretary be instructed to submit a copy of said report to each house of the General Assembly together with The Act agreed upon by the Commissioners for Delaware, which motion being seconded was adopted.~~ -138-



DE04814

~~The Commission then proceded to make out a statement of its receipts and expenditures to date which statement is in the words, letters and figures following, viz:~~

To the General Assembly of the State of Delaware.

The Commissioners appointed on the part of the State of Delaware by an Act of the General Assembly, approved March 23d, 1905, to confer with like Commissioners appointed by the Legislature of the State of New Jersey, for the purpose of drafting uniform laws to regulate the catching and taking of fish in the Delaware River and Bay between said two states, and also to ascertain the dividing line between said River and Bay, and upon each of the shores of the said two States, where said dividing line extended shall intersect the same, and at the joint expense of said States, erect a suitable monument to mark the said dividing line, do respectfully report to the General Assembly as follows:

That, in accordance with the provisions of the said Act of Assembly, they did, on the first day of April, A. D. 1905, meet, and after being duly qualified, according to law, did organize by the election of Alexander B. Cooper, President, and Walter H. Hayes, Secretary, and at once entered upon the performance of their duties. A large number of

printed notices were prepared and mailed to prominent fishermen and others throughout the State, soliciting information upon the subject-matter before the Commission. A number of public meetings were called by the Commission by public advertisements and held at prominent points in the State, to-wit, at New Castle, Delaware City, Lewes, Dover and Wilmington. These meetings were all well attended by men engaged and interested in every branch of fishing in the Delaware Bay and River. With their aid and suggestions, and with the aid of full copies of the fishing laws heretofore in existence in this State, the Commissioners, after due and careful consideration, drafted an outline of a bill providing for uniform laws, in accordance with the information and data thus obtained.

They also communicated with Commissioners on the part of the State of New Jersey, to wit, William J. Bradley, John Boyd Avis and James Strimple, and arranged for meetings of the Joint Commission in the City of Philadelphia.

On the fifteenth day of December, 1905, the first joint meeting was held in the City of Philadelphia, and organization of the Joint Commission was effected by electing Alexander B. Cooper, President, and John Boyd Avis, Secretary. The matters committed to the Joint Commission were taken up , thoroughly discussed, and a mode of pro-

ceeding agreed upon. Meetings of the Joint Commissioners and the respective State Commissioners were held from time to time until the sixteenth day of January, 1907, upon which last named date a bill providing for uniform laws to regulate the catching and taking of fish in the Delaware River and Bay between the said two States was presented to the Joint Commission, and after full discussion, amendment and consideration, was agreed upon. A copy of the bill is herewith submitted to the General Assembly of the State of Delaware, with a certificate of approval annexed, signed by all the Commissioners of behalf of both States, to take such action thereon, as is provided in, "An Act to ratify and confirm the compact or agreement between the States of New Jersey and Delaware respecting the Delaware River and Bay and to authorize the execution thereof," approved March 20th, 1905, and published in Volume 23, Laws of Delaware, page 12.

Owing to slight differences in procedure, in the two States, it was found necessary to make some changes in relation thereto, in the Act to be adopted by the State of New Jersey, and the Commissioners return herewith, a copy of the New Jersey bill as agreed upon by the Joint Commission as aforesaid, with a certificate of approval signed by all of the Commissioners on the part of both States.

With the exception of these slight changes in the matter of procedure, so as to adapt the bills to the system in force in each of the respective States, the said bills are alike, and provide uniform laws for the catching and taking of fish in the waters of the Delaware River and Bay between the said States.

The Commissioners on the part of this State, and the commissioners on the part of the State of New Jersey, have submitted the bills for uniform laws, as so drawn, to the Attorney General of the respective States, and have received opinions from them respectively, approving said laws.

The provisions of the bill in the judgment of the Commissioners are in accord with the prevailing opinions of the fishermen of this State and those intersected in the preservation and taking of fish in said waters, as expressed and shown from the testimony taken by the Commissioners at the various meetings held, and from such other sources as have been available to the Commisioners.

The most serious difference of opinion presented to the Commissioners was as to the Menhaden Fisheries, and was between the catchers and takers of food fish in the Delaware Bay and River, and the Menhaden fishermen who have large and valuable plants at Lewes in this State, and elsewhere. A special hearing was given to the Menhaden

fishermen in the City of Wilmington. At which meeting it was strongly urged by those representing the Menhaden Fisheries that, notwithstanding a prevailing public opinion to the contrary, they were not catchers of food fish to any great extent, and that their operations were rather a benefit, than a detriment to the other fishing industries. Outside of those directly interested in the Menhaden Fisheries, the evidence was very strong that during the latter part of the month of August, and particularly in the month of September, many small food fish in passing from the waters of the Delaware River and Bay are captured and destroyed by the Menhaden fishermen. Therefore, after a full investigation and thorough consideration of all the information they have been able to get on the subject from both sides, the Commissioners are of the opinion that Menhaden fishing should not be allowed in the Delaware Bay after the thirty-first day of August in each year. In this connection, the Commissioners would also say that they have carefully examined and considered the reports of the United States Fish Commision, a special Commission appointed by the State of New Jersey, and much literature on the subject, as well as the testimony of persons having a practical knowledge of the conditions.

In view of the undoubted fact of the gradual disappearance of the shad from said waters, and the almost toatl disappearance of the valuable sturgeon industries, the

Commissioners have been especially solicitous to ascertain what measures of protection should be given to these fish and industries. They have been unable to discover any cause or causes for the present conditions, excepting the Menhaden fishing as heretofore carried on, and the pollution of the waters, and they have endeavored to guard against the total extinction of these valuable fish in the provisions of the bill herewith submitted.

Another duty imposed by the General Assembly upon the Commissioners was to ascertain and mark the dividing line between the Delaware River and Bay. They examined many persons, captains, pilots and others familiar with the waters, United States Government Charts, and on the twenty-second day of June, 1906, the Joint Commission boarded the tug "Taurus" and went down the Delaware River to ascertain the Dividing line between it and the Delaware Bay. They found no little difficulty in doing this, as the character of the soil was so spongy and marshy that it was almost impossible to select suitable places for erecting the monuments. After a thorough and careful inspection, however, of both sides of the said River, and in view of the information above mentioned, they determined "That a monument should be erected on the Delaware shore, at or near Liston's Point, and that a similar monument should be erected on the New Jersey shore near the mouth of Hope Creek, and that a straight line drawn through the center of said monuments, across the body of water intervening, should be the line divid-

ing Delaware River from the Delaware Bay", and thereupon they determined to acquire title in the State of Delaware to a sufficient quantity of land upon which said monument is to be erected on the Delaware shore, and instructed the Secretary to ascertain if such title could be obtained. They have arranged with the owners of said land to convey to the State of Delaware a sufficient quantity thereof, not exceeding ten feet square, upon which said monument is to be erected, at a cost not to exceed Five Dollars. The Commissioners feel that the State of Delaware is indebted for the public-spirited liberality of Albert W. Cummins and his sisters, the owners of this land, for practically donating it to the State for this purpose.

On the thirty-first day of October, 1906, the Joint Commission entered into a contract with William J. Davidson of the City of Wilmington, Delaware, a competent and trustworthy dealer in, and manufacturing of monuments, to erect two suitable monuments, one on the Delaware shore at the point above designated, and one on the New Jersey shore at the point above designated. The cost for the erection of, and inscription on both of these monuments amounts to Three Hundred and Seventy Dollars. The contract was awarded to said Davidson, as he was the lowest and best bidder for the same, in response to proposals therefor submitted by the Commission. In addition, the Joint Commission has provided that the said monuments shall be erected under the

supervision and direction of a competent inspector employed for that purpose by the Joint Commission, and subject to his approval. These monuments are precisely alike in size and manner of erection. Each is eight feet, four inches high, one foot and six inches square at the base, tapering to one foot square near the top, and then beveled to a point at least four inches above the top square. One side of each of said monuments is to be polished, and each of said monuments is to be set upon a concrete foundation three feet deep, said concrete to be laid on good timber or stone slab bottom. Each concrete foundation to be at least four feet square at the bottom, to continue at that size for six inches in height, thence to taper on all sides to the top of the concrete which shall be at least two feet and six inches square. Each of said monuments is to be of Brandywine granite, and on the polished side of the monument to be erected on the Delaware shore is to be the following inscription.

"MOUTH OF THE DELAWARE RIVER.

A straight line drawn from the centre of this monument, to the centre of a similar monument, erected near the mouth of Hope Creek, on the New Jersey shore, is the dividing line between the Delaware River and Bay.

Ascertained June 22nd, A. D. 1906, in pursuance of uniform acts of the Legislatures of the State of Delaware and the state of New Jersey, approved A. D. 1905.

Alexander B. Cooper,

William S. Hilles,

Walter H. Hayes,

Commissioners of Delaware.

William J. Bradley,

John Boyd Avis,

James Strimple,

Commissioners of New Jersey."

And on the polished side of the monument to be erected on the New Jersey shore is to be the following inscription.

"MOUTH OF THE DELAWARE RIVER.

A straight line drawn from the centre of this monument, to the centre of a similar monument, erected near Liston's Point, on the Delaware shore, is the dividing line between the Delaware River and Bay.

Ascertained June 22nd A. D. 1906, in pursuance of uniform acts of the Legislatures of the State of Delaware and the State of New Jersey, approved A. D. 1905.

William J. Bradley,

John Boyd Avis,

James Strimple,

Commissioners of New Jersey.

Alexander B. Cooper,

William S. Hilles,

Walter H. Hayes,

Commissioners of Delaware."

Under the term of the contract, these monuments are to be erected on ~~on~~ before the first day of March, A. D. 1907.

The Commissioners return herewith a statement of the necessary expenses incurred by them attendant upon the execution of their duties as said Commissioners, together with the receipted vouchers for all payments made. They also return the minutes of the Commissioners of this State, the minutes of the Joint Commission, the typewritten copy of the testimony taken before them, together with the contract for the erection of said monuments.

It will be necessary for the Commissioners to hereafter draw from the State Treasury, out of the funds appropriated, an amount sufficient to pay for one-half of the cost of the making, erection and inspection of said monuments and other expenses.

Respectfully submitted.

Alex. B. Cooper

Wm S. Hilles

Walter H. Hayes

Commissioners for the State of Delaware.



DE04824

It was moved that the Secretary be instructed to submit a copy of said report to each House of the General Assembly tOgether with the Act agreed upon by the Commissioners for Delaware, which motion being seconded was adopted.

The Commission then proceded to make out a statement of its receipts and expenditures to date which statement is in the words, letters and figures following, viz:

Wilmington, Del., Feb. 2, 1907.

Statement of moneys received and expended by the Delaware Commissioners (Delaware-New Jersey Fisheries Compact).

RECEIPTS.

To cash received from the State Treasurer:

| | | |
|---|---|---|
| 1905 | | |
| Nov. 24, cash | | $ 46.75 |
| 1906 | | |
| April 11, to cash received | | $200.00 |
| Oct. 2, to cash | | $ 73.65 |
| 1907 | | |
| Jan. 7, to cash redeposited by Walter H. Hayes, Secretary, being the excess of the amount paid him by check No. 2, of April 13, 1906, over expenses | | 6.51 |
| Feb. 2, to cash of State Treasurer | | $ 52.00 |
| | Total | $379,11 |
| Total expenditures to date | | $361.34 |
| Balance in hadns of Commissioners Feb. 2, 1907 | | $ 17.77 |



DE04825

EXPENDITURES.

1906

Jan 20, check No. 1, C. M. Smith Printing and Stationery Company----------$ 41.75

April 13, Check No. 2, Walter H. Hayes, Sec. expenses &c $ 40.00

May 7, Check No. 3, Florence Preston, copying fish laws $ 5.00

" Check No. 4, P. J. Mulligan, Hall rent----------$ 5.00

" Check No. 5, Bennett F. Lancaster, Hall rent------$ 1.50

" Check No. 6, Bross Willard Printing Co. posters-- $ 3.50

" Check No. 7, Mercantile Printing Co., posters-----$ 4.60

" Check No. 8, Charles G. Guyer, papers, backings, &c used in copying laws----------$ 3.05

" Check No. 9, Charles G. Guyer, stenographic services and reporting meetings----------$123.50

Aug 7, Check No. 10, West. Union Tele. Co.---------- .59

Sept 20, Check No. 11, Joseph L. Cahall, Sec. of State---$ 4.00

Oct. 25, Check No. 12, Chas. Warner Co., tug Taurus------$ 45.00

" Check No. 13, A. L. Ainscow, lunch &c----------$28.85

1907

Feb. 2, Check No. 14, Charles G. Guyer, Stenographic services &c.----------$ 52.00

Feb. 2, Check No. 15, William D. Hudson, Register of Wills, Kent County, copy of will of Juliet P. Cummins---------- 3.00

Total $361.34

Mr. Hayes moved that a requisition for $68.90 be drawn on the Governor to pay for expenses for stenography,



DE04826

typewriting and clerical services incurred by the Commission as follows, viz:

Charles G. Guyer----------$28.90

Reba J. Coyle----------$15.00

Helen Thornton----------$25.00

and that said bills be paid when said money was received from the State Treasurer, which motion being duly seconded was adopted.

Mr. Hayes moved that a check be drawn for $3.00 in favor of W. D. Hudson, Register of Wills of Kent County, in payment for a certified copy of the Will of Juliet P. Cummins which motion being seconded was adopted.

On motion the Commission adjourned.

Walter R. Hayes
Secretary.



DE04827

907 Market Street,

Wilmington, Delaware, March 2, 1907.

10.30 A. M.

The Commission met pursuant to the following notice in writing of the President viz:

Dear Sir:-

The Delaware and N. J. Boundary Commission will meet at my office (Saturday) March 2, at 10.30 o'clock A. M.

Yours respectfully,

Alexander B. Cooper,

President.

Present, Messrs. Cooper, Hilles and Hayes.

The minutes of the last meeting were read and approved.

On motion of Mr. Hilles it was ordered that a requisition be drawn on the Governor for the sum of four hundred dollars, to pay for the making and erecting of the monuments, and other expenses.

On motion the secretary was requested to write to the New Jersey commission, suggesting that as the work of the commission is nearly completed, that the accounts between the States, be settled by their forwarding to us one-half the expenses for erecting the monuments and expenses incidental there-

to.

Upon motion the Commission adjourned.

Walter D. Heaps
Secretary.



DE04829

907 Market Street,

12 o'clock A. M.

May 21, 1907.

The Commission met pursuant to the following notice:

May 20, 1907.

Dear Sir:-

The Del. and N. J. Boundary commission will meet at my office to-morrow, (Tuesday) at 12 o'clock M. Mr. Hilles cannot meet earlier.

Yours truly,

Alex. B. Cooper,

Pres.

PRESENT: Messrs. Cooper, Hilles and Hayes.

The President presented the Act adopted by the Delaware Legislature and approved by the Governor which reads as follows:

Substitute to House Bill No. 135.

An Act Providing Uniform Laws to Regulate the Catching and Taking of Fish in the Delaware River and Bay Between the State of Delaware and the State of New Jersey.

WHEREAS, By virtueof Article IV of the compact or agree-



DE04830

ment entitled a "Compact Between the State of New Jersey and the State of Delaware, Relating to the Boundary Controversy Between said States," which was ratified and confirmed by an Act of the General Assembly of the State of Delaware, approved March 20th, 1905, and by an Act of the Legislature of the State of New Jersey approved March 21st, 1905, the State of Delaware by an Act of the General Assembly thereof, approved March 23rd, 1905, appointed Alexander B. Cooper, William S. Hilles and Walter H. Hayes, Commissioners on the part of the State of Delaware to confer with like Commissioners appointed, or to be appointed, by the Legislature of the State of New Jersey, to do and perform all the duties, acts, matters and things required and stipulated in the said Compact or Agreement; and

WHEREAS, By a similar Act of the Legislature of the State of New Jersey, approved May 11th, 1905, William J. Bradley, John Boyd Avis and James Strimple were appointed like Commissioners, on the part of the State of New Jersey, to confer with the said Commissioners on the part of the State of Delaware, and to do and perform the duties aforesaid; and

WHEREAS, Each of the said Commissions have been duly organized as provided and required by law; and

WHEREAS, The said Commissioners of the said respective states, in joint meeting held for that purpose, have agreed upon uniform laws to regulate the catching and taking of fish in the Delaware River and Bay between the said states, and have also

ascertained the dividing line between the said Delaware River and Delaware Bay, and have upon each of the shores of the said two States where said dividing line extended intersects the same, provided for the erection of a suitable monument to mark said dividing line, in pursuance of the duties imposed upon them by law; therefore,

Be it enacted by the Senate and House of Representatives of the State of Delaware in General Assembly met:

SECTION 1. That the provisions of this Act shall affect and apply only to the catching and taking of fish in the waters of the Delaware River and Bay lying between the States of Delaware and New Jersey.

SECTION 2. That the inhabitants of the States of Delaware and New Jersey shall have and enjoy a common right of fishery throughout, in and over the waters of said river between low water marks on each side of said river between the said states, except so far as either state may have heretofore granted valid and subsisting private rights of fishery.

SECTION 3. That nothing herein contained shall affect the territorial limits, rights or jurisdiction of either of said states of, in or over the Delaware River, or the ownership of the

subaqueous soil thereof, except as is expressly set forth in said Compact between the said states; nor shall any thing herein contained affect in any way the planting, catching or taking of oysters, clams, or other shell fish, or interfere with the oyster industry, as now or hereafter carried on under the laws of either of said states.

SECTION 4. That hereafter it shall be lawful for any person to catch and take, from the waters aforesaid, fish of any character (except shell fish) with any net, hook and line, or other appliances; provided the meshes of any net shall not be less than two and one-half inches long stretched measure, and except as hereinafter provided; provided further, that nothing in this Section shall apply to nets used for catching eels.

SECTION 5. That hereafter it shall be unlawful for any person to catch and take, or to attempt to catch and take, shad from the waters aforesaid with a seine or net of any character, the meshes of which shall be less than five and one quarter inches stretched measure. It shall also be unlawful for any person to catch and take, or to attempt to catch and take, any shad from the said waters in any manner whatsoever between the hours of Twelve o'clock midnight of every Saturday and twelve o'clock midnight of the Sunday next ensuing, and also between the fifth day of June in each and every year and the first day of March thence

next ensuing. It shall also be unlawful for any person at any time to set, place or use a net of any kind, except a drifting net, for the purpose of catching and taking shad within one-half mile of the mouth of any river, creek or stream emptying into the said waters.

SECTION 6. That hereafter it shall be unlawful for any person to catch and take, or to attempt to catch and take, carp from the waters aforesaid with a seine or net of any character, the meshes of which shall be less than two inches stretched measure. It shall also be unlawful for any person to catch and take, or to attempt to catch and take, from the said waters any carp in any manner whatsoever, between the hours of twelve o'clock midnight of every Saturday and twelve o'clock midnight of the Sunday next ensuing. It shall also be unlawful for any person to catch and take, or to attempt to catch and take, from the waters aforesaid, any carp weighing less than one pound, and should any such fish be caught, it shall be immediately returned to the waters uninjured. It shall also be unlawful for any person to catch and take, or to attempt to catch and take, any carp in any manner whatever between the first day of May and the tenth day of August of each and every year.

SECTION 7. That hereafter it shall be unlawful for any person to catch and take, or to attempt to catch and take, rock fish from the waters aforesaid with a seine or net of any kind,

the meshes of which shall be less than two inches stretched measure. It shall also be unlawful for any person to catch and take, or to attempt to catch and take, any rock fish in any manner whatsoever between the hours of twelve o'clock midnight of every Saturday and twelve o'clock midnight of the Sunday next ensuing. It shall also be unlawful for any person to catch and take, or to attempt tocatch and take, from the waters aforesaid, in any manner whatever, any rock fish weighing more than twenty pounds, andshould any such fish weighing over twenty pounds be caught, it shall be immediately returned to the waters uninjured.

SECTION 8. That hereafter it shall be unlawful for any person to catch and take, or to attempt to catch and take, from the waters aforesaid, any sturgeon or mamoose with a net of any character, the meshes of which shall be less than thirteen inches stretched measure. It shall also be unlawful for any person to catch and take, or to attempt to catch and take, any sturgeon or mamoose under six feet in length, and if any such sturgeon or mamoose under six feet in length should be caught it shall be immediately returned to the waters uninjured. It shall also be unlawful for any person to catch and take, or to attempt to catch and take, sturgeon or mamoose from the waters aforesaid, in any manner whatever, between the hours of twelve o'clock noon of every Saturday and twelve o'clock midnight of the Sunday next ensuing, and also between the first day of July in each and every

year and the first day of March thence next ensuing.

SECTION 9. That hereafter it shall be unlawful for any person to catch and take, or to attempt to catch and take, from the waters aforesaid, any trout or weak fish with a net of any character, the meshes of which shall be less than two inches stretched measure. It shall also be unlawful for any person to catch and take, or to attempt to catch and take, any trout or weak fish from the waters aforesaid, with a net of any character, between the hours of twelve o'clock midnight of every Saturday and twelve o'clock midnight of the Sunday next ensuing.

SECTION 10. That hereafter it shall be unlawful for any person to catch and take, or to attempt to catch and take, fish of any kind with a net of any character which is anchored, staked or fastened down in any way across the mouth of any river, creek or stream emptying into the waters aforesaid.

SECTION 11. That hereafter it shall be unlawful for any person by boat, anchor, dredge, or otherwise, in the waters aforesaid, to willfully and without reasonable cause, interfere with, break, damage, or destroy any drift net or gill seine being lawfully used for the taking of any fish as herein provided.

SECTION 12. That hereafter it shall be unlawful for any person willfully to put or place in the waters aforesaid any

explosive substance whatever, or any drug or poisoned bait for the purpose of catching and taking, killing or injuring the fish, or to allow any dye stuff, coal or gas tar, coal oil, saw dust, tan bark, coculusindicus (otherwise known as fish berries), lime, refuse from gas houses, oil tanks or vessels, or any other deleterious, destructive or poisonous substance to be turned into or allowed to run into any of the waters aforesaid, in quantities sufficient to destroy or impair fish life or distrub the habits of fish inhabiting the same. Any person violating any of the provisions of this Section shall be deemed guilty of a misdemeanor, and upon conviction thereof shall forfeit and pay a fine of not more than five thousand dollars, or shall be imprisoned not more than one year, or both, in the discretion of the court.

SECTION 13. That hereafter it shall be unlawful for any person to catch and take, or to attempt to catch and take, fish of any kind or description from the waters aforesaid by a net of any character on the Sabbath Day, commonly called Sunday.

SECTION 14. That hereafter it shall be unlawful for any person to catch and take, or to attempt to catch and take, fish of any kind from the waters aforesaid with a set line, or to have use, erect or maintain in the waters aforesaid, for the purpose of catching and taking fish of any kind (except cat fish, eels and suckers), any fish basket, eel weir, fyke net, pound net, shore net, dip net, cast net, wing-wall, wing-dams, or any other device, excepting in the manner and with the means in this Act provided.

Provided, that nothing contained in this Section shall prevent the catching and taking of carp with shore nets, dip nets, or cast nets.

SECTION 15. That hereafter it shall be unlawful for any person to sell, expose for sale, or have in possession, any fish caught and taken in violation of the provisions of this Act.

SECTION 16. Every violation of any of the provisions of this Act shall be deemed a misdemeanor, and upon conviction thereof, where no other specific penalty is herein provided, each offender shall forfeit and pay to the State of Delaware a fine of not less than twenty dollars nor more than two hundred dollars, and costs of prosecution, and in default of payment thereof shall be committed to the county jail, or workhouse, for a period of not less than ten days nor more than ninety days, or until such fine and costs are paid.

SECTION 17. Any and every boat, vessel, net, trap, pot, pound, set line, fyke, weir, or other property used by any person for the unlawful taking of, or attempting to take, any fish in the waters aforesaid, in violation of the provisions of this Act, shall be forfeited to the State of Delaware, together with the tackle, apparel and furniture of said boat or vessel, and all other apparatus and implements so unlawfully used; and the same shall be seized and detained by the sheriff, officer, or any

constable, or authorized deputy or deputies, until sold or discharged, as hereinafter provided. Upon the conviction of any such person, as aforesaid, the court shall, in addition to the sentence pronounced against such person, enter an order and judgment of forfeiture against said property so unlawfully used and shall order the sheriff of the county to at once seize the same wheresoever it may be found, who shall, thereupon, advertise and sell the same at public auction, for cash, to the highest and best bidder for the same, after giving at least ten days notice by advertisements posted in at least ten public places of the county, of the time and place of said sale; the proceeds of said sale, after deducting all costs, charges and expenses, shall be paid by the said sheriff to the State Treasurer for the use of the state. In the event that the said person, so charged as aforesaid, shall be acquitted, the said property shall be forthwith returned to the person in whose custody it was at the time it was so seized and taken as aforesaid.

SECTION 18. Any Justice of the Peace, or other committing officer, shall, upon affidavit made that any person, boat, vessel, or other appliance or apparatus hereinbefore enumerated, is, are or have been violating, or used in violation of, this Act, issue his warrant to the sheriff, county constable, or officer, of the county, authorized to make such arrest, commanding him to arrest such person and to seize and detain such property for hearing,

trial, or other proceeding under this Act. The said sheriff, constable or officer, may, if necessary, summon to his aid the posse comitatus, and may require the assistance and use of any other boat, vessel, or other means, by paying, or tendering, just compensation. It shall not be necessary that the affidavit shall state the name of the boat or vessel, or describe with particularity the property to be seized.

SECTION 19. That the costs, charges and expenses of any proceeding for the violation of the provisions of this Act, shall be taxed and allowed as follows:

To any sheriff, constable, or officer, for each day actually engaged in seizing the said property, five dollars ($5.00);

To every person summoned by and rendering aid to such sheriff or constable, for each day actually engaged in assisting in seizing said property, two dollars ($2.00);

To every Justice of the Peace, sheriff, constable, officer, witness, or other person performing service under this Act and not herein specifically mentioned, the same fees as are now provided by law for similar services. Said costs, charges and expenses shall be paid by the officer making the sale out of the proceeds thereof; or if the property be not so sold, then by the State Treasurer upon the certificate of the court or Justice of the Peace, or committing officer, before whom the proceedings were had.

That the General Assembly shall appropriate at least the sum of two hundred dollars per annum for the purpose of paying the costs and charges incurred under the provisions of this Act.

SECTION 20. That it shall be unlawful for any person to catch and take, or to attempt to catch and take, from the said Delaware River or Delaware Bay, with purse or shirred nets operated by or from steam or other vessels, fish of any kind whatsoever; provided, however, that this section shall not apply to the catching and taking of menhaden, sharks, porpoises, and herring-hogs, by the crews of vessels licensed as provided for in this section. It shall be the duty of the Collector of Oyster Revenue, upon the payment to him annually of the sum of one hundred dollars ($100.00) for each and every vessel or boat, to issue a license to such vessel or boat to catch and take menhaden, sharks, porpoises and herring-hogs in the waters of the Delaware Bay as far North as a straight line drawn from the centre of the mouth of Mahon's River to the nearest point opposite on the New Jersey shore from the first day of June until the thirty-first day of October, inclusive, of each year, and at no other time or times. The said money so received for said license shall be paid over to the State Treasurer for the use of the state.

SECTION 21. It shall be unlawful for any person to have in his possession or to bring into this state any fish generally

known as edible or food fish that has been caught and taken from the waters of the Delaware Bay or River within the bounds aforesaid, for the purpose of extracting oil therefrom, or of converting said fish into fertilizer; and it shall also be unlawful for any person to extract oil or to convert, or in any manner assist in extracting oil from, or in converting such fish into fertilizer.

SECTION 22. That any Fish Commissioner, Collector of Oyster Revenue, Sheriff, Constable, or any officer may, upon view, arrest any person violating any of the provisions of this act without warrant or writ issued for such purpose.

SECTION 23. That all prosecutions for the violation of any of the provisions of this Act, unless otherwise herein specially provided, shall be had in like manner, under similar process and proceeding, under the same restrictions and with the same privileges and rights and before the same court or officer as is now, or shall hereafter be, provided by the laws of the State of Delaware for other misdemeanors, or violations of this law.

SECTION 24. That each of the said States of Delaware and New Jersey shall also have concurrent jurisdiction over all offenses and violations of this Act committed, or attempted to be

committed, by any person who is not an inhabitant of either of said states.

SECTION 25. The Governor of the State of Delaware shall, when and as requested by the Governor of the State of New Jersey, issue a commission or commissions to such person or persons as may be named to him by the Governor of the State of New Jersey, which shall authorize the person or persons to whom the same are directed to arrest the inhabitants of either the State of Delaware or the State of New Jersey for any violation of this Act, provided, however, that if the person so arrested shall be an inhabitant of the State of Delaware, such person shall be forthwith taken to the State of Delaware for trial and punishment. The Governor of this State may, at any time, and shall, when and as requested by the Governor of the State of New Jersey revoke the said commissions, or any of them. The compensation of the person or persons to whom such commission or commissions may be directed shall be paid wholly by the State of New Jersey.

The Governor of the State of New Jersey shall, when and as requested by the Governor of the State of Delaware, issue a commission or commissions to such person or persons as may be named to him by the Governor of the State of Delaware, which shall authorize the person or persons to whom the same are directed to arrest the inhabitants of either the State of Delaware or the State of New Jersey for any violation of this Act, provided, how-

ever, that if the person so arrested shall be an inhabitant of the State of New Jersey, such person shall be forthwith taken to the State of New Jersey for trial and punishment. The Governor of the State of New Jersey may, at any time, and shall, when and as requested by the Governor of the State of Delaware, revoke the said commissions, or any of them. The compensation of the person or persons to whom such commission or commissions may be directed shall be paid wholly by the State of Delaware.

Nothing contained in this section shall be so construed as to prevent the arrest of any inhabitant of the State of Delaware by any other officer or person having authority under the laws of the said State of Delaware to make arrests for the violation of the provisions of this Act.

SECTION 26. This Act shall not become operative until the Legislature of the State of New Jersey shall have passed, and the Governor of that State shall have approved of a similar law, agreed upon by the Commission, as recited in preamble of this Act.

The provisions in this Act contained regulating the size of the meshes of fishing nets shall not become operative until October 1, 1908.

SECTION 27. That all laws, or parts of laws, inconsistent with the provisions of this Act, be and the same are hereby repealed.

STATE OF DELAWARE, }
DOVER, } ss.
KENT COUNTY, }

And now to wit this fourteenth day of March A. D. 1907, I, Walter H. Hayes, Secretary of the Delaware Commissioners (Delaware-New Jersey Fisheries Compact) do hereby certify that the above and foregoing is a true and correct copy of an act of the Legislature of the State of Delaware, entitled "An Act Providing Uniform Laws to Regulate the Catching and Taking of Fish in the Delaware River and Bay Between the State of Delaware and the State of New Jersey" passed at Dover March 13th, A. D. 1907.

Walter H. Hayes,
Secretary.

and also presented a certified copy of the Act of the State of New Jersey which reads as follows;

Chapter 131. Laws of 1907.

S T A T E O F N E W J E R S E Y.

An Act providing uniform laws to regulate the catching and taking of fish in the Delaware river and bay between the State of

Delaware and the State of New Jersey.

WHEREAS, By virtue of article four of the compact or agreement entitled "A compact between the State of New Jersey and the State of Delaware, relating to the boundary controversy between said States," which was ratified and confirmed by an act of the Legislature of the State of New Jersey, approved March twenty-first, one thousand nine hundred and five, and by an act of the General Assembly of the State of Delaware, approved March twentieth, one thousand nine hundred and five, the State of New Jersey, by an act of the Legislature thereof, approved May eleventh, one thousand nine hundred and five, appointed William J. Bradley, James Strimple and John Boyd Avis commissioners on the part of the State of New Jersey to confer with like commissioners appointed, or to be appointed, by the General Assembly of the State of Delaware, to do and perform all the duties, acts, matters and things required and stipulated in the said compact or agreement; and

WHEREAS, By a similar act of the General Assembly of the State of Delaware, approved March twenty-third, one thousand nine hundred and five, Alexander B. Cooper, William S. Hilles and Walter H. Hayes were appointed like commissioners on the part of the State of Delaware, to confer with the said commissioners on the part of the State of New Jersey, and to do and perform the duties aforesaid; and

WHEREAS, Each of the said commissions have been duly orga-



DE04846

nized as provided and required by law; and

WHEREAS, The said commissioners of the said respective States, in joint meeting held for that purpose, have agreed upon uniform laws to regulate the catching and taking of fish in the Delaware river and bay between the said States, and have also ascertained the dividing line between the said Delaware river and Delaware bay, and have, upon each of the shores of the said two States, where said dividing line extended intersects the same, provided for the erection of a suitable monument to mark said dividing line, in pursuance of the duties imposed upon them by law; therefore,

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. The provisions of this act shall affect and apply only to the catching and taking of fish in the waters of the Delaware river and bay lying between the States of Delaware and New Jersey.

2. The inhabitants of the States of Delaware and New Jersey shall have and enjoy a common right of fishery throughout, in and over the waters of said river, between low-water marks on each side of said river between said States, except so far as either State may have heretofore granted valid and subsisting private rights of fishery.

3. Nothing herein contained shall affect the territorial limits, rights or jurisdiction of either of said States, of, in or over the Delaware river, or the ownership of the subaqueous soil thereof, except as is expressly set forth in said compact

between the said States; nor shall anything herein contained affect in any way the planting, catching or taking of oysters, clams or other shell-fish, or interfere with the oyster industry as now or hereafter carried on under the laws of either of said States.

4. Hereafter it shall be lawful for any person to catch and take from the waters aforesaid fish of any character (except shell-fish) with any net, hook and line, or other appliances; provided, the meshes of any net shall not be less than two and one-half inches long, stretched measure, and except as hereinafter provided; provided further, that nothing in this section shall apply to nets used for catching eels.

5. Hereafter it shall be unlawful for any person to catch and take, or to attempt to catch and take, shad from the waters aforesaid with a seine or net of any character the meshes of which shall be less than five and one-quarter inches, stretched measure. It shall also be unlawful for any person to catch and take, or to attempt to catch and take, any shad from the said waters, in any manner whatsoever, between the hours of twelve o'clock noon of every Saturday and twelve o'clock midnight of the Sunday next ensuing, and also between the fifth day of June in each and every year and the first day of March thence next ensuing. It shall also be unlawful for any person at any time to set, place or use a net of any kind, except a drifting net, for the purpose of catching and taking shad within one-half mile of the mouth of any

river, creek or stream emptying into the said waters.

6. Hereafter it shall be unlawful for any person to catch and take, or to attempt to catch and take, carp from the waters aforesaid with a seine or net of any character the meshes of which shall be less than two and one-half inches, stretched measure. It shall also be unlawful for any person to catch and take, or to attempt to catch and take, from the said waters any carp, in any manner whatsoever, between the hours of twelve o'clock noon of every Saturday and twelve o'clock midnight of the Sunday next ensuing. It shall also be unlawful for any person to catch and take, or to attempt to catch and take, from the waters aforesaid any carp weighing less than one pound; and should any such fish be caught it shall be immediately returned to the waters, uninjured. It shall also be unlawful for any person to catch and take, or to attempt to catch and take, any carp, in any manner whatever, between the first day of May and the tenth day of August of each and every year.

7. Hereafter it shall be unlawful for any person to catch and take, or to attempt to catch and take, rockfish from the waters aforesaid with a seine or net of any kind, the meshes of which shall be less than two and one-half inches, stretched measure. It shall also be unlawful for any person to catch and take, or to attempt to catch and take, any rockfish in any manner whatsoever between the hours of twelve o'clock noon of every Saturday and twelve o'clock midnight of the Sunday next ensuing. It

shall also be unlawful for any person to catch and take, or to attempt to catch and take, from the waters aforesaid, in any manner whatever, any rockfish weighing more than twenty pounds or measuring less than ten inches in length; and should any such fish, weighing over twenty pounds, or measuring less than ten inches in length, be caught, it shall be immediately returned to the waters, uninjured.

8. Hereafter it shall be unlawful for any person to catch and take, or to attempt to catch and take, from the waters aforesaid, any sturgeon or mamoose with a net of any character, the meshes of which shall be less than thirteen inches, stretched measure. It shall also be unlawful for any person to catch and take, or to attempt to catch or take, any sturgeon or mamoose under six feet in length, and if any such sturgeon or mamoose under six feet in length should be caught, it shall be immediately returned to the waters, uninjured. It shall also be unlawful for any person to catch and take, or attempt to catch and take, sturgeon or mamoose from the waters aforesaid, in any manner whatever, between the hours of twelve o'clock noon of every Saturday and twelve o'clock midnight of the Sunday next ensuing, and also between the first day of July in each and every year and the first day of March thence next ensuing.

9. Hereafter it shall be unlawful for any person to catch and take, or to attempt to catch and take, from the waters aforesaid, any trout or weakfish with a net of any character, the

meshes of which shall be less than two and one-half inches, stretched measure. It shall also be unlawful for any person to catch and take, or to attempt to catch and take, any trout or weakfish from the waters aforesaid, with a net of any character, between the hours of twelve o'clock noon of every Saturday and twelve o'clock midnight of the Sunday next ensuing.

10. Hereafter it shall be unlawful for any person to catch and take, or to attempt to catch and take, fish of any kind with a net of any character which is anchored, staked or fastened down in any way across the said waters or any part thereof, or at right angles with the shore line thereof, or across the mouth of any river, creek or stream emptying into the waters aforesaid.

11. Hereafter it shall be unlawful for any persons by boat, anchor, dredge, or otherwise, in the waters aforesaid, to willfully and without reasonable cause, interfere with, break, damage or destroy any drift net or gill seine being lawfully used for the taking of any fish as herein provided.

12. Hereafter it shall be unlawful for any person willfully to put or place in the waters aforesaid any explosive substance whatever, or any drug or poisoned bait for the purpose of catching and taking, killing or injuring the fish, or to allow any dye stuff, coal or gas tar, coal oil, sawdust, tan bark, coculus indicus (otherwise known as fish-berries), lime, refuse



DE04851

from gashouses, oil tanks or vessels, or any other deleterious, destructive or poisonous substance to be turned into or allowed to run into any of the waters aforesaid, in quantities sufficient to destroy or impair fish life or distrub the habits of fish inhabiting the same. Any person violating any of the provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction thereof shall forfeit and pay a fine of not more than five thousand dollars, or shall be imprisoned not more than one year, or both, in the discretion of the court.

13. Hereafter it shall be unlawful for any person to catch and take, or to attempt to catch and take, fish of any kind or description from the waters aforesaid by a net of any character on the Sabbath day, commonly called Sunday.

14. Hereafter it shall be unlawful for any person to catch and take, or to attempt to catch and take, fish of any kind from the waters aforesaid with a set line, or to have, use, erect or maintain in the waters aforesaid, for the purpose of catching and taking fish of any kind (except catfish, eels and suckers), any fish basket, eel weir, fyke net, pound net, shore net, dip net, cast net, wing-wall, wingdams, or any other device, excepting in the manner and with the means in this act provided; provided, that nothing contained in this section shall prevent the catching and taking of carp with shore nets, dip nets or cast nets.

15. Hereafter it shall be unlawful for any person to sell,



DE04852

expose for sale or have in possession, any fish caught and taken in violation of the provisions of this act.

16. Any person or persons violating any of the provisions of this act in all cases where no other specific penalty is herein provided, shall forfeit and pay a fine of not less than twenty dollars nor more than two hundred dollars and costs of prosecution, and in default of payment thereof shall be committed to the county jail or workhouse for a period of not less than ten days nor more than ninety days, or until such fine and costs are paid.

17. Any and every boat, vessel, net, trap, pot, pound, set line, fyke, weir or other property used by any person for the unlawful taking of, or attempting to take, any fish in the waters aforesaid, in violation of the provisions of this act, shall be forfeited to the State of New Jersey, together with the tackle, apparel and furniture of said boat or vessel and all other apparatus and implements so unlawfully used; and the same shall be seized and detained by the sheriff, officer, any constable or any fish and game warden of the State, or authorized deputy or deputies, until sold or discharged, as hereinafter provided. Upon the conviction of any such person as aforesaid, the court shall, in addition to the sentence pronounced against such person, enter an order and judgment of forfeiture against said property so unlawfully used and shall order the sheriff of the county, or any fish and game warden of the State, to at once seize the same



DE04853

wheresoever it may be found, who shall thereupon advertise and sell the same at public auction, for cash, to the highest and best bidder for the same, after giving at least ten days' notice by advertisements, posted in at least ten public places of the county, of the time and place of said sale; the proceeds of said sale, after deducting all costs, charges and expenses, shall be paid by the said sheriff or fish and game warden to the Board of Fish and Game Commissioners for the use of said commission according to law. In the event that the said person, so charged as aforesaid, shall be acquitted, the said property shall be forthwith returned to the person in whose custody it was at the time it was so seized and taken as aforesaid.

18. Any justice of the peace, or other officer legally qualified by law, shall, upon affidavit made that any person, boat, vessel or other appliance or apparatus hereinbefore enumerated, is, are or have been violating, or used in violation of this act, issue his warrant to the sheriff or any constable of the county or any fish and game warden of the State, authorized to make such arrest, commanding him to arrest such person and to seize and detain such property for hearing, trial or other proceeding under this act. The said sheriff, constable, officer or fish and game warden, may, if necessary, summon to his aid the posse comitatus, and may require the assistance and use of any other boat, vessel or other means, by paying, or tendering, just



DE04854

compensation. It shall not be necessary that the affidavit shall state the name of the boat or vessel, or describe with particularity the property to be seized.

19. It shall be unlawful for any person to catch and take, or to attempt to catch and take, from the said Delaware river or Delaware bay, with purse or shirred nets operated by or from steam or other vessels, fish of any kind whatsoever; provided, however, that this section shall not apply to the catching and taking of menhadden, sharks, porpoises and herring-hogs, by the crews of vessels licensed as provided for in this section. It shall be the duty of the Fish and Game Commission of the State, upon the payment to it annually of the sum of one hundred dollars ($100) for each and every vessel or boat, to issue a license to such vessel or boat to catch and take menhaden, sharks, porpoises and herring-hogs, in the waters of the Delaware bay as far north as a straight line drawn from the center of the mouth of Mahon's river to the nearest point opposite on the New Jersey shore, from the first day of June until the thirty-first day of August, inclusive, of each year, and at no other time or times. The said money so received for said license shall be paid over to the Fish and Game Commission of the State for the use of said commission as provided by law.

20. It shall be unlawful for any person to have in his possession or to bring into this State any fish generally known as edible or food fish that has been caught and taken from the waters of the Delaware bay of river within the bounds aforesaid,

for the purpose of extracting oil therefrom or of converting said fish into fertilizer; and it shall also be unlawful for any person to extract oil, or to convert, or in any manner assist in extracting oil from or in converting such fish into fertilizer.

21. Any fish commissioner, fish and game warden, sheriff, constable, or any officer may, upon view, arrest any person violating any of the provisions of this act without warrant or writ issued for such purpose.

22. Each of the said States of Delaware and New Jersey shall also have concurrent jurisdiction over all offenses and violations of this act committed or attempted to be committed by any person who is not an inhabitant of either of said States.

23. The Governor of the State of Delaware shall, when and as requested by the Governor of the State of New Jersey, issue a commission or commissions to such person or persons as may be named to him by the Governor of the State of New Jersey, which shall authorize the person or persons to whom the same are directed to arrest the inhabitants of either the State of Delaware or the State of New Jersey for any violation of this act; provided, however, that if the person so arrested shall be an inhabitant of the State of Delaware, such person shall be forthwith taken to the State of Delaware for trial and punishment. The Governor of the State of Delaware at any time shall, when and as requested by the Governor of this State, revoke the said commissions, or any of them. The compensation of the person or persons to whom

such commission or commissions may be directed shall be paid wholly by the State of New Jersey.

The Governor of the State of New Jersey shall, when and as requested by the Governor of the State of Delaware, issue a commission or commissions to such person or persons as may be named to him by the Governor of the State of Delaware, which shall authorize the person or persons to whom the same are directed to arrest the inhabitants of either the State of Delaware or the State of New Jersey, for any violation of this act; provided, however, that if the person so arrested shall be an inhabitant of the State of New Jersey, such person shall be forthwith taken to the State of New Jersey for trial and punishment. The Governor of this State may, at any time, and shall, when and as requested by the Governor of the State of Delaware, revoke the said commissions, or any of them. The compensation of the person or persons to whom such commission or commissions may be directed shall be paid wholly by the State of Delaware.

Nothing contained in this section shall be so construed as to prevent the arrest of any inhabitant of the State of New Jersey by any other officer or person having authority under the laws of the said State of New Jersey to make arrests for the violation of the provisions of this act.

24. The provisions of this act where the offense is designated as a misdemeanor shall be enforced in accordance with the provisions of the statutes of the State relating to misdemeanors and in all other cases shall be enforced in accordance with the

provisions of an act entitled "An act to provide a uniform procedure for the enforcement of all laws relating to fish, game and birds, and for the recovery of penalties for violations thereof", approved March twenty-ninth, one thousand eight hundred and ninety-seven, and the supplements thereto and acts amendatory thereof.

25. This act shall take effect immediately, but shall not become operative until the Legislature of the State of Delaware shall have passed, and the Governor of that State shall have approved of a similar law, agreed upon by the commission, as recited in the preamble of this act. The provisions in this act contained regulating the size of the meshes of fishing nets shall not become operative until October first, one thousand nine hundred and eight.

26. All laws, or parts of laws, inconsistent with the provisions of this act, be and the same are hereby repealed.

APPROVED MAY 7th., 1907.

STATE OF NEW JERSEY

Department of State.

I, S. D. Dickinson, Secretary of State of the State of New Jersey, do hereby Certify that the foregoing is a true copy of an Act passed by the Legislature of this State, and approved by the Governor, the seventh day of May A. D. 1907., as taken from and compared with the original now on file in my office.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official Seal at Trenton, this thirteenth day of May one thousand nine hundred seven.

(SEAL)

S. D. Dickinson

Secretary of State.

The President presented the brief and title and certificate of George N. Davis, concerning the land upon which the Delaware monument is to be erected. The brief and certificate read as follows:

TITLE

to

PLOT OF GROUND AT LISTON'S POINT,

DELAWARE.

Will of Juliet P. Cummins, dated the 16th day of June 1892.

-183-

DE04859

"Item 2". I give and devise all and singular my lands and real estate wheresoever situated and whether owned by me or which I may hereafter acquire and of which I may die seised or entitled to unto my husband, David J. Cummins, for and during his natural life, and from and after his death, I give and devise the same as follows, viz: I give and devise all the said lands and premises except the farm called "The Crockett Farm", hereinafter mentioned, in fee simple to, unto and among such of my six children, William P. Cummins, Margaret C. Lea, Susan F. Cummins, Juliet Agnes Cummins, Edith C. Davis and Albert W. Cummins, as may be living at the death of my said husband, but if any one or more of my said children shall die before the death of my said husband leaving nevertheless at the time of the death of my said husband, child or children then living or issue then living of any such child that may have died previously to the death of my said husband, then such child, children or issue of such shall be substituted in the place and stead of that one or more of my said children so dying and so respectively leaving child, children or issue of such then living, and shall take by representation the sahre or part of said lands which the parent or ancestor would have taken if living and for and in the same estate the issue of any such child or children taking per stirpes and not per capita.

Juliet P. Cummins died on or about the
day of October, A. D. 1894, leaving the following children to survive her; Margaret C. Lea, Susan F. Urbin, Juliet Agnes Cummins, Edith C. Davis and Albert W. Cummins. The said William P.

Cummins mentioned in the will of Juliet P. Cummins, having previously died on or about the day of A. D. without issue.

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Will of William Polk, dated December 15, 1852, approved May, 9, 1853, provides inter alia as follows:...I give and devise to my daughter, Juliet Cummins her heirs and assigns, all that farm or tract of land situate in Appoquinimink Hundred which I bought of John Richardson, called "Rich Neck" and known by the name of High Roads Farm with the with the marsh thereto attached which I bought of Benjamin David and McKnight, which by referring to the deeds will more fully appear, with all and singular the improvements and appurtenances thereto belonging...to have and to hold etc.....to my daughter Juliet to her the said Juliet Cummins her heirs and assigns forever...(not subject to husband David J. Cummins' debts).....and in case my daughter Juliet shall die without any lawful child or issue living at the time of her decease or in case of the decease of any such child or children of my said daughter Juliet, without lawful issue, then I give and devise etc.....

---

| | | |
|---|---|---|
| John Richardson and wife | | DEED |
| to | | March 25, 1842. |
| William Polk | | I - 5 - 418. |

All those certain two tracts or parcels of land and marsh situate, lying and being in Appoquinimink Hundred in the County of New Castle aforesaid and severally described as follows, to wit:

No. 2. A tract of land or marsh, the boundaries whereof are as follows, to wit:BEGINNING at a stake on the West side of the River Delaware, being a corner marsh which Matthew Real formerly purchased from a certain Simon Gythen, thence with a line dividing the one from the other, South fifty-six degrees West to a branch or gut called Simons Branch which makes out of Blackbird Creek, thence down said branch by the several courses thereof to its confluence with Delaware River aforesaid, thence down said River to the first mentioned stake or place of BEGINNING containing about one hundred and fifty acres.

The plot of land to be conveyed in the deed to the State of Delaware on which the monument to mark the mouth of the Delaware River is to be erected is a part of the tract of land above described.

---

| | |
|---|---|
| William Herdman, Sheriff | Deed Poll. |
| to | September 8, 1828, |
| John Richardson | G - 4 - 279. |

No. 2. Here described same as that last above.

Sold as property of William Frazier.....



DE04862

I do hereby certify that I have examined the title to the plot of land ten feet square, conveyed by Alfred W. Cummins et.al to the State of Delaware, by indenture dated the Twenty-seventh day of April, A. D. 1907, now lodged in the Recorders Office at Wilmington for Record, and that in my opinion said deed conveys to the State of Delaware, a good fee simple title to the land therein described, clear of all liens of record.

George N. Davis.

May 21, 1907.

The Secretary reported that the Deed of Alfred W. Cummins et.al. to the State of Delaware for said land was lodged in the Recorders Office at Wilmington, for record.

It was moved that the bill of George N. Davis for services in acquiring said deed and searching the title to the land therein mentioned, and the purchase money for said land, amounting in the whole to Sixty seven Dollars and Fifty cents($67.50), be paid and that an order be drawn for said amount which motion being duly seconded was adopted.

The Secretary reported that on May 2nd, he had written to the Honorable J. Boyd Avis, Secretary of the New Jersey Commissioners, the following letter, viz:

Wilmington, Del., May 2, 1907.

Hon. J. Boyd Avis,

Woodbury, N. J.

My Dear Senator:-

Mr. Davidson, the contractor for the monuments, is ready to erect them at any time. The Delaware Commissioners have about secured the title to the land for their monument and will be ready to have it put up any time after the middle of next week. The contractor desires to take both monuments down the River at the same time and erect them while his men are down there.

Will you please let me know when it will suit your Commission to have your monument erected?

Of course we will need the inspector, provided for, as soon as the contractor starts the putting up of the monuments. I recall that you were the committee to employ such inspector.

Yours respectfully,

Walter H. Hayes,

Secretary.

that on May 10th, he had received a letter in reply to the above from Secretary Avis which reads as follows:

Woodbury, N. J.

May 10, 1907.

Hon. Walter H. Hayes,

Wilmington, Del.



DE04864

My dear Mr. Hayes,

I have received your letter advising me of the fact that Mr. Davidson is ready to erect the monuments.

I will take this matter up with the other members of the Jersey Commission and make final arrangements for the erection of the monument on our shore, and advise you as early as possible.

Yours very truly,

John Boyd Avis.

and that he had informed contractor Davidson of the position of the New Jersey Commissioners.

Mr. Hayes moved that the actual expenses of the Commissioners, viz: A. B. Cooper $8.70, William S. Hilles $6.00, and Walter H. Hayes, $12.10, be paid and that orders be drawn to the respective commissioners for said amounts which motion being duly seconded was adopted.

The Secretary reported that on the 27th of March he received from the State Treasurer, the State warrant for Four hundred dollars ($400.00) and had deposited the same in the Equitable Guarantee and Trust Company.

On motion the commission adjourned.

Walter H. Hayes

Secretary.



DE04865

907 Market Street,
Wilmington, Del., June, 24, 1907.
10.30 A. M.

The Commission met pursuant to the following notice in writing of the President, viz:

Wilmington, Del., June 22, 1907.

Dear Sir:-

A meeting of the Delaware Commissioners (Delaware-New Jersey Fisheries Compact) will be held at the office of the Commissioners, 907 Market Street in this City, Monday June 24, 1907 at 11 o'clock A. M.

Yours respectfully,
Alexander B. Cooper.
President.

Present: Messrs. Cooper, Hilles and Hayes:

The minutes of the last meeting were read and approved.

The Secretary notified the Commission that he had in his possession, the deed to the State of Delaware, for the land near Liston's Point upon which it was proposed to erect the Delaware monument which deed duly recorded is in the words, letters and figures following, to wit;

THIS INDENTURE, made the twenty-seventh day of April in the year of our LORD one thousand nine hundred and seven;

BETWEEN, Albert W. Cummins of Wilmington, New Castle



DE04866

County, State of Delaware, Margaret C. Lea (widow), of the Borough of Manhattan, County of New York and State of New York, Susan C. Erben (widow), of Philadelphia, County of Philadelphia, State of Pennsylvania, Edith C. Davis and Eugene, her husband and Juliet Agnes Cummins of Smyrna, Kent County, State of Delaware, parties of the first part and The State of Delaware, party of the second part.

WITNESSETH, That the said parties of the first part, for and in consideration of the sum of Five Dollars, current lawful money of the United States of America, unto them well and truly paid by the said party of the second part, at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, enfeoffed, released, conveyed and confirmed, and by these presents do grant, bargain, sell, alien, enfeoff, release, convey and confirm unto the said party of the second part and its successors.

ALL, that certain lot or piece of land situate at or near a point on the Delaware River, known as Liston's Point, in Appoquinimink Hundred, New Castle County and State of Delaware, to wit; a certain plot of ground situate as aforesaid, ten feet square, in the centre of which is to be erected one of the monuments, to wit; the one on the Delaware shore which is to mark the dividing line between the Delaware River and Bay. Being a part of the same premises of which Juliet P. Cummins died seised, having previously on the sixteenth day of June, A. D. 1892, made her last will and testament, wherein she devised to the grantors

herein, certain premises including the above described lot.

TOGETHER with all and singular the improvements, ways, woods, waters, water-courses, rights, liberties, privileges, hereditaments and appurtenances whatsoever thereunto belonging, or in anywise appertaining, and the reversions and remainders, rents, issues and profits thereof, and all the estate, right, title, interest, property, claim and demand, whatsoever of the said parties of the first part in law, equity or otherwise, howsoever, of, in and to the same, and every part and parcel thereof, reserving to the grantors herein, their heirs and assigns, the right and privilege to prohibit and enjoin the public at large from passing over other premises of these grantors in order to reach the plot of ground hereby conveyed.

TO HAVE AND TO HOLD the said lot, hereditaments and premises, hereby granted, or mentioned, or intended so to be, with the appurtenances unto the said party of the second part and its successors, to and for the only proper use and behoof of the said party of the second part and its successors forever. Provided however, that in case the premises herein granted, shall cease to be used by The State of Delaware for the purpose of erecting and maintaining a monument thereon to mark the dividing line between the Delaware River and Bay, then these premises shall revert to the grantors herein, their heirs and assigns forever.



DE04868

AND the said parties of the first part, their executors and administrators, do by these presents, covenant, grant and agree to and with the said party of the second part and its successors that the said parties of the first part, their Heirs all and singular, the hereditaments and premises herein above described and granted or mentioned or intended so to be, with the appurtenances unto the said party of the second part and its successors against the said parties of the first part, their heris and against all and every other person or persons whomsoever lawfully claiming or to claim the same or any part thereof by, through from, or under him, her, them or any of them shall and will by these presents WARRANT and forever DEFEND.

IN WITNESS WHEREOF, the said parties of the first part have hereunto set their Hands and Seals dated the day and year first above written.

SEALED AND DELIVERED I
IN THE PRESENCE OF

| | | | |
|---|---|---|---|
| George N. Davis | as to | Albert W. Cummins | (SEAL) |
| A. W. Meads | as to | Margaret C. Lea | (SEAL) |
| Joseph R. Fahy | as to | Susan C. Erben | (SEAL) |
| Ida Lovegrove | | Edith C. Davis | (SEAL) |
| Geo. W. Tilghman | | Eugene Davis | (SEAL) |
| as to | Eugene Davis and Juliet Agnes Cummins | Juliet Agnes Cummins | (SEAL) |



DE04869

STATE OF DELAWARE :
:SS.
NEW CASTLE COUNTY :

BE IT REMEMBERED, That on this Ninth day of May in the year of our LORD one thousand nine hundred and seven, personally came before me George N. Davis, a Notary Public for the State of Delaware, Albert W. Cummins, party to this indenture, known to me personally to be such and acknowledged this indenture to b e his deed.

GIVEN under my Hand and Seal of office the day and year aforesaid.

George N. Davis

Notary Public.

(SEAL)

STATE OF NEW YORK :
:SS.
COUNTY OF NEW YORK:

BE IT REMEMBERED, That on this 27th day of April in the year of our LORD, one thousand nine hundred and seven, personally came before me, A. W. Mead, a Notary Public within and for the County and State aforesaid, Margaret C. Lea (widow), party to this indenture known to me personally to be such and acknowledged this indenture to be her deed.

GIVEN under my hand and seal of office the day and year aforesaid.

A. W. Mead

(SEAL)

Notary Public.
N. Y. Co. # 72.



DE04870

STATE OF PENNSYLVANIA :
:SS.
COUNTY OF PHILADELPHIA :

BE IT REMEMBERED, That on this Seventh day of May in the year of our LORD one thousand nine hundred and seven, personally came before me a Notary Public for the Commonwealth of Pennsylvania, residing in the City of Philadelphia, Susan C. Erben, (widow), party to this indenture, known to me personally to be such, and acknowledged this indenture to be her deed.

GIVEN under my hand and seal of office the day and year aforesaid.

Joseph R. Fahy
Notary Public
14 So. Broad St. Phila.,Pa.
Commission Expires
March 12, 1911.
(SEAL)



DE04871

STATE OF DELAWARE } SS.
KENT COUNTY }

BE IT REMEMBERED, That on this Eleventh day of May in the year of our LORD one thousand nine hundred and seven, personally came before me, George W. Tilghman a Notary Public for the State of Delaware, Juliet Agnes Cummins, Eugene Davis and Edith C. Davis his wife, parties to this indenture, known to me personally to be such and severally acknowledged this indenture to be their deed and the said Edith C. Davis being at the same time privately examined by me, apart from her husband, acknowledged that she executed the said indenture willingly, without compulsion or threats, or fear of her husband's displeasure.

GIVEN under my hand and seal of office the day and year aforesaid.

George W. Tilghman

Notary Public.

(SEAL)

Endorsed on the back of the Deed is the following: Received for Record, May 15th A. D., 1907. H. H. Billand Recorder Fee for Recording &c. $2.50. Paid.

STATE OF DELAWARE |
NEW CASTLE COUNTY, |

Recorded in the Recorder's Office at Wilmington, in Deed Record, I. Vol. 21, Page 259 &c., the 15th day of May A. D. 1907.

Witness my hand and official seal.

H. H. Billany

Recorder.

The Secretary offered the following preambles and resolution viz:

WHEREAS, the Delaware Commissioners, have secured title to the land upon which The Delaware monument is to be erected on the shore of the Delaware Bay and have selected the location for the same and

WHEREAS, William J. Davidson, the contractor for the cutting and erecting of said monument, has notified this Commission that he is prepared at any time to place The Delaware monument and the New Jersey Monument in position and that he desires to do so as speedily as possible.

THEREFORE BE IT RESOLVED, That the Secretary is hereby directed to notify the New Jersey Commissioners of the foregoing facts and that the Delaware Commissioners urgently request that said monuments be placed in position on the shores of New Jersey and Delaware soon, as this Commission desires to close its work.



DE04873

Mr. Hayes moved the adoption of the said resolution and preambles, which motion being duly seconded, was unanimously adopted and the Secretary was directed to send forthwith a copy of the same to the New Jersey Commissioners.

On motion the Commission adjourned.

Walter H. Hayes
Secretary.



DE04874

1516 Walnut St., Philadelphia, Pa.

May 12, 1908.

The Joint Commission met at 3 P. M. pursuant to the following notice:

Dear Sir:-

A meeting of the Joint Commission (Delaware-New Jersey Fisheries Compact), is hereby called to meet Tuesday the 12th day of May, 1908, at 3 P. M. at the University Club, 1516 Walnut Street, Philadelphia, Pa.

You are most earnestly requested to be present as business of importance will be brought before the meeting.

Yours respectfully,

Alexander B. Cooper,

President.

Per. H.

Present: Messrs Cooper, Hilles, Hayes, Avis and Strimple.

President Cooper stated the object of the meeting to be, to arrange for the speedy erection of both monuments and stated that the Delaware Commissioners were ready at any time.

Mr. Avis, one of the Commissioners from New Jersey, reported that their commission would be ready in two weeks to select a site for the New Jersey monument and that they would notify Mr. Davidson, the contractor, of the time of their making

such selection.

The Delaware Commissioners presented a bill of $22.50, being one-half the charter price of tug Taurus and tender on June 22, 1906, and which had been paid by them to the New Jersey Commissioners who stated that they would pay the same at once.

On motion adjourned.

Walter H. Hoey
Secretary.

Wilmington, Del., July 15, 1908.

President Cooper and Secretary Hayes of the Commission, (Mr. Hilles being away), proceeded on the Tug Taurus, accompanied by Herbert H. Ward, Esq., Frank L. Speakman, Esq., Albert W. Cummings of the Evening Journal, William McVey of the Morning News, J. Clarence Dillon of the Every Evening, James P. Jones, Major William J. Black, John H. Rodney, Esq., Andred Bryson, Mr. Joseph Harry Rogers, Mr. J. Henry Staddleman, and Mr. Ayers, the foreman for the Contractor for the monuments, down the river to Hope's Creek, pointed out to Mr. Ayers about the location of the New Jersey monument and then proceeded to Liston's Point where Messrs Cooper, Hayes, Cummings and Ayers staked out the site for the Delaware monument.

It was decided on the trip to have both monuments photographed at the expense of the Joint Commission, subject to the approval of the New Jersey Commission. The contractor was instructed to proceed as soon as possible and erect the two monuments.

The Commission returned and reached Wilmington at 8.30 P. M.

Walter W. Hayes

Secretary.



DE04877

907 Market Street, Wilmington, Del.,

August 31, 1908.

10 o'clock A. M.

The Commission met pursuant to the following notice in writing of the President;

Wilmington, Del., August 29, 1908.

Dear Sir:-

A meeting of the Delaware Commissioners (Delaware-New Jersey Fisheries Compact) will be held at the office of the Commissioners, 907 Market Street in this City, Monday, August 31, 1908, at 10 o'clock A. M.

Yours respectfully,

Alexander B. Cooper.

President.

Present: Messrs. Cooper, Hilles and Hayes.

The minutes of the last two meetings were read and approved.

The Secretary notified the Commission that the two monuments had been erected and that he had received the certificate of the Inspector, Mr. John H. Avis, which certificate is in the words, figures and letters following, viz:

Woodbury, New Jersey,

August, 1908.

To Alexander B. Cooper, William S. Hilles, Commissioners appointed by the State of Delaware, William J. Bradley,



DE04878

John Boyd Avis and James Strimple, Commissioners appointed by the State of New Jersey:

I, the undersigned, the Inspector employed and appointed by the above named commission, in accordance with a certain agreement with one William Davidson for the erection of monuments on the New Jersey and Delaware Shore, marking the dividing line between the Delaware Bay and Delaware River, do hereby certify that in the construction of said monuments, the said William Davidson built and constructed in the foundations thereof an additional stone and concrete work not required by the contract to the extent of about sixty cubic feet.

Respectfully submitted,

J. H. Avis

Inspector.

Woodbury, New Jersey,

1908.

To Alexander B. Cooper, William S. Hilles, Walter H. Hayes, Commissioners appointed by the State of Delaware, William J. Bradley, John Boyd Avis and James Strimple, Commissioners appointed by the State of New Jersey:

I, the undersigned, the inspector employed and appointed by the above named Commission in accordance with the provisions of a certain agreement made in triplicate originals



DE04879

by the said Commissioners, with one William Davidson, dated October 31, Nineteen hundred and six, do hereby certify and report that I have personally supervised and inspected the erection of the monuments set out in said agreement, and certify that the monuments provided in said agreement to be erected on the Delaware shore near "Liston's Point" is of Brandywine granite eight feet four inches in height, and one foot six inches square at the base, tapering to one foot square near the top and bevelled to a point at least four inches above the top square. One side of said monument is polished and has cut thereon the inscription provided for in the said contract.

And I do further certify that said monument was erected by the said William Davidson on the Fourth day of August Nineteen hundred and eight.

I do further certify that the monument provided for to be erected on the Jersey shore near the mouth of Hope Creek is of a character similar to that erected at Liston's Point; that one side of said monument is polished and has cut thereon the inscription provided for in said agreement, and that the said monument was erected by the said William Davidson on the Jersey Shore on the Fifth day of August Nineteen hundred and eight.

I do further certify that each of said monuments was set on a concrete foundation at least three feet deep, said

concrete foundations is four feet square at the bottom and continues at that size for six inches in height, then tapers on all sides to the top of the concrete, which concrete at the top is two feet and six inches square; that said monuments have both been erected at the points provided for in the said agreement and selected by the said Commissioners.

I do further certify that said monuments are both finished and erected in a good, workmanlike manner, under my supervision and direction, and in all things in accordance with the terms of the agreement hereinbefore referred to.

All of which is respectfully submitted this Eleventh day of August A. D., nineteen hundred and eight.

This certificate is executed in duplicate originals, one of which is for each of the aforesaid Commissions.

J. H. Avis
Inspector.

The Secretary presented the following bills as being due from the Delaware Commissioners, John H. Avis, Inspector, $30.00; Charles Warner Company for Tug Taurus and Tender on August 15, $25.00; A. L. Ainscow, lunch &c., August 15, $25.00; Secretary for stamps, $1.00; which on motion of Mr. Hilles were



DE04881

directed to be paid and checks drawn for their respective amounts to the proper parties.

The Secretary also presented the bill of Mr. William Davidson to the Delaware and New Jersey Commissioners for the two monuments and their erection, being a total of $420.06, and on motion of Mr. Hilles, it was ordered that $210.03, the share or portion of the Delaware Commissioners, be paid to Mr. Davidson and a check drawn for that amount. This bill includes an item of $32.06 for interest from March 1st, 1907 to August 10, 1908, which was considered should be paid, as the Contractor was ready, under the terms of the contract, to erect the monuments by March 1st, 1907.

The Secretary also presented the bill of Harry E. Bucher for one dozen photographs of the Delaware monument amounting to $8.00, which, on Mr. Hilles' further motion was directed to be paid and check drawn to that amount.

On motion of Mr. Hilles, seconded and adopted, the Secretary was directed to notify the New Jersey Commissioners that the Delaware Commissioners have paid for their share of the monuments and also their share of the charges of the Inspector, and that this practically wound up the affairs of the Delaware Commissioners. It was also directed that the Secretary notify the New Jersey Commissioners, that unless it appeared to them desirable, there would be no further meeting of the Joint

Commission, but if the New Jersey Commissioners wished it, the Delaware Commissioners were ready to meet with them at any time.

On motion of Mr. Hilles, duly seconded and passed, the Secretary was directed to file all the records and papers of the Commission with the Secretary of State as soon as possible after the winding up of the affairs of the Commission and also, that all money standing in the name of the Commissioners after the payment of all bills, to be paid over to the State Treasurer.

On motion adjourned.

Secretary.



DE04883

(204)

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Volume _____ Page _____

RG 0914.005
Delaware Commissioners DE-NJ.
Fisheries Compact
Minute Books

Original Minute Book #1 1905-1908

DE04884

ALEXANDER B. COOPER, PRESIDENT. WILLIAM S. HILLES. WALTER H. HAYES, SECRETARY.

DELAWARE COMMISSIONERS,
(DELAWARE-NEW JERSEY FISHERIES COMPACT)
907 MARKET STREET,
WILMINGTON, DEL.

Copy

January 5, 1907

Hon. William J. Bradley,

Pres. N. J. Com. &C &c.

Dear Senator:

The Del. Commission have been waiting , since our last joint meeting in Phila. Oct. 17th 1906, for the amendments to the contemplated uniform fishing law, between Del. and N. J. but as yet have not received them. Our secretary Mr. Hayes informs me that under the direction of our commission he has written several times to your secretary Senator Avis, but was unable to hear from him, until last Saturday, when he reached him over the telephone. He then said he would submit them this week, but they have not yet been received. I respectfully call your attention to the necessity of speedy action in the matter. Our legislature is now in session, sixty days is the paid limit, and the bill and our report should be presented as soon as possible, to enable it to act promptly.

The amendments I understand are nearly completed and ready for erection.

Will you please give it your attention.

With regards to yourself and Senator Avis,

I am very truly yours,

Alex. B. Cooper
Pres. Del. Com.

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DE Commissioners
Fisheries Compact

1905 - 1907

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ALEXANDER B. COOPER, PRESIDENT. WILLIAM S. HILLES. WALTER H. HAYES, SECRETARY.

DELAWARE COMMISSIONERS,
(DELAWARE-NEW JERSEY FISHERIES COMPACT)
907 MARKET STREET,
WILMINGTON, DEL.

Wilmington, Del., October, 2, 1906.

Walter H. Hayes, Esq.,
1025 Market St.,
Wilmington, Del.

Dear Sir:-

A meeting of the Joint Commission (Delaware -New Jersey Fisheries Compact) is hereby called to meet at the University Club, 1516 Walnut Street, Philadelphia, Pa., on Friday the 5th day of October, 1906, at 2.30 o'clock P. M.

Alex. B. Cooper
President.

DE16140

DE Public Archives

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Delaware Commissioners
Fisheries Compact
General Files
1905- 1907

Brian's

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ALEXANDER B. COOPER,
PRESIDENT.

WILLIAM S. HILLES.

WALTER H. HAYES,
SECRETARY.

DELAWARE COMMISSIONERS,
(DELAWARE-NEW JERSEY FISHERIES COMPACT)
907 MARKET STREET,
WILMINGTON, DEL.

January 8. 1907

Walter H. Hayes, Esq..

Secretary &c.

Dear Sir:-

I have just seen Mr. Hilles, and we both think that a joint meeting of the commission, as above, should be called at once.

Friday of this week will suit him. If convenient to you, will you issue a call for a meeting at the University Club, (1514 Walnut Street, I think,) Philadelphia, on Friday morning of this week, at 11 O'clock, and urge the importance of the meeting, on the N. J. Commissioners.

I called to see you this A. M. but you had gone to Dover.

Yours very truly,

Alex. B. Cooper

Pres.. Joint Com.

DE Public Archives

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DE Commissioners
Fisheries Compact

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ALEXANDER S. COOPER, PRESIDENT. WILLIAM S. HILLES. WALTER H. HAYES, SECRETARY.

DELAWARE COMMISSIONERS,
(DELAWARE-NEW JERSEY FISHERIES COMPACT)
907 MARKET STREET,
WILMINGTON, DEL.

Wilmington, Del., Jan., 14, 1907.

Hon. Walter H. Hayes,

1025 Market St.,

Wilmington, Del.

Dear Sir:-

A meeting of the joint commission (Delaware-New Jersey Fisheries Compact) is hereby called to meet Wednesday the 16th day of January, 1907, at 2.30 P. M. at the University Club 1516 Walnut Street, Philadelphia, Pa.

You are most earnestly requested to be present as business of importance will be brought before the meeting.

Yours respectfully,

Alex. B. Cooper

President.

REPRODUCED AT THE NATIONAL ARCHIVES

# STATE OF NEW JERSEY

ROBERT H. McCARTER
ATTORNEY GENERAL
[redacted] NELSON B. GASKILL,
ASSISTANT ATTORNEY GENERAL

OFFICE OF THE ATTORNEY GENERAL

Trenton, N.J., Jan. 15, 1907.

Hon. R. Wayne Parker,
House of Representatives,
Washington, D.C.

My dear Mr. Parker:-

I beg to enclose herewith, for your information, copy of a letter to me dated Jan. 14, 1907, from the Attorney General of Delaware.

Very truly yours,

/s/ Robert H. McCarter

Attorney General.

# REPORT

## Of Delaware Commissioners

## On Delaware and New Jersey Fisheries Compact.

Wilmington, Del., Feb. 2, 1907.

Statement of Moneys received and expended by the Delaware Commissioners (Delaware-New-Jersey Fisheries Compact).

RECEIPTS.

To cash received from the State Treasurer:

| | |
|---|---|
| 1905. | |
| Nov. 24, cash | $ 46.75 |
| 1906. | |
| April 11, to cash received | $200.00 |
| Oct, 2, to cash | $ 73.85 |
| 1907. | |
| Jan. 7, to cash redeposited by Walter H. Hayes, Secretary, being the excess of the amount paid him by check No. 2, of April 13, 1906, over expenses | $ 6.51 |
| Feb. 2, to cash of State Treasurer | $ 52.00 |
| Total | $379.11 |

| | |
|---|---|
| Total expenditures to date | $361.34 |
| Balance in hands of Commissioners Feb. 2, 1907 | $ 17.77 |

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## EXPENDITURES.

1906.

| | |
|---|---|
| Jan. 20, check No. 1, C. M. Smith Printing and Stationary Company | $ 41.75 |
| April 13, Check No. 2, Walter Hayes, Sec., expenses, &c. | $ 40.00 |
| May 7, Check No. 3, Florence Preston, copying fish laws | $ 5.00 |
| May 7, Check No. 4, P. J. Mulligan, hall rent | $ 5.00 |
| May 7, Check No. 5, Bennett F. Lancaster, hall rent | $ 1.50 |
| May 7, Check No. 6, Bross Willard Printing Co., posters | $ 3.50 |
| May 7, Check No. 7, Mercantile Printing Co., posters | $ 4.60 |
| May 7, Check No. 8, Charles G. Guyer, papers, backings, &c., used in copying laws | $ 3.05 |
| May 7, Check No. 9, Charles G. Guyer, stenographic services and reporting meetings | $123.50 |
| Aug. 7, Check No. 10, West. Union Tele. Co. | $ .59 |
| Sept. 20, Check No. 11, Joseph L. Cahall, Sec. of State, | $ 4.00 |
| Oct. 25, Check No. 1., Chas. Warner Co., tug Taurus, | $ 45.00 |
| Oct. 25, Check No. 13, A. L. Ainscow, lunch, &c. | $ 28.85 |
| 1907. | |
| Feb. 2, Check No. 14, Charles G. Guyer, stenographic services, &c. | $ 52.00 |
| Feb. 2, Check No. 15, William D. Hudson, Register of Wills, Kent County, copy of will of Julia P. Cummins | $ 3.00 |
| Total | $361.34 |

To the General Assembly of the State of Delaware:

The Commissioners appointed on the part of the State of Delaware by an Act of the General Assembly, approved March 23d, 1905, to confer with like Commissioners appointed by the Legislature of the State of New Jersey, for the purpose of drafting uniform laws to regulate the catching and taking of fish in the Delaware River and Bay between said two States, and also to ascertain the dividing line between said River



and Bay, and upon each of the shores of the said two States, where said dividing line extended shall intersect the same, and at the joint expense of said States, erect a suitable monument to mark the said dividing line, do respectfully report to the General Assembly as follows:

That, in accordance with the provisions of the said Act of Assembly, they did, on the first day of April, A. D., 1905, meet and after being duly qualified, according to law, did organize by the election of Alexander B. Cooper, President, and Walter H. Hayes, Secretary, and at once entered upon the performance of their duties. A large number of printed notices were prepared and mailed to prominent fishermen and others throughout the State, soliciting information upon the subject-matter before the Commission. A number of public meetings were called by the Commission by public advertisements and held at prominent points in the State, to wit, at New Castle, Delaware City, Lewes, Dover and Wilmington. These meetings were all well attended by men engaged and interested in every branch of fishing in the Delaware Bay and River. With their aid and suggestions, and with the aid of full copies of the fishing laws heretofore in existence in this State, the Commissioners, after due and careful consideration, drafted an outline of a bill providing for uniform laws, in accordance with the information and data thus obtained.

They also communicated with the Commissioners on the part of the State of New Jersey, to wit, William J. Bradley, John Boyd Avis and James Strimple, and arranged for meetings of the Joint Commission in the City of Philadelphia.

On the fifteenth day of December, 1905, the first joint meeting was held in the City of Philadelphia, and organization of the Joint Commission was effected by electing Alexander B. Cooper, President, and John Boyd Avis, Secretary. The matters committed to the Joint Commission were taken up, thoroughly discussed, and a mode of proceeding agreed upon. Meetings of the Joint Commissioners and the respective State Commissioners were held from time to time until the sixteenth day or January, 1907, upon which last named date a bill provid-

ing for uniform laws to regulate the catching and taking of fish in the Delaware River and Bay between the said two States was presented to the Joint Commission, and after full discussion, amendment and consideration, was agreed upon. A copy of the bill is herewith submitted to the General Assemly of the State of Delaware, with a certificate of approval annexed, signed by all of the Commissioners on behalf of both States, to take such action thereon, as is provided in, "An Act to ratify and confirm the compact or agreement between the States of New Jersey and Delaware respecting the Delaware River and Bay and to authorize the execution thereof," approved March 20th, 1905, and published in Volume 23, Laws of Delaware, page 12.

Owing to slight differences in procedure, in the two States, it was found necessary to make some changes in relation thereto, in the Act to be adopted by the State of New Jersey, and the Commissioners return herewith, a copy of the New Jersey bill as agreed upon by the Joint Commission as aforesaid, with a certificate of approval signed by all of the Commissioners on the part of both States.

With the exception of these slight changes in the matter of procedure, so as to adapt the bills to the system in force in each of the respective States, the said bills are alike, and provide uniform laws for the catching and taking of fish in the waters of the Delaware River and Bay between the said States.

The Commissioners on the part of this State, and the Comsioners on the part of the State of New Jersey, have submitted the bills for uniform laws, as so drawn, to the Attorneys General of the respective States, and have received opinions from them respectively, approving said laws.

The provisions of the bill in the judgment of the Commissioners are in accord with the prevailing opinions of the fishermen of this State and those interested in the preservation and takng of fish in said waters, as expressed and shown from the testimony taken by the Commissioners at the various meetings held, and from such other sources as have been available to the Commissioners.



The most serious difference of opinion presented t
Commissioners was as to the Menhaden Fisheries,—an
between the catchers and takers of food fish in the Delawa
and River, and the Menhaden fishermen who have larg
valuable plants at Lewes in this State, and elsewhere. A
hearing was given to the Menhaden fishermen in the C
Wilmington. At which meeting it was strongly urged by
representing the Menhaden Fisheries, that, notwithstan
prevailing public opinion to the contrary, they were not ca
of food fish to any great extent, and that their operation
rather a benefit, than a detriment to the other fishing indu
Outside of those directly interested in the Menhaden Fis
the evidence was very strong that during the latter part
month of August, and particularly in the month of Sept
many small food fish in passing from the waters of the De
River and Bay are captured and destroyed by the Me
fishermen. Therefore, after a full investigation and the
consideration of all the information they have been able
on the subject from both sides, the Commissioners are
opinion that Menhaden fishing should not be allowed
Delaware Bay after the thirty-first day of August in eac
In this connection, the Commissioners would also say th
have carefully examined and considered the reports
United States Fish Commission, a special Commissi
pointed by the State of New Jersey, and much literature
subject,—as well as the testimony of persons having a pr
knowledge of the conditions.

In view of the undoubted fact of the gradual disa
ance of the shad from said waters, and the almost total
pearance of the valuable sturgeon industries, the Comm
ers have been especially solicititous to ascertain what m
of protection should be given to these fish and industries.
have been unable to discover any cause or causes for th
ent conditions, excepting the Menhaden fishing as her
carried on, and the pollution of the waters, and they ha
deavored to guard against the total extinction of these v
fish in the provisions of the bill herewith submitted.

Another duty imposed by the General Assembly upon the Commissioners was to ascertain and mark the dividing line between the Delaware River and Bay. They examined many persons,—captains, pilots and others—familiar with the waters, United States Government Charts, and on the twenty-second day of June, 1906, the Joint Commission boarded the tug "Taurus" and went down the Delaware River to ascertain the dividing line between it and the Delaware Bay. They found no little difficulty in doing this, as the character of the soil was so spongy and marshy that it was almost impossible to select suitable places for erecting the monuments. After a thorough and careful inspection, however, of both sides of the said River, and in view of the information above mentioned, they determined "That a monument should be erected on the Delaware shore, at or near Liston's Point, and that a similar monument should be erected on the New Jersey shore near the mouth of Hope Creek, and that a straight line drawn through the center of said monuments, across the body of water intervening, should be the line dividing Delaware River from the Delaware Bay," and thereupon they determined to acquire title in the State of Delaware to a sufficient quantity of land upon which said monument is to be erected on the Delaware shore, and instructed the Secretary to ascertain if such a title could be obtained. They have arranged with the owners of said land to convey to the State of Delaware a sufficient quantity thereof, not exceeding ten feet square, upon which said monument is to be erected, at a cost not to exceed Five Dollars. The Commissioners feel that the State of Delaware is indebted for the public-spirited liberality of Albert W. Cummins and his sisters, the owners of this land, for practically donating it to the State for this purpose.

On the thirty-first day of October, 1906, the Joint Commission entered into a contract with William Davidson of the City of Wilmington, Delaware, a competent and trustworthy dealer in, and manufacturer of monuments, to erect two suitable monuments, one on the Delaware shore at the point above designated, and one on New Jeresy shore at the point above designated. The cost for the erection of, and inscription on both of



these monuments amounts to Three Hundred and S
lars. The contract was awarded to said Davidson,
the lowest bidder for the same, in response to prop
for submitted by the Commission. In addition, the
mission has provided that the said monuments shal
under the supervision and direction of a competer
employed for that purpose by the Joint Commissio
ject to his approval. These monuments are precis
size and manner of erection. Each is eight feet,
high, one foot and six inches square at the base,
one foot square near the top, and then beveled to
least four inches above the top square. One side
said monuments is to be polished, and each of said
is to be set up on a concrete foundation three feet
concrete to be laid on good timber or stone slab bot
concrete foundation to be at least four feet square
tom, to continue at that size for six inches in heigh
taper on all sides to the top of the concrete which
least two feet and six inches square. Each of said
is to be of Brandywine granite, and on the polished
monument to be erected on the Delaware shore i
following inscription:

MOUTH OF THE DELAWARE RIVE

A straight line drawn from the center of this
to the center of a similar monument, erected near th
Hope Creek, on the New Jersey shore, is the divid
tween the Delaware River and Bay.

Ascertained June 22nd, A. D. 1906, in pursuance
acts of the Legislatures of the State of Delaware a
of New Jersey, approved A. D. 1905.

ALEXANDER B. C
WILLIAM S. HILL
WALTER H. HAYES
Commissioners o
WILLIAM J. BR
JOHN BOYD AV
JAMES STRIMPL
Commissioners of N

And on the polished side of the monument to be erected on the New Jersey shore is to be the following inscription:

MOUTH OF THE DELAWARE RIVER.

A straight line drawn from the center of this monument, to the center of a similar monument, erected near Liston's Point, on the Delaware shore, is the dividing line between the Delaware River and Bay.

Ascertained June 22nd, A. D. 1906, in pursuance of uniform acts of the Legislatures of the State of Delaware and the State of New Jersey, approved A. D. 1905.

WILLIAM J. BRADLEY,
JOHN BOYD AVIS,
JAMES STRIMPLE,
Commissioners of New Jersey.
ALEXANDER B. COOPER,
WILLIAM S. HILLES,
WALTER H. HAYES,
Commissioners of Delaware.

Under the terms of the contract, these monuments are to be erected on or before the first day of March, A. D. 1907.

The Commissioners return herewith a statement of the necessary expenses incurred by them attendant upon the execution of their duties as said Commissioners, together with receipted vouchers for all payments made. They also return the minutes of the Commissioners of this State, the minutes of the Joint Commission, the typewritten copy of the testimony taken before them, together with the contract for the erection of said monuments.

It will be necessary for the Commissioners to hereafter draw from the State Treasury, out of the funds appropriated, an amount sufficient to pay for one-half of the cost of the making, erection and inspection of said monuments, and other expenses.

Respectfully submitted,
ALEXANDER B. COOPER,
WILLIAM S. HILLES,
WALTER H. HAYES,
Commissioners for the State of Delaware.

# Preliminary Report

OF THE

# Commission For The Investigation of Salt Water Fishing.

1906.

## LETTER OF TRANSMITTAL.

*To His Excellency, Edward C. Stokes, Governor, and to the Members of the Senate and General Assembly of the State of New Jersey:*

In accordance with the provisions of the resolution providing for our appointment your commission present the following report.

GEORGE L. SHINN, Chairman,
JOSEPH CRAWFORD,
CHARLES A. SHEINER, Secretary.

March 12, 1906.

## RESOLUTION PROVIDING FOR THE APPOINTMENT OF THE COMMISSION.

Whereas, There is a growing sentiment in this State in favor of the regulation of the taking and the better protection of our salt water fishes, and

Whereas, The Governor has called attention to the matter in his last message to the Legislature; therefore, be it

Resolved, That the Governor be requested, and he is hereby authorized, to appoint a commission of three persons conversant with the matter whose duty it shall be to make a report, if possible, to the present Legislature, setting forth such facts and conclusions as they may arrive at, together with such measures as they may deem advisable. Such commission shall give hearings in the State House in this city at such time or times as may be convenient for members of the Legislature, who may desire to attend, giving due notice thereof to the Senate and House of Assembly. Such commission shall serve without pay, but may be allowed such sum for expenses as the Legislature my determine.

DE18419

# PRELIMINARY REPORT OF THE COMMISSION

FOR THE

# INVESTIGATION OF SALT WATER FISHING.

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The resolution, under the authority of which your commission was appointed, contemplates the making of a report during the present session of the legislature. The resolution also provides that hearings shall be had in the State House at such times as might be convenient for the members of the Senate and General Assembly. With due regard for the convenience of all persons interested, the first time at which such a hearing could be held was found to be the 21st of last month and on that day a hearing was had in the Senate chamber, the whole afternoon being devoted to listening to arguments on the subjects of menhaden and poundnet fishing, your commission having designated those two subjects as the most important within the purview of its duties. On the 28th day of the same month, at the same place, another afternoon was devoted to the same purpose. The two subjects were discussed from all points of view, able speakers representing the menhaden people, the poundnet men, the sportsmen of the state and the League of Seacoast Hotel Proprietors. Diverse were the views expressed, each speaker being confident that the particular view he held was the correct one, and in almost every instance an array of facts and alleged facts was adduced to substantiate the claims of the speaker. In this way your commission has gathered together a mass of data and statistics, the proper consideration of which will occupy some time. The menhaden and poundnet questions constitute only a fraction of the work outlined for your commission and it is consequently apparent, in view of the early date contemplated for the adjournment of the legislature, that it will be impossible to make a full report on the matters to be considered.

Your commission has, however, been placed in possession of a number of facts which, in our opinion, warrant us in

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making a preliminary report and in suggesting the adoption of certain measures as a basis for the further elaboration of the matters entrusted to us. We have found a state of affairs to exist which we believe calls for more restrictive legislation than is to be found on our statute books at present, and if the remedies which we suggest for existing evils should find approval on your part, we believe the interests of the public could be better subserved by prompt action in some matters than by a postponement of all for another twelve months. Our report will accordingly be limited, in the first place, to the menhaden and poundnet industries, and, in the second place, to such features of these two industries as impressed themselves most forcibly on our attention, leaving all the details and likewise all matters not connected with these two industries for future investigation and consideration. The measures we shall recommend are not of so drastic a nature as to contemplate injury to any person in the state, nor can they be so lasting in their effects that any unforeseen results may not be corrected by legislation next year. We simply desire to report on what we believe to be undisputed facts, leaving all matters of a controversial nature for determination at some future time.

## The Menhaden Industry.

It would be a difficult matter to present even a summary o the arguments advanced in favor of a continuance of the men haden industry. The economic value of the industry to th general public is two-fold; the oil expressed from the fish bein used in tanning leather and in several sciences, no substitut therefor having been discovered; the industry produces fertilizer of a very high grade and the only article brought int competition with the fertilizer produced by the abattoirs o Chicago and other places; removing fish scrap from th market would practically establish a monopoly in the busines of supplying fertilizer in favor of the so called beef trust; th products of the menhaden plants are accordingly of great valu to the farming and other industries. These statements, mad by counsel in behalf of the menhaden industry, were not con troverted; they were not even challenged; we accordingl have no reason to doubt the truth of these contentions.

The federal government and a number of the states alon the Atlantic Seaboard, have at different times conducted in vestigations into the operations of the menhaden steamers After considering exhaustive reports made by the Commis sioners of Fisheries in various years, Congress declined to inter fere with the industry. Massachusetts passed a law prohibitin the operation of purse or shirred nets in Buzzard's Bay, and Vir ginia enacts a license fee and limits the taking of menhaden i Chesapeake Bay to residents of the state. In no state i there any restriction as to the operation of the nets in th ocean, either for menhaden or food fish with the exception o New Jersey. In this state the law prohibits, or intends to pro hibit, the taking of food fish by the menhaden steamers. I addition to this, each steamer and sailing vessel is required t take out a license, the fee ranging from one hundred to tw hundred dollars according to the tonnage of the steamer, an being fixed at twenty-five dollars each for sailing vessels According to evidence adduced before your commission twen ty-six out of the forty steamers owned by New Jersey corpora tions pay this license fee, the remaining fourteen steamer

being used in other waters. Of the forty other steamers, coming to the New Jersey coast from the South, none pays a license, this being due to the fact that the license law is almost impossible of enforcement. Our statutes make it the duty of the State Fish and Game Commission and its officers to enforce the license law, but the legislature has not provided the commission with the means to carry out the provisions of the law. When the wide range of ocean water along the New Jersey coast and the very irregular indentations of the coast are considered, together with the fact that each menhaden steamer carries a crew of from fifteen to thirty men, we think the failure of the Fish and Game Commissioners to enforce the law is excusable, and we were not at all surprised at the testimony adduced before us of the flagrant violations of the law on the part of southern vessels; in fact, it is apparent that the reason why any licenses are paid is because of the ownership of some of the steamers by New Jersey corporations which could be prosecuted without the seizure of the vessel contemplated by the statute. It would require fast-sailing gunboats to enforce the present statute as against vessels from other states, and the same state of affairs would exist were a prohibitive measure enacted. It would be applicable practically only to vessels owned in New Jersey.

It is also claimed in behalf of the menhaden industry, and that on the highest scientific authority, that no appliances of man can possibly affect the supply of the fish in the ocean; it is claimed that the numbers of menhaden at the present day are as great as they ever were, that the fluctuations in the numbers are due to causes which human skill and study have failed to ascertain; it is also asserted that less than five per cent. of the total number of menhaden are annually captured by the menhaden steamers and that, as the capture does not take place during the spawning season, there are always enough left for a supply for the following year, especially when the almost wonderful fecundity of the fish is taken into consideration. Although these statements are based on the reports of investigations conducted by the United States Fish Commission and other high authorities, yet there is reason to



doubt at least some of them. Most of them were challenged by numerous witnesses who appeared in the interest of handline fishermen and most of these contended that the supply of menhaden was growing less year by year and that the menhaden industry by destroying the food reduces the numbers of edible fish. But even on this subject there was a wide diversity of opinion among handline fishermen, who are certainly the most interested persons in this controversy, some insisting that edible fish have decreased in quantity and others, supported by a score of affidavits, contending that there are fully as many edible fish in the ocean at present as there were half a century ago. Some residents of Atlantic City, who have spent a good many years as handline fishermen and who still follow that occupation, declared that it would improve their fishing if more menhaden were taken; their argument is that menhaden constitute the principal food of the bluefish and sharks and that no other fish, excepting very large weakfish, ever eat menhaden; bluefish destroy many other kinds of fish and together with the sharks, tend to drive fish from our shores, so that if these predaceous fish were deprived of their principal food, of little value otherwise, there would be more weakfish, striped bass and other kinds of highly prized game and food fish. It should also be stated in this connection that the industry affords employment to a thousand persons in the state. On account of the manifest benefits arising from the pursuit of this industry, your commission cannot recommend any interference with it, as far as the taking of menhaden only is concerned.

But there is another feature of the menhaden industry which presents an altogether different aspect. It is contended on the part of those who regard the industry with unfavorable eyes that the menhaden steamers take large quantities of food fish and that these food fish are ground up into fertilizing material. On the part of the menhaden people, supported by the strongest evidence from the United States Fish Commission, it is contended that not enough food fish are taken to supply the crews of the vessels employed in the industry. It is probably true that, in the pursuit of their ordinary

avocation, the menhaden steamers do not take food fish in sufficient quantities to interfere with the supply, but your commission is firmly convinced that the menhaden steamers have taken food fish, not for the purpose of rendering them into fertilizing material but for the purpose of placing them in cold storage and disposed of them when the market presented a favorable opportunity and your commission is just as firmly convinced of the contention that the menhaden steamers should not be permitted to pursue any such course. In the first place, it would be a difficult matter for fish to be taken from a steamer and placed in cold storage without causing deterioration in the flesh of the fish and in many instances rendering it unfit for food, on account both of the distance the dead fish would have to be carried without ice and on account of the fact that menhaden steamers always have at least traces of putrid fish from previous hauls and are consequently not kept as clean as proper regard for public health would indicate in a vessel used to contain food for human kind. A mass of statistics supplied to your commission shows that the average wholesale price of food fish for some years to persons engaged in taking them for the market has been $2.12 a barrel, or one and one-twenty-seventh cent per pound. With fish obtainable at so low a figure there can certainly be no demand for an increase in the facilities for taking food fish, especially if such facilities would tend to aggravate the conditions so bitterly complained of by some of the handline fishermen.

Nevertheless it has been shown that one corporation engaged in taking menhaden during the past year experimented in the taking of food fish and that some two thousand tons were placed in cold storage in a refrigerator erected in this state. That the experiment was successful seems to be indicated by preparations now alleged to be under way for an extension of this taking of food fish and the very material increase in the number of vessels used by this corporation, the latter having purchased the whole outfit of a very much larger corporation. There is reason to apprehend that numerous cold storage places will be erected in New Jersey during the coming season and, unless some legislation is adopted prohibiting this extension, the owners of these cold storage places will with good reason argue before the next legislature that they have with the sanction of the state invested large sums of money in an industry which affords employment to many hands and tends to supply the market with cheap fish. A further corroboration of this projected extension of the capture of food fish may be found in the contention made at both hearings of your commission that the present laws of the state permit the taking of food fish by menhaden steamers. Although we may believe that the menhaden industry should not be interfered with as long as all that is sought is menhaden yet we would respectfully urge the passage of measures which will prohibit the taking of food fish by these steamers and it is obvious that such legislation cannot be too quickly enacted. It is on this account that we would respectfully urge the passage of the following measure:



An Act to restrict the taking of fish by the use of purse or shirred nets from steam and other vessels to the taking of menhadens and to regulate the taking of such menhaden and to require a license therefor.

Be it enacted by the Senate and General Assembly of the State of New Jersey:

1. Hereafter it shall be unlawful for any person or persons, corporation or corporations, to take with purse or shirred nets operated from steam or other vessels in any of the waters within the jurisdiction of this state, including the waters of the Atlantic ocean within three nautical miles of the coast line of said state, any kind of fish whatsoever, either on his account or benefit or on account and benefit of his employer, under a penalty of two hundred dollars; provided, however, that this section shall not apply to the taking of menhaden on the part of crews of vessels licensed as provided for in this act.

2. Whenever any person or persons, corporation or corporations, may intend to take menhaden with such purse or shirred nets in the waters above specified, such person or persons, corporation or corporations, shall make an application therefor to the Board of Fish and Game Commissioners of this state.

3. Upon the receipt of such application the Board of Fish and Game Commissioners shall, upon the payment to the said board

of the sum of one hundred dollars for each steam vessel of not more than fifty tons net tonnage, one hundred and twenty-five dollars for each steam vessel of over fifty tons, and not more than one hundred tons net tonnage, and two hundred dollars for each steam vessel of over one hundred tons net tonnage, said net tonnage to be determined by custom house measurement, and twenty-five dollars for each sailing vessel with tenders to be so employed in the taking of menhaden by means of such shirred or purse nets, as a license fee, issue to such person or persons, corporation or corporations, a licence, duly signed by the secretary of said Board of Fish and Game Commissioners, which said license shall be valid and in force for the term of one year from the date thereof and no license shall be issued for a space of time less than one year.

4. It shall be unlawful for any person or persons, corporation or corporations, to bring into this state any weakfish, bluefish, bonito, porgy, kingfish, herring, shad or other fish generally known as edible fish for the purpose of converting said fish into fertilizer under a penalty of two hundred dollars; and it shall be unlawful for any person to convert, or in any manner to assist in converting, such fish into fertilizer, under a penalty of two hundred dollars.

5. The provisions in the first section of this act shall not apply to any persons employed on any steamer or other vessel engaged in taking menhaden, taking sufficient food fish for their own consumption and those immediately dependent upon them.

6. An act entitled "An Act to regulate fishing by steam and other vessels with shirred or purse seines in the waters of the State of New Jersey, and to require a license for such fishing," approved March 26, 1896, is hereby repealed.

7. This act shall take effect immediately.

## The Poundnet Industry.

A great deal of what has been said in regard to the menhaden industry applies with equal force to the operation of poundnets. Evidence has been adduced before your commission to the effect that the poundnets have deprived hundreds of handline fishermen of their occupation, that a great many pounds are constructed of netting with so fine a mesh as to prevent the escape of any and all fish and that the poundnets absolutely prevent the passing up and down along the shores of



New Jersey of any kind of fish. On the other hand, it is argued that the poundnets furnish a supply of cheap fish not only to the seaside resorts but also to people living inland that handline fishermen have, on account of the ever increasing population of our seaside resorts, found more remunerative occupation than fishing, and that the meshes of the nets used are no smaller than the demands of the industry require. The evidence against and in favor of the poundnets is voluminous and contradictory, but your commission does not feel as if it is called upon at the present time to determine this question. There are numerous arguments in favor of a restriction of the poundnet industry irrespective of the economic questions involved in the supply of cheap food fish.

One of the greatest natural advantages possessed by New Jersey is its coast. The revenue derived from New Jersey in almost countless ways on account of the influx hither of summer visitors is enormous, and is well worthy of the sedulous care of the authorities. The wishes and the welfare of these people, who add so much to the wealth of the state, are well worthy of consideration. One of the main reasons why they come here is on account of the fishing afforded by the ocean, and anything that would materially interfere with this sport should not be tolerated, unless there were some compensating agency of more importance to counterbalance it. This also applies in a very large measure to permanent residents of the state who desire to indulge in the pleasure of angling.

Nor has your commission found any reason why the operation of poundnets should not be restricted. The shad fisherman who owns a few feet of water frontage on the Delaware is required to register the same, pay a registration fee and give a bond that he will comply with the laws passed for the governing of his actions. Men who desire to build piers along the water front anywhere in the state are compelled to pay a tribute to the state through the agency of the riparian commissioners. The poundnet owners are the only persons enjoying such privileges who are exempt from any restrictions. They occupy the land which is owned by the state and

which certainly possesses a great value to them, without hindrance or compensation; they seize upon the fish, also, under the best interpretations of the law, the property of the state, without even asking permission to do so. The question of compensation to the state for the privileges enjoyed is, however, a matter of minor consideration. The aim of your commission is to suggest such legislation as will, in a measure at least, satisfy the property owners along the seaside, the anglers of the state and such other interests as have presented themselves to our attention, without, however, suggesting any restrictions which will interfere with the supply of cheap fish for all.

Owners of poundnets who appeared before your commission admitted that the mesh of the leader need not be less than seven inches for the successful operation of a poundnet; in fact, many poundnet owners use even a larger mesh, thus permitting small fish to pass by. Others, however, still insist on using a small mesh, although they admitted that they could get along very well with one of larger mesh. It is on this account that your commission would suggest the passage of an act limiting the size of mesh for the leader to six inches. A suggestion to this effect met with opposition on the part of some of the poundnet owners who had already purchased netting of smaller mesh for the coming season's fishing. In order to avoid any fault-finding on this account your commission would suggest that such poundnet owners may be permitted to use up such netting as they own at present, the limitation as to the six-inch mesh applying only when the netting at present on hand shall be used up. It was practically admitted on the part of every poundnet owner who appeared before us that a mesh of two and three-fourths inches for the heart and of two and one-fourth inches for the pocket would be amply sufficient for the demands of the industry; a number of poundnet owners use smaller mesh. Your commission would suggest restricting the mesh to the size indicated above.

One of the principal objections raised to the operation of poundnets is that they establish a screen extending over a mile into the ocean, preventing the passage of fish in their migrations. Poundnets as at present operated are a succession of leaders, hearts and pockets, four or five of these frequently being strung together with no intervening space. In order to afford some opportunity for the fish to pass up and down the coast your commission would suggest the passage of an act requiring a space of at least two hundred feet to be left between each pocket and the next following leader. This would also do away with the objections raised by owners of sailing and motor boats that the poundnets compel them to make long detours in order to get around the nets, the two hundred feet of space intervening between pocket and leader being sufficient to permit of the passage of any kind of vessel.



According to the regulations of the Department of War no leader can begin at a point less than fifteen hundred and twenty feet from the shore. This regulation was adopted for the purpose of affording a passageway for vessels to ply in close proximity to the shore, and not with any intention of protecting the fish. That it incidentally answers the latter purpose will be admitted. But it is claimed that this regulation is not complied with by the poundnet owners, and that there have been many flagrant violations of it, of which the War Department was not aware or to which it paid no attention. The poundnet owners deny this allegation. Be this as it may, the poundnets are at present being operated under permits from the War Department, and the conditions of these permits should be observed in the interest of public welfare or they would not have been determined upon by the War Department. Now the State of New Jersey has far better opportunities of enforcing such regulations, and your commission accordingly would suggest the enactment of a statute making the regulations of the War Department the laws of New Jersey.

For the purpose of affording proper facilities to the authorities for the enforcements of the restrictions above indicated your commission would suggest that poundnet owners be required to register their nets in the office of the county clerk of the county where they operate poundnets.

## Sandy Hook and Raritan Bay.

There is pending at present in the House of Assembly a bill providing for the prohibition of net fishing in Sandy Hook and Raritan bays and Staten Island Sound and the tributaries thereof. If an enactment of this nature had been placed upon our statute books a score of years ago it would undoubtedly have operated for the benefit of the state of New Jersey. Unfortunately, at that time the extent of poundnet fishing was not foreseen. One poundnet was erected after the other and what one person had the right to do others assumed the right to do, until there is an accumulation at the present day of some forty-four poundnets in the limited area of water indicated in the proposed law. This number is being added to every year and there can be no doubt that the existence of these nets has kept away and driven away considerable numbers of summer residents. They have precluded the possibility of indulgence in the sport of angling and have made extremely hazardous the use of motor and other boats, especially in the evening. But to pass the measure at present pending in the House of Assembly would mean the sacrificing of considerable property, of large sums of money which the state by failure to legislate to the contrary has invited the investment of. Other states, although they do not interfere with the operation of poundnets in the ocean, have restricted or prohibited them in bays and estuaries of the ocean, a policy which New Jersey would do well to follow, especially as the development and value of large tracts of land along and near the ocean depend on the use of such property for summer residences.

New York state does not tolerate netting in Jamaica Bay and other inland salt waters and the result is that large numbers of pleasure parties, many of these from New Jersey, every day during the fishing season go to New York waters, thus diverting from New Jersey a source of revenue and pleasure which should have been encouraged instead of driven away.

In Sandy Hook bay poundnets are increasing in number; they are threatening the practical closing up of the Shrewsbury river. Fortunately so far a few, a very few, poundnets, are to be found along the bay coast of Sandy Hook, and while the prohibition of maintaining them would entail a loss on a few individuals, this loss would be trifling compared to the enormous advantages to be derived therefrom.



It is, in fact, a question whether any individual would sustain any loss. The few who, in past years, operated poundnets in the territory sought to be proscribed, have no stakes driven and the netting they may have purchased may be used in the vast expanse of water open to owners of poundnets, both in Sandy Hook and Raritan Bays and the Atlantic ocean.

Your commission would accordingly suggest the passage of the act referred to when it shall have been amended so as to apply only to the Shrewsbury river and that area of water lying between the bay shore of Sandy Hook and a line drawn from the extreme end of Sandy Hook to the steamboat dock at Atlantic Highlands.

For the reasons above stated your commission would suggest the enactment of the following:

An Act to regulate the taking of fish by means of poundnets, the construction and maintenance of such poundnets and to require their registration.

Be it enacted by the Senate and General Assembly of the State of New Jersey:

1. The owner or possessor of every poundnet in any of the waters within the jurisdiction of this state, including the waters of the Atlantic ocean within three nautical miles of the coast line of said state, shall before he begins the operation of such poundnet or begins to take fish therefrom, give to the clerk of the Court of Common Pleas of the county wherein such poundnet or the greater part thereof may be, a description in writing, of said poundnet, giving the dimensions of the leader, heart and pocket and the size of the mesh; which said description it shall be the duty of the county clerk to file in his office and to give a certificate therefor upon the payment to him of a registration fee of two dollars.

2. It shall be unlawful to erect or maintain any poundnet, the

mesh of the leader of which shall be less than six inches, stretch measurement; it shall be unlawful to erect or maintain any poundnet the mesh of the heart of which shall be less than two and three-fourths inches, stretch measurement; it shall be unlawful to erect or maintain any poundnet the mesh of the pocket of which shall be less than two and one-fourth inches, stretch measurement.

3. It shall be unlawful to erect or maintain any poundnet unless there shall be a clear and open space of at least two hundred feet between the extreme end of the pocket and the beginning of the leader of the next poundnet, and such intervening space shall be kept free and clear of any and all kinds of nets or netting.

4. It shall be unlawful to erect or maintain any poundnet the shore-end of the leader of which shall be less than fifteen hundred and twenty feet from the low water mark on the shore and it shall be unlawful to erect or maintain any poundnet the extreme pocket of which shall be more than forty-five hundred and sixty feet from low water mark at the shore.

5. Any person or persons guilty of the violation of any of the provisions of this act shall be punished by a fine of two hundred dollars.

6. The provisions of this act as far as they apply to the restriction of the sizes of mesh in the leader, heart or pocket of any poundnet shall not be held to apply to any netting in use at the time of the passage of this act or the owner of said netting, but when such netting in use at the time of the passage of this act shall have become worn out or destroyed by storm or accident then the aforesaid provisions of this act shall be held to apply to all renewals of such netting.

7. The provisions of this act shall not apply to any of the fresh waters of this state and nothing in this act shall be held to repeal or to modify any of the provisions of an act entitled "An Act for the protection of certain kinds of birds, game and fish, to regulate their method of capture and to provide open and close seasons for such capture and possession," approved April 14, 1905, and the amendments of and supplements thereto.

8. The provisions of this act shall be enforced in accordance with the provisions of an act entitled "An Act to provide a uniform procedure for the enforcement of all laws relating to fish, game and birds, and for the recovery of penalties for violations thereof," approved March 29, 1897, and the amendments of and supplements thereto.



9. This act shall take effect immediately.

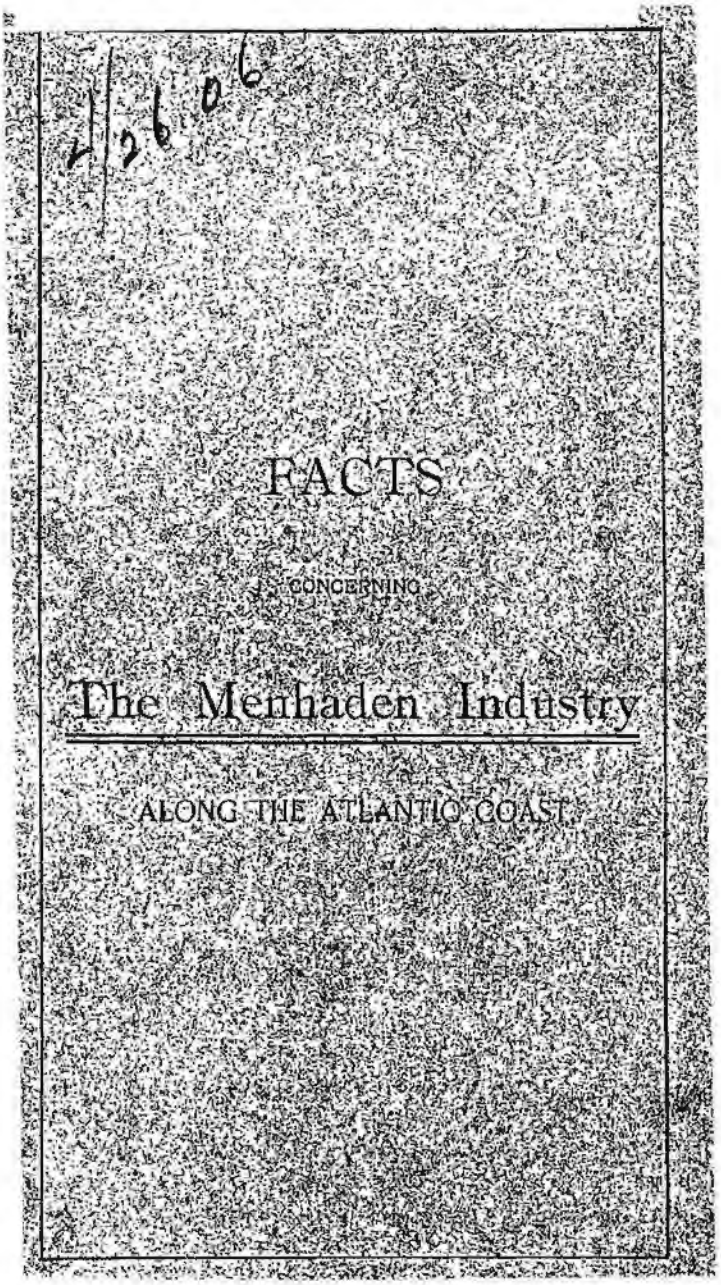
An Act to restrict fishing with nets in the Shrewsbury river a that portion of Sandy Hook Bay lying between the bay sho of Sandy Hook and a line drawn from the extreme end Sandy Hook Point to the steamboat dock at Atlantic Hig lands.

Be it enacted by the Senate and General Assembly of the Sta of New Jersey:

1. It shall be unlawful for any person or persons, corporati or corporations, to erect or maintain, or to use, in the waters the Shrewsbury river and of that portion of Sandy Hook Bay lyi between the bay shore of Sandy Hook and a line drawn from t extreme end of Sandy Hook Point to the steamboat dock at Atla tic Highlands, any poundnet, gill net, fyke net or any kind of fix net whatsoever for the taking of fish, or to use in said waters a sweeping seine for the taking of fish under a penalty of two hu dred dollars.

2. The provisions of this act shall be enforced in accordan with the provisions of an act entitled "An Act to provide a u form procedure for the enforcement of all laws relating to fi game and birds, and for the recovery of penalties for violatio thereof," approved March 29, 1897, and the amendments of a supplements thereto.

3. This act shall take effect immmediately.


FACTS
CONCERNING
The Menhaden Industry
ALONG THE ATLANTIC COAST

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# Facts Concerning the Menhaden Industry

## Along the Atlantic Coast.

### Historical.

The history of the menhaden industry along the Atlantic coast begins with the earliest settlement of the colonists. We find that Thomas Morton wrote in 1632 concerning Virginia:

"There is a fish (by some called shadds, by some allizes) that at the spring of the year pass up the rivers to spawn in the ponds, and are taken in such multitudes in every river that hath a pond at the end that the inhabitants doung their ground with them. You may in one township see a hundred acres together, set with these fish, every acre taking 1,000 of them, and an acre thus dressed will produce and yield so much corn as three acres without fish."

This passage is very interesting showing the use of fish as fertilizers in Virginia over two hundred and fifty years ago.

In Governor Bradford's "History of Plimoth Plantation" an account is given of the early agricultural experiences of the Plymouth colonists. In April, 1621, at the close of the first long dreary winter, "they (as many as were able) began to plant their corn, in which service Squanto (an Indian) stood them in great stead, showing them both the manner how to set it and after how to dress and tend it. Also he told them, except they got fish and set it (in these old grounds) it would come to nothing; and he showed them that in the middle of April, they should have store enough come up the brook by which they began to build, and taught them how to take it."

It will therefore be noted that the existence of

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menhaden in the waters adjacent to the Atlantic coast doubtless had considerable effect upon the maintenance of the colonists and greatly assisted in their agricultural pursuits.

Among scientists the menhaden is known as Brevoortis tyrannus ; but it has, however, about thirty common names, among which are porgy, moss-bunkers and fat backs.

In Washington Irving's Knickerbocker's History of New York, will be found the following references :

"An old Dutch burgher, famed for his veracity, and who had been a witness of the fact, related to them that he saw the Duyvel in the shape of a huge moss-bonker, seize the sturdy Antony by the legs and drag him beneath the waves. Nobody ever attempts to swim across the creek after dark, and as to the moss-bonkers, they are held in such abhorrence that no good Dutchman will admit them to his table who loves good fish and hates the devil."

Although the use of menhaden as fertilizer dates back to the earliest history of this country, the manufacture of menhaden oil has been prosecuted for a few years only.

"Several individuals claim the honor of having been the first to discover its value. About the year 1850 Mrs. John Bartlett, of Blue Hill, near Mount Desert, Me., while boiling some fish for her chickens noticed a thin scum of oil upon the surface of the water. Some of this she bottled, and when on a visit to Boston soon after carried samples to Mr. E. B. Phillips, one of the leading oil merchants of that city, who encouraged her to bring more. The following year the Bartlett family industriously plied their gill-nets and sent to market thirteen barrels of oil, for



which they were paid at the rate of $11 per barrel, in all $143.

"Mr. Phillips gave them further encouragement, furnishing nets and large kettles, which they set up out of doors in brick frames, for trying out the fish. It was thought that much oil was thrown away with the refuse fish and scrap, and the idea of pressing this scrap was suggested. This was at first accomplished by pressing it in a common iron kettle with a heavy cover and a long beam for a lever ; afterward by placing it under weight of heavy rocks, in barrels and tubs perforated with auger holes. Mr. Phillips subsequently fitted out some fifty parties on the coast of Maine with presses of the model known as the screw and lever press."—History of American Menhaden by G. Brown Goode. See United States Fish Commission's Report, 1877.

### Present Condition of the Industry.

At the present time there are about thirty factories along the Atlantic coast engaged in the manufacture of fish oil and fertilizer. The average amount of cash invested in each of these factories is approximately $100,000, making a total investment, as represented by factories, of $3,000,000. In connection with these factories about seventy-five steamers are operated, the average tonnage of which is about 150 net tons, while their value will probably average $25,000 each ; making a total investment as represented by steamers of $1,875,000. In the operation of the factories and steamers more than five thousand men are employed including the best known and highest class fishermen along the Atlantic coast.

## Adverse Legislation and Criticism.

From time to time bills have been introduced in the legislatures of the states bordering on the Atlantic coast for the purpose of regulating the menhaden fisheries, with the idea in view of preventing the destruction of this valuable fish. As to the necessity of such legislation, we find Mr. L. E. Mattox, possibly the best informed man in this country on this subject, writes as follows:

"In fact where all the data point to the conclusion that the menhaden while on our coast are being destroyed by predaceous enemies in greater numbers every day than by man with all his appliances in a whole season, it would seem sheer unreason to establish a petty restriction of the catch lest the stock should be ultimately exhausted.

"No other state will be guilty of such folly, even if we should allow our own to be. The effect of restricting the fishery, as referred to, would be to drive the oil and guano manufacture and those engaged in it out of the state, with all their capital and equipment, and to extinguish the industrial activities set in operation by their business. The time for restriction will be when restriction has been shown to be needed. Other states have made a trial of the interference policy in the same matter and have abandoned it as uncalled for and unwise.

"The complaint that the seines 'scare' the edible fish from the interior waters may be dismissed as too trivial for notice. If the limited operations of seining scare the fish out, much more should the far more extended operations outside scare them in. The same weight is to be attached to the charge that the seines injure the shad fishery by capturing the fish."



Goode, in the history of this industry above referred to, on the point of the probable destruction of the fish, states as follows:

"Of the abundance of menhaden in times gone by we can know very little, for they have never been considered an important species, and might easily escape the observation of writers. We infer that they were abundant at the time of the Dutch colony on New York Island, two hundred years ago, from the name given to it by the New Netherlanders; in fact we have the statement, already quoted, of Dankers and Sluyter, who before 1679 saw in the bay of New York schools of innumerable fish and a sort like herring, called there mossbonkers. L'Hommedieu speaks of their abundance at the close of the last century.

"There is no evidence of a decrease in the abundance of menhaden during a period of fifteen or more years of fisheries conducted on an immense scale. It seems, therefore, that no one can reasonably predict a decrease in the future. The movements of marine fishes are capricious in the extreme. The only cases in which the fisheries have been clearly shown to exercise a pernicious effect is where the spawning fish are taken in great quantities. It has been clearly determined that the menhaden are never captured upon their spawning beds.

"The bluefish with the bonito are, however, their most destructive enemies, not even excepting man. Mr. Simpson, examining a great many of the bluefish caught on the North Carolina coast in the summer of 1874, found from one to three 'fatbacks' in the stomach of each. These corsairs of the sea, not content with what they eat, which is of itself an enormous quantity, rush ravenously through the closely crowded schools, cutting and tearing the living fish as

they go, and leaving in their wake the mangled fragments. Traces of the carnage remain for weeks in the great 'slicks' of oil so commonly seen on smooth water during the summer season.

"Is it too much, then, to multiply the three hundred millions of millions of menhaden probably consumed by the full-grown bluefish alone on the coast of New England in the summer months by ten? This would allow three thousand millions of millions of menhaden, old and young, annually destroyed in the waters of the United States, in comparison with which the number annually taken by men is perfectly insignificant. This estimate will seem extravagant at first sight, but I believe that it will be found a very moderate one by any who may take the pains to investigate the question for themselves."

In the year 1892 a committee of the United States Senate propounded to Mr. M. McDonald, at that time United States Fish Commissioner, certain questions, which are quoted herewith, together with Mr. McDonald's answers.

This report in full can be found in Miscellaneous Document No. 156, United States Senate, 52nd Congress, First Session.

"Q. Has there been a marked decrease in the abundance of the menhaden in recent years?

"A. There has been no falling off in the supply of menhaden except locally, and apparently in consequence of the low temperature of the water. As, for example, in the inshore waters north of Cape Cod, from which they have been known to absent themselves for a period of ten years.

"Q. As compared with the fish taken by man, what influence is exerted on the abundance of menhaden by predaceous fishes, birds, etc.?



"A. It has been estimated that the number of menhaden taken in seines and other forms of nets during the last season was about 700,000,000. There is no means of determining exactly how many are destroyed by birds, whales, porpoises, and other predaceous animals, but the number is believed to be far in excess of that taken by the fishery. From the stomach of a shark 100 whole menhaden have been taken and bone whales have been known to consume several barrels at a mouthful. Shoals several miles in length of porpoises have been seen in the act of destroying schools of menhaden, and it is scarcely to be doubted that they alone consume more than the entire fishing fleet. Competent observers have seen sharks covering acres of water in the midst of menhaden schools in which the fish were huddled together like flocks of frightened sheep, and the destruction caused by these voracious animals probably exceeds that brought about by porpoises. Among the sharks the spined dogfish is the most abundant and most destructive on the menhaden schooling grounds. The tunny, which reaches a weight of 1,000 pounds, is among the fishes which destroy large numbers of menhaden. The swordfish and the sailfish are also active and powerful enemies. The pollock, the cod, the squeteague, the striped bass, the bluefish, and the bonito are very destructive to the menhaden. Prof. Baird estimated that the bluefish alone probably destroyed twelve hundred million millions of fish during the season of four months in the summer and fall on the New England coast alone. Of these Goode thinks at least one quarter are 'probably menhaden'."

It would therefore seem that man as a probable factor in the extermination of menhaden

may be eliminated in the consideration of the question.

Another objection which has been urged against the menhaden fisheries is the fact that large quantities of food fish are caught by the menhaden steamers in purse nets employed in catching menhaden.

In 1892 in the report to the United States Senate above referred to, the United States Fish Commissioner on this point stated as follows:

"The investigations of the Fish Commissioner have shown that the capture of food fish by menhaden fishermen is, as a rule, very limited or rare. There is much evidence to show that generally not enough fish suitable for food have been taken to supply the tables on board the vessels. On rare occasions schools of food fish have been captured and carried to market, where they have been sold for food. In a very few instances, where they could not be sold for market purposes, they have probably been utilized in the factories. This is, however, less objectionable than cases that have often happened in the market food-fish fishery, where quantities of fish have been taken to sea from New York or other ports and thrown overboard by the crews of fishing vessels, because there was no demand for the fish and no facilities for keeping them. It is a common feature of the market fishery in almost all large market ports for tons of fish to be thrown away on frequent occasions, and in some places this is almost a daily occurrence. The captures of food-fish, however, by menhaden vessels have been so exceptional, and the total quantity so small, that the influence upon the general abundance of these species can not be appreciable. When it is understood that the annual yield of the



fisheries in the region where the menhaden industry is prosecuted amounts to more than a billion pounds in round numbers, it will be seen that the catching of a food-fish now and then, or the capture of a few barrels each season, would not materially affect the general supply of such species.

"It is fair to say, in consideration of this particular matter, that practically no fishery is entirely exempt from waste, and can not be from the very nature of the circumstances under which fishing is ordinarily prosecuted. Thus, the hook-and-line fisherman may wound many fish that he does not catch; he may take many that are not suitable for market, and consequently have to be thrown away. The gill-net fisherman will lose many fish in hauling his net that have been killed and sunk to the bottom and the condition of the market is often such that not all the fish arriving can be sold. There is probably no fishery prosecuted but what instances could be cited where fish in greater or less quantities have been thrown away, often through no fault of the fisherman, but rather because he has been powerless to control circumstances."

In 1894 Hugh M. Smith, M. D., now Deputy Fish Commissioner at Washington, made a report on this subject and if any one is in doubt as to the statement of facts made therein on the subject, he has but to write to Dr. Smith, who is possibly the best informed man on this subject in this country.

In order to arrive at reliable figures as to the amount of food fish taken, one man was placed on the Fisheries' Steamer Arizona during the summer of 1894. This steamer fished from Long Island Sound to the Capes of the Dela-

ware. Another man was placed upon the Steamer J. W. Hawkins and this steamer fished from Maine to North Carolina.

The Arizona made 619 seine hauls and captured 18,709,900 fish of which 18,706,800 were menhaden and 3,100 were what might be classed as food fish, although many of the varieties of fish included as food fish are rarely used for such purpose.

The J. W. Hawkins made 459 seine hauls and captured 9,350,665 fish, of which 9,258,955 were menhaden and 91,710 were what might be classed as food fish, but it should be stated that among this number of food-fish were included 80,877 alewives.

By reference to the report made by Dr. Smith, Bulletin of the United States Fish Commission, 1895, a copy of which is readily obtainable, the number of fish of each variety caught may be ascertained.

The average annual catch of menhaden has not increased since the year 1894, when these observations were made, hence the figures given above are applicable to the conditions of the present day.

A comparison of the amount of net fish taken by the menhaden steamers with the amount of food fish taken by the pound net fishermen is very interesting and the results are startling.

For an example, in the year 1892 (last authentic figures obtainable) the pound net fishermen on the northern coast of New Jersey alone took from the waters 6,866,149 pounds of net fish.

Dr. Smith in his report on this subject which



is readily obtainable from the Fish Commission at Washington, writes as follows:

"Probably the time is not far distant when it will become an obvious necessity in some states to place more stringent regulations on the use of pound and other nets in certain situations, as, for instance, in the mouths of rivers, where the decrease in the catch of shad, sturgeon, salmon, etc., may often be clearly traced to the taking of fish on their way to the spawning grounds in such numbers that the reproductive process is practically inhibited; but it is a well-recognized fact that the pound and other nets which are set in the open waters of the ocean and take chiefly free-swimming marine fishes are the least likely to do serious damage and afford the least ground for apprehension.

"Probably the most valid and forceful objection that has been made against the pound nets on this coast is that there is a large destruction of immature and small fish that are unmarketable. This criticism is applicable to most of the pound fishing in this country. It is not generally denied by the pound fishermen that many fish too large to go through the meshes of the nets and too small to be marketed are caught and, by the nature of the fishery, necessarily sacrificed. The same objection is justly advanced against much of the seine fishing on our coast. No entirely satisfactory remedy has as yet been suggested for this condition. The enlargement of the mesh in the bowl of the pound nets will not completely overcome present objections and will introduce elements of expense and trouble which the fishermen wish to avoid. The fishermen say that, unless the size of the mesh is made so large that many marketable fish will escape, the fish sought to be preserved will be gilled, and thus as effectually destroyed

as with a small mesh, while the time and labor required to clear the net of the gilled fish would make the prosecution of the business almost impracticable. The remedy which seems to afford the most relief is to require the pound operators to lift the nets more frequently than is usually done, to liberate all small fish, and bring to the shore only such fish as are marketable."

There have been suggestions made from time to time by ill-advised persons interested in this subject, that the menhaden fisheries should not be allowed to fish within the three mile limit. This in the first place would deprive the state of the revenue from the annual licenses of the menhaden steamers and in the second place such a movement would probably drive menhaden fishermen into the food-fish business.

Beyond the three mile limit there are very few menhaden, but the food-fish are accustomed to swim in large schools at this distance from the shore. There would be then nothing to prevent the menhaden fishermen from catching large bodies of food-fish and supplying the markets with the same. And in this connection it might be said that the steamers of the menhaden fisheries need but cold storage apparatus to completely adapt them to the food-fish business.

And indeed such would be the inevitable result of an attempt to destroy by state legislation the menhaden fisheries. The companies now engaged in this industry have invested in fishing steamers, plants and apparatus, a sum of money very considerable in the aggregate. If they are prohibited from pursuing the menhaden industry, they must of necessity go into the food



fish business for which they are already well equipped as to vessels and plants. In this event they would undoubtedly conduct their operations just without the three mile limit and take every fish possible without regard to size, species or amount.

Menhaden fishermen have some $5,000,000 invested in the industry; and it is more to their interest than to that of any one else to see that the menhaden do not diminish in numbers. It is vitally necessary for them that every precaution be taken to prevent the extermination of the fish.

### Importance of the Fertilizer Furnished by the Menhaden Industry to Agriculturists.

In considering this question, it must be borne in mind that there are but two sources from which the organic ammonia used in fertilizers is derived: First, from the bone and tankage furnished by the meat packers of Chicago and elsewhere controlled by the so-called Beef Trust and, second, from the fish scrap furnished by the menhaden industry. Suppose the fish scrap furnished by the menhaden industry was eliminated from the situation. Is it not very clear that this would operate directly to the disadvantage of the farmers? If the meat packers were thus left in control of the entire situation the price of fertilizer would undoubtedly be much higher. Much consideration has been given in this country to the question of the value of fish and fish scrap as a fertilizer.

President Dwight, of Yale College, visiting Eastern Long Island in 1804, speaks with much

approval of the menhaden as a fertilizer, and thus describes the introduction of its use:

"Their agriculture has, within a few years, been greatly improved. For a considerable period before the date of this journey the land had become generally impoverished by a careless husbandry, in which the soil was exhausted, and no attempts were made to renew its strength. Within this period its inhabitants, with a laudable spirit of enterprise, have set themselves to collect manure wherever it could be found. Not content with what they could make and find upon their own farms and shores, they have sent their vessels up the Hudson and loaded them with the residuum of potash manufactories, gleaned the streets of New York, and have imported various kinds of manure from New Haven, New London, and even from Hartford. In addition to all this, they have swept the Sound and covered their fields with the immense shoals of white-fish with which, in the beginning of the summer, its waters are replenished. No manure is so cheap as this, where the fish abound; none is so rich and few are so lasting. Its effect on vegetation is prodigious. Lands which heretofore have scarcely yielded ten bushels of wheat by the acre are said, when dressed with white-fish, to have yielded forty. The number caught is almost incredible. It is here said, and that by persons of very fair reputation, that 150,000 have been taken at a single draught. Such, upon the whole, have been their numbers, and such the ease with which they have been obtained, that lands in the neighborhood of productive fisheries are declared to have risen, within a few years, to three, four, and in some cases, to six times their former value."

In the year 1877 Mr. A. O. Atwater made an



investigation of this subject and his report may be found in the report of the United States Fish Commission for the year 1877.

The following extract from Mr. Atwater's report will be, and should be, interesting to the residents of the State of New Jersey, owing to the fact that reference is made to the opinion of Prof. G. H. Cook, at that time secretary of the State Board of Agriculture:

"As a result of the profitable utilization for the manufacture of oil, the use of the whole fish as a fertilizer has gradually and almost entirely ceased, and given place to the refuse from which oil has been expressed or otherwise extracted. This is known in its crude state as 'fish scrap,' 'fish pomace,' or 'chum,' and when more carefully prepared, as 'dry fish,' 'dry ground fish,' and 'fish guano.' Still farmers have been slow to avail themselves of this more concentrated material."

Professor G. H. Cook, of New Jersey, in his report as the secretary of the State Board of Agriculture, writes:

"The supply for fish guano is almost unlimited in this state, and it only needs capital and skill to build up a business of great importance to the state and profit to the manufacturer. On the coasts of Long Island and of Maine, where the business has been carried on for the oil which could be got from the fish, the residuum has been sold at various prices from $15 to $30 a ton, and has been a very popular fertilizer with those who have used it. It is sought for by the manufacturers of superphosphate of lime, to mix with their product, and there can be no doubt that it is very beneficial in such a mixture, giving quickness to its action, while the superphosphate would add to the duration of efficiency.

When this source of manure is properly worked it can be made to supply all the guano needed in the state.

"While the most common mode of using these fish is in the hill or furrow for corn, they are often employed in a compost with barnyard manure and a little lime. Those who have tried such a mixture say that it is superior to any guano in the market. When applied on corn the crop is considered as certain. Some farmers mix them with muck and apply the compost upon wheat. This fertilizer is wonderfully rapid in its effects, showing changes in the growth of a crop in a few days after it has been applied. But it is not lasting manure. In a year or two this stimulating effect is gone, and a second application is necessary. For producing quick results it is so efficient that all farmers who have tried it unite in testifying to its value.

"The cardinal principle to be observed by the farmer in the purchase of fertilizer is to select those which furnish, in the best form and at the lowest cost, the ingredients of plant-food that his crops need and his soil fails to supply.

"The principle that should guide the manufacturer should be to economize all available materials in his manufacture so as to furnish the valuable ingredients in the best forms, in products of high grade and uniform composition, and at the fairest practicable rates.

"The most important ingredients of our fertilizers, because the most rare and costly, are nitrogen, phosphoric acid and potash. The first two are most important. These are supplied in large proportions by fish."

As to the value of fish scrap as a fertilizer, the attention of those interested in the subject is directed to a report of the United States Fish



Commission in the year 1903, by Charles H. Stevenson, from which the following is a quotation:

"Although the argicultural value of dried fish scrap is nearly equal to that of Peruvian guano, the market price is much below that article. In explanation of this fact it may be stated that fish scrap is not in such compact and good mechanical condition for shipment and general use. Its value as a fertilizing agent has not been so widely known as that of Peruvian guano, and thus its principal use is largely limited to the manufacturers of superphosphates, who are forced by competition to exercise great caution in the cost of manufacture."

### Conclusion.

A great many investigations have been made on this subject for the purpose of ascertaining whether or not the menhaden industry, as now conducted, would eventually drive these fish from our waters and whether or not the menhaden industry, as now conducted, destroys large quantities of food fish, which would otherwise be valuable for the markets.

The result of these various investigations has been a complete vindication of the menhaden industry. Many of these investigations have been, of course, for honest purposes of ascertaining facts, while other investigations were by competitors of the menhaden fisheries for the purpose of driving them out of the business.

The best informed people on this subject are naturally those connected with the United States Fish Commission at Washington and any one desiring to obtain the exact facts relative to the menhaden industry has but to make inquiry

of that department at Washington, the purpose of which is to protect our American fisheries.

Probably the most sane conclusion reached by any one who has investigated this matter, is contained in the following quotation from the report of Mr. Goode, above referred to:

"It is not hard to surmise the menhaden's place in nature; swarming in our waters in countless myriads, swimming in closely-packed, unwieldy masses, helpless as flocks of sheep, close to the surface and at the mercy of the enemy, destitute of means of defense or offense, their mission is unmistakably to be eaten. In the economy of nature certain orders of terrestrial animals, feeding entirely upon vegetable substances, seem intended for one purpose, to elaborate simpler materials into the nitrogenous substances necessary for the food of other animals which are wholly or in part carnivorous in their diet. So the menhaden, deriving its own substance from otherwise unutilized organic matter, is pre-eminently a meat producing machine. Man takes from the water annually six or seven hundred millions of these fish, weighing from two hundred and fifty to three hundred thousand tons, but his indebtedness to the menhaden does not end here. When he brings upon his table bluefish, bonitos, weakfish, swordfish, bass, codfish, what is he eating? Usually nothing but menhaden!

"Whether there is any likelihood that the myriads which now swarm our waters will ever be perceptibly diminished by the loss of six or seven hundred millions of their numbers annually, I will not presume to say. I simply call attention to the fact that spawning fish are apparently never taken in the nets. It is the opinion of many authorities that if fish are not interfered with at the time when they are reproducing their kind there is no great probability of decreasing their number.



"It is the commonly received opinion that purse-net fishing is destined eventually to destroy all the menhaden in our waters. Many decided views to this effect have been advanced by correspondents. All that can be said at present is that the commonly received opinion has not yet been proved to be true."

Up to the present time the menhaden fisheries along the coasts of the United States have been regulated and controlled within their respective limits by the several states. Though this is a subject, the right to regulate which is indubitably in the Federal government, thus far Congress has not seen fit to assume its control. That it is a matter of which the Federal government should take control, and which it alone should regulate is evident when we consider the menhaden's migratory proclivities and how its whereabouts are determined by the season.

Starting in early spring in the waters of the Carolina, as the weather grows warmer this fish goes northward along the coast, passing through the waters of nearly every seaboard state until Fall finds it along the coast of Maine. Their protection by any particular state is, therefore, of but short duration, and at most uncertain. Further than this, the interest of the respective states is inclined to be spasmodic, only being aroused when some bill relating to the industry is presented to its legislature, and not infrequently resulting in ill advised action because based upon incorrect and insufficient information. Most of the seaboard states have

fish commissioners who are supposed to look into the subject of the proper protection of the fish, but in most instances these commissioners do little good, if any. Their observations are usually limited to the waters of their own state, so they at best have a chance to observe the fish during but one season of the year. How much better it would be were Congress to turn over the regulation of the fishing industry to the National Fish Commission, which has at its command men who are expert on the subject, who make it their special study and who are qualified in every way to deal with the subject scientifically. This commission studies the subject through all seasons of the year and in all waters, and is competent to properly regulate the menhaden fisheries (if they need regulation) in such a manner as is best calculated to preserve the fish, yet at the same time protect a useful industry, which gives employment to thousands of men and whose products are of the greatest commercial value and usefulness.

To make the proper regulation of this industry effective, the National Government must take it in hand. If any legislative action be necessary or proper, it should be such as will apply to the whole seaboard. If the states individually attempt it, the result will be conflicting laws applying only to operations within the three mile limit, and in all probability the adoption of such severe measures as will drive from them a useful industry. Another probable result of the lack of uniformity of laws would be that



the menhaden fishermen would concentrate their fleets in the waters of the states wherein they are allowed to fish, and as the fish continue on their migration, follow them up or down the coast, coming within the three mile limit whenever permitted and keeping just outside where not.

Inasmuch as the menhaden fishermen have some $5,000,000 invested in their vessels and plants, it is hardly likely they will permit hostile state legislation to drive them entirely out of the fishing business, and if they are forbidden to take menhaden along the coast within the three mile limit, they will in all probability fish for any and all kinds just without the three mile limit where the state laws could not affect them. The effect of such tactics upon the food-fish can be readily seen and has been already commented upon.

Should, for instance, the state of New Jersey forbid the use of purse nets on its coast within the three mile limit is it not reasonable to suppose that the menhaden fleet starting from the Carolinas in the spring would follow the fish as they migrated northward until they reached the coast of New Jersey? During the stay of the fish in the waters of New Jersey the fleet would doubtless hover about just without the three mile limit. If at that time the menhaden started schooling close to the beach, would not the fleet then in all probability in order to keep its men and boats employed direct their efforts to catching fish of every kind available beyond the three mile limit without respect to whether

they were menhaden or food fish? The result of such an operation upon the supply of food fish on the Jersey coast can be readily seen. If the fishermen on those shores now complain of the scarcity of food fish what would they not say if their ill advised efforts to stir up legislation against the menhaden industry proved to be a boomerang indeed and had fallen the most heavily upon themselves?

For additional information concerning the menhaden industry the reader is referred to the following reports and documents:

"The Fisheries and Fishery Industries of the United States," by G. Brown Goode, Assistant Secretary of the Smithsonian Institution, published in 1877. Miscellaneous Senate Document 124, 47th Congress, First Session.

"History of the American Menhaden," by G. Brown Goode, being an extract from the Report of the United States Fish Commission for 1877.

"Menhaden and Other Fish and their products as relating to Agriculture," by W. O. Atwater, being an extract from the report of the United States Fish Commission for 1877.

"Aquatic Products in Art and Industry," by Charles H. Stevenson, being an extract from the report of the United States Fish Commission in 1902, pages 177 to 279.

"The Natural History of the Menhaden and Mackerel, with notes on the Fisheries," by M. McDonald, being Miscellaneous Document No. 156 of the United States Senate, Fifty-second Congress, First Session.

"Statistics of the Fisheries of the Middle



Atlantic States," by Barton W. Everman, being an extract from the report of the United States Fish Commission for 1902, pages 433 to 540.

"The Coast Report of the Coast Fishery Conference," by E. P. Doyle, Secretary, held December 13 and 14, 1893.

"Statistics of the Fisheries of the New England States, 1902," by A. B. Alexander, Appendix to the report of Fish Commissioner to the Secretary of Commerce and Labor for the year ending June 30th, 1904, pages 245 to 325.

"List of Fishes collected at Sea Isle City, New Jersey, during the summer of 1892," by H. F. Moore, being an extract from the Bulletin of the United States Fish Commission for 1892, pages 357-384.

"Notes on an Investigation of the Menhaden Fish in 1894, with special reference to the food fish taken," by Hugh M. Smith, M. D., being an extract from the Bulletin of the United States Fish Commission for 1895. Pages 285 to 302.

"Economic and Natural History Notes on Fisheries of the Northern Coast of New Jersey," by Hugh M. Smith, M. D., being an extract from the Bulletin of the United States Fish Commission for 1892, pages 365 to 380.

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Volume _____ Page _____

RG 0914.001
Delaware Commissioners DE-NY
Fisheries Compact
General Files
1905 – 1907
Reports

ALEXANDER B. COOPER, PRESIDENT. WILLIAM S. HILLES. WALTER H. HAYES, SECRETARY.

DELAWARE COMMISSIONERS,
(DELAWARE-NEW JERSEY FISHERIES COMPACT)
907 MARKET STREET,
WILMINGTON, DEL.

Sept. 26. 1907.

Walter H. Hayes, Esq.

Dear Sir:-

Will you please attend a meeting of the Delaware Commissioners as above, at my office, to-morrow ( Friday ) morning at 11 o'clock,

And oblige,

Yours truly,

Alex. B. Cooper.

President &c.

I have notified Mr. Hilles.

DE16192

DE Public Archives

0914.1
DE Commissioners
Fisheries Compact
338631

ALEXANDER B. COOPER, PRESIDENT. WILLIAM S. HILLES. WALTER H. HAYES, SECRETARY.

# DELAWARE COMMISSIONERS,

(DELAWARE-NEW JERSEY FISHERIES COMPACT)
907 MARKET STREET,
WILMINGTON, DEL.

Wilmington, Del., May, 4, 1908.

Walter H. Hayes, Esq.,
1025 Market St.,
CITY.

Dear Sir:-

A meeting of the Joint Commission (Delaware-New Jersey Fisheries Compact), is hereby called to meet Tuesday the 12th day of May, 1908, at 3 P. M. at the University Club, 1516 Walnut Street, Philadelphia, Pa.

You are most earnestly requested to be present as business of importance will be brought before the meeting.

Yours respectfully,

Alexander B. Cooper,
President.

Per. W

DE Public Archives

0914.1
DE Commissioners
Fisheries Compact
338031

In the matter of the erection of monuments under agreement between Alexander B. Cooper, William S.Rilles, Walter H. Hayes, Commissioners of Delaware, William J. Bradley, John Boyd Avis and James Strimple, Commissioners of New Jersey,
of the one part,
AND
WILLIAM DAVIDSON,
Contractor.

REPORT OF INSPECTOR.

Dated Aug. 11 1908.

Signed in duplicate.

JOHN BOYD AVIS
COUNSELLOR AT LAW
WOODBURY NEW JERSEY

DE18442

Woodbury, New Jersey,

August, 1906.

To Alexander B. Cooper, William S. Hilles, Commissioners appointed by the State of Delaware, William J. Bradley, John Boyd Avis and James Strimple, Commissioners appointed by the State of New Jersey:

I, the undersigned, the Inspector employed and appointed by the above named commission, in accordance with a certain agreement with one William Davidson for the erection of monuments on the New Jersey and Delaware Shore, marking the dividing line between the Delaware Bay and Delaware River, do hereby certify that in the construction of said monuments, the said William Davidson built and constructed in the foundations thereof an additional stone and concrete work not required by the contract to the extent of about sixty cubic feet.

Respectfully submitted,

J H Avis
Inspector.

DE18443

Woodbury, New Jersey,

1908.

To Alexander B. Cooper, William C. Hilles, Walter H. Hayes, Commissioners appointed by the State of Delaware, William J. Bradley, John Boyd Avis and James Strimple, Commissioners appointed by the State of New Jersey:

I, the undersigned, the inspector employed and appointed by the above named Commission in accordance with the provisions of a certain agreement made in triplicate originals by the said Commissioners, with one William Davidson, dated October 31, Nineteen hundred and six, do hereby certify and report that I have personally supervised and inspected the erection of the monuments set out in said agreement, and certify that the monument provided in said agreement to be erected on the Delaware shore near "Liston's Point" is of Brandywine granite eight feet four inches in height, and one foot six inches square at the base, tapering to one foot square near the top and bovelled to a point at least four inches above the top square. One side of said monument is polished and has cut thereon the inscription provided for in the said contract.

And I do further certify that said monument was erected by the said William Davidson on the Fourth day of August Nineteen hundred and eight.

I do further certify that the monument provided for to be erected on the Jersey shore near the mouth of Hope Creek is of a character similar to that erected at Liston's Point; that one side of said monument is polished and has cut thereon the inscription provided for [illegible] and that the said monument [illegible]

DE18444

Davidson on the Jersey Shore on the Fifth day of August Nineteen hundred and eight.

I do further certify that each of said monuments was set on a concrete foundation at least three feet deep, said concrete foundations is four feet square at the bottom and continues at that size for six inches in height, then tapers on all sides to the top of the concrete, which concrete at the top is two feet and six inches square; that said monuments have both been erected at the points provided for in the said agreement and selected by the said Commissioners.

I do further certify that said monuments are both finished and erected in a good, workmanlike manner, under my supervision and direction, and in all things in accordance with the terms of the agreement hereinbefore referred to.

All of which is respectfully submitted this Eleventh day of August A. D., Nineteen hundred and eight.

This certificate is executed in duplicate originals, one of which is for each of the aforesaid Commissions.

J H Davis
Inspector.

(4)

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Volume Page

RG 0914.5
Delaware Commissioners
DE-NJ
Fisheries Compact
Minute Book
1905 – 1908
w/0914.2 Letter Books

0914.2
Letter Book of the Commissioners
4/7/1905 – 10/12/1908

JOHN BOYD AVIS
COUNSELLOR AT LAW
WOODBURY, N.J.

July 2, 1907.

Walter H. Hayes, Sec'y,

Wilmington, Del.

Dear Sir:-

I have received your letter enclosing the resolution and desire to say that just as soon as we can complete arrangements for placing a monument on the Jersey shore the same will be done. As you know our Legislature is still in session, and this, together with other business matters, has delayed the completion of the work so far as we are concerned. I shall endeavor to do what I can to hurry the matter along.

Yours truly,

February 20, 1935.

Senator S. Rusling Leap,
Salem County,
Woodstown, New Jersey.

Dear Senator Leap:

Herewith you will find a copy of a Bill relative to the appointment of a commission of the State of Delaware to meet a similar commission appointed by the State of New Jersey in connection with the boundary line between the two States.

You will note that it is almost identical with the Bill introduced in the New Jersey Legislature, a copy of which you recently sent me.

I feel sure there will be no doubt about the passage of this Bill, and I will ask you to inform me when the Bill introduced by you becomes a law, in order that I may so notify the Governor, looking towards the appointment of a commission by him.

Yours very truly,

Attorney General.

PWG*B
ENCL.

AN ACT providing for the Appointment of Commissioners to meet Commissioners of the State of New Jersey in relation to the Boundary and Jurisdiction in the Delaware River between The State of Delaware and the State of New Jersey.

Be it enacted by the Senate and House of Representatives of The State of Delaware in General Assembly met:

Section 1. The Governor be, and he hereby is, authorized, empowered and directed to appoint three Commissioners on the part of this State (and to fill vacancies that may occur), to meet Commissioners if and when appointed by the competent authority of the State of New Jersey; and the Commissioners so appointed on behalf of this State, or a majority of them, shall have full power and authority to make and conclude an agreement between the said States of New Jersey and Delaware, respecting taxation, civil and criminal jurisdiction, and any other questions relating to the boundary and jurisdiction of this State and of the State of New Jersey in the Delaware River. Said Commissioners shall report at the present, or some subsequent, session of the General Assembly, and at the same time submit a draft of such legislation, if any, as they shall deem proper.

Section 2. Any agreement so made by the Commissioners shall not be binding on The State of Delaware, until ratified and confirmed by the legislatures of the States of Delaware and New Jersey respectively, and consented to by the U. S. Congress.

Section 3. Said Commissioners shall serve without compensation but shall be paid the necessary expenses while engaged in this mission, and the sum of Five Hundred Dollars ($500.00) is hereby appropriated from the General Fund of the State therefore, which shall be paid only on vouchers signed by at least two Commissioners and approved by the Governor.

Section 4. That the Governor of this State shall transmit to the Governor of the State of New Jersey, a copy of this Act, and request him to communicate it to the legislature of that State.

Section 5. This Act shall take effect immediately.



DE18322

CLARENCE A. SOUTHERLAND
JAMES H. HUGHES, JR.
E. ENNALLS BERL
HERBERT H. WARD, JR.
WILLIAM S. POTTER
PAUL LEAHY

SYBIL L. WARD
DAVID F. ANDERSON
GEO. GRAY THOURON

LAW OFFICES
WARD & GRAY
DELAWARE TRUST BUILDING
WILMINGTON, DELAWARE
TELEPHONE-WILMINGTON 5277

GEORGE GRAY
1883-1899, 1914-1925
HERBERT H. WARD
1856-1927
ANDREW C. GRAY
1850-1929

May 1st, 1935.

Honorable C. Douglass Buck,
Dover,
Delaware.

My dear Governor Buck:

I regret the delay in replying to your letter of April 24th, transmitting to me a copy of the Act approved by you on April 12th, 1935, relating to the matter of the Delaware-New Jersey boundary. My delay in replying has been due to the fact that I was away from my office all last week, and have just been able to get around to answering my correspondence.

I shall be very glad to serve on the commission with the Attorney General and Mr. Richards.

Very truly yours,

CAS:D



DE18323

# The State of Delaware

Office of the Attorney General

October 8, 1937.

Dr. George H. Ryden,
Archives Commission,
Dover, Delaware.

Dear Doctor Ryden:

Under separate cover I am sending to you two sets of photographs, three copies to each set, of a document which is at least very interesting, which has recently come to light in connection with the easterly boundary of the State of Delaware. These photographs are of a purported Deed of Surrender which at present is in the possession of Thomas F. Cadwalader, an attorney at law with offices at 1000 Maryland Trust Building, Baltimore, Maryland. It so happens that Mr. Cadwalader is associated with William L. Rawle, who was appointed Special Master by the U.S.Supreme Court to hear the facts in the recent Delaware-New Jersey boundary case, and upon Mr. Cadwalader finding this paper among other old papers in his Father's office in Philadelphia, the existence of this paper became known.

The original of this Deed is in the possession of Mr. Cadwalader and he is perfectly willing to exhibit it to any officer of this State either at his office in Philadelphia or in Baltimore.

The State of New Jersey contends that this paper is a very important one and that it tends to upset the recent decision of the Supreme Court, contending that while heretofore they had found mention of Writs of the Signet and Private Seal reciting such surrender, that they could never find the Deed of Surrender itself. This paper was found by Mr. Cadwalader in other Penn papers, and as mentioned by Duane E. Minard, who represents the State of New Jersey in the boundary dispute, that it is one of the unexplained mysteries how Penn and his agent came into possession of many original documents (including the original grant at Dover) which rightfully belong to the keepers of such documents in the different Royal Offices of the Crown.

A set of these photographs were submitted to Clarence A. Southerland, former Attorney General, and who represented the State of Delaware in the boundary dispute, and concerning this purported Deed of Surrender Mr. Southerland, under date of August 28, 1937 writes me as follows:

"It seems to me reasonably clear that this paper is merely one of a series of papers looking toward the consummation of an actual surrender and the issuance of the new grant to the Duke of York. The finding of it in America in the possession of the Cadwalader family would bear this out. Had the instrument ever become effective, it would naturally have been recorded in the Rolls Office in England. In any event, the exhibits we have already introduced I am sure will show clearly that the Surrender was never intended to be effective until the new grant passed the Great Seal."

I am giving you this information, which I feel should be kept attached to these papers, in order that it will never appear that the State of Delaware in any manner recognizes the authenticity of this purported Deed, but that the photographs of the Deed are filed in your office solely as a matter of information.

Yours very truly,

Attorney General.

PWG/b

GOP

DESCRIPTION OF BOUNDARY LINE IN DELAWARE BAY

BETWEEN DELAWARE AND NEW JERSEY

PROPOSAL B.

- - - - - to a point in the center of the dredged channel and on a straight line between the monuments on the Delaware and New Jersey shore which mark the line of division between Delaware River and Delaware Bay;

Thence 137° 57', 25,645 yards to Turning Point No. 1, passing Ship John Shoal Lighthouse 681 yards, 227° 57' from the Lighthouse:

Turning Point No. 1 is located on a line between Ship John Shoal Lighthouse and Elbow of Cross Ledge Lighthouse, 5,225 yards 145° 37' from Ship John Shoal Lighthouse:

From Turning Point No. 1; thence 145° 37', 12,876 yards to Elbow of Cross Ledge Lighthouse, (Turning Point No. 2).

Thence on a line between Elbow of Cross Ledge Lighthouse and Brandywine Shoal Lighthouse, 148° 16', 18,124 yards to Turning Point No. 3, located 1,612 yards, 58° 16' from Fourteen Foot Bank Lighthouse;

Thence in the direction 155° 54' in a straight line to seaward beyond the limits of Delaware Bay, passing through a point 1,303 yards, 245° 54' from Brandywine Shoal Lighthouse.

DESCRIPTION OF BOUNDARY LINE IN DELAWARE BAY

BETWEEN DELAWARE AND NEW JERSEY.

PROPOSAL A.

- - - - - to a point in the center of the dredged channel and on a straight line between the monuments on the Delaware and New Jersey shore which mark the line of division between Delaware River and Delaware Bay;

Thence 137° 57', 25,645 yards to Turning Point No. 1, passing Ship John Shoal Lighthouse 681 yards, 227° 57' from the Lighthouse;

Turning Point No. 1 is located on a line between Ship John Shoal Lighthouse and Elbow of Cross Ledge Lighthouse, 5,225 yards 145° 37' from Ship John Shoal Lighthouse:

From Turning Point No. 1, 140° 56', 9,330 yards to Turning Point No. 2, which is located 3,860 yards, 337° 24' from Elbow of Cross Ledge Lighthouse;

Thence 163° 36', 4,050 yards to Turning Point No. 3, which is located 470 yards, 223° 55' from Elbow of Cross Ledge Lighthouse;

Thence 138° 13', 4,240 yards to Turning Point No. 4, which is located 4,290 yards, 144° 35' from Elbow of Cross Ledge Lighthouse;

Thence 145° 50', 12,870 yards to Turning Point No. 5, located 2,440 yards, 35° 30' from Fourteen Foot Bank Lighthouse:

Thence 175° 7', 4,930 yards to Turning Point No. 6, which is located 3,450 yards, 148° 0', from Fourteen Foot Bank Lighthouse;

Thence 150°06', 12,770 yards to Turning Point No. 7, which is located 5,610 yards, 166° 10', from Brandywine Shoal Lighthouse;

Thence 164° 48', 15,340 yards to Turning Point No. 8, which is located 4,690 yards, 69° 40', from Delaware Breakwater Lighthouse;

Thence 120° 0' to seaward beyond the limits of Delaware Bay.

DISCUSSION OF THE BOUNDARY LINE IN DELAWARE BAY BETWEEN DELAWARE AND NEW JERSEY

Selection of limits of main ship channel. The true boundary in Delaware Bay between Delaware and New Jersey was adjudged to be the middle of the main ship channel. As the side limits of the main ship channel are indefinite, it is first necessary to decide upon a limiting depth for the channel. Where there is a dredged channel in the Bay, the depth maintained is 36 feet. From the chart it is noted that the 30-foot depth curve is distinctive for the upper part of the Bay. For this reason that depth curve was used as an arbitrary side limit for the main ship channel.

First Direction or Course a common one for both proposals. In both proposals the boundary line for the Bay starts at the intersection of the center line of the dredged channel with the accepted line of division between Delaware River and Delaware Bay. The first direction given is the course down the center of the dredged channel and extending beyond the southern end of the dredged channel to the first turning point. This point has been selected as the intersection between the line of this course and the line connecting Ship John Shoal Lighthouse with Elbow of Cross Ledge Lighthouse. For convenience the various straight lines laid down in describing the boundary line will be referred to between the turning points as the first, second, third, etc. courses.

Proposal (A). To follow strictly the middle of the channel or the thalweg would require a sinuous line difficult to describe with accuracy. Proposal (A) is the delineation of a boundary line following the middle of the main ship channel as closely as practicable. This line is broken up into nine courses with eight turning points. The precise location of the turning points and of the boundary itself cannot be readily identified in the water.

Proposal B. Proposal (B) is presented as an alternative line which would follow the main ship channel with the least number of changes in direction. The written description of a boundary line established under this proposal will be in the simplest language. The first course and distance is the same as for proposal (A). The second course on this boundary line is that which will lie along a line joining Ship John Shoal Lighthouse with Elbow of Cross Ledge Lighthouse. Elbow of Cross Ledge Lighthouse has been selected as a marker for the reason that it is an existing structure near the middle of the main ship channel. Between turning point No. 1 and Elbow of Cross Ledge Lighthouse the objects marking the direction of the boundary line are intervisible so that a location of the boundary line can be obtained by observing the bearing on the two lights.

The third course of this boundary line lies on the line joining Elbow of Cross Ledge Lighthouse and Brandywine Shoal Lighthouse. Along this course the actual location of the boundary line is discernable by the fact that the lighthouses on Elbow of Cross Ledge and Brandywine Shoal are intervisible.

The fourth course was laid down as a stright line which could be extended to seaward from turning point No. 3 opposite Fourteen Foot Bank and pass about an equal distance away from the extremity of the 30-foot curve on the channel side of Brandywine Shoal and the 30-foot curve on the channel side of Brown Shoal. This line is on the same bearing from Miah Maull Shoal Lighthouse throughout its length so that the lighthouse may be used on the reverse bearing as a visible object fixing the direction of the boundary line for this course. It is noted that this line passes close to the location of Overfalls Lightship, but that lightship was not used as a marker for the boundary line for the reason that it is an aid to navigation subject to slight changes of location from time to time. It has not the same permanence of fixture as do the positions of the lighthouses mentioned in the description.

Geodetic Position of Turning Points Fixed. The geodetic positions of all the lighthouses mentioned in this description have been determined so that their actual locations on the North American datum are fixed and the points so determined can be recovered at any time in the future, even though the lighthouses were totally destroyed. From these geodetic positions the turning points can be recovered in a similar manner.

Distances of Courses off Lights. The given distance by which the first course passes Ship John Shoal Lighthouse is that measured at right angles to the direction of the boundary line at this point. The distance from turning point No. 3 to Fourteen Foot Bank Lighthouse is measured along a straight line at right angles to the course on the bearing connecting Elbow of Cross Ledge Lighthouse and Brandywine Shoal Lighthouse. The distance given from the fourth course to Brandywine Shoal Lighthouse is measured normal to this course.

Divergence of main Ship Channel from Proposal B. In the second course from turning point No. 1 to Elbow of Cross Ledge Lighthouse, the main ship channel as measured between the 30-foot curves crosses to the eastward or toward the New Jersey side of the line for a distance of 2 miles.

Opposite Elbow of Cross Ledge Lighthouse there is located the narrowest width of the main ship channel as used at the present time. In this vicinity the channel usually followed is on the west or Delaware side of the boundary line, although there is a navigable channel of less depth on the other side of the light.

In the third course the center of the main ship channel again crosses to the eastward or toward the New Jersey side, although there is room to navigate a ship on the west side of the boundary line in water deeper than the 30-foot depth.

Below Fourteen Foot Bank the 30-foot curve ceases to be the distinctive depth limit of the main channel, which it is above that shoal. This curve approaches close to the usually travelled route of navigation on the west side of Brandywine Shoal and on the southeast side of Brown Shoal. For that reason the course selected was one which would pass the channel extremity of the 30-foot depth curve about each shoal at an equal distance.

It may be noted that the fourth course approaches closer to the shoals on the eastward side of the entrance to the bay than it does to Cape Henlopen, but it passes over one-half mile from the extremity of these shoals and a vessel may enter the Bay on the east or Cape May side of the boundary. The last described course passes to sea almost three miles distant from the shore of Cape Henlopen and considerably in excess of three miles from the Cape May shore.

Main Ship Track. The main ship track as laid down in the Coast Pilot (Atlantic Coast, Section C, pages 51 and 52) follows closely the boundary line under proposal B. The principal departure from this is in the vicinity of Elbow of Cross Ledge where two pronounced changes in the ship courses are made in order to pass to the westward side of the Lighthouse.

Proposal B. is recommended by the Coast and Geodetic Survey as the most practical line of demarcation between the States of Delaware and New Jersey in Delaware Bay.

# BOUNDARY COMMISSIONS

There have been numerous Boundary Commissions required to delineate and survey the boundaries of Delaware. The Royal Grant from King Charles II to his brother, James, Duke of York, dated March 22, 1682, gave to the Duke of York the Town of New Castle and all the land within 12 miles as well as the territory south of the southern most boundary of the twelve-mile circle to the present Fenwick Island. With this document the twelve-mile circle at the north of Delaware came into being[1].

In 1701 commissioners and surveyors were appointed from each of the two counties of Chester and New Castle. They had to survey and mark the twelve-mile circle under a warrant issued by William Penn in pursuance of the feoffment from the Duke of York.

In 1732 a Boundary Commission was formed and an agreement signed between William Penn and Lord Baltimore (the two proprietors) to end the boundary dispute between Pennsylvania and Maryland and to divide the territory between the Delaware Bay on the east and the Chesapeake Bay on the west of the Peninsula, thus separating Pennsylvania from Maryland.

By Chancellor's Decree in 1750, Lord Hardwicke, the High Chancellor, approved the agreement which had been signed between the proprietors in 1732. The decision was made in favor of the Penn proprietors. Commissioners were appointed to lay out the East-West Boundary as laid forth in the 1732 agreement. In 1751 the surveyors marked the half-way point of the Transpeninsular Line with a stone called Middle Point which became Delaware's southwest corner.

On November 16, 1760, the Board of Commissioners signed a final agreement into which Lord Frederick (successor of Lord Baltimore), the Maryland proprietor, and the Pennsylvania proprietors entered. It was an agreement on the basis of the articles already written up in 1732 and incorporated into the Chancellor's Decree of 1750. This agreement established the major boundaries of Delaware as we know them today.

On December 6, 1763, Charles Mason and Jeremiah Dixon were sworn in by Commissioners to begin their survey work on the Maryland-Pennsylvania boundaries. Mason and Dixon surveyed the North-South line between Maryland and Pennsylvania (Delaware) from 1763 to 1767. This was to delineate the long disputed boundary between Calvert and Penn Lands. Maryland and Delaware presented the final report of this survey to the Commissioners from Maryland and Pennsylvania.

On November 9, 1768 a Final Report of boundaries between the provinces of Pennsylvania and Maryland was submitted to the commission. The boundary between Maryland and Delaware was marked and approved by commissioners on January 11, 1769.

In 1775[2] there was an agreement to ascertain and fix the divisional lines of the several counties within Delaware and to solve inconveniences that may have arisen by the establishment of the boundaries between Delaware and Maryland. The agreement was signed by the Governor of Pennsylvania and the General Assembly of the Three Lower Counties who also designated the boundaries of the present counties of New Castle, Kent and Sussex. The lines between the colonies and counties would forever remain the boundaries. The lines had been run by Commissioners who marked out the lines with stones, pillars and other landmarks. These lines were described by the Commissioners in the return of their proceedings and in an exact map.

In 1849-1850 Delaware, Maryland and Pennsylvania joined in a survey, known as the Graham Resurvey to relocate the stone which marked the junction of the Mason and Dixon Line with the due North or meridian line. In course of time, this stone had disappeared. Due to an error of the commissioners a controversy arose over a small area of land known as "The Wedge". This controversy between Delaware and Pennsylvania was not settled until 1921.

## BOUNDARY COMMISSIONS

In 1869 there was great doubt and uncertainty about the true dividing line between the State of Delaware and the Commonwealth of Pennsylvania, the eastern line of the State of Maryland and the circular line of the State of Delaware. The circular boundary line between the State of Delaware and the Commonwealth of Pennsylvania had never been surveyed and marked since the separation of the three counties. All knowledge of its location was based upon vague and conflicting traditions. The Governor was authorized to appoint two commissioners to cooperate with commissioners from Pennsylvania to settle, determine and locate the line between Delaware and Pennsylvania. The Commissioners were authorized to place and erect a stone or monument on the point where the southern line of Pennsylvania intersects the circular line of Delaware. The commissioners were given power to survey and determine the circular boundary line separating the two States. They had the power to fix suitable marks or monuments of stone or other material one quarter of a mile apart upon the circular boundary[3].

The boundary line between Delaware and Pennsylvania had become uncertain due to destruction, removal, or mutilation of the monuments erected upon this line. In 1889 three commissioners were appointed and authorized to cooperate with commissioners from Pennsylvania to examine, survey and re-establish the boundary line between Delaware and Pennsylvania. The commissioners had to mark the boundary line by the erection of enduring monuments and make a detailed report in duplicate of their operations. The report together with the field notes of surveys, descriptions of monuments, maps and other items had to be signed in duplicate by each of the commissioners and by the civil engineers[4].

In 1909 an act[5] stated that the Governor of Delaware was authorized and requested to communicate with the Governor of Maryland about the replacing and resetting of the stones marking the boundary line between Delaware and Maryland. If necessary the Governor was authorized to take steps to replace or remove the boundary stones.

In 1921 an act[6] provided for the acceptance, approval and confirmation of the report of the Commission that was appointed in pursuance of the Act of the General Assembly of the State of Delaware, approved the twenty-fifth day of April, 1889. This act authorized the commission to examinate, survey and re-establish the circle of New Castle, as the boundary line between Pennsylvania and Delaware.

In 1927 commissioners[7] were appointed and constituted to cooperate with commissioners of New Jersey for the purpose of forming an agreement between the States of Delaware and New Jersey. They had to look to the final adjustment of all controversies relating to the boundary line between the two states and to their respective rights in the Delaware River and Bay.

In 1929 a resolution[8] authorized the Attorney General to take such action as is necessary to protect the rights of the State of Delaware in the disputed area of the Delaware River and Bay. Due to death of members on the Commissions and other numerous reasons, no satisfactory results had been obtained during the past two years.

In 1951 an act[9] stated that monuments marking the common boundaries between the State of Delaware and any neighboring state are the joint property of the State of Delaware and the neighboring states. The State Archivist and Chief Engineer of the State Highway Department had the authorization to examine at least every 5 years the monuments marking the boundaries of this State. They also cooperated with state officials of any neighboring state in case any of the monuments marking the boundary were lost, moved or defaced. They replaced, restored or repaired the monuments and the common boundary line. Further they had authorization to make joint agreements and to enter into joint contracts with appropriate officials or agencies of any neighboring state and with the U.S. Coast and Geodetic Survey or any similar neutral party or agency to resurvey, remark or otherwise delineate more thoroughly any part of any common state boundary. They also had the authorization to enter upon any property to examine any boundary monument. But they had no authorization to do this in the growing season which might damage crops.

## BOUNDARY COMMISSIONS

In 1971 an act[10] instructed the Director of the Division of Archives and Cultural Affairs to publish a description of the boundaries of Delaware in a small pamphlet. In that year the responsibility for the state's boundaries was transferred from the Director of Operations of the Highway Department to the Secretary of Natural Resources and Environmental Control in conjunction with the Director of the Division of Archives and Cultural Affairs[11]. If a question arose as to the common boundary between the State and any neighboring state, the Secretary of the Department of Natural Resources and Environmental Control and the Director of the Division of Historical and Cultural Affairs plus a three member commission to be appointed by the Governor are empowered to negotiate and settle boundary disputes with neighboring states. A copy of the Commission's report will be forwarded to the Office of the Governor and to the office of the Legislative Council, whereupon the new delineation of the boundaries will be inserted in the Delaware Code[12].

On January 7, 1972, the Delaware Boundary State Commission had its first organizational meeting. Governor Russell W. Peterson appointed Robert Jordan, John A. Munroe, and Fletcher E. Campbell to the Delaware State Boundary Commission. In the following years the DSBC had meetings on boundary extensions, made agreements on procedures for marking and preserving boundary monuments, made agreements of resurveys of boundaries, made an acceptance on an offshore boundary proposal and lateral seaward boundary, made an acceptance to share Coastal Energy Impact Program (CEIP) funds with New Jersey, recognized and formalized boundary stones, and signed agreements accepting true locations of boundaries[1].

## BOUNDARY COMMISSIONS

1 Boundary Commission Files, chronological list, RG 1705

2 1 Del. Laws Ch. 229

3 13 Del. Laws Ch. 382

4 18 Del. Laws Ch. 448

5 25 Del. Laws Ch. 1

6 32 Del. Laws Ch. 4

7 35 Del. Laws Ch. 243

8 36 Del. Laws Ch. 277

9 48 Del. Laws Ch. 256

10 58 Del. Laws Ch. 86

11 58 Del. Laws Ch. 102

12 58 Del. Laws Ch. 622

This agreement made, in triplicate originals, this Thirty First day of October, A. D. 1906, between Alexander B. Cooper, William S. Hilles, Walter H. Hayes, Commissioners appointed by the State of Delaware, William J. Bradley, J. Boyd Avis and James Strimple, Commissioners appointed by the State of New Jersey, parties of the first part, hereinafter called Commissioners and William M. Davidson of the City of Wilmington, New Castle County and State of Delaware, party of the second part, hereinafter called Contractor:

Witnesseth that said Contractor hereby covenants, promises and agrees to and with said Commissioners to manufacture, make and set up two monuments or shafts of Brandywine Granite, each of said monuments or shafts to be eight feet four inches high, one foot and six inches square at the base tapering to one foot square near the top and thence bevelled to a point at least four inches above the top square. One side of each of said monuments to be polished; to set up each of said monuments on a concrete foundation, three feet deep, said concrete to be laid on good timber or stone slab bottom, each of said concrete foundations to be at least four feet square at the bottom, to continue at that size for six inches in height then to taper on all sides to the top of the concrete which shall be at least two feet and six inches square; to erect and set up one of said monuments on the Delaware shore near Liston's Point at a place to be selected by said Commissioners; to erect the other of said monuments on the New Jersey shore near the mouth of Hope Creek at a place to be selected by said Commissioners; to cut on the polished side of said monument to be erected on the Delaware shore the following inscription:

MOUTH OF THE DELAWARE RIVER.

A straight line drawn from the centre of this monument, to the centre of a similar monument, erected near the mouth of Hope Creek, on the New Jersey shore, is the dividing line be-

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tween the Delaware River and Bay.

Ascertained June 22nd, A D. 1906, in pursuance of uniform acts of the Legislatures of the State of Delaware and the State of New Jersey, approved A. D. 1905.

Alexander B. Cooper,
William S. Hilles,
Walter H. Hayes,
Commissioners of Delaware.
William J. Bradley,
John Boyd Avis,
James Strimple,
Commissioners of New Jersey.

To cut on the polished side of said monument to be erected on the New Jersey shore the following inscription:

MOUTH OF THE DELAWARE RIVER.

A straight line drawn from the centre of this monument, to the centre of a similar monument, erected near Liston's Point, on the Delaware shore, is the dividing line between the Delaware River and Bay.

Ascertained June 22nd, A. D. 1906, in pursuance of uniform acts of the Legislatures of the State of Delaware and the State of New Jersey, approved A. D. 1905.

William J. Bradley,
John Boyd Avis,
James Strimple,
Commissioners of New Jersey.
Alexander B. Cooper,
William S. Hilles,
Walter H. Hayes,
Commissioners of Delaware

That the words "mouth of the Delaware river" in each of said inscriptions shall be made of letters two inches in length and all other words in each of said inscriptions shall be made with letters or figures one inch in length.

That said monuments shall be finished and erected in a good workmanlike manner under the supervision and direction of a competent inspector employed for that purpose by said Commissioners and subject to his approval.

Said Contractor further promises, covenants and agrees to and with said Commissioners, that both of said monuments shall be finished and erected as aforesaid, complete in all respects on or before the first day of March A. D. 1907.

The said Commissioners hereby covenant, promise and agree to and with said Contractor to pay him for the furnishing and erecting said two monuments as aforesaid, the sum of Three hundred and seventy dollars ($370.00) upon the furnishing and erecting of said two monuments and upon the certificate in writing of the inspector hereinbefore mentioned; that the same have been furnished, made and erected in a good workmanlike manner in accordance with the terms of this agreement.

In witness whereof the said parties hereto have set their hands and seals the day and year first above written.

Signed, sealed and delivered in the presence of
Alex. B. Cooper Jr
as to Cooper, Hayes and Hiller

Alex. B. Cooper (SEAL)
Wm. T. Hiller (SEAL)
Walter W. Hayes (SEAL)
Commissioners of the State of Delaware.

Geo. W. Bradley as to
Virginia Underwood
Cyrus Jarman

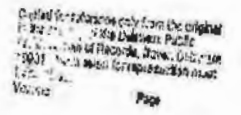
Wm. J. Bradley (SEAL)
John Boyd Avis (SEAL)
James Semple (SEAL)
Commissioners of the State of New Jersey.

George N. Dawson

William Sandson (SEAL)

-3-

DE18337



RG 0914.1
Delaware Commissioners
DE-NJ Fisheries Compact
General Files 1905-1907
Folder #4 Monuments

# Laws of the State of Delaware

**Relating to**

# Fishing in the Delaware River and Bay.

**Chapter 72, Vol. 14, Laws of Delaware.**

## An Act for the Protection of Fishermen.

SECTION 1. (It shall be unlawful for any person not being a citizen of this State to catch or take fish of any kind in the Delaware bay or river, or any of the creeks emptying into the same, within the limits of this State, nor shall any person, being a citizen of this State, have transferred to him, or in any way have control over or possession of any boat, vessel, or net, which shall be owned, in whole or in part, by any person who is not a citizen of this State, and which is used for the purpose of fishing in the Delaware bay or river, or any of the tributaries thereof, within the limits of the State.) Provided that transient vessels may catch fish for their own immediate

use. If any master of a boat or vessel, or other person, shall violate this section, he shall be deemed guilty of a misdemeanor, and shall pay to the State a fine of fifty dollars, and the boat or vessel used in such violation of the law, with all her tackle, apparel and furniture, and all her implements for fishing, gill-net or seine, or any contrivance for taking fish, and anything so taken shall be forfeited and may be seized and detained for trial by any officer or person. Such trial may be had before any justice of the peace, and if condemned, the property seized shall be sold by his order, and the proceeds, deducting costs and charges, be equally divided among the captors: Provided that an appeal shall be allowed from the judgment of the justice, if applied for within ten days, to the Court of General Sessions of the Peace and Jail Delivery, on security being by bond and sufficient surety, in the full value of the property condemned, conditioned to be void if such judgment be reversed by said court. Upon such appeal a jury trial shall be had on the issue whether the boat or vessel seized has been used in violation of this chapter, and if it be found in the affirmative, the court shall affirm the



judgment of the justice; otherwise such j
shall be reversed and the property seized sha
upon be sold or released accordingly. The A
General shall appear for the captors and de
appeal. Any justice of the peace shall, upon
made that a boat or vessel is violating this
issue his warrant to the sheriff or constal
manding them, or either of them, to seize an
such boat or vessel, and any sheriff or consta
also have power under this act to make said
and detention without warrant, and in the p
ance of his said duty may, if necessary, su
*posse comitatus*, armed with fire-arms and a
tion, and use the same, if forced to do so, in e
of the law, and if maiming or death follows
of arms, it shall be considered justifiable, and
ficer and his posse be free from legal respon
He may also require the assistance and use
other boat or vessel, they receiving compens
hereafter provided. It shall not be necessary
affidavit shall state the name of the vessel, o
master; such names may be inserted in the
ings after the seizure. The sheriff or constal

be entitled to five dollars per day, and each person summoned by him, and rendering him aid, two dollars per day, and for each boat he may require for his assistance a just compensation, to be paid out of any property seized and condemned, the officer or officers will be paid by the State. If any owner, master, or person belonging to, or on board of any boat or vessel, shall oppose or resist the sheriff or other person in the execution of such warrant, or shall resist any lawful seizure of such boat, vessel, or other property, such person shall be deemed guilty of a misdemeanor, and shall pay to the State a fine of one hundred dollars. It shall be the duty of the Attorney-General to cause any person indicted under this chapter, and who is out of the State, to be demanded and brought to trial.

SEC. 3. Repealed. Vol. 14, Chap. 419, Sec. 4.

(SEC. 3. It shall be unlawful for any person to lay out, float or set any gill-seine or net, or use any contrivance to catch shad or herring nearer than one mile from the mouth of any river or creek within the limits of this State. Any person so offending shall forfeit and pay a fine of fifty dollars, one-half for the



use of the informer, the other half for the u
State. And in addition thereof, shall for
float, seine, gill-seine or net or any contriva
all boats, vessels, tackle and furniture, and
plements belonging to any boat or vessel use
nection with any such fishing. The seizur
condemnation and sale under this section,
the same as the seizure, trial, condemnation
under Section 1 of Chapter 72, Volume 14,
Delaware, to which act this act is an ame
Any person destroying any such float, sei
seines or nets, or contrivances used in viol
this act, shall not be liable to the owner or ow
possessor, in any damage for the destructio
of.)

SEC. 4. If any sheriff or constable ref
neglects to serve the warrant issued by the
trate for the execution of this law, or if any o
posse he may summon to his assistance refus
him, it shall be considered a misdemeanor, an
they shall forfeit and pay to and for the use
State the sum of ten dollars, to be collected a
fines and penalties are collected, and if an

shall refuse to render the assistance the sheriff or constable or other person may demand, they, or each of them shall forfeit and pay the sum of five dollars, and forfeit the protection of this law.

SEC. 5. Repealed. Vol. 14, Chap. 419, Section 4.

SEC. 6. (Every person being a citizen of this State, who may desire to fish in the Delaware bay or river, for market, with nets, shall make an affidavit before a justice of the peace of this State, stating that he is a bona fide citizen of the State of Delaware, giving his place of residence and the length of time he has resided at the said place, and that he is the true and legal owner of the boat and net to be used in fishing; that he will not use such boat and net, or either of them, in the interest of any person not a citizen of this State. Said affidavit shall be filed in the office of the justice of the peace before whom it is made, and the party making the said affidavit shall procure from the justice of the peace a certificate, stating that such an affidavit has been made, and exhibit and show the same to any person demanding an inspection of the same. The affidavit required to be made and certificate obtained under this section shall



be made and obtained before the first day of
each and every year such person proposes
Any person who shall violate any of the provi
this section shall be guilty of a misdemean
upon conviction thereof shall be fined not le
fifty dollars, and shall also forfeit the boat, or
both as the case may be, used in fishing.) (
ed, that the provisions of this section shall a
those citizens of this State only who may d
fish for sturgeon or with nets exceeding seve
(75) fathoms in length.)

SEC. 7. It shall be unlawful for any pe
have in his or her possession, or expose for s
shad caught in the river Delaware or its trib
within the jurisdiction of this State, above the
ern point of Reedy Island, between the eleve
of June and the tenth day of August in any y
der a penalty of five dollars for each and eve
so had in possession or exposed for sale, to be
ered in an action of debt, with costs of suit,
person or persons in his or their name, befo
justice of the peace of the county, or where
fendant resides or lives; and in all prosecut

proceedings under this act it shall not be necessary to file any statement of demand or to comply with the formalities required in penal actions, and in all such actions, both parties may be sworn. One-half of the said penalty shall be paid to the informer.

SEC. 8. It shall be unlawful for any person to make use of any gill-seine of a less mesh than ten inches for the purpose of catching fish in the river of Delaware, within the jurisdiction of this State, above the southern point of Reedy Island, between the tenth day of June and the tenth day of August in any year, and he, she, or they so offending shall forfeit or pay the sum of one hundred dollars, together with costs of suit, for each and every offence, and one-half of said penalty shall be paid to the informer.

SEC. 9. It shall be unlawful for any person to cast, draw, fasten, or otherwise make use of any net, trap, device, or contrivance for the purpose of catching (shad) in the river of Delaware, or the bay thereof, within the jurisdiction of this State, between the hours of (eight) on Saturday and midnight of Sunday, throughout the year, and he, she, or they, so offending, shall forfeit and pay the sum of fifty dollars,



together with costs of suit, for each and e
fence, and one-half of said penalty shall be pa
informer.

(SEC. 10. That it shall be unlawful for
son to fish for shad or herring in any of the
creeks in Kent and Sussex counties after the
of June, and in any rivers or creeks of Ne
county after the fifteenth day of June, in a
under the same penalties and forfeitures of
3, Chapter 72, Volume 14, Laws of Delaw
amended by this act.)

(SEC. 11. That nothing in Section 1 of
shall apply to any rivers, creeks, or wate
Delaware river or bay, north of what is k
Smyrna creek or Duck creek, nor shall any of
visions apply to the waters tributary to the
peake bay.)

SEC. 12. All fines and penalties collecte
this act, after deducting the amounts due to
former and the costs of the suit, shall be pai
State Treasurer for the use of the State.

*Passed at Dover, March* 28, 1871.

Volume 21, Page 417.

*An Act to amend Chapter 72, Volume 14, Laws of Delaware, and to provide for the apprehension of persons fishing for shad contrary to law.*

*Be it enacted by the Senate and House of Representatives of the State of Delaware in General Assembly met:*

SECTION 1. That the act entitled "An act for the protection of fishermen," being Chapter 72, Volume 14, Laws of Delaware, be and the same is hereby amended by adding thereto after Section 12 a new section to read as follows: Section 13. That it shall be the duty of the Fish Commissioner of this State to provide, arm and equip a boat to patrol the waters of the Delaware river within the jurisdiction of this State on Sundays during shad fishing season; and it shall be the duty of those in charge of said boat, to patrol said waters on said days and enforce in the manner now provided by law, the provisions of law against all persons who shall violate the same.

That all expenses incurred in carrying out the provisions hereof shall be paid by the Levy Court of New Castle county on warrants drawn by the said Fish Commissioner. Provided, however, that said expenses shall not exceed the sum of two



dollars in any one year.

*Approved March 23, A. D. 1899.*

Volume 21, Page 418.

*An Act providing that it shall be illegal to fi waters of the Delaware bay or Delaware river w jurisdiction of this State with a net or seine with which, when stretched, shall be less than two eighth inches.*

*Be it enacted by the Senate and House of Rep tives of the State of Delaware in General Assemb*

SECTION 1. That from and after this a become a law no person shall use for the pur catching fish in the waters of the Delaware Delaware river within the jurisdiction of thi any net or seine the meshes of which, when str shall be less than two and five-eighth inches.

SEC. 2. That any person who shall viol of the provisions of this act shall be guilty of demeanor, and, upon conviction thereof, sh fined not exceeding two hundred dollars or im

ed not exceeding three months, or both in the discretion of the Court.

SEC. 3. All laws or parts of laws inconsistent with the provisions of this Act be and the same are hereby repealed.

*Approved March 23, A. D. 1899.*

Chapter 146, Page 289, Vol. 22.

*An Act to Amend Chapter 72, Volume, 14, Laws of Delaware, and to provide for the apprehension of persons fishing for shad contrary to law.*

*Be it enacted by the Senate and House of Representatives of the State of Delaware in General Assembly met:*

SECTION 1. That the Act entitled "An Act for the protection of fishermen," being Chapter 72, Volume 14, Laws of Delaware, be and the same is hereby amended by adding thereto after Section 12, a new section to read as follows:

SEC. 13. That it shall be the duty of the Governor of this State to appoint a suitable person for the term of four years, and quadrennially thereafter,



whose duty it shall be to provide, e
charge of a boat to patrol the water of
river within the jurisdiction of this
days during shad fishing; and it shall
said person and those in charge of sa
trol said waters on said days and enfor
ner now provided by law, the prov
against all persons who shall violate th

That all expenses incurred in car
provisions hereof, shall be paid by the
New Castle County; provided, however
penses shall not exceed the sum of two
lars in any one year.

SEC. 2. That all Acts or parts of
tent herewith be and the same are hereb

*Approved February 19, A. D. 1901.*

Volume 22, Page 328.

*An Act to prevent carp fishing in the*
*and its tributaries during the months of Ju*
*August of each year.*

*Be it enacted by the Senate and House of*

*tives of the State of Delaware in General Assembly met*:

SECTION 1. That from and after the passage of this Act, it shall be unlawful for any person or persons to catch or in any wise take or capture carp fish in the Delaware bay or river or any of its tributaries within the limits of this State during the months of June, July and August in each and every year.

SEC. 2. That any person violating the provisions of this Act shall be guilty of a misdemeanor and upon conviction thereof shall be fined not exceeding fifty dollars or be imprisoned not less than thirty days or both at the discretion of the Court.

*Approved March* 2, *A. D.* 1901.

Volume 22, Page 724.

*An Act to amend Chapter* 145, *Volume* 22, *Laws of Delaware, entitled "An Act to prevent carp fishing in the Delaware bay and its tributaries during the months of June, July and August of each year," by extending the time of the close season.*

*Be it enacted by the Senate and House of Representatives of the State of Delaware in General Assembly met*:



SECTION 1. That Section 1 of Chapt
ume 22, Laws of Delaware, be and the s
hy amended by inserting in the fifth line
tion 1 of said chapter and volume betwe
"of" and the word "June," the word "May

*Approved April* 16, *A. D.* 1903.

Volume 22, Page 725.

*An Act appropriating certain funds of th*
*expended in the propagation of sturgeon.*

*Be it enacted by the Senate and House of*
*tives of the State of Delaware in General As*

SECTION 1. That the Commissioner
Fisheries be and he is hereby authori
shall be the duty of said Commissioner,
suitable building to be used as a hatch
necessary articles and things whatsoever
pagation and increase of sturgeon to be d
the waters of this State.

SEC. 2. That for the purpose of carr
fect the provisions of this Act the sum of
dred dollars is hereby appropriated for t

ing December 31, A. D. 1903, and the further sum of eight hundred dollars is hereby appropriated for the year ending December 31, A. D. 1904; and the State Treasurer is hereby directed to pay the same from the general fund, from time to time, on the requisition of the Commissioner of Fish and Fisheries, who shall certify that the sum is actually necessary for the purposes as set forth in this Act. The said Commissioner of Fish and Fisheries shall annually in the month of December, make to the Governor, a report of all moneys coming to said Commissioner's hands under the provisions of this Act, which said report shall also include a list of the disbursements of said moneys with complete vouchers therefore attached.

*Approved March* 31, *A. D.* 1903.

Rev. Code, Page 469, Chapter 419, Volume 14.

*A supplement to the Act entitled "An Act for the protection of fishermen."*

SECTION 1. That it shall be unlawful for any person not being a citizen of this State, under this Act, to use more than three hundred fathoms of gill-



net or seine, and any person who may
section shall be deemed guilty of a misd
shall pay to the State a fine of twenty-fi
every such violation.

SEC. 2. That the Governor be and
authorized to appoint five commissione
be appointed in and for, and shall r
County of New Castle, in the towns o
Delaware City, New Castle, Wilmingto
mont, one in each place; and the appo
be made and vacancies filled by the Gov
during the period of two years. The
sioners are hereby authorized and req
cognizance of all violations of the act
is a supplement, to arrest any and e
against the aforesaid law, to seize and d
or boats of said offender, and are he
with all the powers, privileges and rem
the sheriff and constables enumerate
aforesaid.

SEC. 3. Inserted as an amendment

SEC. 4. .....

*Passed at Dover, February* 19, 1873.

Rev. Code, Page 470, Chapter 99, Volume 18.

*An Act for the protection of fisheries in this State.*

SECTION 1. That it shall not be lawful for any person or persons to place in any of the ponds, lakes, rivers or streams of this State, or in any of the waters belonging to the State, any lime, gas tar, coculus-indicus (otherwise known as fish berries), or any other deleterious substance, or take or catch fish with any deleterious substance or medicated bait, or shall any person or persons make use of giant or electric powder, or any explosive substance whatever for the purpose of taking fish, and any person or persons offending against the provisions of this section of this Act shall be guilty of a misdemeanor, and upon conviction shall be punished by imprisonment for a period not exceeding six months or by a fine not exceeding fifty dollars, or by both, such fine and imprisonment at the discretion of the Court before which such conviction shall be had.

SEC. 2. Of all the penalties recovered under this Act one-half shall go to the informer and the other half shall be paid to the State Treasurer to be paid by him upon demand to the Fish Commissioner of



this State to be used by him in the perfor
his duties, and accounted for by him in his

SEC. 3. That this Act shall take effe
diately.

*Passed at Dover, April 5, 1887.*

Rev. Code, Page 472, Chapter 650, Volume

*An Act for the protection and increase of fo*
*Delaware waters.*

SECTION 1. That from and after the p
this Act it shall be unlawful during the sh
for any person or persons to fish with float
other devices for catching shad anywhere
shore of Delaware bay within a half mil
mouth of any creek or river within the
named limits, viz: Commencing one mile
Blackbird creek on the north, and extending
south of Mispillion river on the south,
thereout a space of three hundred feet a
shore of the said bay about midway between
creek and Murderkill creek, where it shall b
ful for Joseph Wood and his successors to th

the property now owned by him opposite the point above mentioned to fish with stake nets.

SEC. 2. That it shall not be lawful for any person or persons to fish for shad either in the said bay or any of the creeks or rivers emptying into the same, within the limits described in Section 1 hereof, from Saturday, 12 o'clock meridian, until midnight of Sunday. It shall also be unlawful to place or maintain any obstruction in any of the said creeks or rivers to prevent the fish ascending the same.

SEC. 3. The season for fishing for shad shall close within the limits named in Section 1 hereof on the tenth day of June of each year.

SEC. 4. The Governor may appoint a policeman, residing in the vicinity of Bowers' Beach, whose duty it shall be to diligently inquire for violations of the provisions of this Act, and all other laws relating to fish or oysters, whether within bay, creeks or rivers, and when such are brought to his notice it shall be his duty to immediately prosecute the same, and failing to do so may himself be fined for neglect of duty. His duty for this service shall commence on March twentieth and close on June tenth. He shall receive for



his services two dollars per day while emp
fines, if any are collected, may be applie
ary of the policeman as far as they will
ance to be paid from the revenue from
shall also be the duty of the oyster reve
to see that all oyster and fish laws are f
promptly executed, and every violation
mediately prosecuted to conviction. T
shall also, on the first day of May, A. D.
nually thereafter, appoint some suitab
resident of Bowers' whose duty it shall
violations of the oyster laws, and
promptly and vigorously prosecute and
ishment all persons guilty of any such v
shall receive a yearly salary of one hu
to be paid quarterly out of the oyster fu
lector of oyster revenue.

SEC. 5. Any one violating any pro
act shall be guilty of a misdemeanor,
viction thereof shall forfeit and pay a
than ten dollars, nor more than fifty do
prisoned not less than one nor mo
months.

Any officer neglecting to discharge the duties herein imposed shall be alike guilty and punished in like manner.

SEC. 6. Chapter 131, Volume 19, Laws of Delaware, is hereby repealed and this Act substituted therefor.

*Passed at Dover, March* 21, 1893.

Rev. Code, Page 473, Chapter 134, Volume 19.

*An Act for the protection of mammose, or young sturgeon in the Delaware bay, river, and their tributaries.*

SECTION 1. That it shall not be lawful for any person or persons to cast, draw, set, anchor, drift, or stake, any gilling net, seine or shore-net, or any other device or appliances of any kind whatsoever, for the the purpose of catching fish commonly called or known as mammose (which are young sturgeon under three feet in length), in the waters of the Delaware bay, river and their tributaries, with the jurisdiction of the State of Delaware. And any person or persons fishing with gilling nets, drift nets, shore seine nets, or any kinds of nets, devices or appliances,



who shall find young sturgeon, or mamm
three feet in length entangled or caught th
immediately, with care and with the le
injury to the fish, disentangle and let loo
and transmit the fish to the water witho
Any person or persons violating any pr
this section, or having in their posses
sturgeon, or mammose, under three fee
either for consumption or for sale, or wi
willfully to destroy the same, for so offe
on conviction thereof, be punished with
dollars for each and every fish so caught,
stroyed, and in default of paying such fi
convicted thereof, to be imprisoned in th
for thirty days.

SEC. 2. That any fish commissione
den, deputy fish warden, sheriff, deputy
stable, policeman or special officer of t
hereby authorized to apprehend, arrest
diately take any person who may be guilt
lation of any of the provisions or section
before any justice of the peace, magist
other authority, and thereupon make ch

violation of the law or any of the provisions thereof, and the magistrate shall forthwith hear and determine the charge and render judgment accordingly, with the right of certiorari or appeal, as in all similar cases of arrest and conviction, and in case of any failnre of any fish commissioners, wardens, or any other officer named above, to prove his case, the State shall pay the costs.

SEC. 3. That one-half of the fines imposed under any section of this act shall be for the benefit of the prosecutor, and the other half shall be paid to the treasurer of the county in which the prosecution shall be made. And the said treasurers of the several counties of the State of Delaware shall pay over to the respective commissioner of Delaware all moneys forfeited and received by them by virtue of this act, and said commissioner shall pay over the same to the Treasurer of the State.

SEC. 4. That this act shall immediately go into force and effect, and shall be deemed and taken to be a public act.

*Passed at Dover, April* 23, 1891.



Rev. Code Page 473, Chapter 863, Volume 1

Joint Resolution in relation to fishing haden. That from and after the adopti resolution the collector of oyster revenue s payment to him of the sum of one hundre annually issue a license to any vessel or fis to fish for and take menhaden, sharks, porp herring hogs in the waters of the Delawa far north as Mahon's river, from the 20th d to the 20th day of November in each yea cense fee to be for the use of the State. A of a vessel or owner thereof who shall fi waters without first having procured sa shall be deemed guilty of a misdemeanor conviction thereof shall be fined the sum o dred dollars and costs of prosecution, for the State.

*Resolved, further,* That the Commi Fish and Fisheries shall have power and given authority to make arrests of person the laws of this State, and the provisions o lution, and, if necessary may call in and de person or persons, boat or boats, vessel

with their crews, as a *posse comitatus* in the enforcement of this resolution and the laws of this State.

All Acts or parts of Acts inconsistent herewith are hereby repealed.

*Adopted at Dover, May* 2, 1893.

Rev. Code, Page 474, Chapter 652, Volume 19.

SECTION 1. Any person who takes or catches any black bass or trout from any of the waters of New Castle county with a haul seine shall pay a fine of five dollars for each fish so caught, taken or possessed, with costs of prosecution; provided, however, that the catching or taking of black bass or trout with nets other than haul seines shall not be prohibited by this act between the first day of June and the first day of November in each year, nor shall it prohibit the taking or catching of black bass or trout at any time during any year by hook and line.

SEC. 2. Any person engaging in the artificial culture or maintenance of fish may take fish at any time for stocking ponds and creeks, and for other



purposes, and may grant permits in writing persons to capture fish for artificial propag

SEC. 3. A person who takes or catches of the waters of New Castle county, othe hook and line, any black bass or trout les inches in length and does not immediately same with the least possible injury to the w which they were taken or caught, or has session any black bass or trout, less than in length, caught or taken from any of the New Castle county, shall be fined not mor dollars for each fish so caught or taken, possessed; and the possession of any such be *prima facie* evidence that the same was taken from the waters of New Castle cou

SEC. 4. The penalties provided for in ing sections, and the costs of suits, of eve fense, shall be recoverable before a just peace by an action of debt in the name of t Delaware, as debts are now recoverable b half to be paid to the Delaware Rod and ciation and the other half to the informer; or costs are not paid as herein provided,

person or persons shall undergo an imprisonment in the county jail for not more than ten days.

SEC. 5. That Chapter 561, Volume 18, Laws of Delaware, is hereby repealed.

*Passed at Dover, May 2, 1893.*

Volume 23, Chapter 127, Page 220.

*An Act to amend Chapter 250, Volume 21, Laws of Delaware, being an Act entitled "An Act providing that it shall be illegal to fish in the waters of the Delaware bay or Delaware river within the jurisdiction of this State with a net or seine with meshes which, when stretched, shall be less than two and five-eights inches" by providing that nets or seines with smaller meshes may be used for fishing in Delaware bay.*

*Be it enacted by the Senate and House of Representatives of the State of Delaware in General Assembly met:*

SECTION 1. That Chapter 250, Volume 21, Laws of Delaware, be and the same is hereby amended by striking out of Section 1 of said Chapter 250, the words "Delaware bay or" in line three of said chapter, and adding at the end of said Section 1



lowing: "and no person or persons shall us
purpose of catching fish in the waters of
bay within the jurisdiction of this State, a
seine, the meshes of which, when stretched,
less than two inches."

*Approved March 30, A. D. 1905.*

Volume 23, Chapter 128, Page 221.

*An Act to prevent carp fishing in the Dela and its tributaries, south of the north bank or Appoquinimink creek, during the months of July gust of each year.*

*Be it enacted by the Senate and House of tatives of the State of Delaware in General met:*

SECTION 1. That from and after the p this Act it shall be unlawful for any perso sons to catch or in any wise to take or cap fish in the Delaware bay or river or any of taries south of the north bank or shore quinimink creek, within the limits of this

ing the months of July and August in each and every year.

SEC. 2. That any person violating the provisions of this Act shall be guilty of a misdemeanor and upon conviction thereof shall be fined not exceeding fifty dollars, or be imprisoned not less than thirty days or both at the discretion of the Court.

SEC. 3. That this Act shall not be construed to repeal any former Acts in relation to carp fishing unless the same are manifestly inconsistent with this Act.

*Approved, March* 16, *A. D.* 1905.

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DE-NJ Fisheries Compact
General Files 1905-1907

Folder #3 - Legislation

JOHN BOYD AVIS
COUNSELLOR AT LAW
WOODBURY, N. J.

June 4, 1908.

Hon. Walter H. Hayes,

Wilmington, Del.

Dear Mr. Hayes,

I desire to advise you that arrangements had been made to go down the River and select a place for setting the monument today, but owing to the fact that Mr. Acton, the surveyor, who is also an attorney-at-law, is engaged in a case in the Supreme Court, it was impossible for us to take the trip. Arrangements will be made to go down the Bay sometime next week, and I will let you know the result as soon as we are able to go.

I am writing this to you so that you will understand the cause of the delay.

Yours truly, John Boyd Avis

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THE SENATE OF NEW JERSEY

Woodbury, N. J.,

June 27, 1908.

Hon. Walter H. Hayes,

Wilmington, Del.

My dear Mr. Hayes,

I desire to advise you that Senator Bradley and I, as members of the New Jersey Commission, located the site for the monument to be erected on the Jersey shore, yesterday, and have made arrangements with the owner to secure a deed for the ground that we will need.

I expect to have this matter all completed by the middle of next week and we will then be ready to go ahead and have the monument set.

I will advise you immediately upon the completion of the arrangements.

Yours very truly,

John Boyd Thacher

DE16200

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DE Commissioners
Fisheries Comp.
338631

THE SENATE OF NEW JERSEY

Woodbury, N. J. 7/8/08.

Walter H. Hayes Esq.

Wilmington, Delaware.

Dear Mr. Hayes :-

Your letter has been received. We appreciate your kind invitation to accompany you on your trip down the bay, but will not be able to accept at this time. Expect to have our deed some time this week and will send you word at once when completed.

I send to you enclosed check of Senator Bradley as President of the Commission for $22.50, the amount due to your Commission. This should have been sent to you sooner, but was apparently overlooked.

Yours truly.

John Boyd Avis

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THE SENATE OF NEW JERSEY

Woodbury, New Jersey

July 17, 1908.

Hon. Walter H. Hayes,

Wilmongton, Delaware,

My dear Mr. Hayes:-

I have received your letter, and in reply desire to advise you that we have made all arrangments for our plot of land and expect the deed in a few days. We are satisfied, however, to go ahead at once and set the monuments. We have chosen John H. Avis, Woodbury, New Jersey as the inspector, who will be on the ground at any time that may suit MR. Davidson. He knows the spot selected by our Commission for the monument. We approve of your action in employing a photographer, and will want at least a half dozen photos of each monument. I will write to Mr, Davidson that he may fix a day as soon as convenient to him.

Yours very truly.

John Byrne Avis

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DE Commissioners
Fisheries Compact
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DE16206

JOHN BOYD AVIS
COUNSELLOR AT LAW
WOODBURY, N.J.

July 21, 1908.

Hon. Walter H. Hayes,

Wilmington, Del.

Dear Sir:

I have received your letter of the 20th inst., and note contents.

If you are going to have the monuments photographed together, I think it would be well to reserve a dozen for us.

Yours truly,

John Boyd Avis

DE Public Archives

0914.1
DE Commissioners
Fisheries Compact
338631

JOHN BOYD AVIS
COUNSELLOR AT LAW
WOODBURY, N.J.

August 14, 1908.

Hon. Walter E. Hayes,

Wilmington, Del.

Dear Sir:-

I have received your letter and send to you enclosed the report of the Inspector with relation to the setting of the two monuments. I will obtain the bill from the Inspector and forward to you later.

I think, as you do, that we should have a meeting the early part of September to wind up the business of the Commissions and will confer with Senator Bradley and let you know what date will suit us.

Yours truly,

John Boyd Avis

1827

DE16209

DE Public Archives

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DE Commissioners
Fisheries Compact
338631

Aug. 28 1908.

Dear Walter:-

Will you see Hilles and let us have a meeting early next week at my office, so that we can determine what else is to be done and arrange to do it, and get the confounded thing off of our hands.

Yours truly,

Alex. B. Cooper

To Walter H. Hayes, Esq.
Wilmington, Del.

(20)

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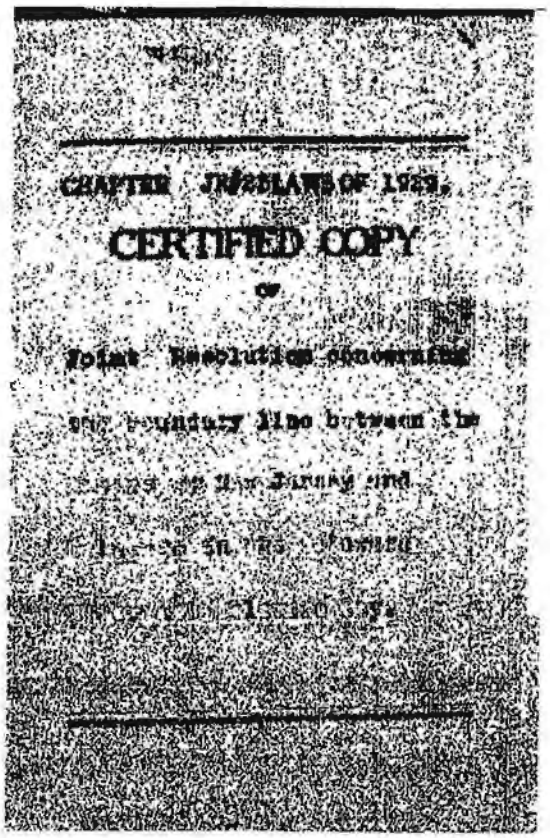


CHAPTER [illegible] LAWS OF 1929.

CERTIFIED COPY

OF

Joint Resolution concerning

the boundary line between the

[illegible] of New Jersey and

[illegible] States [illegible]

[illegible] 1929.

DE02836

Joint Resolution

(OFFICIAL COPY REPRINT)

SENATE JOINT RESOLUTION No. 15

# STATE OF NEW JERSEY

Joint Resolution concerning the boundary line between the States of New Jersey and Delaware in the Delaware River and Bay and Delaware Bay.

WHEREAS, The Commissioners of the State of New Jersey appointed under Joint Resolution No. 4, approved March 6, nineteen hundred and twenty-seven, to confer with like commissioners representing the State of Delaware for the purpose of drafting a compact or agreement between said States and legislation consequent thereon to be submitted to the Legislatures of said States for action thereon, looking to the final adjustment of all controversies relating to the boundary line between said States and their respective rights in the Delaware River and Bay, have reported to the Legislature that they have been unable to reach an agreement with the commissioners of the State of Delaware and have recommended that the said controversies be referred to the Attorney General to the end that appropriate action may be taken [illegible]

[illegible]

BE IT RESOLVED by the Senate and General Assembly of the State of New Jersey:

1. The Attorney General is hereby authorized to investigate and, with the approval of the Governor, take such action as he shall deem necessary and to institute such action or proceeding in the Supreme Court of the United States as may be necessary to secure a judicial determination of said controversies between the State of New Jersey and the State of Delaware over the boundary line between said States from the Pennsylvania State line along the Delaware River and Bay to the Atlantic Ocean.

2. This joint resolution shall take effect immediately.

Approved May 6, 1929.

152

DE02837

State of New Jersey

Department of State

I Joseph P. S. Fitzpatrick, Secretary of State of the State of New Jersey do hereby Certify that the foregoing is a true copy of an Act passed by the Legislature of this State and approved by the Governor, the [illegible] day of May A. D. 1929

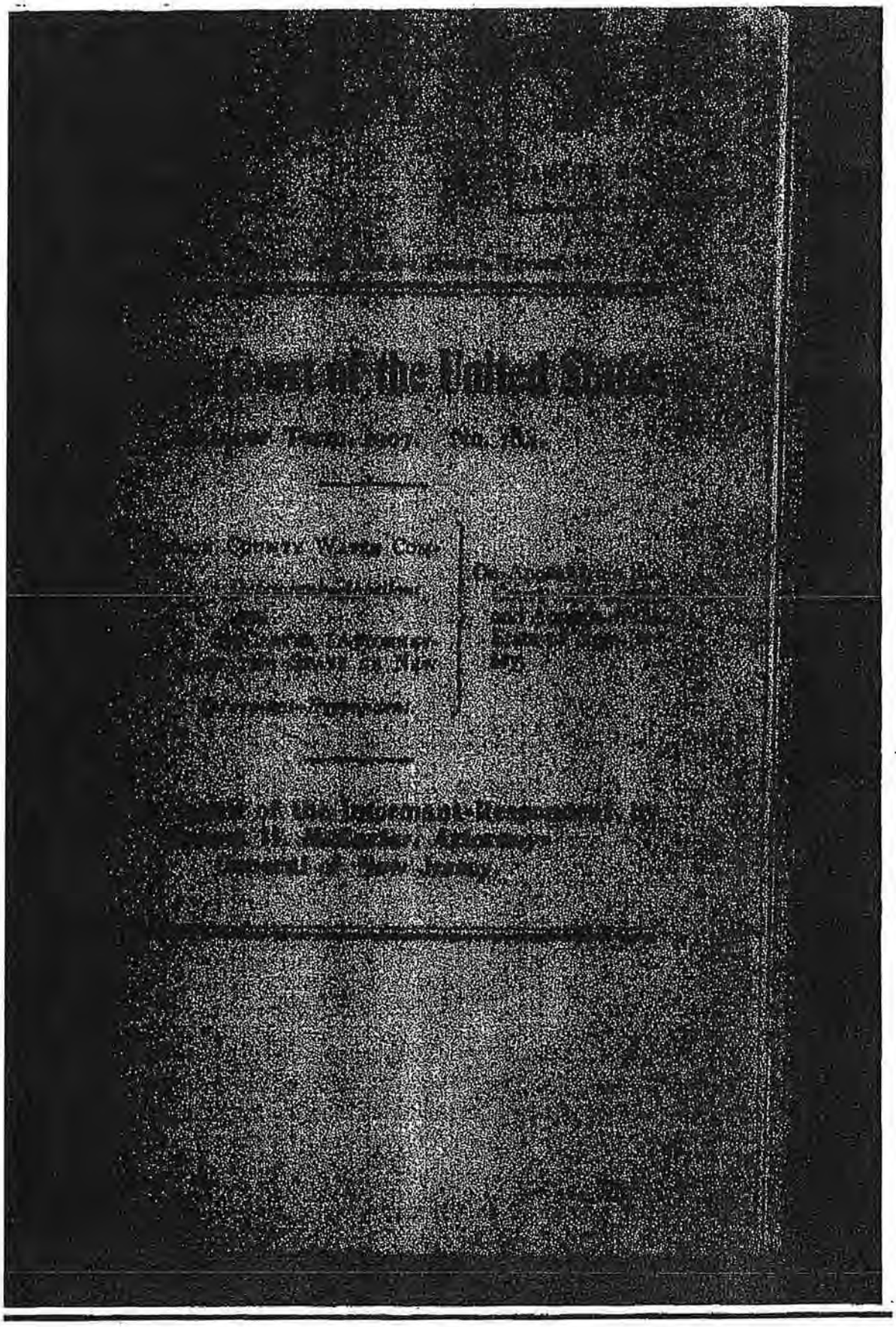
as taken from and compared with the original now on file in my office

In Testimony Whereof, I have hereunto set my hand and affixed my Official Seal at Trenton this [illegible] day of [illegible] in the year of our Lord one thousand [illegible]

Joseph P. S. Fitzpatrick
Secretary of State

DE02838

DE02839



DE32726

# Supreme Court of the United States

October Term, 1907. No. 184.

THE HUDSON COUNTY WATER COMPANY,
*Defendant-Appellant,*
*and*
ROBERT H. McCARTER, ATTORNEY-GENERAL OF THE STATE OF NEW JERSEY,
*Informant-Respondent.*

On Appeal from the Court of Errors and Appeals of the State of New Jersey.

## STATEMENT OF FACTS.

This is an appeal from a decree of the New Jersey Court of Errors and Appeals, the court of last resort in that State, affirming a decree of the Chancellor, awarding to the informant the relief prayed for in the information, and perpetually enjoining the Hudson County Water Company from carrying or transporting into Staten Island or the State of New York, or elsewhere out of the State of New Jersey, any of the waters of the Passaic river.

The suit was instituted by the Attorney-General and an amended information filed in the Court of Chancery of New Jersey on or about the nineteenth of September, nineteen hundred and five, alleging that a corporation of the State of New Jersey, known as the East Jersey Water Company, was engaged in the sale of water to municipal corporations and water companies, and to other consumers, taken from the Passaic river, and for that purpose had established extensive works at Little Falls, on said river and in said State, and was daily diverting from said river a quantity of water estimated at thirty million gallons, and that the demands of their customers in the State of New Jersey were increasing from year to year; that a corporation of the State of New Jersey, known as the Hudson County Water Company, the appellant herein, had entered into a contract with certain corporations located in Staten Island, in the State of New

DE32727

York, to supply them with water, which, in turn, it had arranged to secure from the East Jersey Water Company by means of intermediate corporations; and had likewise entered into a contract with the city of New York for a supply of water from the same source into Staten Island, to be distributed by the municipal authorities of the said city of New York to consumers in the borough of Richmond, in Staten Island, and within the corporate limits of the city of New York, whereby it was proposed to supply to said city not less than three million gallons of water per day. That said last-mentioned contract had been made with full knowledge of the provisions of the act of the Legislature of the State of New Jersey approved May eleventh, nineteen hundred and five, entitled "An act to preserve and maintain the lakes, ponds, brooks, creeks, rivers and streams of this State, and to prevent the water thereof from being carried, by pipes, conduits, ditches or canals, into other States for use therein, and to authorize the Court of Chancery to assist in the observance of this act," and being Chapter 238 of the Pamphlet Laws of that year, whereby the Legislature, after reciting that the available waters of the fresh-water lakes, ponds, brooks, creeks, rivers and streams of the State of New Jersey do not increase with the growth of the population, and unless the same are carefully preserved, will become inadequate to perform their natural functions, which functions are essential to the health and prosperity of all the citizens of the State, enacted that it should be unlawful for any person or corporation to transport or carry, through pipes, conduits, ditches or canals, the waters of any fresh-water lake, pond, brook, creek, river or stream of the State of New Jersey into any other State for use therein, and making it the duty of the State Geologist to keep a general oversight over such sources of water supply, and see that the same are preserved for the use and benefit of the citizens and inhabitants of the State, and to prevent the waters thereof from being transported, in manner aforesaid, into other States for use therein; and requiring him, upon being informed that it is the intention of any person or corporation to so carry or transport into any other State for use therein, any such waters, through the Attorney-General, to apply to the Court of Chancery for an injunction to restrain the same, which Court was thereby empowered and authorized to entertain jurisdiction of such a suit in order to preserve the waters aforesaid for the use and benefit of the citizens and inhabitants of the State; and to that end the said Court was authorized to issue such restraining order and injunction, both preliminary and final, as may be necessary.

A full copy of this act is attached to this brief in the appendix.

and may likewise be found on page 461 of the Pamphlet Laws of the State of New Jersey for the year 1905.

The information further showed that the Passaic river is the principal and most important of all the available sources of supply of water to the cities and towns of New Jersey, and that the demand for water for use in the State of New Jersey is growing more rapidly than the population of the State, and that within a short time the entire supply of the Passaic river and its tributaries will be required for the uses of the people of the State; that the said Passaic river is also a natural outlet for the drainage that exists within its valley, and receives such drainage, including much fetid and unhealthy matter, and carries it to the sea; and that the maintenance of the normal quantity of water within its banks is necessary to prevent its further pollution. That several municipalities bordering near or upon the said river, by legislative authority or otherwise, are, and for a number of years past have been, emptying their sewage into the said river, and already the waters thereof have become greatly contaminated, and the health, comfort and prosperity of the good citizens living near or along its banks have become affected thereby, and are in danger of becoming more so, and that any further diversion of the waters of the Passaic river at Little Falls or elsewhere, for the purpose of transmission to the State of New York, will render the stream inadequate to carry such sewage, fetid matter or drainage into the sea, and will cause discomfort and disease to the inhabitants of the State who live or work near to or adjoining the said stream below the point of diversion; and that the proposed diversion will deprive the State and its citizens of large quantities of water which belong to the State by virtue of its sovereignty, as successor to the English crown, in the ownership at common law of all the waters of fresh-water streams, subject to the rights only of the riparian owners along said streams, and which, if undiverted in the manner proposed, would ultimately flow on to lands of and become the property of the State.

The information further pleaded the act of the Legislature above referred to, and prayed for the relief therein authorized and for an injunction.

An answer was filed by the Hudson County Water Company, practically admitting the facts averred in the information, but claiming the benefit of the contracts set out in the information, and denying that the act of the Legislature of the State of New Jersey, approved May eleventh, nineteen hundred and five, was applicable to it, and insisting that it was void because it impaired the obligation of said contracts, because it took property without

due compensation and without process of law, and provided for the interference of commerce between the States of New Jersey and New York, and denied to the citizens of other States the privileges of citizens of New Jersey, as well as the equal protection of the laws, and was, therefore, violative of the Federal Constitution.

After full hearing, as before stated, a final decree was entered, according the Informant all the relief desired, on the advice of VICE-CHANCELLOR BERGEN, in accordance with the opinion found in page 36 of the record. From this decree an appeal was taken to the Court of Errors and Appeals, resulting in a unanimous affirmance of that decree, the opinion of that Court being delivered by MR. JUSTICE PITNEY. This opinion is found on page 44 of the record.

The opinions of the Court of Chancery and of the Court of Errors and Appeals of the State Court are so luminous and convincing that the respondent could well rest his case upon their reasoning, and the Court is respectfully referred to those opinions as printed in the record, and no effort will be made in this argument to repeat what is therein included.

The appellant in its assignment of errors (record, page 65) places its right to review the decision of the court of last resort of the State of New Jersey in this Court, upon the fact that that decision sustained the act of the Legislature before referred to, the effect of which was to validate an act that should have been held to be void as an attempt to regulate, control or forbid commerce between the State of New Jersey and other states, and because of the other constitutional provisions referred to in the answer and hereinabove noted, including the claim that by virtue of the said decree, the Hudson County Water Company was denied the right and privilege to sell water taken from a running stream in New Jersey to citizens of New York, as fully and freely as to citizens of New Jersey, in violation of the provisions of the Federal Constitution, providing for the regulation, by the Congress exclusively, of commerce between the states, and also in violation of the provisions of the Constitution whereby the citizens of New York are entitled to the privileges and immunities of the citizens of New Jersey and the equal protection of the laws of New Jersey.

The Court will take judicial notice that the Passaic river is a fresh-water stream, flowing into the ocean through New York bay; and that at the point of diversion (Little Falls) it is not

navigable, but becomes so a short distance above the city of Newark.

*Brown v. Seofield, 8 Barb. 239.*
*Pearson v. Howard, 7 Pet. 324.*
*The Montello, 11 Wall. 411.*
*U. S. v. Rio Grande Co., 174 U. S. 690.*

It nowhere appears in this case how, if at all, either the East Jersey Water Company or the Hudson County Water Company acquired their alleged right to divert water at Little Falls, and it must be assumed that, so far as lower riparian owners are concerned, including, of course, the State itself, these companies are mere interlopers or squatters. It is not even claimed that either of them is a riparian owner, so that the defendants, thus claiming to exercise the valuable right to divert large quantities of water of a running stream, bases its right so to do entirely upon squatter sovereignty, notwithstanding the fact that such conduct amounts, in law, to a nulsance, which any lower riparian proprietor can either enjoin, or sue to recover his damages.

*East Jersey Water Co. v. Bigelow, 31 Vr. (60 N. J. L.) 201.*

Even if the East Jersey Water Company were shown to be a riparian proprietor at Little Falls, its rights in the water of the river flowing thereby are perfectly well settled by rules too familiar to require any citation of authorities. Such an owner has a mere usufruct in the water as it flows by his property; he may gain the benefit of any power arising therefrom; he may divert it through his premises, provided he restore it again to the natural channel before it reaches the boundary of a lower proprietor. He may use it reasonably for domestic purposes, but he has no right to divert any substantial quantity and apply it to his own or other people's uses. The lower owner is entitled to have substantially the full amount of water flow by his land without diminution or diminution by or on the part of an upper proprietor. It is believed that no authority can be found which questions the right of the East Jersey Water Company to divert sixty millions of gallons of water from the Passaic river at this or any other point without the consent of the lower owners, and to apply the same to municipal or other purposes.

*U. S. v. Rio Grande Co., 174 U. S. 690, 702.*

This familiar principle would be applicable if the East Jersey Water Company, on whose rights the defendant must of course rely, were a riparian proprietor. When it cannot even claim that right, it becomes all the more significant.

But the appellant, without seriously questioning the correctness of this axiomatic rule, denies that it here concerns the State in any way, and insists that this suit has no properly interested party to support it. In a word, it denies that the State has any interest in the premises, either at common law or by virtue of the statute above referred to, and claims that any rights sought to be given by that statute are unavailable against the defendant, by reason of the fact that it had, previous to the enactment, entered into contracts looking to the proposed diversion of the waters into the State of New York.

It thus appears that the fundamental question to be determined is whether or not the State is interested and can assert such interest in this manner.

What, then, is the interest of the State and what rights has it in the premises?

The correct answer to this inquiry is two-fold: the State, as successor to the Crown in England, is—

(*a*) The absolute owner of the bed of the stream and of the banks thereof up to high-water mark, so far as it is navigable.

*Stevens* v. *Paterson and Newark R. R. Co.*, 5 *Vr.* (34 *N. J. L.*) 532; *Cobb* v. *Davenport*, 7 *Vr.* (36 *N. J. L.*) 369; and

(*b*) The rights of the private proprietors in the running stream above the point of navigability, whose title goes to the thread, being limited and usufructary only, the residue of interest or property in the great mass of running water resides in the State as trustee for the public, and the State has not only the right to preserve, but it is charged with the duty, as such trustee, of preserving the same for the common benefit of all its citizens.

## I.

### The State, as a Lower Owner, is Entitled to Preserve the Integrity of the Stream so that it will Come to it Unimpaired in Quantity.

This is but an example of the principles applied in *Attorney-General* v. *Delaware & Bound Brook R. R. Co.*, 12 *C. E. Gr.* (27 *N. J. Eq.*) 631, where the court, through Mr. Justice Dixon, said:

> "In equity as in the law court, the Attorney-General has the right, in cases where the property of the sovereign or the interests of the public are directly concerned, to institute suit by what may be called civil information for their protection. The State is not left without re-

dress in its own courts, because no private citizen chooses to encounter the difficulty of defending it, but has appointed this high public officer, on whom it has cast the responsibility, and to whom, therefore, it has given the right of appearing on its behalf and invoking the judgment of the courts on such questions of public moment."

A leading case is *Attorney-General* v. *Jamaica Pond Aqueduct Corporation, 133 Mass. 361.*

Here an information was filed by the Attorney-General against a corporation claiming that Jamaica Pond was one of the great ponds of the commonwealth, and that the defendant by its charter and other statutes was authorized to draw water therefrom, provided it did not reduce the level below a certain limit, and that the defendant, claiming legislative authority, was about to erect water-works for the purpose of supplying a municipality with water, the effect of which would be, as the information claimed, to lower the level of Jamaica Pond below the limit fixed as aforesaid, thereby impairing the rights of the public in the use of the pond for fishing, boating and other lawful purposes.

The opinion, after determining that the Attorney-General had the power to restrain any corporation exercising *ultra vires* powers, continues:

"There is another ground upon which, in our opinion, this information can be maintained, though perhaps it belongs to the same general head of equity jurisdiction, of restraining and preventing nuisances. The great ponds of the commonwealth belong to the public, and, like the tide waters and navigable streams, are under the control and care of the commonwealth. The rights of fishing, boating, bathing and other like rights which pertain to the public, are regarded as valuable rights, entitled to the protection of the government. *West Roxbury* v. *Stoddard, 7 Allen 158. Attorney-General* v. *Woods, 108 Mass, 436. Commonwealth* v. *Vincent, 108 Mass. 441.* If a corporation or an individual is found to be doing acts without right, the necessary effect of which is to destroy or impair these rights and privileges, it furnishes a proper case for an information by the Attorney-General to restrain and prevent the mischief.

"Suppose a city or an aqueduct corporation commences a canal or an aqueduct, without authority from the Legislature, designed to draw off great quantities of the water, so as to injure or endanger the rights of the public therein, an information in equity would fur-

nish the only adequate means of ascertaining and protecting the rights of the government and of the public. The Legislature has the right to determine to what extent the defendant corporation may draw down the waters of Jamaica Pond for the purposes for which it was incorporated."

Another important case is *Coosaw Mining Co.* v. *South Carolina, 144 U. S. 550,* where an information on behalf of the State of South Carolina, filed to prevent the defendant corporation from improperly digging, mining and removing phosphate deposits in the navigable waters of the State, was sustained. Mr. Justice Harlan, after construing the legislation under which the defendant corporation was claiming the right, adversely to the company and in favor of the State, confirms the right of the State to equitable relief by injunction in the premises, and concludes:

"The grounds of equity jurisdiction in such cases as the one before us are substantially those upon which courts of equity interfere in cases of waste, public nuisance and purpresture."

He then refers with approval to *United States* v. *Gear, 3 How. 120,* where a bill for injunction by the United States was sustained to prevent the digging of ore from lead mines upon the public lands; to *Attorney-General* v. *Forbes, 2 My. & Cr. 123,* where it was said by the Lord Chancellor:

"Many cases might have been produced in which the court has interfered to prevent nuisances to public rivers and to public harbors; and the Court of Exchequer, as well as this court, acting as a court of equity, has a well-established jurisdiction upon a proceeding, by way of information, to prevent nuisances to public harbors and public roads; and, in short, generally to prevent public nuisances."

Reference in the opinion is also made to *Gibson* v. *Smith, 2 Atk. 182,* and to *Attorney-General* v. *Jamaica Pond Aqueduct (supra),* at length, and it concludes as follows:

"These principles are applicable to the present case. The remedy at law for the protection of the State, in respect to the phosphate rocks and phosphatic deposits in the beds of its navigable waters, is not so efficacious or complete as a perpetual injunction against interference with its rights by digging, mining and removing such rocks and deposits without its consent. The Coosaw Mining Company, unless restrained, will not only appropriate to its use property held in trust for the public, but will prevent the proper administration of that trust for an indefinite period, by obstructing

owners, acting under lawful authority, from enjoying rights in respect to that property derived from the State. These conflicting claims cannot be so effectively or conclusively settled by proceedings at law, as by a comprehensive decree covering all the matters in controversy. Proceedings at law or by indictment can only reach past or present wrongs done by the appellant, and will not adequately protect the public interests in the future. What the public are entitled to have is the security, for all time, against illegal interference with the control, by the State, of the digging, mining and removing of phosphate rock and phosphatic deposits in the bed of the Coosaw river. Such security was properly given by the decree below."

See, also, *Story's Eq. Jur., secs., 922, 923*, where it is stated that an information in equity at the suit of the Attorney-General is readily sustained by courts of equity, because of "their ability to give a more complete and perfect remedy than is attainable at law, in order to prevent irreparable mischief and also to suppress oppressive and vexatious litigation."

See, also, *Kerr on Injunctions, 262; 1 Joyce on Injunctions, 156.*

This whole subject was luminously discussed by this Court in the recent case of *Missouri v. Illinois and the Sanitary District of Chicago, 180 U. S. 208, 243*, in which the right of a state, through its Attorney-General or otherwise, to preserve the integrity or purity of its streams by bill for injunction, was maintained, and reliance had upon *Attorney-General v. Jamaica Pond Aqueduct Corporation (supra); Coosaw Mining Company v. South Carolina, 144 U. S. 550 (supra)*, and other cases.

The damage or injury to a lower private riparian owner seeking an injunction in cases of this character need not be great. See *High on Injunctions, 795*, where the fact that such lower proprietor will suffer but small damage from the proposed diversion is said not to be any defense to an injunction.

To the same effect are—

*Hulme v. Schreve, 4 N. J. Eq. 116;*
*Shields v. Arndt, Id. 234;*
*Higgins v. Flemington Water Co., 9 Stew. 538;*
*Corning v. The Troy Iron and Nail Factory, 40 N. Y. 191.*

Mr. Angell, in his treatise on *Water Courses, sec. 135*, says: "That a diversion of a water course without actual injury to a riparian owner down the stream legally imports damages (because it is an infringement of a right), is a doctrine powerfully sustained by the American authorities."

See, also, *Mudge* v. *Salisbury, 110 N. Y. 413,* where, in a similar case by a private proprietor, the Court says:

> "Resort to equity by the plaintiffs was proper in this case. The jurisdiction of courts of equity and their power to grant relief cannot be doubted. The avoidance of a multiplicity of actions and the inadequacy of legal remedies to prevent the defendants from taking away the water, to the detriment of plaintiffs' prior rights thereto, and to secure to plaintiffs the continuous enjoyment, by them, of those superior rights, are deemed sufficient grounds for the interposition of a court of equity. (*Olmsted* v. *Loomis, 9 N. Y. 423; Corning* v. *Troy Iron Factory, 40 Id. 191.*)"

See, also, *Garwood* v. *N. Y. C. & H. R. R. R. Co., 83 N. Y. 400; Weiss* v. *Oregon Iron and Steel Co., 11 Pac. Rep. 255.*

If this minimum of damage suffice to support a private suit for an injunction by a private owner, *a fortiori* will it suffice in this case, where the information is by the Attorney-General. The allegations of the information, to the effect that the proposed diversion will not only deprive the State and its citizens of large quantities of water, but will cause discomfort and disease to the inhabitants of the State, and interfere with the functions of the stream which are essential to the health and prosperity of its citizens, are either undenied or admitted in the answer, as shown by the opinions. If the proposed diversion is permitted, then more discomfort and disease will follow. The defendant or other corporations, encouraged by a refusal of the court to act at this time, would erect expensive plants and rely upon the cost thereof as a reason to prevent future interference by the State. The principle that the State can prevent waste or destruction of its property does not require it to wait until they have assumed large proportions. The court should encourage alertness on the part of the public in these matters, and its Attorney-General, while ever on the alert to protect the property of the State, should not be required to wait until he is met by the claim of laches, or of large expenditure, but should act promptly, and the fact that little or no present damage to the State is shown should not, by the courts, be permitted to be interposed as a defense.

It must not be overlooked that individuals may acquire, by prescription against the Crown or the State, the right to the soil of public waters and hence prescriptive rights might be set up as against the State.

As shown by this court in *Missouri* v. *Illinois, 200 U. S. 496, 520,* time in the acquisition of rights may sometimes run against a state; and it is hence of importance to a state to prevent the acquisition of title by prescription.

See *Gould on Waters, sec. 37*, and the cases cited in support of this doctrine, including *Hale, De jure maris, chapter 5.*
*Oppenheim, International Law, sec. 243;*
*Hargrave's Law Tracts, 18;*
*Nichols v. Boston, 98 Mass. 30;*
*Boston v. Richardson, 105 Mass. 41;*
*George v. Meeker, 34 Conn. 31;*
*Palmer v. Hicks, 6 Johns. 133;*
*2 Kents Com. 427.*

## II.

THE STATE, WITHOUT REGARD TO ITS LOWER PROPRIETORSHIP, IS ENTITLED TO AN INJUNCTION AS SUCCESSOR TO THE CROWN AND AS REPRESENTATIVE OF THE PUBLIC; AND THIS TOO NOTWITHSTANDING THE PROVISIONS OF THE FEDERAL CONSTITUTION RELIED UPON BY THE APPELLANT.

It is believed that the State has a supervisory interest and property in the waters that lie or flow in it, entitling and requiring it, as the representative of the public, to preserve the same, and that this right and duty have been inherited from the King of England.

In *Hargrave's Law Tracts, chap. 2*, is a consideration of the right of prerogative of the King in private or fresh rivers, and it is there stated that the King, by an ancient right of prerogative, hath had a certain interest in many fresh rivers, even when the sea doth not flow and reflow, among which are an interest of jurisdiction, namely, in reference to common law nuisances in and by rivers, as when the sewers were not kept. That this gave rise to the commission of sewers, as well for fresh rivers as for salt, *vide 23 H. 8 chap. 5*, where in the act of parliament appointing a commission to look after the sewers that flowed into and through the public fresh water streams of the kingdom, it was recited for that "by reason of our royal dignity and prerogative royal, we are bound to provide for the safety and preservation of our realm."

Another part of the King's jurisdiction in reference to nuisances is there stated to be to reform and punish nuisances in all rivers, whether fresh or salt, that are a common passage, and among the nuisances mentioned, page 9, are "the polluting of the rivers by cuts or trenches." In Chapter V, there is a consideration of the rights which a subject may have in the creeks or arms of the sea, and on page 23, reference is made to *1 H. 4. chap. 12*, whereby it was enacted "that there shall be commissions

DE32737

granted to survey and keep the waters and great rivers, and to correct and amend the default."

In *Smith v. Rochester, 92 N. Y. 463–477*, is found a philosophical statement of the true rule. I quote as follows:

> "Among other rights which pertain to sovereignty is that of using, regulating and controling for special purposes the waters of all navigable lakes or streams, whether fresh or salt, and without regard to the ownership of the soil beneath the water. The right is known as the *jus publici* and is deemed to be inalienable.
>
> "Judge Edmonds, in his learned opinion in *Gould* v. *Hudson River Railroad Co., 6 N. Y. 546*, says: 'When regarding the rights of the State in respect to lands, we must not be unmindful that it has two interests, one governmental and the other proprietary. Or as it is divided by M. Prudhon in his *Traite du Domain Public*, the public domain, which is that kind of property which the government holds as mere trustee for the use of the public, such as public highways, navigable rivers, salt springs, etc., and which are not, of course, alienable; and the domain of the State, which applies only to things in which the State has the same absolute property as an individual would have in like cases.' Although this quotation is from a dissenting opinion, yet, so far as the principle announced is concerned, it met with no dissent and is supported by universal authority. *6 N. Y. 555; U. S. B'k* v. *B'k of Metropolis, 15 Pet. 387; Doe dem Knight* v. *Nepean, 5 B. & A. 91; Hoyt* v. *Sprague, 12 Pick. 407; 3 Kent's Com. 537; Pollard's Lessee* v. *Hagan, 3 How. U. S. 222.*
>
> "In the examination of any of the numerous questions relating to water-courses that may arise, no discussion would be complete which failed to refer to the ancient and learned treatise *De jure Maris*, by Sir Matthew Hale, and which, after the lapse of two centuries, remains the most concise, comprehensive and reliable work on the subject of which it treats. As appears from the learned note of Judge Cowen to *ex parte* Jennings (*6 Cow. 537*), under the following title, 'Of the right of prerogative in private or fresh rivers,' it reads: 'The king, by an ancient right of prerogative, hath had a certain interest in many fresh rivers, even where the sea does not flow or reflow, as well as salt or arms of the sea, and those are these which follow:
>
> "'1st. A right of franchise or privilege that no man may set up a common ferry for all passengers without

prescription time out of mind or a charter from the king.

"3d. An interest, as I may call it, of pleasure or recreation.

"4th. An interest of jurisdiction.

"And another part of the king's jurisdiction in reformation of nuisances is to reform and punish nuisances in all rivers, whether fresh or salt, that are a common passage not only for ships and greater vessels, but also of smaller, as barges and boats, to reform the obstructions or annoyances that are therein to such common passage, for as the common highways on the land are for the common-land passage, so these kind of rivers, whether fresh or salt, that bear boats or barges, are highways by water, and as the highways by land are called *altæ viæ regiæ*, so these public rivers for public passage are called *fluvie regales* and *streames le Roy;* not in reference to the propriety of the river, but to the public use.'"

An intelligent consideration of the subject will also be found in sections 133, 138, 138*d*, 140*a* and 141 of *Farnham* on Waters.

In *Connecticut River Lumber Co.* v. *Alcott Falls Co., 65 N. H. 290, 21 Atl. Rep. 1090*, an application by the Attorney-General to prevent the erection of a dam in the Connecticut river which would interfere with the easy flotation of logs thereon, was upon this ground, sustained by the Supreme Court of New Hampshire.

Upon the same theory the Supreme Court of Indiana, in the case of *State* v. *Ohio Oil Co., 150 Ind. 21, 49 N. E. Rep., p. 809*, sustained an application by its Attorney-General for an injunction to prevent the waste of natural gas by the defendant, which was drilling for oil.

There the whole subject of the right of the State, as the representative of the public, to protect the public interest in the common property, like gas or water, is considered in a very elaborate opinion, and the right to an injunction expressly sustained upon the ground that it is the duty of the State, where the common property of the people at large is being wasted, destroyed, misapplied, or injured, to interfere, likening the principle to legislation concerning fish, or to prevent a nuisance in public streams. The language of the Supreme Court of Kansas, in *State* v. *Barfield, 28 Kan. 726*, is adopted, to the effect that:

"Anything which is an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property by an entire community

> or neighborhood, or any considerable number of persons, is a public nuisance. The fish within our waters constitute the most important constituent of that species of property commonly designated as wild game, the general right to ownership of which is in the people of the State, as in England it was in the king, and the right and power to protect and preserve such property for the common use and benefit is one of the recognized prerogatives of the sovereign coming to us from the common law, and preserved and expressly provided for by the statutes of this and every other State in the Union."

Elaborate quotations are then made from several other cases, including that of *Attorney-General* v. *Aqueduct Corporation, 133 Mass. 361* (*supra*), and *Coosaw Mining Co.* v. *South Carolina, 144 U. S. 566* (*supra*).

Practically the same subject was considered by this Court in the case of *Ohio Oil Co.* v. *Indiana, 177 U. S. 190*, where it sustained legislation of the State of Indiana making it unlawful for any person, being in possession of a natural gas or oil well, to permit the flow of gas or oil from any such well to escape into the open air, without being confined for a longer period than two days next after such oil or gas shall have been struck, and held that legislation of that character in no way interfered with private property, nor did it amount to a denial of due process of law.

The opinion is a philosophical one by MR. JUSTICE WHITE, and can only be fully appreciated by being read *in extenso*.

It determines that oil and gas embodied in the bowels of the earth occupy in law a position somewhat the same as water, and concludes that the three may be characterized as minerals *feræ naturæ*.

It says:

> "Water and oil, and, still more strongly, gas, may be classed by themselves, if the analogy be not too fanciful, as minerals *feræ naturæ*. In common with animals, and unlike other minerals, they have the power and the tendency to escape without the volition of the owner. Their 'fugitive and wandering existence within the limits of a particular tract was uncertain,' as said by Chief Justice Agnew in *Brown* v. *Vandergrift, 80 Penn. State 147, 148*. They belong to the owner of the land, and are a part of it, so long as they are on or in it and are subject to his control; but when they escape and go into other land, or come under another's control, the title of the former owner is gone. Possession of the land, therefore, is not necessarily possession of the gas.

After adverting to the right of the State to protect animals *ferae naturae*, the opinion continues:

"Viewed, then, as a statute to protect or to prevent the waste of the common property of the surface owners, the law of the State of Indiana, which is here attacked, because it is asserted that it divested private property without due compensation, in substance, is a statute protecting private property and preventing it from being taken by one of the common owners without regard to the enjoyment of the others. Indeed, the entire argument, upon which the attack on the statute must depend, involves a dilemma, which is this: If the right of the collective owners of the surface to take from the common fund, and thus reduce a portion of it to possession, does not create a property interest in the common fund, then the statute does not provide for the taking of private property without compensation. If, on the other hand, there be, as a consequence of the right of the surface owners to reduce to possession a right of property in them, in and to the substances contained in the common reservoir of supply, then, as a necessary result of the right of property, its indivisible quality and the peculiar position of the things to which it relates, there must arise the legislative power to protect the right of property from destruction."

The decree of the highest court of the State of Indiana sustaining the right of that State through its Attorney-General to enjoin the waste of natural gas was therefore sustained by this Court, and that alone upon the theory that the State has a duty and right to protect property of this kind within it, which belongs to no one particular person, but is given to all. Surely the interest which the owner of the soil has, by virtue of his title *usque ad inferos* to the gas or oil that is in it, is as great as the right of the private owner of riparian land to the water flowing through it, and if the State, as settled by this high authority, can legitimately protect the common interest which the people at large have in the gas or oil thus located, and before it is specifically appropriated, a similar right must reside in the sovereign to protect the common right in the waters of the State.

This court, in *Kansas v. Colorado, 185 U. S. 125*, had occasion to consider its jurisdiction and right to maintain a suit by or on behalf of a state to prevent the pollution or disturbance of flow of water streams running through its boundaries, and in the course of its opinion said:

"The mere fact that a state has no pecuniary interest in the controversy would not defeat the original juris-

diction of the Court which might be invoked by the state as *parens patriæ*, trustee, guardian or representative of all or in considerable portion of its citizens; and that the threatened pollution of the waters of a river flowing between states, under the authority of one of them, thereby putting the health and comfort of the citizens of the other in jeopardy, presented a cause of action justifiable under the constitution.

In the case before us, the State of Kansas files her bill as representing and on behalf of her citizens, as well as in vindication of her alleged rights as an individual owner, and seeks relief in respect of being deprived of the waters of the river accustomed to flow through and across the state, and the consequent destruction of the property of herself and of her citizens, and injury to their health and comfort."

See also *Missouri* v. *Illinois and the Sanitary District of Chicago, 180 U. S., 208.*

It is exactly this theory that promoted the suit at bar.

Precisely the same view was announced by this court in the very recent case of *Kansas* v. *Colorado, 206 U. S. 46, 99,* in which, after quoting from *Missouri* v. *Illinois* (*supra*), MR. JUSTICE BREWER referred to the action there pending, in which the State of Kansas undertook to enjoin the State of Colorado from diverting the waters of the Arkansas river, and sanctioned the right of the State, as complainant, to invoke injunctive relief, saying:

"It (Kansas) is not acting directly and solely for the benefit of any individual citizen to protect his riparian rights. Beyond its property rights it has an interest as a state in this large tract of land bordering on the Arkansas river. Its prosperity affects the general welfare of the State. The controversy rises, therefore, above a mere question of local private right and involves a matter of state interest, and must be considered from that standpoint * * *"

and MR. JUSTICE HOLMES, in the important case of *Georgia* v. *Tennessee Copper Co., 206 U. S. 226, 237,* thus expresses the same idea.

"The case has been argued largely as if it were one between two private parties; but it is not. The very elements that would be relied upon in a suit between fellow-citizens as a ground for equitable relief are wanting here. The State owns very little of the territory alleged to be affected, and the damage to it capable of estimate in money, possibly, at least, is small. This

is a suit by a State for an injury to it in its capacity of quasi-sovereign. In that capacity the State has an interest independent of and behind the titles of its citizens, in all the earth and air within its domain. It has the last word as to whether its mountains shall be stripped of their forests and its inhabitants shall breathe pure air. It might have to pay individuals before it could utter that word, but with it remains the final power. The alleged damage to the State as a private owner is merely a makeweight, and we may lay on one side the dispute as to whether the destruction of forests has led to the gullying of its roads."

Now it is upon this theory that from time immemorial game and fish laws have been sanctioned.

In *Allen v. Wyckoff*, 19 *Vr.* (*48 N. J. L.*) 90, Justice Dixon says:

"As a game law the statute falls into the line of a long series of enactments, beginning in the very early history of the mother country and continuing uninterruptedly down to the present time."

And if the decisions of the Court in regard to those statutes be examined, it will be found that the Supreme Court of Illinois, in the case of *Magner v. The People*, 97 *Ill.* 333, correctly says:

"The ownership (of the game) being in the people of the State—the repository of the sovereign authority—and no individual having any property rights to be affected, it necessarily results that the Legislature, as the representative of the people, may withhold or grant to individuals the right to hunt and kill game, or qualify and restrict it, as in the opinion of its members will best subserve the public welfare."

See also *American Express Co.* v. *The People* (*Sup. Ct. of Ill.*), 24 *N. E. Rep.* 758.

I can see no distinction whatever in principle between the reserved right of the State to protect the common interest in that interest that is *feræ naturæ*, and animals like game that are *feræ naturæ*, and continuing the analogy, inasmuch as statutes have been enacted in almost every State regulating the times when game shall be shot or fish caught, and applying a different rule to non-residents from that which is permitted to residents, which statutes have been constantly sustained as being a proper exercise of the police power and in no way amenable to the criticism that they contravene the Federal Constitution as interfering with commerce, it would seem that chapter 238 of the laws of 1905 (*supra*) is entirely valid legislation.

A leading case is that of *State* v. *Geer*, decided by the Court of Errors of Connecticut and reported in *61 Conn. 144*.

There the validity of an act of the Connecticut Legislature, the first section of which forbade the killing of woodcock, etc., for the purpose of conveying the same beyond the limits of the State, and the second section of which forbade any person or corporation to transfer or convey beyond the limits of the State any such woodcock, etc., killed within the State, was questioned. The defendant had been convicted of violating this act and appealed from such conviction upon the ground that it was an invalid piece of legislation. The following quotation from the opinion may well be studied:

> "The defendant further demurred to the complaint '(3) because section 2546 of the General Statutes is unconstitutional and void so far as it may be construed to forbid the transporting from the State, or having possession of such birds with intent to procure such transportation to another State, birds described therein, which birds have been sold to parties in such other State, and have begun to move as an article of inter-state commerce; and (4) because it is made to appear in said complaint that the defendant is guilty under said section, if such birds were bought by the defendant in the markets of this State as merchandise and commerce, and had begun to move as an article of commerce.' In short, the defendant insists that the statute, as construed by us, is unconstitutional, as restricting inter-state commerce, and refers to *Robbins* v. *Taxing Dist., 120 U. S. 469, 7 Sup. Ct. Rep. 592; The Daniel Ball* v. *U. S., 10 Wall. 566; Railroad Co.* v. *Husen, 95 U. S. 465; State* v. *Saunders, 19 Kan 127; Territory* v. *Evans (Idaho), 23 Pac. Rep. 115; Territory* v. *Nelson, Id. 116; State* v. *Mining Co. (Indiana Sup.), 22 N. E. Rep. 778;* and *Express Co.* v. *People (Illinois Sup.), 24 N. E. Rep. 759.* In *State* v. *Saunders, 19 Kan. 127,* the Court says it seems to be finally settled, among other things, that no State can pass a law which will directly interfere with the free transportation from one State to another, or through a State, of anything which is or may be subject to inter-state commerce; that a law which prohibits the catching and killing of prairie chicken may be valid, although it may indirectly prevent the transportation of such chickens from the State to any other State; but a law which allows prairie chickens to be caught and killed, and thereby to become the subject of traffic

The opinion

and commerce, and at the same time directly prohibits their transportation from the State, is unconstitutional and void. Without stopping to consider the construction which was given to the constitutional provision under discussion by the earlier commentators, except to suggest, in the language of Judge Story (*2 Story, Comm. 511*), that a very material object of its adoption was the relief of the States which export and import through other States from the levy of improper contributions on them by the latter—an object which was shown to be important by the experience of the States during the confederation period—we feel constrained to hold the provision of the statute to be constitutional. It being conceded that the State, under its general police power, may lawfully prohibit the killing of the game birds in question, it may, of course, control such killing, and the times and purposes thereof. It may lawfully enact that they may be killed and sold and held for sale only for domestic consumption. The State, in the exercise of its power, instead of prohibiting the killing altogether, permits the person killing them to acquire only a qualified right in them, namely, the right to appropriate them to his own use, and the right to sell or transport them for domestic use. *The birds in question never become articles of commerce within the meaning of the term contended for by the defendant. They became private property of a qualified character.* The law limited the purposes for which they might be killed and become private property. The difference between property of this sort and the ordinary private property of commerce is obvious. The apparent assumption of the Kansas court, above referred to, that game which the law allows to be caught and killed, thereby necessarily becomes the subject of traffic and commerce, meaning inter-state commerce, appears to us unsound. If the proposition were true, then the conclusion that a State law interfering with such commerce would be unconstitutional might pass unquestioned. But we cannot acquiesce in a decision which would deny the power of the State to limit the right to kill, sell and hold its own game by any provision short of an absolute prohibition, without thereby transforming it into that species of property the transportation of which from the State it is unconstitutional to prohibit."

The case was then appealed to this Court, and affirmed in an opinion written by Mr. Justice WHITE and reported in *161 U. S.*

519, who states that the charge against the defendant was "the possession of game birds for the purpose of transporting them beyond the State, which birds had been lawfully killed within the State."

He passes to a consideration of the constitutionality of the statute creating the liability, and says: "The solution of the question involves a consideration of the nature of the property in game and the authority which the State had a right lawfully to exercise in relation thereto."

He then continues:

> "Among other sub-divisions, things were classified by the Roman law into public and common. The latter embraced animals *ferœ naturæ* which, having no owner, were considered as belonging in common to all the citizens of the State. After pointing out the foregoing sub-division, the Digest says:
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> "'There are things which we acquire the dominion of, as by the law of nature, which the light of natural reason causes every man to see, and others we acquire by the civil law; that is to say, by methods which belong to the government. As the law of nature is more ancient, because it took birth with the human race, it is proper to speak first of the latter. 1. Thus all the animals which can be taken upon the earth, in the sea or in the air, that is to say, wild animals, belong to those who take them. * * * Because that which belongs to nobody is acquired by the natural law by the person who first possesses it. We do not distinguish the acquisition of these wild beasts and birds by whether one has captured them on his own property or on the property of another; but he who wishes to enter into the property of another to hunt can be readily prevented if the owner knows his purposes to do so.' *Digest, Book 41, Tit. 1, De Adquir. Rer. Dom.*
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> "No restriction, it would hence seem, was placed by the Roman law upon the power of the individual to reduce game, of which he was the owner in common with other citizens, to possession, although the Institutes of Justinian recognized the right of an owner of land to forbid another from killing game on his property, as indeed this right was impliedly admitted by the Digest in the passage just cited. *Institutes, Book 2, Tit. 1, s. 12.*
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> "This inhibition was, however, rather a recognition of the right of ownership in land than an exercise by the State of its undoubted authority *to control the taking and use of that which belonged to no one in*

*particular, but was common to all.* In the feudal as well as the ancient law of the continent of Europe, in all countries, the right to acquire animals *ferœ naturæ* by possession was recognized as being subject to the governmental authority and under its power, not only as a matter of regulation, but also of absolute control. *Merlin, ubi sup.*, mentions the fact that, although tradition indicates that from the earliest day in France every citizen had a right to reduce a part of the common property in game to ownership by possession, yet it was also true that as early as the Salic law that right was regulated in certain particulars. Pothier, in his treatise on property, speaks as follows:

"In France, as well as in all other civilized countries of Europe, the civil law has restrained the liberty which the pure law of nature gave to every one to capture animals who, being in *naturali laxitate*, belong to no person in particular. The sovereigns have reserved to themselves, and to those to whom they judge proper to transmit it, the right to hunt all game, and have forbidden hunting to other persons. Some ancient doctors have doubted if sovereigns had the right to reserve hunting to themselves and to forbid it to their subjects. They contend that, as God has given to man dominion over the beasts, the prince had no authority to deprive all his subjects of a right which God had given them. The natural law, say they, permitted hunting to each individual. The civil law which forbids it is contrary to the natural law and exceeds, consequently, the power of the legislator, who, being himself submitted to the natural law, can ordain nothing contrary to that law. It is easy to reply to these objections. From the fact that God has given to human kind dominion over wild beasts, it does not follow that each individual of the human race should be permitted to exercise this dominion. The civil law, it is said, cannot be contrary to the natural law. This is true as regards those things which the natural law commands or which it forbids; but the civil law can restrict that which the natural law only permits. The greater part of all civil laws are nothing but restrictions on those things which the natural law would otherwise permit. It is for this reason, although by the pure law of nature, hunting was permitted to each individual, the prince had the right to reserve it in favor of certain persons and forbid it to others. *Pothier, Traite du Droit de Propriete, Nos. 27-28.*

"The right belongs to the king to hunt in his dominion; his quality of sovereign gives him the authority to take possession above all others of the things which belong to no one, such as wild animals; the lords and those who have a right to hunt hold such right but from his permission, and he can affix to this permission such restrictions and modifications as may seem to him good.' *No. 32.*

"In tracing the origin of the classification of animals *ferœ naturæ*, as things common, Pothier moreover says:

"'The first of mankind had in common all those things which God had given to the human race. This community was not a positive community of interest, like that which exists between several persons who have the ownership of a thing in which each has his particular portion. It was a community, which those who have written on this subject have called a negative community, which resulted from the fact that those things which were common to all belonged no more to one than to the other, and hence no one could prevent another from taking of these common things that portion which he judged necessary in order to subserve his wants. Whilst he was using them others could not disturb him, but when he had ceased to use them, if they were not things which were consumed by the fact of use, the things immediately re-entered into the negative community, and another could use them. The human race having multiplied, men partitioned among themselves the earth and the greater part of those things which were on its surface. That which fell to each one among them commenced to belong to him in private ownership, and this process is the origin of the right of property. Some things, however, did not enter into this division, and remain therefore to this day in the condition of the ancient and negative community.' *No. 21.*

"Referring to those things which remain common, or in what he qualified as the negative community, this great writer says:

"'These things are those which the juris consults called *res communes*. Marcien refers to several kinds—the air, the water which runs in the rivers, the sea and its shores. * * * As regards wild animals, *ferœ naturæ*, they have remained in the ancient state of negative community.'

"In both the works of Merlin and Pothier, *ubi sup.*, will be found a full reference to the history of the varying control exercised by the law-giving power over the

right of a citizen to acquire a qualified ownership in animals, *feræ naturæ*, evidenced by the regulation thereof by the Salic law, already referred to, exemplified by the legislation of Charlemagne, and continuing through all vicissitude of governmental authority. This unbroken line of law and precedent is summed up by the provisions of the Napoleon Code, which declare *(Arts. 714, 715)*: 'There are things which belong to no one, and the use of which is common to all. Police regulations direct the manner in which they may be enjoyed. The faculty of hunting and fishing is also regulated by special laws.' Like recognition of the fundamental principle upon which the property in game rests has led to similar history and identical results in the common law of Germany, in the law of Austria, Italy, and, indeed, it may be safely said in the law of all the countries of Europe. Saint Joseph Concordance, vol. 1, p. 68.

"The common law of England also based property in game upon the principle of common ownership, and therefore treated it as subject to governmental authority.

"Blackstone, whilst pointing out the distinction between things private and those which are common, rests the right of an individual to reduce a part of this common property to possession, and thus acquire a qualified ownership in it, on no other or different principle from that upon which the civilians based such right. *2 Bl. Com. 1 and 12.*

"Referring especially to the common ownership of game, he says:

"'But, after all, there are some few things which, notwithstanding the general introduction and continuance of property, must still unavoidably remain in common, being such wherein nothing but an usufructuary property is capable of being had; and therefore they still belong to the first occupant during the time he holds possession of them and no longer. Such (among others) are the elements of light, air and water, which a man may occupy by means of his windows, his gardens, his mills and other conveniences; such also are the generality of those animals which are said to *feræ naturæ*, or of a wild and untamable disposition, which any man may seize upon and keep for his own use or pleasure.' *2 Bl. Com. 14.*

"'A man may lastly have a qualified property in animals *feræ naturæ, propter privilegium*, that is, he may have the privilege of hunting, taking and killing them in

exclusion of other persons. Here he has a transient property in these animals usually called game so long as they continue within his liberty, and may restrain any stranger from taking them therein; but the instant they depart into another liberty this qualified property ceases. * * * A man can have no absolute permanent property in these, as he may in the earth and land; since these are of a vague and fugitive nature, and therefore can admit only of a precarious and qualified ownership, which last so long as they are in actual use and occupation, but no longer.' *2 Bl. Com. 394.*

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"Undoubtedly this attribute of government to control the taking of animals *feræ naturæ*, which was thus recognized and enforced by the common law of England, was vested in the colonial governments, where not denied by their charters or in conflict with grants of the royal prerogative. It is also certain that the power which the colonies thus possessed passed to the States with the separation from the mother country, and remains in them at the present day, in so far as its exercise may be not incompatible with or restrained by the rights conveyed to the Federal government by the Constitution. Kent, in his Commentaries, states the ownership of animals *feræ naturæ* to be only that of a qualified property. *2 Kent Com. 347.* In most of the States laws have been passed for the protection and preservation of game. We have been referred to no case where the power to so legislate has been questioned, although the books contain cases involving controversies as to the meaning of some of the statutes. *Commonwealth* v. *Hall, 128 Mass. 410; Commonwealth* v. *Wilkinson, 139 Penn. St. 304; People* v. *O'Neil, 71 Michigan 325.* There are also cases where the validity of some particular method of enforcement provided in some of the statutes has been drawn in question. *Kansas* v. *Saunders, 19 Kansas 127; Territory* v. *Evans, 2 Idaho 634.*"

After quoting with approval several cases, including *Allen* v. *Wyckoff* (*supra*), the opinion continues:

"Whilst the fundamental principles upon which the common property in game rests have undergone no change, the development of free institutions has led to the recognition of the fact that the power or control lodged in the State, resulting from this common ownership, is to be exercised, like all other powers of government, as a trust for the benefit of the people, and not

as a prerogative for the advantage of the government, as distinct from the people, or for the benefit of private individuals as distinguished from the public good. Therefore, for the purpose of exercising this power, the State, as held by this Court in *Martin* v. *Waddell*, *16 Pet. 410*, represents its people, and the ownership is that of the people in their united sovereignty. The common ownership, and its resulting responsibility in the State, is thus stated in a well considered opinion of the Supreme Court of California:

"'The wild game within a State belongs to the people in their collective sovereign capacity. It is not the subject of private ownership except in so far as the people may elect to make it so; and they may, if they see fit, absolutely prohibit the taking of it, or traffic and commerce in it, if it is deemed necessary for the protection or preservation of the public good.' *Ex parte Maier, ubi sup.*

"The same view has been expressed by the Supreme Court of Minnesota, as follows:

"'We take it to be the correct doctrine in this country, that the ownership of wild animals, so far as they are capable of ownership, is in the State, not as a proprietor, but in its sovereign capacity as the representative and for the benefit of all its people in common.' *State* v. *Rodman, ubi sup.*

"The foregoing analysis of the principles upon which alone rests the right of an individual to acquire a qualified ownership in game, and the power of the State, deduced therefrom, to control such ownership for the common benefit, clearly demonstrates the validity of the statute of the State of Connecticut here in controversy. The sole consequence of the provision forbidding the transportation of game, killed within the State, beyond the State, is to confine the use of such game to those who own it, the people of that State. The proposition that the State may not forbid carrying it beyond her limits involves, therefore, the contention that a State cannot allow its own people the enjoyment of the benefits of the property belonging to them in common, without at the same time permitting the citizens of other States to participate in that which they do not own. It was said in the discussion at bar, although it be conceded that the State has an absolute right to control and regulate the killing of game as its judgment deems best in the interest of its people, inasmuch as the State has here chosen to allow the people within her borders

to take game, to dispose of it, and thus cause it to become an object of State commerce; as a resulting necessity such property has become the subject of inter-state commerce, and is hence controlled by the provisions of article 1, section 8, of the Constitution of the United States. But the errors which this argument involves are manifest. It presupposes that where the killing of game and its sale within the State is allowed, that it thereby becomes commerce in the legal meaning of that word. In view of the authority of the State to affix conditions to the killing and sale of game, predicated as is this power on the peculiar nature of such property and its common ownership by all the citizens of the State, it may well be doubted whether commerce is created by an authority given by a State to reduce game within its borders to possession, provided such game be not taken, when killed, without the jurisdiction of the State. The common ownership imports the right to keep the property, if the sovereign so chooses, always within its jurisdiction for every purpose. The qualification which forbids its removal from the State necessarily entered into and formed part of every transaction on the subject, and deprived the mere sale or exchange of these articles of that element of freedom of contract and of full ownership, which is an essential attribute of commerce. Passing, however, as we do, the decision of this question, and granting that the dealing in game killed within the State, under the provision in question, created internal State commerce, it does not follow that such internal commerce became necessarily the subject-matter of inter-state commerce, and therefore under the control of the Constitution of the United States. The distinction between internal and external commerce and inter-state commerce is marked, and has always been recognized by this Court."

The opinion of CHIEF JUSTICE MARSHALL, in *Gibbons* v. *Ogden*, 9 *Wheat.*, to the effect that there is a great distinction between internal commerce and the commerce among the States, is referred to at length, and the Judge continues:

"The fact that internal commerce may be distinct from inter-state commerce destroys the whole theory upon which the argument of the plaintiff in error proceeds. The power of the State to control the killing of and ownership in game being admitted, the commerce in game, which the State law permitted, was necessarily only internal commerce, since the restriction that it should not become the subject of external com-

merce went along with the grant and was a part of it. All ownership in game killed within the State came under this condition, which the State had the lawful authority to impose, and no contracts made in relation to such property were exempt from the law of the State consenting that such contracts be made, provided only they were confined to internal and did not extend to external commerce."

He quotes with approval a large excerpt from the opinion of the Supreme Court of Illinois, in *Magner* v. *The People* (*supra*), as follows:

"It is, perhaps, accurate to say that the ownership of the sovereign authority is in trust for all the people of the State, and hence by implication it is the duty of the Legislature to enact such laws as will best preserve the subject of the trust and secure its beneficial use in the future to the people of the State. But, in any view, the question of individual enjoyment is one of public policy and not of private right."

And after disapproving of the only two cases known to exist in this country holding to the contrary, viz., *State* v. *Saunders*, 76 *Kan.* 127, and *Territory* v. *Evans*, 2 *Idaho*, 634, 23 *Pac. Rep.* 111, he concludes:

"Aside from the authority of the State, derived from the common ownership of game and the trust for the benefit of its people, which the State exercises in relation thereto, there is another view of the power of the State in regard to the property in game which is equally conclusive. The right to preserve game flows from the undoubted existence in the State of a police power to that end, which may be none the less efficiently called into play, because by doing so inter-state commerce may be remotely and indirectly affected. *Kidd* v. *Pearson*, 128 *U. S.* 1; *Hall* v. *De Cuir*, 95 *U. S.* 485; *Sherlock* v. *Alling*, 93 *U. S.* 99, 103; *Gibbons* v. *Ogden*, 9 *Wheat.* 1. Indeed, the source of the police power as to game birds (like those covered by the statute here called in question) flows from the duty of the State to preserve for its people a valuable food supply. *Phelps* v. *Racey*, 60 *N. Y.* 10; *Ex parte Maier*, *ubi sup*; *Magner* v. *The People*, *ubi sup.*, and cases there cited. The exercise by the State of such power therefore comes directly within the principle of *Plumley* v. *Massachusetts*, 155 *U. S.* 461, 473. The power of a State to protect by adequate police regulation its people against the adulteration of articles of food (which was in that case maintained), although in doing so commerce might be remotely

affected, necessarily carries with it the existence of a like power to preserve a food supply which belongs in common to all the people of the State, which can only become the subject of ownership in a qualified way, and which can never be the object of commerce except with the consent of the State and subject to the conditions which it may deem best to impose for the public good."

A careful consideration of the foregoing opinion seems to me to make plain the identity of the right and interest of the State in animals *feræ naturæ*, and in water or other elements belonging to the community at large.

Every argument that is adduced in favor of legislation applying to game laws will support the legislation here under review.

If any additional cases are needed to support the foregoing authoritative decision of this Court, it will be found in the following:

*State* v. *Northern Pacific Express Co., 58 Minn. 403; Ex parte Maier, 103 Cal. 476, 37 Pac. Rep. 402; People* v. *O'Neil, 110 Mich. 324, 68 N. W. Rep. 227; Roth* v. *The State, 51 Ohio St. 209, 37 N. E. Rep. 259; State* v. *Medbury, 3 R. I. 138.*

See also an important series of cases supporting legislation in the State of Massachusetts, regulating the time and manner of taking fish in the sea within the territorial limits of the State, and holding that the same is equally binding upon residents and non-residents thereof. *Dunham* v. *Lamphere, 3 Gray 268*, expressly affirmed in *Commonwealth* v. *Manchester, 152 Mass. 230, 25 N. E. Rep. 113*, which in turn is affirmed by this Court in *sub nom. Manchester* v. *Massachusetts, 139 U. S. 240.*

The opinion of Mr. Justice Washington in *Corfield* v. *Coryell, 4 Wash. C. C. Rep., at page 371*, is the basis of all the law upon this subject. Speaking of the grant in the Federal Constitution of the right of Congress to regulate commerce, this opinion says:

"But this grant contains no cession, either express or implied, of territory, or of public or private property. The *jus privatum* which a State has in the soil covered by its waters is totally distinct from the *jus publicum* with which it is clothed. The former, such as fisheries of all descriptions, remain common to all the citizens of the State to which it belongs, to be used by them according to their necessities, or according to the laws which regulate their use. 'Over these,' says Vattel, b. 1, c. 20, sec. 235, 246, 'sovereignty gives a right to the nation to make laws regulating the manner in which the common goods are to be used.' 'He may make such regulations respecting hunting and fishing, as to

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seasons, as he may think proper, prohibiting the use of certain nets and other destructive methods.'" Vattel, b. 1, c. 20, sec. 248. The *jus publicum* consists in the right of all persons to use the navigable waters of the State for commerce, trade and intercourse, subject, by the Constitution of the United States, to the exclusive regulation of Congress.

"If, then, the fisheries and oyster beds within the territorial limits of a State are the common property of the citizens of that State, and were not ceded to the United States by the power granted to Congress to regulate commerce, it is difficult to perceive how a law of the State regulating the use of this common property, under such penalties and forfeitures as the State Legislature may think proper to prescribe, can be said to interfere with the power so granted. The act under consideration forbids the taking of oysters by any persons, whether citizens or not, at unseasonable times and with destructive instruments, and for breaches of the law prescribes penalties in some cases and forfeitures in others. But the free use of the waters of the State for purposes of navigation and commercial intercourse is interdicted to *no* person, nor is the slightest restraint imposed upon any to buy and sell, or in any manner to trade within the limits of the State."

The learned Judge then passes to a consideration whether the legislation there under review which prohibited any person who was not at the time an actual inhabitant and resident in the State, to rake or gather clams, oysters or shells in any of the rivers, bays or waters of this State, under a penalty, could be deemed to militate against the provision of the Federal Constitution, which declares that the citizens of each State shall be entitled to all the privileges and immunities of citizens in the several States, upon which point the learned Judge says:

"A several fishery, either as the right to it respects running fish, or such as are stationary, such as oysters, clams and the like, is as much the property of the individual to whom it belongs as dry land, or land covered by water, and is equally protected by the laws of the State against the aggressions of others, whether citizens or strangers. Where those private rights do not exist to the exclusion of the common right, that of fishing belongs to all the citizens or subjects of the State. It is the property of all, to be enjoyed by them in subordination to the laws which regulate its use. They may be considered as tenants in common of this property, and they are so exclusively entitled to the

use of it that it cannot be enjoyed by others without the tacit consent or the express permission of the sovereign who has the power to regulate its use.

"This power in the legislature of New Jersey to exclude the citizens of other States from a participation in the right of taking oysters within the waters of that State was denied by the plaintiff's counsel upon principles of public law, independent of the provision of the constitution which we are considering, upon the ground that they are incapable of being appropriated until they are caught. This argument is unsupported, we think, by authority. Rutherfoth, b. 1. ch. 5, secs. 4 and 5, who quotes Grotius as his authority, lays it down that, although wild beasts, birds and fishes, which have not been caught, have never in fact been appropriated, so as to separate them from the common stock to which all men are equally entitled, yet where the exclusive right in the water and soil which a person has occasion to use in taking them is vested in others, no other person can claim the liberty of hunting, fishing or fowling on lands or waters which are so appropriated. 'The sovereign,' says Grotius, b. 2, ch. 2, sec. 5, 'who has dominion over the land, or waters, in which the fish are, may prohibit foreigners (by which expression we understand him to mean other than subjects or citizens of the State from taking them).'

That this exclusive right of taking oysters in the waters of New Jersey has never been ceded by that State, in express terms, to the United States, is admitted by the counsel for the plaintiff, and having shown, as we think we have, that this right is a right of property, vested either in certain individuals, or in the State, for the use of the citizens thereof, it would, in our opinion, be going quite too far to construe the grant of privileges and immunities of citizens, as amounting to a grant of co-tenancy in the common property of the State to the citizens of all the other States. Such a construction would, in many instances, be productive of the most serious public inconvenience and injury, particularly in regard to those kinds of fish, which, by being exposed to too general use, may be exhausted. The oyster beds belonging to the State may be abundantly sufficient for the use of the citizens of that State, but might be totally exhausted and destroyed if the legislature could not so regulate the use of them as to exclude the citizens of the other States

from taking them, except under such limitations and restrictions as the laws may prescribe."

Following this doctrine, this Court, in *McCready* v. *Virginia*, 94 U. S. 391, applied a similar principle to legislation of the State of Virginia, confining to its citizens the right to plant, cultivate and dig oysters upon the public waters of that State, and held that the federal right to regulate commerce was in no way interfered thereby, upon the ground that the property belonged to the people at large, and that the commerce clause in the Federal Constitution was never meant to apply to the common property of the citizens of any State.

The State may confine to its own citizens the right to share in or enjoy the common property belonging to all of its citizens, just as it may so confine the delegation of its sovereign power to exercise the right of Eminent Domain; and no provision of the Federal Constitution prevents it. *Consumers' Gas Trust Co.* v. *Harlan* (*Sup. Ct. of Ind.*), *29 N. E. Rep. 1062.*

The New Jersey courts, in *State* v. *Corson*, *38 Vr.* (*67 N. J. L.*) *178*, and *State* v. *Lee*, *57 Atl. Rep. 142*, affirmed *59 Id. 1118*, also affirmed in this Court, October Term, 1907, have announced the same doctrine; and in *Haney* v. *Compton*, *7 Vr.* (*68 N. J. L.*) *507*, after elaborate argument by distinguished counsel, sustained the seventh section of an act of the New Jersey Legislature for the preservation of clams and oysters, which prohibited the raking or gathering of oysters *in any of the waters of this State* by any person who is not at the time and has not been for six months then next preceding an actual inhabitant and resident of this State, holding that it was not either an interference with commerce or a deprivation of citizens of other States of all the privileges and immunities of citizens of this State.

The theory underlying all these cases is that the commerce clause of the Constitution only applies to such commodities as are properly the subject of commerce, and that the fish, game or other animals *feræ naturæ* of the State belonging to the community at large, are not articles of commerce.

In *State* v. *Northern Pacific Express Co. 58 Minn. 403, 59 N. W. Rep. 1100*, the Supreme Court of Minnesota said:

> "On the second question the defendant's contention is that the provisions of the act prohibiting the shipment out of the State of fish caught within the State, unlawfully interferes with interstate commerce. The complete answer to this is that the fish had never become articles of commerce."

See also, a very instructive opinion of the Supreme Court of Alabama, in *State* v. *Hamb*, *95 Ala. 176, 10 S. Rep. 752*, where the congressional right over interstate commerce is shown to

be confined entirely to such articles as have become the subject of trade, and do not belong to the people in their common right, and which are therefore altogether subject to such legislation as the State may desire in reference thereto.

That legislation of this character has been thus constantly sustained, not solely upon the theory that oysters are planted upon the soil of the State, appears both from the universal character of some of the laws, applying as they do to all the waters of the State, as well as from the fact that many of the cases apply to fish found in the private streams and lakes of the State, and to game flying through the air.

The fact is that the fallacy in the contention of the defendant that this act interferes with commerce, lies in the assumption that the water of the State of New Jersey, which it appears without right to have appropriated, is in no way a commodity or article of commerce. It is like the fish that swim in the waters or the fowls that fly above them. If the State, by reason of its ownership as representative of the public, can preserve the fowls of the air and the fish of the sea, *a fortiori*, must it be able to preserve the waters in which the fish swim, and in which no one has a private interest beyond a mere usufruct.

If the State has enough interest in its waters to protect them from contamination or pollution [*State Board of Health* v. *The Diamond Mills Paper Co., 18 Dick. (63 N. J. Eq.) 111*, affirmed *19 Id. (64 N. J. Eq.) 793*], it would seem that it could also preserve its quantity as well.

To permit of the abstraction of large quantities of water results in a pollution of the residue quite as effectively as does the pouring into the unreduced quantity of obnoxious matter.

In this connection the case of *Commonwealth* v. *Russell, 172 Pa. St. 506, 33 Atl. Rep. 709*, is significant, where it was held that the public was so interested in the maintenance of a pure water supply that the State could properly unite in a suit with a water company to prevent the pollution of a stream.

It is because of the failure to properly apprehend the exact status of running water in a stream of the State that the case of *State (ex rel. Corwin, &c.)* v. *Indiana, &c., Oil Co., 120 Ind. 575, 22 N. E. Rep. 778*, relied on by the appellant, is really inapplicable. For, as is distinctly shown in that case, natural gas, after it is collected from the bowels of the earth, is a well-recognized commodity and article of commerce, and no one can prevent its being gathered and sold; and that decision was put expressly upon that ground, and also contains the following important statement:

> "The act does not assume to provide for the safety, health or comfort of the citizens, but its object is to pre-

DE32758

vent the sinking of gas wells and the laying of pipe lines by persons who desire to convey gas out of the State. It is not a regulation of the mode of procuring, transporting or using natural gas designed to secure the health, safety or comfort of the citizens of Indiana. * * * The act cannot be taken out of the operation of the Federal decisions upon the theory that it is a valid exercise of the police power resident in every sovereign State, for the theory is without foundation."

A moment's reflection upon the law under consideration convinces that it is passed as a part of the police power of the State, and as such is consequently free from any of the constitutional objections that are here sought to be raised against it.

*Jones v. Brim, 165 U. S. 180.*
*P. R. R. v. Hughes, 191 U. S. 477.*
*Field v. Barber Asphalt Co., 194 U. S. 623.*
*Cleveland, &c., Co. v. Illinois, 177 U. S. 514.*

As was well said by this court in the very recent case of *Cook v. Marshall County, 196 U. S. 261, 272*, speaking of the power reserved to Congress by virtue of the commerce clause in the U. S. Constitution:

"But the same policy which authorizes the use of this power as a shield to protect commerce from the vexatious interferences of the States, forbids its employment as a sword to assail measures designed for the preservation of the public health, morals and comfort."

And while it is conceded that it is the ultimate province of the court, and not of the legislature, to determine whether any piece of legislation is or is not a valid exercise of the police power, yet the court will never interfere with legislation of this character designed to preserve the health, prosperity, comfort and safety of its citizens, without the greatest hesitation, and then only when it is very plainly not an exercise of that power.

*Dobbins v. Los Angeles, 195 U. S. 233*

In this connection the recent case of *Jamieson v. Indiana Natural Gas and Oil Co., 128 Ind. 555, 28 N. E. Rep. 76*, is significant, and should be compared with the earlier case of *State (ex rel. Corteln) v. Indiana, &c., Oil Co. (supra)*, so strongly relied on by the defendant.

Obviously, therefore, the respondent can claim no benefit from the fact that previous to the enactment of this law it had made such very minor contracts (not the most important one with the City of New York), for the transmission of a portion of this water to some railroads for consumption in the State of New

York. The State had no knowledge of any such contracts. They are based upon no right, residing either in the East Jersey Water Company or the Hudson Water Company, and amount to nothing more than an assertion by a mere squatter, that the government cannot protect its own, because such squatter has contracted with third persons in regard to the land squatted upon. Such contracts, if good until attacked by the State, were made expressly subject to the reserved police power of the State, and defendant's position is in no way improved thereby. The other, and only important contract—that made with the city of New York—was admittedly entered into after the enactment of the statute in question.

Nature's first law of self-preservation justifies the resort of the State at this time to the courts for protection.

The growth of our cities, which is ever increasing, makes the steadily-decreasing quantity of water in the streams which permeate our State, a menace.

We in New Jersey know of no rule which justifies the tapping of our streams by private money-making enterprises and the carrying the waters thereof in quantities to suit themselves, utterly regardless of our rights or interests, into other States, there to satisfy the thirst or demands of other consumers.

It is respectfully insisted that the decree below was in all respects correct and should be affirmed.

Trenton, N. J., February 25, 1907.

ROBERT H. McCARTER,
*Attorney-General of New Jersey, for Informant.*

# APPENDIX.

(COPY OF CHAPTER 238 OF THE LAWS OF 1905.)

AN ACT TO PRESERVE AND MAINTAIN THE LAKES, PONDS, BROOKS, CREEKS, RIVERS AND STREAMS OF THIS STATE, AND TO PREVENT THE WATERS THEREOF FROM BEING CARRIED BY PIPES, CONDUITS, DITCHES OR CANALS INTO OTHER STATES, FOR USE THEREIN, AND TO AUTHORIZE THE COURT OF CHANCERY TO ASSIST IN THE OBSERVANCE OF THIS ACT.

WHEREAS, The available waters of the fresh water lakes, ponds, brooks, creeks, rivers and streams of this State do not increase with the growth of population, and unless the same are carefully preserved, will become inadequate to perform the functions they were by nature designed to do, which functions are essential to the health and prosperity of all the citizens of this State; therefore,

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. It shall be unlawful for any person or corporation to transport or carry, through pipes, conduits, ditches or canals, the waters of any fresh water lake, pond, brook, creek, river or stream of this State into any other State, for use therein.

2. It shall be the duty of the State Geologist to keep a general oversight over the fresh water lakes, ponds, brooks, creeks, rivers and streams of this State, and to see that the same are preserved for the use and benefit of the citizens and inhabitants of this State, and to prevent the waters thereof from being carried or transported by pipes, conduits, ditches or canals into other States for use therein; upon its being brought to his knowledge that it is the intention of any person or corporation to so carry or transport into any other State for use therein, the waters of any such fresh water pond, lake, brook, creek, river or stream of this State, it shall be his duty, through the Attorney-General, to apply to the Court of Chancery for injunction to restrain the same, and the Court of Chancery is hereby authorized and empowered to entertain jurisdiction of a suit in equity to preserve the waters aforesaid for the use and benefit of the citizens and inhabitants of this State, and to prevent their being, by pipes, conduits, ditches or canals, carried or transported to other States for use therein; and to that end to issue such restraining order or injunction, both preliminary and final, as may be necessary, and to enforce the same in the same manner it is empowered to enforce other injunctions or orders.

3. This act shall take effect immediately.

ALEXANDER B. COOPER, PRESIDENT. WILLIAM S. HILLES. WALTER H. HAYES, SECRETARY.

DELAWARE COMMISSIONERS,
(DELAWARE-NEW JERSEY FISHERIES COMPACT)
907 MARKET STREET,
WILMINGTON, DEL.

February 28, 1907

Walter H. Hayes, Esq.

Member of Commission &c.

Dear Sir:-

In view of the fact that the end of our term of office is rapidly approaching, I have thought it advisable, and do call, a meeting of the Delaware Commissioners, to be held at their office as above located, on ( to-morrow ) Saturday morning at 11 o'clock, to take into consideration certain matters of detail, which it will be necessary to arrange in the final performance of our duties.

Yours truly,

Alex. B. Cooper

Pres.

DE Public Archives

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DE Commissions
Fisheries Compact
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ALEXANDER B. COOPER,
PRESIDENT.

WILLIAM S. HILLES.

WALTER H. HAYES,
SECRETARY.

DELAWARE COMMISSIONERS,
(DELAWARE-NEW JERSEY FISHERIES COMPACT)
907 MARKET STREET,
WILMINGTON, DEL.

March 2. 1907

Walter H. Hayes, Esq.

Dear Sir:-

I enclose copy of the minutes of this morning's meetin Hilles and I thought it best to take this action now, so that we would have every thing in hand before the expiratin of the two years.

Will you please attend to it! If the bill should be amended and then passed, which seems to be likely, I think it would be well for you to see that our certificate of approval is not made a part of it or published with the law.

Hilles says that you told him that you would attend to our claim, and have it put in the appropriation bill.

If anything else suggests itself to you in connection with our duties I wish you would advise me.

Is there any necessity of calling any more joint meeting or taking any further action?

Yours truly,

Alex. B. Cooper

ALEXANDER S. COOPER,
PRESIDENT.

WILLIAM S. HILLES.

WALTER H. HAYES,
SECRETARY.

DELAWARE COMMISSIONERS,
(DELAWARE-NEW JERSEY FISHERIES COMPACT)
907 MARKET STREET,
WILMINGTON, DEL.

March 2. 1907

11 o'clock A. M.

The Commission met at the call of the President.

Present, Messrs. Cooper, Hilles and Hayes.

The minutes of the last meeting were read and approved.

On motion of Mr. Hilles it was ordered that a requisition be drawn on the Governor for the sum of four hundred dollars, to pay for the making and erecting of the monuments, and other expenses.

On motion the secretary was requested to write to the New Jersey commission, suggesting that as the work of the commission is nearly completed, that the accounts between the States, be settled by their forwarding to us one-half the expense for erecting the monuments and expenses incidental thereto.

Upon motion the Commission adjourned.

Secretary.

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THE SENATE OF NEW JERSEY

Woodbury, N. J.

March 7, 1907.

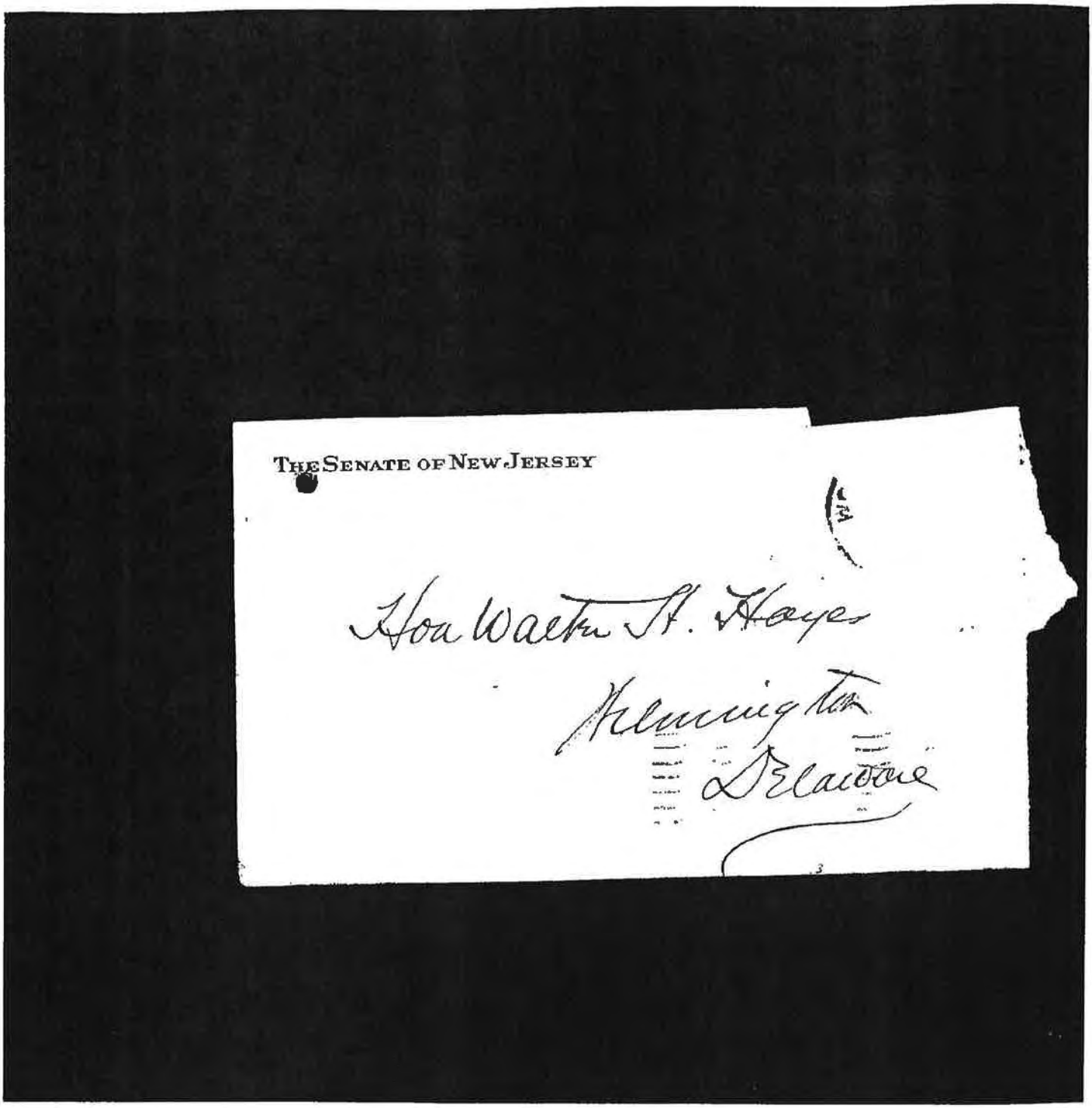
Hon. Walter H. Hayes,

Wilmington, Delaware.

My dear Mr. Hayes :-

We are getting some reports about the Delaware River bill in the Delaware Legislature that are rathor disquieting, and do not speak well for its passage in its original form. I wish you would advise me what the present prospects are for its passage, and what amendments are likely to go in it.

Yours very truly.


THE SENATE OF NEW JERSEY

Hon Walter S. Hayes

Wilmington

Delaware

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# CHAPTER 146.

## OF FISH, OYSTERS AND GAME.

**AN ACT Providing Uniform Laws to Regulate the Catching and Taking of Fish in the Delaware River and Bay between the State of Delaware and the State of New Jersey.**

Preamble

Whereas, By virtue of Article IV of the compact or agreement entitled a "Compact Between the State of New Jersey and the State of Delaware, Relating to the Boundary Controversy Between said States," which was ratified and confirmed by an Act of the General Assembly of the State of Delaware, approved March 20th, 1905, and by an Act of the Legislature of the State of New Jersey, approved March 21st, 1905, the State of Delaware by an Act of the General Assembly thereof, approved March 23rd, 1905, appointed Alexander B. Cooper, William S. Hilles and Walter H. Hayes, Commissioners on the part of the State of Delaware to confer with like Commissioners appointed, or to be appointed, by the Legislature of the State of New Jersey, to do and perform all the duties, acts, matters and things required and stipulated in the said Compact or Agreement; and

Preamble

Whereas, By a similar Act of the Legislature of the State of New Jersey, approved May 11th, 1905, William J. Bradley, John Boyd Avis and James Strimple were appointed like Commissioners, on the part of the State of New Jersey, to confer with the said Commissioners on the part of the State of Delaware, and to do and perform the duties aforesaid; and

Preamble

Whereas, Each of the said Commissions have been duly organized as provided and required by law; and

Preamble

Whereas, The said Commissioners of the said respective states, in joint meeting held for that purpose, have agreed upon uniform laws to regulate the catching and taking of fish in the Delaware River and Bay between the said states, and have also ascertained the dividing line between the said Delaware River and Delaware Bay, and have upon each of

the shores of the said two states where said dividing line extended intersects the same, provided for the erection of a suitable monument to mark said dividing line, in pursuance of the duties imposed upon them by law; therefore.

*Be it enacted by the Senate and House of Representatives of the State of Delaware in General Assembly met:*

Limitation of act

Section 1. That the provisions of this Act shall affect and apply only to the catching and taking of fish in the waters of the Delaware River and Bay lying between the States of Delaware and New Jersey.

Common right of fishery granted to inhabitants of New Jersey and Delaware in Delaware River

Exception

Section 2. That the inhabitants of the State of Delaware and New Jersey shall have and enjoy a common right of fishery throughout, in and over the waters of said river between low water marks on each side of said river between the said states, except so far as either state may have heretofore granted valid and subsisting private rights of fishery.

Territorial limits, &c. or jurisdiction unaffected

Section 3. That nothing herein contained shall affect the territorial limits, rights or jurisdiction of either of said states of, in or over the Delaware River, or the ownership of the subaqueous soil thereof, except as is expressly set forth in said Compact between the said states; nor shall anything herein contained affect in any way the planting, catching or taking of oysters, clams, or other shell fish, or interfere with the oyster industry, as now or hereafter carried on under the laws of either of said states.

Oyster and other shell fish plantation unaffected

Any person may catch fish by net, hook and line

Proviso: nets not less than certain size meshes

Eels excepted

Section 4. That hereafter it shall be lawful for any person to catch and take, from the waters aforesaid, fish of any character (except shell fish) with any net, hook and line, or other appliances; provided the meshes of any net shall not be less than two and one-half inches long stretched measure, and except as hereinafter provided; provided further, that nothing in this Section shall apply to nets used for catching eels.

Shad fishing

Sizes of meshes

Section 5. That hereafter it shall be unlawful for any person to catch and take, or to attempt to catch and take, shad from the waters aforesaid with a seine or net of any character, the meshes of which shall be less than five and one-quarter inches stretched measure. It shall also be unlawful for any person to catch and take, or to attempt to



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Time when shad fishing prohibited

Kind of nets prohibited

catch and take, any shad from the said waters in any manner whatsoever between the hours of twelve o'clock midnight of every Saturday and twelve o'clock midnight of the Sunday next ensuing, and also between the fifth day of June in each and every year and the first day of March thence next ensuing. It shall also be unlawful for any person at any time to set, place or use a net of any kind, except a drifting net, for the purpose of catching and taking shad within one-half mile of the mouth of any river, creek or stream emptying into the said waters.

Carp fishing

Size of meshes

Time when carp fishing prohibited

Section 6. That hereafter it shall be unlawful for any person to catch and take, or to attempt to catch and take, carp from the waters aforesaid with a seine or net of any character, the meshes of which shall be less than two inches stretched measure. It shall also be unlawful for any person to catch and take, or to attempt to catch and take, from the said waters any carp in any manner whatsoever, between the hours of twelve o'clock midnight of every Saturday and twelve o'clock midnight of the Sunday next ensuing. It shall also be unlawful for any person to catch and take, or to attempt to catch and take, from the waters aforesaid, any carp weighing less than one pound, and should any such fish be caught, it shall be immediately returned to the waters uninjured. It shall also be unlawful for any person to catch and take, or to attempt to catch and take, any carp in any manner whatever between the first day of May and the tenth day of August of each and every year.

Rock fishing

Size of meshes

Time when rock fishing prohibited

Rock weighing more than 20 pounds to be returned to waters

Section 7. That hereafter it shall be unlawful for any person to catch and take, or to attempt to catch and take, rock fish from the waters aforesaid, with a seine or net of any kind, the meshes of which shall be less than two inches stretched measure. It shall also be unlawful for any person to catch and take, or to attempt to catch and take, any rock fish in any manner whatsoever between the hours of twelve o'clock midnight of every Saturday and twelve o'clock midnight of the Sunday next ensuing. It shall also be unlawful for any person to catch and take, or to attempt to catch and take, from the waters aforesaid, in any manner whatever, any rock fish weighing more than twenty pounds, and should any

DE14646

such fish weighing over twenty pounds be caught, it shall be immediately returned to the waters uninjured.

Sturgeon

Section 8. That hereafter it shall be unlawful for any person to catch and take, or to attempt to catch and take, from the waters aforesaid, any sturgeon or mamoose with a net of any character, the meshes of which shall be less than thirteen inches stretched measure. It shall also be unlawful for any person to catch and take, or to attempt to catch and take, any sturgeon or mamoose under six feet in length, and if any such sturgeon or mamoose under six feet in length should be caught it shall be immediately returned to the waters uninjured. It shall also be unlawful for any person to catch and take, or to attempt to catch and take, sturgeon or mamoose from the waters aforesaid, in any manner whatever, between the hours of twelve o'clock noon of every Saturday and twelve o'clock midnight of the Sunday next ensuing, and also between the first day of July in each and every year and the first day of March thence next ensuing.

Size of meshes

Sturgeon or mamoose under 6 feet to be returned to waters

Time when sturgeon fishing prohibited

Trout

Section 9. That hereafter it shall be unlawful for any person to catch and take, or to attempt to catch and take, from the waters aforesaid, any trout or weak fish with a net of any character, the meshes of which shall be less than two inches stretched measure. It shall also be unlawful for any person to catch and take, or to attempt to catch and take, any trout or weak fish from the waters aforesaid, with a net of any character, between the hours of twelve o'clock midnight of every Saturday and twelve o'clock midnight of the Sunday next ensuing.

Size of meshes

Time when such fishing prohibited

Anchored nets before mouth of streams prohibited

Section 10. That hereafter it shall be unlawful for any person to catch and take or to attempt to catch and take, fish of any kind with a net of any character which is anchored, staked or fastened down in any way across the mouth of any river, creek or stream emptying into the waters aforesaid.

Unlawful to interfere with drift or gill nets

Section 11. That hereafter it shall be unlawful for any person by boat, anchor, dredge, or otherwise, in the waters aforesaid, to wilfully and without reasonable cause, interfere with, break, damage, or destroy any drift net or gill seine being lawfully used for the taking of any fish as herein provided.

DE14647

OF FISH, OYSTERS AND GAME.

Unlawful to use explosives, or drugs, &c., for purpose of killing or catching fish

Or allow certain substances to flow into waters

Penalty

Section 12. That hereafter it shall be unlawful for any person willfully to put or place in the waters aforesaid any explosive substance whatever, or any drug or poisoned bait for the purpose of catching and taking, killing or injuring the fish, or to allow any dye stuff, coal or gas tar, coal oil sawdust, tan bark, coculusindicus (otherwise known as fish berries), lime refuse from gas houses, oil tanks or vessels, or any other deleterious, destructive or poisonous substance to be turned into or allowed to run into any of the waters aforesaid, in quantities sufficient to destroy or impair fish life or disturb the habits of fish inhabiting the same. Any person violating any of the provisions of this Section shall be deemed guilty of a misdemeanor, and upon conviction thereof shall forfeit and pay a fine of not more than five thousand dollars, or shall be imprisoned not more than one year, or both, in the discretion of the court.

Sunday fishing prohibited

Section 13. That hereafter it shall be unlawful for any person to catch and take, or to attempt to catch and take, fish of any kind or description from the waters aforesaid by a net of any character on the Sabbath Day, commonly called Sunday.

Certain kinds of fishing declared unlawful

Section 14. That hereafter it shall be unlawful for any person to catch and take, or to attempt to catch and take, fish of any kind from the waters aforesaid with a set line, or to have, use, erect or maintain in the waters aforesaid, for the purpose of catching and taking fish of any kind (except cat fish, eels and suckers), any fish basket, eel, weir, fyke net, pound net, shore net, dip net, cast net, wing-wall, wing-dams, or any other device, excepting in the manner and with the means in this Act provided. Provided, that nothing contained in this section shall prevent the catching and taking of carp with shore nets, dip nets or cast nets.

Unlawful to have certain fish in possession

Section 15. That hereafter it shall be unlawful for any person to sell, expose for sale, or have in possession, any fish caught and taken in violation of the provisions of this Act.

Violation of act misdemeanor

Section 16. Every violation of any of the provisions of this Act shall be deemed a misdemeanor, and upon conviction thereof, where no other specific penalty is herein provided,

DE14648

each offender shall forfeit and pay to the State of Delaware a fine of not less than twenty dollars nor more than two hundred dollars, and costs of prosecution, and in default of payment thereof shall be committed to the county jail, or workhouse, for a period of not less than ten days nor more than ninety days, or until such fine and costs are paid. Penalties

Section 17. Any and every boat, vessel, net, trap, pot, pound, set line, tyke, weir, or other property used by any person for the unlawful taking of, or attempting to take, any fish in the waters aforesaid, in violation of the provisions of this Act, shall be forfeited to the State of Delaware, together with the tackle, apparel and furniture of said boat or vessel, and all other apparatus and implements so unlawfully used; and the same shall be seized and detained by the sheriff, officer, or any county constable, or authorized deputy or deputies, until sold or discharged, as hereinafter provided. Upon the conviction of any such person, as aforesaid, the court shall, in addition to the sentence pronounced against such person, enter an order and judgment of forfeiture against said property so unlawfully used and shall order the sheriff of the county to at once seize the same wheresoever it may be found, who shall, thereupon, advertise and sell the same at public auction, for cash, to the highest and best bidder for the same, after giving at least ten days notice by advertisements posted in at least ten public places of the county, of the time and place of said sale; the proceeds of said sale, after deducting all costs, charges and expenses, shall be paid by the said sheriff to the State Treasurer for the use of the State. In the event that the said person, so charged as aforesaid, shall be acquitted, the said property shall be forthwith returned to the person in whose custody it was at the time it was so seized and taken as aforesaid. Forfeiture of boats, &c. traps, pounds, &c. under certain conditions; Custody of said property; Upon conviction courts shall also enter judgment of forfeiture; Sale of said property; Proceeds of sale paid to State Treasurer; Property returned in case of acquittal

Section 18. Any Justice of the Peace, or other committing officer, shall, upon affidavit made that any person, boat, vessel, or other appliance or apparatus hereinbefore enumerated, is, are or have been violating, or used in violation of, this Act, issue his warrant to the sheriff, county constable, or officer, of the county, authorized to make such arrest, commanding him to arrest such person and to seize and detain such property for hearing, trial, or other proceeding Jurisdiction of Justice of Peace; Process, to whom issued

DE14649

Posse comitatus

under this Act. The said sheriff, constable or officer, may, if necessary, summon to his aid the posse comitatus, and may require the assistance and use of any other boat, vessel, or other means, by paying, or tendering, just compensation. It shall not be necessary that the affidavit shall state the name of the boat or vessel, or describe with particularity the property to be seized.

Affidavit, what to contain

Fees

Section 19. That the costs, charges and expenses of any proceeding for the violation of the provisions of this Act, shall be taxed and allowed as follows:

To any sheriff, constable, or officer, for each day actually engaged in seizing the said property, five dollars ($5.00);

To every person summoned by and rendering aid to such sheriff or constable, for each day actually engaged in assisting in seizing said property, two dollars ($2.00);

To every Justice of the Peace, sheriff, constable, officer, witness, or other person performing service under this Act and not herein specifically mentioned, the same fees as are now provided by law for similar services. Said costs, charges and expenses shall be paid by the officer making the sale out of the proceeds thereof; or if the property be not so sold, then by the State Treasurer upon the certificate of the court or Justice of the Peace, or committing officer, before whom the proceedings were had.

Appropriation by General Assembly

That the General Assembly shall appropriate at least the sum of two hundred dollars per annum for the purpose of paying the costs and charges incurred under the provisions of this Act.

Unlawful to use steam power or shirred nets

Except for certain fish

License for boats used in menhaden fishing

Section 20. That it shall be unlawful for any person to catch and take, or to attempt to catch and take, from the said Delaware River or Delaware Bay, with purse or shirred nets operated by or from steam or other vessels, fish of any kind whatsoever; provided, however, that this section shall not apply to the catching and taking of menhaden, sharks, porpoises, and herring-hogs, by the crews of vessels licensed as provided for in this section. It shall be the duty of the Collector of Oyster Revenue, upon the payment to him annually of the sum of one hundred dollars ($100.00) for each

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and every vessel or boat, to issue a license to such vessel or boat to catch and take menhaden, sharks, porpoises and herring-hogs in the waters of the Delaware Bay as far north as a straight line drawn from the centre of the mouth of Mahon's River to the nearest point opposite on the New Jersey shore from the first day of June until the thirty-first day of October, inclusive, of each year, and at no other time or times. The said money so received for said license shall be paid over to the State Treasurer for the use of the state.

Unlawful to have in possession to be used for extracting oil any edible fish

Section 21. It shall be unlawful for any person to have in his possession or to bring into this state any fish generally known as edible or food fish that has been caught and taken from the waters of the Delaware Bay or River within the bounds aforesaid, for the purpose of extracting oil therefrom, or of converting said fish into fertilizer; and it shall also be unlawful for any person to extract oil or to convert, or in any manner assist in extracting oil from, or in converting such fish into fertilizer.

Arrest may be made without warrant

Section 22. That any Fish Commissioner, Collector of Oyster Revenue, Sheriff, Constable, or any officer may, upon view, arrest any person violating any of the provisions of this Act without warrant or writ issued for such purpose.

Prosecutions under this Act under same procedure &c. as for other misdemeanors

Section 23. That all prosecutions for the violation of any of the provisions of this Act, unless otherwise herein specially provided, shall be had in like manner, under similar process and proceeding, under the same restrictions and with the same privileges and rights and before the same court or officer as is now, or shall hereafter be, provided by the laws of the State of Delaware for other misdemeanors, or violations of this law.

Concurrent jurisdiction as to offences committed by non-residents

Section 24. That each of the said States of Delaware and New Jersey shall also have concurrent jurisdiction over all offenses and violations of this Act committed, or attempted to be committed, by any person who is not an inhabitant of either of said states.

Governor of Delaware to issue Commission to certain persons in New Jersey

Section 25. The Governor of the State of Delaware shall, when and as requested by the Governor of the State of New Jersey, issue a commission or commissions to such person or persons as may be named to him by the Governor of the State

Powers of such officers

of New Jersey, which shall authorize the person or persons to whom the same are directed to arrest the inhabitants of either the State of Delaware or the State of New Jersey for any violation of this Act, provided, however, that if the person so arrested shall be an inhabitant of the State of Delaware, such person shall be forthwith taken to the State of Delaware for trial and punishment. The Governor of this State may, at any time, and shall, when and as requested by the Governor of the State of New Jersey revoke the said commissions, or any of them. The compensation of the person or persons to whom such commission or commissions may be directed shall be paid wholly by the State of New Jersey.

Proviso

Such Commissions may be revoked

Governor of New Jersey to issue commissions to certain persons in Delaware

The Governor of the State of New Jersey shall, when and as requested by the Governor of the State of Delaware, issue a commission or commissions to such person or persons as may be named to him by the Governor of the State of Delaware, which shall authorize the person or persons to whom the same are directed to arrest the inhabitants of either the State of Delaware or the State of New Jersey for any violation of this Act, provided, however, that if the person so arrested shall be an inhabitant of the State of New Jersey, such person shall be forthwith taken to the State of New Jersey for trial and punishment. The Governor of the State of New Jersey may, at any time, and shall, when and as requested by the Governor of the State of Delaware, revoke the said commissions, or any of them. The compensation of the person or persons to whom such commission or commissions may be directed shall be paid wholly by the State of Delaware.

Powers of such officers

Proviso

Such commissions may be revoked

Not to affect powers of police officers

Nothing contained in this section shall be so construed as to prevent the arrest of any inhabitant of the State of Delaware by any other officer or person having authority under the laws of the said State of Delaware to make arrests for the violation of the provisions of this Act.

Act operative only when the State of New Jersey shall have in operation similar law

Section 26. This Act shall not become operative until the Legislature of the State of New Jersey shall have passed, and the Governor of that State shall have approved of a similar law, agreed upon by the Commission, as recited in preamble of this Act.

Size of meshes not to be changed until Oct. 1908

The provisions in this Act contained regulating the size of the meshes of fishing nets shall not become operative until October 1, 1908.

Section 27. That all laws, or parts of laws, inconsistent with the provisions of this Act, be and the same are hereby repealed.

Approved April 23, A. D. 1907.

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## CHAPTER 147.

OF FISH, OYSTERS AND GAME.

AN ACT authorizing the compiling and printing of the provisions of the Fish, Oysters and Game Laws.

*Be it enacted by the Senate and House of Representatives of the State of Delaware, in General Assembly met:*

Governor authorized to have compiled the Fish, Oyster and Game laws

Section 1. That the Governor of the State is hereby authorized and empowered to have the provisions of the Fish, Oysters and Game Laws of the State compiled for publication in such form as he deems best; and he is hereby authorized and empowered to draw upon the State Treasurer for the sum of fifty dollars ($50.00), out of any moneys in the State Treasury not otherwise appropriated, for the purpose of defraying the expenses of compiling the same.

Compensation

Number of volumes to be printed

How distributed

Section 2. That the State Board of Supplies shall have five thousand copies of the provisions of the laws so compiled, printed in flexible cloth-bound books of a pocket size; and deliver to each member of the General Assembly fifty copies of said laws, and distribute the remaining copies in such manner as it deems best.

Approved March 5, A. D. 1907.

Op. Bk. 8 p- 750

Trenton, N. J., July 3, 1914.

To the Hon. Herbert H. Ward,
466 Du Pont Building,
Wilmington, Del.

My dear Mr. Ward:

I have your communication of the 24th inst., in reference to the old boundary dispute between the States of New Jersey and Delaware. I know nothing personally about the matter to which you refer, but Mr. Backes, the Second Assistant Attorney General, was here when the case was revived sometime about 1904 or 1905, and depositions taken under a stipulation entered into in the latter part of the 70's, by which either side could revive the case, which was in the Supreme Court of the United States, as I am advised, upon notice.

I observe that Chapter 42 of the Laws of 1905, being "An act to ratify and confirm a compact or agreement between the States of New Jersey and Delaware respecting the Delaware River and bay, and to authorize the execution thereof," approved March 21, 1905, by Article IV, it is provided as follows:

> "Immediately upon the execution hereof the Legislature of the State of New Jersey shall appoint three commissioners to confer with three

DE16223

commissioners to be immediately appointed by the General Assembly of the State of Delaware for the purpose of drafting uniform laws to regulate the catching and taking of fish in the Delaware river and bay between said two States, which said commissioners for each State respectively shall, within two years from the date of their appointment, report to the Legislature of each of said States the proposed laws to framed and recommended by said joint commission. Upon the adoption and passage of said laws so recommended by the respective Legislatures of said two States, said laws shall constitute the sole laws for the regulation of the taking and catching of fish in the said river and bay between said States. Said laws shall remain in force uhtil altered, amended or repealed by concurrent legislation of the said two States," &c.

My understanding is that the State of New Jersey, in pursuance of the Article to which I have just referred, did enact legislation upon the subject, copies of which I enclose, but that Delaware declined to pass an act which would conform in all respects to the laws then already enacted by the State of New Jersey, and there the situation, as I understand, ended. It is now proposed, as I am informed, to take the matter up anew, and I am enclosing you herewith, as I have before stated, the original legislation drafted by the State of New Jersey, but which was not concurred in by the State of Delaware, and also the present legislation by the State of New Jersey now in force.

Of course, you know the time limited within which the commissioners were to report their recommendations, which was two years from the date of their appointment, has expired, but, as I read our act, there is nothing in our law which would prohibit the Legislature of this State from enacting the laws so recommended, even though the two-year period had expired. In other words, as I read

the statute, the duty of the commissioners was to recommend the laws, and thereafter the two states were to adopt the laws so recommended, and the same should constitute the sole laws for the taking and catching of fish in the river and bay.

Mr. Backes advises me that in converence with Mr. Stratton, Chief Warden of this State, it is unlikely that the State of New Jersey would want to go back to the old laws which they adopted in conformity with the act of 1905, but would far rather have the existing laws remain in force, a copy of which I am likewise enclosing for your perusal. It may be that the last-named laws will cover all the subject-matter which you desire, and if this be so, I think the solution of the problem will be easy if the State of Delaware will adopt the latter laws, whereupon the State of New Jersey can, by an enabling act passed at the next session of the Legislature, provide that the laws now in force in the State of New Jersey should be taken and deemed to be the laws of this State within the meaning of Article IV of the act of 1905, and should remain in full force and effect according to the tenor and meaning of said Article until the same should be altered, amended or repealed by concurrent legislation of the States of New Jersey and Delaware.

If I am mistaken in any of the premises, I shall be glad to hear from you.

Bk. 8 p- 750
H. Ward #4

I am writing this letter upon the information given to me by Mr. Backes, who participated somewhat in the case, but who was not one of the counsel therein. The counsel representing the State of New Jersey were former Attorney General Robert H. McCarter and Chauncey G. Parker.

I am also enclosing herewith copy of a letter from Mr. Stratton, addressed to Mr. Bakkes, which is self-explanatory.

Yours very truly,

John W. Wescott

Attorney General.

DE16226

L. 1905, Ch. 42, "An act to ratify and confirm a compact or agreement between the States of New Jersey and Delaware respecting the Delaware River and Bay, and to authorize the execution thereof," was not concurred in by the State of Delaware. Therefore, the boundary dispute between the two States concerning the catching of fish, etc. in the Delaware River and Bay was not settled. It can be brought up again at any time.

Hon. Herbert H. Ward
Wilmington, Del.
July 3, 1914
Op. Bk. 8, p. 750

BOUNDARIES:DELAWARE & N.J:LAW 1905, CHAPTER 42

DE16227

RESOLUTIONS.

## CHAPTER 255.

HOUSE JOINT RESOLUTION authorizing the Governor of the State of Delaware to appoint a Commission to meet with a like Commission from the State of New Jersey and draft modifications of the laws regulating the taking of fish in the Delaware River and Bay and report same to the General Assembly of the State of Delaware.

Preamble

WHEREAS, it is desirable to modify the laws regulating the taking of fish in the waters of the Delaware River and Bay between the States of New Jersey and Delaware, and

Preamble

WHEREAS, under the terms of the compact now existing between the State of New Jersey and the State of Delaware such modifications can be made only by concurrent legislation of the said two States, therefore

*Be it resolved by the Senate and House of Representatives of the State of Delaware in General Assembly met:*

A commission to be appointed by the Governor to confer with a like commission of the State of New Jersey regulating the taking of fish from the Delaware Bay and River

Section 1. That the Governor of the State of Delaware is hereby authorized to appoint a Commission consisting of three members to confer with a like Commission of the State of New Jersey and draft modifications of the laws regulating the taking of fish in the aforesaid waters and to report the same to the General Assembly of the State of Delaware, now in session.

Approved February 3, A. D. 1915.

The following is the substance of a statement contained on pages 669 &c. (Chap. 74, Article 7) of the Revised Code of Delaware, 19135.

In accordance with the provisions of Article IV of the compact of 1905 between the States with respect to the Delaware River, Commissioners for the said respective states agreed upon and drafted a uniform law to regulate the catching and taking of fish in the Delaware River and the Delaware Bay between the said two states.

That the said draft of said uniform law appears as Chapter 146 of the Laws of Delaware for 1907.

That said uniform law was enacted by the Legislature of New Jersey,(Chap. 131, P. L. 1907. )

That said uniform law, with a few changes and additions also appears in Secs. 143 to 168 inclusive of Chap. 74 of the Revised Code of Delaware 1915.

By 28 Del. Laws. Ch. 203, approved March 15, 1915, said sections 154 to 168 inclusive, of Chap. 74 of the Delware Revised Code of 1915 were repealed and new sections 143 to 168 incl. substituted in lieu thereof and by 28 Del. Laws, Chs. 204nand 205; 30 Del. Laws, Ch. 80; 32 Del. Laws, Ch. 175; 33 Del. Laws, Ch. 194; 35 Del. Laws Chs. 175 and 178 and 36 Del. Laws, Ch. 238, several changes were made in the said new Sections and several additions were made thereto!

By Ch. 248, Del. Laws of 1921, a commission was appointed to confer with a New Jersey commission to draft modifications of the regulations for fishing in Delaware River and Bay; an agreement upon a modification was made by said commissioners which modified law Del. approved by 33 Del. Laws, Ch. 193, approved March 14, 1923, not to be effective until New Jersey enacted similar law which New Jersey did not do.

By 35 Del. Laws, Ch. 243, approved March 2, 1927 other commissioners were appointed by Delaware for the object of settling the boundary dispute, like commissioners were appointed by New Jersey , but the new or modified law suggested by the joint commission was not adopted by New Jersey but was conditionally adopted by Delaware.

Compact is Chapter 42 Laws 1905
N.J.
Ohio 1907 act was Chapter 131
Ct U S Supreme Court
N. J. Delaware Boundary

DE21495

The Revised Code of Delaware then contains the following statement:

"Disregarding the proposed uniform law found in 33 Del. Laws. Ch. 193, and also the proposed uniform law found in 35 Del. Laws, Ch. 178, both of which never became effective by reason of the failure of the State of New Jersey to enact similar laws on the subject, as above stated, the law now in force in the State of Delaware, regulating the catching and taking of fish in the Delaware River and the Delaware Bay consists of the law as found in 28 Del. Laws, Ch. 203, approved March 15, 1915 and the various amendments and additions subsequently made thereto by later acts, as hereinabove stated, and is contained in the following Sections 181 to 211, inclusive, of this Chapter.

DE21497

**New Jersey State Archives**
Department of Law and Safety
Attorney General's Office
Closed Case Files, 1920's - 1950's
**Box 8**

DE14668

1901

## CHAPTER 193

FISH, OYSTERS AND GAME

**AN ACT to Amend Chapter 74 of the Revised Code of the State of Delaware providing uniform laws to regulate the catching and taking of fish in the Delaware River and Bay between the States of Delaware and New Jersey and providing penalties for violations thereof.**

WHEREAS, By virtue of a joint resolution passed by the Legislature of the State of Delaware, approved the fourth day of February, A. D. one thousand nine hundred and twenty-one, entitled "House Joint Resolution authorizing the Governor of the State of Delaware to appoint a commission to meet with a like commission from the State of New Jersey and draft modification of the laws regulating the taking of fish in the Delaware River and Bay and report same to the General Assembly of the State of Delaware," the following were appointed commissioners on the part of the State of Delaware, Frederick D. Bendler, Harris Samonisky and J. Hall Anderson, and

WHEREAS, By a concurrent resolution passed by the Legislature of the State of New Jersey on the twenty-eighth day of February, A. D., one thousand nine hundred and twenty-one, providing for the appointment of a commission by the Governor of New Jersey to confer with a like commission from the State of Delaware for the purpose of preparing concurrent laws regulating fishing in the Delaware River and Bay between the States of New Jersey and Delaware, the following were appointed commissioners to represent the State of New Jersey, William A. Logue, Jeremiah E. Chambers and James M. Stratton; and

WHEREAS, the said commissions of the said respective States have been duly organized as provided and required by law; and

FISH, OYSTERS AND GAME

WHEREAS, the said commissioners of the said respective States in joint meetings held for that purpose, have agreed upon uniform laws to regulate the catching and taking of fish in the Delaware River and Bay between the said States; now therefore;

*Be it enacted by the Senate and House of Representatives of the State of Delaware in General Assembly met:*

That 2500. Sec. 143 to 2525. Sec. 168 inclusive and all intervening sections of Chapter 74 of the Revised Code of the State of Delaware, except 2518. Sec. 161, 2519. Sec. 162 and 2520. Sec. 163, be and the same are hereby repealed and the following sections substituted in said chapter 74 in lieu thereof. 2500, Sec. 143 to 2525, Sec. 168, Revised Code Amended

2500. Sec. 143. LIMITATION OF APPLICATION:—The provisions of this act shall affect and apply only to the catching and taking of fish in the waters of the Delaware River and Bay lying between the States of Delaware and New Jersey and between low water marks on each side of said River and Bay. Limitation of taking and catching fish in Delaware River and Bay between Delaware and New Jersey

2501. Sec. 144. COMMON RIGHT OF FISHERY:—The inhabitants of the States of Delaware and New Jersey shall have and enjoy a common right of fishery throughout, in and over the waters of said Delaware River between the low water marks on each side of said River between the said States, except so far as either State may have heretofore granted valid and subsisting private rights of fishery; nothing herein contained however shall be so construed as to give to the inhabitants of the State of New Jersey a common right of fishery with the inhabitants of the State of Delaware in the waters of the Delaware Bay. Common Right of Fishery

2502. Sec. 145. TERRITORIAL LIMITS, JURISDICTION, ETC.:—Nothing herein contained shall affect the territorial limits, rights or jurisdiction of either of said States of, in or over the Delaware River, or the ownership of the subaqueous soil thereof, except as is expressly set forth in the compact between Territorial limits, jurisdiction, etc.

the said States; nor shall anything herein contained affect in any way the planting, catching or taking of oysters, clams or other shell fish, or interfere with the oyster industry, as now or hereafter carried on under the laws of either of said States. Each of said States may on its own side of said River, continue to exercise riparian jurisdiction of every kind and nature, and to make grants, leases and conveyances of riparian lands and rights under the laws of said respective States. Each of said States shall have and exercise exclusive jurisdiction within said River to arrest, try and punish its own inhabitants for violation of the concurrent and uniform legislation relating to fishery provided by this act.

Designation of fish

Game fish

Bait fish

Food fish

2503. Sec. 146. DESIGNATION OF FISH:—For the purposes of this act the following fish shall be designated as game fish, to wit: Black bass or small mouth bass, large mouth bass, otherwise called Oswego or yellow bass; strawberry or calico bass; rock bass, otherwise known as red eye or goggle eye; white bass, crappie, pike-perch, otherwise called wall eye pike or Susquehanna salmon; pike, pickerel, charr, commonly called brook or speckled trout; and all other forms of trout except what are commonly called "weak fish." The following shall be designated as bait fish, to wit: All species of minnows, killifishes and stone catfish. All other species or varieties of fish whatsoever shall be designated as food fish, except menhaden, sharks, porpoises and herring hogs.

Devices permitted in catching game fish

Violation Penalty

2504. Sec. 147. DEVICES PERMITTED IN CATCHING GAME FISH:—It shall be unlawful to catch or fish for any game fish in said waters with any device or by any means or methods whatsoever excepting with rods and lines or hand lines commonly called dipsey or throw lines, each having not more than three hooks, or with trolling lines with spoon or artificial bait having not more than one burr of three single hooks attached. The number of rods and lines or the number of trolling lines shall not exceed two of one or the other device named and said lines must be under the direct and immediate supervision of the person fishing therewith. Any person violating any of the provisions of this section shall, on conviction thereof, be subject to a fine of twenty dollars.

DE14671

FISH, OYSTERS AND GAME

2505. Sec. 148. DEVICES PERMITTED IN CATCHING BAIT FISH:—It shall be unlawful to fish for bait fish in said waters except with the following devices: Rods and lines and hand lines with not more than three hooks attached, a minnow seine not more than 100 feet in length, a dip net not more than five feet square, a minnow trap the opening of which shall not be more than 1¼ inches in diameter, a scoop net with a single handle and with a diameter of not more than two feet. Any person who uses any other device, method or means for catching bait fish, other than those specified in this section, shall on conviction thereof, be subject to a fine of twenty dollars.

Devices permitted in catching bait fish

Violation

Penalty

2506. Sec. 149. DEVICES PERMITTED IN CATCHING FOOD FISH:—It shall be unlawful to fish for food fish in said waters with any device, method or means excepting by the following devices and under regulations and restrictions hereinafter in this Act prescribed, to wit: A seine, a gill net, an eel pot or fyke net, each without wings, pound nets, a parallel net or stake net at the edge of low water and rods and lines or hand lines, otherwise known as dipsey or throw lines each having not more than three hooks. Any person who shall use or employ any method or device for catching food fish other than those named in this section, or shall use or employ any device named in this section contrary to the regulations and restrictions hereinafter prescribed, shall be subject to a fine of twenty dollars.

Devices permitted in catching food fish

Violation

Penalty

2507. Sec. 150. STURGEON:—It shall be unlawful to catch or take or attempt to catch or take any sturgeon from said waters with any device excepting a seine or gill net the meshes of which shall measure not less than 13 inches stretched measure while being fished or to catch or take or attempt to catch or take any sturgeon or mammose from said waters under 5 feet in length but should any sturgeon under said length be caught it shall be carefully and immediately returned to said waters with wet hands and with the least possible injury. Sturgeon measuring 5 feet long and over becoming accidentally entangled in shad or other nets while being lawfully used, may be retained. It shall be lawful to catch and take

Nets used for Sturgeon fishing

DE14672

FISH, OYSTERS AND GAME

Closed season

Violation Penalty

sturgeon from said waters at all times of the year except during the months of July, August and September. Any person violating any of the provisions of this section shall, on conviction thereof, be subject to a fine of $100, together with a forfeiture of all nets, boats and other appliances used.

Nets used for Herring fishing

Closed season

Violation Penalty

2508. Sec. 151. HERRING:—It shall be unlawful for any person to catch or take or attempt to catch or take from said waters any herring with a net of any character the meshes of which shall be less than three inches stretched measure while being fished or take or catch or attempt to take or catch any herring from said waters between the tenth day of June in each year and the first day of March next ensuing. Any person who shall violate any of the provisions of this section shall, on conviction thereof, be subject to a fine of $100, together with a forfeiture of all boats, nets and appliances used.

Closed season for Carp

Size

Nets used

Violation Penalty

2509. Sec. 152. CARP:—It shall be unlawful to catch or take or attempt to catch or take any carp from the waters aforesaid during the months of June, July and August of each year or to catch or attempt to catch any carp weighing less than one pound but should any such fish be caught it shall be immediately returned to said waters uninjured. It shall be unlawful to catch or take or attempt to catch or take any carp from said waters with a parallel net, being a net set approximately parallel with the shore, the meshes of which measure less than 2½ inches stretched measure while being fished or with a hauling seine the meshes of which shall be less than 2½ inches stretched measure while being fished, provided however that old seines now in lawful use for the taking of carp may be used until May 31st 1924 and provided further that no nets or seines shall be set in such a manner as to impede navigation and provided further that all fish other than carp, catfish and suckers caught in said seine must be returned unharmed to said water, beyond low water mark. Any person violating any of the provisions of this section shall, on conviction thereof, be subject to a fine of $100 together with a forfeiture of all nets and other appliances used.

DE14673

FISH, OYSTERS AND GAME

Nets used in catching Shad

2510. Sec. 153. SHAD:—It shall be unlawful for any person to catch or take or attempt to catch or take any shad from said waters with a gill net the meshes of which shall be less than 5¼ inches stretched measure while being fished or to catch or take or to attempt to catch or take shad by any means or device between June 10th and March 1st next ensuing. It shall also be unlawful at any time to set, place or use a net for catching shad, except a drifting gill net, within one-half mile of the mouth of any river, creek or stream emptying into the Delaware Bay. It shall be unlawful to catch or take or attempt to catch or take any shad from said waters with a stake net provided however that stake nets of 5¼ inch mesh or over while being fished, may be used for the taking of shad in that portion of the Bay south of a straight line running from the mouth of Stow Creek on the Jersey shore to the mouth of Smyrna Creek on the Delaware Shore, where by reason of the oyster stakes the use of drift nets is impossible, and also provided that said stake nets shall not be set within 200 feet of any other net, and provided further that it shall be unlawful to permit the stakes of such nets to remain in said waters after June 15th of each year. Any person violating any of the provisions of this section shall, upon conviction thereof, be subject to a fine of $100, together with a forfeiture of all nets, boats and other appliances used.

Closed season

Violation

Penalty

Nets of certain mesh prohibited in Rock fishing

2511. Sec. 154. ROCK:—It shall be unlawful for any person to catch or take or attempt to catch or take from said waters any striped bass commonly called rock fish with a shore hauling seine the meshes of which shall be less than 2½ inches stretched measure while being fished or with a drifting gill net the meshes of which shall be less than 3 inches stretched measure and it shall also be unlawful to catch or take any rock fish from said waters weighing more than 20 pounds or measuring less than 10 inches in length and if any such be caught they shall be immediately returned to said waters uninjured. It shall be unlawful to catch or take from said waters any rock fish between May 1st and November 15th next ensuing. Any rock fish of legal size which becomes entangled in drifting shad nets while being lawfully fished be-

Closed season

Violation

Penalty

tween March 1st and June 10th, may be retained. Any person violating any of the provisions of this section shall upon conviction thereof be subject to a fine of $100 together with a forfeiture of all nets, boats and other appliances used.

Nets used in catching Weak Fish, White and Yellow Perch

2512. Sec. 155. WEAK FISH, WHITE AND YELLOW PERCH:—It shall be unlawful to catch or take or attempt to catch or take from said waters any weak fish or white or yellow perch with a net of any character except a shore haul seine the meshes of which shall not be less than 2½ inches stretched measure while being fished and the length of which shall not exceed 400 yards or with a drifting gill net the meshes of which shall not be less than 3 inches stretched measure while being fished and shall not exceed 400 yards in length and it shall also be unlawful to use more than one net from any one boat. It

Open season

shall be lawful to catch or take weak fish, white or yellow perch, as aforesaid, at all times of the year. Old seines now in lawful use may be lawfully used for the taking of weak fish, white or yellow perch until July 31st 1924. Any person

Violation

Penalty

violating any of the provisions of this section shall upon conviction thereof be subject to a fine of $100 together with a forfeiture of all nets, boats and other appliances used.

Closed season for Eels without certain devices

2513. Sec. 156. EELS:—It shall be unlawful to use eel pots and fyke nets each without wings from June first to July first in each year both dates inclusive, provided, that the entrance of said eel pot and fyke net shall not be more than six inches in diameter and the outside diameter not more than 30 inches, provided however that eel pots and fyke nets, with wings not exceeding 5 fathoms in length, for the purpose of taking eels only, the entrance of which shall not be more than 12 inches and the diameter not more than 72 inches, may be used in the Delaware Bay south of a line drawn from West Creek on the Jersey shore to Jones' Creek on the Delaware

Open season

shore, from the 15th day of October to the 31st day of December in each year, both dates inclusive, any person violat-

Violation

Penalty

ing any of the provisions of this section shall on conviction thereof be subject to a fine of $20 together with a forfeiture of all nets, boats and other appliances used.

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2514. Sec. 157. SIZE OF FISH:—It shall be unlawful for any person to catch or take or attempt to catch or take any black bass or any small mouth bass, large mouth bass, otherwise known as Oswego or yellow bass, less than 9 inches in length, or any pike or pickerel or any pike-perch, otherwise known as wall eyed pike or Susquehanna salmon, less than 12 inches in length or any calico or strawberry bass, crappie, white bass, rock bass, otherwise known as red eye or goggle eye, or trout or charr, less than six inches in length, any fish of a less length than those described which may be caught must be returned immediately to the water; provided that nothing in this section shall be construed to prevent the fishery authorities of the State of Delaware or of the State of New Jersey from capturing fish of any size from said waters, at any time of the year or in any manner, for propagating purposes and for stocking other waters in said States through their authorized representatives respectively. Any person who shall violate any of the provisions of this section shall, on conviction thereof be subject to a fine of $10 for each and every fish so caught and had in possession.

Size of Bass and other fish prescribed

Open season for propagating purposes

Violation

Penalty

2515. Sec. 158. CLOSED SEASON FOR GAME FISH:—It shall be lawful to catch food fish with rods and lines and hand lines, and trolling lines as described in section 2506. Sec. 149. of this act, at any time of the year but it shall be unlawful to fish for or take any game fish excepting from the 15th day of June to the first day of December inclusive in each year. Any person violating any of the provisions of this Section shall on conviction thereof, be subject to a fine of $10 for each and every fish so taken.

Closed season for game fish

Violation

Penalty

2516. Sec. 159. UNLAWFUL TO DAMAGE NETS:—It shall be unlawful for any person by boat, anchor, dredge or otherwise to wilfully and without reasonable cause, interfere with, break, damage or destroy any drifting gill net or hauling seine or net of any description, being lawfully used. Any person violating any of the provisions of this section shall on conviction thereof, be subject to a fine of $20.

Damaging of nets prohibited

Violation

Penalty

DE14676

FISH, OYSTERS AND GAME

Pollution of waters unlawful

2517. Sec. 160. POLLUTION:—It shall be unlawful for any person to put or place any explosive or poisonous substances whatsoever, or any drug, or any poisonous bait for the purpose of catching, taking, killing or injuring fish of any kind in said waters, or to allow any dye stuff, coal or gas tar, coal oil, saw dust, tank bark, cocculus indicus (otherwise known as fish berries), lime, vitriol, or any of the compounds thereof, refuse from gas houses, oil tanks or vessels, or any deleterious, destructive or poisonous substances of any kind to run, flow, wash or be emptied into any of the waters aforesaid, unless it is shown that every practicable means has been used to prevent the pollution of said waters by the escape of deleterious substances. In case of the pollution of said waters by substances known to be injurious to fishes or to fish food it shall not be necessary to prove that such substances have actually caused the death of any particular fish. Any person violating any of the provisions of this section shall, on conviction thereof, be subject to a fine of $200.

In case of pollution must be proved

Violation

Penalty

Fish unlawfully caught cannot be bought or sold

2518A. Sec. 161A. UNLAWFUL TO BUY OR SELL FISH UNLAWFULLY CAUGHT:—It shall be unlawful for any person to purchase, sell, expose for sale, or have in possession any fish caught or taken in violation of any of the provisions of this act under a penalty of $10 for each fish so sold, exposed for sale or had in possession.

Violation

Penalty

Interference with officers prohibited

2519A. Sec. 162A. INTERFERENCE WITH OFFICERS:—Any person or persons who shall, by threat, menace or force, or in any manner attempt to deter or prevent any fish and game warden or other person authorized to make arrests for violation of any of the provisions of this act, from enforcing or carrying into effect any provisions of this act, or who shall resist arrest or the seizure of boats or nets illegally used, shall, on conviction thereof, be subject to a fine of $100.

Penalty

Sunday fishing prohibited

2520A. Sec. 163A. SUNDAY FISHING:—It shall be unlawful for any person to catch or take or attempt to catch or take, any fish of any kind or description by means of a net

DE14677

or to use a net of any character in the waters aforesaid from Saturday at 2 P. M. until Sunday at 12 o'clock midnight next ensuing in each week; provided that shad nets lawfully staked may remain in the water during said hours but no fish shall be taken therefrom. Any person violating any of the provisions of this section shall, upon conviction thereof, be subject to a fine of $100 together with a forfeiture of all nets, boats and other appliances used.

Proviso

Violation

Penalty

2521. Sec. 164. POUND NETS, STAKED NETS, ETC.:—It shall be unlawful for any person to catch or take or attempt to catch or take from said waters fish of any kind with a pound net or net of any character which is anchored or staked or fastened down in any manner permanently or otherwise or to use any net so fastened down or anchored in any manner (except staked nets for the taking of shad as provided in 2510. Sec 153. of this act), nor shall any net of any kind or character, excepting a drifting gill net and eel pot or a fyke net each without wings, or a parallel net for the capture of carp only as herein before in this act provided, be used for the purpose of catching and taking fish in said waters within one-half mile above or below the mouth of any river, creek or stream emptying into said waters, provided, that gill nets, with meshes not smaller than 3 inches stretched measure while being fished and not exceeding 25 fathoms in length, may be staked on the Jersey shore only, within one-half mile of the shore in the Delaware Bay below Ben Davis Point; and provided further than pound nets for the taking of food fish, which do not extend into the Delaware Bay more than 300 feet from mean low water mark or 300 feet from the outside of the flats which fall bare at low water, may be set and used in the Delaware Bay south of a line drawn from West Creek on the Jersey shore to Jones' Creek on the Delaware shore from the first day of March to the 31st day of December in each year, both dates inclusive, provided however, written permission shall be first obtained for setting said pound nets from the Board of Game and Fish Commissioners of Delaware if said nets are to be set on the Delaware shore and from the Board of Game and Fish Commissioners of New

Pound nets, staked nets or other devices unlawful

Exceptions

Proviso

Proviso

Written permission obtained from Board of Game and Fish Commissioner

Jersey if said nets are to be set on the Jersey shore. It shall also be unlawful, except in the catching and taking of menhaden, sharks, porpoises and herring-hogs as hereinafter provided for any person to catch and take or to attempt to catch and take from said waters any fish with purse or shirred nets operated by or from steam or other vessels or to use any vessels or boats propelled by steam or gasoline power or by sail, to scare, frighten or drive any edible fish into any nets of any character or to surround any edible fish with any kind of power boats or vessels or nets or to lay out any gill nets of any character, from any power boats or vessels, longer than 200 fathoms in length except shad nets and sturgeon nets nor shall any one boat or vessel lay out more than one net or have more than one net on board. Any person who shall violate any of the provisions of this section shall on conviction thereof, be subject to a fine of $20 together with a forfeiture of all boats, nets and other appliances used.

Violation

Penalty

License must be had before catching Menhaden, &c.

2522. Sec. 165. MENHADEN:—It shall be unlawful for any person, firm or corporation to catch or take or attempt to catch or take from any part of the Delaware Bay within the jurisdiction of the State of Delaware with purse or shirred nets or with any other nets or devices any menhaden, sharks, porpoises or herring-hogs without having first obtained a license therefor from the proper authorities of the State of Delaware and paying therefor whatever license fees shall at the time be required by the laws of the State of Delaware; and it shall likewise be unlawful for any person, firm or corporation to catch or take or attempt to catch or take from any part of the Delaware Bay within the jurisdiction of the State of New Jersey with purse or shirred nets or with any other nets or device any menhaden, sharks, porpoises or herring-hogs without having first obtained a license therefor from the proper authorities of the State of New Jersey and paying therefor whatever license fees shall at the time be required by the laws of the State of New Jersey. Any person violating the provisions of this Sec. shall be subject to whatever penalties are now prescribed or may hereafter be prescribed by the said States respectively. Sharks and porpoises acciden-

Violation

Penalty

tally caught by hook and line or by any nets being lawfully fished may be retained. Exceptions

2523. Sec. 166. EXTRACTING OIL FROM FOOD FISH PROHIBITED:—It shall be unlawful for any person to have it* his possession or to bring into this State any edible fish caught from said waters for the purpose of extracting oil therefrom or of converting said fish into fertilizer; and it shall also be unlawful for any person to extract oil or to convert or in any manner assist in extracting oil from or in converting such fish into fertilizer. Any violation of the provisions of this section shall be a misdemeanor and upon conviction thereof a fine of $500 shall be imposed by the Court, and within the State of Delaware the same proceedings shall be had and before the same courts as may now or hereafter be provided by the laws of the said State in the trial of misdemeanor. Extracting oil from food fish prohibited. Violation. Penalty.

2524. Sec. 167. PROCEDURE:—All prosecutions for violation of any of the provisions of this act committed upon the soil of the State of Delaware or upon said waters within the jurisdiction of the State of Delaware shall be conducted by Delaware authorities and by and before the Justices and Courts of Delaware and in accordance with the provisions of 2410. Sec. 53 of Chapter 74 of the Revised Code of the State of Delaware, and all prosecutions for violations of any of the provisions of this act committed upon the soil of the State of New Jersey or upon said waters within the jurisdiction of the State of New Jersey shall be conducted by New Jersey authorities and by and before Justices and Courts of New Jersey and in accordance with the provisions of an act of the legislature of the State of New Jersey entitled "An Act to provide a uniform procedure for the enforcement of all laws relating to fish, game and birds, and for the recovery of penalties for violations thereof, approved March 29, 1897, and the acts amendatory thereof and supplementary thereto." Prosecutions for violation in Delaware waters conducted by Delaware authorities. New Jersey by authorities of said State.

Every boat, vessel, net, line, fyke or any other property or appliances unlawfully used in said waters which are within the jurisdiction of the State of Delaware in violation Forfeiture of property seized.

*So enrolled.

of any provision of this act shall be forfeited to the State of Delaware and any of said property or appliances unlawfully used in said waters which are within the jurisdiction of the State of New Jersey in violation of any provision of this act shall be forfeited to the State of New Jersey; the procedure regarding the forfeiture of such property in the State of Delaware shall be according to 2518. Sec. 161 of Chap. 74 of the Revised Code of the State of Delaware and any acts which may be passed amendatory thereof or supplementary thereto and the costs and charges of proceedings in the State of Delaware shall be according to 2519. Sec. 162 of Chap. 74 of the Revised Code of the State of Delaware and of any acts which may be passed amendatory thereof or supplementary thereto; and the procedure regarding said forfeiture of such property and regarding said costs and charges in the State of New Jersey shall be according to the present procedure laws of the State of New Jersey and of any acts which may be passed amendatory thereof or supplementary thereto. Nothing in this act shall be so construed as to give the inhabitants of the State of New Jersey or any non residents of Delaware the right to fish in that part of the Delaware Bay which is under the jurisdiction of the State of Delaware, should the State of Delaware by appropriate legislation see proper to deny to the inhabitants of the State of New Jersey or other non residents of Delaware such right or should see proper to impose upon the inhabitants of New Jersey or other non residents of Delaware any license charge for such privilege; and nothing in this act shall be so construed as to give the inhabitants of the State of Delaware or any non residents of New Jersey the right to fish in that part of the Delaware Bay which is under the jurisdiction of the State of New Jersey, should the State of New Jersey by appropriate legislation see proper to deny to the inhabitants of the State of Delaware or other non residents of New Jersey such right or should see proper to impose upon the inhabitants of Delaware or other non residents of New Jersey any license charge for such privilege.

Reciprocity as to non-residents

In order that the properly appointed officers of Delaware

and New Jersey may have the right to make arrests and seize property anywhere in said waters the Governor of Delaware, when requested by the Governor of New Jersey shall issue commissions to such persons as may be named to him by the Governor of New Jersey which shall authorize them to arrest and seize the property of the inhabitants of either State or non residents of either State anywhere in said waters for any violation of any of the provisions of this Act, which Commissions shall at any time be subject to revocation upon the request of the Governor of New Jersey and the compensation of such commissioned officers shall be paid wholly by the State of New Jersey; and the Governor of the State of New Jersey when requested by the Governor of the State of Delaware shall issue Commissions to such persons as may be named to him by the Governor of Delaware which shall authorize them to arrest and seize the property of the inhabitants of either State or non residents of either State anywhere in said waters for any violation of any of the provisions of this Act, which Commissions shall at any time be subject to revocation upon the request of the Governor of Delaware and the compensation of such commissioned officers shall be paid wholly by the State of Delaware, but nothing in this section shall be so construed to prevent any other officers of either State from making arrests within the jurisdiction of their respective States for the violation of any of the provisions of this act; whenever an arrest is made or property seized for any violation of this act committed in said waters within the jurisdiction of the State of Delaware the accsued and such property seized shall be at once delivered by the officer making the arrest to the proper Delaware authorities for trial, and whenever an arrest is made or property seized for any violation of this act committed in said waters within the jurisdiction of the State of New Jersey the accused and such property seized shall be at once delivered hy the officer making the arrest to the proper New Jersey authorities for trial. If any person or persons shall fail to pay any fine and costs imposed under this act the Justices, Court or Magistrate imposing same shall commit such person to the jail of the County where such conviction is had for a

Governor of Delaware to commission certain officers upon request from Governor of New Jersey

Compensation

Reciprocity

Duties of certain officials

period not exceeding 90 days or until said fine and costs are paid. Any member of the Board of Game and Fish Commissioners, Game Warden, Deputy Game Warden, Collector of Oyster Revenue, Sheriff, Constable or any public officer, may upon view arrest any person violating any of the provisions of this act without any warrant or writ issued for such purpose. This section is expressly subject to the specific provision of the treaty between the said two States, giving each State exclusive jurisdiction within said River to arrest, try and punish its own inhabitants for violation of the concurrent legislation relating to fishery herein by this Act provided for.

Act not valid until similar enactment by New Jersey

2525. Sec. 168. All acts or parts of acts inconsistent with this act are hereby repealed but neither this act nor any section, proviso or part thereof shall be valid or become operative until a similar act has been enacted by the State of New Jersey.

Approved March 14, A. D. 1923.

DE14683

July 1, 1922 - June 30, 1923

A commission, consisting of former Commissioner William A. Logue, of Bridgeton; Jeremiah Chambers of Cape May, and Protector James M. Stratton, had conferences during the year with a committee appointed by the Governor of Delaware, consisting of J. Hall Anderson, Dover; Harris Samonisky, Wilmington; and Frederick D. Bendler, Delaware City, for the purpose of agreeing on a concurrent law for the Delaware river and bay between New Jersey and Delaware.

Our Board instructed the Protector that we were opposed to making the proposed concurrent law any more liberal than the present concurrent law with Pennsylvania affecting the Delaware river, it being desirable to have practically the same restrictions for Delaware river and bay between New Jersey and Delaware as are provided for in the upper portion of the Delaware river.

In March, much to our surprise, Protector Stratton received word from J. Hall Anderson that the Delaware Legislature, despite the fact that the Joint Commission had not come to final terms, passed, and their Governor approved, two acts, one act containing some provisions agreed upon and some provisions not considered by the Joint Commission, one of which was a provision forbidding New Jersey residents fishing in their waters, which law was not to become operative until concurred in by New Jersey; the other act simply prohibited New Jersey residents fishing in their waters and took effect immediately. The Commissioners representing New Jersey informed Mr. Anderson that in view of his law prohibiting residents of New Jersey from fishing in their waters that our Legislature would undoubtedly at its next session pass an act prohibiting the residents of Delaware from fishing in our waters, and further, that the action of the Delaware Legislature would certainly have a deterrent effect on the effort of the two states to obtain uniform legislation.

July 1, 1923 - June 30, 1924

Through an inquiry made by Governor William D. Denny, of Delaware, Governor Silzer of this State, took up with our Board the cause which brought about retaliatory legislation by the New Jersey Legislature of 1924. It appeared that the Legislature of Delaware had passed an act prohibiting non-residents using nets within the jurisdiction of Delaware in the Delaware river and bay, and this act was passed by the State of Delaware while at the same time there was a joint commission of representatives of Delaware and New Jersey looking toward a uniform concurrent law regulating net fishing.

Later Governor Silzer wrote to our Board requesting us to make arrangements for a further meeting of the Joint Commission, if the same were agreeable to Governor Denny. Protector James M. Stratton who was a member of the New Jersey Commission, together with the other Commissioners, Honorable William A. Logue and Jeremiah Chambers, again took up the matter with Governor Denny.

July 1, 1926 - June 30, 1927

In April, four fishermen from Delaware were arrested by our wardens for fishing with a net in the Delaware Bay within the jurisdiction of New Jersey in violation of the act prohibiting nonresidents fishing in the Delaware Bay with nets, which act was passed in 1924 and was a retaliatory measure by this State to meet an act previously passed by the State of Delaware, prohibiting nonresidents from fishing in the Delaware Bay within the jurisdiction of the State of Delaware. The men were convicted, and a few days later the Delaware authorities arrested two residents of New Jersey for violation of the Delaware nonresident act. These defendants being unable to pay the penalty were committed to a Delaware jail. Both cases were finally withdrawn and the defendants released.

The whole matter was taken up with the Attorney General's Department. It appears that inasmuch as there was no legislation or compact fixing a dividing line in the Delaware Bay between the States of New Jersey and Delaware, and under the terms of Joint Resolution No. 4, passed at the 1927 session of the Legislature, for the appointment of a Commission to confer with a similar Commission from the State of Delaware, to fix the boundary line between the two States and settle other disputes, and said Commission having met and organized a few days previously, that it was advisable not to continue with the prosecutions. This was agreeable to Attorney General Sutherland of Delaware, who ordered the release of the New Jersey residents and the return of their boats and nets.

For many years New Jersey has endeavored to obtain concurrent legislation with Delaware, but each time the Delaware legislature has failed to concur in laws passed by the New Jersey legislature.

In justification of the arrest by our wardens a report made by Commissioner Harry T. Hagaman, who personally inspected the waters, showed that the Delaware fishermen were eastward of the channel in an area long regarded as belonging to New Jersey, and that the New Jersey fishermen were eastward of this channel. He added that in the inspection, he was accompanied by J. R. Hensler, of Ocean county, who had been appointed by the Governor to succeed him as Commissioner at the expiration of his term, and that Mr. Hensler was familiar with the situation.

July 1, 1930 - June 30, 1931

The Attorney General has brought suit in the United States Supreme Court to ascertain the true boundary line between the State of New Jersey and the State of Delaware.

Our Board is very much interested in this case, inasmuch as for many years past there have been fierce disputes between the fishermen and oystermen of Delaware and New Jersey as to the respective territories of the States. There have been efforts made to settle the question for many years, but with no success.

New Jersey claims its title by virtue of the sovereignty of the Crown of England existing prior, and to which it succeeded as a result of the American Revolution and the Treaty of Paris, and by virtue of the common law of England existing at that time, which was adopted by New Jersey and Delaware upon attaining their independence.

P
6-13-38

**New Jersey State Archives**
Department of Law and Safety
Attorney General's Office
Closed Case Files, 1920's - 1950's
**Box 8**

DE21588

1920

April 4,
1924.

My dear Governor Bunting:

I am again writing you about the conditions concerning fishing on the Delaware River.

In 1921 a committee of three from New Jersey and three from Delaware was appointed for the purpose of agreeing on a concurrent law for the two States. Owing to the lateness of the season, nothing could be done by the joint commission in that year.

In 1922 several meetings were held.

In March, 1923, much to the surprise of our Commissioners, it was found that the Delaware Legislature, despite the fact that the Joint Commission had not come to final terms, passed, and their Governor approved two acts: one containing some provisions agreed upon, and some provisions not considered by the joint commission, one of which was a provision forbidding New Jersey residents fishing in their waters.

As a result of this action, the Legislature of New Jersey, in the present session, passed a law prohibiting residents of Delaware fishing in New Jersey waters.

As I said to you in a former letter, this is a most unwholesome condition, and one that should not exist, for retaliation always brings trouble in its wake.

There ought to be no difficulty in having the States of New Jersey and Delaware agree upon a uniform and concrete law regarding fishing in Delaware Bay. Such a law, agreeable to both States, should prevent any friction in the future.

Having this in mind, I would suggest that arrangements might be made to have our commission again meet with ours, in order to see what can be accomplished.

DE21418

W.H.D.#2

If this is agreeable, will you please have your commission communicate with Mr. J. M. Stratton, State House, Trenton, who will make all arrangements for our nomination?

With assurances of my highest regard, I am,

Sincerely yours,

Governor.

Hon. William D. Denny, Governor,
Dover,
Delaware.

New Jersey State Archives
Governor Silzer Papers
Box 18 Folder 86

DE21420

1923

State of Delaware

Executive Department

DOVER

March
Twelfth
Nineteen Twenty-one.

Fish Commission

Hon. Edward I. Edward,
Governor of New Jersey,
Trenton, N. J.

My dear Governor:

I acknowledge receipt of your letter of the 10th inst., advising that the Hon. William A. Logue, James M. Stratton and Jeremiah Chambers have been appointed a commission to meet with a like commission from the State of Delaware for the purpose of preparing concurrent fishing laws in the Delaware River and Bay.

Assuring you of my appreciation for your action in the matter, I am

Sincerely yours,

Governor.

WDD/H

New Jersey State Archives
Governor Edwards Papers
Box 4 File 60



DE16761

Fish & Game

State of Delaware

Executive Department

DOVER

February 26, 1924

Honorable George S. Silzer,

Governor of New Jersey,

Trenton, N. J.

My dear Governor Silzer:

I thank you for your courteous telegram of February 24th. I am enclosing copy of the Game and Fish Laws of Delaware and wired you today as follows:

"The Delaware Law prohibits non-residents from fishing only for food fish with nets in waters of Delaware Bay under Delaware jurisdiction. There is no prohibition against hook and line fishing. I am forwarding copy of Delaware Laws."

Sincerely yours,

Governor.

WDD.BAS

New Jersey State Archives
Governor Silzer Papers
Box 18 Folder 86

Form 1204

| CLASS OF SERVICE | SYMBOL |
|---|---|
| Telegram | |
| Day Letter | Blue |
| Night Message | Nite |
| Night Letter | N L |

If none of these three symbols appears after the check (number of words) this is a telegram. Otherwise the character is indicated by the symbol appearing after the check.

# WESTERN UNION TELEGRAM

NEWCOMB CARLTON, PRESIDENT GEORGE W. E. ATKINS, FIRST VICE-PRESIDENT

| CLASS OF SERVICE | SYMBOL |
|---|---|
| Telegram | |
| Day Letter | Blue |
| Night Message | Nite |
| Night Letter | N L |

If none of these three symbols appears after the check (number of words) this is a telegram. Otherwise the character is indicated by the symbol appearing after the check.

RECEIVED AT 14 EAST STATE ST., TRENTON, N. J. ALWAYS OPEN

S R DS 40 3 EX

DOVER DEL 1250P FEB 25 1924

HON GEO S SILZER

TRENTON NJ

THE DELAWARE LAW PRHIBITS NON-RESIDENTS FROM FISHING ONLY FOR FOOD FISH WITH NETS IN WATERS OF DELAWARE BAY UNDER DELAWARE JURISDICTION THERE IS NO PROHIBITION AGAINST HOOK AND LINE FISHING I AM FORWARDING COPY OF DELAWARE LAWS

WILLIAM D DENNEY

GOVERNOR OF DELAWARE

155P

down these will only breed ill-feeling and endanger our then friendly relations.

I await your suggestion in the matter.

Yours very truly,

Governor.

His Excellency, William D. Denney,
Governor of Delaware,
Dover, Delaware.

D

New Jersey State Archives
Governor Silzer Paper
Box 18 Folder 86

February 28,
1924.

Dear Governor:-

After receiving your telegram with reference to the law existing in your State prohibiting non residents from fishing for food fish with nets in the waters of Delaware Bay under the jurisdiction of your State, I felt compelled to sign a like measure passed by the Legislature of New Jersey, which prohibits the same kind of fishing on our side of the Bay.

It would seem that this unfortunate situation should not be allowed to continue, as it is apt to engender unfriendly feelings between the people of the two States engaged in fishing, and retaliatory measures and discriminating legislation are never to be commended.

Would it not, therefore, be wise to have this matter taken up by the two States, in an effort to arrive at an amicable arrangement, which might later be embodied in the laws of our States?

I submit this to you as a good neighbor, feeling as you must feel that it is highly important that the friendly relations heretofore existing between the two States should be continued. Retaliatory legislation on both sides will only breed ill-feeling and endanger our then friendly relations.

I await your suggestion in the matter.

Yours very truly,

Governor.

His Excellency, William D. Denney,
Governor of Delaware,
Dover, Delaware.

D

New Jersey State Archives
Governor Silzer Papers
Box 18 Folder 86



DE21405

State of Delaware

Executive Department

DOVER

March 13, 1924

Honorable George S. Silzer,
Governor of New Jersey,
Trenton, N.J.

My dear Governor Silzer:

I acknowledge receipt of your letter of February 28th in reference to the laws regulating the taking of fish in the Delaware Bay.

I agree with you that no situation which might engender unfriendly feelings between the fishermen of the two States should be permitted to continue.

As the two States created like Commissions in February 1921, for the purpose of modifying the Laws regulating the taking of fish in the Delaware River and Bay, and said Commissions are still in existence, it seems to me that the matter might well be referred to them for action.

The New Jersey Commission, which was created by concurrent resolution on February 28, 1921, consists of Messrs. William A. Logue, J. E. Chambers, and James M. Stratton. They met a number of times with the Delaware Commission and the result of their labors was presented to the Delaware Legislature and duly enacted with a proviso that the Act would not become operative until a similar Act has been enacted by the State of New Jersey. This Act was approved by me on March 14, 1923, and I presume the same will be considered by the Legislature of New Jersey now in session.

If you agree with me that it would be well to refer this matter to these Commissioners, I will be pleased to refer it to the Delaware Commission for its attention.

I heartily agree with you that it is highly important that the friendly relations heretofore existing between the two States should be continued, and trust that no further legislation will be attempted on either side that might breed ill-feeling.

Yours very truly,

Governor.

WDD.BAS

New Jersey State Archives
Governor Silzer Papers
Box 18 Folder 86

March 25,
1935.

My dear Mr. Logue:

I am enclosing you copy of a letter from the Governor of Delaware, in answer to one from me.

I wish you would please let me know the present situation, and what you think can be done to bring about a better understanding.

He speaks of an Act of the State of Delaware having been approved of March 14,1925. Is this the act which brought about the legislation by our legislature this year in retaliation?

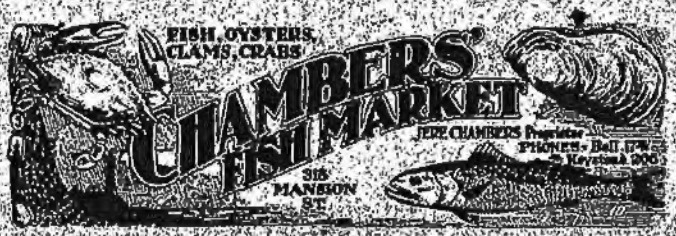
Yours very truly,

Governor.

Hon. William A. Logue,
Bridgeton,
N.J.

S

New Jersey State Archives
Governor Silzer Papers
Box 18 Folder 86




Cape May N. J. March 31 1924

Honorable George S. Silzer,
Trenton, N.J.

Dear Governor:

I am in receipt of your letter of March 25 enclosing a copy of a letter to you from Governor Denney, of Delaware, respecting fishing in the Delaware Bay.

The Delaware Act of March 14 1923 prohibited non-residents from fishing in Delaware waters and the New Jersey Act, which passed the Legislature this session, was in retaliation.

The New Jersey Commission, as Governor Denney states, met, a number of times, with that appointed by him, and discussed matters in much detail, but failed to come to a common understanding, and for that reason no legislation was recommended by the New Jersey Commission. It may be that the Delaware Commission did, but it was without our knowledge or concurrence.

Inasmuch as both States now prohibit non-residents from fishing in the waters of the Delaware Bay within their respective jurisdictions, and as it seems to be the actual intent of both that the prohibition be removed it would appear to be the proper proceedure to do as suggested by Governor Denney and refer the matters to the Commissioners in order that some plan, mutually agreeable, might be arrived at.

Very truly yours,

Jeff E. Chambers

DE21411

New Jersey State Archives
Governor Silzer Papers
Box 18 Folder 80



DE21412

(No. 1—D 2 E—5M)

# STATE OF NEW JERSEY

BOARD OF
FISH AND GAME COMMISSIONERS
TRENTON

March 31, 1924.

Hon. George S. Silzer,
Governor of New Jersey,
State House,
Trenton, N. J.

My dear Governor:

I have your letter of March 25th, enclosing a copy of a letter from Hon. W. D. Denny, Governor of Delaware, and note that you ask me if the Delaware act approved March 14, 1923, was the act which brought about the New Jersey legislation of 1924 prohibiting non-residents fishing with nets in Delaware bay; and also that you would like to know what can be done to bring about a better understanding with Delaware.

In direct reply to your inquiry, I beg to say that the Delaware act referred to by the Governor of Delaware is not the act which brought about the New Jersey act of 1924. The Delaware act which brought about the legislative action this year was another act, passed about the time of the Delaware act of March 14, 1923.

HISTORY OF JOINT COMMISSION

In 1921 a committee consisting of former Commissioner William A. Logue, of Bridgeton, Jeremiah Chambers, of Cape May, and myself, was appointed to confer with a committee appointed by Governor Denny, of Delaware, consisting of J. Hall Anderson, Dover, Harry Samonisky, Wilmington, and Frederick D. Bendler, Delaware City, for the purpose of agreeing on a concurrent law for the Delaware river and bay between New Jersey and Delaware.

Owing to the adjournment of the legislature early in 1921, nothing could be done by the joint commission in 1921.

Several meetings were held by the joint commission in 1922.

In March 1923, much to my surprise, I received word from Mr. Anderson that the Delaware legislature, despite the fact that the joint commission had not come to final terms, passed and their Governor approved, two acts, one act containing some provisions agreed upon and some provisions not considered by

the joint commission, one of which was a provision forbidding New Jersey residents fishing in their waters, which law was not to become operative until concurred in by New Jersey; the other act simply prohibited New Jersey residents fishing in their waters and took effect immediately. The commissioners representing New Jersey informed Mr. Anderson that in view of his law prohibiting residents of New Jersey from fishing in their waters that our Legislature would undoubtedly at its next session pass an act prohibiting the residents of Delaware from fishing in our waters, and further, that the action of the Delaware legislature would certainly have a deterrent effect on the effort of the two states to obtain uniform legislation.

CORRESPONDENCE AND COMMENT REFERRING TO DELAWARE NON-RESIDENT LAW.

Mr. J. Hall Anderson of Dover, Chairman of the Delaware Joint Commission, in transmitting the second Delaware act to me by letter dated May 1, 1923, stated that the Delaware members of the joint commission did not sponsor that act, nor did they have anything to do with it.

On March 8, 1923, Mr. Anderson called my attention to an act passed by New Jersey in 1826, which act prohibited non-residents from fishing with nets in our waters, which act fixes a penalty of $30. for violation, and makes certain exceptions as follows: provided that nothing in this act shall be so construed as to affect the right or privilege of any owner or owners, tenant or tenants, not resident in this State, from fishing upon or opposite to his, her or their shore in this State, or to prevent any resident, owner or tenant from employing what hands he may think necessary to carry on the business of his or their fisheries; provided also, that nothing in this act contained shall relate to or in any wise affect the fisheries on the waters of the river Delaware.

No prosecutions have ever been brought against residents of Delaware as non-residents for fishing in our waters under the above mentioned act. Delaware fishermen have been arrested in our waters, but for fishing illegal nets and for fishing out of season.

Responsive to Mr. Anderson's letter of March 8, 1923, representing the New Jersey members of the commission, I wrote as follows:

(No. 1—D 2 E—5M)

# STATE OF NEW JERSEY

BOARD OF

FISH AND GAME COMMISSIONERS

TRENTON

#3 G. S. S. March 13, 1925.

"I have your letter of the 8th concerning the bill introduced in the legislature of your State prohibiting non-residents using nets in Delaware bay within the jurisdiction of the State of Delaware, and asking if there is a law in this State prohibiting non-residents from using nets.

"Under separate cover, I am sending you a copy of the fish and game laws, and refer to "An act concerning fisheries" passed December 27, 1826, and to be found on page 65.

"This act has never been enforced in the Delaware bay, but if the legislature of your State passes the act referred to, I have no doubt but that our law will be enforced, and further if your law is passed, our legislature will no doubt at its next session pass an act that will have a penalty that will conform with yours.

"Inasmuch as our State has not enforced our law respecting non-residents against Delaware parties, who fish in our waters, it would seen inadvisable for your legislature to pass the act now proposed, as it would certainly have a deterrent effect on the effort to get a concurrent uniform law between the two States."

SUGGESTION AS TO WHAT CAN BE DONE.

As to your inquiry as to what can be done to bring about a better understanding, I beg to say, without having consulted at this time any of the New Jersey members of the joint commission, that the first step should be for the Delaware legislature to repeal their act prohibiting non-residents from fishing in our waters, whereupon the joint commission could make an effort to agree upon a concurrent law. It is plain that we cannot have concurrent and uniform legislation for Delaware bay, if each state is to forbid residents of the other state fishing in its waters.

PAST EFFORT TO AGREE.

You might be interested to know that several efforts have been made to have concurrent and uniform laws with the State of Delaware. A few years ago a joint commission of the two states agreed upon a uniform concurrent law, which law was passed by the New Jersey legislature and approved, but the Delaware legislature refused to concur.

Moreover, during Governor Townsend's term as governor, he took up with Governor Sproul of Pennsylvania, and Governor Edge of New Jersey, the matter of fixing a closed season for five years on sturgeon in the waters of the Delaware river and bay, and



DE14751

(No. 1—D 2 E—5M)

STATE OF NEW JERSEY
BOARD OF
FISH AND GAME COMMISSIONERS
TRENTON

#4 G. S. S.

the legislatures of New Jersey and Pennsylvania passed such an act, but the legislature of Delaware refused to concur, and at the session of 1922, the New Jersey legislature repealed the act.

The act of Delaware prohibiting non-residents from fishing in their waters as furnished by Mr. Anderson, is enclosed.

Yours very truly,

J. H. Stratton

Protector.

New Jersey State Archives
Governor Silzer Papers
Box 18 Folder 86

AN ACT TO AMEND CHAPTER 74 OF THE REVISED CODE OF THE STATE OF DELAWARE BY PROHIBITING NON-RESIDENTS OR ALIENS FROM TAKING FISH IN NETS FROM THE WATERS OF THE DELAWARE BAY WITHIN THE JURISDICTION OF THE STATE OF DELAWARE AND PROVIDING A BOAT FOR USE IN ENFORCING THE PROVISIONS OF THIS ACT.

BE IT ENACTED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE STATE OF DELAWARE IN GENERAL ASSEMBLY MET;

Section 1. That chapter 74 of the Revised Code of the State of Delaware be and the same is hereby amended by inserting immediately after 2525 Sec., 168 thereof the following new Section:

2525A. Sec. 168A. It shall be unlawful for any non-resident of the State of Delaware, or any alien, at any time to take or attempt to take edible or food fish of any kind by means of any net of any character or any device or contrivance whatsoever, except with rod, hook and line or hand line, from the waters of the Delaware Bay within the jurisdiction of the State of Delaware. For the purpose of this act all unnaturalized foreign-born residents of this State shall be classed as non-residents of this State, and any person, not an alien who has resided not less than twelve months within this State, shall be deemed to be a resident of this State. Any person violating any of the provisions of this Section, shall, upon conviction thereof, be fined not less than one hundred dollars nor more than five hundred dollars, and costs, together with a forfeiture of all nets, boats and other appliances used. If any person shall fail to pay any fine and costs imposed under the provisions of this act such person shall be committed to the jail of the County where such conviction is had for a period not

exceeding ninety days or until such fine and costs are paid.

For the purpose of enforcing the provisions of this act the Board of Game and Fish Commissioners is hereby authorized, empowered and directed to secure by gift, purchase or otherwise a suitable power-boat to be used exclusively in enforcing the laws of the State of Delaware. The amount which the said Board is authorized to expend for the purpose aforesaid is hereby limited to the sum of Twelve Hundred Dollars, and the said sum of Twelve Hundred Dollars, or so much thereof as may be necessary, is hereby appropriated for the purpose aforesaid from any money in the Treasury of the State of Delaware not otherwise appropriated. The State Treasurer shall pay said sum not exceeding Twelve Hundred Dollars on warrant of the said Board, approved by the Auditor of Accounts.

New Jersey State Archives
Governor Silzer Papers
Box 18 Folder 86

Every Evening
WILMINGTON DAILY COMMERCIAL
ESTABLISHED 1871

DELAWARE GAZETTE
ESTABLISHED 1784

DELAWARE STATE JOURNAL
ESTABLISHED 1832

WILMINGTON DAILY COMMERCIAL
ESTABLISHED 1866

WM. F. METTEN, PUBLISHER

WILMINGTON, DEL.
April 4, 1927.

To His Excellency,

Hon. Robert P. Robinson,

Governor of Delaware.

Dear Sir:

Herewith you will please find enclosed a letter to you regarding the activities of our Fish Commission. In addition thereto we are sending enclosed, two copies of this letter to you. We would appreciate it very much if these copies were forwarded to the speaker of the House and the president pro tem of the Senate in order that they may have some idea of the work in which we have been engaged. With best wishes, I am

Yours very truly,

Harris Samonisky

Harris Samonisky

DE16630

DE Public Archives

1302.7
Gov. Papers
087742

To His Excellency

Hon. Robert P. Robinson, Governor of Delaware.

Dear Sir:

Since our last written report to you in March 1925, we have, as members of a commission, the same being authorized by House Joint Resolution, Chapter 248, Volume 321, Laws of Delaware, given considerable time, thought and effort, to endeavor to draft a bill relating to the catching or taking or attempting to catch or take fish from the waters of the Delaware river, lying between low water marks of the state of Delaware and state of New Jersey, which would be agreeable to the inhabitants of said states as under compact agreement passed by the congress of the United States in 1905, we must have a common right of fishery on the waters of the Delaware river in order to have any law at all, except the laws as were in existence previous to 1905, and only such parts of them as did not interfere with a common right of fishery.

As our compact agreement states, we must have a common right of fishery in the waters of the Delaware river and may have uniform laws relating to fishing on the bay, we have deemed it advisable, as the fishing in the bay appeared as most of our difference, to draw a bill relating to catching or taking or attempting to catch or take fish from the waters of the Delaware river only.

This bill which has been introduced in the senate of the present session of the General Assembly was drawn after considerable communication between the commissions appointed of the state of New Jersey and state of Delaware. On the advice of the attorney general of the state of Delaware, Clarence A. Southerland, Esq., who conferred with

of the state of New Jersey, we are now presenting, with a few changes, the law passed by the state of New Jersey in 1907, and which law we find after frequent consultations with the people of the state of Delaware, who are interested in the fishing industry as a means of livelihood and conservation of food fish, to be as near perfect as a law can be applying to fishing on the waters of the Delaware river.

We believe that the people of the state of Delaware would not be satisfied with any material change in the law as presented and that the state of New Jersey will pass it at its next session of their General Assembly which will be not later than 1928 and possibly sooner. We understand they do not expect to adjourn sine die and may meet again this year.

We wish to assure you that the task of securing uniform legislation is both complicated and arduous, and the present commission believes that the only way we can secure a common right of fishery on the river and uniform laws relating to catching or taking or attempting to catch or take fish from the waters of the bay is by the enactment of two separate acts and the present act of applying to the river will be of great help in future considerations of the bay question.

The Delaware commissioners also desire to state that they entertain sentiments of the best personal regard and respect for all members of the New Jersey commission who are men of unquestionable integrity, ability and high standing in their state; the personal relations of the two commissions have been most pleasant.

In submitting out report to you, the commission is of the opinion that the fishing industry in New Jersey and Delaware is hampered because of the lack of uniform legislation and the confusion which has arisen

since the compact of 1905.

The Delaware commission desires to state that in considering uniform fishing laws it has always had in mind the conservation of food fish and it is only fair to say that the New Jersey commissioners have heartily cooperated in this matter.

This commission deems it proper to call your attention to the fact that for some years and since the passage of the Federal migratory bird law there has been considerable agitation in favor of a migratory fish law which would place the catching and taking of migratory fish under Federal regulation.

Other states beside Delaware and New Jersey, between which navigable waters run, have had great difficulty in agreeing through their State Legislatures upon uniform fish laws and this condition which exists all through the United States has been the cause of the present agitation for Federal control of fishing. Such a Federal law may prove to be the only solution of the difficulty but it may be many years before such Federal control may be made effective.

We wish to take this opportunity to express our thanks to the attorney general of the state of Delaware, Honorable Clarence A. Southerland, for the great amount of interest he has taken in the work of our commission. He has made trips to Trenton to confer with the attorney general of the state of New Jersey and our commission has had numerous conferences with him in working out our problem.

Harris Damowisky
Secretary

April 4, 1927



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Governor's Papers
1927
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May 6, 1938

MEMORANDUM RELATIVE TO CONTROVERSY RESPECTING FISHING IN THE DELAWARE RIVER

A day or two prior to May 5, 1938, Senator Craven of Salem County informed Governor Moore that a number of shad fisherman residing in Salem County had complained that an employee of the Delaware Fish and Game Commission had suggested to one of their number that it was proposed to stop New Jersey residents from fishing for shad in the Delaware River as a result of the failure of the latter to comply with the Delaware law providing for the licensing of fishing boats. (Revised Code of Delaware, 1935, Chapter 74, Sections 80 to 86 inclusive) In part this Act provided:

> "It shall be unlawful for any person, firm or corporation to engage in the business of carrying fishing parties, for hire, in any boat or boats for the purpose of fishing in the waters of the Delaware River, Delaware Bay and that part of the Atlantic Ocean under the jurisdiction of the State of Delaware, without first obtaining an annual license for each boat from the Board of Game and Fish Commissioners of the State of Delaware; provided however, nothing in this section shall apply to boats propelled exclusively by oars."

A license fee of $10.00 for each year was fixed for each boat licensed to a resident of Delaware and a license fee of $50.00 for each year was fixed for each boat licensed to a non-resident of that State. Upon conviction of a violation of the Act by a non-resident of Delaware, a minimum fine of $100.00 was fixed. The regular penalty for violation was a fine of not less than $50.00 nor more than $500.00 together with cost of prosecution and a provision that the offender should suffer the forfeiture of each and every boat or boats used.

Under instructions from Governor Moore, Mr. Burlington (Secretary of the New Jersey Fish and Game Commission), and myself met Attorney General Green of Delaware and the president of the Delaware Fish and Game Commission, Leonard K. Yerker, at Mr. Green's office in Wilmington on May 5, 1938 to discuss the complaint made to Senator Craven above referred to. At this conference, Mr. Yerker stated that his board had in no official way taken any steps to interfere with shad fishing by New Jersey residents in the Delaware River under the above stated law or under any other statute of Delaware. Attorney General Green stated that to his knowledge the State of Delaware did not contemplate interfering under the aforesaid statute with New Jersey residents fishing for shad in the Delaware River and he

informed Mr. Burlington and myself that we were authorized to so inform Governor Moore.

Inquiries made by Mr. Burlington developed that the State of Delaware was at the time engaged in enforcing in certain parts of Delaware Bay the provisions of the so-called "Fishing Party Boat Law" hereinbefore referred to and the New Jersey shad fishermen having learned of the enforcement in the Bay were apprehensive that the Delaware Fish and Game officials might undertake to also interfere with the shad fishing in the River.

No attempt was thereafter made to in any way interfere with inhabitants of New Jersey fishing in the Delaware River but the Fish and Game officials of Delaware continued thereafter to engage, with the use of a power boat, in actively attempting to enforce the so-called "Fishing Party Boat Law" of Delaware in the Delaware Bay, on the Delaware side thereof and in the course of this activity several inhabitants of New Jersey were apprehended and charged with the violation of this statute. As a result of this apprehension and charge, the New Jersey inhabitants made complaint to the Governor and at his request Mr. George Warren, President of the New Jersey Fish and Game Commissioner, and Mr. Stockton of this department, conferred at Wilmington with Attorney General Green. As a result of this conference it was agreed that there would temporarily be no attempt to enforce the so-called "Fishing Party Boat Law" against inhabitants of New Jersey and that the Governors of the two states should designate commissions to agree upon and recommend to the Legislatures of the two states proposed legislation in the way of amending the legislation dealing with fishing in the Delaware River and Bay which had been enacted in 1907 pursuant to a Compact of 1905.

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Department of Law and Safety
Attorney General's Office
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238

4

May 24, 1938

Honorable David T. Wilentz
Attorney General
State House

Attention: Mr. Solan

Dear Mr. Solan:

We had three complaints come into the office today from owners of party boats living in New Jersey who were arrested by officers of the State of Delaware in the Delaware Bay on the Delaware side of the channel. These officers boarded the boats with firearms exposed and forced the captain of the party boats to the Delaware shore where they were tried and fined from $50.00 to $100.00 each.

We have no reciprocal law in New Jersey, as we do not charge a license fee to party boats.

This is the first time that there has been a conflict in our laws that we know about, and we are wondering whether under the old compact and concurrent laws they would have a clear right to arrest our New Jersey residents in that we have no reciprocal law giving us rights to arrest people from Delaware.

Yours very truly,

H. J. Burlington
Executive Secretary

HB.HP

P.S. Just had a telephone message from Mr. Yerger stating that there are 200 Delaware boat captains in the State House at Delaware protesting the action of the officials in arresting New Jersyites in their waters because of the fact that New Jersey does not require a permit from citizens of Delaware in our waters. He stated that he will suggest that all activity in arrests be stopped until both New Jersey and Delaware can get together on some agreement.

We are enclosing copy of letter regarding this matter to our Attorney General, for your further information.

It would appear that the only way to get this Delaware Bay matter cleared up would be through a consultation between the Attorneys General of both States.

Very respectfully yours,

H. J. Burlington
Executive Secretary

p
Enc.

P.S. George Warren has just come in from the Attorney General's office and they assure him that they will take the matter up immediately with the Attorney General of Delaware and will do everything possible to work out a satisfactory solution of the matter.

New Jersey State Archives

S. QUADLING, President CAPT. CON. GEHRING, Secretary CAPT. WALTER LIPPINCOTT, Treasurer

207

# FORTESCUE CAPTAINS' ASSOCIATION, Inc.

FORTESCUE, N. J.

May 27, 1938

morable Govenor Harry A. Moore,
enton,N.J.

ur Honor:

On Sunday May 22nd, 1938, while fishing with hook and line the western side of the channel of the Delaware Bay, two of our rsey Party Boat fishermen were illegally boarded by the Delaware ate Game Wardens and forced under protest to proceed to Bower's each with their parties aboard numbering twenty-two persons. The ptains then taken to Camden, Del. where they were convicted before Justice of the Peace and fined $100.00 and costs each. One Captain ing sent to jail.

These Wardens all being armed but on a private boat and ring the trip from fishing grounds to Delaware, ran into and damaged e of the Jersey Boats belonging to Capt. Paul Hickman, Fortescue,N.J., that he will have to loose time from fishing to make repairs, and yet have in no way compensated Captain Hickman for damaged done to s boat.

These Captains had no idea that they were violating any law at so ever, they are licensed by the United States Goverment to ply eir trade in any of the waters of the United States, therefore we peal to you to contact our neighboring Govenor so that we may get elief from this present situation.

In Jersey we have no law that would stop a handline fisherman om Delaware, fishing in Jersey waters and would not want a law that uld prohibit our neighbors from fishing with us Jersyman.

In Delaware the fisherman do not want the law they have and ey want it changed as soon as possible; attached, you will find clipping which is self explanatory. This clipping was taken from e Bridgeton Evening News, May 26th, 1938.

Therefore, in behalf of J ersey and Delaware Sport Fishermen beseech you to take immediate action in our behalf as you did with e Net Fisherman in the Delaware River so that we Jerseyman may fish Delaware Waters and Delaware Fisherman in Jersey Waters without ing molested.

Respectfully,
FORTESCUE CAPTAINS ASSN. INC.

Roy S. Quadling President.

tary: C. T. Gehring

New Jersey State Archives

205

June 1st, 1938.

Hon. A. Harry Moore, Governor,
State House,
New Jersey.

Your Honor:

You will find enclosed a communication from the Fortesque Captains' Association, Incorporated.

They brought this matter to my attention Monday and wished me to communicate with you immediately, but as I had hearings in Jersey City, it was impossible for me to bring it to your attention personally. However, I would appreciate having it given as careful and prompt attention as possible.

It seems that at one time, depending upon the wind and tides, all the fish are along the New Jersey shore and maybe within a few hours time they are on the Delaware shore. New Jersey has always allowed the small party boat captains and fishermen to fish along the Jersey shore and this is the first time that Delaware has interfered with the New Jersey fishermen.

I advised them to enter a complaint with the Fish and Game Commission here in New Jersey. They have done that but felt that your intercession with the Fish and Game Commission would be the thing that would really count.

It effects so many it is really important that some stand be taken so that these fishermen really know what they can and cannot do.

I will greatly appreciate hearing from you as soon as this matter can be settled.

Respectfully,

Thelma A. Parkinson

THELMA A. PARKINSON.

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New Jersey State Archives

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FISHERMAN COMPLAINS

Editor Evening News:

An outrage was pulled off on the [illegible] and [illegible] fishermen of New Jersey by the Delaware Fish and Game Association. Three boats [illegible] arrested Sunday, May 22. All [illegible] boat licenses to carry fishing parties for hire to fish in the Delaware Bay and tributaries [illegible] to ply their honest [illegible] to earn their living, not [illegible] how they could possibly be violating any sane laws. They were captured and hauled before a magistrate and fined $100. All are American citizens.

I personally know no fisherman [illegible] who [illegible] these [illegible] fishing in the Delaware Bay and tributaries. They [illegible] not after any fish stocked by [illegible] Fish and Game Association of Delaware who extract from we [illegible] $10 because we carry fishing parties for hire to fish in the Delaware Bay and tributaries. Yet we are all American citizens and have government permits to ply our trade in these waters. There is nothing to justify us in giving away $10 to this association for we derive no benefit from them and the episode Sunday is calculated to breed hatred from our Jersey neighbors and their Sunday arrests smacks strongly of [illegible] the seeds of anarchy.

[illegible] Delaware fishermen are [illegible] to know when such an [illegible] law was ever passed and [illegible] though this fishing [illegible] was hatched by two [illegible] hoping to [illegible] trade [illegible] $20 [illegible] the really [illegible] bright [illegible] some [illegible] this [illegible] them [illegible] our [illegible] They, the [illegible] tell us [illegible] like [illegible]

[illegible] restaurants [illegible]

New Jersey State Archives

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June 15, 1938.

Hon. David T. Wilentz,
265 Madison Ave.,
Perth Amboy, N. J.

My dear Attorney General:

Mr. George Warren, Captain Burlington and I met with the Attorney General of Delaware and members of the Fish and Game Commission of that State today, and after some argument over the legal aspect of the situation, we obtained an agreement from them to the effect that they would not interfere with Jersey boat parties fishing in Delaware waters, pending the appointment by the Governor of a Commission to formulate concurrent legislation applicable to both States reviewing the whole subject.

As it appears that it is unlikely that we could get a resolution through the Legislature tomorrow, authorizing the appointment of such a commission, particularly with an appropriation, it was agreed that the Governor should appoint as soon as possible this Commission, and the Fish and Game Commission would stand to advance the necessary expenses until legislation can be enacted.

From the attitude of the Attorney General and the members of the Delaware Commission, this was really a very good solution of the whole affair. Upon our arrival they were satisfied that their laws on this subject were binding and when we left they were apparently convinced that our contention that the laws subsequent to the compact were not binding in either State - it was then simply a question to provide for some agreement that would satisfy both Fish and Game Commissions.

They have reserved a certain portion of the waters where Jersey boats will be notified that they cannot fish, and also that Jersey party boats cannot land on the Delaware shores to take out Delaware parties. However, the waters that they did reserve were not used by Jersey boats to any extent and the main source of supply of fish is now accessible to the Jersey party boats.

In other words, they are not going to enforce the statute under which the Jersey men were arrested until the new commission files its report.

Mr. Warren is going to get in touch with the Governor about the personnel of the commission as soon as possible. I tried to report to him this afternoon but find he could not be reached.

With kindest regards,

Very truly yours,

RS:M

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**Box 8**

DE21623

1967

# The State of Delaware

*To* P. Warren Green

*Of* New Castle *County, Greeting:*

**Know You,** *That reposing special trust and confidence in your knowledge, integrity, prudence and ability, we have constituted and appointed, and by these presents do constitute and appoint you, the said*

P. Warren Green

*To be* a member of the Commission to Study Uniform Laws Relative to Fishing in the Delaware Bay, to serve during the pleasure of the Governor

*resident at* Wilmington, New Castle *County, Delaware*

*giving hereby and granting unto you the said*

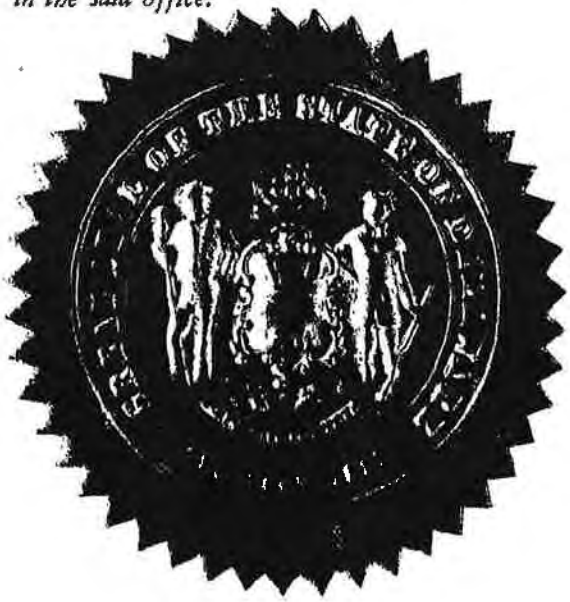
P. Warren Green *full power and authority to execute and discharge the said office*

of member of the Commission, aforesaid

*in all the several parts and branches thereof and keeping of all records, books, papers and writing whatsoever to the said office belonging:*

## To Hold, Exercise and Enjoy the Said Office

*With all fees, perquisites, emoluments and advantages thence lawfully arising, or thereunto of right in anywise appertaining, until your term therein, according to law, shall of course expire; you behaving yourself well so long in the said office.*



**In Witness Whereof,** *The* **Great Seal of the State of Delaware** *is hereunto affixed.*

**Witness** Richard C. McMullen *Esquire*

*Governor of the said State, at Dover, the*

twenty-third *day of* June

*in the year of our Lord one thousand nine hundred and*

thirty-eight *and in the year of the Independence of the United States of America, the one hundred and* sixty-second

Richard C. McMullen

*Secretary of State*

*BY THE GOVERNOR:*

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1915 Code p 216

DE16612

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BC # 455 11 1

STATE OF DELAWARE
EXECUTIVE DEPARTMENT
DOVER

RICHARD C. McMULLEN
GOVERNOR

June 17, 1938

Hon. P. Warren Green,
Attorney-General,
Wilmington, Delaware.

My dear Mr. Green:

I wish to express my thanks for your opinion relative to the questions arising through the action of our Game and Fish Commission and the fishermen of New Jersey.

In naming the Commission to handle this matter, it would please me very much if you could serve as one of the members.

Yours very truly,

Richard C. McMullen

Governor.

ejn.

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Attorney General

Gen. admin. Files 1930-48

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# The State of Delaware

## Office of the Attorney General

June 28, 1938

Hon. Charles L. Terry, Jr.
Secretary of State
Dover, Delaware

Dear Charles:

Governor McMullen writes that he has appointed you, Wilbert Rawley and myself as a Commission to study the fishing laws applying to the Delaware River and Bay.

It is my understanding that Governor Moore of New Jersey will appoint a like Commission and thereafter we should meet as soon as possible.

The other day representatives of New Jersey conferred at my office and they raised the question whether the State of Delaware could make effective the Fishing Party Boat Law unless the State of New Jersey passed an identical law.

It occurs to me that at the very beginning it will be necessary for the Jersey Commission and for us to determine the force and effect of Article IV of the Compact of 1905. You will find the Compact fully set forth in the 1915 Revised Code at pages 1214 - 1218.

You will note that Article IV of the Compact provides for the appointment of Commissions by both States to draft uniform laws to regulate the catching and taking of fish in the Delaware River and Bay. It is then provided:

> "Upon the adoption and passage of said laws so recommended by the respective Legislatures of said two States, said laws shall constitute the sole laws for the regulation of the taking and catching of fish in the said River and Bay between said States. Said laws shall remain in force until altered, amended or repealed by concurrent legislation of the said two States."

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In the 1935 Revised Code at page 669, you will find a historical treatment by the Code Commissioners, and therein it is stated that the first uniform law was Chapter 146 of 23 Del. Laws, approved April 23, 1907. The next paragraph states that in 1915 the existing laws were repealed and new sections substituted in lieu thereof, and I especially direct your attention to the concluding paragraph immediately before Code paragraph 2982 to the following effect:

> "The law now in force in the State of Delaware, regulating the catching and taking of fish in the Delaware River and the Delaware Bay, consists of the law as found in 28 Del. Laws Ch.203, and the various amendments and additions subsequently made thereto by later acts, as hereinabove stated, and is contained in the following Sections 181 to 211, inclusive, on this Chapter."

If you will examine Chapter 203 of 28 Delaware Laws you will note that the last paragraph thereof is as follows:

> "The provisions of Sections 143 to 168, inclusive, as hereby enacted and amended, shall go into effect upon the approval hereof by the Governor of the State of Delaware."

Further, that while the provisions of most of the sections are identical with the law of 1907, there was an important addition to Par. 2502 Section 145, which enters greatly into the present question; said addition being:

> "And nothing herein contained shall be construed to give to the inhabitants of the State of New Jersey a common right of fishery with the inhabitants of the State of Delaware in the waters of the Delaware Bay."

It is my understanding that on numerous occasions both the State of Delaware and the State of New Jersey have amended the original uniform law by adding thereto new sections which have been done without the concurrence of the other State.

It, therefore, seems to me that we first must determine whether under the hereinbefore quoted provisions of Article IV of the Compact, the original law concurred in

by both of the States is the sole law regulating the taking and catching of fish in the River and Bay and remains the sole law until it is altered, amended or repealed by concurrent legislation of the two States. Also how far it was intended that the words "taking and catching of fish" should apply, and especially whether either State has the power to enact legislation that does not directly, but only indirectly, appertain to the taking and catching of fish.

I believe you can see the necessity of reaching such a determination, for if only those laws that have been concurred in by both States are valid, then the provision of law hereinbefore quoted as part of Section 145 passed in 1915, denying to the State of New Jersey a common right of fishery with the inhabitants of this State in the waters of the Delaware Bay, has no force and we are required to permit New Jersey fishermen to fish in the Delaware Bay upon equal terms with the inhabitants of this State, although under the Compact the common right of fishery only was granted in the Delaware River.

As soon as convenient to you, will you kindly write me, or let me know, when we can sit down and confer over this subject? In the meantime, I propose seeing Mr. Robert H. Richards, who, I believe, is the only living member of the original Commission, in order that I may ascertain from him his views on the subject matter of this letter.

Very truly yours,

Attorney General

PWG:w

GDE

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STATE OF NEW JERSEY

BOARD OF FISH AND GAME COMMISSIONERS

TRENTON

June 6, 1938

Honorable A. Harry Moore, Governor
State House
Trenton, New Jersey

My dear Governor:

In reply to your esteemed letter of June 2 with enclosures from Miss Thelma Parkinson and the Fortescue Captains' Association, Inc. which we are returning herewith, beg to say that on May 24 we took up the matter of arrests of New Jersey boat captains with the Board of Game and Fish Commissioners at Dover, Delaware.

At that time a number of Delaware boat captains appeared at the State House at Delaware protesting the arrest of New Jersey residents for fishing with party boats in the waters of the Delaware Bay under the jurisdiction of the State of Delaware, they, no doubt feeling that New Jersey would retaliate.

These arrests were made under the provisions of the Delaware law requiring a party boat license from both residents and non-residents.

As a matter of fact, New Jersey has no law requiring a license from either residents or non-residents for fishing party boats in the Delaware Bay, and therefore, there could not have been any retaliation.

The President of the Delaware Commission, Mr. Yerger, called us on the same day to find out what might be done regarding this protest. We advised Mr. Yerger that under the circumstances we thought they should not continue to enforce this law.

On May 31, we received a letter from the Secretary of the Delaware Board of Game and Fish Commissioners stating that the Attorney General of Delaware was consulted relative to enforcing this law in the Delaware Bay and that it was his opinion that their Board can do nothing but enforce this law.

New Jersey State Archives

STATE OF DELAWARE
EXECUTIVE DEPARTMENT
DOVER

RICHARD C. McMULLEN
GOVERNOR

June 24, 1938

Hon. P. Warren Green,
Attorney-General,
Wilmington, Delaware.

Dear Mr. Green:

I have today appointed the Hon. Charles L. Terry, Jr., of Dover, and Wilbert Rawley, Leipsic, Delaware, to serve with you as a three member Commission to Study uniform laws relative to fishing in the Delaware Bay, and have advised Governor Moore as per your advice.

As you also advise an early meeting date for this Commission, will you please call a meeting at your convenience?

Yours very truly,

Richard C. McMullen.

Governor.

ejn.

DE Public Archives

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Attorney General
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June 28th,
1938

My dear Governor McMullen:

I have today appointed a commission of three to determine all matters relative to the fishing reghts in the Delaware Bay, and also to determine the disputed rights regarding the Delaware boundary line as it applies to the Delaware River, and to make recommendations regarding any necessary legislation.

The members of the commission are:

Mr. George C. Warren, Jr., President
Board of Fish and Game Commissioners, Trenton

Mr. John Bolan, Assistant Attorney General,
Attorney General's Office, Trenton

Miss Thelma Parkinson, Vineland, N. J.

Sincerely yours,

(A. Harry Moore)

Governor

Honorable Richard C. McMullen
Governor of Delaware
Dover, Delaware

AHN:FHR

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STATE OF DELAWARE
DEPARTMENT OF STATE
DOVER

CHARLES L. TERRY, JR.
SECRETARY OF STATE

August 5, 1938

Hon. P. W. Green,
Attorney General,
Wilmington, Delaware.

Dear Perc:

Tuesday, August 16, at 2: P. M. at the Traymore Hotel, Atlantic City, has been the time and place designated for the meeting of our commission with the Jersey Commission. Will you please arrange to be present at that time?

With kindest personal regards,

Sincerely yours,

Charles L. Terry Jr.

Secretary of State.

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# The State of Delaware

Office of the Attorney General

August 9, 1938.

Hon. Charles L. Terry, Jr.,
Secretary of State,
Dover, Delaware.

Dear Charles:

I have your note that there will be a meeting of the Delaware Commissioners with the Jersey Commissioners on Tuesday, August 16th. at 2 P.M. at the Traymore Hotel, Atlantic City, relative to the fishing laws applicable to the Delaware River and Bay, and I shall arrange to be present.

I shall assume that you are in touch with Mr. Rawley, the other Commissioner, and you will make arrangements especially for transportation. If you have no other means I would suggest that we have either the State Detective of Kent County or the State Detective of New Castle County to drive us, and if you conclude to do so, will you kindly notify Col. Storey or me of these arrangements.

Most sincerely yours,

Attorney General.

PWG*b

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# The State of Delaware

## Office of the Attorney General

August 18, 1928.

Game and Fish Commission,
Dover, Delaware.

Dear Sirs:

Although you may have been informed by Mr. Wilbur Rawley, a member of your Commission, that the three Commissioners appointed by the Governor of this State, relative to the fishing laws passed pursuant to the Compact of 1905, met with the Commissioners of the State of New Jersey appointed by Governor Moore for a like purpose, which meeting was held in Atlantic City on Tuesday, August 16th.

It is the opinion of the representative of the Attorney General's office of New Jersey and my opinion that only those laws are valid which have been concurred in both by the State of New Jersey and the State of Delaware relating to the taking and catching of fish in the Delaware River and Bay.

Article 4 of the Compact of 1905 provided for the appointment of Commissioners representing both States for the purpose of drafting uniform laws, said article further provided:

> "Upon the adoption and passage of said laws as recommended by the respective Legislature of said two States said laws shall constitute the sole laws for the regulation of the taking and catching of fish in the said river and bay between said States. Said laws shall remain in force until altered, amended or repealed by concurrent legislation of the said two States."

I find that what purports to be the uniform laws as published in your pamphlet of the Game and Fish Laws are not the uniform laws passed by this State and concurred in by New Jersey, but a purported amendment thereto passed in 1915, being Chapter 203 of 28 Delaware Laws, p. 598. The last section thereof being as follows:

COPY

"The provisions of Section 143 to 168, inclusive, as hereby enacted and amended, shall go into effect upon the approval hereof by the Governor of the State of Delaware".

As before stated, it is our opinion that the Compact requires reciprocal enactment by Delaware and New Jersey, and as indicated, the amendment of 1915, purporting to make the laws effective upon the approval of the Governor of the State of Delaware without the concurrence therein by the State of New Jersey, violated the terms of Article 4 of the Compact of 1905 and are not valid.

The substance of the meeting of last Tuesday was that the Commissioners will confer with the Game and Fish Commissions of their respective States in order to review the existing laws and to determine what provisions should be repealed, amended or supplemented.

May I therefore ask your Commission to secure a copy of the uniform laws which were approved by Delaware and New Jersey and make a study thereof, in order to determine in what manner said laws should be changed. You will find these uniform laws concurred in by Delaware and New Jersey in Chapter 146 of 24 Delaware Laws, p. 272. In making this study I would submit to you the advisability of considering the attempt to amend these laws by the herebefore mentioned Chapter 208 of 28 Delaware Laws, p. 598.

In this connection I would also suggest a consideration of Chapter 193, 32 Delaware Laws, approved March 14, 1923, by which the General Assembly of Delaware gave approval to suggested new uniform laws, which while being enacted by the General Assembly of this State were never enacted by the State of New Jersey and therefore did not become effective. Similar action was taken in 1927 and a proposed uniform law, being Chapter 178 of 35 Delaware Laws, was approved by the General Assembly of this State, but as New Jersey did not enact it it likewise became ineffective.

Further, for your information, I notice that what purports to be Section 189 was purportedly amended by Chapter 201 of 40 Delaware Laws; Section 193 purportedly amended by Chapter 175 of 35 Delaware Laws; Section 195 purportedly amended by Chapter 180 of 30 Delaware Laws; Section 200 purportedly amended by Chapter 238 of 36 Delaware Laws; Section 205 purportedly amended by Chapter 86 of 32 Delaware Laws, Sec. 16; and Section 206 purportedly amended by Chapter 176 of 35 Delaware Laws.

In addition the Compact of 1905 provides for uniform laws regulating the taking and catching of fish in the Delaware River and Bay. Therefore, if there is any general law, although not purporting to be an amendment to the uniform laws but contains

provisions which would regulate the taking and catching of fish in the Delaware River and Bay, such should be considered in connection with the present study.

This study should be made immediately and when it has been done I would suggest an immediate conference with the Commissioners of this State appointed to consider the uniform laws and it may be that at that conference it would be advisable to have the New Jersey Commissioners and the Game and Fish Commission of that State present in order that we could determine the probability of agreement on changes for new uniform laws.

Yours very truly,

Attorney General.

PWG*b

COPY

1935 Code Par. 2984, Section 183.

"2984. Sec. 183. Territorial Limits, Rights and Jurisdiction Unaffected; Oyster and Shell Fish Industry Unaffected: - Nothing herein contained shall affect the territorial limits, rights or jurisdiction of either of said States of, in or over the Delaware River, or the ownership of the subaqueous soil thereof, except as is expressly set forth in the compact between the said States; nor shall anything herein contained affect in any way the planting, catching or taking of oysters, clams, or other shell fish, or interfere with the oyster industry, as now or hereafter carried on under the laws of either of said States. And nothing herein contained shall be construed to give to the inhabitants of the State of New Jersey a common right of fishery with the inhabitants of the State of Delaware in the waters of the Delaware Bay."

The first sentence ending with the words "either of said States" is Section 3 of the Uniform Laws approved April 23, 1907, being Chapter 146 of 24 Delaware Laws, p. 272.

The last sentence, underscored as above, was added by an Act approved March 16, 1915, being Chapter 203 of 28 Delaware Laws, p. 598, entitled "An Act to amend Sections 2500 to 2525 of the Revised Statutes of the State of Delaware in relation to the catching and taking of fish in the waters of the Delaware River and Bay lying between the States of Delaware and New Jersey." The concluding paragraph of this Act of 1915 being as follows:

"The provisions of Sections 143 to 168, inclusive, as hereby enacted and amended, shall go into effect upon the approval hereof by the Governor of the State of Delaware."

The concluding paragraph of the Act to provide Uniform Laws approved in 1907 was as follows:

"This Act shall not become operative until the Legislature of the State of New Jersey shall have passed and the Governor of that State shall have approved of a similar law, agreed upon by the Commission, as recited in the preamble of this Act."

DE Public Archives

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Attorney
1930-1948
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STATE OF NEW JERSEY
BOARD OF FISH AND GAME COMMISSIONERS
GEORGE C. WARREN, JR.
PRESIDENT

February 14, 1939

Honorable A. Harry Moore
Governor of New Jersey
Trenton, New Jersey

Dear Governor Moore:

In July of last year, you communicated with us, stating that you were anxious to adjust a way satisfactory to inhabitants of this State who engage in fishing in the Delaware river and bay, a controversy which had its inception in attempts by the Board of Game and Fish Commissioners of the State of Delaware to enforce the laws of that State regulating fishing in these waters, and you asked us to join with a Commission appointed by the Governor of Delaware, to the end that we might investigate the subject matter of the controversy and, without loss of time, suggest, if possible, peaceful ways and means of terminating the dispute.

As tending to promote a fruitful discussion of the issues with the representatives of the State of Delaware, at the outset we made an examination of the legislation of the two States dealing with the regulation of fishing in the river and the bay and following is a brief summary of our findings in this direction: We found that almost from the beginning of statehood, Delaware and New Jersey had engaged in disputes concerning the fishing rights of their respective inhabitants in the river and bay; that during the final quarter of the last century this dispute was presented to the United States Supreme Court; that in order to terminate this litigation the legislatures of the two States in 1905 ratified a Compact (known as the Compact of 1905) which Compact was approved by Congress on March 21, 1905; that this Compact contained provisions for a joint commission to draft uniform laws to regulate the catching and taking of fish in the river and in the bay; that in 1907 such legislation was drafted by the Joint Commission and was enacted into law by the legislatures of the two States (Chapter 131, P.L. 1907 is the New Jersey Uniform Law).

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STATE OF NEW JERSEY
BOARD OF FISH AND GAME COMMISSIONERS
GEORGE C. WARREN, JR.
PRESIDENT



We ascertained further that due to the inability of the legislatures of the two contracting States to agree as to amendments and changes in this uniform legislation of 1907 during the years intervening since its enactment, and due to the legislation therein not meeting present day requirements, the said Uniform Acts of 1907 have fallen into disuse and that, in fact, during the intervening years, each State has adopted new legislation on the subject, which legislation has not been concurred in by the other State. In addition to this unfortunate situation, in our interchange of views with the members of the Delaware Commission we found that there existed differences of opinion between us respecting the relative rights under existing statutes, of the inhabitants of the two States in the matter of fishing in the river and bay.

Our examination and consideration of the subject leads us to the conclusion that in the enactment of this independent legislation there lurks the seed of inevitable controversy between the enforcing officials of the two jurisdictions and of eventual disruption of good relations between the States. As a matter of fact we found that the trouble experienced by the New Jersey fishermen during the past summer grew out of the enforcement of a law of Delaware prohibiting fishing in unlicensed party boats in the river and bay, there being no similar law enacted in New Jersey.

It is our decided opinion that the way out of pending and future controversies between the States is a renewal of the policy of common action initiated by the States when they enacted the Uniform Statutes of 1907. As we view it, in the regulation of fishing rights on boundary waters no good reason exists for diversity of legislative treatment, and therefore that the challenge of the situation is to endeavor to bring said Uniform Laws of 1907 up to date by means of amendments in line with current policy respecting the regulation of fishing.

We found that the members of the Delaware Commission were likewise of the belief that this was the proper line of approach to be taken to remove the subject from the arena of controversy

DE02755

Accordingly, our discussions with the representatives of Delaware have centered about the ways in which the Uniform Laws of 1907 may be altered and amended so as to satisfy the requirements of public policy now existing in the two States on this subject of regulating fishing in these waters.

In performing this part of our work we availed ourselves of the experience and technical skill of the personnel of the agencies of the two States engaged in the administration of the laws respecting fishing.

Our joint efforts have resulted in the drafting of an amendment to the said Uniform Act of 1907 in a form suitable for enactment in New Jersey and a copy of this draft is attached. This draft has been prepared in collaboration with the members of the Delaware Commission who have assured us that they will recommend, for enactment by the legislature of that State, a bill containing similar regulatory provisions to the provisions embodied in this draft. Referring to the draft attached, attention is directed to a provision providing for the licensing of boats used by fishing parties in these waters. There is no law of this character in New Jersey at present although Delaware has had such a law for a number of years. In including this provision in the attached draft we were influenced by the fact that it seems a proper subject of regulation and also by reason of the fact that the representatives of Delaware were of the opinion that the Legislature of that State would be unwilling to eliminate the provision from the body of its statute law. Under this draft the fee charged inhabitants of New Jersey is $10.00 per boat. Under the existing Delaware law this charge is fixed at $50.00 per boat.

In conclusion we strongly urge that the suggested bill be enacted into law in that thereunder the inhabitants of this

62

STATE OF NEW JERSEY
BOARD OF FISH AND GAME COMMISSIONERS
GEORGE C. WARREN, JR.
PRESIDENT

-4-

State will retain the decided advantages respecting fishing in these waters which inured to them under this Compact of 1905.

Sincerely yours,

DE02757

New Jersey State Archives
Special Correspondence Governor Moore
Fishing Regulations Delaware River
1938-1939

DE02758

1996

DE02816

1997

## POUND FISHERIES SUMMARY

The following is a summary of the pound fisheries' report for the calendar year ending December, 1938:

| | |
|---|---|
| Approximate value of all pounds | $812,200.00 |
| Proceeds derived from sale of fish | $781,414.14 |
| Number of pounds of fish caught and disposed of | 81,688,969 |

Licenses issued:

| | |
|---|---|
| Atlantic Ocean | 142 |
| Sandy Hook and Raritan Bay | 32 |
| | 174 |
| Number of pounds operated | 161 |
| Number of men employed | 420 |

## MENHADEN AND FOOD FISH LICENSES

In accordance with the law regulating the licensing of vessels to take menhaden and food fish, there were 54 vessels licensed to take menhaden with purse or shirred nets within the three mile limit, and 58 vessels licensed to take food fish with purse or shirred nets and beam trawls beyond the two mile limit, during the calendar year of 1938.

## STRIPED BASS

Under the law passed last year requiring licenses for the netting of striped bass, there were 1,706 licenses issued by the Board to 268 persons, 1,587 being for gill nets, 53 for fyke nets, and 66 for hauling seines.

## EELS

Under permits issued by the Department for eel pots and fish baskets, 4,935 pounds of eels were taken during the year 1937.

## DELAWARE BAY CONTROVERSY

The special commission appointed by Governor A. Harry Moore last year to act in conjunction with a similar commission appointed by the Governor of Delaware in making a study of the laws of the two States with a view to having concurrent laws, met several times during the year, and the following is the final report of the New Jersey commission as submitted to the Governor:

February 14, 1939.

Honorable A. Harry Moore,
Governor of New Jersey,
Trenton, New Jersey.

Dear Governor Moore:

In July of last year, you communicated with us, stating that you were anxious to adjust a way satisfactory to inhabitants of this State who engage in fishing in the Delaware river and bay, a controversy



which had its inception in attempts by the Board of Game and Fish Commissioners of the State of Delaware to enforce the laws of that State regulating fishing in these waters, and you asked us to join with a Commission appointed by the Governor of Delaware, to the end that we might investigate the subject matter of the controversy and, without loss of time, suggest, if possible, peaceful ways and means of terminating the dispute.

As tending to promote a fruitful discussion of the issues with the representatives of the State of Delaware, at the outset we made an examination of the legislation of the two States dealing with the regulation of fishing in the river and the bay and following is a brief summary of our findings in this direction: We found that almost from the beginning of statehood, Delaware and New Jersey had engaged in disputes concerning the fishing rights of their respective inhabitants in the river and bay; that during the final quarter of the last century this dispute was presented to the United States Supreme Court; that in order to terminate this litigation the legislatures of the two States in 1905 ratified a Compact (known as the Compact of 1905) which Compact was approved by Congress on March 21, 1907; that this Compact contained provisions for a joint commission to draft uniform laws to regulate the catching and taking of fish in the river and in the bay; that in 1907 such legislation was drafted by the Joint Commission and was enacted into law by the legislatures of the two States (Chapter 131, P. L. 1907 is the New Jersey Uniform Law).

We ascertained further that due to the inability of the legislatures of the two contracting States to agree as to amendments and changes in this uniform legislation of 1907 during the years intervening since its enactment, and due to the legislation therein not meeting present-day requirements, the said Uniform Acts of 1907 have fallen into disuse and that, in fact, during the intervening years, each State has adopted new legislation on the subject, which legislation has not been concurred in by the other State. In addition to this unfortunate situation, in our interchange of views with the members of the Delaware Commission we found that there existed differences of opinion between us respecting the relative rights under existing statutes, of the inhabitants of the two States in the matter of fishing in the river and bay.

Our examination and consideration of the subject leads us to the conclusion that in the enactment of this independent legislation there lurks the seed of inevitable controversy between the enforcing officials of the two jurisdictions and of eventual disruption of good relations between the States. As a matter of fact we found that the trouble experienced by the New Jersey fishermen during the past summer grew out of the enforcement of a law of Delaware prohibiting fishing in unlicensed party boats in the river and bay, there being no similar law enacted in New Jersey.

It is our decided opinion that the way out of pending and future controversies between the States is a renewal of the policy of common action initiated by the States when they enacted the Uniform Statutes of 1907. As we view it, in the regulation of fishing rights on boundary waters no good reason exists for diversity of legislative treatment, and therefore that the challenge of the situation is to endeavor to bring said Uniform Laws of 1907 up to date by means of amendments in line with current policy respecting the regulation of fishing.

We found that the members of the Delaware Commission were likewise of the belief that this was the proper line of approach to be taken to remove the subject from the arena of controversy. Accordingly, our discussions with the representatives of Delaware have centered about the ways in which the Uniform Laws of 1907 may be altered and amended so as to satisfy the requirements of pub-

policy now existing in the two States on this subject of regulating fishing in these waters.

In performing this part of our work we availed ourselves of the experience and technical skill of the personnel of the agencies of the two States engaged in the administration of the laws respecting fishing.

Our joint efforts have resulted in the drafting of an amendment to the said Uniform Act of 1907 in a form suitable for enactment in New Jersey and a copy of this draft is attached. This draft has been prepared in collaboration with the members of the Delaware Commission who have assured us that they will recommend, for enactment by the legislature of that State, a bill containing similar regulatory provisions to the provisions embodied in this draft. Referring to the draft attached, attention is directed to a provision providing for the licensing of boats used by fishing parties in these waters. There is no law of this character in New Jersey at present although Delaware has had such a law for a number of years. In including this provision in the attached draft we were influenced by the fact that it seems a proper subject of regulation and also by reason of the fact that the representatives of Delaware were of the opinion that the Legislature of that State would be unwilling to eliminate the provision from the body of its statute law. Under this draft the fee charged inhabitants of New Jersey is $10.00 per boat. Under the existing Delaware law this charge is fixed at $50.00 per boat.

In conclusion we strongly urge that the suggested bill be enacted into law in that thereunder the inhabitants of this State will retain the decided advantages respecting fishing in these waters which inured to them under this Compact of 1905.

Sincerely yours,
(Signed) GEORGE C. WARREN, Jr.,
THELMA PARKINSON,
JOHN SOLAN.

Accordingly, the amendment drafted by the Joint Commission was presented to the New Jersey Legislature and was introduced as Senate Bill No. 201 on February 27, 1939. However, up to the present time it has failed to become a law, as has the bill introduced in the Delaware Legislature.

## POLLUTION

There was a noticeable decrease in the pollution of our streams during this fiscal year as is evidenced by the fact that only seven abatement notices were sent to those who polluted our waters. There were five prosecutions against the persons who failed to heed the notice to stop polluting the streams of this State.

## SHAD

There was an increase of 2,198 in the number of shad caught in the Delaware during the 1939 season. A total of 96,002 of these fish was taken, the value being $2,165.04 above last year. It is noted that there was a great decrease in the number of men and boats engaged in the shad fishing industry in the Delaware River during the year, and also in the Hudson River.

In the Hudson River there was an increase of 97,688 shad taken, or a total of 258,177 pounds, although the value of the fish decreased $19,353.12.



### DELAWARE RIVER SHAD INDUSTRY

| County | Boats 1938 | Boats 1939 | Nets 1938 | Nets 1939 | Men Engaged 1938 | Men Engaged 1939 | Number of Shad Caught 1938 | Number of Shad Caught 1939 | Value of Shad Caught 1938 | Value of Shad Caught 1939 | Value of Boats & Nets 1938 | Value of Boats & Nets 1939 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Cumberland .. | 150 | 56 | 150 | 179 | 175 | 71 | 49,059 | 38,235 | $17,658.00 | $18,618.95 | $14,725 | $14,955 |
| Salem ........ | 26 | 31 | 26 | 30 | 58 | 62 | 32,367 | 44,890 | 18,384.80 | 21,845.00 | 12,000 | 12,950 |
| Gloucester ... | 6 | 8 | 6 | 2 | 12 | 6 | 2,200 | 1,160 | 1,220.00 | 580.80 | 1,200 | 1,180 |
| Camden ...... | 10 | 14 | 10 | 14 | 20 | 28 | 6,800 | 2,450 | 4,060.00 | 1,235.00 | 1,500 | 1,050 |
| Burlington ... | 10 | 8 | 10 | 8 | 30 | 17 | 442 | 364 | 331.50 | 431.00 | 685 | 610 |
| Mercer ....... | 11 | 8 | 7 | 8 | 26 | 31 | 3,879 | 2,279 | 3,150.00 | 950.00 | 1,475 | 1,170 |
| Hunterdon ... | 11 | 6 | 6 | 6 | 27 | 30 | 9,126 | 5,338 | 4,396.41 | 2,740.00 | 1,025 | 925 |
| | 234 | 126 | 215 | 246 | 348 | 245 | 93,804 | 96,002 | $44,221.91 | $46,386.95 | $32,460 | $33,060 |
| Increase ...... | | | | 33 | | | | 2,198 | | 2,165.04 | | |
| Decrease ..... | | 98 | | | | 97 | - | | - | | | 400 |

### HUDSON RIVER SHAD INDUSTRY

| Boats 1938 | Boats 1939 | Nets 1938 | Nets 1939 | Men Engaged 1938 | Men Engaged 1939 | Pounds Caught 1938 | Pounds Caught 1939 | Number Shad Caught 1938 | Number Shad Caught 1939 | Value Shad Caught 1938 | Value Shad Caught 1939 | Value Boats & Nets 1938 | Value Boats & Nets 1939 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 185 | 154 | 154 | 125 | 250 | 200 | 1,496,134 | 1,754,301 | 420,985 | 518,821 | [illegible] | [illegible] | [illegible] | [illegible] |

New Jersey State Archives
Commissioners of Fisheries Annual Reports 1871-1885

2000

DE02819

Mr. Chas Besore:

Inclosed is copy of Report to Gov. Moore in 1929 respecting Fishing Rights in the Delaware and also a copy of the bill introduced at the time.

Mr. Warren and Capt. Burlington and Miss Sullivan of the Fish & Game Department were the active persons in the matter from the New Jersey end.

Kindly let me have the inclosed w en they have served your purpose.

John Sooy



DE21626

**New Jersey State Archives**
Department of Law and Safety
Attorney General's Office
Closed Case Files, 1920's - 1950's
**Box 8**

# SENATE, No. 201

# STATE OF NEW JERSEY

INTRODUCED FEBRUARY 27, 1939

By Mr. FORAN

Referred to Committee on Game and Fisheries

AN ACT to alter, amend and revise an act entitled "An act providing uniform laws to regulate the catching and taking of fish in the Delaware river and bay between the State of Delaware and the State of New Jersey," approved May seventh, one thousand nine hundred and seven; regulating the carrying of fishing parties for hire in any boat used in fishing in said river and bay; and repealing section six of said act and sections 23:9–39 to 23:9–58, both inclusive, of the Revised Statutes.

WHEREAS, Pursuant to a compact between the States of New Jersey and Delaware respecting the Delaware river and the Delaware bay (which compact now appears as article three of chapter twenty-eight of Title 52 of the Revised Statutes) this State, by an act of the Legislature thereof, approved May seventh, one thousand nine hundred and seven, and known as chapter one hundred thirty-one of the laws of one thousand nine hundred and seven, enacted a law dealing with and regulating the catching and taking of fish in the Delaware river and bay between said two States; and the State of Delaware, by an act of the Legislature of that State, approved April twenty-third, one thousand nine hundred and seven, enacted a law, uniform in substance and effect with the aforesaid law of the State of New Jersey, dealing with and regulating the catching and taking of fish in the Delaware river and bay between said two States; and

WHEREAS, Alterations and amendments to said uniform laws, as authorized by article four of the aforesaid compact between said States, are now

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deemed advisable, and accordingly a commission, selected in part by the Governor of Delaware and in part by the Governor of New Jersey, has prepared a bill containing the suggested alterations and amendments to said uniform acts of one thousand nine hundred and seven, a true copy of which bill, as prepared by said commission, in form suitable for adoption by the Legislature of New Jersey, is set forth under the enacting clause hereof; therefore,

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

The following sections of the act of which this act is an alteration, amendment and revision, are hereby altered, amended and revised to read as follows:

1. The provisions of this act shall affect and apply only to the catching and taking of fish in the waters of the Delaware river and bay lying between the States of Delaware and New Jersey.

2. The inhabitants of the States of Delaware and New Jersey shall have and enjoy a common right of fishery throughout, in and over the waters of said river, between low-water marks on each side of said river between said States, except so far as either State may have heretofore granted valid and subsisting private rights of fishery.

3. Nothing herein contained shall affect the territorial limits, rights or jurisdiction of either of said States of, in or over the Delaware river, or the ownership of the subaqueous soil thereof, except as is expressly set forth in said compact between the said States; nor shall anything herein contained affect in any way the planting, catching or taking of oysters, clams or other shellfish, or interfere with the oyster industry as now or hereafter carried on under the laws of either of said States.

4. For the purpose of this act, fish shall be designated as follows:

"Game fish" means black bass or small-mouth bass; large-mouth bass, otherwise called Oswego or yellow bass; strawberry or calico bass; rock

bass, otherwise known as redeye or goggle-eye; white bass; crappie; pike perch, otherwise called wall-eyed pike or Susquehanna salmon; pike; pickerel; char, commonly called brook or speckled trout, or any form of trout.

"Bait fish" means all species of minnows, killifishes and stone catfish.

"Food fish" means all other species or varieties of fish whatsoever.

[4.] 5. Hereafter it shall be lawful for any person to catch and take from the waters aforesaid fish of any character (except shell-fish) [with any net, hook and line, or other appliances; *provided*, the meshes of any net shall not be less than two and one-half inches long, stretched measure, and except as hereinafter provided; *provided, further*, that nothing in this section shall apply to nets used for catching eels.] , only with and by the use of the following devices and under regulations and restrictions hereinafter described;

A. A seine, gill net, eel pot, or fyke net, each without wings, a parallel net or stake net, at the edge of low water, and rods and lines, or hand lines, otherwise known as dipsey or throw lines, each having not more than three hooks; *provided*, that the mesh of any net shall not be less than three inches stretched measure while being fished.

B. No person shall fish for bait fish in the waters aforesaid except with the following devices, to wit: Rods and lines and hand lines with not more than three hooks attached; a minnow seine not more than one hundred feet in length; a dip net not more than five feet square; a minnow trap, the opening of which shall not be more than one and one-quarter inches in diameter; a scoop net with a single handle and with a diameter of not more than two feet.

C. It shall be lawful to use trawl lines or set lines with three or more hooks attached from November fifteenth to March first, for the purpose of taking codfish only.

[5.] 6. Hereafter it shall be unlawful for any person to catch and take, or to attempt to catch and take, shad from the waters aforesaid with a seine or net of any character the meshes of which shall be less than five and one-

quarter inches, stretched measure while being fished, [It shall also be unlawful for any person to catch and take, or to attempt to catch and take, any shad from the said waters, in any manner whatsoever, between the hours of twelve o'clock noon of every Saturday and twelve o'clock midnight of the Sunday next ensuing,] and also between the [fifth] tenth day of June in each [and every] year and the first day of March thence next ensuing. [It shall also be unlawful for any person at any time to set, place or use a net of any kind, except a drifting net, for the purpose of catching and taking shad within one-half mile of the mouth of any river, creek or stream emptying into the said waters.]

7. Hereafter it shall be unlawful for any person to catch and take, or to attempt to catch and take, striped bass, commonly called rockfish from the waters aforesaid [with a seine or net of any kind, the meshes of which shall be less than two and one-half inches, stretched measure. It shall also be unlawful for any person to catch and take, or to attempt to catch and take, any rockfish in any manner whatsoever between the hours of twelve o'clock noon of every Saturday and twelve o'clock midnight of the Sunday next ensuing.] in any manner whatsoever between the first day of March and the thirty-first day of May next ensuing. It shall also be unlawful for any person to catch and take, or to attempt to catch and take, from the waters aforesaid, in any manner whatever, any rockfish weighing more than twenty pounds or measuring less than [ten] eighteen inches in length; and should any such fish, weighing over twenty pounds or measuring less than [ten] eighteen inches in length, be caught, it shall be immediately returned to the waters, uninjured.

8. Hereafter it shall be unlawful for any person to catch and take, or to attempt to catch and take, from the waters aforesaid, any sturgeon [or mamoose] with a net of any character, the meshes of which shall be less than thirteen inches, stretched measure while being fished. [It shall also be unlawful for any person to catch and take, or to attempt to catch or take, any sturgeon or mamoose under six feet in length, and if any such

sturgeon or mamoose under six feet in length should be caught, it shall be immediately returned to the waters, uninjured. It shall also be unlawful for any person to catch and take, or attempt to catch and take, sturgeon or mamoose from the waters aforesaid, in any manner whatever, between the hours of twelve o'clock noon of every Saturday and twelve o'clock midnight of the Sunday next ensuing] and [also] it shall also be unlawful to take sturgeon between the first day of July in each and every year and the first day of March thence next ensuing.

9. [Hereafter it shall be unlawful for any person to catch and take, or to attempt to catch and take, from the waters aforesaid, any trout or weakfish with a net of any character, the meshes of which shall be less than two and one-half inches, stretched measure. It shall also be unlawful for any person to catch and take, or to attempt to catch and take, any trout or weakfish from the waters aforesaid, with a net of any character, between the hours of twelve o'clock noon of every Saturday and twelve o'clock midnight of the Sunday next ensuing.] No person shall catch, take, or have in possession, any codfish measuring less than fifteen inches in length, bluefish measuring less than nine inches in length, weakfish or sea trout measuring less than ten inches in length, sea bass or kingfish measuring less than eight inches in length, blackfish or tautog, mackerel, or porgie measuring less than seven inches in length, flounder measuring less than ten inches in length, butterfish measuring less than six inches in length, striped bass, commonly called rockfish, weighing more than twenty pounds or measuring less than eighteen inches in length, sturgeon less than five feet in length, black bass, small-mouth bass, large-mouth bass, otherwise known as Oswego or yellow bass, measuring less than nine inches in length, pike, pickerel, or pike-perch, otherwise known as wall-eyed pike or Susquehanna salmon, measuring less than twelve inches in length, calico or strawberry bass, crappie, white bass, rock bass, otherwise known as redeye or goggle-eye, less than six inches in length, brook trout or char, rainbow and brown trout, measuring less than seven inches in length, or eels measuring less than fourteen inches in length.

10. Hereafter it shall be unlawful for any person to catch and take, or to attempt to catch and take, fish of any kind with a net of any character which is anchored, staked or fastened down in any way across the said waters or any part thereof, or at right angles with the shore line thereof, across the mouth of any river, creek or stream emptying into the waters aforesaid.

11. Hereafter it shall be unlawful for any persons by boat, anchor, dredge, or otherwise, in the waters aforesaid, to willfully and without reasonable cause, interfere with, break, damage or destroy any drift net or gill seine being lawfully used for the taking of any fish as herein provided.

12. Hereafter it shall be unlawful for any person willfully to put or place in the waters aforesaid any explosive substance whatever, or any drug or poisoned bait for the purpose of catching and taking, killing or injuring the fish, or to allow any dye stuff, coal or gas tar, coal oil, sawdust, tan bark, cocculus inducus (otherwise known as fish-berries), lime, refuse from gas-houses, oil tanks or vessels, or any other deleterious, destructive or poisonous substance to be turned into or allowed to run into any of the waters aforesaid, in quantities sufficient to destroy or impair fish life or disturb the habits of fish inhabiting the same. Any person violating any of the provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction thereof shall forfeit and pay a fine of not more than [five] one thousand dollars, or shall be imprisoned not more than one year, or both, in the discretion of the court.

13. Hereafter it shall be unlawful for any person to catch and take or to attempt to catch and take, fish of any kind or description from the waters aforesaid by a net of any character [on the Sabbath day, commonly called Sunday] or use a net of any kind other than a hand landing net between Saturday noon and Sunday at twelve o'clock midnight next ensuing in each week.

14. [Hereafter it shall be unlawful for any person to catch and take, or to attempt to catch and take, fish of any kind from the waters aforesaid with a set line, or to have, use, erect or maintain in the waters aforesaid,

for the purpose of catching and taking fish of any kind (except catfish, eels and suckers), any fish basket, eel weir, fyke net, pound net, shore net, dip net, cast net, wing-wall, wingdams, or any other device, excepting in the manner and with the means in this act provided; *provided,* that nothing contained in this section shall prevent the catching and taking of carp with shore nets, dip nets or cast nets.] No nonresident of either State nor an alien shall take or attempt to take any fish by means of a net of any character or by any device or contrivance, except with rod, hook and line, or hand line, in the waters aforesaid under a penalty of five hundred dollars for each offense, together with the forfeiture of all nets, boats and other appliances used.

15. Hereafter it shall be unlawful for any person to sell, barter, or exchange, expose for sale, barter, or exchange, or have in possession, any fish caught and taken in violation of the provisions of this act.

[17.] 16. Any and every boat, vessel, net, trap, pot, pound, set line, fyke, weir or other property used by any person for the unlawful taking of, or attempting to take, any fish in the waters aforesaid, in violation of the provisions of this act, shall be forfeited to the State of New Jersey, together with the tackle, apparel and furniture of said boat or vessel and all other apparatus and implements so unlawfully used; and the same shall be seized and detained by the sheriff, officer, any constable or any fish and game warden of the State, or authorized deputy or deputies, until sold or discharged, as hereinafter provided. Upon the conviction of any such person as aforesaid, the court shall, in addition to the sentence pronounced against such person, enter an order and judgment of forfeiture against said property so unlawfully used and shall order the sheriff of the county, officer, constable, or any fish and game warden of the State, to at once seize the same wheresoever it may be found, who shall thereupon advertise and sell the same at public auction, for cash, to the highest and best bidder for the same, after giving at least ten days' notice by advertisements, posted in at least ten public places of the county, of the time and place of said sale; the proceeds of

said sale, after deducting all costs, charges and expenses, shall be paid by the said sheriff, officer, constable, or fish and game warden to the Board of Fish and Game Commissioners for the use of said commission according to law. In the event that the said person, so charged as aforesaid, shall be acquitted, the said property shall be forthwith returned to the person in whose custody it was at the time it was so seized and taken as aforesaid.

[18.] 17. Any justice of the peace, or other officer legally qualified by law, shall, upon affidavit made by any person that any person, boat, vessel or other appliance or apparatus hereinbefore enumerated, is, are or have been violating, or used in violation of this act, issue his warrant to the sheriff, officer, or any constable of the county or any fish and game warden of the State, authorized to make such arrest, commanding him to arrest such person and to seize and detain such property for hearing, trial or other proceeding under this act. The said sheriff, constable, officer or fish and game warden, may, if necessary, summon to his aid [the] a posse comitatus, and may require the assistance and use of any other boat, vessel or other means, by paying, or tendering, just compensation. It shall not be necessary that the affidavit shall state the name of the boat or vessel, or describe with particularity the property to be seized.

[19.] 18. It shall be unlawful for any person to catch and take, or to attempt to catch and take, from the said Delaware river or Delaware bay, with purse or shirred nets operated by or from steam or other vessels, or with vessels operating beam or otter trawls, otherwise commonly called drag nets, fish of any kind whatsoever, under a penalty of one thousand dollars for each offense; *provided, however,* that this section shall not apply to the catching and taking of menhaden [, sharks, porpoises and herring-hogs,] by the crews of the vessels licensed as provided for in this section. [It shall be the duty of] The fish and game commission of the State, may in its discretion, upon the payment to it annually of the [sum of one hundred dollars ($100.00) for each and every vessel or boat,] following fees:

Any vessel of not more than fifty tons net tonnage ..... $100.00

Any vessel of over fifty tons and not more than one hundred tons net tonnage ..... $500.00

Any vessel of over one hundred tons net tonnage ..... $750.00

[to] issue a license to such vessel or boat to catch and take menhaden [, sharks, porpoises and herring-hogs] in the waters of the Delaware bay [as far north as a straight line drawn from the center of the month of Mahon's river to the nearest point opposite on the New Jersey shore, from the first day of June until the thirty-first day of August, inclusive, of each year, and at no other time or times] east of the main ships' channel to the New Jersey shore, said license to be valid until December thirty-first of the calendar year in which the license is issued. The said money so received for said license shall be paid over to the fish and game commission of the State for the use of said commission as provided by law.

[20.] 19. It shall be unlawful for any person to have in his possession or to bring into this State any game, bait or food fish [generally known as odible or food fish that] as hereinbefore defined which has been caught and taken from the waters of the Delaware bay or river within the bounds aforesaid, for the purpose of extracting oil therefrom or of converting said fish into fertilizer; and it shall also be unlawful for any person to extract oil, or to convert, or in any manner assist in extracting oil from or in converting such fish into fertilizer.

20. Excepting when licensed as hereinafter provided and excepting with respect to a boat propelled exclusively by oars, it shall be unlawful for any person, firm, or corporation to carry fishing parties for hire in any boat used in fishing in the waters of the Delaware river and bay lying between

the State of which the applicant is an inhabitant of a fee of ten dollars for each boat licensed in the event the licensee be an inhabitant of the State of Delaware or of the State of New Jersey, and upon the payment of a fee of fifty dollars for each boat licensed in the event the licensee is not an inhabitant of either the State of Delaware or the State of New Jersey. Any license issued under this section shall only authorize the licensee to hire and board such licensed boat from the shore of the State under which he is licensed. Any person, firm or corporation violating any of the provisions of this section shall be fined upon conviction thereof, a sum not less than fifty dollars nor more than five hundred dollars, in the discretion of the court, and shall pay the suit costs and, in addition, shall suffer the forfeiture of each and every boat used. When a violator of the provisions of this section is not an inhabitant of either the State of Delaware or the State of New Jersey, he shall be fined not less than one hundred dollars, and shall suffer the forfeiture of each and every boat used. The provisions of this section shall be enforced and all penalties for the violation thereof shall be recovered in accordance with the provisions of chapter ten of Title 23 of the Revised Statutes of New Jersey. Upon failure to pay any fine imposed for the violation of any provisions of this section, the person upon whom the fine is imposed may be committed by the court to the common jail of the county in which the conviction is had for a period not exceeding ninety days, unless the fine imposed on him and the suit costs are sooner paid. All monies obtained by the Board of Fish and Game Commissioners of the State of New Jersey as license fees, and as fines, court costs and from sales of forfeited property, in actions instituted by or on behalf of the State of New Jersey, shall be turned over to the Board of Fish and Game Commissioners of the State of New Jersey for its uses and purposes.

21. Any fish commissioner, fish and game warden, sheriff, constable [illegible] any officer may, upon view, arrest any person violating any of the provisions of this act without warrant or writ issued for such purpose.

22. Each State shall have and exercise exclusive jurisdiction within said river to arrest, try and punish its own inhabitants for any violation of this act, and each State shall have concurrent authority within the Delaware bay to arrest the inhabitants of either State for any violation of this act; *provided,* if any inhabitant of the State of Delaware shall be arrested in the Delaware river or bay by any officer for any violation of this act, he shall be forthwith taken to the State of Delaware for trial and punishment, and if any inhabitant of the State of New Jersey shall be arrested in the Delaware river or bay by any officer for any violation of this act, he shall be forthwith taken to the State of New Jersey for trial and punishment.

The police authority of any officer of either the State of Delaware or the State of New Jersey empowered to make an arrest under the provisions of this act shall include the right and power to take an arrested inhabitant of the State of New Jersey to the proper tribunal in the State of New Jersey for trial and to take an arrested inhabitant of the State of Delaware to the proper tribunal in the State of Delaware for trial. Each of the said States of Delaware and New Jersey shall [also] have concurrent jurisdiction over all offenses and violations of this act committed, or attempted to be committed, by any person who is not an inhabitant of either of said States.

23. The Governor of the State of Delaware shall, when and as requested by the Governor of the State of New Jersey, issue a commission or commissions to such person or persons as may be named to him by the Governor of the State of New Jersey, which shall authorize the person or persons to whom the same are directed to arrest the inhabitants of either the State of Delaware or the State of New Jersey or any other person for any violation of this act; *provided, however,* that if the person so arrested shall be an inhabitant of the State of Delaware, such person shall be forthwith taken to the State of Delaware for trial and punishment. The Governor of the State of Delaware at any time shall, when and as requested by the Governor of this State, revoke the said commissions, or any of them. The compensation

of the person or persons to whom such commission or commissions may be directed shall be paid wholly by the State of New Jersey.

The Governor of the State of New Jersey shall, when and as requested by the Governor of the State of Delaware, issue a commission or commissions to such person or persons as may be named to him by the Governor of the State of Delaware, which shall authorize the person or persons to whom the same are directed to arrest the inhabitants of either the State of Delaware or the State of New Jersey, or any other person, for any violation of this act; *provided, however,* that if the person so arrested shall be an inhabitant of the State of New Jersey, such person shall be forthwith taken to the State of New Jersey for trial and punishment. The Governor of this State may, at any time, and shall, when and as requested by the Governor of the State of Delaware, revoke the said commissions, or any of them. The compensation of the person or persons to whom such commission or commissions may be directed shall be paid wholly by the State of Delaware.

Nothing contained in this section shall be so construed as to prevent the arrest of any inhabitant of the State of New Jersey by any other officer or person having authority under the laws of the said State of New Jersey to make arrests for the violation of the provisions of this act.

[16] 24. Any person or persons violating any of the provisions of this act in all cases where no other specific penalty is herein provided shall forfeit and pay a fine of not less than twenty dollars nor more than two hundred dollars and costs of prosecution, and in default of payment thereof shall be committed to the county jail or workhouse for a period of not less than ten days, nor more than ninety days, [or until] unless such fine and costs are sooner paid.

[24] 25. The provisions of this act where the offense is designated as a misdemeanor shall be enforced in accordance with the provisions of the statutes of the State relating to misdemeanors and in all other cases shall be enforced in accordance with the provisions of [an act entitled "An act to provide a uniform procedure for the enforcement of all laws relating

to fish, game and birds, and for the recovery of penalties for violation thereof," approved March twenty-ninth, one thousand eight hundred and ninety-seven, and the supplements thereto and acts amendatory thereof] chapter ten of Title 23 of the Revised Statutes (1937).

26. Each of the said States of Delaware and New Jersey reserves to itself the full and complete authority to legislate solely, relative to the seaworthiness of, and proper equipment for, all boats owned by its inhabitants, or noninhabitants of either State, and all boats which make their home port its shores, or take fishing parties for hire from its shores respectively.

[25] 27. This act shall take effect immediately, but shall [not] become operative [until the Legislature of the State of Delaware shall have passed, and the Governor of that State shall have approved a similar] upon the State of Delaware enacting a law uniform in substance and effect to the foregoing. [agreed upon by the commission as recited in the preamble of this act. The provisions in this act contained regulating the size of the meshes of fishing nets shall not become operative until October first, one thousand nine hundred and eight.] Upon this act becoming a law it shall be the duty of the Secretary of State to so certify to the Governor of the State of Delaware transmitting therewith a certified copy of this act, and likewise upon the State of Delaware enacting a law uniform in substance and effect hereto the Secretary of State of the State of Delaware shall so certify to the Governor of the State of New Jersey, transmitting therewith a certified copy of the law of the State of Delaware.

[26] 28. [All laws, or parts of laws, inconsistent with the provisions of this act, be and the same are hereby repealed.] Section six of the act hereby altered, amended and revised and sections 23:9-39 to 23:9-58, both inclusive, of the Revised Statutes are hereby repealed.

29. If any provision of this act, or the applicability thereof to any person or circumstances, is held invalid, the remainder of this act and the applicability thereof and of such provisions to other persons or circumstances shall not be affected thereby.

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Department of Law and Safety
Attorney General's Office
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Wilmington 33, Delaware
Sept. 11, 1946

Board of Game and Fish Commissioners
Dover
Delaware

Attention of Mr. Frank A. Lawson, Chief Warden

Gentlemen:

This letter is written in reply to your request of August 12, 1946 concerning the laws which now govern fishing and fishing rights in the Delaware River and Bay. On examination, we found that the answer to the question required a great deal of research, which accounts for the delay in answering your letter.

In order to understand the status of the present law, it is necessary to examine the entire legislative history of the Fishery Laws of this State and of New Jersey.

As you have indicated in your letter, the starting point is found in the Compact between the States which is framed by a joint commission, the members of which were appointed by the Governors of the two States, which Compact was executed on behalf of the States on March 21, 1905 (Appendix, 23 Laws of Delaware). This Compact provided in part that upon ratification by the Congress it would become binding in perpetuity upon both of the States. It was subsequently ratified and approved by the Congress (34 U. S. Stat., p. 394), and the terms thereof became a part of the law of both States in perpetuity.

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A further examination of the Compact shows that provisions were adopted (Articles 1 and 2) which give mutual rights for the service of criminal and civil process for offenses committed on the soil of the other State or upon the water of the Delaware River or aboard vessels within the exclusive jurisdiction of either State. The Compact next provided that the inhabitants of both States should have and enjoy a common right of fishery throughout, in and over the waters of the Delaware River between the low water marks except so far as either State may have heretofore granted valid and subsisting private rights of fishery (Article 3).

In Article 4, the States pledged themselves to appoint commissioners to confer for the purpose of drafting uniform laws to regulate the catching and taking of fish in the Delaware River and Bay between the two States, and provided further that within two years from the date of their appointment the commissioners should report to the Legislature of each State the proposed laws framed and recommended by the joint commission, and that upon the adoption and passage of the laws so recommended, they should constitute the sole laws for the regulation and taking and catching of fish in the River and Bay. These laws, if and when enacted, were to remain in force until altered, amended or repealed by concurrent legislation of the two States.

Article 5 provided that all of the laws of each State relating to the regulation of fisheries in the Delaware River not inconsistent with the right of common fishery mentioned in the Compact should continue in force in the respective States until the enactment of the concurrent legislation therein provided.

This analysis of the Compact shows that it was solemnly agreed that both States would enact uniform laws to regulate the catching and taking of fish in the Delaware River and Bay. It is equally clear that the joint commission in drawing the Compact recognized the necessity for uniform fishery laws and that if such uniform laws were not adopted by both States, the purpose for which the Compact was framed would be defeated. It is equally apparent that until the States adopted uniform acts, all of the laws of each State relating to the regulation of fisheries should continue in force.

These conclusions raise the question as to whether the States in fact adopted such uniform laws.

Shortly after the execution of the Compact, it was ratified and confirmed by an act of the General Assembly of the State of Delaware on March 20, 1905, and by an act of the Legislature of the State of New Jersey dated March 21, 1905. Subsequently commissioners were appointed by both States, and as appears from the preamble of Ch. 146, 24 Delaware Laws, and from the preamble of the New Jersey Act (P.L. 1907, p. 302) the commissions organized and agreed in a joint meeting held for that purpose upon uniform laws to regulate the catching and taking of fish in the Delaware River and Bay. On April 23, 1907, the Delaware Legislature adopted what purported to be the Uniform Act as framed by the joint commission. Sec. 26 of that Act expressly provided that the Act should not become operative until the Legislature of New Jersey shall have passed and the Governor of that State shall have approved of a similar law agreed upon by the commission as recited in the preamble of the Delaware Act. On May 7, 1907, the Legislature of the State of New Jersey having enacted a so-called Uniform Law, the Governor of that State approved the New Jersey Act (P.L. 1907, Ch. 131, p. 302). That Act also specifically provided that it should not take effect immediately but would not become operative until the Legislature of Delaware shall have passed and the Governor of Delaware shall have approved of a similar law, agreed upon by the commission, as recited in the preamble of that Act.

We have examined carefully the provisions of both of the so-called Uniform Acts and find there are many inconsistencies in them. For example, Sec. 5 of the Delaware Act provides that it shall be unlawful to fish for shad between the hours of twelve o'clock midnight on Saturday and twelve o'clock midnight on Sunday. Sec. 6 of the New Jersey Act provides that it shall be unlawful to fish for shad between the hours of twelve o'clock noon of Saturday and twelve o'clock midnight of Sunday. Sec. 6 of the Delaware Act provides that the meshes of a net used to catch carp shall not be less than two inches stretched measure, while the New Jersey Act provides for meshes of not less than two and one-half inches stretched measure. There is also a discrepancy in the time during which it shall be unlawful to catch carp. Sections 7 and 9 of both Acts differ in the same respect as Sec. 6. Sec. 10 of the Delaware Act provides that it is unlawful to catch fish with a net which is anchored or fastened in any way across the mouth of any river, creek or stream emptying into the waters, while Sec. 10 of the New Jersey Act also provides that it is unlawful to catch fish with a net which is anchored or fastened in any way across "the said waters or any part thereof, or at right angles with the shore line thereof," in addition to the mouth of any river, creek or stream emptying into the waters.

Sec. 18 of the Delaware Act provides that a warrant may be issued to a sheriff, county constable or officer of the county authorized to make an arrest, while the New Jersey Act provides in addition that a warrant may be issued to any fish and game warden of the State. Sec. 19 of the Delaware Act providing for the costs, charges and expenses of any proceeding for violation of the provisions of the Delaware Act is not found in the New Jersey Act. Following that Section, in the Delaware Act the sections bear different numbers. Sec. 22 of the Delaware Act provides that certain officers may arrest without a warrant where the provisions of the Delaware Act are violated. The corresponding section in the New Jersey Act (Sec. 21) does not permit the Collector of Oyster Revenue to arrest under such circumstances and substitutes the Fish and Game Warden. Sec. 23 of the Delaware Act relating to prosecutions and procedure differs substantially from the provisions of Sec. 24 of the New Jersey Act which incorporates the New Jersey provisions for prosecution and procedure.

It is apparent from the above that the acts adopted by the two States were not uniform and that, therefore, they could not have been the law which was agreed upon by the joint commission nor the Uniform Law contemplated by the Compact between the States.

We have not been able to determine which of the two States was at fault in not adopting the Uniform Law agreed to by the joint commission although the fault appears to lie with the Delaware Legislature inasmuch as the Delaware Senate Journal of the Special Session of 1916 reports on p. 79 that Delaware had not adopted the Uniform Act as it was framed.

We are not unaware of the consequences of any opinion of this office which would hold that the Uniform Act as contemplated by the Compact between the States is not effective but under the circumstances it is our opinion that the Uniform Law contemplated by the preambles of both the Compact and the subsequent legislative enactments of the States contemplated a uniformity in legislation that is not found in a comparison of the two acts. As both New Jersey and Delaware specifically provided that the legislation which they enacted would not be effective unless and until the other State adopted a Uniform Act, the conclusion is inescapable that a Uniform Law does not exist today.

While it might conceivably have been possible for the New Jersey and Delaware Legislatures to adopt uniform provisions beyond the two year period mentioned in the Compact, it appears from our further examination of the laws of both States that such has not been the case.



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For example, the New Jersey Legislature in 1911 adopted an act which regulated fishing in the waters of the Delaware River and Bay lying between the two States and all the tributaries of the River and Bay within said limits wherein the tide ebbs and flows. That Act (P.L. Ch. 263, p. 550) regulates fishing for game fish enumerated in the statute, fish that were not within the contemplation of the Uniform Act and, in one instance, that of fishing for sturgeon, and lays down new restrictions. Clearly this Act does not make for uniformity.

The Delaware Legislature on the other hand carried the provisions of the Delaware Act of 1907 into the 1915 Code (Ch. 74, Sections 143 to 168 inclusive). It nevertheless repealed the provisions of Ch. 74 of the Revised Code of 1915, and by the provisions of Ch. 203 of 28 Delaware Laws, approved March 16, 1915, substituted a new act which related to fishing in the waters of the Delaware River and Bay. This Act did not purport to be a uniform act. Other changes and additions to the new sections so adopted were made by Ch. 204 and 205 of 28 Delaware Laws; Ch. 176 of 30 Delaware Laws; Ch. 175 of 32 Delaware Laws; Ch. 194 of 33 Delaware Laws; Ch. 175 and 176 of 35 Delaware Laws; and Ch. 238 of 36 Delaware Laws.

By the provisions of Ch. 248 of 32 Delaware Laws, approved Feb. 4, 1921, the Governor of the State of Delaware was authorized to appoint a commission to confer with a like commission appointed by the Governor of the State of New Jersey to draft modifications of the supposed law between the two States regulating the catching of fish in the River and Bay. By the provisions of Ch. 193 of 33 Delaware Laws, approved March 14, 1923, it was again recited that the commissions had been appointed, had met, and had agreed upon uniform laws. By Sec. 10 of that Act, it was again provided that neither the Act nor any section or part thereof would be valid or become operative until a similar act was enacted by the State of New Jersey. So far as we can determine, there is no record that the Delaware Legislature ever enacted similar legislation, and the provisions of Ch. 193 of 33 Delaware Laws never became effective.

Once again (Ch. 243, 35 Delaware Laws), a commission was appointed by the State of Delaware to confer with a like commission representing the State of New Jersey for the purpose of framing a Compact or agreement with the State of New Jersey concerning the respective rights of the States in the Delaware River and Bay. Ch. 278, 35 Delaware Laws contains Uniform Fishing Laws which were not to take effect unless similar legislation were adopted by New Jersey. As before, no action has been taken by New Jersey.

From this examination of the various acts, it becomes apparent that Delaware and New Jersey have not enacted uniform legislation which is binding upon both states and their citizens. The provisions of the original Compact of 1905 in so far as they relate to the rights of the States in the issuance of process and with respect to the common right of fishery not having been amended by joint action of the States remain in full force and effect. In the absence of any further uniform laws, each State has retained the right to enact legislation which will be effective within its territorial jurisdiction which includes, of course, the waters of the Delaware River and Bay which belong to each.

Ch. 146, 24 Laws of Delaware is not effective since it was not a uniform provision. Likewise the provisions of Ch. 74 of the Revised Code of Delaware, 1915, do not represent the Uniform Law adopted by New Jersey or which was in effect in New Jersey in 1915. The first provisions which purport to enact legislation covering the rights of Delaware and its citizens are found in Ch. 203, 28 Delaware Laws. That Chapter expressly provides that it should become effective "upon the approval hereof by the Governor of the State of Delaware." The Act was approved by the Governor on March 16, 1915. At the time of its approval, it became the only specific legislation covering fishing rights in the Delaware River and Bay. The subsequent enactments of the Delaware Legislature do not purport to repeal that entire Chapter although there were, as set forth above, numerous amendments to the law in Volumes 30, 32, 33, 35 and 36 Delaware Laws. These amendments are set forth and incorporated in the law as it appears in Ch. 74 of the Revised Code of Delaware, Sections 181 to 211 inclusive. These provisions represent the law of the State of Delaware with respect to fishing rights in the Delaware River and Bay. In the absence of any uniform law which would, under the Compact between the States, be superior, the provisions of Ch. 74 must be considered by your Board as the laws which you are to enforce.

In reading the last paragraph appearing on page 2 of your letter, it appears that you have misconstrued the effect to be given to Ch. 74, Art. 7 of the Revised Code of 1915. Under our law, the codifiers of our statutes do not enact legislation by incorporating acts into a single volume. When they spoke as appears on p. 1219 of that Code of the Uniform Law (appearing as Sections 143 to 168 inclusive), they did not give that legislation any effect beyond that which it had prior to its codification. The sections did not represent a uniform law between the States before their insertion in the 1915 Code and did not acquire uniformity by any reference which might have been made thereto by the codifiers. Sections 143 to 168 were not uniform provisions at any time and were, therefore, not effective as provided by Sec. 168.

The fact that after the enactment of Ch. 203, 28 Delaware Laws, uniform commissions were appointed by the Governor of this State does not mean that Delaware did not have laws regulating fishing in the waters over which it has jurisdiction. This action should be interpreted to mean that we did not have Uniform Laws enforceable by both Delaware and New Jersey.

To sum up this lengthy letter, it is our opinion that the statement appearing in the Revised Code of Delaware, 1935, is correct, that at the present time there is no Uniform Law, and that Ch. 203, 28 Delaware Laws as amended governs the regulation of fishing in the Delaware River and Bay within the jurisdiction of the State of Delaware over such waters.

Very truly yours,

Attorney General

VAT:F

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Volume 1560-000 Page 093
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Ferris - HRWH Dept.

WALTER H. BACON
COUNSELLOR AT LAW
BRIDGETON, N.J.

December 7, 1925.

IN RE: NEW JERSEY-DELAWARE BOUNDARY.

Hon. George S. Silzer,

Trenton,

N. J.

Dear Sir:

Enclosed you will find my report in the matter of the New Jersey-Delaware Boundary Question.

Duplicate will be forwarded to the Board of Shell Fisheries.

At the convenience of yourself and the members of the Board, I will be glad to appear and make some further practical suggestions as to the course which should be pursued in order to protect the New Jersey oyster interests.

Respectfully,

REPORT

# NEW JERSEY-DELAWARE BOUNDARY LINE

DATED DECEMBER 7, 1925

WALTER H. BACON
COUNSELLOR AT LAW
BRIDGETON, NEW JERSEY

TO THE HONORABLE GEORGE S. SILZ, GOVERNOR OF NEW JERSEY, AND TO THE BOARD OF SHELL FISHERIES OF THE STATE OF NEW JERSEY:-

The question submitted for determination is the location of the dividing line between New Jersey and Delaware.

While the boundary line between New Jersey and Pennsylvania and New York have been established by conventions between said States, respectively, all attempts to establish the boundary between New Jersey and Delaware have been unsuccessful.

(C.S. of N.J., pg. 5357 et seq.)

Delaware claims that its boundaries are as follows:-

"STATE BOUNDARIES:- The limits of the State are declared to be, on the south, the divisional line between Delaware and Maryland: on the west, the divisional line between Delaware and Maryland extended northerly to its intersection with the southerly boundary line of Pennsylvania; on the north, the boundary line between Maryland and Pennsylvania extended easterly to its intersection with the twelve mile circle described from New Castle and said twelve mile circle extended to low water mark on the eastern side of the Delaware River; and on the east, low water mark on the eastern side of the Delaware River within said twelve mile circle, the southerly perimeter of said twelve mile circle from its intersection with said low water mark westerly to the middle line of Delaware River, the middle lines of Delaware River and Bay below said twelve mile circle to the mouth of said Bay, and the Atlantic Ocean."

(Revised Code of Delaware 1915,pg.7,Sec.6.)

There is no separate act of establishing the boundary lines of New Jersey.

The boundary lines of Salem and Cape May Counties as established by the act of January 21, 1709-10, extended only to the River and Bay (Nixon's Digest, pg. 161). By act of November 28,1822, the boundaries of Salem, Cumberland and Cape May Counties were extended to the Main Ship Channel in the River and Bay (Nixon's Digest, pg. 161), and by act of April 10,1846, the boundary lines of the Counties of Salem, Cumberland and Cape May are "declared to be the main ship channel in the River and bay of Delaware adjoining said Counties respectively" (Nixon's Digest,pg. 164). By the Revision of 1877,the county lines are given in some sections as "to and up the bay" and in others to the main ship channel. The lines of the Townships in Cumberland County are given as "to" and "up" the Bay/. (C.S. of N.J., Title "Counties").

Proprietary title to New Jersey is based upon the letters patent from King Charles II to James, Duke of York, dated March 12, 1664, for

> "All that part of the main land of New England****** together also with the said river called Hudsons River and all the lands from the west side of Connecticut, to the east side of Delaware Bay."
>
> Leaming & Spicer's Grants and Concessions,pg.3.
>
> Martin vs. Waddell, 16 Peters (U.S.) 367.

By deed of lease, dated June 23,1664, and of release dated June 24,1664, James, Duke of York, granted New Jersey to Berkley and Cartaret, describing it as,

> "All that tract of land adjacent to New England, and lying and being to the westward of Long Island and Menitas Island, and bounded on the east part by the main sea, and part by Hudson's River, and hath upon the west Delaware bay or river, and extendeth southward to the main ocean as far as Cape May at the mouth of Delaware bay; and to the northward as far as the norther-

most branch of the said bay or river of Delaware, which is forty-one degrees and forty minutes of latitude, and crosseth over thence in a straight line to Hudson's river in forty-one degrees of latitude." (Leaming & Spicer,pg.8.) (Central R.R. Co. of N.J. vs.Jersey City, 70 N.J.L. 61).

In 1674 and 1680, after the restoration following the Dutch conquest of New Jersey, the Duke of York re-granted the same territory, describing its western boundary in one deed as extending "along" and in the other as running "up" the Delaware. (Leaming & Spicer, pp. 47 and 414.)

Proprietary title to Delaware is based upon two grants made by James, Duke of York, to William Penn. Each bears date August 24, 1682. One is for "All that the Town of Newcastle otherwise called Delaware and all that tract of land lying within the compass or Circle of Twelve Miles about the same, scituate lying and being upon the River Delaware in America. And all islands in the said River Delaware and the said River and Soil thereof lying north of the Southermost part of the said Circle of Twelve Miles about the said Town." (Pennsylvania Archives, 2nd Series, Vol. V,pg. 739.).

The other is for, "All that tract of land upon Delaware River and Bay beginning Twelve Miles South from the Town of Newcastle otherwise called Delaware, and extending South to the Whore-Kill otherwise called Capin Lopin together with free and undisturbed Use and Passage into and out of all Harbours, Bays, Waters, Rivers, Isles and Inletts belonging to or leading to the same together with the Soil, Fields, Woods, Underwoods, Mountain, Hills, Fenns , Isles, Lakes, Rivers, Rivoletts, Bays and Inletts situate in or belonging unto the Limits and Bounds aforsaid." (Pennsylvania Archives, 2nd Series, Vol. V.pg.741)

While by the first of these grants, the River and the soil thereof within the Twelve Mile Circle is attempted to be conveyed, there is no such attempt in the second deed and none in the grant for New Jersey.

There have been many cases in various courts in which the question has been debated and decided as to the rights of the Proprietors to lands under water by virtue of the various grants.

Without setting forth the details, the statement may be safely made that the title to lands under tidal waters is in the public and not in the Proprietors or their grantees, and that the original boundary line between New Jersey and Delaware, at least below the Twelve Mile Circle, is the River and Bay and not the shore on either side.

Martin vs. Waddell, 16 Peters 367.

Arnold vs. Mundy, 6 N.J.L. 1.

Attorney General vs. Bound Brook Railroad Co., 27 N.J.E. 1, affirmed 27 N.J.E. 661.

In Handley's Lessee vs. Anthony, 5 Wheaton 375 (1820), Mr. Chief Justice Marshall, speaking for the United States Supreme Court, said,

> "When a great river is the boundary between two nations or states, if the original property is in neither, and there be no convention respecting it, each holds to the middle of the stream."

There is a difference between "territory" and "jurisdiction". This is clearly defined in Central Railroad Company of New Jersey vs. Jersey City, 209 U.S. 473, where it was held that the compact between New Jersey and New York gives New York exclusive jurisdiction over New York Bay and to low water mark on the Jersey shore, but confirms the title of New Jersey in the land under water to the middle of the Bay.

In Louisiana vs. Mississippi, 202 U.S. 1, there was a conflict

channel of the stream marks the true boundary between the adjoining states up to which each state will, on its side, exercise jurisdiction. In International law, therefore, and by the usage of European nations, the term "middle of the stream", as applied to a navigable river, is the same as the middle of the channel of such stream, and in that sense the terms are used in the treaty of peace between Great Britain, France and Spain, concluded at Paris in 1765. By the language, "a line drawn along the middle of the River Mississippi from its source to the River Iberville", as there used, is meant along the middle of the channel of the River Mississippi.'"

And then he adds,

"This judgment related to navigable rivers. But we are of opinion that, on occasion, the principle of the thalweg is applicable, in respect of water boundaries, to sounds, bays, straits, gulfs, estuaries, and other arms of the sea."

In my opinion, therefore, the boundary line between New Jersey and Delaware, below the southerly perimeter of the Twelve Mile Circle from New Castle, is the middle of the main channel of the Delaware River and Bay.

This line can be located by reference to the United States Coast and Geodetic Survey Map No. 1218, Delaware Bay, as far up as Liston's Point on the Delaware Shore and Mad Horse Creek on the Jersey shore, which is said to be approximately the mouth of the River.

This conclusion finds some support in the maps or charts of Pennsylvania, Delaware and New Jersey issued by the United States Geological Survey, which Congressman Bacharach obtained for me from Washington. These maps show the boundary line between New Jersey and Pennsylvania as being in the middle of the River until the line strikes the northern boundary of the Delaware Twelve

between the horities of the two Stat arising out of the enforcement of the oyster laws of those States, which involved a dispute respecting the true boundary line. This was held to be a controversy between the States in their sovreign capacity, which is within the original jurisdiction of the Supreme Court of the United States.

In delivering the opinion of the Court, Mr. Chief Justice Fuller said:

> "The term 'thalweg' is commonly used by writers on international law in definition of water boundaries between states, meaning, the middle, or deepest, or most navigable channel. And while often styled 'fairway' or 'midway' or 'main channel', the word itself has been taken over into various languages. Thus, in the treaty of Luneville, February 9, 1801, we find 'le thalweg de l'Adige', 'le thalweg du Rhin', and it is similarly used in English treaties and decisions, and the books of publicists in every tongue."

Referring to the opinion in Iowa vs. Illinois, 147 U.S. 1, he quoted as follows:-

> "Mr. Justice Field, delivering the opinion of the court, said:
>
> 'When a navigable river constitutes the boundary between two independent states, the line defining the point at which the jurisdiction of the two separates is well established to be the middle of the main channel of the stream. The interest of each state in the navigation of the river admits of no other line. The preservation by each of its equal right in the navigation of the stream is the subject of paramount interest. It is, therefore, laid down in all the recognized treatises in

Mile Circle and is then carried across the River to the New Jersey shore and the boundary line between Delaware and New Jersey is then carried along low water mark on the New Jersey shore to a point above Hope Creek on the Jersey shore and nearly opposite St. Augustine Light on the Delaware shore, and is then carried back to the middle of the River and extended down the River and Bay below Ship John Light and to a point nearly opposite Goose Point on the Delaware shore and the mouth of Mantuxent Creek on the Jersey shore, where the line ends. These maps also indicate the main channel in a portion of the Bay but not in the River.

As to the land under water within the Twelve Mile Circle, a very different problem is presented, and it is this question which has given rise to most of the litigation and legislation respecting the New Jersey-Delaware boundary.

Delaware's earlier claims to the River and Bay are set forth in a charge delivered by Chief Justice Harrington to a jury in a homicide case some time prior to 1835, which is reported in a note to Emory vs. Collings, 1 Harr. (Del.) 325, Photo-stat copy of which is herewith, as it contains much of historical interest.

There are two other cases in which the question was litigated but not definitely settled.

PEA PATCH ISLAND CASE.

About 1780, there appeared at low tide in the Delaware River, about five miles below New Castle, a small, muddy exposure of soil, "about the size of a man's hat". By accretion, an island of about eighty-seven acres soon formed, which in consequence of a tradition that a vessel laden with peas had once sunk on the spot where the island afterwards rose, acquired the name of Pea Patch Island (later Fort Delaware).

In 1784, the New Jersey Proprietors granted this island, describing it as situate in Salem County, New Jersey, to persons whose

title afterwards vested in Dr. Henry Gale of New Jersey, and in 1851, the Legislature of New Jersey relinquished to Dr. Gale whatever interest it might have in the island. This was after the passage of the Act of 1822, in which New Jersey claimed to the main Ship Channel, and the Island was on the Jersey side of the channel.

In 1813, the State of Delaware, by an act of its Legislature, conveyed the Island to the United States. The Government took possession under this grant and commenced the erection of a fort upon it, and in consequence of these two grants a controversy began between Dr. Gale, claiming under the title of New Jersey, and the United States, claiming under that of Delaware.

Two suits were brought in the Federal Courts to try the title; one in 1838 in the New Jersey Circuit (Gale's Lessee vs. Bealing), in which judgment was rendered in favor of the New Jersey title, and the other in 1838, in the Delaware Circuit (United States vs. Cochrin), in which judgment was in favor of the Delaware title, and the Delaware United States Marshal turned out of possession the person who had been placed in possession by the New Jersey United States Marshal.

The matter was the subject of litigation and claim for thirty-three years, during which time numerous opinions were rendered on both sides by lawyers of national prominence and great ability.

On August 3, 1846, Congress passed an act authorizing the President "to take such steps as he might deem advisable for adjusting the title to the Pea Patch Island", and in pursuance of this authority an agreement was finally reached "to submit the question of the title to the arbitration of some professional gentleman, in whose ability, learning and honor both parties should have such implicit confidence, as to be willing to accept, as final and conclusive, whatever award he might make upon the question."

President Polk appointed Hon. John Sergeant, of Philadelphia,

concluded between the Secretary of War and Dr. Gale's grantee, for the submission. The award was in favor of the United States.

The report of this case in the appendix to Wallace, Cases in the Circuit Court of the United States for the Third Circuit, contains a full statement of the testimony, arguments of counsel and Mr. Sergeant's conclusion, and is of great historical value. In the Attorney General's office in Trenton will be also found copy of the brief of Garret D. Wall, United States District Attorney for New Jersey, and the charge of Mr. Justice Baldwin to the jury, in the case of Gale vs. Bealing.

Herewith is a photostat copy of the Twelve Mile Circle taken from the Wallace report by courtesy of the State Librarian.

Mr. Justice Baldwin and Mr. Sergeant reached opposite conclusions upon substantially the same state of facts, except that in his charge to the jury, Justice Baldwin laid some stress on the validity of the proprietary grant and also stated, what has been repeatedly claimed in other litigation, that William Penn took nothing by either of his grants from the Duke of York because the latter did not have title from King Charles II.

It is to be noted that this charge was delivered in 1836 and that Martin vs. Waddell, tried in the New Jersey Circuit in 1835, was not decided in the United States Supreme Court until 1842. The majority opinion in that case (Mr. Justice Baldwin dissenting) was to the effect that from 1702, the date of the surrender by the Proprietors to Queen Anne, they never had any right in the navigable waters of the State. It would seem, however, that the grant by the State to Dr. Gale in 1851 cured this defect.

As to the defect in the Penn title, the records show that the statement by Mr. Justice Baldwin was based upon the evidence produced before him, but at the hearing before Mr. Sergeant, records were produced showing a grant by letters patent from Charles II to

had been gra[illegible] by the Duke to Penn sev[illegible] months before. Mr. Sergeant lays great stress on the production of this patent, but from all the information available, its authenticity is open to serious question.

By this arbitration, the Federal Government maintained its possession of the Island, but the award does not bind New Jersey as a sovreign state and does not settle the boundary line dispute. So far as court records go, the verdict and judgment in the case of Gale vs. Bealing settles New Jersey's claim to the middle of the river even within the Twelve Mile Circle, but, of course, has no binding effect on Delaware because of an opposite decision by a court of equal authority.

It seems highly probable that when Chief Justice Harrington delivered his charge in State vs. Morris he was not unmindful of the pending litigation in the Pea Patch Island case.

NEW JERSEY VS. DELAWARE.

In April, 1872, Delaware officers arrested twenty or more citizens and residents of New Jersey charged with violating a Delaware fishing law, and such violations were alleged to have been committed east of the middle line of the Delaware River, within the Twelve Mile Circle.

After a series of proclamations, joint resolutions, appointment of commissions and other vain effort to establish a boundary line, a bill was filed by New Jersey against Delaware in the United States Supreme Court about March 13, 1877, by Jacob Vanatta, then Attorney General of New Jersey.

The claim made by the bill of complaint is that New Jersey

> "Is the owner in fee-simple of a portion of the bed of the Delaware River, that is to say, from the southeasterly corner of the State of Pennsylvania, on said River, down said River to and into Delaware Bay. That within

the J its aforesaid your orator part of the bed of said River extends from the New Jersey shore thereof to the middle of said River. That within and beyond the limits aforesaid the tides of the ocean ebb and flow, and that, within the limits aforesaid, your orator has and is entitled to, in and on every part of the waters of said river, an equal interest and concurrent jurisdiction with the State of Delaware."

New Jersey's claim of title is then set out, beginning with the grant from King Charles II to the Duke of York including the surrender by the Proprietors to Queen Anne in 1702, and ending with the Declaration of Independence July 4, 1776, and again claims equal rights and concurrent jurisdiction with Delaware over the waters of the river between the two states and the fee simple title to the bed of the River to the middle thereof.

The prayer of the bill was, among other things, that the true boundary line between the two States be ascertained, declared, defined and perpetually established, and that an injunction issue to prevent further interference with Jerseymen who fished on the Jersey side.

On March 31, 1877, an injunction issued against Delaware prohibiting interference with citizens of New Jersey in exercising their right to fish in the river Delaware.

On May 2, 1892, a stipulation was signed indefinitely extending the defendant's time to plead.

On May 24, 1897, the Court ordered the Clerk to notify counsel that "the Court expects this cause to be disposed of at the next term".

Afterwards Delaware filed its answer.

By this answer, Delaware claims title in fee simple to the whole of the bed of the Delaware River, "lying within the compass

that New Jers[illegible] has any title to any po[illegible]n of the River within the circle but does not set up any claim or title to any other portion of the river or bay east of the main channel.

After answering the New Jersey claim of title as made by the bill, Delaware sets up its claim of title beginning with the discovery of the Atlantic Coast of North America by Sebastain Cabot in 1497, including the grants from the Duke of York to Penn in 1682, and the grant by Charles II to the Duke of York in 1685, which grant it is claimed was obtained by the Duke in performance of his covenants of further assurance contained in the deeds to Penn. Delaware also claims the benefit of the decision of the arbitrator in the Pea Patch case.

Testimony was taken before a commissioner in Philadelphia and a copy of same and of the exhibits is contained in several large volumes on file in the State Library at Trenton.

Pursuant to Article IX of the Compact of 1905 (C.S. of N.J., pg. 5377), an order was made April 15, 1907, dismissing the bill of complaint without costs and without prejudice, on motion of Mr. Robert H. McCarter, for the complainant. (205 U.S. 550).

LEGISLATION.

New Jersey has made many other abortive efforts to establish the boundary line. On November 7, 1820, an act was passed to appoint commissioners to meet similar commissioners from Delaware for that purpose.

No commissioners were appointed by Delaware.

Similar efforts were made in 1873 before filing the bill in the United States Supreme Court, and commissioners were appointed by each State. (C.S. of N.J., pg. 5372). Those for New Jersey were Abraham Browning, Courtlandt Parker and Albert H. Slape. Delaware paid off and discharged its commissioners before the work was completed.

and Chauncey G. Parker were appointed commissioners to confer with like commissioners from Delaware,

> "For the purpose of framing a compact or agreement between the said States and legislation consequent thereon to be submitted to the legislatures of said two States for action thereon, looking to the amicable termination of the suit between said States now pending in the Supreme Court of the United States, and the final adjustment of all controversies relating to the boundary line between said States and to their respective rights in the Delaware river and bay." (C.S. of N.J., pg. 5374).

This compact will be found in C.S. of N.J., pp. 5374 to 5377, and while it purports to be a compact "relating to the boundary controversy between said States", examination of its provisions discloses that it relates to jurisdiction, not territory. And as to territory, Article VIII expressly provides that,

> "Nothing herein contained shall affect the territorial limits, rights or jurisdiction of either State of, in or over Delaware river, or the ownership of the subaqueous soil thereof, except as herein expressly set forth."

The compact, in terms, relates only to the Delaware River, and makes no attempt to settle the boundary lines in compliance with the act under which the New Jersey commissioners were appointed.

The compact was ratified by Delaware (Revised Code 1915,pg. 1214), and thereafter by Congress (34 U.S. Stat. at Large,Chap. 394).

Pursuant to the provisions of Article IV of the compact,each State appointed commissioners to draft a uniform fishing law applicable to the waters of the Delaware River and Bay lying between the two States, and to ascertain and mark the dividing line

between the river and bay. (C.S. of N.J., pg. 5373) (Delaware Code, pg. 1213).

The Legislatures of each State passed the Uniform Act in 1907.

Each act contains the following provisions:-

> "Nothing herein contained shall affect the territorial limits, rights or jurisdiction of either of said States of, in or over the Delaware River, or the ownership of the subaqueous soil thereof, except as is expressly set forth in the compact between the said States; nor shall anything herein contained affect in any way the planting, catching or taking of oysters, clams, or other shell fish, or interfere with the oyster industry, as now or hereafter carried on under the laws of either of said States."
>
> (C.S. of N.J., pg. 2536) (Delaware Code 1219).

Nothing contained in the compact nor in the uniform fishing laws can be construed as a waiver by Delaware to its claim of title to the subaqueous soil of the River, below low water mark, within the Twelve Mile Circle, and, as already shown, Delaware does not now claim title to the subaqueous soil of any part of the Bay, east of the middle thereof, nor of any part of the River, east of the middle thereof, outside of the limits of the Twelve Mile Circle.

There appears to be a very general misapprehension as to the extent of Delaware's claims.

LINE BETWEEN RIVER AND BAY.

The precise point where the River ends and the Bay begins has long been a matter of dispute.

Delaware's boundaries as claimed by its Legislature in laws of Delaware, 1874, Chap. 1, pg. 2, Sec. 2, are as follows:-

> "The limits of the State are declared to be the divisional lines between it and Maryland, run and marked by Commissioners, and approved January 11,

1763, the circular line between it and Pennsylvania, surveyed and marked in 1701, under a warrant issued by William Penn in pursuance of the feoffment from the Duke of York dated August 24, 1682, as the same has been held, occupied and recognized by the said States, respectively, ever since that time, low water mark on the eastern side of the River Delaware, within the twelve mile circle from Newcastle; and the middle of the Bay below said circle."

By the last clause of this description, the mouth of the River would appear to be above the southern boundary of the Twelve Mile Circle. By the description in the 1915 Code, heretofore quoted, the mouth of the River would appear to be below said boundary.

August 12, 1885, Attorney General John P. Stockton made a report to Governor Abbett as to the location of this dividing line. (See records in Attorney General's office at Trenton.)

This report includes copy of correspondence between the Attorney General of New Jersey and the Attorney General of Delaware on the subject, and grew out of a dispute as to the territory covered by the injunction issued by the United States Supreme Court in New Jersey vs. Delaware, to which reference has been already made.

For the purposes of this injunction, the dividing line was fixed as being "a line drawn from Cohansey Light to Bombay Hook Point."

As already stated, one of the duties of the commissioners appointed under the Compact of 1905 was "to ascertain and mark the dividing line between the river and bay".

In a note to the compact in the Delaware Code, pg. 1213, the statement is made that,

"The said commissioners of the said respective States, in joint meetings held for that purpose, agreed upon and drafted a uniform law to regulate the catching and taking

of fish in the Delaware River and Bay between the said States, ascertained the dividing line between the Delaware River and Delaware Bay, and, upon each of the shores of the said two States where said dividing line extended intersects the same, provided for and erected suitable monuments to mark said dividing line. One of said monuments is erected on the Delaware Shore at or near Liston's Point and the other opposite on the New Jersey Shore at or near the mouth of Hope Creek; a straight line drawn through the center of these two monuments is the dividing line between the Delaware River and Delaware Bay. Journal House of Representatives 1907, p. 252 &c. Senate Journal 1907, pp. 249 to 253. Said draft of said uniform law was submitted to the General Assembly of Delaware and to the Legislature of New Jersey, and by the Legislature of New Jersey duly enacted as drawn. Said uniform law appears in Sections 143 to 168, inclusive, of this Chapter."

No reference to this dividing line can be found in the New Jersey Compiled Statutes.

Senator Avis, one of the New Jersey commissioners, writes concerning it,

"We fixed the dividing line between the bay and the river, and erected a monument at the mouth of Hope Creek on the Jersey shore and at a point opposite on the Delaware shore."

Reference to the Government Charts will show that these various lines are many miles apart but the line established by the commissioners and apparently recognized by Delaware, being the line from Hope Creek to Liston's Point, would seem to be the official line and has much greater foundation in fact than the line from Cohansey Light to Bombay Hook, or the southern boundary of the Twelve Mile Circle.

Conclusions.

1. Within the Twelve Mile Circle, the boundary line between New Jersey and Delaware is still an open question which can be settled only by Convention between the States or by decree of the United States Supreme Court. From a practical standpoint, the Board of Shell Fisheries is not interested in this question because the up-stream water pollution has destroyed the oyster beds which formerly existed within the Circle.

2. Below the Twelve Mile Circle, the boundary line, according to the decisions of the United States Supreme Court, is the thalweg or middle of the main channel of the Delaware River and Bay, from the southerly perimeter of the Twelve Mile Circle to the Atlantic Ocean.

3. Substantially all the natural oyster beds on the New Jersey side of the main channel are between the mouth of the River, indicated by the line drawn from Hope Creek to Liston's Point, and the "southwest line", being an imaginary line drawn from the mouth of Straight Creek to Cross Ledge Lighthouse. It is these beds which the Board of Shell Fisheries of New Jersey desire to protect.

4. By Article VI of the New Jersey-Delaware Company of 1905 and Sec. 3 of the Uniform Fishing Law of 1907, it is provided that,

> "Nothing herein contained shall affect the planting, catching or taking of oysters, clams or other shell fish, or interfere with the oyster industry as now or hereafter carried on under the laws of either State."

This provision should be construed as a recognition of the right of each State to regulate, by legislation, the oyster industry in its own waters.

5. In the Spring of 1925, Delaware oyster boats dredged for and caught oysters from beds on the New Jersey side of the main channel of the Bay, in violation of the New Jersey statutes regulating its oyster industry. The oystermen so violating the law were





DE27341

not arrested because of doubt as to the boundary line.

6. If those in authority concur in the conclusions herein expressed concerning the location of said boundary, it is respectfully suggested that the Governor or Attorney General of Delaware be advised that a continuation of such violations will result in prompt prosecutions.

7. Incident to the preparation of this report, a large amount of information has been obtained relative to the subject matter thereof, and if any point has not been comprehensively covered in the foregoing summary, which has been made as brief as possible, under the circumstances, information relative thereto can be readily furnished.

Dated December 7, 1925.

Respectfully submitted,

(sgd) WALTER H. BACON

Counsellor at Law.

December 30,
1925.

My dear Attorney General:

As you know, I had Mr. Walter Bacon look up the question of the boundaries between Delaware and New Jersey, and he has furnished me a very interesting report.

As these conclusions usually drift into some channel where they cannot be found at a later date, when needed, I am suggesting that his report and the accompanying maps be filed in the Library. What do you think of the idea of filing whatever you have in your office relating to this controversy in the Library, so that they may be put together for future reference?

Yours very truly,

Governor.

Hon. Edward L. Katzenbach,
Attorney General.

DE27344

EDWARD L. KATZENBACH
ATTORNEY GENERAL

Trenton, N.J., Jan. 4, 1926.

Your Excellency:

Your communication of December 31st last, re the interstate boundary line in the Delaware River, has been received. The interest which you have taken in the matter is gratifying, and it is also gratifying to know that the results of Mr. Bacon's labors will be filed in the Library, where they can be obtained upon application.

We will follow your suggestion with respect to the records of this office to be put in the Library for future reference.

Very respectfully yours,

Edward L. Katzenbach

Attorney General.

Hon. George S. Silzer,
Governor of New Jersey,
State House.

ELK/S

December 29,
1925.

My dear Governor:

Last Spring some Delaware oyster boats dredged for and caught oysters from beds in the New Jersey side of the main channel of Delaware Bay in violation of New Jersey statutes regulating the oyster industry. This action, of course, created considerable friction, and I am very much afraid that if the practice be continued it may lead to physical violence.

Such action, of course, should be deplored, and prevented, if possible. It is our duty to see that nothing of that kind happends if we can prevent it. The oyster industries of Delaware and New Jersey are well defined, and have been for many years. You grant licenses for those who desire to enter this business on your side of the river, and we do the same on ours.

We have been replenishing the natural oyster beds on our side of the river, and are planning to continue an extension of this work. It is quite natural that we do not want trespassers, who have not even a license from your State or ours, to come on these beds and get the benefit of our money and work.

The differences between the States have gradually been disappearing, and I am hoping that we can settle the whole matter once and for all by amicable agreement, as we did with the State of Pennsylvania.

You will recall that by Article 6 of the New Jersey-Delaware Compact of 1905, and Section 3 of the Uniform Fishing Law of 1907, it is provided that:

> "Nothing herein contained shall affect the planting, catching or digging of oysters, clams, or other shell fish, or interfere with the oyster industry as now or hereafter carried on under the laws of either State."

fg

This is a distinct recognition of the oyster industry as carried on under the laws of both States

I would appreciate it very much if you would let me know what you think of the best way to approach the matter.

Yours very sincerely,

Governor.

Hon. Robert P. Robinson, Governor,
Dover,
Delaware.

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New Jersey State Archives
Governor Meyner's Papers
Box 22, Folder 163



DE21443

N.J. - GOVERNORS - ANNUAL MESSAGE
N.J. Gov
Rutgers University Library

# THIRD ANNUAL MESSAGE

OF

# HON. GEORGE S. SILZER

Governor of New Jersey

TO THE LEGISLATURE OF NEW JERSEY

January 12, 1926

MacCrellish & Quigley Co.
Trenton, New Jersey

DE16741

New Jersey State Archives
Governor Sulzer Annual Message

DE16742

## OYSTERS.

Little attention has been paid to the important oyster industry in this State, the output of which annually amounts to approximately $10,000,000. This industry is located principally on the Delaware River, in the vicinity of Bivalve, at the mouth of the Maurice River. With the opening of the Manasquan Canal the oyster industry in Barnegat Bay may be largely developed. This can only be ascertained after the canal has been opened and conditions studied. There is, however, a healthy growth there, and a prospect of substantial development.

Contrary to the general tendency to disintegrate, evidenced in other parts of the country, the industry in New Jersey has prospered and grown, and is now one of the healthiest survivors in the country.

This growth and prosperity has been due, in large measure, to the good judgment of the Board of Shell Fisheries and the sensible co-operation and team work of the men engaged in conducting the industry.

Last year an appropriation was made for re-shelling some of the natural oyster beds in the Delaware River, and so extending the area. This work should be further extended and encouraged, and in addition thereto, in order to preserve the entire industry, pollution should be carefully watched and prevented.

Due to an ancient dispute with the State of Delaware over the boundary line, residents of Delaware occasionally come to our oyster beds and appropriate to themselves our oysters and seedlings. This is discouraging to our oyster planters, and if allowed to continue will soon result in the refusal on the part of the State to make further appropriations.

It is necessary, therefore, that some action be taken.

During the last year I had an investigation made as to the respective rights of the two States, and upon the receipt of the report communicated with the Governor of Delaware, looking toward an amicable settlement of this question. I believe that such settlement would avoid the possibility of bloodshed, and would be of mutual advantage to the States, and preserve the

friendly relations that have always existed between New Jersey and Delaware. If no friendly adjustment can be made, there may be necessity for court action to settle our rights.

At the time of the writing of this message no reply has been received from the Governor of Delaware.

I cannot permit this opportunity to pass without congratulating this industry on the careful way in which it is managed. During all of the agitation throughout the country last year against oysters that were infected, and in all of the investigations made by other States following that condition, no one was able to point either to any infection of our oysters or to any other unfavorable condition. This was due to the watchfulness against pollution and infection, and the constant supervision of the Board of Shell Fisheries and the Department of Health. No one need to be afraid to eat oysters from this State.

## OCEAN PIERS.

The ocean front of New Jersey is one of its most valuable assets, particularly in furnishing a place for recreation, health and pleasure. Anything that tends to impair the usefulness of this shore front is detrimental to the interests of the State. A large industry has been built up, and thousands from our own State and other States are attracted to our shores every summer.

No obstructions can be placed upon our ocean front without the consent of the State, because in every case application must first be made to the State for the grant of riparian rights.

Our past experience has been that when applications for riparian rights were made, they were granted on general terms, permitting the purchaser to construct what he wished. The result has been that, in many cases, piers have been extended into the ocean, many times unsightly in appearance, and, at other times, permitted to fall into decay or used in such a way as to become a nuisance and a menace.

In some of our shore resorts the further building of piers has been stopped or attempted to be stopped by municipal action. It would seem that the time has arrived when we should give thought to the future of this playground and this industry. If

January 18,
1926.

My dear Governor:

I have your letter of January 14th, and from my examination of the matter I find that the matter of fishing rights was settled by the commission to which you referred, but the oyster rights were not settled.

I had Walter Bacon go thoroughly into the matter this summer, and he has made a very exhaustive report, outlining the exact situation. From this, and my own investigation, I am sorry to say that the matter still seems to be open. Last Spring there was some difficulty down there from Delaware, because they knew that the matter had not been settled.

Very truly yours,

Governor.

Hon. E. C. Stokes,
Mechanics National Bank,
Trenton, N.J.

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RESOLUTIONS

CHAPTER 243

**HOUSE JOINT RESOLUTION**

*Be it resolved by the Senate and House of Representatives of the State of Delaware in General Assembly met:*

Sec. 1. That Robert H. Richards, William S. Hilles, Charles W. Cullen, William M. Short and William F. Cummins be and they hereby are appointed and constituted Commissioners of the State of Delaware to confer with like Commissioners representing the State of New Jersey, for the purpose of framing a compact or agreement between the said States and legislation consequent thereon, to be submitted to the Legislatures of said two States for action thereon, looking to the final adjustment of all controversies relating to the boundary line between said States and to their respective rights in the Delaware River and Bay. The said Commissioners shall report at the present or some subsequent Session of the Legislature.

Sec. 2. That there is hereby appropriated out of any moneys in the Treasury of the State not otherwise appropriated, the sum of Two Thousand Dollars ($2,000.00), to defray the traveling and necessary expenses of the Commissioners while engaged on the matters herein referred to. Said appropriation shall be immediately available upon the approval of this Joint Resolution, and shall continue in force as long as the said Commissioners are engaged on said matter, and shall be paid by the State Treasurer from time to time on vouchers submitted by the Commissioners and signed by at least three Commissioners.

Approved March 2, A. D. 1927.

# JOURNAL

OF THE

# Eighty-third Senate

OF THE

## STATE OF NEW JERSEY

BEING THE

## One Hundred and Fifty-first Session of the Legislature

TRENTON, N. J.
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1927

DE13986

Mr. Stevens offered the following resolution, which was read and adopted:

*Resolved,* That when the Senate adjourns it be to meet Thursday, March 17th, at 12 o'clock noon.

On motion of Mr. Stevens, the Senate then adjourned.

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THURSDAY, March 17th, 1927.

At 12 o'clock noon the Senate met.

The session was opened with prayer by the Hon. David H. Agans.

Under the direction of the President, the Secretary called the Senate, when the following Senators appeared and answered to their names:

Messrs. Abell, Agans, Bright, Case, Cole, Davis (President), Forsyth, Larson, Mackay, Mathis, Pierson, Reeves A. C., Reeves F. M., Richards, Roberts, Simpson, Stevens, Stiles, Williams, Wolber—20.

One communication endorsed "Nominations" was received from the Governor at the hands of his secretary, Mr. Fred Bloodgood.

Mr. Stevens moved that the communication from Mr. Edward L. Katzenbach, the Attorney-General, concerning the appointment of commissioners and the joint resolution be spread in full on the Journal.

Which motion was adopted.

STATE OF NEW JERSEY,
EDWARD L. KATZENBACH,
ATTORNEY GENERAL.

TRENTON, N. J., March 10th, 1927.

*Hon. Francis B. Davis, President, New Jersey State Senate, Senate Chamber, State House:*

MY DEAR MR. PRESIDENT—The Attorney-General of Delaware has delivered to me in person the certified copy of joint resolution appointing commissioners from the State of Delaware, herewith enclosed.

The personnel of the Delaware Commission is as follows: Robert H. Richards, who was formerly Attorney-General of Del-

aware, and was such during the period of the last compact between the States; William S. Hilles, who is a leading citizen, and also a leading lawyer of Wilmington; Charles W. Cullen, who is a member of the Delaware Bar practicing in Georgtown, Sussex county, Delaware; William M. Short, who is an oysterman of Kent county, Delaware; William F. Cummins, who is also an oysterman of Kent county.

I took up with you the question of the personnel of the New Jersey Commission. You were to consult with the Governor and others concerning it, as I recall. Since Delaware has passed the resolution and notified us to that effect, perhaps you may desire to call the matter to the Legislature's attention during the session of the week of the 14th.

Believe me,

Very sincerely yours,
(Signed) EDWARD L. KATZENBACH,
*Attorney-General.*

JOINT RESOLUTION RELATING TO THE BOUNDARY CONTROVERSY BETWEEN THE STATES OF NEW JERSEY AND DELAWARE.

BE IT RESOLVED *by the Senate and House of Representatives of the State of Delaware in General Assembly Met:*

1. That Robert H. Richards, William S. Hilles, Charles W. Cullen, William M. Short and William F. Cummins be and they hereby are appointed and constituted commissioners of the State of Delaware to confer with like commissioners representing the State of New Jersey, for the purpose of framing a compact or agreement between the said State and legislation consequent thereon, to be submitted to the Legislatures of said two States for action thereon, looking to the final adjustment of all controversies relating to the boundary line between said States and to their respective rights in the Delaware river and bay. The said commissioners shall report at the present or some subsequent session of the Legislature.

2. That there is hereby appropriated out of any moneys in the treasury of the State not otherwise appropriated, the sum of two thousand dollars ($2,000.00), to defray the traveling and necessary expenses of the commissioners while engaged on the matters herein referred to. Said appropriation shall be immediately available upon the approval of this joint resolution, and shall continue in force as long as the said commissioners are engaged on said matter, and shall be paid by the State Treas-

urer from time to time on vouchers submitted by the commissioners and signed by at least three commissioners.

WILLIAM WINTRUP,
*Speaker of the House.*

WILLIAM F. ALLEN,
*President Pro Tem of the Senate.*

Approved March 2d, 1927.
ROBT. P. ROBINSON,
*Governor.*

STATE OF DELAWARE,
OFFICE OF SECRETARY OF STATE.

I, Charles H. Grantland, Assistant Secretary of State of Delaware, do hereby certify that the above and foregoing is a true and correct copy of Joint Resolution Relating to the Boundary Controversy Between the States of New Jersey and Delaware, approved March 2d, A. D. 1927, as the same appears on file in this office.

In Testimony Whereof, I have hereunto set my hand and official seal, at Dover, this seventh day of March, in the year of our Lord, one thousand nine hundred and twenty-seven.

(Signed) CHARLES H. GRANTLAND,
[SEAL] *Assistant Secretary of State.*

The following message was received from the House of Assembly by the hands of its clerk:

STATE OF NEW JERSEY,
ASSEMBLY CHAMBER,
*Mr. President:* March 16th, 1927.

I am directed by the House of Assembly to inform the Senate that the House of Assembly has passed the following bills:

Senate Bill No. 76, entitled "A supplement to an act entitled 'An act relative to sales of lands under a public statute or by virtue of any judicial proceedings' (Revision of 1874),"

Senate Bill No. 96, entitled "A supplement to an act entitled 'An act concerning public utilities; to create a Board of Public Utility Commissioners and to prescribe its duties and powers,' approved April twenty-first, one thousand nine hundred and eleven,"

Senate Bill No. 107, entitled "A supplement to an act entitled 'An act relating to courts having criminal jurisdiction and regu-

State of Delaware,

# Office of the Attorney General

CLARENCE A. SOUTHERLAND,
ATTORNEY GENERAL
JAMES R. MORFORD,
LEONARD G. HAGNER,
EARLE D. WILLEY,
HOWARD J. COOKE,
DEPUTY ATTORNEYS GENERAL
ALVY R. EVANS,
CLERK

WILMINGTON, DEL. December 26, 1928.

Hon. Robert P. Robinson,
Wilmington, Delsware.

My dear Governor Robinson:

I have your letter of December 20th enclosing a petition from the oystermen of Delaware concerning the New Jersey boundary question.

As you know, a Boundary Commiesion was appointed, of which Mr. Richards is now chairman. My suggestion is that you request Mr. Richards to give you a report as to the present status of the matter so that you may advise the oystermen.

I am today writing Mr. Richards a letter advising him of the receipt by you of this petition and suggesting that he write you concerning the status of the matter.

Very truly yours,

CAS:O.

Attorney General.

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Volume Page

1302 - 007

Governor's Papers

1928

A - B

Delaware - N.J. Boundary Com

Dover, Delaware,
April 29, 1929.

Hon. C. Douglass Buck, Governor,
Dover, Delaware.

Dear Sir:

The Commissioners of the State of Delaware, appointed under the provisions of House Joint Resolution approved March 3, 1927 (35 Del.Laws,Chap.243), and the act of January 30, 1929, amendatory thereto, to confer with Commissioners of the State of New Jersey for the purpose of framing a compact between the States looking to the final adjustment of all controversies relating to the boundary line between the said States, desire to invite your attention to the facts hereinafter set forth.

Following the approval of the House Joint Resolution of 1927, above referred to, the Commissioners named thereunder met and organized. Robert H. Richards, Esq., was elected Chairman of the Commission and Charles W. Cullen was elected Secretary. The Commissioners met several times during the year 1927 with the New Jersey Commissioners, who likewise were five in number, and had been duly appointed by authority of the New Jersey Legislature. No agreement upon the matter before the Commissioners was reached in those meetings.

Subsequently, two of the Commissioners named, William S. Hilles and William M. Short, died, and Robert H. Richards and William F. Cummins resigned as members of the Commission.

Pursuant to the amendatory act of 1929, the Governor of the State of Delaware filled the vacancies on the Commission by the appointment of David J. Reinhardt, Esq., Howard M. Buckson,



DE02689

James B. Robinson and Clarence A. Southerland.

The Commission as thus constituted met and elected Charles W. Cullen, Esq., as President, and Howard M. Buckson as Secretary. This Commission has had two meetings with the New Jersey Commission during the present year. Several suggestions were made by each Commission as to the possible settlement of the disputed boundary line, but no agreement was reached.

In order that you may be apprized of the exact nature of the disoute, we state below the claims of each of the States with respect to the boundary line and the present status of the matter.

By Section 7 of the Revised Code of the State of Delaware, the boundaries of the State are fixed as follows:

> "The limits of the State are declared to be, on the South, the divisional line between Delaware and Maryland; on the West, the divisional line between Delaware and Maryland extended Northerly to its intersection with the Southerly boundary line of Pennsylvania; on the North, the boundary line between Maryland and Pennsylvania extended Easterly to its intersection with the twelve mile circle described from New Castle and said twelve mile circle extended to low water mark on the Eastern side of the Delaware River; and on the East, low water mark on the Eastern side of the Delaware River within said twelve mile circle, the Southerly perimeter of said twelve mile circle from its intersection with said low water mark Westerly to the middle line of Delaware River, the middle lines of Delaware River and Bay below said twelve mile circle to the mouth of said Bay, and the Atlantic Ocean."

It will be observed that the State of Delaware claims jurisdiction over the sub-aqueous soil of the Delaware River within the twelve mile circle to low water mark on the New Jersey shore. Below the twelve mile circle the State of Delaware claims to the middle of the River and Bay. According to the contention of numerous persons and firms engaged in the oyster industry in this State, the middle line of the River and Bay is intended to mean the geographical center of the River and Bay, and not the middle of the main ship channel. The State of New Jersey claims that

the boundary line between the States is the middle of the main ship channel from the Pennsylvania line to the Capes.

There are thus two points of dispute between the States. The first relates to the area within the twelve mile circle. The claim of the State of Delaware to hold to low water mark on the New Jersey shore rests upon the deed of feoffment from the Duke of York to William Penn, dated August 24, 1682 (Appendix to Vol. 1, Del. Laws, p.1). The claim of the State of Delaware to the middle line of the River and Bay below the twelve mile circle rests upon the assumption that the dividing line of the River and Bay between two states is the geographical center thereof, and furtner, upon the assumption that the State has at all times exercised jurisdiction to such a line.

The claim of the State of New Jersey to the middle of the main ship channel rests upon its refusal to recognize the validity of the deed of the Duke of York to William Penn for the twelve mile circle, and also upon the claim that the line is governed by the decisions of the Supreme Court of the United States fixing boundary lines between states divided by a navigable stream or bay as the middle of the main ship channel.

While as above stated, several propositions fixing a compromise line were suggested by both sides, none of the lines so suggested was agreeable to both Commissions. This Commission is of the opinion that it will be impossible to fix the line by agreement and that it will be necessary, in order that the line may be finally determined, for a suit to be instituted in the Supreme Court of the United States and carried to completion.

The appointment of the two State Commissions two years ago was brought about by a dispute in the Delaware Bay concerning

the ownership of the natural oyster beds which lie adjacent to Ship John Shoal. By an informal agreement between the Attorneys General of the respective states at that time, coupled with action to that effect by the New Jersey Shellfish Commission, the disputed area around Ship John Shoal was buoyed off and declared closed ground to oystermen of both states. This agreement was carried out during the two years of negotiation between the two Commissions.

Following the recent termination of the unsuccessful negotiations between the two Commissions, it was again agreed by the Commissions that a similar arrangement would be recommended to the oyster industries of both states and to the New Jersey Shellfish Commission. This Commission is advised that such arrangement has been approved by the parties in interest and that it will be carried out pending the determination of the boundary line by the Supreme Court of the United States.

The natural oyster beds surrounding Ship John Shoal are valuable beds and the oystermen of both states are naturally anxious to dredge for oysters at that point as soon as possible. This Commission is further advised that the continued closing of the so-called disputed area to dredging will eventually result in great harm to the natural beds, due to the fact that the oysters will die. It is of great importance, therefore, that the question involved be adjudicated as promptly as possible.

This Commission also believes that any suit filed in the Supreme Court of the United States should also finally determine the title to the sub-aqueous soil of the Delaware River within the twelve mile circle. While there is at present no controversy in this area (fishing rights having been settled by the compact

between the states in 1903), yet it would be highly desirable to settle the entire dispute in one suit.

The House Joint Resolution of 1927, creating this Commission, provided:

> "The said Commission shall report at the present or some subsequent session of the Legislature."

The session of the Legislature of 1939 having adjourned sine die, and the situation above set forth requiring prompt action, this Commission desires to lay before you the foregoing facts and to recommend that you request the Attorney General of this State to take prompt action, in cooperation with the Attorney General of New Jersey, to institute suit in the Supreme Court of the United States, with a view to the final adjudication of the disputed boundary line.

In this connection your attention is also invited to Senate Joint Resolution No. 3, approved by you February 11, 1939, authorizing and directing the Attorney General to take such steps as he may deem necessary to determine finally the boundary line between the two States, in the event of a necessity arising therefor, because of the failure of the two Commissions to arrive at a satisfactory agreement.

It is believed that the action here recommended is in conformity with this resolution.

Respectfully submitted,

Chas. B. Cahall

James D. Robinson

Howard M. Burton

David J. Reinhardt

Leonard Southerland

Commissioners of the State of Delaware appointed in the matter of the Delaware-New Jersey boundary line.

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Volume ___ Page
1302-000-007
Governor's Papers
DE - NJ Boundary Commission
1929

December 27, 1928

Hon. Walter H. Bacon,
Bridgeton, New Jersey.

My dear Mr. Bacon:

Since your telephone communication with me, some days ago, with respect to another meeting of the Delaware-New Jersey Boundary Commission, I have learned that Mr. W. M. Short, one of the members of the Delaware Commission, has died. This makes two members of the Commission that have died since the Commission was originally created, Messrs. Hilles and Short. The Commission is consequently reduced to three members, Mr. Cullen, Mr. Cummins and myself.

Unfortunately the Act which authorized the appointment of the Delaware Commission does not provide for the filling of vacancies in the Commission.

Personally I do not feel that the State of Delaware would be properly represented by a commission of three, inasmuch as the Legislature evidently intended and desired that the State should be represented by a commission of five. I think it would be much better to have the matter presented to the General Assembly of Delaware which meets in a few days and ask them to either amend the existing Act or pass a new act providing for a Commission of five, so that the State, in any further meetings, will be represented as it was originally intended and designed that it should be, by a commission of five members. If the State should be represented by a commission of three members, two would constitute a majority, but if I were one of two constituting such a majority, I would not be willing to agree to anything tentatively or to make a recommendation to the State because the State evidently expected to have a recommendation that would be expressive of the judgment of at least three representatives of the State. Consequently I think it would be wiser to defer any further meeting of the commissions representing the two States until the State of Delaware can be represented by a commission of five members.

I am writing to the Governor today and sending him a copy of this letter and suggesting that he take steps to have the Legislature take immediate action with respect to the matter as soon as they convene. There is no reason why the Legislature cannot act at once.

With personal regards and best wishes for the New Year, I am

Yours sincerely,

HMR/W

DE16634

1302-007

Governors Papers

1928

A-B



DE16635

LAW OFFICES

ROBT. H. RICHARDS
AARON FINGER
CHARLES F. RICHARDS

4060 DUPONT BUILDING
WILMINGTON, DELAWARE
BELL TELEPHONE 411

December 27, 1928

Hon. Robert P. Robinson,
Governor of Delaware,
Dover, Delaware.

My dear Governor: Confidential.

Supplementing my letter written to you of even date, I would suggest that it probably would be better to have the Legislature pass a new Act providing for a new Commission and repealing the old Act, so that the Governor would feel perfectly free to appoint entirely new men, if you should see fit to do so. Personally, I do not care to serve longer on the Commission or on any new Commission, because I do not believe I can do any good.

Yours sincerely,

RHR/W

1302 - 007
Governor's Papers
1928
A-D



DE16637

LAW OFFICES

ROBT. H. RICHARDS
AARON FINGER
CHARLES F. RICHARDS

4080 DUPONT BUILDING
WILMINGTON, DELAWARE
BELL TELEPHONE 411

December 27, 1928

Hon. Robert P. Robinson,
Governor of Delaware,
Dover, Delaware.

My dear Governor:

I am enclosing herewith a copy of a letter I wrote to Honorable Walter Bacon, Chairman of the New Jersey Boundary Commission appointed to confer with a similar Commission representing the State of Delaware for the purpose of attempting to settle the question of the boundary between the two States.

It is needless for me to repeat in my letter to you what is said in my letter to Mr. Bacon. I beg leave, however, to respectfully suggest that you immediately take the matter up upon the convening of the Legislature and endeavor to get them at once to pass an act authorizing the appointment of a new Commission. Such an act should contain a proper provision authorizing the Governor to fill any vacancy in the Commission. The old Act did not contain such a provision and this omission has proved unfortunate.

The Commission that was appointed had two meetings with the New Jersey Commission, one in Wilmington and one at Bridgeton, New Jersey. I thought at and after the first meeting in Wilmington that we might be able to agree, but after the second meeting, held in New Jersey, I rather came to the conclusion that we would not be able to agree. However, no effort should be spared to effectuate an amicable agreement of this dispute. It is, in my judgment, susceptible of amicable adjustment. I think it is somewhat unfortuate that the more or less abstract question of the boundary between the two States should be influenced by the specific question, to wit, the ownership of certain natural oyster rocks, that was the immediate cause of the creation of the existing Commission to settle the boundary question, but such questions are usually made prominent by some specific issue that brings them forward.

I beg to remain

Yours sincerely,

Chairman of Commission appointed by State of Delaware to confer with like Commission from State of New Jersey with respect to the boundary between the two States.

RHR/W

1302-007
Governor's Papers
1928
A-B

Boundary Commission

December 28, 1928

Capt. Jas. W. Wilcutts,
Bowers, Delaware.

My dear Capt. Wilcutts:

In accordance with your verbal request and the desire as expressed by a number of the persons engaged in the oyster industry who recently sent to the Governor's office a petition for some action by the Boundary Commission of the two States, I beg to say that I have taken this matter up with Mr. Southerland and Mr. Richards.

Mr. Richards writes me that two meetings of the Commissions representing New Jersey and Delaware were held, but nothing was accomplished. About the time they were ready to hold another meeting, one of our commissioners died and recently, as you know, Mr. Short died. This leaves our commission withonly three members instead of five and the law does not permit the Governor to fill these vacancies. Mr. Richards is therefore unwilling to call another meeting of the Commission so long as Delaware has only three members on its commission. He suggests that some action should be taken by the incoming Legislature, looking toward the appointment of a new commission and giving the Governor power to appoint said commissi n and to fill vacancies. If you will communicate the contents of this letter to the oystermen, I presume they will immediately take some action to have such laws passed bythe incoming Legislature as will remedy the matter. I am sorry I am not able to accomplish anything more for you and for them.

Very truly yours,

Governor.

bas

1302-007
Governor's Papers
1928
A-D

December 28, 1928

Hon. Robert H. Richards,
du Pont Building,
Wilmington, Del.

My dear Mr. Richards:

Please accept my thanks for yours of the 27th instant containing copy of letter written to Hon. Walter H. Bacon of Bridgeton, N.J. regarding the meeting of the Boundary Commissions of Delaware and New Jersey.

I thank you for this full explanation of the case and quite agree with you that some Legislative action should be taken toward the formation of a commission permitting the Governor to appoint the commission and fill vacancies when such occur.

Very truly yours,

Governor.

bas

Volume Page

1302-007
Governor's Papers
1928
A-B



DE16643

STATE OF NEW JERSEY
WILLIAM A. STEVENS
ATTORNEY GENERAL

Trenton, N.J., June 21, 1929

Atty Genl

My dear Governor:

Agreeable with the request which you made a short time ago on the occasion of a conference regarding the three suits; that is, Delaware River Diversion, Beach Pollution and Delaware Boundary, I have caused to be prepared a statement somewhat in detail of the facts and questions in each case for such use or publicity as you may deem appropriate.

In preparing these statements an effort has been made to bring the subjects out of the purely legal vernacular of the bills of complaint and present them in the language of the man in the street. You will observe that some of the stories in narrative form have a number of interesting phases in which the public might be interested, either in published articles or in addresses which you have occasion to make from time to time.

Respectfully,

Wastevens

Attorney General.

Hon. Morgan F. Larson,
Governor of New Jersey,
State House, Trenton, N.J.

DE16745

New Jersey State Archives
Governor Larson's Papers
Box 2 Folder 15

# REPORT TO

## HONORABLE MORGAN F. LARSON

GOVERNOR OF NEW JERSEY

BY

WILLIAM A. STEVENS

ATTORNEY GENERAL

CONCERNING

## DELAWARE RIVER DIVERSION CASE
## BEACH POLLUTION CASE
## NEW JERSEY-DELAWARE BOUNDARY CASE

---

DATED JUNE 21, 1929

Trenton, N. J., June 21, 1929.

My Dear Governor:

Agreeable with the request which you made a short time ago on the occasion of a conference regarding the three suits; that is, Delaware River Diversion, Beach Pollution and Delaware Boundary, I have caused to be prepared a statement somewhat in detail of the facts and questions in each case for such use or publicity as you may deem appropriate.

In preparing these statements an effort has been made to bring the subjects out of the purely legal vernacular of the bills of complaint and present them in the language of the man in the street. You will observe that some of the stories in narrative form have a number of interesting phases in which the public might be interested, either in published articles or in addresses which you have occasion to make from time to time.

Respectfully,

WILLIAM A. STEVENS,
Attorney-General.

Hon. Morgan F. Larson,
Governor of New Jersey,
State House, Trenton, N. J.

# New Jersey-Delaware Boundry Case

## MEMORANDUM OF FACTS.

### History of the Controversy.

The history of the controversy over the title to the Delaware river and bay, and adjacent territory begins with the history of the American continent. The controversy, originally involved the Swedes and the Dutch. Later the controversy arose between the English and the Dutch out of conflicting claims of discovery by Sebastian Cabot in 1497 and by Henry Hudson in 1609. Both of these navigators, the first under the English flag and the second under the Dutch flag, entered the Delaware bay and claimed all the adjacent territory for their respective sovereigns, but actual possession or occupancy was undertaken by neither nation until 1614 when the Dutch took possession and began to colonize in the territory adjacent to the Hudson River, which they called the North River and the Delaware River, which they called the South River. From that time forward the conflict waged from time to time between the English and the Dutch, forts were established and taken back and forth until a war between the two countries over the American territory was finally and permanently settled by the treaty of Breda on July 31, 1667.

### The Title to New Jersey.

During this prolonged period of conflict grants or letters-patent were issued by both sovereigns for lands in the disputed territory, but the treaty of Breda ceded all the lands along the Delaware river and bay and the Hudson river and bay to Charles II, King of England, and thereafter the title of the English crown continued with only slight interruption until the Declaration of American Independence on July 4, 1776.

## The Delaware Boundary Dispute.

The controversy over the boundary between what are now the States of Delaware and New Jersey arose, and has continued from the year 1682 down to the present day, and at intervals during that time, has given rise to internecine warfare over the conflicting claims of the colonies, states and citizens on the two sides of the river and bay. The dispute between the two states has existed since 1799, and although commissions have been appointed, from time to time, under authority of the legislatures of the two states, no agreement has ever been reached between them except upon the right of citizens of both states to fish in the river and bay.

## The Pea Patch Island Case.

The most celebrated case in the history of this boundary dispute arose in 1913, during the war of 1912, when the State of Delaware ceded to the United States Government for the construction of a fort, an island known as Pea Patch Island. Legend has it that sometime in the eighteenth century, a vessel loaded with dried peas sank in the Delaware Bay. The eddying currents of the tide soon began to collect sediment around this wreck until, one day some navigator of the bay discovered above the surface at low tide, a patch of ground "about the size of a man's hat." The island grew in size and height until, in 1784, it contained 178 acres and was conveyed by John Lawrence to Edward and Clement Hall. Lawrence's title came from a grant of the Proprietors of West Jersey, and on November 24, 1831 the title of Henry Gale, then owner, was confirmed by an act of the New Jersey Legislature. On account of the ship load of peas, this island has always been known as "Pea Patch Island" or "the Pea Patch."

In 1814, the war of 1812 then being still in progress, the War Department sought to obtain the Pea Patch Island for the erection of a fort to protect the City of Philadelphia and the territory adjacent to the Delaware Bay. Inquiries

were made by Army officers of the New Jersey owner but the negotiations were not pursued. The national treasury being much depleted by the war, James Monroe, then Secretary of War, made overtures to the City of Wilmington, Delaware, for the advancement by it of funds to build the fort, on the promise that when the war was over, the government would pay back the money with interest. This offer was accepted and in 1814 the fort was begun and soon completed. In the meantime, instead of pursuing the negotiations with the New Jersey owner, the federal government took the grant for the island from the State of Delaware.

The New Jersey owner brought suit in 1819 in the United States District Court in New Jersey for a writ of ejectment to put the government officials off the island, but that suit was discontinued in 1822. Another suit was brought later in the same court by the successor owner, by which he obtained a favorable decision in 1836.

In May, 1839 the government then brought a suit against the New Jersey owner in the United States Court in Delaware, and judgment was entered in favor of the government. With the title of the island decided in favor of the New Jersey title by the court in New Jersey, and in favor of the Delaware title by the court in Delaware, the controversy between the parties remained undecided, but the threat of the Secretary of War to send soldiers to put the New Jersey claimant off and to hold possession of the island by force, caused the latter to withdraw and leave the government in possession.

The controversy dragged along until, pursuant to an agreement dated February 27, 1847 between the Secretary of War and James Humphrey, the then New Jersey claimant of the island, it was, in 1849, submitted to arbitration by John Sargent, of Philadelphia, who decided in favor of the government.

Hence the conflicting claims of New Jersey and Delaware to the title to the Pea Patch Island have never been judicially determined.

**Intervening Conflicts.**

In 1872, under a law of the State of Delaware, New Jersey fishermen in the bay were arrested and put in jail in Delaware for failure to obtain a fishing license from that state. Several very vigorous proclamations and official protests from Governor Parker of New Jersey resulted in the appointment, in 1873, of commissioners of each state for the purpose of agreeing upon the boundary line, but no agreement was reached. In 1876, the New Jersey Legislature authorized the Attorney-General to institute a suit in the United States Supreme Court to settle the question. Such a suit was instituted the following year and an injunction against the interference of the State of Delaware was obtained. A large number of exhibits and considerable testimony were offered in evidence but the case was allowed to drag along until a new conflict arose in 1904. In the following year (1905) the legislatures of the two states again appointed commissioners to agree upon the boundary. Their negotiations resulted in a compact of that year, wherein they agreed upon common fishing rights and disagreed on boundary. They did agree, however, to dismiss the suit then pending, and it was dismissed.

The suit was dismissed because, during the progress of the hearings, it was discovered that the bill of complaint, as drawn by the Attorney-General at that time, covered only a section of about twenty-four miles in the river and no part of the bay, and if the suit should be decided in favor of New Jersey, only a very small section of the boundary line would be affected. It would benefit the fishing rights in that section of the river, which were later protected by the compact, but would not cover any of the oyster rights in the bay, which later caused a renewal of the controversy.

In May, 1925, the conflict was renewed when Delaware oystermen dredged and took away from territory claimed by New Jersey, some 25 thousand bushels of oysters.

They were indicted in Salem County, but owing to the important title question involved, which was deemed too serious to be tried in a county court in a criminal proceeding, the case was not pressed. But in 1927, the legislature of New Jersey deemed it advisable to make another attempt to settle the boundary by agreement. Delaware joined in the attempt, but after two years of fruitless negotiations, the New Jersey Commissioners, in April of this year, reported to the legislature that they had been unable to reach a satisfactory agreement and recommended that a suit be instituted to finally determine the dispute. Accordingly, on April 17, 1929, the legislature adopted a joint resolution instructing the Attorney-General to bring such a suit.

### The Substance of the Conflicting Claims.

Briefly stated, the substance of the claims of the two states is that New Jersey claims title in fee simple to the soil under the river and bay to the centre of the main or deepest navigable channel, between the northerly boundary line of Delaware (a little below Chester, Pennsylvania, and Gibbstown, New Jersey) and the ocean at Cape May, while Delaware claims all of the river to low water mark on the New Jersey shore within the 12 mile circle drawn about the New Castle, Delaware, Court House as a centre, and to the geographical centre of the river and bay from the southerly rim of that circle to the ocean at Cape May. Within that disputed area, citizens and corporations of New Jersey, under riparian grants issued by this State, have constructed and are using wharves, buildings and other improvements costing more than 100 million dollars, on land claimed by Delaware, and the disputed area in the Delaware Bay includes a considerable portion of the only seed oyster beds in the bay, containing several million bushels of perfectly good oysters, which New Jersey has cultivated and protected since 1799, and brought into a high state of perfection. The citizens of Delaware now claim the right to take these oysters on the ground that that state owns the land where they are located.



DE02747

**Details of the New Jersey Claim.**

While the conflicting claims of England and the Netherlands to the lands adjacent to the Delaware and Hudson Rivers and bays were involved in warfare between the two countries and still undetermined, Charles II, King of England, on March 12, 1664, granted to his brother, James, Duke of York, all the lands between Nova Scotia and Cape May, including all lands from the west side of Connecticut to Delaware Bay, lying between the Hudson River and Bay and the Delaware River and Bay, together with all lands, islands, soils, rivers, harbors, etc., and the absolute power of government thereof. By lease dated June 23, 1664, and by release dated the following day, James, Duke of York, conveyed to Lord John Berkeley and Sir George Carteret, all of what is now the State of New Jersey, from substantially the present northerly boundary thereof to Cape May, between the Hudson River and Bay on the east and the Delaware River and Bay on the west, and including, like the grant from the King to James, the absolute power of government thereof. The grant specified that this territory should be called by the name of New Caesarea or New Jersey, in honor and commemoration of Carteret's successful defense of the Island of Jersey against the Parliamentarians during the English Revolution in the time of Charles II.

When the wars between England and the Netherlands ended and the Dutch claims were surrendered to the English crown by the treaty of Breda in 1667, the question arose whether the title of the Duke of York and Berkeley and Carteret under the previous grants was not thereby revested in the King. In order to settle that question King Charles, by deed of June 29, 1674, reconveyed to the Duke of York the same lands and governmental powers as those contained in the grant of March 12, 1664.

Meanwhile, in 1673, Lord Berkeley became "hardup" and sold his undivided half interest in New Jersey to one Edward Byllynge, who, for reasons of his own, desiring

not to take title in his own name, caused a deed dated February 10, 1673 to be given by Lord Berkeley to one John Fenwick, who took title as Byllynge's trustee.

A few years later Edward Byllynge came into financial difficulties, and having nothing else left, he made an assignment of his half interest in New Jersey, to William Penn, Gawen Lawrie, and Nicholas Lucas, as trustees, for the benefit of his creditors.

By deed dated July 1, 1676, Sir George Carteret, the owner of one of the undivided halves of New Jersey, and Penn and his associate trustees and Byllynge and Fenwick, as the holders of the title to the other undivided half interest, agreed upon the partition of the territory into the divisions thereof since known as East Jersey, which was conveyed to Carteret, and West Jersey, which was conveyed to Penn and his associates.

The Duke of York, theretofore on July 29, 1674, had given Sir George Carteret a confirmatory deed for an area which corresponded, not exactly but substantially, to the area, which, by the partition, became East Jersey, and by deed dated August 6, 1680, the Duke of York gave to Penn and his associates a confirmatory deed for that portion which by the partition became West Jersey. These two deeds were intended merely to pass on to the then owners of the portions, respectively, the benefits of the confirmatory grant of June 29, 1674, from the King to the Duke of York.

Up to this time the proprietors of East and West Jersey, respectively, possessed through the original and intermediate grants, not only the title to the land, but also the absolute power of government, which amounted practically to sovereignty. Meanwhile, Queen Anne had succeeded to the throne of England and this state of affairs in the colonies suited her not a little. Consequently, by deed dated April 15, 1702, accepted April 17, 1702, the proprietors of the two divisions of New Jersey were compelled to surrender to Queen Anne all sovereignty and powers of

government, which thereafter remained in the English crown until the war of the American Revolution.

Under the Common Law of England at that time, the King owned in fee simple title to all lands under water where the tide ebbed and flowed, which New Jersey claims included the Delaware River and Bay (after the surrender of sovereignty in 1702) between high water marks on the opposite shores. New Jersey has always claimed, and now claims, that by reason of the Declaration of Independence on July 4, 1776, the result of the Revolutionary War, the Treaty of Paris signed September 3, 1783, and the Constitution of the United States, adopted by New Jersey on December 18, 1788, it acquired in fee simple the title immediately theretofore held by the Crown of England to that portion of the Delaware River and Bay lying easterly of the centre of the main or deepest navigable channel thereof, and that Delaware has the same title on the westerly side thereof.

**Details of the Delaware Claim.**

Delaware's claim to title arose after the treaty of Breda, and involves no questions of reinvestiture in the King of England resulting from that treaty, but it does involve another question which will be discussed later.

By deed dated August 24, 1682, the Duke of York conveyed to William Penn all the Town of New Castle (Delaware) and all that tract of land lying within the compass or circle of twelve miles about the same, situate, lying and being upon the river Delaware; and all the islands in the said river Delaware, *and the said river and soil thereof*, lying north of the southernmost part of the said circle of twelve miles about said town, together with the powers of government thereof.

By another deed dated the same day, the Duke of York conveyed to William Penn all that tract of land upon the Delaware River and Bay from the southerly rim of the 12-mile circle to "Capin Lopin" (Cape Henlopen), together



DE02750

with the free and undisturbed use and passage into and out of all harbors, bays, waters, rivers, isles and inlets belonging to or leading to the same; together with the soils, fields, woods, underwoods, mountains, hills, fennes, isles, lakes, rivers, rivulets, bays and inlets, situate in or belonging unto the limits and bounds aforesaid, &c., "reserving a right of way." This deed includes the powers of government then possessed by the Duke of York.

The lands conveyed by these two deeds formed no part of Pennsylvania, which was conveyed to Penn by the King himself, but they formed what was known as the "Three Southern Counties" which, in 1701, became the province, (and in 1776, the state) of Delaware.

It appears, however, that the Duke of York, when he gave the two deeds of August 24, 1682, had no title to the lands therein described. In order to cure this defect, the Duke of York, on March 20, 1683 (seven months later) obtained from his brother, Charles II, a deed for precisely the same lands, by descriptions identical, as those described in the two deeds of August 24, 1682 from the Duke to Penn.

According to the old maps, the 12-mile circle above mentioned, if completed on the east side, would include a large part of Salem and a small part of Gloucester Counties in the State of New Jersey, but the State of Delaware seems never to have claimed title, or attempted to exercise jurisdiction, beyond the low water mark on the New Jersey shore.

Delaware claims that the grants to Penn, from which her title comes, included the river within the 12-mile circle and that the grants to Berkeley and Carteret extended only to the east shore of the river and bay. It does not appear upon what authority Delaware claims to own the bed of the river and bay to the geographical centre thereof, below the 12-mile circle.

## The Institution of the Suit.

Immediately upon the adoption of the joint resolution of April 17, 1929, the Attorney-General began the collection of data and information necessary to prepare the bill of complaint. A vast amount of research was necessary, and a great many ancient records, documents, decisions, histories and maps have been examined, for that purpose, but by May 27th, a little over a month from the beginning of the task, the complaint had been completed and printed, embracing all of the essential facts above stated, and on that day an application was made to the United States Supreme Court for leave to file the complaint. That application was granted and the State of Delaware was directed, by order dated a week later, to file its answer by July 1, 1929.

## The Questions Involved.

Very important and difficult questions are involved. First in importance is the meaning and extent of the ancient grants, in the light of the laws and decisions of England in force at the time they were made, 250 years or more ago. The important and difficult question of fact involved is to determine the location of the main ship channel in the river and bay two and a half centuries ago, and what changes therein have occurred in the meantime. Intensive research and study are being made to determine all these questions, with a view to having everything in readiness for hearings, which are likely to begin sometime in the fall of this year.

Instead of this case dragging along for 27 years, and then being dismissed without determination, as the previous one, this case will be pressed to an early conclusion, which the Attorney-General expects to accomplish within a year from the institution thereof.

June 20, 1929.

New Jersey State Archives
Governor Larson's Papers
Box 7 Folder 55



DE02753

Delaware Boundaries

New Jersey - Delaware

MFR FIL

# DELAWARE GETS WHARFAGE ON JERSEY SHORE

E.J. 2-6-34 p. 1

## Loss of Oyster Beds in Bay Offset by Gains Within 12 Mile Circle

## STATE BOUNDARY FINALLY FIXED

Delaware may yet be more than thankful for the shrewdness of William Penn and the generosity of Charles II.

Two hundred and fifty years ago William Penn received a royal grant of land and river within a twelve-mile circle drawn about New Castle and land was so cheap in those days, that Charles II thought nothing at all of casually giving away thousands of acres of land, just to satisfy an old debt to Penn's father.

It develops today that Delaware will eventually find out that she was the larger winner in the boundary dispute between this State and New Jersey.

In an opinion handed down by the U. S. Supreme Court yesterday, Delaware loses jurisdiction of the Ship John oyster beds in the vicinity of Ship John light, towards the head of the Delaware Bay. In 1930, this oyster area, according to New Jersey, produced 4,000,000 bushels of oysters worth then about $7,000,000.

But, while Delaware loses the oyster bed, she has had her 12-mile circle birthright upheld for all time and more—she gains jurisdiction of the valuable wharfage along the Jersey shore, abutting into the Delaware River.

The Supreme Court decided that Delaware's territory included all of the Delaware River within a twelve-mile circle drawn about New Castle as the center, up to the low water mark on the Jersey shore.

Delaware lawyers, who are familiar with the dispute, are of the attitude that while Jersey may take the oysters, Delaware should have jurisdiction of the wharves on the Jersey shore and tax the wharfage.

These lawyers also are of the opinion that revenue from the wharfage will be greater than revenue from the oysters.

Clarence L. Southerland, of Wilmington, who led Delaware's legal fight in the dispute, said today he did not know how much revenue Delaware could obtain from taxing the wharves, but he did admit the revenue would be considerable.

The next step in the litigation will be for the Supreme Court to hand down a decree and then Mr. Southerland will recommend to the Attorney General's office what further procedure should be taken. It is understood among these recommendations will be that the wharves on the Jersey shore be taxed by Delaware.

And this may precipitate another litigation," surrounding what is known as the Compact of 1905. The Supreme Court held that the actual boundaries of the two States shall be subject to the Compact of 1905.

In 1877, an argument started between Delaware and New Jersey regarding fishing rights of the citizens of the two States. The argument dragged along until an agreement was drawn up and ratified by both States, known as the Compact of 1905.

Article 7 of the compact states: "Each State may on its own side of the River continue to exercise riparian jurisdiction of every kind and nature and to make grants, lease and conveyances of riparian lands and rights under the laws of the respective States."

Mr. Southerland has said that neither Delaware nor New Jersey is in agreement on the meaning and effect of this article.

Incidentally—Mr. Southerland pays tribute to the late Herbert H. Ward and the late George H. Bates, who represented Wilmington in the litigation that led to the Compact of 1905.

"Had it not been for the able, thorough and scholarly work of these men," Mr. Southerland states, "the present case would have taken longer to prepare."

The boundary fixed by the Supreme Court is, Along the low-water mark on the east bank of the Delaware River form a point opposite Marcus Hook southward to a point below Salem.

Then, down the middle of the main ship channel through the Jersey Capes and the Delaware Bay.

New Jersey had asked the Supreme Court to change the existing boun-

E. J. 2-6-1934: 1

(over) DE04453

dary within the circle and to fix the entire length of the boundary as the main channel line.

New Jersey holds title to virtually all of its oyster beds which lie on the Jersey side below the circle.

Delaware had asked that the line be located in the geographical center of the river, a line that would give Delaware part of the beds. New Jersey asked that it be fixed in the center of the ship channel.

The Court pointed out that a line following the middle of the stream would create "a crooked line conforming to the indentation and windings of the coast, but without relation to the needs of shipping."

The dotted line shows how the U. S. Supreme Court designates the New Jersey shore of the Delaware River as boundary between New Jersey and Delaware. Below circle, boundary is to be the middle of main ship channel. Heavily dotted part of circle is the boundary between Delaware and Pennsylvania. The circle was completed in the process of determining the boundary between Delaware and New Jersey.

(over)

DE04454

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Evening Journal - Every Evening
2/6/1934
Microfilm Reel 254

DE04455

Delaware Boundary Case.

May 2, 1934

Hon. S. Rusling Leap
Woodstown, New Jersey

Dear Senator Leap,

A letter dated April 30th, has been received from the Attorney General (of which the enclosed is a copy) requesting me to communicate direct with you.

The decision of the court, rendered February 5, 1934, followed the report of the Special Master, in the following conclusion:-

> "Within the 12 mile circle (that is within a radius of 12 miles of the Court House at Newcastle, Delaware), the river and the subaqueous soil thereof up to low water mark on the easterly or New Jersey side will be adjudged to belong to the State of Delaware, subject to the Compact of 1905."

Realizing that this conclusion of the Special Master was somewhat obscure we argued that the compact before the Supreme Court (see pages 124-131 of our brief, of which a copy is sent you under separate cover). The court did not undertake to construe the compact but contented itself of deciding the boundary subject to that compact. Our view is that the compact was not affected; and could not be affected by the decision, since that compact was ratified by the legislatures of both states and by Congress and is therefore beyond the reach of the courts, except on questions of construction.

In some of our conferences with counsel for Delaware it was intimated that the state would attempt to assess taxes upon structures west of the low water line regardless of the compact and I was not surprised a short time ago to learn that such an attempt was being made. Certainly it should be resisted by property owners subjected to such attacks. In my opinion the compact protects New Jersey in the continued exercise of riparian jurisdiction of every kind and nature and to make grants, leases and conveyances of riparian lands and rights under the laws of New Jersey. The court having refrained from passing on that question it was left open (against our wishes) for a future adjudication. Our view is that the compact was not affected by the decision and that Delaware has no right to impose the proposed taxes.

Delaware counsel suggested on one occasion, prior to the court's decision, that if the court should refrain from interpreting this feature of the compact, the states might negotiate a supplemental compact adopting the middle of the ship channel, within the 12 mile circle, as the boundary between them, or at least covering the area between low water mark and the bulkhead and pierhead lines established by the New Jersey Board of Commerce and Navigation August 21, 1916 (Exhibit 138), with relation towhich most of the New Jersey riparian grants were made.

I did not take the matter up at that time because we did not know what action the court might take on the subject. Since the court took no action that subject might be considered, but I still think the compact protects that area and that the riparian grantee should rely upon the title acquired under those grants. It may be that the state should aid them in sustaining that title.

Within the extent of the low water boundary line, several streams empty into the Delaware which are tidal for long distances inland. We have an understanding with Delaware that (in such cases) low water line will not enter those streams but will be indicated as a straight line between markers located at the point of land on either side of the mouths of such streams.

We are working on the decree and a map of the boundary line which we expect to have ready before long.

Very truly yours,

(signed) DUANE E. MINARD

**New Jersey State Archives**
Department of Law and Safety
Attorney General's Office
Closed Case Files, 1920's - 1950's
**Box 8**

DE27349

July 20, 1934

Delaware Boundary Case.

Hon. S. Rusling Leap
710 Federal Street
Camden, N. J.

Dear Senator

The questions raised in your letter of the 19th inst., received this morning, are serious and susceptible of possible confusion in the future relations between the States.

Jurisdiction, both as to taxes and police, follows territory and with the boundary fixed by the court's decision, jurisdiction extends to that boundary by operation of law, unless otherwise agreed between the parties by compact ratified by the legislatures of both states and approved by Congress.

Criminal Jurisdiction

Articles I and II of the compact of 1905 (4 Comp. Stat. 5375-6) give to each state power to serve criminal process upon any portion of the river between low water marks on each side (except on Reedy and Pea Patch Islands, and except on vessels aground or tied to docks, on the opposite shore of the mainland, or on the shore of said islands) against persons accused of an offense committed upon the soil of said state "or upon the eastern half of said Delaware river" (for New Jersey, and western half for Delaware), or committed on any vessel under the exclusive jurisdiction of that state, and also to serve civil process in the same places and conditions in certain cases described.

Article III gives the citizens of both states common fishing rights in all parts of the river (Ibid, p. 5376). The last paragraph of Article IV provides:-

> "Each state shall have and exercise exclusive jurisdiction within said river to arrest, try and punish its own inhabitants for violations of the concurrent legislation relating to fishery herein provided for". (Ibid).

Article VIII provides:

> "Nothing herein contained shall affect the territorial limits, rights or jurisdiction of either state of, in or over the Delaware river, or the ownership of the subaqueous soil thereof, except as herein expressly set forth." (Ibid p. 5377).

DE14756

While the compact does not expressly confer criminal jurisdiction on New Jersey, the words of Article I, giving it the right to issue criminal process for any offense committed upon the eastern half of Delaware river seem to fairly imply the right to try and punish such offenses. However, the language is not as clear as it might be, and, admittedly, there is room for controversy.

Taxation

In two previous letters; one dated May 2, 1934, addressed to you, and the other, dated July 18, 1934, addressed to the Attorney General, of which he sent you a copy, I have discussed this subject fully. I can add nothing now to what I said in those letters.

Attorney General Green of Delaware informed our Attorney General, at a conference on the 21st ultimo, that the state of Delaware had taken no action looking toward taxing lands under water, or improvements thereon, west of low water mark on the New Jersey side of the river, and I do not believe he has any present intention of stirring up trouble over that question. However, no manifestation of such an intention on the part of Delaware state authorities would be likely until after the decree is settled. There is, at present, no riparian board or body in Delaware having jurisdiction over tidal or subaqueous lands, or the structures thereon. It is possible that the counties or the municipalities, without state action, might attempt to assess the property and levy a tax. The exhibits in the case show that while the limit of municipal territory and jurisdiction is the channel of the river, the statutory boundaries of the counties in Delaware extend to low water mark on our side.

The Remedy

It is impracticable to include in the decree provisions, such as you suggest, covering taxes and criminal jurisdiction:

1. They were not adjudicated in the decision of the court and the court could not do so unless they were contained in a consent decree.

2. I would not expect the Attorney General of Delaware to assume unwarranted authority to consent to such provisions, since they are matters of sovereign jurisdiction residing only in the legislature, and without legislative authority he would be powerless to do so.

I can conceive of no legitimate means of accomplishing these purposes except through a supplemental compact, negotiated by commissioners of both states under legislative authority, and ratified by the legislatures, and approved by Congress, as the Constitution of the United States provides. I see no reason why an attempt should not be made, and I believe something could be accomplished, in that direction.

DE14757

The controversies over boundary, territory and jurisdiction which have arisen between the two states since the compact of 1905, and which gave rise to the present suit, all related to oyster grounds. That is now definitely settled in our favor, by the court's decision which places the boundary, through the disputed territory, in the middle of the ship channel.

In my letter of May 2, 1934, I mentioned the fact that at a conference with the then Attorney General of Delaware, and Mr. Southerland, held some time ago in Wilmington, they mentioned the possibility of a compact between the two states in which Delaware might cede its territory and jurisdiction, east of the main ship channel within the 12 mile circle. Of course, they were speaking without authority from their legislature, and were merely mentioning possibilities for the removal of the controversy over riparian lands, docks, wharves, etc. on the east side of the river.

If the legislatures are disposed to do so I think it possible that a commission appointed by each state might negotiate such a compact; the acrimonious controversy over fishing having been settled by the compact of 1905 and the like controversy over oysters having been settled by the court's decision.

If it should develop that such a compact cannot be obtained, there still remains possible an arrangement such as we have respecting our water boundary line between New Jersey and New York, with respect to which a compact was made in 1834 (4 Comp. Stat. 5358-60). It establishes the territorial boundary in the middle of Hudson River, New York Bay, Kill von Kull, Staten Island Sound and Raritan Bay, with a reservation of jurisdiction in New York over Bedloes and Ellis Islands (and some others) on the west side of that boundary and also with a reservation of jurisdiction in New York over all of those waters to the New Jersey shore in respect to quarrantine and immigrants, and vessels bound to any part in New York.

If we could not agree with Delaware on a boundary in the main ship channel of the river we might agree in a hybrid arrangement, as we did with New York, on some features of jurisdiction, respecting the questions of policing and taxation of subaqueous lands and structures, on the east side of the river below low water mark.

Very truly yours,

(Signed) DUANE E. MINARD.

Copy to --
Hon. David T. Wilentz,
Attorney General
State House, Trenton, N.J.

for his information.

DE14758

**New Jersey State Archives**
Department of Law and Safety
Attorney General's Office
Closed Case Files, 1920's - 1950's
**Box 8**

DE14759

CLARENCE A. SOUTHERLAND
JAMES M. HUGHES, JR.
E. FINNALLS BERL
HERBERT H. WARD, JR.
WILLIAM S. POTTER
PAUL LEAHY

SYBIL U. WARD
DAVID F. ANDERSON

LAW OFFICES
WARD & GRAY
DELAWARE TRUST BUILDING
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TELEPHONE-WILMINGTON 5277

GEORGE GRAY,
1863-1868, 1914-1925
HERBERT H. WARD
1862-1927
ANDREW C. GRAY
1866-1939

February 12, 1935.

Re: New Jersey v. Delaware.

Hon. P. Warren Green, Attorney General,
Wilmington, Delaware.

My dear Mr. Attorney General:

I have your letter of February 8th.

I do not know, of course, what prompts the organization of the New Jersey commission, but I think that Delaware should also have a commission for the purpose. It is quite obvious that the serious question involved within the twelve mile circle is that of taxing of the wharves and other improvements on the New Jersey shore.

I have always felt that sooner or later the State of New Jersey would be compelled to propose the purchase by it from Delaware of the eastern half of the river. The present situation is a most awkward one. From my talks with Mr. Minard, I am inclined to think that he agrees with me, although I cannot, of course, quote him officially to that effect.

Certainly I can see no harm that would come from the appointment of such a commission, and I think much good

might come from it. It would obviously present an opportunity to do away with any more litigation over the matter. Of course, the Delaware Legislature would not appropriate any such sum as $10,000.00 to pay the expenses of the commission. However, $500.00 might be appropriated to cover necessary traveling expenses.

Very truly yours,

C. A. Southerland

CAS:O.

DE Public Archives

1560-000-023-001

Atty Genl

48780

Delaware Boundaries

New Jersey - Delaware

VERT. FILE

# U. S. Supreme Court Finally Fixes Del.-Jersey Boundary

J.E.E. 6-4-1935 P. 25 Del. Boundaries

VERT. FILE

INDEXED

The last of the romantic boundary disputes between states was settled yesterday when the Supreme Court approved a decree setting the boundaries of Delaware and New Jersey.

Since the days of gay, blithesome Charles II, Lord Baltimore and William Penn, the Delaware River valley and the Delmarva Peninsula has been the center of litigation, in the wake of which runs litigation in the highest courts of England, stories of bloodshed, sabre rattling, threats and efforts at pacific negotiations.

**Decree Is Made**

The Supreme Court yesterday decreed the boundaries of the two States shall be:

"Within the twelve-mile circle (that is, within the circle the radius of which is twelve miles, and the center of which is the building used prior to 1881 as the courthouse of New Castle, Delaware, certain arcs of which are hereafter described and determined), the Delaware River and the subaqueous soil thereof up to mean low water line on the easterly or New Jersey side is adjudged to belong to the State of Delaware, and the true boundary line between the States within said twelve-mile circle is adjudged to be mean low water mark on the easterly or New Jersey side of the Delaware River.

"Below said twelve mile circle, the true boundary line between the States of New Jersey and Delaware is adjudged to be the middle of the main ship channel in Delaware River and Bay.

The boundary line separating the States of New Jersey and Delaware, in Delaware River and Bay thus determined is shown upon a composite map, annexed to copies of the decree. The map was made up of parts of charts of the United States Coast and Geodetic Survey, embracing the particular locality.

**Enjoined Against Disputes**

The Supreme Court also decreed "the State of Delaware, its officers, agents and representatives, its citizens and all other persons, are perpetually enjoined from disputing the sovereignty, jurisdiction, and dominion of the State of New Jersey over the territory adjudged to the State of New Jersey by this decree."

The same holds for New Jersey.

The decree, however, is made without prejudice to the rights "of either State, or the rights of those claiming under either of the said States, by virtue of the compact of 1905," which deals with certain fishing rights of the citizens of each State.

The decree was prepared jointly by Attorney General Green and former Attorney General Clarence A. Southerland for Delaware, and Attorney General David T. Wilentz and Duane E. Minard, special counsel for new Jersey.

**50-50 Victory**

What actually happens is that Delaware loses oyster beds in the Delaware Bay, the beds now going within the jurisdiction of New Jersey. On the other hand, Delaware now has apparently undisputed title to the wharfage on the low water line on the Jersey shore within the twelve-mile circle.

Questions of taxation and other issues of the boundary line are to be taken up by joint commissions of Delaware and New Jersey but these commissions cannot make a binding agreement unless ratified by Congress.

The Delaware River boundary dispute had its beginning in 1630 when Lord Baltimore received a grant of land for what is now Maryland and part of the Delmarva peninsula. Later, Penn received from the Duke of York a grant for what is now Delaware.

Baltimore claimed the entire peninsula. The matter was taken to the Court of Chancery in England and the outcome was the division of the peninsula in half, from a line drawn westerly from Cape Henlopen.

Into this story comes the surveyors Mason and Dixon, comes the hot tempered Col. Talbot who "invaded" Delaware near Christiana where he built a fort to protect the interest of Baltimore. There is also the story of oystermen's warfare and fishermen's warfare.

**Ancient Charters Figure**

One of the sidelights of this last phase of the ancient dispute is that New Jersey charged that Delaware's "birth certificate," a charter from Charles II to Duke of York for the

J.E.E. 6-4-1935 :25

Cover

DE04457

western shore of the Delaware River and a grant from Duke of York to Penn were not valid.

In substance, Delaware in the recent case, claimed her boundary was all of the Delaware River within the twelve mile circle, drawn about New Castle; that below the twelve mile circle, the boundary line was the geographical center of the river and bay.

New Jersey held that the boundary line was the center of the ship channel in the river and bay.

The opinion of the Supreme Court gave each State a 50-50 victory. William Penn's twelve-mile circle grant was held valid and it was decided that when there is no such specific grant, the water boundary of States shall be the center of the channel.

(over)

DE04458

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DE04459

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GEORGE GRAY
1853-1899, 1914-1925
HERBERT H. WARD
1868-1927
ANDREW C. GRAY
1898-1925

April 18, 1935.

Re: New Jersey v. Delaware

Honorable Percy Warren Green,
Attorney General,
Public Building,
Wilmington, Del.

My dear Mr. Attorney General:

I have a letter from Mr. Minard suggesting a revision of the language of the proposed paragraph 7 of the decree in the boundary case. I inclose a copy of that letter for your consideration.

I think that his suggestion is sound and that, for the protection of many Delaware corporations who have acquired wharfage rights in New Jersey, it should be accepted, and I recommend that you approve it.

Please advise me your views upon it and I will communicate further with Mr. Minard.

Very truly yours,

CAS:A

Inc.

C A Southerland

DE16269

HOBART & MINARD

Newark, New Jersey.

April 17, 1935.

Hon. Clarence A. Southerland,
Delaware Trust Building,
Wilmington, Delaware.

Dear Mr. Southerland:

Reflecting upon our paragraph 7, as discussed yesterday, it occurred to me on the way home that the several Delaware companies, like duPont and the Ferry Company, and perhaps others, are neither "citizens" nor "inhabitants" of the state in the sense that those words were used in our draft, and since it is the intention not to interfere with them or others similarly situated, I suggest the following for the consideration of Mr. Green and yourself.

> "7. This decree is made without prejudice to the rights of either state, or the rights of those claiming under either of said states, by virtue of the compact of 1905 between said states (35 Stat. L. Pt. 1, Ch. 394, p. 858)."

The words "by virtue of" are not intended to change the thought about the compact or the right, but merely to avoid a repetition of the word "under". However, I have no objection to repeating that word if you prefer.

Very truly yours,

DUANE E. MINARD

DE16270

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Volume Page

Atty. Gen. - Gen. Admin. Files

#308 Folder 1 of 3

NJ vs DE Boundary Case

1933 - 1935 & 1937 - 1938

BC455181

April 29, 1935.

Clarence A. Southerland, Esq.,
Delaware Trust Building
Wilmington, Delaware

Re: New Jersey v. Delaware Boundary.

My dear Mr. Southerland:

I herewith return the enclosed draft relative to the boundary line between the States of New Jersey and Delaware.

The proposed draft meets with my approval.

I note that Par. 7 is in the redrafted form suggested by Mr. Minard, which meets with my approval, as I feel his reason for the correction to the present form is proper.

Very truly yours,

Attorney General.

PWG*B
ENCL.

DE16280

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Wilmington, Delaware,
July 3, 1935.

Hon. Percy Warren Green, Attorney General,
Wilmington, Delaware.

My dear Mr. Attorney General:

As Special Counsel for the State of Delaware in the suit of State of New Jersey v. State of Delaware, to determine the true boundary line between the States, which has just been terminated by decree of the Supreme Court of the United States, I submit the following report:

## I. FILING OF THE SUIT AND REFERENCE TO SPECIAL MASTER.

On June 3, 1929, the State of New Jersey filed in the Supreme Court of the United States a bill of complaint against the State of Delaware (No. 19 Original, October Term, 1929). The bill of complaint alleged that the State of New Jersey claimed title to the subaqueous soil of the Delaware River and Bay lying between the States, to the center line of the main ship channel or thalweg of the Delaware River and Bay; and that a dispute had existed between the two States over the boundary line and the territorial ownership of the bed of the river and bay for many years but had never been settled. The bill prayed, inter alia, that the State of Delaware answer the bill and that the true boundary between the States be determined by the court.

The bill of complaint thus presented a controversy between two of the States, of which the Supreme Court, by Article III, Section 2, of the Constitution of the United States, has original jurisdiction.

Upon the filing of the bill the Supreme Court ordered

DE27354

process to issue, returnable July 1, 1929 (279 U.S.835).

On October 7, 1929, the then Attorney General of the State of Delaware, Hon. Reuben Satterthwaite, Jr., filed the answer of the State of Delaware, which answer averred that the State of Delaware had title to all of the subaqueous soil of the Delaware River within a circle of twelve miles from the Town of New Castle, and also had title to that portion of the subaqueous soil of the Delaware River and Bay lying south of the circle to the geographical or center line of the river and bay.

On December 9, 1929, the State of New Jersey, by its then Attorney General, Hon. William H. Stevens, and its then Assistant Attorney General, Hon. Duane E. Minard, together with Walter C. Bacon, Esq., counsel, filed in the Supreme Court a motion for the appointment of a Special Master to take testimony and file findings in the cause.

On January 6, 1930, the court appointed William L. Rawls, Esq., of the City of Baltimore, State of Maryland, Special Master in the cause, with power to summon witnesses, issue subpoenas and take testimony. The Special Master was directed to make findings of fact and conclusions of law and submit the same to the court, together with recommendations for a decree.

On March 26, 1930, the undersigned was retained by Attorney General Satterthwaite as Special Counsel in the case. By the Act of the General Assembly, approved February 11, 1929 (Vol. 36 Laws of Del., Chap.277), the Attorney General had been authorized and directed to take such steps as he deemed necessary to bring the matter of the boundary dispute before the proper court for the purpose of protecting the rights of the State of Delaware in the disputed area of the Delaware River and Bay.



DE27355

## II. PREPARATION AND TRIAL OF CASE.

Following the retaining of the undersigned as special counsel in the case, work was begun toward preparing the case for trial.

The Attorney General and special counsel were aided in this work by the record of the testimony and exhibits in the prior suit between the States, which was filed in the Supreme Court of the United States by the State of New Jersey in 1877. The suit filed in 1877 was allowed to rest, without any action, for many years, but finally an answer was filed by the State of Delaware and the issues referred to a Master. Much documentary evidence was collected at that time and was presented to the Special Master during the years 1903 to 1905. A record of the testimony and exhibits was preserved and was available to counsel in the present case.

On June 8, 1931, the first hearing of the case took place at the Post Office Building in Philadelphia, Pa., before the Special Master. Following the conclusion of the hearing on June 8th, the Special Master, counsel representing the States, and others, made an inspection tour of the Delaware River and Bay in one of the New Jersey police boats.

The hearing was continued on June 11, June 15 and June 16. At the conclusion of the hearing on June 16, counsel for New Jersey indicated that they had practically completed the introduction of their prima facie case. Thereupon the hearing was adjourned, to meet at Wilmington, Delaware, on August 24, 1931.

The hearing was resumed on the date last mentioned and continued on August 25, August 26, and August 27. At the end of



DE27356

the hearing on August 27, the defendant's counsel had concluded presentation of their prima facie case and the hearings were suspended to meet in Baltimore, Maryland, October 26 following. During the sessions in Delaware, on the afternoon of August 26, the Special Master, in company with counsel on both sides, visited the State Archives at Dover, where there was exhibited to the Master the document claimed by the State of Delaware to be the original patent from King Charles II. to the Duke of York for what is now the State of Delaware.

The hearing was not resumed in Baltimore, but by agreement of counsel was adjourned to take further testimony at Trenton, New Jersey, on December 21, 1931, at which time the State of New Jersey began the introduction of its rebuttal evidence. Hearings were continued on December 22 and December 23. At the conclusion of the hearing on December 23, the hearing was adjourned to meet at the Library of Congress at Washington on February 3 following, to facilitate the introduction into evidence by the State of New Jersey of copies of certain maps.

On February 3, 1932, a hearing was held before the Master in the Library of Congress, Washington, D.C., to take the testimony of Col. Lawrence Martin, the Chief of the Division of Maps of the Library of Congress.

The final hearing in the cause for the taking of testimony was held at Wilmington, Delaware, June 6, 1932, at which time the State of Delaware introduced its evidence in surrebuttal, and both sides closed their testimony.

By agreement the hearing was adjourned, to meet in Baltimore September 12, 1932, for presentation of briefs to the Master and argument of the case.

## III. ARGUMENT AND SUBMISSION OF THE CASE AND DECISION

On September 12, 1933, the case was orally argued before the Special Master by Hon. Duane E. Minard for the State of New Jersey, and by the undersigned for the State of Delaware. At this hearing both sides submitted to the Master briefs and reply briefs, having exchanged their main briefs some time prior to the argument.

On October 9, 1933, the Special Master filed his report in the Supreme Court of the United States. His report sustained the claim of the State of Delaware to the subaqueous soil of the river within the so-called twelve mile circle, and sustained the claim of the State of New Jersey to the subaqueous soil of the lower river and bay to the center of the main ship channel.

Each State filed exceptions to the report of the Special Master in respect of those findings which were adverse to it.

Briefs were duly filed and the matter came on for argument before the Supreme Court of the United States on January 8, 1934, the case being then No. 13 Original, October Term, 1933.

On February 5, 1934, the opinion of the Supreme Court, written by Mr. Justice Cardozo, was filed. The opinion sustained the Master's findings in all respects.

## IV. SETTLEMENT OF THE DECREE.

Following the entry of the Court's opinion, conferences were had between Mr. Minard, representing the State of New Jersey, and the undersigned, with a view to agreeing upon some proper method of surveying the boundary line as determined by the Court.



DE27358

An agreement was reached that the line should be surveyed, marked and described by the United States Coast and Geodetic Survey, if the services of the Survey could be had for that purpose. Mr. Minard and the undersigned visited Washington, D.C., pursuant to an appointment with the Director of the Survey, and were able to arrange for the services of engineers of the Coast and Geodetic Survey for the purpose of surveying and marking the boundary line. The work was undertaken and was completed during the summer and early fall of 1934. In October of 1934 the Survey submitted to the representatives of both States a report of the marking of the boundary line, together with a description thereof.

Following the receipt of this report, counsel for the States had several interviews and considerable correspondence concerning the drafting of the decree. The Attorneys General of both States, with special counsel of both States, met twice in Trenton with a view to agreeing upon the terms of a decree. Although the decree presented some matters upon which it was difficult to reconcile the views of counsel, nevertheless an agreement was finally secured and on May 17, 1935, a stipulation was signed by the Attorneys General and special counsel of both States agreeing to the form of the decree. The decree was thereupon submitted to the Supreme Court of the United States and was entered on June 3, 1935.

With the entry of the decree the case is now finally terminated.



DE27359

## V. QUESTIONS PRESENTED AND SETTLED BY THE CASE.

The boundary dispute with the State of New Jersey presented two separate points of controversy, quite distinct in respect of facts and law. The first point of controversy concerned the title of the subaqueous soil of the Delaware River within the twelve mile circle from New Castle. This dispute had existed practically since statehood.

The second point of controversy concerned the title to the subaqueous soil of the lower river and bay, that is, that portion of the river and bay lying to the south of the southerly arc of the twelve mile circle. This dispute was of recent origin, having been provoked by conflicting claims of the licensed oystermen of the States to the natural oyster beds lying around Ship John Light in the Delaware Bay. This phase of the controversy broke out in 1927 and was the immediate cause of the present suit which has just been terminated.

The opinion and decree of the Supreme Court of the United States has settled the first question in favor of the State of Delaware, and the second in favor of the State of New Jersey. The effect of the decree is to adjudge to the State of Delaware title to all of the subaqueous soil of the river within a circle of twelve miles from New Castle up to mean low water mark on the New Jersey shore. The effect of the decree upon the other dispute is to adjudge to the State of New Jersey title to the subaqueous soil of the lower river and bay, up to the middle of the main ship channel, or rather to the line which has been agreed to by both States, constituting substantially the



DE27360

center line of the channel. The entire boundary is delineated on the map annexed to the decree.

Attention should be invited to the fact that although the map annexed to the decree purports to show a definite boundary line, yet the decree is subject to review or alteration if it should later appear that by natural changes the boundary line shall have shifted. The terms of the decree thus recognize the applicability of the common law principle that if a water boundary changes through gradual erosion or gradual shifting of a channel, the boundary follows the shift; whereas if the change be sudden, as by avulsion, the boundary line remains unchanged.

Attention is also invited to the fact that one of the questions settled by the decree is the authenticity of the document in the State Archives at Dover, purporting to be the original patent of Charles II. to the Duke of York for the tract of land now constituting the State of Delaware. The authenticity of this document was challenged by the State of New Jersey during the trial of the case. Investigation made and evidence collected in England establish beyond doubt the genuineness of this document.

By the decree of the Supreme Court of the United States in this case, the State of Delaware has acquired title to all subaqueous land in the Delaware River, up to mean low water line on the New Jersey shore, including title to the subaqueous soil on which have been erected numerous valuable wharves on the New Jersey side of the river. A list of such structures, their extent, valuation, etc., is found in the record of the case. (See particularly Exhibits 58-93, 94-97, 130.) The title so acquired is presumably subject to the provisions of the Compact of 1905 between the States, hereinafter discussed.

Your attention is further invited to the fact that these



DE27361

wharves, although (presumably) always subject to taxation as real estate within the State of Delaware, have never actually been so taxed. By a statute passed at the last session of the General Assembly and approved by the Governor, the boundaries of the several hundreds in New Castle County affected by the decision are enlarged to include the subaqueous soil of the Delaware River to low water mark on the New Jersey shore. My understanding is that the amendment carries with it some qualification of the right of New Castle County to levy taxes on the structures involved, but I have not been furnished with a copy of the Act and am merely calling this to your attention in connection with any action to be taken by the State or County looking to the taxation of these structures.

## VI. QUESTIONS NOT SETTLED BY THE DECREE.

Reference has been made above to the first suit between the States filed by the State of New Jersey in 1877. After hearings had been had in this case and much testimony and many exhibits introduced, the States entered into a compact which had the effect of settling certain questions theretofore in dispute. This compact was approved by the State of Delaware on March 20, 1905, and formally entered into by the Delaware commissioners on March 31, 1905. (See Vol. 23 Laws of Del., Chap.6 and Appendix). The compact was also duly ratified by the State of New Jersey and was approved by Congress. (34 Stat. L. Pt. 1, Ch.394, p.858.)



DE27362

The compact, to which your particular attention is invited, gave to New Jersey the right to serve criminal and civil process on the Delaware River to low water mark on the Delaware shore; and granted to the inhabitants of both States the common right of fishery in the waters of the river.

Article VII. of the compact provides as follows:

> "Article VII. Each State may, on its own side of the river, continue to exercise riparian jurisdiction of every kind and nature, and to make grants, leases and conveyances of riparian lands and rights under the laws of the respective States."

The meaning of this clause of the compact is far from clear. It is contended by the State of New Jersey that by this compact the State of Delaware recognized the right of the State of New Jersey to make actual grants or cessions of subaqueous soil in the river. This indeed has been the practice of the State of New Jersey for some years. Thus, for example, on October 17, 1931, the Board of Commerce and Navigation conveyed to French's Hotel Company, a New Jersey corporation, a certain tract of land "now or formerly flowed by tidewater, beginning at a point in high water line on the easterly shore of the Delaware River and in running about 1200 feet into the river to the pier head or bulkhead line established in 1916 by the Board of Commerce and Navigation". Many other such grants appear in the record.

I am not familiar with the exact nature of the contentions that will be made by the State of New Jersey with respect to the proper construction of the compact of 1905, but I would point out to you that there will obviously be a difference of opinion between the States on the proper construction of this compact. It will undoubtedly be contended by the State of New Jersey that the compact in some way recognized the exclusive



DE27363

control of the State of New Jersey (presumably including the right to tax structures erected thereon) over the subaqueous soil covered by the grants so made. In any event, it will certainly be contended by the State of New Jersey that the compact amounts at least to a cession of jurisdiction over riparian matters, including the right to determine under what conditions wharves shall be erected or other riparian rights exercised by the owner of the upland or by others.

Presumably the State of Delaware will be justified in contending that the compact does nothing more than recognize what had already been recognized by the State of Delaware, namely, the right of owners of the upland on the New Jersey shore to wharf out to deep water, and that, in any event, the compact cannot be construed as doing more than ceding to New Jersey a certain limited amount of jurisdiction over riparian matters, and that the right to tax was not so ceded.

In this connection attention is invited to the following finding of fact of the Special Master (printed report p.77, finding No. 23):

> "23. By the Compact of 1905 between the States of New Jersey and Delaware the State of Delaware recognized the rights of riparian owners to wharf out on the easterly side of the Delaware River within the twelve-mile circle. By said Compact the State of Delaware did not convey to the State of New Jersey title to any part of the Delaware River or to any part of the subaqueous soil thereof, and said Compact did not in anywise alter or affect the boundaries of the respective states."

Since all exceptions to the Master's findings were overruled, and his report was duly confirmed (Par. No. 1 of the decree of the Supreme Court), the State of Delaware may justifiably take the position that to a limited extent, at least, the construction of the Compact contended for by it has been recognized by the Master and approved by the Supreme Court.



DE27364

In the argument submitted to the Supreme Court the State of New Jersey contended that the Compact of 1905 had in some way transferred title to New Jersey to certain of the subaqueous soil within the twelve-mile circle adjacent to the New Jersey shore. This contention was overruled by the Supreme Court in the following language:

> "The complainant builds another argument upon a compact with the defendant which was ratified by the parties in March, 1905, and approved by Congress in January of that year. 34 Stat. c. 394, p. 858. We are told that by this compact the controversy was set at rest and the claim of Delaware abandoned. It is an argument wholly without force. The compact of 1905 provides for the enjoyment of riparian rights, for concurrent jurisdiction in respect of civil and criminal process, and for concurrent rights of fishery. Beyond that it does not go. 'Nothing herein contained shall affect the territorial limits, rights, or jurisdiction of either State of, in, or over the Delaware River, or the ownership of the subaqueous soil thereof, except as herein expressly set forth.'"

It is to be noted that the opinion of the Supreme Court uses the phrase "enjoyment of riparian rights", which is very far from recognizing any claim of the State of New Jersey to tax the wharf structures erected on subaqueous soil below low water mark.

Attention is also invited to the fact that if the right of the State of Delaware to tax these wharves is finally recognized, it may and probably will carry with it the obligation to police the wharves and generally protect the wharf property on Delaware soil.



DE27365

## VII. DISPOSITION OF DOCUMENTS ASSEMBLED IN CONNECTION WITH THE CASE.

During the progress of the suit a large quantity of documents, copies of documents, maps, etc., came into the custody of counsel for the State of Delaware in connection with the preparation of the case for trial. The issues presented by the second point in controversy, namely, the title to the subaqueous soil in the lower river and bay, were very simple. They depended chiefly on the physical conditions of the river and bay and little evidence could be adduced except maps showing such conditions.

The first issue in the case, however, namely, the title to the river within the twelve mile circle, involved historical research and investigation extending back to the Dutch period, i.e., at least as early as 1631. After the challenge made by New Jersey to the authenticity of the patent of Charles II. to the Duke of York, above referred to, Messrs. Taylor & Humbert, solicitors, of Gray's Inn, London, were employed on behalf of the State of Delaware, and authorized to retain such counsel and employ such clerical assistance as might be necessary to prosecute the investigation in London. Messrs. George H. Davis and Dudley C. Lunt, of the Delaware bar, were also retained and spent some time in London prosecuting these researches. As result of this work a great deal of material was collected. The greater part of it was actually introduced into evidence in the case.

There is submitted herewith, as Exhibit 1 to this report, a calendar of the papers procured in England in connec-



DE27366

tion with the case, the calendar having been prepared, under the direction of the undersigned, by Mr. Dudley C. Lunt.

There is also submitted, as Exhibit 2, a list of the other documents, books, papers, maps, etc., which were assembled in the preparation of the case and are now in the custody of the undersigned as special counsel.

Particular attention is invited to the fact that there are available for distribution two complete sets of the entire record, including the pleadings, the testimony, all of the exhibits in the case, all of the briefs, the oral argument before the Master, requests for findings of fact and conclusions of law, exceptions to the Master's report, briefs in the Supreme Court of the United States, the opinion of the Court and the final decree. This record has undoubtedly some historical value and the two remaining complete copies, it is suggested, should be lodged with some representative public institutions in the State. Your instructions are requested as to the disposition of these two copies of the record.

Instructions are also requested as to the disposition of all the rest of the papers, documents, etc., enumerated in the calendar and the list above referred to.

In conclusion, I submit herewith a statement for services rendered the State of Delaware as special counsel in this case. An appropriation of $25,000. for the payment of the costs and expenses of the boundary suit was made by Act of the General Assembly approved April 19, 1934 (Vol. 39, Del.L.,Ch.3), as amended by the Act approved April 12, 1935.

In connection with this statement I desire to point out the following:

The period of time covered by my employment in the case is somewhat over five years. My work on the case started as



DE27367

soon as I was retained (March 25, 1930), and has been continued from time to time down to the present. During the first three years of the pendency of the suit, a substantial proportion of my time was devoted to this case. The work was arduous and exacting. Every exhibit introduced into evidence by the defendant was prepared under my direction and was actually read, classified and digested, and its relationship to the case determined. In all there were introduced on behalf of the State of Delaware 264 exhibits, most of which were printed documents.

In addition to the Delaware exhibits, all of the New Jersey exhibits, 682 in all, had to be carefully read, examined, classified and digested, and their relationship to the main features of the case determined. In this connection your attention is invited to the "Outline of Exhibits and Testimony" annexed to the briefs of the State of Delaware before the Master and the Supreme Court, and to the briefs filed by both parties before the Special Master and the Supreme Court, which will give some idea of the amount and extent of the work performed in the preparation and trial of this case.

By agreement with Hon. Reuben Satterthwaite, Jr., Attorney General of the State prior to 1933, in association with whom most of the work was performed, the fee of special counsel in this case was fixed at $25,000. Mr. Satterthwaite was at all times familiar with the nature and extent of the work done and the services performed in this case, and I feel that his approval of the fee is a circumstance which is entitled to much weight. I accordingly trust that the bill submitted will receive your approval.

Respectfully submitted,

Special Counsel for the
State of Delaware.

DE27368

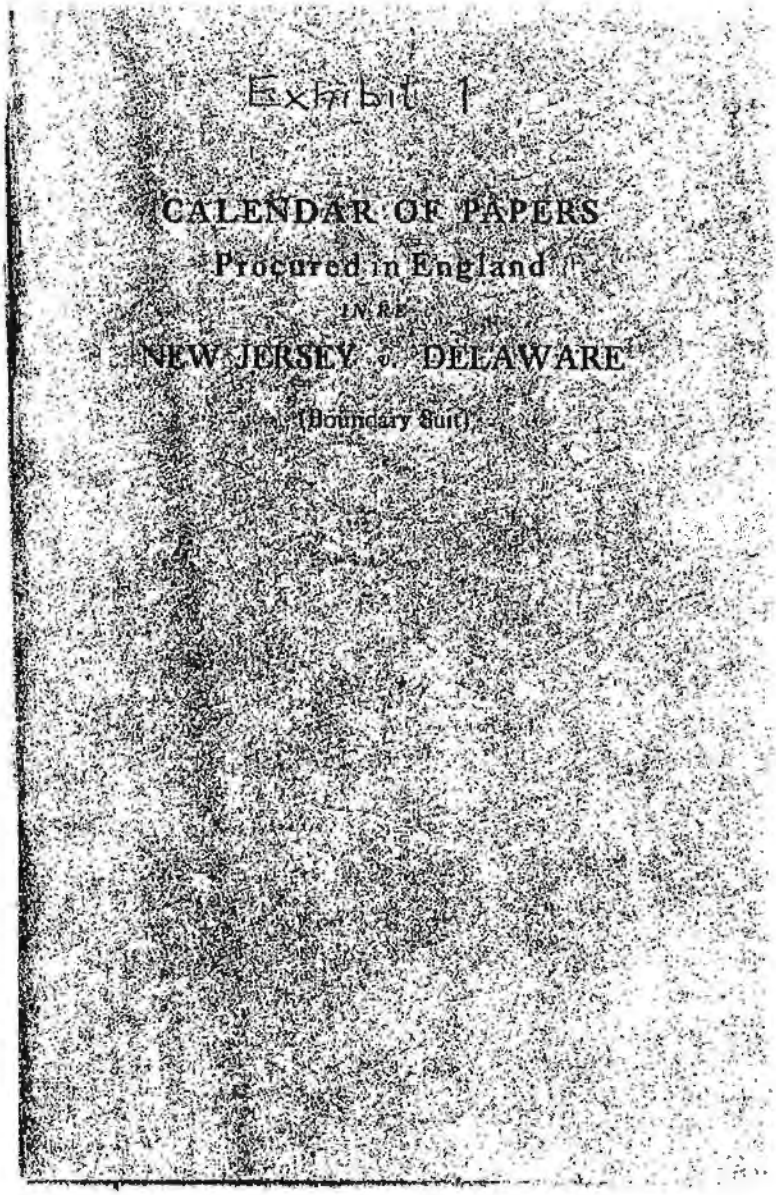
Exhibit 1
CALENDAR OF PAPERS
Procured in England
IN RE
NEW JERSEY v. DELAWARE
(Boundary Suit)

DE27369

# The State of Delaware

Office of the Attorney General

December 27, 1938.

Hon. Richard C. McMullen,
Governor of the State of Delaware,
Dover, Delaware.

My dear Governor:

The Clerk of the U. S. Supreme Court has informed me that the U. S. Supreme Court on December 19th. denied the second petition of the State of New Jersey to reopen its decree made in the Delaware-New Jersey boundary case and therefore the easterly boundary of the State of Delaware is that as passed upon by the U. S. Supreme Court in its final decree, viz, mean low water mark of the Delaware River within the twelve mile circle and the center of the main ship channel to the south thereof. You will note that after the final decree entered in this boundary case by the Supreme Court that two petitions have been filed by the State of New Jersey in the hope to have the main ship channel within the twelve mile circle declared as the easterly boundary of the State of Delaware, but the State of Delaware has been successful in persuading the Supreme Court that both of these petitions do not present any new matter that would justify the Court in reopening its final decree. As New Jersey has been unsuccessful in its attempt on these two occasions, I feel that it can be reasonably assumed that New Jersey has exhausted every effort it can put forth and therefore the easterly boundary line is as decreed.

It is my understanding that the reason for the determined effort by the State of New Jersey to have the main ship channel within the twelve mile circle established as the easterly boundary of the State of Delaware is because valuable property rights extend into the Delaware River from the New Jersey shore, especially in the nature of piers, which in New Jersey are assessed and taxed for school purposes.

Up to the present time these properties have not been taxed by the State of Delaware, New Castle County or the City of Wilmington, and I am calling these facts to your attention for whatever action you deem proper, for as you know, I am now leaving the office of the Attorney General.

DE04483

# The State of Delaware

## Office of the Attorney General

2.

By Chapter 179 of 40 Delaware Laws, p. 664, the boundaries of the City of Wilmington were redefined and inter alia, were projected over to the low water mark upon the easterly side of the Delaware River. The Act provides that all real estate included therein "shall be subject to assessment for municipal taxes in the same manner and subject to the same rights, rules and restrictions as in other cases within the said City". There was however added to this provision the following exception:

> * * * except that no property situated within that part of the City of Wilmington which shall have become a part of the said City by virtue of this Act shall be taxable until the final determination of the effect of an agreement or compact entered into in the year 1905 between the States of New Jersey and Delaware, known as the compact of 1905, and referred to in the opinion of the Supreme Court of the United States in the case entitled 'New Jersey v. Delaware', reported in 291 U.S. 361. The word 'determination' as herein used may refer either to agreement between the said Stated or to a final Court adjudication."

Chapter 16 of the same volume 40 at page 18 similarly defines the boundaries of Brandywine, New Castle, Red Lion and St. George's Hundreds with a similar exception against taxation as to the property held to belong to the State of Delaware under the said decision of the U. S. Supreme Court.

At the same session of the Legislature by Chapter 118 of Vol. 40, page 412, a Delaware-New Jersey Boundary Commission was provided for, by which the Governor was authorized to appoint, as Commissioners on the part of this State, the Attorney General of the State and the Special Counsel authorized by Chapter 277 of 36 Delaware Laws, with the power and authority of the Commissioners "to make and conclude an agreement between the said State of Delaware and New Jersey, respecting taxation, civil and criminal jurisdiction, and any other question relating to boundary and jurisdiction of this State and of the State of New Jersey in the Delaware River." Pursuant to this provision you appointed former Attorney General Clarence A. Southerland and myself as Commissioners for Delaware, and although much work was done it was impossible to come to any final determination, and as provided by the Act we made a report before the convening of the General Assembly in 1937 and suggested that this Commission be recreated but such was not done. However Mr. Southerland and I continued to act as Commissioners, although we had some doubts as to our authority so to do, but were unable to make any headway because of the pending petitions of the State of New Jersey to reopen the U. S. Supreme Court decree.

DE04484

In view of these facts I feel that your attention and the attention of the City of Wilmington and New Castle County should be called to these matters for whatever action the respective authorities feel should be taken relative to the asserting of our determined ownership over to the New Jersey shore. You and the other authorities may feel sure of the cooperation of Mr. Southerland and myself at any time if you feel we can be of any assistence to you in the premises.

I am sending a copy of this letter to the Mayor of the City of Wilmington and the Levy Court of New Castle County because of their interest in this matter.

Most respectfully yours,

Attorney General.

PWG*b
c.c. to Mayor of the City of Wilmington.
c.c. to Levy Court of New Castle County.

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# CHAPTER 119

## DELAWARE-NEW JERSEY BOUNDARY COMMISSION

**AN ACT PROVIDING FOR THE APPOINTMENT OF COMMISSIONERS TO MEET COMMISSIONERS OF THE STATE OF NEW JERSEY IN RELATION TO THE BOUNDARY AND JOINT DUTIES IN THE DELAWARE RIVER BETWEEN THE STATE OF DELAWARE AND THE STATE OF NEW JERSEY.**

*Be it enacted by the Senate and House of Representatives of the State of Delaware in General Assembly met:*

Section 1. That the Governor be and he is hereby authorized and empowered, if in his judgment deemed advisable, to appoint as Commissioners on the part of this State (and to fill any vacancies that may occur) to meet with the Commissioners, if and when appointed by competent authority of the State of New Jersey, the Attorney General of this State and the Counsel of the State of Delaware acting under the provisions of Chapter 277, Volume 36, Laws of Delaware.

The Commissioners so appointed on behalf of this State shall have full power and authority to make and conclude an agreement between the said State of Delaware and New Jersey, respecting taxation, civil and criminal jurisdiction, and any other question relating to boundary and jurisdiction of this State and of the State of New Jersey in the Delaware River. Said Commissioners shall report to the next General Assembly as to their deliberations, and at the same time submit a draft of such legislation, if any, as may be necessary to carry such report into effect.

Section 2. That any agreement so made by the Commissioners shall not be binding on the State of Delaware until ratified and confirmed by the General Assembly of the State of Delaware and the Legislature of the State of New Jersey, respectively, and consented to by the Congress of the United States.

Section 3. That so much of the money appropriated by the provisions of Chapter 3, Volume 39, Laws of Delaware, to pay the

costs and expenses incident to the suit of the State of New Jersey against the State of Delaware to determine the boundary between the States as shall not be required for the payment of such costs and expenses is hereby appropriated for the purpose of defraying the necessary expenses of said Commissioners incurred in the performance of their duties, and the said appropriation so made in said Chapter 3, Volume 39, Laws of Delaware, shall continue in force, both for the purpose of paying the costs and expenses incident to said boundary suit and for the purpose of defraying the necessary expenses of said Commissioners, until January 1, 1937.

Section 4. That the Governor of this State shall transmit to the Governor of the State of New Jersey a copy of this Act, and request him to communicate to the Legislature of that State.

Approved April 12, 1935.

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be obtained.
Volume Page

40 De. Laws
1935

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

April 16,
1935.

My dear Governor Buck:

I am enclosing herewith three certified copies of Chapter 60, P.L.1935, (Senate Bill No. 153.)

As you will note, this is "An act concerning boundary and jurisdiction in Delaware river between this State and the State of Delaware," and provides for the appointment of three commissioners for the State of New Jersey to meet commissioners if and when appointed by the competent authority of the State of Delaware; the commissioners to have power and authority to conclude an agreement between the States of New Jersey and Delaware respecting taxation, civil and criminal jurisdiction, and any other questions relating to boundary and jurisdiction of this State and of the State of Delaware in the Delaware river.

By the terms of this act I am directed to transmit to the Governor of Delaware a copy of this act, and request that the Governor communicate it to the Legislature of that State.

May I ask that you be good enough to so transmit this act to your Legislature.

With best wishes, I am,

Sincerely yours,

Governor.

Hon. C. Douglas Buck,
Governor of Delaware,
Dover, Delaware.

HGH:S

CHAPTER 160 LAWS OF 1935.

# CERTIFIED COPY

OF

An Act concerning boundary and jurisdiction in Delaware river between this State and the State of Delaware.

Chapter 160, Laws of 1935.

~~[SECOND OFFICIAL COPY REPRINT]~~

~~SENATE, No. 153~~

# STATE OF NEW JERSEY

~~INTRODUCED JANUARY 20, 1935~~

~~By Mr. LEAP~~

~~Referred to Committee on Federal and Interstate Relations~~

AN ACT concerning boundary and jurisdiction in Delaware river between this State and the State of Delaware.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. The Governor be and he hereby is authorized, empowered and directed to appoint three commissioners on the part of this State (and to fill vacancies that may occur), to meet commissioners if and when appointed by the competent authority of the State of Delaware; and the commissioners so appointed on behalf of this State, or a majority of them, shall have full power and authority to make and conclude an agreement between the said States of New Jersey and Delaware, respecting taxation, civil and criminal jurisdiction, and any other questions relating to boundary and jurisdiction of this State and of the State of Delaware in Delaware river. Said commissioners shall report at the present or some subsequent session of the Legislature, and at the same time submit a draft of such legislation, if any, as may be necessary to carry such report into effect.

2. Any agreement so made by the commissioners shall not be binding on the State of New Jersey until ratified and confirmed by the Legislatures of the States of New Jersey and Delaware, respectively, and consented to by Congress.

3. There is hereby appropriated out of any moneys in the treasury of the State not otherwise appropriated, the sum of one thousand dollars

($1,000.00) to defray the necessary expenses of the commissioners while engaged in this mission, and to make such reasonable compensation to the commissioners for their services as shall be ascertained and allowed by the Governor. Said appropriation shall be immediately available upon the approval of this act, and shall continue in force until said commissioners have been discharged by the Legislature. Said expenses shall be paid by the State Treasurer from time to time on vouchers signed and submitted by the commissioners, and said compensation for the services of the commissioners shall be paid by the State Treasurer on vouchers signed and submitted by the Governor.

4. That the Governor of this State shall transmit to the Governor of the State of Delaware a copy of this act, and request him to communicate it to the Legislature of that State.

5. This act shall take effect immediately.

Approved April 15, 1935.

# State of New Jersey

## Department of State.

I, Thomas A. Mathis, Secretary of State of the State of New Jersey do hereby Certify that the foregoing is a true copy of an Act passed by the Legislature of this State, and approved by the Governor, the fifteenth day of April A.D. 1935, as taken from and compared with the original now on file in my office

In Testimony Whereof, I have hereunto set my hand and affixed my Official Seal at Trenton, this seventeenth day of April one thousand nine hundred thirty-five.

Thomas A Mathis
Secretary of State.

DE00012

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Volume Page

1302.007
Governors Office
Governors Papers
1935
C-E
Delaware-New Jersey Boundary Comm.

NEW JERSEY SENATE

S. RUSLING LEAP
SENATOR, SALEM COUNTY
WOODSTOWN, N.J.

710 Federal Street,
Camden, New Jersey,
February 7th, 1935.

Hon. P. Warren Green,
Attorney General of
the State of Delaware,
Wilmington, Delaware.

Dear Attorney General:-

I am enclosing herewith a copy of a bill which I have recently introduced in the New Jersey Legislature for the purpose outlined in the Bill.

This Bill was prepared by Duane Minard, Assistant Attorney General, and it is our thought that it would be well to have a similar bill passed by the State of Delaware and appoint the Commissioners and see if we cannot iron out the difficulties that are now existing.

Yours very truly,

S. R. Leap

L/FH

DE Public Archives

1800 - 000-023-001

Atty Genl

487800

February 8, 1935.

Clarence A. Southerland, Esq.,
Delaware Trust Building,
Wilmington, Delaware.

Re: Boundary between New Jersey and Delaware.

Dear Clarence:

I am in receipt this day of a letter from Senator S. Rusling Leap, which is accompanied by a copy of a Bill which he introduced in the New Jersey Legislature, the substance of which is providing for a joint Commission to make and include an agreement between the two States respecting taxation, civil and criminal jurisdiction, and any other question relating to the boundary and jurisdiction between New Jersey and Delaware.

You will note that the Bill provides for three Commissioners and an appropriation of $10,000.00.

In the letter Senator Leap states that the Bill was prepared by Duane Minard, Assistant Attorney General, and that it is their thought to have a similar Bill passed by the State of Delaware and to appoint Commissioners "and see if we cannot iron out the difficulties that are now existing".

I have acknowledged receipt of the letter from Senator Leap and stated that I would communicate with him later.

Will you kindly advise me whether you think it is advisable that a Commission should be appointed by the State of Delaware for the purpose of conferring with a similar Commission acting on behalf of New Jersey.

In my letter to Senator Leap I informed him that if it is decided that a Commission should be appointed, that I am most sure that the State of Delaware would not authorize any such sum of money as it is proposed in the New Jersey Bill to defray expenses of the New Jersey Commission.

I am sending the copy of the Bill for your consideration.

Yours very truly,

Attorney General.

PSG*B
ENCL.

DE Public Archives
1320-000-023-001
ATM Gen
487800

NEW JERSEY SENATE

S. RUSLING LEAP
SENATOR, SALEM COUNTY
WOODSTOWN, N.J.

710 Federal Street,
Camden, New Jersey,
February 11th, 1935.

Hon. P. Warren Green,
Attorney General,
Wilmington, Del.

Dear Attorney General:-

First as to the question of expense, I do not see where there will be any real necessity for any expense other than possibly traveling expenses. I can amend the Bill that I have introduced appropriating $2,000.00 and possibly Delaware would be willing to do the same. It does not mean that very much of that money, even at that, would be used.

I was reading in the paper about the two Bills providing that the jurisdiction of the City of Wilmington should extend to low water mark and also providing for a conveyance to the City of Wilmington. From the standpoint of riparian rights I am rather inclined to believe that these Bills may be necessary by reason of the fact that the City of Wilmington has charge of all riparian rights within their limits and from what I can learn of your laws in Delaware the riparian rights in State property, other than that heretofore vested in the City of Wilmington, can only be transferred or conveyed by an Act of the Legislature.

There has been another Bill introduced in the Legislature providing for an authority to be constituted by Delaware and New Jersey with the idea of constructing a tunnel from Deep Water Point to Wilmington and this may also enter into the discussion between the Commissioners.

Yours very truly,

S. R. Leap

L/FH

DE Public Archives

1560-000-023-001

Atty Bond

487600

S. RUSLING LEAP
SENATOR, SALEM COUNTY
WOODSTOWN, N.J.

NEW JERSEY SENATE

710 Federal Street,
Camden, New Jersey,
March 1st, 1935.

Hon. P. Warren Green,
Attorney General,
Wilmington, Del.

Dear Attorney General:-

I acknowledge your letter of the 20th instant and am very much pleased with the form of the Bill that you have introduced.

Our Bill has already passed the Senate and we are arranging to cut our appropriation down to $2500 when the Bill comes up in the House. I will advise you just as soon as it is passed and will appreciate it if you will do everything within your power to secure the passage of your Bill in Delaware.

Yours very truly,

S. R. Leap
Jr.

L/FH

S. Rusling Leap
Senator, Salem County
Woodstown, N.J.

NEW JERSEY SENATE

710 Federal Street,
Camden, New Jersey,
April 5th, 1935.

Hon. P. Warren Green,
Attorney General,
Wilmington, Del.

Dear Attorney General:-

Beg to advise that the New Jersey Legislature has passed the Bill providing for the appointment of the Commission to adjust the tax and boundary matters between New Jersey and Delaware. The only change in the Bill as passed was a reduction in the amount of the Bill from $10,000 to $1,000. The Governor will sign this Bill within the course of a few days.

I will appreciate if you will advise as to the progress being made with the Bill in Delaware and as soon as it has become a law in Delaware I will arrange for the Governor in New Jersey to make his appointments to the Commission.

Yours very truly,

S. R. Leap Jr.

L:FH



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Volume Page

1560-000-023
NJ. vs DE
Boundary...
folder 5
#308

April 6, 1935.

Hon. S. Husling Leap
710 Federal Street
Camden, New Jersey

Dear Senator Leap:

On the closing day of our Legislature the Bill providing for the appointment of a Commission to meet with a like Commission of your State, to consider matters growing out of the boundary decision, was passed, and there is no question that it will be duly approved by the Governor.

As soon as I receive a copy thereof I will have a copy sent to the Governor of your State and also to you.

The Bill as passed was changed in minor details from the Bill I introduced, which was the one you sent me, the change was that the persons heretofore engaged in the boundary question should be members of the Commission along with the Attorney General, and that the balance of the money appropriated to the old boundary Commission was made available for this new use.

Yours very truly,

Attorney General.

PWG*B

DE Public Archives

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987800

## CHAPTER 179

## WILMINGTON

### AN ACT RELATING TO THE BOUNDARIES OF THE MAYOR AND COUNCIL OF WILMINGTON.

*Be it enacted by the Senate and House of Representatives of the State of Delaware in General Assembly met* (two-thirds of each Branch thereof concurring therein):

Section 1. That Section 1 of Chapter 207, Volume 17, Laws of Delaware, approved April 13, A. D. 1883, and all Acts amendatory thereof or supplemental thereto, be and the same are hereby further amended by striking out said Section and inserting in lieu thereof the following:

Section 1. The City of Wilmington shall be bounded as follows:

BEGINNING at a monument upon the present westerly bank of the Delaware River, said monument being located 2688.63 feet easterly from the extension of the center line of Todds Lane (as the latter is established between Bowers Street and Edge Moor Avenue) measured perpendicularly thereto, and 4392.47 feet southerly from the center line of Edge Moor Avenue (as the latter is established between Todds Lane and Eastlawn Avenue) measured perpendicularly thereto; thence northwesterly on a direct line towards the monument located at the intersection of the center lines of Todds Lane and Edge Moor Avenue, a distance of 3200 feet more or less to its intersection with a line drawn perpendicularly to Market Street (as the latter is at present established between Thirtieth and Thirty-sixth Streets) through a point 77 feet northeasterly from the center line of Thirty-sixth Street, measured along the said center line of Market Street; thence northerly perpendicular to Market Street as aforesaid 5500 feet more or less to the northwesterly side of Market Street as the same is established at 65 feet 6 inches in width; thence northeasterly along the said northwesterly side of Market Street 2500 feet more or less to its intersection with the southwesterly property line of the Diamond State Amusement Company, said intersection being approximately 730 feet northeasterly

from the center line of Forty-third Street, measured along the said side of Market Street; thence north 23 degrees 35 minutes west, along the said property line, a distance of 524.31 feet more or less to a concrete monument; thence north 19 degrees 12 minutes west, along the same property line, a distance of 823.3 feet to a corner of said property; thence north 68 degrees 28 minutes east continuing along the property division line 57.60 feet to a point; thence south 57 degrees 21 minutes east along the property division line 470.2 feet to a point; thence north 26 degrees 26 minutes east along the property division line 264 feet to a point; thence north 18 degrees 1 minute east along the property division line 369.6 feet to a point; thence north 3 degrees 53 minutes east along the property division line 220 feet more or less to the center line of Talley Road, thence northwesterly along the center line of said Talley Road following the various courses and distances thereof to its intersection with the center line of Miller Road; thence southwesterly along the center line of Miller Road following its various courses and distances to its intersection with a line drawn parallel to Thirty-seventh and Thirty-eighth Streets and midway between the said Streets; thence southeasterly parallel to Thirty-seventh and Thirty-eighth Streets and midway between them 1050 feet more or less to a point midway between Harrison and Franklin Streets, as the latter are at present established upon the official map or plan of the City of Wilmington; thence southwesterly along a line midway between Harrison and Franklin Streets 1000 feet, more or less to a point distant 600 feet northeasterly from the northeasterly side of 32nd Street measured at right angles thereto; thence northwesterly parallel to 32nd Street and distant 600 feet northwesterly therefrom 750 feet, more or less, to the northwesterly side of Miller Road; thence southwesterly along the said side of Miller Road 650 feet more or less to the southwesterly side of 34th Street extended (as the same is established between Market and Van Buren Streets; thence northwesterly along the said extension of the said southwesterly side of Thirty-fourth Street 300 feet more or less to the center line of the right of way of the Baltimore & Ohio Railroad); thence in a southwesterly direction following the said center line of the Baltimore & Ohio Railroad right of way 4100 feet more or less to the center line of 18th Street extended, as the latter is established southeast

of Broom Street; thence westerly at right angles to Concord Avenue and along the present City boundary line 1600 feet more or less to the center line of Brandywine Creek; thence following along the center line of Brandywine Creek in a northerly and westerly direction 7800 feet more or less to its intersection with the extension of the easterly side of Rising Sun Lane; thence southwesterly along the said side of Rising Sun Lane 2600 feet more or less to a point distant 150 feet southwesterly from the southwesterly side of Pennsylvania Avenue measured at right angles thereto; thence southeasterly and parallel to the said side of Pennsylvania Avenue 1900 feet more or less to the northwesterly side of Greenhill Avenue; thence southwesterly along the said side of Greenhill Avenue 1950 feet more or less to the northeasterly side of 7th Street; thence northwesterly along the said side of 7th Street extended 2750 feet more or less to the center line of duPont Road; thence southerly along the center line of duPont Road 2200 feet more or less to the southerly side of Lancaster Avenue extended, as the latter is established between Union Street and Greenhill Avenue; thence southeasterly along the said side of Lancaster Avenue, extended, 2100 feet more or less to the southeasterly side of Greenhill Avenue extended; thence southwesterly along the said side of Greenhill Avenue extended 600 feet more or less to the center line of Linden Street extended, as the latter is established between Van Buren and Union Streets; thence southeasterly along the center line of Linden Street extended 1100 feet more or less to the center line of Woodlawn Ave. extended, as the latter is established between Lancaster and Pennsylvania Avenue; thence southwesterly along the said center line of Woodlawn Avenue extended 2700 feet more or less to the northerly side of the right of way of the P. & R. Railroad; thence southeasterly along the said northerly side of the right of way of the P. & R. Railroad 1400 feet more or less to a point on an extension of the mid distant line between Lincoln and Union Streets; thence northeasterly along said mid distant line and parallel to Union Street 1700 feet more or less to the present City boundary line; thence southerly along the present City boundary line 2800 feet more or less to the center line of Maryland Avenue; thence southerly continuing along the present City boundary line 2200 feet more or less to the center line of the right of way of the main

line of the Pennsylvania Railroad; thence northeasterly along said right of way center line and along the present City boundary line about 2900 feet to the westerly side of Beech Street extended, as the latter is laid out southerly from and at right angles to Maryland Avenue; thence southerly along the said side of Beech Street extended and along the present City boundary line 2800 feet more or less to a point distant 450 feet southwesterly from the southwesterly side of "F" Street measured at right angles thereto; thence southeasterly parallel to "F" Street 7800 feet more or less to the southeasterly side of the right of way of the New Castle Branch of the P. B. & W. Railroad; thence in a southeasterly direction along the said right of way of the New Castle Branch of the P. B. & W. Railroad to its intersection with the northerly side of the right of way of the P. & R. Railroad; thence south 37 degrees 28 minutes east along the said northerly side of the right of way of the P. & R. Railroad (as the latter is established upon its plans between Stations 155 and 160) and continuing thence south 37 degrees 28 minutes east across the Delaware River to low water mark upon the easterly side of the Delaware River; thence northeasterly along the said low water line of the easterly side of the Delaware River to a point due east of the monument first mentioned upon the westerly bank of the said river; thence due westerly and re-crossing the Delaware River to the monument at the place of BEGINNING.

Within the limits of the territory by this Act included within and made part of the City of Wilmington, The Mayor and Council of Wilmington shall be and is hereby vested with all the powers, rights, privileges and immunities which by law appertain and belong to it as a municipal corporation, and all the laws or ordinances and regulations in force within the limits of the City of Wilmington, as heretofore existing, and not locally inapplicable, shall be extended and applied to the territory comprised within the boundaries as set forth herein.

The real estate by this Act added to and included within the boundaries of the City of Wilmington, and all persons now or hereafter residing within the said boundaries shall be subject to assessment for municipal taxes in the same manner and subject to

the same rights, rules and restrictions as in other cases within the said City, except that no property situated within that part of the City of Wilmington which shall have become a part of the said City by virtue of this Act shall be taxable until the final determination of the effect of an agreement or compact entered into in the year 1905 between the States of New Jersey and Delaware, known as the compact of 1905, and referred to in the opinion of the Supreme Court of the United States in the case entitled "New Jersey v. Delaware", reported in 291 U. S. 361. The word "determination" as herein used may refer either to agreement betweeo the said States or to a final Court adjudication.

Approved April 11, 1935.

H. B. for
H. B. 164

HOUSE SUBSTITUTE FOR HOUSE BILL NO. 164.

AN ACT PROVIDING FOR THE APPOINTMENT OF COMMISSIONERS TO MEET COMMISSIONERS OF THE STATE OF NEW JERSEY IN RELATION TO THE BOUNDARY AND JOINT DUTIES IN THE DELAWARE RIVER BETWEEN THE STATE OF DELAWARE AND THE STATE OF NEW JERSEY.

BE IT ENACTED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE STATE OF DELAWARE IN GENERAL ASSEMBLY MET:

Section 1. That the Governor be and he is hereby authorized and empowered, if in his judgment deemed advisable, to appoint as Commissioners on the part of this State (and to fill any vacancies that may occur) to meet with the Commissioners, if and when appointed by competent authority of the State of New Jersey, the Attorney General of this State and the Counsel of the State of Delaware acting under the provisions of Chapter 277, Volume 38, Laws of Delaware.

The Commissioners so appointed on behalf of this State shall have full power and authority to make and conclude an agreement between the said State of Delaware and New Jersey, respecting taxation, civil and criminal jurisdiction, and any other question relating to boundary and jurisdiction of this State and of the State of New Jersey in the Delaware River. Said Commissioners shall report to the next General Assembly as to their deliberations, and at the same time submit a draft of such legislation, if any, as may be necessary to carry such report into effect.

Section 2. That any agreement so made by the Commissioners shall not be binding on the State of Delaware until ratified and confirmed by the General Assembly of the State of Delaware and the Legislature of the State of New Jersey, respectively, and consented to by the Congress of the United States.

Section 3. That so much of the money appropriated by the provisions of Chapter 3, Volume 39, Laws of Delaware, to pay the costs and expenses incident to the suit of the State of New Jersey against the State of Delaware to determine the boundary between the States as shall not be required for the payment of such costs and expenses is hereby appropriated for the purpose of defraying the necessary expenses of said Commissioners incurred in the performance of their duties, and the said appropriation so made in said Chapter 3, Volume 39, Laws of Delaware, shall continue in force, both for the purpose of paying the costs and expenses incident to said boundary suit and for the purpose of defraying the necessary expenses of said Commissioners, until January 1, 1937.

Section 4. That the Governor of this State shall transmit to the Governor of the State of New Jersey a copy of this Act, and request him to communicate to the Legislature of that State.

Harry W. Lyons, Speaker of the House

Roy F. Corley, President of the Senate

Approved April 12, 1935 -

C. D. Buck - Governor.

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Volume Page

1560-000-023-001
NJ vs DE
Boundary Case
Folder #2

April 24, 1935

Mr. Robert H. Richards,
Du Pont Building,
Wilmington, Del.

My dear Mr. Richards:

I enclose a copy of "An Act Providing for the Appointment of Commissioners to meet Commissioners of the State of New Jersey in Relation to the Boundary and Joint Duties in the Delaware River between the State of Delaware and the State of New Jersey". It would appear to me that this legislation, when it was prepared was somewhat carelessly drawn. However, in the event a commission can be named under Section 1, I wish to ask if you would serve with Clarence Southerland and the Attorney General as a commission of three.

Very truly yours,

Governor.

bas

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NEW JERSEY SENATE

S. RUSLING LEAP
SENATOR, SALEM COUNTY
WOODSTOWN, N.J.

710 Federal Street,
Camden, New Jersey,
May 17th, 1935.

Hon. P. Warren Green,
Attorney General,
Wilmington, Del.

Dear Attorney General:-

I would appreciate it if you would advise me as to the names of the persons appointed on the Commission by the Governor of the State of Delaware in reference to the New Jersey boundary situation. I would also like to have their addresses in order that the members of our Commission may make their contacts.

The Governor of New Jersey has appointed the Honorable William Chew of Salem, Thomas G. Hilliard, Esquire, of Salem and John M. Summerill, Jr., Esquire of Penns Grove.

Yours very truly,

S. R. Leap

L:FH



DE16282

DE Public Archives

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AM Genl
487800

May 18, 1935.

Hon. S. Rusling Leap,
Woodstown, New Jersey.

Dear Senator Leap:

I have not been advised that the Governor has yet appointed members of the Delaware - New Jersey Boundary Commission, and the first opportunity I have I will call the Governor's attention to this matter.

Yours very truly,

Attorney General.

PWG*B

DE Public Archives

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487800

# The State of Delaware

Office of the Attorney General

June 10, 1935.

Hon. C. Douglass Buck,
Governor of the State of Delaware,
Dover, Delaware.

My dear Governor:

May I call your attention to the provisions of House Substitute for House Bill No. 164, being an Act for the appointment of Commissioners on behalf of this State, to meet Commissioners of the State of New Jersey in relation to the boundary and joint duties in the Delaware River.

This Act was approved by you on April [illegible], and provides that you are authorized, if you deem it advisable, to appoint as Commissioners on behalf of the State of Delaware to meet Commissioners appointed by the State of New Jersey, the Attorney General of this State and counsel for the State of Delaware acting under the provisions of Chapter 277, Vol.36, Laws of Delaware. This latter law provided for special counsel relative to the boundary dispute, and the former Attorney General, Clarence A. Southerland, has acted as such special counsel.

On May 17th. Senator S. Rusling Leap, who is particularly interested in this matter, informed me that the Governor of New Jersey has appointed William Chew of Salem, Thomas G. Hilliard of Salem and John M. Summerill, Jr. of Pennsgrove, as the Commission for the State of New Jersey.

I have had several letters from Senator Leap and also from John W. Woelfle, Secretary of the Commission on Inter-State Cooperation, relative to this Commission, and may I therefore suggest to you that if you deem it advisable that you should appoint this Commission, in order that we may begin our work with the State of New Jersey.

As provided by the Act, former Attorney General Clarence A. Southerland and myself are the persons set forth in the act that you should appoint, if you deem such a Commission desirable.

Yours very truly,

Bayard Frean

Attorney General.

P.G.B
C.C. to Equit.Fr.Co.

DE Public Archives

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ATH Gen'l
487800

CLARENCE A. SOUTHERLAND
JAMES H. HUGHES, JR.
E. ENNALLS BERL
HERBERT H. WARD, JR.
WILLIAM S. POTTER
PAUL LEAHY

SYBIL D. WARD
DAVID F. ANDERSON
GEO. GRAY THOURON

LAW OFFICES
WARD & GRAY
DELAWARE TRUST BUILDING
WILMINGTON, DELAWARE
TELEPHONE-WILMINGTON 5277

GEORGE GRAY
(1853-1899, 1914-1925
HERBERT H. WARD
1858-1937
ANDREW C. GRAY
1895-1929

July 8, 1935.

Hon. C. Douglass Buck,
Dover, Delaware.

My dear Governor:

I have your letter of July 6th and shall be glad to serve on the commission to consider the matter of the Delaware-New Jersey boundary.

Very truly yours,

C A Southerland

CAS:O.

DE Public Archives

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Gov Papers
087793

July 11, 1935.

Honorable P. W. Green,
Attorney General,
Wilmington, Delaware.

Dear Mr. Green:

In accordance with the directions of Governor Buck, I enclose herewith your certificate of appointment as a member of the Delaware-New Jersey Boundary Commission.

Very truly yours,

te Secretary to the Governor.

DE Public Archives

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Gov. Papers
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CLARENCE A. SOUTHERLAND
JAMES H. HUGHES, JR.
E. ENNALLS BERL
HERBERT H. WARD, JR.
WILLIAM S. POTTER
PAUL LEAHY

SYBIL U. WARD
DAVID F. ANDERSON
GEO. GRAY THOMSON

LAW OFFICES
WARD & GRAY
DELAWARE TRUST BUILDING
WILMINGTON, DELAWARE
TELEPHONE-WILMINGTON 5277

GEORGE GRAY
1863-1939, 1914-1925
HERBERT H. WARD
1858-1947
ANDREW C. GRAY
1908-1929

July 15, 1935.

Mrs. Bella A. Stroud, Secretary to the Governor,
Dover, Delaware.

Dear Madam:

I thank you for your letter of July 11th, enclosing commission as a member of the Delaware-New Jersey Boundary Commission, authorized by the Act of 1935.

Very truly yours,

C A Southerland

CAS:O.

DE Public Archives

1302.7
Gov. Papers
087793

CLARENCE A. SOUTHERLAND
JAMES H. HUGHES, JR.
E. ENNALLS BERL
HERBERT H. WARD, JR.
WILLIAM S. POTTER
PAUL LEAHY

SYBIL U. WARD
DAVID F. ANDERSON
GEO. GRAY THOURON

LAW OFFICES
WARD & GRAY
DELAWARE TRUST BUILDING
WILMINGTON, DELAWARE
TELEPHONE-WILMINGTON 8277

GEORGE GRAY
1853-1899, 1914-1925
HERBERT H. WARD
1852-1927
ANDREW C. GRAY
1855-1929

September 23, 1935.

Hon. Percy Warren Green, Attorney General,
Public Buildings,
Wilmington, Delaware.

My dear Mr. Attorney General:

It occurred to me that the State of Delaware might be interested in the hearing to be held by the Chief of Engineers of the War Department on October 3rd, in Philadelphia, upon the matter of granting to the Wilmington-Deep Water Tunnel Company a permit for the construction of a tunnel under the Delaware River.

Such a tunnel, of course, could not be constructed without the consent of the State of Delaware and, as I understand it, it would be necessary to have an Act of the Legislature for the purpose. The issuance of a permit by the Chief of Engineers for the construction of such a tunnel might, it seems to me, create some possible embarrassment in the future. The proper way to proceed, I should think, would be for an applicant to obtain the necessary consent of the State before applying for a permit from the War Department.

I do not know what view you take of the matter but I thought it would be in order merely for me to call

your attention to the facts.

A copy of the notice of the hearing is enclosed for your information.

Very truly yours,

CAS:O.

WAR DEPARTMENT
United States Engineer Office
900 Custom House, 2nd and Chestnut Streets
Philadelphia, Pa.

September 3, 1935.

NOTICE OF PUBLIC HEARING

The application of the Wilmington-Deepwater Tunnel Company for a War Department permit to construct a vehicle tunnel under the DELAWARE RIVER between a point immediately below the SALEM CANAL on the New Jersey side and a point about one mile below the southerly limit of the City of Wilmington on the Delaware side, will be considered at a public hearing on the subject to be held by the undersigned in the United States Customs Court, Room 300, Third Floor, Customhouse, SECOND AND CHESTNUT STREETS, PHILADELPHIA, PA., on Thursday, October 3, 1935, at 11:00 A.M.

All interested parties are invited to be present or to be represented at the above time and place, particularly navigation interests and the officials of any county, city, town or local association whose interests may be affected by the construction of the proposed work. They will be given an opportunity to express their views upon the suitability of the location and adequacy of the plans in reference to navigation, and to suggest changes considered desirable in the interest of navigation.

Oral statements will be heard, but for accuracy of record all important facts and arguments should be submitted in writing, as the records of the hearing will be forwarded for consideration by the War Department. Written statements may be handed to the undersigned at the hearing or mailed to him beforehand.

The plans submitted by the applicants show a two-lane tunnel with the top 55 feet below the plane of mean low water across the channel for a length of 2774 feet, thence on a grade of 3.266% to portals on each shore. A wharf carrying a ventilating house is provided directly over the tunnel at each side of the river. The outshore end of the wharf on the New Jersey side is shown 1800 feet from the center line of the ship channel and the outshore end of the wharf on the Delaware side is shown 3200 feet from the center line of the channel. The elevation of the top of the tunnel at each of those points is proposed by the applicant to be 35 feet below mean low water.

JOHN C. H. LEE
Lieut. Col., Corps of Engineers,
District Engineer.

B&P 1645

WAR DEPARTMENT
United States Engineer Office
900 Custom House, 2nd and Chestnut Streets
Philadelphia, Pa.

September 3, 1935.

NOTICE OF PUBLIC HEARING

The application of the Wilmington-Deepwater Tunnel Company for a War Department permit to construct a vehicle tunnel under the DELAWARE RIVER between a point immediately below the SALEM CANAL on the New Jersey side and a point about one mile below the southerly limit of the City of WILMINGTON on the Delaware side, will be considered at a public hearing on the subject to be held by the undersigned in the United States Customs Court, Room 300, Third Floor, Customhouse, SECOND AND CHESTNUT STREETS, PHILADELPHIA, PA., on Thursday, October 3, 1935, at 11:00 A.M.

All interested parties are invited to be present or to be represented at the above time and place, particularly navigation interests and the officials of any county, city, town or local association whose interests may be affected by the construction of the proposed work. They will be given an opportunity to express their views upon the suitability of the location and adequacy of the plans in reference to navigation, and to suggest changes considered desirable in the interest of navigation.

Oral statements will be heard, but for accuracy of record all important facts and arguments should be submitted in writing, as the records of the hearing will be forwarded for consideration by the War Department. Written statements may be handed to the undersigned at the hearing or mailed to him beforehand.

The plans submitted by the applicants show a two-lane tunnel with the top 55 feet below the plane of mean low water across the channel for a length of 3774 feet, thence on a grade of 3.266% to portals on each shore. A wharf carrying a ventilating house is provided directly over the tunnel at each side of the river. The outshore end of the wharf on the New Jersey side is shown 1800 feet from the center line of the ship channel and the outshore end of the wharf on the Delaware side is shown 2200 feet from the center line of the channel. The elevation of the top of the tunnel at each of these points is proposed by the applicant to be 35 feet below mean low water.

John C. H. Lee

JOHN C. H. LEE
Lieut. Col., Corps of Engineers,
District Engineer.



DE27433

# The State of Delaware

Office of the Attorney General

September 24, 1935.

Lieut. Col. John C. H. Lee,
U. S. Engineer's Office,
900 Custom House,
2nd. and Chestnut Streets,
Philadelphia, Pennsylvania.

Re: Application - Wilmington-Deepwater Tunnel Company.

Dear Sir:

The notice of a public hearing, dated September 3rd. 1935, over your signature, concerning the application of the Wilmington-Deepwater Tunnel Company for a War Department permit to construct a vehicle tunnel under the Delaware River between a point immediately below the Salem Canal on the New Jersey side and a point about one mile below the southerly limit of the City of Wilmington on the Delaware side, has come to my attention, and I note that a public hearing on this subject will be held by you on Thursday, October 3rd. 1935.

Representing the State of Delaware, I feel that you should be informed that the State of Delaware, which under the recent opinion of the U. S. Supreme Court, is the owner of the subaqueous soil within the twelve mile circle from New Castle to the New Jersey shore, has at no time been officially approached by the Wilmington-Deepwater Tunnel Company for authority to construct a tunnel across, on or through its land, and that the State of Delaware has at no time given any authority to construct a vehicle tunnel to said Tunnel Company.

It is my understanding that the permission of both States must first be secured by the applicant, when a proposed tunnel or bridge crosses from one State into another.

This letter is written to you in order that you may be informed of this fact, and to fully protect the interest of the State of Delaware.

Yours very truly,

Attorney General.

OWC:R

COPY

ALL COMMUNICATIONS SHOULD BE ADDRESSED TO "THE DISTRICT ENGINEER, U. S. ENGINEER OFFICE", CUSTOMHOUSE, PHILADELPHIA, PA.

FILE NUMBER
B&P 1645

WAR DEPARTMENT
UNITED STATES ENGINEER OFFICE
CUSTOMHOUSE, 2D AND CHESTNUT STREETS
PHILADELPHIA, PA.

September 26, 1935.

Hon. P. Warren Green, Attorney General,
State of Delaware,
Wilmington, Delaware.

Dear Sir:

I am in receipt of your letter of September 24th, calling attention to the fact that no application has been officially made to the State of Delaware by the Wilmington-Deepwater Tunnel Company for authority to construct a vehicle tunnel under the Delaware River, between points in Delaware and New Jersey, respectively. Application for a War Department permit to construct such a tunnel is before this office and will be considered at a public hearing to be held on Thursday, October 3, 1935.

Permit me to assure you that no permit for the proposed work will be issued by the War Department until franchises have been granted by the competent authorities of the States of New Jersey and Delaware.

Very truly yours,

JOHN C. H. LEE
Lieut. Col., Corps of Engineers,
District Engineer.

Inclosure:
Notice of public hearing.

# The State of Delaware

Office of the Attorney General

October 1, 1935.

Col. John C. H. Lee,
U. S. Engineer's office,
Custom House,
2nd & Chestnut Streets,
Philadelphia, Pennsylvania.

Your File 8 and P 1645.

Dear Sir:

May I thank you for your letter of September 28th. relative to the application of the Wilmington-Deepwater Tunnel Company for authority to construct a vehicle tunnel under the Delaware River between points in Delaware and New Jersey.

I notice that you state that "no permit for the proposed work will be issued by the War Department until franchises have been granted by the competent authorities of the States of New Jersey and Delaware."

The General Assembly of this State is the proper authority of this State to grant such a permit, and the General Assembly will not be in session until January 1936.

Very truly yours,

Attorney General.

PWG*B

COPY

# The State of Delaware

## Office of the Attorney General

October 3rd. 1935.

Governor C. Douglass Buck,
Equitable Trust Company,
Wilmington, Delaware.

Re: Delaware River Tunnel.

My dear Governor:

Immediately after our conversation some days ago I wrote to Col. John C. H. Lee, District Engineer for the U. S. War Department, informing him that no company, especially Wilmington - Deepwater Tunnel Company, had ever applied to the proper authorities of the State of Delaware for a permit to construct a tunnel over or through the lands of the State of Delaware, and called his attention to the fact that under the recent decision of the U. S. Supreme Court that the State of Delaware owned the land to the low water mark on the Jersey shore.

My letter stated that it was written in order that his office might know of the fact that no authority had ever been granted and to protect the interest of the State of Delaware.

Under date of September 26th. Col. Lee acknowledges my letter of September 24th., and his letter contains the following pertinent statement: "Permit me to assure you that no permit for the proposed work will be issued by the War Department until franchises have been granted by the competent authorities of the States of New Jersey and Delaware."

This letter I acknowledged and stated that the General Assembly of this State is the only proper authority to grant such a permit, and that the General Assembly will not be in session until January 1937.

Yours very truly,

PWG*B

Attorney General.

COPY

# The State of Delaware

Office of the Attorney General

October 17, 1935.

Hon. Clarence A. Southerland,
Delaware Trust Building,
Wilmington, Delaware.

Re: DELAWARE - NEW JERSEY.

Dear Clarence:

The other day Senator S. Rusling Leap informed me that the Commissioners of New Jersey desired to meet the Commissioners of the State of Delaware, as soon as possible, in connection with questions arising out of the boundary between this State and New Jersey.

You will find enclosed a copy of a letter which this day I am sending to Hon. T. G. Hilliard, who was Chairman of the New Jersey Commissioners.

In connection with this matter, may I call your attention to the last paragraph of Chapter 179 of Vol. 40 Laws of Delaware, Pp. 667-8. This Act, after extending the limits of the City of Wilmington, contains the following paragraph:

> "The real estate by this Act added to and included within the boundaries of the City of Wilmington, and all persons now or hereafter residing within the said boundaries shall be subject to assessment for municipal taxes in the same manner and subject to the same rights, rules and restrictions as in other cases within the said City, except that no property situated within that part of the City of Wilmington which shall have become a part of the said City by virtue of this Act shall be taxable until the final determination of the effect of an agreement or compact entered into in the year 1905 between the States of New Jersey and Delaware, known as the compact of 1905, and referred to in the opinion of the Supreme Court of the United States in the case entitled 'New Jersey v. Delaware', reported in 291 U.S. 361. The wo5d

herein used may refer either to agreement between the said States or to a final Court adjudication."

A similar provision is found in Chapter 6 of 40 Delaware Laws at page 15, which Act fixes the boundaries of Brandywine, Wilmington, New Castle, Red Lion and St. Georges Hundreds.

Yours very truly,

Attorney General.

PWG*B
Encl.

COPY

T. G. HILLIARD
COUNSELOR-AT-LAW
97 MARKET STREET
SALEM, N.J.

October 28, 1935.

Office of the Attorney General,
Wilmington, Delaware.

For Mr. Green.

Dear Mr. Green:

If the date meets with your approval, the New Jersey Commissioners will be very glad indeed to have you and Mr. Southerland take lunch with them at the Union League at 1.30 P.M. Friday, November 8th, that some discussion of the items open between the States of Delaware and New Jersey may be had.

If for any reason this date and time does not fit in with your engagements and those of Mr. Southerland, please so advise me that some other may be fixed.

H/R

Yours very truly,

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# The State of Delaware

Office of the Attorney General

November 9, 1935.

Hon. T. C. Hilliard,
Salem, New Jersey.

Dear Mr. Hilliard:

After your 'phone call postponing the conference of the representatives of your State with Mr. Clarence A. Southerland and myself representing Delaware, and also your suggestion that we meet on November 15th., may I inform you that thereafter I 'phoned to Mr. Southerland and find that on that day he is engaged in the Court of Chancery, and as I am engaged beginning November 18th. in the trial of three homicide cases, and Mr. Southerland again in the Court of Chancery on November 22nd., we find that we cannot make any definite arrangements to meet you before Monday, November 25th.

Will you kindly inform me whether it is satisfactory that we meet the Commissioners of New Jersey on November 25th. at 1.30 P.M. at the Union League.

Yours very truly,

Attorney General.

PWG*B

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T. G. HILLIARD
COUNSELOR-AT-LAW
97 MARKET STREET
SALEM, N.J.

September 24, 1936.

Hon. P. Warren Green,
Attorney General,
Wilmington, Del.

Dear Mr. Green:

I have yours of September 22, matter of meeting of Commissioners, New Jersey-Delaware Boundary, and the date you suggest, October 8, at 1 P. M., at the Union League, in the City of Philadelphia will suit for our first meeting.

Mr. Chew of the New Jersey Commissioners, has asked me to extend an invitation in his behalf to you for lunch with the New Jersey Commissioners at the time and place just mentioned.

Yours very truly,

T. G. Hilliard

H.H

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T. G. HILLIARD
COUNSELOR-AT-LAW
87 MARKET STREET
SALEM, N.J.

October 7, 1936.

Hon. P. Warren Green,
Attorney-General,
Wilmington, Del.

My dear Mr. Green:

Your wire advising me that it is impractical, by reason of your engagements, to meet with the New Jersey Commissioners, as proposed, on Thursday of this week, has reached me and I have given this information to my fellow commissioners, Messrs. Chew and Summerill.

By reason of the fact that I have been notified by the clerk of our Court of Errors and Appeals of the re-argument of a matter in which I am one of the counsel, I feel that it would be unwise for me to attempt to set down this conference for any time prior to the completion of this re-argument that is likely to be had October 20 or shortly thereafter.

Mr. Chew's engagements are such that until after election it is impractical for him to arrange to be away from his office or place of business and I am therefore forced to suggest that in fixing a time for our conference the date selected be not prior to the week beginning November 9, 1936.

Yours very truly,

T. G. Hilliard

H.H

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# The State of Delaware

Office of the Attorney General

February 11, 1927.

C. R. Mudge, Esq.,
Legal Department,
E.I.duPont de Nemours & Co.,
Wilmington, Delaware.

Dear Mr. Mudge:

In behalf of the Commissioners of the State of New Jersey and the Commissioners of the State of Delaware, former Attorney General Clarence A. Southerland and myself being the Delaware Commissioners, at a conference held pursuant to our duties arising under Chapter 119 of 40 Delaware Laws, page 412, relative to affecting an agreement between the two States respecting taxation, civil and criminal jurisdiction relating to the boundary and jurisdiction of the State of Delaware and of New Jersey in the Delaware River, decided to ask those persons who have piers or projections into the Delaware River beyond the mean low water mark, to furnish to the Commission full information as to such property and the value thereof, and in this connection you will receive a communication from T. G. Hilliard, Esq., one of the Commissioners of the State of New Jersey, and on behalf of the State of Delaware may I most respectfully request that this information be furnished to him, as we desire to have all of this information available for our next conference which will be held on Friday, February 18th.

Very truly yours,

Attorney General.

PWG*b

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STATE OF DELAWARE

EDWARD W. COOCH
LIEUTENANT GOVERNOR

OFFICE OF LIEUTENANT GOVERNOR
DOVER, DELAWARE

March 9, 1937

Hon. P. Warren Green
Attorney General of Delaware
Equitable Building
Wilmington, Delaware

Dear Sir:

Your letter of the 4th inst. enclosing Report of the Commissioners, in the matter of the Boundary and Jurisdiction in Delaware River, between the Statesof Delaware and New Jersey, was duly received. Your letter and the report were presented to the Senate on March 5, and the same appear in the printed Journal for that day. Enclosed find copy of the Journal.

Respectfully yours,

Edward W. Cooch

Lieutenant-Governor

EWC:CB
Enclosure

STATE OF DELAWARE

OFFICE OF THE ATTORNEY GENERAL

Wilmington, Delaware, March 4, 1937

Hon. Edward W. Cooch,
President of the State Senate,
Dover, Delaware.

Honorable Sir:

As directed by the provisions of Chapter 119 of 40 Delaware Laws, page 412, Honorable Clarence A. Southerland and the writer most respectfully herewith make their report to the House of Representatives of the General Assembly of the State of Delaware relative to their actions as Commissioners on behalf of the State of Delaware, in their meetings with Commissioners of the State of New Jersey relative to matters arising from the established boundary line between said two States.

Most respectfully yours,

P. WARREN GREEN
*Attorney General*

| | | |
|---|---|---|
| In Matter of Boundary and Jurisdiction in Delaware River between the States of Delaware and New Jersey. | ‖ | REPORT OF COMMISSIONERS |

To the Senate and General Assembly
Of the State of Delaware:

Honorable Sirs:

The Commissioners appointed by Honorable C. Douglass Buck, then Governor of the State, in pursuance of the provisions of Chapter 119 of 40 Delaware Laws, page 412, said Act dealing with the matter above entitled, respectfully report, as required by said Act, that:

1. They have accepted the commissions to them issued under and in pursuance of the terms and provisions of the said Act of the Legislature of the State of Delaware and are in the discharge of the duties cast upon them by the said commissions.

2. Your Commissioners have met with T. G. Hilliard, William H. Chew and John M. Summerill, the Commissioners appointed and representing, in the above entitled matter, the State

of New Jersey, who were appointed by Honorable Harold G. Hoffman, Governor of the State of New Jersey, in pursuance of the provisions of Chapter 160, Laws of New Jersey 1935.

3. The matters entrusted by both States to their said Commissioners have been discussed fully and your Commissioners are in agreement with the Commissioners of the State of New Jersey in ascertaining the fact to be that pending definite disposition by the Legislature of the State of Delaware of the questions involved in the granting of permission to build a proposed tunnel to be constructed beneath the surface of the Delaware River within the limits of what is known as the "Twelve Mile Circle," it is impractical for the Commissioners of either State to recommend to their respective Legislatures any legislation at this time.

4. The Commissioners of both States are further in agreement that final action on the matters entrusted to the Commissioners should be deferred until such time as action shall have been taken by the Delaware Legislature on proposed or pending legislation affecting the construction of the said proposed tunnel.

5. By the second paragraph of said Act of this State your Commissioners are charged to report to this General Assembly as to their deliberations, and it is our opinion that upon the adjournment of the Legislature our duties and commissions will terminate. The General Assembly should give consideration to whether it desires this commission or another commission to carry on the proposed deliberations, and if so, proper legislation should be enacted.

Respectfully submitted,

P. WARREN GREEN
CLARENCE A. SOUTHERLAND
*Commissioners*

Mr. Matthews, on motion for leave, introduced Senate Bill No. 100, entitled:

An Act to amend Chapter 43 of the Revised Code of Delaware, 1935, relating to the Levy Court of Kent County by further defining the Powers and Authority of said Court.

Which was given first and second reading, the second by title only, and referred to the Committee on Miscellaneous.

Mr. Marshall, on motion for leave, introduced Senate Bill No. 101, entitled:

An Act to regulate the taking of Sand from the Beaches along the Delaware River and Delaware Bay and the Atlantic Ocean.

Which was given first and second reading, the second by title only, and referred to the Committee on Miscellaneous.

Mr. Davis, on motion for leave, introduced Senate Bill No. 102, entitled:

An Act directing the State Highway Department to drain certain lands along Highways under the control and supervision of the State Highway Department.

Which was given first and second reading, the second by title only, and referred to the Committee on Buildings and Highways.

Mr. Steele, on behalf of the Committee on Municipal Corporation, to whom had been referred, Senate Bill No. 59, entitled:

An Act to amend Chapter 162, Volume 37, Laws of Delaware, entitled "An Act changing the name of 'The Town of Milford' to 'The City of Milford' and establishing a Charter therefor," in relation to the transmission of electric current and/or water beyond the City Limits.

Reported the same back to the Senate favorably.

DAVID W. STEELE
S. M. D. MARSHALL
D. P. ROSS

Mr. Ross moved that the Senate adjourn until 11 o'clock, A. M., Monday, March 8, 1937.

Motion prevailed.

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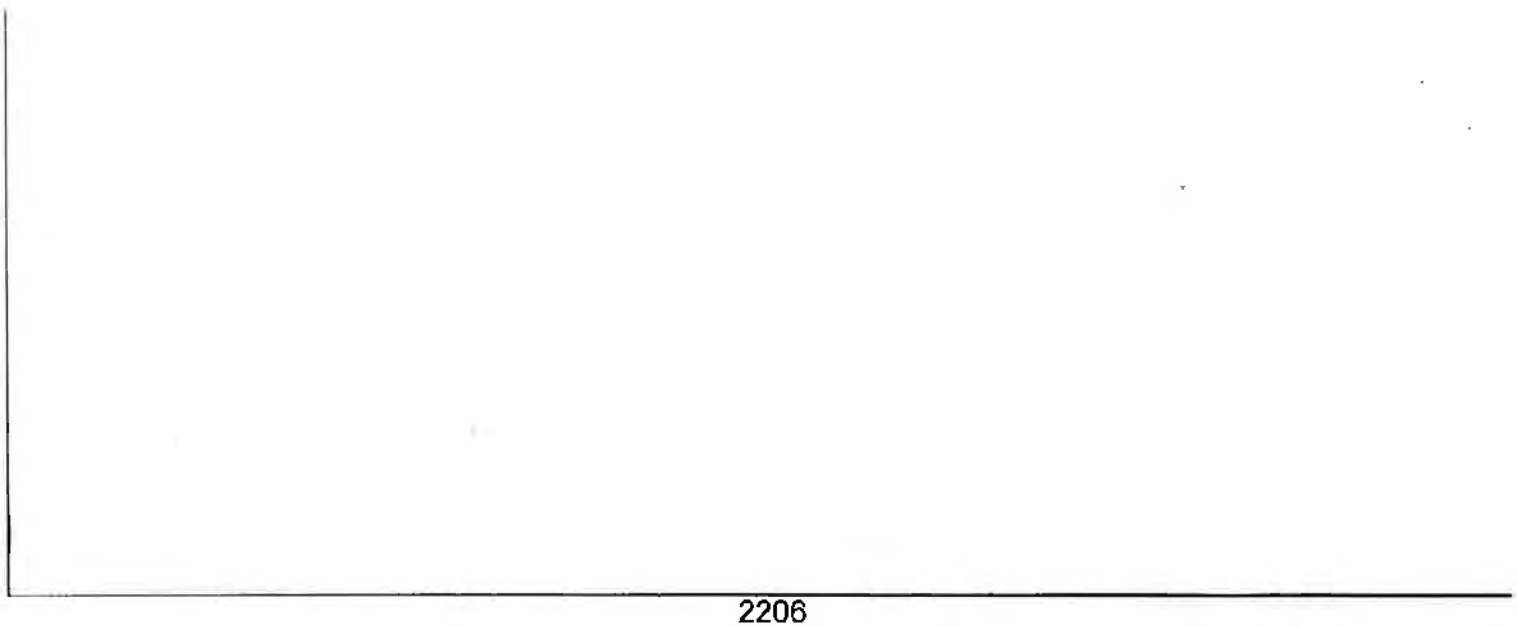

Exhibit No.

Henry S. Sockwell, regarding dredging near Ship John Light .....Rec. pp. 240-249
Charles W. Peace, regarding number of boats licensed by New Jersey (207)....Rec. pp. 251-252

IN THE

# Supreme Court of the United States

**No. 13 Original.** October Term, 1933.
**(No. 19 Original.** October Term, 1929.)

STATE OF NEW JERSEY,
*Plaintiff,*

*v.*

STATE OF DELAWARE,
*Defendant.*

## Reply Brief of Defendant on Exceptions to Report of Special Master.

PERCY WARREN GREEN,
*Attorney General of the State of Delaware.*

REUBEN SATTERTHWAITE, JR.,
CLARENCE A. SOUTHERLAND,
*Special Counsel for the State of Delaware.*

WARD & GRAY,
*Of Counsel.*

## TABLE OF CONTENTS.


| | | PAGE |
|---|---|---|
| INTRODUCTORY | | 1 |
| BOUNDARY IN TWELVE-MILE CIRCLE | | 1 |
| II. (c) (1). | Practical construction of Boundary. Action of Penn and the Proprietors. Estoppel | 2 |
| II. (c) (2). | Riparian Rights and Grants | 5 |
| (3). | Several and Common Fisheries | 5 |
| II. (c) (4). | The Circular Boundary | 17 |
| II. (c) (5). | Boundary Laws and Maps | 19 |
| II. (c) (6). | Exercise of Jurisdiction | 20 |
| II. (c) (7). | The Compact of 1905 | 27 |
| Summary of Point II | | 30 |
| III. | The Title of the State of Delaware | 31 |
| III. (a) (1). | Government of Delaware Counties 1664-1682 | 32 |
| III. (a) (2). | Goverment of Delaware Counties 1682-1776 | 38 |
| III. (b) | Power of Crown to Grant Bed of River | 39 |
| III. (c) | Feoffment of August 24, 1682 | 48 |
| III. (d) | Letters Patent of March 22, 1682/3 | 52 |
| (1). | Surrender of Said Letters Patent | 52 |
| III. (d) (2). | Claim of Title by Estoppel | 58 |
| III. (e) | The Crown's Claim of Title | 60 |
| III. (f) | Repudiation of Penn's Title by the State of Delaware | 64 |
| IV. | Litigation Relating to Title | 69 |
| (a) | Penn v. Baltimore | 69 |
| IV. (b) | Pea Patch Island Case | 74 |
| CONCLUSION | | 78 |


DE01284

## TABLE OF CASES CITED.


| | PAGE |
|---|---|
| Bathgate v. Irvine, 56 Pac. 442, 126 Cal. 135 | 29 |
| Bennett v. Boggs, 1 Bald. 60, 3 Fed. Cas. 221 | 18 |
| Case of Pea Patch Island, 30 Fed. Cas. 1133, Fed. Cas. No. 18311 | 53, 63, 77, 78 |
| Corfield v. Coryell, 4 Wash. C. C. 371, 6 Fed. Cas. 546 | 14 |
| Gale v. Beling, (Ex. 219) | 15, 50, 60, 75, 77 |
| Harlan & Hollingsworth v. Paschal, 5 Del. Ch. 435 | 6 |
| Hart v. Board of Levee Commissioners, 54 Fed. 559 | 29 |
| Kean v. Rice, 12 Serg. & R. (Pa.) 203 | 16 |
| Ketchum v. Duncan, 96 U. S. 659 | 66 |
| Massachusetts v. New York, 271 U. S. 65 | 43, 44, 46 |
| Louisiana v. Mississippi, 202 U. S. 1, 55-56 | 19 |
| Martin v. Waddell, 16 Pet. 367 | 40, 43, 44, 46, 47, 48 |
| Penn v. Lord Baltimore, Ridg. tem. Hardwicke, 333, 27 Eng. Rep. 847; 1 Ves. 444, 27 Eng. Rep. 1132 | 38, 53, 54, 59, 61, 63, 69, 72, 73, 74, 76, 77 |
| Rome Railway & Light Co. v. Look, 141 Ga. 202, 80 S. E. 705, Ann. Cas. 1915 C. 1023 | 29 |
| Shively v. Bowlby, 152 U. S. 1 | 6 |
| State v. Jersey City, 25 N. J. Law 525 | 7 |
| State v. Morris, 1 Harr. (Del.) 326 | 12 |
| State v. Reybold, 5 Harr. 484, 486 | 6 |
| Tyler v. Odd Fellows Association, 143 Mass. 134 | 67 |
| Virginia v. West Virginia, 246 U. S. 565 | 43 |




## TABLE OF AUTHORITIES CITED.


| | PAGE |
|---|---|
| Breviate, 16 Pa. Arch., 2d Ser., p. 19, 109 | 72 |
| Book II, Blackstone's Commentaries, p. 17 | 51 |
| Britton, Chap. 8, Sec. 4, English Translation by Nichols; Baldwin's Edition, Washington, D. C., 1901 | 51 |
| Bigelow on Estoppel (6th Ed.), Chapter 18, Sec. 2 | 65 |
| Duke of York's "Book of Laws" (Exhibit 510) | 34, 37 |
| Farnham on "Waters and Water Rights," Vol. 1, sections 62-66 | 6 |
| Scharf, "History of Philadelphia, Vol. I, (p. 48) | 37 |

IN THE

# Supreme Court of the United States.

No. 13 Original. October Term, 1938.
(No. 19 Original. October Term, 1939.)

STATE OF NEW JERSEY,
*Plaintiff,*
*v.*
STATE OF DELAWARE,
*Defendant.*

ON EXCEPTIONS TO REPORT OF SPECIAL MASTER.

## REPLY BRIEF OF DEFENDANT.

This reply brief will be devoted to answering certain arguments advanced in Plaintiff's first brief and will follow the subject headings in Plaintiff's brief.

Plaintiff's brief, like Defendant's, treats the questions under the two separate headings of "The Boundary Within the Twelve-Mile Circle" and "The Boundary Below the Circle".

## BOUNDARY IN TWELVE-MILE CIRCLE.

Before considering in detail the specific points advanced in this portion of Plaintiff's brief we desire to invite the Court's attention to the general nature of Plaintiff's claims.

Plaintiff's brief on this branch of the case is devoted, first, to an attempt to establish title by prescription in the State of New Jersey to the subaqueous soil of the Delaware River; and second, to an attack on the Delaware title.

Under part II of the brief under the heading "The Title of the State of New Jersey", Plaintiff apparently con-

cedes that, as found by the Master (Report, p. 8, p. 75, Finding 14), the Province of New Jersey had at no time, prior to statehood, any record title to the subaqueous soil of the Delaware River. No attempt is made to set up a record title from the Crown or from the Duke of York.

Plaintiff, however, claims that in colonial times certain riparian rights came into existence which, it argues, are inconsistent with the claim of title by the State of Delaware. Plaintiff further argues that the Master's finding that the State of Delaware at all times exercised exclusive jurisdiction and domination over the Delaware River within the twelve-mile circle is not supported by the evidence. Plaintiff further claims that the State of New Jersey, after statehood, as well as the Province of New Jersey before statehood, exercised jurisdiction over the Delaware River and thus acquired title by prescription.

Plaintiff's claim to title to the eastern half of the river within the twelve-mile circle thus rests, according to its brief, solely on prescriptive rights. No suggestion of a record title is made.

We shall now consider the nature of the evidence on which Plaintiff relies to establish prescription.

**II. (c) (1). Pages 14-35. Practical Construction of Boundary. Action of Penn and the Proprietors: Estoppel.**

Under this heading Plaintiff sets forth quotations from various Exhibits the purport of which is that the inhabitants of West New Jersey were entitled to the use of the Delaware River for navigation. This may be conceded at once. Plaintiff argues that such rights to navigation were entirely inconsistent with the ownership of the subaqueous soil by William Penn as proprietary of Delaware. Plaintiff says, in effect, that the acquisition of title to the subaqueous soil of the river by Penn would "thereby exclude the inhabitants of West Jersey (and later of New Jersey)" from the use of the Delaware River. Therefore, Plaintiff argues, it is contrary to equity that William Penn, who was a trustee for certain land owners in New Jersey, should claim any advantage, under his grants from the Duke of York to the prejudice of the interests of his associates or his *cestuis que trustent*. Plaintiff concludes (Brief, pp. 32-35) that Penn is thereby estopped to claim title to the subaqueous soil of the Delaware River under his grant from the Duke of York and the Royal Patent to the Duke of York which inured to Penn's benefit.



The entire argument is founded upon a misconception of the nature of the rights acquired by the inhabitants of New Jersey. The right to use the river for navigation is in no way inconsistent with the ownership of the bed thereof by an adjoining State. Instances are common in the United States of the ownership of the entire bed of a river by one State to the entire exclusion of the other State from title to the soil of the river. For instance, Maryland owns the bed of the River Potomac. Such ownership, of course, in no way affects the rights of the inhabitants of the other State to use the river for purposes of navigation. The claim that ownership of the soil of the Delaware River by the State of Delaware would exclude the inhabitants of the State of New Jersey from the use of the river needs only to be stated to show its unsoundness. No such claim has ever been made by the State of Delaware. It could not be sustained for a moment.

Yet practically the entire argument in Plaintiff's brief from pages 14 to 35 is devoted to showing that the inhabitants of New Jersey had the use of the Delaware River.

This is entirely correct but such use in no sense establishes a prescriptive title to the soil of the river.

Certain assertions in this portion of the brief which are not supported by the evidence should be briefly noticed. At page 29 it is stated that William Penn never claimed title to any land within a radius of twelve miles east of the river. If by this is meant the New Jersey upland, it is entirely correct. The statement is then made that William Penn "never claimed any part of the river itself".

In our first brief we have pointed out that as early as April, 1683 William Penn instructed his Commissioners to insist on his title to the river, stating that the inhabitants of New Jersey *had the liberty of the river but not the property.* (Exhibit 52, p. 3.)

As stated in our original brief, William Penn in 1701 made a general grant to owners of riparian lands in the town of New Castle of a tract of subaqueous soil extending 600 feet into the Delaware River for the purpose of the erection of wharves, and thereafter nineteen "bank lots" or "water lots" were actually granted to riparian owners. (Exhibits 571-590; 594-610.) If William Penn had title to the western half of the bed of the Delaware River, he likewise had title to the eastern half. The assertion, therefore, that he "never claimed any part of the river itself" is entirely erroneous.

Reference is made to certain instructions of the Crown of March 15, 1683-4 to the Governor of West Jersey respecting the restraint and punishment of pirates. Of course, the enforcement of the Crown laws against piracy in the Delaware Bay or on the high seas has not the slightest relation to the ownership of the subaqueous soil of the Delaware River.



**II. (c) (2). Riparian Rights and Grants. Brief, pp. 35-69. (3). Several and Common Fisheries. Brief, pp. 69-70.**

Under these headings of the brief Plaintiff discusses common law rights in tidal waters and certain modifications of the common law that arose in New Jersey and other American colonies.

The argument appears to be made that the acquisition of such rights was in some way inconsistent with the ownership of the soil by William Penn and operated to defeat his title to the bed of the Delaware River east of the main ship channel within the twelve-mile circle.

It is further argued that the use of the subaqueous soil of the river by citizens of New Jersey for the purpose of erecting wharves giving them access to the river is a use of the soil inconsistent with the title of the State of Delaware. From this Plaintiff argues in some way that we cannot understand that thereby *title* to the entire bed of the river east of the ship channel passed to the State of New Jersey by prescription.

The answer to this entire argument is that the use of subaqueous soil by riparian owners in New Jersey for the purpose of erecting wharves to provide access to navigable waters is in no way inconsistent with the ownership of the soil by William Penn or the State of Delaware.

Plaintiff's argument seems to be as follows:

The sovereign owns the foreshore, i. e., the strip of land between high water mark and low water mark. No structure can be erected on the foreshore or indeed on the subaqueous soil beneath tidal waters without the consent of the sovereign.

This was the law of England but, as Plaintiff has shown, it was never the law of the American Colonies and

was never the law of the Colony or State of Delaware. In New Jersey the common law rule that the State owns the foreshore has always been followed, i. e., the riparian owner owns only to high water mark. In Delaware, however, the riparian owner holds to low water mark.

*Harlan & Hollingsworth v. Paschal*, 5 Del. Ch. 425;

*State v. Reybold*, 5 Harr. 484, 486.

As Plaintiff correctly says, this modification of the English Law is undoubtedly due to custom and usage. Likewise to custom and usage comes the right of the riparian owner to wharf out to navigable water. This custom and usage became very firmly fixed in American Colonial Law and the law in most of the States of the Union recognizes the right of a riparian owner, in the absence of legislative restriction, to wharf out for the purpose of obtaining access to the navigable portion of the river.

See the discussion in Volume 1, Farnham on "Waters and Water Rights," sections 62-66; and the review of the State decisions by Mr. Justice Gray in *Shively v. Bowlby*, 152 U. S. 1.

The courts of the State of New Jersey, however, not recognizing the *title* of the riparian proprietor below high water mark, have of necessity somewhat limited these rights. In the State of New Jersey the riparian owner has no title below high water mark. This was the common law of England. The right of the riparian owner in New Jersey to wharf out is not based on any theory of title to the foreshore or to the subaqueous soil of the river. It is a right which is in the nature of a burden upon the ownership of the foreshore and subaqueous soil. It is a right which is recognized at least as fully, if not more fully, by the laws



of the State of Delaware. *The holder of such a right does not hold it adversely to the State as the owner of the subaqueous soil but in effect derives it from the State.*

It follows, therefore, that the existence of this right and its use by the erection of a wharf is not an act which is hostile to the State as owner and can not be made the foundation for a claim of adverse possession.

The New Jersey doctrine of riparian rights is stated in *State v. Jersey City*, 25 N. J. Law 525, by Judge Elmer of the New Jersey Supreme Court, as follows:

> "It must now be accepted as the established law in New Jersey, that the right of the owner of lands bounding on a navigable river extends only to the actual high water mark, and that all below that mark belongs to the state. The inchoate right, if such it may be called, which the proprietor of the upland has, either with or without a license, to acquire an exclusive right to the property, by wharfing out or otherwise improving the same, gives him no property in the land while it remains under the water. It may be granted by the state to a stranger, at any time before it is actually reclaimed and annexed to the upland. Such is unquestionably the common law, and I am aware of no alteration of it in this respect in New Jersey. Some of the judges seem to have expressed a different opinion in the case of *Bell v. Gough*, before the Court of Errors, but no case has been decided which establishes a different doctrine. In that matter, I concur myself with the opinion expressed by Judge Randolph. 2 *Zab.* 491. If the blocks and lots covered with water had been in this case valued and assessed entirely distinct from the upland, I should have felt constrained to hold that the assessment could not be supported."

It is clear that before the New Jersey legislature undertook by various riparian acts to protect the riparian

rights of the owners of the upland the common law prevailed and was modified only in so far as the riparian owner actually reclaimed the shore or exercised his riparian right by the actual erection of a wharf.

It follows from the foregoing that the recognition of such riparian rights in colonial times never had the effect of passing *title to the soil* to the riparian owner. *Much less did it have the effect of vesting title in the province of New Jersey to the bed of the river east of the main ship channel.*

We agree with the statement that under colonial usage and custom in both the Province of New Jersey and the Colony of Delaware riparian rights sprang up, unknown to the English common law. What of it? Such rights are in no wise inconsistent with the fact that the ownership of the subaqueous soil was vested in William Penn, and the recognition of such rights could not avail to change the boundaries of the colonies.

We are here concerned with a question of title and boundaries. If the riparian owner's right to wharf out vested in him no title to the foreshore or the subaqueous soil of the river then the title thereto remained unaffected by the existence of the right. Moreover, that right flowed from custom and usage sanctioned by the proprietaries of both colonies. It is elementary that one who claims a right derived as grantee of another does not hold adversely to the other and can not by the exercise of that right acquire title by adverse possession.

The conclusion, therefore, is that the exercise of riparian rights by the inhabitants of the Province of New Jersey was not in any sense hostile or adverse to the ownership of the soil by William Penn. It was a right which



he and all other proprietaries of American colonies accorded to the inhabitants of those colonies.

Plaintiff is here seeking to establish *title* to the subaqueous soil of the Delaware River east of the main ship channel. Such title can not be established by pointing to the exercise of riparian rights by the inhabitants of the Province of New Jersey. Even if it could be argued that the riparian owner acquired title by adverse possession to the subaqueous soil underneath the wharf erected by him, such adverse possession would not inure to the benefit of New Jersey and would not shift the boundary line between the States.

To put the matter in another way, the right of the riparian owner to wharf out does not rest upon title to the subaqueous soil, and a claim to ownership of the subaqueous soil by the State of Delaware is not inconsistent with the use of such subaqueous soil by the riparian proprietor for the purpose of wharfing out.

Let us suppose that after a lapse of time a riparian owner who has erected a wharf upon subaqueous soil in front of his property tears down that wharf and does not rebuild it. Surely it can not be said that he holds title to the subaqueous soil which is no longer covered by a wharf. He still has the right to build another wharf, but the ownership of the soil is not thereby changed.

Let us suppose again that a valuable mineral deposit is found in the subaqueous soil of the river within the area circumscribed by the piling of the wharf erected by the owner of the upland. Could it be contended for a moment that the owner of the upland, by virtue of his having erected a wharf, would have any title to such deposit? Clearly not. Nor could the riparian owner contend that by virtue

of his long possession of the wharf he had acquired a title by prescription to the subaqueous soil.

Moreover, as pointed out in our original brief, nearly all the New Jersey grants of riparian rights within the twelve-mile circle, and practically all the improvements on the New Jersey shore within the twelve-mile circle, were made or built after the institution of the prior suit in 1877. The failure of the State of Delaware to attempt to tax these improvements during the pendency of this suit can not be ascribed to laches nor can any acquiescence be imputed to the State during that time.

It should be further noted that the State of Delaware has never questioned the right of citizens of New Jersey to wharf out to navigable water nor can such a right be questioned now because it is clearly protected by the Compact of 1905 between the States.

The point of the matter lies in this: That the exercise of riparian rights by the inhabitants of the Province of New Jersey, and by the citizens of the State of New Jersey is in no way adverse to the title of the State of Delaware. The Special Master so held. We quote from his report as follows:

> "The claim of defendant in the case is, to low water mark on the New Jersey shore within the twelve-mile circle and defendant claims that there is nothing inconsistent between the ownership of the subaqueous soil and the exercise of riparian rights along the river front. There is no evidence in the case of any such adverse exercise of rights by riparian owners as could give rise to prescriptive rights on the part of the plaintiff. The number of grants and improvements thereunder made upon the plaintiff's shore were few, as above pointed out, and in no view of the matter could the exercise of riparian rights change the title to the river or affect the boundary between the plaintiff and the defendant." (Report, pp. 53-54.)



In concluding our discussion of this point we should notice an assertion in Plaintiff's brief to the effect that the State of Delaware "never asserted or claimed title to the bed of the river east of the ship channel until 1872." (Brief, p. 63.)

The Master found on the evidence that from 1682 until the American Revolution William Penn and the Pennsylvania and Delaware Legislative Assemblies exercised exclusive control over the lands and waters within the boundaries of the colonies of Delaware. (Report, p. 74, finding 9.)

The Master further found that since 1783 the State of Delaware has claimed, asserted, and exercised exclusive dominion and jurisdiction over the lands and waters within the boundaries fixed by the title deeds as modified by the Compact of 1905 between the States, and that at no time has it ever abandoned its dominion or jurisdiction or acquiesced in the claim of the State of New Jersey except as modified by the Compact. (Report, pp. 76-77, findings 20-21.)

It would be a tedious process to review all the evidence which disproves the above assertion in Plaintiff's brief and sustains the Master's finding. See Defendant's first brief, pp. 90-105. It will be sufficient here to quote from Plaintiff's own brief statements wholly inconsistent with this contention. On page 121 of Plaintiff's brief Plaintiff argues in effect that there was a subsisting dispute between New Jersey and Delaware over the boundary line prior to the suit of 1877 and in support thereof cites the Delaware

case of *State v. Morris*, 1 Harr. (Del.) 326. The opinion of Chief Justice Harrington in this case shows conclusively the existence of the long pending dispute between the States over the boundary line. We quote the following:

> "The state of Delaware has uniformly claimed the sole and exclusive jurisdiction over the whole of the Delaware bay to low water mark on the Jersey shore, and it has to a certain extent used and exercised jurisdiction over the bay and river by grants of territory, acts of restrictive legislation, and service of process. On the part of the United States there has been no resistance of this claim; but, on the contrary, such acknowledgment of the state's jurisdiction as can be inferred from the acceptance on several occasions of cessions by this state of certain parts of the bay and river for the purpose of erecting forts, piers and breakwaters, for defence against the enemy, or for the protection of commerce. On the part, also, of the state of New Jersey, this claim, though resisted in its full extent, has been partially acceded to and acknowledged, that state having limited her claim of jurisdiction to the main ship channel of the bay. There have been several efforts made by New Jersey to settle this question of boundary between us, and it is to be regretted that our legislature has not acceded to the proposition for a conventional arrangement, or adopted some other course to establish the validity of our claim. So long back as 1782, John Dickinson, in a message to the general assembly of this state, informed that body that a resolution had been adopted by the legislature of New Jersey appointing commissioners 'for settling and establishing the line of jurisdiction between that state, Pennsylvania and this state;' that commissioners had also been appointed by the state of Pennsylvania; and he gave it as his opinion that such a measure was 'proper to be taken on our part for settling the line of jurisdiction in the bay and river Delaware.' The recommendation was not acted upon by the assembly, and though similar propositions have since been made by New Jersey, they have never been acceded to. The convention went on between New Jersey and Pennsylvania, and resulted in an amicable division of the islands, &c. within the river, and an agreement that each state should enjoy and exercise, under certain restrictions, a concurrent jurisdiction upon the waters of the river; but that all capital and other offences committed on the river, the juridical investigation and determination thereof should be exclusively vested in the state wherein the offender should be first apprehended, arrested or prosecuted.
>
> "In November, 1820, the legislature of New Jersey passed a law authorizing the governor to appoint commissioners to meet commissioners to be appointed by this state for the purpose of settling the boundary line between the states and defining the jurisdiction of each. The subject was laid before our legislature and referred to a committee, who reported that it was inexpedient at that time to appoint commissioners for this purpose."



In Plaintiff's brief at page 332 it is said:

> "Prior to 1835 Chief Justice Harrington of the Delaware Supreme Court discussed this boundary dispute in his decision in State v. Morris (reported as a note to Emory v. Collins, 1 Harr. Del. 326), in which he reviewed the controversy between the two states over this boundary line from 1732 to the date of that decision, referring to official action taken by each state during that period."

Finally, on page 343, Plaintiff admits very frankly that:

"The record in this case shows that the river boundary between the two colonies was in dispute as early as 1782, . . ."

The evidence which conclusively shows the continued exercise of dominion over the river by the State of Delaware from the Revolution onward is set forth in detail in our first brief, pages 90 to 105. The bare assertion on page 63 of Plaintiff's brief that the Defendant never asserted or claimed title to the bed of the river east of the ship channel until 1872 is simply contrary to all the facts of the case and contrary to assertions made elsewhere in the same brief.

One further assertion in this portion of Plaintiff's brief should be noticed. On page 65 it is said:

"Plaintiff's title and jurisdiction, by prescription, in Delaware river and bay were adjudicated as part of the *res gestae* by *Justice* Washington, in 1825, in *Corfield v. Coryell* (6 Fed. Cas. 546); by *Chief Justice* Tilghman in *Kean v. Rice*, in 1824, (11 Sargeant & Rawl's Rep. 203); and by *Justice* Baldwin, in 1830, in *Bennett v. Boggs* (1 Bald. 60) and in 1836 in (*Gale v. Behling*) (Ex. 219)."

The case of *Corfield v. Coryell*, 4 Wash. C. C. 371, 6 Fed. Cas. 546, so far from sustaining the New Jersey title to the subaqueous soil of the river, expressly holds that no such title existed. We quote the following from that case:

"The next general question to be considered is, whether the boundaries of the state of New Jersey include the place where the Hiram was seized whilst engaged in dredging for oysters? The grant from Charles II. to his brother, the Duke of York, of the territory of which the present state of New Jersey was a part, dated the 12th of March 1663-4, was of all that



territory lying between the rivers St. Croix adjoining Nova Scotia, and extending along the sea coast southerly to the east side of Delaware bay, together with all islands, soils, rivers, harbours, marshes, waters, lakes, fishings, huntings and fowlings, and all other royalties, profits, commodities, hereditaments and appurtenances to the same belonging and appertaining, with full power to govern the same. The grant of the Duke of York dated the 24th of June 1664, to Lord Berkeley, and Sir George Carteret, after reciting the above grant, conveys to them all that tract of land lying to the westward of Long Island and Manhattan's Island, bounded on the east, part by the main sea, and part by Hudson's river, 'and hath upon the west Delaware bay or river, and extendeth southward,' &c. with all rivers, fishings, and all other royalties to the said premises belonging, &c. There is no material difference between these grants as to the boundaries of New Jersey on the westward; and we are of opinion that, although the rule of the law of nations is, that where a nation takes possession of a country separated by a river from another nation, and it does not appear which had the prior possession of the river, they shall each extend to the middle of it; yet, that when the claim to the country is founded, not on discovery and occupancy, but on grant, the boundary on the river must depend upon the just construction of the grant, and the intention of the parties to be discovered from its face. Taking this as the rule, we think the claim of New Jersey under these grants to any part of the bay or river Delaware below low water mark cannot be maintained. The principle here suggested is, we conceive, fully recognized and adopted by the supreme court in the case of Handly's Lessee v. Anthony, 5 Wheat. (18 U. S.) 374. Neither do we conceive that the limits of the state can, by construction, be enlarged in virtue of the grant of all rivers, fishings, and other royalties;

> which expressions ought, we think, to be confined to rivers, fishings and royalties within the boundaries of the granted premises."

The case also holds that the inhabitants of West New Jersey made use of the Bay and River Delaware for the purposes of navigation and fishery. As above pointed out, this right is unquestioned and in no way affects the title of the State of Delaware.

The case of *Kean v. Rice*, 12 Serg. & R. (Pa.) 203, deals with oyster rights in Maurice River Cove, in the Delaware Bay, far outside of the twelve-mile circle. It has nothing to do with the present dispute. The case of *Bennett v. Boggs*, 1 Bald. 60, 3 Fed. Cas. 221, deals with fishing rights in the Delaware River between Pennsylvania and New Jersey, north of the twelve-mile circle, and is likewise not on the point.

The case of *Gale v. Beling*, unreported, will be hereafter discussed. It is sufficient to point out here that the record title of the State of Delaware, based on the Letters Patent of March 22, 1682/3, was not shown to the court, and the charge on the law was therefore founded on an error of fact.

In conclusion we would point out that even if it were true that the possession of subaqueous soil by riparian owners for the purpose of erecting wharves were hostile or adverse to the State of Delaware the only result would be that such wharf owners would acquire good title against the State of Delaware by adverse possession. But such adverse possession could not avail to transfer title to such wharf lands to the State of New Jersey. The land would be owned in private ownership by the riparian owners but



would still be within the boundaries of the State of Delaware. Much is said by the Plaintiff, in this portion of the brief, of the great value of these wharf rights on the New Jersey side. The implication in the brief is that if the boundary line between the States is determined to be low-water mark on the New Jersey shore the interests of the riparian owners will be either destroyed or seriously prejudiced. This, of course, is simply not the fact. The Compact of 1905 above referred to recognized the rights of riparian owners in the river to wharf out, and the Master so found.

We quote the following from his report:

> "By the Compact of 1905 (Exhibit 53) the two States agreed, among other things, each with the other as follows:
>
> 'Art. VII. Each State may, on its own side of the river, continue to exercise riparian jurisdiction of every kind and nature, and to make grants, leases, and conveyances of riparian lands and rights under the laws of the respective States.
>
> 'Art. VIII. Nothing herein contained shall affect the territorial limits, rights, or jurisdiction of either State of, in, or over the Delaware River, or the ownership of the subaqueous soil thereof, except as herein expressly set forth.'
>
> "Under this Compact clearly all improvements made by riparian owners upon the shore of either State are protected, and any decree fixing the boundary between the plaintiff and the defendant must so provide." (Report, p. 54.)

**II. (c) (4). The Circular Boundary. Brief, pp. 70-88.**

Plaintiff's brief discusses the origin and development of the twelve-mile circle, and the point is made that the circle originated in an arc starting on the Delaware River

and running to the intersection of the arc with the fortieth degree of northern latitude. This is undoubtedly correct. Plaintiff then proceeds to argue that when the deeds of feoffment were executed it was the intention merely to preserve the arc as a boundary between Delaware and Pennsylvania and that the word "circle" did not mean "circle" but was merely descriptive of the boundary between Delaware and Pennsylvania.

This argument is defeated by the wording of the deed of feoffment. In conveying the bed of the river the language used is: "the said river and soil thereof lying north of the southernmost part of the said circle of twelve miles about the said town." Obviously if the circle was intended to be only an arc between New Castle County, Delaware, and Delaware County, Pennsylvania, the above quoted language would be meaningless. To give it any meaning at all it is necessary to extend the circle to the New Jersey shore.

In this portion of the brief Plaintiff also discusses various surveys of the circular line. It is quite natural that any survey should refer to the circle as beginning on the westerly side of the Delaware for the obvious reason that a survey of a boundary line in a navigable river would be a useless proceeding as the boundary could not be marked in the river.

Considerable stress is laid on the fact that in referring to Delaware various documents speak of the Colony of Delaware as lying "on the west side of said river and bay". Numerous instances of this sort are quoted at great length.

We are unable to see how a reference to the Colony of Delaware as lying on the western side of the Delaware River and Bay raises any inference that the charter to the Colony



of Delaware did not include the bed of the river. Yet this seems to be the inference that Plaintiff seeks to draw.

All of the argument under this heading, however, is beside the point. If the river was included in the deed what difference does it make whether the northern arc of the circle was regarded as extending to the New Jersey shore? The point of the matter is that the deed clearly conveyed the bed of the Delaware River north of the southern arc of the circle.

**II. (c) (5). Boundary Laws and Maps. Brief, pp. 89-107.**

Plaintiff's brief discusses in detail the various maps in evidence, which are styled "boundary maps." We repeat, as stated in our original brief, that none of the old maps of Delaware and New Jersey undertook to fix the boundary at all, and the inference that Plaintiff seeks to draw (Brief, p. 346), that a map maker would have indicated any boundary fixed by grant, presupposes a knowledge of the various colonial grants which no map maker would be likely to have. In fact some of the maps in evidence upon which Plaintiff lays great stress show an incorrect boundary between Maryland and Virginia.

The maps in evidence in the preparation of which great care was taken accurately to ascertain boundaries are the United States Geological Survey maps (Exhibits 720, 724, 726), which show the eastern boundary of Delaware on the New Jersey shore within the twelve-mile circle. These maps have been followed generally by map makers in this section. (Exhibits 721, 722, 723.)

In *Louisiana v. Mississippi*, 202 U. S. 1, 55-56 this Court recognized as of evidential value a bulletin of the United States Geological Survey discussing State boundaries.

**II. (c) (6). Exercise of Jurisdiction. Brief, pp. 108-123.**

Under this heading Plaintiff's brief discusses the exercise of jurisdiction over the Delaware River by the provincial and state governments of New Jersey and Delaware.

There is considerable discussion of the enforcement of the Admiralty laws by the Crown authorities in the Delaware River and Bay. This is beside the point. Admiralty powers were exercised by the Crown authorities and the Admiralty Courts were Royal Courts. Such powers were exercised alike over proprietary governments and Crown colonies. The exercise of such powers was in no sense inconsistent with the ownership of the soil of the river by one of the colonial proprietaries.

Plaintiff details certain instances of the exercise of jurisdiction by the State of New Jersey. The principal instances cited are cessions of lands to the United States in the Delaware River and certain arrests for violation of the New Jersey fishing laws. The record shows an equal number of cessions by the State of Delaware to the Federal Government within the twelve-mile circle. See our first brief, pp. 99-100. In view of the well-known boundary dispute between New Jersey and Delaware it is not surprising that the United States Government should have sought to obtain cessions from both States. This fact is merely a proof of the continued existence of the dispute.

One of the instances of the arrest of fishermen in the Delaware River is subsequent to the Compact of 1905 and the other one occurred during the pendency of the prior suit between the States.

These are all of the instances which the Plaintiff is able to cite of the exercise of jurisdiction by the State of



New Jersey within the twelve-mile circle on the Delaware River.

On the other hand the record on behalf of the State of Delaware is replete with instances where process issued by Delaware courts has been served on vessels in the eastern half of the Delaware River within the twelve-mile circle. See the extract from Mr. Sergeant's opinion in the case of Pea Patch Island quoted in our first brief, pages 96 to 98, and numerous instances of the service of process on boats on the New Jersey side of the main ship channel within the twelve-mile circle testified to by the witnesses in the prior suit between the States. (First brief, pp. 98-99; Exhibits 691, 698, 700, 702, 705, 706, 710, 714, 718.)

Commenting on this testimony, which is conclusive as to the actual exercise of jurisdiction by the Delaware courts, Plaintiff's brief says:

> "The testimony of witnesses in that case in 1905, even though they are *all dead*, is not admissible in this case on another issue a quarter of a century later. 1 *Greenleaf on Evidence*, 201. It should be disregarded by the court."

Plaintiff apparently concedes the rule that the testimony of a deceased witness in a former trial between the same parties dealing with the same issue is admissible if the right of cross-examination has been accorded. It is contended, however, that the present case does not present the same issue as the prior suit.

It therefore becomes necessary to examine the pleadings filed in the former suit to determine what were the issues there presented to the court. The bill of complaint filed by the State of New Jersey and the answer of the State of Delaware are found in Exhibit 698. The second paragraph of the bill of complaint reads, in part, as follows:

"That your orator is the owner in fee simple of a portion of the bed of the Delaware river, that is to say, from the southeasterly corner of the State of Pennsylvania, on said river, down said river to and into Delaware bay. That within the limits aforesaid, your orator's part of the bed of said river extends from the New Jersey shore thereof to the middle of said river." (Exhibit 693, p. 1.)

The bill of complaint derives the title of the State of New Jersey to the eastern half of the river from the Crown of England at the time of the Treaty of Paris of 1783.

In paragraph J of the bill the following appears:

"J. By the American Revolution which took place by the declaration of Independence bearing date the 4th day of July 1776, the State of New Jersey became, and was, and from thence forth has been a free and independent state, and as such became entitled to have and to hold such rights as free and independent states may have or hold, to do all acts and things which independent states may of right do, and by force of the said revolution and said independence the said State of New Jersey became invested not only with all and every power of government in and over the territory of said state and the tide-waters adjacent thereto, but also became invested with all the property, and rights of property, within and appertaining to said state, which immediately before said revolution were vested in the crown of England; that at the time the said revolution took place the bed of the River Delaware in its whole width and length, from the falls in said river at or near Trenton, to the mouth of said river—that is, throughout the whole extent to which the tide ebbed and flowed in said river—belonged to and was vested in the crown of England in trust for the uses and purposes of the subjects of the King of Great Britain; that by means of the said revolution, the said independence of the State of New Jersey, and the treaty of peace between the King of Great Britain and the United States of America, concluded at Paris, Sept. 3rd, 1783, that portion of the bed of the Delaware River, last therein before mentioned, situate between the States of New Jersey and Delaware, to the middle of said River, became vested in fee simple in the State of New Jersey; the remaining portion thereof, by the same means and at the time being vested in the State of Delaware; and so the title to the bed of said river, your orator respectfully submits, hath ever since continued and now is." (Exhibit 693, p. 17.)



In paragraph K of the bill (Exhibit 693, p. 19) it is alleged that the State of New Jersey has title to the bed of the Delaware River as claimed by a long, peaceable and undisputed possession, use, and enjoyment.

The prayers of the bill included a prayer *that the true boundary line between the States may be ascertained and established; and also* that the jurisdiction of the State of New Jersey over the Delaware River be ascertained and established. (Exhibit 693, p. 40.)

It is quite true that the particular dispute which precipitated the suit of 1877 was a dispute over fishing rights, just as the present suit was precipitated by a dispute over oyster beds; but the bill of complaint filed by the State of New Jersey did not limit the Supreme Court of the United States to the adjudication of fishing rights, any more than the present bill of complaint limits the question to the ascertainment of the right to dredge oysters in certain disputed territory. As above pointed out, the bill filed in 1877 specifically put in issue the title and jurisdiction of the States over the bed of the river and prayed that the boundary line be ascertained.

The bill of complaint in the present suit presents the same issues within the twelve-mile circle. It is alleged in paragraph five that the State of New Jersey claims the ownership in fee simple of that portion of the subaqueous soil lying east of the thalweg, and the State of Delaware claims the entire bed of the river to low-water mark on the New Jersey shore within the twelve-mile circle.

The title of the State of New Jersey to the upland is traced to the grant to the Duke of York in 1664, as in the former suit, and the title to the eastern half of the river is derived from the Treaty of Peace with England as alleged in the former bill. (Rec., pp. 5-12.)

The prayers of the present bill are, inter alia, that the true boundary line between the States may be ascertained, declared, and perpetually established. (Rec., p. 17.)

In each case the defendant filed an answer denying the ownership of the State of New Jersey to the eastern half of the river within the twelve-mile circle, each case basing its title on the deeds of feoffment from the Duke of York and the letters patent to the Duke of York of March 22, 1682/3.

Paragraph 24 of the bill of complaint in the present suit reads as follows:

> "24. The dispute between the plaintiff and the defendant, and their officers and citizens, respectively, concerning the boundary line between the two States in the Delaware River and Bay and concerning the territorial ownership of the bed of said river and bay as between said States, has existed for many years and the question has arisen from time to time and negotiations have been conducted between the plaintiff and the defendant, and between commissions appointed by the Legislatures thereof, respectively, for the purpose of settling the dispute, and the plaintiff, by leave of this court, filed its bill of complaint against the defendant on March 13, 1877, praying that the true boundary line between the plaintiff and the (14) defendant might be ascertained, declared, defined and perpetually established, and that the rights of the parties in the bed of said river and the territorial extent thereof might be ascertained, declared and established. An answer was filed therein on October 14, 1901, and a replication thereto was filed November 26, 1901, but said suit was discontinued by consent of the parties, under the provisions of an agreement or compact between the parties in 1905 and the question of boundary and territorial ownership were left undetermined." (Rec., p. 13.)



It should be noted that this paragraph asserts that the suit of 1877 was a suit to settle the boundary line between the States. The Plaintiff's bill herein filed has therefore adopted our view of the matter.

The foregoing analysis of the pleadings would seem to make it quite clear that the issue involved in the first suit in 1877 is one of the issues involved in the present suit, viz.: the title of the two States to the easterly half of the Delaware River within the twelve-mile circle from New Castle.

This having been shown, it follows that the testimony to which objection has been made is admissible, it having been given in a judicial proceeding, the right to cross-examine having been accorded, and the witnesses being deceased.

Plaintiff seeks to treat this evidence as not entitled to any consideration because it represents merely the recollection of the witnesses and is not substantiated by court records.

The witnesses were cross-examined and no contention was made that the instances of actual exercise of jurisdiction testified to by them did not take place. Their testimony is not limited to mere expressions of opinion but is positive

and clear as to the actual serving of civil process on vessels in the eastern half of the Delaware River within the circle. The original writ of attachment or summons would not itself disclose where the writ was served. The only possible way to prove where the writ was served was to call the various marshals and deputy marshals who served such writs and the lawyers who knew of the service of the writs in the eastern half of the Delaware River. This was done and their testimony was not impeached or shaken in any respect whatsoever. It is direct and positive evidence in this case of the exercise of civil jurisdiction over the eastern half of the river by the Delaware courts.

Similar testimony was produced in the case of Pea Patch Island before Mr. Sergeant the arbitrator and is summarized by him in the extract from his opinion in our first brief, pages 96 to 98 above referred to.

***Not one single instance of the service of a writ of summons or attachment on a vessel in the eastern half of the circle from the United States court for the district of New Jersey is offered by the Plaintiff.*** In view of this fact and of the evidence above referred to it is not surprising that the Master's finding on this point was as follows:

> "20. The State of Delaware at all times since 1783 has claimed, asserted and exercised exclusive dominion and jurisdiction over the lands and waters within the boundaries fixed by the said title deeds, as modified by the compact of 1905 between the States of Delaware and New Jersey. These boundaries include within their limits all that part of the Delaware River lying north of the southernmost part of a circle of twelve-miles radius from the Town of New Castle, Delaware." (Report, p. 76.)



**II. (c) (7). The Compact of 1905.**

Under this heading Plaintiff's counsel claim that by the Compact of 1905 between the States the State of Delaware ceded to the State of New Jersey "title to the subaqueous soil of the river, within a radius of twelve miles of New Castle, to the extent necessary to accommodate navigation and commerce to the industries which have developed, and used or may develop and use, the subaqueous soil on that side."

We may ask at once: Why, if the Compact intended any such result, did it not expressly so state? The fact is that the Compact of 1905 reserves the question of the boundary line between the States. By the Compact (Exhibit 53) the State of Delaware in Article I ceded to the State of New Jersey authority to serve criminal and civil process over the entire Delaware River, except upon Reedy and Pea Patch Islands, not including, however, vessels moored at wharves on the Delaware side of the river.

By Article III a common right of fishery in the inhabitants of both States was recognized to exist in the Delaware River.

The effect of Article VII of the Compact, quoted in Plaintiff's brief (p. 127) was that the State of Delaware recognized the rights of the inhabitants on the east side of the river to wharf out to navigable water. This right had never been questioned and was undoubtedly inserted to put beyond question the *riparian rights* (as distinguished from *title*) of land owners in New Jersey.

Article VIII then provides as follows:

> "Nothing herein contained shall affect the territorial limits, rights, or jurisdiction of either State of, in, or over the Delaware River, or the ownership of the subaqueous soil thereof, except as herein expressly set forth."

The Master's finding that this Compact in no way affected the boundary line between the States but merely protected the rights of the riparian owners on the Jersey shore is obviously sound. If the Compact intended to cede to New Jersey title to the subaqueous soil it undoubtedly would have so provided.

Plaintiff is here met with an insuperable difficulty. If the Compact of 1905 was a cession of land, the question arises, How much land was ceded? Apparently Plaintiff's counsel contend that there was ceded to New Jersey a vague and uncertain quantity of land "to the extent necessary to accommodate navigation and commerce to the industries which have developed, and used, or may develop and use, the sub-aqueous soil on that side". This is a wholly untenable position. If sound, the boundary line would be forever uncertain. It would depend on the extent to which it may hereafter become necessary to develop and use the lands below low-water mark on the New Jersey shore.

Plaintiff does not specify any line which could be fixed if its contention should be adopted by this Court. What would be the line? Is this Court to investigate to what extent it may hereafter become necessary for riparian owners on the east bank of the Delaware River to use the subaqueous soil of the river Delaware and fix a line which represents such probable future use? Such a suggestion is without any basis whatever to support it. Moreover, no such suggestion was made by Plaintiff when the case was before the Special Master.

Plaintiff argues that the qualifying phrase in Article VIII "except as herein expressly set forth" refers to a cession of land. The phrase obviously refers to the "jurisdiction" over the river which was ceded to New Jersey by



Article I of the Compact. Plaintiff argues that the Compact expressly legalized the grants of subaqueous soil by the State of New Jersey. This again is a strained construction of Article VII. The phrase "riparian lands" refers to the upland and perhaps to the foreshore, but not to the subaqueous soil. Compare the following cases:

*Hart v. Board of Levee Commissioners*, 54 Fed. 559;

*Baldgate v. Irvine*, 58 Pac. 442, 126 Cal. 135;

*Rome Railway & Light Co. v. Loeb*, 141 Ga. 202, 80 S. E. 785, Ann. Cas. 1915 C. 1023.

"Riparian" lands are "bank" lands; not lands under water.

Even if the Compact of 1905 be construed as ceding to the State of New Jersey *the right to determine* to whom riparian rights (i. e., wharf rights appurtenant to riparian lands) shall be granted, it would still not affect the boundary between the States in any conceivable way. The boundary line would continue to be low water mark.

It is safe to say that the construction of the Compact of 1905 now contended for by New Jersey did not occur to its counsel until long after the present suit was instituted.

The Bill of Complaint in this case (Rec., pp. 4-18) sets forth with great particularity the source of Plaintiff's claim of title to the eastern half of the Delaware River and nowhere mentions the Compact of 1905 as the source of that claim. It is inconceivable that the contention now made could have been overlooked when the bill was filed if there were any basis to support it.

Moreover, the construction placed upon the Compact at all times since its execution and approval by Congress has

been the reverse of that now contended for by Plaintiff. Since 1907 the United States has accepted several cessions of subaqueous soil from the State of Delaware east of the ship channel within the circle. It is safe to say that the contention made in Plaintiff's brief in this case is the first time that the idea has ever been advanced that the Compact of 1905 settled the boundary dispute within the twelve-mile circle. Certainly if it had settled the dispute by ceding to New Jersey the eastern half of the river or any part thereof there would have been no occasion whatever for the language of Article VIII of the Covenant which expressly reserves the boundary question from the settlement.

**Summary of Point II.**

An analysis of Plaintiff's points in support of a prescriptive title to the eastern half of the Delaware River within the twelve-mile circle thus discloses that there is no evidence of any weight which supports such a conclusion. The Plaintiff's evidence in support of this contention falls into two classes.

1. Exercise by the Crown in colonial times of Admiralty jurisdiction. This argument confuses the control of the Crown over navigation and Admiralty with the ownership of the soil of the river. The two have no connection. Control by the Crown over navigation and admiralty was paramount no matter whether the Crown or the colony owned the bed of the river. At the present day Congress has paramount authority over navigation in the Delaware Bay, although admittedly its soil is owned by the States of Delaware and New Jersey.

2. The acquisition by citizens and inhabitants of New Jersey of rights of navigation, wharf rights, and fishing



rights in the Delaware River. This argument again confuses title with the right to use the river. The distinction was made by William Penn himself in 1683 in a letter to his commissioners concerning boundary negotiations with the Province of New Jersey, quoted in our first brief, page 22. He distinguished between the "liberty" of the river, i. e., its use, and the "Propriety", i. e., the title or estate in the subaqueous soil. This distinction is perfectly sound and illustrates the fallacy of the conclusion which Plaintiff's counsel seek to draw from the right of citizens of New Jersey to fish in the river and to use the river as a highway of commerce.

We therefore submit that the conclusion of the Master that the State of Delaware has never abandoned its jurisdiction or acquiesced in the claim of the State of New Jersey to the ownership of the subaqueous soil of the eastern half of the river within the twelve-mile circle is fully supported by the evidence and should be sustained, and the Plaintiff's exceptions to this finding should be overruled.

**III. The Title of the State of Delaware. Brief, pp. 133-283.**

In this section of Plaintiff's brief an attempt is made to overthrow or impeach the record title of the State of Delaware to the subaqueous soil of the Delaware River within the twelve-mile circle. The various points urged by the Plaintiff will now be considered. Preliminarily, however, we desire to invite the Court's attention to the state of the Delaware title. Admittedly, on March 22, 1682/3, Charles II of England, by Letters Patent under the Great Seal of England, granted to the Duke of York the territory which is now the State of Delaware. This Patent formally legalized the existence of Delaware as an English Colony

and defined its boundaries. Those boundaries admittedly include the subaqueous soil of the Delaware River within the twelve-mile circle. Therefore, whether during colonial times such soil was owned by William Penn and his descendants or whether it was in the Crown of England, the fact remains that ***the boundaries of the Colony of Delaware were fixed by this patent.*** When the State of Delaware attained independence by the Treaty of Paris in 1783, it succeeded to the title of the Crown with its boundaries fixed and determined by the charter and title deeds which formally constituted it an English Colony.

Much of the evidence in this case concerns the Penn title to Delaware, which we believe is the correct title and which the Special Master found to be the correct title. It is important to note at the outset, however, that unless the Plaintiff in this case can overthrow the Letters Patent of March 22, 1682/3, the boundaries of Delaware must be held to be fixed by this patent.

**III. (a). Government of Delaware Counties. (1). From 1664-1682. Brief, pp. 136-155.**

In this portion of Plaintiff's brief it is argued that prior to August 24, 1682, the date of the grant of Delaware by the Duke of York to William Penn, the Duke of York had no possession or control over Delaware. Defendant contends that from 1664 to 1682 Delaware was governed in all respects as a dependency of the Government of New York, and that therefore the Duke of York, though without record title from the Crown, had a *de facto* title and *de facto* powers of government over Delaware good against all the world but the English Crown.

The Master so held. See findings of fact 2 and 3, Report, page 72, quoted in our first brief, page 12.



Plaintiff examines various exhibits adduced by the Defendant upon this point and attempts to argue that the authority so exercised in Delaware in this period was that of the Crown. Plaintiff's brief says (page 155):

> "We accordingly submit that whatever powers of government of the Delaware Colony were administered during this period by the British Governors at New York, they were exercised by virtue of the prerogatives of the Crown and not because the Delaware Colony was regarded as appurtenant to the New York Colony, or because the Duke or *his* governors had any legal right to exercise such powers."

Not only does the record fail to support this assertion but completely disproves it. The exhibits in evidence show that while the Duke of York was without good record title the government of the Delaware Colony was administered at New York by Governors under the Duke of York. The Governors under the Duke of York derived their authority from him solely. For example the Duke of York's commission to Governor Andros of July 1, 1674 (Exhibit 513, pp. 31-32), is the sole source of the authority exercised by Governor Andros. He had no separate commission from the Crown and exercised his authority solely by virtue of the Duke of York's commission.

The various acts of these New York Governors recite the Duke of York's commission as the source of the authority exercised by them. Thus the patent to Captain Carr (Exhibit 513, pp. 25-26) refers to Colonel Nicolls as "Governor-General under his Royal Highness James Duke of York and Albany, etc., of all his territories in America." Similar language appears in the patent to William Tom (Exhibit 513, p. 28). Similar language appears in the con-

firmatory patent of 1668 to Captain Carr (Exhibit 513, p. 131), and in the patent to Anthony Inlos (Exhibit 511).

It conclusively appears from the Duke of York's "Book of Laws" (Exhibit 510) that the authority established in the Colony of Delaware was exercised not by the Crown, and not by Royal Governors appointed by the Crown, *but by the Governors appointed by and responsible to the Duke of York.* The laws are described as follows:

"LAWES

"Establisht by the Authority of his Majesties Letters patents, granted to his Royall Highness James Duke of Yorke and Albany; Bearing Date the 12th Day of March in the Sixteenth year of the Raigne of our Soveraigne Lord Kinge Charles the Second.

"Digested into one Volume for the publicke use of the Territoryes in America under the Government of his Royal Highnesse.

"Collected out of the Severall Laws now in force in his Majesties American Colonyes and Plantations.

"Published March the 1st Anno Domini 1664 at a General meeting at Hemsted upon Longe Island by virtue of a Commission from his Royall Highness James Duke of Yorke and Albany given to

"Colonell Richard Nicolls Deputy Governeur, bearing date the Second day of Aprill 1664."

(Exhibit 510, p. 2.)

It is stated in the appendix to this Book of Laws that after the country was brought under subjection to the English Col. Richard Nicolls "assumed control of the government by virtue of the Duke's commission to him as Deputy." (Exhibit 510, p. 4.)

By an order of 1668 newly appointed councillors were required to take an oath "to his Royal Highness." (Exhibit 510, p. 5.)



One of the Ordinances of 1671 provided that the tenure of land at Delaware was to be held in free and common socage "as his Royal Highness by his Majesty's patent holds all his territories in America," and it was further provided that the quit-rents should be paid as "reserved in their several patents as an acknowledgment to His Royal Highness." (Exhibit 510, p. 9.)

The records show that an appeal lay from the courts at New Castle to the courts at New York. The record of a case tried in the New Castle County courts on November 2, 1680, shows that the plaintiff in the suit had appealed from a decision of the court of New Salem, New Jersey, to the courts at New Castle. The case was tried at the New Castle Court and the jury returned a verdict for the plaintiff. Whereupon the defendant gave notice of an appeal to the New York Courts. This case is part of the New Castle County court records. (Exhibit 515, pp. 2-4.)

The order of Commander Brockholls and Council, acknowledging the grant of Delaware to William Penn and directing the inhabitants to yield obedience to Penn states that the Commander and Council, being fully satisfied of Mr. Penn's right to the possession and enjoyment of the premises, have thought it necessary to signify and declare the same and to give thanks "for your good service done in your several offices and stations during the time you remained under His Royal Highness' government." (Exhibit 516, pp. 74-75.)

The deeds of feoffment for Delaware were recorded in New York. (Exhibit 522.) Conclusive proof that the authority exercised in the Delaware Colony prior to 1682 was that of the Duke of York and not that of Royal Governors is found in the proceedings before the Privy Council upon

William Penn's petition for a grant of Pennsylvania. The Committee of the Privy Council, upon receipt of William Penn's petition, wrote to Sir John Werden, the Duke's Attorney, on June 14, 1680, inquiring "in relation to the proprietary of His Royal Highness in those parts." (Exhibit 518, p. 2.) Sir John Werden replied to the effect that the proposed boundaries to William Penn agree well enough "with that colony or plantation which hath been hitherto (ever since the conquest of New York by Colonel Nicolls) held as an Appendix, and Part of the Government of New York by the Name of Delaware Colony." The subsequent proceedings show that the Duke of York's interests were consulted and he was treated as the Proprietary of the Delaware territory. The letter of the Attorney General, received by the Committee on November 11, 1680, refers specifically to the Dutch and Swedish plantations on the westward of the Delaware River and states that they have for a long time "either enjoyed the protection of His Royal Highness . . . or of the Lord Baltimore."

The twelve-mile circle itself has its origin in an agreement that William Penn's boundaries for Pennsylvania should be twelve miles distant from the settlements at New Castle. On November 23, 1680, Sir John Werden wrote to the secretary of the Committee for Trade and Plantations a resume of the discussion between himself and William Penn as to the proposed boundary for Pennsylvania and referred to the Duke's intention "to keep some convenient distance from New Castle northward for boundary to that colony." (Exhibit 518, pp. 15-16.) The result of the matter was the circular boundary devised by Lord Chief Justice North. Lord Chief Justice North's draft of this boundary concludes:



> "Excepting all Lands within twelve Miles of the Town of Newcastle, that shall happen to lie within the said Bounds, now in the Possession of his Royal Highness, or his Tenants or Assigns." (Exhibit 518, pp. 19-20.)

The foregoing brief review of some of the evidence touching this point leaves no room for doubt, first, that the Duke of York was the actual possessor and proprietor of the Delaware Colony and, second, that this possession and government were fully known to, recognized, and acquiesced in by the King in Council.

This control extended to the settlement at Upland (now Chester, Pennsylvania) to the same extent as the New Castle settlement.

As is well known, the Swedes had settled at Upland and Manayunk (Scharf, History of Philadelphia, Vol. I, p. 74; Scharf, History of Delaware, Vol. I, p. 48). The Duke of York succeeded to the government of all territory on the west side of the Delaware River and Bay, and exercised full jurisdiction thereover. By the ordinance of September 25, 1676, the Book of Laws established by the Duke of York in New York, Long Island and dependencies was made applicable "in this River and precincts." (Exhibit 510, p. 23.) Paragraph 2 of the ordinance provides:

> "2. That there bee three Courts held in ye several parts of the River & bay as formerly, To witt one in New Castle, one above att Uplands another below at the Whorkil." (Exhibit 510, p. 23.)

Paragraph 5 of the ordinance also refers to "the Court for Uplands."

The Duke's possession and control of the early Delaware and Pennsylvania settlements is thus established by the record.

**III. (a). Government of Delaware Counties. (3). 1682-1776. Brief, pp. 156-161.**

Plaintiff here argues that the Master's finding that William Penn and his successors governed the Colony of Delaware and exercised undisturbed possession and control thereover from 1682 until the American Revolution is not justified. Plaintiff, however, fails to cite any evidence which is inconsistent with this finding. Plaintiff argues that the Act of Union of 1682, which annexed the three counties of Delaware to Pennsylvania was unauthorized. If we assume that it was unauthorized, yet it is a fact that it was acted on for nearly twenty years until the Delaware colonies broke away from Pennsylvania and had their own legislative assembly. Thereafter they continued to acknowledge the Penns as proprietaries and governors until the Revolution. But even if the Act of Union were illegal, what has this to do with the boundaries of the colony or Penn's rights as proprietary and governor?

The overwhelming evidence in support of the well-known historical fact that William Penn and his successors were the governors and proprietors of Delaware from 1682 until the American Revolution is discussed by the Special Master in various portions of his report. In particular we refer to his discussion of the matter on pages 39 to 41 of his report. Some of the evidence is detailed on pages 82 to 89 of our first brief.

It is sufficient at this point to refer again to the language of Lord Hardwicke in *Penn v. Lord Baltimore*, quoted in our original brief on pages 88-89. Referring to the rights of the Penns based upon actual possession and dominion over Delaware for seventy years he states that the proof of such possession "is very clear." (Exhibit 642, p. 23; 27 Eng. Rep. 1138.)



Under this heading reference is also made to the Order of the Privy Council of November 13, 1685, which it is claimed was an adjudication of the title to Delaware in the Crown as against William Penn.

This point is further discussed in Plaintiff's brief under the heading of "Penn v. Baltimore" and will be fully answered hereafter. It is sufficient for the moment to point out that the dispute was between Lord Baltimore on the one hand and William Penn on the other, and that the decision not only did not foreclose William Penn's title but in effect sustained it.

**III. (b). Power of Crown to Grant Bed of River. Brief, pp. 162-170.**

The point is next made that the English Crown could not alien the bed of a navigable river. It is not clear from Plaintiff's discussion of the subject whether Plaintiff claims that the bed of a navigable river could not be conveyed at all or whether the contention is made that it could not be conveyed in private ownership. It should be noted at once that the present case does not present the question, which has been raised in several cases before this Court but not directly decided, of the right to grant subaqueous soil in *private ownership*. The question raised here is whether title to subaqueous soil could be granted as a part of a grant creating a new colony the proprietor of which held such subaqueous soil not in private ownership but for the public use.

On this point we can not do better than quote the Master's discussion of this contention.

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On this point we can not do better than quote the Master's discussion of this contention.

**"The Power of the Crown to Make the Grant.**

"Much discussion has been had concerning the right of the English Crown to grant subaqueous soil in private ownership. This discussion, however, is not applicable to the instant case because the record shows that in fact governmental powers were granted to William Penn by the deeds of feoffment for Delaware. The Duke of York, who had theretofore been exercising such governmental powers, transferred them to William Penn by the deeds and by his act of relinquishing control over the territory and thereafter exercising no control whatever over Delaware. Penn and his successors, including the Assembly of the Delaware Counties, proceeded to exercise powers of government for one hundred years prior to the Treaty of Peace with Great Britain. No technical objections to the form of the grants for Delaware can avail to destroy the validity and the efficacy of the instruments which in effect made William Penn proprietary of Delaware and established an English colony in America. The deed of feoffment for the twelve-mile circle contained the following language:

> 'Together with all Rents Services Royalties franchises Duties Jurisdiccons liberties and privileadges thereunto belonging And all the Estate Right Title Interest powers property claime and demand whatsoever of his said Royall Highnesse of in or to the same or to any part or parcell thereof . . .' (Exhibit 521, p. 2.)

"The case of *Martin v. Waddell*, 16 Pet. 367, is urged by plaintiff as establishing that the ownership of the subaqueous soil could not have been legally granted by the Crown. The case referred to involved the construction of the terms of the surrender by the proprietors of the province of East Jersey and did not involve the question of the power of the Crown to grant



subaqueous soil. The facts before this Court in that case were as follows:

"The case below was an action of ejectment instituted by the lessee of Waddell in the Circuit Court of the United States for the District of New Jersey, against Martin, et al., for the recovery of certain subaqueous soil in Raritan Bay, New Jersey. Waddell's lessee, the defendant in error before the Supreme Court, claimed by virtue of a survey of the lands made in 1834 under authority of the proprietors of East Jersey. Martin, the defendant in the ejectment, claimed under an act of the State of New Jersey of November 25, 1824, under the terms of which act the State authorized commissioners to permit the owners of the upland to survey the adjacent subaqueous soil for the purpose of planting and growing oysters.

"The question before the court therefore was the right of Martin, the plaintiff in error, and the defendant in the ejectment proceeding, to take oysters upon a tract of subaqueous soil to which Waddell, as the grantee of the proprietors, claimed title.

"The patent of Charles II to the Duke of York of March 12, 1663/4, for New York, New England and New Jersey (Exhibit 6), the indenture of June 23, 1664, from the Duke of York to Berkeley and Carteret (Exhibit 7), the confirmatory patent from Charles II to the Duke of York of June 29, 1674 (Exhibit 17), the deed of confirmation from the Duke of York to the then proprietors of East Jersey of March 14, 1682/3 (Exhibit 55), and the surrender of the powers of government by the proprietors of East Jersey to the Crown on April 15, 1702 (Exhibit 25), were all in evidence in the Martin case and were considered by this Court.

"This Court held that after the surrender of the powers of government and other *jura regalia* by the proprietors of East Jersey in 1702 they no longer held

title to the subaqueous soil of Raritan Bay, and reversed a judgment in favor of Waddell who claimed under the proprietary title.

"This decision was confined strictly to the construction to be given to the language of the grants to the Duke of York and the language of the surrender of the East Jersey proprietors. The East Jersey proprietors had surrendered in 1702 all powers of government, and the question presented was whether they still retained title to the subaqueous soil of Raritan Bay. Chief Justice Taney, speaking for the Court, said:

> 'No words are used for the purpose of withholding from the crown any of its ordinary and well-known prerogatives. The surrender, according to its evident object and meaning, restored them in the same plight and condition in which they originally came to the hands of the Duke of York. Whatever he held as a royal or prerogative right, was restored, with the political power to which it was incident. And if the great right of dominion and ownership in the rivers, bays, and arms of the sea, and the soils under them, were to have been severed from the sovereignty, and withheld from the crown; if the right of common fishery for the common people, stated by Hale in the passage before quoted, was intended to be withdrawn, the design to make this important change in this particular territory would have been clearly indicated by appropriate terms; and would not have been left for inference from ambiguous language.' (p. 416.)

"There is a vast difference between the question of whether or not title to subaqueous soil may be retained in private ownership and the question as to whether or not the title to that soil has been vested by valid grant to a government. The history of the American Colonies shows that the Crown repeatedly granted the subaqueous soil in the rivers and bays in America to its colonies. *Virginia v. West Virginia*, 246 U. S. 565, is an instance where the charter of Maryland granted the title to low water mark on the farther shore of the Potomac River to Lord Baltimore." (Report, pp. 54-57.)



The Master's finding on this point is so clearly sound that further discussion would seem superfluous. However, it is worth while to point out that this Court has held that the decision in *Martin v. Waddell* was based upon an interpretation of the grants then before the Court. In referring to *Martin v. Waddell* this Court, in the case of *Massachusetts v. New York*, 271 U. S. 65, speaking through Mr. Justice Stone, said (p. 90):

> "It was held, in an opinion by Chief Justice Taney, that the relinquishment by the Proprietors to the Crown, of the rights and powers of government vested in them, carried with it as an incident the title to land under tidal waters; that that title and ownership had passed to the State of New Jersey as an incident to its sovereignty over the territory embraced in the royal grants, and excluded all claims of title to lands under navigable waters by those claiming under grants by the Proprietors. The reasoning of the opinion was addressed wholly to the proper interpretation to be placed upon grants or reservations of rights of sovereignty with respect to their operation to transfer title of lands under navigable waters; and it is decisive of this case."

Since it is an admitted fact that the soil of the Delaware River was granted to William Penn not in private ownership but as proprietary, and since the patent from the Crown to the Duke of York likewise granted the subaqueous soil of the river along with full governmental powers, the

rule applied in *Martin v. Waddell* and in *Massachusetts v. New York* is directly applicable here.

At the time that the Duke of York received from the Crown his patent for Delaware with all the jura regalia and powers of government therein granted, and at the time when he physically delivered this patent to William Penn in pursuance of his covenant for further assurance, William Penn was in fact exercising actual powers of government over the Delaware Counties, and was in all respects the proprietary thereof, lacking only a formal transfer from the Duke to make him the legal as well as the de facto proprietary.

That a Propriety or Seigniory may be held by prescription is settled English law.

> "All franchises or privileges, which a man may have without a title appearing upon record, he may claim by prescription;" 6 Com. Dig. 79C.
>
> "But franchises or liberties, which cannot be seised as forfeited, before the cause of forfeiture appeare upon record, cannot be claimed by prescription; . . . yet a man may claim a county palatine by prescription, and in respect thereof, to have a 'bona et catalla felon' etc. Co. L. 114b. Vidi Franchises (D. 1.)" 6 Com. Dig. 79D.
>
> "The highest franchise is a county palatine.
>
> "A county palatine is so called a palatio regis, because the count has jura regalia within his county as fully as the king himself, from whom all justice, honour, dignity, franchises, and privileges were at first derived. 4 Inst. 204. Dav. 60. . . .
>
> "It may be by prescription, or by parliament.
>
> "So the King may create a county palatine. Dav. 61." 4 Com. Dig. 246 D. 1.



> County Palatine of Chester: "This is a county palatine by prescription and according to my Lord Coke, is the most ancient and honourable remaining at this day." 2 Bac. Ab. 758.
>
> County Palatine of Durham: "This is also a county palatine by prescription, and said to have been erected soon after the Conquest, and is parcel of the bishopric of Durham." 2 Bac. Ab. 759.
>
> "Even before the Norman Conquest the bishops of Durham appear to have claimed palatinate or quasi-palatinate rights and jurisdiction. This prescriptive franchise was confirmed by charters of William the Conqueror, William Rufus, Henry I, and Henry II. In the reign of Edward I, Anthony Bek, the then Bishop, was summoned to appear before the King's Justices under the statute of 'Quo Warranto' to show how he held his franchise, and on his refusal to appear his franchise was seized into the King's hands in the name of distress. The Bishop appealed to the King and his council in Parliament, who held that he was entitled to jura regalia between Tyne and Tees, and in Norhamshire and Bedlington." 9 Laws of Eng. 124.
>
> "Three of these counties, Chester, Durham, and Lancaster, are called counties palatinate. The two former are such by prescription or immemorial custom, or at least as old as the Norman Conquest:—these palatine privileges (so similar to the regal independent jurisdictions usurped by the great barons on the continent during the weak and infant state of the first feodal kingdoms of Europe), were, in all probability, originally granted to the Counties of Chester and Durham, because they bordered upon inimical countries, Wales and Scotland, in order that the inhabitants, having justice administered at home, might not be obliged to go out of the county, and leave it open to the enemy's incursions; and that the owners, being encouraged by so large an authority, might be the more watchful in its defence." 1 Blackstone 116.

"A prescription cannot be for a thing which cannot be raised by grant. For the law allows prescription only in supply of the loss of a grant, and therefore every prescription presupposes a grant to have existed." 2 Blackstone 265.

According to the decisions of *Martin v. Waddell* and *Massachusetts v. New York*, the question underlying the construction to be given deeds and grants relating to soil under navigable waters is one of intention. Was it the intention to sever the ownership of the subaqueous soil from the powers of government and other prerogative rights? (P. 411.) Let us apply to the case at bar the rules laid down by Chief Justice Taney in *Martin v. Waddell* for the construction of grants of this character.

We must not, he says, look merely to the construction and technical meaning of the words. The laws and institutions of England, the history of the times, *the object of the charter, the contemporaneous construction given to it, and the usages under it are entitled to consideration* (p. 411).

The object of the patent and deeds for Delaware was to enable William Penn "to establish a colony upon the newly discovered continent." Penn desired the title to the bed of the Delaware River for no private or petty purpose but for a public purpose of great moment. He was actuated by high motives. He desired to protect and foster navigation and the commerce of his colony. As we have shown, the ownership of the foreshore and of the river bed was a valuable right in the development of navigation. The "history of the times" makes it clear that the right he thus acquired was *intended to be used for the benefit of the new community which he was seeking to create.*



The contemporaneous construction by all parties, *including the Crown of England*, of the patent and deeds for Delaware was that William Penn was thereby constituted the proprietor of the colony of Delaware, as fully and amply as though the deeds of feoffment had conferred upon him express powers of government.

The usages under the grants have been dwelt upon at length. William Penn and his successors, with no other title but these grants, exercised full powers of government over Delaware for one hundred years prior to statehood.

If therefore technicalities of language are to be laid aside, and the question decided on a broad and liberal view, based on the tests laid down in *Martin v. Waddell*, William Penn's title to the Delaware River is unassailable. The deeds of feoffment did convey "powers", "jurisdictions" and "royalties", and the lack of more ample language is in this view a trivial technicality. In fact, "the history of the times, the object of the charter, the contemporaneous construction given to it, and the usages under it" for the century which followed it outweigh all the highly technical arguments that can be made against the technical sufficiency of the language of the deed.

If the test to be applied to the title is whether the ownership of the subaqueous soil was intended to be severed from the powers of government, then the answer is necessarily that the title to such soil passed to William Penn, for he in fact was exercising the powers of government. Certainly the Crown was not exercising such powers, nor was the Duke of York. The only governing authority was that of William Penn. Therefore, if the rule above referred to be applied, the title must be held to be good.

The grant to William Penn of the Delaware River was to him as a proprietary—as the founder of a new colony,

and the rights and powers granted him were intended to be used, as was said in *Martin v. Waddell*, "for the same purposes, and to the same extent, that they had been used and enjoyed for centuries in England."

We submit that the Master's findings are sustained by the applicable decisions of this Court, and that the exceptions thereto should be overruled.

**III. (c). Feoffment of August 24, 1682. Brief, pp. 170-181.**

Under this section of the brief it is argued, first, that the deed of feoffment from the Duke to William Penn of August 24, 1682 conveyed no powers of government; and second, that a feoffment could convey only a corporeal hereditament.

With regard to the first point it is to be noted that while the Duke of York had never been granted expressed powers of government over the Colony of Delaware by letters patent from the Crown he had, as we have shown, actually exercised such powers for eighteen years and was at the time he gave the deed in full possession and enjoyment of such powers. He could convey to Penn what he had.

The language of the deed of feoffment did not expressly convey powers to Penn to pardon offenses, to raise assemblies, etc., such as are often found in letters patent creating a proprietary. The deed of feoffment for the twelve-mile circle, however, contained the following language:

> "Together with all Rents Services Royalties ffranchises Duties Jurisdiccons liberties and privi ledges thereunto belonging And all the Estate Right Title Interest powers property claime and demand whatsoever of his said Royall Highnesse of in or to the same or to any part or parcell thereof . . . " (Exhibit 521, p. 2.)



This language is not as detailed as that ordinarily used in letters patent creating a proprietary government, but it is ample to pass all the "royalties", all the "jurisdictions" and all the "powers" which the Duke of York actually possessed at the time. As we have before shown, he was the *de facto* owner and proprietary of the colony, and the deed of August 24, 1682, was sufficient to pass all his title and powers of government. The letters patent of March 22, 1682/3, formally granted to him not only the title to the soil but full powers of government as well. These powers of government, after August 24, 1682, were actually exercised by William Penn as proprietary.

It is also urged that the draft of the patent of 1688 intended by James II for William Penn (Exhibit 550) contains language raising the inference that King James regarded the deeds of feoffment as insufficient to convey powers of government and that William Penn acknowledged such insufficiency (Brief, pp. 175-176). It is stated that the purpose of the new patent was to release William Penn from penalties which might result from the exercise of governmental powers under the deeds of feoffment.

An examination of the draft of the patent of 1688 will show that the interpretation sought to be placed thereon by Plaintiff is erroneous. Plaintiff quotes from page 4 of the exhibit the language purporting to be an acknowledgment by William Penn of the use and exercise of prerogatives and powers "which as he is now advised he could not nor can maintain or justify by virtue of the said indenture from us or otherwise howsoever." (Brief, p. 176.) The

sentence immediately following the quoted portion is as follows (Exhibit 550, p. 5):

> "Wherein he hath amongst other things according to his judgment for the better improvement of the said tract of land and premises and also of his own province of Pennsylvania adjoining thereunto *promoted a general liberty of conscience to all the inhabitants therein*, least therefore the said William Penn may hereafter be called in question or may have fallen within the reach of some of our laws or statutes and be liable to prosecution in our courts Ecclesiastical or Temporall for such his crimes or offenses." (Italics ours.)

The foregoing language makes it clear that the purpose of the pardon included in the draft of the patent was to relieve William Penn from the consequences of the crime of having "promoted a general liberty of conscience" to all inhabitants, not only in Delaware, but in Pennsylvania—to the mind of a Stuart King a very serious offense.

The point of Exhibit 550 lies in its reaffirmation that the Delaware Colony was intended for William Penn (Exhibit 550, p. 4).

Plaintiff refers to the opinion of Justice Baldwin in the case of *Gale v. Beling* (Exhibit 219). We have discussed this case in our first brief. It is sufficient to repeat that the force of the Court's opinion is destroyed by the fact that the letters patent from the Crown for Delaware were not before the Court in that case and the charge was therefore founded on an error of fact.

The statement is made that a grant by feoffment was limited to the conveyance of corporeal hereditaments. This is not correct. In fact from earliest times the feoffment was used to convey not merely corporeal hereditaments but



the appurtenances thereto "such as hamlets appurtenant to chief manors, and common of pasture, turbary, fishery, or the like; and things incorporeal, as franchises, and servitudes of tenements". (Britton, Chap. 8, Sec. 4; English Translation by Nichols; Baldwin's Edition, Washington, D. C., 1901.)

This argument is beside the point, however, because a grant of land covered by water *is* considered in the English law as a grant of land and is a corporeal hereditament.

In Book II, Blackstone's Commentaries, p. 17, it is said:

> "Hereditaments then, to use the largest expression, are of two kinds, corporeal and incorporeal. Corporeal consist of such as effect the senses; such as may be seen and handled by the body: incorporeal then are not the object of sensation, can neither be seen nor handled, are creatures of the mind, and exist only in contemplation.
>
> "Corporeal hereditaments consist wholly of substantial and permanent objects; all of which may be comprehended under the general denomination of land only. . . . It is observable that *water* is here (1 Co. Inst. 6) mentioned as a species of land, which may seem a kind of solecism; but such is the language of the law; and therefore I cannot bring an action to recover possession of a pool or other piece of water by the name of *water* only; . . . but I must bring my action for the land that lies at the bottom, . . . But the land, which the water covers, is permanent, fixed, and immovable: and therefore in this I may have a certain substantial property; of which the law will take notice, and not of the other."

The attempt, two hundred and fifty years after its date, to question an ancient muniment of title to one of the

States of the Union on technical grounds ought not, we submit, to be favored by the Court.

**III. (d). Letters Patent of March 22, 1682/3. Brief, pp. 182-191. (1). Surrender of Said Letters Patent. Brief, pp. 191-225.**

Under this heading of the brief, Plaintiff discusses the letters patent for Delaware which formally legalized the existence of the Colony of Delaware and defined its boundaries. Plaintiff describes the mechanics of the issuance of letters patent and apparently admits that these letters patent were taken out at the expense of William Penn and for his benefit, and in fulfillment of the covenant for further assurance given by the Duke of York in the deeds of feoffment of August 24, 1682.

Plaintiff then proceeds to argue that these letters patent were shortly thereafter surrendered to the Crown in connection with the application of the Duke of York for a new grant of the Delaware territory. (Exhibits 368, 369.)

This contention of Plaintiff is the crucial point of this branch of the case. Unless Plaintiff can escape from the plain effect of the letters patent of March 22, 1682/3, the title of the State of Delaware to the bed of the river within the circle must be held to be good.

Several points are made in support of this argument.

First, it is argued that the proposed bill of April 11, 1683, recites a surrender of the letters patent of March 22, 1682/3, and therefore there must have been such a surrender. We have pointed out in our first brief the weakness of the claim that the recital of a surrender in a *bill for a proposed patent* is entitled to any legal effect. Obviously it is no more evidence of surrender than a recital of the payment of the consideration in a draft of a proposed deed is evidence that the consideration was paid before the deed was executed. Plaintiff argues that the proposed grant of April 11, 1683, was never consummated, yet in the same breath the argument is made that the surrender recited in the proposed grant was consummated.



It is also argued that because the attorney for the Penns obtained a certified copy of the patent roll at the time of the suit of *Penn v. Lord Baltimore*, the inference is that he did not have the original. This, of course, is a *non sequitur*. In the case at bar and in the *Case of Pea Patch Island* not only was the original produced but also copies thereof. This would be the natural course of any attorney.

We invite attention to the fact that Plaintiff has failed to produce any record of the Public Record Office in England to substantiate its argument on surrender. Plaintiff ignores the fact that the letters patent of March 22, 1682/3, were before the Court of Chancery in *Penn v. Lord Baltimore* and their validity and existence sustained by the opinion of Lord Hardwicke. We submit that after the lapse of nearly two hundred years since this decision, they are not open to question.

Plaintiff argues (Brief, p. 195) that the phrase "river and soil thereof" in the deeds of feoffment is to be interpreted according to the language of the draft of the bill of April 11, 1683 (Exhibit 368), and that the bill of April 11, 1683, did not intend to convey the bed of the river.

The language of the bill of April 11, 1683, is:

> "All that river called Delaware and the soyl thereof and all islands in the said river."

This language is substantially the same as that in the letters patent of March 22, 1682/3, and is substantially the same as the language of the deed of feoffment.

We are unable to follow the argument that the word "soil" does not mean the soil of the river. The word "thereof" means "of the river" and the phrase "soil thereof" means the soil of the river. The words "soil of the river" mean the bed of the river.

Next, that William Penn failed to mention these letters patent. The exhibits show conclusively that William Penn based his title on the deeds of feoffment and that he was correct in so doing. His immediate grantor was not the Crown but the Duke of York. That William Penn referred to his immediate source of title is certainly no evidence that the Duke of York had surrendered the letters patent of March 22, 1682/3. All the available evidence indicates the contrary.

Plaintiff devotes considerable argument to the effect that the document in the State Archives at Dover is not the original letters patent for Delaware. (Brief, pp. 201-225.) The importance of this point lies in the fact that if the document is the original it constitutes the strongest possible evidence that it was not surrendered.

We have dealt at some length with this point in our original brief and in this brief shall merely answer some of the arguments advanced by Plaintiff.

It is said that the original document was not offered in evidence in *Penn v. Lord Baltimore*. (Brief, p. 202.) Exhibit 735 is a copy of the *original record* in the Chancery Office in London. We do not understand the assertion that the Public Record Office entry book is not "an original record." (Brief, p. 203.) Obviously it is a record of much higher authenticity than the breviate upon which Plaintiff relies to overthrow the Public Record Office records. The assertion that Exhibit 735 does not show that the document



was offered in evidence, and that the exhibit is only a list of documents mentioned in the bill of complaint, is without any foundation whatever. An inspection of the exhibit will show that it is an extract from the official record of the decree. The decree begins by reciting the hearings in the matter, and proceeds to enumerate the various documents which were considered by the Court, including the exhibits. The distinction between originals and copies in this list of exhibits is obvious and shows beyond any doubt that the original letters patent of March 22, 1682/3, were before the Lord Chancellor. The attempt of Plaintiff to make it appear that the matter quoted from this decree is merely "the substance of the original bill" is without any foundation for the reason that this is simply not the fact. The stars in the exhibit indicate the omission of the substance of the original bill.

Reference to the various documents recited as being before the Court will show that there are included a number of books, e. g., "A Book of the Laws of Maryland", a book entitled "Nieuwe Weield", etc. Note also the exhibit described as "A map marked D. U. T." Obviously these exhibits could not have formed part of the original bill of complaint. They are exhibits that were introduced in evidence before the Lord Chancellor.

The assertion is made (Brief, pp. 203-204) that Exhibit 366, which was the copy of the letters patent of March 22, 1682/3, shown to Mr. Paris at the time of his examination in Chancery, was an exhibit in the case. The endorsement shows that it was not.

Plaintiff next argues that certain discrepancies between the breviate and the official Chancery decree roll should be resolved in favor of the breviate. This argument

is difficult to understand since the Chancery decree roll is the official record and the breviate merely a brief or compilation of the papers in the case made for the Penns and in no sense an official English record.

The length to which Plaintiff is forced to go in an endeavor to impeach the authenticity of the Dover document is illustrated by the argument on page 207 of the brief that it was impossible that the grant of March 22, 1682/3, was "immediately" delivered to Penn for the reason that Penn did not return to England until July 12, 1684. It does not seem unreasonable to assume that William Penn had an agent or attorney in England; in fact any other assumption would be highly unreasonable. That the patent could have been delivered to such agent or attorney seems not to have been considered by Plaintiff.

Plaintiff next argues (Brief, p. 209) that the document at Dover is "not even a correct copy of the original." We are unable to understand the Plaintiff's theory as to what the Dover document is. It is argued that it is not the original and that it is not a duplicate. Obviously it is not an exemplification. What, then, can it be? Plaintiff asserts (Brief, p. 219) that it is "an incorrect copy." It has attached to it a seal the remnants of which are entirely consistent with the theory that the original was the Great Seal of England. Plaintiff makes no contention that it is a forgery. If genuine the seal must be genuine, and the only seal that could have been attached is the Great Seal of England.

The various attempts to impeach the authenticity of this document collapse by their own weakness and by the impossibility of explaining the nature of the document upon any reasonable theory other than the obvious and reasonable conclusion that it is the original document.



Attention is invited to the statement on page 215 of Plaintiff's Brief that the endorsement "perpetuity" on the back of the document "is characteristic of every original grant." This is substantially correct. See Sir Henry Maxwell-Lyte's testimony. (Exhibit 731, p. 44.) The Dover document has such an endorsement.

It is argued that the explanation of the absence of an intact seal from the document, i. e., that it has crumbled away because of handling in two hundred and fifty years, is "unconvincing." (Brief, p. 216.) We cannot understand how there is anything unconvincing in the crumbling of a pendant wax seal during a period of two hundred and fifty years. The argument that no document purporting to be an original can be accepted as such which does not carry convincing evidence of the presence of the Great Seal entirely overlooks the fact that an original patent might have completely lost the seal and yet be otherwise perfectly regular on its face. The destruction of the seal would in nowise impair the validity of the document.

The attention of the Court is invited to the actual size of the Great Seal of England and the length of the cord to which it was attached, as shown by Plaintiff's Exhibits 190, 191, 192, and 193. Particular attention is invited to the broken seal on Exhibit 191. It will be noted that not only is a large section of the seal broken off but the seal has cracked and worn away at the two places where the cord enters the wax. The length of the cord on Exhibit 191 would appear to be about ten inches and the length of the cord on the Dover document (Exhibits 761 and 762) would appear to be the same. It is entirely reasonable to believe that the seal gradually broke and crumbled away, leaving only two fragments of the middle of the seal adhering to the cord.

The original seal upon the Dover document must have been a large one. What other seal could there have been affixed to the document except the Great Seal of England! It was not the Privy Seal because the writ of Privy Seal is still in the records of the Public Record Office at London. Therefore, it must have been the Great Seal of England and the document is the original document.

Considerable discussion is devoted by Plaintiff to the opinions of Sir Henry Maxwell-Lyte. (Brief, pp. 217-225.) The objections and criticisms upon the various opinions expressed by Sir Henry Maxwell-Lyte appear to be of an insubstantial character and we do not understand that any serious attempt is made to question his qualifications or the soundness of his conclusions.

III. (d) (2). Claim of Title by Estoppel. Brief, pp. 226-230.

Plaintiff here undertakes to assail the Master's finding that by virtue of the issuance of the letters patent of March 22, 1682/3 a good title by estoppel in law and in equity passed to William Penn for the Delaware territory including the subaqueous soil of the river within the twelve-mile circle.

It is first argued that the deeds of feoffment conveyed no powers of government and hence the covenant "for further assurance" did not relate to powers of government.

We have previously shown that the language of the deed of feoffment was sufficiently broad to convey to William Penn the powers of government which the Duke of York actually had, and the Master so held. See the quotation on pages 54 to 57 of his report, heretofore set forth.

The assertion is made that the doctrine of equitable estoppel could not apply to powers of government, or to



"royalties", by which is evidently meant the bed of the river. No authority is cited in support of this assertion and we think none can be cited.

Plaintiff discusses the right of the Duke of York to alien his powers of government. The fact remains that he did alien them and that William Penn and his successors exercised them without hindrance from the English Crown from 1682 to the time of the American Revolution. We submit that an attempt at this late date to argue that the Duke of York had no right to alien powers of government is purely an academic question.

On page 229 of the brief it is again asserted that the Crown could not convey the title to the bed of the river. This argument has been fully discussed and answered.

It is said that Penn "waived his rights" under the conveyance of further assurance because he knew at the time that the feoffment was given to him that the Duke had no title. No authority is cited in support of this argument. Moreover, the argument is completely answered by the decision in *Penn v. Lord Baltimore*. The Lord Chancellor held:

> "In 1683 the Duke of *York* takes a new grant from the crown; and having granted before, was bound to make further assurance, for the improvements made by *Penn* were a foundation to support a bill in equity for further assurance." (Exhibit 542, p. 22; 27 Eng. Rep. 1138.)

It is further argued that whatever rights the Duke of York may have had prior to 1682 in the Delaware Colony had been granted by him to the New Jersey proprietors prior to the date of the feoffment.

Since it is an admitted fact in the case that the grant to Berkeley & Carteret stopped at the easterly side of the

Delaware River there is no basis whatever for this contention. In so far as the argument is based on the right of the inhabitants of New Jersey to use the river for purposes of navigation the answer is, as we have already said, that that right is in no wise inconsistent with the ownership of the subaqueous soil.

**III. (e). The Crown's Claim of Title. Brief, pp. 231-273.**

In this portion of the brief Plaintiff argues that there is error in the Special Master's findings (Report, p. 76, findings 18 and 19) to the effect that the Crown of England recognized and confirmed the title and possession of William Penn to Delaware and his powers of government thereover, and that at no time did the Crown take any action looking to the dispossession of William Penn from such title and possession. The Plaintiff urges five reasons in opposition to these findings.

1. It is first urged that the Act of Union and other statutes relating to Delaware were ineffective because not submitted to the Crown for approval. This is a repetition of the argument made under Point III-(a)-2 of the brief, pages 156-161, and has already been answered. No action was ever taken by the Crown to set aside the Act of Union, but if the Act of Union were entirely void, it would not affect boundaries of Delaware.

2. Plaintiff states that the record shows that from 1682 until the death of Penn in 1718 his "claim of title" was frequently questioned and "rejected" by the Crown. This is incorrect. We have discussed the evidence on this point on pages 79 to 82 of our original brief. No question



was raised concerning the validity of the Penn title until 1701 when the report of the Surveyor General, containing charges against William Penn's government, came before the Board of Trade. (Exhibit 417.) During the period from 1682 to 1701 the title was not questioned and on the contrary was expressly confirmed by letters patent under the Great Seal of England in 1694 restoring Penn to the government of the Province of Pennsylvania "& territories." (Exhibit 557, p. 4.) The Special Master so found. (Report, p. 76, finding 17.)

Moreover, it is not correct to say that the title was "rejected" by the Crown. None of the proceedings before the Board of Trade or the Privy Council ever resulted in any adjudication against the Penn title. There was a report from the Privy Council of January 16, 1734/5 (Exhibit 636), favorable to Lord Baltimore's claim to Delaware; but this was followed by the case of *Penn v. Lord Baltimore* in the Court of Chancery, the decision in which sustained the Penn title.

Plaintiff argues that the Order of the Privy Council of November 13, 1685 (Exhibit 264), was an adjudication of the title against William Penn. This contention is more fully set forth under point IV-(a) of the brief and will be there answered. It will be shown that there was no adjudication against Penn. The adjudication was against Lord Baltimore.

3. It is next argued that during the negotiations relating to Penn's proposal to surrender his powers of government to the Crown, Penn himself abandoned his claim to powers of government over Delaware. The negotiations for the surrender of Penn's powers of government are discussed in some detail and the assertion is made (Brief, pp.

231, 235, 248) that Penn admitted that he had no grant for Delaware. This assertion is not borne out by the evidence. Penn never admitted that he had no grant for Delaware; he repeatedly asserted title under the deeds of feoffment. The quotations from the proceedings found in Plaintiff's brief on pages 235-239 are replete with references by Penn to the "territories" belonging to Pennsylvania. The phrase "territories belonging to Pennsylvania" meant the Delaware Counties. The phrase was subsequently judicially construed by the Royal Court of Admiralty at New Castle in 1727 to mean the Delaware Counties. (Exhibit 569.)

It should be added that all of the negotiations for the surrender by Penn of his powers of government came to nothing. The surrender was never carried out. Before the purchase price was paid Penn died and after his death litigation ensued in the Court of Exchequer concerning the consummation of the surrender. These points are discussed in our first brief, pages 81 to 83.

Reference is made to the opinion of the Attorney General of October 21, 1717 (Exhibits 471, 624.) Although the officer who gave that opinion did not have before him the letters patent of March 22, 1682/3, he nevertheless recommended that the Crown *establish its title in the Court of Chancery* before making any grant of Delaware. This course was never followed.

4. It is next argued that the declarations which Penn was required to sign, to the effect that the approval of his appointment of Deputy Governors should not be construed to diminish the Crown's "claim or right" to the Lower Counties, constitute in effect an admission by Penn of the fact that he had no title. The fact is that Penn's refusal to sign the first form submitted to him (Exhibit 1044,



quoted in Plaintiff's brief, p. 251), which referred to the Crown's "right and title" instead of the Crown's "claim of title," is direct and positive proof that Penn refused to admit the Crown's title. What he did was to admit the Crown's "claim of title," a very different thing.

No action was ever taken by the Crown to establish its supposed claim of title. The statement in Plaintiff's brief therefore on page 266 that Penn's declarations reserved the "right" of the Crown is incorrect.

Plaintiff pushes the argument to the length of saying that this reservation of the Crown's claim, though never acted on and though manifestly unsound, "destroys the argument of Lord Hardwicke and Mr. Sergeant that the Penns remained in undisputed possession of the three Lower Counties." (Brief, p. 267.) Plaintiff no doubt refers to the decisions (not the "arguments") of the Lord Chancellor of England in *Penn v. Lord Baltimore*, and of John Sergeant, Esq., the arbitrator in the *Case of Pea Patch Island*, which have been fully discussed in our first brief. Whatever may have been the "attitude" of certain ministers of the Crown, it could not destroy the effect of an adjudication by the Court of Chancery.

5. It is argued that Penn's possession did not extend to the subaqueous soil of the river east of the ship channel. There is nothing in the record which supports any such distinction. As we have pointed out, Penn asserted dominion over the subaqueous soil of the Delaware River as early as 1683 in his letter to his commissioners. (Exhibit 52, p. 3.) Dominion over the subaqueous soil was exercised by the Penns by the grant of "bank lots" in the town of New Castle (Exhibit 570) and by surveys of Reedy Island in 1749 and 1762. (Exhibits 591-593.) There is no

possible way that the Plaintiff can distinguish between Penn's assertion of dominion over the subaqueous soil of the river on the east side of the channel and the soil on the west side of the channel, for the reason that the description in the deeds of feoffment and the letters patent includes the entire river within the circle.

Lastly it is argued that Admiralty jurisdiction was exercised by the Crown in the Delaware River and Bay. We have previously commented on this argument. It clearly confuses the question of title with the control of the Crown over navigation and Admiralty matters. The two are entirely separate. Defendant's Exhibit 569 was not introduced to show Admiralty jurisdiction by William Penn, but to show a judicial construction of the phrase "territories thereupon depending" which we have above referred to. The Admiralty Court was, as Plaintiff correctly says, a Royal Court and the construction of the phrase was thus an official recognition of the existence of Delaware under the proprietary government of the Penns.

**III. (f). Repudiation of Penn's Title by the State of Delaware. Brief, pp. 274-283.**

Plaintiff's brief discusses the Delaware Act of 1794 (Exhibit 665) as a "repudiation" of the Penn title. The argument is made that if the statute confiscated the Penn lands it was unconstitutional; but as an unconstitutional construction is to be avoided the Act should be construed as constitutional, and the recitals in it that the Penn's claims to the lands within the State of Delaware were unfounded should be taken to be true. All this argument is beside the point. If the State of Delaware acquired the title to the bed of the Delaware River as successor to the Penns at the time of the Revolution it is not estopped to assert that title



against the State of New Jersey, because of the Act of 1794 or because of any other Act to which the State of New Jersey is not a party.

It is an elementary principal of the law of estoppel that the person who seeks to enforce an estoppel in pais must have believed the representation by his opponent and acted upon it to his injury. In other words he must have been misled and have changed his position upon the faith of the representation so that it would be inequitable to permit his opponent to deny the truth of the representation.

In Chapter 18, Section 2, of Bigelow on Estoppel (6th Ed.), it is said:

> "Estoppel by representation consists in holding for truth a representation acted upon when the person who made it, or his privies, seek to deny its truth and to deprive the party who has acted upon it of the benefit obtained. The origin of the estoppel is probably to be found in the doctrine of equity that if a representation be made to another who deals upon the faith of it, the former must make the representation good if he knew or was bound to know it to be false. Lord Eldon in the case just cited speaks of this as 'a very old head of equity.' But the principle had been fully adopted at law as ground for an action of deceit several years before this remark was made, and though still called 'equitable estoppel' the estoppel is as fully available at law as in equity.
>
> "In order to justify the interposition of equity in the case mentioned it is necessary to establish, not only the fact of misrepresentation or concealment, but also that it has been in a matter of substance or of importance to the interests of the other party, and that it has actually misled him. If the misrepresentation was of a trifling or immaterial thing, or if the party alleging it did not in fact trust in it or was not misled by it, or if

it was vague or inconclusive in its nature, or if it was upon a matter of opinion or fact equally open to the knowledge of both parties, in regard to which neither could be presumed to trust the other; in these and the like cases equity will not grant relief."

This Court has so held.

In *Ketchum v. Duncan*, 96 U. S. 659, it was contended, on behalf of certain bondholders, that the purchasers of some coupons were estopped to claim that the coupons were still valid obligations of the issuing company.

This Court, speaking through Mr. Justice Strong, stated the doctrine of estoppel as follows (p. 666):

"Moreover, it is necessary to notice who sets up this plea of estoppel. An estoppel *in pais* does not operate in favor of everybody. It operates only in favor of a person who has been misled to his injury, and he *only* can set it up. If, therefore, there be any estoppel in this case, it must be in favor of some bondholder (if any there was) who was led to believe, by the action of William B. Duncan, that the railroad company was, in May and November, 1874, paying the coupons of the first mortgage, then falling due, and paying them in order to extinguishment; but no such bondholder asserts such an estoppel. So far as it appears, no one of the appellants was so misled. No one of them can claim an estoppel which is personal, and of which only the person misled to his hurt can avail himself. Indeed, it does not appear that any one of the witnesses (very few in number) who supposed the coupons were being paid when they received their money from the Bank of Mobile, was at the time, or is now, the holder of a single first-mortgage bond. Nor is there a single coupon-holder who now claims that he was misled or deceived by any of Duncan, Sherman, & Co.'s agents, by the Bank of Mobile, or the Union Bank of London, or by the Credit Foncier. It is impossible, therefore, to see how there can be any estoppel, or wherein can be found any fraud in purchasing the coupons."



In *Tyler v. Odd Fellows Association*, 145 Mass. 134, the Supreme Court of Massachusetts thus stated the rule:

"An estoppel results from conduct which was intended to induce, and has induced, another to act to his disadvantage. It can only come from a successful effort to get one to change his situation."

Many more cases might be cited but the principles above referred to are unquestioned.

In the case at bar there is no suggestion by Plaintiff that the recitals in the Delaware Act of 1794 constituted anything more than an expression of opinion by the Delaware Legislature as to the source of the Delaware title. The facts surrounding the title were matters of public record. They were as open to the examination of the State of New Jersey as to the State of Delaware. In no sense could they have deceived the State of New Jersey. In no sense did the State of New Jersey rely upon them or was misled by them to its injury.

Suppose that the Legislature, in the recitals to the Act of 1794, had undertaken to aver that the title of the State of Delaware was derived from still a third source, i. e., some source other than the Penns or the Crown of England. Could it be claimed that in a boundary dispute with one of her sister States of the Union the State of Delaware would be estopped from showing the error in the recitals of the act? We say that there is no doctrine of the law either by the rule of estoppel or otherwise which would prevent the State from showing the true title whenever it should be called in question.

If a state of the Union does in fact possess good record title to certain lands within its borders, how is it possible for it to be divested of that title by means of a legislative Act which recites an erroneous source of that title?

No authority on this point is cited to support Plaintiff's contention that the Act of 1794 vested title in the State of New Jersey by estoppel, and we submit none can be found.

The Master discusses this question on pages 57 to 60 of his report. After quoting the recital of the Delaware Act of 1794 he says:

> "It is contended that as it would have been unconstitutional for Delaware to have confiscated the ungranted Penn lands within the state, that it must be assumed that it intended by this enactment to repudiate the validity of the grants to Penn, but the question of the validity of the action of Delaware, with respect to the Penn ungranted lands, is one matter, and the question of its boundaries, which had been fixed and determined at the time of the Revolution, is another. It is apparent from the Act the Delaware Legislature quoted, that it was denying the ownership of the ungranted lands in the Penns and not referring to its boundaries which had become fixed and determined on July 4, 1776. Harsh as the treatment of the Penn heirs may have been, it cannot serve to unsettle the boundaries of the state which had theretofore been fixed and determined. (Report, p. 58.)

We submit that the Master's conclusion is undoubtedly correct and should be sustained. The constitutionality of the Delaware Act of 1794 is not now before this Court and this Court is not required to pass upon it nor, we submit, is it proper to do so in this proceeding.



Plaintiff quotes from the unreported case of *Gale v. Beling* discussed in our first brief on pages 112 to 122. It appears that Mr. Justice Baldwin expressed the view, commented on in our first brief, that upon the acquisition of statehood the State of Delaware had "an election" to derive its title either from William Penn or from the Crown.

In commenting on this case the Master said:

> "With all respect to the learned Justice it would seem that he overlooked the fact, as above pointed out, that the true boundaries of Delaware had become fixed and determined by the Declaration of Independence on July 4, 1776." (Report, p. 60.)

If the Delaware Act of 1794 had any effect upon the title of the State of Delaware it must be because it worked a cession of land to the State of New Jersey by estoppel or otherwise. Plaintiff does not make any such argument. But if the Act of 1794 did not work a cession to the State of New Jersey then the boundary line between the States remained unchanged. This is exactly what the Master held and we submit that his conclusion is sound and should be sustained by this Court.

**IV. Litigation Relating to Title. (a). Penn v. Baltimore. Brief, pp. 284-314.**

In our first brief we have fully discussed the decision of the Court of Chancery in the case of *Penn v. Lord Baltimore*, Ridg. temp. Hardwicke, 333, 27 Eng. Rep. 847; 1 Ves. 444, 27 Eng. Rep. 1132.

We have shown that it is a direct holding that the Penns had a valid and equitable title to Delaware under the deeds of feoffment and the letters patent of March 22, 1682/3.

We shall comment briefly on Plaintiff's effort to evade the effect of this decision.

Plaintiff states that the Privy Council was the court of last resort of the British Empire. So far as colonial questions are concerned this is correct, subject, however, to the jurisdiction of the courts in cases where it was proper for them to take jurisdiction. Plaintiff then argues that the proceedings before the Privy Council in 1683-1685 culminating in the Order in Council of November 13, 1685 (Exhibit 264), constituted an adjudication of the title of Delaware in the Crown as against William Penn.

This argument is based upon a misconception of the proceedings. The controversy started on Lord Baltimore's objection to the Duke of York obtaining a further grant of the Lower Counties (Exhibit 372). Lord Baltimore's objection was based upon the claim that he held the title to the Delaware territory under the patent of 1632 for Maryland. The order adjudicated this claim and denied it except as to half of the peninsula. It adjudicated nothing more. The rights between Penn and the Crown—Penn's equitable title to the Lower Counties—were not formally before the Privy Council. In point of fact, however, the proceedings did recognize William Penn as the real party in interest. The order of the Committee of the Privy Council of April 17, 1683, concludes with a direction that application be made to the Duke of York *not to pass any conveyance to Mr. Penn for the Delaware territory* until the dispute with Lord Baltimore should be settled (Exhibit 546, p. 2). This was a recognition of Penn's equitable ownership. In the proceedings of May 30, 1683, Mr. Penn's agent was heard in support of the claim that Delaware was possessed by the Dutch and Swedes before the date of Lord Baltimore's patent.



(Exhibit 546, p. 3.) The proceedings of March 17, 1684, refer to "the difference between Mr. Penn and the Lord Baltimore."

The proceedings of August 26, 1685, refer to the differences between Lord Baltimore and Mr. Penn "touching boundaries and title of soil in America." (Exhibit 546, p. 12.) Similar reference is found in the proceedings of September 2, 1685. (Exhibit 546, p. 13.) The proceedings of October 8, October 17, October 31, and November 7, 1685 (Exhibit 546, pp. 14-15), show that the real parties to the controversy were Lord Baltimore and William Penn.

The Order in Council of November 13 (Exhibit 264) included an order that "the said Lord Baltimore and William Penn together with their respective officers and all others whom it may concern" were to take notice thereof and give due and ready obedience thereunto.

The contention, therefore, that the Order in Council of November 13, 1685, was an adjudication of title between the Crown and William Penn is clearly without any foundation in the record. The record shows *that Penn was recognized as the real party in interest.* The form of the Order, viz: that the lands were adjudged "to His Majesty" was correct, since the *record* title was in the Crown, by reason of the accession of the Duke of York to the throne.

The construction placed upon the Order in Council of November 13, 1685, by the Plaintiff is contradicted by the opinion of the Crown law officers in 1717 (Exhibit 635). The Attorney General and Solicitor General considered the title claimed by Lord Baltimore to the Lower Counties and the Order in Council of November 13, 1685, the substance of which Order was quoted in their opinion (Exhibit 635, pp. 14-15). If they had regarded the Order as an adjudication

of the title in the Crown as against William Penn they would not have recommended that the Crown title "should be established by the Court of Chancery before any grant should be made of the premises." Moreover, in the case of *Penn v. Lord Baltimore* the Order in Council of November 13, 1685, was well known to Lord Baltimore's counsel and was included in the pleadings in the case (Breviate, 16 Pa. Arch., 2d Ser., p. 19, 109), yet no contention appears to have been made by Lord Baltimore's counsel that the Privy Council Order of November 13, 1685, was an adjudication which extinguished William Penn's title to Delaware. Certainly had there been anything in such a contention it would not have escaped the attention of Lord Baltimore's counsel and it would not have escaped the attention of the Lord Chancellor.

We have, then, a situation where the Order in Council of November 13, 1685, was before the Crown law officers in 1717 and before the Court of Chancery in England in 1750, and the construction placed upon that Order by all the parties is entirely inconsistent with the construction which Plaintiff now attempts to place upon it.

Moreover it should be noted that in 1709 the matter was again before the Privy Council. The parties were Lord Baltimore on the one hand and William Penn on the other. The proceedings terminated in the order of June 23, 1709, ratifying and confirming the prior order in all points. (Exhibits 264, 631.)

In discussing the proceedings before the Court of Chancery in the case of *Penn v. Lord Baltimore* Plaintiff argues first that the decision did not decide the Penn title to Delaware. The point is made that the court's jurisdiction was invoked on the ground of specific performance. This is entirely correct, but it is in no way inconsistent with the fact



that Lord Baltimore in his defense set up the objection that the agreement contained a covenant for mutual conveyances and that since the Penns had no sufficient title to the Lower Counties to make an effectual conveyance they could not perform the covenant, and since the agreement was to be performed in toto or not at all the action must fail. (Exhibit 642, p. 9.) The Lord Chancellor overruled this objection in the language quoted in our first brief on page 86.

Notwithstanding the fact that primary jurisdiction to determine colonial boundaries was in the Privy Council it is obvious that an equitable right must be adjudicated by the Court of Chancery. This is exactly what was held by Attorney General Northey in 1717 when he recommended that the Crown's claims be litigated in the Court of Chancery before any grant was made to Delaware. (Exhibit 635, pp. 15-16.)

Plaintiff states that the opinion in *Penn v. Baltimore* does not mention "the surrender" of the grant of March 22, 1682/3. Plaintiff is here arguing in a circle. The failure of Lord Baltimore's counsel to make any contention that the grant had ever been surrendered is strong evidence that no such surrender ever occurred.

It is said that the opinion does not refer to "royalties, government or any title to the rivers." There is no specific reference to the ownership of subaqueous soil, for the reason that there was no occasion for the court to distinguish between the ownership of the upland and the ownership of the subaqueous soil. Obviously if the title was sustained it was sustained *in toto*.

However, the opinions do refer to Penn's powers of government. Lord Hardwicke says in the second opinion:

> "Then consider this in point of possession of the Penns; the proof of which is very clear: they have been

permitted to appoint governors of these lower counties; which have been approved by the Crown according to the statute of King William."

The first opinion of Lord Hardwicke (Exhibit 642, pp. 1-6) expressly recognizes that the dispute was between two proprietaries holding powers of government. Lord Hardwicke said:

"This is a question between feudatory Lords, proprietors of provinces: And concerning not only their private interest, but the rights of government and the right of private persons, and has been well compared to the case of the Lords marchers." (Exhibit 642, p. 3.)

Later in the opinion he says:

"For here are powers of government, jurisdiction, legislation, raising subsidies, together with all kinds of military powers granted by these deeds:" (Exhibit 642, p. 4.)

Plaintiff is therefore incorrect in arguing that the court did not have before it the question of powers of government of the two proprietaries who were parties to the suit.

Plaintiff's discussion of the case of *Penn v. Lord Baltimore* concludes with the statement that Penn's title was a "condemned title." By whom the title was condemned Plaintiff does not show. As we have demonstrated, and as the Special Master held, the title was sustained on every occasion when it was attacked, and was both expressly and impliedly recognized by the Crown of England.

**IV. (b). Pea Patch Island Case. Brief, pp. 314-351.**

In commenting on the Pea Patch Island case, which we submit is an important precedent for the decision of the instant case, entitled to weight because of its thorough consideration of the evidence and the reasoning of the opinion, Plaintiff offers a series of insubstantial objections.



Plaintiff first remarks that the decision is not *res judicata* between the parties. This is admitted. The decision is, however, persuasive. Unlike the unreported case of *Gale v. Beling*, so heavily relied on by Plaintiff, it was thoroughly argued and briefed and practically all the pertinent evidence was before the arbitrator. It is true that a great mass of documentary evidence not before the arbitrator in the Pea Patch case has been adduced in this case, but such additional documentary evidence is either cumulative or immaterial.

Plaintiff appears to attach great importance to the opinion of the United States District Attorney for the District of New Jersey of June 9, 1834. (Exhibit 215.)

To dispose of the conclusions in this opinion it is sufficient to point out the repeated statement in Mr. Wall's opinion that "Delaware was never granted by the King" and "there is no valid grant from the King to any person for the River Delaware." Mr. Wall was not familiar with the letters patent of March 22, 1682/3, and hence fell into a serious error of fact. This is the same error of fact which appears in Mr. Justice Baldwin's charge to the jury in *Gale v. Beling*. This error seems to be traceable to the opinion of the United States District Attorney for the District of New Jersey to the Secretary of War dated April 20, 1822 (Exhibit 216), an excerpt from which is quoted on pages 329-330 of Plaintiff's brief. This opinion also asserts that no grant of Delaware from the King to the Duke of York can be found.

We shall not attempt to answer all the various criticisms of the arbitrator's opinion which appear to us to be quite insubstantial.

On page 335 Plaintiff states that the deeds of feoffment conveyed no powers of government and that the arbitrator is in error in stating that they did. We have heretofore pointed out that the deeds did convey the "powers" of the Duke of York, and that the deed was acted on and the powers of government were thereafter exercised by William Penn. This is an historical fact which Plaintiff can not argue away. The Master so found. (Report, p. 74, Finding 9.)

Plaintiff says that the arbitrator was unaware of the "surrender of the grant" of March 22, 1682/3. (Brief, p. 335.) This assertion that the grant was surrendered is reiterated again and again in the Plaintiff's brief. It is cited as a reason why this Court should overturn the decision in *Penn v. Lord Baltimore* (Brief, p. 308), and it is relied on to escape the persuasiveness of the opinion of Mr. Sergeant.

The fact is that never until after the filing of the Bill of Complaint in the present suit was any contention ever made that the grant of March 22, 1682/3, had been surrendered. No such contention appears to have been made in the prior suit, in which a great amount of testimony was taken over a period of several years. The reason for the insistence upon this claim is that if it is unsound it follows that no matter what was the state of the Penn title, the boundaries of Delaware were fixed by the letters patent of March 22, 1682/3, and included the Delaware River.

Plaintiff attempts to cast doubt on the fact that the original Patent of March 22, 1682/3 (referred to as "the Dover document"), was before the arbitrator. We have heretofore shown that there is no question whatever as to the authenticity of this document. The suggestion that



the Delaware counsel who introduced the original Patent in evidence in the case of Pea Patch Island lacked confidence in its authenticity (Brief, p. 336) is entirely baseless. The introduction in evidence of a rolls copy as well as of a copy certified under the seal of the Mayor of London indicated no lack of faith in the original. Mr. Sergeant's statement that the original Patent probably was produced in *Penn v. Lord Baltimore* we have shown to be correct. (Defendant's first brief, pp. 44-46.)

The statement on page 340 of Plaintiff's brief that the application of the Earl of Sutherland for a grant of Delaware was withdrawn, "which accounts for the fact that the proceedings in Chancery ensued", is not understood. The arbitrator's statement that the application "was not further pursued" is correct. (Exhibits 471, 472, 483.)

Plaintiff argues that the arbitrator did not have before him the documentary evidence showing Penn's "repeated admissions of lack of title". (Brief, p. 340.) We have herein shown that there were no such admissions.

The assertion is made that there could be no equitable estate in the title to the subaqueous soil of the Delaware River. (Brief, p. 341.) No authority is cited for this statement and we submit that none can be. Title to the subaqueous soil, while prima facie in the Crown, as part of the *jura regalia*, is granted in the same manner as upland.

The arbitrator's reference to the trial in the case of *Gale v. Beling* as "essentially ex-parte with a very imperfect exhibition of evidence" (quoted in Plaintiff's brief on page 347), we have shown to be warranted. The most important single document, namely, the letters patent of March 22, 1682/3, was not before the court. Moreover, the other serious error of fact made by the learned Justice in suggesting that a straight line drawn from the two inter-

sections of the twelve-mile circle with the west bank of the Delaware River would pass to the west of Pea Patch Island is certainly a strong indication that his views were rendered without adequate assistance from counsel in the case.

Plaintiff's brief is, we think, unjustifiably severe in its criticism of Mr. Sergeant's opinion. The opinion on its face shows that the writer was an able lawyer of judicial temperament who had fully grasped the issues before him. The suggestion that the arbitrator "strayed from judicial paths to reach his decision" is a wholly unwarranted reflection on the character and ability of Mr. Sergeant, who was one of the leading members of the Pennsylvania Bar at the time when he was selected as arbitrator in the case.

In this case Mr. Sergeant's findings were reviewed and approved by the Special Master. (Report, pp. 41-46, and conclusion of law No. 6.)

We submit that the decision in the *Case of Pea Patch Island* is worthy of consideration by this Court, is persuasive, and should be approved.

### Conclusion.

We have heretofore pointed out to the Court that it was not until after the filing of the Bill of Complaint in the present case that any suggestion was ever made that the letters patent of March 22, 1682/3 were surrendered. This suggestion recurs in Plaintiff's brief again and again. There is not the slightest evidence in the record to support it. The evidence is overwhelming that the document in the State Archives at Dover is the original letters patent of March 22, 1682/3, and the Master so found. (Report, p. 75, finding 13.) That the recital of a proposed surrender of a proposed new patent which never became effective



constituted in law a surrender of the original grant is so clearly without merit as to require no real discussion.

What, then, is the reason for the Plaintiff's insistence on this argument? *It lies in the fact that if the grant was not surrendered its existence is decisive of this branch of the case.*

The fundamental question here presented is the question of the boundaries of two of the original colonies of the Union. Each colony owes its origin to a Royal charter. The boundaries of each colony were fixed by such charter. If the charter for Delaware was not surrendered we may concede, for the sake of argument, the soundness of all of the Plaintiff's objections to the Penn title. If we assume that William Penn did not receive the benefit of the letters patent of March 22, 1682/3; if we even assume that the Delaware Act of 1794 constituted a binding election by the State of Delaware to derive its title from the Crown of England; in short, *if we assume that the Penns had no title*, yet the fact remains that the boundaries of the Colony of Delaware at the time of its origin were fixed by its title deeds and that these boundaries included the bed of the Delaware River within the twelve-mile circle. If we assume that the Duke of York had title to the lands and waters of the Colony of Delaware at the time he ascended the throne, then it follows that that colony existed as a separated colony *with those boundaries so fixed by his letters patent* until the American Revolution, and that upon the recognition of statehood by the Crown of Great Britain the State of Delaware succeeded to the rights of the Crown *with the boundaries fixed in the letters patent to the Duke of York.*

Plaintiff's brief seems to recognize the soundness of this argument, and this is probably the reason for the vig-

orous attempt, never before made, to prove that the letters patent of March 22, 1682/3, were surrendered. That attempt has failed as there is no evidence whatever to support it. It of necessity follows that the letters patent of March 22, 1682/3, which gave the Royal assent to the creation of a new colony, fixed the boundaries of that colony *and included within it as an integral part thereof the bed of the Delaware River within the twelve-mile circle.*

Respectfully submitted,

PERCY WARREN GREEN,
*Attorney General of the State of Delaware.*

REUBEN SATTERTHWAITE, JR.,
CLARENCE A. SOUTHERLAND,
*Special Counsel.*

WARD & GRAY,
*Of Counsel.*

# SUPREME COURT OF THE UNITED STATES.

No. 13 Original.—OCTOBER TERM, 1933.

State of New Jersey, vs. State of Delaware. } Upon exceptions to the Report of the Special Master.

[February 5, 1934.]

Mr. Justice CARDOZO delivered the opinion of the Court.

Invoking our original jurisdiction, New Jersey brings Delaware into this court and prays for a determination of the boundary in Delaware Bay and River.

The controversy divides itself into two branches, distinct from each other in respect of facts and law. The first branch has to do with the title to the bed or subaqueous soil of the Delaware River within a circle of twelve miles about the town of New Castle. Delaware claims to be the owner of the entire bed of the river within the limits of this circle up to low water mark on the east or New Jersey side. New Jersey claims to be the owner up to the middle of the channel. The second branch of the controversy has to do with the boundary line between the two states in the river below the circle and in the bay below the river. In that territory as in the river above, New Jersey bounds her title by the *Thalweg*. Delaware makes the division at the geographical centre, an irregular line midway between the banks or shores.

The Special Master appointed by this court in January, 1930 (280 U. S. 529) has now filed his report. As to the boundary within the circle, his report is in favor of Delaware. To that part of the report exceptions have been filed by New Jersey. As to the boundary in the bay and in the river below the circle, his report is in favor of New Jersey. To that part exceptions have been filed by Delaware. The two branches of the controversy will be separately considered here.

*First. The boundary within the circle.*

Delaware traces her title to the river bed within the circle through deeds going back two and a half centuries and more.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1930.

No. 15 Original.

STATE OF NEW JERSEY,

*Plaintiff,*

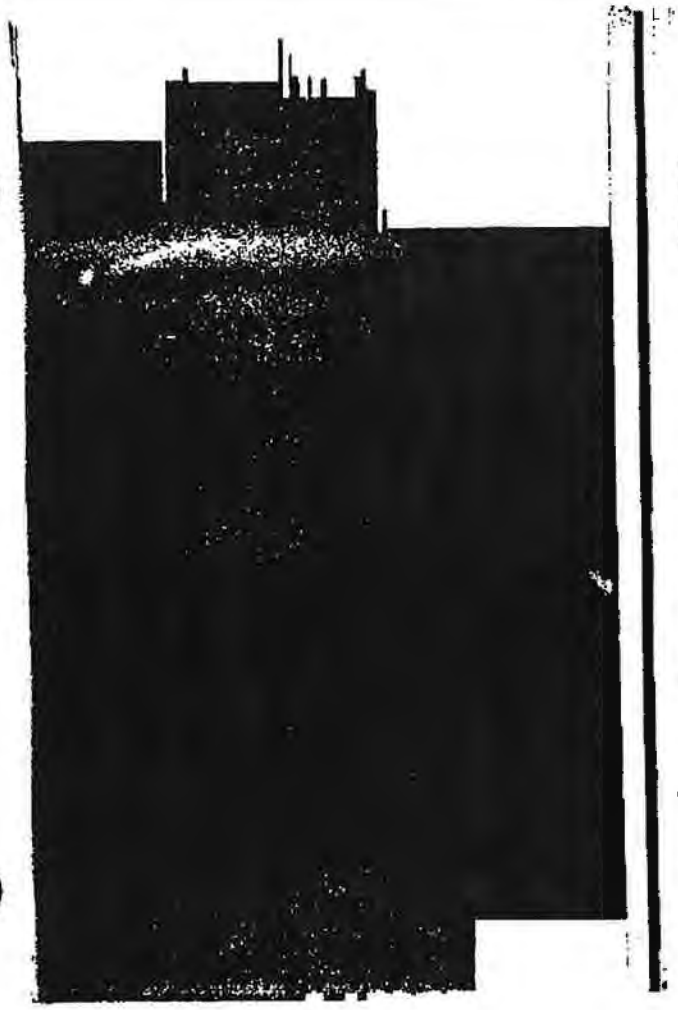
vs.

STATE OF DELAWARE,

*Defendant.*

# STIPULATED RECORD
# TESTIMONY
# VOLUME I.

Author W. Gaus, Law Printer, 24-26 Lafayette Street, Newark, N. J.



# INDEX


| | Page |
|---|---|
| Notice | 1 |
| Motion for Leave to file Bill of Complaint | 2 |
| Proof of Mailing Copies of Motion and Bill of Complaint | 3 |
| Bill of Complaint | 4 |
| Motion for Leave to file Bill of Complaint | 13 |
| Answer | 15 |
| Notice | 78 |
| Motion for the Appointment of a Special Master | 79 |
| Motion for the Appointment of a Special Master in this Case | 81 |


TESTIMONY.


| | | | |
|---|---|---|---|
| Order of Reference | | | 82 |
| Opening Statement on Behalf of Plaintiff | | | 89 |
| *Plaintiff's Witnesses.* | | | |
| Henry J. Sherman, | direct examination | | 94 |
| recalled, | direct " | 117, 180, 225, | 236 |
| Miss Vera M. Castellano, | direct examination | | 91 |
| | cross " | | 116 |
| recalled, | direct " | 241, | 247 |
| Arthur M. Denny, | direct examination | | 123 |
| recalled, | direct " | | 159 |
| W. W. Woolbarty, | direct examination | | 120 |
| Harry M. Geiter, | direct examination | | 129 |
| Charles R. Reiter, | direct examination | | 150 |
| | cross " | | 160 |
| recalled, | direct " | 197, | 249 |
| | cross " | | 251 |
| Albert Robeson McAllister, Jr., | direct examination | | 160 |
| recalled, | direct " | | 249 |
| Joseph N. Perrine, | direct examination | | 174 |
| | cross " | | 194 |
| Edward Cahill, | direct examination | | 198 |
| | cross " | | 201 |
| Clinton Campbell, | direct examination | | 203 |
| | cross " | | 206 |
| George O. Ball, | direct examination | | 208 |
| | cross " | | 209 |
| | re-direct " | | 209 |


DE14946

| | | Page |
|---|---|---|
| J. Hamplit Lake, | direct examination | 210 |
| | cross " | 219 |
| | re-direct " | 217 |
| Arthur Hinson, | direct examination | 217 |
| Kieran Cashill, | direct examination | 218 |
| | cross " | 222 |
| | re-direct " | 221 |
| Alonzo P. Bacon, | direct examination | 224 |
| | cross " | 234 |
| | re-direct " | 225 |
| Herbert B. Sockwell, | direct examination | 226 |
| | cross " | 227 |
| Charles M. Biggin, | direct examination | 227 |
| recalled, | direct " | 237 |
| Judith S. Blackman, | direct examination | 229 |
| | cross " | 231 |
| Stella Berry, | direct examination | 231 |
| | cross " | 233 |
| | re-direct " | 232 |
| | re-cross " | 234 |
| Zadok Sharpe, | direct examination | 234 |
| David Robbins, Jr., | direct examination | 239 |
| Clarence M. Robbins, | direct examination | 243 |
| | cross " | 245 |
| | re-direct " | 249 |
| Henry S. Sockwell, | direct examination | 248 |
| Charles W. Pence, | direct examination | 251 |
| Benjamin A. Sleeper, | direct examination | 252 |
| | cross " | 262 |
| | re-direct " | 269 |
| recalled, | direct " | 295, 317 |
| Hugh B. McCollum, | direct examination | 293 |
| Harry A. Marmer, | direct examination | 301 |
| George H. Hilliston, | direct examination | 306 |
| Isaac Smith, | direct examination | 320 |
| Dennis F. Ryan, | direct examination | 325 |
| Charles Hall, | direct examination | 330 |
| J. Richards Nelson, | direct examination | 350 |
| | cross " | 373 |

| | | Page |
|---|---|---|
| Opening Statement on Behalf of Defendant | | 377 |
| Defendant's Exhibits Offered in Evidence | | 383, 413, 420, 454, 725 |
| *Defendant's Witnesses.* | | |
| Clement E. Hoopes, | direct examination | 411 |
| | cross " | 413 |
| Howard Deane, | direct examination | 432 |
| Samuel H. Baynard, Jr., | direct examination | 451 |
| | cross " | 453 |
| recalled, | direct " | 454 |
| James La Penne Gourraux, | direct examination | 463 |
| John T. Dickson, | direct examination | 457 |
| | cross " | 462 |
| | re-direct " | 464 |
| | re-cross " | 465 |
| Thomas Muncy, | direct examination | 465 |
| | cross " | 468 |
| John A. Turbyfan, | direct examination | 472 |
| | cross " | 474 |
| George H. Wells, | direct examination | 482 |
| | cross " | 484 |
| | re-direct " | 488, 491 |
| | re-cross " | 490, 492 |
| Plaintiff's Exhibits Offered in Evidence | | 422, 542, 554, 715 |
| *Plaintiff's Rebuttal Witnesses.* | | |
| William T. Campbell, | direct examination | 494 |
| | cross " | 496 |
| | re-direct " | 500 |
| George O. Bell, | direct examination | 504, 509 |
| Dr. Henry B. Kummel, | direct examination | 506 |
| Samuel H. Sheldon | direct examination | 513 |
| Alonzo Bacon, | direct examination | 515 |
| J. Hamnitt Lake, | direct examination | 517 |
| | cross " | 521 |
| | re-direct " | 531 |
| Philip Cromwell, | direct examination | 522 |
| Elijah P. Hancox, | direct examination | 528 |


DE14947

| | | Page |
|---|---|---|
| Charles P. A. Bright, | direct examination | 529 |
| Samuel M. Denny, | direct examination | 530 |
| Joshua H. Wheaton, | direct examination | 537 |
| Albert E. McAllister, Jr., | direct examination | 554 |
| Mrs. Janetta W. Schoonover, | direct examination | 613 |
| Colonel Lawrence Martin, | direct examination | 664 |
| Stipulation re Exhibits | | 749 |


*Notice.*

[1] IN THE

# Supreme Court of the United States

OCTOBER TERM, 1929.

No. 19 Original.

STATE OF NEW JERSEY, *Plaintiff,*

*vs.*

STATE OF DELAWARE, *Defendant.*

## NOTICE.

TO:

Hon. C. Douglas Buck, Governor, and

Hon. Reuben Satterthwaite, Jr., Attorney-General of the State of Delaware.

SIRS:

Please be advised that on Monday, June 3, 1929, the plaintiff will apply to the Court for leave to file its bill of complaint, a copy of which is annexed hereto.

WILLIAM A. STEVENS,
Attorney-General.

DUANE H. MINARD,
Assistant Attorney-General,
*Solicitors for Plaintiff.*

Dated May 25, 1929.

[illegible] further on direct examination as follows:

Mr. Minard: When you withdrew from the stand we were offering Plaintiff's Exhibit No. 58, [illegible] Grant in Deany, which has been described.

(Grant referred to was then filed marked Plaintiff's Exhibit No. 58.)

Q. Now, with regard to Exhibit 58, Grant A, have you prepared any data that can accompany it giving information?

A. Yes, sir.

Q. Have you made an examination of the locality to ascertain the nature and extent of the improvements made under that grant?

A. I have.

Q. Now, will you tell us what the result of your investigation was?

Witness: Speaking now of the Deney Wharf under Grant A?

Mr. Minard: Yes, Exhibit 58.

A. The location I have marked as foot of West Street [80] Walk, about 200 feet southwest of the northeast line of the Borough of Pennsgrove.

Q. Now, what does that paper show—I don't mean for you to read it—I mean, what information does it give?

A. It gives a general description of the structure and a diagram of it.

Q. Does it show the high water line?

A. It does.

Q. Does it show the low water line?

A. It does.

Mr. Minard: I offer as Exhibit 59 a sketch and description of the improvements made under the Grant on Exhibit 58.

(Paper referred to was then filed marked Plaintiff's Exhibit No. 59.)

Q. Now, can you describe generally what the nature of that structure is on Exhibit 59?

A. It consists of a solid fill wharf for a distance of about 150 feet beyond the high water line and 100 feet [81] beyond low water line, in which, for a distance of 420 feet, the wharf consists of barges resting on piles.

Q. Do you know what it is used for?

A. It is not in use at the present time.

Q. Do you know how long it has been there?

A. Well, I visited that territory during the War, and I remember seeing it there, and I would say it has been there more than 10 years.

Q. Now, Grants B and C on Exhibit 57. I show you a document which purports to be a deed from the Board of Commerce and Navigation to the Pennsgrove Pier Company for land below high water mark in the Borough of Pennsgrove, dated March 21, 1916, certified by the Director and Secretary of the Board of Commerce and Navigation, with map attached, and ask you what that document is.

A. That is a grant from the Board of Commerce and Navigation to the Pennsgrove Pier Company for property situated on the Delaware river in the Borough of Pennsgrove.

Q. The map shows the extent of the property?

A. Yes, sir.

Q. Grant N purports to be a certified copy of gra
from the Board of Riparian Commissioners of New Je
copy to [99] Annie E. Brown, dated August 28, 1924, i
that correct?

A. Yes, sir.

Q. For how many tracts?

A. One tract.

Q. Extending how far from high water line?

A. 950 feet.

Mr. Minard: I offer it as Exhibit 84.

(Paper referred to was then filed marked Plai
tiff's Exhibit No. 84.)

Q. Grant K, Exhibit 82, Grant M Exhibit 83 and Gra
N Exhibit 84, have you a combined description of th
structure constructed on the land covered by those gran

A. I have.

Q. What is it?

A. Pile bulkhead near high water line.

Q. None of it extends below low water line?

A. None of it below low water line.

Q. Is it described here on this paper?

A. It is.

Mr. Minard: I offer that as Exhibit 85.

(Paper referred to was then filed marked Plai
tiff's Exhibit No. 85.)

[100] Q. Grant L purports to be a certified copy o
grant from Board of Commerce and Navigation to Willia
D. Astor of lands in township of Lower Penns Neck, dat
November 19, 1923, is that correct?

A. One tract.

Q. Extending how far from high water line?

A. 964 feet on the north side and 970 feet on the south side.

Mr. Minard: I offer it as Exhibit No. 86.

(Paper referred to was then filed marked Plaintiff's Exhibit No. 86.)

Q. Have you a description of the structure upon that tract?

A. I have a sketch.

Q. A sketch of the structure?

A. Yes, sir.

Q. Describe, generally, what it is.

A. It is a pier for landing boats to carry people to and from a park adjoining the pier.

Q. How far does it extend below low water mark?

[101] 494 feet.

Q. Below low water mark?

A. Yes.

Mr. Minard: I offer the two sheets of description and the tracing or sketch as Exhibit 87.

(Papers referred to were then filed marked Plaintiff's Exhibit No. 87.)

Q. Grant O appears to be a grant from the Board of Commerce and Navigation to William D. Astor of lands in Lower Penns Neck township, dated October 19, 1925, is that correct?

A. It is.

Q. How many tracts?

A. One tract.

*Henry J. Sherman—for Plaintiff—recalled, Direct.*

A. Yes, sir.

Q. Where is that on the sketch?

A. It is shown on the left-hand side of the sketch near the portion marked, Plan.

Q. Is the diagram in the upper left-hand corner?

A. Yes, sir, and the lower left-hand corner.

[286] Q. Now, bulkhead, what does that represent?

A. That represents a construction between high and low water.

Q. Which they have erected themselves?

A. Yes, sir.

Q. Where is the limit of that grant shown on this?

A. It is not on there; we were not asked to show it.

Q. Is the limit of the grant below low water line?

A. Yes, sir.

Q. How far out?

A. A substantial distance, several hundred feet.

Q. I notice from this sketch they have a rail line there.

A. Yes, sir.

Q. Is that where they receive their supplies of coal?

A. Yes, sir.

Q. For the plant?

A. Yes, sir.

Q. Exhibit 61 contains a description and diagram of the structure on Grant J. Do you know where that improvement is measured?

A. It is in Pennsville or Lower Penns Neck Township.

[287] Q. The low water line is shown on this?

A. Yes, sir.

Q. The bulkhead is at the bottom of the diagram, is it not?

A. Yes, sir.

Q. So that the wings of the Y are towards the shore?

A. Towards the river, towards the center of the river.



*Henry J. Sherman—for Plaintiff—recalled, Direct.*

Q. Then, the bulkhead line is near the shore?

A. Yes.

Q. And this extends below low water line and branches out?

A. Yes, sir.

Q. Now, what is this?

A. It is a jetty to protect the shore line.

Q. Is that a permanent structure?

A. Yes, sir.

Q. What relation does that bear to the upland?

A. It protects the upland from erosion.

Q. Is it necessary for that purpose?

A. Yes, sir.

Q. Is there any industry on the upland there?

A. No, it is an amusement park.

[288] Q. So this is in connection with the amusement park?

A. Yes, sir.

Q. At Pennsville?

A. Pennsville.

Q. Known as Riverview Beach Park?

A. Yes, sir.

Q. That is used in connection with the docking of the steamship line?

A. Yes, sir.

Q. Is the waterfront along the river there used in connection with the park?

A. Yes, sir.

Q. For what purpose?

A. Merely for bathing purposes and boating.

Q. And that jetty was built to protect that beach?

A. Yes, sir.

Q. Now, Exhibit 65, that is a description and diagram?

A. Yes, sir.

Q. Do you know where that is measured?

DE15086

Q. (Mr. Southerland.) I don't suppose they have any recollection how far that old pier went in the river?

A. I did not inquire about that.

Q. And you did not look for any of the posts?

A. No.

Q. (Mr. Minard.) Now, Exhibit 42 is an Act of the Legislature of New Jersey, March 22, 1871, authorizing Barber to build a wharf—did you make an investigation of that?

A. Yes, sir.

Q. What did you find?

A. I found there an old wharf located at the foot of [312] West Harmony street, Penns Grove, originally used for a freight line, but now in a very dilapidated condition.

Q. Do you know who it was built by?

A. Henry Barber.

Q. Is he the grantee in the act?

A. He is.

Q. Do you know how far that pier was built below the low water line?

A. About 400 feet.

Q. Below low water mark?

A. Yes, sir.

Q. Do you know when that was built?

A. No, I do not.

Q. Is that included in any grant from the Board?

A. No, sir.

Mr. Minard: I now offer this paper in evidence.

[311] A. No, I have not.

Q. (Mr. Minard.) Exhibit 44 was an Act of March 17, 1871, authorizing Guest to construct a wharf at Penns Grove. Did you make an investigation of that?

A. Yes, sir.

Q. What did you find?

A. I found there only the remains of an old structure the outlines of which I could trace on low water.

Q. And you have shown that on this proposed Exhibit 39?

A. Yes, sir.

Q. Now, where is low water line on that one?

Q. Low water is outside of that pier.

Q. What do you mean that you could trace it to low water?

A. I walked around there, and I could see the stumps of the old pier.

Q. So far as you know, it did not extend beyond low water?

A. No, sir.

Q. Do you know when it was built?

A. No.

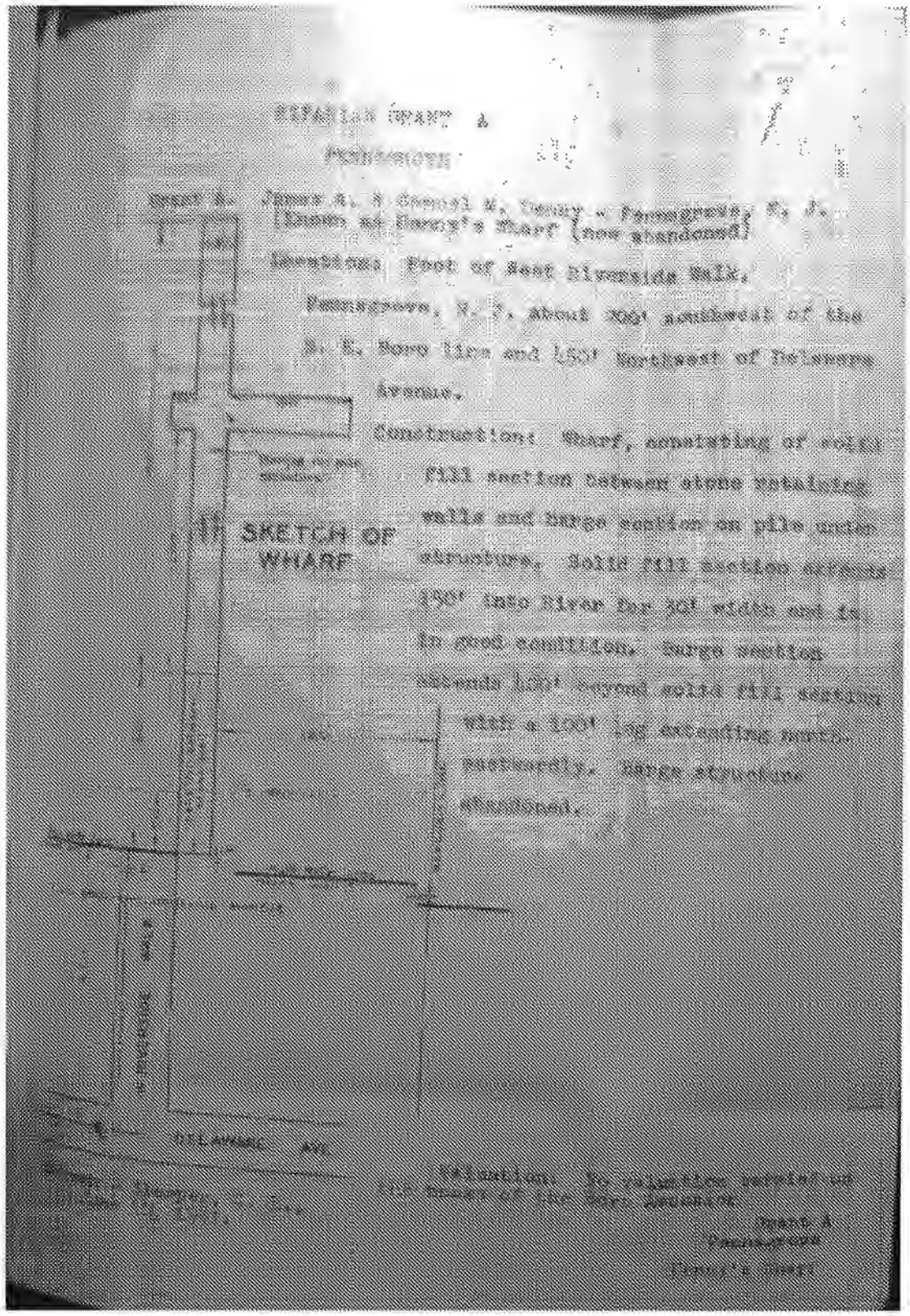
Q. Or by whom?

A. No, but the lines of it are shown.

[313] Mr. Minard: I offer that in evidence as Plaintiff's Exhibit 134.

(Paper referred to was then filed marked Plaintiff's Exhibit No. 134.)

Q. Now, did you make an investigation of the Walker Act, Exhibit 38, March 21, 1870?




Wharf A.
Known as Conrail #, Penny - Pennsgrove, N. J.
[Known as Penny's Wharf (now abandoned)

Location: Foot of West Riverside Walk.
Pennsgrove, N. J. about 700' southwest of the
N. E. Bound line and 1500' Northwest of Delaware
Avenue.

Construction: Wharf, consisting of solid
fill section between stone retaining
walls and barge section on pile supp.
structure. Solid fill section extends
150' into River for 70' width and is
in good condition. Barge section
extends 120' beyond solid fill section
with a 100' leg extending north-
westerly. Barge structure
abandoned.

Evaluation: No evaluation carried out
[illegible] the barge structure.

Wharf A
Pennsgrove
Penny's Wharf

## RIPARIAN GRANTS B & C

## PENNSGROVE

Grant B - Pennsgrove Pier Co.

Grant C - French's Hotel Co.

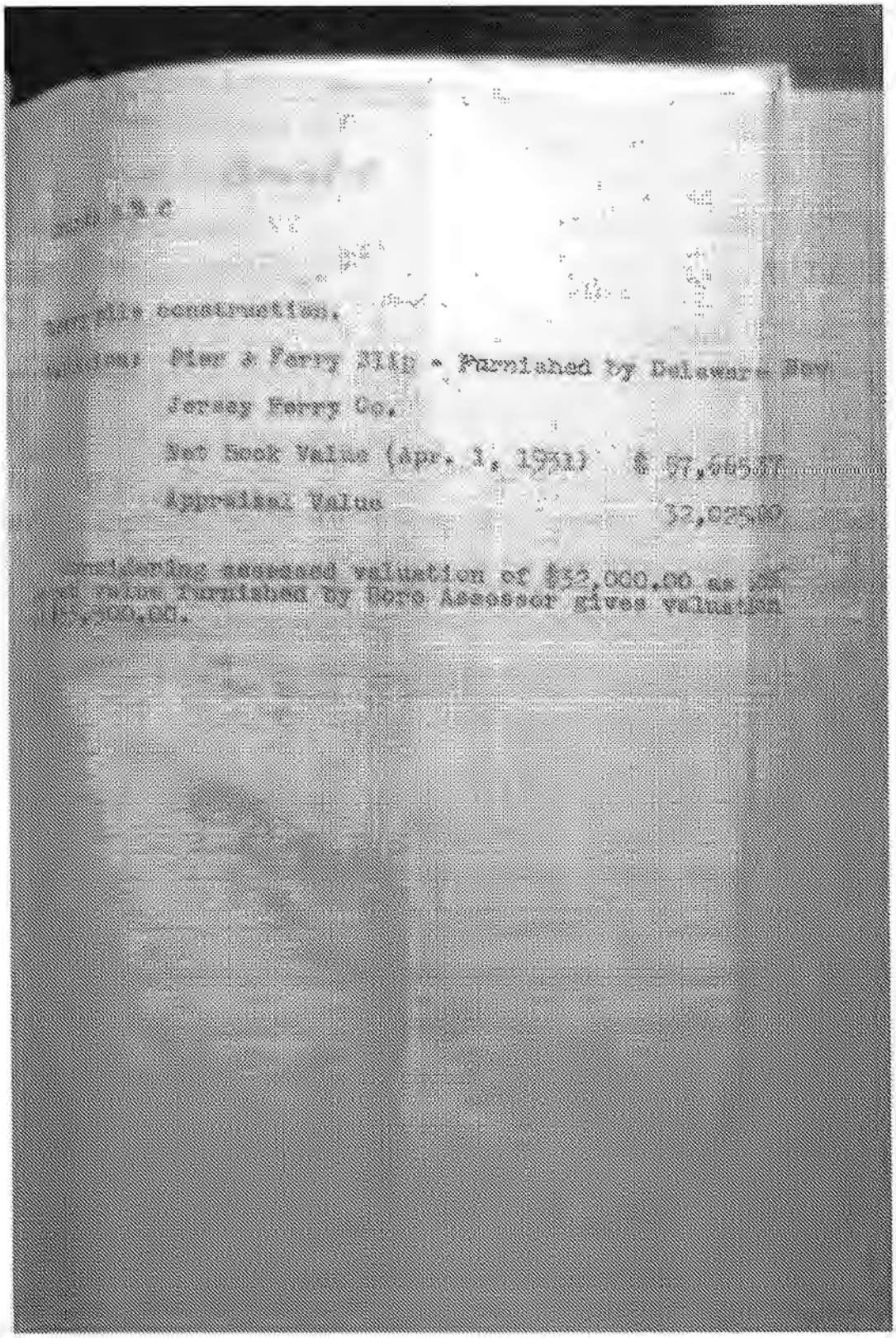
Now owned and operated by Wilson Line.

Location: Foot of Main St., Pennsgrove, N. J.

Description: Construction consists of a main wharf on the extension of Main St. with landing facilities for Wilson Line boats with a spur to the southwest for the Pennsgrove-Wilmington ferries. The main wharf consists of solid fill 35' wide between masonry walls extending to low water line; then a [illegible]' wide section composed of 3 successive sets of steel trusses each 59' long supported by 4 concrete piers on a pile and timber footing; then a timber deck structure on piling 13' wide by 106' long; then solid fill 50' wide by [illegible]' long and one 130' wide by 190' long, all retained by flat arch steel sheet piling. The head of the wharf has its corners cut off at 45° angle with concrete transfer bridge or gangway openings, with a bridge installed in the southwesterly opening, the remaining part being under construction.

A one story frame waiting room 29' x 51' is located at the southeasterly corner of the inshore end of solid fill, and one story frame storage building 30' x 60' is located at the southeasterly portion of the outshore end of solid fill section at the head of the wharf.

The Ferry wharf extends at about 45° to the southeast from the third or timber deck piling section of the main wharf. The spur is a timber section piling [illegible]' wide by 90' long widening to [illegible]' by 52' long to the bridge transfer structure. The bridge consists of two 75' steel trusses spaced for 14' roadway with a 5' walkway on either side. On both sides of the bridge there are separate 6' wide platforms giving access to the steel gallows frame and operators booth for the bridge elevating equipment. The gallows frame consists of two plate girders, supporting motors, counterweights, etc. which are in turn supported by 4 latticed channel columns on each end, resting on [illegible] structure [illegible] racks of vertical fender planking backed by [illegible]



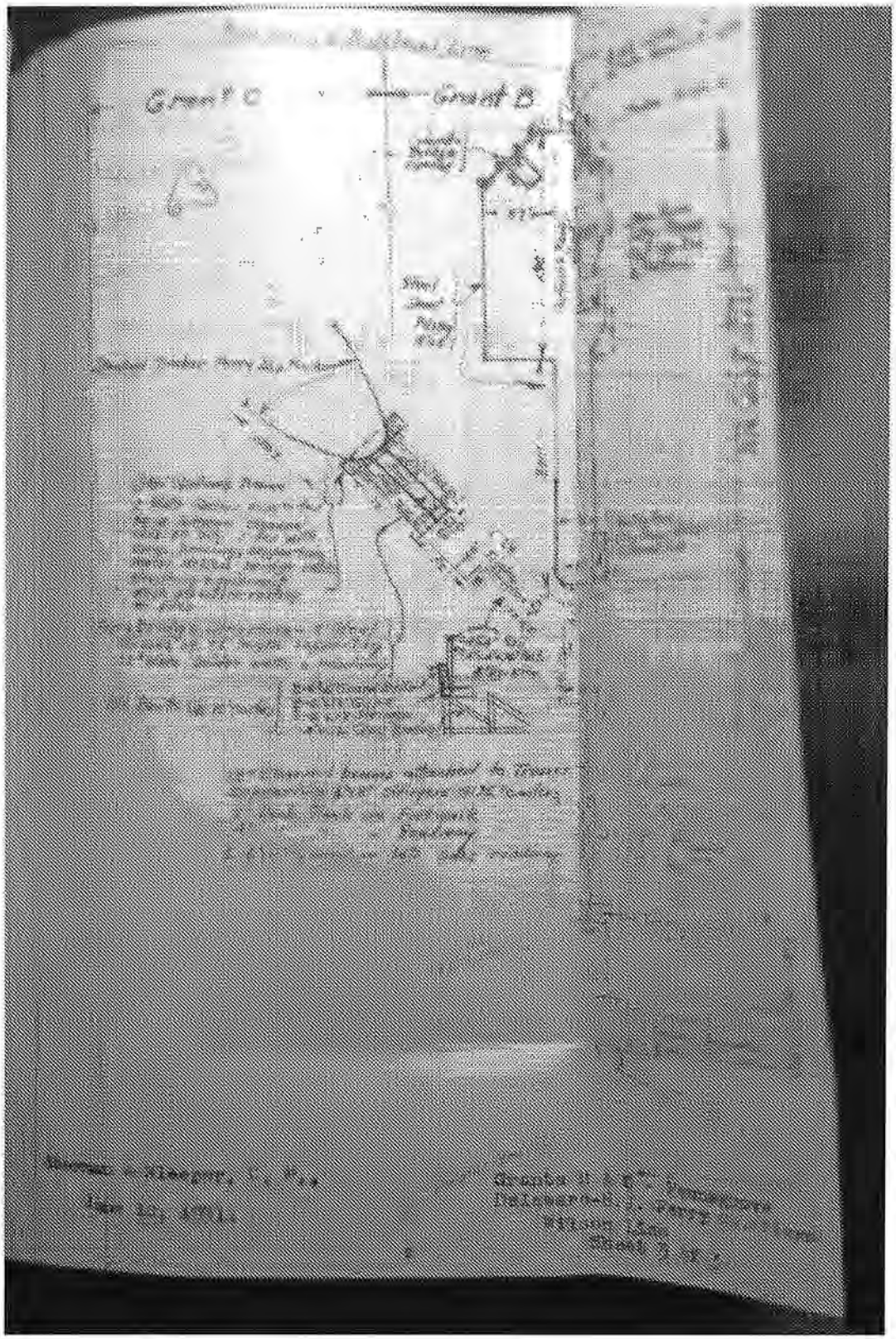
construction.

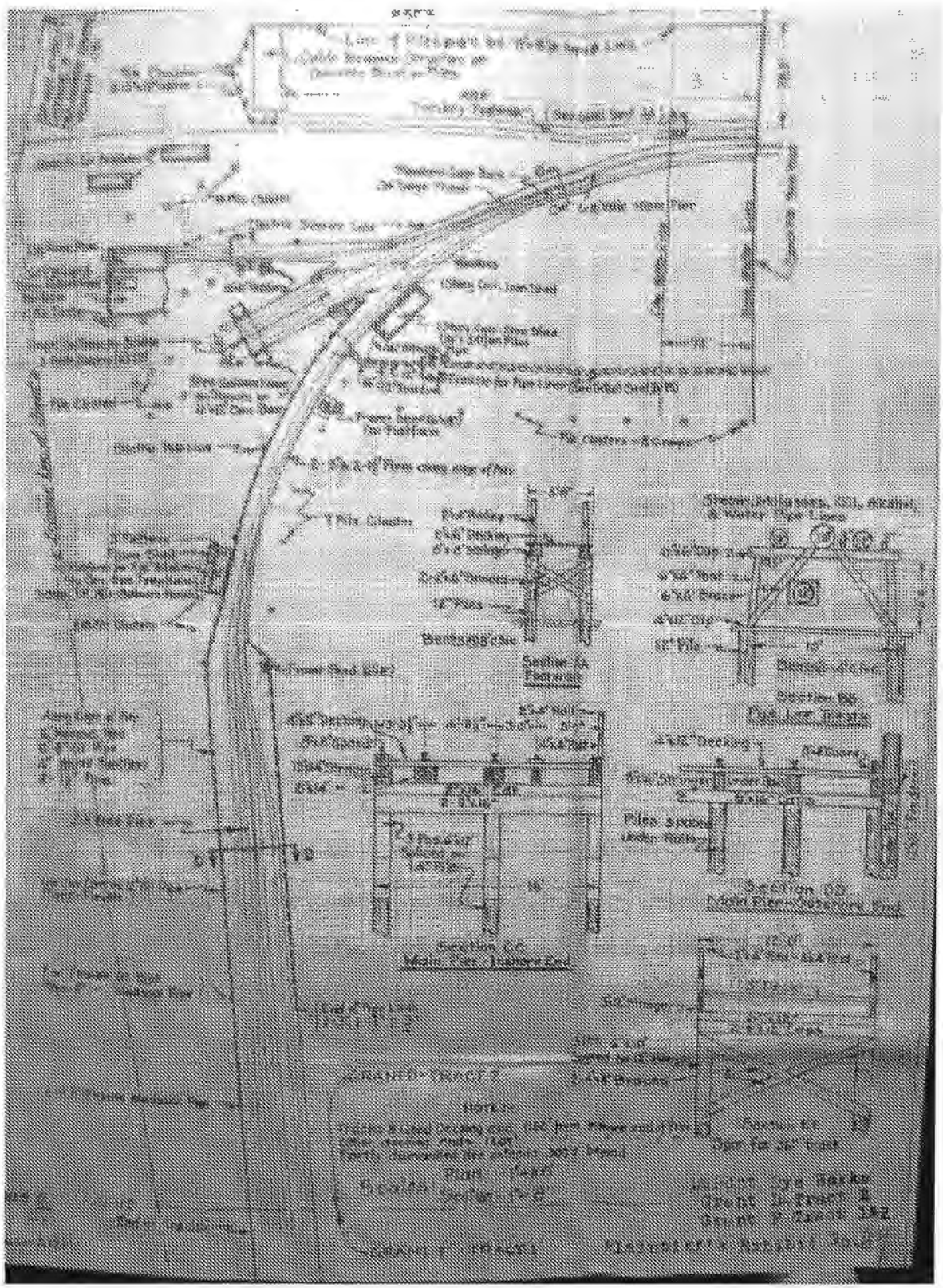
Pier & Ferry Slip - Furnished by Delaware - New Jersey Ferry Co.

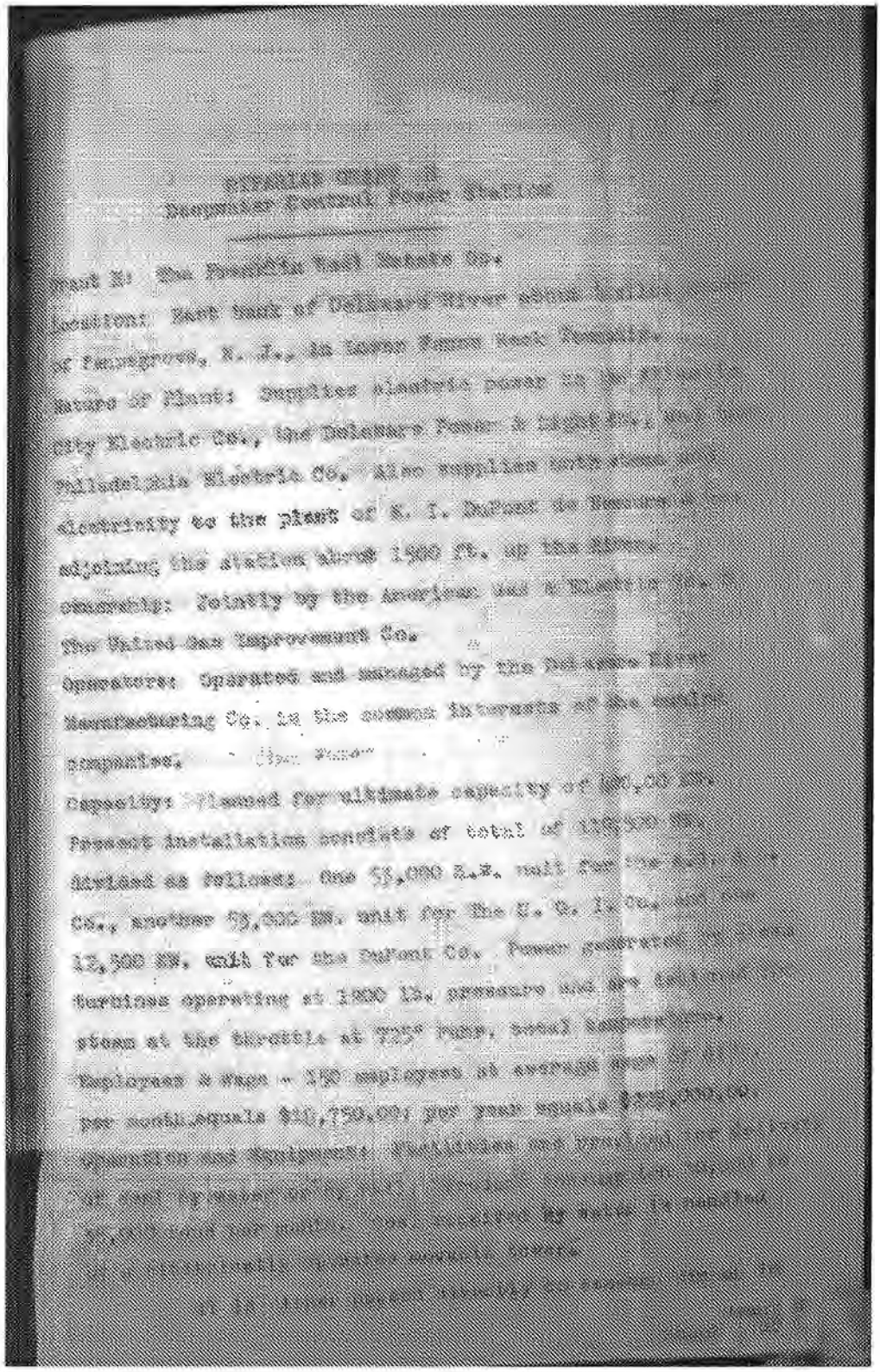
Net Book Value (Apr. 1, 1951) $ 57,685.37

Appraised Value 32,825.00

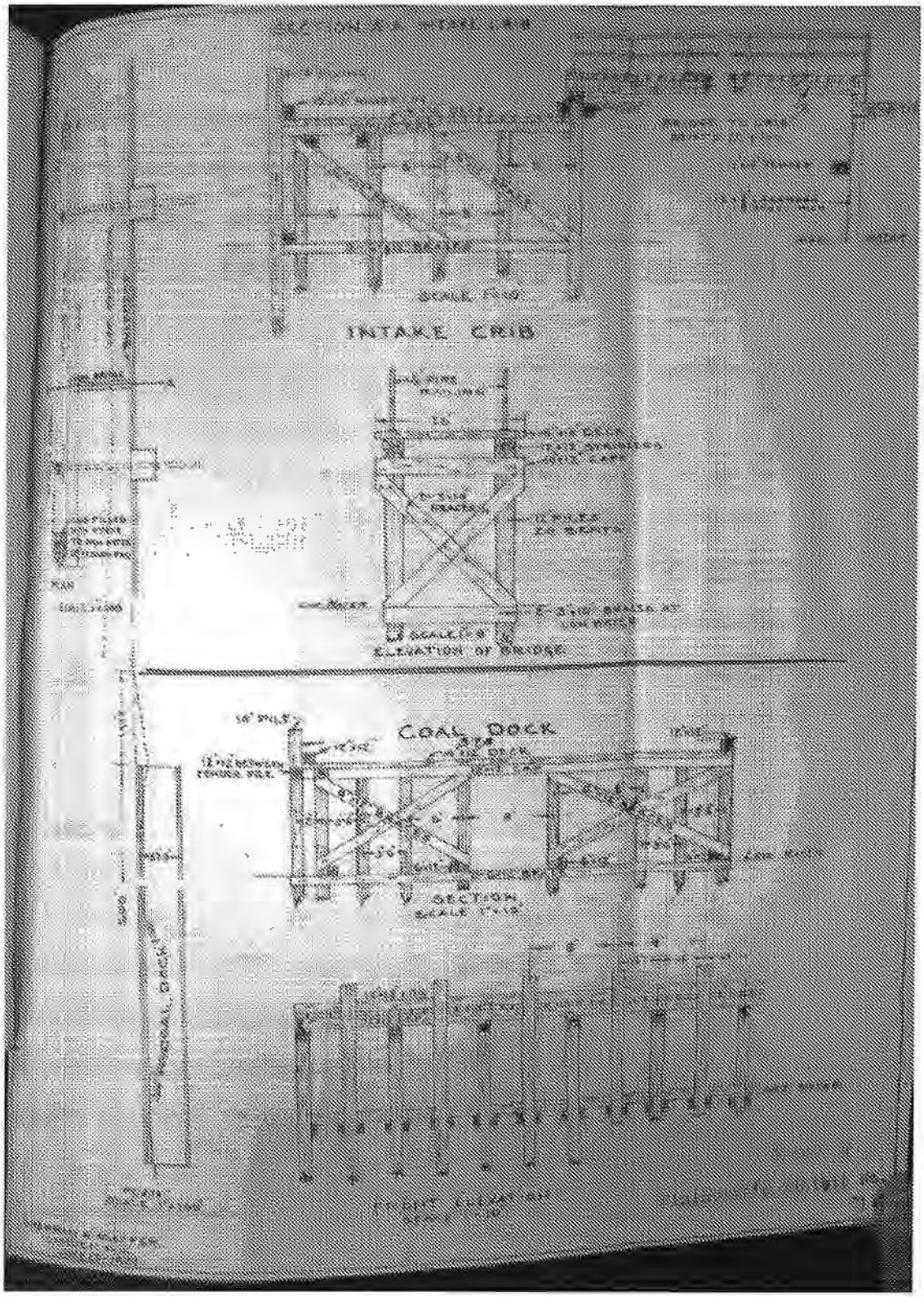
Considering assessed valuation of $32,000.00 as 100% value furnished by Cape Assessor gives valuation $ 3,200.00.







[redacted]


INTAKE CRIB
COAL DOCK

Owner's: William P. Bonsa

Owner's: Delaware-New Jersey Ferry Co.

Location: Foot of Main St., Pennsville, Lower Penns Neck Twp.

Description: There are two pier and ferry-slip structures for the Pennsville-New Castle Ferry Route. The more northerly structure, on the extended line of Main St., is not used during ordinary traffic which is carried by the more recent southerly structure. The two lines originally ran in opposition to each other. Both are now the property of the Wilson Line.

The inner portion of the northerly wharf consists of a solid fill roadway 25' x 250' between upper bulkheading, with an 8' wide timber sidewalk structure on piling on the northerly side; adjoining is the bridge pier structure 70' wide by 102' long. Next is the ferry bridge composed of two steel thru Warren type trusses 75' long and 9' deep, built up of latticed channels and angle sections, 14' c.to c. of trusses with roadway section between and 9' sidewalk overhanging on each side. There is 6' open space between the sidewalk and 14' wide timber & pile platforms on the outside of the structures giving access to the gallows frame & bridge elevating equipment. Extending beyond the bridge is the slip construction of customary reaks, vertical fender planking, backed by piles and having the structure at end. A section timber bulkhead has been constructed about 5' south of the south side of the solid fill section.

Sheet 1 of 2

CHARGE 2 & 3

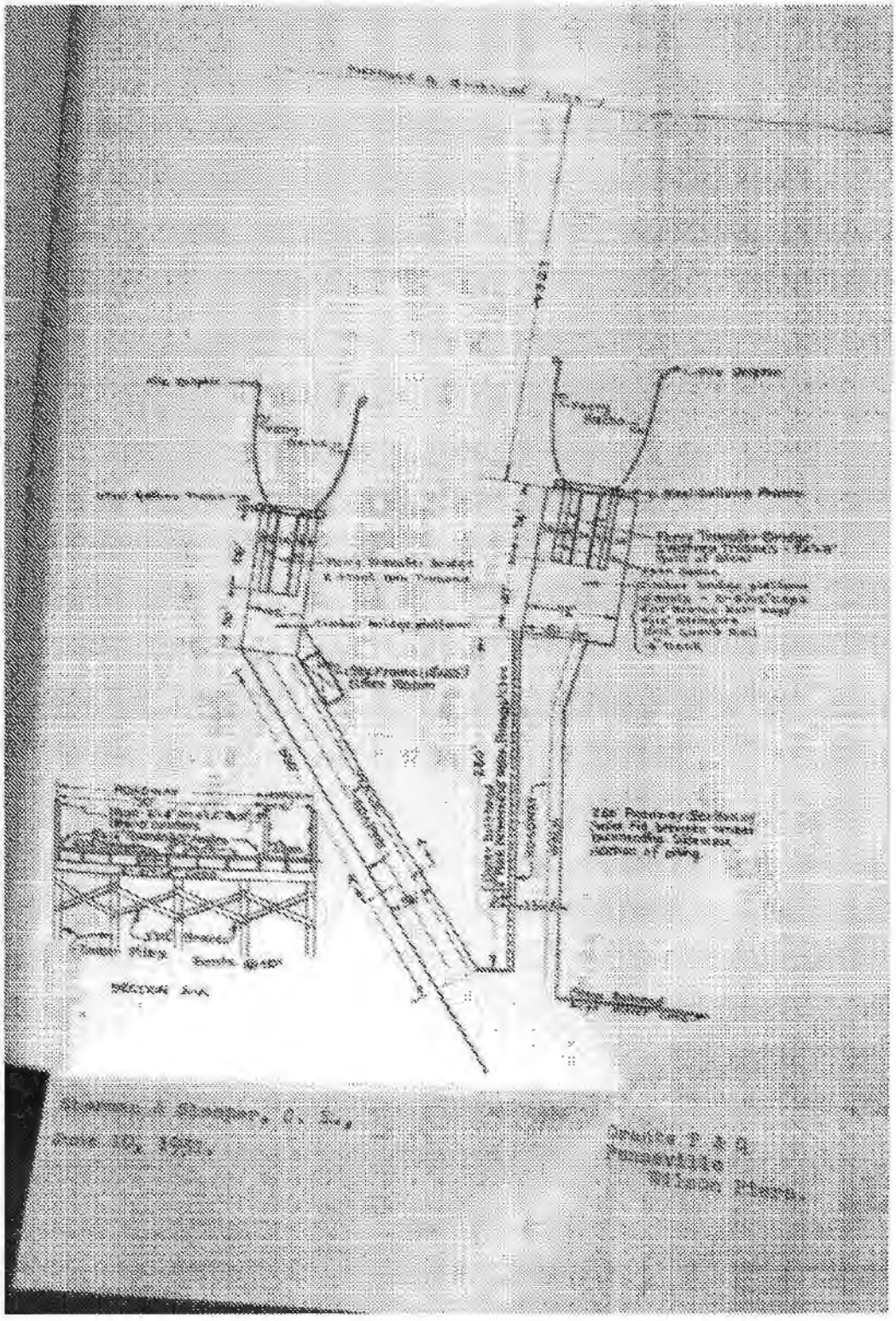
The southerly pier extends from the [illegible] riverbank wall on the westerly side of Main St., at angle of about 30 degrees to the adjoining northerly wall. The trunk section is typical timber & pile deck structure about 30' wide by [illegible]' long, with a two land roadway 20' wide and a 5' walk on the north side. Adjoining thereto is a one story frame steam room and refreshment and supported a piling. Adjoining this is a section 50' long of heavy timber construction leading to the transfer bridge 65.5' long and having a 30' overall width. This bridge consists of two steel low trusses on either side of a 14' roadway with 5' walks outside. The low trusses have a height of 5' and are built up from 5" x 10" channel sections for the chords and web members. An 8' wide platform outside of both sidewalks gives access to the gallows frame elevating equipment. Beyond the transfer bridge is a heavy 4 bank rack ferry slip with pile dolphins bound by cable both at the rack entrances and along the outside. See sketch attached for further details.

Valuation: 2 Pier Structures - Furnished by Delaware-New Jersey Ferry Co. Net value - $ 132,692.51

Appraisal Value - $ 85,300.00

Assessing assessment valuation at $[illegible], as fixed by Assessor, to be [illegible] the [illegible] values makes a valuation of $[illegible]. See sketch attached.

Sheet 2 of 2.



Grant Y

Kelly's Point

Grant Y - Penn Beach Property Owners Assoc., Inc.

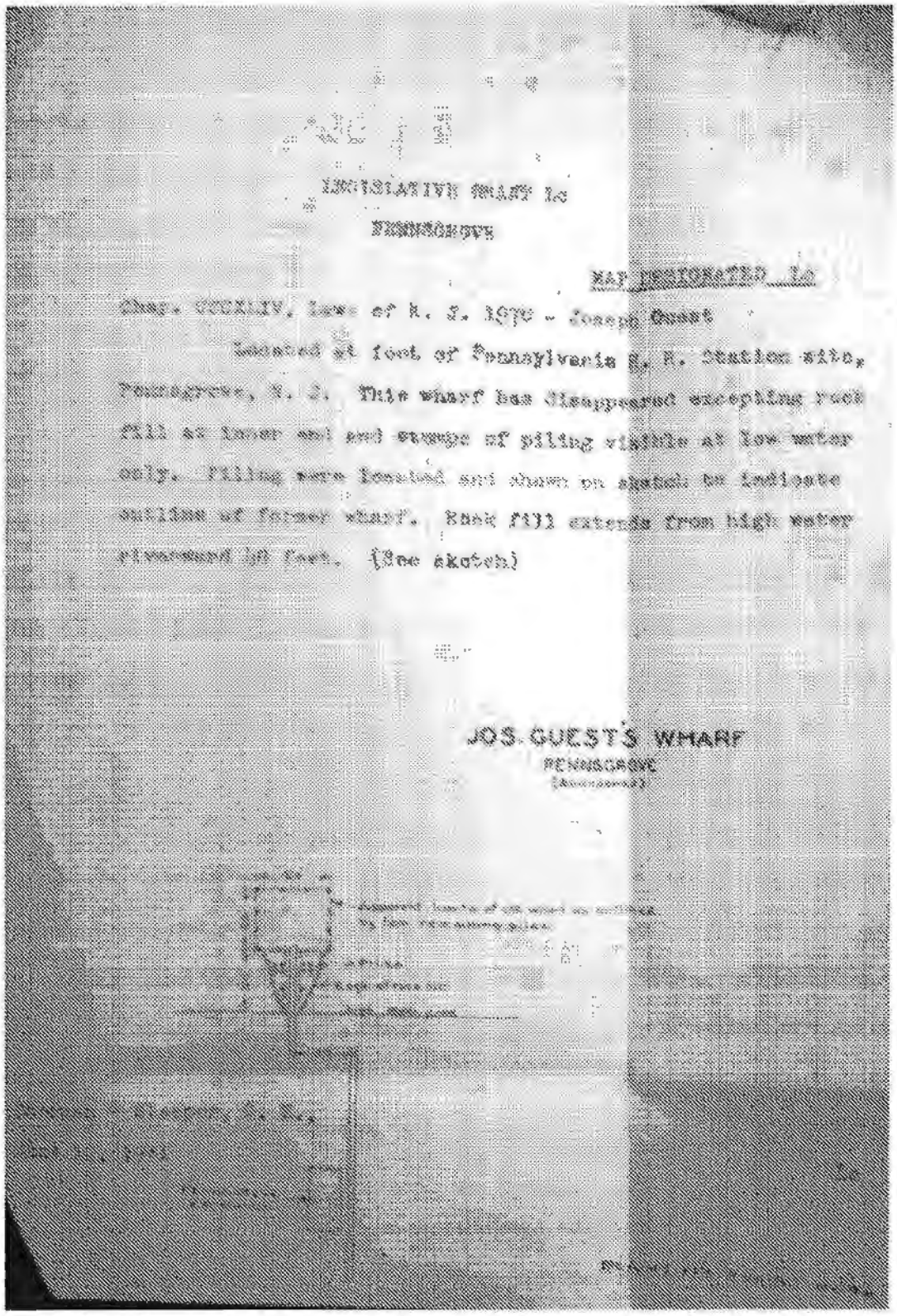
Location: Twp. Lower Penns Neck, at Kelly's Point, Penn Beach, about one mile below Pennsville.

Description: Timber Pier attached to Club House, width of 6 Ft; extending 30' from porch of building to N.W.L. and 150' to head of T.18' x 6' with about 50' of structure between H. W. L. & L. W. L.

Valuation: Approximate Value - $300.

SKETCH SHOWING
PIER CONSTRUCTION

Grant Y
Kelly's Point
Penn Beach
Property Owners
Assoc. Pier



MAP PREPARED TO
Chap. CCCXLIV, Laws of N. J. 1870 - Joseph Guest

Located at foot of Pennsylvania R. R. Station site, Pennsgrove, N. J. This wharf has disappeared excepting rock fill at inner end and evenge of piling visible at low water only. Piling were located and shown on sketch to indicate outline of former wharf. Rock fill extends from high water riverward 50 feet. (See sketch)

JOS. GUEST'S WHARF
PENNSGROVE

**No. 134, Original**

IN THE
Supreme Court of the United States

STATE OF NEW JERSEY,
*Plaintiff*,

v.

STATE OF DELAWARE,
*Defendant*.

# DELAWARE'S APPENDIX ON CROSS-MOTIONS FOR SUMMARY JUDGMENT

**VOLUME 4 (Pages 2281 – 3172)**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December 22, 2006

**TABLE OF CONTENTS**
**VOLUME 4**

**PAGE**

**Coastal Management Plan Documents**

New Jersey Department of Environmental Protection ("NJDEP"), New Jersey Coastal Management Program - Bay and Ocean Shore Segment and Draft Environmental Impact Statement (May 1978) (excerpts) ..... 2281

NJDEP, New Jersey Coastal Management Program - Bay and Ocean Shore Segment and Final Environmental Impact Statement (Aug. 1978) (excerpts) ..... 2307

Delaware Office of Management, Budget & Planning, Discussion Draft of the Delaware Coastal Management Program (Sept. 1978) (excerpts) ..... 2331

NJDEP, Options for New Jersey's Developed Coast (Mar. 1979) ..... 2383

National Oceanic & Atmospheric Administration, U.S. Department of Commerce ("NOAA"), Delaware Coastal Management Program and Final Environmental Impact Statement (Mar. 1980) ..... 2519

NJDEP, Proposed New Jersey Coastal Management Program and Draft Environmental Impact Statement (May 1980) (excerpts) ..... 2607

NOAA, New Jersey Coastal Management Program and Final Environmental Impact Statement (Aug. 1980) ..... 2627

Letter from John King, NOAA, to Heather Gibbons, Connolly Bove Lodge & Hutz LLP (Nov. 29, 2006) ..... 3171

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# STATE OF NEW JERSEY
# COASTAL MANAGEMENT PROGRAM
# BAY AND OCEAN SHORE SEGMENT

MAY 1978

**DRAFT ENVIRONMENTAL IMPACT STATEMENT**

**US DEPARTMENT OF COMMERCE**
**National Oceanic and Atmospheric Administration**
**Office of Coastal Zone Management**

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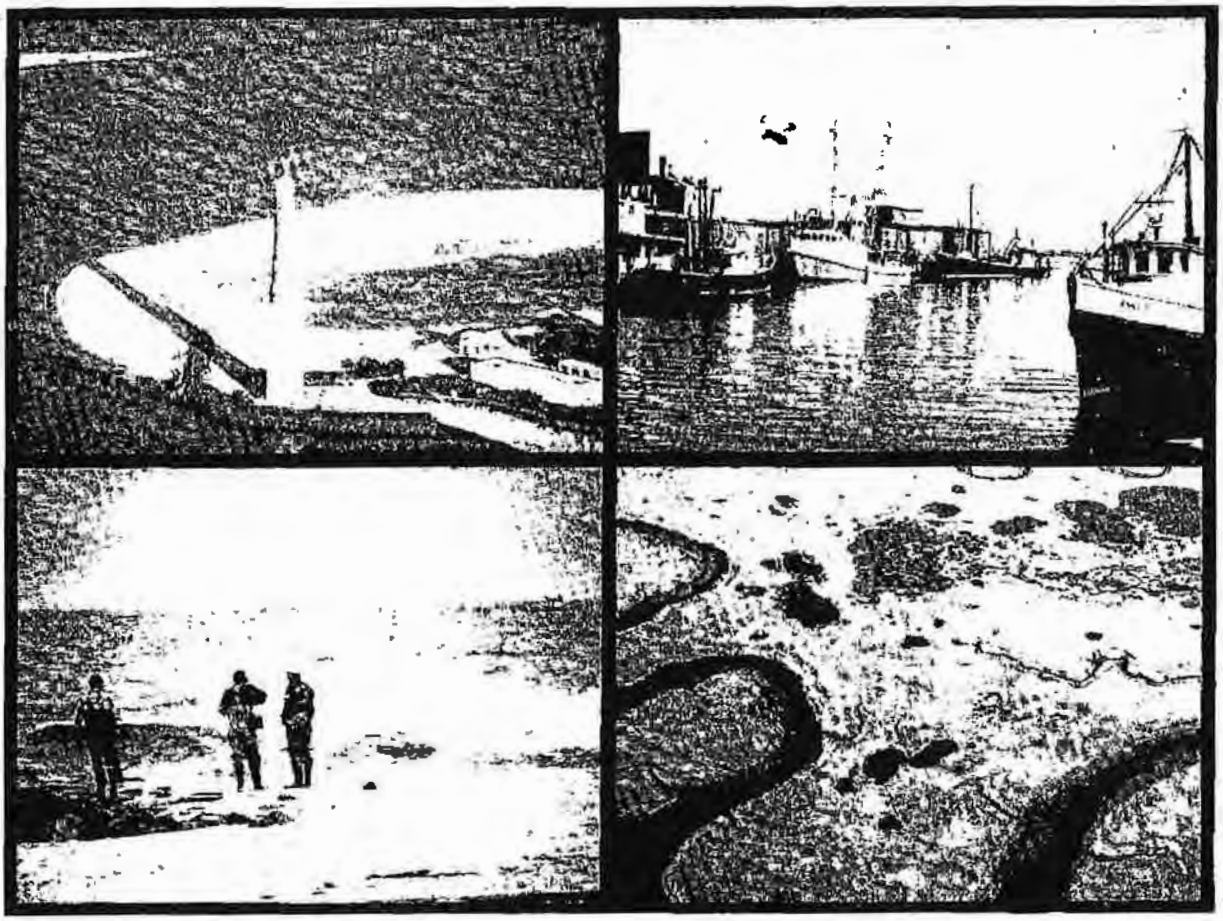

DE23817

The New Jersey Coastal Management Program - Bay and Ocean Shore Segment was prepared in part with financial assistance from the National Oceanic and Atmospheric Administration, Office of Coastal Zone Management, under the provisions of Section 305 of the federal Coastal Zone Management Act (P.L. 92-583, as amended).

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# NEW JERSEY COASTAL MANAGEMENT PROGRAM

# BAY AND OCEAN SHORE SEGMENT

# AND

# DRAFT ENVIRONMENTAL IMPACT STATEMENT

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May 1978

U.S. DEPARTMENT OF COMMERCE NOAA
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2234 SOUTH HOBSON AVENUE
CHARLESTON, SC 29405-2413

COASTAL ZONE
INFORMATION CENTER

Prepared by:

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Division of Marine Services
Office of Coastal Zone Management
P. O. Box 1889
Trenton, New Jersey 08625

U.S. Department of Commerce
National Oceanic and Atmospheric Administration
Office of Coastal Zone Management
3300 Whitehaven Street, N.W.
Washington, D.C. 20235

D.S. N.O.A.A. / O.C.Z.M.
HT393.N5 N495 1978 c.2

STATE OF NEW JERSEY
DEPARTMENT OF ENVIRONMENTAL PROTECTION
ROCCO D. RICCI, COMMISSIONER
P. O. BOX 1390
TRENTON, N.J. 08625
609-292-2885

APR 19 1978

Mr. Robert Knecht
Assistant Administrator for Coastal Zone Management
U. S. Department of Commerce
National Oceanic and Atmospheric Administration
3300 Whitehaven Street, N. W.
Washington, D. C. 20235

COASTAL ZONE
INFORMATION CENTER

Dear Mr. Knecht:

The State of New Jersey takes pride in submitting to you the New Jersey Coastal Management Program - Bay and Ocean Shore Segment, to begin the federal review process under Section 306 of the federal Coastal Zone Management Act.

The Department of Environmental Protection, as New Jersey's lead coastal management agency, will undertake a series of public hearings and informal workshops throughout the state to discuss the proposed Coastal Management Program - Bay and Ocean Shore Segment with a wide range of federal, state, and local agencies, interest groups, and citizens to help identify, over the next three months, the revisions that may be appropriate before the Governor's formal review and request that you approve the program.

New Jersey's coast is a fragile and coveted resource facing conflicting opportunities and pressures. This Coastal Management Program provides the framework for sound decision-making to conserve this resource and achieve a balanced use of the Bay and Ocean Shore region of New Jersey's coast.

Very truly yours,

Rocco D. Ricci, P. E.
Commissioner

100% RECYCLED

NOTE TO READER/NEPA SUMMARY

The National Environmental Policy Act of 1969 (NEPA) mandates that an environmental impact statement be prepared as part of the review and approval process of major actions by Federal agencies. The action contemplated is approval of the New Jersey Coastal Management Program - Bay and Ocean Shore Segment under Section 306(h) of the Federal Coastal Zone Management Act of 1972, as amended (CZMA). An immediate effect of approval is the qualification of the State for Federal matching funds for use in administering the Coastal Program for the Segment. In addition, the Coastal Zone Management Act stipulates that Federal activities affecting the coastal zone shall be, to the maximum extent practicable, consistent with an approved State management program.

This document is organized as follows:

Part I - Introduction - prepared by the Federal Office of Coastal Zone Management (OCZM) with the assistance of the State of New Jersey.

Part II - New Jersey Coastal Management Program - Bay and Ocean Shore Segment - prepared by the state and relied upon by the Federal OCZM as a description of the proposed action.

Part III-VIII - Environment Impacts - prepared by Federal OCZM with the assistance of the State of New Jersey.

For purposes of reviewing this proposed action, the key concerns are:

- whether the Bay and Ocean Shore Segment is consistent with the objectives and policies of the national legislation,

- whether the State management authorities are adequate to implement the segment,

- whether the award of Federal funds under Section 306 of the Federal Act will help New Jersey to meet those objectives, and

- whether there will be a net environmental gain as a result of Program approval and implementation.

The Federal Office of Coastal Zone Management believes the answers to these key questions are affirmative. The Office wants the widest possible circulation of this document to all interested agencies and parties in order to receive the fullest expression of opinion on these questions.

This Program is of major significance, not only to New Jersey, but to the Nation. It is one of the first Programs submitted from an eastern coastal state. Further, the New Jersey coast represents a concentration of natural, historic, and economic attributes that is of national importance. The Federal Office of Coastal Zone Management thanks those participating in the review of the New Jersey Coastal Management Program - Bay and Ocean Shore Segment and this environmental impact statement.

Federal approval of the Coastal Program will permit NOAA-OCZM to award New Jersey annual program administration grants to implement the program, grants for continued funding under the Coastal Energy Impact Program (CEIP), and grants to plan and manage for shorefront access and shoreline erosion. In addition, federal actions in this segment of New Jersey's coastal zone will be required to be consistent with the Coastal Program, to the maximum extent practicable.

The award of federal funds will allow New Jersey to:

a) continue to develop and implement the Program's Location Policies, also referred to as the Coastal Location Acceptability Method (CLAM).

b) undertake three mapping programs which will chart the natural, social and economic features of the coastal zone.

c) prepare a Coastal Handbook.

d) increase coordination on coastal decision making between state and local governments.

e) continue educational and information programs and projects to increase coastal awareness.

f) develop specific energy facility siting criteria and policies jointly with the Department of Energy.

g) coordinate with Atlantic City and County officials in the redevelopment of Atlantic City.

h) support and promote access to beaches and other waterfront areas and continue the Beach Shuttle service to Island Beach State Park.

i) improve coastal management enforcement and monitoring programs.

j) fully consider the national interests in the use of the coastal zone.

NEPA Summary

(X) Draft Environmental Impact Statement ( ) Final Environmental Impact Statement

Department of Commerce, National Oceanic and Atmospheric Administration, Office of Coastal Zone Management. For additional information about this proposed action or this statement, please contact:

Office of Coastal Zone Management
National Oceanic and Atmospheric Administration
Attn: Ms. Kathryn Cousins
Regional Manager, North Atlantic Region or
Richard S. O'Connor
Assistant Manager, North Atlantic Region
3300 Whitehaven Street, N.W.
Washington, D.C. 20235
Phone: 202/634/4235

1. Type of Action

Proposed Federal approval of New Jersey Coastal Management Program - Bay and Ocean Shore Segment.

(X) Administrative ( ) Legislative

2. Brief Description of Action

It is proposed that the Secretary of Commerce approve the Coastal Zone Management Program (Bay and Ocean Shore Segment) of the State of New Jersy pursuant to P.L. 92-583. Approval would permit implementation of the proposed segmented program, allowing program administration grants to be awarded to the State, and require that Federal actions be consistent with the Program, to the maximum extent practicable.

3. Summary of Environmental Impacts and Adverse Environmental Effects

Approval and implementation of the Program will allow the State to more effectively implement existing State management within the Bay and Ocean Shore region. The State will condition, restrict, or prohibit selected land and water uses in some parts of the New Jersey coast, while encouraging development in other parts. Each coastal municipality will retain primary responsibility for managing land use along its coast. The impacts of the New Jersey Coastal Management Program - Bay and Ocean Shore SEgment will be generally beneficial, although there may be some adverse, short-term economic impacts on some coastal users, and the Program will entail the irreversible commitment of coastal resources.

4. Alternatives Considered

A. Federal Alternatives

The Assistant Administrator could delay or deny approval of the New Jersey Coastal Management Program - Bay and Ocean Shore Segment under the following conditions if:

1. The Program does not have the authorities necessary to implement the Program at the time of Section 306 segment approval.

2. The Program does not adequately achieve the goals of the Coastal Zone Management Act as expressed by Congress in Section 302 of the Act.

3. The national interest in the siting of facilities in the coastal zone were not adequately considered.

4. The Bay and Ocean Shore Segment could not be unified with the entire state coastal management program.

B. State Alternatives

1. The State could withdraw its application and not seek Federal assistance.

2. The State could wait until the entire State Program is submitted.

3. The State could wait until new legislation is adopted that recodifies the Wetlands Act, CAFRA and Riparian Laws.

4. The State could reduce the coastal boundary under CAFRA jurisdiction.

5. The State could wait until more precise policies using the Coastal Location Acceptability Method (CLAM) have been completed or mapped.

6. The State could seek legislation delegating coastal zone management authority to localities.

5. A list of all Federal, State and Local Agencies and other parties from which comments have been requested is in the Appendix.

6. This DEIS was submitted to EPA on April 28, 1978, and a notice of availability was published in the Federal Register on May 5, 1978. Public comments on the DEIS should be submitted to the Federal Office of Coastal Zone Management by June 19, 1978.



DE23824

TABLE OF CONTENTS


| | Page |
|---|---|
| Commissioner's Letter | |
| Note to Reader/NEPA Summary | i |
| Table of Contents | v |
| PART I: INTRODUCTION | 1 |
| PART II: DESCRIPTION OF THE PROPOSED ACTION: NEW JERSEY COASTAL MANAGEMENT PROGRAM-BAY AND OCEAN SHORE SEGMENT | 5 |
| Chapter One: COASTAL MANAGEMENT IN NEW JERSEY | 6 |
| Purpose | 6 |
| Major Issues and Opportunities | 7 |
| Coastal Management Efforts in New Jersey | 8 |
| New Jersey Approach to the Federal Coastal Zone Management Program | 9 |
| Basic Coastal Policies | 11 |
| Chapter Two: BOUNDARY -DEFINING THE COASTAL ZONE | 13 |
| Introduction | 13 |
| Inland Boundary - Bay and Ocean Shore Segment | 13 |
| Seaward and Interstate Boundaries-Bay and Ocean Shore Segment | 16 |
| Chapter Three: COASTAL RESOURCE AND DEVELOPMENT POLICIES | 19 |
| 1.0 Purpose | 19 |
| 2.0 Authority | 20 |
| 3.0 Jurisdiction | 20 |
| 4.0 Definitions | 20 |
| 5.0 Coastal Management Decision-Making Process | 21 |
| 6.0 Location Policies | 24 |
| 6.1 Introduction | 24 |
| 6.2 Special Water Areas | 31 |
| 6.2.1 Shellfish Beds | 31 |
| 6.2.2 Surf Clam Areas | 32 |
| 6.2.3. Prime Fishing Areas | 33 |

6.2.4 Finfish Migration Pathways 34

6.2.5 Submerged Vegetation 35

6.2.6 Navigation Channels 36

6.2.7 Shipwrecks and Artifical Reefs 37

6.2.8 Marine Sanctuaries 37

6.3 Water Areas 39

6.3.1 General Definition 39

6.3.2 General Policy 39

6.3.3 Rationale 39

6.3.4 General Information Requirements 40

6.3.5 Definition of Water Body Types 40

6.3.6 Definition of Water Uses 41

6.3.7 Water Acceptability 44

6.3.8 Water Acceptability Conditions 46

6.3.9 Illustrative Example 50

6.4 Special Water's Edge and Land Areas 50

6.4.1 High Risk Erosion Areas 50

6.4.2 Dunes 54

6.4.3 Central Barrier Island Corridor 55

6.4.4 Flood Hazard Areas 57

6.4.5 Historic Resources 60

6.4.6 Specimen Trees 60

6.4.7 Prime Forest Areas 61

6.4.8 Prime Wildlife Habitat 62

6.4.9 Public Open Space 63

6.4.10 Steep Slopes 64

6.4.11 Prime Agricultural Areas 65

6.4.12 Bogs 66

6.4.13 Stream Heads 66





DE23826

6.5 Water's Edge Areas 68

6.5.1 Lower Water's Edge 68

6.5.2 Upper Water's Edge 72

6.5.3 Retained Water's Edge 76

6.5.4 Filled Water's Edge 79

6.6 Land Areas 81

6.6.1 General Definition of Land Areas 81

6.6.2 General Policy 81

6.6.3 Depth to Seasonal High Water Table Factor 82

6.6.4 Soil Permeability Factor 85

6.6.5 Soil Fertility Factor 86

6.6.6 Vegetation Index Factor 87

6.6.7 Development Potential Factor 89

6.6.7.1 Definition 89

6.6.7.2 Residential Development Criteria 89

6.6.7.3 Commercial and Industrial Development Criteria 91

6.6.7.4 Campground Development Criteria 93

6.6.7.5 Energy Facility Criteria 94

6.6.7.6 Rationale 94

6.6.7.7 Information Requirements 95

6.6.7.8 Illustrative Example 95

6.6.8 Regional Growth Potential Factor 96

6.6.9 Land Factor Composite Map 99

6.6.9.1 Purpose 99

6.6.9.2 Preparation 99

6.6.9.3 Illustrative Example 101

6.6.9.4 Subareas 101

6.6.9.5 Land Acceptability Tables 102

6.6.9.6 Definition of Levels of Acceptable Development 112

6.6.9.7 Special Construction Standards for Wet Soils 121

6.7 Composite Mapping 123

6.8 Preparation of Location Acceptability Map 126

6.9 Determination of Location Acceptability 126

6.10 Location of Linear Development 131

6.11 General Location Policy 131

7.0 Use Policies 132

7.1 Purpose 132

7.2 Housing 132

7.3 Resort-Recreation 135

7.4 Energy 137

7.5 Infrastructure Public Facility 147

7.6 Industry-Commerce 148

7.7 Ports 149

7.8 Shore Portection 149

8.0 Resource Policies 151

8.1 Purpose 151

8.2 Marine Fish and Fisheries 151

8.3 Water Quality 152

8.4 Surface Water Use 152

8.5 Groundwater Use 152

8.6 Runoff 153

8.7 Soil Erosion and Sedimentation Control 154

8.8 Vegetation 155

8.9 Wildlife 157

8.10 Air 157

8.11 Public Services 158

8.12 Public Access to the Shorefront 158



DE23828

8.13 Scenic Resources and Design 159

8.14 Secondary Impacts 159

8.15 Buffers and Compatability of Uses 160

8.16 Solid Waste 161

8.17 Energy Conservation 162

8.18 Neighborhoods and Special Communities 162

8.19 Traffic 163

Chapter Four: MANAGEMENT SYSTEM-POLICIES ON DECISION MAKING PROCESSES 164

Introduction 164

Department of Environmental Protection 165

Division of Marine Services 165

- Coastal Area Facility Review Act (CAFRA) 165
- Wetlands Act 166
- Riparian Statutes 166
- Shore Protection Program 167

Other Programs in DEP 167

Division of Water Resources 168
Division of Environmental Quality 169
Division of Parks and Forestry 169
Green Acres and Recreation 169
Division of Fish, Game, and Shellfisheries 169
Solid Waste Administration 169
Office of the Commissioner 170

Department of Energy 170

Other State Departments 171

Department of Agriculture 171
Department of Community Affairs 171
Department of Labor and Industry 172
Department of Public Advocate 172
Department of Transportation 172

Municipal and County Government 172

Regional and Interstate Agencies 173

Public Participation 174

Conflict Resolution - Appeals 174

Chapter Five: MANAGING THE COAST: NATIONAL INTERESTS, CONSISTENCY OF FEDERAL ACTIONS AND REGIONAL BENEFIT DECISIONS 176

Introduction 176

National Interests 176

Federal Consistency 186

Regional Benefit Decisions 192

Chapter Six: SPECIAL COASTAL RESOURCE AND DEVELOPMENT POLICY REQUIREMENTS OF THE FEDERAL COASTAL ZONE MANAGEMENT ACT 194

Introduction 194

Geographic Areas of Particular Concern 194

Areas for Preservation and Restoration 196

Chapter Seven: NEXT STEPS IN COASTAL MANAGEMENT IN NEW JERSEY 197

Completing the Bay and Ocean Shore Segment 197

Completing the State's Management Program 198

Changing the Coastal Management Program 199

Part III: PROBABLE IMPACTS OF THE PROPOSED ACTION ON THE ENVIRONMENT 201

Part IV: ALTERNATIVES TO THE PROPOSED ACTION 215

Part V: PROBABLE ADVERSE ENVIRONMENTAL EFFECTS WHICH CAN BE AVOIDED 221

Part VI: RELATIONSHIP BETWEEN LOCAL SHORT-TERM USES OF THE ENVIRONMENT AND THE MAINTENANCE AND ENHANCEMENT OF LONG-TERM PRODUCTIVITY 223

Part VII: IRREVERSIBLE OR IRRETRIEVABLE COMMITMENTS OF RESOURCES THAT WOULD BE INVOLVED IN THE PROPOSED ACTION SHOULD IT BE IMPLEMENTED 225

Part VIII: CONSULTATION AND COORDINATION 227

APPENDICES 229

A. Secretarial Findings Index 231

B. The Coastal Planning Process: 1973-1978 233

C. Federal Agency Participation: 1975-1978 240

D. Local Government Participation: 1975-1978 247

E. Comments on the Coastal Management Strategy for New Jersey - CAFRA Area - September 1977 249

F. Coastal Zone Boundary 252

G. Excluded Federal Lands 264

H. Recipients of the Draft Environmental Impact Statement 266

I. Data Sources for Location Policies 271

J. Draft Memorandum of Understanding between DEP and DOE on Coastal Zone Management 277

K. Legal Authorities 283

L. Legal Commentary 304

M. Glossary 310

N. Case Studies: Using the Location Policy (CLAM) 316

O. Residential Development Density Types 340

LIST OF FIGURES

Figure 1 - New Jersey Bay and Ocean Shore Segment Boundary, 1978 14

Figure 2 - New Jersey CAFRA Inland Boundary, 1973 15

Figure 3 - Segment Inland Boundary 17

Figure 4 - Coastal Management Decision-Making Process 22

Figure 5 - Water Acceptablity Table 45

Figure 6 - High Risk Erosion Areas 52

Figure 7 - Dunes 54

Figure 8 - Central Barrier Island Corridor 56

Figure 9 - Flood Hazard Areas 57

Figure 10 - Stream Heads 67

Figure 11 - Lower Water's Edge 70

Figure 12 - Upper Water's Edge 73

Figure 13 - Retained Water's Edge 77

Figure 14 - Filled Water's Edge 80

Figure 15 - Wet Terraces and Uplands 83

Figure 16 - Infill Diagram 90

| | | |
|---|---|---|
| Figure 17- | Regional Growth Potential | 98 |
| Figure 18- | Land Acceptability Tables | 103 |
| Figure 19- | Acceptable Development Levels Definition | 119 |
| Figure 20- | Illustrative Land and Water Composite Map | 124 |
| Figure 21- | Outer Continental Shelf - Present and Potential Oil and Gas Leasing Areas | 138 |
| Figure 22- | Pine Barrens Exclusion Area | 143 |
| Figure 23- | Federal Agency Participation | 241 |
| Figure 24- | New Jersey Bay and Ocean Shore Segment Boundary-Wetlands Landward of CAFRA Boundary | 256 |
| Figure 25- | New Jersey Coastal Zone Region-Proposed Coastal Zone 1977 | 258 |
| Figure 26- | New Jersey Selected Salinity Data | 259 |
| Figure 27- | Major Federal Lands Excluded from the Bay and Ocean Shore Segment | 265 |




DE23832

## Chapter Two: BOUNDARY-DEFINING THE COASTAL ZONE

Introduction
Inland Boundary - Bay and Ocean Shore Segment
Seaward and Interstate Boundaries - Segment

**********

### Introduction

Different people and various interest groups hold different perceptions of the geographic extent of New Jersey's coastal resources. This chapter defines the boundary of the Bay and Ocean Shore Segment of New Jersey's coastal zone under the federal Coastal Zone Management Act. At this stage of New Jersey's participation in the national coastal management program, the geographic scope of the New Jersey Coastal Program submitted for federal approval is limited to this initial segment. New Jersey's coastal management program for federal purposes does not yet include the entire coastline of the state. This boundary must not be considered in a vacuum. It must be read and understood in concert with the Coastal Resource and Development Policies of Chapter Three and the Management System of Chapter Four that defines how decisions on uses of coastal resources will be made within the defined boundary under the Coastal Program.

### Inland Boundary - Bay and Ocean Shore Segment

The geographic scope of the Bay and Ocean Shore Segment includes lands along New Jersey's Atlantic Ocean shoreline, lands along the bays behind the barrier islands, and lands along the Delaware Bay and Raritan Bay. This general description provides the basis for the term "Bay and Ocean Shore Segment", as depicted in Figure 1. The actual inland boundary of the Segment uses the CAFRA boundary and the Upper Wetlands Boundary, and is defined as:

> The landward boundary of the Coastal Area as defined in the Coastal Area Facility Review Act, or the Upper Wetlands Boundary of coastal wetlands located landward of the CAFRA boundary along tidal water courses that flow through the CAFRA Area, whichever is more landward, including State-owned tidelands.

In 1973, the Legislature enacted and the Governor signed into law the Coastal Area Facility Review Act (CAFRA). This law includes a statutory "Coastal Area" that generally describes the inland boundary of the Bay and Ocean Shore Segment, with the exception of certain additional wetlands areas as defined in this chapter. The inland boundary of the "Coastal Area" delineated under CAFRA in 1973 appears on Figure 2. It extends from the Raritan Bay east to Sandy Hook, south to Cape May Point and north and west up the Delaware estuary almost to the Delaware Memorial Bridge north of Salem. The total land area is 1,376 square miles or 17 percent of New Jersey's land area. The coastline is more than 215 miles in length, with 126 miles along the Atlantic oceanfront from Sandy Hook to Cape May. Inland the CAFRA boundary ranges from a few thousand feet from the ocean in Monmouth County, to 24 miles from the Atlantic Ocean around the Mullica River at Batsto in Burlington County. Major roads and rights-of-way, such as the Garden State Parkway and county roads, define the inland boundary. The law excluded a small area around the Cape May County Airport from the "Coastal Area". A metes-and-bounds description of the "Coastal Area" may be found in the statute, at N.J.S.A. 13:19-4. Maps indicating the CAFRA boundary on U.S. Geological Survey topographic quadrangle maps (scale of one inch = 2,000 feet or 1:24,000) are available for public inspection at the Trenton offices of DEP's Division of Marine Services.



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Figure 1

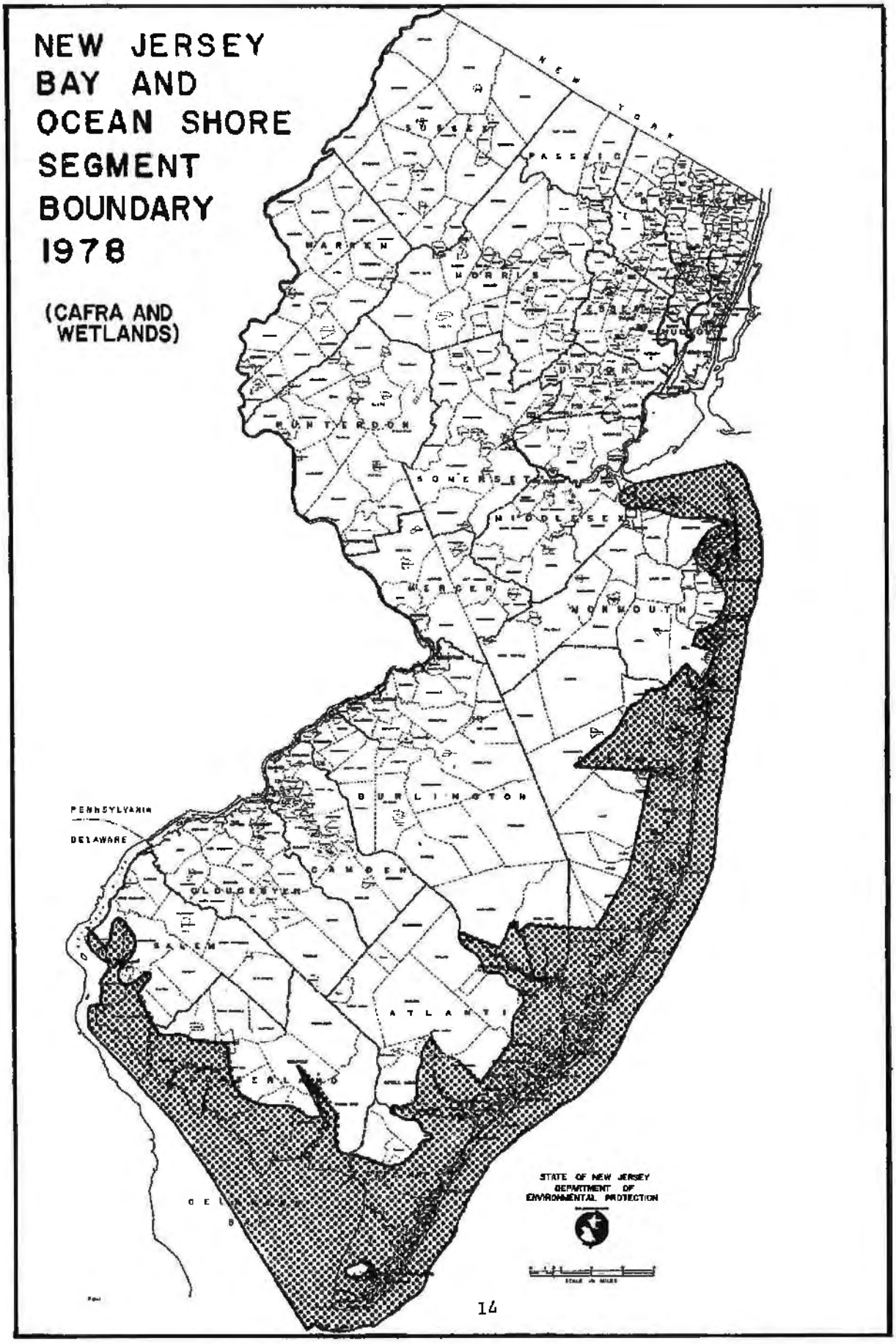


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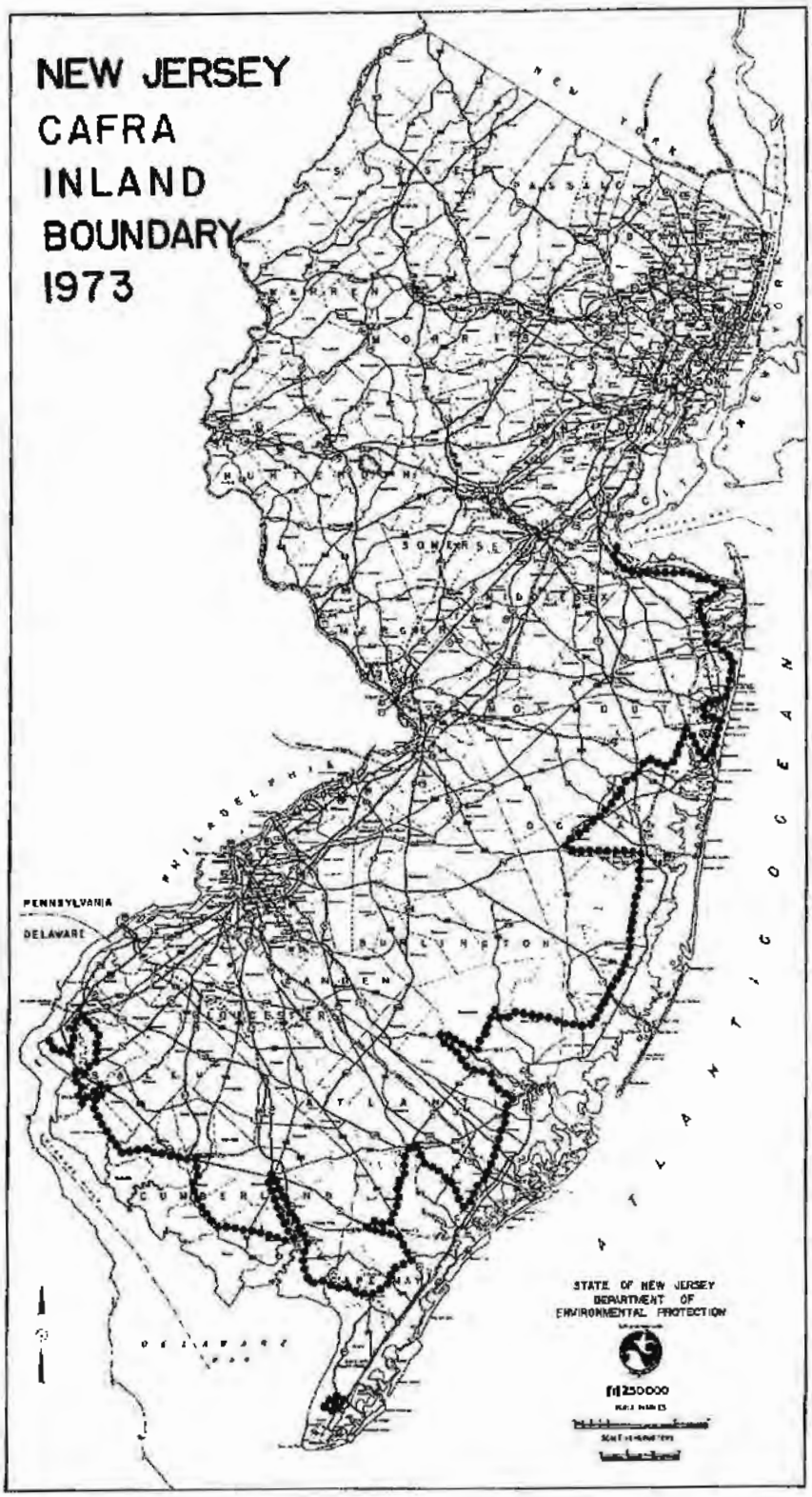
Figure 2


NEW JERSEY
CAFRA
INLAND
BOUNDARY
1973
NEW YORK
ATLANTIC OCEAN
PENNSYLVANIA
DELAWARE
PHILADELPHIA
DELAWARE BAY
STATE OF NEW JERSEY
DEPARTMENT OF
ENVIRONMENTAL PROTECTION
1:250000

The CAFRA Area features the stretch of barrier islands and headlands traditionally called the "Jersey Shore," long known as a recreation area for the state, northeastern United States, and Canada. This area includes all of the state's oceanfront beaches. Parts of the unique Pine Barrens, as well as the shores of the Delaware Bay and Raritan Bay are also included within the "Coastal Area". All of Atlantic City, which faces new opportunities and problems as a result of casino gambling and offshore oil and gas exploration, lies within the CAFRA Area.

While the statutory CAFRA Area does include considerable portions of the regulated coastal wetlands, DEP completed the rigorous delineation and mapping of coastal wetlands required by the Wetlands Act of 1970 (N.J.S.A. 13:9A-1 et seq.) after enactment of CAFRA. As a result, approximately 3,750 acres of selected coastal wetlands are found landward of the present CAFRA inland boundary, along tidal streams that are largely included within the CAFRA Area. This situation occurs primarily in Atlantic, Burlington, Cumberland, Monmouth and Salem counties. In order to comply with the inland boundary requirements of the federal Coastal Zone Management Act, these coastal wetlands must be included with this first segment of New Jersey's coastal management program. State-owned tidelands along these same tidal streams are also included by definition.

The Upper Wetlands Boundary defines land areas subject to the jurisdiction of the Wetlands Act, on photo-maps (scale of one inch = 200 feet or 1:2,400) on file at county court houses and available for inspection at the Trenton offices of DEP's Division of Marine Services. Appendix F lists the DEP Wetlands maps that include wetlands areas considered to be within the inland boundary of the Bay and Ocean Shore Segment. Figure 3 shows an example of an area in Monmouth County where wetlands extend landward of the CAFRA boundary. As the inland boundary of the Segment is not exactly the same as the CAFRA inland boundary, the phrase "Bay and Ocean Shore" will be used to describe the geographic area that includes the CAFRA Area and these directly adjacent Wetlands, for the purposes of the Federal Coastal Zone Management Act. This term will also be used to distinguish the Bay and Ocean Shore Segment from the waterfront areas of New Jersey's coastline along the Delaware and Hudson rivers.

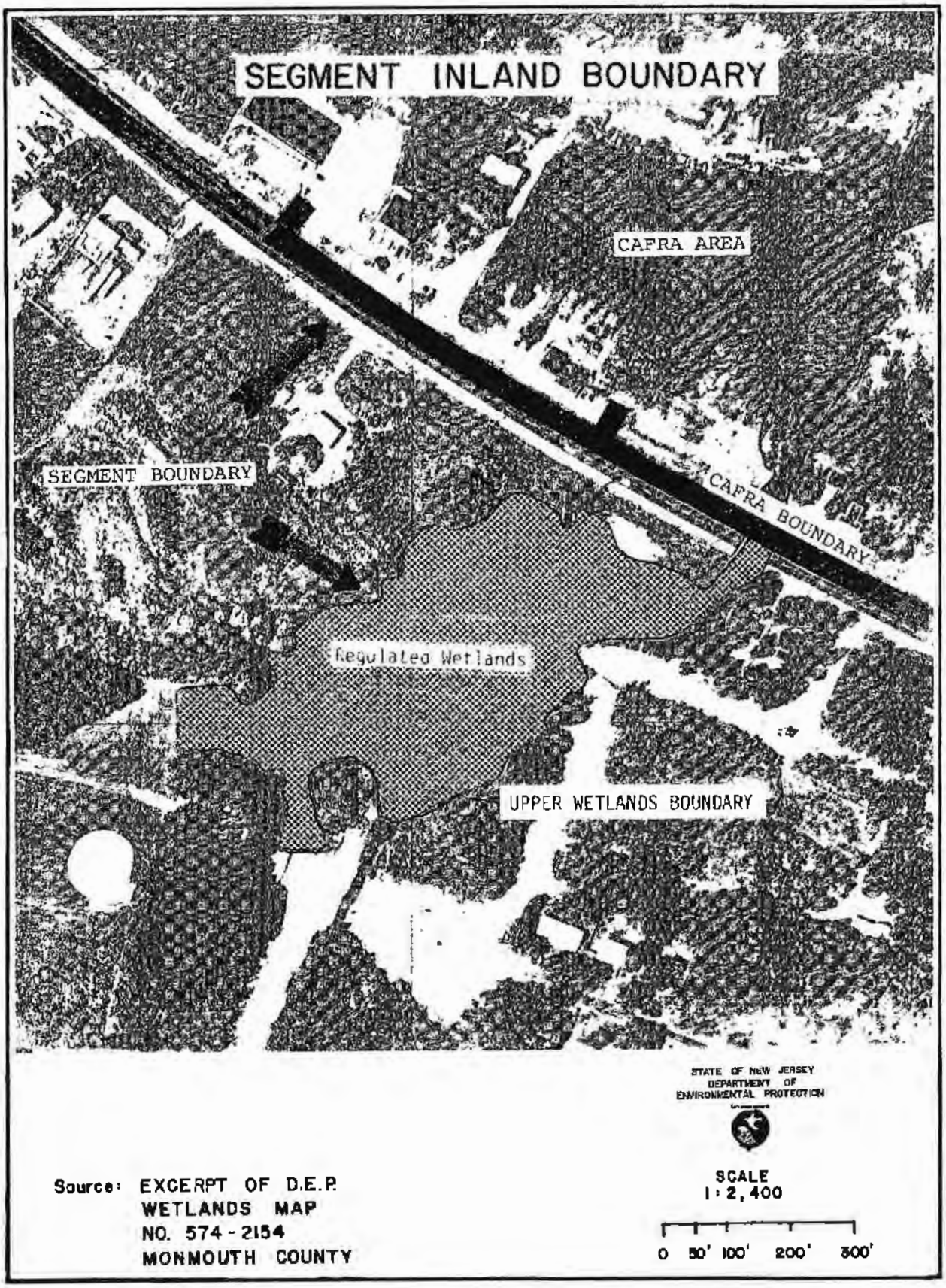
Finally, as DEP completes its multi-year tidelands delineation program, the inland boundary of the Bay and Ocean Shore Segment may require further revision to include tidelands that may also be located landward of the present CAFRA boundary.

Seaward and Interstate Boundaries - Bay and Ocean Shore Segment

The seaward boundary of the Bay and Ocean Shore Segment and indeed the entire coastal zone is the outer limit of the United States territorial sea. This limit is three nautical miles from base lines established by international law and defined by the United States. The geographic jurisdiction of the Coastal Area Facility Review Act extends seaward to the State's territorial limit.

New Jersey has potential interstate coastal zone boundaries with Delaware, New York, and Pennsylvania, but the Pennsylvania boundary will not be addressed here as it does not affect the Bay and Ocean Shore Segment.

Figure 3


SEGMENT INLAND BOUNDARY
CAFRA AREA
SEGMENT BOUNDARY
CAFRA BOUNDARY
Regulated Wetlands
UPPER WETLANDS BOUNDARY
STATE OF NEW JERSEY
DEPARTMENT OF
ENVIRONMENTAL PROTECTION
Source: EXCERPT OF D.E.P.
WETLANDS MAP
NO. 574 - 2154
MONMOUTH COUNTY
SCALE
1 : 2,400
0 50' 100' 200' 300'

New Jersey's Bay and Ocean Shore Segment boundary with the State of Delaware through Delaware Bay and the Delaware River was established in 1933 by the U.S. Supreme Court in New Jersey v. Delaware (291 U.S. 361). The interstate boundary is generally along the ship channel in the middle of Delaware Bay. However, from a point near the northern tip of Artificial Island, in Lower Alloways Creek Township, Salem County, the interstate boundary between New Jersey and Delaware extends north at the mean low water line on the New Jersey shoreline, until the Delaware-Pennsylvania boundary. Resolution of potential conflicts between the coastal policies of Delaware and New Jersey will require continued coordination and work in the first year of Program approval, toward appropriate agreements between the coastal management programs of both states, Salem County and the affected municipalities.

The extensions on the open sea of New Jersey's boundaries with New York and Delaware are not yet determined. The issue of the lateral seaward boundary is receiving focused attention as a result of the 1976 amendments to the federal Coastal Zone Management Act, which created a Coastal Energy Impact Program to assist states financially to cope with the onshore effects of offshore oil and gas energy activities. Each state's share of this financial assistance depends in part upon the leased Outer Continental Shelf acreage adjacent to a particular coastal state. Adjacency is determined by the extension of the lateral seaward boundary of each state. The New Jersey Department of Environmental Protection and the New Jersey Department of Energy, the designated lead agency for administration of the Coastal Energy Impact Program in New Jersey, are taking steps to define the lateral seaward boundaries of New Jersey with Delaware and with New York.

(d) the Department of Environmental Protection and the Department of Energy are satisfied that no other feasible and economical energy alternative exists for the timely and efficient production of needed electrical power.

Liquified Natural Gas - The National Energy Plan contains the following statements applicable to New Jersey:

"Due to its extremely high costs and safety problems, LNG is not a long-term secure substitute for domestic natural gas. It can, however, be an important supply option through the mid-1980s and beyond, until additional gas supplies may become available...The previous Energy Resources Council guidelines are being replaced with a more flexible policy that sets up no upper limit on LNG imports. Under the new policy, the Federal Government would review each application to import LNG so as to provide for its availability at a reasonable price without undue risks of dependence on foreign supplies. This assessment would take into account the reliability of the selling country, the degree of American dependence such sales would create, the safety conditions associated with any specific installation, and all costs involved." (p. 57)

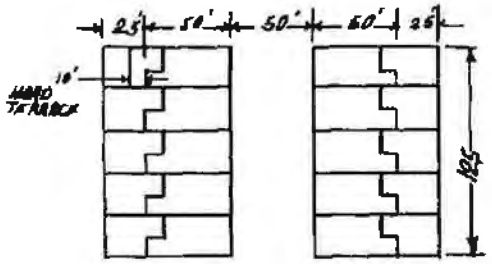
LNG facilities have been proposed in recent years for Deptford and Logan Townships in Gloucester County, and on Staten Island, New York from where the LNG would be pipelined to New Jersey. The New Jersey Coastal Program states that LNG terminals shall be acceptable only at sites remote from substantial concentrations of human populations. As noted by the former Federal Power Commission, such sites may exist in the more rural parts of the Segment. No LNG terminal shall be approved in the coastal zone until the Federal Energy Regulatory Commission (former Federal Power Commission) within the Department of Energy, responds affirmatively to the May 1976 petition by New Jersey and its neighboring states for the issuance of siting criteria that adequately consider the safety hazards associated with this energy technology. If the Commission does not respond positively to the petition by New Jersey and others, and if there is a pressing need for LNG as determined by the New Jersey DOE Master Plan, New Jersey will then attempt to create an interstate task force to define appropriate siting criteria for this type of energy facility. (See Chapter Three, Section 7.4.14)

Recreation

The New Jersey coast is a national recreational resource. In considering the national interest in recreation, New Jersey reviewed the Nation-wide Outdoor Recreation Plan, the evolving New Jersey State Comprehensive Outdoor Recreation Plan (SCORP), the Land and Water Conservation Fund Act, and the Historic Preservation Act (P.L. 89-665). In addition, New Jersey offered draft coastal documents including the Coastal Management Strategy (September 1977) for review to the National Marine Fisheries Service, Bureau of Outdoor Recreation and its successor National Heritage Program, Fish and Wildlife Service, National Park Service and staff of Gateway National Recreational Area-Sandy Hook, and the Advisory Council on Historic Preservation.

Major objectives of the national interest in recreation are:

- To consider recreation as an equal among competing uses of the coastal region.
- To provide high quality recreational opportunities to all people of the United States, while protecting the coastal environment.
- To increase public recreation in high density areas




Case No. 10

| | |
|---|---|
| Total Site Area: | 0.57 Acres |
| Dwelling Units: | 10 |
| Average Lot Size: | 0.043 Acres of 1,875 Sq. Ft. |
| Gross Density: | 17.5 DU/Acre |
| Total Area Structures and Paving (assuming all impervious): | = 0.49 Acres or 85.6% of site. |

If 5% or 0.028 acres is preserved or planted as native forest vegetation and a minimum 5% or 0.028 acres is planted with herbs or shrubs, and if the impervious paving is reduced to 80% by making a minimum 5.6% or 0.032 acres permeable, this plan would be acceptable under CLAM in any area designated for Intensive Development.

ACKNOWLEDGEMENTS

The Office of Coastal Zone Management in the Division of Marine Services, Department of Environmental Protection, prepared the New Jersey Coastal Management Program-Bay and Ocean Shore Segment, with the assistance of staff of the entire Department, other state, federal, and local agencies, interest groups, and citizens.

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**********

Special thanks to Commissioner Rocco D. Ricci, First Deputy Commissioner Betty Wilson & Director Donald T. Graham of the Division of Marine Services.

# NEW JERSEY
# COASTAL MANAGEMENT PROGRAM
# BAY AND OCEAN SHORE SEGMENT
## Public Hearings

Tuesday, June 13, 1978
7:30 p.m.

Cumberland County Court House
Freeholders' Meeting Room
Second Floor, Rear
Broad Street, (Route 49)
Bridgeton, New Jersey

Wednesday, June 14, 1978
7:30 p.m.

Ocean County Administration Bldg.
Freeholders' Meeting Room
Hooper Avenue & Washington Street
Toms River, New Jersey

Thursday, June 15, 1978
10:00 a.m.

State Museum Auditorium
205 West State Street
Trenton, New Jersey

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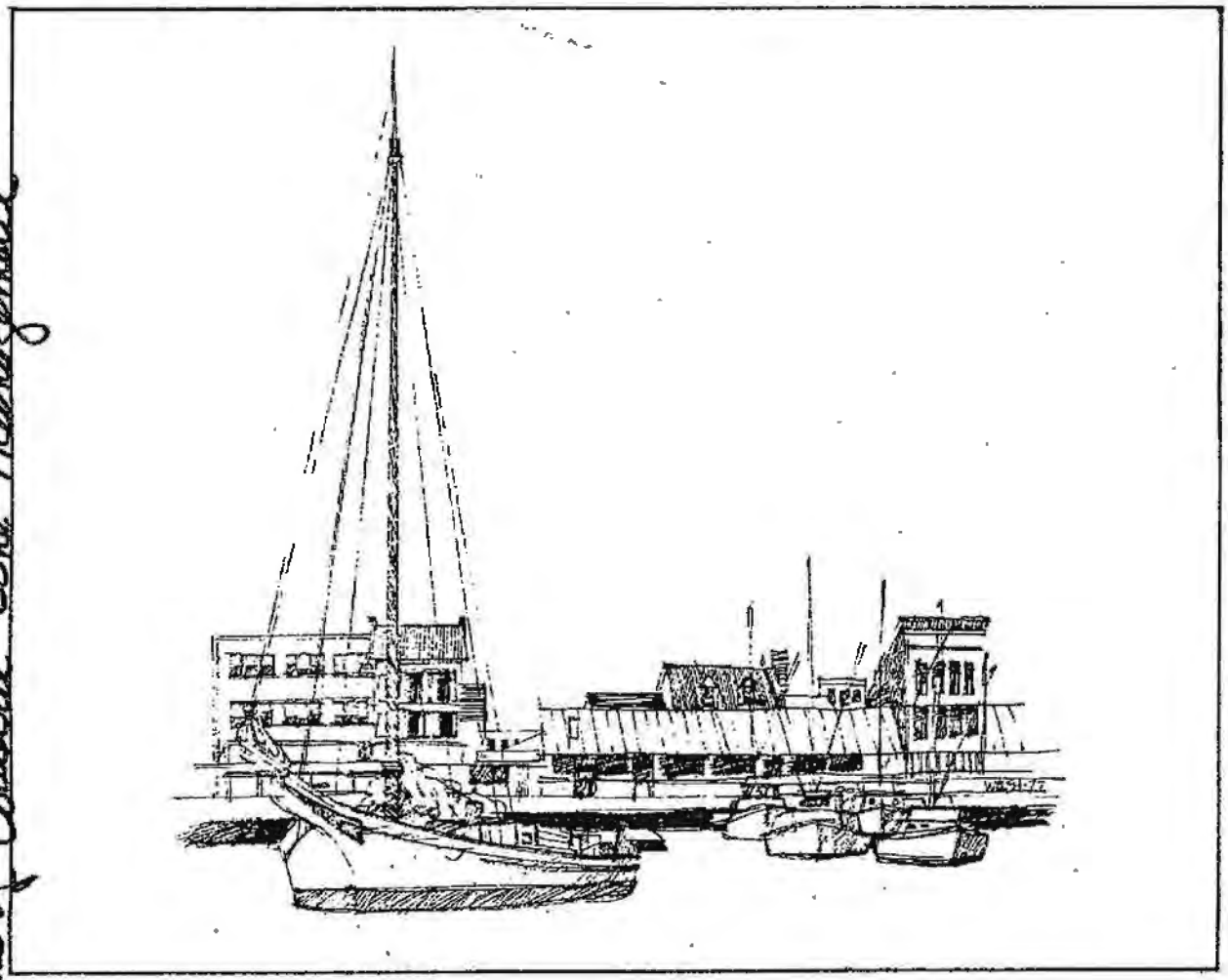

U.S. National Oceanic + Atmospheric Administration.
Office of Coastal Zone Management

**U.S. DEPARTMENT OF COMMERCE**
**National Oceanic and Atmospheric Administration**
Office of Coastal Zone Management

DE23352

The New Jersey Coastal Management Program - Bay and Ocean Shore Segment was prepared in part with financial assistance from the National Oceanic and Atmospheric Administration, Office of Coastal Zone Management, under the provisions of Section 305 of the federal Coastal Zone Management Act (P.L. 92-583, as amended).

1295

# NEW JERSEY COASTAL MANAGEMENT PROGRAM

# BAY AND OCEAN SHORE SEGMENT

# AND

# FINAL ENVIRONMENTAL IMPACT STATEMENT

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August 1978

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**DEPARTMENT OF ENVIRONMENTAL PROTECTION**

**Brendan Byrne**
**Governor**

**Daniel J. O'Hern**
**Commissioner**

DE23354

STATE OF NEW JERSEY
DEPARTMENT OF ENVIRONMENTAL PROTECTION
DANIEL J O'HERN, COMMISSIONER
P. O. BOX 1390
TRENTON, N.J. 08625
609-292-2885

AUG 22 1978

Dear Reader:

I am pleased to present you with the New Jersey Coastal Management Program - Bay and Ocean Shore Segment and Final Environmental Impact Statement. As Governor Byrne indicates in his cover letter, the Department of Environmental Protection is the lead agency for coastal zone management in New Jersey.

Preparation of this Coastal Management Program began under the leadership of former DEP Commissioners David J. Bardin and Rocco D. Ricci. I wish to express my gratitude to my predecessors and to Director Donald T. Graham of the Division of Marine Services and David N. Kinsey, Chief of the Office of Coatal Zone Management and his staff for their contributions to this work.

The Management System, including the specific responsibilities of this Department to meet the requirements of the federal Coastal Zone Management Act, are explained within the Program description. I am also directing that all Departmental decisions which affect the Bay and Ocean Shore Segment be consistent with the Coastal Management Program, to the extent permissible under existing statutes. In particular, the decisions of the Natural Resources Council on riparian lands management will be subject to my oversight and approval to insure that the Program's policies are implemented.

Insights, suggestions and criticism from a wide variety of public agencies, organizations and individuals have already contibuted significantly to the preparation of this program for the Bay and Ocean Shore Segment. The planning and implementation of New Jersey's coastal program will be successful only if it is understood and supported by the public.

Each area of the state is special and important, but the coast is the area which presents perhaps the most challenging set of potential opportunities and conflicts. This Coastal Management Program - Bay and Ocean Shore Segment is a major step towards the maintenance and enhancement of this precious area.

Very truly yours,

Daniel J. O'Hern
Commissioner

100% RECYCLED

NOTE TO READER/NEPA SUMMARY

The National Environmental Policy Act of 1969 (NEPA) mandates that an environmental impact statement be prepared as part of the review and approval process of major actions by Federal agencies. The action contemplated is approval of the New Jersey Coastal Management Program - Bay and Ocean Shore Segment under Section 306(h) of the Federal Coastal Zone Management Act of 1972, as amended (CZMA). An immediate effect of approval is the qualification of the State for Federal matching funds for use in administering the Coastal Mangement Program for the Bay and Ocean Shore Segment. In addition, New Jersey will be eligible for continued funding under the Coastal Energy Impact Program (CEIP). The federal Coastal Zone Management Act stipulates that Federal activities affecting the coastal zone shall be, to the maximum extent practicable, consistent with an approved State coastal management program.

This document is organized as follows:

| | |
|---|---|
| Part I - | Introduction - prepared by the Federal Office of Coastal Zone Management (OCZM) with the assistance of the State of New Jersey. |
| Part II - | New Jersey Coastal Management Program - Bay and Ocean Shore Segment - prepared by the state and relied upon by the Federal OCZM as a description of the proposed action. |
| Parts III-VIII - | Environmental Impacts - prepared by Federal OCZM with the assistance of the State of New Jersey. |

The thirteen appendices which follow Part VIII are also part of the Program. Appendix M includes responses to general questions raised by the public on the Draft EIS.

For purposes of reviewing this proposed action, the key concerns are:

- whether the Bay and Ocean Shore Segment is consistent with the objectives and policies of the national legislation,
- whether the State management authorities are adequate to implement the segment,
- whether the award of Federal funds under Section 306(h) of the Federal Act will help New Jersey to meet those objectives, and
- whether there will be a net environmental gain as a result of Program approval and implementation.

The Federal Office of Coastal Zone Management believes the answers to these key questions are affirmative. The Office has widely circulated this document to all interested agencies and parties in order to receive the fullest expression of opinion on these questions.

This Program is of major significance, not only to New Jersey, but to the Nation. It is one of the first Programs submitted from an eastern coastal state. Further, the New Jersey coast represents a concentration of natural, historic, and economic attributes that is of national importance. The Federal Office of Coastal Zone Management thanks those participating in the review of the New Jersey Coastal Management Program - Bay and Ocean Shore Segment and this environmental impact statement.

NEPA Summary

( ) Draft Environmental Impact Statement (X) Final Environmental Impact Statement

Department of Commerce, National Oceanic and Atmospheric Administration, Office of Coastal Zone Management. For additional information about this proposed action or this statement, please contact:

Office of Coastal Zone Management
National Oceanic and Atmospheric Administration
Attn: Ms. Kathryn Cousins
Regional Manager, North Atlantic Region or
Richard S. O'Connor
Assistant Manager, North Atlantic Region
3300 Whitehaven Street, N.W.
Washington, D.C. 20235
Phone: 202/634/4235

1. Type of Action

Proposed Federal approval of New Jersey Coastal Management Program - Bay and Ocean Shore Segment.

(X) Administrative ( ) Legislative

2. Brief Description of Action

It is proposed that the Secretary of Commerce approve the Coastal Zone Management Program (Bay and Ocean Shore Segment) of the State of New Jersey pursuant to P.L. 92-583. Approval would permit implementation of the proposed segmented program, allowing program administration grants to be awarded to the State, and require that Federal actions be consistent with the Program, to the maximum extent practicable.

3. Summary of Environmental Impacts and Adverse Environmental Effects

Approval and implementation of the Program will allow the State to implement more effectively existing State management within the Bay and Ocean Shore region. The State will condition, restrict, or prohibit selected land and water uses in some parts of the New Jersey coast, while encouraging development in other parts. Each coastal municipality will retain primary responsibility for managing land use along its coast. The impacts of the New Jersey Coastal Management Program - Bay and Ocean Shore Segment will be generally beneficial, although there may be some adverse, short-term economic impacts on some coastal users, and the Program will entail the irreversible commitment of coastal resources.

4. Alternatives Considered

A. Federal Alternatives

The Assistant Administrator could delay or deny approval of the New Jersey Coastal Management Program - Bay and Ocean Shore Segment under the following conditions if:

1. The Program does not have the authorities necessary to implement the Program at the time of Section 306 segment approval.

2. The Program does not adequately achieve the goals of the Coastal Zone Management Act as expressed by Congress in Section 302 of the Act.

3. The national interest in the siting of facilities in the coastal zone were not adequately considered.

4. The Bay and Ocean Shore Segment could not be unified with the entire state coastal management program.

B. State Alternatives

1. The State could withdraw its application and not seek Federal assistance.

2. The State could wait until the entire State Program is submitted.

3. The State could wait until new legislation is adopted that recodifies the Wetlands Act, CAFRA and Riparian Laws.

4. The State could reduce the coastal boundary under CAFRA jurisdiction.

5. The State could wait until more precise policies using the Coastal Location Acceptability Method (CLAM) have been completed or mapped.

6. The State could seek legislation delegating coastal zone management authority to localities.

5. A list of all Federal, State and Local Agencies and other parties from which comments were received is listed in the Appendix M.

6. This FEIS was submitted to EPA on August 30, 1978.

TABLE OF CONTENTS


| | Page |
|---|---|
| Governor's Letter | |
| Commissioner's Letter | |
| Note to Reader/NEPA Summary | i |
| Table of Contents | v |
| PART I: INTRODUCTION | 1 |
| PART II: NEW JERSEY COASTAL MANAGEMENT PROGRAM - BAY AND OCEAN SHORE SEGMENT: DESCRIPTION OF THE PROPOSED ACTION | 7 |
| Chapter One: COASTAL MANAGEMENT IN NEW JERSEY | 8 |
| Purpose | |
| Major Issues and Opportunities | |
| Coastal Management Efforts in New Jersey | |
| New Jersey Approach to the Federal Coastal Zone Management Program | |
| Chapter Two: BOUNDARY - DEFINING THE COASTAL ZONE | 14 |
| Introduction | |
| Inland Boundary - Bay and Ocean Shore Segment | |
| Seaward and Interstate Boundaries - Bay and Ocean Shore Segment | |
| Chapter Three: A VISION OF THE COAST | 20 |
| Introduction | |
| The Vision | |
| Basic Coastal Policies | |
| Chapter Four: COASTAL RESOURCE AND DEVELOPMENT POLICIES | 27 |
| 1.0 General | 27 |
| 1.1 Purpose | |
| 1.2 Authority | |
| 1.3 Jurisdiction | |
| 1.4 Severability | |
| 1.5 Review, Revision, and Expiration | |




DE23359

TABLE OF CONTENTS - Cont.


| | | Page |
|---|---|---|
| 2.0 | Coastal Decision-Making Process | 30 |
| | 2.1 General | |
| | 2.2 Principles | |
| | 2.3 Definition | |
| | 2.4 Pre-Application Phase | |
| | 2.5 Application or Project Review Phase | |
| | 2.6 Information Requirements | |
| 3.0 | Location Policies | 33 |
| | 3.1 General | 33 |
| | 3.2 Special Areas | 34 |
| | 3.2.1 General | |
| | 3.2.2 Shellfish Beds | |
| | 3.2.3 Surf Clam Areas | |
| | 3.2.4 Prime Fishing Areas | |
| | 3.2.5 Finfish Migration Pathways | |
| | 3.2.6 Submerged Vegetation | |
| | 3.2.7 Navigation Channels | |
| | 3.2.8 Shipwrecks and Artificial Reefs | |
| | 3.2.9 Marine Sanctuaries | |
| | 3.2.10 Beaches | |
| | 3.2.11 Coastal Wetlands | |
| | 3.2.12 High Risk Beach Erosion Areas | |
| | 3.2.13 Dunes | |
| | 3.2.14 Central Barrier Island Corridor | |
| | 3.2.15 Historic Places | |
| | 3.2.16 Specimen Trees | |
| | 3.2.17 White Cedar Stands | |




DE23360

2315

TABLE OF CONTENTS - Cont.


Page

3.2.18 Endangered or Threatened Wildlife or Vegetation Species Habitat

3.2.19 Critical Wildlife Habitats

3.2.20 Public Open Space

3.2.21 Steep Slopes

3.2.22 Farmland Conservation Areas

3.2.23 Bogs and Freshwater Wetlands

3.2.24 Ephemeral Stream Corridor

3.2.25 Special Hazards Areas

3.2.26 Excluded Federal Lands

3.2.27 Borrow Pits

3.3 Water Areas 63

3.3.1 General Definition of Water Areas

3.3.2 General Policy on Uses of Water Areas

3.3.3 General Rationale for Water Areas Policy

3.3.4 Water Acceptability Table

3.3.5 Definitions of Water Body Types

3.3.6 Rationale for Policies by Water Body Types

3.3.7 Definitions of Water Uses

3.3.8 Water Acceptability Conditions by Water Uses

3.4 Water's Edge 83

3.4.1 General Definition of Water's Edge

3.4.2 Natural Water's Edge

3.4.3 Retained Water's Edge

3.4.4 Filled Water's Edge

3.5 Land Areas 90

3.5.1 General Definition of Land Areas

3.5.2 General Policy for Land Areas

3.5.3 Coastal Regions

TABLE OF CONTENTS - Cont.


Page

3.5.4 Environmental Sensitivity

3.5.5 Development Potential

3.5.6 Definition of Acceptable Intensity of Development

3.5.7 Land Acceptability Tables

3.5.8 Determination of Location Acceptability

3.6. Policy on Location of Linear Development

3.7 General Location Policy

4.0 Uses Policies 115

4.1 Purpose

4.2 Housing

4.3 Resort-Recreation

4.4 Energy

4.5 Public Facility

4.6 Industry-Commerce

4.7 Ports

4.8 Coastal Engineering

5.0 Resource Policies 147

5.1 Purpose

5.2 Marine Fish and Fisheries

5.3 Water Quality

5.4 Surface Water Use

5.5 Groundwater Use

5.6 Runoff

5.7 Soil Erosion and Sedimentation Control

5.8 Vegetation

5.9 Wildlife

5.10 Air

5.11 Public Services




DE23362

Page

5.12 Public Access to the Shorefront

5.13 Scenic Resources and Design

5.14 Secondary Impacts

5.15 Buffers and Compatability of Uses

5.16 Solid Waste

5.17 Energy Conservation

5.18 Neighborhoods and Special Communities

5.19 Traffic

5.20 High Percolation Wet Soils

5.21 Wet Soils

5.22 Fertile Soils

5.23 Flood Hazard Areas

Chapter Five: MANAGEMENT SYSTEM - POLICIES ON DECISION-MAKING PROCESSES 164

Introduction 164

Department of Environmental Protection 165

Division of Marine Services 165

- Coastal Area Facility Review Act (CAFRA)
- Wetlands Act
- Riparian Statutes
- Shore Protection Program

Other Programs in DEP 167

Division of Water Resources
Division of Environmental Quality
Division of Parks and Forestry
Green Acres Program
Division of Fish, Game and Shellfisheries
Solid Waste Administration
Office of the Commissioner

Department of Energy 173

TABLE OF CONTENTS - Cont.


| | Page |
|---|---|
| Other State Departments<br>Department of Agriculture<br>Department of Community Affairs<br>Department of Labor and Industry<br>Department of the Public Advocate<br>Department of Transportation | 174 |
| Municipal and County Government | 175 |
| Regional and Interstate Agencies | 176 |
| Public Participation | 177 |
| Conflict Resolution - Appeals | 178 |
| Chapter Six: MANAGING THE COAST: NATIONAL INTERESTS, CONSISTENCY OF FEDERAL ACTIONS AND REGIONAL BENEFIT DECISIONS | 180 |
| Introduction | 180 |
| National Interests | 180 |
| Federal Consistency | 191 |
| Regional Benefit Decisions | 199 |
| Chapter Seven: SPECIAL COASTAL RESOURCE AND DEVELOPMENT POLICY REQUIREMENTS OF THE FEDERAL COASTAL ZONE MANAGEMENT ACT | 201 |
| Introduction | 201 |
| Geographic Areas of Particular Concern | 201 |
| Areas for Preservation and Restoration | 206 |
| Chapter Eight: NEXT STEPS IN COASTAL MANAGEMENT IN NEW JERSEY | 207 |
| Managing the Bay and Ocean Shore Segment | 207 |
| Completing the State's Management Program | 208 |
| Changing the Coastal Management Program | 210 |
| Part III: PROBABLE IMPACTS OF THE PROPOSED ACTION ON THE ENVIRONMENT | 211 |
| Part IV: ALTERNATIVES TO THE PROPOSED ACTION | 225 |
| Part V: PROBABLE ADVERSE ENVIRONMENTAL EFFECTS WHICH CAN BE AVOIDED | 231 |

TABLE OF CONTENTS - Cont.


| | | Page |
|---|---|---|
| Part VI: | RELATIONSHIP BETWEEN LOCAL SHORT-TERM USES OF THE ENVIRONMENT AND THE MAINTENANCE AND ENHANCEMENT OF LONG-TERM PRODUCTIVITY | 233 |
| Part VII: | IRREVERSIBLE OR IRRETRIEVABLE COMMITMENTS OF RESOURCES THAT WOULD BE INVOLVED IN THE PROPOSED ACTION SHOULD IT BE IMPLEMENTED | 235 |
| Part VIII: | CONSULTATION AND COORDINATION | 237 |


APPENDICES


| | | |
|---|---|---|
| A. | Secretarial Findings Index | 241 |
| B. | The Coastal Planning Process: 1973-1978 | 243 |
| C. | Federal Agency Participation: 1975-1978 | 250 |
| D. | Local Government Participation: 1975-1978 | 254 |
| E. | Coastal Zone Boundary | 258 |
| F. | Excluded Federal Lands | 278 |
| G. | Memorandum of Understanding between DEP and DOE on Coastal Zone Management | 280 |
| H. | Legal Authorities | 286 |
| I. | Legal Commentary | 300 |
| J. | Glossary | 306 |
| K. | Data Sources for Location Policies | 317 |
| L. | Using the Coastal Resource and Development Policies | 323 |
| M. | Comments and Responses on the NJCMP-Boss and DEIS (May 1978) | 329 |


LIST OF FIGURES


| | | |
|---|---|---|
| Figure 1 - | New Jersey Bay and Ocean Shore Segment Boundary, 1978 | 15 |
| Figure 2 - | New Jersey CAFRA Inland Boundary, 1973 | 16 |
| Figure 3 - | Segment Inland Boundary | 18 |

| | | Page |
|---|---|---|
| Figure 4 - | Coastal Regions | 22 |
| Figure 5 - | Dunes | 47 |
| Figure 6 - | Central Barrier Island Corridor | 50 |
| Figure 7 - | Water Body Types | 66 |
| Figure 8 - | Natural Water's Edge | 84 |
| Figure 9 - | Retained Water's Edge | 86 |
| Figure 10 - | Filled Water's Edge | 89 |
| Figure 11 - | Infill Diagram | 97 |
| Figure 12 - | Outer Continental Shelf - Present and Potential Oil and Gas Leasing Areas | 127 |
| Figure 13 - | Pine Barrens Exclusion Area | 129 |
| Figure 14 - | Flood Hazard Areas | 162 |
| Figure 15 - | Coastal Permit Jurisdiction | 166 |
| Figure 16 - | Coastal Permit Process | 167 |
| Figure 17 - | Higbee Beach GAPC | 203 |
| Figure 18 - | Federal Agency Participation | 251 |
| Figure 19 - | Wetlands Landward of CAFRA Boundary | 262 |
| Figure 20 - | New Jersey Coastal Zone Region Proposed Coastal Zone - 1977 | 264 |
| Figure 21 - | New Jersey Coastal Zone Boundary Index Map and Maps at 1:250,000 Scale | 265 |
| Figure 22 - | Selected Salinity Data | 275 |
| Figure 23 - | Major Federal Lands Excluded from the Bay and Ocean Shore Segment | 279 |

## Chapter Two: BOUNDARY-DEFINING THE COASTAL ZONE

Introduction
Inland Boundary - Bay and Ocean Shore Segment
Seaward and Interstate Boundaries - Segment

**********

### Introduction

Different people and various interest groups hold different perceptions of the geographic extent of New Jersey's coastal resources. This chapter defines the boundary of the Bay and Ocean Shore Segment of New Jersey's coastal zone under the federal Coastal Zone Management Act. At this stage of New Jersey's participation in the national coastal management program, the geographic scope of the New Jersey Coastal Program submitted for federal approval is limited to this initial segment. New Jersey's coastal management program for federal purposes does not yet include the entire coastline of the state. The proposed boundary for the entire coastal zone is described in Appendix E. All federal lands are excluded from the coastal zone. Appendix F contains a list of the excluded federal lands.

The boundary for the Bay and Ocean Shore Segment must not be considered in a vacuum. It must be read and understood in concert with the Coastal Resource and Development Policies of Chapter Four and the Management System of Chapter Five that defines how decisions on uses of coastal resources will be made within the defined boundary under the Coastal Management Program.

### Inland Boundary - Bay and Ocean Shore Segment

The geographic scope of the Bay and Ocean Shore Segment includes lands along New Jersey's Atlantic Ocean shoreline, lands along the bays behind the barrier islands, and lands along the Delaware Bay and Raritan Bay. This general description provides the basis for the term "Bay and Ocean Shore Segment", as depicted in Figure 1. The actual inland boundary of the Segment uses the CAFRA boundary and the Upper Wetlands Boundary, and is defined as:

> The landward boundary of the Coastal Area as defined in the Coastal Area Facility Review Act, or the Upper Wetlands Boundary of coastal wetlands located landward of the CAFRA boundary along tidal water courses that flow through the CAFRA Area, whichever is more landward, including State-owned tidelands.

In 1973, the Legislature enacted and the Governor signed into law the Coastal Area Facility Review Act (CAFRA). This law includes a statutory "Coastal Area" that generally describes the inland boundary of the Bay and Ocean Shore Segment, with the exception of certain additional wetlands areas as defined in this chapter. The inland boundary of the "Coastal Area" delineated under CAFRA in 1973 appears on Figure 2. It extends from the Raritan Bay east to Sandy Hook, south to Cape May Point and north and west up the Delaware estuary almost to the Delaware Memorial Bridge north of Salem. The total land area is 1,376 square miles or 17 percent of New Jersey's land area. The coastline is more than 215 miles in length, with 126 miles along the Atlantic oceanfront from Sandy Hook to Cape May. Inland the CAFRA boundary ranges from a few thousand feet from the ocean in Monmouth County, to 24 miles from the Atlantic Ocean around the Mullica River at Batsto in Burlington



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Figure 1

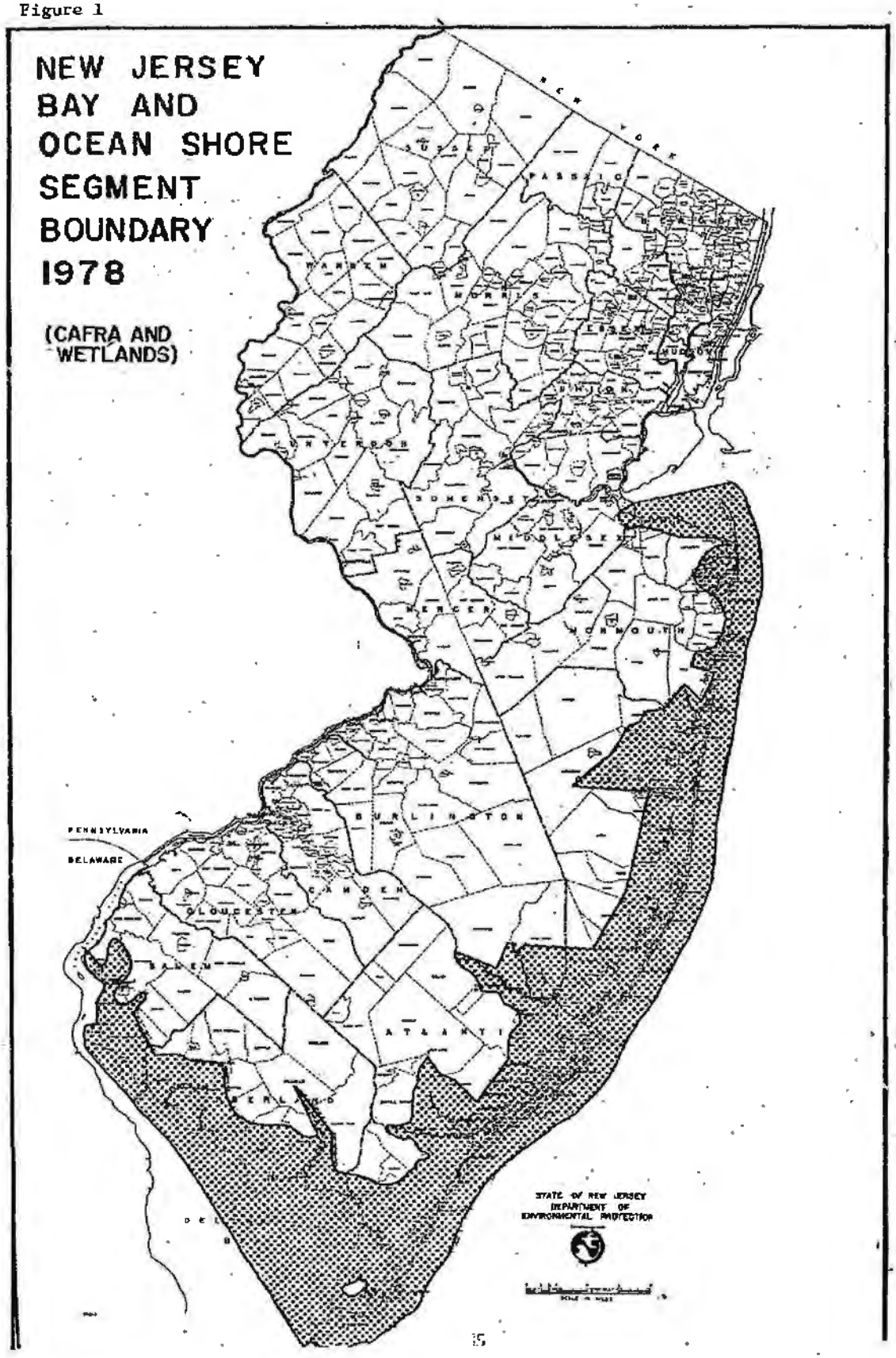
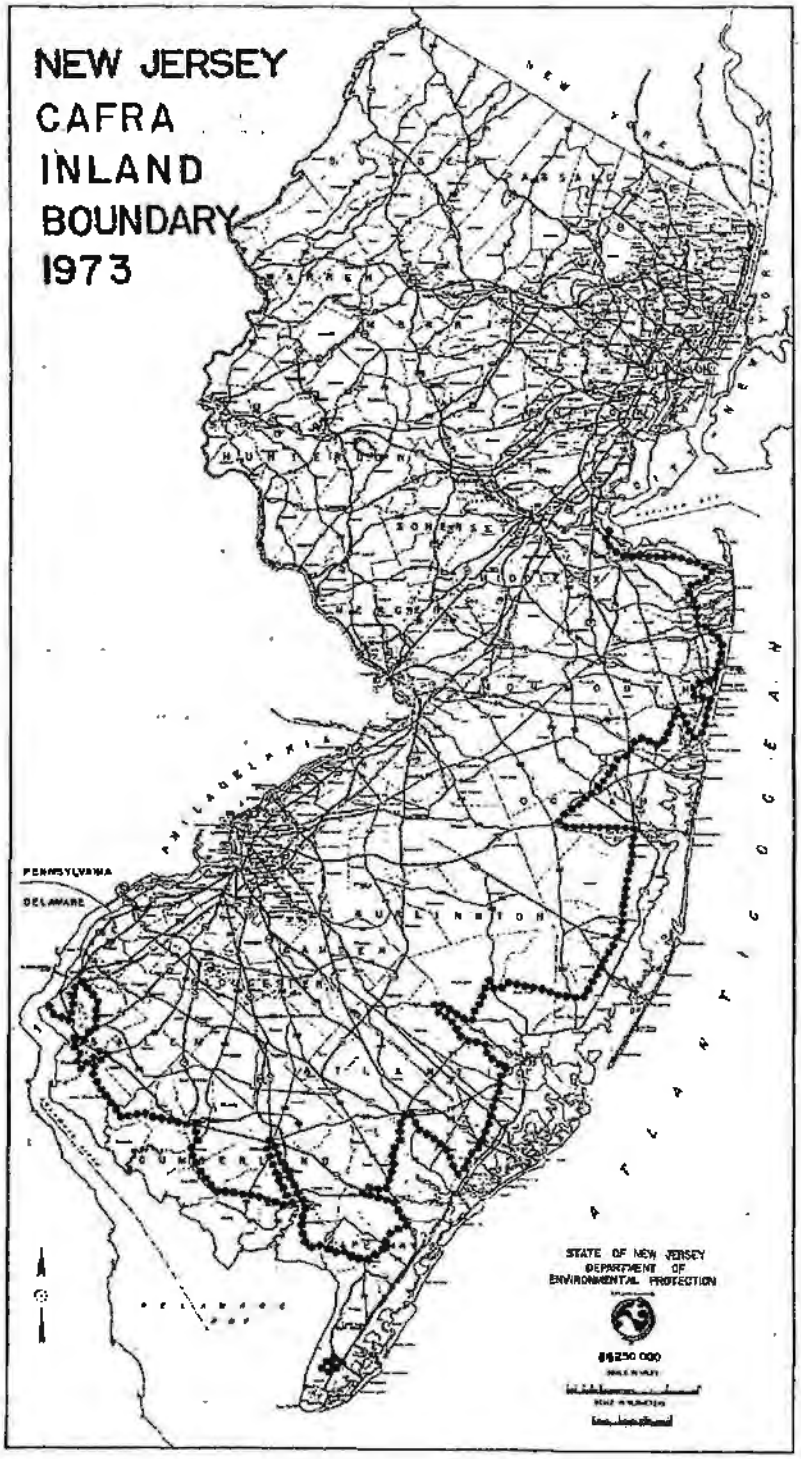

NEW JERSEY
BAY AND
OCEAN SHORE
SEGMENT
BOUNDARY
1978
(CAFRA AND
WETLANDS)
NEW YORK
PENNSYLVANIA
DELAWARE
BURLINGTON
CAMDEN
GLOUCESTER
SALEM
ATLANTIC
OCEAN
MONMOUTH
MIDDLESEX
MERCER
HUNTERDON
SOMERSET
MORRIS
ESSEX
UNION
HUDSON
PASSAIC
BERGEN
SUSSEX
STATE OF NEW JERSEY
DEPARTMENT OF
ENVIRONMENTAL PROTECTION

Figure 2


NEW JERSEY
CAFRA
INLAND
BOUNDARY
1973
PENNSYLVANIA
DELAWARE
STATE OF NEW JERSEY
DEPARTMENT OF
ENVIRONMENTAL PROTECTION

County. Major roads and rights-of-way, such as the Garden State Parkway and county roads, define the inland boundary. The law excluded a small area around the Cape May County Airport from the "Coastal Area". A metes-and-bounds description of the "Coastal Area" may be found in the statute in Appendix H (N.J.S.A. 13:19-4). Maps indicating the CAFRA boundary on U.S. Geological Survey topographic quadrangle maps (scale of one inch = 2,000 feet or 1:24,000) are available for public inspection at the Trenton offices of DEP's Division of Marine Services.

The CAFRA Area features the stretch of barrier islands and headlands traditionally called the "Jersey Shore," long known as a recreation area for the state, northeastern United States, and Canada. This area includes all of the state's oceanfront beaches. Parts of the unique Pine Barrens, as well as the shores of the Delaware Bay and Raritan Bay are also included within the "Coastal Area". All of Atlantic City, which faces new opportunities and problems as a result of casino gambling and offshore oil and gas exploration, lies within the CAFRA Area.

While the statutory CAFRA Area does include considerable portions of the regulated coastal wetlands, DEP completed the rigorous delineation and mapping of coastal wetlands required by the Wetlands Act of 1970 (N.J.S.A. 13:9A-1 et seq.) after enactment of CAFRA. As a result, approximately 3,750 acres of selected coastal wetlands are found landward of the present CAFRA inland boundary, along tidal streams that are largely included within the CAFRA Area. This situation occurs primarily in Atlantic, Burlington, Cumberland, Monmouth and Salem counties. In order to comply with the inland boundary requirements of the federal Coastal Zone Management Act, these coastal wetlands must be included with this first segment of New Jersey's coastal management program. State-owned tidelands along these same tidal streams are also included by definition.

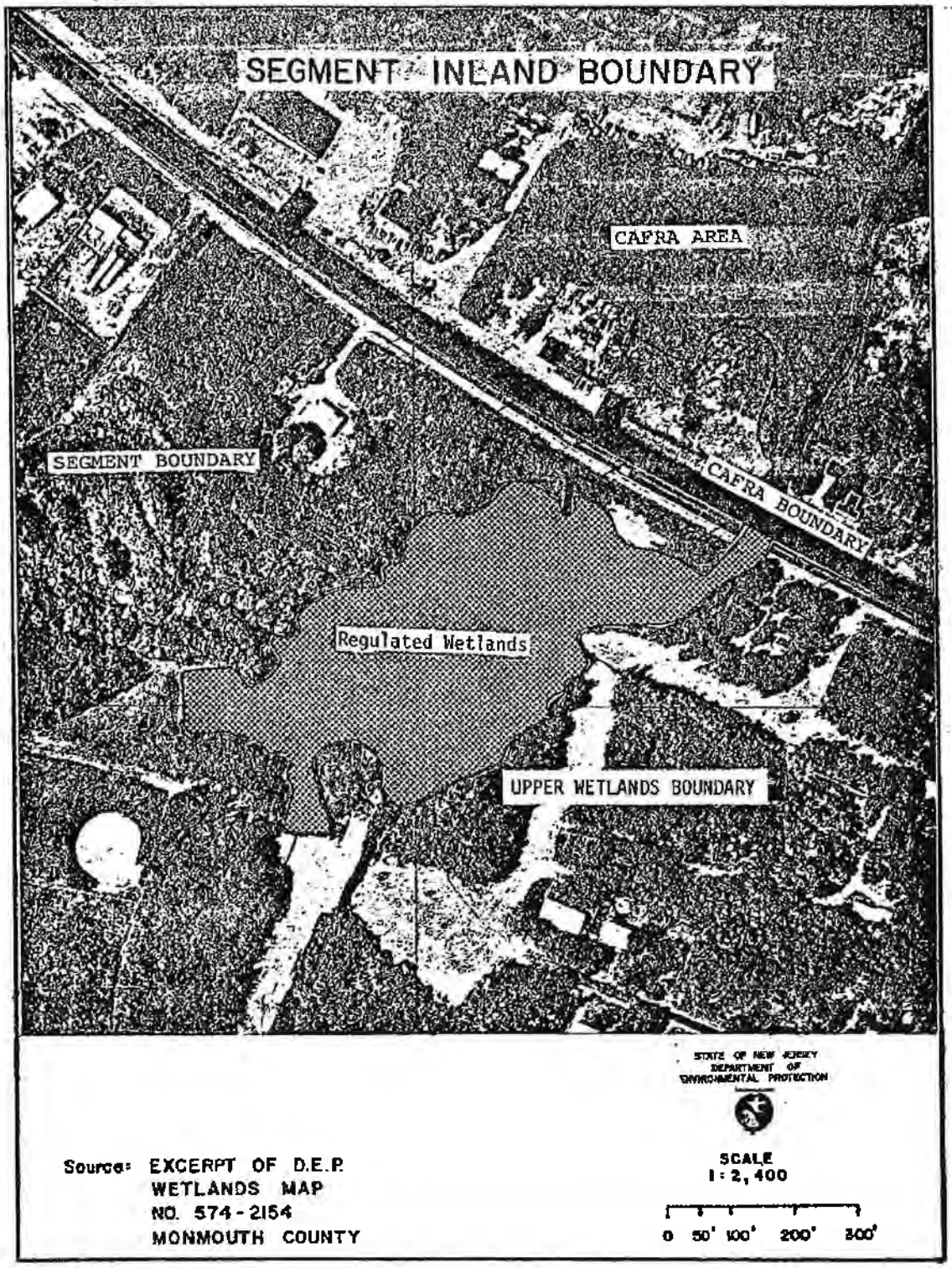
The Upper Wetlands Boundary defines land areas subject to the jurisdiction of the Wetlands Act, on photo-maps (scale of one inch = 200 feet or 1:2,400) on file at county court houses and available for inspection at the Trenton offices of DEP's Division of Marine Services. Appendix E lists the DEP Wetlands maps that include Coastal Wetlands areas considered to be within the inland boundary of the Bay and Ocean Shore Segment. Figure 3 shows an example of an area in Monmouth County where wetlands extend landward of the CAFRA boundary. As the inland boundary of the Segment is not exactly the same as the CAFRA inland boundary, the phrase "Bay and Ocean Shore" will be used to describe the geographic area that includes the CAFRA Area and these directly adjacent Wetlands, for the purposes of the federal Coastal Zone Management Act. This term will also be used to distinguish the Bay and Ocean Shore Segment from the waterfront areas of New Jersey's coastline along the Delaware and Hudson rivers.

Finally, as DEP completes its multi-year tidelands delineation program, the inland boundary of the Bay and Ocean Shore Segment may require further revision to include tidelands that may also be located landward of the present CAFRA boundary.

Seaward and Interstate Boundaries - Bay and Ocean Shore Segment

The seaward boundary of the Bay and Ocean Shore Segment and indeed the entire coastal zone is the outer limit of the United States territorial sea. This limit is three nautical miles from base lines established by international law and defined by the United States. The geographic jurisdiction of the Coastal Area Facility Review Act extends seaward to the State's territorial limit.

Figure 3 |


SEGMENT INLAND BOUNDARY
CAFRA AREA
SEGMENT BOUNDARY
CAFRA BOUNDARY
Regulated Wetlands
UPPER WETLANDS BOUNDARY
STATE OF NEW JERSEY
DEPARTMENT OF
ENVIRONMENTAL PROTECTION
Source: EXCERPT OF D.E.P.
WETLANDS MAP
NO. 574-2154
MONMOUTH COUNTY
SCALE
1:2,400
0 50' 100' 200' 300'

18

New Jersey has potential interstate coastal zone boundaries with Delaware, New York, and Pennsylvania, but the Pennsylvania boundary will not be addressed here as it does not affect the Bay and Ocean Shore Segment.

New Jersey's Bay and Ocean Shore Segment boundary with the State of Delaware through Delaware Bay and the Delaware River was established in 1933 by the U.S. Supreme Court in New Jersey v. Delaware (291 U.S. 361). The interstate boundary is generally along the ship channel in the middle of Delaware Bay. However, from a point near the northern tip of Artificial Island, in Lower Alloways Creek Township, Salem County, the interstate boundary between New Jersey and Delaware extends north at the mean low water line on the New Jersey shoreline, until the Delaware-Pennsylvania boundary. Resolution of potential conflicts between the coastal policies of Delaware and New Jersey will require continued coordination and work in the first year of Program approval, toward appropriate agreements between the coastal management programs of both states, Salem County and the affected municipalities.

The extensions on the open sea of New Jersey's boundaries with New York and Delaware are not yet determined. The issue of the lateral seaward boundary is receiving focused attention as a result of the 1976 amendments to the federal Coastal Zone Management Act, which created a Coastal Energy Impact Program to assist states financially to cope with the onshore effects of offshore oil and gas energy activities. Each state's share of this financial assistance depends in part upon the leased Outer Continental Shelf acreage adjacent to a particular coastal state. Adjacency is determined by the extension of the lateral seaward boundary of each state or the delineation of a resource allocation between states. The New Jersey Department of Environmental Protection and the New Jersey Department of Energy, the designated lead agency for administration of the Coastal Energy Impact Program in New Jersey, are taking steps to define the lateral seaward boundaries of New Jersey with Delaware and with New York.

"New or expanded electric generating facilities facilities (for base load, cycling, or peaking purposes) and related facilities are conditionally acceptable subject to the following conditions:

(a) The construction and operation of the proposed facility shall comply with the Coastal Resource and Development Policies, with special reference to air and water quality standards and policies on marine resources and wildlife,

(b) NJDEP and NJDOE shall find that the proposed location and design of the electrical generating facility is the most prudent and feasible alternative for the production of electrical power that NJDOE has determined is needed, including a consideration, evaluation, and comparison by the applicant of alternative sites within the coastal zone and inland,

(c) Fossil fuel (coal, oil or gas) generating stations shall not be located in particularly scenic or natural areas that are important to recreation and open space purposes,

(d) Nuclear generating stations shall be located in generally remote, rural, and low density areas, consistent with the criteria of 10 CFR 100 (U.S. Nuclear Regulatory Commission rules on siting nuclear generating stations and population density) and/or any other related federal regulations. In addition, NJDEP shall find that the nuclear generating facility is proposed for a location where the appropriate low population zone and population center distance are likely to be maintained around the nuclear generating facility, through techniques such as land uae controls or buffer zones,

(e) The construction and operation of a nuclear generating station shall not be approved unless DEP finds that the proposed method for storage and disposal of the spent fuel to be produced by the facility: (i) will be safe, (ii) conforms to standards established by the U.S. Nuclear Regulatory Commission, and (iii) will effectively remove danger to life and the environment from the radioactive waste material. This finding is required under present state law (N.J.S.A. 13:19-11) and will be made consistent with judicial decisions (see Public Interest Research Group v. State of New Jersey, 152 N.J. Super. 191) and federal law,

(f) The construction of electric generating facilities using renewable forms of energy such as solar radiation, wind, and water, including experimental and demonstration projects, is encouraged in the coastal zone provided that the facilities do not significantly adversely affect scenic or recreational values.

Liquified Natural Gas - The National Energy Plan contains the following statements applicable to New Jersey:

"Due to its extremely high costs and safety problems, LNG is not a long-term secure substitute for domestic natural gas. It can, however, be an important supply option through the mid-1980s and beyond, until additional gas supplies may become available...The previous Energy Resources Council guidelines are being replaced with a more flexible policy that sets up no upper limit on LNG imports. Under the new policy, the Federal Government would review each

application to import LNG so as to provide for its availability at a reasonable price without undue risks of dependence on foreign supplies. This assessment would take into account the reliability of the selling country, the degree of American dependence such sales would create, the safety conditions associated with any specific installation, and all costs involved." (p. 57)

LNG facilities have been proposed in recent years for West Deptford and Logan Townships in Gloucester County, and on Staten Island, New York from where the LNG would be pipelined to New Jersey. The New Jersey Coastal Program states that LNG terminals are discouraged unless they are constructed so as to neither unduly endanger human life nor property nor otherwise impair the public health, safety and welfare, and comply with the Coastal Resource and Development Policies. Because the tankering of LNG could pose potential risk to life and property adjacent to New Jersey's waterways which also serve as boundaries with the states of Pennsylvania along the Delaware River and the state of New York in the Port of New York and New Jersey, the state considers decisions concerning the siting of LNG terminals to be an interstate matter. New Jersey is still awaiting a response in this regard to the petition (RM 76-13) it filed, along with its neighboring states, to the Federal Energy Regulatory Administration (former Federal Power Commission) in May 1976 (See Section 4.4.14 of Chapter Four).

Recreation

The New Jersey coast is a national recreational resource. In considering the national interest in recreation, New Jersey reviewed the Nation-wide Outdoor Recreation Plan, the evolving New Jersey State Comprehensive Outdoor Recreation Plan (SCORP), the Land and Water Conservation Fund Act, and the Historic Preservation Act of 1966 as amended. In addition, New Jersey offered draft coastal documents including the Coastal Management Strategy (September 1977) for review to the National Marine Fisheries Service, Bureau of Outdoor Recreation and its successor Heritage Conservation and Recreation Service, Fish and Wildlife Service, National Park Service and staff of Gateway National Recreational Area-Sandy Hook, and the Advisory Council on Historic Preservation.

Major objectives of the national interest in recreation are:

- To consider recreation as an equal among competing uses of the coastal region.
- To provide high quality recreational opportunities to all people of the United States, while protecting the coastal environment.
- To increase public recreation in high density areas
- To improve coordination and management of recreation areas.
- To protect existing recreation areas from adverse contiguous uses.
- To accelerate the identification and no-cost transfer of surplus and underutilized federal property.

New Jersey will consider the recreational potential of a site in each decision under the Coastal Program. The highest priority for use of waterfront sites will be recreation, and residential and industrial projects will include recreation areas to the maximum extent practicable. The Policies are consistent with the New Jersey State Comprehensive Outdoor Recreation Plan (SCORP), which was also prepared by DEP.

| Comment | Response |
|---|---|
| U.S. NUCLEAR REGULATORY COMMISSION - Cont. | |
| 1137.<br>Pg. 177, paragraph 3, states that, "The Commissioner has interpreted "public welfare" to include a full consideration of national interests..." We do not find assurance in either the N.J. law or the regulations that the "public" includes those beyond the State's border. | The interpretation has been included in Chapter 6, which has been adopted as regulation by New Jersey. |
| 1138.<br>Pg. 186 Federal Consistency - We suggest changing the second sentence to read: "They issue permits and licenses for activities such as...the construction and operation of nuclear power plants..." | This suggestion has been incorporated in revised chapter 6, federal consistency section. |
| 1139.<br>Pg. 187 (2) - This statement tends to equate national interest with national security. National interest is a broader concern. We suggest changing the wording to: "The activity is clearly in the national interest and is carried out in a manner which minimizes conflict with the Coastal Resource and Development Policies." | This has been clarified in revised chapter 6, federal consistency section. |
| 1140.<br>Pg. 189 - The NRC mission has been lumped under DOE. NRC should be separately stated as we are an independent Federal agency. It should read: "NUCLEAR REGULATORY COMMISSION Permits and licenses the construction and operation of nuclear facilities." | This change has been incorporated in revised chapter 6, federal consistency section. Please excuse this error. |
| 1141.<br>Pg. 203 section 2 state, "Under these policies, Large scale energy production...must locate in the region outside the Segment's boundaries." Where is the justification that keeps this from being an arbitrary exclusion of activities in the national interest? | This section has been clarified in revised Part III, Section I. Large scale energy production is not prohibited, but must comply with the full range of DCMS policies. |
| 1142.<br>Pg. 212 (paragraph 1) - The timetable for DOE and DEP to investigate the feasibility of alternative energy production methods is not given. | This is outlined in the Energy Master Plan as being 1-2 years. |
| 1143.<br>Pg. 212 (paragraph 3) - The last 2 sentences assume that there is adequate water to support the energy facility inland and that an inland location will not result in coastal air and water quality degradation. It appears that N.J. could very well approach inland alternatives to coastal sites through the memorandum of Understanding between DEP and DOE and the N.J. Energy Act. | It would not be appropriate to address alternative inland sites in the CU which only addressed conflicts between DOE and DEP over interpretation of the coastal policies or need requirements. |

* U. S. GOVERNMENT PRINTING OFFICE : 1978 272-443/8399



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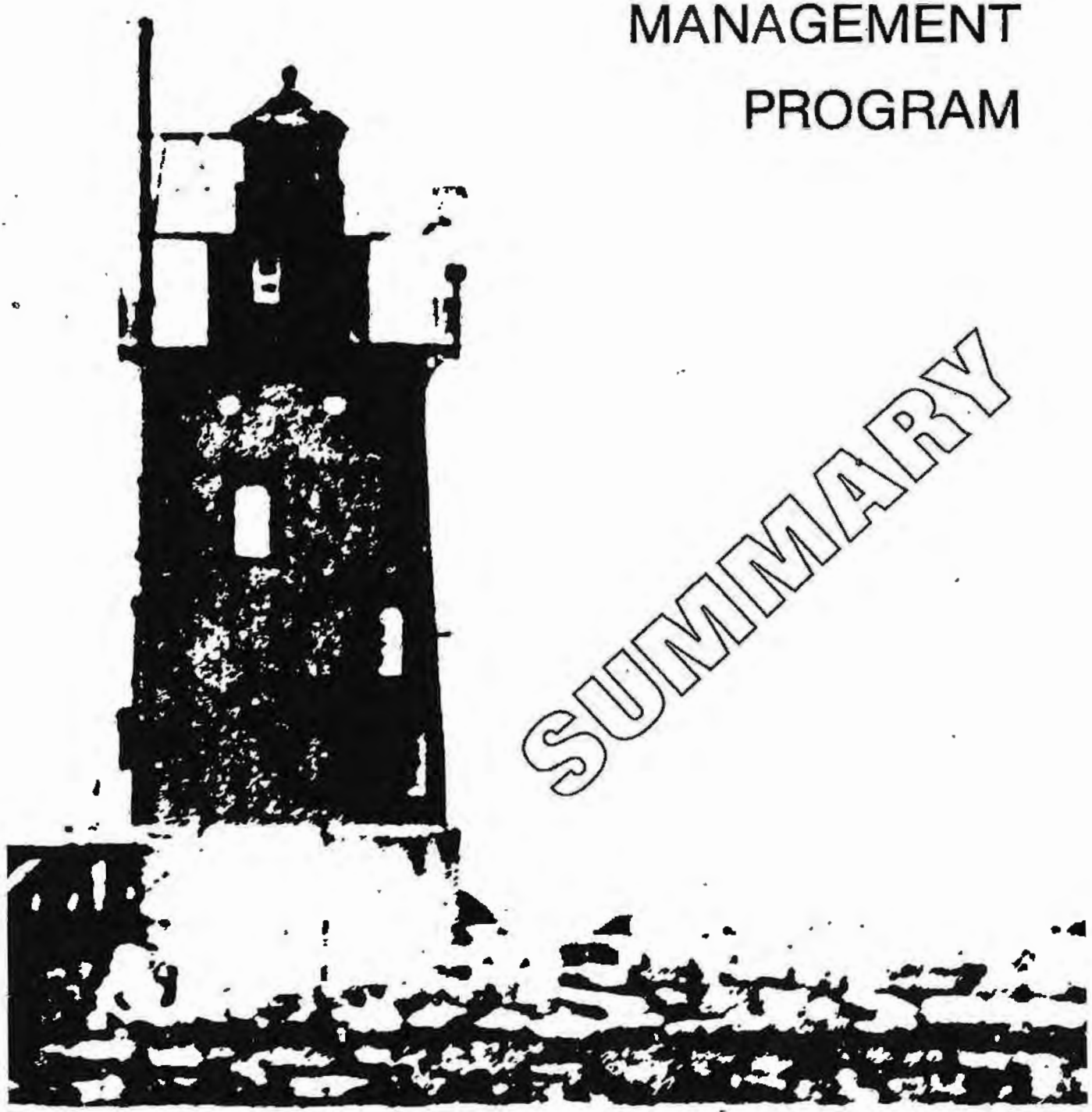
# DELAWARE COASTAL MANAGEMENT PROGRAM



SUMMARY

## DISCUSSION DRAFT

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DE29867

DELAWARE COASTAL MANAGEMENT
PROGRAM

(DISCUSSION DRAFT)

# SUMMARY

September, 1978

DELAWARE COASTAL MANAGEMENT PROGRAM
OFFICE OF MANAGEMENT, BUDGET & PLANNING
Dover Delaware

DE29868

# PREFACE

This document is a summary of the Delaware Coastal Management Program, Discussion Draft, dated September 1978. It is intended to provide an overview of the program in a format which will facilitate public review. The Summary contains all of the policies included in the Discussion Draft; however, much of the background discussions and appended material has been omitted. Reviewers are cautioned that the Summary may not cover all aspects of program development and compliance with federal approval requirements.

Public review and comment on the Delaware Coastal Management Program is encouraged. In addition to this Summary, the Program is comprised of the following documents:

1. "Discussion Draft, Delaware Coastal Management Program", September 1978.
2. Working Paper Number 7, "The National Interest in Resources and Facilities of the Delaware Coastal Zone", March 1978.
3. Working Paper Number 8, "Beach Erosion Control and Shoreline Access Planning", September 1978.

Additional program review and approval steps are required by federal regulation, and include the preparation of both a draft and final environmental impact statement. Public hearings will be held follwing release and public notice of these documents in accordance with the requirements of the National Environmental Policy Act.

Comments on any aspect of the Program should be sent to: Delaware Coastal Management Program, Office of Management, Budget and Planning, Townsend Building, P.O. Box 1401, Dover, Delaware 19901.

DE29869

# TABLE OF CONTENTS


1. Goals and Objectives ..... 1
2. Participation in Delaware's Coastal Management Program ..... 2
3. Wetlands ..... 3
4. Barrier Beaches ..... 6
5. Coastal Waters ..... 12
6. Underwater Lands and the Coastal Strip ..... 16
7. The Public Lands ..... 19
8. Natural Areas ..... 21
9. Flood Hazard Areas ..... 24
10. Port of Wilmington ..... 27
11. Woodlands and Agricultural Lands ..... 29
12. Historic and Cultural Areas ..... 31
13. Living Resources ..... 33
14. Mineral Resources ..... 35
15. State-Owned Recreation and Conservation Lands ..... 36
16. General Development Issues ..... 38
17. Energy Facilities ..... 42
18. Public Investment Considerations ..... 47
19. Recreation and Tourism ..... 51
20. National Defense and Aerospace Facilities ..... 54
21. Transportation Facilities ..... 55
22. Air Quality ..... 60
23. Water Supply ..... 61
24. Implementation ..... 63
25. Coastal Management Coordination ..... 63
26. Program Overview ..... 68


DE29870

# 6. UNDERWATER LANDS AND THE COASTAL STRIP

## SIGNIFICANCE OF UNDERWATER LANDS AND THE COASTAL STRIP

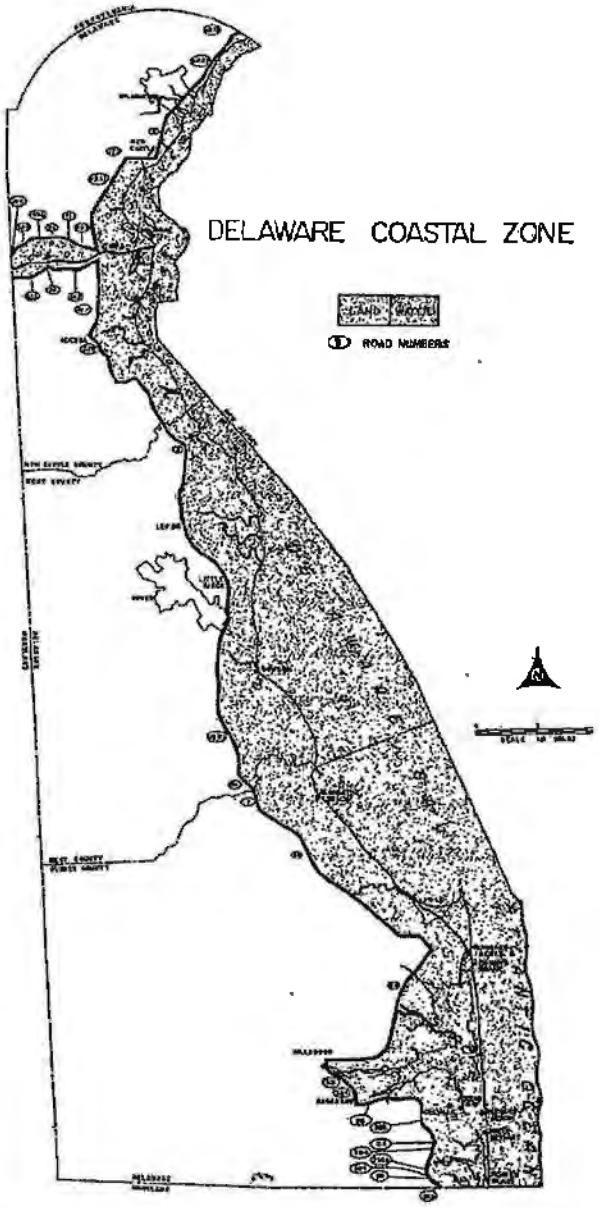
Underwater lands refers here to those lands in Delaware which lie below the high tide line. These include lands beneath the Atlantic Ocean to the three-mile limit, as well as lands beneath the Delaware side of the Delaware-New Jersey border. Underwater lands overlap the Coastal Strip, which is a strip of land and water located between Delaware's seaward territorial limits and a landward boundary delimited by a series of roads and highways. The land portion of the Strip varies in width from a few hundred yards north of Wilmington to about 12 miles wide in the southeastern part of the State. The Coastal Strip corresponds to the Coastal Zone Act's definition of the "Coastal Zone." The CMP uses the former term to avoid confusion with the Coastal Zone boundary adopted by the program, which encompasses the entire State.

Underwater Lands and the Coastal Strip are significant State resources, in part, because of their proximity to other coastal resources. About eighty percent of Delaware's tidal wetlands, all of the beaches and summer resort areas, five of ten State Parks, six of nine State Wildlife Areas, two federal Wildlife Refuges, nearly all of the fish and shellfish spawning and nursery areas, a substantial number of State's historic and archaeological sites, and over one-fourth of the significant natural areas identified by the Delaware Nature Education Center are located in the Coastal Strip. The use of land and water in the Coastal Strip may impact any or all of these resources and the uses — recreation, tourism, fishing, etc. — that they support. Underwater Lands in the Delaware Bay and the Little Bays of Southeastern Sussex County are particularly important to the fishery. In early 1978, for example, 13 lessees held a total of 7,960 acres of State subaqueous lands for oyster cultivation.

Underwater Lands and Coastal Strip are also important because of the commerce that they support. Piers, docks, boat slips, etc. are built on Underwater Lands. These lands are also dredged to keep shipping channels open. The Port of Wilmington, in the Coastal Strip, contributes significantly to the Delaware Valley port complex, the second busiest Atlantic Coast port. In fiscal year 1977 nearly 2.4 million tons of cargo, about one-half of it crude oil, were handled at the Port.

Much of the Coastal Strip is attractive from industry's viewpoint because of the nearby water supply — useful for industrial processes and for the transportation of supplies and products. Power plants, for example, typically need large quantities of supplies.

AREA REGULATED UNDER CHAPTER 70, TITLE 7, DELAWARE CODE — THE COASTAL ZONE ACT OF 1971. (CALLED THE "COASTAL STRIP" IN THE DISCUSSION DRAFT)



Nearly one-fourth of the land in the portion of the Coastal Strip lying north of the Chesapeake and Delaware Canal is already occupied by industry.

Delaware Underwater Lands and Coastal Strip are also important to the Nation. The recreational opportunities afforded by the management of these resources, for example, extend to hundreds of thousands of U.S. citizens residing outside Delaware. Further, some of the Nation's energy problem is addressed in the Coastal Strip. The Getty Oil Refinery at Delaware City makes oil products for use outside the State. A natural shipping channel up to 70 feet deep lies about four miles off southeastern Kent County in lower Delaware Bay, and serves as an anchorage to oil tankers for lightering to barges and smaller tankers. There is year-round daily use of this anchorage. In 1975, 850,000 barrels of crude oil per day were shipped into the Delaware Valley, most of this being lightered in the lower Bay.

Moreover, if large quantities of oil or gas are discovered offshore near Delaware, it is possible that a pipeline through the Underwater Lands and the Coastal Strip will be the most desirable means of transporting the mineral resources. Finally, preliminary evaluations of the hydrocarbon potential of Delaware's Underwater Lands have been promising. If oil or gas can be economically recovered from these lands, the State will be in a position to help the rest of the Nation meet its energy needs.

## PROBLEMS OF UNDERWATER LANDS AND COASTAL STRIP UTILIZATION AND MANAGEMENT

Heavy industrial uses and recreational pursuits, as well as other uses which rely on maintenance of the natural environment, cannot be accommodated near each other. The possibility of human error or equipment failure in the operation of certain facilities, such as, LNG terminals or deepwater ports, poses grave risks in or near areas used for high density recreation and commercial fishing. Moreover, such facilities and certain heavy industrial uses not only threaten the fragile coastal environment directly, but also typically generate pressure for additional development with negative impact of its own. Finally, many "lighter" manufacturing activities are better suited at inland locations where the economic, aesthetic, and other impacts are more favorable.

On the other hand, Underwater Lands or the Coastal Strip sometimes offer the only sites for certain important activities. If oil or gas is discovered under Delaware waters, for example, it may be impossible to develop the resources from land. Likewise, an oil pipeline from the Outer Continental Shelf oil and gas lease tracts must pass through State waters if it is to reach refineries and gas plants.

Problems of utilization and management of Underwater Lands and the Coastal Strip also raise the following specific issues: (1) what controls over the location, extent and type of industry should be exerted; (2) should specific uses with a high potential for environmental degradation be absolutely prohibited; (3) what exceptions, if any, are appropriate; (4) if a case-by-case approach is used, what factors should be considered in the decision to prohibit or permit industry; (5) if offshore industrial uses are allowed, how will navigation, national defense, and the environment be protected; and (6) how will the impact of offshore development on the fishery be minimized?

## GENERAL CMP POLICIES FOR UNDERWATER LANDS AND COASTAL STRIP MANAGEMENT

1. *The natural environment of the Coastal Strip shall be protected for recreation, tourism, fishing, crabbing, and gathering other marine life useful in food production.*
2. *The need for protection of the natural environment in the Coastal Strip shall be balanced with the need for new industry in the State.*
3. *The location, extent and type of industrial development in the Coastal Strip that is most likely to pollute Delaware's bays and coastal areas shall be controlled.*
4. *The development and use of offshore oil, gas, and other mineral resources of the State shall be managed to make the maximum contribution to the public benefit and so as to effectuate their full utilization, conservation, and protection.*

## SPECIFIC CMP POLICIES FOR UNDERWATER LANDS AND COASTAL STRIP MANAGEMENT

5. *New heavy industrial uses shall be prohibited in the Coastal Strip. Such uses are ones characteristically involving more than 20 acres, and characteristically employing smokestacks, tanks, distillation or reaction columns, chemical processing equipment or waste-treatment lagoons. Heavy industrial uses shall not only be defined by their physical characteristics, however, but also by their potential to pollute in the event of human error or equipment failure. Examples of heavy industry are oil refineries, basic steel manufacturing plants, basic cellulosic pulp-paper mills, and chemical plants such as petrochemical complexes. For purposes of this policy, public sewage treatment or recycling plants shall not be deemed heavy industry uses.*
6. *New manufacturing uses or the expansion of existing manufacturing uses shall be allowed in the Coastal Strip by permit only, although in no case shall new manufacturing uses be allowed in wetlands or where inconsistent with local zoning regulations. Manufacturing uses are ones which mechanically or chemically transform substances into new products, and characteristically employ power-driven machines and materials*

handling equipment. Manufacturing uses typically include establishments engaged in assemblying components of manufactured products, provided the new products are not fixed improvements. Examples of manufacturing uses include garment factories, automobile assembly plants, and jewelry and leather goods manufacturing establishments.

7. The following factors shall be considered in passing on requests for permission to construct or operate a manufacturing use in the Coastal Strip:
   (A) Environmental impact, including but not limited to, probable air and water pollution likely to be generated by the proposed use under normal operating conditions as well as during mechanical malfunction and human error; likely destruction of wetlands and flora and fauna; impact of site preparation on drainage of the area in question, especially as it relates to flood control; impact of site preparation and facility operations on land erosion; effect of site preparation and facility operations on the quality and quantity of surface, ground and subsurface water resources, such as the use of water for processing, cooling, effluent removal, and other purposes; in addition, but not limited to, likelihood of generation of glare, heat, noise, vibration, radiation, electromagnetic interference and obnoxious odors.
   (B) Economic effect, including the number of jobs created and the income which will be generated by the wages and salaries of these jobs in relation to the amount of land required, and the amount of tax revenues potentially accruing to State and local government.
   (C) Aesthetic effect, such as impact on scenic beauty of the surrounding area.
   (D) Number and type of supporting facilities required and the impact of such facilities on all factors listed in this subsection.
   (E) Effect on neighboring land uses including, but not limited to, effect on public access to tidal waters, effect on recreational areas, and effect on adjacent residential and agricultural areas.
   (F) County and municipal comprehensive plans for the development and/or conservation of their areas of jurisdiction.
8. New offshore gas, liquid, or solid bulk product transfer facilities shall be prohibited in the Coastal Strip. Such facilities are docks or port facilities, whether artificial islands or attached to shore, for the transfer of bulk quantities of any substance from vessel to onshore facility or vice versa. However, a docking facility or pier for a single industrial or manufacturing facility and docking facilities located in the city of Wilmington for the Port of Wilmington, shall not be prohibited.
9. Offshore pipelines which transfer bulk quantities of gas, oil or other liquids to terminals within the Coastal Strip shall be prohibited. Such pipelines generally shall be allowed if they transit the Coastal Strip and environmental safeguards are observed. However, if such pipelines represent a significant danger of pollution to the Coastal Strip and generate pressure for construction of industrial plants in the Coastal Strip, they shall be prohibited.
10. Underwater lands of the State shall not be surveyed geologically, geophysically, or seismically unless and until the water quality of the State which may thereby be affected is adequately assured.
11. No operations or activities shall be commenced on the drilling, deepening or plugging back of any offshore oil or gas wells located on underwater lands of Delaware without the permission of the State, and unless in conformance with the rules for such operations and activities adopted by the Delaware Department of Natural Resources and Environmental Control.
12. Permission to develop underwater lands shall not be granted without the prior approval of the U. S. Department of the Defense, and shall be subject to any restriction or limitation imposed by the Department.
13. Easements for mineral exploration and exploitation underlying that part of the surface of the Atlantic shore owned by the State may be permitted at such times and places as necessary to permit the extraction and transportation of oil, gas, sulphur or other minerals from State, federal or private lands, but permanent interference with the surface of the Atlantic shore shall be prohibited.
14. The following factors shall be considered prior to the leasing of underwater lands for possible mineral development:
   (A) The health, safety, or welfare of persons residing in, owning real property, or working in the neighborhood of such areas;
   (B) Potential interference with the residential or recreation areas to an extent that would render such areas unfit for residential or recreation uses or unfit for park purposes;
   (C) Potential interference with the aesthetic and scenic values of the Delaware coast;
   (D) Potential water pollution problems;
   (E) Endangerment to marine life or wildlife;
   (F) Potential interference with commerce or navigation; and
   (G) Protection of State lands from drainage of oil, gas or other minerals or objectionable substances.

16. *The lessee of underwater lands shall be required to exercise a high degree of care to avoid impairment of and interference with the enjoyment and use of such lands, the water above them and neighboring land and water. Such uses include bathing, boating, fishing, fish and wildlife production, and navigation. The lessee shall also exercise a high degree of care to prevent oil, tar, residuary products of oil, or refuse of any kind from any well or works to be deposited on or pass into the waters of the ocean, any bay or inlet thereof, or any other waters covering submerged lands.*

# 7. THE "PUBLIC LANDS"

## SIGNIFICANCE AND VALUE

The Delaware Coastal Management Program, in its first year of program development, recognized the significance of the crucial issues relating to certain lands along the coast. The lands involved are those properties along the Atlantic Coast between Cape Henlopen and Fenwick Island which have never been transferred from the public domain. They currently include the Cape Henlopen and Delaware Seashores State Parks and portions of the Assawoman Wildlife Area.

The lands, commonly called the "public lands" because a Public Lands Commission established in 1913 was the first State agent to manage them, are extremely valuable as vacation areas. During the first nine months in 1977 alone over three million people, a great many of them from out-of-state, enjoyed these lands.

## PUBLIC LANDS MANAGEMENT ISSUES

The territory which is now Delaware was given to William Penn by the Duke of York (later King) of England. Penn and his heirs made many land grants from the territory prior to the American Revolution. Delaware made additional grants after the Colonies achieved Independence. The State Supreme Court has determined that Penn and his heirs owned the land as sovereigns, not as individuals. Therefore, any land not granted by the time the State gained its independence became State property.

Land was plentiful and precise boundaries were of little consequence. Some areas were considered of little value. In many cases, there was a dearth of geographical knowledge of the area conveyed. Land transfers were sometimes made without a writing. Deeds were not routinely recorded and deed descriptions, when they were recorded, used mortal markings, such as "the old white oak." Geological processes altered earlier boundaries.

In 1913, the General Assembly expressed its concern over the State public lands by establishing a Public Lands Commission to ascertain State boundaries. The Commission engaged Thomas B. Pepper to conduct a survey of the public lands from the lighthouse on Fenwick Island to the old lighthouse at Lewes, a stretch encompassing virtually all of Delaware's Ocean front. Mr. Pepper's survey included extensive historical research of the patent records in Delaware and Maryland, as well as physical measurement of the property. The survey was recorded in Georgetown in 1929.

In 1955, the State Highway Department caused the 1929 Pepper boundaries to be resurveyed and reconfirmed. The survey was supervised by Fred Ruyter who was assisted by Mr. Pepper. The Ruyter survey crews drove steel casings into the ground and implanted concrete markers on top of the casings in order to mark the boundaries.

In 1971, a Delaware Chancery Court ruled that the Pepper plot, as confirmed by Ruyter, constituted a true and accurate survey of the lands portrayed thereon to the extent that State land titles were disputed in the subject case which applied only to the lands between South Bethany and Fenwick Island.

Much of monumenting work accomplished in 1955 was destroyed by the great storm of 1962. Some monuments were removed, perhaps illegally.

The loss of the monuments, the lack of an effective monitoring program, and lingering title disputes inevitably led to encroachment. In some cases, State land is falsely claimed under bogus deeds, or deeds are obtained through tax sales.

Finally, in some cases when litigation has offered the promise of restitution of State coastal property, the General Assembly has legislatively relinquished State claims in order to protect private investments. This "solution", of course, would be unnecessary if protection of State coastal lands precluded private development of State lands.

In order to address these issues a comprehensive survey was undertaken with Coastal Management Program support to establish the location of the public lands and fully monument them. That step completed, it is now necessary to prescribe policies to assure that these irreplaceable resources will be managed properly.

## GENERAL CMP POLICY FOR "PUBLIC LANDS" MANAGEMENT

1. *DNREC shall supervise, control and care for Delaware's "Public Lands."*

## SPECIFIC CMP POLICIES FOR "PUBLIC LANDS" MANAGEMENT

2. *The State shall pursue all necessary and appropriate remedies to address encroachments upon State "Public Lands" and to protect their integrity from further claim.*



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management program.

The national interest will be considered in the amendment of any State rule or regulation used to implement the CMP and in the planning for and siting of the facilities identified in Working Paper No. 7, entitled *The National Interest in Resources and Facilities of the Delaware Coastal Zone.* The lead agency may add facilities if it determines that there is a national interest in such facilities. The federal Office of Coastal Zone Management (OCZM) and other federal agencies are invited to assist the lead agency in making that determination.

The lead agency will submit timely written comments addressing the national interest in proposed facilities to the appropriate State departments and agencies with planning or siting authority. The comments will balance the national interest in the proposed facility with the national interest in preservation of resources. Sources used in that balancing process will include Working Paper No. 7; policy statements from the President; federal laws; statements from federal agencies; testimony from public hearings or other public input; or plans, reports, or studies from federal, State, interstate agencies or local government.

The appropriate State agency will respond in writing to the lead agency's comments in its planning action or siting decision. Such response will summarize the comments and explain how the action or decision reflects the consideration thereof. The lead agency will review that response as part of its responsibility to monitor and evaluate the management of the State's coastal resources pursuant to Executive Order No. 60. In the event that the lead agency determines that the response inadequately reflects consideration of the national interest, it will so notify the Governor and re-submit its comments to the appropriate agency, which will then respond anew.

Executive Order No. 60 requires the lead agency to submit comments addressing the Coastal Management Program policies and concerns to local land and water use decision makers. The above cited policy which requires consideration of the national interest, will be implemented by the Executive Order and the Land Use Planning Act. Pursuant to Title 29, Section 92 of the Act, the lead agency will make the same types of comments to decision-making of local government as it will to State agencies, as discussed above. The Act requires a written rationale for the local government's decision, which must include a discussion of the lead agency's comments or recommendations, if any. A State review board may require reconsideration of the local decision if the local government fails to adequately consider the comments. It is also important to note that, under the Land Use Planning Act, interested federal agencies must be (1) notified of proposed land use planning actions of greater than local significance; (2) afforded an opportunity to participate in local decision programs; and (3) allowed to submit comments and recommendations on such actions.

The CMP recognizes that the national interests in facilities and resources may change over time. Inasmuch as many of the broad policies in the program cannot be readily reviewed on a case-by-case basis, the national interest in such policies will be reconsidered at least once a year by the lead agency in the annual report to the Governor, the General Assembly, and OCZM.

An additional mechanism for ensuring federal input on projects will be the establishment of joint permit review and processing steps by federal and State agency staffs prior to formal permit action by either party. Initial efforts have been undertaken between State agencies and some federal agencies relative to State/Corps of Engineers approvals, and further action will be taken to institutionalize such processes. Informal coordination, of course, already takes place between many State and federal agencies on a broad range of CMP concerns.

Finally, the "federal consistency" provisions of the CMP will also be used to make sure that federal actions are consistent to the extent practicable with the CMP.

## REGIONAL COORDINATION

Coordination among the localities and states in Delaware's region has been of primary concern since the program development effort began. Actions by neighboring states can directly affect Delaware and the value of its coastal resources. In order to provide an opportunity for the states to identify problems of a regional nature and to ensure that compatible approaches to the management of regional resources are being used by the states, Delaware hosted the first of what has become a more or less regular meeting of State CMP staffs. Included in these meetings are Delaware, New Jersey, Pennsylvania, Maryland, Virginia and, more recently North Carolina, South Carolina, and Georgia.

A higher level of coordination mechanism is the Mid-Atlantic Governors' Coastal Resources Council (MAGCRC), an organization formed by the Governors of the states in the region for the purpose of exchanging information, developing policy, and preparing responses to federal agencies on major coastal issues, primarily those relating to outer continental shelf (OCS) development and energy. This group, which involves the Governors and their officials primarily responsible for development of State OCS and energy policy, has met on a somewhat regular basis and has been particularly successful in raising the level and scope of state participation in many federal OCS leasing and regulatory processes.

Another effort, currently only in the development stage, is the establishment of a Regional Coastal Information Center (RCIC). This proposal emanates from a concern of coastal managers and concerned



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citizens who, on one hand, lack information and, on the other hand, are concerned that research and information gathering programs and projects may be duplicative or fail to address clearly perceived problems. A definite need for a *quick response* information delivery system has been identified. The information needs are quite diverse, ranging from highly specific environmental data to more general background information on the coastal law. To date, the national Coastal Zone Information Center of OCZM has worked to supply some of the information, but a national center cannot begin to provide the specialized coverage needed at state and local levels.

The Delaware CMP made an initial attempt at closing this gap by funding a Research Clearinghouse effort based on work done by the University of Delaware which related to coastal management. This start was useful, but limited in scope.

New England and the Pacific Northwest have responded to the need for more localized coastal information through the formation of RCIC. The RCIC approach was first suggested at the national level by OCZM and the Sea Grant Marine Advisory Service. The Mid-Atlantic States have proposed a more decentralized and state-specific system, sharing information through common formating.

The overall goal of this system will be to provide a readily accessible quick-response coastal information capability for (1) state coastal planning programs and other state and local agencies; (2) scientists and technical personnel needing environmental data and/or bibliographic information; (3) Sea Grant programs; (4) regional fishery management; and (5) the general public.

Delaware's CMP will work with the Delaware Sea Grant Program in support of this proposed system.

Another issue involving regional coordination is more limited in scope and involves the Delaware-New Jersey boundary along the upper Delaware River, particularly as it affects Salem County, New Jersey. As a result of a 1933 U.S. Supreme Court ruling, Delaware's jurisdiction extends to the low water mark on the New Jersey shore. Salem County officials contend that Delaware law, particularly the Delaware Coastal Zone Act, unduly precludes development along the Delaware River in New Jersey. While Delaware understands Salem County's concerns, there is no clear evidence that New Jersey has suffered any adverse effects. The creation of a "no-man's zone" in the River would raise serious administrative and legal problems. Thus, a cooperative exchange of information between the parties is deemed the best solution for avoiding potential problems. To facilitate the exchange of information, Delaware has agreed to share information on Coastal Zone Act applications, where appropriate, with Salem County and has asked Salem County to notify it whenever an impending development in their county could raise the jurisdictional difficulty. In any event, only a few possible uses would cause problems. For example, single purpose (use) piers extending into the Delaware River, the most likely regulatory issue, would require a Delaware Coastal Zone Act application permit, but experience under the Act involving Delaware and Pennsylvania indicates that such applications can be processed to the satisfaction of all parties.

Finally, a long-standing mechanism for coordination in the Wilmington area, the Wilmington Metropolitan Area Planning Coordinating Council (WILMAPCO), is significant to the CMP. Municipal, county, and State representatives from Delaware, Maryland, and New Jersey work together in WILMAPCO to resolve interstate and intrastate issues affecting the Wilmington area.

## OVERALL CMP IMPLEMENTATION

Executive Order will establish a Coastal Management Committee to be comprised of private citizens and officials from State, county and local governments to provide oversight and coordination regarding program implementation. The duties of the Committee may include:

1) Advice regarding applications for Section 306 funding, including review of proposed annual work plan, etc;
2) Where required under CEIP Intrastate Allocation Process, approval of applications for CEIP grants and loans;
3) Monitor CMP implementation on a regular basis to ensure that the Program is achieving stated objectives;
4) Review and offer recommendatione on federal actions subject to consistency determinations and certifications;
5) Provide an informal mechanism, as appropriate, for the review of plans, major development projects, capital programs, etc., covered by the Land Use Planning Act (this would not substitute for the process established by the Act but would allow for informal discussions of issues which are subject to the Act's provisions);
6) Recommendation and approval of CMP amendments, including designation of Areas of Particular Concern/Special Management areas, etc; and
7) Function as a special problems advisory group where major development projects, changes in federal, state or other law or regulation, variations in funding levels, or other matters necessitate coordination, comprehensive review, and mutual action.

This mechanism, combined with those listed above, provides a comprehensive framework for intergovernmental and interagency coordination, and on-going private sector participation, which will ensure that Delaware's Coastal Management Program is effective and meaningful.



DE29937

## COORDINATION POLICIES

1. *State and local units of government responsible for implementing the CMP should provide an opportunity for each other, federal agencies, and other interested parties to review and comment on proposed actions which may affect each other, federal agencies or other interested parties.*
2. *State and local units of government responsible for implementing the CMP should actively consult with other local, state, federal, regional and private entities to the extent necessary to provide for adequate coordination, as well as informed and reasoned program decisions.*
3. *State agencies responsible for implementation of the CMP shall coordinate their CMP-implementation responsibilities with each other to the extent necessary to assure well-informed and reasoned program decisions.*
4. *All state agencies and local units of government shall consider, prior to any CMP decisions, the national interest in (1) the planning for and siting of facilities which are necessary to meet other than local requirements, and, in conjunction with such planning and siting, (2) coastal resource and conservation and preservation.*

# 26: PROGRAM OVERVIEW

The need for a Coastal Management Program became apparent after several land use problems arose which were caused largely by increases in both the year-round and seasonal coastal populations. It became obvious that, if uncontrolled growth were to continue unchecked, the already recognized problems — traffic congestion, failing waste disposal systems, sand dune destruction, storm damage vulnerability, etc. — would be intensified. Further, it was almost a certainty that new problems would arise unless some management programs were designed to guide development near and at coast. The Coastal Management Program, the mechanism which was chosen to resolve coastal problems, has adopted policies (some are enforceable; many others are of the encouragement type) to allow orderly growth while protecting the coastal resources.

Perhaps "conflict resolution" is the key term in the reasons for having a program. For example, a parcel of marshland may be filled, thereby exterminating the plants and animals that occupied that part of the marsh. However, increased knowledge of the geography and biology of the coastal areas has shown that some uses of land irreversibly change the character of the land. Thus, there is a conflict between someone wanting to make a property suitable for some specific use and someone who is concerned about the continuous loss of wetlands and its effects on the life cycles of the marshland wildlife. Other coastal-related, controversial and conflicting practices include: indiscriminate dredging of lagoons and channels; pollution of the bays and groundwater; and the effects of inappropriate land uses (e.g., strip development on already overcrowded roads). It should be realized that often there is no deliberate intention on the part of the landowners to create environmental problems; sometimes problems occur because people continue to do things the way they always have done them. Because of increased public awareness of environmental deterioration and because of the recognition of the cumulative impacts of many small but unsound projects, it became necessary for the State to take a good objective look at what was happening in the coastal areas.

As the program developed, certain themes became noticeable. The conflicts seemed to center around progress (development) versus environmental protection. It is now believed that we can have the best of both extremes. However, the local units of government must carefully analyze their desires and the options that are available. Again, it becomes a case of "conflict resolution". For example, growth may be desired in a community but there is no more undeveloped land available except wetlands or beach lands. The best option in such a case may very well be to reuse derelict or underutilized land that already has utilities and roads in place. An approved program would provide the framework for policy development at all levels of government.

An approved program would benefit Delaware in several ways, including:

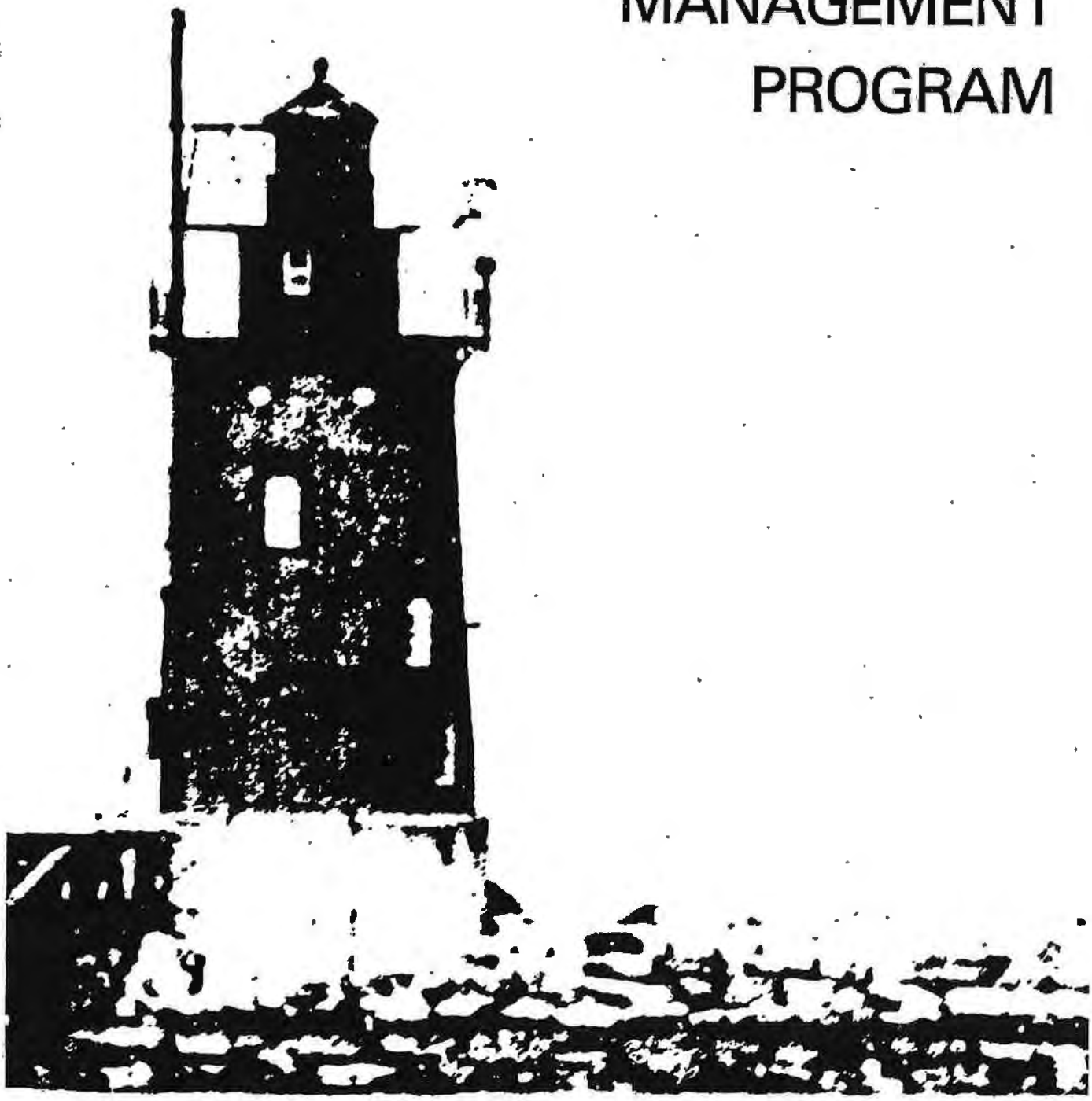
- Unified policies would be used in dealing with land use decisions.
- Federal activities would have to be consistent with the Coastal Management Program (with some exceptions).
- The Federal government would pay most of the administrative costs of the CMP.
- The public information and education parts of the CMP would increase public awareness of the coastal resources and their related problems.

Thus, it can be seen that the Coastal Management Program can be used as a vehicle to guide growth in a way that is environmentally sound. Perhaps, if growth is discouraged along beach fronts and the undamaged natural areas, we can continue to enjoy the beaches and wetlands of Delaware in an almost natural setting.



DE29938

# DELAWARE COASTAL MANAGEMENT PROGRAM



## DISCUSSION DRAFT

SEPTEMBER
1978

DE29939

This publication is financed in part through a federal grant from the Office of Coastal Zone Management, NOAA under the provisions of Section 305 of the Coastal Zone Management Act of 1972 (Public Law 92-583). Third Year Grant # 04-7-158-44037

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DE29940

ERRATA SHEET

Page 5.A.4-1, paragraph 1, line 11. "It is mapped on the following page." should read "It is mapped on the page that follows page 5.A.4-11."

Page 5.A.4-1, paragraph 1, line 13. Appendix letter is "E".

Page 5.B.2-3, paragraph 2, line 4, and Page 5.B.2-4, paragraph 1, line 10. "Section V.A." should read "Section 5.A."

Page 5.C.3-4, paragraph 4, lines 6 and 7. Sentence should read "Agricultural activities indirectly introduce herbicides and pesticides, thereby threatening living resources."

Page 5.D.3-10, paragraph 2, line 7. Executive Order number is "61."

Page 5.D.7-1. "Interstate Highways" heading near bottom of page should read "Highways."

Page 5.D.7-7, paragraph 2, line 12. Sentence should read, "The deposition of dredge spoils in water is an aggravated form of water and bottom disturbance. Unfortunately, the natural state of land sites used for dredge spoils is also typically destroyed by such deposition."

Page 5.D.7-9, paragraph 1. The first eleven lines are redundant. The page should start with "State Office of ..."

Page 5.D.7-9. Insert heading "C. Railroads" after second paragraph, and reduce the policy numbers that follow by one so that they range from 3-8 instead of from 4-9.

Page 5.D.8-1, paragraph 2, line 3. The line should read "increase in mortality or serious irreversible or incapacitating "

Page 5.D.10-1, paragraph 3, line 9. Executive Order number is "61."

DE29941

# DELAWARE COASTAL MANAGEMENT PROGRAM

(DISCUSSION DRAFT)

September, 1978

DELAWARE COASTAL MANAGEMENT PROGRAM

OFFICE OF MANAGEMENT, BUDGET & PLANNING
Dover, Delaware

DE29942

STATE OF DELAWARE
EXECUTIVE DEPARTMENT
OFFICE OF MANAGEMENT, BUDGET, AND PLANNING
DOVER, DELAWARE 19901

OFFICE OF THE DIRECTOR

PHONE: (302) 678-4271

August 31, 1978

The Honorable Pierre S. du Pont
Governor
Legislative Hall
Dover, Delaware 19901

Dear Governor du Pont:

It is my pleasure to transmit to you the Discussion Draft of the Delaware Coastal Management Program. This document represents many years of research, analysis, discussion, debate and review by many private citizens, State and local government representatives, and our staff. It has been prepared as a policy framework for the proper management of land and water resources of this State, cognizant of the need to balance environmental concerns with economic needs.

With publication of this Discussion Draft, we are beginning a process of public reviews, workshops, and hearings which we hope will lead to approval of the Delaware Coastal Management Program by the U. S. Department of Commerce. As you know, approval brings financial assistance for program implementation, assures Delaware of continued Coastal Energy Impact Assistance, and provides an important mechanism to require that federal actions be conducted in a manner consistent with Delaware's needs, objectives and policies.

We appreciate your continued support of our efforts in this area and hope that the Delaware Coastal Management Program meets with your approval.

Sincerely,

Nathan Hayward, III
Director

NH/DSH/jad

III

DE29943

## PREFACE

This document is a draft of the Delaware Coastal Management Program prepared by the Office of Management, Budget and Planning (OMBP) for review and discussion with interested citizens, federal agencies, interest groups, and affected State, county and local entities. It is being made available in anticipation of a series of public workshops to be held throughout the State beginning in October. At least two public hearings will be held during the review processes which begin in October. Copies are being placed in libraries, public buildings and governmental offices throughout the state. As long as the supply lasts, single copies are available free of charge by contacting the Delaware Coastal Management Program, Office of Management, Budget and Planning, 3rd Floor, Townsend Building, P.O. Box 1401, Dover, Delaware 19901 (Phone: (302) 678-4271).

In accordance with federal review and approval requirements set forth in the Federal Coastal Zone Management Act (P.L. 92-583), the Delaware Coastal Management Program and supportive documents will be submitted to the Office of Coastal Zone Management (OCZM), NOAA, U.S. Department of Commerce. OCZM, upon submission of the State's draft program, will review it to determine if program requirements have been met. Assuming major revisions are not needed to satisfy federal requirements, OCZM and OMBP will jointly prepare a Draft Environmental Impact Statement (DEIS). A combined DEIS-Program document will then be published and distributed to principally affected federal agencies, State, local and regional agencies, national interest groups, and interested individuals. Notice of the availability of the DEIS-Program Document and the public hearing will be given in the Federal Register, in local newspapers, and through other media (at least thirty (30) days' notice will be given prior to the hearing).

From the time of notice of availability in the Federal Register (and local media) of the DEIS-Program Document, each federal agency, other person or entity normally has forty-five (45) days pursuant to Council on Environmental Quality guidelines to provide comments, if any, on the management program and/or the DEIS to the Associate Administrator of OCZM. During this period a public hearing(s) will be held in one or more locations in the State. Following the public hearing(s) the comment period normally will remain open for fifteen days.

Following the close of the DEIS-Program Document comment period, OCZM and the State will review and evaluate the comments received. Preparation of response to comments, revisions to the program (if appropriate), submission of a final program document, and preparation and printing of the Final Environmental Impact Statement (FEIS) will then take place.

Notice of the FEIS will be given in the Federal Register (and local media) and a thirty (30) day review and comment period provided. Following this review, the Associate Administrator



DE29944

of OCZM may approve or disapprove the program. Notice of such action and the reasons therefore will be published in the Federal Register and in local media.

The review and approval processes listed above normally take up to seven months, hence, considerable opportunity for detailed public input and program modification are provided.

The reviewer of this Discussion Draft is advised that typographical errors, missing references, and certain other deficiencies may be present. These will be corrected prior to preparation of the DEIS-Program Document. More importantly, this document is incomplete in certain sections:

(a) Summary - a separate program summary will be prepared and distributed. A summary section will be included in the DEIS and FEIS documents.

(b) Section 5.E./Coordination and Appendix E - a Coastal Management Committee will be established by Executive Order to monitor program implementation, advise on other program matters, participate in consistency determinations, and have other duties. The Committee will be composed of both private citizens and officials from State, county and local governments.

(c) Appendix E - interim erosion and sediment control regulations have not been finalized at this time.

(d) Appendix F - the lists of federal actions, licenses and permits, grant-in-aid programs subject to the consistency provisions are being finalized and will be made available separately.

Comments, questions, requests for additional information, etc., should be sent to the Delaware Coastal Management Program at the address listed above.



DE29945

ACKNOWLEDGEMENTS

The Delaware Coastal Management Program has been prepared by the staff of the Environmental Policy and Coordinative Planning Section of the Office of Management, Budget and Planning, Executive Department, Dover, Delaware.

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DE29946

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DE29947

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*Agency affiliation during period of participation in program development.



DE29949

CONTENTS


| | Section |
|---|---|
| Summary, Delaware Coastal Management Program | 1 |
| Framework for Program Development | 2 |
| Genesis | 2.A. |
| Reasons for a Program | 2.B. |
| Benefits of an Approved Program | 2.C. |
| Major Questions Addressed by the Program | 3 |
| Participation in Program Development | 4 |
| Management Issues | 5 |
| Resources Subject to Management | 5.A. |
| Wetlands | 5.A.1. |
| Beaches | 5.A.2. |
| Coastal Waters | 5.A.3. |
| Underwater Lands and the Coastal Strip | 5.A.4. |
| Areas of Special Interest | 5.B. |
| The Public Lands | 5.B.1. |
| Natural Areas | 5.B.2. |
| Flood Hazard Zones | 5.B.3. |
| Port of Wilmington | 5.B.4. |
| Other Areas of Interest | 5.C. |
| Woodlands and Agricultural Lands | 5.C.1. |
| Historic and Cultural Areas | 5.C.2. |
| Living Resources | 5.C.3. |
| Mineral Resources | 5.C.4. |
| State-Owned Recreation and Conservation Lands | 5.C.5. |
| Development Issues | 5.D. |
| Introduction | 5.D.1. |
| General Development | 5.D.2. |
| Energy Facilities | 5.D.3. |
| Public Investment Considerations | 5.D.4. |
| Recreation and Tourism | 5.D.5. |
| National Defense and Aerospace Facilities | 5.D.6. |
| Transportation Facilities | 5.D.7. |
| Air Quality | 5.D.8. |
| Water Supply | 5.D.9. |
| Implementation | 5.D.10. |
| Coastal Management Coordination | 5.E. |
| Appendices | |
| General Requirements | A |
| Uses Subject to Management | B |
| Special Management Areas | C |
| Boundaries | D |
| Legal Authorities and Organization | E |
| Coordination, Public Involvement and National Interest | F |
| Miscellaneous Requirements | G |




DE29950

5.C.3.

# LIVING RESOURCES

## SIGNIFICANCE AND VALUE

Delaware has an abundance of wild birds, fish and fur bearing animals. The State is inhabited by approximately 37 species of waterfowl, 91 species of other water birds, four upland game birds, 24 species of birds of prey, 160 different song birds and 45 species of mammals. In addition, Delaware's waters are home for numerous species of freshwater and saltwater fish.

The State's coastal wetlands provide attractive habitats for mallards, black duck, least terns, blue-winged teal, gadwall, wood duck and snow and Canadian geese. Coastal waters in the Delaware Bay are inhabited seasonally by sea ducks. Fall migrations of waterfowl along the Atlantic flyway bring hundreds of thousands of waterbirds to Delaware's coastal areas. During the winter, the State supports more than 125,000 Canadian geese. This represents one of the largest overwintering concentrations of the species on the East Coast. These resources are enjoyed by the general public for their scenic value and hunting opportunities.

The majority of salt and brackish water sport fishing in Delaware occurs in the Delaware Bay, but there are also important sport fisheries in the Atlantic Ocean, Inland Bays and the many tidal streams feeding into these waters. The principal salt and brackish water fish caught in Delaware include weakfish, flounder (summer and winter), bluefish, striped bass, sea bass, perch, sturgeon, spot and drum.

Crabbing and clamming are popular salt and brackish water-based sports along the Delaware Coast, and large numbers of crabs and clams are taken in the State's bays and tidal estuaries.

A great deal of fresh water fishing occurs on old mill ponds. Once there were 130 mill ponds in Delaware, but only 60 remain today. Twenty-five of the 60 remaining ponds have been restored and maintained over the last two decades for public use, providing recreation for Delaware's 20,000 fresh water anglers.

The value of these resources is well documented in the State Comprehensive Outdoor Recreation Plan (SCORP) and in numerous studies prepared by the Division of Fish and Wildlife of the Delaware Department of Natural Resources and Environmental

Control (DNREC). Additionally, the National Marine Fisheries Service (NMFS) had underscored the importance of State Fisheries management in a letter to the Delaware CMP which says, "approximately two-thirds of our commercial species are dependent upon estuarine waters that are under State control."

As Working Paper No. 7 discusses in detail, these resources are of considerable national value for recreation and commerce. The Congress declared, in the Fishery Conservation and Management Act of 1976, that "commercial and recreational fishing constitute a major source of employment and contribute significantly to the economy of the Nation." NMFS has pointed out that "in this ... age of growing populations and growing demands for food ... the sea remains both a frontier and a storehouse of living resources of immense value."

The Congress has also expressed the Nation's interest in maintenance of wildlife with the passage of such legislation as the Dingall-Johnson Act, the Land and Water Conservation Fund Act, the Wild and Scenic Rivers Act, the Wilderness Act, the National Wildlife Refuge Administration Act, the Federal Aid in Wildlife Restoration Act, the Fish and Wildlife Coordination Act, the Migratory Bird Conservation Act, the Endangered Species Act, and the Federal Land Management Policy Act. Indeed, there are over 100 treaties, international agreements, federal statutes and executive orders which provide wildlife protection in this country.

The national interest in endangered fauna and flora is reflected in several federal statutes, particularly the Endangered Species Act of 1973, wherein Congress "finds and declares" that species of fish, wildlife, and plants in danger of or threatened with extinction "are of esthetic, ecological, educational, historical, recreational, and scientific value to the Nation and its people."

Federally listed endangered and threatened animal species, which are "resident" (as defined by the Endangered Species Act of 1973) in Delaware, include: the southern bald eagle; the brown pelican; tbe american peregrine falcon; the arctic peregrine falcon; the leatherback turtle; the Atlantic ridley turtle; the shortnose sturgeon; and several whales, including the blue, bowhead, finback, humpback, right, sei, and sperm. Of these, only the bald eagle, which nests in the Bombay Hook National Wildlife Refuge, is sighted more than rarely.

The following plants found in the State of Delaware have been proposed for inclusion on the national endangered and threatened list by the Smithsonian Endangered Flora Project: Cyperaceae-Phynochospora knieskernii (Family-species), endangered; Ranunculaceae-Trollius laxus, endangered; Spiaceae-Oxypolis canbyi, threatened; Betulaceae-Alnus maritima, threatened; Orchidaceae-Platanthera peramoena, threatened; Poaceae-Muhlenbergia torreyana, threatened; and Scrophulariacea Micranthemum micranthemoides, threatened.

CMP LIVING RESOURCES MANAGEMENT CONCERNS

The CMP is concerned primarily with five aspects of living resources management, namely: (1) habitat preservation; (2) species diversity and population maintenance; (3) program funding needs; (4) regional coordination; and (5) public awareness.

The importance of habitat preservation is obvious. Activities which completely destroy or even slightly alter living resources habitats can seriously upset the fragile ecosystem which supports these resources. Inland clearing for development eliminates wildlife cover, causing many species to leave the area or perish. If an endangered species can utilize only a specific area, the preservation of that area is generally of much greater concern than other areas.

Particularly important, however, are the estuarine areas because they are especially productive. Until recently, however, these areas were not well protected. Between 1950 and 1969, four percent of the Nation's estuarine areas were lost through dredging and filling. That low a percentage may not seem serious, but in absolute figures a great deal of wildlife habitat has been lost. Moreover, 20 years is a short period of time, cumulative losses over longer periods could be drastic.

Development pressures are typically keen due to the recreational opportunities afforded by estuaries. In Delaware's inland bays, a 1969 study showed that 25%, 44% and 10% of the shorelines of Rehoboth Bay, Indian River Bay, and Assawoman Bay, respectively, were developed. Although these changes were documented from 1938 and 1969, almost all of the development took place between 1958 and 1969.

Slight changes in water quality also can be critical. Dissolved, suspended and floating waste materials in water use up oxygen either directly by oxidation or indirectly by causing "plankton blooms", which die and remove oxygen from the water as they decompose. The quantity of dissolved oxygen in the water is extremely important to the economics of the commercial and sport fisheries.

Declines in many species of both finfish and shellfish can be correlated with declines in water quality. Seventy years ago, shad and sturgeon were major commercial fish in Delaware. Throughout the 19th century the annual shad catch weighed between 10 and 19 million pounds. Today, only a few Delaware gill net fishermen seek the relatively rare shad or sturgeon for commercial purposes. Their low population is attributed to the high pollution level in the lower Delaware River which contributes to mortality and curtails up-river migration for the purpose of spawning.

There are, of course, several activities which pose water quality problems. Sewage disposal systems can pollute the water and devastate living resources when such systems malfunction or when the systems are inadequate to handle the quantities or components of the sewage. Ninety-two percent of the fish kills reported in the Nation in 1974 were attributed to such problems.

The development and transportation of energy resources in estuaries threaten fish and wildlife because of oil spill possibilities, although Delaware's experience with oil traffic in the Delaware River and Bay so far has been remarkably trouble-free. Petrochemical complexes, of course, also present oil pollution hazards. A 1961 study by the Delaware Game and Fish Commission contends that such complexes are simply incompatible with wildlife, concluding, "Which shall it be? Heavy petrochemical industry or the benefit and use of Delaware's most valuable natural resource."

Finally, spoil disposal and certain agricultural practices constitute serious threats to habitat. Benthic organisms, those animals living on beds of mud under water, are smothered by spoil disposal operations. In the past, most spoil disposal took place on wetlands which were thereby destroyed. Agricultural activities indirectly introduce herbicides and living resources. The State's own mosquito control program has in the past relied substantially on pesticides or other practices which have harmful side effects on desirable living resources.

Habitat preservation is only one factor which bears on the diversity, population, and health of living resources. Excess fishing and hunting can reduce species population far beyond the maximum sustainable yield. On the other hand, overly strict hunting and fishing prohibitions prevent the resources from being utilized and may adversely affect the health of the resources which compete for limited food supplies. To determine and provide for the appropriate amount of fishing and hunting, data must be gathered and analyzed, access to the resources must be possible, and enforcement of the appropriate levels of hunting and fishing must be assured.

Unfortunately, past hunting and fishery management planning activities have been somewhat hampered by lack of financial support. Typically, the bulk of the money appropriated for natural resources management has been spent on protecting air and water quality, with relatively little left over for living resources management.

Interstate regulations have also posed problems in the past, particularly the restrictions imposed by the New Jersey-Delaware Fisheries Compact of 1907. This Compact calls for the formualtion of identical fishery laws by New Jersey and Delaware for the Delaware Bay. Once these laws are agreed upon by the States they cannot be changed without the approval of both States. For a long time the two states believed the Compact had been properly implemented and that they could not change their respective laws without each other's approval. This arrangement proved unsatisfactory because it was difficult to reach a consensus on how the laws should be modified to reflect changing fishery technologies. Under the auspices of the CMP, the Compact was examined by the Delaware Department of Justice and an opinion was issued which declared that the key provision in the Compact was never implemented. This action will be of considerable value in allowing Delaware to update its fisheries statutes and regulations, an action now underway. However, the need for some sort of regional fishery planning still exists because fish stocks do not recognize jurisdictional boundaries and because fishermen from different states must be regulated at least somewhat alike if they are to be competitive with each other.

Finally, as with many of the resources considered by the CMP, the program is concerned that the public be fully aware of the significance and value of living resources so that it can enjoy them without endangering the resources or themselves. Hunter safety is an important concern in this regard.

## CMP LIVING RESOURCES POLICIES

### 1. THE QUANTITY AND QUALITY OF LIVING RESOURCES HABITAT SHOULD BE PRESERVED TO THE MAXIMUM EXTENT PRACTICABLE.

Several sections of the document describe CMP habitat preservation measures. Most important are the wetlands policies (Sec. 5.A.1.), the water quality policies (Sec. 5.A.3.), the coastal strip policies (5.A.4.), the nature preserves policies (Sec. 5.B.2.), and the State-owned conservation lands policies (Sec. 5.C.5.). Also noteworthy is DNREC's Endangered Species Program, discussed under Policy No. 6.

5.D.3.

# ENERGY FACILITIES

## A. Introduction

This section incorporates by reference Working Paper No. 7--"The Natural Interest in Resources and Facilities of the Delaware Coastal Zone." That paper presents a detailed analysis of the national, regional, and Statewide energy resources and energy facility needs; the siting criteria for such facilities; the impacts of energy facilities on coastal resources; the balancing of the need for energy facilities with the interest in resource preservation; and a discussion of the CMP policies which reflect that balancing.

Although this section briefly highlights the working paper discussion, its main purpose is to describe the CMP planning process for energy facilities likely to be located in, or which may significantly affect the coastal zone. That process recognizes that current CMP energy policies may be modified during program implementation, depending on a host of unpredictable factors described in the working paper. Thus the siting process provides for review of the energy policies, and a method for their alteration, if appropriate. It also provides for the coordination of energy facility planning and siting with federal, regional, State, and local agencies as these activities may affect the Delaware Coastal Zone. In addition, the process establishes a procedure for assessing the suitability of specific sites for energy facilities. That procedure is also used to anticipate and manage the impacts of energy facilities. Finally, the energy facility planning and siting process considers the national interest in energy facility siting, as well as the national interest in resource preservation. The policies in other sections of the document, most notably the 5.A. sections, directly affect energy facility siting and are, in fact, energy siting policies. The legal authorities relied upon to implement the energy facility siting policies are referenced throughout this section and are discussed in detail in Appendix E (Legal Authorities and Organization).

## B. Current CMP Energy Policies

### 1. Conservation

According to the President, the Nation's economic security and the American way of life will be gravely endangered unless the United States makes a timely adjustment of its use of energy. Oil and gas provide about 75 percent of the country's energy needs, but constitute less than 8 percent of its energy resources. In early 1977, the Nation imported 9 million barrels of oil per day, one-half of the domestic supply. During an 8-month period

in that year, oil imports were reportedly worth $23 billion. Moreover, oil and gas supply disruptions have already caused temporary unemployment of more than one million American workers--some of them Delawareans. Finally, most of the known oil and gas supplies are owned by Nations which have uncertain relationships with the United States, a situation which jeopardizes foreign policy and the reliability of future energy imports.

As oil and gas supplies continue to dwindle--one projection estimates that World supplies of recoverable oil and gas will be exhausted by the year 2000--the problems of the adverse balance of trade, energy shortage-induced unemployment, and a weakened foreign policy posture may be aggravated unless the country learns to change its energy consumption habits. Ultimately, new sources of energy must be developed. In the meantime, conservation measures are needed to mitigate the impacts of the energy crisis.

In response to the federal Energy Conservation and Production Act (P. L. 94-385), Delaware's Office of Management, Budget and Planning has developed an Energy Conservation Plan for the State of Delaware. That plan has been approved by the Federal Energy Administration and is hereby incorporated into the CMP by reference. The objective of the plan is to reduce energy consumption in the State by more than 5 percent by 1980. Measures which will be utilized to achieve that goal include, but are not limited to: increased thermal and lighting efficiency in State buildings; industrial and commercial energy audits; homeowner energy audits; legislation allowing right turns on red stoplight signals; strict enforcement of highway speed limits; promotion of the use of carpools and mass transit; waste oil recycling; and several energy conservation educational programs.

The Governor not only has supported energy conservation measures with the development and adoption of the Energy Conservation Plan, but also with two Executive Orders. Executive Order No. 15 restricts the use of air conditioning in State buildings and encourages homeowners to do likewise. Executive Order No. 9 establishes the Governor's Energy Resource Management Commission which, among its other duties has assisted in the development and updating of the Energy Conservation Plan.

By virtue of House Joint Resolution No. 11 (1977), the Delaware General Assembly has also adopted energy conservation as an official State policy. Moreover, the Delaware Energy Act of 1978 implements many of the program steps adopted by the Delaware Energy Conservation Plan, as well as several other energy conservation measures.

Finally, the CMP reduces the demand for energy by encouraging more energy efficient land-use patterns. Several recent studies have demonstrated that substantial energy savings can result from the clustered form of land development, which is encouraged by the program's public investment policies.

2. Oil Refineries

Oil refinery facilities in the Delaware Valley appear to be ample for the anticipated short-term and, possibly, long-term needs of the region. The Getty Oil Co. refinery capacity at Delaware City exceeds State demands, and makes Delaware a net exporter of refined petroleum products.

Several federal agencies have pointed out that if new sites become necessary, coastal locations are not necessarily required. The coastal resources in Delaware are the State's most important asset. Development near or in such resources may affect: recreation and tourism; fish and wildlife; water quality; wetlands; historical and cultural sites; floodplains; and other resources of national, regional, and Statewide significance. Because of the substantial impact of refineries on coastal resources, the CMP prohibits the construction of new oil refineries in wetlands or in a coastal area defined as the "coastal zone" by the Delaware Coastal Zone Act. That area, hereinafter referred to as the "coastal strip" to avoid confusion with the CMP coastal zone boundary, which is the entire State, lies between a series of inland roads and the Delaware River and Bay. The coastal strip varies from a few hundred yards wide in northern Delaware to a maximum of 12 miles in the south, and is mapped on page

New oil refineries are not prohibited inland by the CMP, provided certain State and local standards discussed below, are maintained.

3. Gas Plants

Outer continental shelf (OCS) development off the Atlantic coast may create a demand for new gas plants in the Mid-Atlantic region of the country. Although there are several types of gas plants, the type with which the CMP is concerned is one which constitutes a "heavy industry use," as defined in the Delaware Coastal Zone Act. Like oil refineries, gas plants do not necessarily require a coastal location. Also like oil refineries, the environmental impact of gas plants is such that the CMP does not permit them in wetlands or the coastal strip. Inland locations are acceptable with the same qualifications as exist for oil refineries.

4. LNG Facilities

Liquefied natural gas (LNG) facilities are used primarily to make the importation of foreign gas supplies economically feasible. A typical LNG import/export facility consists of a marine unloading pier, a cryogenic pipeline leading from the pier to storage tanks, storage tanks, liquefaction units or vaporizers, and compressors and pipeline facilities to transport the gas.

The national and State interest in promoting reliance on foreign energy supplies is, at best, unclear. It is also unclear that there is any need for LNG facilities in Delaware's coastal strip--the only arguably suitable location in the State for such facilities. What is clear, however, is that LNG facilities that involve large-scale over-water transfer of LNG threaten human life and may significantly impact coastal resources. For all the above reasons, the CMP prohibits these types of LNG facilities in Delaware. Inshore natural gas facilities are permitted provided they can meet the environmental protection measures discussed in Section 5.A. and Appendix E.

5. Deepwater Ports

Deepwater ports used to transfer bulk products, such as oil, are also prohibited in Delaware waters. Under certain circumstances, such ports can serve environmental and economic interests of the Nation. Unfortunately, the impact of a deepwater port within the Delaware Bay on State resources could be drastic. An oil spill from a 200,000 ton tanker in the Delaware Bay, for example, would probably be catastrophic, particularly because of the proximity to valuable wetlands and beaches. Moreover, the dredging and spoil disposal operations necessary to establish and maintain a channel and basin would be extensive in the Delaware Bay, causing certain destruction of marine life and costing millions.

Neither of those problems are presented by offshore deepwater ports sufficiently distant from shore. For that reason, and others, the CMP supports deepwater ports, provided that they meet certain minimum standards. Those standards include a location far enough offshore to minimize oil spill threats to the coast and to obviate dredging requirements; stringent environmental safeguards; and a demonstrated reduction of tanker traffic and lightering in the Bay.

6. OCS Oil And Gas Development Facilities

Facilities which support OCS oil and gas development may include oil and gas platforms, platform fabrication yards, storage depots, crew and supply bases, pipelines, and tank farms.

# SECTION 5E

## COASTAL MANAGEMENT COORDINATION

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5.E.

# COASTAL MANAGEMENT COORDINATION

## A. Background And Issues

"Coordination" is one of the most frequently used words in government. Committees, policy boards, councils, technical advisory groups (TAC's in the bureaucratic jargon), and a variety of other bodies are established by virtually every agency and unit of government. Generally, these bodies are an attempt to provide a forum for discussion of concerns, resolution of conflicts, exchange of information, the "testing" of concepts or recommendations before they are made public, sent to a legislative body, or otherwise acted upon. The CMP, for example, has its own sounding board, the Coastal Zone Management Committee.

The proliferation of such groups in Delaware onte reached the point where a former Governor established a committee on committees to examine the problem and recommend the abolition of unnecessary groups at the State government level. More recently, an Intergovernmental Task Force (officially named the Intergovernmental Task Force on Overlapping Services) was established to examine the overlaps of services among various levels of government which often are the genesis for many coordinative groups.

The basic CMP issue, however, is not so much reducing the number of groups as it is the need for an effective process whereby the various groups can be heard. The CMP balances diverse and often conflicting interests. Substantive inputs into the CMP are necessary to achieve well-informed and reasoned program decisions. By obtaining information necessary for developing the CMP, as well as views on what is proposed for program implementation, many potential conflicts can be resolved before they ripen.

As Section Four (Public Participation Process) indicates, the CMP began coordination with the various units and levels of government early in the program's development. Continued coordination during program implementation will be necessary for program refinement and to avoid conflicts between agencies responsible for program implementation. In Delaware, as in nearly every sizeable coastal area, management of land and water resources is shared by various levels of government and among many separate agencies within these levels. As is noted elsewhere, planning and zoning actions, particularly those which relate to uses of individual parcels, are primarily the responsibility of local entities. Yet, the State government delivers many services generated by locally approved development, and assumes responsibility for those resources determined to be worthy of regulation for the general public's benefit. Many services and responsibilities are shared, some formally such as schools, some less formally such as economic recruitment and promotion. Where such actions complement

each other, the benefits may accrue to everyone. Where they conflict with each other, the different levels of government often frustrate each other.

Conflicts can also occur within State government. For example, the frequent incompatibility between highways and parks can cause a conflict between objectives of the Delaware Department of Transportation and those of the Delaware Department of Natural Resources and Environmental Control (DNREC). Likewise, industrial recruitment and other development efforts can run afoul of efforts to control or reduce air or water pollution. Preservation of historic or prehistoric sites may also conflict with plans for new facility construction. Inasmuch as the CMP involves policies for both resource preservation and development, coordinative mechanisms are needed to ensure that the various State agencies responsible for implementing the policies are fully apprised of how their actions may affect other CMP objectives.

In many cases the management policies are specific enough to dictate the result without coordination. In others, however, the CMP's flexibility allows the relevant agencies to work together to determine the best approach. The CMP concern, in such cases, is that the agencies consider the CMP concerns and recommendations, as well as each other's viewpoint.

A related issue is the need to recognize and preserve the statutory or traditional separations of powers, duties and responsibilities which have been vested in the individual agencies and units of government. This fundamental issue was acknowledged by the Delaware Tomorrow Commission, a blue-ribbon Commission appointed by the Governor. The Commission recommended enactment of statewide land use planning legislation providing for participation of all levels of government in certain land use decisions, while preserving the traditional rights and powers (a recommendation which the Commission found extremely difficult to accommodate when charged by Governor du Pont with the responsibility for drafting the land use planning legislation).

Finally, coordination processes may become costly in terms of time or manpower commitments, and may impose delays in planning, regulatory, or other management processes. They may also introduce elements of uncertainty and unpredictability into on-going management processes, thereby reducing their credibility or threatening their legality. Thus the processes cannot be so unwieldy that they cause more problems than they resolve.

B. Coordination Between State And Local Agencies

In Delaware, where local units of government exercise the primary control over land use decisions while the State government provides much of the required public services and facilities, coordination is especially important. Too often in the past a lack of such coordination has resulted in a mis-matching of development and the provision of needed facilities, or the location of major developments which conflict with the plans of local governments or State agencies. To correct this problem, the Delaware Tomorrow Commission drafted (with CMP support) and recommended the adoption of legislation calling for a process that would assure consistency and coordination between levels of government, as well as between government and private enterprise. The legislation, the Land Use Planning Act of 1978, was subsequently enacted and is discussed in detail in Appendix E (Legal Authorities and Organization). Here it is sufficient to note that the Act establishes a formal process by which State and local governments must provide an opportunity for each other to review and comment on proposed actions which may affect each other.

Although the new Land Use Planning Act provides the coordinative device which the CMP relies upon most heavily for State-local consultation, several other mechanisms established prior to development of the CMP will supplement the Act. For example, a Coastal Zone Management Committee, comprised of state, county, municipal, federal, and non-government representatives, was established by Executive Order No. 41 signed by Governor Tribbitt on May 29, 1974. This Committee served in an advisory capacity during program development. A subsequent Coastal Management Committee with specified coordination responsibilities will be established by Executive Order concurrent with program approval (See Part F of this Section). Also , most, if not all, the CMP permit decisions (discussed in Section 5.A.) are preceded by public hearings at which local governments have an opportunity to comment. Conversely, local zoning decisions at both the county and municipal levels are preceded by public hearings. Moreover, the "A-95" Clearinghouse review process discussed below also provides State-local coordination.

C. Coordination Between State Agencies

The primary State coordination mechanisms used to implement the CMP are established by an Executive Orders which will be issued concurrently with program approval. These Orders establish the program as the official management program for the State's coastal resources, require that State department and agencies, to the extent permitted by law, enforce the Program's goals, objectives and policies including the ones appearing in Part G of this Section, and create a Coastal Management Committee. The State agency officially designated to oversee the program

will have the responsibility for monitoring and evaluating the management activities of those agencies and departments having specified responsibilities under the program, and shall inform the Governor and the General Assembly of their performance. Executive Order 61 requires all State agencies to cooperate with the designated lead agency. Such cooperation, of course, includes sufficient coordination to ensure that CMP policies are enforced. The Governor, of course, has the authority to resolve issues resulting from possible non-compliance with the program or inter-agency conflicts with program objectives and policies.

CMP policy regarding State coordination in management and public investment is also implemented by Delaware Executive Orders Numbers 29 and 6, as amended, setting up the State and Federal Clearinghouse process and the Capital Projects Review Committee. All agencies and "jurisdictions" have the opportunity to review and comment on projects in order to maximize the achievement of goals and objectives and minimize program duplication" (E.O. #29); and it is State policy "to have measurable objectives for capital improvements and their subsequent operating cost implications." (E.O. #6, as amended).

Applications for federal grants from State agencies or from other entities which must be processed through the State are subject to the Clearinghouse Process. Included are requests for ongoing planning programs, many land use and facility plans (such as the various water quality and recreation plans), and numerous public service programs. A review process provides for input from other agencies and includes an assessment of the requests relative to the State Development Plan and its various components. The report of the Delaware Tomorrow Commission outlining broad State development policy is one component, as will be the Delaware CMP upon approval. Requests are evaluated in terms of policy conflicts, duplications of services, budgetary and public investment impacts, and overall benefits to the public.

Another coordination step occurs through the Capital Projects Management Process developed under Executive Order #6 (as amended) and through the preparation of the State's capital investment budget. The basis for review and recommendation of projects is the State Development Plan and the policies adopted as part of it along with consideration of costs/benefits; capacity and timing of the investment relative to demonstrated/expected need and general land use impacts; and the fiscal capabilities of the State.

Finally, as indicated elsewhere in the program document, many CMP-related activities require or otherwise involve State agency coordination independent of the mechanisms described above and below. One example is the coordination provided by the Energy Siting Advisory Committee, discussed in Section 5.D.3. and which provides for coordination regarding location of new or expanded energy facilities. Likewise, State agencies consult with the Delaware Division of Historical and Cultural Affairs with respect to actions which may affect historical or cultural sites. The Delaware Office of Management, Budget and Planning consults with DNREC on permit applications filed pursuant to the Delaware Coastal Zone Act. The list goes on, and, with the aforementioned CMP State coordination mechanisms, State agency coordination should be a CMP strong point.

## D. Coordination With Federal Agencies And Consideration of National Interests

State-federal conflicts have been minimized through direct involvement of key federal agencies in program development as members of the Coastal Zone Management Committee. Other federal agencies were contacted early and often in the program development process. Section Four documents such contacts. Delaware anticipates that federal interest in the program will continue after program approval and welcomes such continued participation.

The CMP will seek opportunities to invite federal participation in technical/advisory committees established to plan for and manage coastal resources, and will evaluate programs, plans, and grant requests subject to the State Clearinghouse Process for their relationship to federal concerns as well as to State policies. In the latter case, where projects before the Clearinghouse appear to be of potential concern to appropriate federal agencies, they will be notified and offered an opportunity to comment.

During program implementation the CMP will employ several means to consider the national interest in: (1) the planning for and siting of facilities which are necessary to meet other than local requirements and (2) coastal resources conservation and protection.

The designated lead agency for program implementation will assume the primary responsibility for ensuring such consideration. There are three types of occasions which will require that the national interest be considered during program implementation: (1) decisions by State government which involve the planning for or siting of facilities necessary to meet other than local requirements; (2) decisions by local units of government which

involve the planning for or siting of facilities necessary to meet other than local requirements; and (3) the annual program review. In addition, there are various consultation mechanisms which will give federal agencies and other interested parties an opportunity to present for timely consideration an evaluation of the national interest to State and local decision makers. Some of these mechanisms are described in this section. Others appear elsewhere in the document. An especially important one is discussed in Section 5.D.3., which deals with energy facilities.

As explained above, Executive Order No.61 requires the designated lead agency to monitor and evaluate the management of the State's coastal resources by the various State agencies and local governments. It also requires all State departments and agencies to cooperate to the fullest extent possible with the lead agency. Moreover, Executive Order No.61 requires all State departments and agencies to enforce the goals, policies and objectives of the coastal management program. Thus, the policy in Part F. of this section which calls for consideration of the national interest is enforceable.

The national interest will be considered in the amendment of any State rule or regulation used to implement the CMP and in the planning for and siting of the facilities identified in Working Paper No. 7, entitled The National Interest in Resources and Facilities of the Delaware Coastal Zone. The lead agency may add facilities if it determines that there is a national interest in such facilities. The federal Office of Coastal Zone Management (OCZM) and other federal agencies are invited to assist the lead agency in making that determination.

The lead agency will submit timely written comments addressing the national interest in proposed facilities to the appropriate State departments and agencies with planning or siting authority. The comments will balance the national interest in the proposed facility with the national interest in the preservation of resources. Sources used in that balancing process will include Working Paper No. 7; policy statements from the President; federal laws; statements from federal agencies; testimony from public hearings or other public input; or plans, reports, or studies from federal, State, interstate agencies or local government.

The appropriate State agency will respond in writing to the lead agency's comments in its planning action or siting decision. Such response will summarize the comments and explain how the action or decision reflects the consideration thereof. The lead agency will review that response as part of its responsibility to monitor and evaluate the management of the State's coastal resources pursuant to Executive Order No. 60. In the event that

the lead agency determines that the response inadequately reflects consideration of the national interest, it will so notify the Governor and re-submit its comments to the appropriate agency, which will then respond anew.

Executive Order No.60 requires the lead agency to submit comments addressing the Coastal Management Program policies and concerns to local land and water use decision makers. The above cited policy which requires consideration of the national interest, will be implemented by the Executive Order and the Land Use Planning Act. Pursuant to Title 29, Section 92 of the Act, the lead agency will make the same types of comments to decision-making of local government as it will to State agencies, as discussed above. The Act requires a written rationale for the local government's decision, which must include a discussion of the lead agency's comments or recommendations, if any. A State review board may require reconsideration of the local decision if the local government fails to adequately consider the comments. It is also important to note that, under the Land Use Planning Act, interested federal agencies must be (1) notified of proposed land use planning actions of greater than local significance; (2) afforded an opportunity to participate in local decision programs; and (3) allowed to submit comments and recommendations on such actions.

The CMP recognizes that the national interests in facilities and resources may change over time. Inasmuch as many of the broad policies in the program cannot be readily reviewed on a case-by-case basis, the national interest in such policies will be reconsidered at least once a year by the lead agency in the annual report to the Governor, the General Assembly, and OCZM.

An additional mechanism for ensuring federal input on projects will be the establishment of joint permit review and processing steps by federal and State agency staffs prior to formal permit action by either party. Initial efforts have been undertaken between State agencies and some federal agencies relative to State/Corps of Engineers approvals, and further action will be taken to institutionalize such processes. Informal coordination, of course, already takes place between many State and federal agencies on a broad range of CMP concerns.

Finally, the "federal consistency" provisions outlined in Appendix F (Section 3) will also be used to make sure that federal actions are consistent to the extent practicable with the CMP.

## E. Regional Coordination

Coordination among the localities and states in Delaware's region has been of primary concern since the program development effort began. Actions by neighboring states can directly affect

Delaware and the value of its coastal resources. In order to provide an opportunity for the states to identify problems of a regional nature and to ensure that compatible approaches to the management of regional resources are being used by the states, Delaware hosted the first of what has become a more or less regular meeting of State CMP staffs. Included in these meetings are Delaware, New Jersey, Pennsylvania, Maryland, Virginia and, more recently, North Carolina, South Carolina, and Georgia.

A higher level coordination mechanism is the Mid-Atlantic Governors' Coastal Resources Council (MAGCRC), an organization formed by the Governors of the states in the region for the purpose of exchanging information, developing policy, and preparing responses to federal agencies on major coastal issues, primarily those relating to outer continental shelf (OCS) development and energy. This group, which involves the Governors and their officials primarily responsible for development of State OCS and energy policy, has met on a somewhat regular basis and has been particularly successful in raising the level and scope of state participation in many federal OCS leasing and regulatory processes.

Another effort, currently only in the developmental stage, is the establishment of a Regional Coastal Information Center. This proposal emanates from a concern of coastal managers and concerned citizens who, on one hand, lack information and, on the other hand, are concerned that research and information gathering programs and projects may be duplicative or fail to address clearly perceived problems. A definite need for a quick response information delivery system has been identified. The information needs are quite diverse, ranging from highly specified environmental data to more general background information on the coastal law. To date, the national Coastal Zone Information Center of OCZM has worked to supply some of the information, but a national center cannot begin to provide the specialized coverage needed at state and local levels.

The Delaware CMP made an initial attempt at closing this gap by funding a Research Clearinghouse effort based on work done by the University of Delaware which related to coastal management. This start was useful, but limited in scope.

New England and the Pacific Northwest have responded to the need for more localized coastal information through the formation of Regional Coastal Information Centers (RCIC). The RCIC approach was first suggested at the national level by OCZM and the Sea Grant Marine Advisory Service. The mid-Atlantic States have proposed a more decentralized and state-specific system, sharing information through common formating.

The overall goal of this system will be to provide a readily accessible quick-response coastal information capability for (1) state coastal planning programs and other state and local agencies; (2) scientists and technical personnel needing environmental data and/or bibliographic information; (3) Sea Grant programs; (4) regional fishery management; and (5) the general public.

Delaware's CMP will work with the Delaware Sea Grant Program in support of this proposed system.

Another issue involving regional coordination is more limited in scope and involves the Delaware-New Jersey boundary along the upper Delaware River, particularly as it affects Salem County, New Jersey. As a result of a 1933 U.S. Supreme Court ruling, Delaware's jurisdiction extends to the low water mark on the New Jersey shore. Salem County officials contend that Delaware law, particularly the Delaware Coastal Zone Act, unduly precludes development along the Delaware River in New Jersey. Delaware officials and CMP staff members met with Salem County officials to discuss the matter. While Delaware understands Salem County's concerns, there is no clear evidence that New Jersey has suffered any adverse effects. The creation of a "no-man's zone" in the River would raise serious administrative and legal problems. Thus, a cooperative exchange of information between the parties is deemed the best solution for avoiding potential problems. To facilitate the exchange of information, Delaware has agreed to share information on Coastal Zone Act applications, where appropriate, with Salem County and has asked Salem County to notify it whenever an impending development in their county could raise the jurisdictional difficulty. In any event, only a few possible uses would cause problems. For example, single purpose (use) piers extending into the Delaware River, the most likely regulatory issue, would require a Delaware Coastal Zone Act application permit, but experience under the Act involving Delaware and Pennsylvania indicates that such applications can be processed to the satisfaction of all parties.

Finally, a long-standing mechanism for coordination in the Wilmington area, the Wilmington Metropolitan Area Planning Coordinating Council (WILMAPCO), is significant to the CMP. Municipal, county, and State representatives from Delaware, Maryland, and New Jersey work together in WILMAPCO to resolve interstate and intrastate issues affecting the Wilmington area.

## F. Overall CMP Implementation

Executive Order ___ establishes a Coastal Management Committee to be comprised of private citizens and officials from State, county and local governments to provide oversight and coordination regarding program implementation. Among the duties of the Committee are:

1) Advice regarding applications for Section 306 funding, including review of proposed annual work plan, etc;

2) Where required under the CEIP Intrastate Allocation Process, approval of applications for CEIP grants and loans;

3) Monitor CMP implementation on a regulat basis to ensure that the Program is achieving stated objectives;

4) Review and offer recommendations on federal actions subject to consistency determinations and certifications;

5) Provide an informal mechanism, as appropriate, for the review of plans, major development projects, capital programs, etc., covered by the Land Use Planning Act (this would not substitute for the process established by the Act but would allow for informal discussions of issues which are subject to the Act's provisions);

6) Recommendation and approval of CMP amendments, including designation of Areas of Particular Concern/Special Management areas, etc; and

7) Function as a special problems advisory group where major development projects, changes in federal, state or other law or regulation, variations in funding levels, or other matters necessitate coordination, comprehensive review, and mutual action.

This mechanism, combined with those listed above, provides a comprehensive framework for intergovernmental and interagency coordination, and on-going private sector participation, which will ensure that Delaware's Coastal Management Program is effective and meaningful.

G. Coordination Policies

1. STATE AND LOCAL UNITS OF GOVERNMENT RESPONSIBLE FOR IMPLEMENTING THE CMP SHOULD PROVIDE AN OPPORTUNITY FOR EACH OTHER, FEDERAL AGENCIES, AND OTHER INTERESTED PARTIES TO REVIEW AND COMMENT ON PROPOSED ACTIONS WHICH MAY AFFECT EACH OTHER, FEDERAL AGENCIES OR OTHER INTERESTED PARTIES.

This general policy will be implemented by the mechanisms discussed above. The details of the most important mechanism--the process established by the Delaware Land Use Planning Act--appear in Appendix E (Legal Authorities and Organization). It will also be implemented through the Coastal Management Committee established by Executive Order ___.

2. STATE AND LOCAL UNITS OF GOVERNMENT RESPONSIBLE FOR IMPLEMENTING THE CMP SHOULD ACTIVELY CONSULT WITH OTHER LOCAL, STATE, FEDERAL, REGIONAL AND PRIVATE ENTITIES TO THE EXTENT NECESSARY TO PROVIDE FOR ADEQUATE COORDINATION, AS WELL AS INFORMED AND REASONED PROGRAM DECISIONS.

This policy simply recommends that the CMP implementation agencies coordinate their activities with others even if those others do not take the initiative pursuant to Policy No. 1.

3. STATE AGENCIES RESPONSIBLE FOR IMPLEMENTATION OF THE CMP SHALL COORDINATE THEIR CMP-IMPLEMENTATION RESPONSIBILITIES WITH EACH OTHER TO THE EXTENT NECESSARY TO ASSURE WELL-INFORMED AND REASONED PROGRAM DECISIONS.

This policy shall be enforced, if necessary, by the Office of the Governor pursuant to the Executive Order calling for CMP implementation. As the discussion above indicates, there are several additional State coordinative mechanisms for CMP implementation.

4. ALL STATE AGENCIES AND LOCAL UNITS OF GOVERNMENT SHALL CONSIDER, PRIOR TO ANY CMP DECISIONS, THE NATIONAL INTEREST IN (1) THE PLANNING FOR AND SITING OF FACILITIES WHICH ARE NECESSARY TO MEET OTHER THAN LOCAL REQUIREMENTS, AND, IN CONJUNCTION WITH SUCH PLANNING AND SITING, (2) COASTAL RESOURCE CONSERVATION AND PRESERVATION.

Again, the preceding discussion and Appendix E. provide the details of how this policy will operate in practice, as well as the authority for it. The facilities and resources to which the policy applies appear in Working Paper No. 7.

# APPENDIX D - BOUNDARIES

The federal Coastal Zone Management Act (CZMA) requires that the CMP identify the boundaries of the coastal zone subject to the management program.

Working Paper No. 2 provides background information on the requirements, and the various options considered during the course of program development. These options included biophysical boundaries -- such as wetland drainage areas, flood hazard areas, watersheds, and the ten foot elevation contour; and institutional boundaries, such as the coastal counties, the Delaware River Basin Commission Boundary, and the areas delineated under Section 208 of the Federal Water Pollution Control Act of 1972.

There are four elements to the CMP boundary: (1) the inland boundary; (2) the seaward boundary; (3) excluded lands; and (4) interstate boundaries.

## 1. The Inland Boundary

According to the CZMA, the inland boundary must include those lands, "the uses of which have a direct and significant impact on coastal waters." "Coastal Waters" are those waters which contain a measurable quantity or percentage of seawater. In Delaware, there are no lands more distant than eight miles from coastal waters. Inasmuch as the primary purposes in defining the boundary are (1) to assist coastal residents and property owners as well as resource users and governmental entities to understand the geographic scope of the management program and (2) to identify areas eligible for Coastal Energy Impact Program assistance, an inland boundary which can be described in a manner which is sufficiently clear and exact for such purposes is obviously preferable over one that is not. By defining the inland boundary in terms of existing political jurisdictions, the objectives of clarity and exactness can be realized. Thus the Delaware CMP has elected to utilize it county boundaries to define the inland boundary.

The federal Office of Coastal Zone Management (OCZM) has suggested that the utilization of county boundaries which border coastal waters is an acceptable option for many of the coastal states, including Delaware where such boundaries encompass the entire State. Defining the CMP inland boundary in terms of landward boundaries of the State has several advantages.



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One, that small area in the State which is relatively distant from coastal waters does not have to be precisely identified and mapped for exclusion. Two, the CMP does not have to struggle with the definition of what constitutes a "direct and significant impact on the coastal waters." Instead the CMP recognizes that certain large-scale uses within eight miles of coastal waters may have such impacts and that the inland boundary should therefore include the entire State. Three, by including all the State in the inland boundary, anyone in Delaware who may be adversely affected by energy development will be eligible to apply for assistance under the Coastal Energy Impact Program.

It is noteworthy that, during the course of program development, several comments were received which advocated adoption of a relatively small inland boundary. Given the pervasive influence of coastal waters in Delaware, however, OCZM and OMBP mutually concluded that such a boundary would not satisfy the legal mandates of the CZMA. At best, only a small portion of the State could be rationally excluded pursuant to the requirements, and such exclusion was deemed not worth the attendant administrative difficulties.

It should also be pointed out that most of the CMP regulatory controls apply only in those areas traditionally viewed as coastal areas, not the entire State. Such areas include the wetlands, beaches, coastal strip (the Delaware Coastal Zone Act's "coastal zone"), and underwater lands. The entire State will be subject only to the provisions of the broader program - - primarily coordination, information systems, and the water and air quality programs.

2. The Seaward Boundary

The seaward boundary is clearly defined in the CZMA. It is the three mile outer limit of the United States territorial sea. The lateral seaward boundaries between New Jersey and Delaware, and Delaware and Maryland have not been determined yet. The boundary in the Delaware River and Bay however, has been fixed according to a United States Supreme Court decision and is approximately the mid-channel of the River and Bay. It is anticipated that the States may have difficulty agreeing upon the remaining boundaries, and that OCZM may have to delimit them, subject to court review.

Regardless of what seaward boundaries are ultimately used, it is important to bear in mind that they will be used for purposes of this program only and represent the area within which the CMP may be authorized and financed. These seaward limits are irrespective of any claims the State may have by virtue of the Submerged Lands Act or any changes that may occur as a result of the Fisheries Conservation and Management Act of 1976.

### 3. Excluded Lands

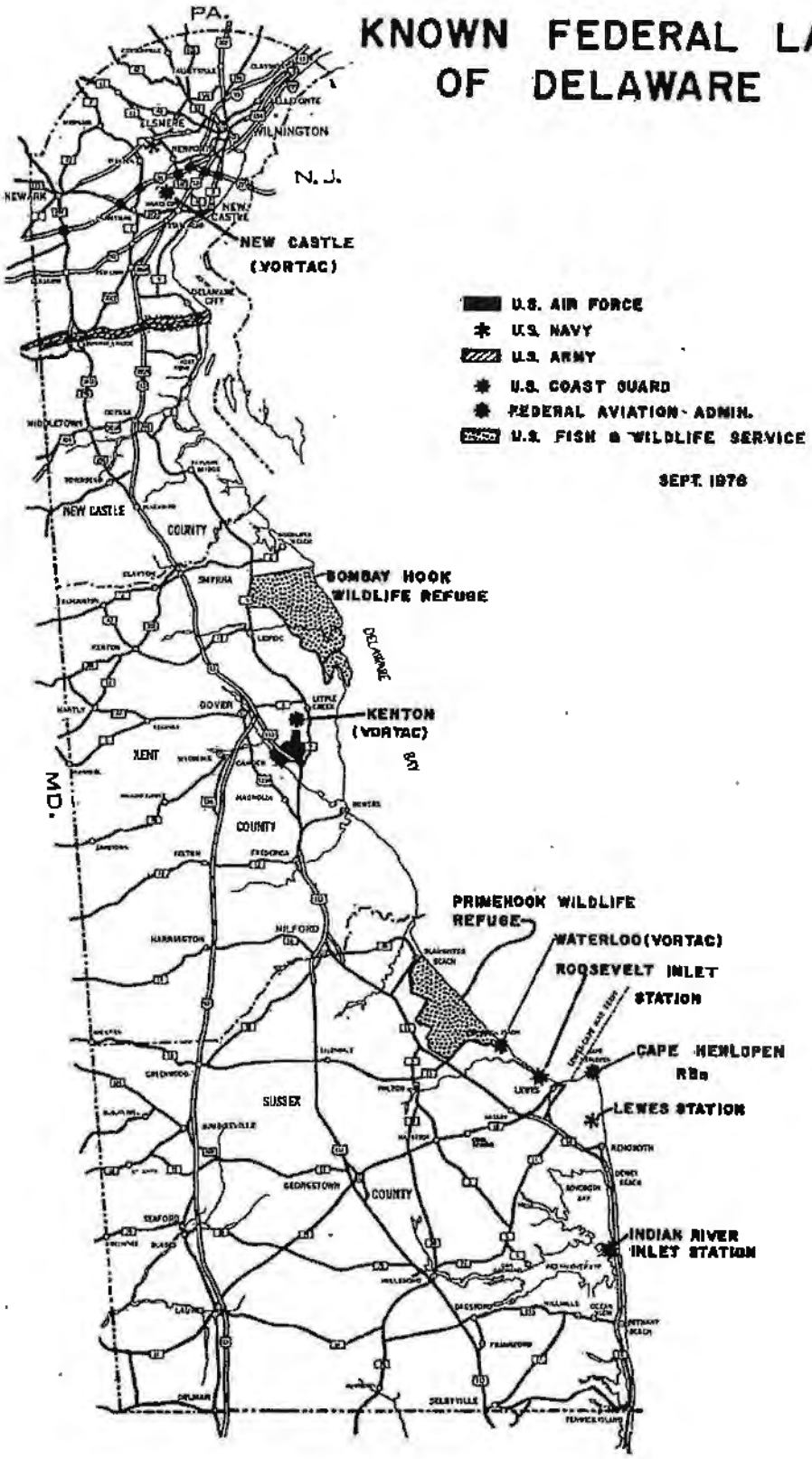
States must exclude from their coastal management zone those lands owned, leased, held in trust or whose use is otherwise by law subject solely to the discretion of the federal government. These lands are identified on the following page.

The exclusion of federal lands does not remove federal agencies from the obligation of complying with the consistency provisions of Section 307 of the CZMA when federal actions on these excluded lands have spillover impacts that significantly affect coastal areas, uses or resources within the purview of the CMP. Nor does such exclusion impair in any way any rights or authorities that the State may have over federal lands that exist separate from this program.

### 4. Interstate Boundaries

Although inland coastal management boundaries of contiguous States need not be coterminous, Delaware has consulted with adjoining coastal States during program development to minimize the possibility of incompatible uses occurring at the juncture of the boundaries. Several meetings were attended by the CMP managers and staffs of Delaware and the adjoining States to discuss a myriad of program development issues, including resource use compatibility. In addition, WILMAPCO, which is comprised of representatives from Delaware, Maryland and New Jersey, has addressed various CMP-related issues, including the boundary situation in Salem County created by the United States Surpreme Court decision alluded to above. That decision subjects parts of waters bordering Salem County, New Jersey to the Delaware Coastal Zone Act. Inasmuch as coastal resources of Delaware may be affected by certain uses of such waters, the Delaware CMP has opposed Salem County efforts to waive the Act's regulatory provisions which may impair development in Salem County.

Two other specific interstate boundary issues taken up by the CMP with adjoining states include (1) the development and implementation of a statewide sediment and erosion control program which is based on a similar program in Maryland, and (2) the review of a New Jersey-Delaware fisheries compact. The latter action generated a Delaware Attorney General's Opinion which has afforded the State increased and needed flexibility in managing its fishery resources.


KNOWN FEDERAL LANDS
OF DELAWARE
PA.
N. J.
MD.
WILMINGTON
NEWARK
NEW CASTLE
(VORTAC)
U.S. AIR FORCE
U.S. NAVY
U.S. ARMY
U.S. COAST GUARD
FEDERAL AVIATION ADMIN.
U.S. FISH & WILDLIFE SERVICE
SEPT. 1978
NEW CASTLE
COUNTY
SMYRNA
BOMBAY HOOK
WILDLIFE REFUGE
DOVER
KENTON
(VORTAC)
KENT
COUNTY
MILFORD
PRIMEHOOK WILDLIFE
REFUGE
WATERLOO (VORTAC)
ROOSEVELT INLET
STATION
CAPE HENLOPEN
RBn
LEWES
LEWES STATION
SUSSEX
COUNTY
GEORGETOWN
INDIAN RIVER
INLET STATION
SELBYVILLE

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# OPTIONS FOR NEW JERSEY'S DEVELOPED COAST

A PREVIEW OF A STATE COASTAL MANAGEMENT PROGRAM FOR PARTS OF:

SALEM, GLOUCESTER, CAMDEN, BURLINGTON, MERCER, MIDDLESEX, SOMERSET, UNION, HUDSON, ESSEX, PASSAIC, AND BERGEN COUNTIES

MARCH 1979


DEPARTMENT OF ENVIRONMENTAL PROTECTION

Brendan Byrne
Governor

Daniel J. O'Hern
Commissioner


DE29594

# OPTIONS FOR NEW JERSEY'S DEVELOPED COAST:

## A Preview of a State Coastal Management Program for Parts of Salem, Gloucester, Camden, Burlington, Mercer, Middlesex, Somerset, Union, Hudson, Essex, Passaic and Bergen Counties

March 1979

New Jersey Department of Environmental Protection
Division of Marine Services
Office of Coastal Zone Mangement
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DE29595

[redacted]

STATE OF NEW JERSEY
DEPARTMENT OF ENVIRONMENTAL PROTECTION
DANIEL J. O'HERN, COMMISSIONER
P O BOX 1390
TRENTON, N.J. 08625
609-292-2885

MAR 1 1979

Dear Reader,

This report addresses one of New Jersey's most valuable and least recognized resources-the waterfront areas along the Hudson and Delaware Rivers and their tributaries. We refer to these areas as the "Developed Coast" for convenience, although they do contain many relatively natural sites, in addition to parts of the State's largest cities. These areas offer New Jersey dramatic opportunities to develop unique recreational, commercial and industrial waterfrout activities, while contributing to efforts to revitalize urban areas.

In recent years, increased national attention has been focused on the waterfront both through the passage and subsequent use of the federal Coastal Zone Management Act, and through a growing recognition that urban waterfront areas have the potential to make a significant contribution to more general urban redevelopment. This attention has led to remarkably similar recommendations from a variety of interested groups. The major, and most challenging issue facing us now is how these recommendations can be turned into reality.

Options for New Jersey's Developed Coast is a preview of the second part of the State's coastal management program being prepared under the federal Coastal Zone Management Act. The first part, for the Bay and Ocean Shore Segment, received federal approval in September, 1978. We have deliberately kept this report as short as possible. A significant amount of background material is included in a separate volume of Appendices which is also available from this Department.

As the title implies, this report provides alternatives which require public discussion and debate. Preferences are expressed for certain options in some sections, but that by no means indicates that the iasue is closed. I urge you to comment upon the options described and to suggest ideas which we may not have yet considered. Comments received by July 2, 1979 will be accepted and fully considered. If you have received this report in time to submit initial comments by April 2, that would be particularly helpful.

We make no pretense of having all the answers. This report and the coastal management program we plan to design from it can, however, be the beginning of a coordinated effort by public and private groupa and individuals to appreciate and use the resources of New Jersey's Developed Coast.

Very truly yours,

Daniel J. O'Hern
Commissioner

TABLE OF CONTENTS

OPTIONS FOR NEW JERSEY'S DEVELOPED COAST


Commissioner's Letter

CHAPTER I INTRODUCTION 1

Suggested Basic Coastal Policies 3

CHAPTER II DESCRIPTION AND VISIONS OF THE DEVELOPED COAST 7

Northern Waterfront Area 7
Delaware River Area 13
Hackensack Meadowlands 17

CHAPTER III BOUNDARY AND MANAGEMENT SYSTEM 19

Introduction 20
Boundary 21
Existing Authority Option 21
New Legislation Option 43
Federal Consistency 49

CHAPTER IV COASTAL POLICY SUMMARY AND SELECTED MAJOR ISSUES 51

Introduction 51
Coastal Location Acceptability Method Summary 51
Location Policies 52
Selected Major Issues in the Developed Coast 57
Resources Protection 57
Air Quality 57
Housing 60
Resort/Recreation 61
Energy 61
Transportation 62
Public Facilities 65
Industry 65
Ports 66
Commercial Facilities 68

INTRODUCTION TO THE APPENDICES 69


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LIST OF FIGURES


Proposed Coastal Zone Boundary Map 8
Regions of Proposed Coastal Zone - Northern Waterfront Area 10
Delaware River Area 14
Hackensack Meadowlands District 18
Coastal Zone Boundary Under New Legislation Option 45
Sketches of Coastal Zone Boundary Options 46
Delaware and Raritan Canal State Park Overlap With Proposed Coastal Zone 32,33
Growth Regions of the Proposed Coastal Zone 55


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## HAPTER ONE: INTRODUCTION: COASTAL MANAGEMENT IN NEW JERSEY

The Department of Environmental Protection has prepared this report to help ew Jersey design a coastal management program for the tidally influenced water- ront areas in the northeastern part of the state along the Hudson River and elated waters, and in the Hackensack Meadowlands, and in the southwestern part of ie state along the Delaware River and its tributaries. These areas are referred ) as the "Developed Coast".

New Jersey, along with other coastal states, is using the federal Coastal one Management Act of 1972, as amended, to prepare a program intended to promote ne wise use of its coastal areas. The Governor has assigned this responsibility o the Department of Environmental Protection (DEP). The New Jersey program is eing developed in two parts. The first part, called the Bay and Ocean Shore egment, includes the area from the Cheesequake Creek in Middlesex County, then outh of Sandy Hook to the tip of Cape May and then north along the Delaware Bay to ie Delaware Memorial Bridge. The coastal program for this area received federal pproval on September 28, 1978. The second and final part of the program will be he Developed Coast and will integrate both phases of the effort into a single rogram.

This report, as its name implies, describes the major options available to the tate as DEP develops the state's management program for the Developed Coast. lthough there are a large number of theoretical program options, the Department as given greatest emphasis to the alternatives which appear to be most desirable nd feasible. DEP will build upon the information presented here and in a com- anion volume of appendices, and the public responses they evoke, to prepare a raft coastal management program for the Developed Coast, expected by Spring 1979. EP then expects to revise the draft program, based upon public comment on both it nd on this preview, to complete a final program by Summer 1979.

The phrase "Developed Coast" is used because the areas discussed in the eport are, in general, more developed than much of the Bay and Ocean Shore egment. The reader should remember, however, that this phrase does not provide a omplete picture of the region since some of the areas, along the Delaware and aritan Rivers, for example, are quite undeveloped. Once New Jersey's entire oastal program receives federal approval, the distinction between the two regions hould be unnecessary. In the interim, DEP will refer to the "Developed Coast" hile welcoming suggestions for a more accurate name for the area.

This report raises more questions and problems than can be directly answered r solved by the coastal management program. This approach risks the raising f false expectations and ultimate disappointment even if the program does make ignificant, though only partial, progress towards the defined objectives. DEP has hosen this approach, however, in an effort to address honestly the problems and pportunities presented by New Jersey's more developed coastal areas.

This document represents the second step of a five step process the Department f Environmental Protection is using to prepare the State'a coastal management rogram for the Developed Coast, and thus obtain federal approval for its statewide

program. The first step was the Department's efforts to collect data and view-points, and meet with interested individuals and groups during the last four years. These activities are summarized in Appendix A.

The next step will be preparation by DEP of a draft environmental impact statement (DEIS) of the coastal management program for the entire state. Publication of this document in early May will begin the formal review process for the approval of state coastal programs employed by the federal Office of Coastal Zone Management in the National Oceanic and Atmospheric Administration (NOAA-OCZM). The DEIS will combine into one document the program approved in September 1978 for the Bay and Ocean Shore Segemnt with the proposed program for the Developed Coast. This will provide an opportunity to consider changes to the Segment program, in addition to leading toward the completion of the entire State's coastal program.

The fourth step will be the public review and comment on this Options report and the DEIS. Between the publication of this report and July 2, 1979, DEP will schedule public meetings with many interested public agencies and interest groups. Also, people representing residents, federal, state, county or municipal elected representatives or agencies, regional planning groups, or interest groups with environmental, civic, residential or industrial development, or other concerns are invited to contact DEP to arrange other meetings. The Department will also accept written comments during this period. In addition, following publication of the Draft Environmental Impact Statement expected in May, DEP, in coordination with NOAA-OCZM, will hold formal public hearings on the state's proposed coastal management program.

DEP will then use the public comments to refine and, where necessary, rewrite the State's proposed coastal management program. This is the fifth and final step in the coastal program completion process. The product of this effort will be a final environmental impact statement. DEP will then ask the Governor to submit the coastal program to NOAA-OCZM for federal approval. DEP expects to seek this federal approval by September 1979.

Assuming that NOAA-OCZM approves New Jersey's program, the State will then become eligible to receive an estimated annual grant of $1.4 million beginning in September, 1979, to implement the coastal program, and an estimated $1.8 million in grants and $4 million in credit assistance under the Coastal Energy Impact Program. In addition, the Federal Consistency provision of the federal Coastal Zone Management Act will apply throughout New Jersey's coastal zone. These provisions are described in the end of Chapter III.

A major part of the program implementation grant New Jersey receives will be used to administer the State's coastal permit programs which would otherwise be funded from the State budget. In addition, however, DEP intends to use part of the grant to initiate or promote specific state, county or municipal projects which would help further the Suggested Basic Coastal Policies described later in this Chapter. Thus, a municipality could apply to DEP for up to $25,000 to conduct a feasibility study for a specific project which would increase recreational, commercial, or industrial use of the waterfront in a manner consistent with the State's coastal policies. DEP expects that these small grants could also be used, in combination with funds available from other public and private programs, to stimulate larger projects.

In effect, this report is an outline of the state's coastal management program for the Developed Coast. Substantial additional information is included in a separate volume of Appendices. Many sections of the report include preliminary recommendations based on the knowledge and judgement of DEP staff. These recommendations are included both in the interest of candor and to help stimulate and focus public discussion and debate.

The next section of this Chapter describes the Suggested Basic Coastal Policies which indicate the recommended direction of the state coastal management program. Chapter II then describes the current character of the different regions within the Developed Coast. The descriptions also identify major issues related to the waterfront, and explore in general terms the direction the coastal management program could take in each region.

Chapter III describes the proposed boundary of the coastal zone and how the coastal policies can be carried out in New Jersey's developed coast. In many ways, this is the most complicated and potentially controversial part of this report. The boundary must be considered in the context of the management system and of the suggested Coastal Policies, since the boundary eventually selected will be the area within which the coastal policies and management system are applied. DEP recommends that the program be implemented through existing laws. This means that the current process for making land and water use decisions will be largely unchanged, except that state decisions will be based on the Basic Coastal Policies and on the policies described in Chapter IV and in the Appendices, and municipalities and other decision-making agencies will be offered the policies as advisory input to their decisions. This Chapter also describes an alternative based upon proposed new legislation which would dramatically alter the decision-making process if it was chosen and approved by the Legislature and Governor. This option is presented to stimulate thought and discussion, but is not recommended at this time because it would be difficult to enact given the deadlines for federal approval of New Jersey's coastal management program.

The fourth chapter contains a summary of the Suggested Specific Coastal Policies found in the Appendix volume and a discussion of major land and water use issues in the more developed parts of the coastal zone.

The last section of this report is a detailed table of contents of the separate volume of Appendices. The eight appendices address important coastal issues and will be supplied by DEP to any interested reader. They are being distributed in a separate more lengthy document so that this report, of probable interest to more people, could be kept relatively short. Two appendices of particular interest are Appendix B which defines the proposed coastal zone boundary and includes 35 maps, and Appendix H which includes the entire set of Coastal Resource and Development Policies adopted for the Bay and Ocean Shore Segment, with suggested revisions.

## Suggested Basic Coastal Policies

The eight Suggested Basic Coastal Policies summarize the major choices and the basic direction recommended by DEP for New Jersey's coastal management program. The first four basic policies were adopted for the Bay and Ocean Shore Segment and are proposed here, with one modification, for the entire coastal zone. DEP is proposing four additional basic policies which would also apply to the entire coastal zone, but would highlight issues of particular importauce in the Developed Coast.

1. Protect and Enhance the Coastal Ecosystem

Note: As adopted for the Bay and Ocean Shore Segment, this basic policy said only "Protect the coastal ecosystem". The added words are intended to make the policy applicable to the entire coastal zone.

Although severely stressed by centuries of use as a waste disposal area, the estuarine complex which makes up the Developed Coast is showing some signs of recovery under the influence of recent federal and state water quality legislation and resulting waste treatment facility construction. Portions of the Hackensack Meadowlands, for example, are witnessing a return of species absent for many years due to poor water quality. While the industrial and commercial nature of the waterfront together with high popnlation densities preclude reattainment of the pristine conditions of the distant past, it is not unreasonable to expect that ambient standards set under the Federal Clean Air Act and Federal Clean Water Act can be attained, that certain natural areas can be restored, and that the urban waterfront can once again provide recreational and employment opportunities for area residents.

The ecosystem of the Bay and Ocean Shore Segment is fragile and special, and is characterized by a combination of beaches and the ocean, tidal and inland wetlands, flood plains, estuarine areas, bays, stream and stream corridors, vegetation communities and wildlife habitats. These natural features make the area a desirable place to visit, which in turn fosters the state'a tourist industry. The same features make the coastal region a productive area for agriculture and commercial and recreational fishing. If the ecosystem is not protected, not only will natural resources and processes be harmed, but the economy of the area and of the state will suffer.

2. Concentrate Rather than Disperse the Pattern of Coastal Residential, Commercial, Industrial and Resort Development and Encourage the Preservation of Open Space

The special characteristics of the coast attract many different types of development to an area which is limited in aize. The concentration of development is the most efficient way to use this limited space because it allows a large variety of activities to be located in the Coastal Zone while minimizing conflicts which could occur between activities such as industry and housing if they were located near each other. In sddition, the concentration of development can provide large expanses of open space which can, in some areas, be more useful to the public than a aimilar amount of open spsce scattered among many small private parcels. The policy to concentrate development does not apply to nuclear generating stations and liquefied natural gas (LNG) facilities.

3. Employ a Method for Decision-Making Which Allows Each Coastal Location to be Evaluated in Terms of Both the Advantages and the Disadvantages It Offers for Development

Traditionally, land and water use planning has focused exclusively on environmental features which offer disadvantages for development or which should be preserved. Each location, however, can also be evaluated in terms of the advantages it offers for development. A site near existing roads, for example, could be developed with less coastal and environmental disturbance than a more isolated site. This policy insures that both types of factors will be considered in decision-making under the Coastal Management Program.

4. Protect the Health, Safety and Welfare of People who Reside, Work and Visit in the Coastal Zone

This basic policy is a reminder that people use the coast for different purposes and have different needs and expectations. The quality of human life improves if needed development is built in a manner which respects the natural and built environment.

5. Promote Public Access to the Waterfront and At Least One Waterfront Park in Each Waterfront Municipality

Along much of the Developed Coast, highways or underutilized private property prevent residents from being able to walk, fish or otherwise enjoy the shores of rivers and bays. In some locations, high-rise buildings immediately adjacent to the waterfront block visual access to the water. Discouraging new highways and high-rise buildings adjacent to the waterfront, providing pedestrian bridges over existing highways, publicly purchasing selected waterfront properties, and obtaining easements for public access over other properties can increase the value of the waterfront to the surrounding communities.

The waterfront in much of the coastal zone does provide sites where urban and suburban residents can relax, walk, fish, or play, even in areas where swimming is not currently advisable. The waterfront offers views of boats and shorelines, fresh breezes and a sense of openness not otherwise available in most urban areas. Waterfront parks, by bringing people to the waterfront, also help raise public consciousness about water quality and waterfront use and development.

Waterfront parks do not have to be large or elaborate. The success of Liberty State Park in Jersey City has demonstrated that an attractive, green area by the water can attract many people. It has also proved that a park can be extremely beneficial in a location which many believed was unsuited to a park. Nevertheless, for some municipalities in the Developed Coast, a waterfront park may make little sense due to the lack of an appropriate site or too small a nearby population. The specific policies on recreation, therefore, will exempt such areas from the policy.

6. Maintain Active Port and Industrial Facilities, and Provide for Necessary Expansion in Adjacent Sites

The Developed Coast includes thriving port and industrial facilities along both the Northern Waterfront and the Delaware River Areas. The continued vitality of these facilities is important to the state's economy and helps New Jersey contribute to several national interests.

7. Maintain Existing Energy Facilities, and Site Additional Facilities Determined to be Necessary by the N.J. Department of Energy in a Manner Consistent with the Policies of this Coastal Management Program

The Northern Waterfront and Delaware River Areas of the Developed Coast contain many of the East Coast's energy facilities. These have helped New Jersey achieve its preeminence as an industry leader and will contribute to meeting the national need for energy in the future. Provided these facilities conform with federal air and water quality standards, they will be unaffected by the coastal management program.

The New Jersey Department of Energy (DOE) is responsible for determining what new energy facilities are needed in the State. DEP will use the specific policies of the coastal management program to ensure that the facilities determined to be necessary by NJDOE are located on sites where they can operate efficiently without threatening the health or welfare of area residents or natural resources.

8. Encourage Residential, Commercial, and Recreational Mixed-Use Redevelopment of the Developed Waterfront

Sections of abandoned and deteriorating waterfront property are suitable for residential, commercial or recreational reuse depending on their location. DEP will aid counties, municipalities, and developers in design of plans and programs to redevelop these lands to more beneficial uses.

The waterfront in or near urban areas can be creatively designed and used to accommodate diverse activities which might, at first glance, be considered infeasible or incompatible. Waterfront projects will be encouraged which include, for example, commercial development such as restaurants and stores, housing, and public open space.

Others have suggested combining industry and ports with recreation and education. If safely constructed, for example, a bike path could follow the outskirts of an industrial facility to a park, or a public area near a port could be designed to give people a view of the port in action, much the way the more familiar "nature interpretative trails" offer ecological understanding.

This Basic Policy is a recognition that developed waterfront areas in New Jersey, because of the views they offer and the large nearby population, provide unique opportunities for nontraditional, as well as traditional, forms of development and redevelopment.

## CHAPTER II: DESCRIPTION AND VISIONS OF THE DEVELOPED COAST

This Chapter describes the character of the geographic area addressed by this report and presents visions of the future which either appear likely or which staff of the Department of Environmental Protection believe are both desirable and achievable. It should be noted at the outset that the visions represent subjective judgements based upon visits to the areas, discussions with local residents and officials, and review of previously prepared reports, studies and plans.

The length and diversity of the developed coast suggests that it be described in segments. In this Chapter, the Northern Waterfront area is discussed first, followed by the Delaware River Area, and then the Hackensack Meadowlands.

### The Northern Waterfront Area

The Northern Waterfront is marked by diversity in its 60-mile stretch from Piscataway Township in Middlesex County to Alpine Borough in Bergen County. Present vistas of the waterfront range from high-rise apartments above the Palisades to broad tidal wetlands along the Raritan and South Rivers. The only common feature of the Northern Waterfront is that it has all been touched by human activity. A Coastal Management Program for the Northern Waterfront will seek to maintain the diverse character which sets apart the different sections of the waterfront, but it will also promote some changes in the use of the waterfront.

Much of the waterfront is currently occupied by underutilized or abandoned industrial or transportation facilities. Some of these sites could be assembled for new labor-intensive industrial uses while others could be redeveloped as park land or for commercial use. Much more of the waterfront could be made accessible to the public, while water quality could be improved to allow recreational boating at many points. Residential areas near the waterfront would then become more desirable places to live, both because of improved access to a cleaner waterfront and because of buffering from industrial and transportation facilities.

The Northern Waterfront will be addressed in this section by first traveling down the outer waterfront from the Palisades to Raritan Bay and then moving up the tidal portions of the region's rivers. Although the character of the northern waterfront can change dramatically in a short distance, segments of different rivers often show similar characteristics. The Upper New York Bay and Arthur Kill-Newark Bay regions -- the core area of the Northern Waterfront -- are similar industrial port districts which have known better days, but they are phyaically separated by the residential waterfront of Bayonne. The Upper Hackensack, Passaic and Rahway River segments, likewise, have similar urban/suburban waterfronts, while the Elizabeth and Perth Amboy Waterfronts have a similar urban residential character.

The Hudson River Region - The Hudson River shoreline from the New York State line to the George Washington Bridge, a distance of ten miles, is protected from development as part of the Palisades Interstate Park. In the future, it will remain unspoiled and continue to provide a spectacular vista of the Palisades Cliffs as they rise from the river.



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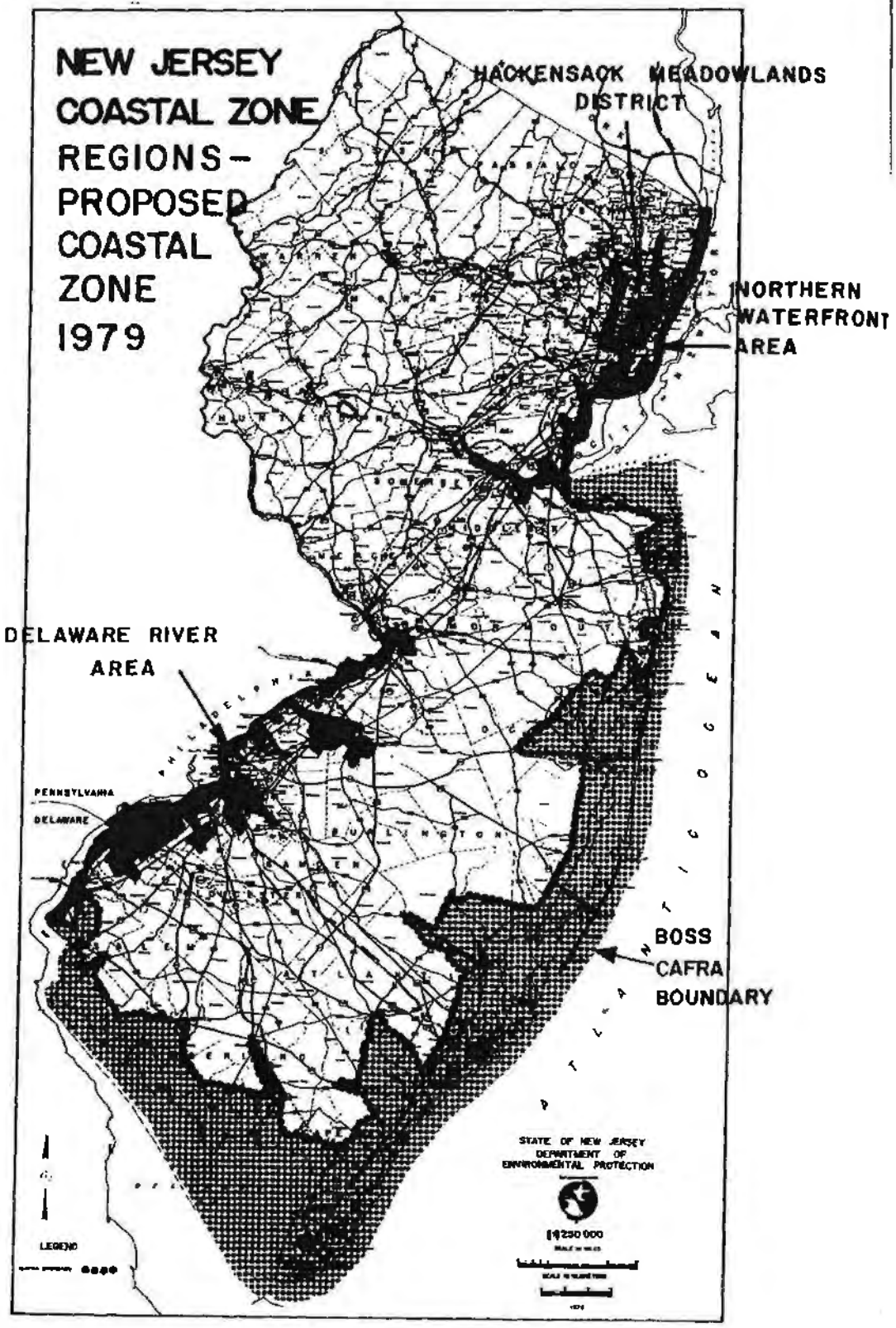
Figure 1


NEW JERSEY
COASTAL ZONE
REGIONS -
PROPOSED
COASTAL
ZONE
1979
HACKENSACK MEADOWLANDS
DISTRICT
NORTHERN
WATERFRONT
AREA
DELAWARE RIVER
AREA
PENNSYLVANIA
DELAWARE
BOSS
CAFRA
BOUNDARY
ATLANTIC OCEAN
STATE OF NEW JERSEY
DEPARTMENT OF
ENVIRONMENTAL PROTECTION
1:250 000
LEGEND

Below the George Washington Bridge, the northern waterfront takes on a two-tiered character, with uses on top of the Palisades entirely different from those below. For the twelve miles from the Bridge to Liberty State Park in Jersey City, the narrow waterfront between the cliffs and river is in large part the scene of railroad yards and docks, many of them underutilized or abandoned. At the top of the cliffs are suburban-type residential neighborhoods with an increasing number of high-rises. Because not all of the waterfront area is needed for rail and ship transportation facilities or for new industrial facilities, the creation of waterfront parks to meet the recreational needs of the densely populated neighborhoods atop the cliffs is both desirable and feasible. Because of severe traffic congestion on top of the cliffs and the lack of a mass transit system, an end to the indiscriminate construction of high rises in this area may be desirable. In particular, some have suggested that no new high rises should be constructed between Route 505 (Boulevard East) and the River, as such construction would further limit public access to the waterfront.

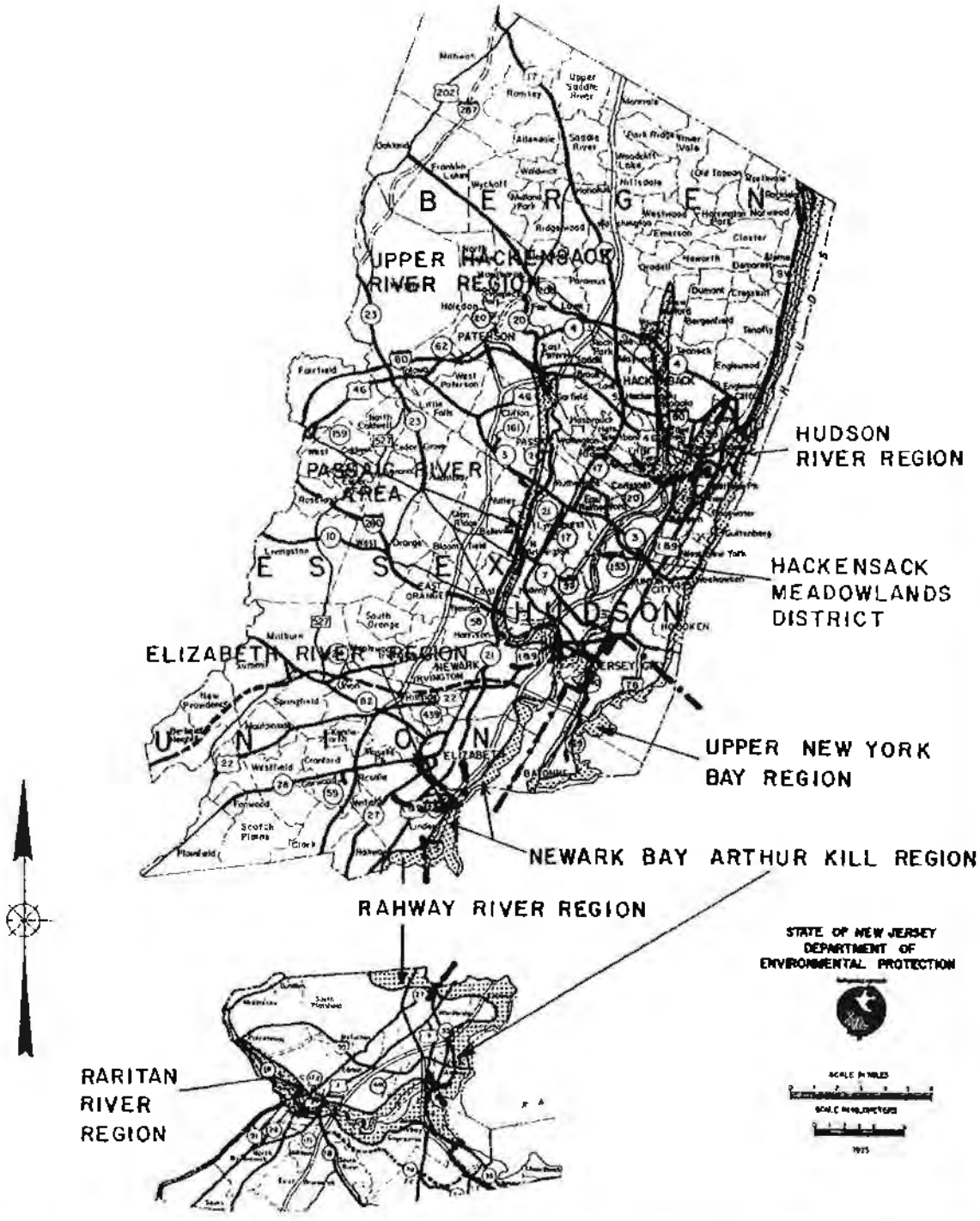
Liberty State Park in Jersey City, already the most popular facility of the state park system, will continue to be a chief recreational facility for the inner core of the Northeast New Jersey Metropolitan Region. Planning is underway for future recreational development of the park and for the transformation of the abandoned Central Railroad of New Jersey terminal within the Park into an activity center, as part of the revitalization of surrounding residential development in Jersey City. The City of Hoboken is pursuing similar plans for the Erie-Lackawanna terminal.

Upper New York Bay Region - South of the Park, the waterfront is much the same as it is to the north except that the transportation-oriented waterfront area is wider and the residential sections of Jersey City are separated from the waterfront by the New Jersey Turnpike. For these reasons, this segment of the waterfront may be an appropriate area for industrial redevelopment as suggested by the Port Authority of New York and New Jersey. Further south, in Bayonne, industrial facilities and oil storage tanks occupy the Kill Van Kull waterfront, with residential neighborhoods in close proximity. In this area, buffering of residential from industrial uses may be the best way to improve the quality of the urban neighborhood. Along Bayonne's western waterfront of Newark Bay and also along part of Kill Van Kull, residential neighborhoods are adjacent to the water's edge. Also, two parks line the bayfront. This area is likely to be little changed in the future, although the parks, which offer a place to watch the busy commercial activities of Newark Bay, may be improved and possibly expanded. At the northern end of Newark Bay in Jersey City, a regional shopping center and other business occupy the waterfront. As the water quality of the Bay is improved, the waterfront might change from a parking lot to an asset attracting people to these businesses.

Newark Bay-Arthur Kill Region - Newark Bay divides into the Hackensack and Passaic Rivers between Jersey City and Newark. Along the two-mile stretch before both rivers enter the Hackensack Meadowlands District, the shorelines are heavily industrialized with the exception of the half-mile waterfront of Lincoln Park in Jersey City. Because of the proximity of these rivers to the Newark and Jersey City labor force, this area should continue to be a good location for industry.

# PROPOSED COASTAL ZONE : NORTHERN WATERFRONT AREA

Figure 2



On the western shore of Newark Bay is the City of Newark. Most of its bay frontage consists of the rundown vestiges of an industrial waterfront. The waterfront is separated from Newark's residential neighborhoods by several blocks but is near enough to the City's labor force to make it a prime location for industrial redevelopment. At the southern end of Newark's waterfront and the northern end of Elizabeth's is a modern container port. It is a major employer and an example of the potential of a modernized waterfront. South of the container port in Elizabeth is a large tract of vacant waterfront served by rail. This land is being considered by the Port Authority of New York and New Jersey for promotion under its industrial park development program.

Continuing south, Newark Bay gives way to Arthur Kill. The northernmost three-fourths of a mile of the Kill is bordered by an old, urban residential neighborhood within the City of Elizabeth. Creation and enhancement of public open space in the narrow sector between homes and the Kill could enhance this neighborhood and encourage its preservation. From Elizabeth south to the Middlesex County boundary (City of Linden), the shoreline of the Kill has considerable amounts of wetlands which have been developed. Petroleum tank farms are the most prevalent developed use. In the future, this portion of waterfront is likely to have continued industrial use, but stronger measures to preserve those wetlands which are undeveloped (all the undeveloped coastal wetlands in Linden are owned by adjacent industries) may be desirable.

Moving into Middlesex County, there are docks and warehouses, but about as much vacant land as in Union County. Wetlands are found primarily along Woodbridge Creek, a small tidal tributary. Also, as in Union County, water dependent industry is probably the best use for the waterfront, but lands not needed by industry should be preserved for the sake of preserving the estuarine ecosystem. In the City of Perth Amboy is a site which is being evaluated for its potential as a support base for offshore oil and gas operations. Further south in Perth Amboy, residential neighborhoods extend to the waterfront. Here emphasis could be placed on public open space, as in the residential waterfront of Elizabeth.

Across the Raritan River, the entire Raritan bayfront, with the exception of a residential neighborhood in South Amboy, consists of vacant land separated from residential neighborhoods by the North Jersey Shore rail line. Because of its proximity to existing residential neighborhoods and public transportation, this land has potential for residential, commercial or industrial development (if properly buffered from residences), as well as for public open space.

At the end of this sector of vacant land along Raritan Bay is the beginning of the Bay and Ocean Shore Segment. We will therefore turn our attention to the tidal portions of the rivers which flow into this "outer" northern waterfront.

Upper Hackensack River Region - Beginning in the north, the first river is the Hackensack which is tidal to Oradell, Bergen County. For the first 4 1/2 miles from Oradell to Hackensack, the river is surrounded by suburban residential neighborhoods with some commercial uses. Some have suggested a cycling or hiking path in this area, and Bergen County is considering plans for impoundment of the river at Hackensack to create a lake-park complex.

Where the Hackensack River enters the Meadowlands District it is joined by the Overpeck Creek, a tributary which is tidal for the four miles to Leonia. For the upper two miles, the shoreline is public open space -- Overpeck Park. From the park to the river's juncture with the Hackensack, land uses along the creek include industry, a small amount of commercial and residential property and a large percentage of vacant land. This vacant land, like vacant land on the nearby portion of the Hackensack, could provide for recreation such as boat launching or fishing provided that water quality is brought up to state standards. It could also be a site for water-oriented commercial uses, or minimally polluting industries.

Passaic River Region - The Passaic River is tidal from the Dundee Dam at Clifton to Newark Bay. North of Newark the river is bordered by suburban and urban residential neighborhoods, but much of the immediate waterfront is given over to industries, especially textiles and related printing and dyeing. On the west bank, public access is also denied by State Highway 21. Wherever possible along this stretch of river, public access could be acquired, and where feasible a foot or cycling path system could be developed to enhance the recreational opportunities of the densely populated cities and towns along the banks, while water-dependent industries would continue to provide employment. The Saddle River which flows into the Passaic at the Garfield-Hasbrouck Heights border is tidal for about two miles. The shores of this river are largely undeveloped although residential and commercial uses do encroach certain sections. Because of its less developed shoreline, this river segment has more potential than the Passaic for ecologically sound, planned development, which might encompass a number of different but compatible uses. As the Passaic River reaches Newark, industrial uses become dominant although much of the immediate waterfront is vacant or is occupied by abandoned structures. Revitalization of industry and commerce where possible, and development of small parks or river access paths elsewhere appears to be a desirable future for the Passaic as it passes between Newark on the west and Kearny, East Newark and Harrison on the east.

Elizabeth River Region - In the City of Elizabeth, the Elizabeth River is tidal for two miles as it flows into Arthur Kill, although the length of tidal waters may be diminished by a current U.S. Army Corps of Engineers flood control project. There is some riverfront park land as well as vacant land along the shore, but for the most part homes and apartments line its banks, limiting the potential for public access. In the future, parks could be improved and public access provided where feasible, although greater improvement in the river's environment will be a result of improvement in water quality.

Rahway River Region - The Rahway River is tidal for five miles from Grand Avenue in Rahway to the Arthur Kill. Above Grand Avenue on the non-tidal portion of the river, Union County has acquired the river corridor for public open space, and the river provides opportunities for canoeing, hiking and other forms of recreation. In the tidal portion of the river, however, there is a wide assortment of land uses, few of which take advantage of the river. In Rahway itself, single-family homes, commercial establishments, and a marina line the river, while closer to the Arthur Kill the shoreline becomes marshy and vacant with the exception of some tank farms which do not appear to be water dependent. In the future, the wetlands near the Kill could be preserved, and improvements could be made along the riverfront in Rahway to make it more of an asset to adjacent neighborhoods and businesses.

Raritan River Region - The Raritan River's tidal reach extends inland to Interstate Route 287 in Piscataway Township. From Route 287 to New Brunswick, the Raritan is paralleled on the south by the Delaware and Raritan Canal. On the north, much of the land is park land, although in some areas the riverfront is residential. Under the direction of the Delaware and Raritan Canal Commission, DEP and the Middlesex County Park Department, the canal should be restored and the Park maintained. Access to the riverfront will, however, be limited in some areas by construction designed to make State Highway 18 a limited access highway. In New Brunswick, the riverfront has already been separated from urban neighborhoods by Route 18, but a pedestrian bridge provides access to public open space along the banks. Public and private emphasis could be placed on assuring continued public access despite highway construction.

East of New Brunswick is the most extensive river wetland area in the northern waterfront. This area extends along the Raritan and up its tributary, the South River. Preservation of these wetlands could be desirable as an open space resource for surrounding residential neighborhoods, as well as for a source of nourishment for the Raritan estuary system. Further east, the south bank of the Raritan is the scene of shipping and industrial facilities, many of them abandoned. On the north bank is a former arsenal which is being redeveloped as an industrial park. Industry is likely to remain the dominant use of the area near the mouth of the Raritan in this vision of the future Northern Waterfroot.

The Delaware River Area

The Delaware River Area resembles the Northern Waterfront Area in size and diversity in its 60 mile stretch from Trenton to Pennsville. Like the Northern Waterfront, it has an urban center with densely populated residential areas, industry and shipping; it has abandoned piers and factories; it has residential suburbs; and it has undeveloped land and undisturbed wetlands. The difference between this area and the Northern Waterfront lies in the proportion of land devoted to different uses. The urban/industrial area centered in Camden is relatively limited, while the amount of undeveloped land is relatively large. The Delaware River Area also tends to be wider than the Northern Waterfront Area, due to the greater penetration of tidal water up the numerous creeks which flow into the Delaware. The Coastal Zone extends several miles up such major streams as Crosswicks Creek, Rancocas Creek, Cooper River, Big Timber Creek and Oldmans Creek.

The same basic policies will be applied to the Delaware River Area as to the Northern Waterfront Area. These policies will be designed to maintain the present diversity of uses with each use in its optimal location. The following analysis examines what this means for the specific regions of the Delaware River Area, starting at Trenton and moving southward.

The Burlington-Mercer Region - The Burlington-Mercer Region includes all of the [illegible] along the Delaware River north of the Camden-Philadelphia metropolitan region, traversed by Route 130, Interstate 295 and the N.J. Turnpike, has been extensively suburbanized.

The waterfront is primarily residential, with the most intensive residential [illegible] from Burlington City southward. Much of the coastal zone here is a relatively narrow strip of shoreland rising from the river to the first road.

increased public access to the riverfront, provided the public is not endangered and access does not interfere with other legitimate activities. The preservation of the few remaining areas still relatively open and undisturbed in the Region could also be a goal of the Coastal Program. These include the lower reaches of Big Timber Creek, the marina area on the Cooper River, and Fisherman's Cove, which could be maintained as natural areas for carefully managed recreational activities.

The Gloucester - Salem Region - This region extends south from the Big Timber Creek to the boundary of the Bay and Ocean Shore Segment in Salem County. Most of the riverfront area in this region is industrially owned. The northern part of Gloucester's coastal zone includes two major refineries, extensive bulk storage facilities and large petro-chemical complexes. Further south, a few heavy industries are located intermittently along the riverfront, including large DuPont and Monsanto facilities in Gloucester and another DuPont complex in Salem County.

Yet this region is by far the least developed and most sparsely populated area outside the Bay and Ocean Shore Segment. Between National Park in Gloucester County and Penns Grove in Salem County, the active energy and industrial complexes are typically separated by large tracts of vacant land including extensive wetlands and lowland forests. Although the Delaware River lies within one to three miles of Interstate 295, road access to the waterfront is almost non-existent. In the entire stretch from Paulsboro in Gloucester County to Penns Grove in Salem County, there are no public sewer systems in place immediately adjacent to the Delaware River, although the region's areawide waste treatment management plans call for sewering a two-mile stretch of riverfront in Greenwich Township.

The central area of this region, for the most part, contains industrial activities and vacant undeveloped tracts. The region's population, focused at the two ends, can be seen as extensions of two large metropolitan areas -- the Camden-Philadelphia Area to the north and the Wilmington area to the south. Parts of the southern area, which includes Penns Grove, Pennsville and Salem City, have recently lost industry -- creating high unemployment and leaving behind vacant or underutilized facilities. New waterfront industry and port development would be most appropriate in those areas where there are existing infrastructure, an available labor force and underutilized industrial facilities. Vacant land along the waterfront and close to the population centers must also be evaluated in terms of its potential for meeting the recreational needs of the people living in these areas.

The central area is quite wide due to the inland penetration of coastal streams. Demand for industrial, residential and commercial development is expected a few miles inland of the waterfront along Routes 130 and 295. The Suggested Coastal Policies propose that this development take place in concentrated form and as infill rather than sprawling the entire length of the Camden/Philadelphia Salem/Wilmington corridor. In addition, the many stream corridors, wetlands and the lowland forests in this region could be preserved. The stream corridors, the undeveloped portion of the Delaware River waterfront and other undeveloped lands may be suitable for parks, campgrounds and perhaps new marinas, while wetlands, lowland forests and other sensitive areas could be preserved as nature areas.



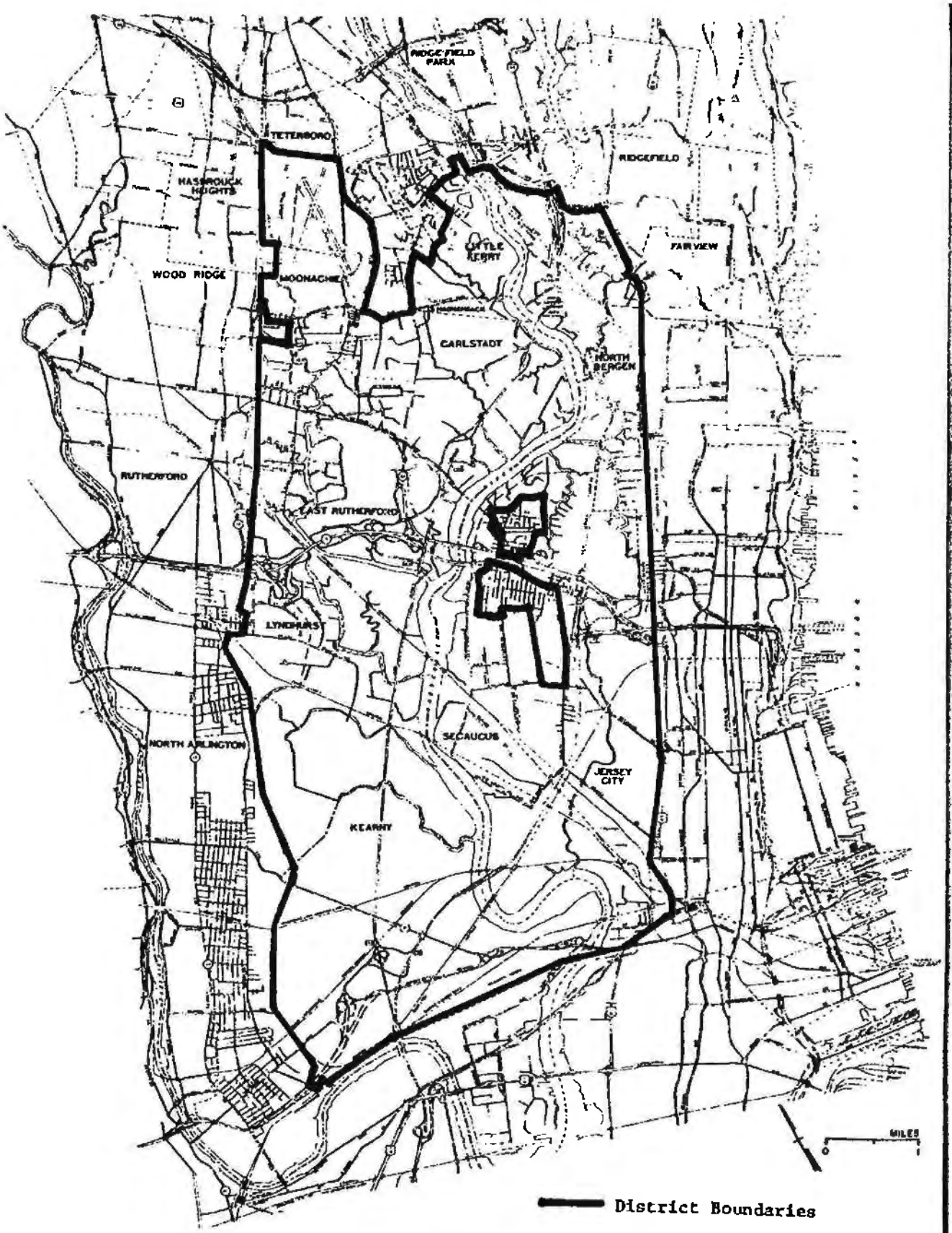
DE29603

## The Hackensack Meadowlands District

The Hackensack Meadowlands District is a 33 square mile area of tidal wetlands, fresh water wetlands and upland located along the Hackensack River 2 1/2 miles west of midtown Manhattan. Until 1968, the District was largely undeveloped except for huge landfills, warehouses, and some light industry and electrical generating facilities. In that year, the Legislature created the Hackensack Meadowlands Development Commission (HMDC), a state agency intended to direct the orderly and comprehensive development of this area. In the ten years of the Commission's existence, the Meadowlands Sports Complex, consisting of a football/soccer stadium and a racetrack, and new commercial and light industrial buildings have been erected on the west bank of the Hackensack River. On the east bank, the Harmon Cove area, including a planned unit residential development, the Meadowlands Hilton Hotel and several office and industrial buildings have been developed. Much of the Meadowlands, however, still remains undeveloped.

A vision for the Meadowlands has already been created by the HMDC, which was given full planning and zoning authority for the District by its enabling legislation. In 1972, the HMDC introduced a master plan which foresees the development of additional planned residential-commercial-office complexes designed to both take advantage of the wetlands environment and preserve it to the maximum extent possible. The plan also calls for the preservation of several large wetlands preserves and the creation of one major and several smaller parks. The Commission's Open Space Plan calls for the preservation of 6,210 acres of open space, of which 3,160 acres are wetlands.

The Master Plan was substantially amended in 1977 and will no doubt be amended in the future. Rather than offer an alternative vision, DEP proposes the adoption of this evolving vision, which must be based on the HMDC Act and is defined specifically by the Commission, as the vision of the State's Coastal Management Program.




HACKENSACK MEADOWLANDS DISTRICT

Figure 4



DE29603.02

## CHAPTER III: BOUNDARY AND MANAGEMENT SYSTEM


INTRODUCTION
BOUNDARY
EXISTING AUTHORITY OPTION
  Summary
  Department of Environmental Protection
    Organization
    Regulatory Programs - Regulatory Tier
      Wetlands Act
      Riparian Statutes
      Waterfront Development Law
    Regulatory Programs - Administrative Tier
      Water Quality Program
        NPDES Permits
        Areawide Water Quality Management (208) Plans
        Wastewater Treatment Facilities
      Stream Encroachment
      Flood Hazards
      Wild and Scenic Rivers
      Delaware and Raritan Canal State Park
      State Owned Lands
      Publicly Owned Lands
      Air Quality
      Solid Waste
    Funding Programs
      Green Acres and Recreation
      Harbor Clean-Up
      Waste Treatment Facilities
      Federal Implementation Funds
  Other State Agencies
    Department of Energy
    Department of Agriculture
    Department of Community Affairs
    Department of Labor and Industry
    Department of Transportation
  County and Municipal Land Use Authority
    County Authority
    Municipal Authority
  Regional Land Use Authority
    Delaware River Area
    Hackensack Waterfront Area
    Northern Waterfront Area
NEW LEGISLATION OPTION
  Summary
  Consolidation of State Permits
  Activities Subject to New Law
  State/County/Municipal Authority
  Alternatives
FEDERAL CONSISTENCY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## INTRODUCTION

The Coastal Zone Boundary and Management System determine the parts of Ne Jersey which will be affected by the coastal program. The boundary describes th areas which are distinctive because of the presence of, or proximity to tida waters. The Management System indicates how DEP proposes to implement the Coasta Policies summarized in Chapters I and IV within this boundary.

This Chapter discusses two possible frameworks for a boundary and managemen system. The first alternative is based upon existing state authority while th second would require that new legislation be passed by the New Jersey Legislatur and signed by the Governor. DEP-OCZM has developed the two alternatives afte public comment on, and further analysis of options presented in the September 197 issue of its newsletter, The Jersey Coast. Several possible variations within eac alternative are noted, and DEP welcomes other suggestions.

The next section of this Chapter describes the proposed boundary of th coastal zone. This boundary would be similar under each of the options, bu activities within would be regulated differently depending upon which option chosen.

The following section describes the Existing Authority Option by examini the broad range of existing state, regional, county and municipal programs th affect land and water uses in the coastal zone. Each is described, and i utility for coastal management purposes assessed. This examination is intended do three things: 1) Identify the nature of decisions that affect land and wat uses in the coastal zone; 2) Identify the levels of government and agencies th make these decisions; and 3) Propose techniques that will coordinate this decisi making with the policies of the coastal program.

The fourth section describes the New Legislation Option. This option described because DEP believes it would allow the Department to carry out coast responsibilities previously delegated to it by the Legislature in a more efficie and straight forward manner than is now possible. The New Legislation Option, definition, could not form the management system of the coastal management prog without action by the Legislature and Governor. Because of the time required deliberation and passage of legislation, the Legislature would be unlikely to p a new law in time for federal approval of New Jersey's Coastal Management Progr even if they were favorably inclined towards the concept. DEP is, therefo recommending the Existing Legislation Option. This would give the State a coast management program with a somewhat more cumbersome regulatory system, but it wo allow the State to receive the federal funding available under the Coastal Z Management Act, and to consider adoption of the proposed new legislation in following legislative session.

The final section of this Chapter briefly describes the significance to Jersey of the "Federal Consistency" provision of the federal Coastal Zone Mana ment Act which will be the same regardless of which option is chosen.



DE29604

## BOUNDARY

DEP's preliminary suggestion for the coastal zone is the areas now defined by CAFRA and the Wetlands Act, lands along all other tidal water bodies inland to the first public road, the Hackensack Meadowlands Development Commission District, and all coastal waters to the head of tide and seaward to the three mile limit. (See Figure 1). In addition, the land on top of the Palisades is included in the boundary under the New Legislation Option. This area is not included in the boundary proposed under the Existing Authority Option because the State currently lacks jurisdiction to regulate high rise housing in the area.

The proposed boundary is defined in detail, with 35 maps, in Appendix B. One possible variation which is not included on the maps, would be to set the maximum inland distance of the coastal zone boundary as 1,000 feet from the water in the Developed Coast. This would restrict the size of the coastal zone along some tributaries, but would have no effect along the Hudson and Delaware Rivers and other major water bodies, where the first road is generally located much less than 1000 feet from the water.

The boundary would include all land with a significant impact on coastal waters. The coastal zone would include narrow areas inland of the area currently regulated under the Wetlands Act, Waterfront Development Law, and riparian statutes. In these areas, the only applicable coastal policies would be those which can be enforced under other existing regulatory or funding programs.

The proposed boundary is discussed in greater detail throughout the Existing Authority Option and New Legislation Option Sections of this Chapter, and is further defined in Appendix B.

## MANAGEMENT SYSTEM - EXISTING AUTHORITY OPTION

### Summary

The Existing Authority Option is designed to allow the Department of Environmental Protection to use its administrative authority to obtain for New Jersey the benefits available under the federal Coastal Zone Management Act (CZMA) by insuring that state actions which affect the coast are consistent, equitable, predictable, and in the long-term interest of the people of New Jersey. Implementation of this option would not dramatically change the way in which coastal decisions are currently made.

State actions to be considered involve regulatory, funding and planning programs which are already operating. Two major changes could be afforded by the Coastal Management Program under this option: First, these state programs would, for the first time, be united by a publicly stated, binding set of substantive policies; and second, New Jersey could make greater use of the authority already granted to the Delaware River Basin Commission to review development proposals in the Delaware River Area. (Under either option, New Jersey would receive other benefits of the federal CZMA including funding for coastal planning and projects, and consistency between Federal and state actions.)



DE29605

The coastal zone boundary, under this option, would have two parts. A Regulatory Tier would include all land and water now subject to state riparian laws, including the Waterfront Development Permit, and the Wetlands Act of 1970. In this relatively narrow area, composed only of lands now or formerly flowed by the tide and regulated wetlands, all new development would have to conform with the Coastal Policies to be adopted. DEP would apply the policies to entire proposals, even if only parts of the project were to be located in this Regulatory Tier.

The remaining, upland sections of the Developed Coast would be referred to as an Administrative Tier. In these areas, DEP would insure that new development: a) would not have a direct and significant negative impact on coastal waters; b) would not harm air quality, and c) would not lead to soil erosion. DEP would accomplish this through existing programs which: Regulate point source discharges into navigable waters, development or construction in stream channels, development or construction in designated flood hazard areas, collection and disposal of solid wastes, and development in designated river areas; Regulate air emissions from stationary sources; and Establish and enforce soil erosion and sedimentation standards respectively.

The line between the first and second tiers under this option depends upon the inland boundary of the State's riparian jurisdiction, which, in most cases, has not yet been mapped. Until this mapping is completed by DEP's Office of Environmental Analysis, determinations of whether a site is within the riparian parts of the first tier would be made on a case by case basis. The wetlands areas of the first tier have been delineated and are shown on publicly available DEP maps.

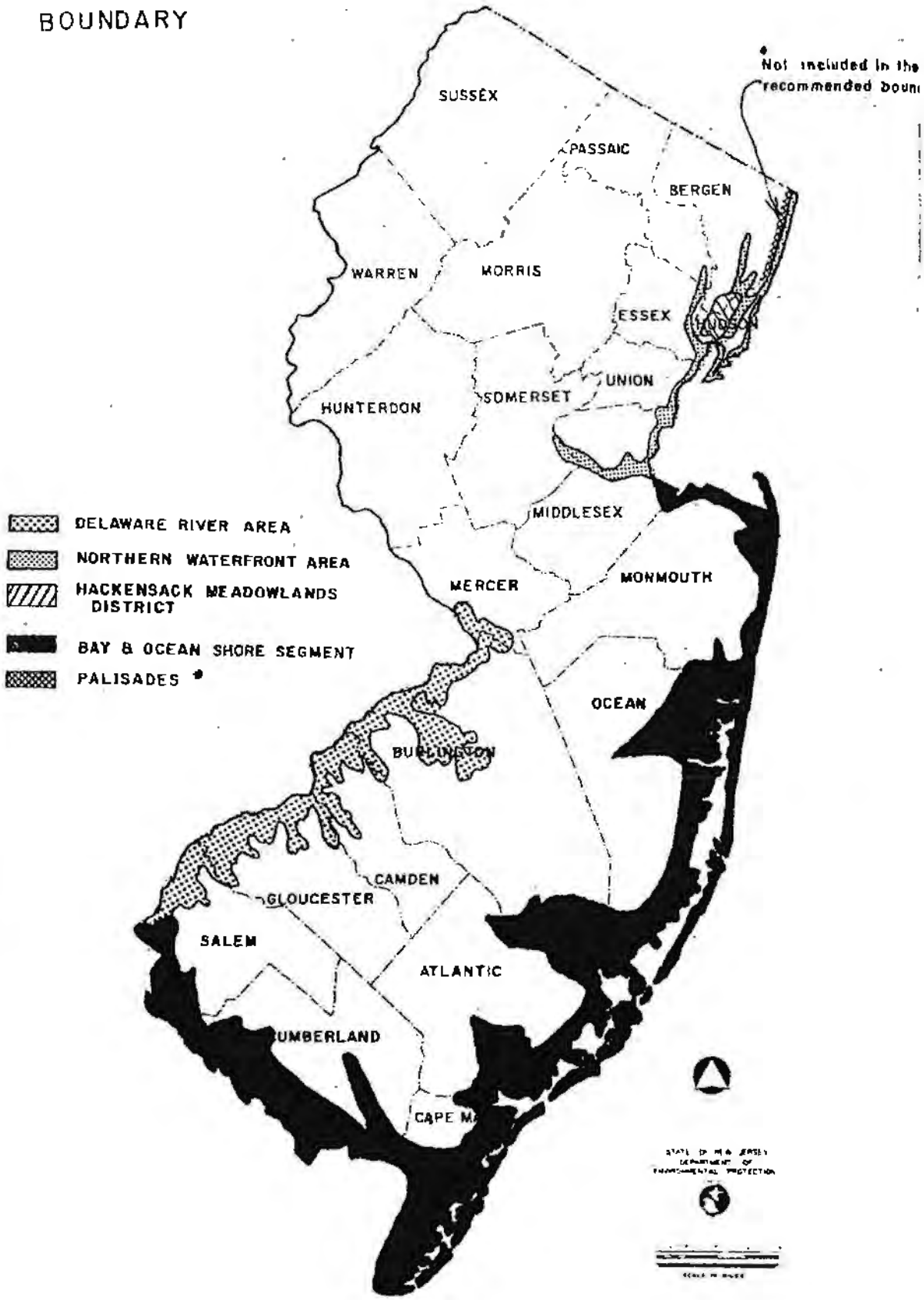
In addition, in the Delaware River Area, which contains more open and environmentally sensitive land than the Northern Waterfront Area, DEP would work with the Delaware River Basin Commission (DRBC) to have that agency consider appropriate Coastal Policies in its review of projects in New Jersey. This review by the DRBC would become a formal part of the Management System through a memorandum of understanding (MOU) between DEP and the Commission.

[illegible] Meadowlands District, the State's coastal zone management [illegible] Meadowlands Development Commission. Coastal policies [illegible] be the policies already adopted by the State in the form of [illegible] District Master Plan, Open Space Plan and other policy documents.

[illegible] funding it expects to receive after the coastal program [illegible] to support activities which are consistent with the coastal [illegible] use some of the fuuda to make small grants to municipalities [illegible] projects within the defined coastal zone. In addition, [illegible] would award grants from the other funding programs it [illegible] projects which would help further the coastal policies. [illegible] advice to municipalities and counties in the coastal [illegible] dual land owners and developers, on projects or plans it [illegible]

[illegible] analysis of the decision-making framework which would be [illegible] Authority Option. Three kinds of governmental decisions [illegible] affect land and water uses: planning decisions, regu[illegible]ons, and funding decisions. These activities take place on

# STATE OF NEW JERSEY
# PROPOSED COASTAL ZONE
# BOUNDARY






DE29607

the municipal, county, regional, state, and interstate levels. The available management options in each of these three areas have been grouped as follows: Regulatory and funding programs administered by DEP; Regulatory and funding programs administered by other state agencies; County and municipal regulatory and planning authority; and Regional and interstate regulatory and planning authority.

Department of Environmental Protection

A. Organization

The Department of Environmental Protection (DEP) is responsible for planning and implementing the New Jersey Coastal Management Program. Created by the Legislature in 1970, the Department was given broad authority to "formulate comprehensive policies for the conservation of the natural resources of the State... (N.J.S.A. 13:1D-9). Specific authority for preparation of the coastal program was delegated by the Governor when he designated DEP as New Jersey's coastal planning agency under Section 305 of the federal Coastal Zone Management Act. DEP also serves as New Jersey's lead agency to administer the Federally approved program under Section 306 of the Act.

The Department is divided into nine operating units: the Commissioner's Office; Division of Marine Services; Division of Water Resources; Division of Environmental Quality which includes the Bureau of Air Pollution Control; Division of Fish, Game and Shellfisheries; Solid Waste Administration; Division of Parks and Foreatry; the Green Acres Administration and the Division of Administrative Operations. The Offices of Coastal Zone Management, Riparian Lands Management, and Wetlands Management are all located in the Division of Marine Services.

The core of the management system under this option will be the adoption by DEP of the coastal policies for the Developed Coast as administrative rules. This means that the actions of every Division in the Department will be legally bound to be consistent with the coastal policies to the extent statutorily permissable. This last phrase means that a DEP permit review may not exceed the scope established by the permit program's enabling legislation. This is the process New Jersey has already adopted for the Bay and Ocean Shore Segment, in which every DEP division is bound to act consistently with the Coastal Resource and Development Policies to the extent statutorily permissible. If this practice is repeated for the policies of the Developed Coast, each of the activities listed below will be exercised in a coordinated manner, consistent with the coastal policies described in Chapter IV and Appendix H.

B. Regulatory Programs - Regulatory Tier

DEP's authority in the Regulatory Tier of the Developed Coast would be based on the Wetlands Act, the riparian statutes, and the Waterfront Development Law. These laws apply to virtually all aspects of all development within this first tier. Their administration would be unchanged with an approved coastal management program, except that decisions made under each program would be made on the basis of the codified coastal policies, which in some cases would represent a change in policy.



DE29608

1. Wetlands Act - New Jersey will continue to regulate activities on wetlands with authority derived from the Wetlands Act of 1970 (N.J.S.A. 13:9A-1 et seq.) and the Procedural Rules and Regulations adopted in 1972. The Act, which is administered by the Office of Wetlands Management in the Division of Marine Services, gives the state broad discretion in regulating virtually any form of development or disturbance on mapped coastal wetlands, except for mosquito control and continued commercial production of salt hay or other agricultural crops or activities.

The Act defines coastal wetlands as those wetlands subject to tidal action along specified water bodies. They are not regulated under the Act until they have been mapped and the maps promulgated, following notice to affected property owners and a public hearing.

In the Developed Coast, there is a considerable amount of wetland acreage, located primarily along the Delaware River, and also including approximately twenty acres of mapped wetlands located on the Raritan River, in and near Perth Amboy. The Act specifically exempts the Hackensack Meadowlands District from its coverage. Small wetlands areas in the Delaware River Area have not yet been delineated and are therefore not now regulated by DEP. The Department will use the funds available under the Federal Coastal Zone Management Act to complete the delineation.

Since enactment of the Wetlands Act in 1970 and adoption of the Wetlands Regulations in 1972, the annual amount of wetlands filled in New Jersey has been reduced from 1900 to 55 acres.

2. Riparian Statutes - In New Jersey, the use of "tide-flowed" (or riparian) lands, which are defined as those lands now, formerly or hereafter flowed by the mean high tide (including filled lands), is based on the ownership of land adjacent to the waterway. All those lands that are flowed by the tide, up to the high water mark, are owned by the State of New Jersey, except where already conveyed. The State holds these lands as trustee for the public, and they must be administered in the public interest. The State exercises control over riparian land in two ways: through its proprietary role as owner, and through its regulatory role under the Waterfront Development Law.

[redacted] jurisdiction extends to the mean high water mark, which [redacted] of a theoretical 18.6 year tide. DEP's Office of [redacted] branch of the Commissioner's Office) is presently con- [redacted] ation program throughout the State. Until the delinea- [redacted] ffice of Riparian Lands Management is determining the [redacted] aw on a case-by-case basis. Landowners proposing to [redacted] ed about a proposed project, as well as DEP's Marine [redacted] ividual cases to the attention of the Department.

[redacted] is exercised through the Natural Resource Council, [redacted] license the use of State-owned Riparian lands provided [redacted] interest. The Council, which is composed of twelve [redacted] ernor, with the advice and consent of the N.J. State [redacted] concerning applications for riparian conveyances.

The Council may make any decision it believes to be in the public interest DEP's Commissioner and Director of Marine Services, however, have the authority t veto any Council action inconsistent with state policy by virtue of their right t approve all Council meeting minutes and instruments of conveyance. Should a vet occur, the application is returned to the Council for reconsideration. Considera tion of the State's Coastal Policies in riparian decision-making is also assure by the fact that the Division of Marine Services serves as staff to the Natura Resource Council.

The owners of land immediately upland of the tideland have the first righ to purchase riparian lands, and must receive notice before any other party applie for a conveyance. The Council will not consider an application for a riparia conveyance without first examining the intended use of the land. Where, fe example, an applicant seeks to purchase riparian land for a use which requires bulkhead, the Council will examine the use of the land behind the bulkhead in ord to determine if such a use is appropriate for the site. The Council conducted su an analysis in 1976, when it rejected the Steuber Chemical Company's applicati for a dock in Jersey City. The dock was required for a bulk oil storage facili which was, in the view of the Council, both unneeded and inappropriate for th location. It is through reviews of this kind that the State's riparian authori will function as an essential element of the management system.

3. Waterfront Development Law - Persons proposing to build on the wate front, including persons applying for a riparian grant, lease or license from t Natural Resource Council and persons already having title to, or interest riparian lands, must obtain a Waterfront Development permit from the Office Riparian Lands Management before any new development takes place on such land (N.J.S.A. 12:5-3). Development includes, but is not limited to, dredging, or t construction or alteration of a dock, wharf, pier, bulkhead, bridge, pipeline, cable crossing.

Waterfront Development permits for activities in the Bay and Ocean Sh Segment are now granted or denied on the basis of the Rules on Coastal Resource Development Policies (N.J.A.C. 7:7E-1.1 et seq.). Approval of a coastal managem program for the Developed Coast will result in the same uniform administration the program based on policies appropriate for that area.

The extent of the state's regulatory jurisdiction for Waterfront Developm permits is subject to interpretation. The law states in part that "All plans the development of any waterfront upon any navigable water or stream of this st or bounding thereon ... shall be first submitted to the Department of Environmen Protection". (N.J.S.A. 12:5-3). It is the phrases "waterfront" and "or bound thereon" which have never been formally defined and are subject to interpretati

The language of the Waterfront Development Law suggests that the Legisla intended the State's regulatory authority to include an inland strip of land undetermined width in addition to the land flowed by the tide. Past administra practices by DEP, however, has restricted the program's application only to t flowed land. DEP does not currently require upland land owners to obtain a Wa front Development permit for development solely on uplands. Many upland proj are, however, brought under DEP jurisdiction because some element of the proj such as a dock or outfall pipe, extends into the area where Waterfront Develop permits have traditionally been required.

Regulatory Programs - Administrative Tier

Development in the Administrative Tier, as well as in the Regulatory Tier, of the Coastal Zone will have to honor existing laws which require new development to meet regulations concerning the enhancement of water and air quality, the regulation of soil erosion, and the protection of flood hazard areas, wild and scenic rivers, and the Delaware and Raritan Canal. Programs in these areas are already being administered by various sections of DEP and will be unchanged by the Coastal Management Program. They are described here because they contribute to New Jersey's coastal management efforts and because, if the jurisdiction of the Waterfront Development permit is not reinterpreted, they could help the state receive Federal approval for its coastal program by fulfilling various requirements of the federal Coastal Zone Management Act.

The policies of these programs appear to be consistent with the proposed coastal policies and, in several cases, are in fact identical. For water and air quality, for example, the coastal policies adopt the policies being developed by the divisions of the Department with greatest expertise in each field. In the course of preparing the draft and final EISs of the Coastal Program, and through the public review process, DEP-OCZM will more closely examine the policies of each program. DEP-OCZM will continue to monitor and review proposed changes to these policies through the rule-making process. If a change were to violate the coastal policies eventually adopted, the DEP Commissioner could refuse to allow the change.

Water Quality Programs - The Federal Clean Water Act of 1977 (33 USC 466 et seq.) sets a framework for eliminating the discharge of pollutants into navigable waters by 1985. This is to be accomplished by Federal-state partnerships under which EPA sets increasingly strict effluent standards for wastewater discharges and the states set quality standards for rivers, bays and the ocean, and develop a strategy for their attainment. The key regulatory element is the National Pollutant Discharge Elimination System (NPDES) and the key planning element is the [illegible] Quality Management Plan (208 Plan). These elements, as well as [illegible] wastewater treatment facility requirements, are the key programs for attaining the State's water quality goals in the coastal zone and throughout the [illegible].

[illegible] attainment and maintenance of water quality is the responsi[illegible] Division of Water Resources, bur the Division of Marine Services [illegible] water quality enhancement through the enforcement of water [illegible] in decision-making under the Wetlands Act and riparian [illegible] administration of these two laws, water quality is but one of [illegible] considered in decision-making, while in the administration [illegible] programs, the Division of Water Resources is primarily con[illegible] ity, but will consider other coastal policies to the extent [illegible].

[illegible] point source of discharge into the waters of the United [illegible] territorial sea, must receive a National Pollutant Discharge [illegible] (NPDES) from either EPA or the State. There are 1,396 [illegible] regulated by NPDES in New Jersey. Perhaps as many as half [illegible] located in the coastal zone. In New Jersey, permits [illegible] 11; but the State now has enabling legislation (the [illegible] Act N.J.S.A. 58:10A-1 et seq.) which allows DEP

to take over the permitting function. Under the present arrangement, DEP's Divi
sion of Water Resources must certify that a proposed discharge will not prevent th
attainment of the State's water quality standards before EPA may issue a NPDE
permit. This certification, based on Section 401 of the Federal Clean Water Act
focuses on the chemical and biological impact of the proposed discharge on attain
ment of the water quality standards for the receiving body of water. For example
waters classified as TW-1, the highest classification for tidal waters, must b
suitable for shellfish harvesting where permitted. If a proposed discharge woul
threaten the shellfish beds in TW-1 waters, the Division of Water Resource
would have to withhold Section 401 Certification, and thus preclude EPA fro
issuing a NPDES permit. The NPDES permit process could be used to implement man
of the proposed coastal policies for point sources of discharges.

When EPA approves a State program for issuing NPDES permits, the requirement
remain the same -- compatibility with Federal effluent guidelines, and stat
water quality standards -- but, in New Jersey, DEP rather then EPA would make th
initial permit determination. EPA would then have the authority to overrule DE
concerning any permit, just as DEP can currently prevent EPA from issuing a permi
by not providing the Water Quality Certificate.

The State's Water Pollution Control Act (Section 6(b)) also authorizes th
Division of Water Resources to adopt regulations placing pre-construction require
ments on anyone planning to build a new facility which would discharge wastewater
If such Preliminary Facility Approval Regulations were to be drafted, a perso
proposing to build a facility could be required to first examine its potentia
impact on water quality, and DEP could prevent construction or require modifica
tions in the plan until it was satisfied that the completed facility would b
compatible with State water quality requirements. Thus, DEP could control wate
pollution through control over the siting and construction of facilities instead o
having to wait for the facility to be built, and then placing treatment require
ments upon it. Preparation and adoption of such regulations could significantl
increase the types of development which DEP could require to follow the coasta
policies.

The coastal program will adopt by reference the State's water quality stand
ards as its standards; and DEP-OCZM will comment on any proposed revisions. Thi
is the same procedure adopted for the Bay and Ocean Shore Segment which recognize
and relies upon the Division of Water Resources expertise. The Division of Mari
Services will use its permitting authority, in consultation with the Division o
Water Resources, to approve projects which will not prevent attainment of Stat
water quality standards.

Areawide Water Quality Management (208) Plans

A Water Quality Plan developed according to Section 208 of the Clean Water Ac
is a comprehensive and implementable strategy for the control of water pollution
a county or multi-county area. Federal and State legislation require that th
Coastal Management Program and 208 Plans be consistent. Through a Federal agree
ment between the Department of Commerce and the Environmental Protection Agency
and through a working relationship at the state level between the Divisions
Marine Services and of Water Resources, the policies of the two programs are bei
coordinated and made consistent for both point and non-point sources of pollutio

Each 208 plan is to consist of a set of policies and a management system detailing how and by which agencies these policies will be enforced. The Developed Coast is to be addressed by five separate 208 Plans:

| Counties | Planning Agency | Status as of 12/78 |
|---|---|---|
| 1. Middlesex | Middlesex County Planning Board | Certified by Governor |
| 2. Mercer | Mercer County Planning Board | Awaiting Governor's certification |
| 3. Burlington/Camden/ Gloucester | Delaware Valley Regional Planning Commission | Awaiting Governor's certification |
| 4. Salem | DEP-Division of Water Resources | Draft Plan expected shortly |
| 5. Bergen/Hudson/Essex/ Passaic/Union/Somerset | DEP-Division of Water Resources | Draft Plan expected shortly |

The Division of Marine Services will not issue riparian or wetlands permits to development proposals which conflict with a State certified 208 Plan. Similarly, all other regulatory programs in DEP will not issue permits to projects in conflict with a certified plan (N.J.S.A. 58:11A-10). DEP-OCZM has been participating in the 208 planning process to assure that the plans are not only consistent with coastal policies, but also contain policies and strategies designed to protect water-related coastal resources. Thus, in implementing 208 plans through regulatory and other strategies, DEP, the counties and other agencies will also be implementing elements of the coastal program.

Wastewater Treatment Facilities - Under the State Water Pollution Control Act, a permit from the Division of Water Resources is required for the construction, [illegible] modification or operation of any wastewater treatment facility, including but not limited to sewage treatment plants, sewage collection systems including interceptors, sewer outfalls, industrial wastewater treatment plants, and pollution control ponds. Furthermore, the Division may place a ban on new connections to a sewerage system when that system is found to be receiving flows in excess of its capacity or discharging inadequately treated sewage.

[illegible] and Sewer Systems in Realty Improvements Act (N.J.S.A. [illegible] vision must certify the adequacy of the proposed water [illegible] system for any development involving fifty or more [illegible] producing wastewater, before a municipality may give [illegible] roval. This requirement assures that proposed major [illegible] and the entire state which employ on-site sewage [illegible] the disposal system is adequate "with respect to [illegible] supply, topography, existing individual sewage [illegible] perties, water table, soil characteristics, avail- [illegible] Sewage" and meets State standards regarding design [illegible] be of importance primarily in areas without [illegible] the Developed Coast, this would include portions of [illegible] Counties .

4. Stream Encroachment Permits

No structure or alteration within the natural and ordinary high-water mark o any stream may be made without a permit from DEP's Division of Water Resources The Stream Encroachment Act is intended primarily for flood protection "to safe guard the public against danger from waters impounded or affected by such struc tures" (N.J.S.A. 58:1-26). Administration of this program tends to result in th preservation of stream channels in their natural state, which are biologicall productive areas offering important recreational opportunities. Of 500 strea encroachment permit applications received in 1978, DEP granted 450. Very few however, were in the proposed coastal zone because the Division of Water Resources practice is to waive Stream Encroachment Permit review for projects requiring Waterfront Development Permit. The Coastal Policies related to hydrology and floo hazard areas can be implemented through the Stream Encroachment Permit program

5. Flood Hazards

The Flood Hazards Act, N.J.S.A. 58:16A-55, authorizes DEP to adopt land us regulations for delineated floodways "designed to preserve (their) flood carryin capacity and to minimize the threat to the public safety, health and genera welfare". This Act is also administered by the Division of Water Resources

Floodways are considerably wider than the stream channels regulated under th Stream Encroachment Act. DEP has adopted, or proposed for adoption, floodwa delineations in various parts of the Developed Coast. (See Appendix H) Under th Act, municipalities may conduct the delineation and adopt regulations concernin their use in zoning ordinances, provided that they meet the minimum standards o the DEP regulations.

Like the Stream Encroachment Law, admioistration of this Act directly result in the preservation of valuable stream corridors and flood plains.

6. Wild and Scenic Rivers

The purpose of the Wild and Scenic Rivers Act of 1977 (N.J.S.A. 13:8-45 e seq.) is to preserve, protect and enhance the natural and recreational value o some of the State's most significant river segments. The Act allows the Commis sioner of DEP to designate river segments as "wild", "scenic", "recreational", "developed recreational". In any river segment so designated, all constructio activities would be either prohibited or regulated within the river's flood hazar area. This would expand upon DEP's authority under the Flood Hazard Act in th areas designated, by permitting a much wider range of considerations as criter for DEP's regulatory decisions. The types of development that are controlled wi depend on which designation is applied to the segment, with "wild" rivers havi the strictest prohibitions and "developed recreational" the most lenient. DEP h proposed regulations to be promulgated under this Act which would allow the cre tion of municipal Wild and Scenic River Commissions to decide on permits f regulated uses. These regulations are expected to be adopted in 1979.

The Act requires that DEP-owned land within the designated river area managed consistent with the purposes of designation. The geographic extent of t river areas includes only the flood hazard area delineated by DEP jurisdiction an in effect, the geographic scope of the delineated river area would be less th the coastal zone boundary. The Green Acres Administration is the DEP agen responsible for rule making and for recommending rivers for designation.

The Office of Coastal Zone Management intends to work with the Green Acres Administration to nominate one or more river segments in the Developed Coast for Wild and Scenic designation. The two types of river designation which appear most applicable to the Developed Coast are "recreational" and "developed recreational". The characteristics of these two river types as found in the Act are as follows:

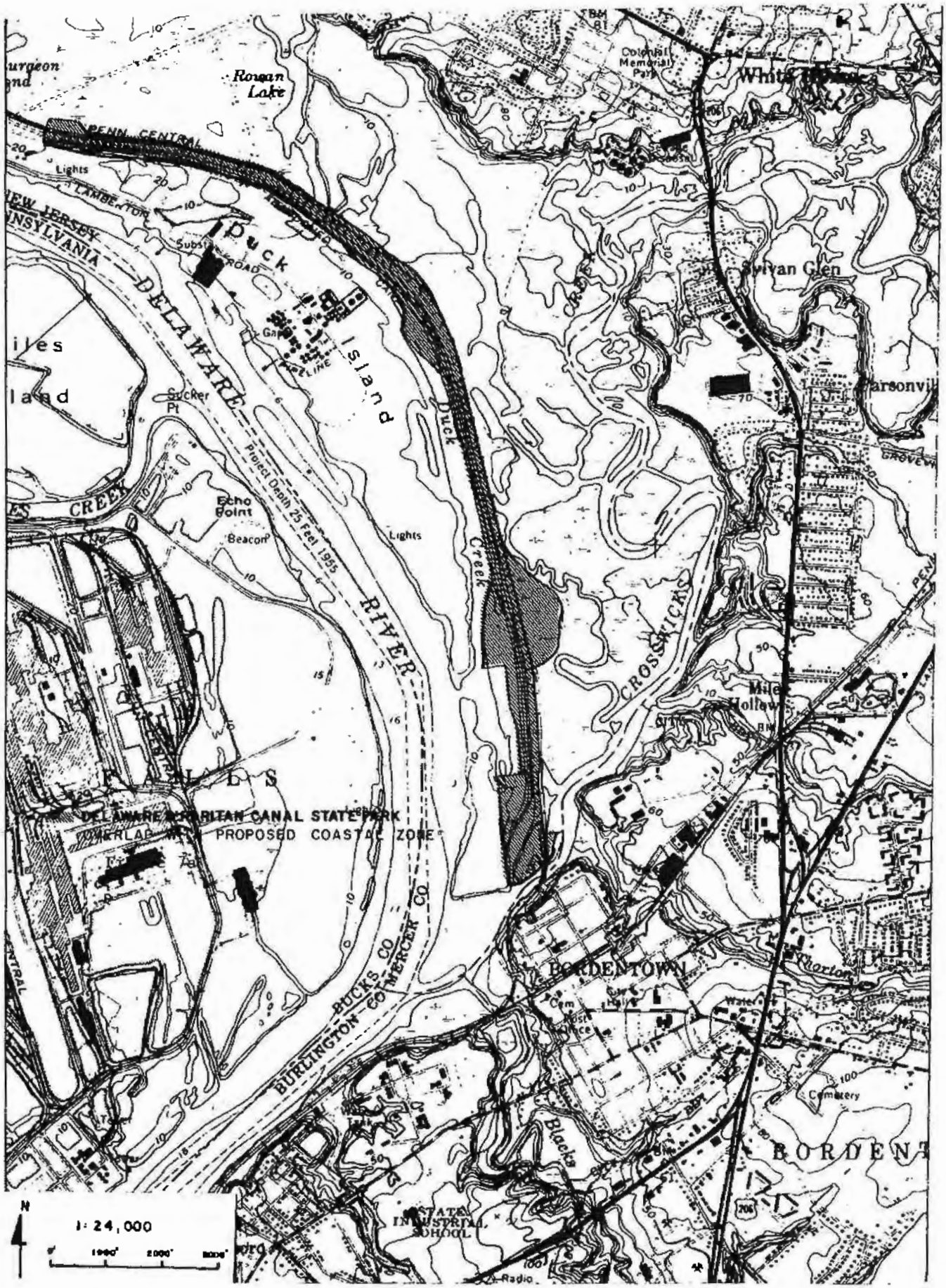
> Recreational river areas are those rivers, or sections thereof, that are readily accessible, that may have some development along their shorelines, and that may have undergone some impoundment or diversion prior to their inclusion in the New Jersey Scenic River System.
>
> Developed recreational rivers are those rivers, or sections thereof, that are readily accessible, that may have some development along their shorelines, that may have undergone substantial impoundment or diversion, but which remain suitable for a variety of recreational uses (N.J.S.A. 13:8-48).

DEP-OCZM has drafted the set of criteria listed in Appendix G, and interested readers are invited to comment on these proposed criteria, and/or use them to evaluate the relative merits of different river segments. A nominated river segment should be a stretch of several miles of a tidal river, possibly including tributaries. The flood hazard area around the river segment must be delineated before the nomination as a Wild and Scenic River area can be considered. The area should be bounded by significant natural or man-made features. Examples of river [illegible] could be designated include: Hudson River from George Washington [illegible] State Park (only characteristics of the New Jersey side, including [illegible] Manhattan, would be considered), or the Rancocas Creek from head of [illegible] influence with the Delaware. DEP has proposed for adoption the flood [illegible] former region, but has not yet delineated it in the latter.

[illegible] Raritan Canal State Park Law
[illegible] et seq.)

[illegible] three years before the State's Wild and Scenic Rivers Act, [illegible] law. Preservation of the sixty mile Delaware and Raritan [illegible] Delaware and Raritan Canal Commission, in, but largely [illegible] Department is required by the law to administer all [illegible] Canal as a State park, in accordance with a master plan [illegible] May, 1977. The Commission is given project review [illegible] within a delineated review zone which includes the Canal [illegible] side of it in which development will have drainage or [illegible] within this zone, the Commission has the authority to [illegible] modify any project ..." (N.J.S.A. 13:13a-14c), and [illegible] be final and binding.

[illegible] by the Commission are set by the following pro- [illegible] half mile of the Canal Park, all projects will [illegible], noise or other ecological impacts. Outside this [illegible] streams that enter the Canal Park, projects will be [illegible] pacts. Projects to be reviewed in this latter area [illegible] struction or redevelopment of twenty-five or more [illegible] ch will cover one or more acres of land with impervious


Rowan Lake
PENN CENTRAL
Lights
LAMBERTON
Substation
ROAD
Duck Island
DELAWARE
Gate
Gate Line
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Echo Point
Beacon
Lights
Duck Creek
RIVER
CROSSWICKS
Colonial Memorial Park
Sylvan Glen
Parsonville
Miles Hollow
DELAWARE RARITAN CANAL STATE PARK
PROPOSED COASTAL ZONE
BORDENTOWN
BURLINGTON CO
BUCKS CO
Thorton
Cemetery
Blacks
STATE INDUSTRIAL SCHOOL
Radio
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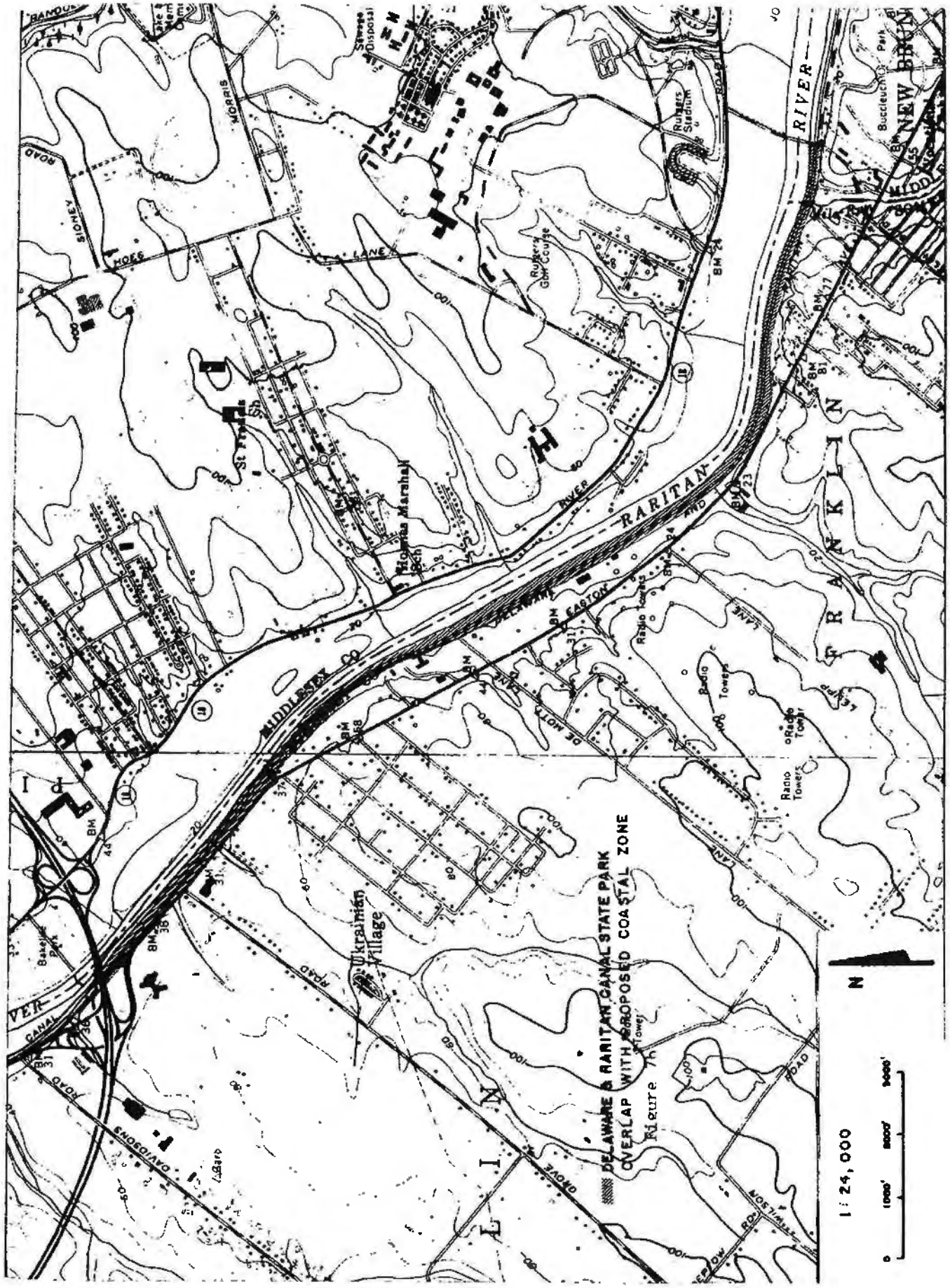
RARITAN
RIVER
NEW BRUNSWICK
FRANKLIN
PISCATAWAY
MIDDLESEX CO
Ukrainian Village
DELAWARE & RARITAN CANAL STATE PARK
OVERLAP WITH PROPOSED COASTAL ZONE
Figure 7h
1:24,000
N

surfaces, and projects with any of the following uses: livestock pens, corrals or feed lots; pipelines, storage or distribution systems for petroleum products or chemicals; liquid waste, storage, distribution or treatment facilities; solid waste storage, distribution or incineration or landfill; quarries, mines or borrow pits; land application of sludge or effluents. Hearings on the proposed regulations took place in December 1978, and adoption is expected.

Two small segments of the canal park, totalling approximately 288 acres, lie within the proposed coastal zone. (See Figure 7) In the Northern Waterfront area, the Canal extends along the Raritan River from New Brunswick to the limits of tidal water. In the Delaware River area, it begins at Crosswicks Creek, Hamilton Township, and then leaves the coastal zone as it turns away from the river in Trenton. The policies proposed by the Commission are consistent with the proposed Coastal Resource and Development Policies.

8. State Owned Land

The Natural Areas System Act, N.J.S.A. 13:1B-15.12a et seq., calls for the Department to designate and regulate state owned lands of natural value for the purpose of protecting and enchancing those values. The natural area regulations govern state agencies administering lands designated as part of the system, and ensure that any critical areas purchased by the state for preservation or conservation purposes are adequately protected.

There is one existing designated Natural Area in the proposed developed coast: Liberty Park Natural Area, which covers 60 acres in Liberty State Park. The Natural Areas System Act is a regulatory adjunct to those coastal policies encouraging the preservation of open space and the protection of critical environmental areas.

In addition to Liberty State Park, there are other state parks in the Developed Coast including part of Rancocas State Park in Burlington County, and parts of the Delaware and Raritan State park in Middlesex and Mercer Counties. These parks and any other State-owned lands managed by DEP within the coastal zone, including forests and fish and wildlife management areas, will be managed consistent with coastal policies. Development proposed on DEP managed lands is reviewed by DEP-OCZM to assure consistency, if it requires one or more coastal permits. All such development would be reviewed under a proposed Administrative Order clarifying the relationship between the divisions of DEP with coastal responsibilities.

The coastal resources along the Hudson River north of the George Washington Bridge, most notably the Palisades, are protected by inclusion within the Palisades Interstate Park. The park is managed by the Palisades Interstate Park Commission, a bi-state agency of New Jersey and New York.

Federally owned land is excluded from the coastal zone (see Appendix C).

9. Air Quality Programs

As the New Jersey agency designated to administer the Federal Clean Air Act, DEP's Division of Environmental Quality conducts the planning for, and monitoring of air quality. The Division's Bureau of Air Pollution Control has promulgated, and is further developing programs by which the National Ambient Air Quality Standards (NAAQS) will be attained. In compliance with the 1977 Amendments to the Federal Clean Air Act, New Jersey has submitted to the Environmental Protection Agency a State Implementation Plan outlining strategies for attainment and maintenance of the Standards.

The Bureau of Air Pollution Control has an extensive permitting program which reviews proposals for any operation which would result in air pollution emissions. Thus, any proposal to construct or operate manufacturing facilities, non-commercial fuel burning equipment, storage tanks to hold fuel and other organic substances, and commercial fuel burning equipment with a heat output rate of one million BTU/hour or more must receive a permit from DEP. In addition, the Bureau requires permits to install any incinerator unless it will serve a multi-family dwelling of six units or less.

The purpose of requiring permits under the State's Air Pollution Control Act is to impose controls necessary to meet established standards on potential sources of new air pollution. The Act, therefore, will serve to implement the coastal policies on air quality. Permits are granted when the Bureau has ascertained that the application complies with Federal and State air pollution regulations, and that its emissions control system reflects "Best Available Control Technology", also considered "state of the art" technology. In any year, the Bureau reviews 6,000 to 7,000 applications and approves all but about 120 of these.

10. Solid Waste

The Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq. authorizes DEP to supervise the collection and disposal of all solid wastes and related operations, including the location of disposal sites. Proposed facilities and sites are to be reviewed with reference to the quality of groundwater, erosion control, and "such other measures as shall be deemed necessary to protect the public health and safety of the environment "(N.J.S.A. 13:1E-6). Because numerous environmental impacts may be considered under this Act, DEP would apply all of the proposed coastal policies as criteria for site selection for solid waste collection and disposal facilities.

C. Funding Programs - Entire Coastal Zone

In addition to regulating selected land and water uses, DEP also administers funding programs which can help to ensure effective coastal management. These program have been created by both state and federal laws.

1. Green Acres and Recreation

The Green Acres Administration determines where and how state funds should be spent for park and open space acquisition, development, and maintenance. DEP can purchase land under this program by condemnation if necessary. DEP-OCZM reviews proposed expenditures of Green Acres funds in the Bay and Ocean Shore Segment of the coastal zone, for consistency with the Coastal Resource and Development Policies and can suggest modifications or block inconsistent proposals. The same procedure will be followed in the Developed Coast. In addition, the Use Policies for Recreation suggest that Green Acres funds be withheld from municipalities with recreational plans or ordinances which are inconsiatent with the State Coastal Policies.

The State Comprehensive Outdoor Recreation Plan (SCORP), prepared by the Green Acres Administration, addresses the adequacy of open spsce for existing and projected demands, and the accessibility of recreation resources for all segments of the population. The plan qualifies New Jersey for funding under the Federal Land and Water Use Conservation Fund Program. In addition to studying recreation needs and uses, SCORP also includes inventories of federal, state, county, municipal and private recreation resources. The major policies in SCORP, which are

also proposed for adoption in the Coastal Management Program, include an emphasis on open space in urban areas, recreation facility development, increasing public access to recreation resources through mass transit, and developing barrier free recreation facilities.

In November 1978, the voters of New Jersey approved a $200 million Green Acres Bond issue, with $100 million earmarked for the acquisition of park land in urban areas. This brings to $540 million the amount of money approved by the voters for Green Acres funding since 1961. The Green Acres Administration will be spending this money in accord with SCORP priorities. Some of the money will be used for direct state acquisition, while the majority will be channeled through local governments. This money will help to significantly expand public access to the waterfront in the developed coast.

New Jersey is also likely to receive additional funds for park rehabilitation in selected urban areas under the federal Urban Parks and Recreation Recovery Act, passed in 1978. These funds could be used by an eligible municipality to fill the local matching share of a state Green Acres grant.

2. Harbor Clean-Up

The "New York Harbor Collection and Removal of Drift Project" is a joint State/Federal undertaking supervised by the U.S. Army Corps of Engineers and administered at the state level by the Bureau of Capital Improvements in DEP's Division of Administrative Operations. The plan calls for the Corps to remove all abandoned sources of drift from both public and private property from mean high water seaward to a distance of 300 feet. Disposal methods include burning at sea, landfill, and land incineration, with burning at sea found preferable. Some dredging may be required to reach structures scheduled for removal. Local governments are to be responsible for subsequent maintenance of facilities, and no funds are provided for the revitalization of cleared areas.

New Jersey's share of the project's cost, $10 million, was authorized by the voters of the state as part of the $30 million Beaches and Harbors Bonds Act of 1977. The Act states in part that "the state's growing population, expanding commercial development, and tourist industry all require and should have a clean, adequate, and accessible shoreline" (Section 2b).

The program, which has to date been planned only in the Northern Waterfront area, has been administered with the removal of navigation hazards as the sole criteria for distribution of funds. Once coastal policies for this area are developed and adopted, however, and in keeping with the policy stated in the Act, Harbor Clean-up grants could be given only to those municipalities whose master plans and zoning ordinances are in substantial agreement with the coastal policies.

3. Waste Treatment Facilities

The State Public Sanitary Sewerage Facilities Assistance Act of 1965, N.J.S.A. 26:2E-1 et seq., authorizes the Department of Environmental Protection to grant funds to two or more local government units, and under certain specified conditions to a single municipality, for preparation of a feasibility study and report, for construction or extension of a sewerage system. The program is administered by the Division of Water Resources. The Act also authorizes DEP construction grants for up to 30 percent of the State-local cost of water pollution control projects which

qualify for the 75 percent Federal construction subsidy available from EPA under Section 201 the Federal Water Pollution Control Act Amendments of 1972. The State sewerage treatment plant construction aid program is designed to complement the federal sewerage construction grants, and DEP's funding priorities are in accordance with Federal priority guidelines and Areawide Water Quality Management (208) Plans. This funding program will help to carry out coastal policies related to secondary impacts and the protection of environmentally critical or sensitive areas.

4. Federal Coastal Program Pass-Through Funds

Coastal Zone Management Implementation (306) Funds

Upon federal approval of the coastal program, New Jersey is eligible to receive implementation funds under section 306 of the federal Coastal Zone Management Act. DEP received $800,000 in September 1978, for example, after approval of the program for the Bay and Ocean Shore Segment. The Department has made available $50,000 of this implementation money to selected county and municipal governments included within the Bay and Ocean Shore Segment boundary by inviting them to submit proposals for up to $15,000 for projects which would help to fulfill the objectives of the coastal program.

After New Jersey receives Federal approval for the coastal program for the Developed Coast, which together with the Bay and Ocean Shore Segment will make up the complete coastal program for New Jersey, the State will be eligible for increased 306 funds to implement the entire program. DEP intends to make a part of this money available for county and municipal governments to assist with projects which will help to carry out the goals and objectives of the coastal program. Other States have, for example, granted funds to local governments for the development of beach access plans or projects, land use analyses, zoning ordinance revisions, and downtown revitalizations.

DEP has also been receiving funds for the past four years, under Section 305 of the federal Coastal Zone Management Act, to develop the coastal management program. In 1977, DEP passed through $180,000 of these planning funds to twelve coastal counties, and in 1978 the Department granted $75,000 to eleven of the counties to enable them to write specific reports contributing to DEP's development of a coastal program. DEP is currently receiving its last year of 305 federal coastal planning funds and will not be eligible to receive additional 305 funds.

Coastal Energy Impact Program (308) Funds

The Coastal Energy Impact Program, Section 308 of the Coastal Zone Management Act, provides funds to assist states in dealing with impacts from new or expanded energy facilities. These funds also can be passed through to county and local governments, or be used directly by the State. New Jersey has received $77 to be used for energy impact planning grants this year. Also this year, the State expects to receive $1.3 million in formula grants to spend over the next several years. In New Jersey, the Department of Energy is the lead agency for this program. The CEIP is explained in more detail in the section below which discusses the Department of Energy.

## OTHER STATE AGENCIES

A number of state agencies, in addition to DEP, make decisions affecting land and water uses in coastal areas.

Unlike the operating divisions of DEP, these agencies are not bound by DEP rules concerning coastal policies, unless their activities require a DEP permit. Only the Department of Energy (DOE) is specifically obligated to follow the adopted Coastal Resource and Development Policies. This was accomplished through a memorandum of understanding between DEP and DOE which was signed August 22, 1978, and applies to the entire coastal zone. Similar memoranda could be arranged with the other departments, or the Governor could issue an executive order binding other departments to follow the coastal policies. DEP, however, anticipates being able to implement the State's coastal program without additional such agreements.

The sections which follow indicate those activities of other state agencies which affect coastal land or water uses and which could, if conducted consistently with the coastal policies, enhance the program's effectiveness.

All major construction projects will be consistent with the coastal policies by virtue of the Governor's Executive Order 53 of 1973 which requires that any state project costing one million dollars or more, or state projects costing less than one million dollars which by reason of their nature or location have the potential for substantial adverse environmental impacts, be first reviewed by DEP for environmental impacts.

### 1. Department of Energy

The Department of Energy (NJ DOE), created in July 1977 (N.J.S.A. 52:27F-1 et seq.), has broad planning and implementation authority over energy-related matters, including facility siting.

The Departments of Energy and Environmental Protection, recognizing their coextensive jurisdiction over energy facility siting in the coastal zone, and also recognizing the importance of such siting decisions to a successful coastal management program, entered into the memorandum of understanding mentioned above. The memorandum has three important features: a procedure for DOE review of coastal permit applications, a commitment by DEP and NJDOE to make their findings on the basis of the State's Coastal Resource and Development Policies as well as on the State Energy Master Plan, and a procedure for resolving disagreements between the two agencies. The policies proposed for the Developed Coast will be considered amendments to the adopted Coastal Resource and Development Policies for the Bay and Ocean Shore Segment. These policies too will not be adopted until they are agreed to by NJ DOE, and they will then also be subject to the signed Memorandum of Understanding.

The New Jersey Department of Energy is also the lead agency for the Coastal Energy Impact Program (CEIP). The 1976 Amendments to the federal Coastal Zone Management Act created Section 308, the CEIP, to provide financial assistance to help coastal states respond to the growth and impacts of new energy exploration and development. A second objective of the CEIP is to balance the two national goals of encouraging development of domestic energy resources to further energy self-sufficiency, and to protect and manage the nation's coast in a manner consistent with the objectives of a state's Coastal Management Program. To be eligible for

assistance under the CEIP, a coastal state must be receiving a grant under Section 305 of the Act, have a coastal management program which has been approved under Section 306, or be making satisfactory progress which is consistent with the policies set forth in Section 303 of the Act. New Jersey currently meets these criteria. Ensuring New Jersey's continued eligibility through federal approval of a complete statewide coastal management program, is one key incentive for completing the program.

As the lead agency for CEIP, the New Jersey Department of Energy is responsible for administering the program, including soliciting applications, providing technical assistance, and evaluating and approving project applications to distribute funds according to the program's intrastate allocation process. DOE and DEP coordination is required by the federal CEIP regulations which state that CEIP assistance cannot be granted without DEP-OCZM certification of compatibility with the goals and policies of the developing Coastal Management Program or consistency with the approved Coastal Management Program.

To facilitate such a finding, and to satisfy the requirement that the state's coastal planning agency review CEIP applications, the memorandum of understanding provides that all such applications will be forwarded to DEP for consistency review.

Another major responsibility of the Department of Energy is preparation and updating of the State Energy Master Plan. This plan considers the production, distribution, consumption and conservation of energy in the state and surrounding region. The Plan and the more specific reports it promises will become a primary resource for energy facility siting decisions by DEP. The State Energy Master Plan was formally adopted in October 1978.

The Board of Public Utilities, which is in, but not of, the Department of Energy, has broad regulatory authority over public utilities. Included in this authority is the power to supercede local zoning decisions when necessary if the service conveniences the welfare of the public (N.J.S.A. 40:55D-19). This authority comes into play only when a proposed utility facility has received required state permits (including coastal permits) and is denied a required local permit. This provision helps New Jersey fulfill a section of the federal CZMA requiring that local governments not be able to unreasonably restrict uses of regional benefit.

2. Department of Agriculture

The Department of Agriculture shares with DEP the regulatory responsibility of the Soil Erosion and Sediment Control Act (N.J.S.A. 4:24-39 et seq.). The Act is administered by the State Soil Conservation Committee, which includes the Commissioners of the two Departments, and local Soil Conservation Districts. The law controls erosion and sediment during the construction phase of development.

It mandates site plan review of proposed sediment control practices for all construction, excluding individually developed single family homes, resulting in a soil disturbance of at least 4,000 square feet and requiring a municipal building permit. Reviews are conducted according to 1972 guidelines which describe standards for techniques to establish ground protection and control of runoff, such as diversions, sediment basins, slope protection structures and channel stabilization. The Coastal Resource and Development Policies pertaining to soil are based on the Act, thereby assuring conformity between the two.

3. Department of Community Affairs

The Department of Community Affairs (DCA) is responsible for the administration of a broad range of social programs, including those affecting housing. The Department does not, however, play a significant role in the formal management system of the Coastal Program, with the possible exception of the activities of its Housing Finance Agency.

Under Section 701 of the Federal Housing and Community Development Act, DCA has prepared a State Development Guide Plan (Preliminary Draft - September 1977). The major policies of the Guide Plan are: Maintain the quality of the environment, preserve the open space necessary for an expanding population, provide space and services to support continued economic expansion, and enhance the quality of life in urban areas. These policies and the regulatory and funding decisions made pursuant to them are consistent with the proposed coastal policies.

DCA's Housing Finance Agency (HFA) provides financing for both public and private housing, and makes its decision on the basis of the Guide Plan. DEP will explore development of a more specific statement of consistency between DCA's housing policies and DEP's coastal policies which would expand the coastal program's impact.

4. Department of Labor and Industry and Economic Development Authority

The Department of Labor and Industry's (DLI) regulatory programs are, for the most part, not land-use related. However, the Department through its Office of Business Advocacy and the Economic Development Authority (EDA), plays important roles in siting and financing business and industry in the State. As part of this effort, DLI assists industrial developers in obtaining the State permits necessary for siting and operating plants, and will therefore work with DEP on industrial siting decisions. In addition, the Department can speed the development review process by steering potential developers towards sites on which development would be consistent with the coastal policies.

The Economic Development Authority is governed by a seven member board including the Commissioner of DEP. The Authority works closely with the Division of Economic Development within the Department of Labor and Industry. The EDA arranges low-interest, long-term financing for industrial projects and is authorized to enter into contracts and buy and sell land and buildings. In 1977, it provided $265 million for low interest loans throughout the State. DEP is working with EDA to explore the opportunity for consistency between EDA funding criteria and the proposed coastal policies. This could lead to coordinated planning for industrial development.

5. Department of Transportation

The Department of Transportation (DOT) is responsible for the planning, construction, and maintenance of state highways, the review and funding of local highway projects, the planning of state and regional transportation strategies, and the regulation of some transportation facilities. DOT construction projects affecting DEP-regulated lands or resources are subject to DEP regulatory authority, thus insuring their conformity with the coastal policies. As part of their planning responsibilities, DOT and DEP have a working relationship for planning in coastal areas.

## COUNTY AND MUNICIPAL LAND USE AUTHORITY

### County Authority

The major role of counties in the coastal program management system under this Existing Authority Option is as planners. County land use authority is limited to the review and approval of subdivision and site plans for traffic impacts on county roads, and for drainage impacts on county facilities. This authority is derived from the state through the County and Regional Planning Enabling Act (N.J.S.A. 40:1-55). To guide county decision making, most counties have prepared master plans or studies analyzing county issues and concerns. The Municipal Land Use Act (N.J.S.A. 4D:55D-1 et seq.) mandates coordination between county and municipal authorities by requiring that municipal master plans include a statement concerning the relationship between the municipal plan and the county master plan.

Other county functions which could help to carry out a coastal program include the 208 water quality planning responsibility some counties have undertaken and the counties' responsibility to prepare Solid Waste Management plans. Under the County Environmental Health Act of 1978, each county can formulate and enforce environmental health ordinances to control air pollution, solid waste, noise and water pollution. These ordinance must be consistent with applicable state laws, rules and regulations. The Act gives the Commissioner of DEP authority to delegate administration of the environmental health laws it administers to the counties. To date, this authority has not been exercised.

Most coastal counties have been actively involved in the planning and development of the state's coastal program. For two years, DEP has sponsored a state-county coastal coordination project with every county in the Bay and Ocean Shore Segment and Salem, Camden, Gloucester, Burlington (for one year), Middlesex, Hudson and Union counties in the proposed Developed Coast. Using funds made available under the federal Coastal Zone Management Act, DEP contracted with the counties for the provision of information and analysis which is being used in the development of the coastal program. The counties have generated ideas, and in some cases, suggested a boundary and policies for their section of the coastal zone.

Through continued work with the counties during program development, DEP can prepare a program which addresses the needs and concerns of all levels of government. DEP could choose to adopt county and municipal plans which adequately address coastal issues and do not conflict with state policy as specific elements of the state coastal program.

### Municipal Authority

New Jersey's municipalities, through their power to enact and enforce zoning ordinances, possess extensive regulatory authority over land uses. The Municipal Land Use Law, (NJSA 40:55D-1 et seq.), requires municipal planning boards to prepare master plans to guide municipal land use. It requires that all municipal zoning ordinances be consistent with or designed to carry out the land use element of the master plan.

The state and municipality act as a check on each other in areas subject to State land use regulatory authority. A locally approved proposal cannot be constructed without receipt of relevant state approvals, and a state-approved project with certain exceptions in which the state has eminent domain authority, must receive appropriate local approvals.

DEP-OCZM has been soliciting municipal participation in the development of the coastal program by sharing draft documents with municipal officials and holding public meetings throughout the state. In addition, DEP-OCZM will continue to encourage municipalities to review and comment on State coastal permit applications. Active involvement of the municipalities and consistency between local plans, ordinances and policies and state coastal policies is important for the successful development and implementation of the coastal program.

## REGIONAL LAND USE AUTHORITY

### Delaware River Area

In the Delaware River Area, the Delaware River Basin Compact, a 1961 agreement between the states of New Jersey, Delaware, New York and Pennsylvania, and the federal government creating the Delaware River Basin Commission, may complement and enahance New Jersey state authority to implement the coastal policies. The Commission's responsibilities include planning, conservation, utilization, development, management and control of the water resources of the Delaware Basin. The Commission consists of the governors of the four Basin states (the respective environmental commissioners serve as their representatives) and a designee of the federal government.

Section 3.8 of the Compact states in part that "No project having a substantial effect on the water resources of the basin shall hereafter be undertaken by any person, corporation or governmental authority unless it shall have been first submitted to and approved by the commission ...".

DEP has entered into a small contract with the DRBC to help determine how this project review authority can best be used to implement New Jersey's coastal policies. The first step in this project is to assure consistency between the state's evolving coastal policies for the Delaware River Area and DRBC's Comprehensive Plan. Once consistency is achieved, it will be possible for DRBC to require that proposed developments be consistent with coastal policies as well as with its Comprehensive Plan. Some of the questions still to be answered involve the types of development that DRBC will review for consistency with the New Jersey coastal policies, the review of proposed development that could impact more than one state, and DEP oversight of DRBC's project review activity.

### Hackensack Meadowlands District

Implementation of coastal policies in the Hackensack Meadowlands District will be a joint venture of DEP and the Hackensack Meadowlands Development Commission (HMDC). The HMDC is composed of the Commissioner of the Department of Community Affairs and three residents each from Bergen and Hudson Counties. It is responsible for developing and implementing a plan for ecologically sound development of the Meadowlands District. For this purpose, it has been given planning and zoning powers for the District, which were previously exercised by the individual municipalities. In 1972, the Meadowlands Commission adopted a master plan, which, as revised in 1977 and 1978, is to guide future development of the District. The HMDC will be the State agency responsible for implementing the coastal program in the Meadowlands District, and the coastal policies for the District will be those presently or hereafter adopted by the HMDC in their Master Plan and other policy documents.

### Northern Waterfront Area

In most of the northern waterfront, coastal policies can be enforced directly only through the riparian statutes. Near the Raritan Bay, DEP also has regulatory authority over development in mapped wetlands. In addition, DEP can channel funds it administers to projects consistent with coastal policies.

The coastal policies can be further implemented through coordination with several interstate and regional agencies having jurisdiction in the area. One of these agencies, the Port Authority of New York and New Jersey, is a self-supporting corporate agency formed in 1921 by the States of New York and New Jersey "to deal with the planning and development of terminal and transportation facilities, and to improve and protect the commerce of the Port District". The Port District is a large area surrounding New York harbor and includes all of the Northern Waterfront coastal zone. Because of the Port Authority's active involvement in the development and management of port, transportation and industrial facilities, DEP-OCZM is working closely with the Authority in policy development. Management of large areas of the northern waterfront by this interstate agency could be an important element of the management system.

In 1978, legislation was enacted in New Jeraey and New York to enable the Port Authority to undertake an industrial park development program to revitalize the inner cities of the Port District and create an estimated 30,000 jobs over the next ten years. The Port Authority program to develop sites for manufacturing plants in the hard-pressed central cities would require an investment of more than $1 billion in public and private funds over the next ten years, of which the Port Authority would invest up to $400 million on a self-supporting basis.

The Interstate Sanitation Commission was formed in 1936 by the states of New Jersey, New York and Connecticut to control pollution in the tidal waters of the New York metropolitan area. More recently the Commission has become concerned with air pollution as well, and monitors and conducts research concerning both air and water quality. Under its compact (Article 17 as revised October 1970), the Commission may "develop and, after public hearing place in force ... classifications of waters and effluent standards within the District". A NPDES permit may not be issued for any discharge which would violate the Commission's standards.

In addition, planning in the Northern Waterfront Area may also benefit from the newly created Hudson River Waterfront Study and Planning Commission. This Commission, established by Governor Byrne in Executive Order No. 69 on January 11, 1979, is to "conduct a thorough study and investigation of the various alternatives for the planning and redevelopment of the Hudson River Waterfront South of the George Washington Bridge". The Commission will be composed of State Legislators, representatives of Hudson and Bergen Counties, the Mayors of 15 waterfront municipalities in those counties and other citizens appointed by the Governor. Although the Commission's membership and specific work program has not yet been established, it should provide a valuable source of comments and contributions to the State's Coastal Management Program for the Northern Waterfront Area.

## NEW LEGISLATION OPTION

### Summary

The people of New Jersey, through the Governor and Legislature, have given the Department of Environmental Protection responsibility for implementing a significant number of laws and programs directed towards the State's waters and coastal

lands. In the course of administering these laws, however, certain potentially desirable changes have been suggested by interested citizens or have become apparent to DEP staff, which could not take effect without enactment of a new law. Such a law would be designed to address three major issues: The multiple and overlapping state coastal permit programs; the regulatory gaps in the current coastal permit programs; and the unclear, and often duplicative relationship between state and local coastal planning and regulatory procedures.

In brief, the new law would abolish the current CAFRA, Wetlands and Waterfront Development permit programs, creating instead one coastal permit. The coastal permit program would be administered by municipal governments if their adopted plans were consistent with the state coastal policies. In areas where the local government plans were not consistent, DEP would be responsible for the permit program. Participation of local governments in this program would be assisted in part with funds available under the federal Coastal Zone Management Act.

The Department of Environmental Protection has taken steps in recent years to address these issues through administrative action. The institution of the pre-application conference for projects requiring permits, the publication in 1976 of the Interim Land Use and Density Guidelines for the Coastal Area, and the adoption of the Coastal Resource and Development Policies in 1978 as Administrative Rules have all added efficiency, effectiveness and clarity to DEP's processing of coastal permits. As is discussed in the Existing Authority Option Section, the Department has identified additional revisions which it could explore in future years. The new law, however, would provide much greater potential for quickly improving and simplifying the regulatory process.

Discussion of this new legislation option is divided into three sections: Consolidation of State Permits; Activities Subject To The New Law; and State/County/Municipal Authority Under The New Law.

1. Consolidation of State Permits

As a result of the passage of the Wetlands Act of 1970, the Coastal Area Facility Review Act of 1973 and the statute creating waterfront development permits in 1914, New Jersey now has three coastal permits. While each permit program made sense when it was initiated, the result is that one project often requires two or even three of the permits. This is particularly unnecessary now that the state is adopting one set of policies to direct decisions under all three programs.

The new law would repeal the statutes creating the three permit programs and substitute one "Coastal Permit" applying to specified types of projects in one state "Coastal Zone". As the next two sections discuss, the law could be written so that different types of development, or different types of areas, such as wetlands, could continue to be distinctly addressed. The law would have to recognize the remaining riparian statutes so that a coastal permit application for use of riparian lands would only be accepted from persons who had established their right to use the lands.

2. Activities Subject to the New Law

The types of activities to be managed by the proposed law would vary within three tiers of the coastal zone. The first tier, or Water's Edge Area, would include all tidal and non-tidal wetlands, beaches, dunes, flood prone areas and all other land between the water and the first inland road. Development in this area

COASTAL ZONE BOUNARY
UNDER NEW LEGISLATION
OPTION

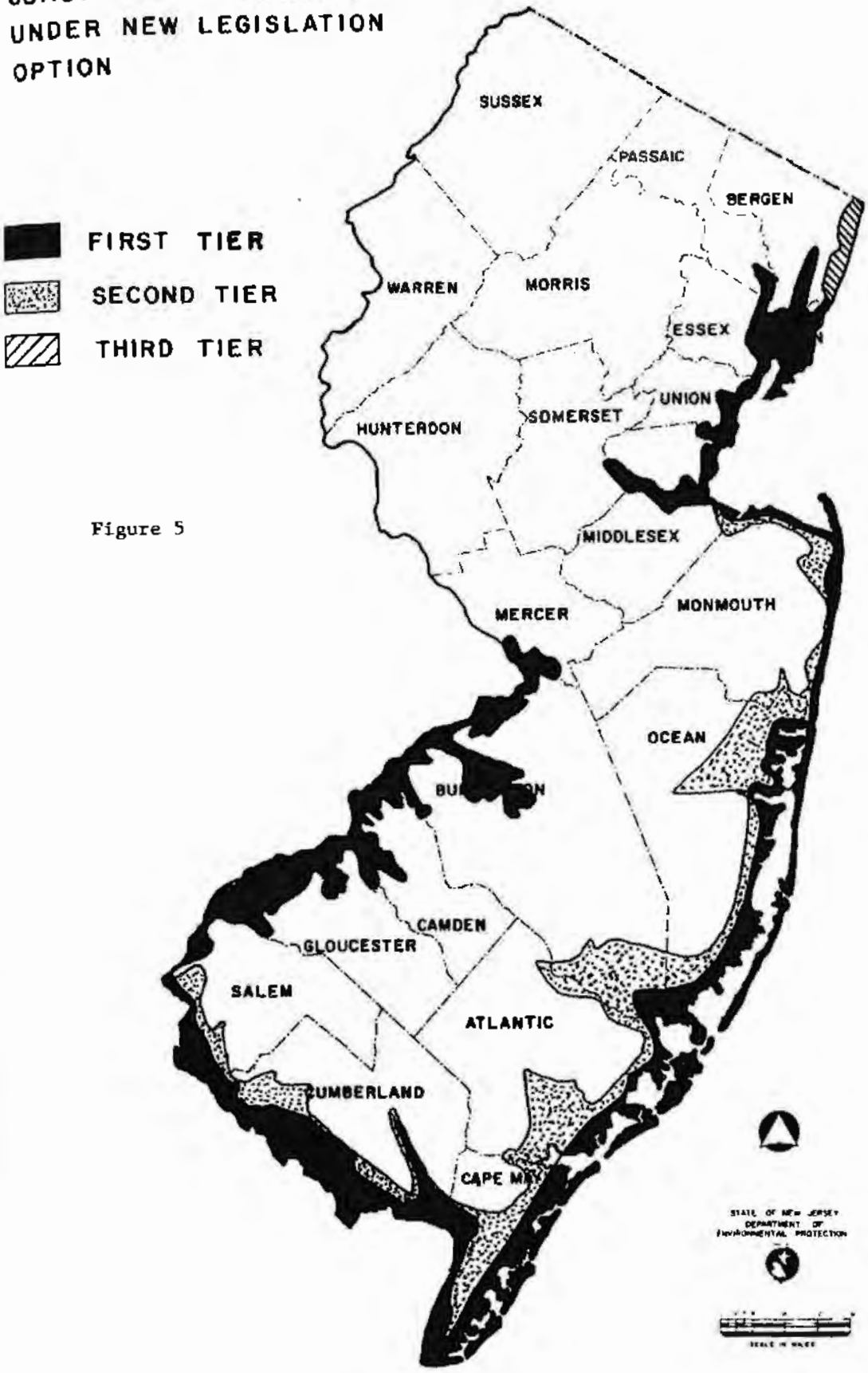


Figure 5



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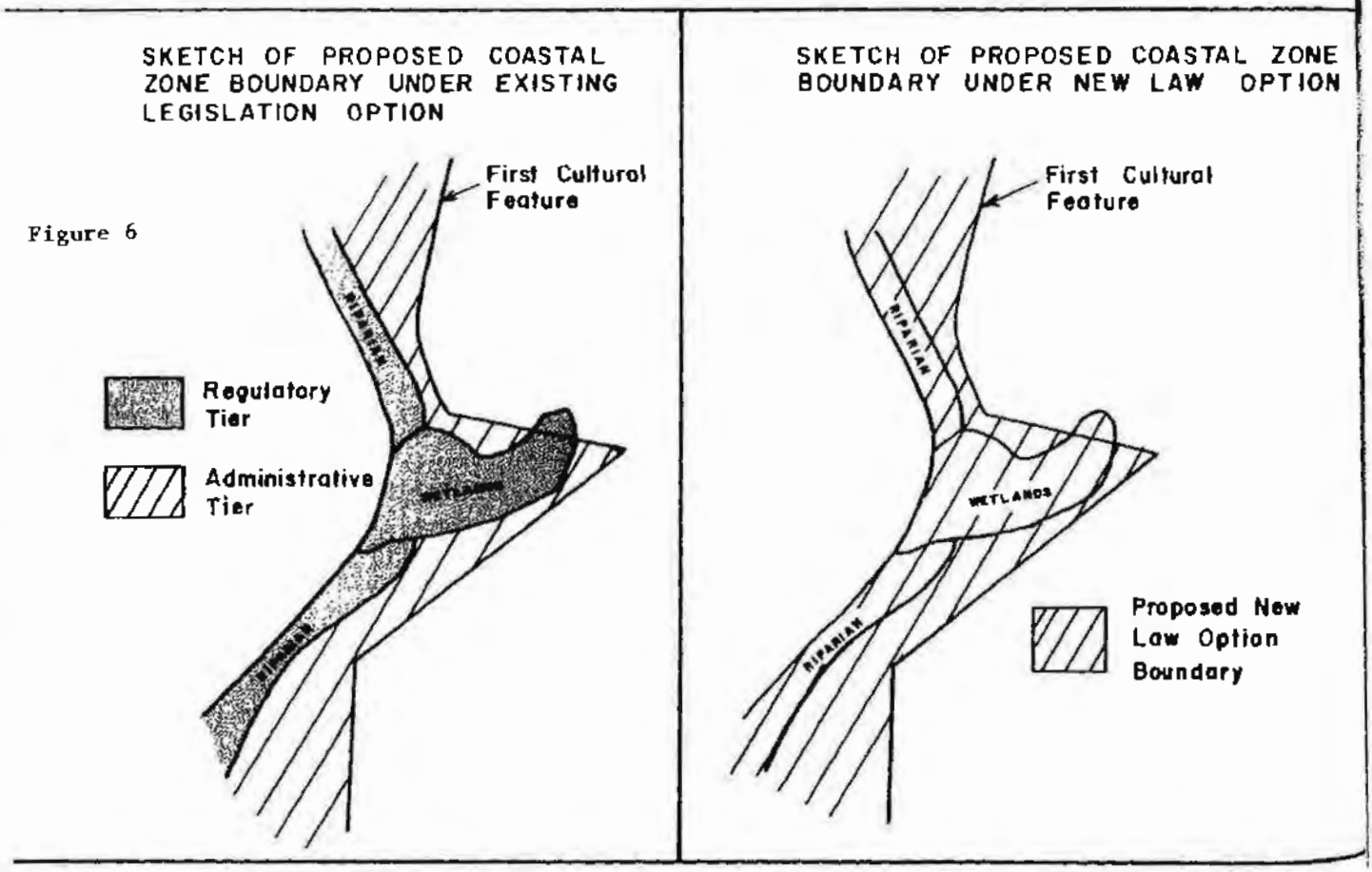
with the exception of minor repairs to existing facilities, would require a Coastal Permit due to the high environmental sensitivity of these areas, and the need to protect life and property from erosion, flooding and storms.

In the second tier, which would include the remainder of the coastal zone except the Palisades area, only major development would require a Coastal Permit. The activities to be regulated would be similar to those regulated under CAFRA, including housing developments of more than 25 units, energy facilities, landfills and major industrial, commercial, transportation, and wastewater treatment facilities.

The third tier would include the Palisades area where the only regulation would be that new development not obstruct the view of the Palisades or the ability of people to enjoy the view from the Palisades. The Palisades area would be defined as the area from the New York-New Jersey boundary on the north to Palisade Avenue in Englewood Cliffs on the south and from the Hudson River shoreline on the east to the 250 foot contour line on the west.

The changes represented by this regulatory system would be that most development immediately adjacent to the water, as well as that now subject to waterfront development, Wetlands and CAFRA authority, would require a coastal permit. Additional protection would thereby be afforded to life and property near the shorefront through stronger management of dune areas and other areas subject to flooding. Also, high rise structures on top of the Paliaades would be prohibited.

Figure 6



3. State/County/Municipal Authority Under the New Law

Development which requires a CAFRA, Wetlands, or Waterfront Development permit currently must be reviewed by both state and municipal governments for essentially the same factors. The two reviews have the benefit of requiring a developer to conform with both local and state regulations and standards before building, but they have the disadvantages of sometimes delaying and adding expense to the development approval process and resulting in a generally cumbersome and confusing regulatory maze.

The new law would reform this system by requiring DEP to delegate its responsibility to issue coastal permits to municipalities with plans and ordinances consistent with the state coastal program. This system would be adopted as follows:

a) After the new law was enacted, DEP would contact each municipality in the coastal zone, inviting them to apply for certification to issue coastal permits.

b) DEP would then meet with those officials who expressed interest and compare their plans and ordinances with the policies of the state coastal program.

c) If the plans of a municipality were consistent, DEP would give the municipality authority to issue, conditionally approve, or deny coastal permits. Building applicants then would no longer have to approach DEP for a coastal permit.

If necessary, DEP would make small grants available to a local government for administration of the coastal permits. The funds would be passed through from Federal grants New Jersey receives under the Coastal Zone Management Act, and priority would be given to areas with the most intense development pressure.

DEP would delegate this authority to a municipality with three conditions: Amendments, modifications, or variances to local plans or ordinances would have to be approved by DEP; Municipal decisions could be administratively appealed to the Commissioner of DEP; and DEP would review, and could rescind, each certification every two years.

d) Until the plans of a municipality were reviewed by DEP, or if the plans were not consistent with the state coastal program, DEP would continue to review the coastal permit applications. At the same time, DEP would make grants available to a municipality in which the governing body voted to undertake studies or in other ways work with DEP to seek consistent state-local coastal plans.

Alternatives

If a new coastal law is considered by the Legislature, it could include the provisions described or a wide variety of options. The coastal zone boundary, for example, could be smaller, although for New Jersey to continue to be eligible

for funding under the Federal Coastal Zone Management Act, at least all coastal waters and their adjacent shorelands must be included. The coastal zone could also be larger, including, for example, large inland areas along the Delaware or Hudson Rivers.

As with the boundary, many alternatives to the list of activities to be regulated are possible. First, the tiers could be defined differently, using as a criteria, for example, depth to seasonal high water table or soil classifications. Second, a 1,000 foot buffer around sensitive areas could be included as part of the first tier. Third, the first and second tiers could be combined, with the same activities regulated in both areas. Fourth, additional activities could be regulated, such as the destruction of buildings on the New Jersey State Register of Historic Places.

A new law could also be much more limited in scope, addressing only one of the issues described above. The "Dune Management Act" proposed by Governor Byrne in his "State of the State" address in January 1979, for example, would fill what is probably the most significant gap in the existing set of coastal laws.

The law could also allow DEP to delegate the responsibility for issuing coastal permits to counties as well as to municipalities. If the plans and ordinances of a county were consistent, DEP could then grant the county authority to issue, conditionally approve, or deny the coastal permits in all municipalities in the county which DEP had not yet certified. Building applicants would no longer need a coastal permit from DEP, but they would still need to receive two levels of approval: county and municipal. As DEP certified additional municipalities in the county, the municipalities would take over the permit granting authority for the county.

Another possible approach to managing urban waterfront areas would be the establishment of a regional commission. The Legislature and Governor could create such a commission as an entirely new body, or they could give additional decision-making authority to existing agencies. In the Northern Waterfront, for example, the Port Authority of New York-New Jersey or the Tri-State Regional Planning Commission could be given some or all of the regulatory responsibility for land and water use decisions currently exercised by State, County and municipal governments. The same type of authority in the Delaware River Area could be delegated to the Delaware Valley Regional Planning Commission or the Delaware River Basin Commission.

The creation of a new regional agency has been publicly proposed only for the Northern Waterfront Area. The Waterfront Coalition of Hudson and Bergen, made up of some of the area's environmental and civic groups, has for the past several years suggested creation of a temporary waterfront planning commission to assess the needs of the area and make recommendations concerning its reclamation. The duties of the commission would include preparing inventories of present land ownership and use, along with proposed development goals. The commission would be charged with devising a permanent institutional mechanism for carrying out the plan. The Coalition suggests that such a regional approach is appropriate for stimulating the redevelopment needed in the Northern Waterfront area. The regional agency would be similar to the Hudson River Waterfront Study and Planning Commission recently established by the Governor, except that it would include a greater representation of local citizens involved with environmental issues, representatives of neighborhood and ethnic groups, business and industry representatives and local elected officials.



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The concept of a regional commission could also be applied to the Delaware River Area. A commission for either area could also be established as a decision-making agency, with power to supercede or replace current state and municipal responsibilities. If the Legislature gave such a permanent commission power to allocate tax benefits and burdens throughout the region, as it has to the Hackensack Meadowlands Development Commission, the commission could decrease municipal competition for tax ratables, and thereby increase cooperation and sound planning.

FEDERAL CONSISTENCY

The meaning of Federal Consistency has been subject to much debate since it was first included in the Coastal Zone Management Act in 1972. At a minimum, it leads to increased coordination between DEP and federal agencies near the coast. It increases opportunities for more efficient and effective review of coastal projects which require both state and federal approvals and it establishes a formal process for resolution of differences.

In addition, federal consistency appears to allow the state to block or modify most projects in the coastal zone which require federal permits or funding and would violate parts of the coastal program. This could be particularly important for activities which are either undertaken by a federal agency or require their approval, and do not require permits from DEP. The two major examples of such activities are federally licensed and permitted activities described in OCS plans, and activities affecting navigable waters which are regulated by the U.S. Army Corps of Engineers.

Once the State has an approved coastal management program, any OCS plan for exploration, development or production from any tract impacting New Jersey's coast would have to be certified as consistent with the State Coastal Program. As opposed to past procedures which only allowed the State to exercise review and comment authority over OCS plans, the consistency provisions go one step further by allowing the state to enforce its coastal policies through a consistency certification process.

The second major area in which federal consistency could supplement state authority is in dredging, filling and other activities regulated by permits issued by the U.S. Army Corps of Engineers. The Corps, under Section 10 of the Rivers and Harbors Act of 1899, regulates the obstruction or alteration of, the construction of any structure in or over, and the excavation from or depositing of material in any navigable water of the United States. Under federal law "navigable waters" include adjacent wetlands. The discharge of dredged or fill materials into U.S. waters is also regulated by the Corps under Section 404 of the Water Pollution Control Act of 1972, which requires that such activities take place only at approved disposal sites.

Federal Consistency would allow the state to participate in the regulation of coastal wetlands that have not been delineated, fresh water wetlands, and the wetlands of the Hackensack Meadowlands. At present, none of these areas are covered by the New Jersey Wetlands Act.

Whether the state may exercise this indirect regulatory authority in the manner described above is a subject of some debate, on both state and national levels. Proponents of the more expansive view (including DEP-OCZM) contend that the language of Section 307 clearly indicates that any Federal activity which

significantly affects the coastal zone is subject to review. Proponents of the more restrictive view argue that Federal consistency applies only to activities which are also subject to state regulation. This approach is based on the view that Congress cannot expand the regulatory authority of a state agency when the state legislature has not authorized such an expansion, and on the belief that any land or water use not regulated under an approved coastal management program does not significantly affect the coastal zone. This debate is, as of this date, still unresolved.

In any case, federal consistency applies only after a State's coastal program is approved and cannot be used by a state to help demonstrate that it has sufficient authority to meet the standards of the federal Coastal Zone Management Act. It is, however, a benefit to the State, and DEP is continuing efforts to determine the limits of its potential.

## CHAPTER IV: SELECTED MAJOR ISSUES AND COASTAL POLICIES

Introduction
Coastal Location Acceptability Method
Selected Major Issues in the Developed Coast

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The Coastal Policies will be the heart of New Jersey's Coastal Management Program. They will articulate the State viewpoint of the best ways to use and manage the more developed parts of the coastal zone. As such, they will provide the substantive rules by which the state legal authorities affecting the coast are administered. In addition, the Coastal Policies will offer a sense of direction to residents, land owners and other governmental agencies for decisions they make which may not fall within the state coastal management system.

In this Chapter, the framework for the policies is described, the proposed decision-making method is summarized, and major uses of the Developed Coast are discussed. In the draft coastal program, DEP will propose one set of policies for New Jersey's entire proposed coastal zone including both the Bay and Ocean Shore Segment and the Developed Coast. The framework will be the policies adopted for the Bay and Ocean Shore Segment.

### COASTAL LOCATION ACCEPTABILITY METHOD SUMMARY

DEP proposes to use the same three step coastal decision-making process in the Developed Coast that has already been adopted for the Bay and Ocean Shore Segment. This process is called the Coastal Location Acceptability Method (CLAM). CLAM, involving Location, Use and Resource Policies, increases the predictability and specificity of decisions while providing flexibility sufficient to respond to changing events and new information. The Location Policies are summarized below while the Use and Resource Policies are discussed in the following section. The complete text of the proposed policies is printed in Appendix H.

The Coastal Location Acceptability Method includes a large number of suggested specific policies, in an effort to anticipate and address most coastal resources and proposed activities. Only a small number of the policies will apply to any given proposal. The generally different characters of the Bay and Ocean Shore Segment and the Developed Coast will be respected through this process. Thus, for example, DEP proposes to follow a "Special Area" policy protecting "endangered or threatened wildlife or vegetation" throughout the coastal zone, but it is likely to be an issue primarily though not exclusively on sites in the Bay and Ocean Shore Segment. Similarly, a "Basic Coastal Policy" to concentrate the pattern of coastal development and a Use Policy to locate ports in existing port areas will result in a greater amount of development in the Developed Coast.

DEP plans to propose this set of policies for the entire coastal zone as a revision to the Administrative Rules adopted for the Bay and Ocean Shore Segment on September 28, 1978 (N.J.A.C 7E-1.1 et seq.), after incorporating changes based on public review of both this document and the Draft Program Document and Environmental Impact Statement to be prepared this spring.

Location Policies

The Location Policies are designed to classify the variety of land and water features found in the coastal zone, and assign appropriate policies for the use of each feature. The recommended coastal policy for a particular location can be determined, therefore, by reference to the policies for the combination of features of which the site is composed. The Location Policies are divided into four broad categories: Special Areas (discussed in the Environmental Resources section of this Chapter), Water, Water's Edge and Land Areas.

Water Areas - Areas below the mean high water line, including intertidal areas, and nontidal permanent surface water features are classified as "Water Areas". The sensitivity of water areas to environmental impacts depends primarily on the assimilative capacity of the specific water area and the present levels of stress placed upon it. Assimilative capacity indicates the amount of adverse impact or pollutants that a water body can absorb and neutralize before it begins to display a significant reduction in biological diversity, chemical, or physical water quality. Two factors -- water volume and flushing rate (the rate that water in a channel or basin is replaced) -- are used in the Coastal Location Acceptability Method to determine the approximate assimilative capacity of water basins and water channels respectively. Water volume depends upon the surface area and depth of a water body. Other factors may also be important in reaching a specific decision.

The Location Policy for coastal Water Areas varies according to the depth of the water basin, flow of the water channel, and proposed use of the water areas. For this reason, the Coastal Management Program will define specific water basin and water channel types and specific uses of water areas. These specific coastal policies are summarized in a Water Acceptability Table. In addition to the Water Areas policies presented in the Coastal Management Program, proposed coastal development must also comply with applicable state and federal surface and ground water quality statutes and regulations.

The Water Acceptability Table presents policies for 19 types of uses in six types of water channels and two types of bays. The uses are: Aquaculture, Boat Ramps, Retaining Structures, Docks and Piers, Dredging-Maintenance, Dredging-New, Spoil Disposal, Dumping, Filling, Piling, Mooring, Sand and Gravel, Bridges, Cable Routes, Overhead Lines, Pipeline Routes, Dams and Impoundments, Pipes, and Miscellaneous.

The water body types are: Ocean, Open Bay, Semi-Enclosed and Back Bay, Inland Basin, Man-Made Harbor, Large Rivers, Medium Rivers, Creeks, and Streams, Intermittent Streams, Guts, Inlets and Canals.

Water's Edge Areas - The Water's Edge is a strip of natural or disturbed land and water areas at the interface between Water Areas (both tidal and non-tidal) and Land Areas. The Water's Edge includes four broad categories: Natural Water's Edge, Retained Water's Edge, Filled Water's Edge, and Existing Lagoon Areas. In general, the Water's Edge extends from the mean high water line to either the landward limit of soils with a seasonal high water table at the surface or the cultural feature closest to the Water Area, whichever is the lesser distance. Below, the complete text of the proposed water's edge policies is printed.

In general, development is discouraged in the Natural Water's Edge, unless the development satisfies all of the following conditions:

(a) Requires water access or is water-oriented as a central purpose of the basic function of the activity (this condition applies only to development proposed on or adjacent to waterways),

(b) Has no prudent or feasible alternative on a non-Natural Water's Edge site,

(c) Is immediately adjacent to existing Water's Edge development, and

(d) Would result in minimal feasible alteration of on-site vegetation.

Development is acceptable in Retained Water's Edge Areas providing that: (a) the development is water dependent or the proposed development is for a public recreation or resort use (this latter category would include waterfront parks); (b) the development is compatible with adjacent land uses; or (c) the existing retaining structure is adequate to protect the proposed development or appropriate improvements are proposed for the retaining structure.

Development is conditionally acceptable on Retained Water's Edge Areas along existing non-developed, man-made lagoons providing that: (a) the development is compatible with adjacent land uses, and (b) the structural condition of the existing retaining structure is adequate to protect the proposed development or the proposed development provides for adequate repair or replacement of the structure.

Development is acceptable in Filled Water's Edge Areas provided that: (a) the development is water dependent (this condition applies only to development proposed on or adjacent to waterways); (b) reclamation of the site to its natural state is infeasible; and (c) the development is compatible with adjacent land and water uses.

Development of Existing Lagoon Areas is acceptable provided that: (a) reclamation of the site to its natural state is infeasible; (b) the proposed development is compatible with adjacent land and water uses; (c) existing unstabilized slopes are stabilized using natural materials, to the maximum extent practicable; and (d) existing retaining structures are adequate to protect the proposed development, or appropriate improvements are proposed for the retaining structure.

Land Areas - Land Areas include all features not on a barrier island located upland of the Water's Edge, which is defined by the limit of soils with a seasonal high water table at the surface.

The acceptability for development of Land Areas is defined in terms of three levels of acceptable development intensity. Three factors determine the acceptable development intensity for various locations in Land Areas: (a) Coastal Region, (b) Environmental Sensitivity, and (c) Development Potential. Assessment of these three factors indicates the appropriate pattern of development from a broad, regional perspective and provides a method for determining the acceptable intensity of development of specific sites, as well as entire regions.

Determination of the specific Land Areas policy for a site is a four step process. First, the Coastal Region in which the site is located is determined. Second, the Environmental Sensitivity and Development Potential of the site are determined. Third, the Land Acceptability Table for the appropriate region is

consulted to determine the acceptable intensity of development of the site, given the Development Potential and Environmental Sensitivity factors for the site or parts of the site. Fourth, the proposed intensity of development of the site is compared with the acceptable intensity of development for the site.

Coastal development which does not conform with the acceptable intensity of development of a site is discouraged.

Coastal Regions - The coastal zone is classified into twelve different regions on the basis of the varied patterns of coastal development and resources. For these regions, DEP uses three broad regional growth strategies: (a) High Growth, (b) Moderate Growth, and (c) Low Growth. High Growth means that infill, extension, and some scattered development patterns are acceptable. Moderate Growth means that infill and some extension development patterns are acceptable. Low Growth means that only infill development is acceptable.

The Developed Coast's two major regions, Northern Waterfront Area and Delaware River Area, are both proposed as High Growth areas. (The Hackensack Meadowlands are subject to the HMDC Master Plan rather than the Coastal Location Acceptability Method.) The other ten regions are in the Bay and Ocean Shore Segment. (See Figure 8) The "High Growth" classification indicates the generally acceptable pattern of development, but does not exempt a proposal in such an area from the Special Area and other Location Policies, or the Use and Resource Policies. A development proposal in a wetlands site along the Raritan River in the Northern Waterfront Area, for example, would have to meet the Wetlands Special Area Policy to obtain any necessary DEP approvals, even though the site was in a "High Growth" area.

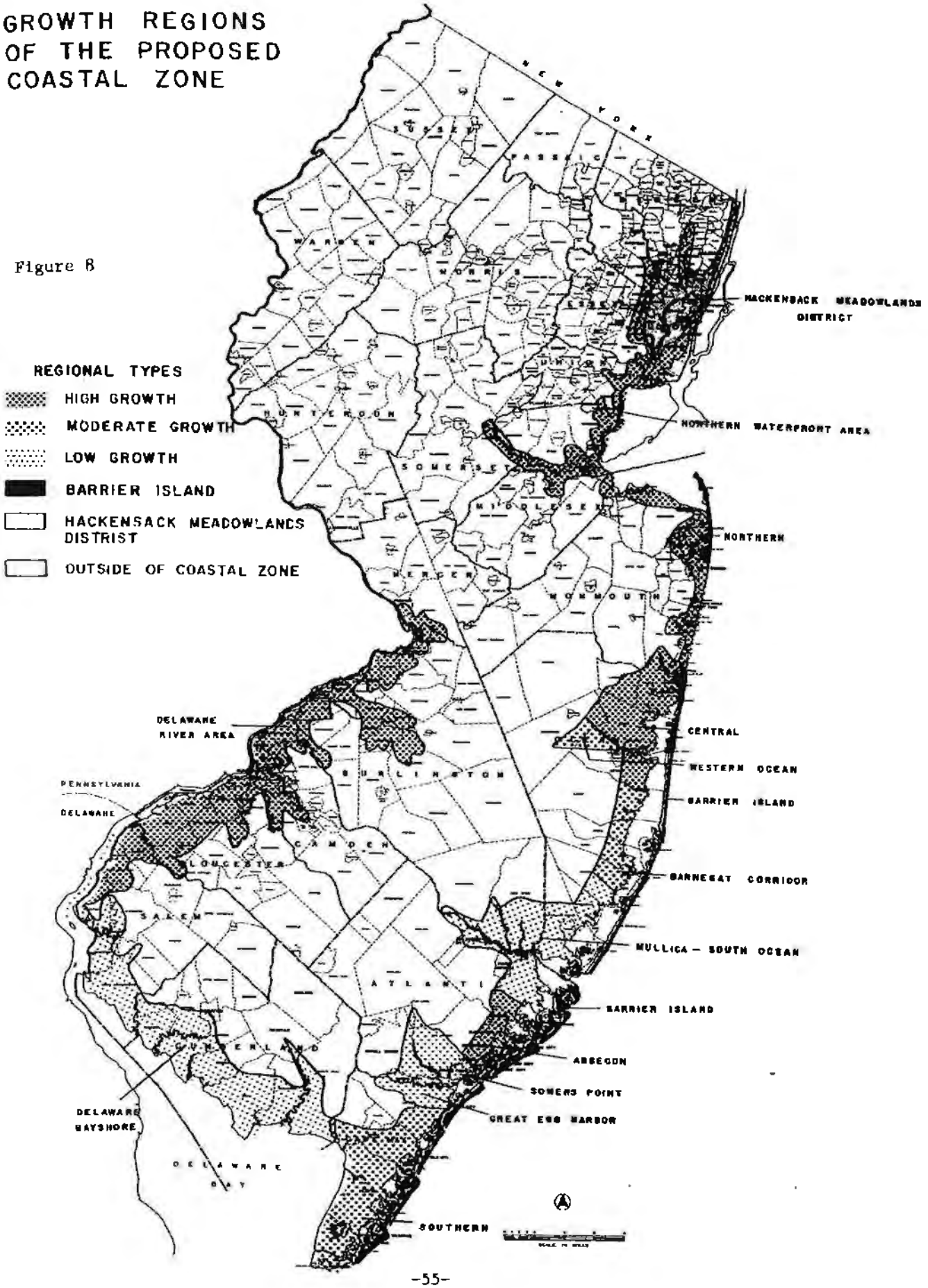
Environmental Sensitivity - Environmental Sensitivity is a composite indication of the general suitability of a land area for development based on three factors -- (a) vegetation, (b) fertility of soils, and (c) percolation rate of soils -- that are combined to indicate High, Moderate, or Low Environmental Sensitivity on a site or parts of a site. The Draft Proposed Amendments to the Coastal Rules in Appendix H first define these rankings and then define specifically the three factors.

Development Potential - Development Potential has three levels -- High, Medium, and Low -- depending upon the presence or absence of certain development-oriented elements at or near the site of the proposed development. These elements include direct access to roads and sewers, and the extent to which the proposal will contribute to infill of the immediately surrounding pattern of development. The Development Potential rating applies to the entire site. Different sets of Development Potential criteria are defined in the Draft Proposed Amendments for residential, commercial, industrial and campground development. Also, some of the criteria vary, depending upon the regional growth classification. If a specific set of Development Potential criteria is not defined for a particular category or type of development, then the Location Policy assumes a Medium Potential for that category until specific criteria are adopted by DEP. Recommended criteria from an applicant or the public may be considered in the course of the permit application process for a particular development prior to adoption by DEP of specific criteria.

Definition of Acceptable Intensity of Development - The Location Policy for Land Areas is expressed in terms of three acceptable intensities of development of the site or parts of a site, as determined by consulting the Land Acceptability Tables for the appropriate region in Appendix H. The acceptable intensities of

# GROWTH REGIONS OF THE PROPOSED COASTAL ZONE

Figure 8



development are expressed in terms of maximum and minimum acceptable percentages of the site, or of different parts of a site, that may be or must be used for structures, herbs and shrubs, or forests. Permeable paving provides a 10% bonus over the permitted maximum level of structures and impervious paving.

High Intensity Development, for example, permits extensive development of paving and structures. Typically, if analysis showed that most of a large area was acceptable for intensive development, the landscape that would be produced would be urban or heavily industrialized. At a Moderate Intensity Development, between 30 and 40 percent of an area can be developed in paving and structures. Typically, if analysis showed that most of a large area was acceptable for moderate intensity development, the landscape that would be produced would be suburban. Low Intensity Development means that the existing conditions of the site would not be disturbed, with removal of vegetation for clearing or maintenance purposes, and no grading, paving or structures. Typically the landscape of Low Intensity Development areas would be rural, agricultural, or forest.

Land Acceptability Tables - The Land Acceptability Table for High Growth Regions indicates the acceptable intensity of development of a site or parts of a site, for each of the nine possible combinations of Environmental Sensitivity and Development Potential factors. The Draft Proposed Amendments to the Coastal Rules contain additional Land Acceptability Tables for the Moderate and Low Growth Regions located in the Bay and Ocean Shore Segment.

The Land Acceptability Tables represent a striking of balances between the environmental sensitivity and development potential of sites, and balances among regions, in order to indicate both which land areas are appropriate locations for development and how the design of the development should use the land features of the site.

Environmental Sensitivity is weighed more heavily in Low Growth Regions than in High Growth Regions. Development Potential is weighed more heavily in High Growth Regions. The general policy in High Growth Regions is to promote growth through infill and lightly limited extension. In this high growth category, the criteria of both high and low development potential are changed to make it easier to obtain a high or medium ranking. For example, proposals that have adequate access to roads and sewers that have been approved but not built may qualify for high development potential status. Proposals that are within 1,000 feet of roads and sewers that have been approved but are not built, qualify for medium development potential. In these areas of planned growth, the requirement that a site must be infill to qualify for medium development potential does not apply. This definition identifies areas where growth is currently planned and then assigns acceptable development intensities as if the infrastructure were in place, which allows non-sequential development. The definition of levels of environmental sensitivity is the same throughout the tablea.

Determination of Location Acceptability - Lastly, the location acceptability of a proposed coastal development is determined by comparing the site plan of the proposed development, and the proposed percentages of the site to be used for structures, paving, herb and shrub vegetation, and forest vegetation, with the acceptable minimum and maximum percentages for the site as specified in the three levels of acceptable development intensity that apply to the site or parts of the site according to the Land Acceptability Tables. The percentages of the proposed development's site plan shall conform with the percentages determined using the Land Acceptability Tables, to the maximum exrent practicable.

## SELECTED MAJOR ISSUES IN THE DEVELOPED COAST

This section first describes how DEP proposes to address the protection of important resources in the Developed Coast and then describes air quality issues and seven major activities which take place in the Developed Coast. The Coastal Resource and Use Policies are noted in this Section. Together with the Location Policies, these policies constitute the Coastal Location Acceptability Method, which is presented in full in Appendix H.

### Resource Protection

The coastal zone contains numerous special Water, Water's Edge, or Land Areas that merit more focused attention because they constitute a highly valued natural resource, are important for human use, or form a significant hazard. The policies for the Special Areas supplement the other more general Location Policies, and take precedence in case of policy conflict.

The Coastal Resource and Development Policies proposed for the Developed Coast, identify 26 classes of Special Areas in which development should be restricted, modified, or, in some cases, prohibited to insure their protection. The areas are: Oyster Beds, Surf Clam Areas, Prime Fishing Areas, Finfish Migration Pathways, Submerged Vegetation Beds, Navigation Channels, Shipwrecks and Artificial Reefs, Marine Sanctuaries, Beaches, Wetlands, High Risk Beach Erosion Areas, Dunes, Central Barrier Island Corridor, Historic Resources, Specimen Trees, White Cedar Stands, Endangered or Threatened Wildlife or Vegetation Species Habitat, Critical Wildlife Habitats, Public Open Space, Steep Slopes, Farmland Conservation Areas, Ephemeral Stream Corridor, Special Hazard Areas, Excluded Federal Lands, Borrow Pits and Bluffs.

Coastal Resources would also be protected by the suggested Resource Policies. These policies involve a review of a proposed development in terms of its effects on various resources of the built and natural environment of the coastal zone, both at the proposed site as well as in its surrounding region. These policies serve as standards to which proposed development must adhere.

The Resource Policies address Marine Fish and Fisheries, Shellfisheries, Water Quality, Surface Water Use, Groundwater Use, Runoff, Soil Erosion and Sedimentation, Vegetation, Wildlife, Air, Public Services, Public Access to the Shorefront, Scenic Resources and Design, Secondary Impacts, Buffers and Compatibility of Uses, Solid Waste, Energy Conservation, Neighborhoods and Special Communities, Traffic, High Percolation Wet Soils, Wet Soils, Fertile Soils, Flood Hazard Areas, Decommissioning of Projects, Noise Abatement, and Barrier Free Design.

### Air Quality in the Developed Coast

Air Pollution is a particularly critical issue in much of New Jersey's Developed Coast, since the region includes many of the State's most densely developed and congested areas. The coastal management program will help improve air quality by supporting and, where possible, enforcing standards and policies prepared in accordance with the federal Clean Air Act. Because of the importance of this issue to the future of the Developed Coast, the State's air quality program is described in some detail below. Readers wishing greater elaboration may request copies of the State Implementation Plan (SIP) from DEP's Division of Environmental Quality.

Congress passed the Clean Air Act of 1970 and its 1977 amendments in response to public recognition of the harmful health effects of air pollution. The Act gave the federal government the authority to set National Ambient Air Quality Standards (NAAQS), or threshold levels for five pollutants: sulfur dioxide ($SO_2$), nitrogen oxides ($NO_x$), carbon monoxide (CO), oxidants or ozone ($O_x$), and total suspended particulates (TSP). A "primary standard", designed to protect the health of the people, was to be attained by 1977, while the more stringent Secondary Standard, aimed at protecting vegetation and wildlife, is to be attained by 1982.

The Act assigns responsibility for developing policies to attain these standards, or more stringent standards if it is deemed necessary, to the individual states. The 1977 amendments to the CAA stipulated that each state submit to the federal Environmental Protection Agency (EPA) no later than January, 1979, a State Implementation Plan providing for the attaining, maintaining, and enforcing of the secondary as well as the primary standards by 1982. Exceptions may be granted allowing for a 1987 attainment date for the ozone and carbon monoxide standards.

In New Jersey, the Bureau of Air Pollution Control within DEP's Division of Environmental Quality is responsible for administering the Clean Air Act requirements. The Bureau made available a summary of its proposed SIP in November, 1978, and submitted its final SIP to the federal Environmental Protection Agency at the end of December 1978.

In all twelve counties within the proposed developed coastal zone, carbon monoxide and ozone primary standards are being violated. In addition, the secondary standards for Total Suspended Particulates have not yet been attained in portions of Middlesex, Union, Essex, and Hudson Counties in the Northern Waterfront, and in the City of Camden in the Delaware River Area.

New Jersey's SIP proposes several strategies for controlling air pollutants which will have a direct effect on the Developed Coast. Ozone production will be limited by imposing more stringent emissions limitations on industrial and commercial facilities. The hydrocarbons and organic compounds these facilities produce, tend to react in the atmosphere in the presence of sunlight to form ozone. Carbon monoxide, produced primarily by motor vehicles, and ozone will be controlled through the State's vehicle inspection and maintenance program, and through the eventual replacement of older vehicles with newer, better controlled ones. In addition to vehicle control, the Plan calls for better coordination of local, regional and state transportation planning, the upgrading of the public transit system and equipment, and the development of ride-sharing, other commuter systems, and other programs designed to reduce air pollution emissions. The problem of excess particulates in New Jersey exists mainly in the Northern Waterfront section of the Developed Coast and will be minimized by controls imposed on industrial and commercial sources, and on motor vehicle design and performance.

One of the major strategies of the Clean Air Act is called Prevention of Significant Deterioration (PSD) and is aimed at the control of further pollution in areas which are currently attaining the NAAQS for particulates and sulfur dioxide. Areas in compliance with the Standards for sulfur dioxide and total suspended particulates are classified as Class I, II or III, depending on the extent to which further degradation of the air with these pollutants will be permitted. In the near future, similar policies will be developed for the other NAAQS - regulated pollutants. The EPA classifies these areas, but the States may redesignate areas within their borders with the approval of the EPA Administrator.

Class I areas, which are to be maintained in pristine condition, will be allowed the least incremental increase, while Class III areas are granted the largest increase in allowable pollution. Most of New Jersey and all of the Developed Coast's areas are Class II, which enables moderate growth. Any new major source, defined as a facility with more than 100 tons of emissions per year, is thus subject to preconstruction review and other requirements in order to determine that the new emissions will not cause or contribute to the exceeding of the maximum allowable increments.

In order to maintain acceptable sulfur dioxide levels within the State, New Jersey has chosen to approach the problem at a regional level by mandating the sulfur content of stored, sold and burned coal and fuel oil. The sulfur-in-coal regulations place the most stringent requirements in the State on the Northern Waterfront and the Delaware River Area, allowing a sulfur content of no more than .2% (by weight) in anthracite and bituminous coal. Sulfur-in-fuel regulations place the Northern Waterfront and the Delaware River Area in the second and third strictest categories in the State. Salem County to the south, however, is treated as a more rural zone with less stringent sulfur-in-fuel standards.

Further development in the Developed Coast, all of which presently exceeds the Standards for at least one pollutant and is therefore classified, "nonattainment", will be dealt with through a combination of strategies. One is the federal policy called "Emissions Offset". This provides a means to allow development in an area which does not meet the Standards for one or more of the pollutants. DEP will issue permits to construct or operate new major sources if the total emissions, within the area at the time the source's operation is to commence, will be sufficiently lower than those existing prior to the time of permit application. To accomplish this, the applicant must obtain offsetting reductions from another major source. The offsets might be achieved by the closing of an older, poorly controlled facility, or by the adoption of more efficient emissions controls by another facility within the area or another operation within the same industry. The initiative for the offset reduction comes from the applicant and another cooperating company. The regulations further specify that any other major sources within the State which are owned by the applicant must be in compliance with emissions regulations.

The operation of the Emissions Offset Policy has inherent problems. By definition, the Policy mandates trade-offs between major sources on a stack-specific basis. Thus, there is presently no system which addresses the contribution to air pollution levels made by the collective influence of non-major sources. The Emissions Offset Policy also could be said to favor applicants which are large sources since offset reductions can be made by another source within the same industry or "corporate complex". Finally, the case-by-case system makes it difficult to perfect the coordination in dispersion modeling and emissions monitoring that is necessary to achieve reliable predictions and results.

In the State Implementation Plan, New Jersey proposes to discontinue the use of this policy for allowing development. The State is working to replace "Emissions Offset" with development of an emissions inventory of commercial and industrial sources which could be used to determine the capacity of the State or area to absorb emissions generated by any new development. The emissions inventory will reflect how much "room" is available for a specific type of development with specific amounts of a pollutant to be generated. Since the emissions of all

sources will be stored in the inventory, the pollutants generated by non-major and major sources will be accounted for collectively, and a more realistic representation of air pollution levels will be provided. The inherent bias towards large industries and trust-type agreements between corporations will not exist since applicant-initiated negotiations in order to obtain offset reduction will not be necessary.

Several issues are referred to in the SIP which express New Jersey's concern with the equity issue among states. In legal action against the EPA and Pennsylvania concerning sulfur-in-fuel standards in the Philadelphia region, New Jersey called for and succeeded in bringing about revised sulfur-in-fuel standards in the Philadelphia region which hold adjacent states responsible for controlling their share of emissions imposed upon the air quality of neighboring states. Since both the Northern Waterfront and the Delaware River areas of the Developed Coast are distinguished by their proximity to congested metropolitan areas of New York, Pennsylvania and Delaware, any other such equity policies would affect these coastal areas of New Jersey.

In addition, the SIP states that the federal government should impose standards of performance at the national level in order to avoid the imposition of local hardship. The "Byrne Amendment" of the 1977 Clean Air Act requires EPA to develop New Source Performance Standards (NSPS) within the next three years for new major industrial installations. Each new source must comply with regulations for the type of industry, must monitor emissions continuously, and must conform with the Best Available Control Technology (BACT). The State is also considering requesting the federal government to limit motor vehicle sales to the California-type emission controlled automobiles.

Housing in the Developed Coast

The coastal program for the developed coast emphasizes revitalization of the urban waterfront. Upgrading existing housing to reduce abandonment and provide housing near existing transportation, infrastructure and places of employment is one step toward rebuilding healthy center-city neighborhoods. In light of the increased cost of new housing, utilization of existing housing through rehabilitation is the key to providing adequate housing opportunities, particularly for low and moderate income families.

Parts of several major cities, typical of the older urban centers of the Northeast which used to be the hubs of industrial, commercial and residential activity, are located in the Developed Coast. In the Northern Waterfront, these include Newark, Jersey City, Elizabeth, Bayonne, West New York, North Bergen, Passaic, Hoboken, Rahway, Perth Amboy and New Brunswick, and in the Delaware River Area, Trenton and Camden. Each of these thirteen municipalities are eligible to receive state urban aid because of their weak economic status. Most of these cities have a stock of structurally sound but abandoned housing as well as vacant lots which can become the focus of rehabilitation, so that the cities can once again become residential centers for all ages and income groups.

At the same time, the proposed coastal zone waterfront includes parts of the growing areas of Southern New Jersey, particularly areas in Burlington and Gloucester Counties. Demand for housing units is expected to continue to grow in the coastal zone in these southern counties.

Outside the urban centers, demand for new housing will continue to be delineated by transportation routes and new industrial and commercial centers. Single and multi-family housing will cluster around existing infrastructure, utilize public transportation to the maximum extent feasible and locate as close to places of work as possible.

The Suggested Specific Coastal Policies found in Appendix H address Water's Edge Housing, Cluster Development, Residential Mix, Fair Share Housing, Housing and Public Transportation, Housing Rehabilitation, High Rise Housing, and Large Scale Planned Residential Developments.

Resort/Recreational Uses in the Developed Coast

Recently, recreation has gained acceptance as a basic need rather than just a leisure time activity. Recreation covers a broad range of activities including swimming, sunbathing, boating and all the activities which use the coastal resources of the Jersey Shore. Recreation also includes walking, picnicking, bicycling and other activities which can be enjoyed anywhere in the state.

To meet the needs of the people of New Jersey, more and varied recreational opportunities must be made available. Experience has shown that people make greater use of recreational facilities located near where they live than those to which they must travel. This observation argues for acquiring and developing parks in or within close proximity to urban areas. Traditionally, cities have not always been anxious to reserve land for a recreational use, because land, when acquired for recreation, may not provide a monetary return to the municipality. In addition, the cost of designing and maintaining parks has often led to unimaginative or dilapidated facilities.

The waterways which cross the Developed Coast, such as Newark Bay and the Passaic, Hudson, Raritan and Delaware Rivers, provide potential for desperately needed recreation areas in urban centers. Until recently, few people have considered these waters as a recreational resource, either because the water bodies are polluted or because they are not accessible to the public. In some cases, present industrial use of the waterfront precludes public use of the water's adjacent shoreline. However, in many areas, industry has abandoned the waterfront locations leaving expanses of waterfront property vacant and in need of renewal. Where urban areas formerly had no open spaces available for recreation, the vacant waterfront land can be developed to provide opportunities for recreational activities.

Also, the recent creation and immediate popularity of Liberty State Park in Jersey City has demonstrated the great benefits and potential for additional waterfront recreation in urban areas.

The Suggested Specific Coastal Policies found in Appendix H would require at least one waterfront park in most municipalities and would encourage all residential, industrial and commercial developments to be designed to include recreational areas.

Energy Uses in the Developed Coast

The energy use policies articulated in the Coastal Management Program for the Bay and Ocean Shore Segment already address the siting of energy facilities in the Developed Coast. Only few changes are proposed, therefore, to make the



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policies applicable to the entire coastal zone. The policies for the Segment were adopted by both DEP and the New Jersey Department of Energy, and revisions or additions will not be made without similar agreement.

The Developed Coast is already the home of most of the state's non-nuclear energy facilities. The proposed policies suggest that needed new facilities locate in or near the same areas subject to meeting air and water quality standards and the other relevant coastal policies.

New Jersey will probably need to accommodate additional energy facilities to continue contributing to the national production of energy. At this time, however, it is impossible to determine how many different types of energy facilities will be required, due to uncertainty regarding the ultimate output of oil and gas from the Baltimore Canyon, the amount of energy needed in the short and long term particularly considering increased energy conservation activity, and the extent to which the output of existing facilities can be increased. The Hess refinery in Woodbridge, for example, has been idle since 1974, and could be reactivated if the need arose.

Many new energy facilities have been proposed for location in the Developed Coast in recent years, such as LNG facilities in Logan and West Deptford Township. Recently, DEP issued a Waterfront Development permit to GATX Corporation for a liquid bulk loading facility in West Deptford. A few proposals, including petroleum and chemical storage tanks in Jersey City, Bayonne, and Bordentown, have been abandoned after strong public opposition. Many more facilities are discussed, often in the media, but appear to be in an early speculative stage.

The only energy company or utility believed to hold land along the Developed Coast is Public Service Electric & Gas which owns Newbold Island on the Delaware River on which it may one day propose to build a fossil fuel (oil/coal) power plant. This site was disapproved for a nuclear facility in 1971 because of its proximity to a large population.

At least two energy projects which have recently begun in the Developed Coast make use of renewable fuel resources. The Elizabethtown Gas Company, serving 183,000 customers in six counties, has initiated an experimental program to install solar heating and cooling systems to its customers. In addition, Exxon's Bayway Refinery in Linden has been pursuing cogeneration by using waste steam heat from other industrial operations for energy.

The Suggested Energy Use Policies found in Appendix H, include a procedure already in use by DEP and the Department of Energy for the review of energy facility proposals. Other policies address OCS Oil and Gas Exploration and Development, Onshore Support Bases, Platform Fabrication Yards and Module Construction, Repair and Maintenance Facilities, Pipe Coating Yards, Pipelines and Associated Facilities, Oil Refineries, and Petrochemical Facilities, Gas Processing Plants, Storage of Oil, Gases and Other Potentially Hazardous Liquid Substances, Tanker Terminals, Electric Generating Stations, and Liquified Natural Gas Facilities.

Transportation in the Developed Coast

Transportation planning is a statewide issue and is not specifically related to the coast. It is, nevertheless, important to consider existing, proposed and desirable transportation facilities and networks in the preparation of a coastal program and in determining the locations of specific facilities, since transportation has a major impact on air quality, energy consumption, and growth patterns.

The northern waterfront area and Hackensack Meadowlands, and the Delaware River waterfront area are served by relatively distinct transportation systems. The following discussion examines the two areas independently, but recommends policies that can be applicable to both.

Northern Waterfront and Hackensack Meadowlands Areas - Northern New Jersey, highly urbanized and industrialized, is served by major highways, passenger and freight railroads, shipping lines, and by Newark Airport and smaller airfields in Linden and Teterboro.

Major limited-access highways cover most of the region and provide access to New York and South Jersey as well as enabling travellers from New England and Canada to pass through to the South. In spite of the relatively large number of major highways and other local roads, the routes are often severely congested, particularly during rush hours, when traffic is frequently at a standstill. In addition to being overloaded, the local road system is in poor condition, most of it constructed several decades ago.

The public transportation system only provides a competitive alternative to the automobile in limited areas. Express buses for commuters to Manhattan have the use of special lanes which provide an added incentive for commuters to leave their cars behind. The commuter rail system in North Jersey is composed of the Port Authority Trans-Hudson Corporation (PATH) line, connecting Newark with Manhattan, the Conrail-operated New York-Long Branch Railroad which goes down the Jersey shore to Bay Head in Ocean County, and several other Conrail lines terminating in Hoboken or Manhattan, and the Newark City subway.

An alternative form of transport would be the use of a ferry service between New Jersey and Manhattan. In summer 1978, a daily ferry service from Liberty Park in Jersey City took visitors to Ellis Island and Battery Park in New York City. This service will be expanded during Summer 1979 to include stops at the Statue of Liberty.

A number of additions to this existing transportation network are currently under review by various government agencies or the subject of discussion by interested people. Several new roads, for example, have been proposed, including a Hudson River route between Jersey City and Bayonne in Hudson County, which has been approved by the Federal Highway Administration, as part of the Federal highway program, a new route between Linden and Carteret, and a link to the Turnpike from Elizabeth and Newark Airport in Union County. In Bergen County, the completion of Route 21 along the Passaic River to connect with I-80, is the major construction contemplated under the County's transportation improvement program. Construction is scheduled to begin in 1980. In Middlesex County, the extension of Route 18 to Piscataway is under construction, while a proposed alignment of an extension of I-95 to connect with I-287 is still under discussion. In addition, the Garden State Parkway is presently being widened to form an extra lane from the Raritan River Bridge north to Route 22.

The sponsorship of car and van pools through the use of computer origin and destination mapping, by the Departments of Transportation and Energy has met with limited success, but additional special lanes for multi-passenger vehicles, may increase their use. DEP, together with the Departments of Energy and Transportation, has recommended that the new lane on the Garden State Parkway be a High Occupancy Vehicle lane for the use of car and van pools only, but no final decision has yet been made.

The major anticipated rail transportation improvement is the Department of Transportation's plan to upgrade and electrify the New York-Long Branch Railroad. The Urban Mass Transportation Authority has given concept approval for limited electrification of the line from South Amboy to Matawan as Phase I of a proposal to extend electrification to Long Branch. The project is expected to be completed by 1982. Although these improvements themselves are outside the Northern Waterfront area, they may reduce the automobile traffic in the area.

In Hoboken, the railroad terminal, which was built in 1907 and is a switching point for 38,000 commuters on PATH trains, is being refurbished by grants from the U.S. Departments of Commerce, Interior, and Transportation and the State Economic Development Authority. In the Hackensack Meadowlands, commuters have a new link to rail travel since the June 1978 opening of the Harmon Cove Station.

An alternative to dependence on the private automobile, is the ferry service between Sandy Hook and Manhattan, suggested by the Gateway National Park Service in its draft management plan. The ferry service is contemplated as an additional way to bring people to Sandy Hook, since the Park Service believes the limited parking space currently prevents the park from being utilized to its full capacity. Ferries could also be used to transport commuters between Monmouth County and New York.

At a time when energy conservation is becoming part of transportation planning, the increased use of bicycles for short journeys can provide an alternative means of transportation. The extension to Route 18 in Middlesex County will include a bikeway as part of its construction. This will connect with a new bikeway across the Raritan River in Johnson Park. Bikeways have also been proposed along the Palisades Interstate Parkway, and along the Hoboken Waterfront, but these schemes are still in the early stages of discussion.

Delaware River Area - The Delaware River waterfront is heavily built up and industrialized. Trenton and Camden grew to be major cities because of their dependence on river traffic, which subsequently declined as new transportation routes displaced to water. The New Jersey Turnpike and I-295 run parallel to each other along the Delaware River with many smaller local roads connecting them to the waterfront. Rail service along the Delaware is almost exclusively for freight. Lines run from Camden, east to Mount Holly, north to Trenton, and South to Cumberland and Salem Counties. Only the Port Authority Transit Corporation (PATCO) line between Philadelphia, Camden and Lindenwold, a high-speed semi-automated electric line, carries passengers.

There is regular bus service all along the Delaware River Corridor, with connections to Atlantic City and New York, and both Camden and Trenton have urban bus services.

Although the Delaware Valley Regional Planning Commission's (DVRPC) proposed plan for the year 2000 shows no new major road building programs, a few small projects are contemplated. In Camden County, the DVRPC proposed completing I-[illegible] to connect with I-76, and in Burlington County, the environmental impact statement for the connection of I-295 between Trenton and Route I-195 has been complet[illegible]



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In rail transportation, PATCO has approved extensions of the line south from Camden to Atco and North to Maple Shade and Moorestown. Completion of the extension will take at least five years, using existing Conrail tracks. All lines would pass through Camden and then into Philadelphia.

The Transportation Use Policies suggested for the Coastal Program found in Appendix H address Roads, Public Transportation, Bicycle and Foot Paths, and Fishing Platforms.

Public Facilities in the Developed Coast

Public facilities such as wastewater treatment and solid waste recovery facilities are necessary to meet public needs.

In most areas in the Developed Coast, an infrastructure is well in place. However, in some cases, facilities constructed years ago are obsolete, inadequate or not well maintained so that new or expanded facilities which use modern technology need to be built. Also, new public facilities will be needed as new methods of sewage and wastewater treatment are employed in New Jersey. For example, the composting facility, recently completed in Camden, provides an alternative to Camden City's past practice of offshore sludge disposal. Other types of facilities might be needed in the Delaware and Northern Waterfront Area for New Jersey to comply with EPA's goal to phase out ocean dumping by the end of 1981.

As part of the effort to rehabilitate the urban areas, public facilities may need to be improved to adequately serve the rehabilated and redeveloped areas. Recognizing that an infrastructure already exists in urban areas, redevelopment and any new development should locate near existing public facilities. This will minimize the need to build new facilities and where feasible, enhance efforts to upgrade existing facitlities.

The Suggested Specific Coastal Policies for Public Facilities in the Developed Coast (see Appendix H) generally encourage upgrading existing facilities to meet development and redevelopment needs. The policies also addresa Solid Waste and Wastewater Treatment.

Industry in the Developed Coast

In the Coastal Management Program for the Bay and Ocean Shore Segement, Industry and Commerce were listed together under Section 4.6 of the Use Policies. In this document, DEP addresses them separately so that the diatinct demands and benefits of both industry and commerce can be more specifically recognized.

Industrial uaes are among the most controversial and complicated activities occurring in the Developed Coast, because of the diverse and often conflicting effect industry can have on an area. While industry can mean jobs, new tax revenues and the provision of goods and services for the local or regional economy, it can also mean more pollution, safety hazards and increased congeation. Industrial use of the waterfront can also preclude other uaes in the limited amount of land along the waterfront in urban areas.

New Jersey is an important industrial center, ranking seventh among all statea in industrial output. Because of its proximity to major markets, within overnight trucking distance to 31 percent of the nation's population, New Jersey offers facilities to reach mass markets quickly and cheaply. Major rail, air and



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ship lines which converge at deepwater ports in the New York-New Jersey Port District and the Philadelphia-Camden area have made New Jersey's waterfronts very desirable, accessible waterfront sites. Changes in transportation and technology, however, have caused changes in patterns of industrial development along New Jersey's waterfronts.

The early development of the Hudson Waterfront as a major marine transport center and the convergence of the railroads in Jersey City, West New York and South Amboy spurred economic growth of the northern waterfront areas. The emergence of truck transport caused a shift in industrial development away from the waterfront to outlying areas leaving large tracts of vacant land and abandoned railroad property near the water. In the northern waterfront, some of these areas have been redeveloped into container port facilities which provide automated cargo handling facilities.

Much of the Northern Waterfront Area along the Hudson River, Arthur Kill and Newark Bay is either in, or zoned for, industrial warehousing or railroad use. Some municipal ordinances in these areas include restrictions on noxious industrial uses such as rendering plants, oil refineries and tank farms.

The Delaware River waterfront has experienced industrial development at a slower pace than the Northern Waterfront. The southern portion of the Delaware Waterfront has attracted chemical and petrochemical industries. Much of the remaining area along this part of the Delaware is privately owned vacant land which has been zoned for industrial use. Industry is also a major user of the Delaware Waterfront north of Burlington City.

Industry in the Developed Coast would be conditionally acceptable, according to the Suggested Specific Coastal Policies found in Appendix H, if it meets the Location and Resource Policies. In addition, new or expanded coastal dependent industrial or commercial development is encouraged at or adjacent to existing sites, to the maximum extent practicable. Marine resource dependent industry, such as commercial fishing, is encouraged and shall have priority over other waterfront uses, except for recreation.

Ports in the Developed Coast

Parts of the Northern Waterfront Area and parts of the Delaware Waterfront Area are included in two of the nation's largest port areas; the Port of New York and New Jersey and the Port of Philadelphia. The Port Authority of New York and New Jersey was created in 1921 to promote and protect commerce in the New York-New Jersey Port District. The New York-New Jersey port is the nation's largest, both in terms of total tonnage and the dollar value of freight handling. More than three-fourths of this total is handled in the Newark-Elizabeth container port facilities. The other large public port facility in the northern waterfront area is the Hoboken Port Authority Marine Terminal.

In the Delaware River Area, the South Jersey Port Corporation has been responsible for port development. The Corporation owns two large general cargo and dry bulk terminals in Camden. The Camden Port Authority, formed in 1978, will now share some of the port responsibilities in the city of Camden. The Delaware River Port Authority (DRPA) owns and operates four bridges which span the Delaware River, and maintains responsibility for the Lindenwold High Speed Line. Although the DRPA does not own or operate any port facilities along the Delaware, it promotes trade and commerce in the Port of Philadelphia.

The deepest ship channels in the northern waterfront and the Delaware area are maintained at 40 feet depths. This allows port facilities in these areas to accommodate large cargo, tanker and container ships. Over the past few years, as shipping technology and the type of cargo being handled has changed, new and different types of port facilities have replaced old cargo piers and lighterage terminals. Now oew container port terminals need sites which can provide wide expanses of waterfront land with good road and rail access away from congested urban centers. Attractive facilities for cargo carriers can accommodate large vessels, provide good equipment, ample storage space and offer a quick turnaround. Bulk cargo is increasingly being carried in large superships which need specialized terminals to accommodate the transfer of oil, ore or other types of liquid or dry bulk cargo.

The port facilities along New Jersey's waterfronts have changed to meet the demands of the new shipping practices. However, while the changes allow New Jersey to have the largest container terminal in the world in Elizabeth, the changes have also been costly to New Jersey's older port areas. The older single ports which have been vacated are now the site of rotting piers, abandoned buildings and vacant land. Where srevedores used to be busy loading coal from rail cars to boats, abandoned railroads and rotting wharves and docks sit idly at the waterfront.

DEP seeks to use the coastal program to help the Northern and Delaware Waterfront Areas remain healthy port areas by keeping pace with new shipping technologies while providing for redevelopment of the existing outmoded and obsolete docks and terminals. In some cases, unused and underused docks and piers can be rehabilitated ro accommodate port needs. However, in many cases, dilapidated wharves and piers need to be removed to provide for more appropriate uses of the sites compatible with surrounding redevelopment and community needs.

Ir is easy to see that port activities have changed considerably over the past ten ycars. The Port Authority of New York-New Jersey recognizes the changes which have been made recently to accommodate new needs, but predicts little need for construction of new or expansion of existing port facilities in the New York-New Jersey area over the next ten years. The Port Authority has, however, expressed interest in new industrial development in the Port area.

The need for new or expanded port facilities in the Delaware area is also uncertain. South Jersey Port Corporation has indicated that they foresee no need for new facilities over the next few years. On the other hand, the Delaware River Port Authority has been following OCS operations in the Baltimore Canyon and has suggested the Delaware River area as a likely site for new OCS support facilities. Although the recently formed Camden Port Authority hopes to promote facilities in the City of Camden, it has not determined whether there will be a need for additional port facilities.

In summary, specific needs for additional port facilities in the Delaware River Area and Northern Waterfront Areas have not been demonstrated. DEP, however, wishes to insure that sufficient suitable sites for further port developed are available to meet reasonably anticipated future need. The somewhat general nature of the policies proposed in Appendix H reflect the absence of publicly presented, specific, realistic plans by any of the relevant port authorities. DEP will continue working with the port authorities to propose more specific alternatives to these policies based on analyaes of future demand.

The Suggested Port Use Policies are intended to insure that needed port operations and expansion are promoted in established port areas as much as possible.

Commercial Facilities in the Developed Coast

Commercial development along the urban waterfronts could serve as a catalyst to attract people and services to central cities. Views of the Manhattan and Philadelphia skylines offered from the New Jersey shores of the Hudson and Delaware Rivers make the waterfronts in New Jersey's cities appropriate locations for riverfront restaurants, cafes, concert pavillions, markets and promenades.

A concentration of commercial and retail establishments at the waterfront would be consistent with the state's urban renewal efforts. Visitors and residents could use public transportation to reach the waterfront and in most cases, the waterfront area is within walking distance of other areas of the city. Allowing a mix of commercial development which would include shops, restaurants, cultural and recreational facilitiea and other services would create a magnet which would pull people to the waterfront as well as to the cities.

The Suggested Specific Coastal Policies for Commercial Uses found in Appendix H address Hotel-Motel Development, Hotel-Casino Development, Retail Trade, Convention Centers, Arenas and Cultural Facilities and Parking Facilities.

## INTRODUCTION TO THE APPENDICES

A companion volume to this report includes eight appendices with more detailed information related to preparation of New Jersey's coastal management program. The lengthy report will be quickly sent to any individual who writes or calls DEP's Office of Coastal Zone Management.

The Appendices are listed and briefly summarized below.

A. THE COASTAL PLANNING PROCESS - This appendix is a summary of DEP's coastal planning activities from 1973 to the present which laid the groundwork for this Options report and for New Jersey's approved Coastal Management Program for the Bay and Ocean Shore Segment. Sections of the Appendix address Major Planning Documents, Public Shorefront Access and Erosion, Energy, Legal Framework, Economics and Land Use, Information Systems, Nominated Areas of Public Concern, Coastal Awareness, Mapping and Public Partipation.

B. THE COASTAL ZONE BOUNDARY - This appendix explores the selection of a boundary for the Developed Coast. Included are 35 maps indicating the proposed boundary and a list of the municipalities with land within this part of the proposed coastal zone. The appendix also includes a description of the criteria DEP used to select this proposal.

C. EXCLUDED FEDERAL LANDS - The federal Coastal Zone Management Act requires that states exclude lands owned, leased, or held in trust by the Federal Government. This appendix lists the 20 federal land holdings of greater then 100 acres which are within the proposed boundary of the Coastal Zone.

D. OTHER PLANS AFFECTING THE COAST - An array of regional authorities, agencies, and commissions, both public and private, have prepared plans or proposed development policies for parts of the developed coastal zone. These regional organizations proved to be rich sources of data and ideas which DEP-OCZM will continue to tap throughout the development of the coastal management program.

DEP-OCZM has met with representatives of each regional group and has reviewed the published reports most relevant to the coastal zone. This appendix summarizes the most important findings and recommendations found in these publications. It is divided into five sections: Statewide reports, the Northern Waterfront, the Hackensack Meadowlands District, the Delaware River Area, counties and municipalities, and programs of other states.

The Appendix addresses reports prepared by the N.J. Department of Community Affairs, N.J. Cabinet Committee on Urban Policy, Tri-State Regional Planning Commission, Port Authority of New York and New Jersey, Jersey City Planning Commission, Liberty State Park Study and Planning Commission, Delaware and Raritan Canal Commission, Regional Plan Association, Stevens Institute Center for Municipal Studies and Services, Hackensack Meadowlands Development Commission, Delaware Valley Regional Planning Commission, Wilmington Metropolitan Area Planning Coordinating Council, Delaware River Basin Commission, a selection of counties and municipalities, and coastal programs prepared by New Jersey's nearest neighbors -- New York, Pennsylvania and Delaware.

E. HISTORY AND REQUIREMENTS OF THE FEDERAL COASTAL ZONE MANAGEMENT ACT - This appendix summarizes the provisions of the Federal Act passed in 1972 and amended in 1976.

F. THE DELAWARE - NEW JERSEY BOUNDARY - The Delaware Coastal Zone Act of 1971 precludes, or at least impedes, major waterfront industrial development along the shoreline of Salem County, New Jersey, as a result of the peculiar interstate boundary between the States of New Jersey and Delaware along the Delaware River. As a result of a U.S. Supreme Court decision in New Jersey v. Delaware (291 U.S. 361) in 1933, the interstate boundary between New Jersey and Delaware extends north at the mean low water line on the New Jersey shoreline, from a point near the northern tip of Artificial Island, in Lower Alloways Creek Township, Salem County, until the Delaware-Pennsylvania boundary, almost at the Salem County-Gloucester County boundary. Consequently, major development extending in some parts of Salem or Gloucester Counties which extends into the Delaware River could require approval from the State of Delaware, in addition to approvals from the State of New Jersey. This appendix describes the background of this issue and the requirements and poilicies of Delaware's Coastal Zone Act and Underwater Lands Act.

G. DRAFT CRITERIA FOR NOMINATION OF RIVER AREAS UNDER THE STATE WILD AND SCENIC RIVERS ACT - DEP-OCZM has developed the draft set of criteria included in this Appendix to aid itself and other interested parties in nominating river segments which would benefit from inclusion within the State's wild and scenic river system. Interested readers are invited to comment on the individual criteria, rank their importance (high, medium, or low), suggest additional criteria, and use the criteria in evaluating river segments. It would be especially helpful if individuals or groups with local knowledge compared river segments using these criteria (or a set of criteria they developed themselves) and made the results available to DEP-OCZM. DEP-OCZM will work with the Green Acres Administration to aid that Office in making recommendations for designation of river segments.

H. DRAFT PROPOSED AMENDMENTS TO RULES ON COASTAL RESOURCE AND DEVELOPMENT POLICIES - This last appendix reprints the entire set of Coastal Resource and Development Policies which DEP adopted for the Bay and Ocean Shore Segment of the Coastal Zone. Included are revisions DEP proposes to include so that the policies will appropriately address resources and development throughout the entire proposed coastal zone. The proposed changes are highlighted in the text.

The full text of this Appendix, with revisions based upon public comment, will form a chapter of the proposed coastal management program and draft environmental impact statement which DEP will prepare with NOAA-OCZM this Spring.



DE29630

ACKNOWLEDGEMENTS

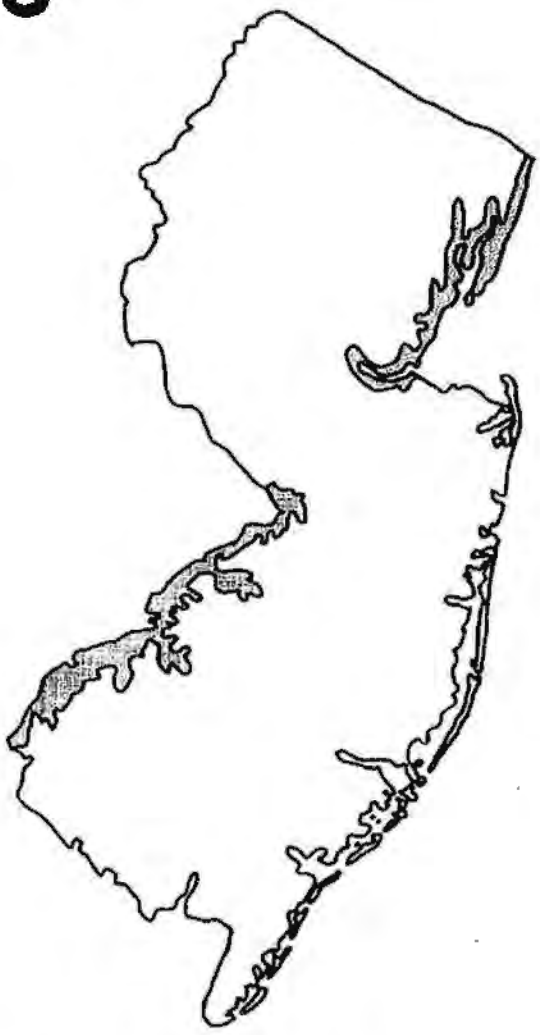
Options for New Jersey's Developed Coast was prepared by staff of the Office of Coastal Zone Management, under the direction and principal authorship of John R. Weingart, Assistant Chief. Contributing researchers and writers were Helga Busemann, Allan Campbell, Michael Hochman, Wendy Johnston, Richard Kantor, Amanda Kirkpatrick, David N. Kinsey, Stewart McKenzie, Michael Multari, Andrea Topper, Saul Wiener, and Neil Yoskin. Graphics were designed by Michael Hochman and Saul Wiener, and drafting was performed by Marvin Atwood and James Azzinaro. Typing was by Vicky Posluszny. Additional assistance was provided by Joan Cavaino and Wilma DeFazio in OCZM and Dan Hughes in the Office of Shore Protection.

Please send your comments on this report, or requests for additional copies or the Appendices to:

State of New Jersey
Department of Environmental Protection
Division of Marine Services
Office of Coastal Zone Management
P.O. Box 1889
Trenton, New Jersey 08625

~~Water Resources~~

# OPTIONS FOR NEW JERSEY'S DEVELOPED COAST



A PREVIEW OF A STATE COASTAL MANAGEMENT PROGRAM FOR PARTS OF:

SALEM, GLOUCESTER, CAMDEN, BURLINGTON, MERCER, MIDDLESEX, SOMERSET, UNION, HUDSON, ESSEX, PASSAIC, AND BERGEN COUNTIES

MARCH 1979

# APPENDICES A-G


DEPARTMENT OF ENVIRONMENTAL PROTECTION

Brendan Byrne
Governor

Daniel J. O'Hern
Commissioner


DE29632

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# APPENDICES

# TO

# OPTIONS FOR NEW JERSEY'S

# DEVELOPED COAST

March 1979

New Jersey Department of Environmental Protection

Division of Marine Services

Office of Coastal Zone Management

P.O. Box 1889

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TABLE OF CONTENTS


| | | PAGE |
|---|---|---|
| | | 71 |
| Appendix A | The Coastal Planning Process | 71 |
| Appendix B | The Coastal Zone Boundary | 79 |
| Appendix C | Excluded Federal Lands | 121 |
| Appendix D | Other Plans Affecting the Coast | 123 |
| Appendix E | History and Requirements of the Federal Coastal Zone Management Act | 139 |
| Appendix F | The Delaware - New Jersey Boundary | 141 |
| Appendix G | Draft Criteria for Nomination of River Areas Under the Scenic Rivers Act | 145 |
| Appendix H | Draft Proposed Amendments ro Rules on Coastal Resource and Development Policies | See Separate Volume |


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FIGURES


Figures 1-8 appear in Options for New Jersey's Developed Coast.

| | | |
|---|---|---|
| 9. | New Jersey Proposed Coastal Zone Boundary Index Maps and Maps Reduced from 1:24,000 Scale | 85-119 |
| 10. | Major Federal Lands Excluded from the Coastal Zone | 122 |
| 11. | New Jersey-Delaware Boundary | 142 |


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This volume contains eight appendixes to Options for New Jersey's Developed Coast. The Appendices are briefly summarized below.

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## APPENDIX A: THE COASTAL PLANNING PROCESS: 1973-1979

The New Jersey Coastal Management Program is based on DEP-OCZM staff research, contractual studies by private consultants, university research teams, and state and local government agencies, and considerable public debate, suggestions, questions, and comments over the past six years. The most tangible evidence of the coastal planning process are the federally-approved Coastal Management Program - Bay and Ocean Shore Segment, together with numerous studies and Options for New Jersey's Developed Coast and other reports published by DEP-OCZM. Many of the planning reports produced and widely distributed by DEP-OCZM are available upon request, while others, intended as in-house working documents, are available for review by interested people. Other evidence of the coastal planning process may be less visible, but just as significant as printed documents. This appendix sketches some of the highlights of the coastal planning process to date, both the clearly tangible reports and the public participation efforts.

The coastal program has been prepared in two segments. The first, addressing the Bay and Ocean Shore Segment, received approval from the National Oceanic and Atmospheric Administration in September 1978. The second segment, the Developed Coast, is based on studies prepared for the entire coast during the past six years. Some previous documents which focused on the Bay and Ocean Shore Segment also provided a basic framework for the planning of the Developed Coast, while others specifically addressed issues more prevalent in the Developed Coast.

In addition, DEP-OCZM has held numerous public meetings in the Developed Coast, throughout the planning process. Meetings were held in Trenton to discuss the proposed coastal zone boundary (January 1977), and major planning documents including the Coastal Management Strategy (November 1977) and the Coastal Management Program - Bay and Ocean Shore Segment (May 1978). In the Delaware River Area of the Developed Coast, DEP-OCZM has held public meetings in Camden, in 1976, 1977, and 1978, and in Gloucester in 1978. Speakers from OCZM have attended additional meetings in Gloucester County and Burlington County. DEP-OCZM has shared drafts of documents with the Delaware River Port Authority throughout the planning process and has a contract for joint coastal planning with the Delaware River Basin Commission.

In the Northern Waterfront Area of the Developed Coast, DEP-OCZM held public meetings in Hoboken in 1976, New Brunswick in 1976 and 1978, Jersey City in 1977 and 1978, and Hackensack, Edison and Elizabeth in 1978. In 1977, DEP-OCZM met with municipal officials in Hudson and Bergen counties. DEP-OCZM staff have also spoken to environmental, civic and business groups in the area. Drafts of documents have been shared with the New York and New Jersey Port Authority, and DEP-OCZM has a working arrangement with the Hackensack Meadowlands Development Commission to exchange views on planning efforts.

As an additional method of adding local input and perspectives to planning for the Developed Coast, DEP-OCZM passed through two small grants of federal funds available under the Coastal Zone Management Act to coastal counties to conduct studies on energy facility siting, and to provide county suggestions and comments on the direction and content of the State Coastal Management Program. The participating counties in the Developed Coast were Salem, Gloucester, Camden, Burlington (for one year), Middlesex, Union and Hudson.

Major Planning Documents

Since 1975, DEP-OCZM has prepared seven major coastal planning reports which were widely shared with public groups, individuals, and agencies. These reports and the reaction to them have shaped the direction and policies of the Coastal Program.

In September 1975, DEP published an Inventory of the New Jersey Coastal Area which defines and discusses the diverse resources, problems and opportunities of New Jersey's coast in order to indicate the range of issues that constitute the agenda for coastal zone management.

In July 1976, DEP released Interim Land Use and Density Guidelines for the Coastal Area of New Jersey, prepared with the assistance of Rivkin Associates of Washington, D.C. This document classifies land and water features in the coastal area in terms of relative suitability for development. The Interim Guidelines and the companion publication, Guiding the Coastal Area of New Jersey -- The Basis and Background for Interim Land Use and Density Guidelines, provided an advance indication to developers, municipal officials, and others, of the likely decision on CAFRA permit applications, and have also served as a focal point for discussion and debate in the development of the Coastal Management Strategy (September 1977) and the Coastal Management Program - Bay and Ocean Shore Segment.

In October 1976, Alternatives for the Coast - 1976 was published to indicate the scope of policy alternatives DEP-OCZM was evaluating for the coastal zone, their implications and the principles that helped shape them. DEP-OCZM expanded upon the policy alternatives in twenty-two issue papers published between November 1976 and early 1977. The topics covered were: Agriculture and the Coast, Air Reaources, Cultural Resources, Flooding, Groundwater Quantity and Quality in the New Jersey Coastal Zone, Housing, Ocean Resources (Living, Mineral, and Physical Resources), Sand Movement and the Shoreline, Solid Waste and the Coast, Surface and Coastal Water Resources of New Jersey, Upland Living Resources (Endangered, Threatened and Rare Animals, Endangered and Rare Vegetation, and Upland Wildlife Habitats), and Upland Mineral Resources and the Coast. A separate paper on the value of Atlantic White-Cedar Stands was completed in May 1976.

In December 1976, DEP-OCZM released Alternative Boundaries for New Jersey's Coastal Zone. This report presented ten possible coastal zone boundaries and served as a basis for debate on the issue.

DEP submitted the Coastal Management Strategy, for New Jersey-CAFRA Area to the Governor, Legislature, and public in the fall of 1977. The Strategy introduced the Coastal Location Acceptability Method (CLAM), a method of coastal resource management developed by DEP-OCZM in 1976-1977 using a pilot study area in lower Cape May County. Prepared in part to satisfy the statutory mandate of the Coastal Area Facility Review Act of 1973 that called for the selection of an environmental management strategy for the coastal area in four years, the document also served as a discussion draft of the Coastal Management Program for the Bay and Ocean Shore Segment. DEP distributed 3,000 copies of the Coastal Management Strategy, conducted eight public meetings throughout the state to discuss and debate the coastal program, held twenty additional informal meetings with public agencies and received nearly one hundred written statements with comments on the Strategy. DEP then revised the Strategy substantially in the course of preparing the Draft EIS for the Bay and Ocean Shore Segment document.

The formal federal approval process for New Jersey's coastal program began in May 1978 with the publication of the Coastal Management Program - Bay and Ocean Shore Segment and Draft Environmental Impact Statement. DEP distributed more than 3,000 copies of the draft document, and held numerous meetings with various interest groups to discuss and debate the coastal program. In addition, DEP with NOAA-OCZM convened three public hearings to receive testimony on the DEIS. The final Environmental Impact Statement was the result of revisions made to the May 1978 document, based on public comment gathered at the hearings, in informal meetings, and in written statements, and was approved by NOAA in September 1978.

Public Shorefront Access and Erosion

DEP's Office of Coastal Zone Management served as staff to the Commissioner of DEP in his capacity as an active ex-officio member of the New Jersey Beach Access Study Commission. In 1976-1977, DEP-OCZM staff helped prepare the Commission's report to the Governor and Legislature on beach access in April 1977. This report, entitled Public Access to the Oceanfront Beaches, examined beach use, budgets, and fees and ownership.

A study on shoreline erosion was ptepared under contract to DEP-OCZM by Rutgers University - Center for Coastal and Environmental Studies. The Coastal Geomorphology of New Jersey, in two volumes printed in December 1977, deals with the management techniques, strategies, and the technical basis and background for shoreline erosion management strategies. The study was a large step forward in understanding how to make decisions regarding development along the shoreline. Its influence is seen in many of the policies (high risk erosion, shore protection, dune protection) of the Coastal Resource and Development Policies (See Appendix H).

Energy

In December 1975, the Department of Environmental Protection invited energy industry representatives to provide basic information on coastal energy siting to be used in preparing the energy facility element of New Jersey's coastal zone management program. The results of this "Call for Information" were published by DEP-OCZM in March 1977. The state's three major electric utilities responded in considerable depth to the "Call".

DEP-OCZM's concern with the development of energy facilities is further reflected in two contractual studies undertaken by research groups at Princeton and Rutgers Universities. The study by Princeton's Center for Environmental Studies, entitled Who's in Charge? - Governmental Capabilities to Make Energy Siting Decisions in New Jersey, received financial support from the Federal Energy Administration, which sponsored a similar effort in each of the states associated with the Mid-Atlantic Governors Coastal Resources Council (New York, New Jersey, Delaware, Maryland and Virginia). It was published in September 1977. The Rutgers study, prepared by the Center for Coastal and Environmental Studies and entitled Onshore Support Bases for Offshore Oil and Gas Development: Implications for New Jersey, was released in February 1978. In addition, DEP-OCZM staff completed a report entitled Energy Facility Siting Issues in New Jersey's Coastal Zone, which was released for distribution in December 1977. DEP-OCZM staff also prepared a brief "Fact Sheet on Offshore Drilling in New Jersey" in June 1978.

Legal Framework

In June 1976, DEP-OCZM compiled "An Inventory of Environmental Law in New Jersey", which includes a description of major New Jersey land use, water quality, air pollution, and living resources laws related to coastal zone management. This is an in-house document which is continually updated.

In June 1977, DEP-OCZM completed "Areawide (208) Water Quality Planning and the New Jersey Coastal Zone Management Program: Opportunities for Interagency Coordination," a paper detailing the relationship between coastal zone management planning and water quality planning being conducted in New Jersey under Section 208 of the Federal Water Pollution Control Act.

Economics and Land Use

DEP-OCZM had contracts in 1975 and 1976 with the New Jersey Department of Community Affairs (DCA) and the Department of Labor and Industry (DLI) to prepare background land use and socio-economic studies about the coast. DCA produced information concerning: "Coastal Zone Housing Issues", County Land Use Issues in Atlantic, Cape May, Cumberland, Monmouth, Ocean and Salem Counties (six papers), "Growth Centers and Their Implications", "Sewerage Facilities", "Transportation Systems", and "Water Supply".

The Department of Labor and Industry prepared the following papers: "Background Paper: Economic Perspectives on New Jersey Tourisr Industry", "Economic Inventory", "Economic Issues and Problems in Northeastern Region of New Jersey Coastal Zone", "Some Taxes", "Economic Profiles" on Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Monmouth, Ocean, and Salem Counties (nine papers), and "Municipalities in Burlington and Middlesex Counties".

Information Systems

In February, 1975, in cooperation with the American Arbitration Association, DEP began an experiment to validate the environmental data for the Coastal Program. This experiment involved two large public meetings and several subsequent workshops. By January 1976, agreement was reached on data in nine natural resource categories. The categories are: bathymetry, flood areas, geology, groundwater, land use, slope, soils, tidal wetlands and vegetation.

DEP-OCZM also tested the development of information packages on an automated basis, in cooperation with the American Arbitration Association, Rockefeller Foundation, Rutgers University, and Princeton University. The 1976-1977 project, called the "Intuitive-Interactive Model", produced draft information packages on air pollution, construction noise, physical impact, industrial energy demand, odor pollution, residential energy demand, solid waste and waste demand, and urban runoff. One distinctive feature of the model is the ability of interested users such as developers or municipal officials to work directly, or "interact", with the computer. The findings of the project are being used by DEP in considering the ultimate design of an information system to assist coastal and perhaps statewide land and water use decision-making.

Nominated Areas of Public Concern

In December 1977, DEP-OCZM completed a report for public release entitled Nominated Areas of Public Concern in the New Jersey Coastal Zone. The report describes 176 areas of the state nominated by 140 interested individuals and organizations in 1976-1977, in response to DEP's invitation that the public suggest sites and areas for preservation, development, historic, recreation, visual, or other purposes.

The enthusiastic public response to this invitation led to detailed and wide ranging nominations, which were used in part to confirm and refine the DEP-OCZM staff recommendations on Special Land Areas and Special Water Areas in preparing the Location Policies in the Coastal Management Program - Bay and Ocean Shore Segment and this document. DEP also distributed its report describing the nominations to other state, county and municipal agencies which can make decisions affecting the sites. Finally, the information DEP-OCZM gained about specific sites through the Nominated Areas of Particular Concern program has been used in the past and will be used in the future as supplemental information to be reviewed in individual coastal permit decisions.

Coastal Awareness

Rutgers University Center for Coastal and Environmental Studies, under contract to DEP-OCZM, produced four booklets on coastal issues for public distribution in 1976-1977. The booklets, which are available from DEP are: "State Government and Coastal Zone Management", "Coastal Zone Legislation", "Oil Spills Reaction and Responsibility in New Jersey", and "New Jersey's Fishing Industry".

Mapping

During 1976-1978 DEP-OCZM published several map series, which are available to the public. The Inventory of the New Jersey Coastal Area - 1975 describes where these maps are located and how to use them. The Third Year Coastal Zone Management Program Development Grant Application provides a detailed list of the mapping in the first two years of the program. During the third year (1976-1977), extensive mapping was also done as part of DEP-OCZM's pilot study in lower Cape May County. Samples can be found in Appendix Four of the Coastal Management Strategy (September 1977).

The Interim Land Use and Density Guidelines also includes maps of developed and selected environmentally sensitive areas in the Bay and Ocean Shore Segment. Wetlands maps are on file with each county recording officer and are also available for public inspection or purchase in DEP's Office of Wetlands Management. Flood hazard area maps, as delineated by DEP's Division of Water Resources, are available for public inspection.

In addition, DEP-OCZM funded a study by Rutgers University - Center for Coastal and Environmental Studies to develop an underwater aerial photographic methodology suitable for surveying submerged vegetation in the coastal estuaries of New Jersey. The study culminated in the report, entitled Analysis and Delineation of the Submerged Vegetation of Coastal New Jersey: A Case Study of Little Egg Harbor (January 1978), which describes the aerial underwater photographic method, identifies and maps distributions of species, and discusses the ecological functions and associated problems of each of the dominant species.

In July 1978, DEP-OCZM released a staff working paper entitled Definition of the Preliminary Coastal Zone Boundary for the Delaware River and Northern Waterfront Regions of New Jersey's Coastal Zone. This paper identifies the process used by DEP-OCZM to prepare an initial boundary for the coastal zone outside of the Bay and Ocean Shore Segment.

In September 1978, DEP-OCZM held an all day mapping workshop to begin planning a coordinated effort by state agencies and other interested groups to identify mapping and other data needs, and to devise a system for obtaining, storing, and using the information.

Public Participation

DEP's Office of Coastal Zone Management is committed to wide public participation by law, by practicality, and by principle. DEP-OCZM's involvement efforts have two objectives, to raise the level of public awareness regarding both threats to, and attributes of the coast, and to identify and meet with individuals and groups who can contribute knowledge and opinions to coastal planning efforts.

DEP-OCZM works to involve people early in the planning process and continues to encourage such involvement. Draft documents are made available. Possible policies are discussed in public long before they are even formally proposed, much less adopted. The objective is for the DEP-OCZM staff to be exposed to as much information as possible, and for initial staff ideas and work products to receive a wide and critical reading. The reason is simple: a coastal zone management program cannot be prepared just from Trenton. The state's coastal zone is too large and too diverse. Public input and feedback is critical. Ideas which appear attractive on a planner's desk may be impossible to apply.

DEP-OCZM uses varied forums and publications to hear and explore varied information and viewpoints. To attract coastal residents, DEP-OCZM convened several series of public meetings in coastal counties during 1975-1978. The first meetings, held in Toms River and Trenton in February and May 1975, were focused on introducing the program and DEP's Data Validation Project. A second series of meetings were held in the summer of 1976 following publication of the Interim Land Use and Density Guidelines for the Coastal Area. A third series of seven meetings were held in the early winter of 1976 after release of Alternatives for the Coast. A fourth series of eight public meetings took place around the state in November-December 1977, following public release of the Coastal Management Strategy. These public meetings often began with a slide presentation and talk by a DEP-OCZM staff member and then turned to the specific concerns of the assembled. Discussion at these meetings flows from the questions, and many topics are each discussed relatively briefly. In addition, DEP-OCZM holds periodic workshops focused on specific, pre-announced subjects. Workshops on Agriculture, for example, were held in October 1976 in two locations (Bridgeton and New Brunswick). Additional workshops were held in February 1977 in Trenton and Toms River on Biological Resources, Physical Resources, Housing, Air Resources and Transportation, and Recreation and Boating.

Upon publication and distribution of the Draft Environmental Impact Statement on the Bay and Ocean Shore Segment in May 1978, DEP-OCZM held numerous workshops throughout the state with municipal officials, environmentalists, and industry and trade representatives prior to the document's more formal review at public hearings in June. The workshops were held primarily to further acquaint participants with

the Coastal Location Acceptability Method (CLAM). DEP staff used a step-by-step process with illustrations to work through a CLAM case study. The workshops also provided a forum for additional comments about the document, so that interested parties could receive clarification on specific points within the document, or suggest and discuss particular issues in greater detail than is possible at hearings. DEP-OCZM, in conjunction with NOAA-OCZM, then held three public hearings on the Coastal Management Program in June 1978 in Bridgeton, Toms River, and Trenton. Approximately 180 people attended the hearings at which a total of 35 persons offered testimony. DEP presented a slide show at the start of each hearing to serve as an introduction to the coastal program.

DEP also meets regularly with representatives of builders and environmental groups. DEP-OCZM has shared and discussed with these groups early drafts of several coastal reports including the Interim Land Use and Density Guidelines, CAFRA Procedural Rules and Regulations and the Coastal Management Strategy. Prior to the May 1978 publication of the Coastal Management Program - Bay and Ocean Shore Segment and Draft Environmental Impact Statement, DEP-OCZM distributed 150 copies of a pre-publication version of the document for quick review and comment by other state agencies, coastal county planning boards, builders, and energy, industry and environmental group representatives who had been active in the coastal planning process. Recipients of the pre-publication draft were also invited to a special Saturday review working session.

Since November 1976, DEP-OCZM has held monthly meetings with an Environmental Advisory Group composed of leaders of statewide civic and environmental groups. These meetings have been regularly attended by representatives of the American Littoral Society, American Association of University Women, League for Conservation Legislation, Sierra Club, Association of New Jersey Environmental Commissions, Natural Resources Defense Council, and the League of Women Voters, and occasionally by the Citizens Association to Protect the Environment, New Jersey Audubon Society, New Jersey Conservation Foundation, New Jersey Public Interest Research Group, and the Youth Environmental Society.

DEP-OCZM also convened a series of workshops on energy involving oil and gas industry representatives from Louisiana and Texas, as well as from the New Jersey Petroleum Council and the American Petroleum Institute in Washington, D.C., county energy planning representatives, researchers from Rutgers and Princeton, fishing groups, representatives from several state agencies and representatives from environmental groups. As the Newark Star Ledger noted on April 24, 1977, "It comes as somewhat of a surprise to find many of the combatants meeting across tables to discuss the issue informally, almost casually, in New Jersey."

The hearings held by DEP-OCZM on each CAFRA permit application provide another forum for public input in the Bay and Ocean Shore Segment. The hearings are held near the site proposed for development, and range, depending on the interest aroused by the application, from five minute meetings attended only by the applicant to four hour sessions with up to 300 people.

The coastal meetings and workshops are announced primarily through The Jersey Coast, the DEP-OCZM newsletter. This periodical is mailed to all interested persons and organizations known to DEP-OCZM. The mailing list currently includes more than 5,000 names. Meetings are also announced through press releases and the DEP Weekly Bulletin.

DEP-OCZM recognizes that reliance on a mailing list may neglect many potentially interested persons. To expand interest and knowledge of coastal management issues, the DEP-OCZM staff have spoken before a wide variety of municipal, county, state, and regional agencies, and civic, interest and professional groups in New Jersey and in other states. This provides an opportunity to talk with many people who may be well aware of some of the problems, but unaware of the coastal zone management program and possible solutions. Through these meetings, proposed policies are debated, interested individuals identified, and new people added to the mailing list who may later contribute to an element of the program.

DEP-OCZM also participates in other events to raise public awareness of coastal issues and again to identify more people who are interested in participating in the coastal management process. In June, 1976, for example, the DEP Commissioner led federal, state and local officials, interested citizens, and reporters on a six day walk along New Jersey's 125 mile ocean shoreline. This innovative event sparked considerable publicity and interest in the coast both in New Jersey and nationally. The Beach Shuttle experiment operated by DEP in the summer of 1977, and the return of the service in 1978, have provided another vehicle for probing public views on selected coastal management issues. In addition, DEP-OCZM has had exhibits at boat shows and county fairs. In May 1978, DEP developed a portable display describing New Jersey's coastal management program. This display can be easily updated as DEP progresses through the Federal approval process and begins to emphasize different areas of the State's coastal zone. The exhibit has been placed at several environmental and ecological fairs around the state, in libraries, and in the rotunda of the State House.

## APPENDIX B: THE COASTAL ZONE BOUNDARY

### Introduction

This appendix explores the selection of a boundary for the Developed Coast. The area eventually recommended by DEP, combined with the previously defined Bay and Ocean Shore Segment, will constitute New Jersey's Coastal Zone. A "metes and bounds" description of the proposed boundary indicating the roads followed by the boundary line is available from DEP.

It must be stated at the outset that DEP does not propose to regulate all, or even most activities within the selected coastal zone boundary. Rather, the coastal management program will regulate those activities described in the Management System Chapter.

The federal Coastal Zone Management Act provides general standards which states must meet in selecting a coastal zone boundary.

> "Coastal Zone" means the coastal waters (including lands therein and thereunder) and the adjacent shorelands influenced by each other and in proximity to the shorelines of the several coastal states, and includes islands, transitional and intertidal areas, salt marshes, wetlands, and beaches. The zone extends ... seaward to the outer limit of the United States territorial sea. The zone extends inland from the shoreline only to the extent necessary to control shorelands, the uses of which have a direct and significant impact on the coastal waters. Excluded from the coastal zone are lands the use of which is by law subject solely to the discretion of or which is held in trust by the Federal Government, its officers or agents." (Section 304 (1))

In addition to meeting these standards, DEP seeks a coastal zone boundary which will include all areas in which proximity to the waterfront presents special problems or opportunities, and which is easily recognizable.

DEP is proposing a coastal zone boundary for the Developed Coast which includes all tidal waters and their adjacent shorelands inland to the first road or cultural feature. The effect of this boundary will depend upon the management system chosen to administer New Jersey's coastal management program (See Chapter III).

This Appendix provides a definition of the proposed boundary, lists the specific areas within the boundary, presents maps of the proposed coastal zone, and describes the criteria DEP used to delineate the boundary. Using this information, readers can easily determine whether or not areas about which they are concerned are within the proposed coastal zone.

DEP first publicly analyzed the selection of the coastal zone boundary in December 1976 in a staff working paper entitled "Alternative Boundaries for New Jersey's Coastal Zone". This 55 page paper, which was widely circulated and discussed, described possible boundaries and included a preliminary recommendation.

The coastal zone boundary DEP proposes in this Chapter is a detailed refinement of the preliminary recommendation. Comments by interested individuals and groups, particularly County Planning Boards, suggested specific modifications, some of which have been incorporated into the proposal. The most major change has



DE29644

been the proposed division of the coastal zone into two tiers in the Existing Authority management system option (See Chapter III). In addition, the inland boundary has been adjusted to avoid cutting through pieces of property. Other suggestions, which have been incorporated, are noted as alternatives throughout the Appendix.

The next section describes the criteria DEP used in determining the proposed boundary and notes alternative suggestions.

Criteria of Delineating the Proposed Boundary

The proposed "coastal zone" is based on a definition of coastal waters, an inland boundary drawn along easily-recognized public roads and railroads immediately landward of the defined coastal waters, and the jurisdiction of the Hackensack Meadowlands Development.

Coastal Waters include tidal portions of the Hudson River, Passaic River, Hackensack River, Raritan River, Delaware River, Newark Bay, Upper New York Bay, Raritan Bay, Arthur Kill, Kill Van Kull and their tidal tributaries, and other tidal streams of the Coastal Plain.

The landward extent of coastal waters can be defined either by the limit of waters containing a specified percentage of salinity, the extent of the salt wedge, or tidal influence. DEP has chosen the landward penetration of tidal influence in a watercourse because this provides a readily measurable dividing line for coastal and non-coastal waters. (The tidal limit also coincides with the extent of State-owned tidelands and permit regulation under the riparian lands management program). Salinity levels are highly variable geographically throughout the seasons and from year-to-year, and therefore not appropriate for fixed boundaries, given the complexity and diversity of New Jersey's estuaries.

Two methods have been used to define the upstream limit of tidal activity. First, the approximate tidal limits specified in the annual Compendium of New Jersey Fish Laws, published by DEP's Division of Fish, Game and Shellfisheries have been used where available. These limits are typically defined as bridges or dams. Second, the point where the 20 foot contour interval crosses the water course is used to define the approximate limit of tidal influence along other tidal water courses. The 20 foot contour line criterion was suggested by DEP's Office of Environmental Analysis, since most of tidal influence is within the first 20 foot elevation.

The Office of Environmental Analysis is currently working to precisely and legally define New Jersey's tidal limits. When this work is completed, DEP will consider amendments to the coastal zone boundary.

The inland boundary was drawn along easily recognized public roads and railroads immediately landward of the defined coastal waters. Possible cultural features to be used were identified on the United States Geological Survey (U.S.G.S.) Topographic Quadrangle Maps. These cultural features were cross-checked with recent aerial photographs to eliminate "paper" streets and false information. If no recent aerials were available for the area, the coincidence of data between the quadrangle maps, tax maps, and street maps warranted the assumption that the cultural features in question did exist. At oo point, were set distances or



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natural land features used to better approximate the tidal water. The boundary only follows the path of those cultural features which intersect or cross over another.

This "chain" of cultural features was mapped on overlays using the U.S.G.S. quadrangle maps (1:24,000) as base maps. All points where the boundary meets political boundaries were encircled and coded to enable easier identification of the boundary in specific counties or municipalities.

A narrative was prepared detailing the exact location of the boundary. The text was organized by major water bodies and their tributaries (i.e. Hudson River, Newark Bay, Arthur Kill). The coded points on the maps, indicating points where the coastal zone boundary crossed political boundaries, were included in the text to locate more readily the boundary description for specific municipalities and to create reference between the text and the maps.

This proposed coastal zone includes at least a small part of a total of 237 municipalities in seventeen of New Jersey's twenty-one counties, including municipalities in the Bay and Ocean Shore Segment. The next section of this appendix lists the municipalities in the proposed Developed Coast. Only Hunterdon, Morris, Sussex, and Warren counties have no coastal waters and are entirely excluded from the coastal zone. This relatively large zone, united by the presence of coastal waters, is quite diverse, stretching from the port at Camden to the vast wetlands along Delaware Bay, to the beaches of the barrier islands along the ocean, to the industrialized waterfront of northern New Jersey.

Tidal influence makes the Delaware River region immediately adjacent to these waters "coastal" in the sense intended by the federal Coastal Zone Management Act. Although the Coastal Area Facility Review Act (CAFRA) boundary stops south of the Delaware Memorial Bridge, the tidal influence on the Delaware River extends 60 miles further north to Trenton. Because of the flat topography of the Coastal Plain, tidal tributaries from the Delaware River extend up to 10 miles inland. NOAA-OCZM does not require inclusion of the Delaware River within New Jersey's coastal zone as the quantity of seawater is less than five parts per thousand. However, the State of New Jersey does today manage the wetlands and riparian lands along this part of the coast and DEP recommends inclusion of these areas within the proposed coastal zone for the second phase of New Jersey's coastal management program under federal law.

As part of their contract with DEP-OCZM, several coastal county planning boards suggested a coastal zone boundary for their county. The Hudson County Office of Planning recommended a preliminary coastal zone boundary which closely matches the boundary recommended by DEP. The county used the following six indicators: 1) existing local and county land use maps, 2) land ownership tax records, 3) USGS topographic maps, 4) existing local, county and state transportation maps, 5) land use and transportation surveys, and 6) susceptibility to coastal development or coastal development potential. Other areas were included in the coastal boundary as areas susceptible to coastal development. Several areas of this type exist along the Hudson River where large areas of underutilized railroad land dominate the waterfront.

The Salem County Planning Staff suggested that the Delaware River Area of the coastal zone be limited to the Delaware River shoreline and adjacent portions of its tributaries and their wetlands. The land buffer areas suggested were of minimal width, rather than what they consider the large area included within the current proposed boundaries. Gloucester County's recommendations, presented in the form of a resolution from the County Planning Board, is similar except that they do not recommend any buffer areas, believing the boundary should be confined to wetlands and riparian lands now regulated by DEP.

The Camden County Environmental Agency found OCZM's criteria used to designate the upstream limits of tidal influence on the tributaries to the Delaware River acceptable and, consequently, did not recommend any alternative. Two specific suggestions regarding the boundary in Pennsauken Township were accepted by DEP-OCZM:

1. At the northwestern end of the Township, instead of following the Industrial Highway Remington Avenue out to Route 73, the boundary now follows Hylton Road until it intersects with Route 73. The boundary then continues southeast along Route 73.

2. In the vicinity of the Pennsauken-Cherry Hill municipal line (Maple Avenue), the boundary follows from Maryland Avenue (or an extension of Maryland) to the Penn Central tracks west of Sorrell Horse Road.

One other comment on the boundary is worthy of note. That is the boundary modification suggested by the Wave Hill Center for Environmental Studies and others, to include the Palisades area in the coastal zone. This area extends from the New York-New Jersey boundary on the north to Palisade Avenue in Englewood Cliffs on the South, and from the Hudson River shoreline on the east to the 250' contour line on the west. DEP-OCZM has not included this area under the Existing Authority Option, because it lacks authority to regulate or manage development affecting the view presented by the Palisades. This area is, however, included as part of the recommended coastal zone under the New Legislation Option (See Chapter III).

DEP intends to review and consider additional revisions to the boundary which may be suggested as a result of public review of this document. In addition, several agencies including the Delaware River Basin Commission and the Hackensack Meadowlands Development Commission are currently reviewing the section of the boundary of concern to them and plan to provide DEP with detailed comments for use in preparation of the draft EIS of the coastal program.

Municipalities Within the Preliminary Boundary of the Coastal Zone of the Entire State

All or part of 238 of New Jersey's 567 municipalities are included in the preliminary state-wide coastal zone. The municipalities in the Developed Coast are listed below, by county, by regions, either Delaware River Area or Northern Waterfront Area (which includes the Hackensack Meadowlands District). It is important to note that this is only a proposal at this stage.

DELAWARE RIVER AREA

Burlington County

Beverly City
Bordentown City
Bordentown Township
Burlington City
Burlington Township
Chesterfield Township
Cinnaminson Township
Delanco Township
Delran Township
Edgewater Park Township
Fieldsboro Borough
Florence Township
Hainesport Township
Lumberton Township
Mansfield Township
Maple Shade Township
Medford Township
Moorestown Township
Mount Holly Township
Mount Laurel Township
Palmyra Borough
Riverside Township
Riverton Borough
Southhampton Township
Westhampton Township
Willingboro Township

Camden County

Audubon Borough
Barrington Borough
Bellmawr Borough
Brooklawn Borough
Camden City
Cherry Hill Township
Gloucester City
Gloucester Township
Haddon Township
Hi-Nella Borough
Hi-Nella Borough
Laurel Springs Borough
Lindenwold Borough
Magnolia Borough
Mount Emphraim Borough
Pennsauken Township
Runnemede Borough
Somerdale Borough
Stratford Borough

Gloucester County

Deptford Township
East Greenwich Township
Greenwich Township
Mantua Township
National Park Borough
Paulsboro Borough
Swedesboro Borough
Wenonah Borough
West Deptford Township
Westville Borough
Woodbury City
Woolwich Township

Mercer County

Hamilton Township
Trenton City

Salem County

Oldmans Township
Penns Grove Borough
Pennsville Township
Pilesgrove Township

NORTHERN WATERFRONT AREA

Bergen County

Alpine Borough
Bogota Borough
Carlstadt Borough
East Rutherford Borough
Edgewater Borough
Englewood Cliffs Borough
Fairview Borough
Fort Lee Borough
Garfield City
Hackensack City
Little Ferry Borough
Lyndhurst Township
Moonachie Borough
New Milford Borough
North Arlington Borough
Oradell Borough
Ridgefield Borough
River Edge Borough
Rutherford Borough
Teaneck Township
Teterboro Borough
Wallington Borough

Essex County

Belleville Town
Newark City
Nutley Town

Hudson County

Bayonne City
East Newark Borough
Guttenberg Town
Harrison Town
Hoboken City
Jersey City
Kearny Town
North Bergen Township
Secaucus Town
West New York Town

Middlesex County

Carteret Borough
East Brunswick Township
Edison Township
Highland Park Borough
New Brunswick City
Old Bridge Township
Perth Amboy City
Piscataway Township
Sayreville Borough
South Amboy City
South River Borough
Woodbridge Township

Passaic County

Clifton City
Passaic City

Somerset County

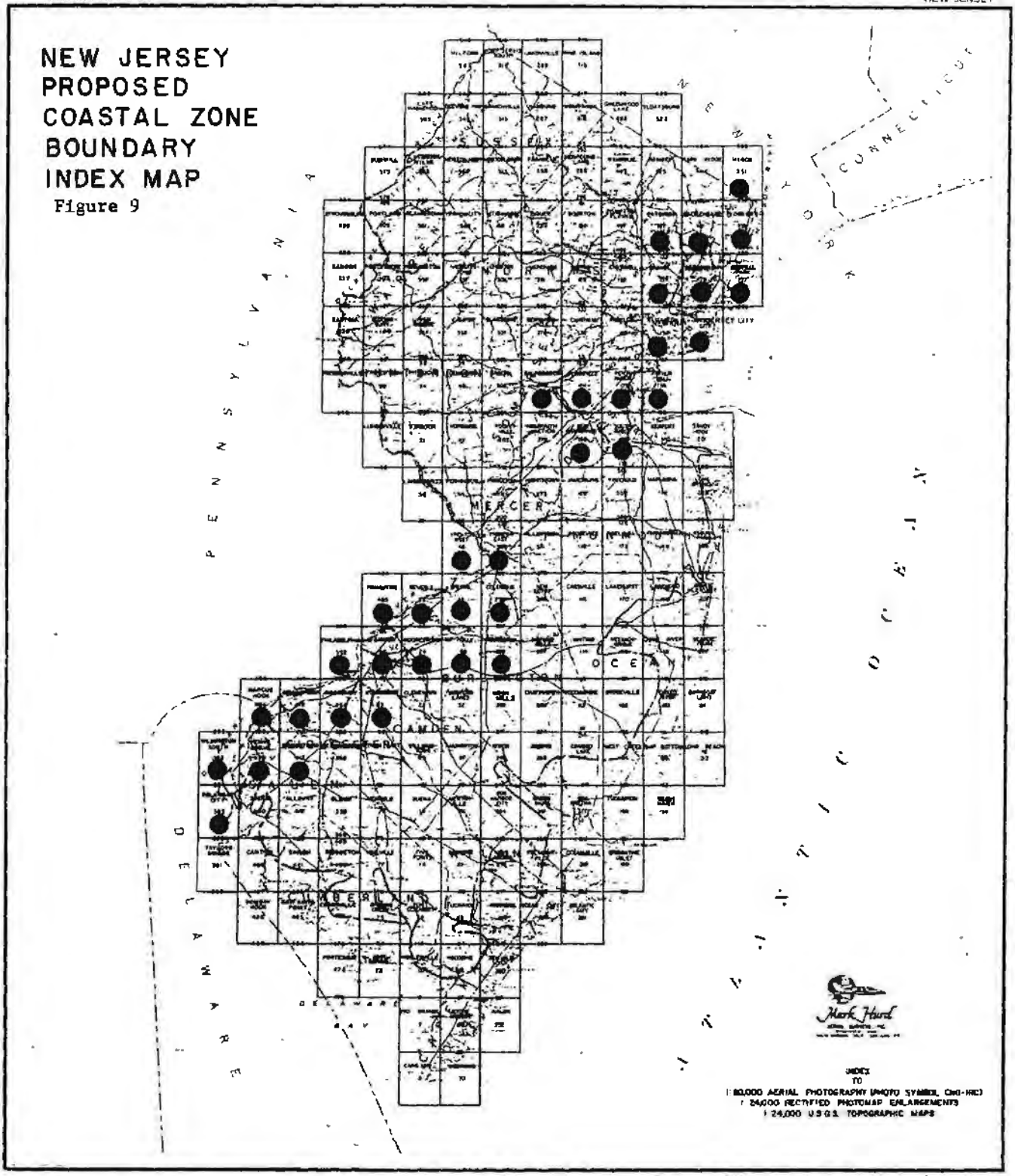
Franklin Township

Union County

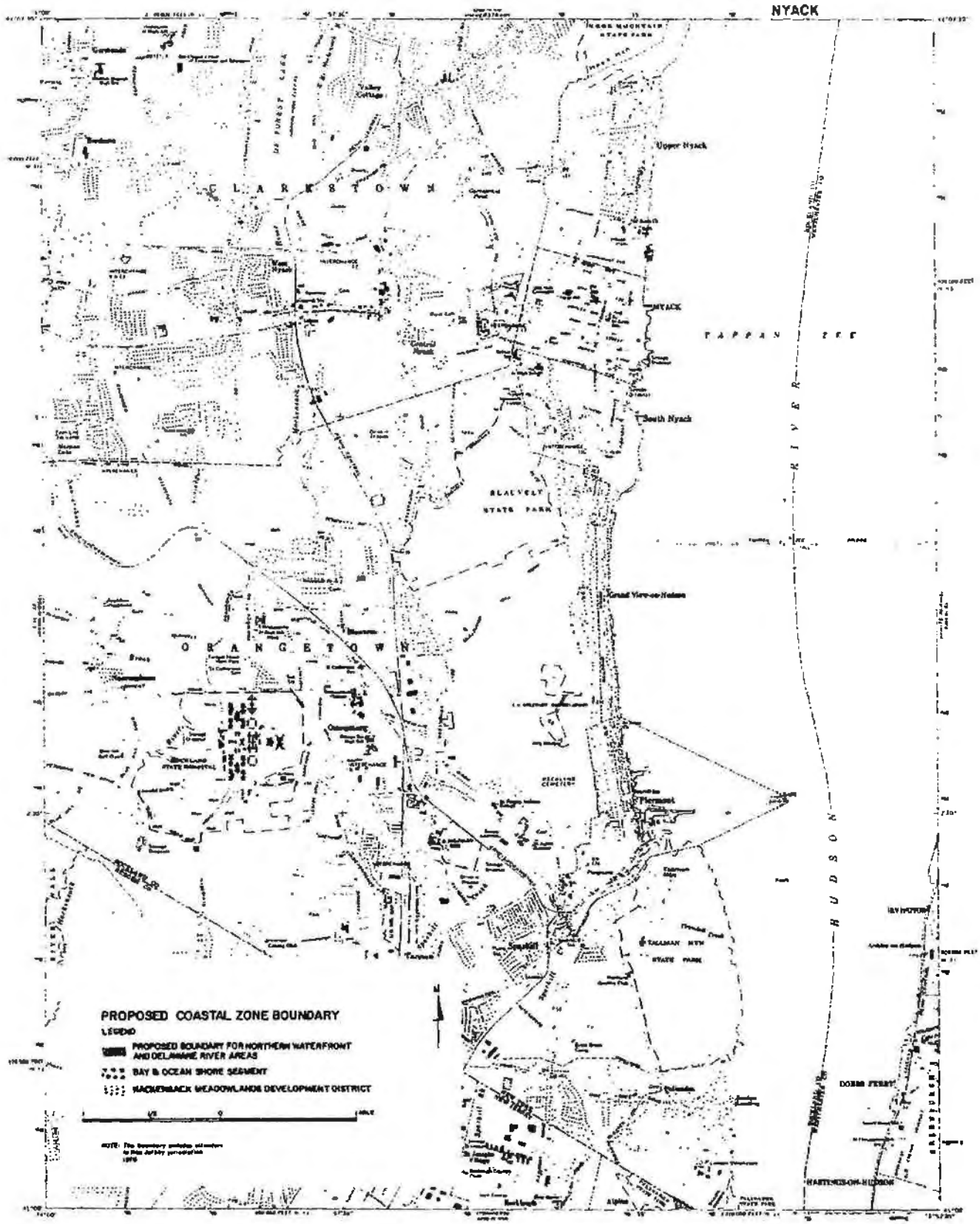
Elizabeth City
Linden City
Rahway City

# NEW JERSEY PROPOSED COASTAL ZONE BOUNDARY INDEX MAP

Figure 9




NEW JERSEY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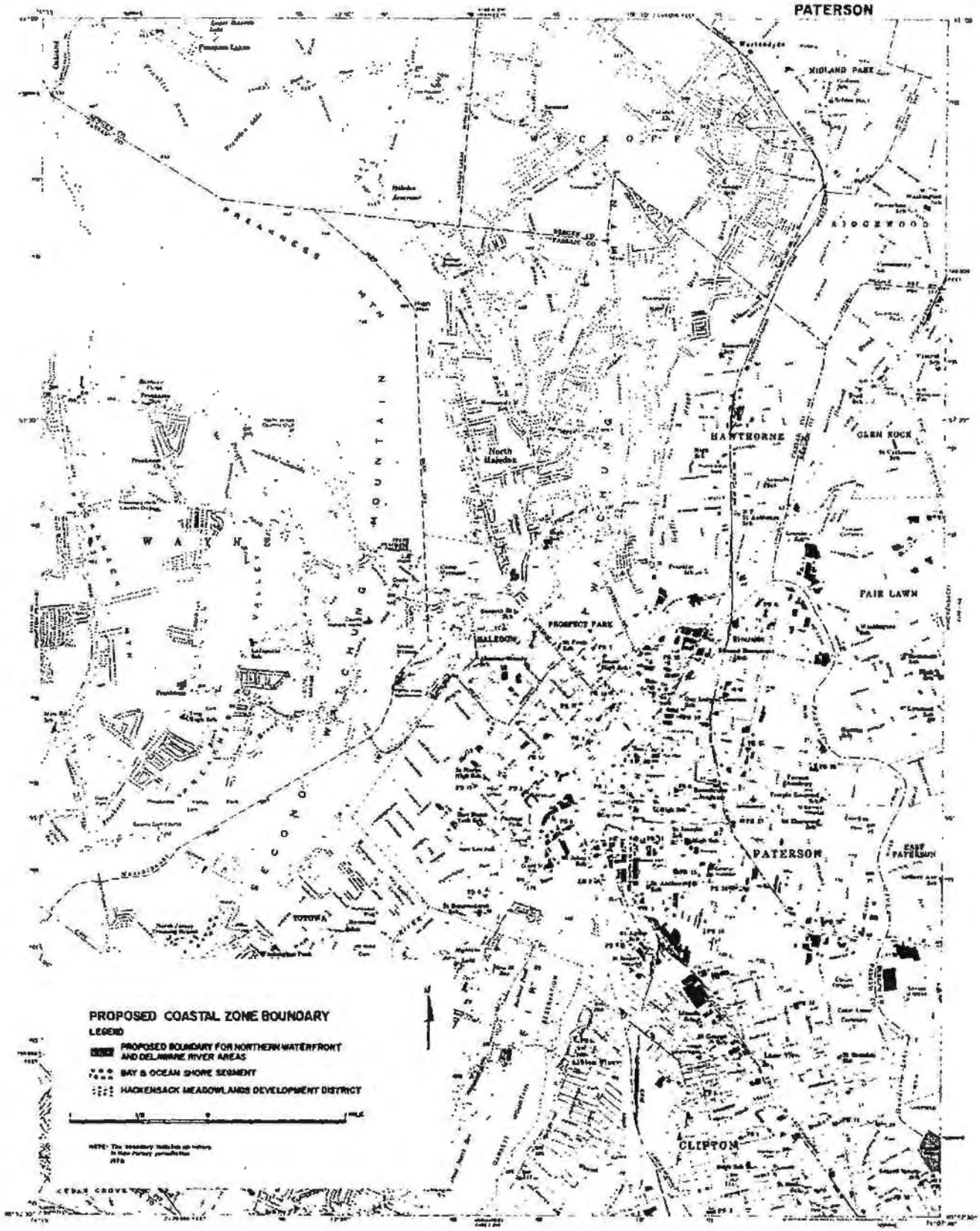
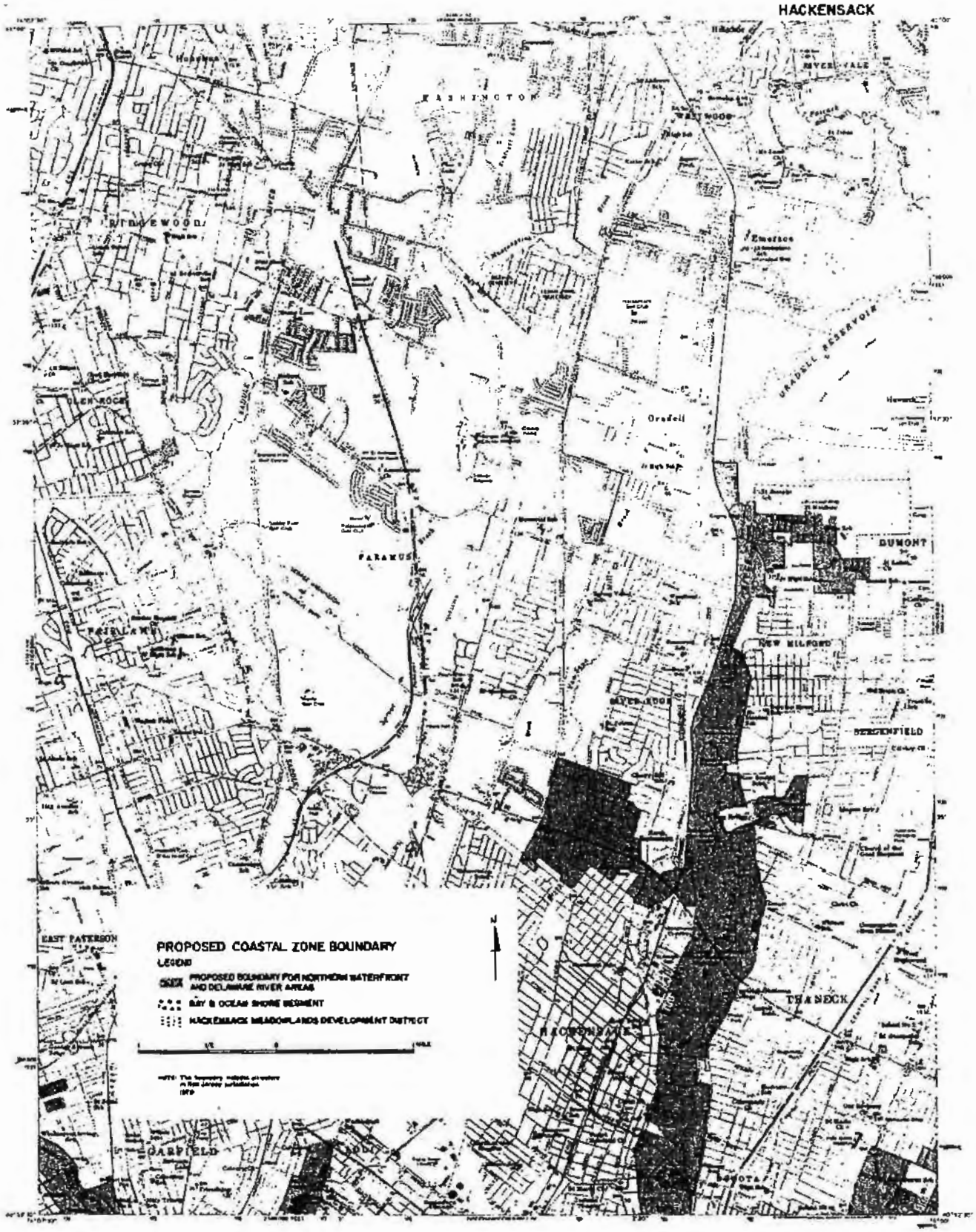
Upper Nyack
South Nyack
NYACK
TAPPAN ZEE
RIVER
HUDSON
BLAUVELT
STATE PARK
ORANGETOWN
Grand View-on-Hudson
Piermont
DOBBS FERRY
HASTINGS-ON-HUDSON
PROPOSED COASTAL ZONE BOUNDARY
LEGEND
PROPOSED BOUNDARY FOR NORTHERN WATERFRONT AND DELAWARE RIVER AREAS
BAY & OCEAN SHORE SEGMENT
HACKENSACK MEADOWLANDS DEVELOPMENT DISTRICT


PATERSON
WAYNE
HAWTHORNE
GLEN ROCK
FAIR LAWN
PROSPECT PARK
HALEDON
PATERSON
TOTOWA
CLIFTON
PROPOSED COASTAL ZONE BOUNDARY
LEGEND
PROPOSED BOUNDARY FOR NORTHERN WATERFRONT AND DELAWARE RIVER AREAS
BAY & OCEAN SHORE SEGMENT
HACKENSACK MEADOWLANDS DEVELOPMENT DISTRICT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LEGEND
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BAY & OCEAN SHORE SEGMENT
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PARAMUS
DUMONT
NEW MILFORD
TEANECK
EAST PATERSON
GARFIELD



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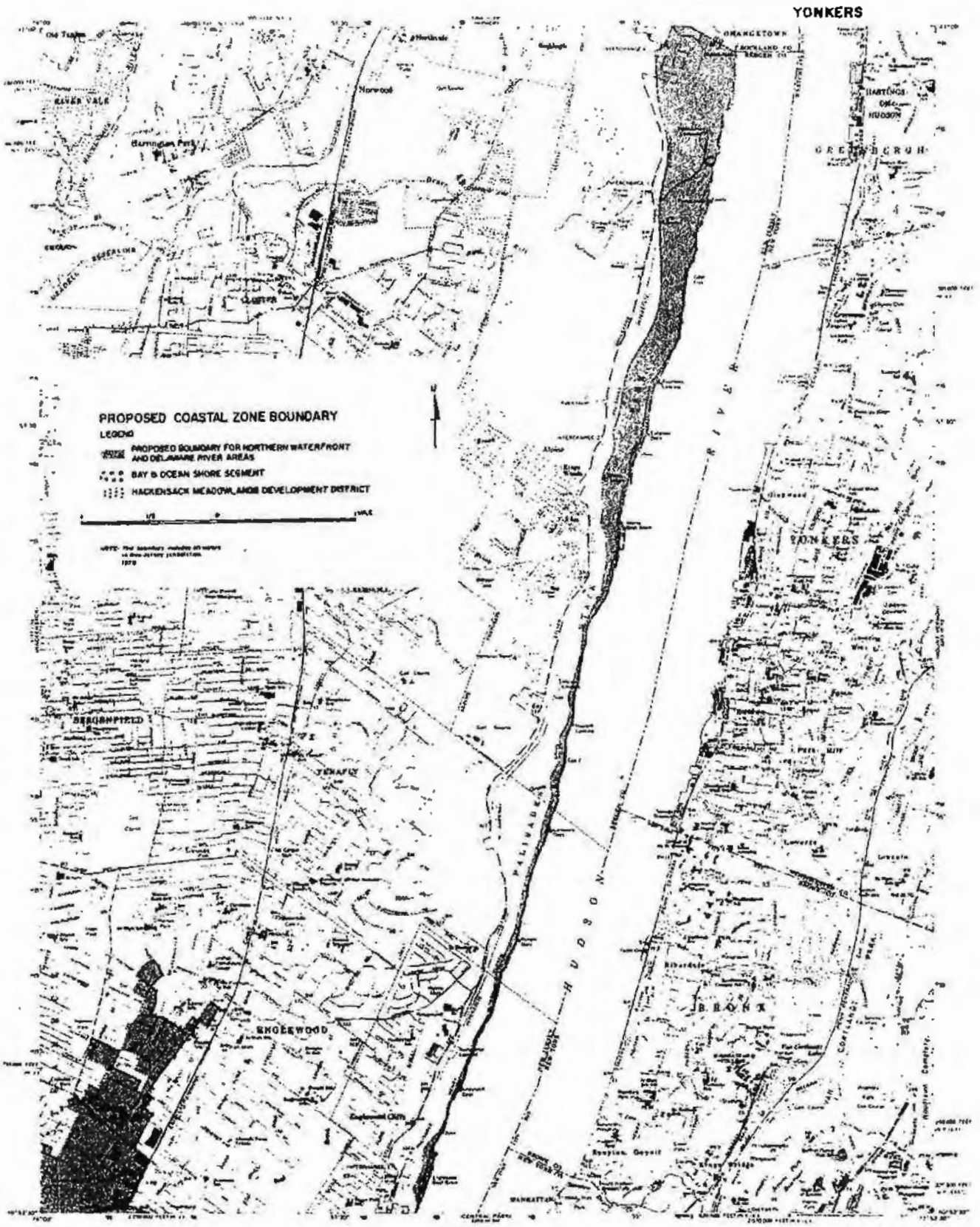
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LEGEND
PROPOSED BOUNDARY FOR NORTHERN WATERFRONT AND DELAWARE RIVER AREAS
BAY & OCEAN SHORE SEGMENT
HACKENSACK MEADOWLANDS DEVELOPMENT DISTRICT
YONKERS
ENGLEWOOD
BRONX
HUDSON

ORANGE
CLIFTON
PASSAIC
VERONA
MONTCLAIR
NUTLEY
BLOOMFIELD
WEST ORANGE
BELLEVILLE
NORTH ARLINGTON
KEARNY
PROPOSED COASTAL ZONE BOUNDARY
LEGEND
PROPOSED BOUNDARY FOR NORTHERN WATERFRONT AND DELAWARE RIVER AREAS
BAY & OCEAN SHORE SEGMENT
HACKENSACK MEADOWLANDS DEVELOPMENT DISTRICT



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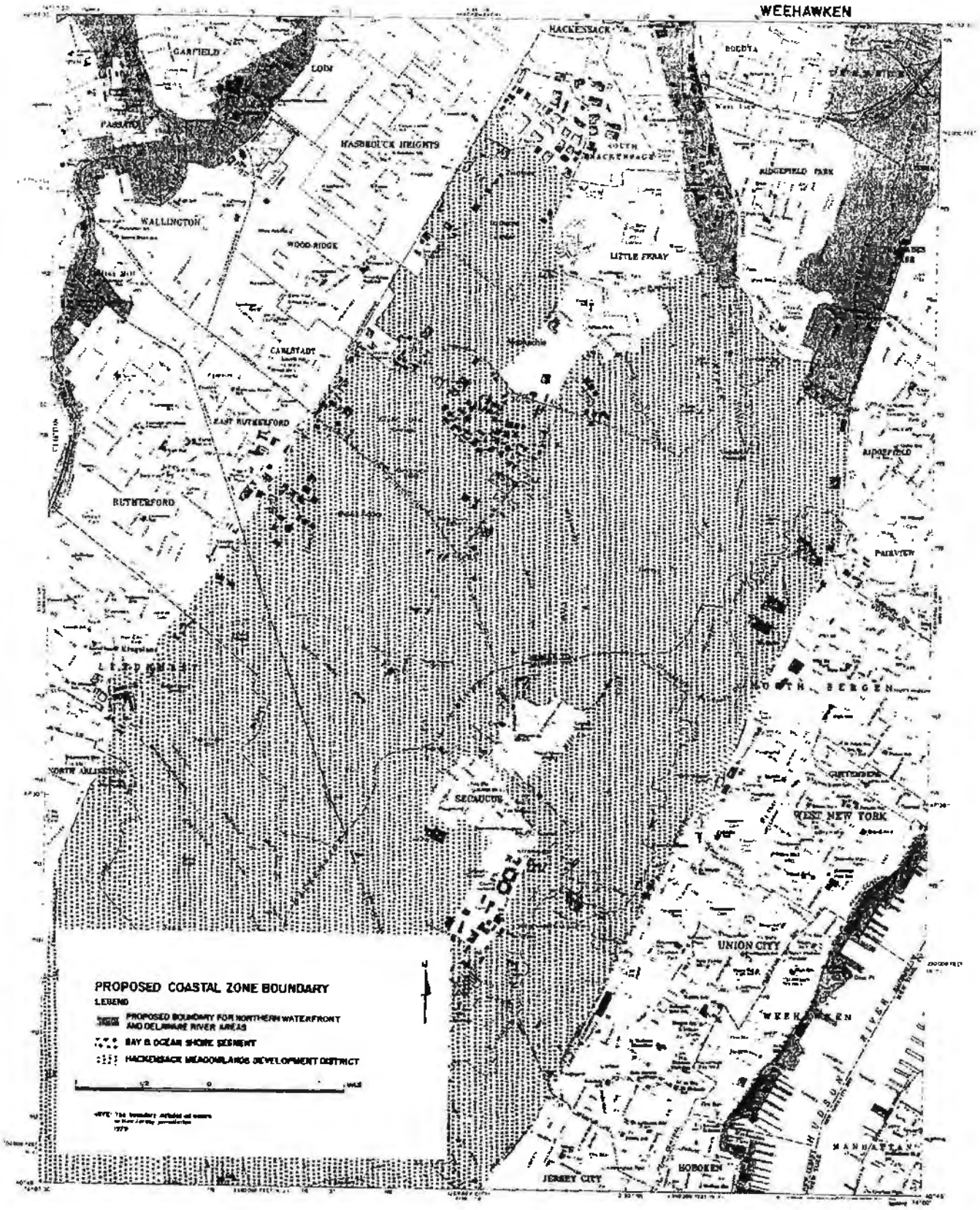
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HACKENSACK
GARFIELD
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PASSAIC
HASBROUCK HEIGHTS
BOGOTA
RIDGEFIELD PARK
WALLINGTON
WOOD-RIDGE
LITTLE FERRY
CARLSTADT
EAST RUTHERFORD
RUTHERFORD
RIDGEFIELD
FAIRVIEW
NORTH BERGEN
SECAUCUS
GUTTENBERG
WEST NEW YORK
UNION CITY
WEEHAWKEN
HOBOKEN
JERSEY CITY
MANHATTAN
PROPOSED COASTAL ZONE BOUNDARY
LEGEND
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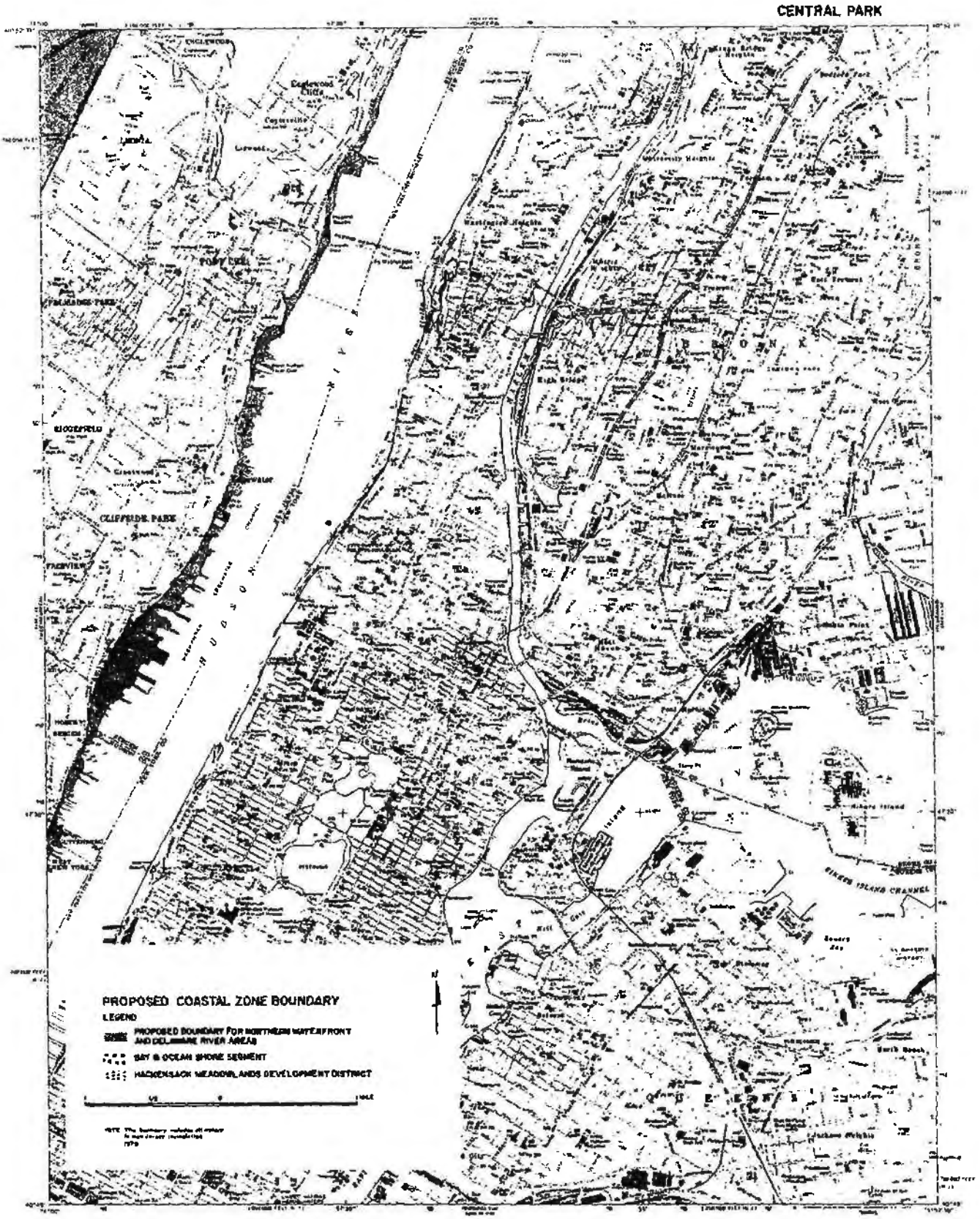
BAY & OCEAN SHORE SEGMENT
HACKENSACK MEADOWLANDS DEVELOPMENT DISTRICT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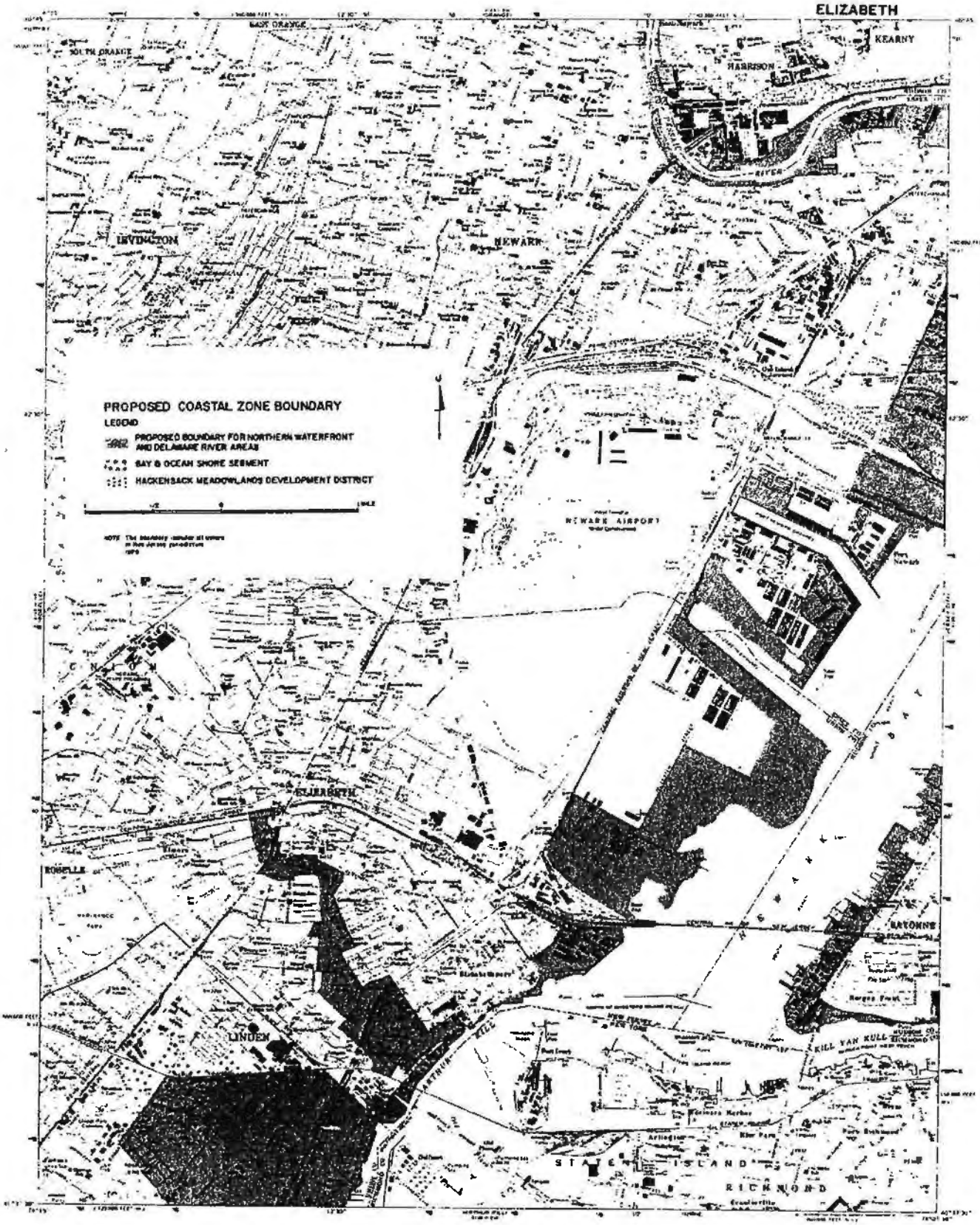
PROPOSED COASTAL ZONE BOUNDARY
LEGEND
PROPOSED BOUNDARY FOR NORTHERN WATERFRONT AND DELAWARE RIVER AREAS
BAY & OCEAN SHORE SEGMENT
HACKENSACK MEADOWLANDS DEVELOPMENT DISTRICT
HUDSON RIVER
BRONX
BLOOMFIELD
CLIFFSIDE PARK
FAIRVIEW
FORT LEE
ENGLEWOOD
RIKERS ISLAND CHANNEL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KEARNY
HARRISON
NEWARK
IRVINGTON
SOUTH ORANGE
EAST ORANGE
NEWARK AIRPORT
ELIZABETH
LINDEN
ROSELLE
BAYONNE
KILL VAN KULL
STATEN ISLAND
RICHMOND
PROPOSED COASTAL ZONE BOUNDARY
LEGEND
PROPOSED BOUNDARY FOR NORTHERN WATERFRONT AND DELAWARE RIVER AREAS
BAY & OCEAN SHORE SEGMENT
HACKENSACK MEADOWLANDS DEVELOPMENT DISTRICT

JERSEY CITY
HOBOKEN
NEWARK BAY
HUDSON RIVER
EAST RIVER
UPPER BAY
GREENVILLE CHANNEL
RED HOOK CHANNEL
BUTTERMILK CHANNEL
PROPOSED COASTAL ZONE BOUNDARY
LEGEND
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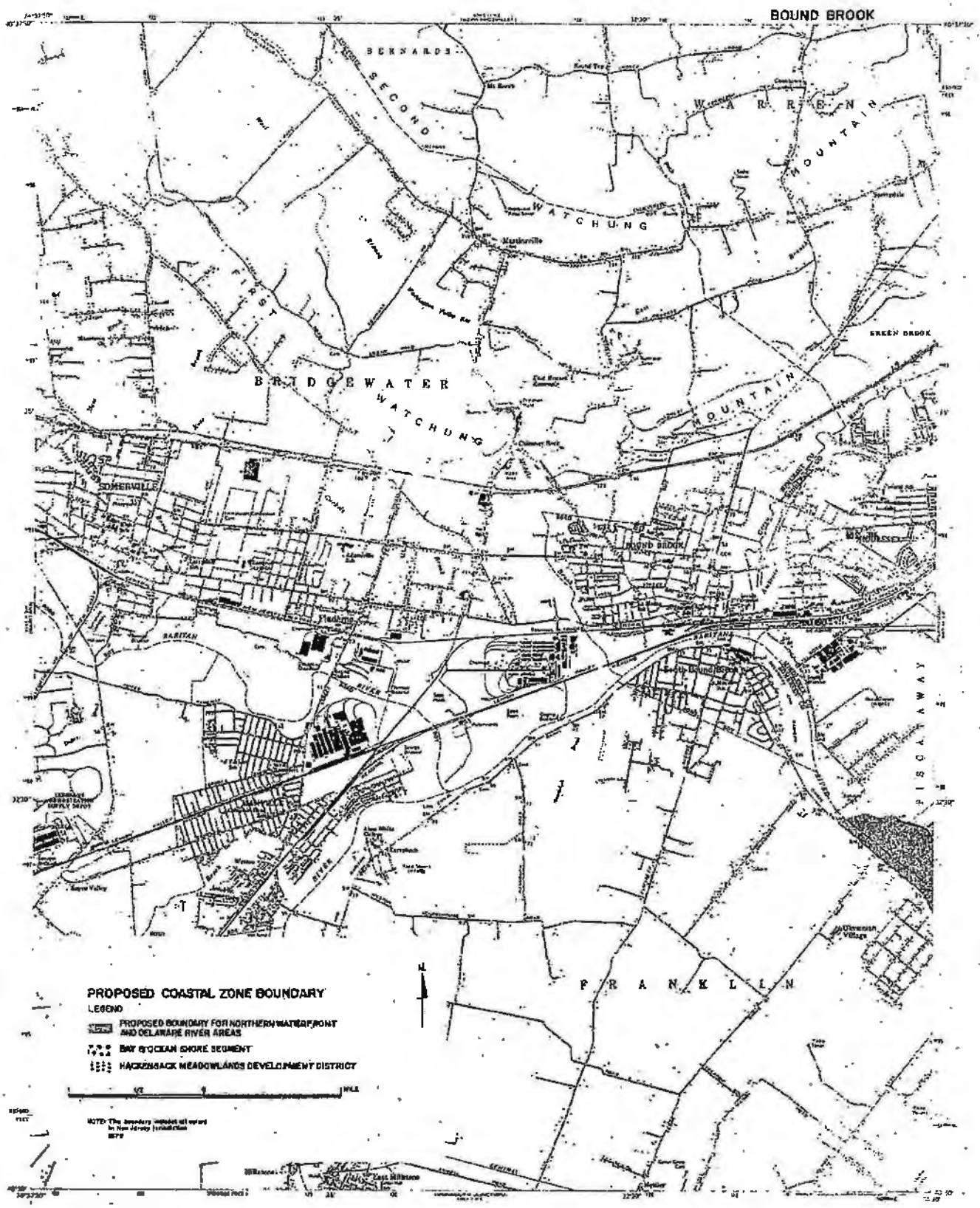
BAY & OCEAN SHORE SEGMENT
HACKENSACK MEADOWLANDS DEVELOPMENT DISTRICT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SECOND
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RARITAN
RIVER
FRANKLIN
PROPOSED COASTAL ZONE BOUNDARY
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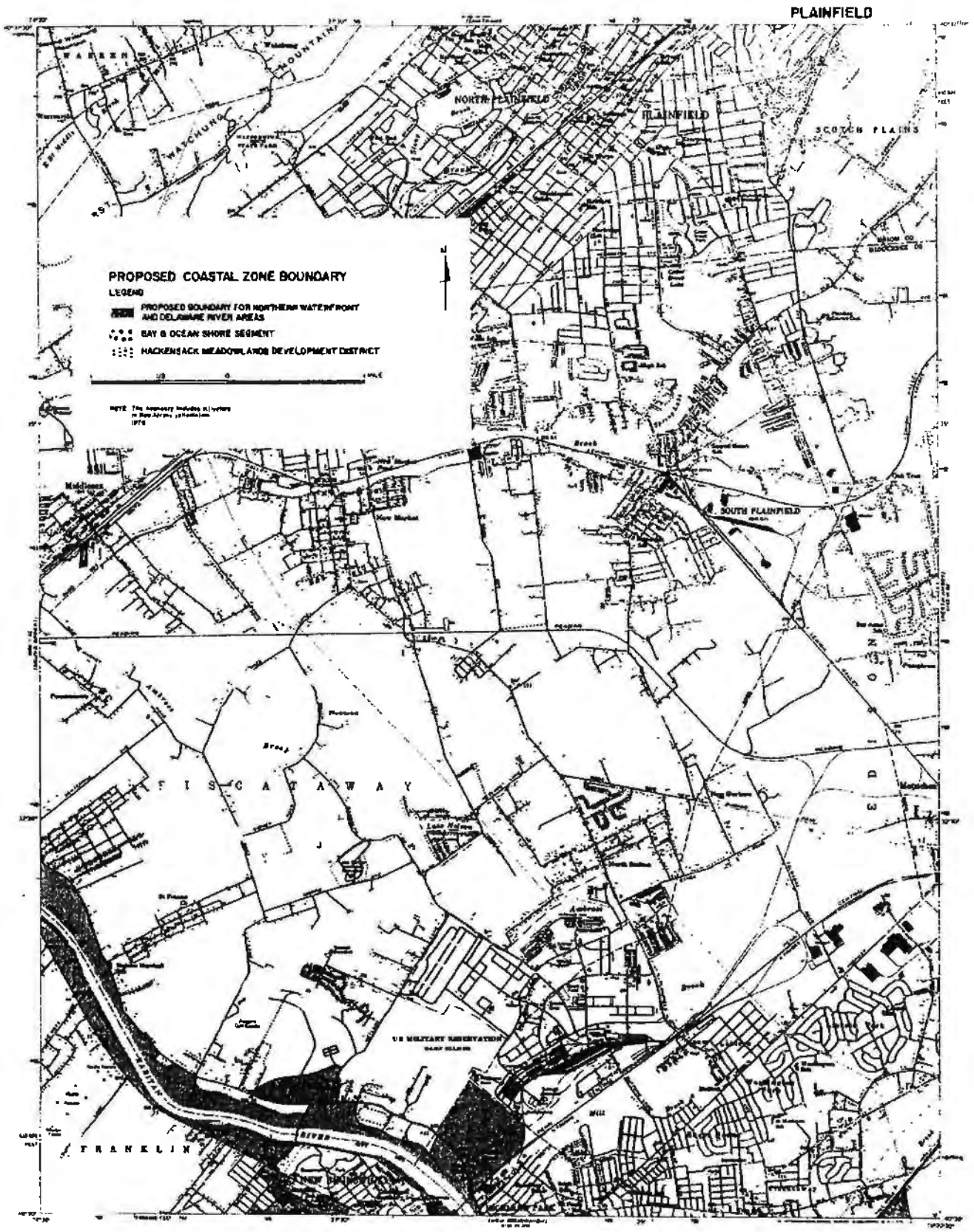
BAY & OCEAN SHORE SEGMENT
HACKENSACK MEADOWLANDS DEVELOPMENT DISTRICT
MILE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LEGEND
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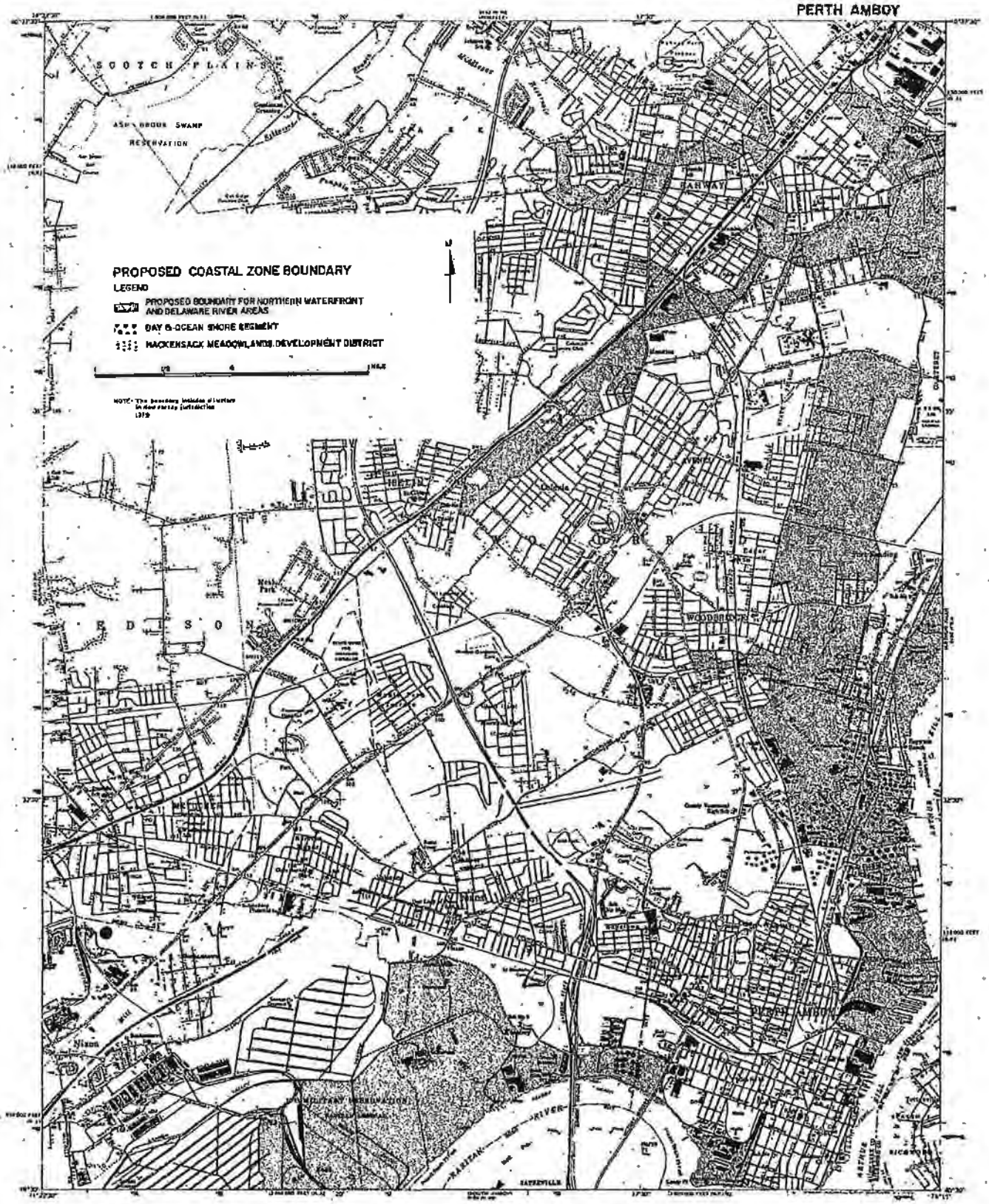
SCOTCH PLAINS
SOUTH PLAINFIELD
FISCATAWAY
FRANKLIN
US MILITARY RESERVATION


PERTH AMBOY
SCOTCH PLAINS
RARITAN RIVER
PROPOSED COASTAL ZONE BOUNDARY
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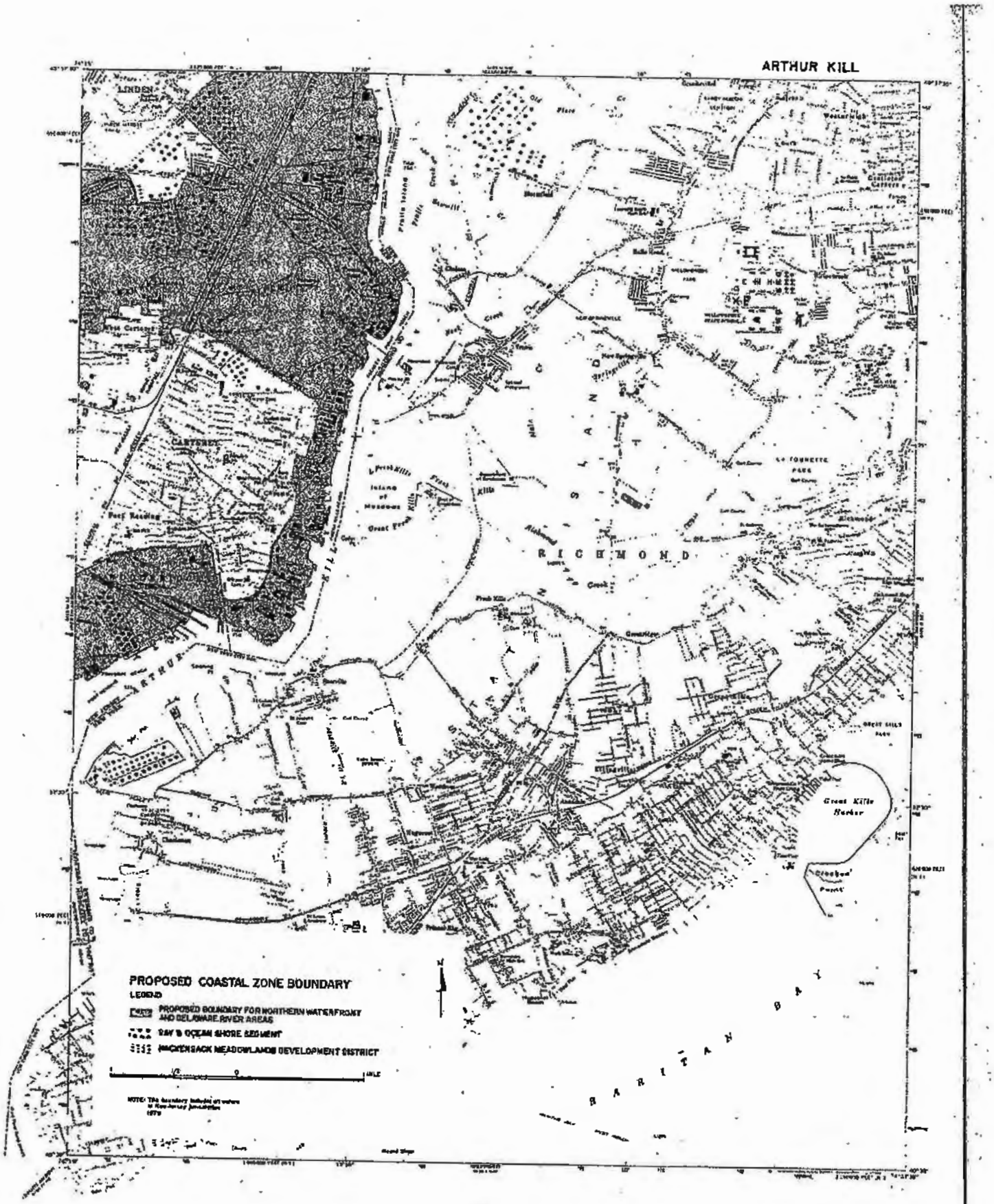
BAY & OCEAN SHORE SEGMENT
HACKENSACK MEADOWLANDS DEVELOPMENT DISTRICT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CARTERET
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RICHMOND
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LEGEND
PROPOSED BOUNDARY FOR NORTHERN WATERFRONT AND DELAWARE RIVER AREAS
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HACKENSACK MEADOWLANDS DEVELOPMENT DISTRICT
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RARITAN BAY



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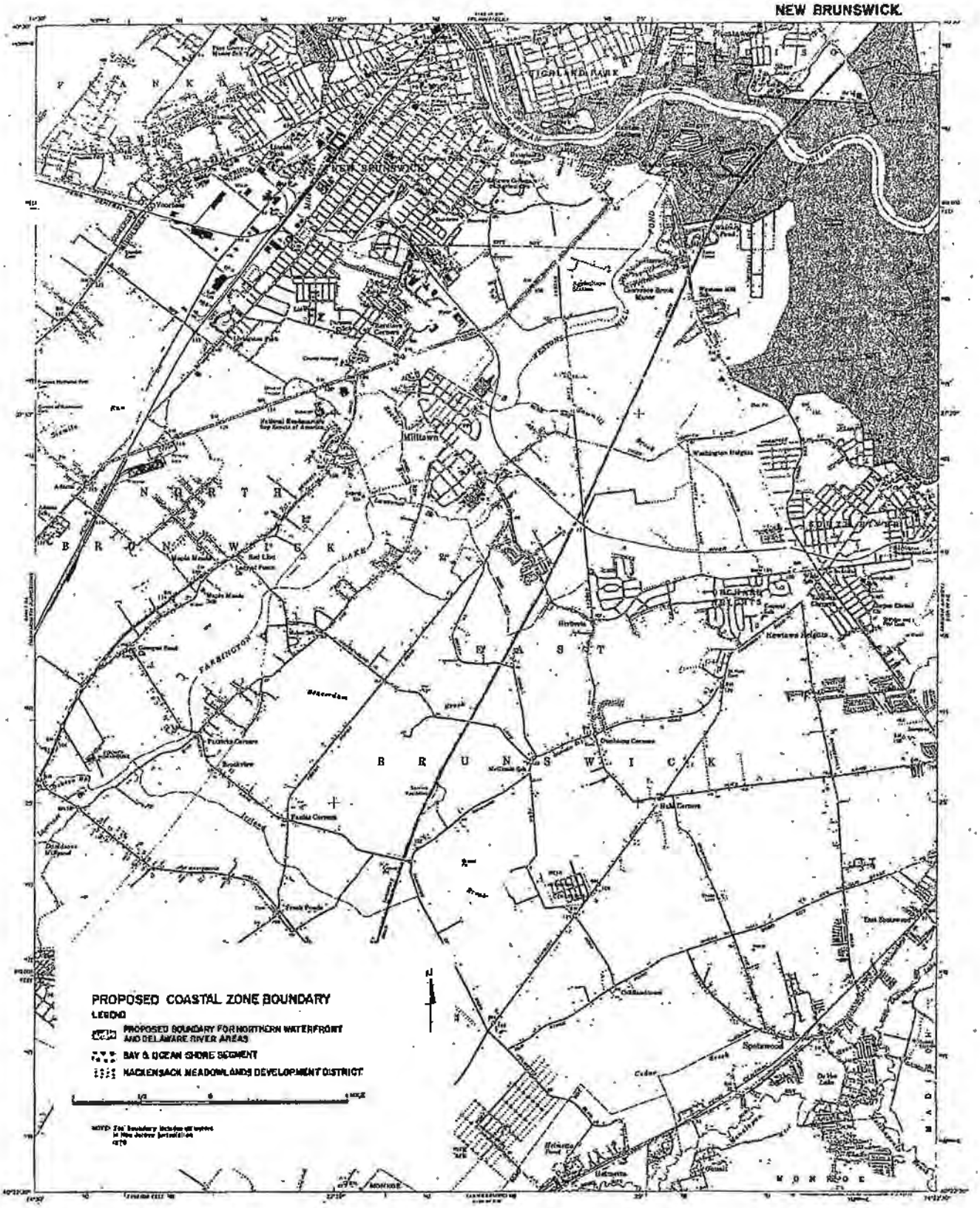
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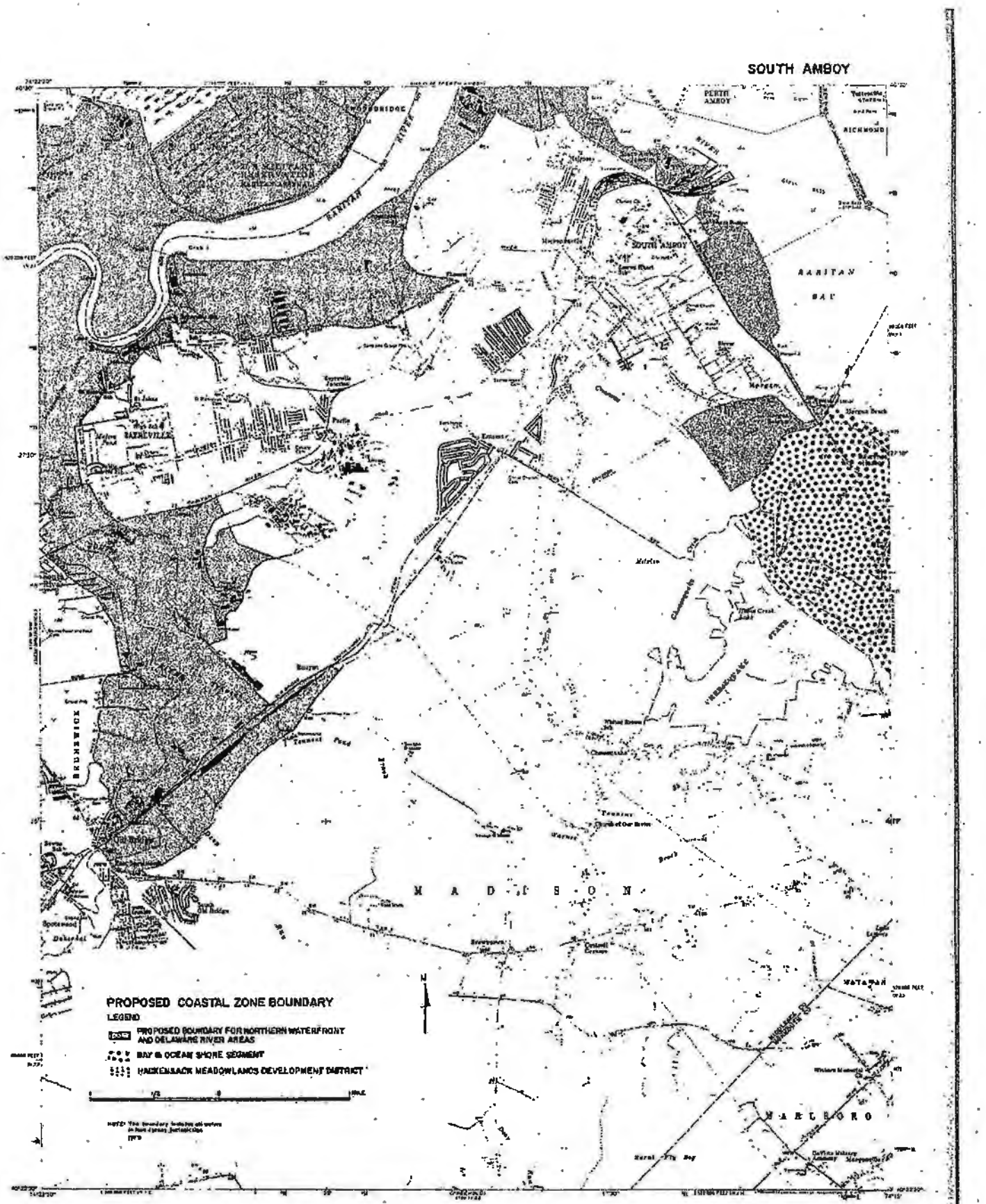
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MADISON
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LEGEND
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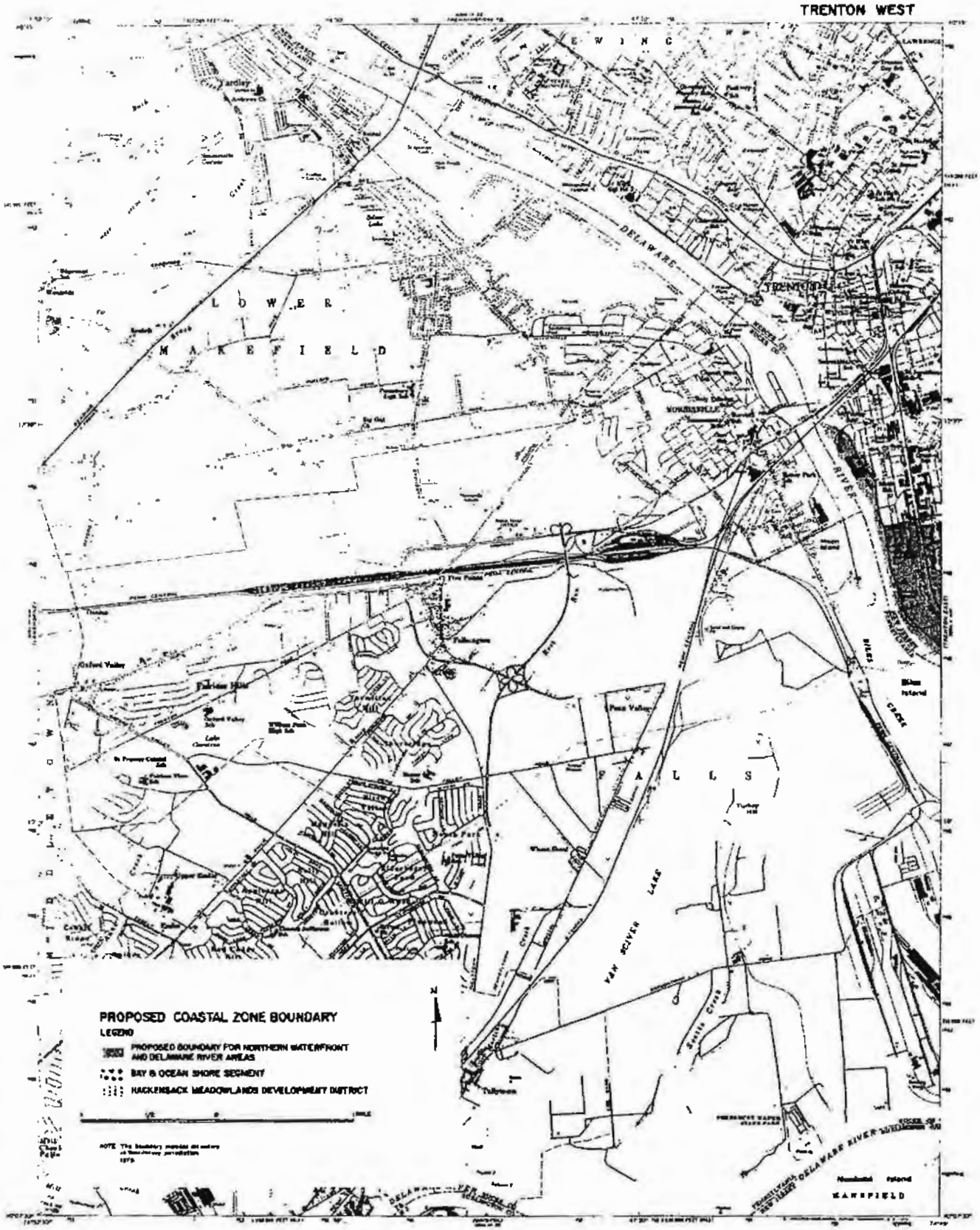
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FALLS
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BAY & OCEAN SHORE SEGMENT
HACKENSACK MEADOWLANDS DEVELOPMENT DISTRICT
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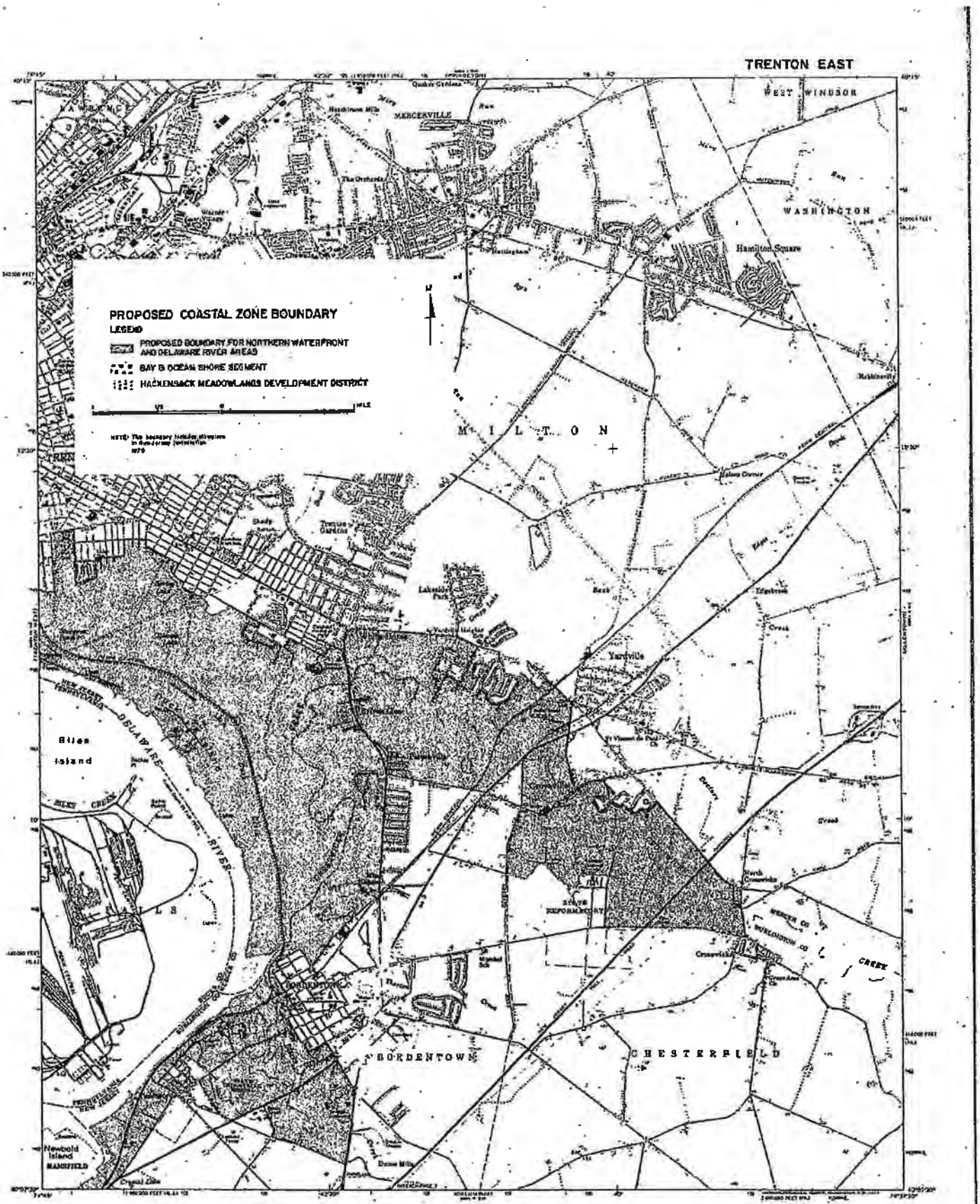
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BAY & OCEAN SHORE SEGMENT
HACKENSACK MEADOWLANDS DEVELOPMENT DISTRICT
MILTON
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FALLS
BORDENTOWN
CHESTERFIELD
CROSSWICKS CREEK
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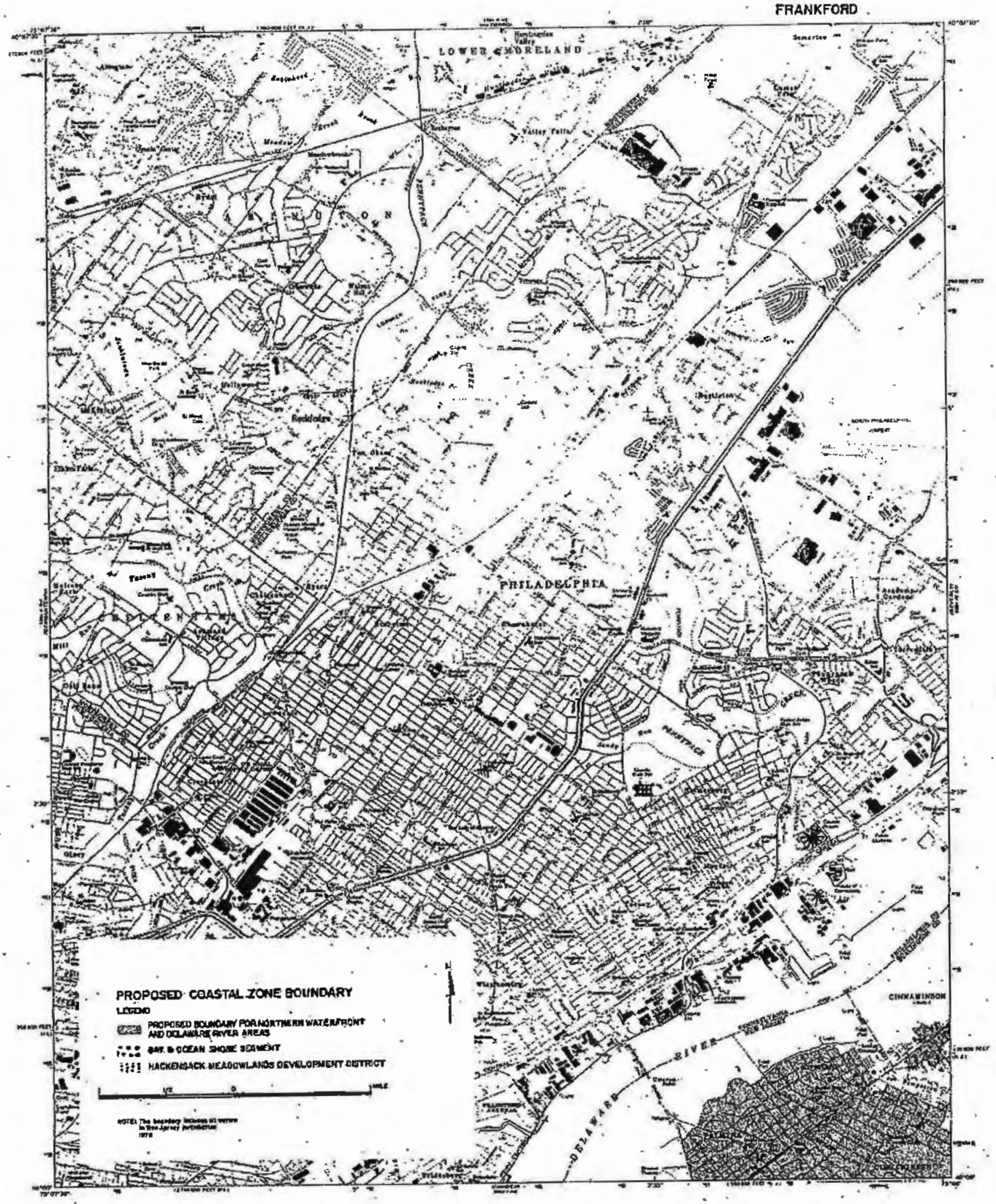
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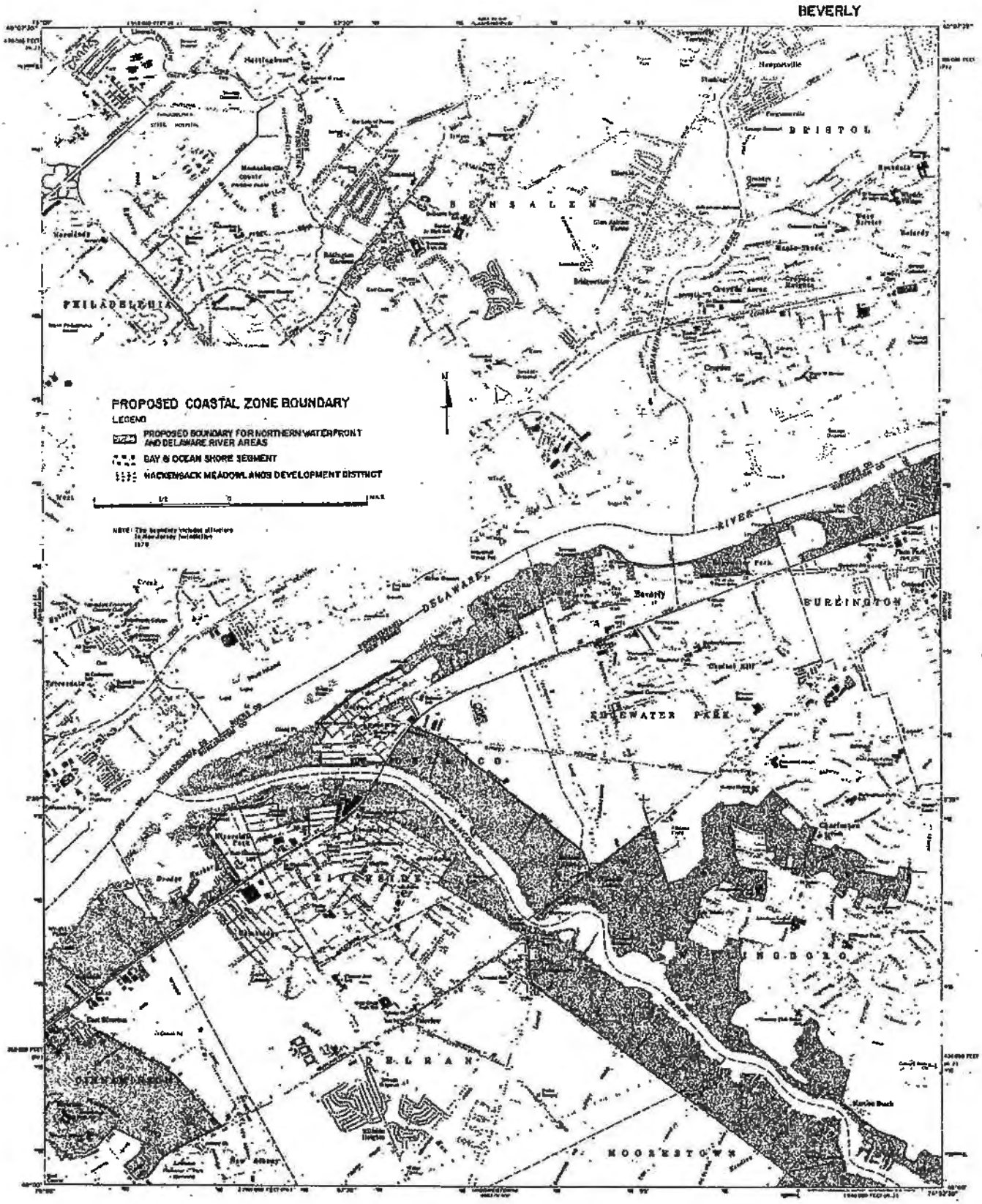
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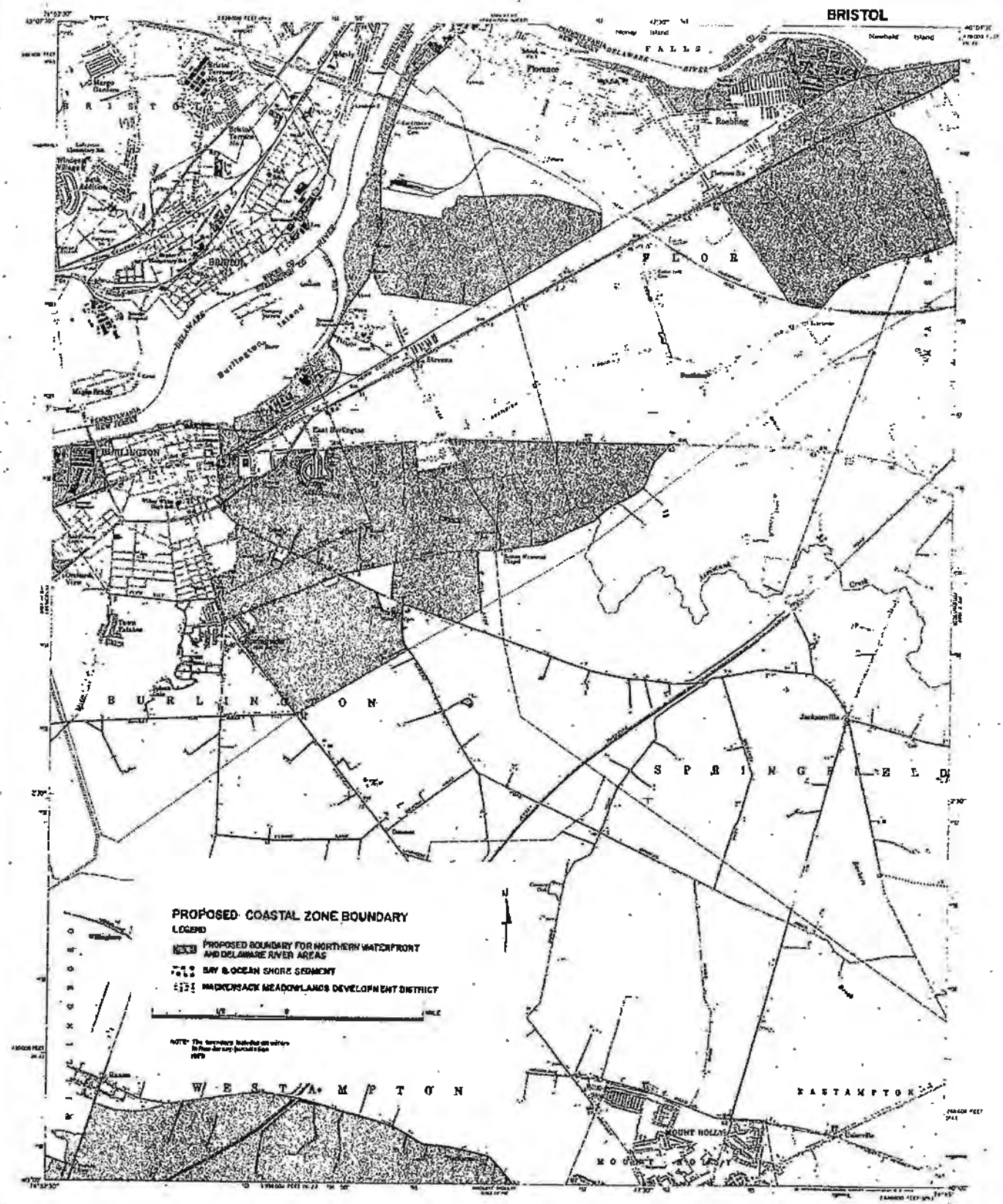
BENSALEM
BRISTOL
DELAWARE RIVER
BURLINGTON
DELRAN
MOORESTOWN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BURLINGTON
FLORENCE
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SPRINGFIELD
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EASTAMPTON
MOUNT HOLLY
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LEGEND
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BAY & OCEAN SHORE SEGMENT
PINELANDS/PASCK MEADOWLANDS DEVELOPMENT DISTRICT
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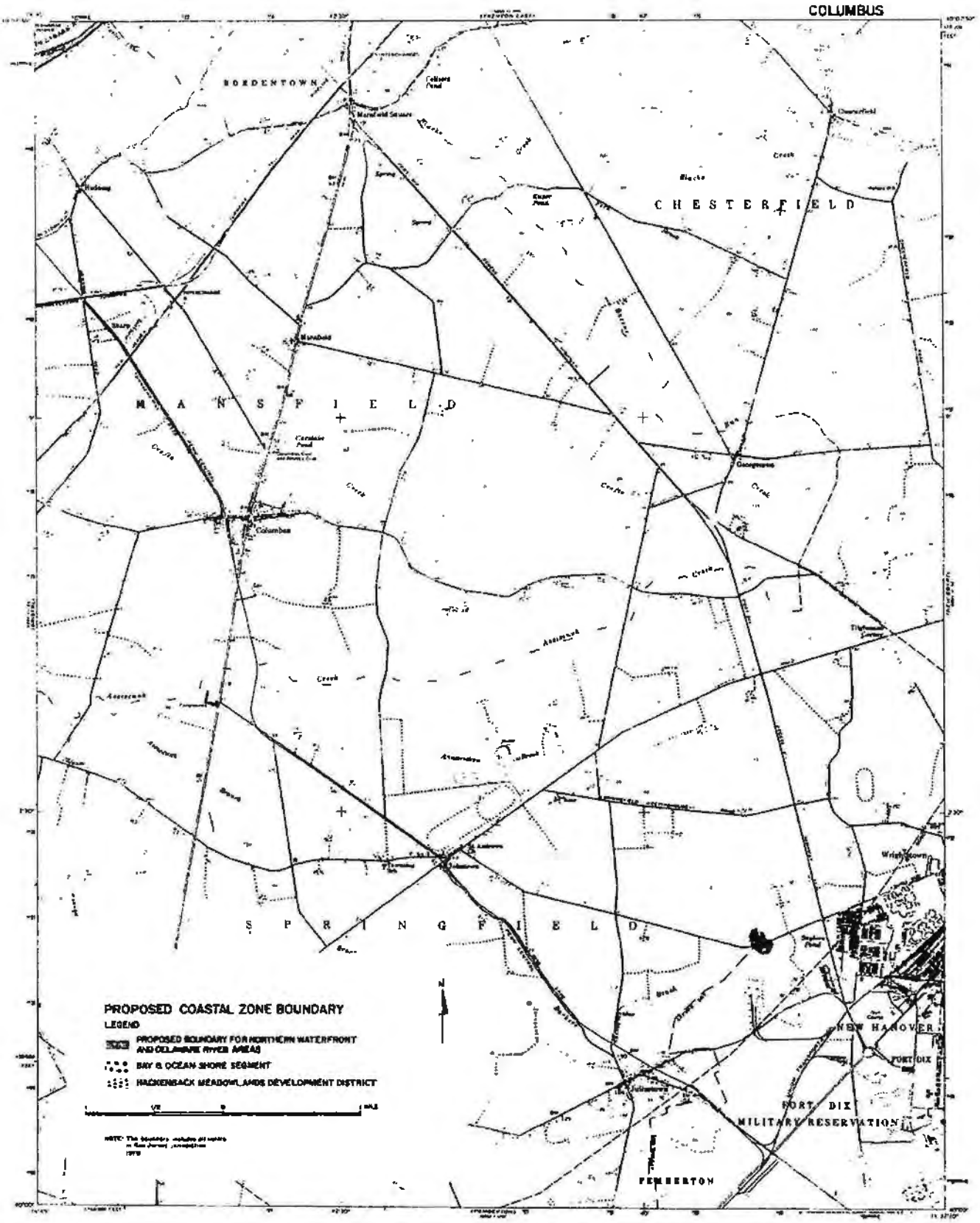
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CHESTERFIELD
MANSFIELD
SPRINGFIELD
NEW HANOVER
FORT DIX
MILITARY RESERVATION
PEMBERTON
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LEGEND
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BAY & OCEAN SHORE SEGMENT
HACKENSACK MEADOWLANDS DEVELOPMENT DISTRICT



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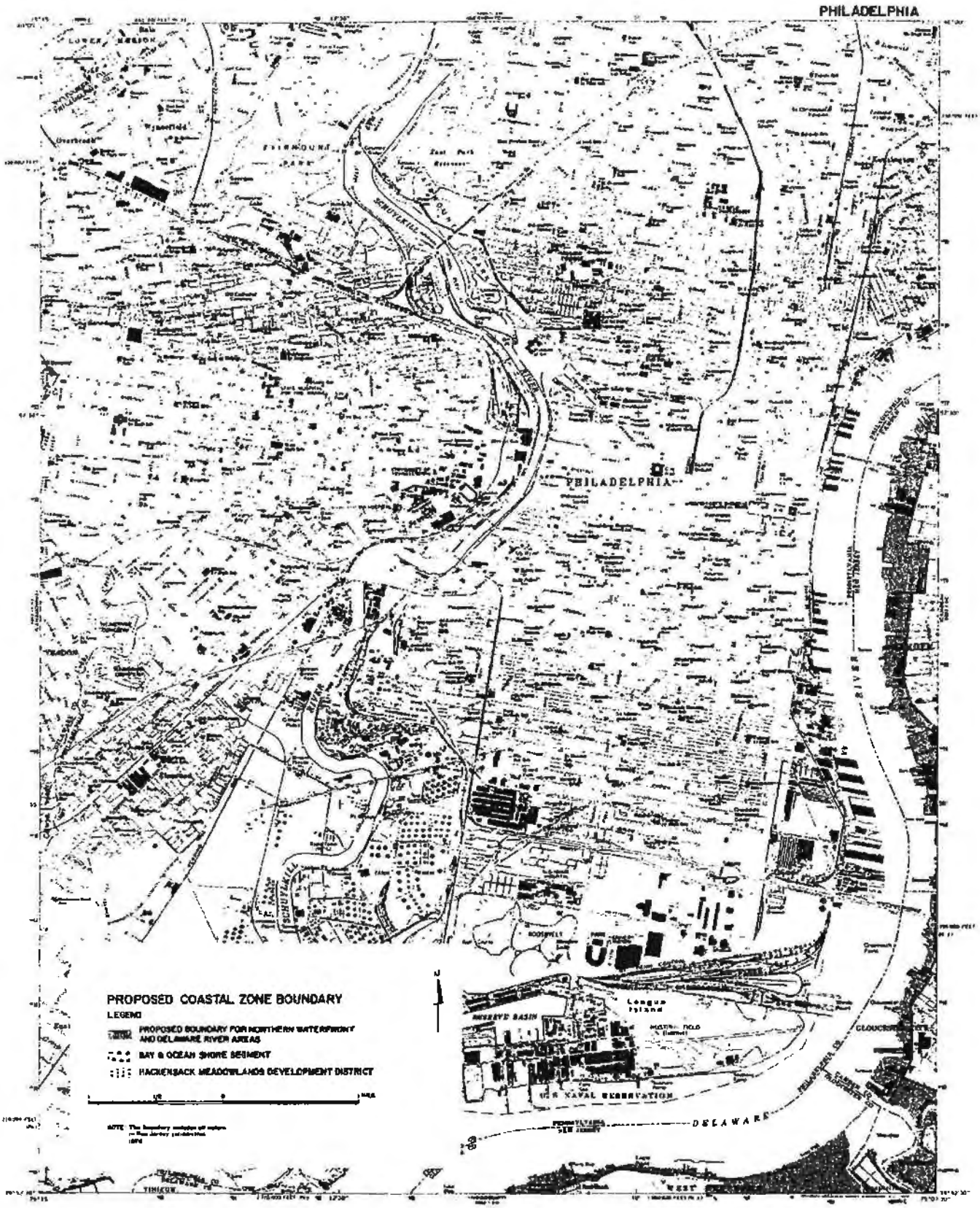
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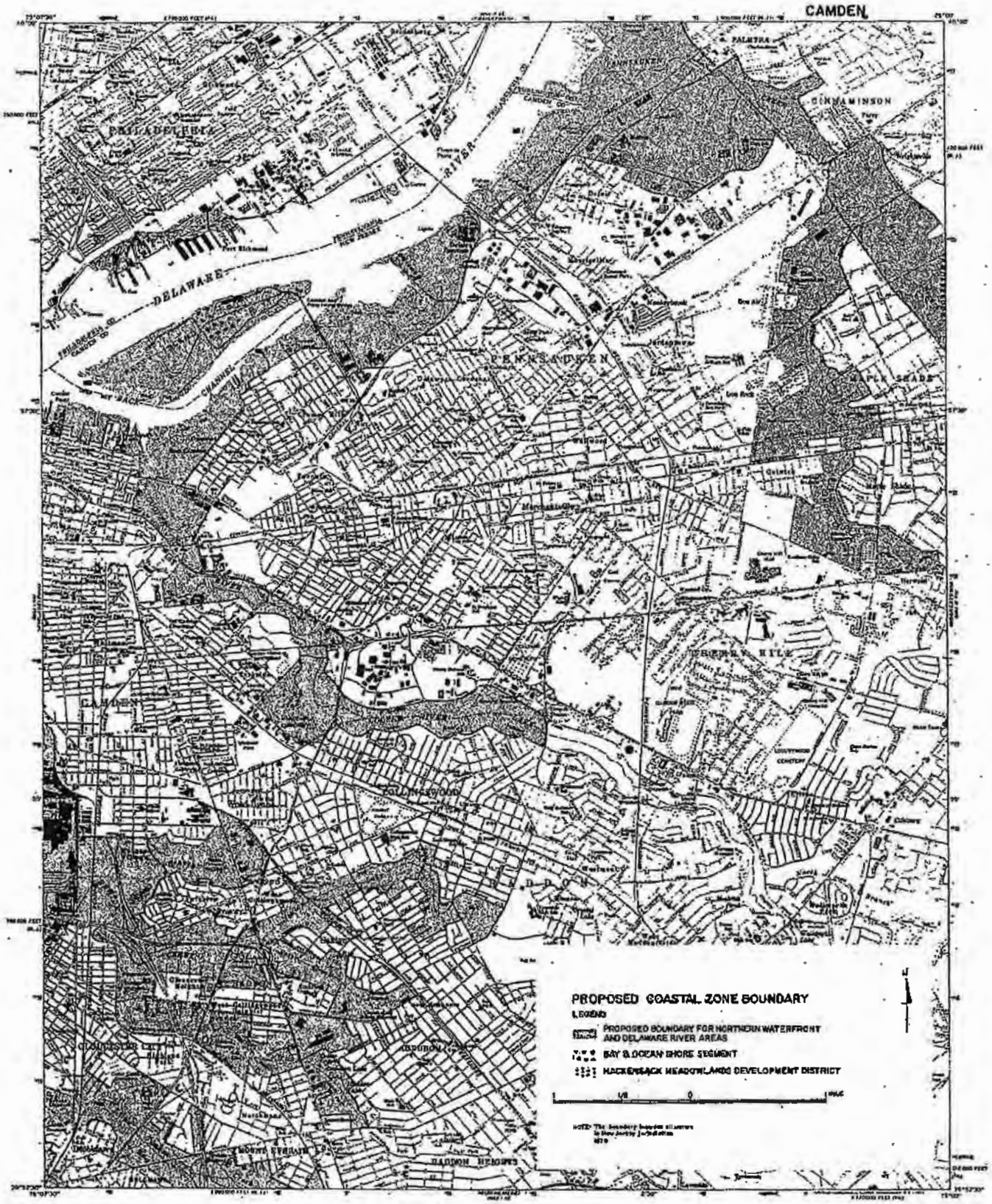
NOTE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MAPLE SHADE
CHERRY HILL
GLOUCESTER
HADDON HEIGHTS
PROPOSED COASTAL ZONE BOUNDARY
LEGEND
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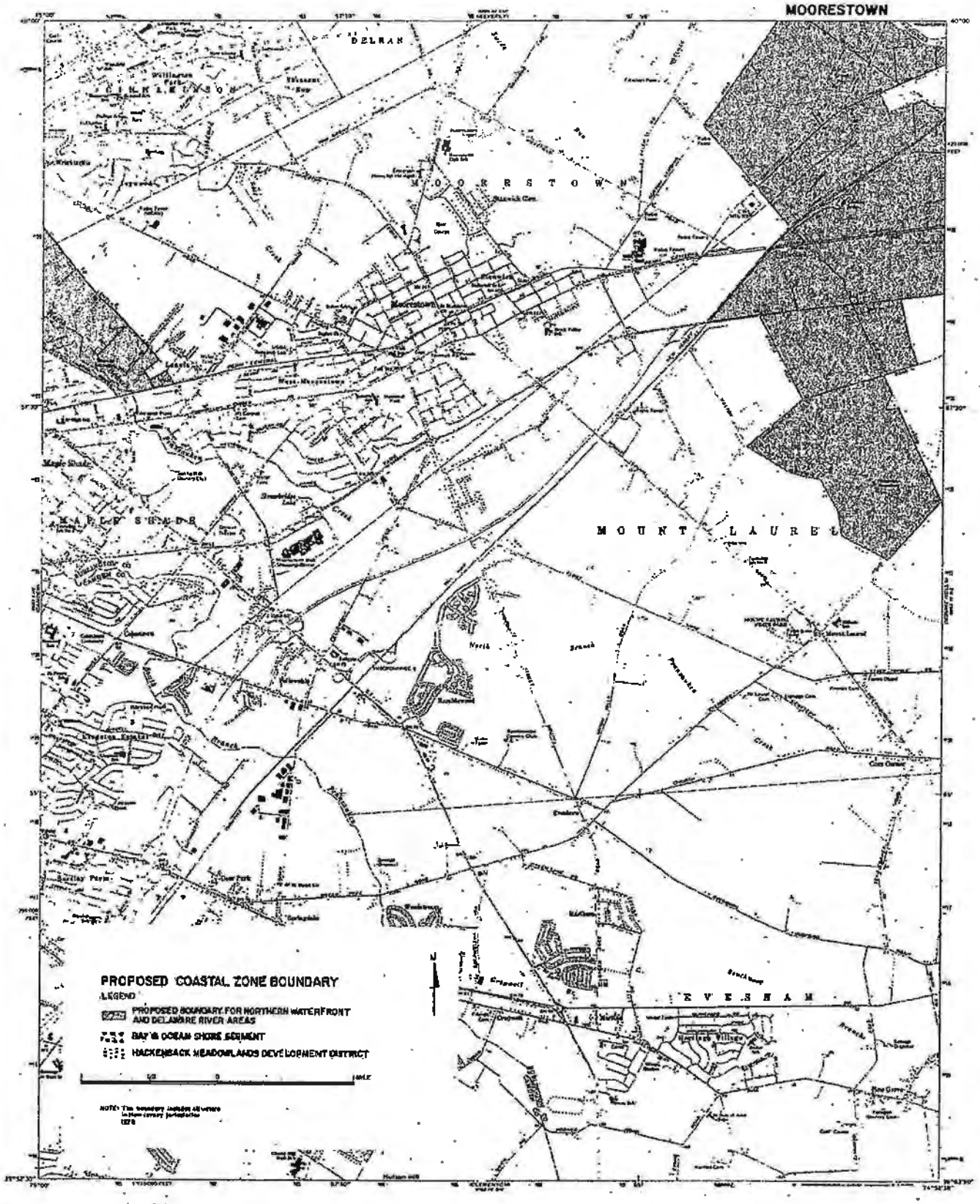
BAY & OCEAN SHORE SEGMENT
HACKENSACK MEADOWLANDS DEVELOPMENT DISTRICT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DELRAN
MOORESTOWN
MOUNT LAUREL
EVESHAM
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LEGEND
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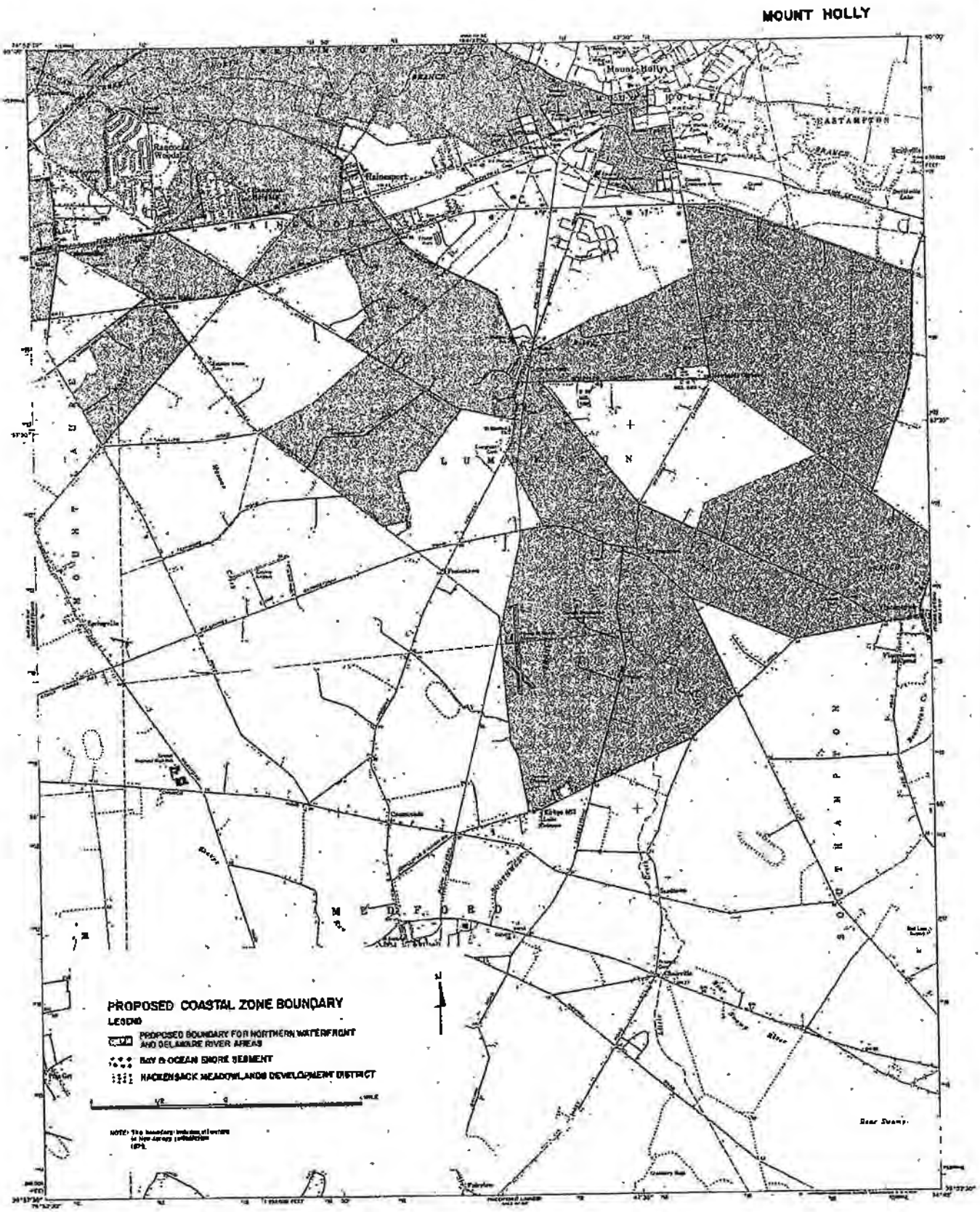
BAY & OCEAN SHORE SEGMENT
HACKENSACK MEADOWLANDS DEVELOPMENT DISTRICT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EASTAMPTON
Rancocas Woods
Rainesport
MAINSTON
LUMBERTON
MEDFORD
SOUTHAMPTON
Bear Swamp
PROPOSED COASTAL ZONE BOUNDARY
LEGEND
PROPOSED BOUNDARY FOR NORTHERN WATERFRONT AND DELAWARE RIVER AREAS
BAY & OCEAN SHORE SEGMENT
HACKENSACK MEADOWLANDS DEVELOPMENT DISTRICT
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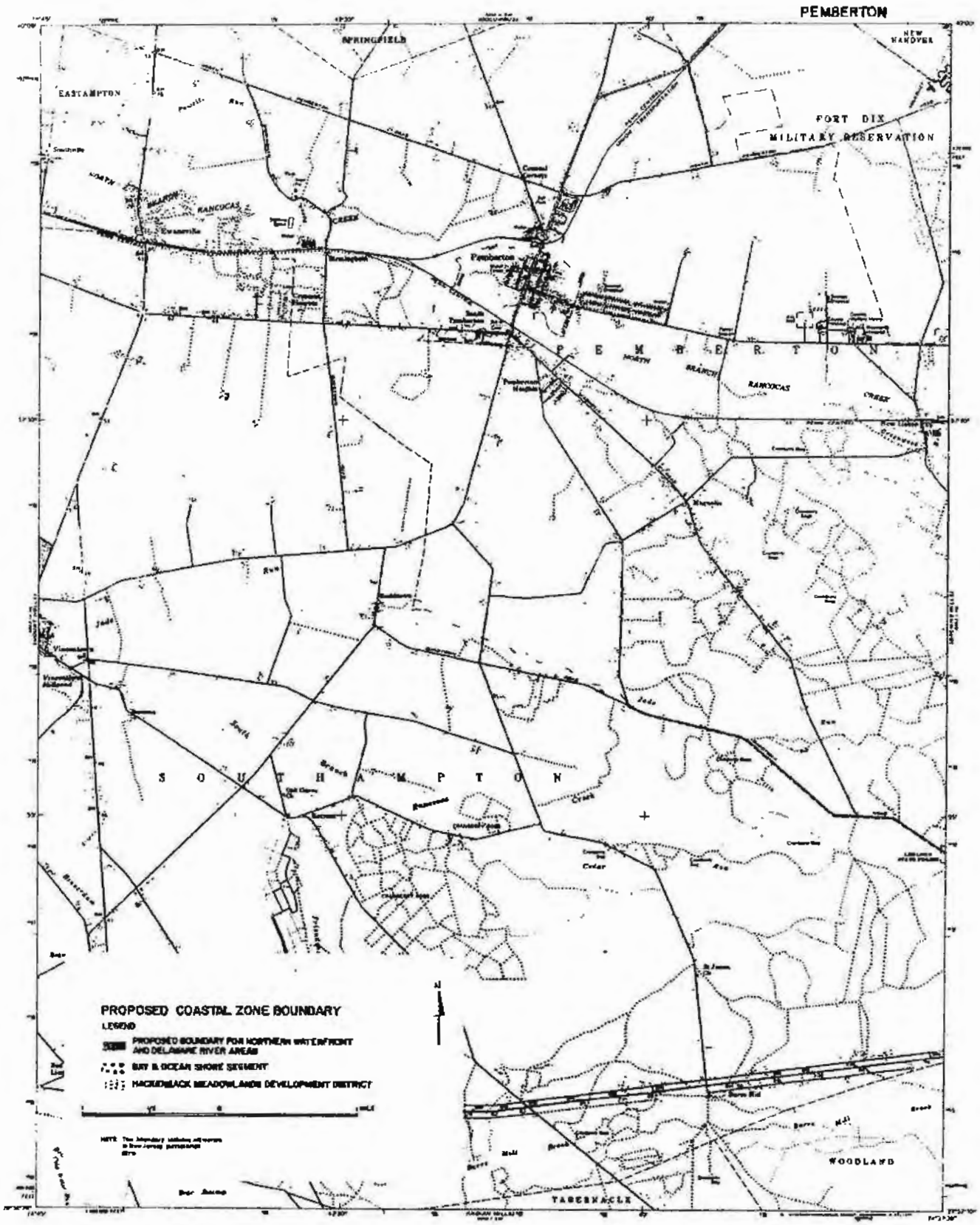
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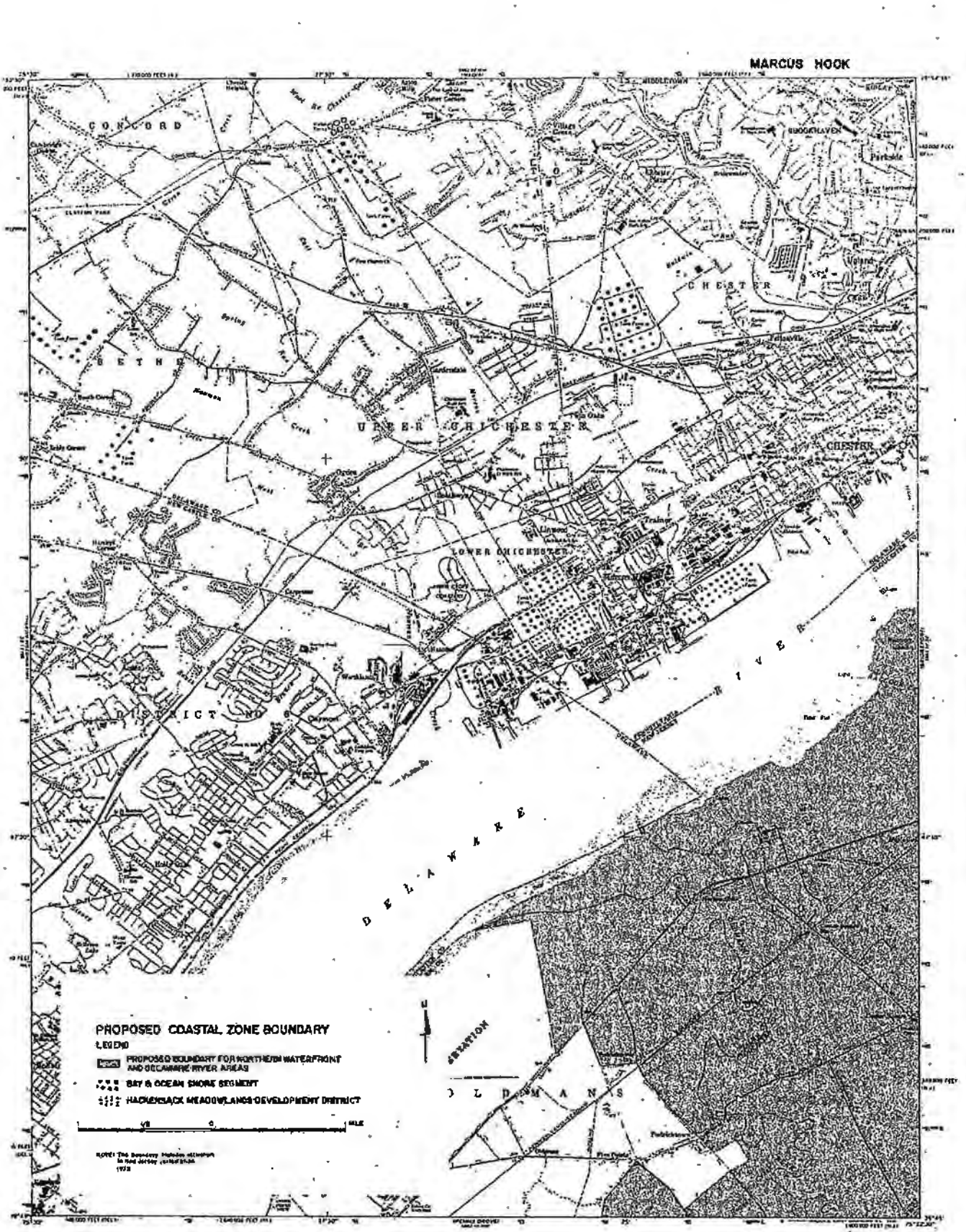
SPRINGFIELD
EASTAMPTON
NEW HANOVER
FORT DIX
MILITARY RESERVATION
RANCOCAS
Pemberton
P E M B E R T O N
SOUTHAMPTON
WOODLAND
TABERNACLE
PROPOSED COASTAL ZONE BOUNDARY
LEGEND
PROPOSED BOUNDARY FOR NORTHERN WATERFRONT AND DELAWARE RIVER AREAS
BAY & OCEAN SHORE SEGMENT
HACKENSACK MEADOWLANDS DEVELOPMENT DISTRICT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CONCORD
BETHEL
UPPER CHICHESTER
LOWER CHICHESTER
CHESTER
BROOKHAVEN
Parkside
Upland
DISTRICT
DELAWARE
RIVER
OLDMANS
PROPOSED COASTAL ZONE BOUNDARY
LEGEND
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BAY & OCEAN SHORE SEGMENT
HACKENSACK MEADOWLANDS DEVELOPMENT DISTRICT
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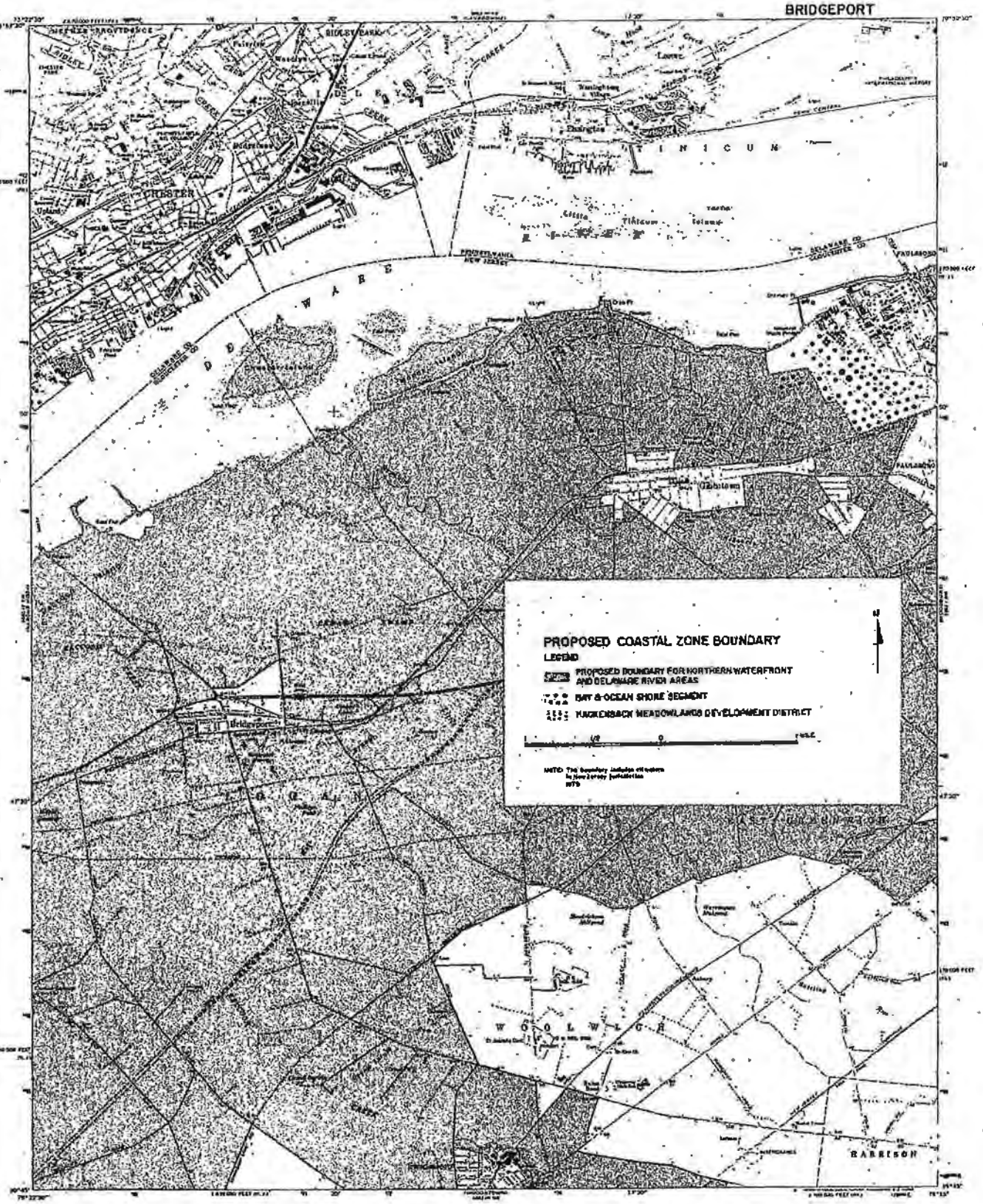
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CHESTER
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LEGEND
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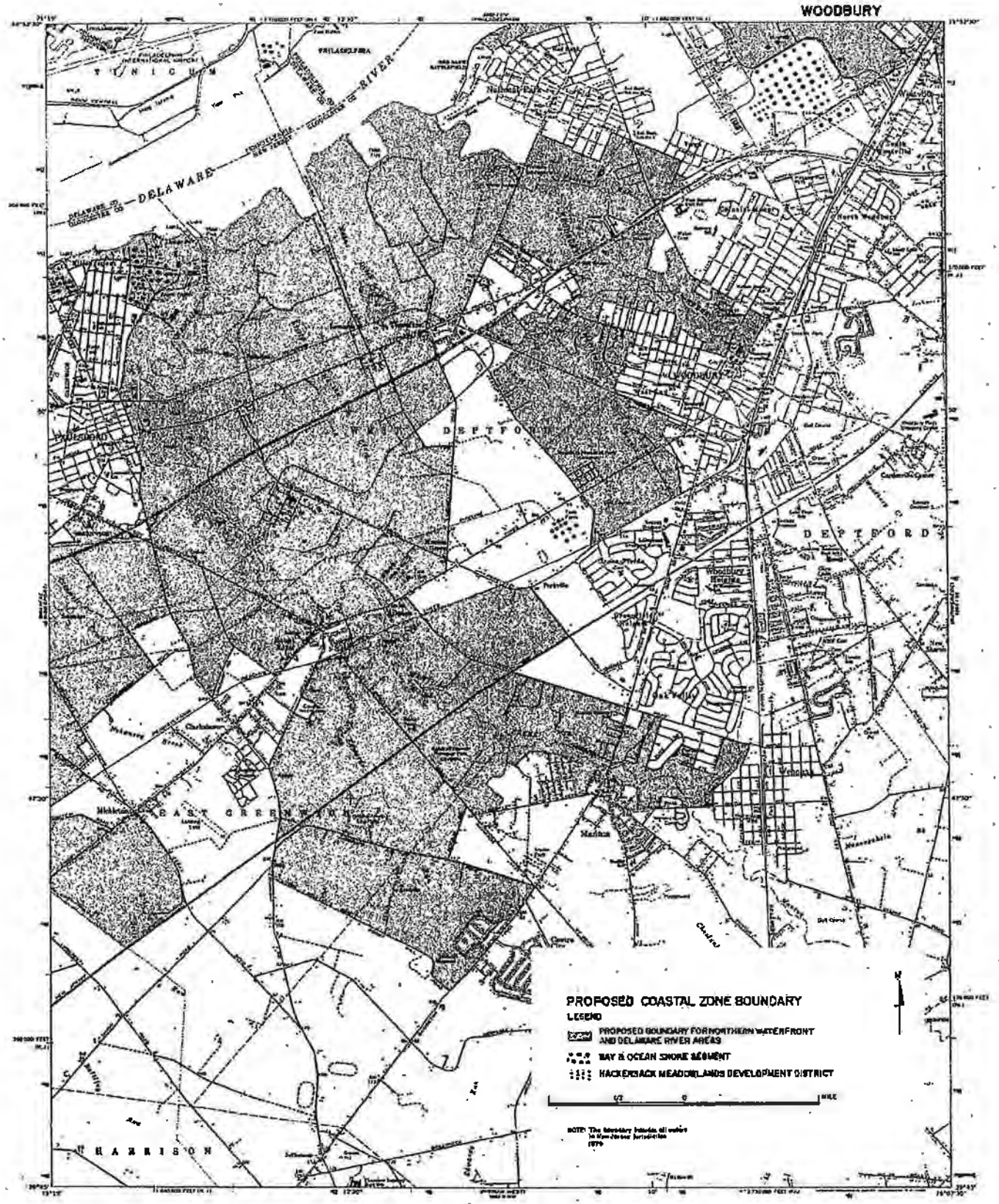
HACKENSACK MEADOWLANDS DEVELOPMENT DISTRICT
WOOLWICH
HARRISON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DELAWARE
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DEPTFORD
EAST GREENWICH
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LEGEND
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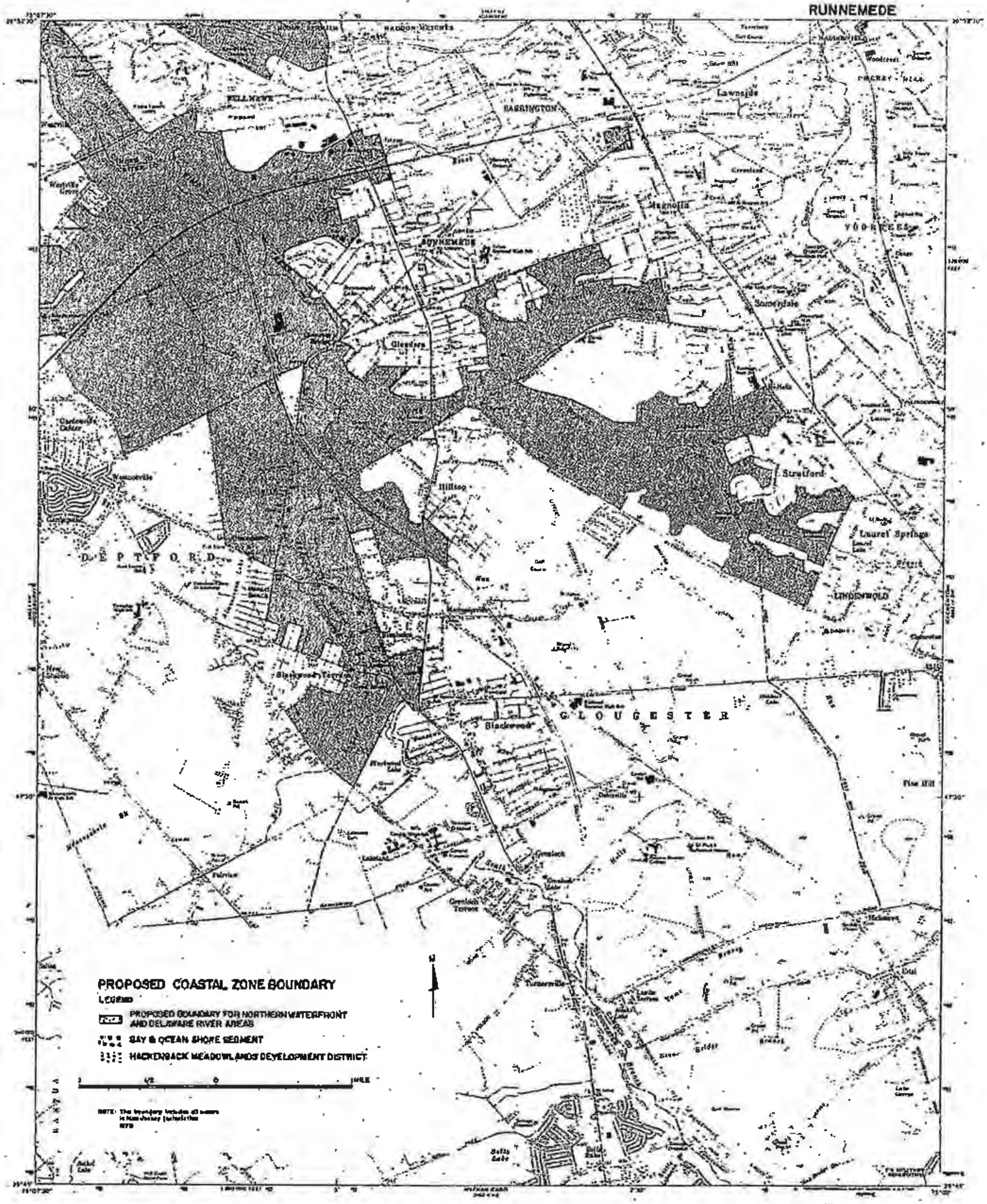
HACKENSACK MEADOWLANDS DEVELOPMENT DISTRICT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Magnolia
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VOORHEES
Somerdale
Glendora
Hilltop
Stratford
Laurel Springs
LINDENWOLD
D E P T F O R D
Blackwood Terrace
G L O U C E S T E R
Blackwood
Pine Hill
Fairview
Grenloch
Turnersville
PROPOSED COASTAL ZONE BOUNDARY
LEGEND
PROPOSED BOUNDARY FOR NORTHERN WATERFRONT AND DELAWARE RIVER AREAS
BAY & OCEAN SHORE SEGMENT
HACKENSACK MEADOWLANDS DEVELOPMENT DISTRICT
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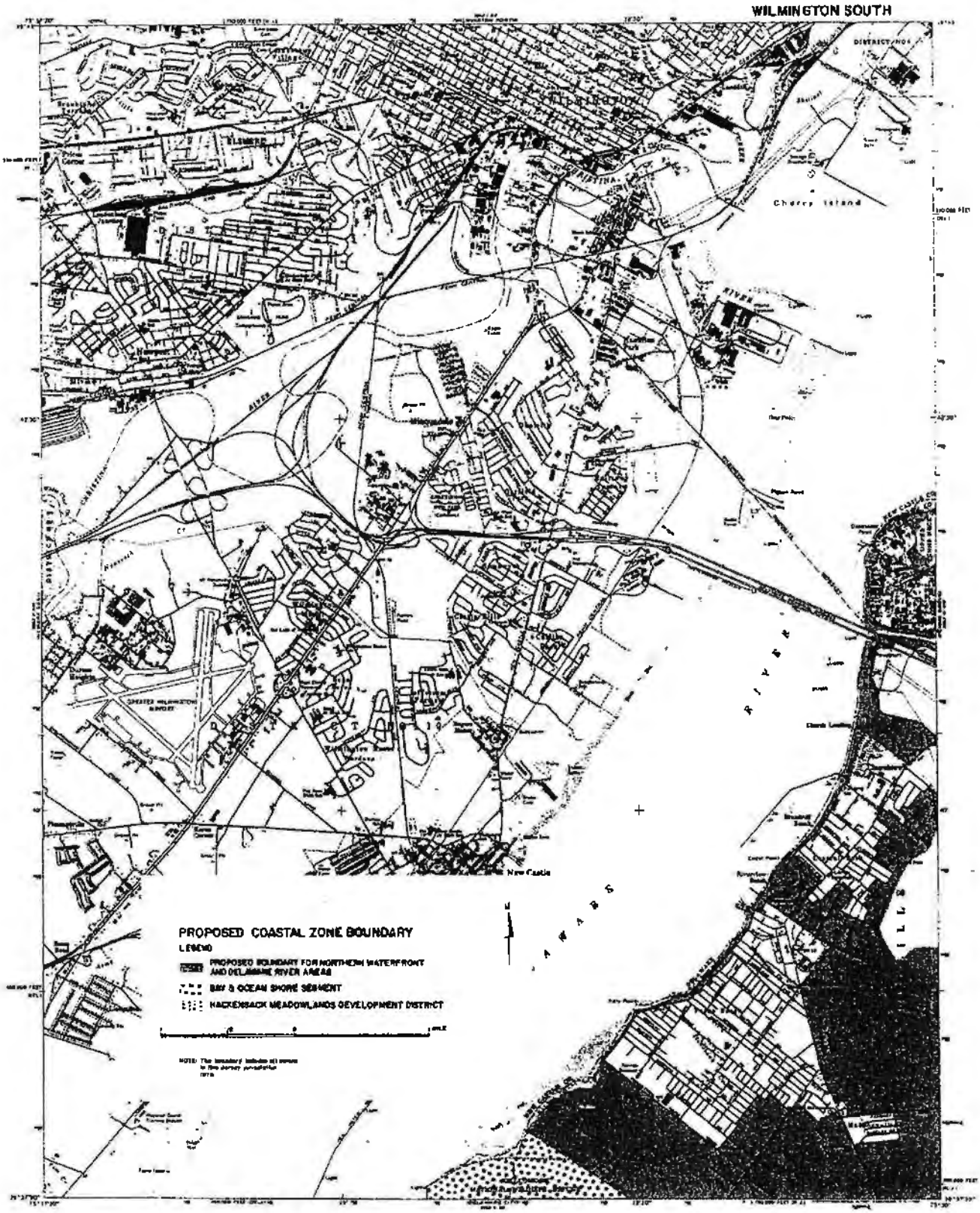
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Cherry Island
New Castle
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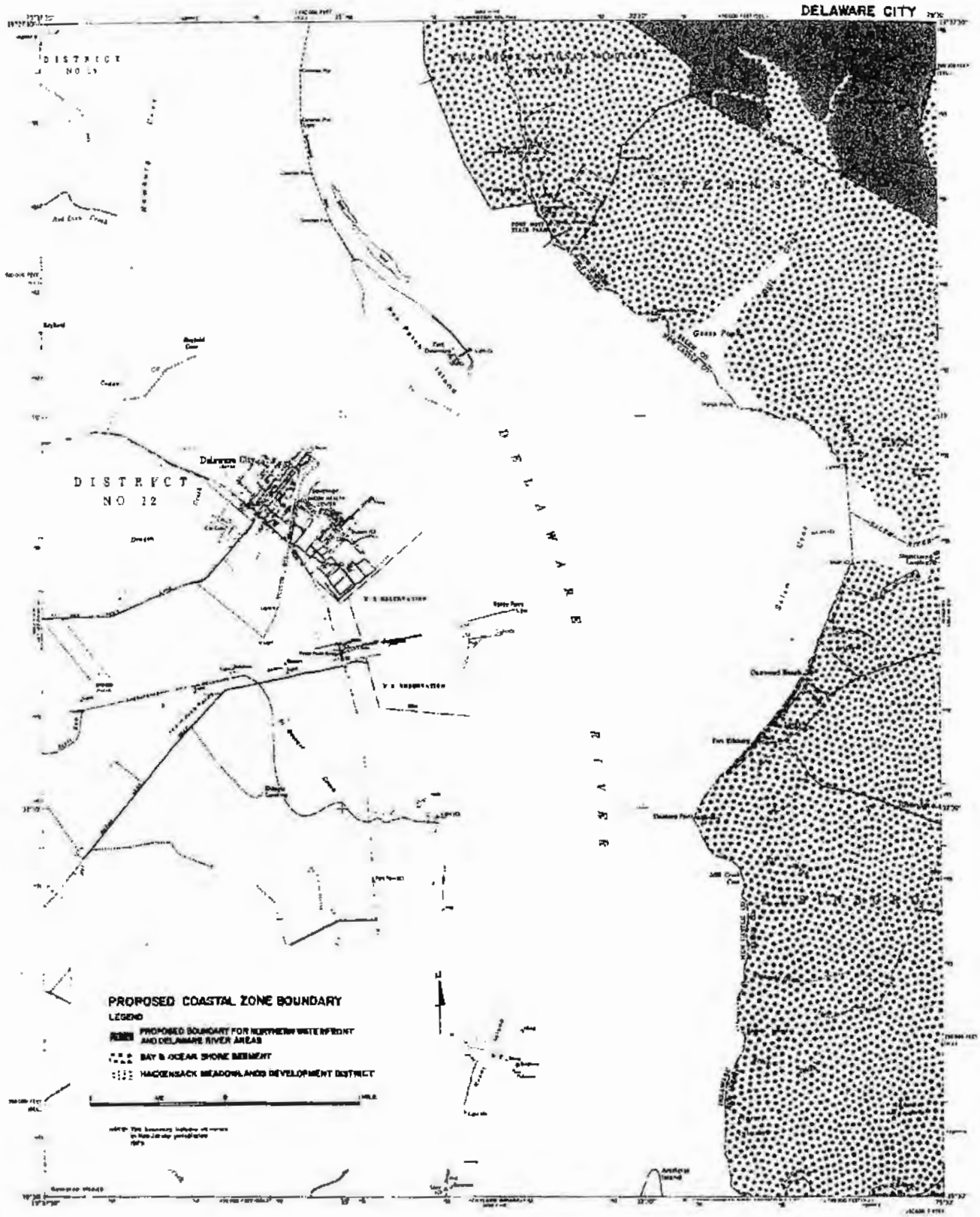
LEGEND
PROPOSED BOUNDARY FOR NORTHERN WATERFRONT AND DELAWARE RIVER AREAS
BAY & OCEAN SHORE SEGMENT
HACKENSACK MEADOWLANDS DEVELOPMENT DISTRICT



DE29649

PENNS GROVE
DELAWARE RIVER
PENNS GROVE
O L D M A N S
PILESGROVE
PROPOSED COASTAL ZONE BOUNDARY
LEGEND
PROPOSED BOUNDARY FOR NORTHERN WATERFRONT AND DELAWARE RIVER AREAS
BAY & OCEAN SHORE SEGMENT
HACKENSACK MEADOWLANDS DEVELOPMENT DISTRICT


DELAWARE CITY
DISTRICT NO 12
DELAWARE RIVER
PROPOSED COASTAL ZONE BOUNDARY
LEGEND
PROPOSED BOUNDARY FOR NORTHERN WATERFRONT AND DELAWARE RIVER AREAS
BAY & OCEAN SHORE SEGMENT
HACKENSACK MEADOWLANDS DEVELOPMENT DISTRICT

## APPENDIX F: THE DELAWARE-NEW JERSEY BOUNDARY AND INTERSTATE COASTAL MANAGEMENT ALONG THE SALEM COUNTY SHORELINE

### Issue

The Delaware Coastal Zone Act of 1971 precludes, or at least impedes, major waterfront industrial development along the shoreline of Salem County, New Jersey, as a result of the peculiar interstate boundary between the State of New Jersey and the State of Delaware along the Delaware River. As a result of a U.S. Supreme Court decision in New Jersey v. Delaware (291 U.S. 361) in 1933, the interstate boundary between New Jersey and Delaware extends north at the mean low water line on the New Jersey shoreline, from a point near the northern tip of Artificial Island, in Lower Alloways Creek Township, Salem County, until the Delaware-Pennsylvania boundary, almost at the Salem County-Gloucester County boundary. Consequently, major development extending into the Delaware River could require approval from the State of Delaware, in addition to approvals from the State of New Jersey.

### Background

In 1933, the United States Supreme Court held that the interstate boundary between the State of Delaware and the State of New Jersey, through Delaware Bay and the Delaware River, generally followed the ship channel in the middle of Delaware Bay. However, at the point near the northern tip of Artificial Island, in Lower Alloways Creek Township, Salem County, the U.S. Supreme Court held that the interstate boundary between New Jersey and Delaware extended north along the mean low water line on the New Jersey side of the River to the Delaware-Pennsylvania border. (See Figure 11 for a sketch showing the New Jersey-Delaware border along the shoreline.)

In 1971, the State of Delaware enacted a stringent Coastal Zone Act, which prohibited heavy industrial development in a defined coastal zone. Since the boundary between New Jersey and Delaware extends to the New Jersey shoreline, the restrictive provisions of this coastal management law applied to development that would be proposed for sites involving land and water along the Salem County Waterfront. In particular, the Delaware law prohibits heavy industry such as oil refineries, steel manufacturing plants and chemical plants. The law also prohibits offshore "bulk product transfer facilities" which include port or dock facilities for the transfer of bulk quantities of any substance, such as oil. However, the law has two exemptions to the bulk product transfer prohibition. New offshore bulk product transfer facilities used solely by the industrial or manufacturing facility to which it is connected, and any bulk product transfer facility within the Port of Wilmington are exempt from the Act.

Manufacturing activities are permitted in Delaware's coastal zone by permit only. Examples of manufacturing uses include automobile assembly plants. For more detailed definitions, refer to the Coastal Zone Act, 7 Del. C. Chapter 70.

Consequently, under Delaware law, some types of activities would be prohibited from locating along the Delaware River in Salem County, while other facilities desiring to locate along the river would need to obtain permit approval from the State of Delaware.



DE29661

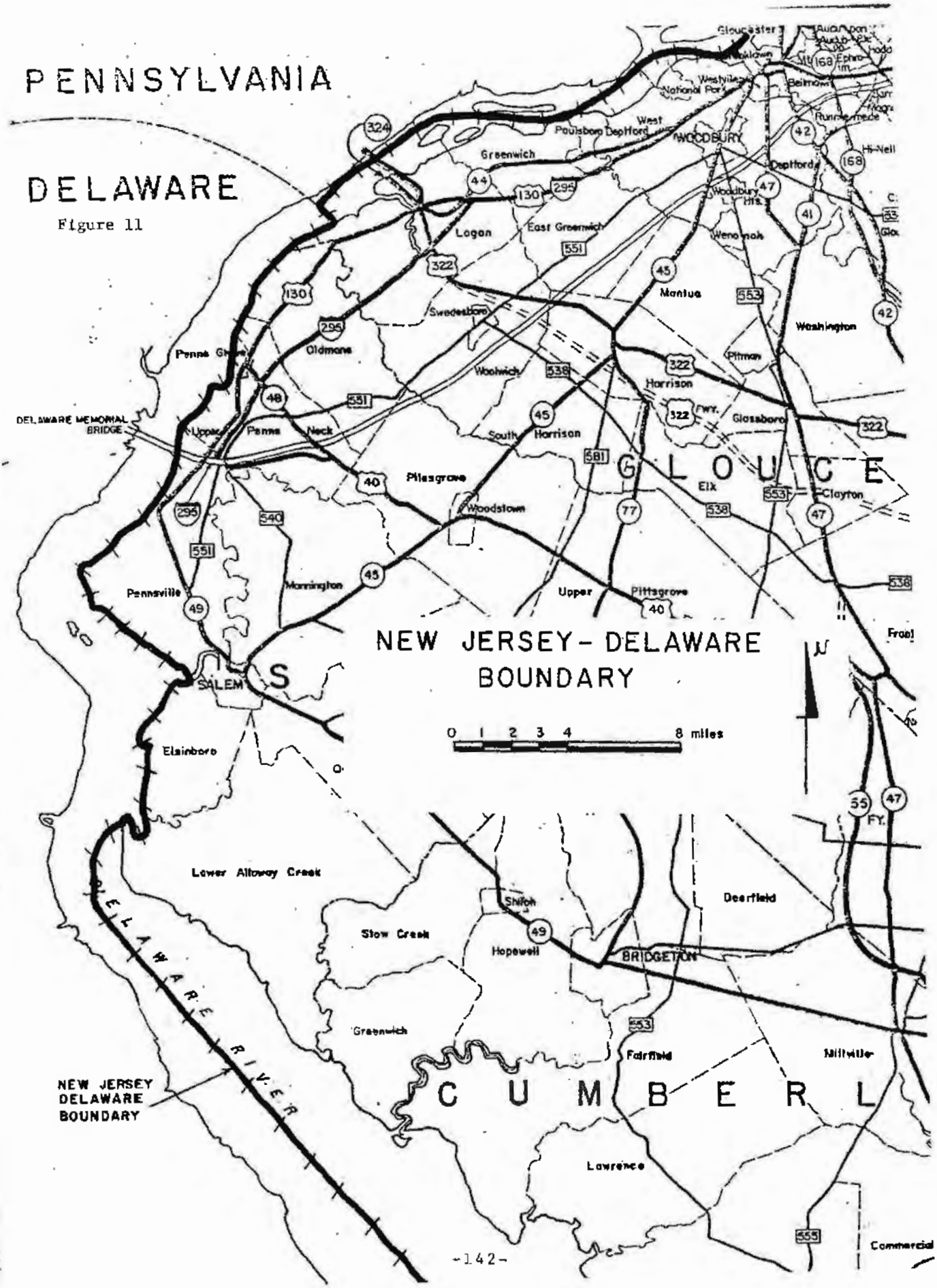



Figure 11

DE29662

Because the State of Delaware exercises jurisdiction along the Salem County shoreline from the mean low water line waterward, projects involving the use of public submerged lands would require approval under Delaware's Underwater Lands Act. This Act authorizes Delaware to exercise authority over state lands lying below Delaware's mean high waterline. Projects requiring approval include: (1) erection of any structure on such lands, (2) dredging or filling of such land, (3) the excavation of any channel, lagoon, turning basin, or ditch on public or private lands which will make connection with public submerged lands, (4) the filling of lands adjacent to public submerged lands and (5) laying of any pipeline, transmission line or telephone line in, on, over or under the beds of public submerged lands.

In addition, New Jersey maintains jurisdiction over a narrow strip of tidelands between the mean high water line and the mean low water line in Salem County. Under the waterfront development permit law enacted in 1919, the New Jersey Department of Environmental Protection, Division of Marine Services, requires a construction permit for any construction along the waterfront of navigable waterways. Therefore, certain development along the Delaware River in Salem County could require approval from both the State of Delaware and the State of New Jersey.

Delaware Jurisdiction in Salem County

Delaware Coastal Zone Act - Since the Delaware Coastal Zone Act took effect in 1971, no activity has taken place along the Salem County shoreline which would come under the jurisdiction of the Act.

While the regulatory experience under the Delaware Coastal Zone Act has been non-existent, the Delaware Coastal Management Program - Discussion Draft, September 1978 suggests that experience under the Act involving a facility in Pennsylvania extending into Delaware waters was handled to the satisfaction of all parties.

Successful interstate cooperation between New Jersey and Delaware can be achieved by sharing information concerning any proposed development in Salem County which could fall under the jurisdiction of Delaware's Coastal Zone Act. Delaware has agreed to notify Salem County of any proposed activity along the Delaware or Salem County shoreline which is subject to the provisions of Delaware's Coastal Zone Act. In return, Delaware has asked Salem County to notify Delaware of any proposed devlopment in Salem County which would fall under the Delaware Coastal Zone Act jurisdiction. Activities along the Delaware Shoreline and the Salem County shoreline within the Port of Wilmington, will be coordinated through the Wilmington Metropolitan Area Planning Coordinating Council (WILMAPCO).

Delaware Underwater Lands Act - The extent of Delaware's jurisdiction along the Salem County shoreline under the Delaware Underwater Lands Act and the mechanisms to create interstate coordination under the Act are not well defined. Lack of experience with development along Salem County's shoreline which could be subject to the provisions of the Underwater Lands Act, is partially responsible for the uncertainty as to how Delaware would exercise its authority along the Salem County shoreline. The only experience with the Delaware Underwater Lands Act and development in New Jersey was in 1971 when Delaware granted a lease to the Dupont Chambers Works in Deepwater to use subaqueous lands in the Delaware River. Dupont

received the lease to dredge, fill and bulkhead the area to locate an oil tank. Experience at Dupont indicates that Delaware chooses to exercise its authority under the Underwater Lands Act on a case-by-case basis. Right now, Delaware and Salem County have not arranged any coordinative mechanisms or means to notify each other of proposed activities along the river which would come under the jurisdiction of the Delaware Underwater Lands Act.

Applicable Delaware Coastal Policies

The Delaware Coastal Management Program - Discussion Draft (September 1978) presents 14 policies that would be particulary relevant to development proposals along the Salem County shoreline. These policies address the use of underwater lands on the coastal strip. In general, new heavy industries, including refineries, are prohibited. New major manufacturing proposals are, however, permissible subject to permit approval. For the specific policies, see Appendix D and also consult the Delaware Coastal Management Program - Discussion Draft; September 1978; pages 5.A.4-1 through 5.A.4.12).

Potential Development Proposals and Regulatory Problems

The Delaware Coastal Management Program - Discussion Draft (September 1978) suggests that the most likely proposal in Salem County would be for a single or multi-purpose pier extending into the Delaware River. The Delaware Attorney General issued an advisory opinion concerning the effect of the provisions of Delaware's Coastal Zone Act on industrial development activities in Salem County, which attempted to clarify questions regarding permissible uses. According to an interpretation of the opinion, a new offshore bulk produce transfer facility used solely by the manufacturing use to which it is physically connected and not to be used as a common facility by more than the manufacturing use, would not be regulated by the Delaware Coastal Zone Act. However, a new offshore bulk product transfer facility used as a common facility or a bulk transfer facility used by more than the manufacturing use to which it is physically connected would be prohibited under the Act. Manufacturing uses are permitted by permit and would be subject to the policies of Delaware's coastal program.

## APPENDIX G: DRAFT CRITERIA FOR NOMINATION OF RIVER AREAS UNDER THE STATE WILD AND SCENIC RIVERS ACT

DEP-OCZM has developed the following draft set of criteria to aid itself and other interested parties in nominating river segments which would benefit from inclusion within the State's wild and scenic river system. Interested readers are invited to comment on the individual criteria, rank their importance (high, medium, or low), suggest additional criteria, and use the criteria in evaluating river segments. It would be especially helpful if individuals or groups with local knowledge compared river segments using these criteria (or a set of criteria they developed themselves) and made the results available to DEP-OCZM. DEP-OCZM will work with the Green Acres Program to aid that Office in making its recommendations for designation of river segments.

A nominated river segment should be a stretch of several miles of a tidal river, possibly including tributaries. It should be bounded by significant natural or man-made features. Examples of river segments which could be designated would include the Hudson River from the George Washington Bridge to Liberty State Park (only characteristics of the New Jersey side, including views of Manhattan, would be considered), or the Rancocas Creek from head of tide to confluence with the Delaware. The Hudson River would be evaluated for its potential as a developed recreational river because it has a highly developed and modified shoreline, but also a great recreational potential for the large number of people who are within walking distance of the river. Rancocas Creek would be evaluated as a recreational river because although developed in some areas, it has sections of undisturbed natural beauty accessible to large numbers of people by public transportation or automobile.

## DEVELOPED RECREATIONAL RIVER AREAS

According to the New Jersey Wild and Scenic Rivers Act, Developed Recreational rivers "are those rivers or sections thereof, that are readily accessible, that may have substantial development along their shorelines, that may have undergone substantial impoundment or diversion, but which remain suitable for a variety of recreation uses". N.J.S.A. 13:8-48(d).

Readers are invited to rank the importance of these criteria for developed recreational rivers as high, medium or low.

Importance

_____ ACCESS CRITERIA

_____ Population living within 3/4 mile (15 minutes walking distance)

_____ Population living within 1 1/2 miles (30 minutes walking distance). Walking distance is distance to waterfront at nearest point on segment.

_____ Population living within 30 minutes by public transportation.

_____ Percentage of water frontage publicly owned.

_____ Percentage of water frontage accessible to the public (this will include some private land, e.g. waterfront restaurant, and exclude some public land, e.g. a limited access highway).

_____ Percentage of segment which is public open space.

_____ RECREATIONAL OPPORTUNITIES CRITERIA

_____ Water quality classification.

_____ Present fishing opportunities.

_____ Potential fishing opportunities given attainment of water quality standards and provision of access points for fishing from publicly owned land.

_____ Present opportunities for water contact sports (swimming, wading, tubing, water skiing, skin or scuba diving)

_____ Potential opportunities for water contact sports given attainment of water quality standards and provision of access points on publicly owned land.

_____ Present picnicking opportunities.

_____ Potential picnicking opportunities given provision of picnic facilities on publicly owned land.

Importance

_____ Length of longest segment of uninterrupted waterfront walking path open to the public as a percentage of length of segment.

_____ Potential of the segment for waterfront walk paths (subjective judgement).

_____ Length of longest segment of uninterrupted path suitable for cycling as a percentage of length of the segment.

_____ Potential of the segment for cycling (subjective judgement).

_____ Length of longest segment suitable for uninterrupted small craft navigation as a percentage of length of the segment.

_____ AESTHETIC, CULTURAL, EDUCATIONAL CRITERIA

_____ Vistas of exceptional grandeur or interest (this could be provided by a natural feature, e.g. the Palisades, an urban skyline, other feats of engineering, e.g. a suspension bridge, or labor-oriented cultural features, e.g. an active port. Judgements of viewshed value should consider the waterfront vistas from both sides of rivers, including interstate rivers.

_____ Presence of historic sites, state or national register structures, period structures or archaeological sites.

_____ Unique opportunities for learning about ecological, geologic or hydrological sytems.

_____ Variety of views from different points in the segment, such as distant background as well as foreground visible from most points.

## RECREATIONAL RIVER AREAS

According to the New Jersey Wild and Scenic Rivers Act, recreational rivers "are those rivers or sections thereof, that are readily accessible, that may have substantial development along their shorelines, and that may have undergone improvement or diversion prior to their inclusion in the New Jersey Scenic River System". N.J.S.A. 13:8-48(c).

Readers are invited to rank the importance of these criteria for developed recreational river areas as high, medium or low.

Importance

_____ ACCESS CRITERIA

_____ Population living within 1 1/2 miles (30 minutes walking distance) of nearest point on waterfront of segment.

_____ Population living within 60 minutes by public transportation.

_____ Population living within 60 minutes by automobile.

_____ Percentage of water frontage accessible to the public. (This will include some private land, e.g. a waterfront restaurant, and exclude some public land, e.g. a limited access highway).

_____ Percentage of segment which is public open space.

_____ Percentage of water frontage publicly owned.

_____ RECREATIONAL OPPORTUNITIES CRITERIA

_____ Water Quality Classification.

_____ Present fishing opportunities.

_____ Potential fishing opportunities given attainment of water quality standards and provision of access points for fishing on publicly owned land.

_____ Present opportunities for water contact sports (swimming, wading, tubing, water skiing, skin or scuba diving).

_____ Potential opportunities for water contact sports given attainment of water quality standards and provision of access points on publicly owned land.

_____ Present recreational boating opportunities.

_____ Potential boating opportunities given attainment of water quality standards and provision of docks and launch ramps on publicly owned land.

Importance

_____ Present picnicking opportunities.

_____ Potential picnicking opportunities given provision of picnic facilities on publicly owned land.

_____ Present camping opportunities given provision of campsites on publicly owned land.

_____ Opportunity for waterfowl hunting.

_____ Length of longest segment of uninterrupted waterfront walking path open to the public as a percentage of length of the segment.

_____ Potential of the segment for waterfront walking paths (subjective judgement).

_____ Length of longest segment of uninterrupted path suitable for cycling as a percentage of length of the segment.

_____ Potential of the segment for cycling (subjective judgement).

_____ Length of longest segment suitable for uninterrupted small craft navigation as a percentage of length of segment.

_____ AESTHETIC, CULTURAL, EDUCATIONAL CRITERIA

_____ Vistas of exceptional grandeur or interest (this could be provided by a natural feature, e.g. the Palisades, an urban skyline, other feats of engineering, e.g. a suspension bridge, or labor-oriented cultural features, e.g. an active port. Judgements of viewshed value should consider the waterfront vistas from both sides of rivers, including interstate rivers.

_____ Variety of views available from different points in the segment including distant background as well as foreground visible from most points.

_____ Presence of historic sites, state or national register structures, period structures or archaeological sites.

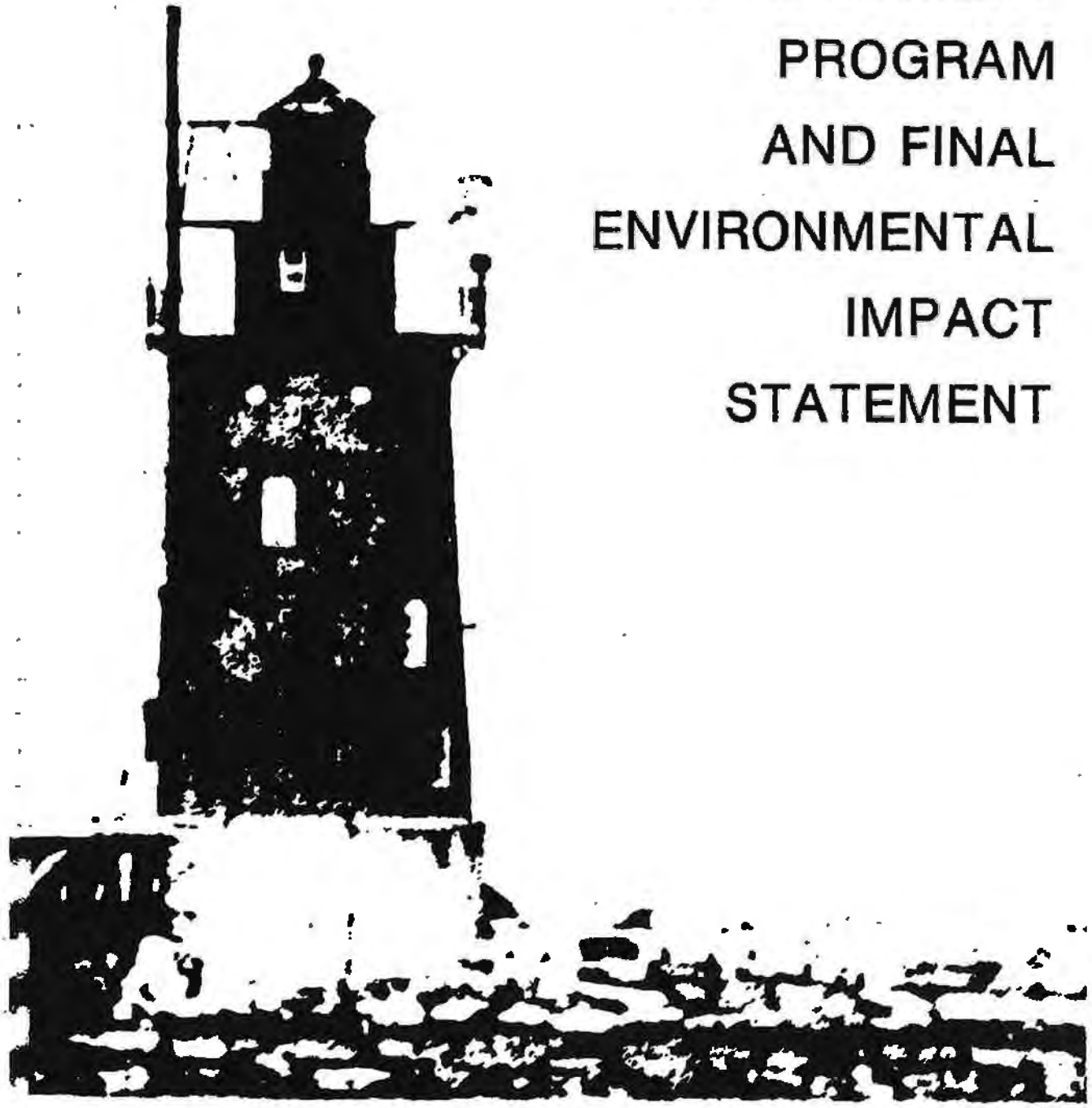
_____ Unique opportunities for learning about ecological or hydrological systems.

_____ River corridor contains diverse flora and fauna, especially rare or endangered species.

_____ Extensive sections of the shoreline have no visible signs of human activity.

_____ Road and rail crossings of the river are limited.

# DELAWARE COASTAL MANAGEMENT PROGRAM AND FINAL ENVIRONMENTAL IMPACT STATEMENT



**U.S. DEPARTMENT OF COMMERCE**
National Oceanic and Atmospheric Administration
Office of Coastal Zone Management

DE22181

UNITED STATES DEPARTMENT OF COMMERCE
The Assistant Secretary for Science and Technology
Washington, D.C. 20230

In accordance with the provisions of Section 102(2)(C) of the National Environmental Policy Act of 1969, we are enclosing for your review and consideration the Final Environmental Impact Statement prepared by the Office of Coastal Zone Management on the proposed Delaware Coastal Management Program.

If you have any questions about the enclosed statement, please feel free to contact

John Phillips
South Atlantic Regional Manager
Office of Coastal Zone Management
3300 Whitehaven Street, N.W.
Washington, D. C. 20235
Phone: 202/254-7494

Thank you for your cooperation in this matter.

Sincerely,

Sidney R. Galler

Sidney R. Galler
Deputy Assistant Secretary
for Environmental Affairs

Enclosures

DE22182

Reprint Notice
March, 1980

This is the second printing of the DCMP/FEIS. The Summary Section and Parts I, III, IV, V and IV of the original edition were printed on buff (gold) paper; these portions are reprinted on white stock in order to reduce costs. Both editions are identical except for the last sentence on page 10, Summary which contained an error.

UNITED STATES

DEPARTMENT OF COMMERCE

# FINAL

# ENVIRONMENTAL IMPACT

# STATEMENT

# PROPOSED

# COASTAL MANAGEMENT PROGRAM

# FOR

# THE STATE OF DELAWARE


Prepared by:

Office of Coastal Zone Management
National Oceanic and
Atmospheric Administration
Department of Commerce
3300 Whitehaven Street, N.W.
Washington, DC 20235

and

Delaware Coastal Management
Program
Office of Management, Budget
and Planning
P.O. Box 1401
Dover, DE 19901



This publication is financed in part through a federal grant from the Office of Coastal Zone Management, NOAA under the provision of Section 305 of the Coastal Zone Management Act of 1972 (Public Law 92-583)

This publication is available in microfiche from the Bureau of Archives and Records, Hall of Records, P.O. Box 1401, Dover, Delaware 19901

Printed in U.S.A.
DOCUMENT NO. 1003-79-05-01


DE22183

DESIGNATION: Final Environmental Impact Statement

TITLE: Proposed Federal Approval of the Delaware Coastal Management Program

ABSTRACT: The State of Delaware has submitted its Coastal Zone Management Program to the Office of Coastal Zone Management for approval. Approval would permit implementation of the proposed program, allow program administration grants to be awarded to the state, and require that federal actions be consistent with the Program. This impact statement includes a copy of the Program (Part II) which is a comprehensive management program for land and water use activities. It consists of numerous policies on diverse management issues which are enforced by various state laws, discusses areas of special interest to the state, and is the culmination of several years of program development.

Approval and implementation of the program will enhance governance of the state's coastal land and water areas and uses according to the coastal policies and standards. The effect of these policies is to condition, restrict or prohibit some uses in parts of the coastal zone, while encouraging development and other uses in other parts. This Program will improve decision-making processes for determining appropriate coastal land and water uses in light of resource considerations and increase public awareness in coastal resources. The Program will result in some short-term economic impacts on coastal users, but will lead to increased long-term protection of the state's coastal resources.

Alternatives include delaying or denying approval if certain requirements of the Coastal Zone Management Act have not been met, or the state could modify parts of the Program or withdraw their application for Federal approval.

APPLICANT: Delaware State Office of Management, Budget & Planning

LEAD AGENCY: U.S. DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
Office of Coastal Zone Management

CONTACT: Mr. John Phillips
South Atlantic Regional Manager
Office of Coastal Zone Management
3300 Whitehaven St., N.W.
Washington, D.C. 20235 (tele. 202/254-7494)

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Department of Defense
Department of Energy
Department of Health, Education & Welfare
Department of Housing & Urban Development
Department of the Interior
Department of Justice
Department of Labor
Department of Transportation
  U.S. Coast Guard
Environmental Protection Agency
Federal Energy Regulatory Commission
General Services Administration
Marine Mammal Commission
Nuclear Regulatory Commission

National Interest Groups

A.M.E.R.I.C.A.N.
AFL-CIO
American Association of Port Authorities
American Bar Association
American Bureau of Shipping
American Farm Bureau Federation
American Fisheries Society
American Forest Institute
American Gas Association
American Hotel and Motel Association
American Industrial Development Council
American Institute of Architects
American Institute of Merchant Shipping
American Institute of Planners
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American Mining Congress
American Oceanic Organization
American Petroleum Institute
American Shore and Beach Preservation Association
American Society of Civil Engineers
American Society of Landscape Architects, Inc.
American Society of Planning Officials
American Water Resources Association
American Waterways Operators
Amoco Production Company
Ashland Oil, Inc.
Associated General Contractors of America
Association of Oil Pipe Lines

Atlantic Richfield Company
Atlantic States Marine Fisheries Commission
Atomic Industrial Forum
Barrier Islands Coalition
Boating Industry Association
Center for Law and Social Policy
Center for Natural Areas
Center for Urban Affairs
Center for Urban & Regional Resources
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Chevron U.S.A., Inc.
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City Service Oil Company
Coastal States Organization
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Continental Oil Company
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Council of State Planning Agencies
The Cousteau Society
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El Paso Natural Gas Co.
Environmental Policy Center
Environmental Defense Fund, Inc.
Environmental Law Institute
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Friends of the Earth
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Great Lakes Basin Commission
Gulf Energy and Minerals, U.S.
Gulf Oil Company
Gulf Refining Company
Gulf South Atlantic Fisheries Development Foundation
Independent Petroleum Association of America
Industrial Union of Marine & Shipbuilding Workers of America
Institute for the Human Environment
Institute for Marine Studies
Interstate Natural Gas Association of America
Izaak Walton League
Lake Michigan Federation
League of Conservation Voters
League of Women Voters Education Fund
Marathon Oil Company
Marine Technology Society
Mobil Oil Corporation
Mobil Exploration & Producing, Inc.
Murphy Oil Company
National Academy of Engineering
National Association of Conservation Districts
National Association of Counties
National Association of Dredging Contractors
National Association of Electric Companies

National Association of Engine & Boat Manufacturers
National Association of Home Builders
National Association of Realtors
National Association of Regional Councils
National Association of State Boating Law Administrators
National Association of State Park Directors
National Audubon Society
National Boating Federation
National Canners Association
National Coalition for Marine Conservation, Inc.
National Commission on Marine Policy
National Conference of State Legislatures
National Environmental Development Association
National Farmers Union
National Federation of Fisherman
National Fisheries Institute
National Forest Products Association
National Governors Association
National League of Cities
National Ocean Industries Association
National Parks and Conservation Association
National Petroleum Council
National Petroleum Refiners Association
National Realty Committee
National Recreation and Park Association
National Research Council
National Science Foundation
National Science Teachers Association
National Shrimp Congress
National Society of Professional Engineers
National Wildlife Federation
National Waterways Conference
Natural Gas Pipeline Company of America
Natural Resources Defense Council
The Nature Conservancy
Nautilus Press
New England River Basin Commission
North Atlantic Ports Association
Outboard Marine Corporation
Resources for the Future
Rice University Center for Community Design and Development
Shell Oil Company
Shellfish Institute of North America
Shipbuilders Council of America
Sierra Club
Skelly Oil Company
Society of Industrial Realtors
Society of Real Estate Appraisers
Soil Conservation Society of America
Southern California Gas Company
Sport Fishing Institute
Standard Oil Company of Ohio

Sun Company, Inc.
Tenneco Oil Company
Texaco, Inc.
Texas A & M University
United Brotherhood of Carpenters & Joiners
of America
Union Oil Company of California
Urban Research and Development Association, Inc.
U.S. Conference of Mayors
U.S. Power Squadrons
Virginia Marine Resources Commission
Water Pollution Control Federation
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DE22188

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College of Marine Studies, University of Delaware
WILMAPCO (Region Clearinghouse)
Delaware State Clearinghouse Committee
Mini Workshops Participants
- Industrial
- Environmental - Conservation
- Agriculture
- Resort/Tourist/Recreation

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All Municipalities in Delaware
New Castle County Council, Planning Department, and Water Quality Agency
Kent County Levy Court and Planning Department
Sussex County Council and Planning Department
DelMarVa Power and Light Company
Nature Resources Defense Council
Delaware Nature Education Society
League of Women Voters of Delaware
Delaware Oil Men's Association
Watch Our Waterways
Sierra Club (Delaware)
Exxon Company U.S.A. (Pennsylvania)
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Soil Conservation Service -County Conservation District Offices
League of Local Governments of Delaware
Greater Wilmington Development Council
Save Our Shores
Delaware Farm Bureau
Delaware State Grange
Interested Citizens and Organizations

TABLE OF CONTENTS


| | Part/Section |
|---|---|
| SUMMARY | |
| Program Summary | A |
| Changes the Program Will Make | B |
| Areas of Controversy | C |
| PURPOSE AND NEED | Part I |
| Federal Coastal Zone Management Act (FCZMA) | Part I.1 |
| How the Delaware Coastal Management Program Meets the Requirements of the FCZMA | Part I.2 |
| DESCRIPTION OF THE PROPOSED ACTION | Part II |
| Overview, Delaware Coastal Management Program | Section 1 |
| Framework for Program Development | Section 2 |
| Genesis | 2.A |
| Reasons for a Program | 2.B |
| Benefits of an Approved Program | 2.C |
| Major Questions Addressed by the Program | Section 3 |
| Participation in Program Development | Section 4 |
| Management Issues | Section 5 |
| Resources Subject to Management | 5.A |
| Wetlands | 5.A.1 |
| Beaches and Shorelines | 5.A.2 |
| Coastal Waters | 5.A.3 |
| Underwater Lands and the Coastal Strip | 5.A.4 |
| Areas of Special Concern | 5.B |
| The Public Lands | 5.B.1 |
| Natural Areas | 5.B.2 |
| Flood Hazard Areas | 5.B.3 |
| Port of Wilmington | 5.B.4 |
| Other Areas of Interest | 5.C |
| Woodlands and Agricultural Lands | 5.C.1 |
| Historic and Cultural Areas | 5.C.2 |
| Fish and Wildlife | 5.C.3 |
| Mineral Resources | 5.C.4 |
| State-Owned Recreation and Conservation Lands | 5.C.5 |
| Development Issues | 5.D |
| Introduction | 5.D.1 |
| General Development | 5.D.2 |
| Energy Facilities | 5.D.3 |
| Public Investment Considerations | 5.D.4 |
| Recreation and Tourism | 5.D.5 |
| National Defense and Aerospace Facilities | 5.D.6 |
| Transportation Facilities | 5.D.7 |
| Air Quality | 5.D.8 |
| Water Supply | 5.D.9 |
| Implementation of Development Policies | 5.D.10 |




DE22190

TABLE OF CONTENTS (Cont.)


| | Part/Section |
|---|---|
| Coastal Management Coordination | 5.E |
| Appendices | |
| General Requirements | A |
| Uses Subject To Management | B |
| Special Management Areas | C |
| Boundaries | D |
| Legal Authorities and Organization | E |
| Coordination, Public Involvement and National Interest (incl. Federal Consistency) | F |
| Miscellaneous Requirements | G |
| List of Participants in Program Development | H |
| ALTERNATIVES TO THE PROPOSED ACTION | Part III |
| AFFECTED ENVIRONMENT | Part IV |
| ENVIRONMENTAL CONSEQUENCES | Part V |
| COMMENTS AND RESPONSES TO THE DEIS | Part VI |

5.C.3.

# FISH AND WILDLIFE

## SIGNIFICANCE AND VALUE

Delaware has an abundance of wild birds, fish and fur bearing animals. The State is inhabited by approximately 37 species of waterfowl, 91 species of other water birds, four upland game birds, 24 species of birds of prey, 160 species of song birds and 45 species of mammals. In addition, Delaware's waters are home for numerous species of freshwater and saltwater fish.

The State's coastal and freshwater wetlands provide habitats for mallards, black duck, least terns, blue-winged teal, gadwall, wood duck and snow and Canada geese. Coastal waters in the Delaware Bay are inhabited seasonally by sea ducks. The fall migration of waterfowl along the Atlantic flyway brings hundreds of thousands of waterbirds to Delaware's coastal areas. During the winter, the State supports more than 125,000 Canada geese. This represents one of the largest winter concentrations of the species on the East Coast. These waterfowl are enjoyed by the general public for their scenic value and for hunting.

Most of the salt and brackish water sport fishing in Delaware occurs in the Delaware Bay, but there are also important sport fishing areas in the Atlantic Ocean, Inland Bays and the tidal streams feeding these waters. The principal salt and brackish water fish caught in Delaware include weakfish, flounder (summer and winter), bluefish, striped bass, sea bass, perch, commercial and sport sturgeon, spot, drum, Atlantic croaker and shad.

Crabbing and clamming are popular activities along the Delaware Coast. Large numbers of crabs and clams are taken in the State's bays and estuaries.

A great deal of fresh water fishing occurs on mill ponds. Once there were 130 mill ponds in Delaware, but only 60 remain today. Twenty-five of the 60 remaining ponds have been restored and maintained over the last two decades for public use, and provide recreation for Delaware's 20,000 fresh water angler.

The value of fish and wildlife is documented in the State Comprehensive Outdoor Recreation Plan (SCORP) and in numerous studies prepared by the Division of Fish and Wildlife of the Delaware Department of Natural Resources and Environmental

Control (DNREC). In addition, the National Marine Fisheries Service (NMFS) has confirmed the importance of State fisheries management in a letter to the Delaware CMP which says, "approximately two-thirds of our commercial species are dependent upon estuarine waters that are under State control."

As Working Paper No. 7 discusses in detail, fish have national value for recreation and commerce. The Congress declared, in the Fishery Conservation and Management Act of 1976, that "commercial and recreational fishing constitute a major source of employment and contribute significantly to the economy of the Nation." NMFS has pointed out that "in this ... age of growing populations and growing demands for food ... the sea remains both a frontier and a storehouse of living resources of immense value."

The Congress has also expressed the Nation's interest in maintenance of fish and wildlife with passage of such legislation as the Federal Aid in Fisheries Restoration Act, the Federal Aid in Wildlife Restoration Act, the Land and Water Conservation Fund Act, the Wild and Scenic Rivers Act, the Wilderness Act, the National Wildlife Refuge Administration Act, the Fish and Wildlife Coordination Act, the Migratory Bird Conservation Act, the Endangered Species Act, the Federal Land Management Policy Act. Indeed, there are over 100 treaties, international agreements, federal statutes and executive orders to protect wildlife in this country.

The national interest in endangered fauna and flora is stated in several federal statutes, particularly the Endangered Species Act of 1973, wherein Congress "finds and declares" that species of fish, wildlife, and plants in danger of or threatened with extinction "are of esthetic, ecological, educational, historical, recreational, and scientific value to the Nation and its people."

Endangered and threatened animal species listed by the federal government which are "resident" (as defined by the Endangered Species Act of 1973) in Delaware, include: the southern bald eagle; the brown pelican; the American peregrine falcon; the srtic peregrine falcon; the leatherback turtle; the Atlantic ridley turtle; the shortnose sturgeon; and several whales, including the blue, bowhead, finback, humpback, right, sei, and sperm. Of these, only the bald eagle, which nests near the Bombay Hook National Wildlife Refuge, is sighted more than rarely.

5.C.3.

The following plants found in the State of Delaware have been proposed for inclusion on the national endangered and threatened list by the Smithsonian Endangered Flora Project: Cyperaceae-Phynochospora Knieskernii (Family-species), endangered; Ranunculaceae-Trollius laxus, endangered; Spiaceae-Oxypolis canbyi, threatened; Betulaceae-Alnus maritima, threatened; Orchidaceae-Platanthera peramoena, threatened; Poaceae-Muhlenbergia torreyana, threatened; and Scrophulariacea Micranthemum micranthemoides, threatened.

CMP LIVING RESOURCES MANAGEMENT CONCERNS

The CMP is concerned primarily with five aspects of fish and wildlife management, namely: (1) habitat preservation; (2) species diversity and population maintenance; (3) program funding; (4) regional coordination; and (5) public awareness.

The importance of habitat preservation is obvious. Activities which destroy or even slightly alter habitats can upset the fragile ecosystem. Inland clearing for development eliminates wildlife cover, causing many species to leave the area or perish. If an endangered species can utilize only a specific area, the preservation of that area is of much greater concern than other areas.

Particularly important, however, are the estauries because they are especially productive. Until recently, however, these areas were not protected. Between 1950 to 1969, four percent of the Nation's wetlands were lost by dredging and filling. That low percentage may not seem serious, but in acreage a great deal of wildlife habitat had been lost. Moreover, 20 years is a short period and cumulative losses over longer periods would be significant.

Development pressures are intense due to the recreational amenity of estuaries. A 1969 study showed that 25%, 44% and 10% of the shorelines of Rehoboth Bay, Indian River Bay, and Assawoman Bay, respectively, were developed. Although these changes were observed from 1938 to 1969, most of the development took place between 1958 and 1969.

Slight changes in water quality can also be important. Dissolved, suspended and floating waste consume oxygen either directly by oxidation or indirectly by causing "plankton blooms" when plankton die oxygen is removed from the water by the process of decomposition. The quantity of dissolved oxygen is important to the economics of the commercial and sport fishery.

5.C.3.

The decline of many species of finfish and shellfish has been correlated with the decline in water quality. Seventy years ago, shad and sturgeon were important commercial fish in Delaware. Throughout the 19th century the annual shad catch weighed between 10 and 19 million pounds. Today only a few Delaware gill net fishermen seek the shad or sturgeon for commercial purposes. Their small number is attributed to pollution in the lower Delaware River which contributes to mortality and curtails up-river spawning migration.

There are, of course several activities which cause water quality problems. Sewage disposal systems can pollute the water and devastate living resources when such systems malfunction or when the systems are inadequate to handle the quantity or components of the sewage. Ninety-two percent of the fish kills reported in the Nation in 1974 were attributed to such problems.

The transportation of petroleum through estuaries threatens fish and wildlife because of the possibility of an oil spill although oil tanker traffic in the Delaware River and Bay so far has been free of trouble. Petrochemical complexes, of course, also present oil pollution hazards. A 1961 study by the Delaware Game and Fish Commission contends that such complexes are incompatible with wildlife, concluding, "Which shall it be? Heavy petrochemcial industry or the benefit and use of Delaware's most valuable natural resource."

Finally, spoil disposal and certain agricultural practices constitute threats to habitat. Benthic organisms, those animals living on the bottom of a body of water, are smothered by spoil deposits. In the past, most spoil disposal took place on wetlands which were thereby destroyed. The State's mosquito control program has in the past relied on pesticides and other practices which also have harmful side effects on aquatic life. Agircultural activities can affect fish and wildlife through the introduction of pesticides and herbicides into the ground and water. However, agricultural lands can provide multi-use recreation and important contributions to wildlife through crop and cover planting practices.

Habitat preservation is only one factor which bears on the diversity, population, and health of fish and wildlife. Excess fishing and hunting can reduce species population far beyond the maximum sustainable yield. On the other hand, overly strict hunting and fishing prohibitions prevent the resources from being utilized and may adversely affect the health of the resources through competition for limited food supplies.

Unfortunately, past game and fish management has been hampered by lack of funds. Usually, the bulk of the money appropriated for natural resource management has been spent on protecting air and water quality, and relatively little was spent on fish and wildlife management.

Interstate regulations have also caused problems, particularly the restrictions contained in the New Jersey-Delaware Fisheries Compact of 1907. This Compact requires the adoption of identical fishery laws by New Jersey and Delaware for the Delaware Bay. Once these laws were agreed upon by the States they could not be changed without the approval of both States. For a time the two states believed that the Compact had been properly implemented and that they could not change their respective laws without each other's approval. This arrangement proved unsatisfactory because it was difficult to reach a consensus on how the laws should be modified to deal with changing fishery technology. Under the auspices of the CMP, the Compact was examined by the Delaware Department of Justice and an opinion was issued which declared that an important provision in the Compact was not implemented. This will allow Delaware to update its fishery statutes and regulations, an action now underway. However, the need for regional fishery planning still exists because fish do not recognize jurisdictional boundaries and because fishermen from the two states must be regulated in a similar manner if they are to be competitive with each other.

Finally, as with many of the resources considered by the CMP, the program is concerned that the public becomes aware of the value of fish and wildlife.

## CMP LIVING RESOURCES POLICIES

### 1. THE QUANTITY AND QUALITY OF FISH AND WILDLIFE HABITAT SHALL BE PRESERVED TO THE MAXIMUM EXTENT POSSIBLE.

Several sections of the document describe CMP habitat preservation measures. Most important are the wetlands policies (Sec. 5.A.1.), the water quality policies (Sec. 5.A.3.), the coastal strip policies (5.A.4.), the nature preserves policies (Sec. 5.B.2.), and the State-owned conservation lands policies (Sec. 5.C.5.). Also noteworthy is DNREC's Endangered Species Program discussed under Policy No. 6.

5.D.3.

# ENERGY FACILITIES

## Introduction

This section includes a number of subjects centering on energy facilities. It examines national, regional and State-wide energy resources and needs. It describes energy facility siting criteria. It identifies effects of such facilities on coastal resources. It discusses the need to balance the need for energy facilities with protection and conservation of natural resources. It also describes Coastal Management Program energy activity policies. And it presents the CMP planning process for energy facilities located in or likely to affect the coastal zone.

The format for this section is different than that used for most of the CMP because of the variety of subjects and the detailed treatment of them required by the Federal Coastal Zone Management Act. Accordingly, each consideration of a particular energy facility includes discussions of the national interest, potential demand, siting criteria, and CMP policy. The discussions contained in this section are more extensive than those previously contained in the CMP Discussion Draft (September 1978). Many reviewers of the September Draft felt that the commentary related to energy facilities contained in a CMP Working Paper (Number 7, The National Interest in Resources and Facilities of the Delaware Coastal Zone, March 1978) should be included in the CMP document.

## ENERGY AND THE NATIONAL INTEREST

### WORLD AND NATIONAL SUPPLY AND DEMAND

The President's National Energy Plan states that:

> "The diagnosis of the U.S. energy crisis is quite simple: demand for energy is increasing, while supplies of oil and gas are diminishing. Unless the U.S. makes a timely adjustment before world oil becomes very scarce and very expensive in the 1980's, the nation's economic security and the American way of life will be gravely endangered."

Cheap energy has enabled the Nation to produce food and other goods and services at a low enough cost to permit general prosperity and a relatively high standard of living. The economic importance of energy to the Nation cannot be overstated. The United States consumed approximately 60 quadrillion

(60,000,000,000,000,000) Btu--one btu is the amount of heat required to raise the temperature of one pound of water one degree Fahrenheit--of energy in 1970. In 1975, the United States consumed 73 quadrillion Btu. At current consumption levels, the national use of energy is projected to reach 125 quadrillion Btu by the year 2000. If the cost of all that energy rises appreciably, the economic consequences will obviously be profound.

Unfortunately, rising costs seem almost inevitable. The cost of energy will, to a large extent, be determined by the familiar principle of demand and supply. As demand increases and supply dwindles, prices will escalate. The world-wide demand for energy has been projected to jump from 250.4 quadrillion Btu in 1973 to 406.1 quadrillion Btu in 1990, an average annual growth rate of 2.9 percent. Supplies, on the other hand, are expected to become more scarce. Of the 250.4 quadrillion Btu consumed in 1973, only 15.1 quadrillion Btu were from other than non-renewable fossil fuels. As the world runs out of those fuels, the price of energy will rise unless alternative energy sources can fill the void.

Like the rest of the world, the United States depends on fossil fuels almost exclusively. About 95 percent of the Nation's energy is supplied by non-renewable fossil fuels. Oil and gas provide 75 percent of the country's energy needs, although they constitute less than 8 percent of its energy resources. In 1975, the Nation used more than 16 million barrels of oil per day, compared to less than 7 million barrels per day in 1947. Oil is used heavily in the residential, commercial and transportation sectors, but is needed most for transportation, where no substitute is currently available. In early 1977, the United States imported 9 million barrels of oil per day, one-half of the domestic supply.

The impact on the Nation's balance of trade--an important measure of the country's economic health--has been substantial. The impact, of course, has been aggravated by rising prices. World-wide oil prices increased four-fold in 1973-1974 alone. In 1974, the United States imported $15.2 billion worth of petroleum crude, $6 billion worth of fuel oil, and $.5 billion worth of natural gas; while it exported only $13 million worth of crude oil, $46 million worth of fuel oil, and $68 million worth of natural gas. During an 8 month period in 1977, oil imports were reportedly worth $23 billion.

Energy-induced economic vulnerability jeopardizes the country's position in the world and may adversely influence foreign policy. The distribution of the remaining oil in the

world is such that OPEC and the Soviet bloc together control approximately 85 percent of the remaining potential recoverable resources. It has been estimated that by the year 2000, about 73 percent of world's oil production will probably come from OPEC and the Soviet bloc. In addition, the Mid-east Nations and the Sino-Soviet bloc combined, hold more than 1.3 quadrillion cubic feet of the less than 2.2 quadrillion cubic feet remaining estimated world reserve of natural gas. United States holdings amount to only 237.1 trillion cubic feet, about one-third of the amount in the Sino-Soviet bloc.

A report by the U. S. Central Intelligence Agency predicts that the United States' demand for oil imports in 1985 could reach between 12 and 15 million barrels per day, most of which will be sought from OPEC countries. The Federal Energy Administration--now part of the Department of Energy--has reported that oil imports could reach 13.5 million barrels per day in 1985 if oil and gas prices are regulated, but that gradual deregulation could drop the figure to 5.9 million barrels per day. However, the Federal Energy Administration has also warned that imports could increase again in 1990 as domestic production declines. Finally, the National Energy Plan projects a 12-16 million barrel per day import figure for 1985.

Natural gas constitutes only 4 percent of domestic energy reserves, but, in 1976, furnished 27 percent of national energy needs--the equivalent of 10 million barrels of oil per day. The National Energy Plan declares that "the growing imbalance between America's domestic natural gas resources and its annual consumption is of particular concern."

Projections of the national gas supply vary. The U. S. Bureau of Mines has predicted that domestic supplies will decrease steadily between now and 2000. A Federal Energy Administration forecast of gas supplies is more optimistic, and estimates that there will be a small increase, until at least 1985. On the other hand, more dire predictions have been made. The National Research Council, for example, has reportedly warned that the United States will completely run out of both oil and natural gas by 2000.

Coal is unlikely to be exhausted in the near future. Coal constitutes 90 percent of the country's conventional energy reserves, but supplies only 18 percent of energy consumption. Within the lower 48 states, the United States has about one-third of the known economically recoverable coal reserves in the world. Full utilization of America's coal resources has been hampered by constraints on demand, rather than lack of supply. Demand has been curtailed by government regulations designed to minimize adverse environmental and health efforts of coal operations.

as well as equipment and transportation limitations.

According to the National Energy Plan, the country must overcome such problems. The Plan states that "Expansion of U. S. coal production and use is essential if the Nation is to maintain economic growth, reduce oil imports, and have adequate supplies of natural gas for residential use."

The Federal Energy Administration has projected a coal production increase from 603 million tons in 1974 to 1040 million tons in 1985. Most of the coal will be used in the generation of electricity. The Federal Energy Administration expects that coal's use in electric generation could increase by 77 percent from 1975 to 1985. In 1974, coal was already used to generate more electricity than any other source.

The demand for electricity--currently greater than 20 quadrillion Btu annually--may more than double by 1990. Accordingly to the Federal Energy Administration, nuclear energy could represent about 26 percent of electric generation in 1985, as compared with 8.6 percent in 1975. Nuclear plants now supply about 10 percent of the Nation's electricity, or 3 percent of the total energy output.

New technology, of course, will also play a role in meeting national and world energy needs, but major contributions from solar, geothermal, and synthetic fuels are not expected to be felt until after 1990. For the near-term, the Nation must rely primarily on oil, gas, coal, and nuclear fuel.

REGIONAL AND STATEWIDE ENERGY SUPPLY AND DEMAND

Even with adequate national energy resource reserves there may be regional or state energy shortages in the U. S. due to the geographic distribution of resources and to factors affecting receipt of energy fuels by particular regions. Although the Middle Atlantic region, however defined, is both an important consumer and processor of energy fuels, this part focuses on Delaware's demand and supply issues. To summarize a Delaware regional energy situation is very difficult due to the way statistics are compiled and the lack of a concensus on a Middle Atlantic region. In some reports, Delaware is considered in the "Northeast"; other reports place it with its immediate neighbors in the "Middle Atlantic"; and still other reports claim Delaware as a "Southeastern" state including it with states as far off as Georgia and Florida. In some cases, regional terminology does not clearly identify component states. Use of data from Delaware's neighboring states is suspect because parts

of those states are distant from Delaware and share few, if any, commonly identifying characteristics and interests. Thus, the focus here is necessarily on Delaware rather than some ill-defined region.

The Federal Energy Administration has prepared energy forecasts to 1980 for each of the states. The Delaware Energy Resources Conservation and Development Commission, created by Executive Order No. 106 and discussed below, has independently predicted State energy needs based on State population projections and national economic growth forecasts. With no allowance for energy conservation, the Commission prediction shows a 19 percent increase in demand between 1975 and 1980, a 33 percent increase between 1975 and 1985, and a 50 percent increase between 1975 and 1990. The Federal Energy Administration forecasts show slightly higher consumption rates, in part because it uses higher population projections. Inasmuch as the State anticipates substantial savings from implementation of energy conservation measures, both projections are probably pessimistic.

Delaware, like other states along the East Coast, has already experienced gas shortages. In the winter of 1976-1977, several industries in the State were forced to close temporarily because of a 1.8 billion cubic feet shortage.

The long-term energy situation for both the State and the Nation is equally uncertain. The next part discusses efforts at the federal level for addressing such uncertainties.

FEDERAL ENERGY INITIATIVES

The Congress has expressed its concern over energy resources in several statutes. One of those, the Federal Energy Administration Act of 1974, states that:

> "The Congress hereby declares that the general welfare and the common defense and security require positive and effective action to conserve scarce energy supplies, to insure fair and efficient distribution of, and the maintenance of fair and reasonable consumer prices for, such supplies, to promote the expansion of readily usable energy sources, and to assist in developing policies and plans to meet the energy needs of the Nation."

The Coastal Zone Management Act, of course, also addresses energy problems. In it, the Congress finds that:

> "The national objective of attaining a greater degree of energy self-sufficiency would be

> advanced by providing Federal financial assistance to meet state and local needs resulting from new or expanded energy activity in or affecting the coastal zone."

Energy activities are broadly defined in the Act and must be considered during Coastal Management Program development. Substantial sums of money are appropriated under Section 308--the Coastal Energy Impact Program--for energy impact assistance.

More recently, the Department of Energy Organization Act, of August 4, 1977, created a Department of Energy to carry out a comprehensive national energy policy. Among the major programs under the new Department are conservation, resource development and production, research and development, date information management, and regulation.

Purposes of the Federal Energy Policy and Conservation Act are:

1. to grant specific standby authority to the President, subject to congressional review, to impose rationing, to reduce demand for energy through the implementation of energy conservation plans, and to fulfill obligations of the United States under the international energy program;

2. to provide for the creation of a Strategic Petroleum Reserve capable of reducing the impact of severe energy supply interruptions;

3. to increase the supply of fossil fuels in the United States through price incentives and production requirements;

4. to conserve energy supplies through energy conservation programs, and, where necessary, the regulation of certain energy use;

5. to provide for improved energy efficiency of motor vehicles, major appliances, and certain other consumer products;

6. to reduce the demand for petroleum products and natural gas through programs designed to provide greater availability and use of this Nation's abundant coal resources; and

7. to provide a means for verification of energy data to assure the reliability of energy data."

Among other things, the Act provides federal funding and technical assistance to state conservation programs. To qualify, states must prepare and implement energy conservation plans to achieve conservation energy savings of at least 5 percent by 1980.

The Energy Policy and Conservation Act also authorized the Federal Energy Administration to require power plants and other major fuel-burning installations to convert to coal. This authority extends powers conferred in the Energy Supply and Environmental Coordination Act of 1974, and may impact energy facility siting choices, as well as the environment.

The potential conflict between energy needs and environmental quality is acknowledged in a number of statutes, including the Clean Air Act, as amended in 1977. That Act provides that the Governor may petition the President to determine that a national or regional energy emergency exists of such severity that air quality standards may be temporarily suspended. Suspension is permissible only if there exists in the vicinity of the pollution source a temporary energy emergency involving loss of necessary energy supplies for residential dwellings or high levels of unemployment.

Part of the solution to energy problems, of course, is the siting of facilities which make efficient use of energy resources. Those facilities are discussed in the following discussion of CMP energy facility issues and policies.

## CMP ENERGY FACILITIES ISSUES AND POLICIES

### CONSERVATION

The Nation's economic security and the American way of life will be gravely endangered unless the United States makes a timely adjustment of its use of energy. Oil and gas provide about 75 percent of the country's energy needs, but constitute less than 8 percent of its energy resources. In early 1977, the Nation imported 9 million barrels of oil per day, one-half of the domestic supply. During an 8-month period in that year, oil imports were reportedly worth $23 billion. Moreover, oil and gas supply disruptions have already caused temporary unemployment of more than one million American workers--some of them Delawareans. Finally, most of the known oil and gas supplies are owned by nations which have uncertain relationships with the United States, a situation which jeopardizes foreign policy and the reliability of future energy imports.

As oil and gas supplies continue to dwindle, the problems of the adverse balance of trade, energy shortage-induced unemployment, and a weakened foreign policy posture may be aggravated unless the country learns to change its energy consumption habits. Ultimately, new sources of energy must be developed. In the meantime, conservation measures are needed to mitigate the impacts of the growing energy crisis.

In response to the Federal Energy Conservation and Production Act (P. L. 94-385), Delaware's Energy Office has developed an Energy Conservation Plan for the State of Delaware. That plan has been approved by the Federal Energy Administration and is hereby incorporated into the CMP by reference. The objective of the plan is to reduce energy consumption in the State by more than 5 percent by 1980. Measures which will be utilized to achieve that goal include, but are not limited to: increased thermal and lighting efficiency in State buildings; industrial and commercial energy audits; homeowner energy audits; legislation allowing right turns on red stoplight signals; strict enforcement of highway speed limits; promotion of the use of carpools and mass transit; waste oil recycling; and several energy conservation educational programs.

The Governor not only has supported energy conservation measures with the development and adoption of the Energy Conservation Plan, but also with two Executive Orders. Executive Order No. 15 restricts the use of air conditioning in State buildings and encourages homeowners to do likewise. Executive Order No. 9 establishes the Governor's Energy Resource Management Commission which, among its other duties has assisted in the development and updating of the Energy Conservation Plan.

By virtue of House Joint Resolution No. 11 (1977), the Delaware General Assembly has also adopted energy conservation as an official State policy. Moreover, the Delaware Energy Act of 1978 implements many of the program steps adopted by the Delaware Energy Conservation Plan, as well as several other energy conservation measures.

Finally, the CMP encourages the reduction of demand for energy by recommending more energy efficient land-use patterns. Several recent studies have demonstrated that substantial energy savings can result from the clustered form of land development, which is encouraged by the Program's public investment policies.

ENERGY FACILITIES SITING

1. Petroleum Refineries

5.D.3.

a. The National Interest

Oil which the country needs for energy and other purposes will have to be refined at petroleum refinery facilities. Petroleum refineries serve the national interest by converting crude oil, natural gas liquids or synthetic crude into gasoline, jet fuels, kerosene, diesel fuel, fuel oils, lubricants, waxes, petrochemical feedstocks, etc. Refineries also provide tax revenues and jobs, although few jobs on a per acre land use basis.

b. Potential Demand

As of November 1976, there were approximately 140 refining companies operating 276 refineries in the United States. The total national refining capacity that year was about 16.0 million barrels per day, slightly less than the 16.4 million barrels per day of total domestic demand for petroleum products.

Private industry typically initiates the siting process for petroleum refineries and associated facilities when the demand for facilities is such that there is a reasonable opportunity for profit. The public knows less about the demand for petroleum refineries than for electric generating plants because government is not as actively involved in assessing the need for the former, or in providing for their siting. Private industry, of course, is reluctant to release data on its analysis of the demand for facilities in specific areas. Thus, it is difficult to quantify the potential demand for additional petroleum refineries in Delaware to the extent that the future demand for power plants can be quantified, for example.

Representatives of the American Petroleum Institute and the U. S. Department of Energy have previously acknowledged that there was no current need for new petroleum refineries in the region. Recently, the Department of Energy has endorsed increased refining capacity along the Atlantic Coast.

Major refineries in New Jersey--at Linden, Perth Amboy, Bayonne, Port Reading/Sewaren, Westville, and Paulsboro/Greenwich; Pennsylvania--at Philadelphia and Marcus Hook; and Delaware--at Delaware City--give the Mid-Atlantic area a total refining capacity of more than one and a quarter million barrels per day. Petroleum refineries in the Delaware Valley alone had a capacity in 1976 of nearly one million barrels per day. Eight hundred-fifty thousand barrels of crude oil per day were shipped into the Delaware Valley during 1975, and the growth rate of imported oil from all sources into the entire Delaware Valley indicates that the total regional refining capacity should expand at a very gradual rate. With the replacement of old

equipment and increases in refining capability of presently operating refineries, the need for new sites will be reduced. Industry officials have explained that refining capacity in the Delaware Valley Region could be almost doubled by upgrading equipment.

A large oil find on the outer continental shelf (OCS) off the East Coast could, on the other hand, increase the demand such that industry will seek new refinery sites. New refineries may also be in demand if the type of OCS crude varies substantially from the type presently refined, although it may be cheaper to modify existing refineries.

That OCS development will create new demand for refineries is not clear, however. The Council on Environmental Quality has pointed out that:

> "In some outer continental shelf frontier areas, the refinery siting problem may not arise at all. Insofar as outer continental shelf oil simply replaces imports, there will be no call for new refineries to handle it."

That possibility, perhaps, accounts for the methodology of a study conducted for the American Petroleum Institute--Mid-Atlantic Regional Study - An Assessment of the Onshore Effects of Offshore Oil and Gas Development--which assumes no new refineries or petrochemical plants will result from OCS development.

In any event, the oil industry is undoubtedly mindful that one principle of the National Energy Plan is that "resources in plentiful supply must be used more widely, and the nation must begin the process of moderating its use of those in short supply." As oil reserves dwindle , so likely, will the need for new sites for oil refineries.

c. Siting Criteria

Direct waterfront access is not an absolute requirement for a refinery. The Federal Energy Administration has offered oil refineries as an example of energy facilities which are not coastal dependent. National Oceanic and Atmospheric Administration regulations, which "implement" the Coastal Zone Management Act, do likewise. Finally, the Council on Environmental Quality notes that refineries are energy facilities that have been "especially" suggested for inland siting. Competitve aspects, crude availability, total environmental impact, energy efficiency, and land availability also are essential determinants of refinery site selection.

Cheap and convenient transportation of crude oil by pipeline makes it feasible to site refineries inland. Mobil Oil Company, for example, operates a 175,000 barrel per day refinery in Illinois which utilizes crude oil transported by pipeline from fields as far away as 1500 miles.

Nonetheless, many elements work together to favor coastal sites, including good markets in populous coastal cities, access to crude oil from abroad, and cheap water transportation. With OCS development, and possibly, superports looming on the horizon, the pressure to locate refineries in the coastal zone will probably continue.

Oil refineries are land extensive. Refineries with a capacity of at least 100,000 barrels a day are able to yield different products to meet seasonal--for example, gasoline in the summer, fuel oil in the winter--geographic, and marketing variations in demand. This flexibility encourages the siting of large refineries, with attendant demands for land. A new domestic refinery in the 250,000 barrel per day range requires roughly 1,000 to 1,500 acres of clear, flat, industrially zoned land. The site should have a maximum slope of 5 degrees, moderately well-drained soil and the capability to support large storage tanks and processing units.

Being largely automated and having substantial acreage of storage tanks and pipelines, a petroleum refinery requires few employees per acre, that is, the employee: acre ratio is low. The capital investment per acre of actual refinery area (operating area excluding buffer and unused acreage) is, however, very high.

Water in large quantities is essential to petroleum refinery operations. The amount of water used depends upon the size of the refinery, the complexity of the product mix, the processing and cooling system technology, and water quality. With an efficient mix of water and air cooling, a 250,000 barrel per day refinery uses between 5 and 15 million gallons of water per day.

Finally, oil refineries require substantial amounts of energy. Electricity, fuel oil, and gas are the major power sources, with purchased electricity typically providing nearly 80 percent of the refinery's energy needs. Heavy-duty transmission lines and electrical substations are, therefore, normally necessary adjuncts to a refinery complex.

d. Impact on Natural Resources

The potential of a refinery for adverse impact on natural resources is directly related to its product mix and the processes

employed; the refinery size; and the sulfur content of the crude or intermediate feedstock being processed. Potential refinery pollutants include heat released either to the atmosphere or to a nearby water body; atmospheric contaminants from combustion required to generate heat and from the safety flare(s); from the evaporation of hydrocarbons and from catalyst regeneration; liquid contaminants resulting from contact of process streams with water; and solid and semi-solid contaminants which occur as bottom sediment from tank cleaning, sludges from waste treatment processes, and spent catalysts.

Noxious-smelling sulfur is potentially a serious source of air, land, and water pollution requiring special attention. Several hundred tons of elemental sulfur may be disposed of each day.

Air emissions of a 250,000 barrel per day refinery have been estimated at the levels shown in the following table. As the table indicates, emission levels vary according to the quality of fuel oil utilized.

Estimated Air Emissions
From a 250,000 Barrel Per Day Refinery
(lbs/day)

| Type of Emission | Fuel Oil Yield | |
|---|---|---|
| | Low | High |
| Particulates | 20,820 | 17,220 |
| Sulfur Dioxide | 97,420 | 83,950 |
| Carbon Monoxide | 5,640 | 5,750 |
| Nitrogen Oxides | 42,082 | 35,145 |
| Hydrocarbons | 90,130 | 91,870 |

Source: Modular Results, "Effects on New England of Petroleum-Related Industrial Development," Vol. 2, (Arthur D. Little, Inc., April 1975), pp. II-35.

Hydrocarbons are a principal emission of petroleum refineries and are difficult to control regardless of fuel quality. These chemicals escape from storage tanks, pipes and valves and are transformed by atmospheric processes into oxidants, harmful to human health according to the Council on

Environmental Quality. Unfortunately, Delaware, along with most other Atlantic coast states, is in violation of federal oxidant level standards.

Liquid refinery wastes include: wastes containing feedstock or process product; process by-products; spills and tank cleaning wastes; non-process effluents, such as blowdown, water treatment and sanitary wastes, ballast from tankers, etc.; and storm water, where the degree of contamination depends on the nature of the drainage area.

Undesirable components of refinery wastewater include: floating and dissolved oil, suspended solids; dissolved solids; phenol and other dissolved organics; cyanide; chromate; organic nitrogen; phosphate; sulfides and mercaptans; and caustics and acids.

A 100,000 barrel per day refinery typically produces the following effluents which may require land disposal: 225 barrels per day of waste treating unit sludge; 325 barrels per day of raw water sludge; 700 barrels per day of spent caustic, which may contain sodium hydroxide, sodium sulfate and sodium sulfide; 20 barrels per day of settling pond sludge; 3 barrels per day of tank cleaning sludge; 4.8 tons per day of electrostatic precipitator output; 6 tons per day of cyclone separator output; 35 tons per day of coke fines from bag filters; 0.3 ton per day of coke chunks; 0.3 ton per day of waste catalysts; and 0.2 ton per day of spent sulfur plant catalyst.

If a coastal location is chosen for an oil refinery, environmental disturbances will occur primarily to marine or estuarine communities. A coastal refinery is usually co-located with a marine terminal. Jetties, piers, and crude oil delivery and oil product transshipment facilities typically comprise a marine terminal for refineries. The construction impacts of those structures can be significant.

More critically, oil transfer operations pose accidental spillage risks. The impacts of oil spills on coastal resources is discussed most thoroughly in the deepwater ports section.

The severity of impact on fauna and flora will depend in part on their tolerance, the toxicity of the wastewater discharge, the size of the receiving waters, the flushing rates of the receiving waters, and the physical-chemical characteristics of the receiving waters. Also important, of course, is the amount and nature of habitat destroyed or disrupted by the construction or operation of the refinery or associated transportation facilities.

In sum, oil refineries may impact natural resources substantially. The next part describes how the Coastal Management Program mitigates such impacts and provides for the siting of oil refineries in Delaware

e. Petroleum Refineries in Delaware

1. THE CMP ABSOLUTELY PROHIBITS THE CONSTRUCTION OF NEW PETROLEUM REFINERIES IN WETLANDS OR IN THE COASTAL STRIP LYING BETWEEN A SERIES OF INLAND ROADS AND THE DELAWARE AND BAY -- A STRETCH OF LAND WHICH VARIES FROM A FEW HUNDRED YARDS WIDE IN NORTHERN DELAWARE TO A MAXIMUM OF 12 MILES IN THE SOUTH.

This coastal strip is the Delaware Coastal Zone Act's "coastal zone." It averages approximately 4 miles in width and comprises about 20 percent of the State's total land area, as well as all of its territorial salt waters. This coastal zone is termed the "coastal strip" in the CMP document and is described and mapped in Section 5.A.4 (Coastal Strip and Submerged Lands). This coastal strip for State regulatory purposes should not be confused with the coastal zone for CMP purposes, which is the entire State.

The Coastal Management Program prohibits new refineries in the coastal strip in order to protect the quality of the natural environment and the coastal uses which that quality permits. The resource section of the Program document describes the national and State interests in preserving natural resources and also briefly discusses the impacts of facilities, including oil refineries. Protection of tbose resources is, of course, part of the basis for excluding refineries from the coastal strip. Resources within the coastal strip are accorded more protection than in inland areas primarily because they are generally either more valuable, or more fragile.

The examples are evident. An oil refinery near the Atlantic beaches is incompatible with the recreational uses of that resource--air and water quality, visual impact, and additional demands on limited water supply are all problems. The potential difficulties of a coastal oil refinery near a wetlands area has previously been noted in the resources section of the CMP. Inland sites pose lesser threats to wetlands and the fish and wildlife these support. In addition, inland sites are usually farther from floodplains.

Most of the State's wetlands are within the coastal strip. Large-scale construction of any kind is prohibited in wetlands. The Coastal Management Program designates wetlands as Geographic

Areas of Particular Concern and a full discussion of this invaluable resource is presented in the Program document. In brief, wetlands serve the national interest in many ways including contributing to food production, flood protection, recreational opportunities, water quality, coastal shoreline stabilization, the economy, and education.

Comparing the value of wetlands with the value of oil refineries or other energy facilities is to compare unlike things with highly dissimilar values. Although it may be impossible to state with certainty that a given wetlands area is more valuable to the State or the Nation in its natural state than it would be if it were utilized for a refinery site, the Coastal Management Program policy against wetlands destruction is justified on several grounds. First, and most important, alternate sites with less natural value are available and suitable for industrial development, but the reverse is not true. An existing wetland area cannot be relocated whereas an unbuilt energy facility can be readily relocated. As the President has pointed out, the Nation is losing wetlands at the rate of 300,000 acres per year and "must now protect against the cumulative effects of reducing (its) total wetlands acreage.

Another reason for excluding refineries from the coastal strip is that refineries have the capacity to stimulate additional industrial development in the same area because they produce products which are useable by other related industries. As one study points out, "...industries which use refined products either as fuel or as raw materials, particularly the petro-chemical industry, will find it desirable to locate near refineries." The Council on Environmental Quality supports that statement:

> "With offshore production, the petro-chemical development (in the Mid-Atlantic Region) is expected to increase roughly in proportion to refinery development..."

Thus, the secondary environmental impacts of an oil refinery in the coastal strip, if permitted, could be substantial.

A further reason for this exclusion of petroleum refineries is the principle expressed in 1971 with the enactment of Delaware's Coastal Zone Act that industrial land uses in the coastal strip should maximize employment per acre whenever possible and, as noted previously, petroleum refineries have a very low employee per acre ratio.

2. NEW PETROLEUM REFINERIES ARE NOT PROHIBITED INLAND PROVIDED STATE AND LOCAL ENVIRONMENTAL, LAND USE AND SITE DEVELOPMENT STANDARDS ARE MET.

The prohibition of new refineries set forth in Policy No. 1 eliminates, for now, some of the most attractive sites in Delaware, namely those fronting the Delaware River and Bay, where waterfront access is assured. As mentioned above, however, direct waterfront access is not absolutely necessary. Moreover, the northern portion of the prohibited strip is very narrow, which means that nonrestricted areas are close to the River and Bay.

It is difficult to compare, for example, the national and State recreational value of beaches with the interest in the products processed by oil refineries. From a national perspective, Delaware's beaches seem to be a rarer, and perhaps more valuable, resource than existing oil refinery sites, which dot the Mid-Atlantic region, or potential sites, which occur in many more locations.

Some of those potential sites are in Delaware, outside the coastal strip, and, as provided in Policy No. 2, new refineries could be permitted, provided specified environmental quality standards are assured. Those standards, such as air emission standards, are described in the Program document. Those and other standards establish criteria by which industry can predict State approval of specific sites. An Energy Facilities Siting Liaison Committee, whose functions are described in the Program document, assists industry in site selection and understanding the various regulatory requirements.

The Coastal Management Program provides a means to assure a continuous evaluation during Program implementation of the need for new facilities, and to allow for amendment of policies for compelling reasons. If there is a critical need in the future for a new petroleum refinery in Delaware to serve national or regional energy needs, the CMP provides for it.

It is a fact that decisions to develop are more irreversible once put into effect than are decisions not to develop. To the extent that there exists uncertainty about the highest value use, a "waiting" policy makes sense. This may account, in part, for President Carter's statement to The Congress that he is "...pleased at the number of states taking positive action to protect their natural resources."

The U. S. Department of Energy has unofficially expressed its concern that the prohibition may indicate a regulatory process

which does not give reasonable assurance of due consideration to allowing petroleum refineries in the coastal strip. That view is erroneous for several reasons.

First, the future siting of petroleum refineries in the coastal strip has already been considered. If the rationale for any standard of conduct must be re-examined each time the standard is applied to a set of circumstances, then the standard serves little purpose and outcome predictability is negligible.

The second factor bearing on the Department of Energy's concern is, as mentioned above, that the Coastal Management Program will continue to examine the viability of the policy and include in that examination consideration of the national interest in the facility.

It is possible, after adequate consideration of the national interest, that a given oil refinery will not be permitted at a specific site under the Coastal Management Program. The Federal Power Commission informed the Delaware Coastal Management Program during program development that the Commission had to be certain that each program "provided" for its own future energy needs and its fair share of regional and national needs."

The Federal Energy Regulatory Commission in July 1978 added that the FERC has "no interest in defining the energy future (including energy conservation) of any State, but we consider it necessary and realistic that State officials and the public demonstrate an understanding of the energy supply consequences of their coastal management program."

There are several flaws in those views. The states represent a diversity of resources that must be recognized. It is unlikely that energy production is the best course of action for each coastal state. In some states, wisest resource management may favor energy production. In other states, the national and state interest in natural resource preservation may be best served by precluding the siting of energy facilities.

In any event, the current oil refinery capacity in Delaware exceeds State demands, and makes Delaware a net exporter of petroleum products. The Getty Oil Company's 140,000 barrel per day capacity refinery in Delaware City is larger than either refinery on the New Jersey side of the Delaware River, and contributes substantially to the total refining capacity in the Mid-Atlantic region. That region--comprised of New Jersey, Pennsylvania, Maryland and Delaware--receives far more crude oil than any other East Coast area. New England, despite its heavy demand for heating oil, is without refineries, and, with the exception of a medium-sized plant near Norfolk, Virginia, there is no refining capacity on the Atlantic coast south of Delaware.

It is also noteworthy that Delaware's prohibition does not apply to the expansion of existing refinery facilities.

The only oil refinery in Delaware, located within that area where new refineries are prohibited, may be allowed to expanded its operations, provided a coastal zone and all other permits are obtained.

The Coastal Energy Impact Program (CEIP), established by the amended Coastal Zone Management Act, may help compensate for State and local environmental losses due to new petroleum refineries and other energy facilities sited in the coastal zone. The federally funded CEIP is designed to protect State and local, not national interests. However, State and local environmental losses and public expenditures due to coastal energy activities may or may not be fully covered by available CEIP funds.

2. Deepwater Ports

a. National Demand

There is no port in the contiguous 48 states with deep enough water to accommodate the 60-foot draft of the standard 200,000 ton "very large crude carriers," the so-called supertankers; and no East Coast port can handle anything larger than 80,000 tons fully loaded--most are restricted to tankers of no more than 50,000 tons. Yet, because of economies of scale, supertankers are carrying an increasingly large part of petroleum in world trade. In 1966 there was only one tanker in the world over 200,000 deadweight tons (dwt). By the end of 1975, there were over 583 supertankers this size in service, and 205 more were under construction or on order. Only 10 percent of the world's fleet, those 583 ships carried 40 percent of the crude oil shipped in world commerce.

The cost advantage of supertankers is demonstrated by comparing a 250,000 dwt tanker and a 50,000 dwt tanker. The latter normally serves Delaware Bay and New York Harbor and averages 40 feet in draft. A 250,000 dwt requires 70 feet of water, but can carry oil over long distances at about half the cost-per-barrel of the smaller tankers.

The U. S. Maritime Administration believes that deepwater ports can help keep the Nation's industry competitive, and, accordingly, has informed the Coastal Management Program that the exclusion of a deepwater terminal could affect the United States economy.

The Congress has also acknowledged the national interest in deepwater ports. The Deepwater Port Act of 1974 establishes a federal program to license ownership, construction, and maintenance of ports located outside the states' territorial limits to unload oil for transportation to onshore receiving facilities by pipeline or shallow draft lighter. The Act includes provisions for environmental review, public access to information, citizen civil actions, and strict liability for oil pollution. It also recognizes state and local concerns, and requires the prior approval of the Governors of coastal states adjacent to proposed deepwater ports.

One consideration in any gubernatorial approval or rejection undoubtedly will be the possibility of oil spills. Deepwater ports are generally regarded as safer than lightering, assuming equal amounts of oil are transferred. For example, the U. S. Office of Technology Assessment has estimated that a hypothetical deepwater port 30 miles off the New Jersey coast would spill half as much oil as small tankers based on the probable total spillage within 50 miles of shore.

A deepwater monobuoy-pipeline system avoids some of the hazards which have given tankers a questionable oil pollution record. Tanker groundings and collisions, oil transfer operations, oil ballast water discharges, and tank cleaning discharges are some of the tanker pollution sources which, to date, have been difficult to control.

Four factors make the risks of oil spills from deepwater port operations generally lower than the risks from small tanker operations: (1) a deepwater port reduces the number of tankers that must be used to move the oil; (2) close surveillance of oil transfer and handling is possible, allowing stricter enforcement of safety standards; (3) oil tanker traffic can avoid crowded harbors; and (4) the distance between the port and the shoreline may reduce damage to valuable coastal areas.

On the other hand, stricter tanker operation standards, improved communications technology and tanker design, and more intensive training of crews, combine to raise the hope that oil transport by tanker will become appreciably safer in the future. Stricter ballast regulations, computer and radar assisted marine traffic managements systems, double bottom hulls and twin screws, and training and licensing of crews will reduce tanker accidents and the risks associated with their operation.

b. Potential Demand

In early 1977, the United States imported 9 million barrels of oil per day. According to a recent study by the College of

Marine Studies at the University of Delaware, approximately 70 percent of all the oil that is delivered to the East Coast moves by water up the Delaware Bay and River.

Despite the high volume of crude oil traffic in the Delaware Bay and the relatively cheaper cost of supertankers vs. smaller tankers for long haul trips, recent studies being done for the State indicate that economics have not yet justified construction of a deepwater port in the Mid-Atlantic region. A 1975 study by the maritime industry oriented Penjerdel Corporation (Oil Port Update) of the feasibility of a deepwater port in the Delaware Bay concluded that a port-pipeline system, sepecially if modest in size, was not economically competitve with a lightering operation.

Rapidly rising construction costs have dissipated the advantages a deepwater port may have enjoyed in past years. The costs of a port inside Delaware Bay range from $193 million to more than $400 million. Moreover, the estimated direct cost of dredging some 15 million to 20 million cubic yards of Bay bottom for a channel to handle 250,000 dwt tankers is estimated at an additional $40 million.

In 1971, the Delaware Bay Transportation Company calculated that oil could be transferred through its proposed port for 12 cents a barrel. At 1975's inflated construction costs, the price would have been 25 cents, even without imposition of a State tax. By comparison, the 1975 lightering charge was between 8 and 11 cents per barrel.

Only large supertankers on the longest trips between the Persian Gulf and the Mid-Atlantic region could take economic advantage of the port at such inflated prices. For tankers less than 100,000 dwt, lightering would be cheaper. Since most oil imported in the Delaware Valley is not brought from long haul distances, a deepwater port today would seem to be economically untenable.

If future oil imports to the Mid-Atlantic region increase dramatically, or if the source of imports changes, there may be greater demand for a deepwater port in the Delaware Bay or off the Atlantic Coast. In the former case oil refinery capacity will have to be sufficiently large to make a port attractive. However, opposition to oil refineries, federal air quality regulations, inflated construction costs, and federal tax policies and import quotas are some of the factors which may deter industry from expanding refinery capacity in the Mid-Atlantic.

On the other hand, if oil consumption increases dramtically, there may be pressure for more refineries, more oil imports, and a



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deepwater port. The Federal Energy Administration has, perhaps pessimistically, predicted that oil consumption in New York, New Jersey, Delaware and Pennsylvania will climb from 2.7 million barrels a day in 1975 to 3.8 million barrels a day by 1985. Based on that estimate, the Federal Energy Administration has also predicted that crude oil imports supplied through New York Harbor and the Delaware Bay will increase from 1.2 million barrels a day to 2 million barrels a day. Moreover, a lone deepwater port on the East Coast could attract supertankers which would otherwise head for other eastern harbors. Finally, a large find on the outer continental shelf and a pipeline hook-up to the port might make the port profitable.

Those speculations probably account, in part, for the current interest in a proposed monobuoy port to be located about 30 miles east of the Delaware shore. Still in the planning stages, private industry has contacted Delaware with proposals to operate a fixed monobuoy. Under these proposals, the State would be the licensee of the port and exert direct control over it.

c. Siting Criteria

The least expensive, most versatile, and most likely deepwater port design is the monobuoy. There are different types of monobuoys, but generally they consist of a floating platform anchored to the sea bottom, with a hose which connects to a buried pipeline. During the construction phase of the port, about 20 acres of waterfront land is required for support. Onshore tank farms--typically storing 10 times the port's daily capacity to assure refineries of a continuous crude supply in the event of a bad weather induced port shutdown--could require an additional 125 acres to 300 acres.

New refineries, of course, would need still more space. Several years ago, the Delaware Bay Transportation Company purchased 1,800 acres of coastal land at Big Stone Beach for storage tanks, landside headquarters, and a supply base for a deepwater port which the company had hoped would be sited in the Delaware Bay.

The economic advantages of a Bay site include the relative proximity to energy consumers and processors, as well as shelter from high seas; the chief advantage of a deep ocean site is the lack of dredging requirements.

Bad weather can temporarily close an ocean offshore port because seas higher than 6 to 8 feet make tanker mooring operations impossible. Only on rare occasions does weather stop tanker

traffic in the Delaware Bay and off-loading in the Bay is restricted only on an average of 30 days per year.

The reported depth of the channel in the Delaware River and Bay varies according to the source and location reported. It is clear, however, that the channel is not deep enough to justify a port near the refineries on either side of the Delaware River. The estimated cost of dredging the 40 foot authorized River channel to 45 feet has been estimated at $300 million, 50 feet would cost $750 million. Moreover, maintenance costs, spoil disposal and salt water intrusion into fresh water aquifers all present additional difficulties.

Portions of the Delaware Bay north of Cape Henlopen are between 58 and 65 feet deep in places. One study concludes that with some dredging an area from Cape Henlopen approximately 12 miles long and one mile wide could sustain operating depths of 70 to 80 feet. However, it would be expensive. A 1969 feasibility study by the United States Coast Guard estimated that the then annual direct cost for deepening the Bay as far as Big Stone Beach to a 72 foot depth would be in excess of $13 million.

Finally, other important deepwater port siting considerations are its possible effect on navigation, on national defense, or on other uses of the sea.

d. Impact on Resources

The Deepwater Port Act requires that the ports be constructed and operated "using best available technology, so as to prevent or minimize adverse impact on the marine environment." U. S. Coast Guard regulations, however, do not specify standards for site selection with criteria such as water depth, dredging requirements, proximity to spawning areas, or sea bottom characteristics. Nor do the regulations include requirements for specialized tanker design to reduce the risk of oil spills. Absent those provisions and probably even with them, the most serious threats to resources posed by deepwater ports are oil spills, dredging operations, and onshore support activities.

Most oil spilled in the ocean floats long enough for wind and water forces to distribute the petroleum hydrocarbons into the water column, sediments, atmosphere, and organisms. The immediate and lethal effects of large oil spills have been demonstrated repeatedly.

In some cases, marine communities can recover remarkably fast. For instance, the biological recovery after a year and a half of the Santa Barbara oil spill was just about complete.

However, the Santa Barbara spill was in an open ocean channel and never reached wetlands.

Both Delaware and New Jersey contain miles and miles of wetlands which are located immediately behind the Bay sand beaches. Access to the wetlands is through small creeks and rivers, which are more plentiful on the Delaware side of the Bay. Moved by tides and winds through those waterways, a massive oil spill would be disastrous.

Oil spills kill birds in several ways. The natural buoyancy and insulation provided by feathers are removed by oil, causing hapless birds to freeze and drown. The Torrey Canyon oil tanker spill reportedly killed 40,000 to 100,000 birds, a tragedy compounded by the slow capacity of birds to recoup population losses. The Wildlife section of this document describes the very large number of waterfowl that rely on clean Delaware wetland and waters.

The number of people relying on Delaware beaches for recreational enjoyment is also described in this document. The impact of a spill near beaches was illustrated in a supertanker spill close to Chilean beaches. In that spill, oil, sand and pebbles combined to make something that resembled asphalt paving on 40 miles of beaches. One remedy for that type of disaster, utilization of detergents, introduces into the environment chemicals frequently more toxic than the oil itself.

It is not clear, of course, that the oil spill threat posed by deepwater ports is graver than the lightering threat. Indeed, the higher probability of total oil spillage of the latter's operations would seem to indicate the opposite. Several considerations, however, detract from a Delaware Bay deepwater port vis-a-vis lightering. One, despite probability analysis to the contrary, there have been no reported serious accidental spills in the Delaware Bay from lightering since its inception in 1959 although some minor spills have occurred. Two, the potential impact of a grounding, collision, or other accident by a barge or small tanker does not compare to that of a 225,000 ton capacity supertanker. Three, any deepwater port site on the Delaware side of the Bay would have to be in close proximity to valuable wetlands and/or beaches. A large spill in that area would be catastrophic. Four, a deepwater port in the Delaware Bay would likely result in an increase of the total volume of oil entering the Bay's fragile ecosystem. Thus, while the spillage might theoretically be less for a port than for an equal amount of lightered imports, a port could in fact mean more total spillage due to the higher volume of oil imports generated by a port.

A deepwater port in the ocean fares better by comparison. The likelihood of collision is probably less, but the greatest advantage is that a supertanker accident 20 or 30 miles offshore would be easier on coastal resources than a Bay port. Even if spilled oil reached shore from that distance, its toxicity would be substantially reduced. A report to the National Science Foundation estimates that whatever oil from a 30,000 ton spill 20 miles off the Delaware coast reached the Bay would be roughly one-sixth as concentrated as it would be were it spilled directly in the Bay. Moreover, oil spill models indicate that oil slick trajectories would disperse much of the oil in the ocean, an unlikely result in the confined Delaware Bay. As the report of the Delaware Bay Oil Transport Committee to a former Governor puts it, "A massive spill of 100,000 or more barrels of crude oil would remain in the Bay for several weeks. The general counterclockwise circulation pattern would distribute the oil throughout the Bay..." That result is very unlikely with a port 20 or 30 miles offshore. Closer to shore, the spills have a more likely chance of reaching the beaches and possibly wetland.

The adverse impact of dredging operations also gives ocean ports a considerable environmental advantage over Bay alternatives. The Council on Environmental Quality reports:

> "the dredge spoil for a nearshore Delaware Bay location at Cape May, New Jersey, would amount to 150 to 200 million cubic yards--enough to cover 10 square miles to a depth of 14.5 to 19 feet...
>
> In all likelihood repeated dredging would also be necessary to keep a Delaware Bay channel and port open. An important direct effect of dredging would be the destruction of sea floor (or benthic) creatures, which are food for the valuable finfish of the Bay. Indirectly, dredging new deep channels could lead to higher salinity farther up the Bay, inviting such salt water predators as the oyster drill to the southern edge of the Cape May flat, which is one of the finest oyster setting areas in the United States."

Although the Delaware side of the Bay would require less dredging than the Cape May site, a Governor's Task Force on Marine and Coastal Affairs has concluded that the potential environmental harm is "incalculable."

Even eight miles offshore in the Atlantic Ocean, a fair amount of dredging would be necessary. As much as 8 to 10 miles of surf clam habitat would be affected in the building and maintenance of a deepwater port at such a site. Farther out, 20 miles offshore where the water is more than 90 feet deep, no dredging would be necessary.

Regardless of where the terminal is built, nearly everyone seems to agree that impacts induced by suppot activities would be very substantial. One scientist expects a deepwater port to produce:

> "enormous secondary environmental effects which perhaps would dwarf primary ones (construction, single massive spill, regular low level spills). Probably the minimum amount of onshore development would be extensive tracts of tank farms in the lower bay area."

The Delaware Bay Oil Transport Committee report concurs:

> "The Committee believes that the most serious consideration from Delaware's point of view is the potential for uncontrolled development of refineries and other heavy industry in the Coastal Zone."

Still another study conducted by Arthur D. Little, Inc. in 1973 concludes:

> "Whether a deepwater terminal in the Delaware Bay handles a low-level or high-level crude import volume, the effect upon the Mid-Atlantic Belt will be specific and noticeable, not only from an economic standpoint, but from visual psychological and physical standpoints as well."

The same study envisioned a port in the Delaware Bay transferring approximately 6.6 million barrels per day to new refineries in Cumberland and Cape May Counties of New Jersey. The study said that 14 square miles of the counties--now devoted to farming and resort activities much like southern Delaware--would be required for at least 9 new refineries and 13 new petrochemcial plants. As a result of the port and associated industries, the two counties would become "a new industrial center" with employment doubling to 300,000 workers by the year 2000.

The Delaware Bay Transportation Company proposal was more modest, with a planned 2 million barrel per day capacity. Nonetheless one new refinery, expansion of existing refineries, and other onshore facilities, mentioned above, were anticipated.

One method for alleviating onshore impacts in developed areas is to run the pipeline directly to existing storage and refinery facilities. Such a pipeline already connects the Raritan Bay-New York Bay region with southern refineries along the Delaware River. Thus, those two Bays have been considered "logical possible locations for the importation of large crude volumes via VLCC (very large crude carriers)." Another possiblity, discussed below, is construction of a new pipeline either up the Delaware Bay or on either side of it.

e. Deepwater Ports in Delaware

3. DEEPWATER PORTS ON THE DELAWARE SIDE OF THE DELAWARE RIVER AND BAY ARE PROHIBITED BY THE COASTAL MANAGEMENT PROGRAM. SUCH PORTS ARE ALSO PROHIBITED WITHIN DELAWARE'S THREE MILE JURISDICTION ALONG THE ATLANTIC OCEAN.

The program recognizes that deepwater ports may serve the national interest under certain economic and environmental conditions. At present, however, those conditions do not exist in the Delaware Bay.

Not only does there appear to be no current economic justification for a Bay port, but the environmental problems seem insurmountable. The Delaware Bay already receives more than twice as much crude oil as all the other East Coast bays, rivers, harbors, and ports combined. A deepwater port would probably increase the Bay's imports substantially, placing a grossly disproportionate share of the burden on the region, and possibly, through sheer volume, raising the probability of an oil spill.

That spill, because of the enormity of today's super-tankers could be catastrophic. The long and clean "track record" of lightering in the Bay raises additional doubts about a substitute method. Finally, there is no guarantee that a deepwater port in the Bay would preclude lightering.

All those factors take on added significance when the critical and fragile Bay environment is considered. The national interest in wetlands, wildlife, beaches, and other resources--detailed in other sections of the Management Program deserve as much protection as can be reasonably afforded. Although the Nation is assured that oil will

reach the refineries on the Delaware River without a deep-water port, it is not assured that some of its most productive, but dwindling, coastal resources can tolerate the blow such a port could deliver.

At the State level, the geographic boundaries of Delaware are of such small proportions that a coastal disaster is much more difficult to bear than is the case in larger states, the federal Coastal Energy Impact Program notwithstanding. Delaware's situation is substantially dissimilar from that of Texas or Louisiana.

The Coastal Management Program prohibition of a Delaware Bay deepwater port also takes into account that other sites appear more suitable. As one author puts it, "Based on environmental criteria, a (Delaware) bay site would be the worst place for a deepwater port." For its part, the Council on Environmental Quality, after a course of research on superports that involved five university reports, special Coast Guard studies, work with the Department of Transporation, and a comprehensive report on shoreside effects from a private contractor, evolved two principles for siting deepwater ports: "keep them away from shore and disperse them in a number of locations." The first of those principles has to do with protection of the coastal environment from oil spills and dredging operations; the second concerns social, economic, and environmental stresses onshore due to oil-related development.

4. NOTWITHSTANDING THE COASTAL MANAGEMENT PROGRAM OBJECTIONS TO A DELAWARE BAY DEEPWATER PORT, THE PROGRAM SUPPORTS THE CONCEPT OF A PORT OFFSHORE THE ATLANTIC COAST, PROVIDED IT MEETS CERTAIN ENVIRONMENTAL STANDARDS INCLUDING A LOCATION FAR ENOUGH OFF SHORE TO MINIMIZE OIL SPILL THREATS TO THE COAST AND TO OBVIATE DREDGING REQUIREMENTS; STRINGENT CONSTRUCTION AND OPERATION SAFEGUARDS; A DEMONSTRATED REDUCTION OF TANKER TRAFFIC AND LIGHTERING IN THE BAY; AND ASSURANCES THAT STATE FINANCIAL INTERESTS ARE PROTECTED.

An offshore port 20 or 30 miles off the coast could handle supertankers that a Bay port could not. Hopefully, the economies of scale would offset the additional transportation costs occasioned by a more distant site, however the CMP recognizes that economic considerations may constrain the development of such a facility in the near future and that such far offshore facilities have to overcome significant problems associated with their exposure to severe weather and sea conditions encountered in the open ocean. The coastal resource savings, although difficult to quantify, are more certain.

The Congress intended that coastal states be given a clear and loud voice in deepwater port siting decisions. Under the Deepwater Port Act, it is conceivable that a coastal state Governor could veto a deepwater port in federal waters offshore from that state. It is not conceivable that the Congress would abrogate that authority for sites within state waters and in close proximity to its valuable and vulnerable coastal resources. Thus, it is apparent, at least from the perspective of the Nation's legislative body, that the national interest in deepwater ports does not necessarily over-ride the national interest in coastal resources.

3. OCS Oil and Gas Support Facilities

a. The National Interest

The national interest in OCS development can be inferred in large part from the prior discussion of energy and the national interest.

With the country's onshore oil and gas supplies dwindling, there are only four ways to satisfy national energy demands: (1) reduce consumption; (2) switch to other energy sources; (3) import oil and gas from foreign countries; or (4) develop new national sources. The first two alternatives are not expected to solve projected short-term energy shortages, the third choice is unattractive politically and economically. Indeed, as the U. S. Department of Interior's OCS Office has informed the Delaware Coastal Management Program, the primary objective of the national OCS development program-- the fourth option--is to decrease dependency on oil imports.

No one knows for certain whether any recoverable oil and gas lies off the Atlantic Coast, however, the U. S. Geological Survey has estimated that between 5 and 14 trillion cubic feet of recoverable gas resources have been estimated at nearly one-third of total U. S. oil reserves and oil and gas development may reach 2-4 million barrels a day in 10 or 15 years, a substantial increase from the one million barrels a day now produced. With the Nation already using about 18 million barrels of oil daily, half of it imported, the OCS contribution will not by itself make the United States energy independent. It can, however, reduce the degree of dependency.

Some feel that it is important to develop the OCS resources as quickly as possible. For example, in its 6th Annual Report, the National Advisory Committee on Oceans and Atmosphere advises the President and the Congress that worldwide energy trends

have made the exploration and development of OCS oil and gas an urgent element in a national energy program, and that "delay could turn out to be a grave mistake." The Report also says that "concerns about the environment and about possible adverse impacts on the coastal States" may cause such delay.

Evidently, the President did not share the Committee's view, for the National Energy Plan (1977) states:

> "it is essential that they (OCS resources) be developed in an orderly manner, consistent with national energy and environmental policies. The Congress is now considering amendments to the OCS Lands Act, which would provide additional authorities to ensure that OCS development proceeds with full consideration of environmental effects and in consultation with States and communities . . . The Administration strongly supports passage of this legislation.

The lead time for major offshore oil and gas development is long enough to enable proper planning for the inevitable OCS development impacts, provided the President's advice is heeded.

Amendments in 1978 to the Outer Continental Shelf Lands Act establishing a new section to the Coastal Energy Impact Program have set-up a system, including up to 80 percent federal grants, to assist coastal states in meeting their administrative costs of participating in OCS energy resources management and development policy and planning decision. For five fiscal years beginning in FY 1979 these OCS grants are authorized at a 5 million per year with each affected coastal state to receive a minimum annual grant not exceeding $100,000. Unfortunately, for fiscal 1979 The Congress has appropriated no grant money. Nevertheless, assuming that this program does receive authorized funding in future years, the OCS State Participation program will encourage improved cooperation and coordination between federal agencies and state governments, and provide an important role for states to participate in formulating the OCS leasing program, reviewing federal actions affecting OCS development, making recommendations regarding development and production plans, and having access to OCS oil and gas information provided by the Secretary of the Interior, among other things. This new CEIP 308(c)(2) program is a practical step forward furthering the National interest in offshore energy production while providing a means for coastal states to express their concerns and have a meaningful input to the leasing, development and production programs.

Apart from the national interest in supplementing national oil and gas supplies with minimal environmental damage, OCS development is in the national interest because of the revenue it generates. Offshore oil and gas royalties of approximately $848 million made up the bulk of revenues collected in fiscal 1977 from mineral operations on federal land.

b. Potential Demand

OCS development related facilities may include oil and gas platforms, fabrication yards, pipeline coating yards, storage depots, crew and supply bases, pipelines, and tank farms.

The potential demand for the first of these--oil and gas platforms--is a function of where the oil and gas may be recovered. Although there are no known economically recoverable quantities of oil and gas onshore in Delaware, there is a fairly good possibility that there may be natural gas in Delaware's offshore lands.

The potential demand for Delaware facilities to support OCS operations depends on five factors: (1) the quantity of production estimated from exploratory drilling results; (2) the composition of the find--all oil, all gas or a mixture; (3) the rate of production; (4) the suitability of Delaware sites; and (5) the availability of alternative sites.

The first of those factors, estimated production, is presently the most important unknown in the entire Atlantic OCS development equation. A very large strike will create demand for many support facilities. If nothing is found, onshore support facilities will not be needed.

Exploratory oil drilling in the lease sale #40 area off the southern New Jersey coast as of February 1979 has produced little evidence of significant hydrocarbons. One company's test well found some natural gas; six other test wells of various oil companies have come-up dry. Other test wells are being drilled and lease sale #49 for tracts off the Delaware, Maryland, and Virginia coasts is scheduled for late February 1979.

Despite initial disappointing test drilling results Delaware's proxmity to promising lease tracts makes the State a possible location for a variety of onshore support facilities.

c. Siting Criteria

Absent guidance from State and local government, oil producers ordinarily make their siting decision on the basis of least cost. Oil industry representatives state a strong preference to locate their onshore bases as close as possible to their lease tracts because of transportation costs. Thus, while some OCS support facilities are not absolutely coastal dependent, the coast is usually a preferred site.

Pipe coating yards generally use less space than platform fabrication yards, but still require from 100 to 150 acres of waterfront land. A marginal wharf of 750 feet on water 20 to 30 feet deep; 150,000 gallons of water per day; and one million kilowatt hours of energy are also typically needed. Pipe coating yards are in demand for relatively short periods of time, thus a site easily adapted to another use at the termination of the pipe coating activity is indicated. Access to rail and major highways is desirable for transporting cement and other supplies.

The siting of a new fabrication yard depends on a significant oil or gas discovery because platforms can be towed from the Gulf region at less cost if many platforms are not required. If the find is of sufficient size to warrant new fabrication facilities, industry spokesmen believe only one fabrication yard will be needed on the East Coast.

Two sites in the Chesapeake Bay area are under consideration. One is on Sparrows Point in Baltimore City, the other is a 1000 acre site acquired by Brown and Root Company north of Cape Charles, Virginia. The combined land and waterfront requirements of the facilities make Delaware an unlikely site particularly since Brown and Root has recently announced a curtailment of their plans.

Storage depots also benefit from nearby transportation networks. They vary in size according to the operation requiring support, the facilities available, and the materials requiring storage. The typical area occupied by a storage depot used only to store pipes may be between 10 and 20 acres; a large number of such depots could reult in a cumulative land requirement which would be difficult to meet in Delaware's coastal strip.

The OCS operations base also generally includes facilities used for the storage, handling, and shipment of supplies whose next and final destination is at the site of the OCS operation. Temporary bases are used during exploratory drilling and require limited acreage--usually existing facilities are leased. A 15-20 foot channel, uncongested harbor and easy ocean access are desirable port characteriestics.

Permanent service bases are used during the OCS development stage. They are larger, typically utilizing between 25 to 50 acres; a 200 foot wharf, with 15-20 feet of water depth at the pier; and 8.2 million gallons of water per platform per year. As with temporary service bases, the location is influenced by distance, cost, land availablity, harbor facilities, and even entertainment facilities. The facility may include storage warehouses, open storage yards, oil storage tanks, limited construction facilities, oil spill containment equipment, crew boats, supply barges, and a heliport. In Lousiana, where over 400 helicopters service the Louisiana offshore area, a single helicopter base occupies over 200 acres by itself.

Repair and maintenance yards may be associated with the operations base. Many firms use these areas to provide repair services for vessels and equipment. Fast and efficient service by highly skilled labor are primary requirements of the oil industry for this type of work. Depending on the vessel type, flotation barge, mobile lift, haul out, or slideway facilities may be required. Quick access to road, rail, and air transport is necessary for fast delivery of supplies and parts.

Steel platform and pipeline installation bases require approximately five acres of waterfront land, with 200 feet of wharf space and a water depth of 15-20 feet at the pier. Distance is the most important siting consideration once those requirements are satisfied.

The marine pipelines themselves generally use a landfall site closest to the production area. The offshore route likewise follows the shortest path possible, but may be modified by anchorages, active faults, shifting bottom sediments, rock outcrops, environmentally sensitive areas or other features. A gently sloping sand or shingle shore approach is preferred, and shifting currents and sediments are avoided if possible. For gas, proximity to the nearest transmission line is important. For oil piped for transshipment, the landfall site will be influenced by the availability of a terminal and tank farm site.

The marine terminal typically includes a berthing system for vessels; loading and unloading equipment; storage tanks; terminal control and safety equipment; and navigational facilities.

Transshipment terminals load crude oil received by pipeline from offshore platforms onto tankers for refining elsewhere. Crude oil receiving terminals receive crude from tankers for delivery to a nearby refinery, with off loading facilities either or onshore depending on depth requirements of the crude carriers.

If oil produced offshore is loaded directly onto tankers or barges, a new marine terminal is unlikely in the Mid-Atlantic region because existing facilities can accommodate such oil. Even with a pipeline, a new marine terminal is usually not needed unless new refineries are planned or the distance to the refineries is very far, as in Alaska, for example. Neither exception currently applies in the Mid-Atlantic region.

The size of a terminal depends on the throughput from offshore, the number of berths at the terminal, the size and frequency of tankers, and the extra storage required for loading downtime · For a 250,000 barrel per day throughput with a storage capacity of one million barrels, the site would need approximately 30 waterfront acres--mostly for the storage tanks, 50 to 60 feet of sheltered water at a mid-depth pier or mooring buoy; and roughly 11 million kilowatt hours per year of energy.

d. Impact on Resources

Offshore exploration development, and production may impact commercial fishing, navigation, defense facilities, long-term ecosystem equilibrium, aesthetics, and so on.

Offshore exploration drillships, and development and production platforms use an area between two and five acres although semi-submersibles require much larger areas.

There are three major potential sources of water pollution: (1) drill cuttings and muds: (2) water brines; and (3) oil spillage caused by blowouts, fires, explosions, or transportation accidents. Offshore oil production contributes only a small percentage of ocean oil pollution. Gas well blowouts and other gas mishaps do not generally pollute water.

Drill cuttings are produced when the wells are drilled, and contain pulverized rock, sediment, and--possibly--harmful metals. Drilling muds are circulated through the wellbore to provide pressure control, lubrication of the drill bit, and removal of drill cuttings from the hole.

5.D.3.

When oil and gas are produced, waters associated with oil and gas pools are often produced also. Those waters are characterized by mineral contamination and require treatment under the Federal Water Pollution Control Act before they can be discharged back into receiving waters.

Relative to the likely impacts of these OCS characteristics, at least in the areas leased offshore in OCS Sale 40, EPA has determined that there will be no significant impacts. The State remains concerned about the likely impacts of such activities in shallow areas, particularly relative to impacts on shellfish beds and intertidal areas of particular value as spawning and nursery areas.

Despite the potential for offshore impact problems, the major environmental impacts of OCS development occur onshore from the construction and operation of the support facilities. Most of those use waterfront sites, the construction or improvement of which may impact wetlands, marine biota, water quality, air quality, beaches, and so forth. If dredging is required, the impact on marine organisms in the dredge area or at the spoils disposal site may be extensive.

Air emissions in platform fabrication yards can result from pipe and metal cleaning by sand blasting; painting; and the transportation emissions of cranes, trucks, trains, tugs, barges, and automobiles. Because of the large land requirements, sedimentation and runoff, problems may be substantial. Soil compaction caused by the constant movement of heavy equipment may decrease groundwater recharge. Wastewater contaminants--from cooling water, process water, and sewage--include heavy metals, and may be lethal to animal and plant life. Moreover, fabrication yards produce large quantities of solid waste, some of which is contaminated with hazardous substances. Noise pollution generated by heavy machinery may be noticeable by communities more than one-half mile from the site. Finally, 24 hour lighting and 200 foot high platforms cause aesthetic impacts.

The impacts of pipe coating yards and fabrication yards are similar. Air emissions from the former include carbon monoxide, sulfur oxides, nitrogen oxides, hydrocarbons, and particulates. Wastewater contaminants consist of thermal effluent, anti-fouling chemicals, and a variety of polluted process waters. Noise generally presents less difficulty than with fabrication yards, but solid waste and aesthetic problems do exist.

Temporary service bases have much less impact than any of the foregoing facilities, especially if the bases are located at or near existing facilities. Air emissions include hydrocarbons from fuel storage tanks and vehicle operations. Wastewater contaminants from bilge and ballast water consist of hydrocarbons and heavy metals. Twenty-four hour noise and up to 6 tons per day of solid waste cause additional impacts. Platform and pipeline installation service bases have about the same impacts as a temporary service base.

Permanent service bases have the same types of impacts, but on a larger scale. The land requirements for the larger service bases impose substantial impacts if undeveloped land is chosen.

Offshore pipelines are buried, except in very deep waters. The trenching method used removes sediments under the pipeline and causes temporary localized increases in turbidity which may affect benthic organisms. Impacts are greater near industrial areas where sediments are polluted. At the shore approach and landfall, site special construction procedures are necessary to protect the integrity of beaches and wetlands.

Onshore pipeline construction temporarily disrupts soil, vegetation, and animal habitats and can permanently disrupt natural drainage systems. According to the Office of Technology Assessment "...most biologists and other scientists agree that pipelines should be routed to avoid marshlands..." The same agency reports that pipeline networks have not been subject to stringent regulatory standards in the past. U. S. Coast Guard pollution incident records on oil spills in 1974, show that a major source of spills was pipelines. Pipelines can leak because of faulty pipe seams, external corrosion, damage from other sources, and improper operation by personnel.

Secondary impacts from pipelines may be the most significant. As the Delaware Bay Oil Transport Committee has explained, "A pipeline running through Delaware would have the highest potential for changing land use." According to another report:

> "a large onshore crude oil storage facility would presumably be erected close by the point where the pipelines come ashore... because of the economies involved, industry would wish to locate new refining or refinery-related processing facilities as close to the storage area as possible."

Although that reasoning may be somewhat circular, a pipeline terminus far from existing storage and refining facilities may stimulate heavy industrial development at the terminus or at the terminals of lateral pipelines fed from the main lines.

If storage tanks are built near the pipeline outfall, the inducement to add refineries may be irresistible. Even where present regulatory prohibitions exist, the law-making authority may yield to the combined pressures of industry, management and labor unions, real estate operators, and others.

A storage tank facility, by itself, can cause serious environmental harm. In 1970, for example, onshore storage tanks were the principle source of oil spills. Oil spill impacts in coastal areas are described in the previous deepwater ports discussion.

The land requirements for storage tank facilities, as mentioned above, can be substantial. The impact of site alteration depends on the characteristics of the site and the surrounding area prior to alterations. Drainage, runoff and erosion patterns are likely to be affected. Moreover, the welding, riveting, sand blasting, and other metal fabrication required in building the storage facilities may contaminate runoff with heavy metals. The day-to-day operations of a marine terminal may also generate the following types of wastewater: domestic; bilge water; ballast water; cooling water; boiler water; process water; and stormwater runoff.

If associated with transshipment facilities, the site may require channel dredging and maintenance. Those activities impact marine biota, and may change coastal water circulation and sediment supply--thereby affecting shoreline and beach erosion and accretion patterns.

Air emissions from storage tanks are caused by evaporation. Estimated leakage from one proposed storage facility with a capacity of more than one million barrels of crude oil was 115.3 tons per year. Evaporative emissions also result when oil is transferred from a tanker to the storage tank. The impact of hydrocarbons on air quality is substantial. Here, it is sufficient to note that they are partially responsible for photochemical smog and directly affect human health.

There are also other problems. Although small fires can usually be contained, the heat may cause explosions of adjacent stored oil. Highly toxic chemical wastes are found in the large quantities of sludge associated with storage facilities. Finally,

marked visual deterioration of the area around the site cannot be avoided in flat open areas with little industrial development, which are common in most of Delaware.

e. OCS Oil and Gas Facilities in Delaware

5. THE CMP GENERALLY SUPPORTS OCS DEVELOPMENT FACILTIIES DUE TO THE COMPELLING NATIONAL INTEREST AND LACK OF VIABLE ALTERNATIVES.

The Coastal Management Program recognizes the importance of OCS development to the Nation, the Mid-Atlantic region, the State and local communities. It acknowledges that the potential for adverse environmental impact is, in some instances, comparable with that of facilities which the program is less inclined to support--although the potential impact of OCS development facilities is not as catastrophic as some other facilities.

The Coastal Management Program supports OCS development for two additional reasons. One, such development affords the State and the Mid-Atlantic coastal region an opportunity to contribute to the national supply of vital energy resources which the State and region use, but heretofore have been unable to produce. Two, with proper coordination--among State, federal and local governments, as well as industry--and vigorous environmental safeguards, most of the problems associated with OCS development can be overcome. Coastal Managment Program coordination efforts as they relate to OCS development are described elsewhere in the program document, and subscribe to the President's recommendation to the Congress that federal consultation with states and communities improve "to assure that they have a real role in decisions which affect them."

Although demand for a Delaware platform fabrication or pipeline yard is unlikely, the Coastal Management Program provides for their consideration. Because those facilities are land extensive, require locations near the State's most important coastal resources, may cause severe and unacceptable effects, and may be sited in other coastal regions with less serious effects, the Coastal Management Program provides for review of proposed sites on a case-by-case basis. Approval of the sites is conditioned on meeting State environmental standards as well as local zoning approval. In addition, the following criteria are used to judge the suitability of the site: (1) applicable county and municipal comprehensive plans; (2) the effect on neighboring land uses; (3) the number and type of supporting public facilities and services required and their effects; (4) the economic effect; (5) environmental effects; and (6) aesthetic considerations. In addition, no major onshore facilities are allowed in wetlands for reasons explained elsewhere in the program document.

Storage depots and service bases are permitted provided State environmental standards and local zoning codes are complied with. There appears to be little potential demand for Delaware service bases during exploratory drilling operations. American Petroleum Institute members informed the Coastal Management Program that the Davisville, Rhode Island facility would probably be used exclusively for exploratory operations in the Mid-Atlantic.

Both State and Sussex County officials are actively promoting Lewes as a supply base. Lewes is the primary location of active industry in coastal Sussex County. About 12 industrial firms occupy 75 acres of land in and around Lewes, which is the closest Delaware port to the OCS activity. However, the water depth at the port may not be adequate to accommodate supply boats without dredging. Moreover, New Jersey locations--especially Atlantic City--appear to enjoy the closest proximity to the OCS activity in the Mid-Atlantic and Industry spokesmen have previously expressed a preference for the Atlantic City area should commercial quantities of oil and gas be discovered. Rising real estate costs, a shift in the location of OCS activity, and inadequate facilities may make the Atlantic City site less attractive.

In that case Lewes or other Delaware sites such as the Port of Wilmington may be selected. Wilmington has the capability of handling large quantities of supplies; is served by major rail, airport, and highway facilities; can provide public and commercial services; has a skilled labor force which may be needed for quick repair operations; and is the closest port to much of the OCS activity that can provide all these services. State and city officials are also promoting the Port as a possible supply base and industry has expressed interest.

The Coastal Management Program encourages the siting of supply bases at Wilmington, Lewes or wherever else they are compatible with (1) the preservation of environmental resources in accordance with the resource protection measures described in the document, and (2) any legal constraints established by the State or local governments.

A wide array of federal, State, and local measures provide pollution controls for OCS development operations. The Outer Continental Shelf Lands Act and the Federal Water Pollution Control Act allow the federal government to impose strict offshore operation standards. The Underwater Lands Act, Environmental Protection Act, and other Delaware statutes give the

State similar powers to control offshore and onshore operations in Delaware territory. Local zoning ordinances, building codes, and other devices can protect local interests, although--as the program document explains--those devices cannot be used to arbitrarily exclude OCS development support facilities.

6. THE COASTAL MANAGEMENT PROGRAM PERMITS OFFSHORE OIL AND GAS EXPLORATION AND DEVELOPMENT IN DELAWARE WATERS, ON A CASE-BY-CASE BASIS, PROVIDED ADHERENCE TO STRICT ENVIRONMENTAL SAFEGUARDS IS ASSURED.

A wide array of federal, state and local measures provide pollution safeguards for OCS operations. The OCS Lands Act and the Federal Water Pollution Control Act provide for strictly imposed federal standards. The State's Environmental Protection Act, Underwater Lands Act and other statutes give the State control over many OCS related activities both in the water and on land. The extensive array of authorities has been documented in a report done by Delaware for the Federal Energy Administration.

The following criteria are among those to be used in the siting of offshore drillships and platforms in Delaware Waters: (1) the number and size of the facilities should be as small as possible; (2) sensitive environmental areas, such as important fishery habitat, should be avoided whenever possible; (3) coordination shall be pursued with New Jersey officials responsible for fishery management, the Mid-Atlantic Fisheries Resources Council, the National Marine Fisheries Service, and the U.S. Department of the Interior; and (4) the desirability and availability of alternative sites must be considered, as well as the probability of oil or gas recovery.

7. OFFSHORE AND ONSHORE PIPELINES ARE PERMITTED BY THE CMP, PROVIDED THAT STATE AND LOCAL ENVIRONMENTAL CONTROL AND LAND USE STANDARDS ARE MET AND THAT STATE-DESIGNATED WETLANDS ARE AVOIDED WHERE EVER PRACTICAL. HOWEVER, THE TERMINUS OF OFFSHORE PIPELINES FROM BOTH OCS OPERATIONS AND DEEPWATER PORTS IS PROHIBITED IN THE COASTAL STRIP.

The Delaware Coastal Zone Act (7 Delaware Code, Chapter 70) prohibits offshore bulk product transfer facilities in the coastal strip unless they are located in the Port of Wilmington or unless the facility serves a single industrial or manufacturing facility for which a permit is granted or which is a nonconforming use. Offshore pipelines have been defined as an "offshore bulk product transfer facility" under prior permit applications and Attorney General's opinions. Such facilities (offshore pipelines) which merely cross (transit) the strip, however, are not subject to prohibition if they have no terminus within the coastal strip.

The discussion of deepwater ports explains some of the problems associated with pipelines landfalls in the coastal strip and the rationale for exclusion. In any event, the refineries and associated industries likely to be serviced by a Delaware pipeline are in Delaware City and Pennsylvania and the Coastal Management Program prohibition, therefore, is unlikely to create a problem.

Neither offshore nor onshore pipelines are likely to confront insurmountable regulatory obstacles. Unlike many coastal states, Delaware has a mechanism for leasing its offshore lands for pipeline right-of-way. The State Division of Highways procedures for granting onshore right-of-ways are clear, inexpensive, and expeditious. Further, State law provides condemnation powers to oil and gas corporations to acquire private property for the purpose of transporting oil and gas, if necessary. Finally, some local officials appear enthusiastic about an OCS pipeline.

The State, of course, is also interested in an OCS pipeline possibility. State representatives are working with the College of Marine Studies, University of Delaware, to identify sensitive Bay areas unlikely to be impacted by oil spills at specified locations and seasons. That work may be used to define low risk areas where pipelines would be acceptable environmentally.

8. NEW STORAGE TANKS CONNECTED TO OCS FACILITIES ARE PERMITTED OUTSIDE THE COASTAL STRIP PROVIDED STATE AND LOCAL ENVIRONMENTAL AND LAND USE STANDARDS ARE MET.

The inland siting of storage tanks is encouraged to avoid impacts on sensitive coastal/environmental areas and the possibility of induced impacts, as discussed previously. New storage tanks in the southern portion of Delaware's coastal strip could, for example, generate political and economic pressure for oil refineries or petrochemical plants. If pipelines are not used to transport OCS resources, dredging would likely be required to provide access to a coastal located storage facility.

Due to the potentially severe environmental impacts, both direct and induced, new storage tanks connected to offshore bulk cargo transfer facilities are not permitted in the coastal strip, with two exceptions. One, the Port of Wilmington (the entire river shoreline of the city) is exempt from the prohibition. Two, bulk cargo transfer-related tanks are also allowed in the coastal strip if they serve only a single industrial facility. Transshipment facilities are not included in the exception.

With the exception of oil storage facilities in Seaford, Delaware's storage facilities are located in the northern part

of the State near the Delaware Valley refineries. The siting of new oil storage tanks to accommodate OCS production will not be needed if such production merely replaces foreign imports, and may be unnecessary in any case.

4. Gas Plants

a. The National Interest

Crude oil production is usually associated with the production of substantial quantities of natural gas. Gas processing plants are designed to recover liquefiable hydrocarbons not removed by normal separation methods from the raw gas stream before it enters commercial transmission lines. Gas treatment plants are designed to remove impurities, such as sulfur, from the gas. Any one facility may include processing and treatment plants.

Gas plant products are liquefied petroleum gases; including propane, butanes, and propane-butane mixtures; natural gasolines; ethane; plant condensate; and small amounts of other hydrocarbon mixtures. The Nation's dependence on gas products is noted previously in the discussion of national energy needs and supply.

b. Potential Demand

According to a 1977 U. S. Bureau of Mines Report, there were 768 gas processing plants in the United States in 1974, with a total capacity of 73,874 million cubic feet per day. Only three of those plants were in East Coast states--two in Pennsylvania and one in Florida. Two coastal states, Louisiana and Texas, produced roughly three-quarters of the marketed natural gas production in 1974, and 40 of the lower 48 states consumed more natural gas than they produced.

The eastern states, particularly those in colder climates, are heavily dependent on natural gas. Should large amounts of natural gas be available from the Atlantic outer continental shelf, nearby onshore gasification plants will probably become cost effective, since the price of shipping gas west for processing and then transporting it back east for consumption is prohibitive.

The level of gas production, if there is any, from the Atlantic OCS is highly uncertain inspite of recent evidence of natural gas fround in OCS exploration efforts in the Mid-Atlantic. If, however, gas is produced at an offshore platform, it likely will be separated from the oil and water contained in the well stream; piped to shore; treated at a gas plant to remove impurities and processed to recover valuable liquid hydrocarbons;

and delivered to a commercial gas transmission line at a specified pressure and quality. The pipeline, if there is one, may dictate where the gas plant(s) is needed. Pipeline siting in Delaware is discussed in the deepwater port and OCS activity parts of this section.

c. Siting Criteria

Gas processing plants, like oil refineries, are not absolutely dependent on a coastal location. Gas company representatives have indicated that such facilities can be located as far as 10 miles from an OCS gas pipeline landfall. Difficulties arise at greater distances because of pipeline construction costs; the interference with telemetrics, which enable onshore control of offshore production wells; and the cooling of gas as it passes through the line from production to shore, which causes liquids to form in the pipelines. On the other hand, the high cost of some coastal land may outweight the advantages of a coastal site. Assuming, however, that a gas processing plant is needed in Delaware because of OCS development, a coastal location obviously would be the closest point to the gas field.

There are no standard designs or sizes for gas plants, each plant is specifically designed for the particular gas stream that it processes. The amount of land required is related but not directly proportional to throughput capacity. A typical billion cubic foot per day plant may require 75 acres of land, of which 20 may be used for building and structures. For planning purposes, a 50 to 75 acre site would be required for a gas plant processing between 200 and 1,000 million cubic feet per day.

The land, preferably flat and well-drained, is needed for buildings, storage facilities, pipes, towers, compressors, buffer zones, and parking lots.

Onshore partial processing facilities may be used to process natural gas or oil. A combined partial processing facility requires approximately 15 acres of land per 100,000 barrels of oil and associated gas processed.

Gas plant products are transported by rail, truck, pipeline, or barge, according to the transportation available and the location of markets for a particular product. Small plants may have products shipped by truck, but pipelines or rail are usually more economical for large product volumes.

Most gas processing plants use less than 200,000 gallons of water daily, but water demand can range from zero to 750,000

gallons depending on the cooling process used. A modern design would probably utilize an air cooled system with mimimal water requirements.

d. Impact on Resources

Gas plants generally pollute the environment less than oil refineries. Accidents occur more frequently in natural gas operations than in corresponding crude oil operations, but gas operation accidents usually cause far less environmental damage. For example, water pollution resulting from pipeline leaks or other malfunctions is less severe than for similar oil mishaps.

Wastewater contaminants include sulfuric acid, chromium, zinc, and chlorine from cooling water; phosphates, sulfite, and bases from boiler water; and dissolved hydrocarbons from diverse sources. Lubricating oils and caustics may also be discharged in the course of plant operations. In addition, the U. S. Department of Energy has pointed out that gas processing plants may cause thermal pollution by lowering or raising the water temperature several degrees before the water is returned to its source.

Substances concentrated in the effluent and heat, according to a comprehensive report by the New England Basin Commission, "can produce serious impacts on the receiving waters." The same report states that the chemicals added to the cooling stream to reduce corrosion and fouling within the condensor system may be "extremely toxic to aquatic organisms." Finally, the report points out that "If a waterfront location is chosen, environmental disturbances due to dredging, filling, channel alteration, and spoil disposal may result. If an inland location is chosen, such disturbances would be non-existent or minimal. Since a wide selection of potential inland sites is usually available, environmentally sensitive regions can be avoided."

Sources of air emissions at gas plants include: processing, evaporation, flares, and combustion from machinery and vehicles. Major air emissions are noxious smelling hydrogen sulfide, sulfur oxides, and hydrocarbons. Nitrogen oxides may also be significant. The estimated, though disputed, process emissions from one plant with a 1.3 billion cubic feet per day throughput was 6.63 tons per day of sulfur dioxide and 1.65 tons per day of hydrogen sulfide. The magnitude of impacts from such emissions is determined by ambient air conditions at and near the site.

Noise can also be a problem. Gas plant compressors, boilers, scrubbers, and flare stacks are all 24-hour noise makers. In developed areas, noise from a gas plant can be serious. A flare stack emitting 81 decibels of noise, for example, exceeds ambient noise levels as far as .7 mile from the stack.

Aside from environmental effects, gas plants are visually unattractive with their tall smokestacks, 24-hour lighting, and denuded landscape. Adequate landscaping in a buffer zone can mitigate that problem.

Finally, solid wastes generated by a gas plant include scale and sludge from boiler and cooling tower cleanouts; tank cleaning sludge; spent dessicants; filtration media and oil absorbents. Also included are hazardous materials, which are defined in the Federal Water Pollution Control Act as:

> "such elements and compounds which, when discharged in any quantity into or upon the navigable waters of the United States or adjoining shorelines or the waters of the contiguous zone, present an imminent and substantial danger to the public health and welfare, including, but not limited to fish, shellfish, wildlife, shorelines, and beaches."

Hazardous waste materials from gas plants may include accidentally spilled liquid gas or other hydrocarbons, and processed sludge containing chemicals and residuals from brine evaporation.

e. Gas Plants in Delaware

9. THE ENVIRONMENTAL IMPACT OF GAS PLANTS IS SUCH THAT THE CMP PROHIBITS THEM IN WETLANDS AND THE COASTAL STRIP. INLAND LOCATIONS ARE ACCEPTABLE ON A CASE-BY-CASE BASIS PROVIDED ALL STATE AND LOCAL ENVIRONMENTAL AND LAND USE STANDARDS ARE MET.

The Delaware Coastal Management Program, for regulatory purposes, treats gas plants like oil refineries. Although the real and potential impacts of the former are generally less severe than those of refineries, they are, nonetheless, serious enough to warrant exclusion from the coastal strip and all wetlands.

The Coastal Management Program recognizes that many of the environmental problems associated with gas processing plants can be overcome with proper planning, careful waste treatment, and strict operational standards. Unfortunately, human error, at diverse levels, often defeats the best laid plans and intentions. To minimize the possible implications of such error for coastal recreation, natural habitat, and other unique values in the coastal strip, the Coastal Management Program allows gasification plants only outside of that area.



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5.D.3.

## 5. LNG Facilities

a. National Interest

Liquefied natural gas (LNG) is formed by cooling natural gas to -260 degrees Fahrenheit, to reduce it to one six-hundredth of its original volume, enabling large volumes of gas to be transported by tankers especially designed to handle LNG.

An LNG export-import system includes the following components: a source of natural gas; transportation from the source to the liquefication plant; the liquefication plant; storage, loading, and port facilities at the exporting site; transportatin by ocean tanker; a regasification plant; and transmission facilities from the regasification plant to a major pipeline. Given the gas demand and supply situation of the Delaware region, only LNG import facility sites are within the scope of this paper.

As noted above, that demand-supply situation is uncertain. Because of its clean-burning and handling characteristics, natural gas demand in the United States and the Delaware region may outstrip natural gas supply. The world's greatest gas reserves lie overseas, which for purposes of gas transport, can be reached economically only by LNG tankers. For that reason, LNG facilities are essential if the Nation is to receive substantial help towards meeting its gas needs from overseas.

Imported LNG accounted for about one-twentieth of one percent of the natural gas consumed in this country during 1977, but LNG is expected in some quarters to make up between 5 and 15 percent of the total U. S. natural gas consumption in 1985. If a pipeline is used to transport Alaskan gas to the continental United States, the percentage will probably be in the lower range of that estimate.

It is important to note, however significant the contribution of LNG may prove to be, that it is not a new source of energy which will allow unrestrained use of natural gas or solve the long-term national or regional gas supply problems. LNG could satisfy a portion of the U. S. energy demand for at least the next 20 years, but the world's limited natural gas supply serves as an uncompromising constraint on continued utilization.

Rather, LNG is seen--even by its proponents as a "stop-gap" measure. The Federal Power Commission, for example, has stated that LNG projects:

> "must be operational soon to assure smooth transition from a petroleum and natural gas economy to an economy operating at its full conservation potential and under alternate energy technologies." (emphasis supplied)

That view is consistent with the National Energy Plan, which says:

> "Due to its extremely high costs and safety problems, LNG is not a long-term secure substitute for domestic natural gas. It can, however, be an important supply option through the mid-1980's and beyond, until additional gas supplies may become available."

The "extremely high costs" to which the Plan refers are attributed to the gas price, royalties, taxes and other payments in the exporting country; production, transmission, liquefication, storage, and loading costs in the exporting country; tanker transportation costs from the exporting country to the United States; and unloading, storage, revaporization, and transmission costs in the United States. Energy conversion inefficiencies also tend to drive the cost upward. The liquefication, storage and vaporization of natural gas requires about 23 percent of the energy of the gas, with liquefication alone consuming 17 percent. A study prepared for the U. S. Energy Research and Development Administration concludes that "their (LNG) imports will be very costly, perhaps more than $4 per million Btu...and their...cost will be reflected in the ultimate price paid by the consumer."

The study also points out, in 1976, that "The importation of natural gas, like that of oil is counter to the national policy of energy independence." Although current national policy seems to be drifting away from the principle of energy independence, the dangers of dependence are as real as ever. Economic drain and the ever present threat of a crippling embargo are salient and alarming features of substantial reliance on foreign imports.

That the national interest in promoting LNG is unclear, was underscored in a December 1977 report by the U. S. General Accounting Office. The report charges that the President's LNG policy falls short of what is needed on several grounds, including the following: (1) the LNG policy is not related to "the over-all national energy plan so as to identify LNG import goals;" (2) the policy "does not adequately address the concerns of vulnerability"--that is, criteria defining "overdependence" are not established; and (3) the policy contains "numerous

obscure statements which only add to the confusion regarding LNG's future role in supplying U. S. energy needs."

b. Potential Demand

Uncertainties make it difficult to evaluate the potential demand for LNG facilities in Delaware. Potential safety hazards and low economic returns, as well as uncertainties in the market, here and abroad, make investment risky. In 1973, when the Nation imported 4 billion cubic feet of LNG, the Federal Power Commission estimated there would be a 1500-fold increase in the amount of LNG imported into the United States between 1973 and 1980. In 1974, the Commission reported zero LNG imports, and importation has continued to lag behind the projection. A 1976 study concludes that uncertainties make it difficult to estimate LNG imports, if any, to the Northeast in 1985 and 2000, and that the year 2000 supply can be estimated "only in the crudest way." The quantity of imports, of course, is also largely a function of the capacity of facilities to receive it. Thus, utilizing LNG supply projections to determine the potential demand for facilities is a non sequitor in some respects.

Another factor laden with uncertainty and bearing on the demand for LNG facility sites is regulatory attitudes. Under the Department of Energy Organization Act, the Federal Energy Regulatory Commission now has the lead federal role in LNG facility siting. Uncertain federal policy, already discussed, clouds the predictability of the Commission's actions.

In 1973, the Federal Power Commission identified 19 potential LNG receiving areas based on at least some of the criteria discussed below. One of those areas was along the Delaware River, where several sites are in high gas demand areas and also near major transmission lines. Two New Jersey sites near the Delaware River not far from Philadelphia (oil refineries and power plants) were proposed. The Federal Power Commission's environmental staff recently concluded, however, that there were "unacceptable risks" in carrying LNG by tanker up the crowded Delaware River, and recommended that approval be denied.

The report, however, emphasized safety hazards that are less prominent southward along the River and Bay. Should the New Jersey sites be abandoned, the southward areas might be considered potential sites for meeting the demand evidently present near Philadelphia. On the other hand, those areas might also be too distant from the metropolitan markets to the north.

5.D.3.

Some, if not all, of the regional demand can be met by the new import facility at Cove Point, Maryland, which went into operation in late 1977. The Cove Point terminal has two tanker berths, four storage tanks and several process areas. The initial operating plans call for about 140 ship arrivals per year, delivering the daily equivalent of two-thirds of a billion cubic feet of gas. Other major LNG terminals in the Northeast are located in Everett, Massachusetts and Staten Island, New York.

With all the above caveats in mind, a study by the National Center for Analysis of Energy Systems estimates that imports of LNG into the Virginia to Maine area in 1985 will be from .8 to 1.1 trillion cubic feet per year. Assuming that the terminals complete or nearly complete will be fully operable in 1985, the frequency of deliveries of LNG tankers will be roughly 2 per week per terminal.

c. Siting Criteria

The site selection process for LNG facilities is currently conducted by the company or consortium proposing the project. The company make its application to the federal authority only after it has done as much preliminary work as possible, which includes at least gaining control over, if not outright ownership of, the proposed site. Thus, neither the public nor the federal government becomes involved in the site selection decision until it has already been made by the company. There are no officially adopted federal siting criteria (although FERC and DOT have proposed siting safety standards), and the currently proposed projects are located in a variety of sites, ranging from remote coastal and riverine areas with 1,000-acre buffer zones to as little as a 90-acre site on Staten Island.

Most proposed LNG plant sites occupy at least 200 acres of shorefront land, which include a buffer zone. Larger areas are usually needed to accommodate all the associated facilities. Generally there are three or more storage tanks containing 300,000 to 600,00 barrels at each plant, with each tank surrounded by deep dikes to contain the liquid gas if it spill. Present technology dictates that the tanks be no more than two or three miles from the marine terminal where ships unload, and some of this distance is likely to be over water because terminals may be sited a mile or more from land in order to have deep water anchorage.

Along the Delaware shore the Delaware River and Bay depth is too shallow in most places to accommodate the large, bulky LNG tankers with their 40 foot drafts. Wilmington may be the only exception, but, because of its population density, is not desirable site for an LNG terminal. A recent study, for reasons, discussed below, recommends, that population near proposed sites be "zero or very low" density within a one-mile

radius, and low within a 6-mile radius.

Also recommend is a 450 foot wide, relatively straight and unobstructed approach channel. A turning basin of at least 2000 feet is desirable near the berth. For those reasons LNG facilities need land space near the marine tanker terminal, and the Federal Energy Administration has identified such facilities as absolutely coastal dependent.

Offshore terminals have been suggested as a means of reducing safety risks in populated areas or congested harbors. At the present time, preliminary offshore terminal designs limit site selection to locations with water depth of 60 feet or more.

Onshore LNG terminal sites must be on solid bedrock or other geological formations which will support the facilities. The site should avoid earthquake and climatic hazards and allow year-round operation.

A report prepared for the U. S. Energy Research and Development Administration, says the site

> "should be so located to minimize disruption to the environment of the area during the construction phase. This includes the ability to control runoff erosion and the ability to limit damage to the area wildlife and foliage. As an example, a rocky shoreline or stable sand beach is preferable to a tidal marsh land whose ecology is more susceptible to disruptions. Deep water close to shore is desirable to minimize dredging."

The same report recommends a site where there is little local maritime traffic because such traffic can be expected to be interrupted to insure the safe paasage of LNG tankers At the Cove Point, Md. LNG terminals the Coast Guard intends to establish a permanent safety zone to restrict ship movement near the terminal.

Proximity to local utilities is also important in order to support construction and operations activities. Water demand is minimal for operations, but supplies are needed to satisfy fire protection regulations.

The site also should be in proximity to transportation systems, especially an existing major natural gas pipeline. The major line through Delaware is closest to the Delaware

River and Bay at a point in New Castle County, in the Wilmington vicinity. In Sussex County the pipeline is closer to Maryland than it is to the Bay. On the other side of the Delaware Bay, in New Jersey, there is an existing major gas pipeline near Cape May. On neither side, however, do the line approach the shore as closely as several other pipelines elesewhere the East Coast.

An alternative to pipelines, once the LNG is landed, is trucks. As of September, 1977, it was estimated that there were 75 LNG trucks in operation in the United States. Railroads and barges have also been proposed as means for transporting LNG, but have been defeated by economics or opposition.

Such opposition suggests that one of the most important criterion for the siting of LNG facilities should be safety considerations.

d. Impact on Resources

As the Office of Technology Assessment puts it,

> "Postulating an LNG disaster scenario is clearly an almost limitless task. There are countless combinations of events which could lead to an accident...to infer, as most LNG safety reports do, however inadvertently, that all the important possibilities have been "covered," may be shortsighted."

One of the possibilities that has been analyzed involves the result of LNG spillage on water in a large-scale accident. In such a case the water would warm the floating LNG, vaporize it, and form cold, low-lying "gas cloud". The heavy cloud would continue to hug the earth until the gas becomes so dilute as to be no longer flammable, and eventually, warms enough to rise and dispense. Researchers disagree on the shape, size movement. and compositions of the cloud, but it is generally agreed that if the vapor ignites, it would be beyond the capability of existing firefighting methods to extinquish it.

Thus, from a safety perspective, the key issue is how far and how broadly a vapor cloud travels before it ignites.

There has never been a massive LNG spill on water. Estimated distance vary from less than one mile to more than 50 miles, depending on different assumptions. Work by the U. S. Bureau of

Mines has indicated that a 25,000 cubic meter spill--the contents of one the cargo tanks in a big LNG tanker-- could produce a 1500 foot long plume, the major part of it is highly flammable. With stable weather conditions and a steady wind of about 7 miles and hour, the plume could theoretically travel some 19 to 38 miles according to the BLM study. More recent studies by the Coast Guard suggest that the impacted area would be from 1.25 to 3.2 miles under normal weather conditions and no more than 10.5 miles under extreme conditions. As one commentator points out, however, "it is highly probable that the cloud would encounter a source of ignition soon after touching land, if not before." In Delaware that land could well be a densely populated area if an accident were to occur in the upper Delaware Bay or the Delaware River.

The Naval Weapons Center at China Lake, California is researching the hazard from an LNG pool fire, which some experts believe is worse than a vapor cloud. The Council on Environmental Quality describes the danger:

> The characteristics of these fires on water, like the behavior of vapor clouds, are subject to great uncertainties and estimates of the safe distance from their intense radiant heat vary significantly. According to a recent FPC (Federal Power Commission) analysis, a generally safe distance from a 25,000-cubic-meter pool fire would be about 8,300 feet or 1.6 miles. People standing 3,600 feet away would blister in 5 seconds, and exposure for longer times-perhaps 10 seconds -- would be fatal. Estimates based on Bureau of Mines figures indicate that the danger might extend farther. According to these figures, on a windless day when thermal radiation is greatest, unsheltered people at a distance of 9,600 feet, or nearly 2 miles, could suffer fatal burns."

The world's worst LNG accident occurred in 1944 when a storage tank in Cleveland ruptured, spilling 6,200 cubic meters of LNG into adjacent streets, sewers, and storm basements. In those confined spaces vapor and air combined in an explosive mixture which ignited and demolished sizeable buildings. Intensely hot fire burst into 2,800 foot flames, and combustible material 1000 feet away caught fire by radiation. The accident resulted in 130 deaths, between 200 and 400 injuries, and approxi-

mately $10 million is property damage. It is recognized that this accident did not involve an import facility nor was the technology fully developed at that period to prevent the widespread damage which occurred.

In 1973, a second signigicant accident occurred at a Staten Island LNG storage facility, where 40 workmen repairing and "empty" LNG tank were killed.

The hazards of LNG operations call for extremely strict safety controls. In some respects, the LNG industry and government have successfully met the challenge. LNG tankers are now equipped with double bottom hulls,special navigation equipment, and other safety features not normally present on other ships; dikes are used to contain the LNG in the event a storage tank ruptures; and better materials are used in all LNG handling equipment.

Many problems remain,however. A major one, already discussed, is the "countless combinations of events which could lead to an accident." Coupled with the uncertainty about whether all the "important possibilities have been covered", doubt emerges.

Despite years of planning and utilization of the best technology available, the proposed terminal sites in New Jersey were considered "unacceptable risks" by members of the Federal Power Commission. Part of the conclusion was based on the location of the shipping channel and the history of tanker accidents near the site.

A standard LNG tanker is a high-powered ship, with an optimum service speed in the 20-knot range--about five knots faster than most oil tankers--and a capacity so large that an 8-story building could fit inside each of its five cargo tanks. By the end of 1975, there had been only 31 LNG shipments to the United States. At that time, there were only 34 LNG tankers in operation worldwide, a minuscule number compared with the 6800 oil tankers in service. Thus, experience with transporting and unloading the behemoth tankers is not extensive, and researchers do not have enough data with which to predict the likelihood that a major LNG spill will occur, how the spilled liquid and resulting vapors will behave, or what impacts will result.

Historically, oil tankers' casualty data have indicated a need for improved marine traffic safety in U.S. ports and waterways. The Delaware River handles 5000 ships per year. By comparison, Boston Harbor handles only 1500 ships per year, while 4000 ships visit

Chesapeake waters yearly. Most of those ships are not equipped with special navigational aids or with crew versed in the LNG threat. Although the U.S. Coast Guard has proposed regulations setting minimum standards for persons employed on United States flag LNG carriers, foreign flag ships entering United States harbors are not subject to the regulations. The U.S. Office of Technology Assessment, accordingly, has questioned the training and competence of foreign crews.

The Council on Environmental Quality has pointed out that there are no formal safety criteria for LNG facility siting and that no broad programmatic environmental impact statements have been prepared for LNG terminals or storage facilities. Those deficiencies led, in 1976, to a petition by Delaware, New York, New Jersey, Pennsylvania, and others for a court order directing the Federal Power Commission to develop uniform and comprehensive standards for site selection and operation of LNG facilities. As of September, 1977, the petition was set for hearing and the standards were not in force.

Other evidence of the continuing national concern and uncertaint over the safety of LNG facilities and adequate measures to control their siting and operations is found in The Congress. A number of bills were introduced in 1978 to establish improved regulation of LNG facilities; the testimony of the bills' sponsors in the Congressional Record emphasizes safety considerations.

Representative Mario Biaggi (D-N.Y.) introduced a bill to amend the Ports and Waterways Safety Act to improve safety regulation of LNG import terminals, storage facilities and reclassification plants. Specific safety considerations in Mr. Biaggi's bill included (among other things):

(1) required buffer zones around terminal facilities;
(2) maximum population density standards for areas around LNG facilities;
(3) consideration of safe navigation in onshore terminal siting;
(4) consideration of synergistic risks in locating LNG facilities adjacent to other hazardous activities or natural hazards; and
(5) adequacy of local firefighting and other disaster services

The bill included a provision for a Governor's veto over siting an offshore LNG terminal adjacent to his state.

In the 1978 Congress the House subcommittee on energy and power heard testimony that there is no clear, written, coordinated Federal regulation policy toward LNG facilities. The subcommittee chairman, John D. Dingell (D-Mich.) expressed concern over vessel collisions and explosions in the vicinty of LNG terminals and difficulties in providing and enforcing vessel traffic restricted zones around busy LNG terminals such as the Cove Point, MD., terminal.

Representative John M. Murphy (D-N.Y.) also proposed in 1978 to amend the Ports and Waterways Safety Act to establish strict controls over LNG facility siting and operations in order to protect public health, safety and property, and the environment from "unique threats" posed by this highly volatile and explosive fuel. The Secretary of Transportation would be required to set minimum standards for LNG facility design, construction and operations taking into consideration, among other things:

(1) alternative more remote terminal sites;
(2) minimum distances from terminal sites and residential areas, power plants, and recreational areas; and
(3) site meteorological, topographic, and other natural features.

Regulatory emphasis would be on preventing and containing discharges of liquified gas. Each affected state with an approved Coastal Management Program would have the primary role in determining LNG siting, once the Department of Transportation issues minimum (Federal) standards for siting and licensing, States would have the authority to supercede these Federal standards.

In the U.S. Senate, Senator John A. Durkin (D-N.H.) expressed concern over the hazards of LNG (and LPG) facilities and present inadequate regulation of these and he sponsored a bill in the 1978 session titled the Comprehensive Liquified Energy Siting Safety and Liability Act. In addition to describing the flammable and explosive hazards of LNG and the difficulties of safely transporting and handling it, Senator Durkin noted the vulnerability of LNG facilities to sabotage.

This enumeration of expressions of Congressional concern over LNG facilities could go on, but these few examples emphasize the concern at the Federal level over the potential for catastrophic consequences of siting and operating LNG faciltiies and the need for severely strict regulation of LNG operations by government at all levels.

Although human safety hazards pose the pre-eminent LNG facilities "impact" problem, resource impact may also be significant. Approximately 800 to 1200 acres of land may be necessary for docks, storage, and vaporization facilities, depending on the terminal's daily capacity. Land mass compaction can re-route aquifers and underwater streams. Onsite wetlands, wildlife and wildlife habitat, historical and archaeological areas, agricultural land, forest, and so on may all be destroyed or damaged. Pipeline corridors can have similar impact, at least temporarily.

The effect of dredging, fill and waste disposal upon the aquatic environment may be a problem. In addition, movement of LNG carriers in shallow areas may disturb bottom life both from the turbulence generated by propellors and the ship's wake. Water circulated through the revaporization plant at 300,000 gallons per minute catches fish in its flow and kills them at intake streams, much in the same manner as power plants. Biocides, used to kill small organisms that pass through the screens, may also kill organisms outside the screen. Thermal pollution--water returned to the water supply source comes out 12 degrees colder than it came in--is still another source of disturbance to aquatic life.

Air and noise problems are usually minimal after construction of the terminal is completed, but aesthetic considerations and the safety hazard may drive surrounding property values down.

e. LNG Facilities in Delaware

The Draft Environmental Impact Statement contained a policy prohibiting LNG facilities in Delaware. The Federal Energy Regulatory Commission (FERC) objected to the prohibition particularly as derived from the siting criteria developed by the CMP. Accordingly, siting criteria supplied by FERC were applied to Delaware. These criteria included: 1) Population - location which provides a buffer between the facility and residential areas; 2) Climate - well sheltered site with a minimum of adverse climate conditions; 3) Navigational Suitability for Tanker Traffic - shortest practical approach channel, avoidance of interference with navigation at any time, minimum depth of 40' for smaller tankers and greater depths for large LNG carriers, minimum concentrations of other vessel traffic, and well established traffic safety systems; 4) Seismic Considerations - avoidance of areas subject to ground movement or subsidence; 5) Topographic Conditions - minimal slopes and well drained lands are desired;

6) Foundation Conditions - stable soils and subsurface, avoidance of wet, marsh soils; 7) Terminal Area - areas with at least 40 foot depths or more if subject to wave action, shortest distance to shore, protection from waves and strong currents; 8) Anchorage Suitability - available anchorage in the vicinity of the terminal site and away from vessel maneuvering areas or channels; 9) Land Use Conflicts - locations should avoid severe conflicts with nearby existing or planned industrial, recreational or conservation-oriented land uses; 10) Existing Environment - avoid rare or endangered species habitats and/or breeding grounds, unique ecosystems, productive marshlands, biologically sensitive areas, wildlife sanctuaries, or high quality habitats; 11) New Pipeline Requirements and Righ-of-Way Availability - minimize new pipeline construction; and 12) Seawater Exchange Systems - seek opportunities to combine LNG vaporization facilities with power plants or other industries to minimize the effects of thermal pollution.

These siting criteria were applied throughout Delaware's coastal area in conformance with the provisions and policies set forth in the appropriate sections.

The State's best transportation systems, including a major natural gas pipeline, occur near its highest area of population density--Wilmington. The undeveloped shorefront is vulnerable to storm damage in many places, soft-bottomed in nearly all places, and much of it is geologically unstable. Finally, the closest point of the main shipping channel to Delaware's shore, which might be suitable for LNG tankers, lies near Wilmington - a Port with considerable ship traffic and within a major population center.

The main shipping channel up the Delaware River and Bay also passes, in places, within a mile or two, of Lewes, and not much farther from Rehoboth Beach--both densely populated in the summer. A tanker accident near either city could spell disaster. The U.S. Energy Research and Development Administration informed the Coastal Management Program that its environmental and safety programs are mandated by the requirement that the Nation's energy be provided in a way that is safe, clean, adequate, and acceptable to society. The Coastal Management Progarm concurs with that requirement, and finds that Delaware sites are neither safe nor acceptable.

Further, the land requirements of LNG facilities, coupled with their tendency to induce additional development, make LNG facilities unsuitable for the area they would otherwise occupy--the Delaware coastal zone. The CMP's discussion of oil refineries, as it pertains to the balancing of the need to protect coastal resources with the need for the facility also applies here.

S.D.3.

10. THE CMP FINDS THAT THERE IS NO SITE IN DELAWARE SUITABLE FOR THE LOCATION OF ANY LNG IMPORT-EXPORT FACILITY.

6. Electric Power Plants

a. The National Interest

The first subsection discusses the Nation's reliance on energy and dependence on foreign energy resources, as well as the national importance of providing a continuous supply of energy with as little foreign assistance as possible. Power plants and their associated facilities can contribute significantly to that objective because electricity can meet a great variety of energy needs without necessarily consuming oil or gas.

Ninety percent of the Nation's conventional energy reserves are coal, a fuel which can be used to generate electricity but which currently accounts for only 18 percent of the country's energy consumption. The National Energy Plan urges that the use of coal be increased to maintain economic growth, reduce the quantity of oil imports, and save gas for residential use. Although coal is used to generate nearly half of the Nation's electricity, new or expanded coal-fueled power plants can further promote essential national energy policies.

Nuclear power plants also decrease reliance on oil imports. Nuclear energy accounts for only 3 percent of all the energy used by the Nation and less than 10 percent of the electricity. New nuclear facilities are expected to increase the latter figure to as much as 26 percent by 1985. If the risks associated with nuclear facilities can be reduced by new technology, the contribution of nuclear power plants may become more significant.

Finally, geothermal facilities can produce electricity from previously untapped natural resources. The national interest in utilizing such resources--as well as coal and nuclear fuel--with the siting and construction of new power plants and associated facilities is underscored in the next part.

b. Potential Demand

Electric power consumption in the United States has grown much more rapidly than total energy consumption during the last several years. The national demand for electricity--now more than 20 quadrillion Btu annually-may double by 1990, and some projections indicate that electricity production will account for 40 percent of total United States energy consumption by the year 2000. On the other hand, most recent consumption patterns show that the rate is slowing down. As a result, long-term projections of the average annual electric demand growth have declined steadily in each of the recent years.

# SECTION 5E

## COASTAL MANAGEMENT

## COORDINATION

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5.E.

# COASTAL MANAGEMENT COORDINATION

## A. Background And Issues

"Coordination" is one of the more frequently used words in government. Committees, policy boards, councils, technical advisory groups, and a variety of other bodies have been established by virtually every agency and unit of government. Generally, these bodies result from an attempt to provide a forum for discussion of concerns, resolution of conflicts, exchange of information, the "testing" of concepts or recommendations before they are acted upon. The CMP, for example, has its own advisory group - the Coastal Zone Management Committee.

The number of such groups in Delaware once reached the point where a former Governor established a "committee on committees" to examine the problem and recommend the abolition of unnecessary groups. Recently, an Intergovernmental Task Force on Overlapping Services was established to examine the overlaps of services among levels of government.

As Chapter Four (Public Participation Process) states, the CMP began coordination early in the program's development. Coordination during program implementation will be necessary to refine the program and to avoid conflicts between agencies responsible for program implementation. In Delaware, as in most states, management of land and water is divided among several agencies within each level. Planning and zoning actions, in particular those which relate to uses of individual parcels, are primarily the responsibility of local government. Yet, the State government provides many services required by locally approved development. These development decisions often require the State to spend money for facilities which would have been unnecessary had the State and local governments worked together to resolve conflicts.

Conflicts can also occur within State government. For example, the frequent incompatibility between highways and parks can cause a conflict between objectives of the Department of Transportation and those of the Department of Natural Resources and Environmental Control (DNREC). Likewise, industrial recruitment and other development programs can hamper efforts to control or reduce air or water pollution. Preservation of historic or prehistoric sites may also conflict with plans for new construction. Inasmuch as the CMP contains policies for both resource preservation and development, coordination is needed to ensure that those

State agencies responsible for implementing the policies are made aware of how their actions may affect other CMP objectives.

In many cases the management policies are detailed enough to result in the proper decision without coordination. In others, however, the CMP's flexibility allows agencies to work together to determine the best solution to a problem. The CMP encourages consideration of different viewpoints.

Related to this is the need to recognize and preserve the powers, duties, and responsibilties which have been vested in the individual agencies and units of government. This need was acknowledged by the Delaware Tomorrow Commission. The Commission recommended enactment of state land use planning legislation providing for participation by each level of government in certain land use decisions, while preserving each other's traditional rights and powers. (The Commission found this recommendation difficult to accommodate when charged later by Governor du Pont with the responsibility for drafting the legislation).

Coordination, however, could become costly and cause delays in planning, regulatory, or other management processes. Thus it cannot be allowed to become unwieldy and cause more problems than it resolves.

B. Coordination Among State and Local Agencies

Because local governments exercise the primary control over land use, and because the State government provides much of the required public services and facilities, coordination is very important. To provide this coordination the Delaware Tomorrow Commission drafted (with CMP staff help) and recommended legislation which provided for a process to assure coordination between the two levels of government, as well as between government and private enterprise. The legislation, the Land Use Planning Act of 1978, was subsequently enacted and is discussed in detail in Appendix E (Legal Authorities and Organization). Here it is sufficient to note that the Act establishes a formal process by which State and local governments provide an opportunity for each other to review and comment on proposed actions affecting them.

Although the Land Use Planning Act provides the method which the CMP relies upon most for State-local consultation, several other methods established prior to completion of the CMP will supplement the Act. For example, the Coastal Zone Management Committee, comprised of state, county, municipal, federal, and non-government representatives, was established by Executive Order No. 41 signed by Governor Tribbitt on May 29, 1974. This Committee served in an advisory capacity during program development.



DE22580

A subsequent Coastal Management Committee with specified coordination responsibilities will be established by Executive Order concurrent with program approval (See Part F of this Section). Also, all of the CMP permit decisions, discussed in Section 5.A. are preceded by an opportunity for a public hearing. If a hearing is either requested or required then local governments may comment. Local zoning decisions are preceded by public hearings at which State agencies may comment. Moreover, the "A-95" review process discussed below also provides State-local coordination.

C. Coordination Among State Agencies

The primary State coordination methods used to implement the CMP are established by three Executive Orders which will take effect upon program approval. These Orders establish the program as the official management program for the State's coastal resources; require that State departments and agencies, to the extent permitted by law, enforce the Program's goals, objectives, and policies including those in Part G of this Section; and create a Coastal Management Committee. OMBP, the State agency officially designated to oversee the program, will have the responsibility for monitoring and evaluating the management activities of those agencies and departments which have particular responsibilities under the program, and shall inform the Governor and the General Assembly of their performance. Executive Order 61 requires all State agencies to cooperate with OMBP. Such cooperation includes sufficient coordination to ensure that CMP policies are enforced. The Governor, of course, has the authority to resolve issues resulting from possible non-compliance with the program or inter-agency conflicts with program objectives and policies.

CMP policy regarding State coordination in management and public finance will also be implemented by Executive Orders 29 and 6, as amended, which establish the State and Federal Clearinghouse process and the Capital Projects Review Committee. All agencies and jurisdictions "have the opportunity to review and comment on projects in order to maximize the achievement of goals and objectives and minimize program duplication" (E.O. #29); and it is State policy "to have measurable objectives for capital improvements and their subsequent operating cost implications." (E.O. #6, as amended).

All state or local agencies or private groups which receive state or federal grants are subject to the Clearinghouse process. This review process provides for comment from other agencies

and includes an assessment of the effects of the request on the State Development Plan. The report of the Delaware Tomorrow Commission which outlined broad State development policy, is one component of that plan, as will be the Delaware CMP upon approval. Requests for grants are evaluated for policy conflicts, duplication of services, budgetary and capital improvement impacts, and benefits to the public.

Another coordination step occurs through the capital projects management process developed under Executive Order #6, as amended, and through the preparation of the State's capital improvements program. The basis for review and recommendation of projects is the State Development Plan, the policies adopted as part of it, as well as consideration of costs and benefits, need for the project, general land use impacts, and the financial condition of the State.

Finally, as stated elsewhere in the program document, many CMP-related activities require or otherwise involve State agency coordination independent of the methods described above and below. One example is the coordination provided by the Energy Facilities Siting Liaison Committee, dicussed in Section 5.D.3, which provides for coordination among agencies and governments regarding location of new energy facilities. Likewise, State agencies consult with the Delaware Division of Historical and Cultural Affairs before doing anything which may affect historical or cultural sites. The Delaware Office of Management, Budget, and Planning consults with DNREC on permit applications filed pursuant to the Delaware Coastal Zone Act.

D. Coordination With Federal Agencies and Consideration of National Interests

State-federal conflicts have been lessened through direct involvement of some federal agencies in program development as members of the Coastal Zone Management Committee. Other federal agencies were contacted for their comments early and often during program development. Section Four documents those contacts. The participation by some federal agencies in the CMP's advisory committee during program development was beneficial to both levels of government and will be continued.

The CMP will invite federal agency participation in technical or advisory committees established to plan for and manage coastal resources, and will evaluate programs, plans, and grant requests subject to the State Clearinghouse Process for their relationship to federal concerns as well as to State policies. In the latter case, where projects before the Clearinghouse appear to be of concern to certain federal agencies, these agencies will be notified and offered an opportunity to comment.

5.E.

During program implementation, the CMP will consider the national interest in: (1) the planning for and siting of facilities which are necessary to meet other than local requirements; and (2) coastal resources conservation and protection. OMBP will assume the responsibility for ensuring such consideration. There are three types of decisions which will require that the national interest be considered during program implementation: (1) decisions by State government which involve planning for or locating facilities necessary to meet other than local requirements; (2) decisions by local units of government which involve planning for or locating facilities necessary to meet other than local requirements; and (3) the annual program review. In addition, federal agencies and other interested parties will be given an opportunity to present their evaluation of the national interest to State and local decision makers. Some of the methods for doing this are described in this section. Others appear elsewhere in the document. An especially important one is discussed in Subsection 5.D.3., which deals with energy facilities.

As explained above, Executive Order 61 requires OMBP to monitor and evaluate the management of the State's coastal resources by State agencies and local governments. It also requires all State departments and agencies to cooperate to the maximum extent possible with OMBP. Moreover, Executive Order 61 requires all State departments and agencies to enforce the goals, policies and objectives of the Coastal Management Program. Thus, the policy in Part F. of this section which calls for consideration of the national interest is enforceable.

The national interest will be considered in the amendment of any State rule or regulation used to implement the CMP and in planning for and locating the facilities identified in Working Paper No. 7, entitled The National Interest in Resources and Facilities of the Delaware Coastal Zone. OMBP may add facilities to this list if it determines that there is a national interest in them.

OMBP will submit written comments addressing the national interest in proposed facilities to the appropriate State departments and agencies with planning or siting authority. The comments will attempt to balance the national interest in the proposed facility with the national interest in the preservation of resources. Sources of information used in that balancing process will include Working Paper No. 7; policy statements from the President; federal laws; statements from federal agencies; testimony from public hearings or other public comment; or plans reports, or studies from federal, State, or interstate agencies or local government.

5.E.

The appropriate State agency will respond in writing to OMBP's comments on its planning action or siting decision. This response will summarize the comments and explain how they were considered in the decision to monitor and evaluate the management of the State's coastal resources pursuant to Executive Order No. 60. In the event that OMBP determines that the response inadequately considers the national interest, it will so notify the Governor and resubmit its comments to the appropriate agency, which will then respond anew.

Executive Order No. 60 requires OMBP to submit comments relating to local land and water use decisions and the relationship to Coastal Management Program policies and concerns to local officials. The above cited policy which requires consideration of the national intereat will be implemented by Executive Order 60 and the Land Use Planning Act. The Act requires a written rationale for the local government's decision, and it must include a discussion of OMBP's comments or recommendations. A State review board may require reconsideration of the local decision if the local government fails to consider the comments. It is also important to note that under the Land Use Planning Act interested federal agencies must be: (1) Notified of proposed land use planning actions of greater than local significance; (2) afforded an opportunity to participate in the local decision process; and (3) allowed to submit comments and recommendations on such actions.

The CMP recognizes that the national interests in facilities and resources may change. Inasmuch as many of the broad policies in the program cannot be easily reviewed on a case-by-case basis, the national interest in such policies will be reconsidered once a year by OMBP in the annual report to the Governor, the General Assembly, and OCZM.

An additional method to ensure federal and State coordination will be the establishment of joint permit review prior to formal permit action by either party. A coordination process between State agencies and some federal agencies has been established relative to State/Corps of Engineers approvals, and additional steps will be taken to institutionalize this process. Informal coordination, of course, already takes place between many State and federal agencies on a range of CMP concerns.

Finally, the federal constistency provisions outlined in Appendix F will also be used to make sure that federal actions are consistent to the extent practicable with the CMP.

E. Regional Coordination

Coordination among the localities and states in Delaware's region has been of concern since the program began. Actions by neighboring states can affect Delaware and its coastal resources. In order to identify regional problems and to ensure that compatible approaches to the management of regional resources are being used by the states, Delaware hosted the first of a series of meetings among State CMP staffs. Included at these meetings are Delaware, New Jersey, Pennsylvania, Maryland, Virginia and, more recently, North Carolina, South Carolina, and Georgia.

A higher level of coordination is the Mid-Atlantic Governors' Coastal Resources Council (MAGCRC), an organization formed by the Governors of the states in the region for the purpose of exchanging information, developing policy, and preparing responses to federal agencies on coastal issues, primarily those relating to outer continental shelf (OCS) oil and gas exploration and development. This group, which involves the Governors and the officials responsible for development of State OCS and energy policy, has met on a somewhat regular basis and has been successful in raising the level and scope of state participation in many federal OCS leasing and regulatory processes.

Another regional coordination effort, currently only in the developmental stage, is the establishment of a Regional Coastal Information Center (RCIC). This proposal is in response to concerns of coastal managers and concerned citizens who lack information and are concerned that research and information gathering programs and projects may be duplicative or fail to address clearly perceived problems. A definite need for a quick response information delivery system has been identified. The information needs are quite diverse, ranging from highly specific environmental data to more general background information on coastal law. The National Coastal Zone Information Center of OCZM has supplied some of the information, but a national center cannot begin to provide the specialized coverage needed at state and local levels.

The Delaware CMP made an initial attempt at closing this gap by funding a Research Clearinghouse based on work done by the University of Delaware which related to coastal management. This start was useful but limited in scope.

New England and the Pacific Northwest have responded to the need for more localized coastal information through the formation of RCICS. The RCIC approach was first suggested at the national level by OCZM and the Sea Grant Marine Advisory Service. The mid-Atlantic States have proposed a more decentralized and state-specific system.

5.E.

This system will provide a readily accessible quick-response coastal information capability for state coastal planning programs and other state and local agencies, scientists and technical personnel needing environmental data and/or bibliographic information, Sea Grant programs, regional fishery management, and the general public. Delaware's CMP will work with the Delaware Sea Grant Program in support of this proposed system.

Another issue involving regional coordination is limited in scope and involves the Delaware-New Jersey boundary along the upper Delaware River, in particular as it affects Salem County, New Jersey. As a result of a 1933 U.S. Supreme Court ruling, Delaware's jurisdiction extends to the low water mark on the New Jersey shore. Salem County officials contend that Delaware law, in particular the Delaware Coastal Zone Act, unduly restricts development along the Delaware River in New Jersey. Delaware officials and CMP staff members met with Salem County officials to discuss the matter. While Delaware understands Salem County's concerns, there is no evidence that New Jersey has suffered any adverse effects. Thus, an exchange of information between the parties is deemed the best way to avoid problems. Therefore, Delaware has agreed to share information on Coastal Zone Act applications, where appropriate, with Salem County, and has asked Salem County to notify Delaware whenever an impending development in their county could raise the jurisdictional difficulty. In any event, only a few possible uses would cause problems. For example, single purpose (use) piers extending into the Delaware River, the most likely regulatory issue, would require a Delaware Coastal Zone Act permit, but experience under the Act involving Delaware and Pennsylvania shows that such applications can be processed to the satisfaction of all parties.

Finally, a long-standing, regional coordinating group in the Wilmington area, the Wilmington Metropolitan Area Planning Coordinating Council (WILMAPCO), is significant to the CMP. Municipal, county, and State representatives from Delaware, Maryland, and New Jersey work together in WILMAPCO to resolve interstate and intrastate issues affecting the Wilmington Area.

F. Coastal Management Committee

An Executive Order to be issued prior to program approval will establish a Coastal Management Committee to be comprised of private citizens and officials from State, county, and local governments to provide oversight and coordination regarding program implementation. Among the duties of the Committee may be:

1) To advise OMBP on applications for Section 306 grants, including review of OMBP's annual work plan;

2) To approve applications for CEIP grants and loans where required under the CEIP Intrastate Allocation Process;

3) To monitor CMP implementation to ensure that the Program is achieving stated objectives;

4) To review and offer recommendations on federal actions subject to the provisions of Section 307 of the CZMA (federal consistency);

5) To provide an informal forum, where appropriate, for the review of plans, large development projects, capital programs, etc., covered by the Land Use Planning Act (this would not substitute for the process established by the Act, but would allow for informal discussions of issues which are subject to the Act's provisions);

6) To recommend and approve CMP amendments, including the designation of Areas of Particular Concern/Special Management areas, etc.; and

7) To function as a special problems advisory group when needed for review of projects; changes in federal, state, or local law or regulation; or other matters of interest to coastal management.

This method, combined with those listed above, provides for intergovernmental and interagency coordination which will ensure that Delaware's Coastal Management Program is effective.

G. Coordination Policies

1. STATE AND LOCAL GOVERNMENTS RESPONSIBLE FOR IMPLEMENTING THE CMP SHALL PROVIDE AN OPPORTUNITY FOR ONE ANOTHER, FEDERAL AGENCIES, AND OTHER INTERESTED PARTIES TO REVIEW AND COMMENT ON PROPOSED ACTIONS WHICH MAY BE OF MORE THAN LOCAL INTEREST.

This general policy will be implemented by the methods discussed above. The details of the most important method--the process established by the Delaware Land Use Planning Act--appear in Appendix E (Legal Authorities and Organization). It will also be implemented through the Coastal Management Committee.

2. STATE AGENCIES RESPONSIBLE FOR IMPLEMENTATION OF THE CMP SHALL COORDINATE THEIR CMP IMPLEMENTATION RESPONSIBILITES WITH EACH OTHER TO THE EXTENT NECESSARY TO ASSURE WELL-INFORMED AND REASONED PROGRAM DECISIONS.

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This policy will be enforced, if necessary, by the Office of the Governor pursuant to Executive Order 61.

3. ALL STATE AGENCIES AND LOCAL UNITS OF GOVERNMENT SHALL CONSIDER, PRIOR TO ANY CMP DECISIONS, THE NATIONAL INTEREST IN: (1) PLANNING FOR AND LOCATING FACILITIES WHICH ARE NECESSARY TO MEET OTHER THAN LOCAL REQUIREMENTS; AND (2) COASTAL RESOURCE CONSERVATION AND PRESERVATION.

The preceding discussion and Appendix E. provide the details of how this policy will operate, as well as the authority for it. The facilities and resources to which the policy applies are further described in Working Paper No. 7.



DE22588

## APPENDIX D - BOUNDARIES

The federal Coastal Zone Management Act (CZMA) requires that the CMP identify the boundaries of the coastal zone subject to the management program.

Working Paper No. 2 provides background information on the requirements, and the various options considered during the course of program development. These options included biophysical boundaries -- such as wetland drainage areas, flood hazard areas, watersheds, and the ten foot elevation contour; and institutional boundaries, such as the coastal counties, the Delaware River Basin Commission Boundary, and the areas delineated under Section 208 of the Federal Water Pollution Control Act of 1972.

There are four elements to the CMP boundary: (1) the inland boundary; (2) the seaward boundary; (3) excluded lands; and (4) interstate boundaries.

### 1. The Inland Boundary

According to the CZMA, the inland boundary must include those lands, "the uses of which have a direct and significant impact on coastal waters." "Coastal Waters" are those waters which contain a measurable quantity or percentage of seawater. In Delaware, there are no lands more distant than eight miles from coastal waters. Inasmuch as the primary purposes in defining the boundary are (1) to assist coastal residents and property owners as well as resource users and governmental entities to understand the geographic scope of the management program and (2) to identify areas eligible for Coastal Energy Impact Program assistance, an inland boundary which can be described in a manner which is sufficiently clear and exact for such purposes is obviously preferable over one that is not. By defining the inland boundary in terms of existing political jurisdictions, the objectives of clarity and exactness can be realized. Thus the Delaware CMP has elected to utilize it county boundaries to define the inland boundary.

The federal Office of Coastal Zone Management (OCZM) has suggested that the utilization of county boundaries which border coastal waters is an acceptable option for many of the coastal states, including Delaware where such boundaries encompass the entire State. Defining the CMP inland boundary in terms of landward boundaries of the State has several advantages.

One, that small area in the State which is relatively distant from coastal waters does not have to be precisely identified and mapped for exclusion. Two, the CMP does not have to struggle with the definition of what consititutes a "direct and significant impact on the coastal waters." Instead the CMP recognizes that certain large-scale uses within eight miles of coastal waters may have such impacts and that the inland boundary should therefore include the entire State. Three, by including all the State in the inland boundary, any jurisdiction in Delaware which may be adversely affected by energy development will be eligible to apply for assistance under the Coastal Energy Impact Program.

It is noteworthy that, during the course of program development, several comments were received which advocated adoption of a relatively small inland boundary. Given the pervasive influence of coastal waters in Delaware, however, OCZM and OMBP mutually concluded that such a boundary would not satisfy the legal mandates of the CZMA. At best, only a small portion of the State could be rationally excluded pursuant to the requirements, and such exclusion was deemed not worth the attendant administrative difficulties.

It should also be pointed out that most of the CMP regulatory controls apply only in those areas traditionally viewed as coastal areas, not the entire State. Such areas include the wetlands, beaches, coastal strip (the Delaware Coastal Zone Act's "coastal zone"), and underwater lands. The entire State will be subject only to the provisions of the broader program -- primarily coordination, information systems, and the water and air quality programs.

2. The Seaward Boundary

The seaward boundary is clearly defined in the CZMA. It is the three mile outer limit of the United States territorial sea. The lateral seaward boundaries between New Jersey and Delaware, and Delaware and Maryland have not been determined yet. The boundary in the Delaware River and Bay however, has been fixed according to a United States Supreme Court decision and is approximately the mid-channel of the River and Bay from the mouth of the Bay to the southern edge of a circle drawn 12 miles around the City of New Castle. North of that point to the Delaware northern boundary, the boundary is the low water mark on the New Jersey side of the River. It is anticipated that the states may have difficulty agreeing upon the remaining boundaries, and that OCZM may have to delimit them, subject to court review.

Regardless of what seaward boundaries are ultimately used, it is important to bear in mind that they will be used for purposes of this program only and represent the area within which the CMP may be authorized and financed. These seaward limits are irrespective of any claims the State may have by virtue of the Submerged Lands Act or any changes that may occur as a result of the Fisheries Conservation and Management Act of 1976.

3. Excluded Lands

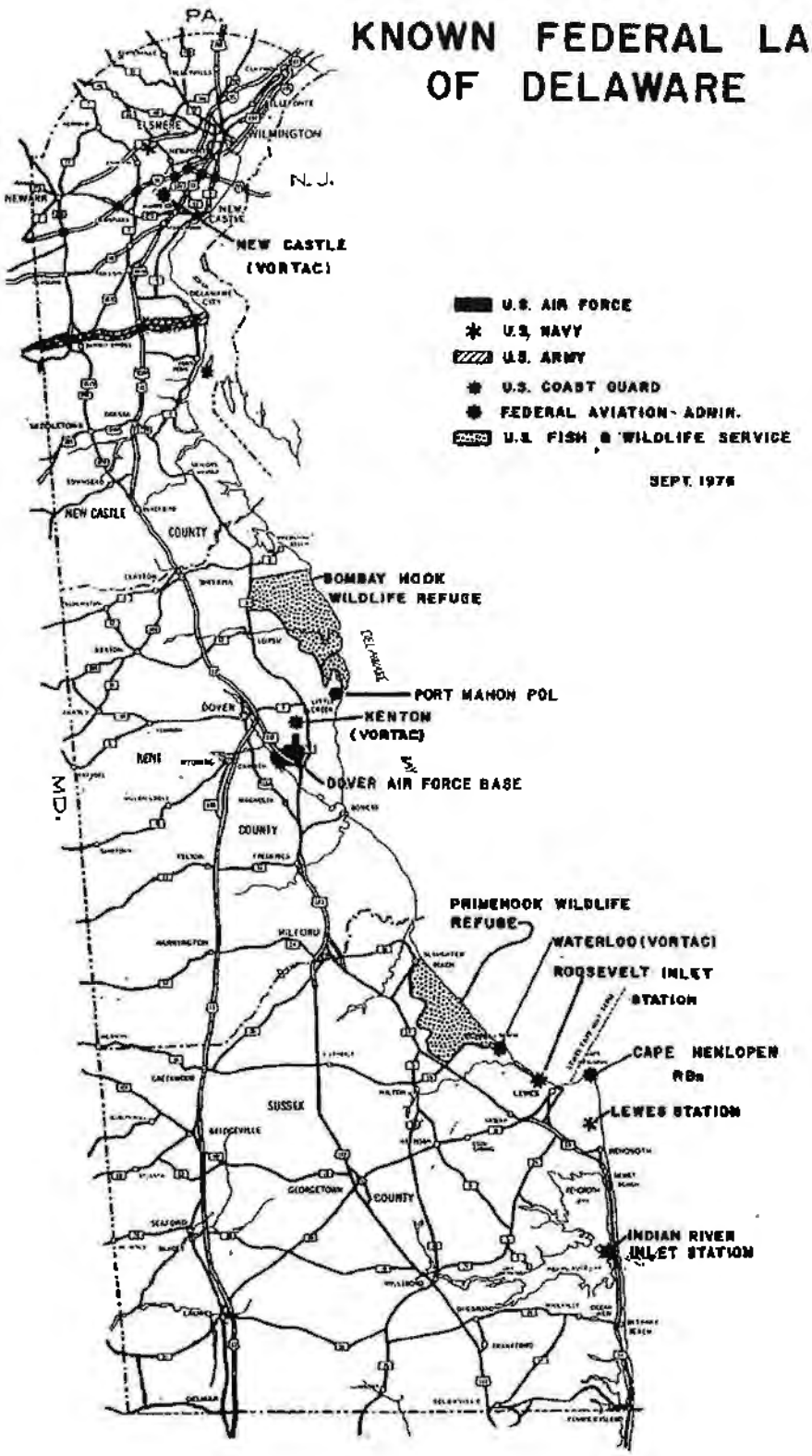
States must exclude from their coastal management zone those lands owned, leased, held in trust or whose use is otherwise by law subject solely to the discretion of the federal government.

The exclusion of federal lands does not remove federal agencies from the obligation of complying with the consistency provisions of Section 307 of the CZMA when federal actions on these excluded lands have spillover impacts that significantly affect coastal areas, uses or resources within the purview of the CMP. Nor does such exclusion impair in any way any rights or authorities that the State may have over federal lands that exist separate from this program. Hence, as identified in Appendix F, federal development activities and projects on federal lands may be subject to a consistency review. Also, while federal agencies are exempt from "state permitting authority" they must comply with permits issued by a state pursuant to federal authority such as those required under the Clean Air and Clean Water Acts.

4. Interstate Boundaries

Although inland coastal management boundaries of contiguous States need not be coterminous, Delaware has consulted with adjoining coastal States during program development to minimize the possibility of incompatible uses occurring at the juncture of the boundaries. Several meetings were attended by the CMP managers and staffs of Delaware and the adjoining States to discuss program development issues, including resource use compatibility. In addition, WILMAPCO, which is comprised of representatives from Delaware, Maryland and New Jersey, has addressed various CMP-related issues, including the boundary situation in Salem County created by the United States Supreme Court decision mentioned above. That decision subjects parts of waters bordering Salem County, New Jersey to the Delaware Coastal Zone Act and other Delaware authority. Inasmuch as coastal resources of Delaware may be affected by certain uses of such waters, the Delaware CMP has opposed Salem County efforts to waive the Delaware's regulatory provisions which may relate to development in Salem County.

Two other specific interstate boundary issues taken up by the CMP with adjoining states include (1) the development and implementation of a statewide sediment and erosion control program which is based on a similar program in Maryland, and (2) the review of a New Jersey-Delaware fisheries compact. The latter action generated a Delaware Attorney General's Opinion which has afforded the State increased and needed flexibility in managing its fishery resources.


KNOWN FEDERAL LANDS
OF DELAWARE
PA.
N. J.
MD.
WILMINGTON
NEW CASTLE
(VORTAC)
U.S. AIR FORCE
U.S. NAVY
U.S. ARMY
U.S. COAST GUARD
FEDERAL AVIATION ADMIN.
U.S. FISH & WILDLIFE SERVICE
SEPT. 1976
NEW CASTLE
COUNTY
BOMBAY HOOK
WILDLIFE REFUGE
DELAWARE
PORT MAHON POL
DOVER
KENTON
(VORTAC)
KENT
COUNTY
DOVER AIR FORCE BASE
PRIMEHOOK WILDLIFE
REFUGE
WATERLOO (VORTAC)
ROOSEVELT INLET
STATION
CAPE HENLOPEN
RBn
LEWES STATION
SUSSEX
COUNTY
INDIAN RIVER
INLET STATION

DE22604

14049

CZIC COLLECTION

# PROPOSED NEW JERSEY COASTAL MANAGEMENT PROGRAM

AND

# DRAFT ENVIRONMENTAL IMPACT STATEMENT

COASTAL ZONE
INFORMATION CENTER

May 1980

U.S. National Oceanic and Atmospheric Administration
Office of Coastal Zone Management
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Prepared by:

State of New Jersey
Department of Environmental Protection
Division of Coastal Resources
Bureau of Coastal Planning and Development
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U.S. Department of Commerce
National Oceanic and Atmospheric Administration
Office of Coastal Zone Management
3300 Whitehaven Street, N.W.
Washington, D.C. 20235

DE24184

STATE OF NEW JERSEY
DEPARTMENT OF ENVIRONMENTAL PROTECTION
OFFICE OF THE COMMISSIONER
P. O. BOX 1390
TRENTON, N. J. 08625
609-292-2885

Dear Friend of the Coast:

I am proud to submit to you the Proposed New Jersey Coastal Management Program and Draft Environmental Impact Statement. Preparation of this document begins the last phase of the review process under Section 306 of the federal Coastal Zone Management Act.

This proposed program is based upon our experience administering the Coastal Management Program approved by the National Oceanic and Atmospheric Administration for the Bay and Ocean Shore Segment in September 1978, and more than five years of coastal management and planning. The program will provide the substantive framework for Governor Byrne's Riverlands Renaissance Program, while also enabling New Jersey to continue balancing the many coastal interests and pressures to both protect sensitive resources and promote necessary development. New Jersey has already demonstrated that these two objectives need not be mutually exclusive.

The Department of Environmental Protection (DEP), as New Jersey's lead coastal agency, will undertake a series of public hearings and informal workshops throughout the State to discuss this Proposed Program with a wide range of federal, state and local agencies, interest groups and citizens to help identify the revisions that may be appropriate before the Governor's formal review and request for federal approval of the program.

While the responsibility for this document rests with DEP, the Proposed Program is already much better than it would otherwise have been because of the time taken by hundreds of New Jersey residents, elected officials, public agencies, and other interested people to review and comment upon earlier drafts and papers, and to attend public meetings we have held during the past five years.

I invite you to carefully review this Proposed Program and to discuss your comments and suggestions with us.

Sincerely,

JERRY FITZGERALD ENGLISE
Commissioner

DE24185

NOTE TO READER/NEPA SUMMARY

The National Environmental Policy Act of 1969 (NEPA) mandates that an environmental impact statement be prepared as part of the review and approval process of major actions by Federal agencies. The action contemplated is approval of the Proposed New Jersey Coastal Management Program under Section 306 of the Federal Coastal Zone Management Act of 1972, as amended (CZMA). An immediate effect of approval is the qualification of the State for Federal matching funds for use in administering the Coastal Mangement Program. In addition, New Jersey will be eligible for continued funding under the Coastal Energy Impact Program (CEIP). The federal Coastal Zone Management Act stipulates that Federal activities affecting the coastal zone shall be, to the maximum extent practicable, consistent with an approved State coastal management program.

This document is organized as follows:

Part I - Summary

Part II - New Jersey Coastal Management Program - Description of the Program

Part III - Description of the New Jersey Coastal Zone - Affected Environment

Part IV - Environmental, Economic and Institutional Consequences

Part V - Alternatives to the Proposed Action

Appendices A-I - The appendices are also part of the Program.

For purposes of reviewing this proposed action, the key concerns are:

- whether the Coastal Management Program is consistent with the objectives and policies of the national legislation,
- whether the State management authorities are adequate to implement the program,
- whether the award of Federal funds under Section 306(h) of the Federal Act will help New Jersey to meet those objectives, and
- whether there will be a net environmental gain as a result of Program approval and implementation.

The Federal Office of Coastal Zone Management believes the answers to these key questions are affirmative. The Office is widely circulating this document to all interested agencies and parties in order to receive the fullest expression of opinion on these questions. The Federal Office of Coastal Zone Management thanks those participating in the review of the Proposed New Jersey Coastal Management Program and this draft environmental impact statement.

This Program is of major significance, not only to New Jersey, but to the Nation. New Jersey is the nation's most densely populated state and the resources of its coastal zone are under intense pressure from development decentralizing out of the nation's first and fourth largest cities, from exploration and potential

development of offshore oil and gas reserves, and from development attracted to the Atlantic City area by casino gambling. Yet New Jersey still has miles of undeveloped tidal marsh along the shore of Delaware Bay and undisturbed beaches and dunes in Island Beach State Park. In no other state do coastal planners face a greater challenge in achieving the national interest in providing for the wise use of coastal resources while preserving the sensitive ecology of the coastal zone.

NEPA Summary

(X) Draft Environmental Impact Statement ( ) Final Environmental Impact Statement

Department of Commerce, National Oceanic and Atmospheric Administration, Office of Coastal Zone Management. For additional information about this proposed action or this statement, please contact:

Office of Coastal Zone Management
National Oceanic and Atmospheric Administration
Attn: Ms. Kathryn Cousins
Regional Manager, North Atlantic Region or
David R. Duncan
Program Assistant, North Atlantic Region
3300 Whitehaven Street, N.W.
Washington, D.C. 20235
Phone: 202-634-4126

1. Type of Action

Proposed Federal approval of Proposed New Jersey Coastal Management Program

(X) Administrative ( ) Legislative

2. Brief Description of Action

It is proposed that the Secretary of Commerce approve the Coastal Management Program of the State of New Jersey pursuant to P.L. 92-583. Approval would permit implementation of the proposed Program, allowing program administration grants to be awarded to the State, and require that Federal actions be consistent with the Program, to the maximum extent practicable.

3. Summary of Environmental Impacts and Adverse Environmental Effects

Approval and implementation of the Program will allow the State to implement more effectively existing State management within the coastal zone. The State will condition, restrict, or prohibit selected land and water uses in some parts of the New Jersey coast, while encouraging development in other parts. Each coastal municipality will retain primary responsibility for managing land use along its coast. The impacts of the New Jersey Coastal Management Program will be generally beneficial, although there may be some adverse, short-term economic impacts on some coastal users, and the Program will entail the irreversible commitment of coastal resources.

4. Alternatives Considered

A. Federal Alternatives

The Assistant Administrator could delay or deny approval of the New Jersey Coastal Management Program under the following conditions if:

1. The authorities necessary to implement the Coastal Management Program were not in place at the time of Program approval.

2. The Program does not adequately achieve the goals of the Coastal Zone Management Act as expressed by Congress in Section 303 of the Act.

3. The national interest in the siting of facilities in the coastal zone were not adequately considered.

B. State Alternatives

1. The State could withdraw its application and not seek Federal assistance.

2. The State could wait until new legislation is adopted before submitting a final EIS for federal approval.

3. The State could choose not to reinterpret the Waterfront Development Law to encompass an upland jurisdiction.

4. The State could designate DEP as the management agency for the coastal zone part of the Hackensack Meadowlands District.

5. A list of all Federal, State and Local Agencies and other parties from which comments were requested is listed in the Appendix H.

6. This DEIS was submitted to EPA on _____, 1980.

7. The Final Environmental Impact Statement (FEIS) will be sent during the thirty-day review period only to persons commenting on this DEIS and persons who specifically request it.

DESIGNATION: Draft Environmental Impact Statement

TITLE: Proposed Federal Approval of the New Jersey Coastal Management Program

ABSTRACT: The State of New Jersey has submitted its Coastal Management Program to the Office of Coastal Zone Management for approval. Approval would permit implementation of the proposed Program, allow program administration grants to be awarded to the State, and require that federal actions be consistent with the Program. This impact statement includes a copy of the Program (Part II) which is a comprehensive management program for land and water use activities. It consists of numerous policies on diverse management issues which are enforced by various state laws, discusses areas of special interest to the State, and is the culmination of several years of program development.

Approval and implementation of the Program will enhance governance of the state's coastal land and water areas and uses according to the coastal policies and standards. The effect of these policies is to condition, restrict or prohibit some uses in parts of the coastal zone, while encouraging development and other uses in other parts. This Program will improve decision-making processes for determining appropriate coastal land and water uses in light of resource considerations and increase public awareness of coastal resources. The Program will result in some short-term economic impacts on coastal users but will lead to increased long-term protection of the state's coastal resources.

Alternatives include delaying or denying approval if certain requirements of the Coastal Zone Management Act have not been met, or the State could modify parts of the Program or withdraw or delay their application for Federal approval.

APPLICANT: New Jersey Department of Environmental Protection, Division of Coastal Resources, Bureau of Coastal Planning and Development

LEAD AGENCY: U.S. DEPARTMENT OF COMMERCE
National Oceanic and Atmopsheric Administration
Office of Coastal Zone Management

CONTACT: Mr. David R. Duncan
North Atlantic Regional Manager
Office of Coastal Zone Management
3300 Whitehaven Road, N.W.
Washington, D.C. 20235 (Tele. 202/634-4126)

COMMENTS: Comment period on this statement ends July 7, 1980



DE24189

PROPOSED NEW JERSEY COASTAL MANAGEMENT PROGRAM

AND

DRAFT ENVIRONMENTAL IMPACT STATEMENT


Commissioner's Letter
Note to Reader
Table of Contents

PAGE

PART I - SUMMARY

Program Summary 1
Changes Program Will Make 6
Major Issues, Opportunities, and Areas of Conflict 7
Major Conclusions 10

PART II - DESCRIPTION OF THE PROPOSED NEW JERSEY COASTAL MANAGEMENT PROGRAM

Chapter One: INTRODUCTION 15

Chapter Two: BOUNDARY 17

Introduction and Summary
Inland Boundary
Seaward and Interstate Boundary

Chapter Three: MANAGEMENT SYSTEM 21

Introduction and Summary 22
Administrative Framework - Department of Environmental Protection 23
Principal Implementation Programs 29

Introduction
Waterfront Development Law
Coastal Area Facility Review Act
Wetlands Act
Tidelands Management
Hackensack Meadowlands Development Commission
Department of Energy
Green Acres Funding
Shore Protection
Federal Coastal Program Funding

Supplementary Programs in DEP 44

Water Quality Program

NPDES Permits
Areawide Water Quality Management (208) Plans
Wastewater Treatment Facilities: Regulation and Funding

TABLE OF CONTENTS - Cont.


| | PAGE |
|---|---|
| Stream Encroachment and Flood Hazards | |
| Wild and Scenic Rivers | |
| Delaware and Raritan Canal State Park | |
| Regulation of State Owned Lands | |
| Air Quality Regulation | |
| Solid Waste | |
| Harbor Clean-Up | |
| Other State Agencies | 55 |
| Department of Agriculture | |
| Department of Community Affairs | |
| Department of Labor and Industry | |
| Department of Transportation | |
| County Land Use Authority | 57 |
| Municipal Land Use Authority | 57 |
| Regional Land Use Authority | 58 |
| Delaware River Area | |
| Northern Waterfront Area | |
| Federal Agency Authority | 61 |
| Public Participation | 62 |
| Conflict Resolution - Appeals | 63 |
| **Chapter Four: COASTAL RESOURCE AND DEVELOPMENT POLICIES** | 65 |
| Note to Reader | |
| SUBCHAPTER 1 - Introduction | |
| SUBCHAPTER 2 - Location Policies | |
| SUBCHAPTER 3 - Special Areas | |
| SUBCHAPTER 4 - General Water Areas | |
| SUBCHAPTER 5 - General Land Areas | |
| SUBCHAPTER 6 - General Location Policies | |
| SUBCHAPTER 7 - Use Policies | |
| SUBCHAPTER 8 - Resource Policies | |

TABLE OF CONTENTS - Cont.


| | PAGE |
|---|---|
| Chapter Five: SPECIAL REQUIREMENTS OF THE FEDERAL COASTAL ZONE MANAGEMENT ACT | 247 |
| Introduction | 247 |
| Federal Consistency | 248 |
| National Interests | 257 |
| Regional Benefit Decisions | 267 |
| Geographic Areas of Particular Concern | 269 |
| Hackensack Meadowlands Development Commission District | |
| Areas for Preservation and Restoration | 290 |
| Energy Facility Planning Process | 291 |
| Shoreline Access and Protection Planning Process | 298 |
| Shoreline Erosion Mitigation Planning Process | 307 |
| Chapter Six: NEXT STEPS IN COASTAL MANAGEMENT IN NEW JERSEY | 313 |
| PART III - DESCRIPTION OF THE NEW JERSEY COASTAL ZONE - AFFECTED ENVIRONMENT | 317 |
| Introduction | 317 |
| Delineating the Proposed Boundary | 317 |
| Municipalities Within the Proposed Coastal Zone | 321 |
| Description and Visions of the Proposed Coastal Zone | 326 |
| Northern Waterfront Area | |
| Bay and Ocean Shore Area | |
| Delaware River Area | |
| PART IV - ENVIRONMENTAL, ECONOMIC AND INSTITUTIONAL CONSEQUENCES OF FEDERAL APPROVAL | 337 |
| Introduction | 337 |
| Direct Effects - Environmental Consequences | 337 |
| Environmental Consequences | |
| Economic Consequences | |
| Institutional Consequences | |
| Possible Conflicts Between Coastal Program and the Plans or Policies of Local Governments, Regional and Insterstate Agencies | 342 |
| Introduction | |
| Local Governments | |
| Regional and Interstate Agencies | |
| PART V - ALTERNATIVES TO THE PROPOSED ACTION | 363 |

TABLE OF CONTENTS - Cont.


| | | PAGE |
|---|---|---|
| **APPENDICES** | | |
| A. | The Coastal Planning Process | 367 |
| B. | Excluded Federal Lands | 375 |
| C. | Memorandum of Understanding Between DEP and DOE | 377 |
| D. | Proposed Waterfront Development Rules and Attorney General's Opinion | 383 |
| E. | Legal Authorities | 395 |
| F. | Legal Commentary | 411 |
| G. | Secretarial Findings Index | 419 |
| H. | Recipients of Draft Environmental Impact Statement | 421 |
| I. | List of Preparers of New Jersey Proposed Coastal Management Program and Draft EIS | 426 |
| **FIGURES** | | |
| 1. | Proposed New Jersey Coastal Zone - Map | 2 |
| 2. | Proposed New Jersey Coastal Zone - Boundary Sketch | 19 |
| 3. | Department of Environmental Protection Organizational Chart | 24 |
| 4. | Division of Coastal Resources Organizational Chart | 25 |
| 5. | Jurisdiction of Proposed Rule for Waterfront Development Law - Concept Sketch and Sample Map | 31 |
| 6. | Wetlands and Waterfront (Riparian) Development Permit Application Processes | 33 |
| 7. | CAFRA Inland Boundary | 34 |
| 8. | CAFRA Permit Application Process | 36 |
| 9. | Bay and Ocean Shore Area Coastal Permit Jurisdiction | 38 |
| 10. | Tidelands Application Process | 39 |
| 11. | Delaware and Raritan Canal State Park Overlap with Proposed Coastal Zone | 50 |
| 12. | Overlap Between Delaware River Basin Commission Jurisdiction and Proposed Coastal Zone | 59 |
| 13. | Special Water's Edge Types - Mainland | 99 |
| 14. | Special Water's Edge Types - Barrier Island | 100 |




DE24193

TABLE OF CONTENTS - Cont.


| | | PAGE |
|---|---|---|
| 15. | Existing Lagoon Edge | 102 |
| 16. | Beach and Dune System | 104 |
| 17. | Coastal Bluffs | 118 |
| 18. | Intermittent Stream Corridor | 120 |
| 19. | Pinelands Jurisdictions | 131 |
| 20. | HMDC Location and Boundary | 134 |
| 21. | Water Area Policy Summary Table | 136 |
| 22. | Water Body Types | 137 |
| 23. | Growth Regions of the Proposed Coastal Zone | 159 |
| 24. | Infill Diagram | 164 |
| 25. | OCS Oil and Gas Leasing Areas | 195 |
| 26. | Pine Barrens Exclusion Area | 200 |
| 27. | Flood Hazard Areas | 241 |
| 28. | Geographic Areas of Particular Concern | 270 |
| 29. | Higbee Beach GAPC | 272 |
| 30. | HMDC Location and Boundary (Same as Figure 20) | 276 |
| 31. | HMDC Approval Process for Subdivisions Outside of SPA | 279 |
| 32. | HMDC Approval Process for SPA and Planned Unit Developments | 280 |
| 33. | HMDC Zoning Map | 283 |
| 34. | HMDC Land Use, Present and Projected | 285 |
| 35. | HMDC Wetland Biozones | 286 |
| 36. | Energy Facilities and their Major Impacts | 292 |
| 37. | Proposed New Jersey Coastal Zone (Same as Figure 1) | 319 |
| 38. | Municipal Government Policies | 343 |
| 39. | Potential Regional Government Conflicts | 361 |
| 40. | Major Excluded Federal Lands | 376 |
| 41. | Jurisdiction of Proposed Rules for Waterfront Development Law - Sketch and Sample Map (Same as Figure 5) | 384 |




DE24194

## CHAPTER TWO - BOUNDARY

Summary
Inland Boundary
Seaward and Interstate Boundaries

**********

### Summary

New Jersey's proposed coastal zone extends from the New York border south to Cape May Point and then north to Trenton. It encompasses the waters and waterfronts of the Hudson River and related water bodies south to the Raritan Bay, the Atlantic Ocean and some inland areas from Sandy Hook to Cape May, the Delaware Bay and some inland areas, and the waterfront of the Delaware River and related tributaries. This Chapter describes the proposed boundary, while Appendix B provides more detail and maps of the boundary, and the process for its delineation.

The proposed coastal zone encompasses areas in which the State, through the Department of Environmental Protection and the Hackensack Meadowlands Development Commission, has the authority to regulate land and water uses that have a significant impact on coastal waters. These authorities include the Coastal Area Facility Review Act (CAFRA), the Wetlands Act, the Waterfront Development Law, Tidelands statutes, and the Hackensack Meadowlands Reclamation and Development Act.

### Inland Boundary

The inland boundary for the portion of the coast from Raritan Bay south to Cape May Point and then north along the Delaware Bay (consisting of parts of Middlesex, Monmouth, Ocean, Burlington, Atlantic, Cape May, Cumberland and Salem Counties), is defined as:

> the landward boundary of the Coastal Area as defined in the Coastal Area Facility Review Act (CAFRA, N.J.S.A. 13:19-4), or the upper boundary of coastal wetlands located landward of the CAFRA boundary along tidal water courses flowing through the CAFRA area, whichever is more landward, including State-owned tidelands.

In the more developed portions of the State (including portions of Salem, Gloucester, Camden, Burlington, Mercer, Middlesex, Somerset, Union, Hudson, Essex, Passaic and Bergen Counties), the coastal zone boundary is defined as:

> the landward boundary of the State's jurisdiction under the Waterfront Development Act (N.J.S.A 12:5-3)* or Wetlands Act (N.J.S.A. 13:9A-1), or the landward boundary of State-owned tidelands, whichever extends farthest inland.

---

* The proposed definition of the inland jurisdictional boundary of the Waterfront Development Law is: the first public road, railroad right-of-way, or property line generally parallel to any navigable waterway, but in no case more than 500 feet or less than 100 feet inland from mean high water.

This boundary (discussed below in "Principal Program Authorities") ensures that the State will regulate at least the first 100 feet inland from all tidal waters. The State will consider all land within 500 feet of tidal water to be within this boundary unless demonstrated otherwise. This represents a substantial reduction from the coastal zone boundary DEP proposed in several publications between December 1976 and March 1979, which would have extended the coastal zone inland to the first road or railroad, regardless of its distance from the water (See Appendix B).

The boundary of the Hackensack Meadowlands region is defined as:

> the boundary of the area defined as the Hackensack Meadowlands District by the Hackensack Meadowlands Reclamation and Development Act. (N.J.S.A. 13:17-4)

A generalized map of the Statewide Coastal Zone Boundary is shown in Figure 1 in Part I of this document, and Figure 2 is a sketch of the boundary in different parts of the State.

The proposed boundary encompasses approximately 1,792 miles of tidal coastline, including 126 miles along the Atlantic Oceanfrout from Sandy Hook to Cape May. It ranges in width from one hundred feet to twenty-four miles (near Batsto and the Mullica River, in Burlington County). The total land area of the Bay and Shore region is approximately 1,376 square miles or 17 percent of New Jersey's land area.

Research indicates that there has been a rising trend in the level of the ocean, relative to coastal land, along the northern East Coast of the United States. Hicks* data places the rise at about 8 inches between the 1890s and 1970. If this trend continues, tidal waters will penetrate further up the State's coastal rivers. Should this change become significant, the coastal zone boundary and the area under the jurisidiction of the Waterfront Development Law, will be redelineated accordingly.

Seaward and Interstate Boundaries

The seaward boundary of the coastal zone is the three nautical mile limit of the United States Territorial Sea, and the interstate boundaries of the States of New York and Delaware and the Commonwealth of Pennsylvania.

In most of Salem County, the Delaware-New Jersey State boundary is the mean low water line on the eastern (New Jersey) shore of the Delaware River. The New Jersey and Delaware Coastal Management agencies have discussed this issue and have concluded that any New Jersey project extending beyond mean low water must obtain coastal permits from both states. New Jersey and Delaware, therefore, will coordinate reviews of any proposed development that would span the interstate boundary to ensure that no development is constructed unless it would be consistent with both state coastal management programs.

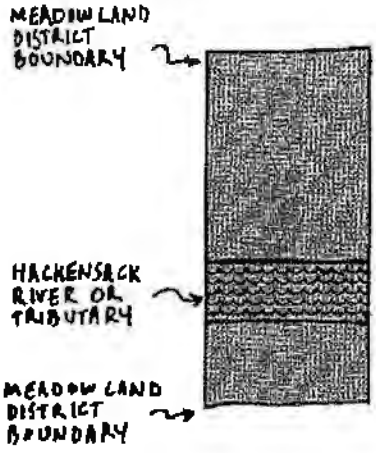
---

* S.D. Hicks, "As the Oceans Rise", National Ocean Survey, NOAA, Vol. 2, No. 2, pp. 22-24, 1972.

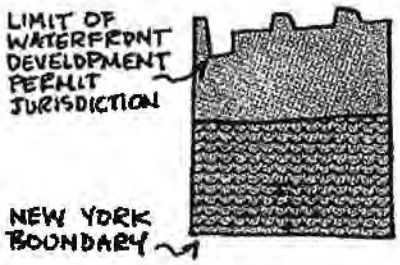
Figure 2

# PROPOSED NEW JERSEY COASTAL ZONE-BOUNDARY SKETCH

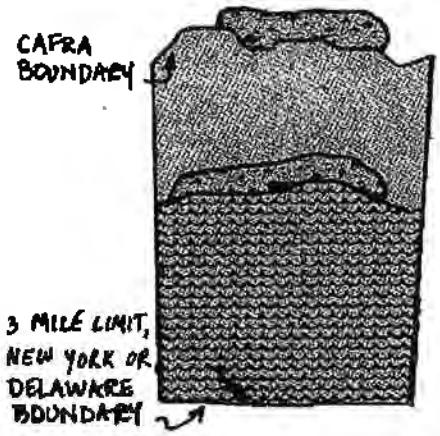
## 1 HACKENSACK MEADOWLANDS GENERALIZED CZ BOUNDARY



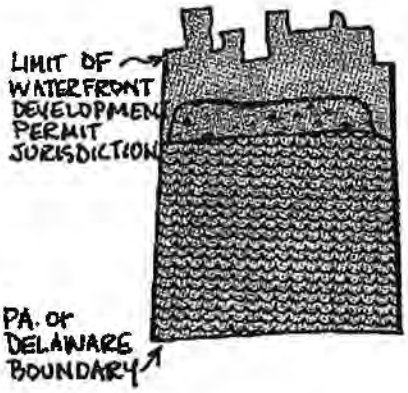

## 2 NORTHERN WATERFRONT GENERALIZED CZ BOUNDARY




## 3 BAY & OCEAN SHORE SEGMENT GENERALIZED CZ BOUNDARY




## 4 DELAWARE RIVER AREA GENERALIZED CZ BOUNDARY




REGULATED WETLANDS

TIDAL WATERS

PROPOSED COASTAL ZONE

New Jersey also recognizes that most electric generating facilities may not be coastal-dependent but do require access to vast quantities of cooling waters, a siting factor that, from the perspective of utilities, increases the attractiveness of coastal locations. This siting policy strikes a balance among various competing national, regional, and state interests in coastal resources, and recognizes some of the differences in the siting requirements of fossil fuel and nuclear generating stations.

The policy directs fossil fuel stations toward built up areas in order to preserve and protect particularly scenic and natural areas important to recreation and open space purposes. New Jersey has articulated this policy with a conscious recognition of the state's progress in attaining and maintaining high air quality. Given the use of appropriate control technology, coal-fired generating stations, for example, appear feasible at various coastal locations. The siting of coal-fired power plants in urban areas also promotes efficient energy use due to the proximity of power plants to load centers.

The nuclear siting policy recognizes public concern for the disposal of spent fuel, as mandated in 1973 by the New Jersey Legislature in CAFRA.

(n) Liquefied Natural Gas (LNG) Facilities

1. Policy

(i) New marine terminals and associated facilities that receive, store, and vaporize liquefied natural gas, and serve base load demand [for transferring, tranforming and storing liquefied natural gas, prior to distribution by pipeline,] are discouraged in the coastal zone [Bay and Ocean Shore Region] unless the proposed facility is located or constructed so as to neither unduly endanger human life nor property nor otherwise impair the public health, safety and welfare, as required by N.J.S.A. 13:19-10f, and complies with the Coastal Resource and Development Policies. In determining the acceptability of proposed LNG facilities, DEP shall also consider siting criteria such as: (a) applicable federal siting criteria, (b) the risks inherent in tankering LNG along New Jersey's water ways and rivers, (c) the risks inherent in transferring LNG onshore, and (d) the compatibility of the facility with surrounding land uses, population densities, and concentrations of commercial or industrial activity.

(ii) New LNG facilities that liquefy, store and vaporize LNG to serve demand during peak periods shall be located in generally remote, rural, and low-density areas where land use controls and/or buffer zones are likely to be maintained.

2. Rationale

New Jersey's policy on LNG facility siting recognizes the responsibilities of various federal agencies, including the Coast Guard and Office of Pipeline Safety Operations in the U.S. Department of Transportation, the Economic Regulatory Administration in the U.S. Department of Energy (US DOE), and the independent Federal Energy Regulatory Commission within USDOE, for management of various aspects of the siting and operations of LNG facilities. New Jersey seeks and welcomes rigorous and consistent federal LNG siting standards. In fact, the State of New Jersey petitioned the former Federal Power Commission in May 1976 for the issuance of such siting criteria. The petition (RM76-13) is still under consideration by the Federal Energy Regulatory Commission.

LNG facilities have been proposed in the 1970's in New Jersey's coastal region along the Delaware River at sites in Logan Township (Transco) and West Deptford Township (Tenneco) in Gloucester County, as well as on Staten Island, New York (Distrigas and Eastcogas), with a proposed natural gas pipeline connection to New Jersey under the Arthur Kill. [As of mid-1978] To date, none of these proposals have received the required federal approvals. The former New Jersey policy on LNG policy is based in part on the results of the Federal Power Commission staff alternative LNG terminal site analysis and recommendation that the West Deptford site not be approved (see Federal Power Commission, Bureau of Natural Gas, Draft Environmental Impact Statement for the Construction and Operation of a Liquefied Natural Gas Import Terminal in West Deptford, New Jersey, Docket No. CP 76-16, Tenneco LNG, Inc., December 1976). The tankering, transfer, and storage of LNG pose significant risks to public health, safety and welfare and may cause serious adverse environmental impacts which may not be restricted to one state, given the likely potential locations of LNG terminals along interstate waterways. New Jersey therefore recommends that the siting of LNG facilities be treated as a regional issue on an interstate basis, ideally by the adoption of consistent federal siting criteria. At the same time, NJDEP and NJDOE will continue to explore the potential and likely impacts of onshore and offshore sites for LNG facilities.

7:7E-7.5 Transportation Use Policies

(a) Roads

1. Policy

New road construction shall be limited to situations where:

(i) a clear need exists, taking into account the alternatives of upgrading existing roads and of using public transportation to meet the need,

(ii) provision is made to include construction of bicycle and foot paths, except where these would not be feasible,

## APPENDIX I - PREPARERS OF THE PROPOSED NEW JERSEY COASTAL MANAGEMENT PROGRAM AND DRAFT ENVIRONMENTAL STATEMENT

The Bureau of Coastal Planning and Development in the Division of Coastal Resources, Department of Environmental Protection prepared this document with the assistance of present and former staff of the entire Department, other state, federal and local agencies, interest groups and citizens. The preparers are listed below and, as required by regulations of the Council on Environmental Quality (1502.17), academic degrees and the number of years of relevant experience of the primary authors are listed in parentheses.

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DE24620

This report was typed primarily by Vicky Posluszny of the DEP Word Processing Center under the leadership of May Stevens.

Special thanks to Assistant Commissioner for Natural Resources Donald T. Graham and Deputy Commissioner Betty Wilson. Thanks also to Chester Mattson of the Hackensack Meadowlands Development Commission, Assistant Commissioner Charles Richman and Administrator Edward J. Linky of the Department of Energy, and Deputy Attorney General John Van Dalen.

# PROPOSED NEW JERSEY COASTAL MANAGEMENT PROGRAM

## PUBLIC HEARINGS

| | | |
|---|---|---|
| TRENTON | JUNE 11, 1980<br>10:00 a.m. | State Museum Auditorium<br>204 West State St. |
| JERSEY CITY | JUNE 11, 1980<br>7:30 p.m. | Five Corners Library<br>678 Newark Ave. |
| CAMDEN | JUNE 12, 1980<br>10:00 a.m. | Rutgers University<br>Law School-Room 207<br>5th and Penn Sts. |
| TOMS RIVER | JUNE 12, 1980<br>7:30 p.m. | Ocean County Courthouse<br>Courtroom 1<br>Washington St. |

PUBLIC COMMENTS WILL BE ACCEPTED UNTIL JULY 7, 1980

TO TESTIFY AT THE PUBLIC HEARINGS OR TO OBTAIN FURTHER INFORMATION, WRITE THE DEPARTMENT OF ENVIRONMENTAL PROTECTION, BUREAU OF COASTAL PLANNING AND DEVELOPMENT, P.O. BOX 1889 TRENTON, N.J. 08625 OR CALL (609) 292-9762.

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# NEW JERSEY COASTAL MANAGEMENT PROGRAM

## AUGUST 1980

FINAL ENVIRONMENTAL IMPACT STATEMENT

U.S. DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
Office of Coastal Zone Management

DEPARTMENT OF ENVIRONMENTAL PROTECTION

Brendan Byrne
Governor

Jerry Fitzgerald English
Commissioner

DE24623

The New Jersey Coastal Management Program and Final Environmental Impact Statement was prepared in part with financial assistance from the National Oceanic and Atmospheric Administration, Office of Coastal Zone Management, under the provisions of Section 305 of the federal Coastal Zone Management Act (P.L. 92-583, as amended).

Cover photo by David N. Kinsey

# NEW JERSEY COASTAL MANAGEMENT PROGRAM

# AND

# FINAL ENVIRONMENTAL IMPACT STATEMENT

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Prepared by:

State of New Jersey
Department of Environmental Protection
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U.S. Department of Commerce
National Oceanic and Atmospheric Administration
Office of Coastal Zone Management
3300 Whitehaven Street, N.W.
Washington, D.C. 20235

DE24625

STATE OF NEW JERSEY
DEPARTMENT OF ENVIRONMENTAL PROTECTION
OFFICE OF THE COMMISSIONER
P. O. BOX 1390
TRENTON, N. J. 08625
609-292-2885

July 31, 1980

Dear Friend of the Coast:

I am proud to submit to you the New Jersey Coastal Management Program and final Environmental Impact Statement. Approval of this document completes the review process under Section 306 of the Federal Coastal Zone Management Act.

This program is based upon our experience administering the Coastal Management Program approved by the National Oceanic and Atmospheric Administration for the Bay and Ocean Shore Segment in September 1978, and six years of coastal management and planning. The program provides the substantive framework for Governor Byrne's Riverlands Renaissance Program, while also enabling New Jersey to continue balancing the many coastal interests and pressures to both protect sensitive resources and promote necessary development. New Jersey has already demonstrated that these two objectives need not be mutually exclusive.

The Department of Environmental Protection (DEP), as New Jersey's lead coastal agency, will continue to prepare publications and to hold public hearing and workshops throughout the state with a wide range of federal, state and local agencies, interest groups and citizens so that this Coastal Management Program is understood and fully used. In addition, I am committed to reviewing the Coastal Resource and Development Policies at least once each year to make necessary revisions and additions.

While federal approval of this coastal management program is a major accomplishment, it by no means concludes our coastal work. Rather, it provides a detailed framework through which we can all focus our efforts to address the range of crucial and complex coastal issues facing New Jersey.

I look forward to working with you in this effort.

Sincerely,

JERRY FITZGERALD ENGLISH
Commissioner

DESIGNATION: Final Environmental Impact Statement

TITLE: Proposed Federal Approval of the New Jersey Coastal Management Program

ABSTRACT: The State of New Jersey has submitted its Coastal Management Program to the Office of Coastal Zone Management for approval. Approval would permit implementation of the proposed Program, allow program administration grants to be awarded to the State, and require that federal actions be consistent with the Program. This impact statement includes a copy of the Program (Part II) which is a comprehensive management program for land and water use activities. It consists of numerous policies on diverse management issues which are enforced by various state laws, discusses areas of special interest to the State, and is the culmination of several years of program development.

Approval and implementation of the Program will enhance governance of the state's coastal land and water areas and uses according to the coastal policies and standards. The effect of these policies is to condition, restrict or prohibit some uses in parts of the coastal zone, while encouraging development and other uses in other parts. This Program will improve decision-making processes for determining appropriate coastal land and water uses in light of resource considerations and increase public awareness of coastal resources. The Program may result in some short-term economic impacts on coastal users but will lead to increased long-term protection of the state's coastal resources.

Alternatives include delaying or denying approval if certain requirements of the Coastal Zone Management Act have not been met, or the State could modify parts of the Program or withdraw or delay their application for Federal approval.

APPLICANT: New Jersey Department of Environmental Protection, Division of Coastal Resources, Bureau of Coastal Planning and Development

LEAD AGENCY: U.S. DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
Office of Coastal Zone Management

CONTACT: Ms. Kathryn Cousins
North Atlantic Regional Manager
Office of Coastal Zone Management
3300 Whitehaven Road, N.W.
Washington, D.C. 20235 (Tele. 202/634-4126)

COMMENTS: Comment period on the Draft Environmental Impact Statement ended July 7, 1980.

NEW JERSEY COASTAL MANAGEMENT PROGRAM

AND

FINAL ENVIRONMENTAL IMPACT STATEMENT


Commissioner's Letter
Note to Reader/NEPA Summary
Table of Contents

PAGE

PART I - SUMMARY

Program Summary 1
Changes Program Will Make 5
Major Issues, Opportunities, and Areas of Conflict 7
Major Conclusions 10
Federal Coastal Zone Management Act 13

PART II - DESCRIPTION OF THE NEW JERSEY COASTAL MANAGEMENT PROGRAM

Governor's Letter 15

Chapter One: INTRODUCTION 17

Chapter Two: BOUNDARY 19

Introduction and Summary 19
Inland Boundary 19
Seaward and Interstate Boundary 20

Chapter Three: MANAGEMENT SYSTEM 23

Introduction and Summary 24
Administrative Framework - Department of Environmental Protection 25
Principal Implementation Programs 31

Introduction
Waterfront Development Law
Coastal Area Facility Review Act
Wetlands Act
Tidelands Management
Hackensack Meadowlands Development Commission
Department of Energy
Green Acres Funding
Shore Protection
Coastal Program Funding

Supplementary Programs in DEP 46

Water Quality Program

NPDES Permits
Areawide Water Quality Management (208) Plans
Wastewater Treatment Facilities: Regulation and Funding

TABLE OF CONTENTS - Cont.


| | PAGE |
|---|---|
| Stream Encroachment and Flood Hazards | |
| Wild and Scenic Rivers | |
| Delaware and Raritan Canal State Park | |
| Regulation of State Owned Lands | |
| Air Quality Regulation | |
| Solid Waste | |
| Harbor Clean-Up | |
| Other State Agencies | 57 |
| Department of Agriculture | |
| Department of Community Affairs | |
| Department of Labor and Industry | |
| Department of Transportation | |
| County Land Use Authority | 59 |
| Municipal Land Use Authority | 60 |
| Regional Land Use Authority | 60 |
| Delaware River Area | |
| Northern Waterfront Area | |
| Federal Agency Authority | 64 |
| Public Participation | 65 |
| Conflict Resolution - Appeals | 66 |
| **Chapter Four: COASTAL RESOURCE AND DEVELOPMENT POLICIES** | |
| Note to Reader | 67 |
| SUBCHAPTER 1 - Introduction | |
| SUBCHAPTER 2 - Location Policies | |
| SUBCHAPTER 3 - Special Areas | |
| SUBCHAPTER 4 - General Water Areas | |
| SUBCHAPTER 5 - General Land Areas | |
| SUBCHAPTER 6 - General Location Policies | |
| SUBCHAPTER 7 - Use Policies | |
| SUBCHAPTER 8 - Resource Policies | |
| **Chapter Five: SPECIAL REQUIREMENTS OF THE FEDERAL COASTAL ZONE MANAGEMENT ACT** | 241 |
| Introduction | 241 |
| Federal Consistency | 242 |
| National Interests | 261 |

TABLE OF CONTENTS - Cont.


| | PAGE |
|---|---|
| Regional Benefit Decisions | 261 |
| Geographic Areas of Particular Concern | 263 |
| Hackensack Meadowlands Development Commission District | 299 |
| Areas for Preservation and Restoration | 284 |
| Energy Facility Planning Process | 285 |
| Shoreline Access and Protection Planning Process | 292 |
| Shoreline Erosion Mitigation Planning Process | 301 |
| Chapter Six: NEXT STEPS IN COASTAL MANAGEMENT IN NEW JERSEY | 307 |
| PART III - DESCRIPTION OF THE NEW JERSEY COASTAL ZONE - AFFECTED ENVIRONMENT | 310 |
| Introduction | 310 |
| Delineating the Boundary | 310 |
| Municipalities Within the Coastal Zone | 314 |
| Description and Visions of the Coastal Zone | 319 |
| Northern Waterfront Area | |
| Bay and Ocean Shore Area | |
| Delaware River Area | |
| PART IV - ENVIRONMENTAL, ECONOMIC AND INSTITUTIONAL CONSEQUENCES OF FEDERAL APPROVAL | 332 |
| Introduction | 332 |
| Direct Effects - Environmental Consequences | 332 |
| Environmental Consequences | |
| Economic Consequences | |
| Institutional Consequences | |
| Possible Conflicts Between Coastal Program and the Plans or Policies of Local Governments, Regional and Insterstate Agencies | 337 |
| Introduction | |
| Local Governments | |
| Regional and Interstate Agencies | |
| PART V - ALTERNATIVES TO THE PROPOSED ACTION | 357 |
| APPENDICES | |
| A. The Coastal Planning Process | 362 |
| B. Excluded Federal Lands | 370 |
| C. Memorandum of Understanding Between DEP and DOE | 372 |
| D. Proposed Waterfront Development Rules and Attorney General's Opinion | 378 |
| E. Legal Authorities | 390 |

TABLE OF CONTENTS - Cont.


| | | PAGE |
|---|---|---|
| F. | Legal Commentary | 406 |
| G. | Secretarial Findings Index | 414 |
| H. | Comments and Responses on Proposed NJCMP and DEIS (May 1980) | 417 |
| I. | Glossary | |
| J. | List of Preparers of New Jersey Coastal Management Program and Final EIS | |


FIGURES


| | | |
|---|---|---|
| 1. | New Jersey Coastal Zone - Map | 2 |
| 2. | New Jersey Coastal Zone - Boundary Sketch | 21 |
| 3. | Department of Environmental Protection Organizational Chart | 26 |
| 4. | Division of Coastal Resources Organizational Chart | 27 |
| 5. | Jurisdiction of Proposed Rule for Waterfront Development Law - Concept Sketch and Sample Map | 33 |
| 6. | Wetlands and Waterfront (Riparian) Development Permit Application Processes | 35 |
| 7. | CAFRA Inland Boundary | 36 |
| 8. | CAFRA Permit Application Process | 38 |
| 9. | Bay and Ocean Shore Area Coastal Permit Jurisdiction | 40 |
| 10. | Tidelands Application Process | 41 |
| 11. | Delaware and Raritan Canal State Park Overlap with Proposed Coastal Zone | 52 |
| 12. | Overlap Between Delaware River Basin Commission Jurisdiction and Proposed Coastal Zone | 62 |
| 13. | Special Water's Edge Types - Mainland | 94 |
| 14. | Special Water's Edge Types - Barrier Island | 95 |
| 15. | Existing Lagoon Edge | 97 |
| 16. | Beach and Dune System | 101 |
| 17. | Coastal Bluffs | 112 |
| 18. | Intermittent Stream Corridor | 114 |

TABLE OF CONTENTS - Cont.


| | | PAGE |
|---|---|---|
| 19. | Pinelands Jurisdictions | 125 |
| 20. | HMDC Location and Boundary | 128 |
| 21. | Water Area Policy Summary Table | 132 |
| 22. | Water Body Types | 133 |
| 23. | Growth Regions of the Coastal Zone | 153 |
| 24. | Infill Diagram | 159 |
| 25. | Acceptable Intensity of Development | 163 |
| 26. | OCS Oil and Gas Leasing Areas | 186 |
| 27. | Pine Barrens Exclusion Area | 191 |
| 28. | Flood Hazard Areas | 236 |
| 29. | Geographic Areas of Particular Concern | 264 |
| 30. | Higbee Beach GAPC | 266 |
| 31. | HMDC Location and Boundary (Same as Figure 20) | 270 |
| 32. | HMDC Approval Process for Subdivisions Outside of SPA | 273 |
| 33. | HMDC Approval Process for SPA and Planned Unit Developments | 274 |
| 34. | HMDC Zoning Map | 277 |
| 35. | HMDC Land Use, Present and Projected | 279 |
| 36. | HMDC Wetland Biozones | 280 |
| 37. | Energy Facilities and their Major Impacts | 286 |
| 38. | New Jersey Coastal Zone (Same as Figure 1) | 312 |
| 39. | Municipal Government Policies | 338 |
| 40. | Potential Regional Government Conflicts | 356 |
| 41. | Major Excluded Federal Lands | 371 |
| 42. | Jurisdiction of Rules for Waterfront Development Law - Sketch and Sample Map (Same as Figure 5) | 379 |

SUMMARY

# PART I

## PART I - SUMMARY

Program Summary
Program History
Changes Program Will Make
  Outside of the Bay and Ocean Shore Segment
  In the Bay and Ocean Shore Segment
Integration of the Two Segments
Major Issues and Opportunities
Major Conclusions - Basic Coastal Policies
Federal Coastal Zone Management Act

**********

### Program Summary

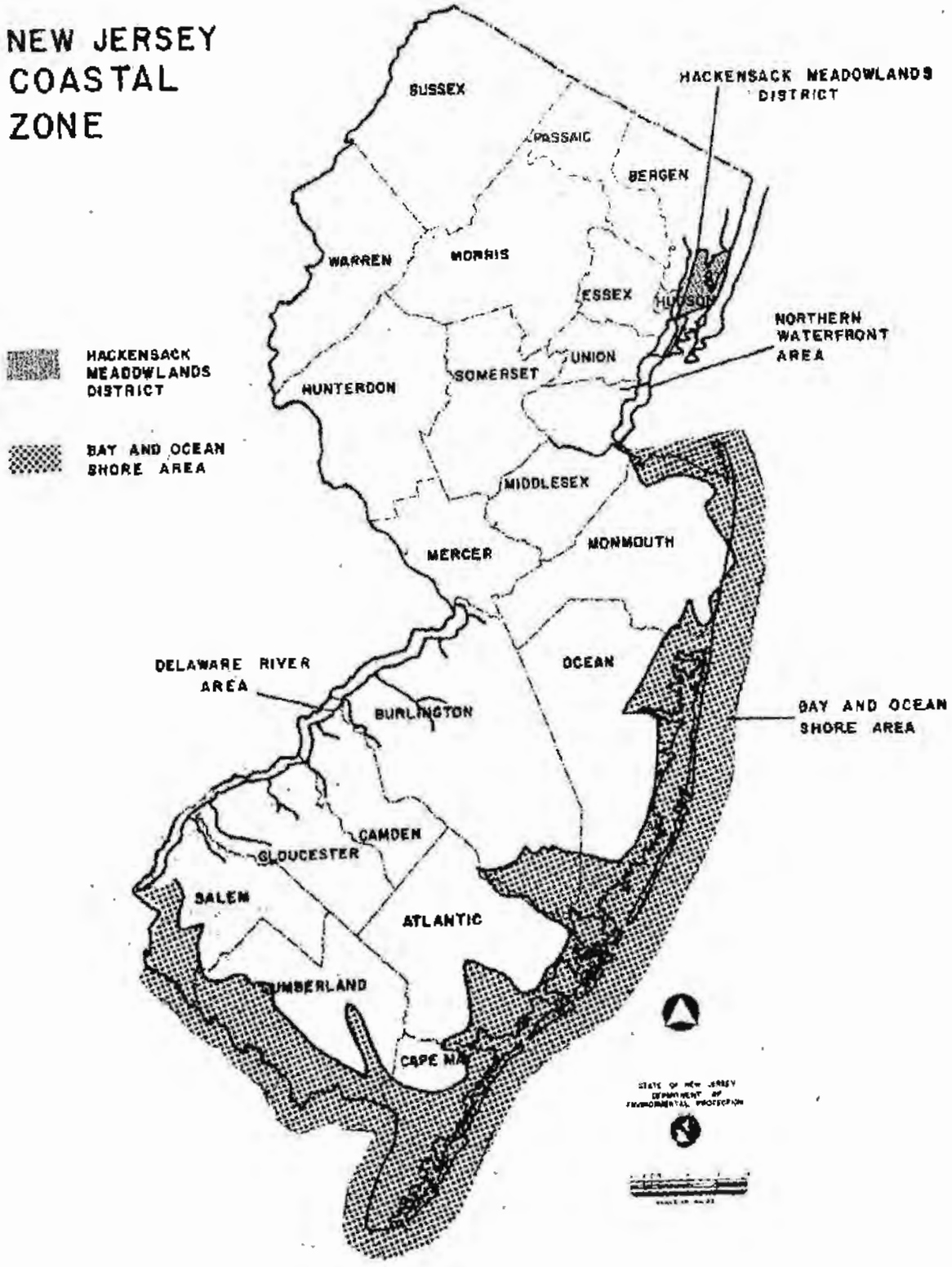
The New Jersey Coastal Management Program has been prepared to determine and describe New Jersey's strategy to manage the future protection and development of the coast. The State of New Jersey is seeking approval of the Program by the U. S. Department of Commerce to obtain the benefits of the federal Coastal Zone Management Act, which will aid State efforts to manage the often conflicting pressures facing the coast.

This document serves as a combined Coastal Management Program and as a Final Environmental Impact Statement, because federal approval of a state coastal management program is considered a "major action" requiring an environmental impact statement under the National Environmental Policy Act (NEPA). The New Jersey Department of Environmental Protection, Division of Coastal Resources (DEP-DCR) is preparing the Coastal Management Program in part with funding provided by the National Oceanic and Atmospheric Administration, Office of Coastal Zone Management (NOAA-OCZM).

New Jersey, along with other coastal states, is using the federal Coastal Zone Management Act of 1972, as amended, to prepare a program intended to promote the wise use of its coastal areas. The Governor has assigned this responsibility to the New Jersey Department of Environmental Protection (DEP). The New Jersey program was developed in two parts. The first part, called the Bay and Ocean Shore Segment, begins at the Cheesequake Creek in Middlesex County, and includes the area south of Sandy Hook to the tip of Cape May and then north along the Delaware Bay to near the Delaware Memorial Bridge. The Coastal Management Program for this area received federal approval on September 29, 1978.

This Coastal Management Program and Final Environmental Impact Statement addresses New Jersey's entire coastal zone. It integrates the Coastal Management Program approved for New Jersey's Bay and Ocean Shore Segment by NOAA, with proposals for New Jersey's other tidally influenced waterfront areas in the northeastern part of the State along the Hudson River and related waters, and in the Hackensack Meadowlands, and in the southwestern part of the State along the Delaware River and its tributaries. These areas have been referred to as the "Developed Coast", a term which does not fully connote their diversity. While the coastal management program is designed to recognize regional as well as site specific differences, this document will avoid use of the phrase "Developed Coast", referring instead to the "Bay and Ocean Shore area", "Delaware River Area", "Northern Waterfront Area", and "Hackensack Meadowlands", the specific counties, municipalities or water bodies of concern, or to "the coastal areas outside of the Bay and Ocean Shore Segment" (See Figure 1).

Figure I

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This document defines and explains the Coastal Resource and Development Policies and the management system the New Jersey Department of Environmental Protection, the New Jersey Department of Energy (NJDOE), and the Hackensack Meadowlands Development Commission (HMDC) will use in managing activities in this Coastal Program. The Coastal Policies are divided into three groups: (1) Location Policies evaluate specific types of coastal locations, such as wetlands and prime farm land; (2) Use Policies are directed at different uses of the coastal zone, such as housing and energy facility development; and (3) Resource Policies focus on controlling the effects of development, such as water runoff and soil erosion, and on the protection of natural and cultural resources. The use of these three groups of policies to evaluate a proposed development is termed use of the Coastal Location Acceptability Method (CLAM).

The Coastal Management Program will be implemented through existing laws and agencies. The principal legal authority will be the coordinated use of the Coastal Area Facility Review Act (CAFRA), Wetlands, and Waterfront Development permit programs, shore protection program, tidelands management program, the regulatory activities of the Department of Energy and the Hackensack Meadowlands Development Commission, and the funding programs available under the federal Coastal Zone Management Act and through the New Jersey Green Acres Administration.

Program History

New Jersey's interest in its tidal waters precedes the American Revolution, for under the public trust doctrine of English common law, tidal waters and the lands thereunder belonged to the sovereign for the common use of all the people. With the Revolution, the royal rights to the State's tidelands became vested in the people of New Jersey. In 1821, the State Supreme Court in Arnold v. Mundy (6 N.J.L. 1) articulated the State's right to convey, regulate, improve and secure the tidelands for the common benefit of every individual citizen, but also determined that neither the State nor the purchaser or licensee of tidelands could impair the public's common rights of fishing and navigation in tidal waters. In 1869, the General Riparian Act was passed setting forth the procedure by which an administrative agency, then the Riparian Commissioners, could alienate State-owned tidelands. Subsequent State Supreme Court decisions have declared that because tidal lands are held in public trust, the State must consider the broad public interest and must receive adequate compensation for these lands.

In 1914, the State Legislature showed its first interest in regulating the land areas along tidal waters when it passed the Waterfront Development Law. The Law requires that prospective developers obtain State agency approval for "all plans for the development of any water-front upon any navigable water or stream of this State or bounding thereon ..." (N.J.S.A. 12:5-3).

The next major law affecting the State's coastal area was the Hackensack Meadowlands Reclamation and Development Act passed 55 years later in 1969. To ensure the orderly development of the Meadowlands District, the law created the Hackensack Meadowlands Development Commission, provided it with authority to regulate all forms of development within the District, and instructed it to develop a master plan for the District.

Concern about the environment of the State's coastal zone was reflected in the Wetlands Act of 1970. The Wetlands Act delegated authority to the newly created Department of Environmental Protection to delineate and regulate development in all coastal wetlands of the State from the Raritan River Basin southward.

The next major legislative advance in coastal zone management occurred in 1973 when the State passed the Coastal Area Facility Review Act (CAFRA) giving DEP authority to regulate major development in the Bay and Ocean Shore Segment of the coastal zone to preserve environmentally sensitive sites and ensure a rational pattern of development, and also requiring the Department to prepare a strategy for the management area by September, 1977.

In 1972, the U.S. Congress passed the Coastal Zone Management Act, declaring a national interest in the effective management, beneficial use, protection and development of the coastal zone, and encouraging and assisting the states to develop and implement management programs to achieve wise use of the land and water resources of the coastal zone. In response to this federal initiative, the State has been working since 1974 to prepare and obtain federal approval for a statewide coastal management program.

Because DEP, under CAFRA, had already prepared a coastal management strategy for the Bay and Ocean Shore area in 1977, DEP elected to seek federal approval of this segment first, and to then complete the boundary, policy and management system suitable for the remainder of the State's coastal zone. Between 1974 and 1978, the Department collected data and viewpoints, and met with interested groups throughout the State, which provided a foundation for the coastal management program for the segment and for the rest of the State. One end result was a comprehensive set of Coastal Resource and Development Policies to be used by the Department to ensure consistent and predictable permit decision-making in the coastal zone. These were adopted as Departmental rules effective September 28, 1978 and the Coastal Management Program for the Bay and Ocean Shore Segment received federal approval the next day.

The first step toward continuing the coastal management program into the more developed portions of the State was publication of Options for New Jersey's Developed Coast in March 1979. In the report, DEP candidly discussed the opportunities and choices available to New Jersey under the federal Coastal Zone Management Act, with a particular emphasis on the state's more developed coastal areas. This report served as a basis for public comment and discussion in the Spring and early Summer of 1979.

Publication of the Proposed New Jersey Coastal Management Program and Draft EIS was the second step. The third step was the public review and comment on it and on the Options report. DEP staff met with, and received comments from many residents and people representing federal, state, county and municipal elected representatives and agencies, regional planning groups, and interest groups with environmental, civic, residential, industrial development, and other concerns. In addition, NJDEP and NOAA-OCZM jointly held four formal public hearings on the State's proposed coastal management program on June 11 and 12 in Camden, Jersey City, Toms River and Trenton.

NJDEP and NOAA-OCZM used the public comments to refine and, where necessary, rewrite the State's proposed coastal management program. This was the fourth and final step in the coastal program completion process. The product of this effort is this coastal management program and final environmental impact statement, which the Governor is submitting to NOAA-OCZM for federal approval.

Changes the Program Will Make

Federal approval of the New Jersey Coastal Management Program will not cause any dramatic immediate effects. Rather, the changes that will occur stem from the beginning of concerted coastal planning in New Jersey in the early 1970's, and will be realized gradually as the results of that planning are accepted and applied. A description of the proposed coastal zone as it is today and as it will become through implementation of a Coastal Management Program may be found in Part III. Federal approval is a major step toward the acceptance of the state's coastal planning activities which will help accelerate those changes which have begun in recent years.

Three general areas of change are being produced by the coastal program. In each case, these changes have already been brought about in the Bay and Ocean Shore Segment of the coast and will be realized in the remainder of the coastal zone with implementation of a Coastal Management Program. The first change caused by the proposed coastal management program is improved procedures for coastal land and water use decision-making. The adoption of the Coastal Resource and Development Policies as administrative rules will result in greater predictability of DEP coastal decisions. These rules substitute publicly debated and refined written policies for case-by-case decision making. The largely federally funded coastal planning effort has enabled New Jersey to employ a professional coastal planning staff for the past five years which has been able to incorporate new, as well as previously underused, information into State coastal policies. In some cases, the policies codify what had become administrative practice, while in others they will result in different decisions. The major change caused by these policies will be better use of New Jersey's coastal resources. The policies are summarized at the end of this Chapter and presented in full in Chapter Three.

In addition, DEP has adopted procedural rules for CAFRA and the Wetlands Act, established innovations such as the pre-application conference, and most recently reorganized the former Division of Marine Services into a Division of Coastal Resources, with a single permit office (instead of three) and increased monitoring and enforcement capabilities. These actions, coupled with the Legislature's enactment of the "90 Day Construction Permit Law", are creating a regulatory process in which developers and others can make their own plans on the basis of binding, and increasingly predictable, beneficial and efficient policies and procedures.

The second change caused by the coastal management program will be the availability of increased funding in New Jersey for coastal management. The State is currently receiving $800,000 a year to implement the coastal program in the Bay and Ocean Shore Segment. Upon Federal approval of New Jersey's statewide program, the State will then become eligible to receive an estimated fourteen-month grant of $2.1 million to implement the coastal program, and an estimated $1.8 million in grants and $4 million in credit assistance under the federal Coastal Energy Impact



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Program. Part of the program implementation grant New Jersey receives will be used to administer the State's coastal permit programs and to increase the Department's monitoring and enforcement of coastal activities and decisions. The funds will also be used for research projects and continued planning to refine the Coastal Resource and Development Policies as necessary and to focus on additional issues and information which could improve the state's coastal management program. In addition, DEP intends to use part of the grant to initiate or promote specific state, county or municipal projects which would help further the Coastal Resource and Development Policies described in Chapter Four. Thus, a municipality could apply to DEP for funding to conduct a planning study for a specific project which would increase recreational, commercial, or industrial use of the waterfront in a manner consistent with the State's coastal policies. DEP expects that these small grants will be used in conjunction with funds available from the CZIP program administered by the Department of Energy. These planning funds are intended as seed money to enable local governments to obtain larger implementation grants from other State, federal and private funding sources. Federal approval of the statewide program will extend these benefits to 244 municipalities in seventeen counties.

Lastly, the coastal management program is bringing increased public focus on the coast. This is the change which makes other more specific changes possible. As people become more aware of the resources of the coast, and of the problems and opportunities the resources present, they become willing to devote more attention, support and money to various coastal issues. Issues such as public access to the waterfront, high rise construction, energy facility siting, and the use of urban waterfronts have all been subject to recent public discussion and debate. The Coastal Management Program has certainly not been the only cause of this concern, but it has sponsored, and will continue to promote, educational programs and publications, research, pilot projects, and revisions to State policies to increase public awareness and use of the coast.

Changes the Program will make Outside of the Bay and Ocean Shore Segment

Federal approval of a Statewide Coastal Management Program will bring the remainder of the coast the same benefits of consistent and predictable coastal permit decision making, federal funding for planning and permitting, and increased public awareness to coastal issues that is now enjoyed in the Bay and Ocean Shore Segment.

In addition, completion of the management program beyond the Bay and Ocean Shore Segment will entail a defining of DEP's jurisdiction under the Waterfront Development Law. This law gives the Department authority to regulate construction in the navigable waters of the State and the adjacent "waterfront". The inland extent of the "waterfront" has never been defined formally in the sixty-five year history of this law. Based upon its legislative history, the Department (with the agreement to the Attorney General) has decided that a boundary ranging from 100 to 500 feet inland of mean high water is consistent with the intent of the legislation. This change will be accomplished through the adoption of an administrative rule which will take effect September 26, 1980. This rule will entrust DEP with project review responsibility over all upland development along a narrow strip of land along coastal waters in the Delaware River Area and Northern Waterfront Area. It would cause no change in the CAFRA area. This proposal is not an extension of the CAFRA boundary. It is discussed in detail in Part II, Chapter Two, and the text of the proposed rule is included in Appendix D.

In the Hackensack Meadowlands District, the Coastal Management Program will not replace the adopted Meadowlands District Master Plan and associated policy documents as the guiding policies for the District. What the program will do is bring about closer coordination between the HMDC and the Department, provide federal funds to improve planning and program implementation in the District, and bring greater public awareness to the coastal resources of the Meadowlands District.

Changes the Program will make in the Bay and Ocean Shore Segment

The Coastal Management Program for the Bay and Ocean Shore Segment is in place and has received federal approval. Continuation of the program into the remainder of the State's coastal zone will have little impact on the Bay and Ocean Shore Segment. The one change that will be made is that the Coastal Resource and Development Policies will be amended to make them applicable statewide. There are some substantive changes in the policies affecting the Bay and Ocean Shore Segment. These changes were suggested by staff planning activities, public comment and project review experience, which would be deemed advisable even if the Coastal Management Program were not being extended beyond the Segment. The changes are included in the amended rules on Coastal Resource and Development Policies found in Chapter Four of Part II which will take effect September 26, 1980.

Integration of the Two Segments

Upon federal approval of a statewide coastal management program there will no longer be any distinction between the Bay and Ocean Shore Segment and the remainder of the coastal zone, except that the Segment will be a wider zone in which CAFRA is the principal regulatory authority. The Coastal Resource and Development Policies will be a unified set of policies to guide Departmental policies throughout the statewide coastal zone. The policies will, however, recognize site specific and regional differences, and will be more restrictive of new development in land areas in certain "limited growth" regions, all of which are in the Bay and Ocean Shore Area, than in "extension" or "development" regions, which are located both within and without the segment. In the Hackensack Meadowlands District, development will be regulated by the Hackensack Meadowlands Development Commission as lead agency, in accordance with its adopted Master Plan Zoning Regulations.

The overall result will be a comprehensive state-wide coastal management program in which environmentally sensitive "special areas" receive special protection wherever they are found, but in which the regulation of development in land areas will be most restrictive in the relatively pristine area near the shores of the Mullica River, Great Egg Harbor and Delaware Bay, and least restrictive in urban areas, and in the urban/suburban areas along the Delaware River, in northeastern New Jersey, and in the Hackensack Meadowlands District. Planning, funding and permitting will be carried out in a uniform statewide manner, except that different laws will be used to implement coastal objectives in different portions of the coastal zone.

Major Issues and Opportunities

This section of the Summary describes major coastal issues in New Jersey, including areas of controversy. The conflicting interests and viewpoints held by different groups on coastal issues demand that a meaningful coastal program be

controversial, while the complexity of the issues together with the dynamic quality of the coast itself suggest that no coastal program will ever be "complete" in the sense of having resolved all outstanding issues.

Sand dunes, power plants, surf clams, and the State's largest cities all share the resources of New Jersey's coast. Over the years numerous competing and often conflicting activities have converged on the Jersey Shore. New Jersey residents and tourists from all regions of the country spend their vacations at the Jersey Shore, which accounts for the vitality of New Jersey's second largest revenue-producing industry, tourism. Boaters, fishermen, divers, young and old enjoy the ocean breezes and salt air. Rapid development of the Shore area to accommodate those seeking relief from hot summers in the city, as well as those desiring permanent residence in a healthy environment, however, has created many competing pressures for the coast's fragile resources. New Jersey's wetlands were disappearing rapidly until the passage of the Wetlands Act in 1970. The barrier islands are overbuilt. The shoreline is eroding. Fish and shellfish resources are under intense pressure from recreational, commercial and industrial interests. The energy industry continues to examine the coast for potential sites for energy facilities. How can the New Jersey coast be maintained as a healthy ecosystem and guarded against the depletion of natural resources, while accommodating those resort-oriented and other activities and facilities which belong on the coast?

Away from the shore, the New Jersey coast is even more diverse and in demand for a wider range of activities. Despite, and in some cases because of, the more built up nature of the waterfront along the state's rivers and bays, the maintenance of existing natural areas and the restoration of spoiled areas is of great concern. In addition, the economic revitalization of New Jersey's cities is an increasingly recognized coastal issue, as urban waterfronts are seen to offer opportunities for rejuvenating and creating attractive residential and commercial areas. The more developed areas also support the state's ports and considerable industrial development which contribute to the state and national economy. A need to facilitate and in some cases expand these operations is likely, and will need to be considered in terms of the multiple coastal issues.

One of the major issues the Coastal Program addresses is water quality. The water bodies in the coastal area are crucial to the vitality of the coastal ecosystem and the protection of the health and safety of coastal and many inland residents. Proper management can alleviate problems of contaminated ground and surface water, stream turbidity and land and bank erosion. Good water quality is also essential to the fish and shellfishing industry, as well as to sport fishermen and boaters.

Recent storms and increased development have contributed to New Jersey's eroding shoreline. Beach restoration and preservation are essential for maintaining New Jersey's thriving tourist industry. Construction along the beach and waterfront areas can also limit public access to the shore. High-rises built in the past have obstructed some panoramic vistas, and some beachfront development has interfered with passive and active coastal recreation.

The coast does not just include pristine areas. Many of the once thriving urban waterfronts in New Jersey are now vacant land and unused, poorly maintained docks. Atlantic City and its region faces a unique set of development pressures from casino gambling and offshore oil and gas exploration. Camden, Jersey City, Newark and other cities face more traditional urban problems while possessing greatly underused waterfront areas.

Energy is one of the most complex issues facing the entire country. The Jersey coast currently has two operating nuclear plants and four more are under construction. Oil and gas exploration off New Jersey's coast is now a reality, and development is still a possibility. New Jersey will have to grapple with the new demands which will be placed on the coast's resources by these activities and associated facilities.

Public concern for prudent coastal management reflects a general concern for the quality of life. People want to live in a healthy environment, and provide a healthy environment for all the other living resources which are part of the coastal ecosystem. However, the public often expresses concern over the morass of regulations at all levels of government directed toward management of public goods and resources. Often, the applications, fees, permits and time delays appear to overshadow the intended benefits of a resource management program.

Despite the federal and state legislation for coastal management in New Jersey, the coastal program faces several constraints. New Jersey's coastal laws, while progressive by national standards, are not perfect. By relying primarily upon laws passed in 1914, 1968, 1970, 1973 and 1977, the state's coastal management program is faced with both regulatory duplication, so that development proposals may require more than one coastal permit, and regulatory gaps which prevent the State from fully protecting potentially valuable natural resources and developments. DEP has addressed some of those issues through the reorganization of the Division of Coastal Resources. The Coastal Management Program will provide a focus for additional steps in this direction. The result is that New Jersey has adequate legal authority for federal approval of its coastal management program but also faces challenges for future legislative and administrative reform.

In addition, the real property tax system has led to inter-municipal rivalry for ratable-producing property. Construction and development often take precedence over concern for open space in some financially hard pressed municipalities. New Jersey's strong tradition of home rule has meant that some municipalities make individual development decisions with little regard for regional impacts, posing severe constraints for the proper management of coastal regions. Also, the actions, or lack of action, of neighboring states can affect New Jersey's coast.

Coastal management in New Jersey is a delicate process, balancing fragile and sensitive environmental resources with development essential to the economy of the state. The public wants to work, live, and play, in the coastal zone, as well as to develop, restore and protect the coast. The agenda of coastal zone management ranges from dredge spoil disposal to rehabilitation of urban neighborhoods, from protection of surf clam beds to preservation of dunes. This requires a program that is dynamic and flexible to change, and, most important, responsive to the concerns of the citizenry, while being sufficiently specific to indicate to public officials and private interests the implications of the program.

This Coastal Management Program is a tool for making decisions, but it is not a panacea. It is important to understand that this document is not a detailed, rigid plan indicating only one activity which can or should take place on each site, block, or acre in the coastal zone. New Jersey has deliberately designed a program which accommodates the creativity, interests, and initiative of individual land owners, developers, citizens, and others, and recognizes the State's historic commitment to a strong role for local governments in land use decision-making. The Program, therefore, focuses on coastal resource management decisions with greater than local significance that the Legislature has entrusted to State agencies. The Coastal Program provides enforceable policies to form predictable and consistent decisions which will best manage New Jersey's coast.

## Major Conclusions - Basic Coastal Policies

The major conclusions of the New Jersey Coastal Management Program are summarized by eight proposed basic coastal policies. These policies are recommended objectives for all public and private land and water use decision-making in the coastal zone, and they summarize the direction of the legally binding, specific Coastal Resource and Development Policies included in Chapter Four of the description of the New Jersey Coastal Management Program (Part II of this FEIS).

### 1. Protect and Enhance the Coastal Ecosystem

Although severely stressed by centuries of use as a waste disposal area, the estuarine complex in developed coastal areas is showing some signs of recovery under the influence of recent federal and state water quality legislation and resulting waste treatment facility construction. Portions of the Hackensack Meadowlands, for example, are witnessing a return of species absent for many years due to poor water quality. While the industrial and commercial nature of the waterfront together with high population densities preclude reattainment of the pristine conditions of the distant past, it is not unreasonable to expect that ambient standards set under the Federal Clean Air Act and Federal Clean Water Act can be attained, that certain natural areas can be restored, and that the urban waterfront can once again provide recreational and employment opportunities for area residents.

The coastal ecosystem is fragile and special, and is characterized by a combination of beaches and the ocean, tidal and inland wetlands, flood plains, estuarine areas, bays, streams and stream corridors, vegetation communities and wildlife habitats. These natural features make the area a desirable place to visit, which in turn fosters the state's tourist industry. The same features make the coastal region a productive area for agriculture and commercial and recreational fishing. If the ecosystem is not protected, not only will natural resources and processes be harmed, but the economy of the area and of the state will suffer.

### 2. Concentrate Rather than Disperse the Pattern of Coastal Residential, Commercial, Industrial, and Resort Development and Encourage the Preservation of Open Space

The special characteristics of the coast attract many different types of development to an area which is limited in size. The concentration of development is the most efficient way to use this limited space because it allows a large variety of activities to be located in the coastal zone while minimizing conflicts which could occur between activities such as industry and housing if they were



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located near each other. In addition, the concentration of development can provide large expanses of open space which can, in some areas, be more useful to the public than a similar amount of open space scattered among many small private parcels. The policy to concentrate development does not apply to nuclear generating stations and liquefied natural gas (LNG) facilities.

3. Employ a Method for Decision-Making Which Allows Each Coastal Location to be Evaluated in Terms of Both the Advantages and the Disadvantages It Offers for Development

Traditionally, land and water use planning has focused exclusively on environmental features which offer disadvantages for development or which should be preserved. Each location, however, can also be evaluated in terms of the advantages it offers for development. A site near existing roads, for example, could be developed with less coastal and environmental disturbance than a more isolated site. This policy insures that both types of factors will be considered in decision-making under the Coastal Management Program.

4. Protect the Health, Safety and Welfare of People who Reside, Work and Visit in the Coastal Zone

This basic policy is a reminder that people use the coast for different purposes and have different needs and expectations. The quality of human life improves if needed development is built in a manner which respects the natural and built environment.

5. Promote Public Access to the Waterfront Through Linear Walkways and At Least One Waterfront Park in Each Waterfront Municipality

Along much of the waterfront, particularly in developed areas, highways or underutilized private property prevent residents from being able to walk, fish or otherwise enjoy the shores of rivers and bays. In some locations, high-rise buildings immediately adjacent to the waterfront block visual access to the water. Discouraging new highways and high-rise buildings adjacent to the waterfront, providing pedestrian bridges over existing highways, publicly purchasing selected waterfront properties, and obtaining easements for public access over other properties can increase the value of the waterfront to the surrounding communities, by making possible linear walkways, bikeways and vita courses along the waterway.

The waterfront in much of the coastal zone does provide sites where urban and suburban residents can relax, walk, fish, or play, even in areas where swimming is not currently advisable. The waterfront offers views of boats and shorelines, fresh breezes and a sense of openness not otherwise available in most urban areas. Waterfront parks, by bringing people to the waterfront, also help raise public consciousness about water quality and waterfront use and development.

Waterfront parks do not have to be large or elaborate. The success of Liberty State Park in Jersey City has demonstrated that an attractive, green area by the water can attract many people. It has also proved that a park can be extremely beneficial in a location which many believed was unsuited to a park. Nevertheless, for some municipalities, a waterfront park may make little sense due to the lack of an appropriate site or too small a nearby population. The specific policies on recreation, therefore, will exempt such areas from the policy.

6. Maintain Active Port and Industrial Facilities, and Provide for Necessary Expansion in Adjacent Sites

The proposed New Jersey coastal zone includes thriving port and industrial facilities along both the Northern Waterfront and the Delaware River Areas. The continued vitality of these facilities is important to the state's economy and helps New Jersey contribute to several national interests.

7. Maintain and Upgrade Existing Energy Facilities, and Site Additional Energy Facilities Determined to be Needed by the N.J. Department of Energy (DOE) in a Manner Consistent with the Policies of this Coastal Management Program

The Northern Waterfront and Delaware River Areas of the proposed coastal zone contain many of the East Coast's energy facilities for crude oil refining, petrochemical manufacture and electricity generation. Crude oil refining and petrochemical manufacture serve national needs. Electricity is generated for regional needs. Provided these facilities comply with federal air, water, toxic substance and other applicable regulations, the continued operation and needed expansion of existing petrochemical and oil refining facilities are expected to be acceptable under the New Jersey Coastal Management Program. Electric generating facilities must be in compliance with the same federal standards, and also must be determined to be needed by the N.J. Department of Energy.

The New Jersey Department of Energy (DOE) is responsible for determining what new energy facilities are needed in the State. DEP will use the specific policies of the coastal management program to ensure that the facilities determined to be necessary by NJDOE are located on sites where they can operate efficiently without threatening the health or welfare of area residents or natural resources.

8. Encourage Residential, Commercial, and Recreational Mixed-Use Redevelopment of the Developed Waterfront

Sections of abandoned and deteriorating waterfront property are suitable for residential, commercial or recreational reuse depending on their location. DEP will aid counties, municipalities, and developers in design of plans and programs to redevelop these lands to more beneficial uses.

The waterfront in or near urban areas can be creatively designed and used to accommodate diverse activities which might, at first glance, be considered infeasible or incompatible. Waterfront projects will be encouraged which include, for example, housing, public open space and commercial developments such as restaurants and stores.

Others have suggested combining industry and ports with recreation and education. If safely constructed, for example, a bike path could follow the outskirts of an industrial facility to a park, or a public area near a port could be designed to give people a view of the port in action, as the more familiar "nature interpretative trails" offer ecological understanding.

This Basic Policy is a recognition that developed waterfront areas in New Jersey, because of the views they offer and the large nearby population, provide unique opportunities for nontraditional, as well as traditional, forms of development and redevelopment.

## Federal Coastal Zone Management Act (FCZMA)

In response to intense pressure, and because of the importance of coastal areas of the United States, Congress passed the Coastal Zone Management Act (P.L. 92-583) which was signed into law on October 27, 1972. The Act authorized a Federal grant-in-aid program to be administered by the Secretary of Commerce, who in turn delegated this responsibility to the National Oceanic and Atmospheric Administration's (NOAA) Office of Coastal Zone Management (OCZM). The Coastal Zone Management Act of 1972 was substantially amended on July 26, 1976 (P.L. 94-370). The Act of the 1976 amendments affirm a national interest in the effective protection and development of the coastal zone by providing assistance and encouragement to coastal states to voluntarily develop and implement rational programs for managing their coastal areas.

Broad guidelines and the basic requirements of the CZMA provide the necessary direction to States for developing coastal management programs. These guidelines and requirements for program development and approval are contained in 15 CFR Part 923 as revised and published, March 28, 1979, in the Federal Register. In summary, the requirements for program approval are that a State develop a management program that:

(1) Identifies and evaluates those coastal resources recognized in the Act that require management or protection by the State;

(2) Re-examines existing policies or develops new policies to manage these resources. These policies must be specific, comprehensive and enforceable, and must provide an adequate degree of predictability as to how coastal resources will be managed;

(3) Determines specific uses and special geographic areas that are to be subject to the management program which should be based on resources capability and suitability analyses, socio-economic considerations and public preferences;

(4) Identifies the inland and seaward areas subject to the management program;

(5) Provides for the consideration of the national interest in the planning for and siting of facilities that meet more than local requirements; and

(6) Includes sufficient legal authorities and organizational arrangements to implement the program and to insure conformance to it.

In arriving at these substantive aspects of the management program, States are obliged to follow an open process which involves providing information to and considering the interests of the general public, special interest groups, local government, and regional, State, inter-state and Federal agencies.

Section 305 of the CZMA authorizes a maximum of four annual grants to develop a coastal management program. After developing a management program, the state may submit it to the Secretary of Commerce for approval pursuant to Section 306 of the CZMA. If approved, the state is then eligible for annual grants under Section 306 to implement its management program. If a program has deficiencies which need to be remedied or has not received approval by the time Section 305 program development grants have expired, a state may be eligible for preliminary approval funding under Section 305(d).

Section 305 of the Act stipulates that Federal agency actions shall be consistent, to the maximum extent practicable, with approved State management programs. Section 307 further provides for mediations by the Secretary of Commerce when a serious disagreement arises between a Federal agency and a coastal State with respect to a Federal Consistency Issue.

New Jersey's Department of Environmental Protection discusses the purpose of developing a comprehensive program through participation in the Federal Coastal Zone Management Program and its desire to seek approval of its Program under Section 306 of the CZMA in Part I of this document.

Approval of the New Jersey Coastal Management Program is considered a major action which significantly affects the quality of the human enviornment. An immediate effect of approval is the qualification of the State for Federal matching funds for use in administering the program. In addition, the CZMA stipulates that Federal activities affecting the coastal zone shall be consistent to the maximum extent practicable with an approved management program.

It is the general policy of OCZM to issue a combined final environmental impact statement (FEIS) and program document. Parts III, IV, and V of this FEIS were prepared by OCZM. Parts I and II of this FEIS is a description of the State's program and was prepared by the New Jersey Department of Environmental Protection.

For purposes of reviewing the proposed action, the key questions are:

- whether the New Jersey Program is consistent with the objectives and policies of the national legislation.

- whether the award of Federal funds under Section 306 of the Federal act will help New Jersey to meet those objectives.

- whether the State's management authorities are adequate to implement the Program, and

- whether there will be a net environmental gain as a result of program approval and implementation.

OCZM has made an assessment that the answers to these questions are affirmative. OCZM wants the widest possible circulation of this document to all interested agencies and parties. OCZM thanks those participating in the review of the New Jersey Program and this Final Environmental Impact Statement.

# PART III

DESCRIPTION OF THE PROPOSED NEW JERSEY
COASTAL MANAGEMENT PRPGRAM

Chapter 1: Introduction

Chapter 2: Boundary

Chapter 3: Management System

STATE OF NEW JERSEY
OFFICE OF THE GOVERNOR
TRENTON
08625

BRENDAN T. BYRNE
GOVERNOR

Mr. Michael Glazer
Assistant Administrator for Coastal Zone Management
U.S. Department of Commerce
National Oceanic and Atmospheric Administration
3300 Whitehaven Street, N.W.
Washington, D.C. 20235

Dear Mr. Glazer:

The State of New Jersey submits the New Jersey Coastal Management Program for approval under Section 306 of the Federal Coastal Zone Management Act.

This program is the culmination of a six year process during which a wide range of agencies, interest groups and citizens have worked together to identify issues of concern, review draft recommendations and debate public policy on the coast. In the two years since New Jersey received federal approval of the Coastal Management Program for the Bay and Ocean Shore Segment, we have been able to dramatically improve the processes for coastal decision-making as well as the substance of those decisions. We have also learned from administering that approved program and have incorporated our experience this coastal management program for the State's entire coastal zone. In addition, new policies have been added to apply specifically to the more developed areas which are now part of the coastal zone.

I have reviewed this document and approved the management program for the New Jersey coastal zone as State policy. Accordingly, I have designated the Department of Environmental Protection as the single State agency to receive and administer implementation grants under Section 306 of the Coastal Zone Management Act.

I certify that the State of New Jersey has the legal authority necessary to implement the management program, and that the organizational structure necessary to implement the program is in place.

I believe that this coastal management program will enable the wise management of one of New Jersey's greatest assets, the coast.

Sincerely,

GOVERNOR

## CHAPTER ONE - INTRODUCTION

This part of the final environmental impact statement describes the New Jersey Coastal Management Program. This is the heart of the document and the focus of the other parts and of the appendices. Unlike some EIS's, it does not repeat all the information in Part I, but rather assumes the reader is somewhat familiar with this introductory material.

The Department of Environmental Protection (DEP) has prepared the New Jersey Coastal Management Program to protect the state's coastal resources while accommodating needed future development. The Program contains the statements of policy which will be followed by DEP in making coastal decisions and which will guide other public and private actions affecting the coast. The Coastal Management Program is also designed to enable New Jersey to meet the requirements, and thereby reap the benefits of the federal Coastal Zone Management Act. These include greater consistency between state and federal actions in the coastal zone, and the provision of federal funds for New Jersey's coastal management efforts.

DEP was given responsibilty for preparing and administering the State's coastal management program by the Governor. DEP's enabling legislation, the Coastal Area Facility Review Act (CAFRA), Wetlands Act, Waterfront Development Law, and tidelands and shore protection statutes provide a strong mandate and basis for direct State agency involvement in key decisions involving the coastal region. The Department of Energy Act and the Hackensack Meadowlands Reclamation and Development Act give some coastal responsibilities to other State agencies, and these are also included in the Coastal Management Program.

The Coastal Management Program also contains the standards DEP will use to determine the consistency of actions proposed in the coastal zone by federal, state, and local agencies. New Jersey's coastal policies will be used to determine the consistency with the approved program of federal activities, development projects, licenses, permits, and financial assistance to the State and local governments under Section 307 of the federal Coastal Zone Management Act. The Coastal Program will aid DEP when it is called upon to review federal domestic financial assistance applications under the A-95 Project Notification and Review Process, as well as Environmental Impact Statements prepared under the National Environmental Policy Act. From time to time, DEP is also likely to receive requests for advice or comments on the adequacy or appropriateness of plans and proposals by government agencies and private interests. The Coastal Policies provide a visible basis for offering an informed comment on the consistency of these plans and proposals.

State funding decisions that affect coastal resources will also be guided by the Coastal Program. In particular, several important State aid, and direct State financing programs administered by DEP involve decision-making in the coastal zone: (1) the Green Acres Open Space Acquisition and Outdoor Recreation program of grants to local governments and direct DEP efforts, (2) the Shore Protection program of matching grants to local governments, and (3) the pass through grants DEP will make to local governments with funds available under the federal Coastal Zone Management Act.

The strong direct State role does not mean that DEP will regulate every proposed use of coastal resources within the defined coastal zone. Local governments in the coastal zone will continue to be solely responsible for the considerable amount of land and water use decision-making in the coastal zone which has no regional impact, as defined by State law.

New Jersey's coastal management program has three interrelated, basic elements: first, a boundary defining the general geographic scope of the program; second, Coastal Resource and Development Policies defining the standards for making decisions on what activities may take place within the boundary; and third, a management system defining the types of decisions subject to the program, and the process by which those decisions will be made. The Coastal Management Program, a guide to decision-making, resembles a tripod. All three legs, or elements, must be firmly in place for the Program to stand and work. All three elements function together and must be read and understood together, especially because of New Jersey's direct state control approach.

For example, if read out of the context of the overall management program, the Coastal Resource and Development Policies could be applied to every land and water use decision in the coastal zone, from the location of a single gas station to a nuclear generating station. That is not the intent here. Rather, the Coastal Resource and Development Policies are to be applied as substantive standards for decision-making for only those selected coastal decisions defined in the management system, particularly CAFRA, Wetlands, and waterfront development permit applications. The Coastal Policies could, however, because of their comprehensive nature, be used to guide other decisions not strictly subject to the New Jersey Coastal Management Program. The heart of the program remains, however, the combination of boundary definition, policy statements, and decision-making processes that in concert spell out New Jersey's approach to managing its coastal resources.

This Part of the EIS is presented in six chapters. Chapter Two defines the boundary proposed for the coastal zone. Chapter Three describes the management system which will be used within the boundary to carry out the Coastal Resource and Development Policies. Chapter Four presents the definitions, policies and rationales for the Coastal Resource and Development Policies which describe what should and should not take place in the coastal zone.

Chapter Five addresses seven special requirements of the federal Coastal Zone Management Act: Federal Consistency, National Interests, Regional Benefit Decisions, Geographic Areas of Particular Concern, Areas for Preservation and Restoration, Shoreline Access and Protection Planning, Shoreline Erosion Mitigation Planning Process, and the Energy Facility Planning Process. These sections, for the most part, repeat information in the first four Chapters but in a format which directly addresses the specific federal requirements and which provides greater detail. The proposed inclusion of the Hackensack Meadowlands Development Commission District is discussed in detail in this Chapter at the end of the section on Geographic Areas of Particular Concern.

Finally, Chapter Six outlines the next steps in the coastal management process in New Jersey, including public review and comment on this draft coastal management program, preparation of a Final program, and activities New Jersey plans to pursue once the program receives federal approval.

## CHAPTER TWO - BOUNDARY

Summary
Inland Boundary
Seaward and Interstate Boundaries

**********

### Summary

New Jersey's coastal zone extends from the New York border south to Cape May Point and then north to Trenton. It encompasses the waters and waterfronts of the Hudson River and related water bodies south to the Raritan Bay, the Atlantic Ocean and some inland areas from Sandy Hook to Cape May, the Delaware Bay and some inland areas, and the waterfront of the Delaware River and related tributaries.

The coastal zone encompasses areas in which the State, through the Department of Environmental Protection and the Hackensack Meadowlands Development Commission, has the authority to regulate land and water uses that have a significant impact on coastal waters. These authorities include the Coastal Area Facility Review Act (CAFRA), the Wetlands Act, the Waterfront Development Law, Tidelands statutes, and the Hackensack Meadowlands Reclamation and Development Act.

### Inland Boundary

The inland boundary for the portion of the coast from Raritan Bay south to Cape May Point and then north along the Delaware Bay (consisting of parts of Middlesex, Monmouth, Ocean, Burlington, Atlantic, Cape May, Cumberland and Salem Counties), is defined as:

> the landward boundary of the Coastal Area as defined in the Coastal Area Facility Review Act (CAFRA, N.J.S.A. 13:19-4), or the upper boundary of coastal wetlands located landward of the CAFRA boundary along tidal water courses flowing through the CAFRA area, whichever is more landward, including State-owned tidelands.

In the more developed portions of the State (including portions of Salem, Gloucester, Camden, Burlington, Mercer, Middlesex, Somerset, Union, Hudson, Essex, Passaic and Bergen Counties), the coastal zone boundary is defined as:

> the landward boundary of the State's jurisdiction under the Waterfront Development Act (N.J.S.A 12:5-3)* or Wetlands Act (N.J.S.A. 13:9A-1), or the landward boundary of State-owned tidelands, whichever extends farthest inland.

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* The definition of the inland jurisdictional boundary of the Waterfront Development Law is: the first public road, railroad right-of-way, or property line generally parallel to any navigable waterway, but in no case more than 500 feet or less than 100 feet inland from mean high water.

This boundary (discussed below in "Principal Program Authorities") ensures that the State will regulate at least the first 100 feet inland from all tidal waters. The State will consider all land within 500 feet of tidal water to be within this boundary unless demonstrated otherwise. This represents a substantial reduction from the coastal zone boundary DEP proposed in several publications between December 1976 and March 1979, which would have extended the coastal zone inland to the first road or railroad, regardless of its distance from the water (See Appendix B).

The boundary of the Hackensack Meadowlands region is defined as:

> the boundary of the area defined as the Hackensack Meadowlands District by the Hackensack Meadowlands Reclamation and Development Act. (N.J.S.A. 13:17-4)

A generalized map of the Statewide Coastal Zone Boundary is shown in Figure 1 in Part I of this document, and Figure 2 is a sketch of the boundary in different parts of the State.

The boundary encompasses approximately 1,792 miles of tidal coastline, including 126 miles along the Atlantic Oceanfront from Sandy Hook to Cape May. It ranges in width from one hundred feet to twenty-four miles (near Batsto and the Mullica River, in Burlington County). The total land area of the Bay and Shore region is approximately 1,376 square miles or 17 percent of New Jersey's land area.

Research indicates that there has been a rising trend in the level of the ocean, relative to coastal land, along the northern East Coast of the United States. Hicks* data places the rise at about 8 inches between the 1890s and 1970. If this trend continues, tidal waters will penetrate further up the State's coastal rivers. Should this change become significant, the coastal zone boundary and the area under the jurisidiction of the Waterfront Development Law, will be redelineated accordingly.

Seaward and Interstate Boundaries

The seaward boundary of the coastal zone is the three nautical mile limit of the United States Territorial Sea, and the interstate boundaries of the States of New York and Delaware and the Commonwealth of Pennsylvania.

In most of Salem County, the Delaware-New Jersey State boundary is the mean low water line on the eastern (New Jersey) shore of the Delaware River. The New Jersey and Delaware Coastal Management agencies have discussed this issue and have concluded that any New Jersey project extending beyond mean low water must obtain coastal permits from both states. New Jersey and Delaware, therefore, will coordinate reviews of any proposed development that would span the interstate boundary to ensure that no development is constructed unless it would be consistent with both state coastal management programs.

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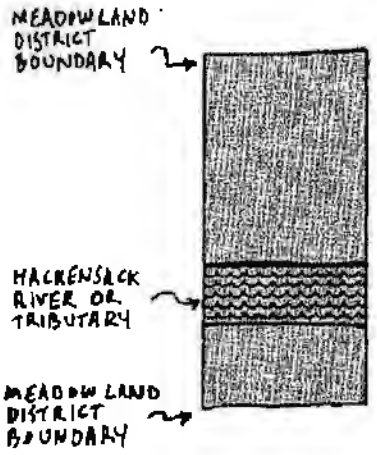
* S.D. Hicks, "As the Oceans Rise", National Ocean Survey, NOAA, Vol. 2, No. 2, pp. 22-24, 1972.

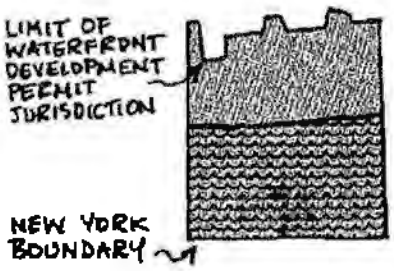
Figure 2

# NEW JERSEY COASTAL ZONE BOUNDARY SKETCH

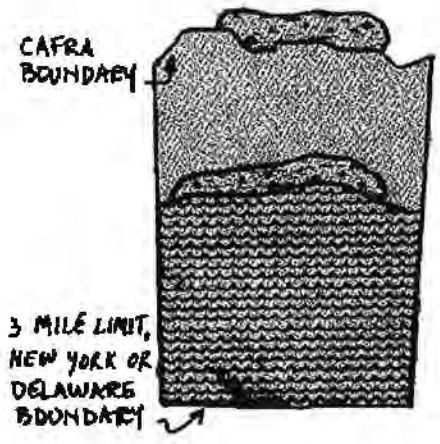
## 1 HACKENSACK MEADOWLANDS GENERALIZED CZ BOUNDARY



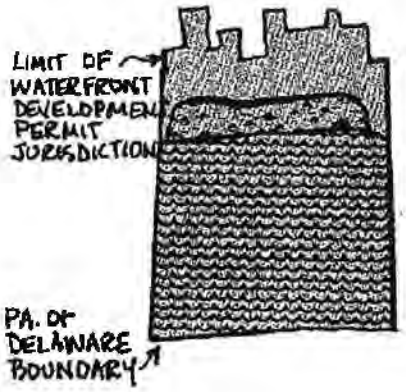

## 2 NORTHERN WATERFRONT GENERALIZED CZ BOUNDARY




## 3 BAY & OCEAN SHORE SEGMENT GENERALIZED CZ BOUNDARY




## 4 DELAWARE RIVER AREA GENERALIZED CZ BOUNDARY




REGULATED WETLANDS

TIDAL WATERS

PROPOSED COASTAL ZONE

## CHAPTER THREE - MANAGEMENT SYSTEM

MANAGEMENT SYSTEM
- Introduction and Summary
- Administrative Framework-Department of Environmental Protection
- Principal Program Authorities
  - Introduction
  - Waterfront Development Law
  - Coastal Area Facility Review Act
  - Wetlands Act
  - Tidelands Management
  - Hackensack Meadowlands Development Commission
  - Department of Energy
  - Green Acres Funding
  - Shore Protection
  - Coastal Program Funding
- Supplementary Program Authorities
  - Water Quality Program
    - NPDES Permits
    - Areawide Water Quality Management (208) Plans
    - Wastewater Treatment Facilities: Regulation and Funding
  - Stream Encroachments and Flood Hazards
  - Wild and Scenic Rivers
  - Delaware and Raritan Canal State Park
  - Pinelands Protection
  - Regulation of State Owned Land
  - Air Quality Regulation
  - Solid Waste
  - Harbor Clean-Up
- Other State Agencies
  - Department of Agriculture
  - Department of Community Affairs
  - Department of Labor and Industry
  - Department of Transportation
  - Department of Health
- County and Municipal Land Use Authority
  - County Authority
  - Municipal Authority
  - Regional Land Use Authority
    - Delaware River Area
    - Hackensack Waterfront Area
    - Northern Waterfront Area
  - Federal Agency Authority
  - Public Participation
  - Conflict Resolution

**********

## MANAGEMENT SYSTEM

### Introduction and Summary

In passing the federal Coastal Zone Management Act of 1972 (CZMA), Congress recognized both the importance of the coastal zone and the need to strengthen existing public controls over resources and development in order to protect it. Section 302(h) of the Act states that:

> The key to more effective protection and use of the land and water resources of the coastal zone is to encourage the states to exercise their full authority over the lands and waters in the coastal zone by assisting the states ... in developing land and water use programs for the coastal zone, including ... methods and processes for dealing with land and water use decisions of more than local significance.

This section of the New Jersey Coastal Management Program describes the methods and processes that New Jersey has developed to guide decision-making in the coastal zone.

Section 305 of the CZMA requires that participating coastal states demonstrate one of three methods of exercising control over those land and water uses in the coastal zone which have a direct and significant impact on coastal waters. New Jersey's approach corresponds to management technique "B" -- Direct State regulation and planning -- as described in Section 306(e)(1) of the CZMA. This is the only feasible approach under New Jersey's existing legislative framework that is in compliance with the requirements of the CZMA. It requires no new legislation.

This Chapter describes the administrative framework and program structure under which New Jersey proposes to exercise these controls. It contains a description of the three state agencies involved in significant coastal decision-making: the Department of Environmental Protection, the Hackensack Meadowlands Development Commission and the Department of Energy. It describes the principal legal authorities and programs to be used in implementing the policies found in Chapter Three, including the Coastal Area Facility Review Act (CAFRA), the Wetlands Act, the Waterfront Development Law, the authority to grant title to, or license the use of State owned tidelands (sometimes referred to as riparian lands), and the Hackensack Meadowlands Reclamation and Development Act. It also describes certain capital spending programs such as the Green Acres Program, the Shore Protection Program and the coastal management funds available under the CZMA.

Also described are other state regulatory programs, largely administered by DEP, which are not focused as exclusively on the coastal zone, but which do affect the coast and supplement the State's ability to implement specific Coastal Resource and Development Policies or categories of policies. These are described as "supplementary program authorities".

The last sections of the Chapter analyze the manner in which the programs of other state, county, municipal, regional and federal agencies function with the Coastal Management Program.



DE24656

## ADMINISTRATIVE FRAMEWORK - THE DEPARTMENT OF ENVIRONMENTAL PROTECTION

Created by the Legislature in 1970, the Department of Environmental Protection (DEP) was given broad authority to "formulate comprehensive policies for the conservation of the natural resources of the State..." (N.J.S.A. 13:1D-9). Specific authority for preparation of the coastal program was delegated by the Governor when he designated DEP as New Jersey's coastal planning agency under Section 305 of the federal Coastal Zone Management Act. DEP also serves as New Jersey's lead agency to administer the Federally approved program, under Section 306 of the Act.

The Department is divided into nine operating units: the Division of Coastal Resources (prior to July 1, 1979, the Division of Marine Services); Division of Water Resources; Division of Environmental Quality (which includes the Bureau of Air Pollution Control and the Solid Waste Administration); Division of Fish, Game and Wildlife; Division of Parks and Forestry; the Green Acres Administration; the Division of Fiscal and Support Services; Division of Employee Management and Development; and the Commissioner's Office. The Bureaus of Coastal Project Review, Coastal Planning and Development, Coastal Enforcement and Field Services, Tidelands, Coastal Engineering, and Marine Law Enforcement are all located in the Division of Coastal Resources (See Figure 3).

The core of the Coastal Management Program's management system is the adoption by DEP of the Coastal Resource and Development Policies as administrative rules. This means that the actions of every Division in the Department will be legally bound to be consistent with the Coastal Policies to the extent permitted by the enabling legislation of each program.

DEP's regulatory authority in the coastal zone is principally based on the Waterfront Development Law, the Coastal Area Facility Review Act, the Wetlands Act, and the Tidelands statutes. These laws apply to virtually all aspects of major development within this zone. Their administration will be unchanged under the coastal management program with the exception of the Waterfront Development permit program's redefined jurisdiction.

Division of Coastal Resources - On July 1, 1979, the former Division of Marine Services was reorganized and continued as the Division of Coastal Resources. The reorganization's principal features are the consolidation of three different permit offices (the former Office of Coastal Zone Management's CAFRA Permit Section, the Office of Riparian Lands Management, and the Office of Wetlands Management) into one Bureau of Coastal Project Review, the placement into one bureau of all coastal planning and development activities, and the creation of a Bureau of Coastal Enforcement and Field Services. This reorganization became permanent in 1980 when the Legislature amended the relevent portions of DEP's enabling legislation (N.J.S.A. 13:1D-1 et seq.).

The Division's new organization is described in chart form in Figure 4, and is summarized as follows:

- The Bureau of Coastal Project Review administers the CAFRA, Wetlands, and Waterfront Development Permit Programs, in conformance with the respective enabling legislation and with the Rules on Coastal Resource and Development Policies. The Bureau assumes the permit functions of the former Offices of Coastal Zone Management, Riparian Lands Management, and Wetlands Management.

Figure 3

# DEPARTMENT OF ENVIRONMENTAL PROTECTION
# ORGANIZATIONAL CHART
# JANUARY, 1980

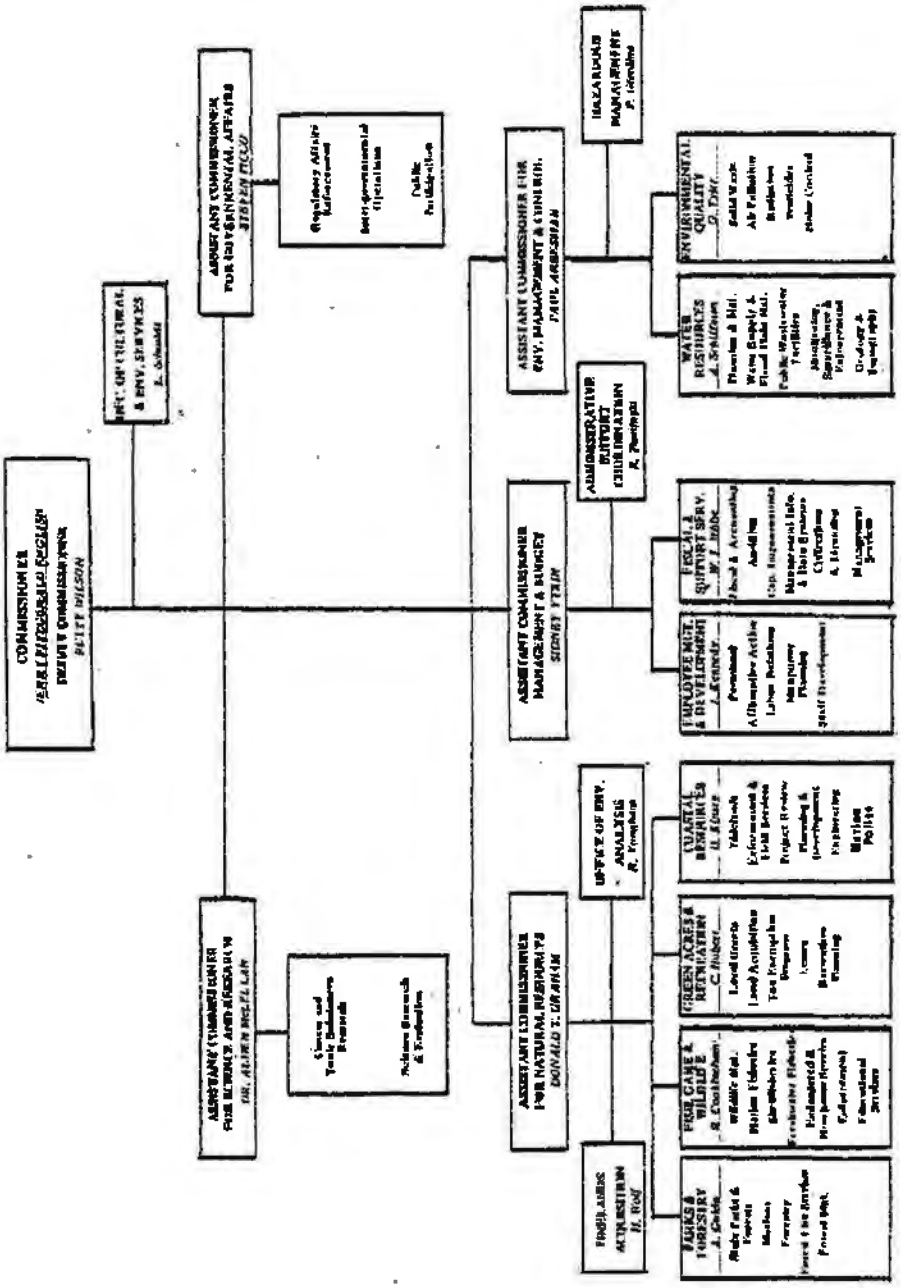
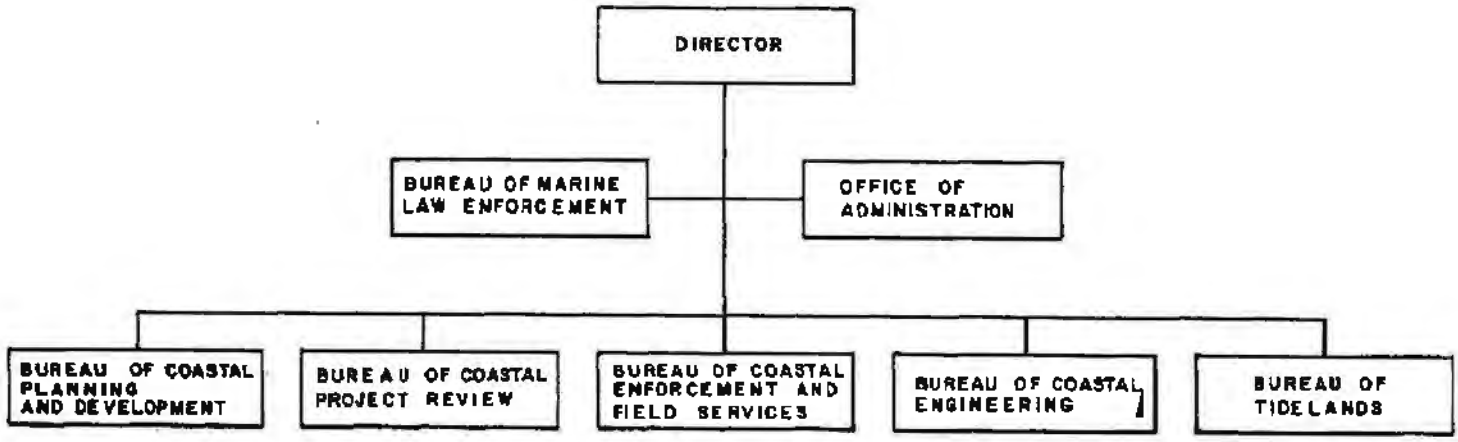


Figure 4

# DIVISION OF COASTAL RESOURCES ORGANIZATIONAL CHART APRIL, 1980



- The Bureau of Coastal Planning and Development provides a single planning agency to assist in the development and refinement of a program to guide and regulate development and resource protection in the coastal zone. This office assumes the planning functions of the former Office of Coastal Zone Management.

- The Bureau of Tidelands serves as staff to the Tidelands Resource Council and aids in the protection and management of State-owned tidelands through the review of applications for conveyances for grants, leases and licenses. The Bureau assumes the functions of the former Office of Riparian Lands Management with respect to the description and valuation of State-owned tidelands.

- The Bureau of Coastal Enforcement and Field Services provides an interdisciplinary inspection team to support the functions of the Bureaus of Tidelands and Coastal Project Review. The Bureau assumes the inspection and enforcement activities of the former Offices of Coastal Zone Management, Wetlands Mangement and Riparian Lands Management.

- The Bureau of Coastal Engineering administers the State's shore protection and waterway maintenance programs. It assumes the functions of the former Office of Shore Protection.

Division of Water Resources - The Division of Water Resources is responsible for water quality planning and maintenance, water supply, and flood plain management. The Division is the designated water quality planning agency under Section 208 of the Federal Clean Water Act and, under the New Jersey Water Pollution Control Act (N.J.S.A. 58:10A-1 et seq.), has the authority to administer the National Pollution Discharge Elimination System (NPDES) permits once EPA delegates this responsibility to DEP. The standards set by the Division under the Clean Water Act are incorporated into the Coastal Policies, as required by Section 307(f) of the federal Coastal Zone Management Act. The Division also has the authority to regulate the building or alteration of structures within stream areas and to regulate development and land use in designated floodways under the Flood Hazard Areas Control Act, (N.J.S.A. 58:16A-50 et seq.).

Within the seventeen New Jersey counties with coastal waters, area-wide water quality planning (also known as 208) is being conducted by four county planning boards, by the Delaware Valley Regional Planning Commission in four counties, and by the Division of Water Resources in the remaining nine counties. The plans are being completed between 1979 and 1980 in different parts of the state. The water quality planning program seeks institutional and technical alternatives to control and abate water pollution. The key policies of the program are to protect the sources of potable water supply, control toxic and hazardous substances, control pollution from areawide sources, and protect environmentally sensitive areas. Water quality planning programs may utilize and refine the Coastal Location Acceptability Method for activities which need not be regulated for coastal management program approval (i.e. activities not having a direct and significant impact on coastal waters), and in parts of the state outside the coastal zone. The method could, for example, be modified and used in making land and water use decisions on and near non-tidal portions of the Delaware River and in other areas of the State where a decision-making method is needed to protect water quality.

The Division of Water Resources is also responsible for supervising the development of the State Water Supply Master Plan. The plan, financed by the State Water Conservation Bond Fund, will assess near and long-term water needs, evaluate various alternatives for meeting those needs, and provide a framework for the future planning and management of the State's water supplies. Specific recommendations will be made including those for near-term water supply development projects, conservation and management policies, interconnection programs, and drought and emergency response plans. The draft plan was completed in Spring, 1980. The Division of Coastal Resources will continue to work with the Division of Water Resources to assure consistency between the Water Supply Master Plan and the Coastal Policies.

Division of Environmental Quality - The Division of Environmental Quality is responsible for air quality planning and monitoring and is the agency designated to administer the federal Clean Air Act in New Jersey. The Division also is responsible for the State's radiation, noise, pesticide control and solid waste management programs. Under the requirements of the Clean Air Act, the Bureau of Air Pollution Control in the Division is developing programs to attain National Ambient Air Quality Standards. The attainment of standards for photochemical oxidants for the entire State, for carbon monoxide in central business districts, and for particulates in Camden and Jersey City, and the maintenance of clean air levels throughout the state are the major problems to be addressed.

The Division of Environmental Quality is also responsible for the development of a statewide plan to maximize use of resource recovery and minimize the adverse environmental impacts of solid waste. This was the responsibility of the Solid Waste Administration until August, 1979 when it was abolished and its functions transferred. The state has been divided into twenty-two districts (21 counties and the Hackensack Meadowlands Development Commission District). Each district is responsible for developing a ten-year plan to meet the solid waste needs for each municipality within the region. The SWA is responsible for coordinating the district planning through the development of a statewide plan and for providing guidelines, especially in the area of hazardous waste, for use by the twenty-two planning districts.

The Division of Coastal Resources works closely with the Division of Environmental Quality to develop programs directed toward attainment of the National Ambient Air Quality Standards, and to assure consistency between the Coastal Policies and statewide solid waste planning. In addition, attention will be given to the impact of Coastal Policies on air quality outside of the Coastal Zone. Coordination with the Division of Environmental Quality should result in the use of Coastal Policies to help attain statewide air quality and solid waste management goals as well as use of the State Implementation Plan and State and district solid waste plans to further Coastal Management Program goals.

Division of Parks and Forestry - The Division of Parks and Forestry manages the state's parks and is responsible for acquiring, operating and maintaining historic sites. The Division reviews CAFRA permit applications in addition to coordinating with Division of Coastal Resources on park and recreation policies.

Green Acres and Recreation - The Green Acres Administration develops a comprehensive recreation plan and works with the Division of Parks and Forests and the Division of Fish, Game and Wildlife to identify and rank possible sites for DEP purchase. The Division of Coastal Resources reviews all proposed expenditures of Green Acres funds, and where differences emerge, the Commissioner of DEP makes the final decision.

The New Jersey State Comprehensive Outdoor Recreation Plan (SCORP), prepared by the Green Acres Administration, addresses the adequacy of open space for existing and projected demands, and the accessibility of recreation resources for all segments of the population. The plan qualifies New Jersey for funding under the Federal Land and Water Use Conservation Fund Program. In addition to studying recreation needs and uses, SCORP also includes inventories of federal, state, county, municipal and private recreation resources. The major policies in SCORP, which are fully consistent with the Coastal Resource and Development Policies, include emphasizing open space in urban areas, developing recreation facilities, increasing public access to recreation resources through mass transit, and developing barrier free recreation facilities.

Division of Fish, Game and Wildlife - The Division of Fish, Game and Wildlife is responsible for managing the fish and wildlife resources of the State. This includes research and educational programs as well as enforcement of state fish and game laws and maintenance of state fish and wildlife management areas. The Division also administers the federal Endangered Species Act of 1973, which provides funds for the purchase or management of land for research and for other activities to protect wildlife.

Office of the Commissioner - The Office of the Commissioner conducts a number of functions relating to the Coastal Management Program.

Matters relating to Coastal Resources; Green Acres and Recreation; Fish, Game and Wildlife; Parks and Forestry; and Pinelands are supervised by the Assistant Commissioner for Natural Resources. Matters relating to water and air quality, solid wastes, and toxics are supervised by the Assistant Commissioner for Environmental Management and Control.

First, the Office of Environmental and Cultural Services coordinates the review of major development proposals likely to require more than one DEP-administered permit, applications circulated through the A-95 Project Notification and Review Process, and state agency sponsored projects costing more than one million dollars (as required by Executive Order #53 of 1973). This coordinated review helps speed the permit review process and insures the application of consistent policies. This Office also reviews coastal permit applications in terms of possible archaeological impacts. In addition, the Office evaluates the potential impact of CAFRA permit applications on cultural resources, maintains the State Register of Historic Places, and makes recommendations to the Commissioner for State nominations to the National Register of Historic Places.

DEP's Assistant Commissioner for Science administers the New Jersey Spill Control and Compensation Act (N.J.S.A. 58:1-23.11 et seq.) In addition, under his direction, the Office of Cancer-Causing and Toxic Pollutants is conducting research with the assistance of computer facilities funded by the U.S. Council on Environmental Quality. The information produced by this research will be incorporated

into the Coastal Policies, and could conceivably lead to proposed alternatives to certain siting policies. In addition, this computer project is serving as a model for DEP to test the feasibility of digitizing much of the information necessary to apply the Coastal Policies.

The Tidelands Delineation Program, conducted by the Office of Environmental Analysis (under the direction of the Assistant Commissioner for Natural Resources), is a multi-year project to map the extent of State-owned tidelands by delineating the mean high tide line. The program will require several years to complete because of the complex issues of land ownership to be resolved.

The Office of Public Participation, created in 1979, directs DEP's efforts to stimulate public interest and involvement in the development and implementation of all of the Departments management and planning programs.

## PRINCIPAL PROGRAM AUTHORITIES

### Introduction

This section describes the Coastal Management Program's principal regulatory and capital spending programs. They are described as "principal" programs since they allow the State, through a number of agencies, to implement a broad range of Coastal Policies. This is particularly true of the three coastal permit programs administered by the Division of Coastal Resources (the Coastal Area Facility Review Act, the Waterfront Development Law, and the Wetlands Act). These authorities, in and of themselves, provide authority for land and water uses in the coastal zone sufficient for program approval. In contrast, the supplementary programs which follow this section are more limited in scope and involve the implementation of only one or a few policies (e.g. air quality or water quality).

This section also describes the process by which the Tidelands Resource Council, a twelve-member citizen body, supervises the management of State-owned tidelands (sometimes called riparian lands). This section explains how the decisions of the Council are made consistent with the Coastal Resource and Development Policies contained in Chapter Three. Also described are:

The Hackensack Meadowlands Development Commission (HMDC): A state-level regional agency regulating development and conservation in a 31 square mile area encompassing part of the Hackensack River Estuary and associated uplands. Its master plan constitutes the proposed State Coastal Resource and Development Policies for the area, and, for the purposes of the Federal CZMA, its regulatory authority constitutes the principal management mechanism;

The Department of Energy (DOE): The state agency responsible for energy planning, DOE is authorized to participate with all other state departments on any regulatory decision affecting energy facilities.

The Shore Protection Program: A program planned and administered by the Division of Coastal Resources, and

The Green Acres Program: A recreation and open space funding program administered by DEP's Green Acres Administration.

1. Waterfront Development Law - The Waterfront Development Law (N.J.S.A. 12:5-3) authorizes DEP to regulate the construction or alteration of a dock, wharf, pier, bulkhead, bridge, pipeline, cable, or other "similar or dissimilar development" on or adjacent to navigable waterways and streams throughout the State.

Past and present administrative practice under the Law (passed in 1914) has been generally restricted to tide-flowed lands on or below the mean high water line, but DEP has now adopted regulations to fully implement the law by defining both its geographic scope and the types of development to which it applies. These regulations, which are reprinted in Appendix D, are intended to re-establish DEP's long neglected authority to guide development in waterfront areas. They have been reviewed by the Attorney General of New Jersey, who has issued an opinion endorsing them in terms of both geographic scope and facilities subject to the law. The Attorney General's opinion is also contained in Appendix D.

Under these regulations, the following types of development in the waterfront area will, with specified exceptions, require DEP approval:

a. Docks, wharves, piers, bulkheads, bridges, pipelines, cables, mooringa and other submerged structures (all these already require DEP approval);

b. The construction, reconstruction, structural alteration, relocation or enlargement of any building or other structure, or of any excavation or landfill, and any change in the use of any building or other structure, or land or extension of use of land.

The waterfront area itself is defined (N.J.A.C. 7:7-2.4) as including all tidal waterways and lands adjacent thereto up to the first property line, public road or railroad right-of-way generally parallel to the waterway, provided that the boundary is between 100 and 500 feet from the waterway. This rule will apply in upland areas beyond the mean high water line only outside the CAFRA area and Hackensack Meadowlands District (see Figure 2). The waterfront boundary for a hypothetical location is illustrated in Figure 5a, and a sample map of the boundary is shown in Figure 5b.

Persons proposing to undertake waterfront development must first apply to the Division of Coastal Resources for a permit. The applicant must hold a valid grant, lease or license for the tide flowed part of the site before the application will be considered. The permit process is outlined in Figure 6.

Waterfront Development permits are subject to the requirements of the 90 Day Construction Permit Law (N.J.S.A. 13:1D-29). Under its provisions interested persons who consider themselves aggrieved by the granting or denial of a Waterfront Development permit may appeal the Division's decision to the Tidelands Resource Council (a proposed amendment to the 90 Day Construction Permit Rules will transfer this function to the Commissioner). This includes the right to challenge decisions which the appealing party contends are in conflict with the Rules on Coastal Resource and Development Policies.

2. Coastal Area Facility Review Act (CAFRA) - The Coastal Area Facility Review Act (N.J.S.A. 13:19-1 et seq.) authorizes DEP to regulate and approve the location, design and construction of major facilities in a 1,376 square mile coastal region encompassing portions of Middlesex, Monmouth, Ocean, Burlington, Atlantic, Cape May, Cumberland and Salem Counties (See Figure 7). The CAFRA area

Figure 5a

## JURISDICTION OF RULE FOR WATERFRONT DEVELOPMENT LAW — CONCEPT SKETCH

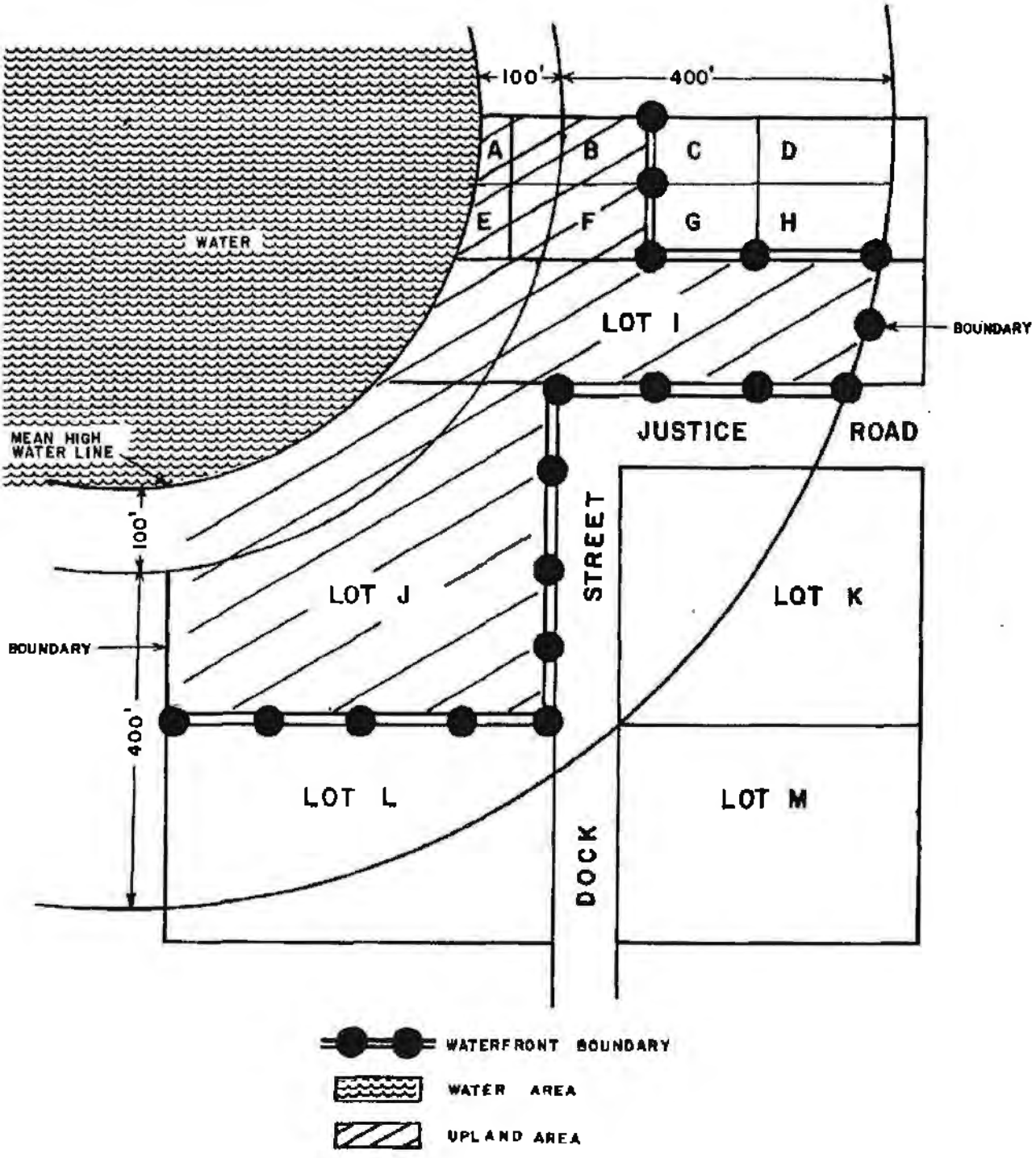
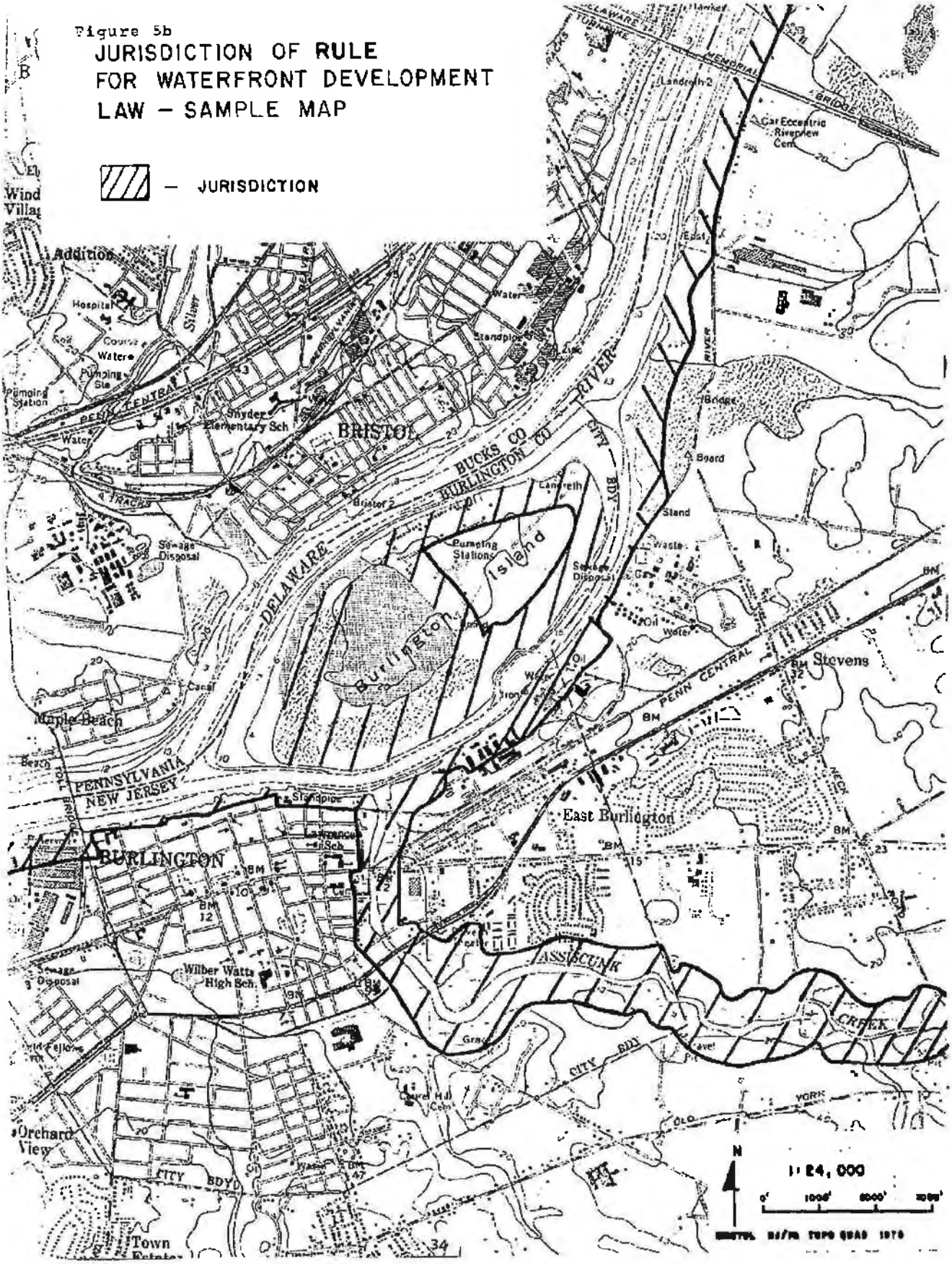


Figure 5b

JURISDICTION OF RULE
FOR WATERFRONT DEVELOPMENT
LAW – SAMPLE MAP

– JURISDICTION

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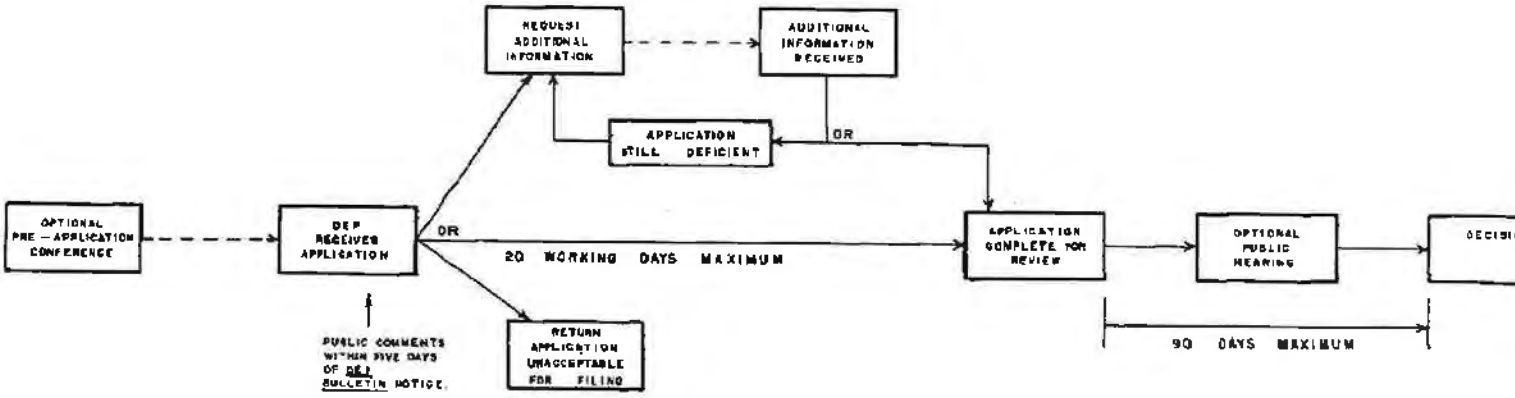
## WETLANDS AND WATERFRONT (RIPARIAN) DEVELOPMENT PERMIT APPLICATION PROCESSES

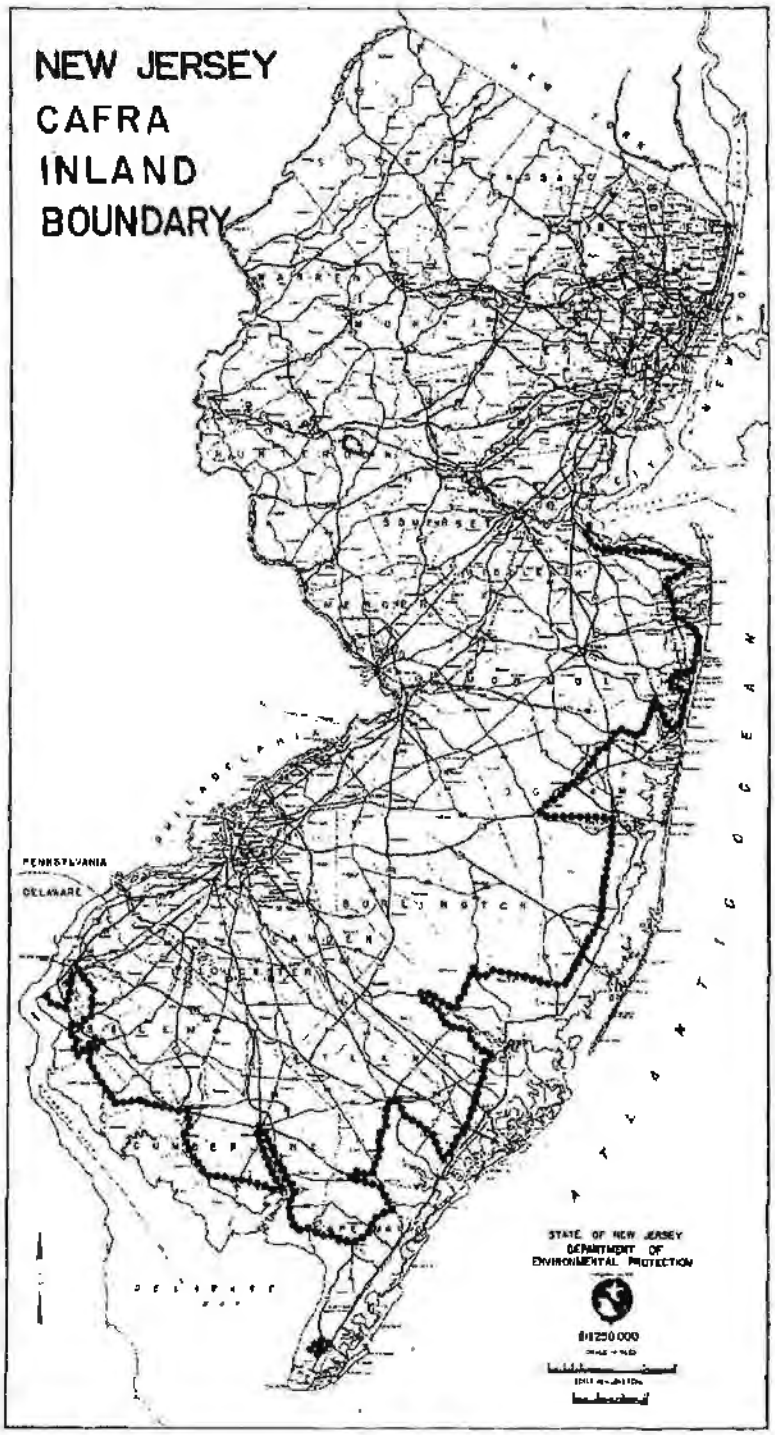



NOTE:

A WATERFRONT DEVELOPMENT PERMIT APPLICATION IS NOT DECLARED COMPLETE FOR REVIEW WITHOUT A LAWFUL RIPARIAN OCCUPATIONAL OR USE INSTRUMENT SUCH AS A RIPARIAN GRANT, LEASE, OR LICENSE.

- - - - INDICATES THAT THE TIMETABLE IS SET BY THE APPLICANT.

Figure 7


NEW JERSEY
CAFRA
INLAND
BOUNDARY
PENNSYLVANIA
DELAWARE
STATE OF NEW JERSEY
DEPARTMENT OF
ENVIRONMENTAL PROTECTION

also includes coastal waters. Lying within the CAFRA area are New Jersey's barrier beach islands, all of its coastal resort areas, portions of the Pinelands, large agricultural areas, and New Jersey's fastest growing county (Ocean). The Act is administered by the Division of Coastal Resources.

Facilities regulated under CAFRA include all those proposed for the following purposes:

a. Electric power generation, including oil, gas, coal fired or nuclear;

b. Public facilities, including housing developments of 25 or more dwelling units, roads and airports, parking facilities of 300 spaces or more, wastewater treatment systems and components, and sanitary landfills;

c. Food and food by-products, paper and agri-chemical production;

d. Mineral products, chemical and metallurgical processes an inorganic salt manufacture;

e. Marine terminals and cargo handling and storage facilities.

The full list of facilities regulated under CAFRA, together with the text of the Act, is reprinted in Appendix E. A flow chart depicting the CAFRA permit application process appears as Figure 8.

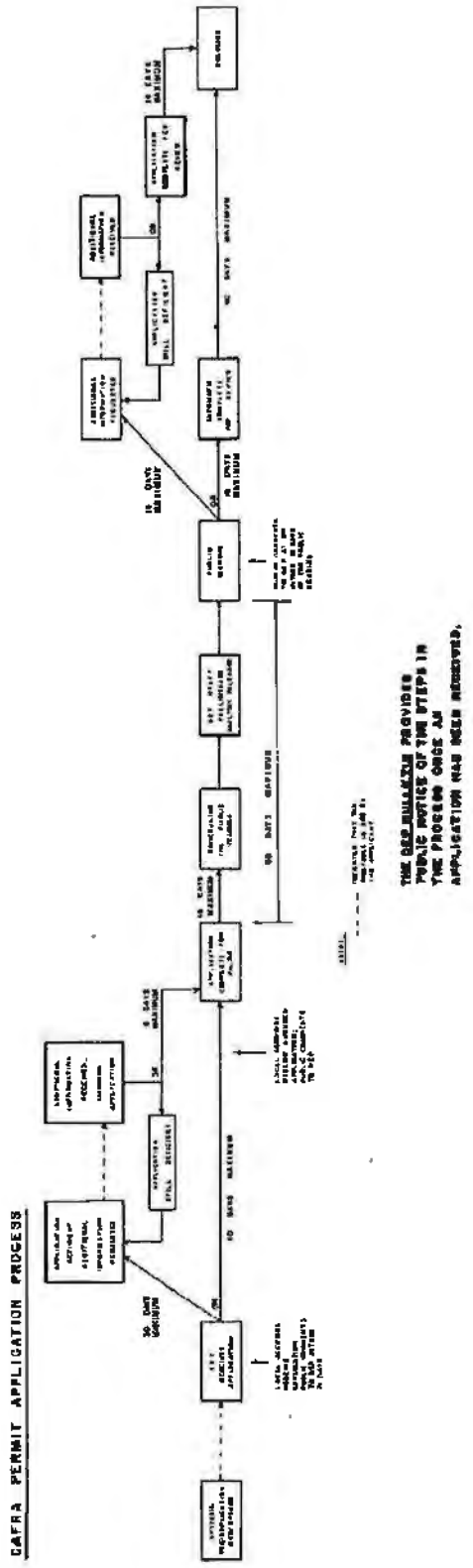
Persons proposing to build CAFRA-regulated facilities must first submit an application and Environmental Impact Statement (EIS) to the Division. A public hearing and review of the EIS by other DEP divisions and state agencies are required before the decision to grant or deny the permit may be made by the Division Director.

CAFRA permit decisions may be appealed by an interested person to the Commissioner of DEP, or directly to the three member Coastal Area Review Board. Appeals to the Commissioner may also be taken to the Review Board following her decision. The broad provisions of the appeals process allow challenges to permit decisions on the basis that they are inconsistent with the Rules on Coastal Resource and Development Policies.

3. Wetlands Act - The Wetlands Act of 1970 (N.J.S.A. 13:9A-1 et seq.) authorizes DEP to regulate activities on coastal wetlands. Since its enactment and the adoption of the Wetlands Regulations in 1972, the amount of wetlands filled in New Jersey has been reduced from 1,900 to 55 acres annually. In 1978, approximately 14 acres of regulated wetlands were filled, while in 1979, less than one acre was filled. The Act, which is administered by the Division of Coastal Resources, gives the state broad discretion in regulating virtually any form of development or disturbance on mapped coastal wetlands, except for mosquito control and continued commercial production of salt hay or other agricultural crops or activities.

Coastal wetlands are defined as those wetlands subject to tidal action along specified water bodies. They are not regulated under the Act until they have been mapped and the maps promulgated, following notice to affected property owners and a public hearing. Most coastal wetlands were mapped and the maps promulgated by 1972. The Act does not affect inland or freshwater wetlands.

Figure 8



The greatest amount of wetlands acreage is found along the Atlantic shorefront but there is also a considerable amount of acreage along the Delaware River, and approximately twenty acres of regulated wetlands on the Raritan River, in and near Perth Amboy. The Act specifically exempts the Hackensack Meadowlands District from its coverage. Small wetlands areas in the Delaware River Area have not yet been delineated and are therefore not now regulated by DEP. They would, however, be regulated under the proposed rules for the Waterfront Development Act.

Under Administrative Order No. 12 of 1977, Wetland permit decisions are made by the Division Director and may be appealed to the Commissioner of DEP. As is the case with Waterfront Development and CAFRA permits, permit decisions may be challenged on the basis that they violate the Rules on Coastal Resource and Development Policies.

The Division of Coastal Resource's jurisdiction under each of the three coastal permits in the Bay and Ocean Shore Segment is shown in Figure 9. The Waterfront Development's proposed jurisdiction in the rest of the State is depicted in Figure 2.

4. Tidelands Management - In New Jersey, "tide-flowed" (or riparian) lands are owned by the State of New Jersey, except where already conveyed. These are lands now or formerly flowed by the mean high tide, including filled lands. The State owns the lands as trustee for the public, and must administer their use in the public interest. The State exercises control over tidelands in two ways: through its proprietary role as owner, and through its regulatory role under the Waterfront Development Law.

The State's ownership interest extends to the mean high water mark, which is determined on the basis of a theoretical 18.6 year tide. DEP's Office of Environmental Analysis is presently conducting a tidelands delineation program throughout the State. Until the delineation is complete, the Division of Coastal Resources is determining the applicability of tidelands law on a case-by-case basis. Landowners proposing to build and citizens concerned about a proposed project, as well as the Division of Coastal Resources staff of Marine Lands Inspectors, bring individual cases to the attention of the Department.

The State's ownership role is exercised through the Tidelands Resource Council, which may grant, lease, or license the use of State-owned tidelands provided such action is in the public interest. Persons seeking to purchase, lease or otherwise use these lands must first obtain the Council's approval (Figure 10). Many of the State's tidelands were sold in the nineteenth and early twentieth century, but it is the present practice of the Council only to license the use of the lands, and not to grant them outright, except in unusual cases.

The Council, which is composed of twelve citizens appointed by the Governor, with the advice and consent of the State Senate, has broad discretion concerning applications for tideland conveyances. The Council may make any decision it believes to be in the public interest. DEP's Commissioner and Director of Coastal Resources, however, have the authority to veto any Council action inconsistent with state policy. Should a veto occur, the application is returned to the Council for reconsideration. Consideration of the State's Coastal Resource and Development Policies in tidelands decision-making is also assured by the fact that the Division of Coastal Resources serves as staff to the Tidelands Resource Council.

# FIGURE 9

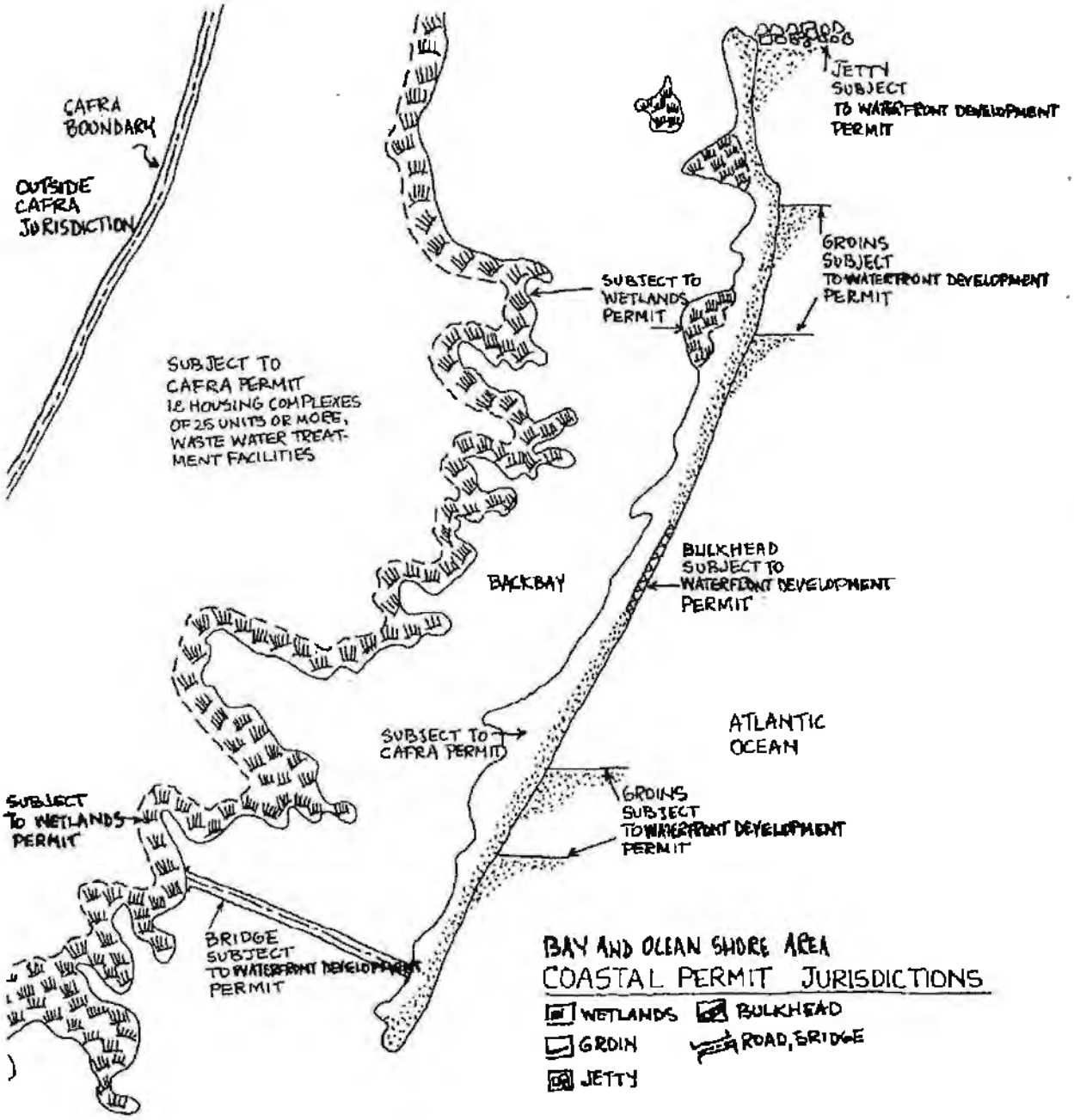
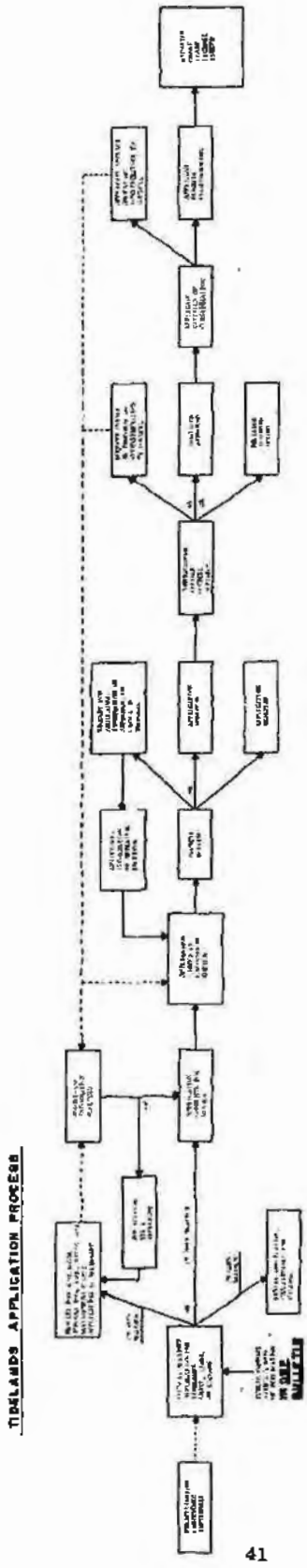

CAFRA BOUNDARY
OUTSIDE CAFRA JURISDICTION
JETTY SUBJECT TO WATERFRONT DEVELOPMENT PERMIT
GROINS SUBJECT TO WATERFRONT DEVELOPMENT PERMIT
SUBJECT TO WETLANDS PERMIT
SUBJECT TO CAFRA PERMIT IE HOUSING COMPLEXES OF 25 UNITS OR MORE, WASTE WATER TREATMENT FACILITIES
BULKHEAD SUBJECT TO WATERFRONT DEVELOPMENT PERMIT
BACKBAY
ATLANTIC OCEAN
SUBJECT TO CAFRA PERMIT
SUBJECT TO WETLANDS PERMIT
GROINS SUBJECT TO WATERFRONT DEVELOPMENT PERMIT
BRIDGE SUBJECT TO WATERFRONT DEVELOPMENT PERMIT
BAY AND OCEAN SHORE AREA
COASTAL PERMIT JURISDICTIONS
WETLANDS
BULKHEAD
GROIN
ROAD, BRIDGE
JETTY

Figure 10



In keeping with traditional riparian law, the owners of land immediately upland have the first right to purchase or use tidelands. But before any person may make use of tidelands, the Council requires that they obtain a Waterfront Development Permit. Since the permit may only be granted if the activity is consistent with the Coastal Resource and Development Policies, this requirement insures that the use of tidelands will conform with those policies.

5. Hackensack Meadowlands District - Implementation of coastal policies in the Hackensack Meadowlands District will be a joint venture of DEP and the Hackensack Meadowlands Development Commission (HMDC), with the Commission's plans guiding both agencies in their decisions. The HMDC is composed of the Commissioner of the Department of Community Affairs and three residents each from Bergen and Hudson Counties, appointed by the Governor, with the advice and consent of the State Senate. The Commission is responsible for developing and implementing a plan for ecologically sound development of the Meadowlands District. For this purpose, it has been given planning and zoning powers for the District, which were previously exercised by the individual municipalities. In 1972, the Meadowlands Commission adopted a master plan, which, as revised in 1977, 1978 and 1979, is to guide future development of the District. The HMDC will be the State agency responsible for implementing the State's coastal program under the CZMA in the Meadowlands District, and the coastal policies for the District will be those presently adopted by the HMDC in their Master Plan and other policy documents.

Amendments to the Zoning Regulations of the Hackensack Meadowlands District will be considered as amendments to the Coastal Management Program when they meet the definition for amendments found in 15 CFR 923.80(c):

"amendments are defined as substantial changes in, or substantial changes to enforceable policies or authorities related to:

(1) Boundaries;

(2) Uses subject to the management program;

(3) Criteria or procedures for designating or managing areas of particular concern or areas for preservation or restoration; and

(4) Consideration of the national interest involved in the planning for and in the siting of, facilities which are necessary to meet requirements which are other than local in nature."

As required by 15 CFR 923.53(a)(1), DEP-Division of Coastal Resources will make federal consistency determinations for actions affecting the Meadowlands District. However, such determinations will be made after consultation with the HMDC. The District is not subject to the requirements of the Wetlands Act.

6. Regulation and Planning of Energy Facilities - The Department of Energy (NJDOE), created in July 1977 (N.J.S.A. 52:27F-1 et seq.), has broad planning authority over energy-related matters, including the authority to participate in the decision-making of other State agencies concerning the siting of energy facilities. The fact that energy generating and petroleum refining facilities often seek to locate in the coastal zone means that NJDOE's authority is a significant element in the management system.

The Departments of Energy and Environmental Protection, recognizing their coextensive jurisdiction over energy facility siting in the coastal zone, and also recognizing the importance of such siting decisions to a successful coastal management program, entered into a memorandum of understanding in August 1978. The memorandum has three important features: a procedure for DOE review of coastal permit applications, a commitment by DEP and NJDOE to make their findings on the basis of the State's Coastal Resource and Development Policies as well as on the State Energy Master Plan, and a procedure for resolving disagreements between the two agencies. The proposed amendments to the existing Coastal Resource and Development Policies will not be adopted until agreed to by NJDOE, at which time they will be subject to the August 1978 Memorandum of Understanding. (See Appendix C)

In the case of a disagreement between DEP and DOE concerning the siting of an energy facility, the matter will be submitted to an Energy Facility Review Board for resolution. The Board was established by the Act creating DOE, and consists of the Director of DOE's Division of Energy Planning and Conservation, the Chief Executive Officer of the state instrumentality with the power of approval over the application, and a designee of the Governor. The Board has never had to meet.

The New Jersey Department of Energy is also the lead agency for the Coastal Energy Impact Program (CEIP). The 1976 Amendments to the federal Coastal Zone Management Act created Section 308, the CEIP, to provide financial assistance to help coastal states respond to the growth and impacts of new energy exploration and development. A second objective of the CEIP is to balance the two national goals of encouraging development of domestic energy resources to further energy self-sufficiency, and to protect and manage the nation's coast in a manner consistent with the objectives of a state's Coastal Management Program. To be eligible for assistance under the CEIP, a coastal state must be receiving a grant under Section 305 of the Act, have a coastal management program which has been approved under Section 306, or be making satisfactory progress which is consistent with the policies set forth in Section 303 of the Act. New Jersey currently meets these criteria. Ensuring New Jersey's continued eligibility through federal approval of a complete statewide coastal management program is one key incentive for completing the program.

CEIP grants are based in part on the amount of OCS acreage adjacent to a particular state. As specified in the FCZMA, NOAA's Assistant Administrator for Coastal Zone Management is in the process of establishing extended lateral seaward boundaries which will be used to determine New York and Delaware, and New Jersey's respective CEIP grant allocations.

As the lead agency for CEIP, the New Jersey Department of Energy is responsible for administering the program, including soliciting applications, providing technical assistance. Funds are allocated to municipal and county governments, State agencies and governmental regional planning agencies according to the program's intrastate allocation process which includes project evaluation and approval by the New Jersey Intrastate Allocation Committee, representing diverse state interests. DOE and DEP coordination is required by the federal CEIP regulations which state that CEIP assistance cannot be granted without DEP certification of compatibility with the goals and policies of the developing Coastal Management Program or consistency with the approved Coastal Management Program.

To facilitate such a finding, and to satisfy the requirement that the state's coastal planning agency review CEIP applications, the Memorandum of Understanding provides that all such applications will be forwarded to DEP for consistency review.

Another major responsibility of the Department of Energy is preparation and updating of the State Energy Master Plan. This plan considers the production, distribution, consumption and conservation of energy in the state and surrounding region. The Plan and the more specific reports it promises will become a primary resource for energy facility siting decisions by DEP. The State Energy Master Plan was formally adopted in October 1978.

The Board of Public Utilities, which is in, but not of, the Department of Energy, has broad regulatory authority over public utilities. Included in this authority is the power to supercede local zoning decisions when necessary if the service conveniences the welfare of the public (N.J.S.A. 40:55D-19). This authority comes into play only when a proposed utility facility has received required state permits (including coastal permits) and is denied a required local permit. This provision helps New Jersey fulfill a section of the federal CZMA requiring that local governments not be able to unreasonably restrict uses of regional benefit (See Chapter Four).

7. Green Acres Funding - The Green Acres Administration determines where and how state funds should be spent for park and open space acquisition, development, and capital improvements. DEP can purchase land under this program by condemnation if necessary. The Division of Coastal Resources reviews proposed expenditures of Green Acres funds in the coastal zone for consistency with the Coastal Resource and Development Policies and can suggest modifications. In addition, under the Use Policies for Recreation, Green Acres funds would be withheld from municipalities with recreational plans or ordinances which are inconsistent with the Coastal Resource and Development Policies.

The State Comprehensive Outdoor Recreation Plan (SCORP), prepared by the Green Acres Administration, addresses the adequacy of open space for existing and projected demands, and the accessibility of recreation resources for all segments of the population. The plan qualifies New Jersey for funding under the Federal Land and Water Use Conservation Fund Program. In addition to studying recreation needs and uses, SCORP also includes inventories of federal, state, county, municipal and private recreation resources. The major policies in SCORP, which are also proposed for adoption in the Coastal Management Program, include an emphasis on open space in urban areas, recreation facility development, increasing public access to recreation resources through mass transit, and developing barrier free recreation facilities.

In November 1978, the voters of New Jersey approved a $200 million Green Acres Bond issue, with $100 million earmarked for the acquisition and development of park land in urban areas. This brings to $540 million the amount of money approved by the voters for Green Acres funding since 1961. The Green Acres Administration will be spending this money in accord with SCORP priorities. One top priority is the creation of waterfront parks in urban areas. Some of the money will be used for direct state acquisition, while the majority will be channeled through local governments as matching grants. This money will help to significantly expand public access and recreational opportunities through the coastal zone.

New Jersey has also received additional funds for park rehabilitation in selected urban areas under the federal Urban Parks and Recreation Recovery Act, passed in 1978. These funds could be used by an eligible municipality to fill the local matching share of a state Green Acres grant.

8. Shore Protection - Shoreline erosion is a major concern in New Jersey, and DEP is authorized to undertake any and all actions necessary to prevent and/or repair damage caused by such erosion (see N.J.S.A. 12:6A-1). In 1977, New Jersey's voters approved a $30 million bond issue (the Beaches and Harbors Bond Act of 1977, P.L. 77-208), $20 million of which is to fund State matching grants for beach restoration, maintenance and protection facilities, projects and programs.

The Act requires that DEP prepare a comprehensive master plan that will serve as a basis for these grants. Work on this plan has been underway since 1978, and is being conducted by the Division of Coastal Resources. Shore Protection rules, which have been proposed only in draft form, would be procedural rules which cite the Coastal Resource and Development Policies relevant to shore protection for their substantive element. These include policies on Coastal Engineering, Dunes and Dune Management, Beach Nourishment, and High Risk Beach Erosion Areas. This uniformity between programs is required by the adoption of the Coastal Resource and Development Polices as Department rules governing coastal decision-making.

In addition to guiding the state's program, the Shore Protection Master Plan and the Coastal Policies will serve as a basis for the planning of joint projects with the U.S. Army Corps of Engineers. Coastal permits will be issued only in conformity with the Policies.

9. Coastal Program Funding

Coastal Management Program Implementation (306) Funds

Upon federal approval of the coastal program, New Jersey is eligible to receive implementation funds under Section 306 of the federal Coastal Zone Management Act. DEP received $800,000 in FY 1979, for example, after approval of the program for the Bay and Ocean Shore Segment. The Department made available $50,000 of this implementation money to selected county and municipal governments included within the Bay and Ocean Shore Segment boundary by inviting them to submit proposals for planning projects which would help to fulfill the objectives of the Coastal Program, and selected projects in Toms River and Bridgeton. In FY 1980, the Department received a second year implementation grant of $840,000, of which $86,000 is being passed through to six local governments.

After receiving Federal approval for the complete coastal program, New Jersey will be eligible for increased Section 306 funds to implement the entire program. DEP intends to continue to make a part of this money available for local governments to assist with projects which will help to carry out the goals and objectives of the coastal program. Other States have, for example, granted funds to local governments for the development of beach access plans or projects, land use analyses, zoning ordinance revisions, and downtown revitalization projects.

DEP has also been receiving funds for the past four years, under Section 305 of the federal Coastal Zone Management Act, to develop the Coastal Management Program. In 1977, DEP passed through $180,000 of these planning funds to twelve coastal counties. In 1978, the Department granted $75,000 to eleven of the counties to enable them to write specific reports contributing to DEP's development of a coastal program. In 1979, DEP granted $110,000 to five municipalities in the developed coast to develop plans for projects which would further the State's coastal objectives. DEP is currently receiving its last year of Section 305 federal coastal planning funds and will not be eligible to receive additional Section 305 funds.

Coastal Energy Impact Program (308) Funds

The Coastal Energy Impact Program, Section 308 of the Coastal Zone Management Act, provides funds to assist states in dealing with impacts from new or expanded energy facilities, and existing, expanded or new coastal energy activities. State agencies, counties and municipal governments are eligible to receive CEIP grants and loans from the Department of Energy, which is the state's designated lead agency for CEIP. New Jersey has been alloted almost $2 million in grants and $3 million in loans since the program's inception in 1977. The CEIP is explained in more detail in the section above which discusses the Department of Energy.

Supplementary Implementation Programs in DEP

There are a number of programs in DEP which require that new development meet regulations and standards concerning the maintenance and enhancement of water and air quality, the regulation of soil erosion, and the protection of flood hazard areas, wild and scenic rivers, and specified park areas. Programs in these areas will be useful in implementing particular coastal policies. They will be subject to the Coastal Resource and Development Policies to the extent allowed by their enabling legislation. This extent is narrow in the case of programs dealing with the quality of the ambient environment (i.e. air and water quality regulation), but is broader where a program involves land use regulations.

The policies of these programs are generally consistent with and, in several cases, are identical with the proposed Coastal Policies. The Coastal Policies on Water and Air Quality and Solid Waste adopt by reference the policies being developed by the divisions of the Department with greatest expertise in each field. The Division of Coastal Resources continues to monitor and review proposed changes to these policies through the rule-making process, and if a change were to violate the adopted Coastal Resource and Development Policies, the DEP Commissioner could refuse to allow the change.

Water Quality Program - The Federal Clean Water Act of 1977 (33 USC 466 et seq.) sets a framework for achieving a national goal of restoring and maintaining the chemical, physical and biological integrity of the nation's waters and ensuring that they be fishable and swimmable. This is to be accomplished by Federal-state partnerships under which EPA sets increasingly strict effluent standards for wastewater discharges and the states set quality standards for rivers, bays and the ocean, and develop a strategy for their attainment. The key regulatory element is the National Pollutant Discharge Elimination System (NPDES), and the key planning element is the Areawide Water Quality Management (208) Plan. These elements, as well as State wastewater treatment facility requirements, are the key programs for attaining the State's water quality goals in the coastal zone and throughout the state.

The attainment and maintenance of water quality in New Jersey is the responsibility of DEP's Division of Water Resources. The Division of Coastal Resources also plays a role in water quality enhancement through the enforcement of water quality resource policies in decision-making under CAFRA, the Wetlands Act and the Waterfront Development Law. The Division of Water Resources will consider other coastal policies not related to water quality to the extent statutorily permissible.

NPDES Permits - Any point source discharge into the waters of the United States, including the territorial sea, must receive a National Pollutant Discharge Elimination System Permit (NPDES) from either EPA or the State. There are 1,396 facilities currently regulated by NPDES in New Jersey. Perhaps as many as half of these facilities are located in the coastal zone. In New Jersey, permits are issued by EPA, Region II, but the State now has enabling legislation (the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq.) which allows DEP to take over the permitting function. Under the present arrangement, DEP's Division of Water Resources must certify that a proposed discharge will not prevent the attainment of the State's water quality standards before EPA may issue a NPDES permit, and can therefore prevent the issuance of that permit. This certification, which is required by Section 401 of the Federal Clean Water Act, focuses on the chemical and biological impact of the proposed discharge on attainment of the water quality standards for the receiving body of water. For example, water classified as TW-1, the highest classification for tidal waters, must be suitable for shellfish harvesting where permitted. If a proposed discharge would threaten the shellfish beds in TW-1 waters, the Division of Water Resources would have to withhold Section 401 Certification, and thus preclude EPA from issuing a NPDES permit. The NPDES permit process could be used to implement many of the proposed coastal policies for point sources of discharges.

When EPA approves a State program for issuing NPDES permits, the requirements remain the same -- compatibility with Federal effluent guidelines and state water quality standards -- but in New Jersey, DEP rather than EPA would make the initial permit determination. EPA would then have the authority to overrule DEP concerning any permit, just as DEP can currently prevent EPA from issuing a permit by not providing the Water Quality Certificate.

Section 6(b) of the State's Water Pollution Control Act also authorizes the Division of Water Resources to adopt regulations placing pre-construction requirements on anyone planning to build a new facility which would discharge wastewater. So-called "Preliminary Facility Approval" Regulations were proposed in the summer of 1977 which would require any person proposing to build a facility to first examine its potential impact on water quality. DEP could prevent construction or require modifications in the plan until it was satisfied that the completed facility would be compatible with State water quality requirements, thereby controlling water pollution by regulating the siting and construction of facilities in addition to regulating effluents. Adopting such regulations could significantly increase the types of development which DEP could require to follow the coastal policies. The proposed rules, however, were not well accepted and are presently being studied and revised.

The Coastal Management Program will adopt by reference the State's water quality standards as its standards, and the Division of Coastal Resources will comment on any proposed revisions. This is the same procedure adopted for the Bay and Ocean Shore Segment, which recognizes and relies upon the Division of Water

Resources' expertise. The Division of Coastal Resources will use its permitting authority, in consultation with the Division of Water Resources, to approve only those projects which will not prevent attainment of State water quality standards.

Areawide Water Quality Management (208) Plans

A Water Quality Management Plan developed according to Section 208 of the Clean Water Act is a comprehensive and implementable strategy for the control of water pollution in a county or multi-county area. Federal and State legislation require that the Coastal Management Program and 208 Plans be consistent. Through a Federal agreement between the Department of Commerce and the Environmental Protection Agency, and through a working relationship at the state level between the Divisions of Coastal Resources and Water Resources, the policies of the two programs are being coordinated and made consistent for both point and non-point sources of pollution.

Each 208 plan is to consist of a set of policies and a management system detailing how and by which agencies these policies will be enforced. The Coastal Zone is to be addressed by nine separate 208 Plans:

| Counties | Planning Agency | Status as of July 1980 |
|---|---|---|
| 1. Middlesex | Middlesex County Planning Board | Certified by Governor |
| 2. Mercer | Mercer County Planning Board | Certified by Governor |
| 3. Burlington/Camden/ Gloucester | Delaware Valley Regional Planning Commission | Certified by Governor |
| 4. Salem/Cumberland | DEP-Division of Water Resources | Certified by Governor |
| 5. Bergen/Hudson/Essex/ Passaic/Union/Somerset | DEP-Division of Water Resources | Certified by Governor |
| 6. Monmouth | DEP-Division of Water Resources | Certified by Governor |
| 7. Ocean | Ocean County Planning Board | Draft Plan Completed |
| 8. Atlantic | Atlantic County Division of Planning | Draft Plan Completed |
| 9. Cape May | Cape May County Planning Board | Draft Plan Completed |

The Division of Coastal Resources will not issue CAFRA, Waterfront Development or Wetlands permits to development proposals which conflict with a certified 208 Plan. Similarly, all other regulatory programs in DEP will not issue permits to projects in conflict with a certified plan as required by N.J.S.A. 58:11A-10. The Division of Coastal Resources has been participating in the 208 planning process to assure that the plans are not only consistent with Coastal Policies, but also contain policies and strategies designed to protect water-related coastal resources. Thus, in implementing 208 plans through regulatory and other strategies, DEP, the counties and other agencies will also be implementing elements of the Coastal Management Program.

Wastewater Treatment Facilities - DEP is actively involved in the planning, financing and regulation of wastewater treatment facilities.

The State Water Pollution Control Act (N.J.S.A. 58:10A-1 et seq.), authorizes DEP's Division of Water Resources to require a permit for the construction, installation, modification or operation of any wastewater treatment facility, including

but not limited to sewage treatment plants, sewage collection systems including interceptors, sewer outfalls, industrial wastewater treatment plants, and cooling towers and ponds. Through another program authorized by the Water Pollution Control Act, the Division may place a ban on extensions to a sewerage system when that system is found to be receiving flows in excess of design capacity or to be discharging inadequately treated sewage.

Under the Water Supply and Sewer Systems in Realty Improvements Act (N.J.S.A. 58:11-23 et seq.), the Division must certify the adequacy of the proposed water supply and wastewater disposal system for any development involving fifty or more houses, or other structures producing wastewater, before a municipality may give the necessary subdivision approval. This requirement assures that proposed major subdivisions in the coastal zone and the entire state which employ on-site sewage disposal will not be built unless the disposal system is adequate "with respect to wells or other sources of water supply, topography, existing individual sewage disposal systems on adjacent properties, water table, soil characteristics, available area and expected volume of sewage" and meets State standards regarding design (N.J.A.C. 7:9-2.5). This law is of importance primarily in areas without regional sewerage systems. In the proposed coastal zone, this includes significant portions of Cumberland, Salem, and Cape May Counties.

In September, 1979, EPA delegated administration of the Wastewater Construction Grant Program under Section 201 of the Federal Clean Water Act to the Division of Water Resources. Under this program, DEP determines the eligibility of proposed municipal facilities for federal aid for facility planning (Step I), engineering (Step II), and construction (Step III). Since all wastewater facilities require a Waterfront Development permit (and a CAFRA permit if located in the CAFRA zone), DEP and EPA in 1977 entered into an agreement which requires that applicants obtain these permits before Step II engineering funds are released. This practice will continue under the delegated program. This insures that wastewater treatment facilities are planned, funded and built in accordance with Coastal Policies.

The State Public Sanitary Sewerage Facilities Assistance Act of 1965, (N.J.S.A. 26:2E-1 et seq.), authorizes DEP to give grants of up to 30 percent of the State-local cost of construction projects which qualify for the 75 percent Federal construction subsidy under Section 201. The State construction aid program is designed to complement the federal sewerage construction grants, and DEP's funding priorities are in accordance with Federal priority guidelines and Areawide Water Quality Management (208) Plans. This funding program will help to carry out coastal policies related to secondary impacts and the protection of environmentally critical or sensitive areas.

Stream Encroachments and Flood Hazards

No structure or alteration within the 100 year floodplain of any stream may be made without a permit from DEP's Division of Water Resources. This permit responsibility existed under the Stream Encroachment Act (N.J.S.A. 58:1-26) until its repeal and transfer to the Flood Hazards Area Control Act (N.J.S.A. 58:16A-50 et seq., as amended, see P.L. 1979, c.359). The program is intended primarily for flood protection, "to safeguard the public against danger from waters impounded or affected by such structures".

Administration of this program supports the preservation of stream channels in their natural state, and will allow further implementation of the Coastal Policies related to hydrology and flood hazards. Of 500 stream encroachment permit applications received in 1978, DEP granted 450. The Division of Coastal Resources and Water Resources are discussing procedures for waiving the Stream Encroachment Permit requirement for projects requiring a Waterfront Development Permit.

The Flood Hazards Area Control Act also authorizes DEP to adopt land use regulations for delineated floodways "designed to preserve (their) flood carrying capacity and to minimize the threat to the public safety, health and general welfare". Under the Act, municipalities may conduct the delineation and adopt regulations concerning their use in zoning ordinances, provided that they meet the minimum standards of the DEP regulations.

DEP has adopted, or proposed for adoption, floodway delineations in various parts of the proposed coastal zone (See Resource Policy on Flood Hazard Areas in Chapter Four). The Act only applies to riverine flood hazard areas, however, so its use in coastal flood zones is extremely limited.

Wild and Scenic Rivers

The purpose of the Wild and Scenic Rivers Act of 1977 (N.J.S.A. 13:8-45 et seq.) is to preserve, protect and enhance the natural and recreational value of some of the State's most significant river segments. The Act allows the Commissioner of DEP to designate river segments as "wild", "scenic", "recreational", or "developed recreational". In any river segment so designated, all construction activities would be either prohibited or regulated within the river's flood hazard area. This would expand upon DEP's authority under the Flood Hazards Area Control Act in the areas designated, by permitting a much wider range of considerations as criteria for DEP's regulatory decisions.

Before any designations can be made, the flood hazard area of a river under consideration must be delineated. The geographic extent of river designation is the flood hazard area, except that DEP owned lands beyond the flood hazard area which are important to the river may also be included in the designated river area. A designation study, assessing the river's values, and the impact of designation must be prepared and will be subject to public review and hearings.

The types of development that are controlled under the Act will depend on which designation is applied to the segment, with "wild" rivers having the strictest prohibitions and "developed recreational" the most lenient. DEP's Green Acres Administration has published guidelines for designation of the State's rivers under which both the Lower Delaware River and the Hudson River could be characterized as developed recreational segments. Examples of river segments which may be designated include: Hudson River from the New Jersey-New York border to Liberty State Park (only characteristics of the New Jersey side, including views of Manhatten, would be considered), or the Rancocas Creek from head of tide to confluence with the Delaware. DEP has proposed flood hazard area delineations for the Rancocas Region under the Flood Hazard Areas Control Act.

The Delaware and Raritan Canal State Park Act
(N.J.S.A. 13:13A-1 et seq.)

This law is similar to, but was enacted three years before, the State's Wild and Scenic Rivers Act. Preservation of the sixty mile Delaware and Raritan Canal is entrusted to the Delaware and Raritan Canal Commission, which is in but largely independent of DEP. The Department is required by the law to administer all State-owned lands along the Canal as a State park, in accordance with a master plan adopted by the Commission in May, 1977. The Commission is given project review authority over proposals within a delineated review zone which includes the Canal Park and any land on either side of it in which development will have drainage or visual impact on the park. Within this zone, the Commission has the authority to "review and approve, reject or modify any project ..." (N.J.S.A. 13:13a-14c).

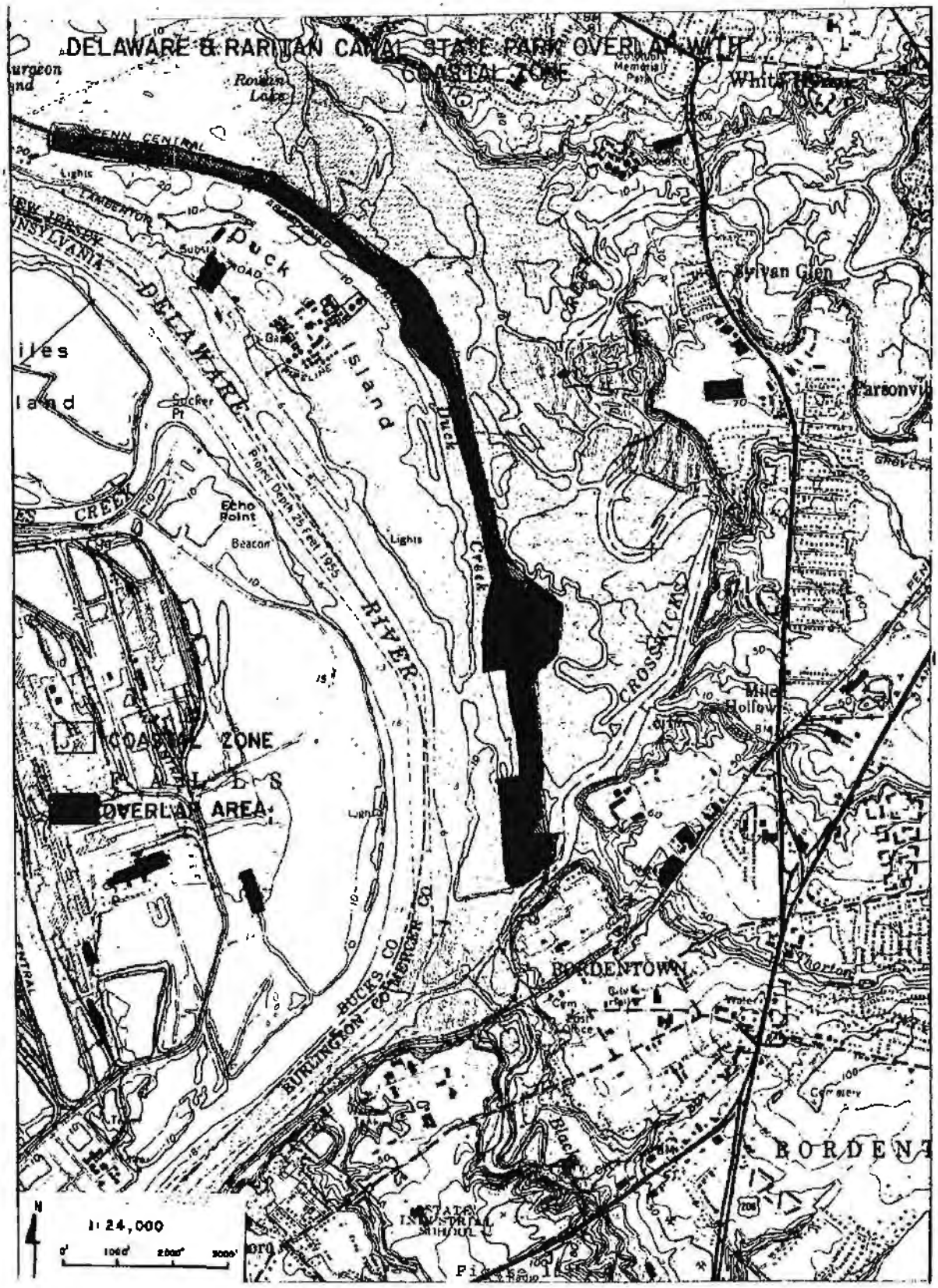
The projects to be reviewed by the Commission are set by rules adopted in 1979 (N.J.A.C. 7:45-1.1 et seq.): Within 1,000 feet of the Canal Park (the "A" zone), all projects will be reviewed for drainage, visual, noise or other ecological impacts. Outside this area, but within watersheds of streams that enter the Canal Park (the "B" zone), projects will be reviewed only for drainage impacts. Projects to be reviewed in this latter area will be those involving construction or redevelopment of twenty-five or more dwelling units, projects which will cover one or more acres of land with impervious surfaces, and projects with any of the following uses: livestock pens, corrals or feed lots; pipelines, storage or distribution systems for petroleum products or chemicals; liquid waste, storage, distribution or treatment facilities; solid waste storage, distribution or incineration or landfill; quarries, mines or borrow pits; land application of sludge or effluents.

Two small segments of the canal park, totalling approximately 288 acres, lie within the proposed coastal zone (See Figure 11). In the Northern Waterfront area, the Canal extends along the Raritan River from New Brunswick to the limits of tidal water. In the Delaware River area, it begins at Crosswicks Creek, Hamilton Township, and then leaves the coastal zone as it turns away from the river in Trenton. Within these segments, proposed development would have to meet the policy requirements of both the Canal Commission and the Coastal Management Program. The policies proposed by the Commission are consistent with the proposed Coastal Resource and Development Policies.

Pinelands Protection

The Pinelands Protection Act (P.L. 1979, Ch. 111; N.J.S.A. 13:18A-1 et seq.) establishes a framework for the comprehensive planning and regulation of development in the approximately 1,000,000 acres of fragile, highly valued pinelands that reach across central and southern New Jersey. The Pinelands Area and its sub-areas are mapped and the overlap between that area and the proposed coastal zone is shown in Figure 19 (Chapter 4).

The Act is intended to accomplish the purposes of the National Parks and Recreation Act of 1978 (P.L. 95-625), which authorized federal support for Pinelands protection through planning and land acquisition. The Federal Act directs the Department of the Interior to provide up to $3 million in planning assistance if requested by the Governor, and up to $26 million in implementation funds


DELAWARE & RARITAN CANAL STATE PARK OVERLAY WITH COASTAL ZONE
PENN CENTRAL
Lights
TRENTON
Duck Island
DELAWARE
Sucker Pt
Point Depth 25 Feet 1955
Echo Point
Beacon
Lights
Duck Creek
RIVER
COASTAL ZONE
OVERLAY AREA
Lights
BURLINGTON-CONNECTICUT CO
BUCKS CO
Rowan Lake
Sylvan Glen
CROSSWICKS
BORDENTOWN
1:24,000

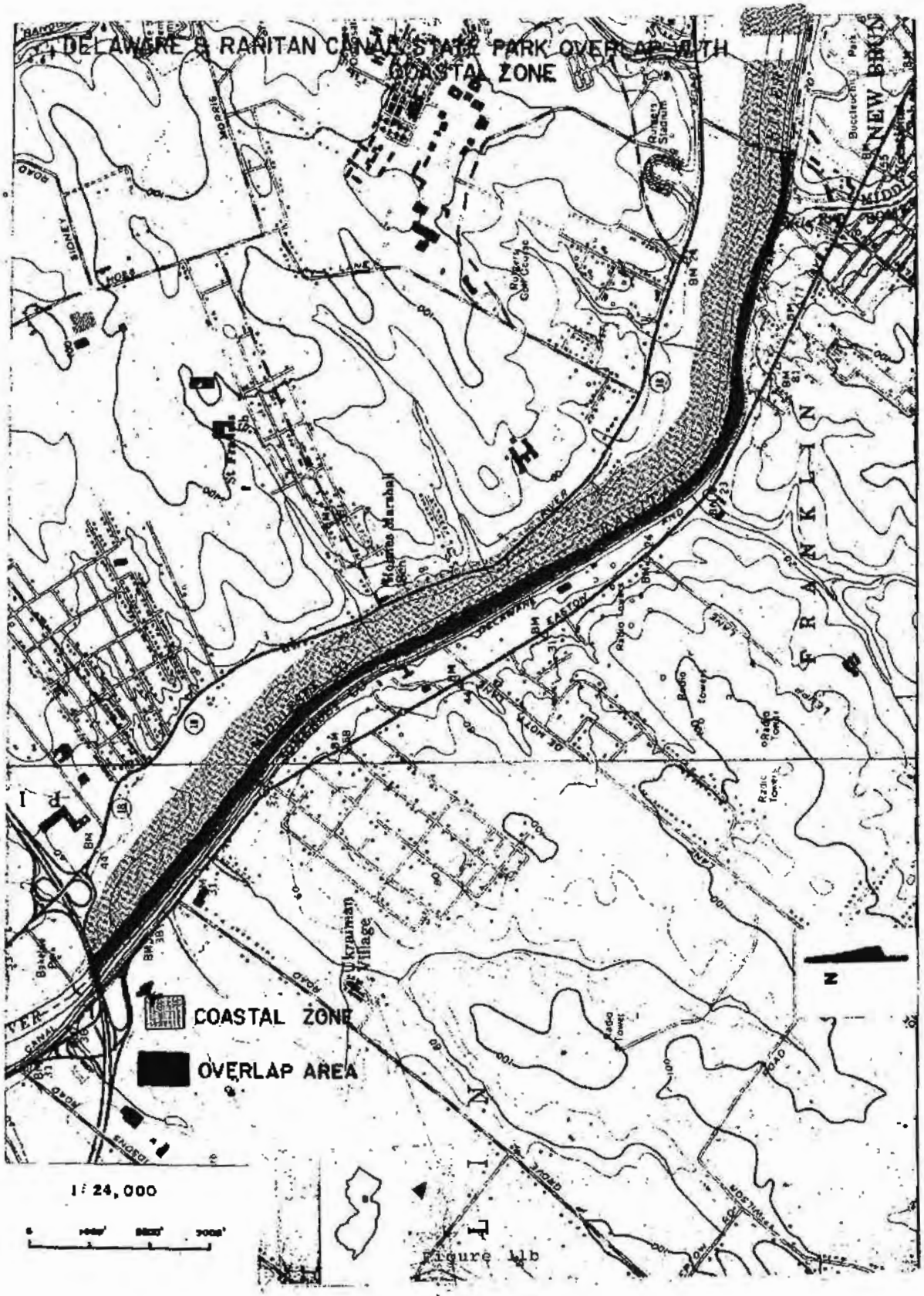

DELAWARE & RARITAN CANAL STATE PARK OVERLAP WITH COASTAL ZONE
COASTAL ZONE
OVERLAP AREA
1: 24,000
N

Figure 11b

following submission of an acceptable master plan. Both the planning process and a moratorium on State permit approvals and financial assistance were initiated by a Governor's Executive Order (EO No. 71, 1979) in March, 1979. The Pinelands Protection Act was subsequently passed and signed into law on June 28, 1979.

The Act establishes the following policy goals for the Pinelands:

1. The goal of the comprehensive management plan with respect to the entire pinelands area shall be to protect, preserve and enhance the significant values of the resources thereof in a manner which is consistent with the purposes and provisions of this act and the Federal Act.

2. The goals of the comprehensive management plan with respect to the protection area shall be to:

(a) Preserve and maintain the essential character of the existing pinelands environment, including the plant and animal species indigenous thereto and the habitat therefor;

(b) Protect and maintain the quality of surface and ground waters;

(c) Promote the continuation and expansion of agricultural and horticultural uses;

(d) Discourage piecemeal and scattered development; and

(e) Encourage appropriate patterns of compatible residential, commercial and industrial development, in or adjacent to areas already utilized for such purposes, in order to accommodate regional growth influences in an orderly way while protecting the pinelands environment from the individual and cumulative adverse impacts thereof.

3. The goals of the comprehensive management plan with respect to the preservation area shall be to:

(a) Preserve an extensive and contiguous area of land in its natural state, thereby insuring the continuarion of a pinelands environment which contains the unique and significant ecological and other resources representative of the pinelands area;

(b) Promote compatible agricultural, horticultural and recreation uses, including hunting, fishing and trapping, within the framework of maintaining a pinelands environment;

(c) Prohibit any construction or development which is incompatible with the preservation of this unique area;

(d) Provide a sufficient amount of undeveloped land to accommodate specific wilderness management practices, such as selective burning, which are necessary to maintain the special ecology of the preservation area; and

(e) Protect and preserve the quantity and quality of existing surface and ground waters.

The Act created a 15 member Commission (in but independent of DEP), and directed the Commission to develop a comprehensive Pinelands management plan by August 8, 1980.

On June 8, 1980, the Commission released a draft Comprehensive Management Plan including a land use map and development standards. Since the plan's release, legislation has been enacted to extend the deadline for plan adoption from August 8 to December 15, 1980, to allow adequate time for comment and revision. The standards for the Preservation Area, however, will take effect on August 8, 1980 as called for in the initial legislation.

Within one year of the plan's adoption, every county and municipality located in whole or in part in the Protection Area must submit to the Commission a master plan and/or zoning ordinance which complies with the adopted policies. Also following adoption, state regulatory and capital spending decisions in the area must comply with the policies.

The Act continues and extends to county and municipal approvals the moratorium on decision-making in the Pinelands area. The construction of single family dwellings is exempted from the moratorium in the Protection Area if the building lot was owned by January 7, 1979 by the person who is to occupy the dwelling, has access to a sewer system or, where no sewer is available, is greater than one acre in area.

The Commission may grant exceptions from the moratorium when necessary to alleviate extraordinary hardship or to satisfy a compelling public need, or where it has been determined that the project is consistent with the Act's purposes and would not result in substantial impairment of the Pinelands area's resources. The Commission has not yet adopted regulations governing this process.

The Pinelands National Reserve overlaps with the coastal zone in portions of Ocean, Burlington, Atlantic and Cape May Counties (see Figure 19), and in the Mullica River watershed there is also overlap between the coastal zone and the Pinelands Area under the jurisdiction of the State Pinelands Act. In this later area, coastal permits and approval from the Pinelands Commission will both be required for new development. This area is designated a part of the Preservation Area by the Pinelands Protection Act and a Limited Growth Region by the Coastal Resource and Development Policies, indicating a consistency of policies. In the area of overlap between the coastal zone and the National Reserve which is not under the jurisdiction of the Pinelands Protection Act, the Coastal Management Program will be the principal means of implementing the Pinelands Comprehensive Management Plan. The amendment to Coastal Growth Ratings in Ocean County (Chapter 4, Section 7:7E-5.3) and revisions to the Resource Policy on Buffers and Compatibility of Uses (Chapter 4, 7:7E-8.15), are both intended to make the coastal program more consistent with the draft Comprehensive Management Plan. Similarly, Section 22 of the State Pinelands Protection Act requires that DEP review its coastal policies and make any revisions "as may be necessary to effectuate the purposes of this act and the Federal Act". DEP believes that the Coastal Resource and Development Policies, as amended in this document, are basically

consistent with Federal and State Pinelands objectives and with the draft Pinelands Comprehensive Management Plan. Nonetheless, between now and the time of adoption of the Pinelands Comprehensive Management Plan, DEP and Pinelands Commission staff will be meeting to discuss modifications to both programs to increase their consistency.

Regulation of State Owned Land

The Natural Areas System Act (N.J.S.A. 13:1B-15.12a et seq.) calls for the Department to designate and regulate State-owned lands for the purpose of protecting and enhancing their natural values. The natural area regulations govern state agencies administering lands designated as part of the system, and ensure that any critical areas purchased by the State for preservation or conservation purposes are adequately protected. The Natural Areas System Act is a regulatory adjunct to those coastal policies encouraging the preservation of open space and the protection of critical environmental areas.

There are ten designated Natural Areas in the proposed coastal zone. These are described in Chapter Five under Geographic Areas of Particular Concern.

Parts of Rancocas State Park in Burlington County and the Delaware and Raritan State park in Middlesex and Mercer Counties are also in the proposed coastal zone. These parks and any other State-owned lands managed by DEP within the coastal zone, including forests and fish and wildlife management areas, will be managed consistent with the Coastal Policies. Development proposed on DEP managed lands is reviewed by the Division of Coastal Resources to assure consistency, if it requires one or more coastal permits.

Coastal resources along the Hudson River north of the George Washington Bridge, most notably the Palisades, are protected by inclusion within the Palisades Interstate Park. The park is managed by the Palisades Interstate Park Commission, a bi-state agency of New Jersey and New York.

Federally owned land is excluded from the coastal zone (see Appendix B).

Air Quality Programs

As the New Jersey agency designated to administer the Federal Clean Air Act, DEP's Division of Environmental Quality conducts the planning for and the monitoring of air quality. The Division's Bureau of Air Pollution Control has promulgated, and is further developing programs by which the National Ambient Air Quality Standards (NAAQS) will be attained. In compliance with the 1977 Amendments to the Federal Clean Air Act, New Jersey has submitted a State Implementation Plan (SIP) to the U.S. Environmental Protection Agency outlining strategies for attainment and maintenance of the Standards.

The Bureau of Air Pollution Control has an extensive permitting program which reviews proposals for any operation which would result in air pollution emissions. Thus, any proposal to construct or operate manufacturing facilities, non-commercial fuel burning equipment, storage tanks to hold fuel and other organic substances, and commercial fuel burning equipment with a heat output rate of one million BTU/hour or more must receive a permit from DEP. In addition, the Bureau requires permits to install any incinerator unless it will serve a multi-family dwelling of six units or less.

The purpose of requiring permits under the State's Air Pollution Control Act is to impose controls necessary to meet established standards on potential sources of new air pollution. The Act, therefore, will serve to implement the Coastal Policies on air quality. Permits are granted when the Bureau has ascertained that the application complies with Federal and State air pollution regulations, and that its emissions control system reflects "Best Available Control Technology", also considered "state of the art" technology. In any year, the Bureau reviews 6,000 to 7,000 applications and approves all but about 120.

Solid Waste

The Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq. authorizes DEP to supervise the collection and disposal of all solid wastes and related operations, including the location of disposal sites. Proposed facilities and sites are to be reviewed with reference to the quality of groundwater, erosion control, and "such other measures as shall be deemed necessary to protect the public health and safety of the environment "(N.J.S.A. 13:1E-6). Because numerous environmental impacts may be considered under this Act, DEP would apply all of the proposed Coastal Policies as criteria for site selection for solid waste collection and disposal facilities.

Under the New Jersey Solid Waste Management Act and the Federal Resource Conservation and Recovery Act (RCRA, P.L. 94-580), every county in the State as well as the Hackensack Meadowlands Development Commission must draft a solid waste management plan. After the plans are adopted, they will control the siting of solid waste disposal facilities. RCRA states that for a plan to receive EPA implementation funds, it must provide that all solid waste be recycled or disposed of in sanitary land fills meeting federal requirements. The Division of Coastal Resources will review developing solid waste management plans for consistency with coastal policies.

Harbor Clean-Up

The "New York Harbor Collection and Removal of Drift Project" is a joint State/Federal undertaking, supervised by the U.S. Army Corps of Engineers and administered at the state level by the Bureau of Capital Improvements in DEP's Division of Fiscal and Support Services. The plan calls for the Corps to remove all abandoned sources of drift from both public and private property, from mean high water seaward to a depth of 20 feet. Disposal methods include burning at sea, landfill, and land incineration, with burning at sea found preferable. Some dredging may be required to reach structures scheduled for removal. Local governments are to be responsible for subsequent maintenance of facilities, and no funds are provided for the revitalization of cleared areas.

New Jersey's share of the project's cost, $10 million, was authorized by the voters of the State as part of the $30 million Beaches and Harbors Bonds Act of 1977. The Act states in part that "the state's growing population, expanding commercial development, and tourist industry all require and should have a clean, adequate, and accessible shoreline" (Section 2b).

OTHER STATE AGENCIES

A number of state agencies, in addition to DEP, make decisions affecting land and water uses in coastal areas.

Unlike the operating divisions of DEP, these agencies are bound by the Rules on Coastal Resource and Development Policies only when their activities require a DEP permit. Only the Department of Energy (DOE) is specifically obligated to follow the adopted Coastal Resource and Development Policies, pursuant to a Memorandum of Understanding with DEP.

The sections which follow describe those activities of other state agencies which affect coastal land or water uses and which could, if conducted consistently with the Coastal Policies, enhance the program's effectiveness.

All major State public construction projects will be consistent with the coastal policies by virtue of the Governor's Executive Order 53 of 1973, which requires that any State project costing $1.0 million or more, or State projects costing less than $1.0 million which by reason of their nature or location have the potential for substantial adverse environmental impacts, be first reviewed by DEP for environmental impacts.

Department of Agriculture - The Department of Agriculture shares with DEP the regulatory responsibility of the Soil Erosion and Sediment Control Act (N.J.S.A. 4:24-39 et seq. as amended). The Act is administered by the State Soil Conservation Committee, which includes the Commissioners of the two Departments, and local Soil Conservation Districts. The Act controls erosion and sediment during the construction phase of development.

It mandates site plan review of proposed sediment control practices for all construction, excluding individually developed single family homes, resulting in a soil disturbance of at least 5,000 square feet. Reviews are conducted according to regulations (N.J.A.C. 2:90-13) describing standards for techniques to establish ground protection and control of runoff, such as diversions, sediment basins, slope protection structures and channel stabilization. The Coastal Resource and Development Policies pertaining to soil are based on the Act, thereby assuring conformity between the two.

In addition, local Soil Conservation Districts and the South Jersey Resource Conservation and Development Council, with technical assistance from the USDA-Soil Conservation Service, have worked with several municipalities on dune stabilization and dune management.

Department of Community Affairs - The Department of Community Affairs (DCA) is responsible for the administration of a broad range of social programs, including those affecting housing. The Department does not, however, play a significant role in the formal management system of the Coastal Program, with the possible exception of the activities of its Housing Finance Agency.

Under Section 701 of the Federal Housing and Community Development Act and the State law which established the Division of State and Regional Planning (N.J.S.A. 13:1B-15.50), DCA has prepared a State Development Guide Plan (Preliminary Draft - September 1977). The major policies of the Guide Plan are: Maintain the quality of the environment, preserve the open space necessary for an expanding population, provide space and services to support continued economic expansion, and enhance the quality of life in urban areas. These policies, and the regulatory and funding decisions made under them, are consistent with the proposed coastal policies.

DCA's Housing Finance Agency (HFA) provides financing for private housing, and makes its decision on the basis of the Guide Plan and other State policies. Because all HFA proposals involve projects with costs exceeding $1.0 million, DEP is able to use Executive Order 53 to insure that they are designed consistently with the Coastal Resource and Development Policies. In addition, HFA-financed projects with 25 units or more require a CAFRA Permit, and all HFA-financed projects in the coastal zone outside the CAFRA area will require either a Waterfront Development or Wetlands permit.

Department of Labor and Industry - The Department of Labor and Industry's (DLI) regulatory programs are, for the most part, not land-use related. However, the Department, through its Office of Business Advocacy, plays an important role in siting and financing business and industry in the State. As part of this effort, DLI assists industrial developers in obtaining the State permits necessary for siting and operating plants, and will therefore work with DEP on industrial siting decisions. In addition, the Department can speed the development review process by steering potential developers towards sites on which development would be consistent with the Coastal Policies.

Economic Development Authority - The Economic Development Authority (EDA), arranges low-interest, long-term financing for projects (including commercial fisheries), and is authorized to enter into contracts and buy and sell land and buildings. It is governed by a seven member board which includes the Commissioner of DEP. The Authority works closely with the Division of Economic Development within the Department of Labor and Industry. In 1977, it provided $265 million for low interest loans throughout the State. DEP is working with EDA to explore the opportunity for consistency between EDA funding criteria and the proposed Coastal Policies. This could lead to coordinated planning for industrial development.

Department of Transportation - The Department of Transportation (DOT) is responsible for the planning, construction, and maintenance of state highways, the review and funding of local highway projects, the planning of state and regional transportation strategies, and the regulation of some transportation facilities. DOT construction projects affecting DEP-regulated lands or resources are subject to DEP regulatory authority, insuring their conformity with the coastal policies. As part of their planning responsibilities, DOT and DEP have a working relationship for planning in coastal areas.

Department of Health - The Department of Health shares with DEP the regulatory responsibilities for shellfish control activities including depuration and for recreational sanitation. Additionally, the Department of Health is responsible for the administration of a broad range of health programs, including health facilities planning, which may impact on the development of coastal policies.

## COUNTY LAND USE AUTHORITY

The major role played by counties in the coastal program management system is that of planners. County land use authority is limited to the review and approval of subdivision and site plans for traffic impacts on county roads, and for drainage impacts on county facilities (see N.J.S.A. 40:27-1 et seq.). Most counties have prepared master plans or studies analyzing county issues and concerns to guide their decision making. The Municipal Land Use Act (N.J.S.A. 40:55D-1 et seq.) mandates coordination between county and municipal authorities by requiring that municipal master plans include a statement concerning the relationship between the municipal plan and the county master plan.

Other county functions which could help to carry out a coastal program include the 208 water quality planning responsibility some counties have undertaken and the counties' responsibility to prepare Solid Waste Management plans. Under the County Environmental Health Act of 1978, each county can formulate and enforce environmental health ordinances to control air pollution, solid waste, noise and water pollution. These ordinance must be consistent with applicable state laws, rules and regulations. The Act gives the Commissioner of DEP authority to delegate administration of the environmental health laws it administers to the counties. To date, this authority has not been exercised, nor have the Act's programs been funded.

Most coastal counties have been actively involved in the planning and development of the New Jersey's coastal program. For two years, DEP sponsored a state-county coastal coordination project with every county in the Bay and Ocean Shore Segment and Salem, Camden, Gloucester, Burlington (one year), Middlesex, Hudson and Union (one year) counties. Using funds made available under the federal Coastal Zone Management Act, DEP contracted with the counties for the provision of information and analysis which is being used in the development of the Coastal Program. The counties have generated ideas, and in some cases, suggested a boundary and policies for their section of the coastal zone.

## MUNICIPAL LAND USE AUTHORITY

New Jersey's municipalities derive their power to enact and enforce zoning ordinances from the State, and possess extensive regulatory authority over land uses. The Municipal Land Use Law, (NJSA 40:55D-1 et seq.), requires municipal planning boards to prepare master plans to guide municipal land use. It requires that all municipal zoning ordinances be consistent with or designed to carry out the land use element of the master plan.

The State and municipality act as a check on each other in areas subject to State land use regulatory authority. A locally approved proposal cannot be constructed without receipt of relevant state approvals, and a State-approved project, with certain exceptions in which the State has eminent domain authority, must receive appropriate local approvals.

The Division of Coastal Resources has been soliciting municipal participation in the development of the coastal program for years by sharing draft documents with municipal officials and holding public meetings throughout the state. In addition, the Division will continue to encourage municipalities to review and comment on State coastal permit applications. Active involvement of the municipalities and consistency between local plans, ordinances and policies and state Coastal Policies is important for the successful development and full implementation of the Coastal Program.

## REGIONAL LAND USE AUTHORITY

### Delaware River Area

In the Delaware River area, authority to implement the Coastal Policies is complemented and enhanced by the Delaware River Basin Commission (DRBC). The DRBC was created in November 1961 upon enactment of concurrent legislation by the Congress of the United States and by the respective legislatures of the States of Delaware, New Jersey, and New York, and the Commonwealth of Pennsylvania. It is charged with the responsibility for development and effectuation of plans, policies

and projects relating to the water resources of the multi-state Delaware River Basin. The members of the DRBC are the Governors of the signatory States and one commissioner appointed by the President of United States. The Governors appoint alternates to the act as their representatives. The Commission exercises its powers and duties within the limits of the Delaware River Basin, defined in the Delaware River Basin Compact as the area of drainage into the Delaware River and its tributaries, including Delaware Bay (see Figure 12).

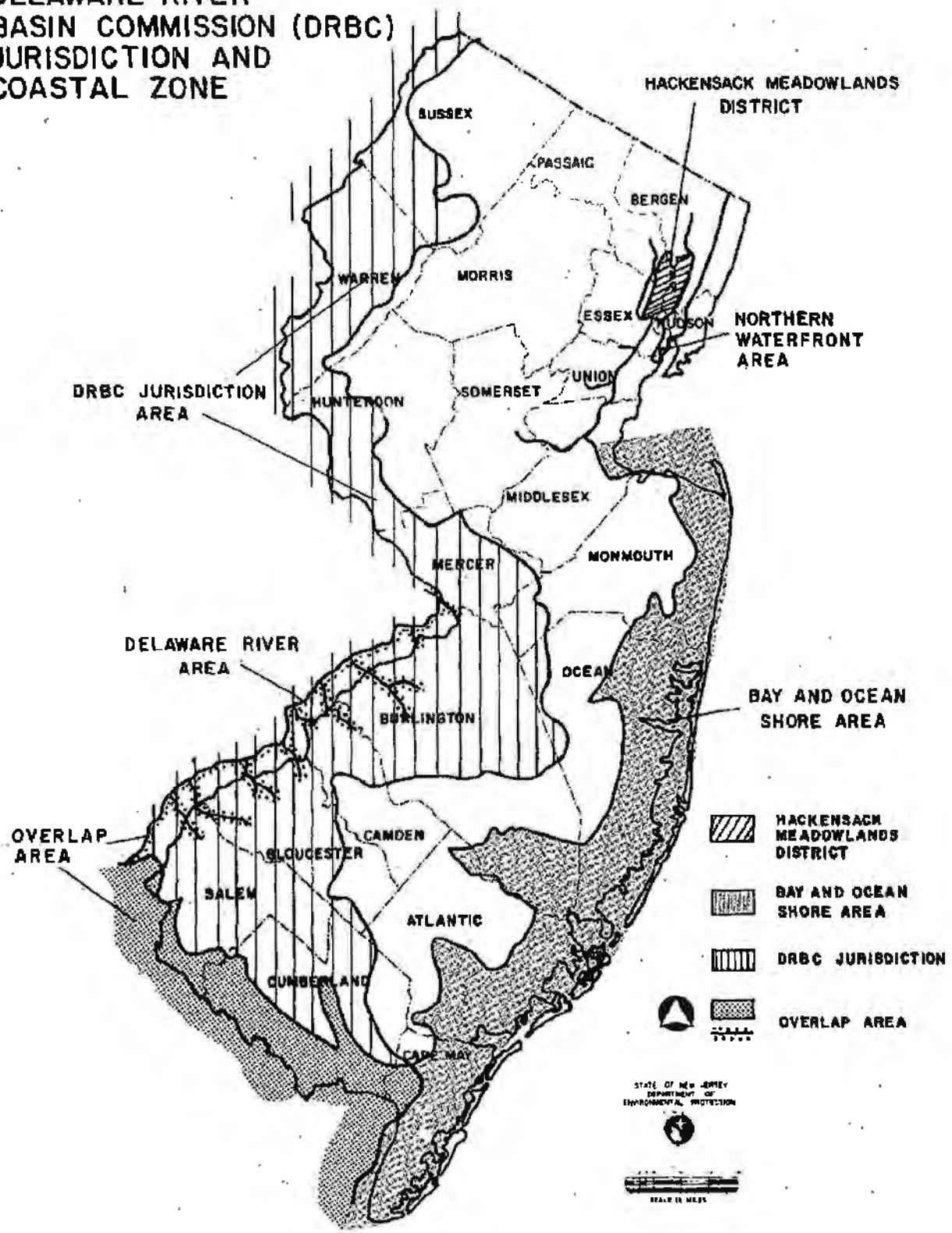
Under the provisions of the Compact, DRBC has broad powers in relation to management of water supplies, water quality, pollution control, flood protection, watershed management, recreation, fish and wildlife, hydro-electric power, and regulation of water withdrawals and diversions. Under Section 3.8 of the Compact, no project having a substantial effect on the water resources of the basin may be undertaken without the Commission's approval. Under Article 11, all public projects affecting the water resources of the Delaware Basin must be planned in consultation with the Commission.

The Delaware River Basin Compact requires that the DRBC develop and adopt a comprehensive plan for the water resources of the Basin. The Comprehensive Plan differs from the usual "master plan" in that it serves not only as a guide for development of the water resources, but also as a management and regulatory mechanism. It sets water quality standards for the basin, which together with state standards are the criteria for water quality certification of NPDES permits. It also establishes an interstate waste load allocation program for the Delaware River Estuary. In October, 1979, the DRBC produced a report titled The Delaware River Basin containing generalized recommendations and strategy for updating the Comprehensive Plan. The report was the product of a comprehensive basinwide (Level B) study of the baains's water resources.

The Comprehensive Plan includes Commission administrative actions and determinations, and the Plan continues to grow in scope as the Commission regularly adds new policies, criteria, standards and projects. For example, in 1978 the Commission adopted a wetlands policy similar in substance to the State's proposed Wetlands Special Area Policy, as part of the Comprehensive Plan. The plan, therefore, goes beyond the presentation of programs and facilities for meeting various needs; it includes a codification of administrative decisions governing water resources use, development and conservation.

DEP hopes to modify an existing administrative agreement between DRBC and DEP for the purpose of coordinating DEP coastal permit programs with DRBC project review in the Coastal Zone. Although such an agreement is not essential for federal approval of the New Jersey Coastal Management Program, it would supplement the coastal permit programs by ensuring that DRBC, upon the request of DEP, will use its authority under Section 3.8 of its Compact to review proposed projects significantly affecting the water resources of the Delaware River Basin. A recently completed coordination project between DRBC and DEP-DCR provided input to the Department in drafting the proposed Coastal Resource and Development Policies and concluded that the policies are not in conflict with the DRBC Comprehensive Plan. The administrative agreement would ensure that DRBC will consider adopted Coastal Resource and Development Policies to the maximum extent feasible as criteria in its project review decisions. The Department will also work with DRBC and the Delaware and Pennsylvania coastal management programs to develop a unified set of coastal policies for consideration for future incorpuration into the DRBC Comprehensive Plan.

# OVERLAP BETWEEN DELAWARE RIVER BASIN COMMISSION (DRBC) JURISDICTION AND COASTAL ZONE

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Another regional agency in the Delaware River Area is the Delaware River Port Authority (DRPA). The DRPA is a self-sustaining bi-state public agency of Pennsylvania and New Jersey. It owns and operates four bridges which span the Delaware River connecting Southeastern Pennsylvania and Southern New Jersey, and through its subsidiary PATCO operates the Lindenwold High Speed Line. Although the Delaware River Port Authority does not own or operate any port facilities along the Delaware, it promotes trade and commerce for the ports of the Delaware River, collectively known as Ameriport.

As part of its efforts to plan for and promote the Delaware River Port area, the Delaware River Port Authority is currently working to develop a Delaware River Regional Port Planning Study which will be funded by the federal Maritime Administration. The study will make recommendations concerning development of twenty-seven sites wholly or partly within the New Jersey coastal zone. DEP has analyzed these sites and determined that under the Rules on Coastal Resource and Development Policies water dependent development would be acceptable provided Special Area, Use and Resource Policies are complied with. On two sites the presence of wetlands substantially limits the developable area. A map of the twenty-seven sites and DEP comments on their acceptability for development are available at DEP-DCR offices in Trenton. DEP will continue to coordinate closely with DRPA as their regional port planning study progresses.

Although the DRPA is specifically exempted from State regulation (N.J.S.A. 32:3-6), it must obtain permission for the acquisition or use of State-owned tidelands from the Tidelands Resource Council.

The Delaware River and Bay Authority was created by an interstate compact between New Jersey and Delaware. The Authority operates the Delaware Memorial Bridge and the Cape May-Lewes Ferry, and is empowered to operate marine terminals.

Northern Waterfront Area

In most of the northern waterfront, the Coastal Policies are enforceable only through the Waterfront Development and Tidelands Management programs. Near the Raritan Bay, DEP also has regulatory authority over development in mapped coastal wetlands. In addition, DEP will fund capital spending projects only when they are consistent with the Coastal Policies.

The Coastal Policies can be further implemented, however, through coordination with several interstate and regional agencies having jurisdiction in the area. One of these agencies, the Port Authority of New York and New Jersey, is a self-supporting corporate agency formed in 1921 by the States of New York and New Jersey "to deal with the planning and development of terminal and transportation facilities, and to improve and protect the commerce of the Port District". The Port District encompasses a large area surrounding New York harbor and includes all of the Northern Waterfront coastal zone.

The Authority's operations are not exempt from DEP's regulatory and tidelands authority (see N.J.S.A. 32:1-35.11 and 32:1-32.35).

Because of the Port Authority's active involvement in the development and management of port, transportation and industrial facilities and its mandate to protect and promote commerce through the Port of New York and New Jersey, the Division of Coastal Resources is working closely with the Authority in policy

development. The planning and development of large northern waterfront sites by this interstate agency could be an important step toward revitalization of urban waterfront areas.

In 1978, legislation was enacted in New Jersey and New York enabling the Port Authority to undertake an industrial park development program intended to revitalize the inner cities of the Port District and to create an estimated 30,000 jobs over the next ten years. The Port Authority program to develop sites for manufacturing plants in the hard-pressed central cities would require an investment of more than $1 billion in public and private funds over the next ten years, of which the Port Authority would invest up to $400 million on a self-supporting basis.

The Interstate Sanitation Commission was formed in 1936 by the states of New Jersey, New York and Connecticut to control pollution in the tidal waters of the New York metropolitan area. More recently the Commission has become concerned with air pollution as well, and monitors and conducts research concerning both air and water quality. Under its compact (Article 17 as revised October 1970), the Commission may "develop and, after public hearing place in force ... classifications of waters and effluent standards within the District". A NPDES permit may not be issued for any discharge which would violate the Commission's standards.

Waterfront planning and management in the Northern Waterfront Area may also benefit from the Hudson River Waterfront Study, Planning, and Development Commission. This Commission was established by Governor Byrne in Executive Order No. 69 on January 11, 1979 to "conduct a thorough study and investigation of the various alternatives for the planning and redevelopment of the Hudson River Waterfront South of the George Washington Bridge". The Commission is composed of State legislators, representatives of Hudson and Bergen Counties, the mayors of 15 waterfront municipalities in those counties and other citizens appointed by the Governor. The Commission has released a Working Draft Report (March 1980) and will present its recommendations, including a proposal for a permanent regional agency which will prepare a Riverfront Plan to guide the redevelopment and revitalization of the waterfront, to the Governor in September 1980. DEP's Bureau of Coastal Planning and Development serves as staff to the Commission.

Federal Agency Authority

Section 307 of the FCZMA allows states with approved coastal management programs to object to direct federal activities, federal permits or funding activities in or affecting the coastal zone which would violate elements of the Coastal Program. Also covered by Section 307 are federally licensed and permitted activities described in Outer Continental Shelf (OCS) exploration plans.

The meaning of "Federal Consistency" has been subject to much debate since it was first included in the Coastal Zone Management Act in 1972. At a minimum, it leads to increased coordination between DEP and federal agencies near the coast. It increases opportunities for more efficient and effective review of coastal projects which require both state and federal approvals and it establishes a formal process for resolution of differences.

Once the State has an approved coastal management program, any OCS plan for exploration, development or production from any tract affecting New Jersey's coast would have to be certified as consistent with the State Coastal Management Program. This is now in effect as a consequence of federal approval for the Bay

and Ocean Shore Segment. As opposed to past procedures which only allowed the State to exercise review and comment on OCS plans, the consistency provisions go one step further by allowing the State to enforce its coastal policies through a consistency certification process.

Federal consistency applies only after a State's coastal program is approved and cannot be used by a state to help demonstrate that it has sufficient authority to meet the standards of the federal Coastal Zone Management Act. Federal Consistency is discussed in detail in Chapter Five.

Public Participation

Public participation is an essential element in the development of a viable coastal management program. The New Jersey program offers opportunities for participation not only in program development, but also in regulatory decision-making and continued planning.

The three coastal permit programs (CAFRA, Wetlands, and Waterfront Development) all have public notice and hearing requirements, providing the opportunity for public participation in the implementation of the coastal policies. DEP will ensure public notice of pending applications through notification of the appropriate county planning board, county environmental commission, municipal planning board, county environmental commission, soil conservation district, and the Delaware Valley Regional Planning Commission and Tri-State Regional Planning Commission. In addition, owners of land adjacent to the site proposed for development will be informed of the application. All pending applications are listed in the DEP Bulletin which is distributed free and has a current circulation of 1,600. The Department is also cooperating with the "coast watch" program, sponsored by the American Littoral Society, to inform more people about pending coastal decisions and other events.

DEP holds a public hearing near the site of a proposal for every CAFRA permit application, and for major Wetlands and Waterfront Development permit applications. In addition, any interested person can review DEP's file on a pending application and submit written comments. Decisions to lease or sell tidelands are made by the Tidelands Resource Council at meetings which are open to the public.

DEP will continue to involve coastal residents, workers and visitors in planning for the future of the coastal zone. This involvement takes several forms, and the Department will remain open to additional public participation techniques which may be suggested. Substantive changes in the Coastal Management Program and its policies will be subject to the notice and hearing requirement of both the federal regulations and the New Jersey rule-making process.

The Division of Coastal Resources will continue to publish The Jersey Coast several times each year to inform interested people of future public meetings, available reports, and coastal planning and regulatory activities. Division staff will continue to make themselves available to meet with interested groups and the Division will continue to convene a series of public meetings throughout the coastal zone at least twice a year. In addition, Division staff will continue to meet periodically with the leaders of statewide environmental groups, builders groups, and other groups which express interest.

Part of public participation is public education, and DEP will continue to prepare and to assist others in preparing informative, understandable publications about the coast and the coastal zone management program. The Department will supplement governmental publications with the use of newspapers, magazines, radio and displays in public places such as libraries, shopping areas and conventions.

Conflict Resolution - Appeals

The permit decisions made under the New Jersey Coastal Management Program, as described in this Chapter, can be appealed administratively. A CAFRA permit decision can be appealed by any interested person within 21 days of the final DEP action, to the DEP Commissioner or to a Coastal Area Review Board composed of the Commissioners of Environmental Protection, Community Affairs, and Labor and Industry. The decision of the Commissioner or of the Review Board can be further appealed through the courts. A Wetlands permit decision may be appealed to the DEP Commissioner and then to the courts. A Waterfront Development permit decision may be appealed to the Tidelands Resource Council (DEP has proposed to change the procedure so appeals will be to the Commissioner), and then to the courts.

There is no administrative process for appealing the decision of a State agency to adopt a rule, but the adoption of any rules, including the Rules on Coastal Resource and Development Policies, may be challenged by bringing an action in the Appellate Division of the New Jersey Superior Court.

The Department of Energy (DOE) may appeal decisions affecting the construction or location of an energy facility to the Energy Facility Review Board. Under the Department of Energy Act, the Board will be called into existence by the Department of Energy if it disagrees with the decision of any state agency to grant or deny a permit for an energy facility. The Memorandum of Understanding in Appendix C explains this process. It is important to note, however, that between July 1977 and the present, the DEP/DOE conflict resolution process has not been necessary.

The Management System for the Coastal Program does not appear likely to generate other conflicts which will require a resolution mechanism. If a proposal requires approval under several laws with different sets of criteria, the applicant will have to meet them all. A project subject to the Coastal Management Program and encouraged by the plans or actions of another agency could not be constructed unless it received the required coastal permits. At the same time, a project which conforms with all the Coastal Resource and Development Policies could not be constructed until the applicant received all other required state, federal, and municipal approvals.

Chapter 4: Coastal Resource and Development Policies

[redacted]

## CHAPTER FOUR - COASTAL RESOURCE AND DEVELOPMENT POLICIES

### Note to Reader

This chapter defines substantive coastal policies to guide public decisions about significant proposed development and management of resources of New Jersey's coastal zone. A three step decision-making process involving Location, Use and Resource Policies is used in order to increase predictability and add more specificity to the coastal decision-making process.

Coastal policies for the Bay and Ocean Shore Segment were adopted as administrative rules (N.J.A.C. 7:7E-1.1 et seq., effective September 28, 1978), and appeared on pages 27-163 of the New Jersey Coastal Management Program - Bay and Ocean Shore Segment and Final Environmental Impact Statement (August 1978). As adopted, the policies applied only to the Bay and Ocean Shore Segment. The policies will be amended effective September 26, 1980, to expand their jurisdiction to the entire coastal zone.

The policies will be the criteria for permit decisions under CAFRA, the Wetlands Act and the Waterfront Development Act, and will guide DEP recommendations to the Tidelands Resource Council and management actions anywhere in the coastal zone.

These amended rules apply to all CAFRA applications found complete for review on or after September 26, 1980, and for all Wetland Act and Waterfront Development Act applications found complete for filing on or after September 26, 1980. However, these amended rules also apply to applications found complete for review or filing before September 26, 1980, at the request of the applicant.

CHAPTER TABLE OF CONTENTS


| | | |
|---|---|---|
| SUBCHAPTER 1 - INTRODUCTION | | 71 |
| 7:7E-1.1 | Purpose | 71 |
| 7:7E-1.2 | Authority | 71 |
| 7:7E-1.3 | Jurisdiction | 71 |
| 7:7E-1.4 | Severability | 74 |
| 7:7E-1.5 | Review, Revision, and Expiration | 74 |
| 7:7E-1.6 | Coastal Decision-Making Process | 75 |
| SUBCHAPTER 2 - LOCATION POLICIES | | 79 |
| 7:7E-2.1 | Introduction | 79 |
| 7:7E-2.2 | Classification of Land and Water Types | 79 |
| 7:7E-2.3 | Mapping and Acceptability Determination | 79 |
| SUBCHAPTER 3 - SPECIAL AREAS | | 81 |
| 7:7E-3.1 | Introduction | 81 |
| 7:7E-3.2 | Shellfish Beds | 81 |
| 7:7E-3.3 | Surf Clam Areas | 82 |
| 7:7E-3.4 | Prime Fishing Areas | 83 |
| 7:7E-3.5 | Finfish Migratory Pathways | 84 |
| 7:7E-3.6 | Submerged Vegetation | 85 |
| 7:7E-3.7 | Navigation Channels | 85 |
| 7:7E-3.8 | Canals | 86 |
| 7:7E-3.9 | Inlets | 87 |
| 7:7E-3.10 | Marina Moorings | 88 |
| 7:7E-3.11 | Ports | 88 |
| 7:7E-3.12 | Submerged Infrastructure Routes | 89 |
| 7:7E-3.13 | Shipwrecks and Artificial Reefs | 89 |
| 7:7E-3.14 | Estuarine or Marine Sanctuary | 90 |
| 7:7E-3.15 | Wet Borrow Pits | 91 |
| 7:7E-3.16 | Intertidal Flats | 93 |
| 7:7E-3.17 | Filled Water's Edge | 96 |
| 7:7E-3.18 | Existing Lagoon Edge | 96 |
| 7:7E-3.19 | Natural Water's Edge - Floodplains | 98 |
| 7:7E-3.20 | Alluvial Flood Margins | 100 |
| 7:7E-3.21 | Beach and Dune Systems | 100 |
| 7:7E-3.22 | Central Barrier Island Corridor | 106 |
| 7:7E-3.23 | Wetlands | 107 |
| 7:7E-3.24 | Cranberry Bogs | 109 |
| 7:7E-3.25 | Wet Borrow Pit Margins | 110 |
| 7:7E-3.26 | Coastal Bluffs | 111 |
| 7:7E-3.27 | Intermittent Stream Corridors | 113 |
| 7:7E-3.28 | Farmland Conservation Areas | 115 |
| 7:7E-3.29 | Steep Slopes | 116 |
| 7:7E-3.30 | Dry Borrow Pits | 116 |
| 7:7E-3.31 | Historic and Archaeological Resources | 118 |
| 7:7E-3.32 | Specimen Trees | 119 |
| 7:7E-3.33 | Endangered or Threatened Wildlife or Vegetation Species Habitat | 119 |
| 7:7E-3.34 | Critical Wildlife Habitats | 120 |

CHAPTER TABLE OF CONTENTS - Continued


SUBCHAPTER 3 - Continued

| | | |
|---|---|---|
| 7:7E-3.35 | Public Open Space | 121 |
| 7:7E-3.36 | Special Hazards Areas | 122 |
| 7:7E-3.37 | Excluded Federal Lands | 122 |
| 7:7E-3.38 | Special Urban Areas | 123 |
| 7:7E-3.39 | Pinelands National Reserve and Pinelands Protection Area | 124 |
| 7:7E-3.40 | Hackensack Meadowlands District | 127 |
| 7:7E-3.41 | Wild and Scenic River Corridors | 127 |

SUBCHAPTER 4 - GENERAL WATER AREAS 131

| | | |
|---|---|---|
| 7:7E-4.1 | Definition | 131 |
| 7:7E-4.2 | Policy Summary Table | 131 |
| 7:7E-4.3 | Ocean | 131 |
| 7:7E-4.4 | Open Bay | 138 |
| 7:7E-4.5 | Semi-enclosed and Back Bay | 139 |
| 7:7E-4.6 | Tidal Guts | 139 |
| 7:7E-4.7 | Large Rivers | 140 |
| 7:7E-4.8 | Medium Rivers, Streams and Creeks | 140 |
| 7:7E-4.9 | Lakes, Ponds and Reservoirs | 141 |
| 7:7E-4.10 | Acceptability Conditions for Uses | 141 |

SUBCHAPTER 5 - GENERAL LAND AREAS 151

| | | |
|---|---|---|
| 7:7E-5.1 | Definition | 151 |
| 7:7E-5.2 | Acceptability of Development in General Land Areas | 151 |
| 7:7E-5.3 | Coastal Growth Rating | 151 |
| 7:7E-5.4 | Environmental Sensitivity Rating | 155 |
| 7:7E-5.5 | Development Potential | 157 |
| 7:7E-5.6 | Definition of Acceptable Intensity of Development | 162 |
| 7:7E-5.7 | Land Acceptability Tables | 167 |

SUBCHAPTER 6 - GENERAL LOCATION POLICIES 175

| | | |
|---|---|---|
| 7:7E-6.1 | Policy on Location of Linear Development | 175 |
| 7:7E-6.2 | Basic Location Policy | 175 |
| 7:7E-6.3 | Secondary Impacts | 175 |

SUBCHAPTER 7 - USE POLICIES 177

| | | |
|---|---|---|
| 7:7E-7.1 | Purpose | 177 |
| 7:7E-7.2 | Housing Use Policies | 177 |
| 7:7E-7.3 | Resort/Recreational Use Policies | 181 |
| 7:7E-7.4 | Energy Use Policies | 184 |
| 7:7E-7.5 | Transportation Use Policies | 201 |
| 7:7E-7.6 | Public Facility Use Policies | 203 |
| 7:7E-7.7 | Industry Use Policies | 205 |
| 7:7E-7.8 | Mining Use Policies | 206 |
| 7:7E-7.9 | Port Use Policies | 207 |
| 7:7E-7.10 | Commercial Use Policies | 209 |
| 7:7E-7.11 | Coastal Engineering | 212 |
| 7:7E-7.12 | Dredge Spoil Disposal on Land | 214 |
| 7:7E-7.13 | National Defense Facilities Use Policy | 215 |

| | | |
|---|---|---|
| SUBCHAPTER 8 - RESOURCE POLICIES | | 217 |
| 7:7E-8.1 | Purpose | 217 |
| 7:7E-8.2 | Marine Fish and Fisheries | 217 |
| 7:7E-8.3 | Shellfisheries | 217 |
| 7:7E-8.4 | Water Quality | 219 |
| 7:7E-8.5 | Surface Water Use | 219 |
| 7:7E-8.6 | Groundwater Use | 220 |
| 7:7E-8.7 | Runoff | 220 |
| 7:7E-8.8 | Soil Erosion and Sedimentation | 222 |
| 7:7E-8.9 | Vegetation | 223 |
| 7:7E-8.10 | Important Wildlife Habitat | 225 |
| 7:7E-8.11 | Air Quality | 225 |
| 7:7E-8.12 | Public Services | 227 |
| 7:7E-8.13 | Public Access to the Shorefront | 228 |
| 7:7E-8.14 | Scenic Resources and Design | 229 |
| 7:7E-8.15 | Buffers and Compatibility of Uses | 229 |
| 7:7E-8.16 | Solid Waste | 230 |
| 7:7E-8.17 | Energy Conservation | 231 |
| 7:7E-8.18 | Neighborhoods and Special Communities | 232 |
| 7:7E-8.19 | Traffic | 232 |
| 7:7E-8.20 | High Permeability Moist Soils | 233 |
| 7:7E-8.21 | Wet Soils | 233 |
| 7:7E-8.22 | Fertile Soils | 234 |
| 7:7E-8.23 | Flood Hazard Areas | 235 |
| 7:7E-8.24 | Decommissioning of Projects | 237 |
| 7:7E-8.25 | Noise Abatement | 238 |
| 7:7E-8.26 | Barrier Free Design | 238 |

## SUBCHAPTER 1 - INTRODUCTION

### 7:7E-1.1 Purpose

This chapter presents the substantive policies of the Department of Environmental Protection regarding the use and development of coastal resources, to be used primarily by the Division of Coastal Resources in the Department in reviewing permit applications under the Coastal Area Facility Review Act (CAFRA), N.J.S.A. 13:19-1 et seq., Wetlands Act, N.J.S.A. 13:9A-1 et seq., and Waterfront Development Permit Program, N.J.S.A. 12:5-3. The rules also provide a basis for recommendations by the Department to the Tidelands Resource Council on applications for riparian grants, leases, or licenses.

By adopting these policies as administrative rules, according to the Administrative Procedures Act, the Department aims to increase the predictability of the Department's coastal decision-making by limiting administrative discretion, as well as to ensure the enforceability of the Coastal Resource and Development Policies of the coastal management program of the State of New Jersey prepared under the federal Coastal Zone Management Act. Further, the Department interprets the "public health, safety, and welfare" clause in CAFRA (N.J.S.A. 13:19-10f) and the Wetlands Act (N.J.S.A. 13:9A-4d) to include a full consideration of the national interests in the wise use of coastal resources.

### 7:7E-1.2 Authority

These rules are adopted under the general powers of the Department, N.J.S.A. 13:1D-9, as well as the Department's specific rule-making and coastal management powers under the Coastal Area Facility Review Act, N.J.S.A. 13:19-17, the Wetlands Act, N.J.S.A. 13:9A-1 et seq., the Waterfront Development Permit Program N.J.S.A. 12:5-1 et seq., and the riparian lands statutes (generally N.J.S.A. 12:3-1 et seq.). These rules are consistent with the purpose and intent of the 90 Day Construction Permit Law and regulations, P.L. 1975, c. 232, and N.J.A.C. 7:1C-1 et seq. These rules complement the adopted rules that implement the Wetlands Act, N.J.A.C. 7:7A-1.0 et seq., and the rules that define the permit application procedures under CAFRA, N.J.A.C. 7:7D-2.0 et seq. The Coastal Resource and Development Policies are derived from the legislative intent of the CAFRA, Wetlands, Waterfront Development, and riparian statutes, and, in the case of the Coastal Area Facility Review Act, the rules define the standards for approval, conditional approval, or denial of permit applications more precisely than the findings required by N.J.S.A. 13:19-10 and 11.

### 7:7E-1.3 Jurisdiction

(a) General

These rules shall apply to five categories, as defined in Section 7:7E-1.3(c) to (g), of actions or decisions by the Department on uses of coastal resources within or significantly affecting [the Bay and Ocean Shore Region of] the coastal zone: (1) coastal permits, (2) consistency determinations, (3) financial assistance, (4) DEP management actions affecting the coastal zone, and (5) DEP planning actions affecting the coastal zone.

(b) Geographic Scope of the New Jersey Coastal Zone

These rules shall apply geographically to the New Jersey Coastal Zone which is defined as the Coastal Area under the jurisdiction of the Coastal Area Facility Review Act (N.J.S.A. 13:19-4), all other areas now or formerly flowed by the tide, shorelands subject to the Waterfront Development Law, regulated Wetlands listed at N.J.A.C. 7A-1.13, and the Hackensack Meadowlands Development Commission District as defined by N.J.S.A. 13:17-4.

(c) Coastal Permits

These rules shall apply to all waterfront development permits (N.J.S.A. 12:5-3), Wetlands permits (N.J.S.A. 13:9A-1 et seq.) and CAFRA permits N.J.S.A. 13:19-1 et seq.).

(d) Consistency Determinations

These rules shall apply to decisions on the consistency or compatibility of proposed actions by federal, state, and local agencies with the Coastal Resources and Development Policies, inlcuding but not limited to determinations of federal consistency under Section 307 of the federal Coastal Zone Management Act, determinations of consistency or compatibility under the Coastal Zone Management Act, comments on Draft and Final Environmental Impact Statements prepared under the National Environmental Policy Act, and comments on other public and private plans, programs, projects and policies.

(e) Financial Assistance Decisions

These rules shall apply to state aid financial assistance decisions by DEP under the Shore Protection Program and Green Acres Program within the Coastal Zone, to the extent permissible under existing statutes and regulations.

(f) DEP Management Actions

These rules shall apply, to the extent statutorily permissible, to the following DEP management actions in or affecting the coastal zone in addition to those noted above:

TIDELANDS RESOURCE COUNCIL

(1) Conveyances of State owned tidelands (N.J.S.A. 12:3-1 et seq).

DIVISION OF WATER RESOURCES

(1) Permits for use of a floodway (N.J.S.A. 58:16A-50)

(2) Promulgation of regulations concerning land use in delineated flood hazard areas (N.J.S.A. 58:16A-50)

(3) Permits for point source discharges under the National Pollution Discharge Elimination System (N.J.S.A. 58:10-1 et seq.) presently issued by EPA under Section 402 of the Federal Clean Water Act.

(4) Certification under Section 401 of the Federal Clean Water Act (water quality certificates)

(5) Approval of wastewater treatment works, sewage collection systems, and outfall sewers (N.J.S.A. 5:10A-6)

(6) Wastewater Treatment Construction Grants (N.J.S.A. 26:2E-1 et seq.)

(7) Sewerage connection ban exemptions (N.J.S.A. 58:10A-4)

(8) Designation of Critical Sewerage areas (N.J.S.A. 58:11-44)

(9) Permits for 50 or more sewerage (septic) facilities (N.J.S.A. 58:11-23)

(10) Approval of Sewerage facilities in Critical Areas (N.J.S.A. 58:11-45)

(11) Permit to divert surface and/or subsurface or percolating waters for public water supply (N.J.S.A. 58:1-37, 58:4A-2)

(12) Approval of diversions for water supply (N.J.S.A. 58:1-17)

(13) Permit to drill wells (N.J.S.A. 58:4A-14)

(14) Permits to construct new or modified public water supply sources, treatment plants, and distribution systems (N.J.S.A. 58:11-2,3, 10)

(15) Permits to install or maintain a physical connection between an approved public potable water supply and an unapproved supply (N.J.S.A. 58:11-9 to 9.11)

(16) Dam Permits (N.J.S.A. 58:4-1)

DIVISION OF ENVIRONMENTAL QUALITY

(1) Permit to construct, install, or alter control apparatus or equipment (N.J.S.A. 26:2C-9.2)

(2) Certificate to operate control apparatus or equipment (N.J.S.A. 26:2C-9.2)

(3) The Approval of a variance to exceed an air quality standard (N.J.S.A. 26:2C-9.2)

SOLID WASTE ADMINISTRATION

(1) Approval of sanitary landfill sites (N.J.S.A. 13:1E-1 et seq.)

GREEN ACRES AND RECREATION

(1) Adoption of regulations concerning use of state owned lands (N.J.S.A. 13:8-20 et seq.)

(2) Designation of state owned lands for inclusion in the Natural Area system (N.J.S.A. 13:1B-15.12a et seq.)

(3) Allocations of Green Acres Grants (N.J.S.A. 13:8A-19 et seq.)

(4) Inclusion of and adoption of regulations concerning river areas in the Wild and Scenic Rivers System (N.J.S.A. 13:8-45 et seq.)

DIVISION OF FISH, GAME AND WILDLIFE

(1) Adoption of regulations concerning use of land and water areas under the control of the Division (N.J.S.A. 13:1B-30 et seq., 23:1-1 et seq., 23:4-28)

ALL DIVISIONS

(1) Management of state-owned lands by DEP.

(g) DEP Planning Actions

These rules shall provide the basic policy direction for the following planning actions undertaken by DEP in the Coastal Zone as the lead state agency for coastal management under Section 306 of the federal Coastal Zone Management Act.

DIVISION OF COASTAL RESOURCES

Coastal Zone Management
Shore Protection

DIVISION OF WATER RESOURCES

Areawide water quality management ("208")

DIVISION OF ENVIRONMENTAL QUALITY

Air quality planning
Solid Waste management

GREEN ACRES AND RECREATION

Planning for public acquisition of coastal lands

7:7E-1.4 Severability

If any provision of these rules or the application of these rules to any person or circumstances is held invalid, the remainder of the rules and the application of such provision to persons or circumstances other than those to which it is held invalid, shall not be affected thereby.

7:7E-1.5 Review, Revision, and Expiration

The Department shall periodically review these rules, consider the various national, state, and local interests in coastal resources and developments seeking coastal locations, and propose and adopt appropriate revisions to these rules. Under the requirements of the federal Coastal Zone Management Act, the Department expects to conduct an annual review of the rules and expects to revise, amend or readopt the rules before the five year deadline under Executive Order No. 66 of 1979 for periodic review of administrative rules.

7:7E-1.6 Coastal Decision-Making Process

(a) General

Decisions on uses of coastal resources shall be made using the three step process comprising the Location Policies (Subchapters 2 through 6), the Use Policies (Subchapter 7), and the Resource Policies (Subchapter 8) of these rules. Depending upon the proposed use, project design, location, and surrounding region, different specific policies in each of the three steps may be applicable in the coastal decision-making process. The Coastal Resource and Development Policies address a wide range of land and water types (locations), present and potential land and water uses, and natural, cultural, social and economic resources in the coastal zone. DEP does not, however, expect each proposed use of coastal resources to address all Location Policies, Use Policies, and Resource Policies. Rather, the applicable policies are expected to vary from proposal to proposal. Decisions on the use of coastal resources in the Hackensack Meadowlands District will be made by the Hackensack Meadowlands Development Commission, as lead agency, and by the Department, consistent with the Hackensack Meadowlands District Master Plan, its adopted components and management programs.

(b) Principles

The Coastal Resource and Development Policies represent the consideration of various conflicting, competing, and contradictory local, state, and national interests in diverse coastal resources and in diverse uses of coastal locations. Numerous balances have been struck among these interests in defining these policies, which reduce but do not presume to eliminate all conflicts among competing interests. One reason for this intentional balancing and conflict reducing approach is that coastal management involves explicit consideration of a broad range of concerns, in contrast to other resource management programs which have a more limited scope of concern. Decision-making on individual proposed actions using the Coastal Resource and Development Policies must therefore consider all three steps in the process, and weigh, evaluate, and interpret inevitably complex interests, using the framework established by the policies. In this process, interpretations of terms, such as "prudent", "feasible", "minimal", "practicable", and "maximum extent", as used in a specific policy or combinations of the policies, may vary, depending upon the context of the proposed use, location, and design. Finally, these principles should not be understood as authorizing arbitrary decision-making or unrestrained administrative discretion. Rather, the limited flexibility intentionally built into the Coastal Resource and Development Policies provides a mechanism for incorporating professional judgment by DEP officials, as well as recommendations and comments by applicants, public agencies, specific interest groups, corporations, and citizens into the coastal decision-making process.

In the application of administrative discretion, DEP officials will be guided by eight basic coastal plicies, which summarize the direction of the specific policies.

1. Protect and enhance the coastal ecosystem.

2. Concentrate rather than disperse the pattern of coastal residential, commercial, industrial, and resort development and encourage the preservation of open space.

3. Employ a method for decision-making which allows each coastal location to be evaluated in terms of both the advantages and the disadvantages it offers for development.

4. Protect the health, safety and welfare of people who reside, work and visit in the coastal zone.

5. Promote public access to the waterfront through linear walkways and at least one waterfront park in each waterfront municipality.

6. Maintain active port and industrial facilities, and provide for necessary expansion in adjacent sites.

7. Maintain and upgrade existing energy facilities, and site additional energy facilities determined to be needed by the N.J. Department of Energy (DOE) in a manner consistent with the policies of this Coastal Management Program.

8. Encourage residential, commercial, and recreational mixed-use redevelopment of the developed waterfront.

(c) Definitions

The Coastal Resource and Development Policies are stated in terms of actions that are encouraged, required, acceptable, conditionally acceptable, discouraged, or prohibited. Some policies include specific conditions that must be met in order for an action to be deemed acceptable. Within the context of the Coastal Resource and Development Policies and the principles defined above in Subsection (b), the following words have the following meanings.

(1) "action", "activity", "development", "project", "proposal", or "use" are used interchangably to describe the proposed use of coastal resources that is under scrutiny using the Coastal Resource and Development Policies.

(2) "site", "location", "area", or "surrounding region" means the geographic scope of the proposed use of coastal resources that is under scrutiny using the Coastal Resource and Development Policies. This shall include the site of a proposed use as well as the surrounding area or region that may be affected by or affects the proposed use and is therefore appropriate for evaluation as part of the coastal decision-making process, as well as alternative sites.

(3) "prohibited" means that a proposed use of coastal resources is unacceptable and that DEP will use its legal authority to reject or deny the proposal.

(4) "discouraged" means that a proposed use of coastal resources is likely to be rejected or denied as DEP has determined that such uses of coastal resources should be deterred and developers should be dissuaded from proposing such uses. In cases where DEP considers the proposed use to be in the public interest despite its discouraged status, DEP may permit the use provided that mitigating or compensating measures are taken so that there is a net gain in quality of the affected ecosystem.

(5) "conditionally acceptable" means that a proposed use of coastal resources is likely to be acceptable provided that conditions specified in the policy are satisfied.

(6) "acceptable" means that a proposed use of coastal resources is likely to be approved.

(7) "encouraged" means that a proposed use of coastal resources is acceptable and is a use, by its purpose, location, design, or effect, that DEP has determined should be fostered and supported in the coastal zone, through favorable consideration of other aspects of the location, design, or effect of the use in terms of the weighing process of the Coastal Resource and Development Policies.

(8) "water dependent" means development that must have direct access to the body of water along which it is proposed in order to function. Maritime activity, commercial fishing, public waterfront recreation and marinas are examples of water dependent uses, but only the portion of a development requiring direct access to the water is water dependent. The test for water dependency shall assess both the need of the proposed use for access to the water and the capacity of the proposed water body to satisfy the requirements and absorb the impacts of the proposed use. A proposed use will not be considered water dependent if either the use can function away from the water or if the water body proposed is unsuitable for the use. For example, in a maritime operation a dock or quay and associated unloading area would be water dependent, but an associated warehouse would not be water dependent. Housing, hotels, motels, casinos and restaurants are not water dependent.

(9) "navigable" means navigable in fact, including by canoe, at mean low tide.

(d) Pre-Application Phase

At an optional pre-application conference with a prospective applicant, DEP shall employ the Coastal Resources and Development Policies as a basis for a candid, informal and non-binding evaluation of the merits of a proposed use, location and design.

(e) Application or Project Review Phase

DEP shall employ the Coastal Resource and Development Policies as the standards for issuing actual decisions, making determinations, and carrying out management and planning actions that affect the coastal

zone. Decisions may be issued with conditions or pre-conditions as permitted by the procedural rules of the Department and as reasonably necessary to carry out the spirit and intent of the Coastal Resource and Development Policies.

(f) Information Requirements

Applicants for coastal permits shall comply with the adopted procedural rules and regulations that define the information to be submitted as part of applications for Waterfront Development, Wetlands, and CAFRA Permits. Applicants shall submit information to DEP indicating and documenting how the proposed use complies with the applicable Coastal Resource and Development Policies. This information shall be submitted [at least] in a discrete section of the application, or its accompanying environmental impact statement (EIS) if applicable, that is identified by the heading "Compliance with Coastal Resource and Development Policies". At the pre-application phase, mapped information for a site and its surrounding region shall be submitted at least at a scale of 1:24,000 (1 inch = 2,000 feet). At the application phase, mapped information shall be submitted at least at a scale of 1:24,000 and at larger scale(s), such as 1:2,400 (1 inch = 200 feet), appropriate for the size and complexity of the site and its surrounding region. Information describing the site and surrounding region, including alternatives, in terms of the Coastal Resource and Development Policies, shall be mapped to the maximum extent practicable. Approximate data sources referred to in the Coastal Resource and Development Policies, such as soil surveys, shall be required to be supplemented as necessary by site-specific data presented by an applicant in the environmental impact statement.

## SUBCHAPTER 2 - LOCATION POLICIES

### 7:7E-2.1 Introduction

The coastal land and water areas of New Jersey are diverse. The same development placed in different locations will have different impacts on the coastal ecosystem and built environment as well as different social and economic implications. Different policies are therefore required for different locations. This section defines the Location Policies of the Coastal Program. These policies are also known as the Coastal Location Acceptability Method or CLAM. This presentation of the policies is lengthy and detailed because the coast is large, varied, and complex. The method of applying the policies is, however, relatively simple.

### 7:7E-2.2 Classification of Land and Water Types

The Location Policies classify all land and water locations into a General Area and some into one or more Special Areas.

Special Areas are so naturally valuable, or so important for human use, or so hazardous, or so sensitive to impact, or so particular in their planning requirements, as to merit focused attention. Special Areas are defined and given special policies in Subchapter 3. Special Area types are grouped under four broad headings: Special Water Areas; Special Water's Edge Areas; Special Land Areas; and Special Coast Wide Areas.

General Areas are general types of locations which classify the whole coastal zone with the exception of the Water's Edge, which is entirely a Special Area. Parts of General Areas may also be classified as one or more Special Areas. General Areas are defined and given general policies in Subchapters 4 and 5. General Area types are grouped under two broad headings: General Water Areas (Subchapter 4) and General Land Areas (Subchapter 5).

### 7:7E-2.3 Mapping and Acceptability Determination

The Coastal Location Acceptability Method (CLAM) is a nine step process which determines DEP policy for any proposed coastal use in any coastal location. The first six steps are the mapping and policy determination process to assess Location Acceptability, which is the subject of this section. Steps 7 and 8 refine the Location Acceptability Determinations by reviewing the proposed use in terms of Uses and Resources Policies. Step 9 is the synthesis of Location, Use and Resource Policies.

CLAM Location Policy Analysis:

Step 1 - Identify and map site and surrounding region

Step 2 - Identify and map Special Areas

Step 3 - Determine and map Special Area Policies

Step 4 - Identify and map General Areas

Step 5 - Determine and map General Areas Policies

Step 6 - Map Final Location Acceptability and list Location Policy conditions

CLAM Use Policy Analysis:

Step 7 - Identify applicable Use Policies, evaluate the proposed use, and, if necessary, modify the Location Acceptability Determination and list Use Policy conditions

CLAM Resource Analysis:

Step 8 - Identify applicable Resource Policies, evaluate the proposed use, and, if necessary, modify the Location Acceptability Determination and list Resource Policy conditions

CLAM Synthesis:

Step 9 - Determine final acceptability of proposed use

Summarize and synthesize the final acceptability of a proposed use at a proposed location in terms of the applicable Location, Use and Resource Policies. Approval will only be given if a proposal satisfies all three sets of policies. In particular, applicants should note that applications that do not satisfy Location Policies will not be approved even if the Use and Resource Policies are satisfied.

SUBCHAPTER 3 - SPECIAL AREAS

7:7E-3.1 Introduction

Special Areas are those 39 types of coastal areas which merit focused attention and special management policies. This subchapter divides Special Areas into Special Water Areas (Section 7:7E-3.2 through 7:7E-3.16), Special Water's Edge Areas (7:7E-3.17 through 7:7E-3.27), Special Land Areas (7:7E-3.28 through 7:7E-3.30), and Coastwide Special Areas (7:7E-3.31 through 7:7E-3.41). Special Water Areas extend landward to the mean high water line. Special Water's Edge Areas extend from the mean high water line (or the level of normal flow in non-tidal streams) to one of the following: the inland limit of alluvial soils with a seasonal high water table equal to or less than one foot; the one hundred year flood hazard line, whether tidal or fluvial; the inland limit of water's edge fill; or the inland limit of coastal bluffs, whichever is the most extensive. Special Land Areas are landward of the Water's Edge. Coastwide Special Areas may include Water, Water's Edge or Land Areas.

All land or water locations, except Special Water's Edge Areas, are subject to either the Land Area or Water Area General Policies. In addition, certain locations are subject to one or more Special Area policies. All Special Water's Edge Areas are subject to one or more Special Area Policies. Where the applicable General and Special Area policies differ, the Special Area Policies shall be applied.

7:7E-3.2 Shellfish Beds

(a) Definition

Shellfish Beds are defined as estuarine bay or river bottoms (tidelands) that are productive for hard clams (Mercenaria mercenaria), soft clams (Mya arenaria), eastern oysters (Crassostrea virginica), bay scallops (Argopecten irradians), or blue mussels (Mytilus edulis). A productive bed is one which can be shown to have a history of natural recruitment for one or more of these species, or is leased by the State of New Jersey for shellfish culture, or is a State Shellfish Management Area.

(b) Policy

(1) Any development which would result in the destruction of presently productive Shellfish Beds is prohibited. The term destruction includes actions of filling to create East land, overboard dumping or disposal of solids or spoils which would smother present shellfish populations or create unsuitable conditions for shellfish colonization, or the creation of bottom depressions with anoxic water conditions. Development within Shellfish Beds is conditionally acceptable if the development is of national interest and no prudent and feasible alternative sites exist.

(2) Any coastal development which would result in contamination or condemnation of Shellfish Beds is prohibited. Development which would significantly alter the salinity regime, substrate characteristics (as through runoff and sedimentation), natural water circulation pattern, or natural functioning of the Shellfish Beds, during the construction or operation of the development is prohibited.

(3) Water dependenr development which requires dredging adjacent to shellfish beds is discouraged and must be managed so as not to cause significant mortality of the shellfish resulting from increase in turbidity and sedimentation, resuspension of toxic chemicals, or to otherwise interfere with the natural functioning of the shellfish bed. New dredging within shellfish beds is prohibited. Maintenance dredging of existing navigation channels is conditionally acceptable with state managed shellfish recovery programs encouraged prior to dredging.

(4) If there is a delay of more than one year between completion of permit application review and initiation of approved activity, the site may be required to be resurveyed as the shellfish resource value may hsve changed during the interim.

(c) Rationale

Estuarine shellfish are harvested by both commercial and recreational fishermen, with the sport group concentrating on hard clams. Oysters, bay scallops and soft and hard clams are predominantly commercial species. Commercial dockside landing values in New Jersey for 1978 were $3.43 million for estuarine mollusks, with an estimated retail industry value of $8.6 million. The commercial harvest is estimated to support employment of 1,500 persons in fishing, distribution, processing, and retail. Sport clammers numbered 21,200 in 1978. In addition to direct human consumption, shellfish play an important role in the overall ecology of the estuary. Young clams are important forage foods for a variety of finfish such as winter flounder, crabs and migratory waterfowl especially the diving species.

7:7E-3.3 Surf Clam Areas

(a) Definition

Waters within the territorial sea of the State of New Jersey which can be demonstrated to support significant commercially harvestable quantities of surf clams (Spisula solidissima), or areas important for recruitment of surf clam stocks. This includes areas where fishing is prohibited for research sanctuary or conservation purposes by N.J.A.C. 7:25-12.1(d)4.

(b) Policy

Development which would result in the destruction, condemnation, or contamination of Surf Clam Areas is prohibited. Development within Surf Clam Areas is conditionally acceptable only if the development is of national interest and no prudent and feasible alternative sites exist.

(c) Rationale

The surf clam fishery accounted for dock-side landing values (wholesale) of $7.5 million during 1978 and estimated retail value of $10.9 million. The industry annually generates monies in excess of the retail value, supports employment of over 300 full and part time people in fishing and 1,000 - 1,500 in canning, processing, distribution and industry services. Significant areas of productive water are presently closed due to water pollution. In addition, the massive marine fish kill during the summer

of 1976 was estimated to have resulted in the loss of $65 million in sea clam stocks over a seven year period. Surf clam harvesting within New Jersey's territorial sea is regulated by NJDEP. The Mid-Atlantic Regional Fisheries Management Council regulates sea clamming within the Fishery Conservation Zone (200 mile limit). Harvesting is required to be compatible with these agencies, as appropriate. Harvest quotas and other management measures have been adopted for sea clamming (surf clams and ocean quahogs) within the Fishery Conservation Zone.

7:7E-3.4 Prime Fishing Areas

(a) Definition

Prime Fishing Areas include tidal water areas and water's edge areas which have a demonstrable history of supporting a significant local quantity of recreational or commercial fishing activity. The area includes all coastal jetties and groins and public fishing piers or docks. Prime Fishing Areas also include all red line delineated features within the State of New Jersey's three mile territorial sea illustrated in: B.L. Freeman and L.A. Walford (1974) Angler's Guide to the United States Atlantic Coast Fish, Fishing Grounds and Fishing Facilities, Section III and IV. While this information source applies only to the Delaware Bay and Atlantic Ocean shorefronts, prime fishing areas do occur throughout the coastal zone.

(b) Policy

Permissible uses of Prime Fishing Areas include recreational and commercial finfishing and shellfishing, as presently regulated by NJDEP Division of Fish, Game, and Wildlife, scuba diving and other water related recreational activities.

Prohibited uses include sand or gravel submarine mining which would alter existing bathymetry to a significant degree so as to reduce the high fishery productivity of these areas. Disposal of domestic or industrial wastes must meet applicable State and federal effluent limitations and water quality standards.

(c) Rationale

Natural bathymetric features, such as the Shrewsbury Rocks and important sand ridges, and artificial structures act as congregation areas for many species of finfish, shellfish, and a diversity of invertebrate species which are essential to marine ecosystem functioning. These areas are heavily utilized by recreational and commercial fishermen. Commercial fishing occurs primarily along the Delaware Bay and Atlantic Ocean. Over 2.7 million people annually participate in marine sport fishing and shellfishing in New Jersey. This represents the highest number of participants in any state, from Maine to Maryland. Of that total, 1.6 million reside in New Jersey, with the remaining number coming mostly from Pennsylvania and New York (792,000 and 300,000 respectively.) The Mid-Atlantic Regional Fisheries Management Council manages fishing activities seaward of the State's coastal zone.

7:7E-3.5 Finfish Migratory Pathways

(a) Definition

Waterways (rivers, streams, creeks, bays inlets) which can be demonstrated to serve as passageways for diadromous fish to or from seasonal spawning areas, including juvenile anadromous fish which migrate in autumn and those listed by H. E. Zich (1977) "New Jersey Anadromous Fish Inventory" NJDEP Miscellaneous Report No. 41, and including those portions of the Hudson and Delaware Rivers within the coastal zone boundary are defined as Finfish Migratory Pathways. Species of concern include: alewife (river herring) (Alosa pseudoharengus), blueback herring (Alosa aestivalis), American shad (Alosa sapidissima), striped bass (Morone saxatilis), and American eel.

(b) Policy

Development, such as dams, dikes, spillways and intake pipes, which creates a physical barrier to the movement of fish along finfish migratory pathways is prohibited, unless acceptable mitigating measures such as fish ladders, erosion control, or oxygenation are used. Development which lowers water quality to such an extent as to interfere with the movement of fish along finfish migratory pathways or to violate State and Delaware River Basin Commission water quality standards is prohibited.

Mitigating measures are required for any development which would result in: lowering dissolved oxygen levels, releasing toxic chemicals, raising ambient water temperature, impinging or suffocating fish, causing siltation, or raising turbidity levels during migration periods.

Water's edge development which incorporates migration access structures, such as functioning fish ladders, will be conditionally acceptable, provided that the NJDEP, Division of Fish, Game, and Wildlife approves the design of the access structure.

(c) Rationale

Striped bass are one of New Jersey's most prized sport fish and are actively sought wherever they occur in New Jersey. This species spawns in the Delaware, Hudson and Maurice Rivers. American Shad, once much more numerous and formerly an important commercial species, continue to make an annual spawning run in the Delaware and Hudson Rivers, where there is an active sport fishery. A much reduced commercial fishery exists in the Delaware Bay and River. Herrings are important forage species and spawn annually in many of New Jersey's tidal tributaries including the Raritan and Hackensack Rivers. Herrings are fished during spring runs, for direct human consumption, garden fertilizer and for use as bait.

7:7E-3.6 Submerged Vegetation

(a) Definition

This special area consists of estuarine water areas supporting rooted vascular seagrasses such as widgeon grass (Ruppia maritima) and eelgrass (Zostera marina). Eelgrass beds are limited to shallow portions of the Shrewsbury River, Barnegat Bay and Little Egg Harbor. Widgeon grass is for the most part limited to shallow areas of upper Barnegat Bay. Detailed maps of the distribution of the above species for New Jersey, and a method for delineation, are available from DEP in the DEP-DCR sponsored study, The New Jersey Submerged Aquatic Vegetation Distribution Atlas (Final Report) February, 1980, conducted by Earth Satellite Corporation.

(b) Policy

Destruction of submerged vegetation beds is prohibited. Mitigation measures are required for all upland developments which would result in erosion or increased turbidity that would adversely affect this special area. Trenching for energy pipelines and submarine cables of national significance will be conditionally acceptable, provided there is no prudent or feasible alternative site, and if the site is restored to original bathymetry and replanted with pre-development vegetation species, if these species have not colonized the site after three years.

(c) Rationale

New Jersey's estuarine waters are relatively shallow, rich in nutrients and highly productive. The submerged vegetation of these shallow waters serve important functions, as suspended sediment traps, important winter forage for migratory waterfowl, nursery areas for juvenile finfish, bay scallops and blue-claw crabs, and by nourishing fishery resources through primary biological productivity (synthesis of basic organic material) through detrital food webs in a similar manner to salt marsh emergent Spartina cord grasses. In addition, seagrasses absorb wave energy and the root networks help stabilize silty bay bottoms. The value of seagrasses was dramatically illustrated during the 1930's when a disease epidemic virtually eliminated eelgrass from the eastern U.S. Atlantic ocean coastline. The number of finfish, shellfish, and waterfowl drastically decreased, threatening their survival. The oyster industry of the Atlantic coast was ruined. Bays became choked with silt and new mud flats were formed.

7:7E-3.7 Navigation Channels

(a) Definition

Navigation channels include water areas in tidal rivers and bays presently maintained by DEP or the Army Corps of Engineers and marked by U.S. Coast Guard with buoys or stakes, as shown on NOAA/National Ocean Survey Charts: 12214, 12304, 12311, 12312, 12313, 12314, 12316, 12317, 12318, 12323, 12324, 12326, 12327, 12328, 12330, 12331, 12332, 12333, 12334, 12335, 12337, 12341, 12343, 12345, 12346, and 12363. Navigation channels also include channels marked with buoys, dolphins, and stakes,

and maintained by the State of New Jersey, and access channels and anchorages. Navigation channels are approximately parallel to the river bed. Access channels are spurs that connect a main navigation channel to a terminal. Anchorages are locations where vessels moor within water at or near the water's edge for the purpose of transferring cargo, or awaiting high tide, better weather, or fuel and terminal availability.

(b) Policy

New or maintenance dredging of existing navigation channels, is conditionally acceptable providing that the condition under the new or maintenance dredging policy is met (see Section 7:7E-4.10(e) and (f)). Development which would cause terrestrial soil and shoreline erosion and siltation in navigation channels shall utilize appropriate mitigation measures. Development which would result in loss of navigability is prohibited.

(c) Rationale

Navigation channels are essential for commercial and recreational surface water transportation, especially in New Jersey's back bays where water depths are very shallow. Channels play an important ecological role in providing estuarine circulation and flushing routes, and migration pathways and wintering and feeding habitat for a wide diversity of finfish, shellfish, and waterfowl.

Navigational channels, access channels and anchorages form a network of areas that have a depth sufficient to enable marine trade to operate at the limiting depth of the channel. If one part of the system is not maintained, the entire system might be unable to function.

7:7E-3.8 Canals

(a) Definition

Canals are navigation channels for boat traffic through land areas which are created by cutting and dredging or other human construction technique sometimes enlarging existing natural surface water channels. The Cape May, Bay Head-Manasquan, and Delaware and Raritan Canals are the principal examples in the New Jersey Coastal Zone.

(b) Policy

The Cape May and Bay Head-Manasquan Canals are man-made tidal cuts. Development in these canals must be consistent with the General Water Area policies for Tidal Cuts (7:7E-4.7) as well as with the following policies:

1. In canals presently used for navigation, such as the Cape May and Bay Head-Manasquan canals, the following policies shall apply:

   (i) Aquaculture, filling, dams and impoundments, and any other use which would interfere with existing or proposed canal boat traffic is prohibited.

(ii) Maintenance dredging is encouraged as needed provided that an acceptable spoil disposal site is available and turbidity is controlled.

2. In the Delaware and Raritan Canal, and in the surrounding Review Zone established by the Delaware and Raritan Canal Commission, development must be consistant with the Rules and Regulations of the Review Zone of the Delaware and Raritan Canal State Park (N.J.A.C. 7:45-1.1).

(c) Rationale

Canals represent a large capital investment to create boat traffic routes. Of the coastal canals, the Cape May and Manasquan-Bay Head canal are still used extensively for their original purpose. Maintenance of this original function is encouraged.

Abandoned canals offer recreational opportunities. The Delaware and Raritan Canal is being redeveloped as a State park with recreational boating and continued use as a water supply facility. This re-use is encouraged.

7:7E-3.9 Inlets

(a) Definition

Inlets are natural channels through barrier islands allowing movement of fresh and salt water between the ocean and the backbay system.

Inlets naturally have delta fans of sediment seaward and landward deposited by the ebb and flow of the tide.

The seaward limit of an inlet is defined as the seaward extent of the ebb delta fan. The landward limit is defined as the inland extent of the flood delta fan.

If there is doubt about the extent of these fans, the applicant shall submit up-to-date bathymetric surveys and DEP staff will determine the boundary on a case-by-case basis.

(b) Policy

Inlets consists of an Ocean portion and a Semi-enclosed or Back Bay portion. Development in Inlets must be consistent with the General Water Area Policy for one of these water area types, and with the following policies.

1. Filling is prohibited.

2. Submerged Infrastructure is discouraged.

(c) Rationale

Inlets play a vital role in the estuarine ecosystem. They control patterns of backbay currents, salinity and nutrient distribution and provide migratory pathways between the ocean and the back bays for marine and estuarine species.

Submerged infrastructure is a hazard in inlets since the strong currents may expose and break the pipes or cables. There is also a possibility of anchors snagging and breaking the infrastructure.

7:7E-3.10 Marina Moorings

(a) Definition

Marina moorings are areas of water that provide mooring and boat maneuvering room as well as access to land and navigational channels for recreational boats. Typically maintenance dredging is required to preserve water depth.

(b) Policy

1. Any use that would detract from existing or proposed recreational boating use in marina mooring areas is discouraged.

2. Maintenance dredging in the marina mooring and access channel is encouraged provided that turbidity is controlled and that there is an acceptable dredge spoil disposal site.

(c) Rationale

Marinas are a key element in New Jersey's coastal resort economy. The maintenance of existing marina areas and the protection of these areas from competing uses which would detract from the recreational service they provide is, therefore, a high priority.

7:7E-3.11 Ports

(a) Definition

Ports are water areas having, or lying immediately adjacent to, concentrations of shoreside marine terminals and transfer facilities for the movement of waterborne cargo (including fluids), and including facilities for loading, unloading and temporary storage. Ports are found in Newark, Elizabeth, Jersey City, Weehawken, Hoboken and Camden.

NOTE: Policies for a docking facility or concentration of docks for a single industrial or manufacturing facility may be found under the General Water Area Policy for Docks and Piers (Section 7:7E-4.11).

(b) Policy

1. Any use which would preempt or interfere with port uses of this water area is prohibited.

2. Aquaculture and dumping of solid or semi-solid waste is prohibited.

3. Boat ramps for recreational boating are discouraged.

4. Docks and piers for cargo movement are an encouraged use.

5. Filling to create docks or quays is conditionally acceptable if docks and piers built on pilings are not feasible.

(c) Rationale

The ports of New Jersey are components of two of the nation's three largest port districts -- the New York-New Jersey Port District and the Delaware River Port District. The Port of Newark-Elizabeth is the nation's largest containerport. Shipping is a major industry in the state as well as an important contributer to the well-being of other state industries. A set of policies aimed at encouraging the use and expansion of existing ports, while discouraging the sprawl of port uses into undeveloped areas will, therefore, be an element of coastal policy.

7:7E-3.12 Submerged Infrastructure Routes

(a) Definition

A submerged infrastructure route is the corridor in which a pipe or cable runs on or below a submerged land surface.

(b) Policy

Any activity which would increase the likelihood of infrastructure damage or breakage, or interfere with maintenance operations is prohibited.

(c) Rationale

Submerged infrastructure routes are a large capital investment and much depends on the safe functioning of the infrastructure. Both human and natural systems suffer from accidental breakage, especially of large oil or gas pipelines. Activities which increase hazard for submerged infrastructure must therefore be excluded.

7:7E-3.13 Shipwrecks and Artificial Reefs

(a) Definition

This Special Area includes all permanently submerged or abandoned remains of vessels which serve as a special marine habitat and are within the ocean waters of the State of New Jersey three mile territorial sea, but outside of Navigation Channels. Known sites include those shown either on National Ocean Survey (N.O.S.) Charts listed in the definition above of the Navigation Channel Special Area, or listed in: W. Krotee and R. Krotee Shipwrecks Off the New Jersey Coast (1966) and B.L. Freeman and L.A. Walford Angler's Guide to the United States Atlantic Coast Fish, Fishing Grounds, and Fishing Facilities (1974). Also included in this category are artificial fishing reefs which serve the same natural function as a habitat for living marine resources.

(b) Policy

Acceptable uses include recreational and commercial finfishing and shellfishing, scuba diving, research and expansion of artificial reefs by the deposition of additional weighed non-toxic material, provided it can be demonstrated that additional material will not wash ashore, or interfere with either navigation as regulated by U.S. Coast Guard or commercial fishing operations.

Prohibited uses include commercial salvage of wrecks, submarine sand or gravel mining which would destroy ecological or physical stability, and sewage or industrial waste disposal.

(c) Rationale

Shipwrecks and other natural or artificial materials can serve as critical habitat for benthic finfish and lobsters, and other invertebrates which prefer shelter in hard substrates otherwise uncommon in New Jersey's marine waters. These areas function as congregation areas for migratory species and support extensive recreational fishing by private boats, commercial party boats, and commercial lobstering. Shipwrecks are also fragile historic and cultural resources. Scuba diving club members from New Jersey and other states visit these resources. This policy applies only to ocean areas and does not conflict with waterfront clean-up efforts.

7:7E-3.14 Estuarine or Marine Sanctuary

(a) Definition

An Estuarine or Marine sanctuary is a specific geographic area located within ocean waters, from the highest extent of tidal action seaward to the outer edge of the Continental Shelf, which has been designated by the Secretary of Commerce after approval by the President of the United States. Any sanctuary within New Jersey's coastal zone would not become effective if within 60 days of designation the Governor disapproved. Under Title III of the Marine Protection, Research and Sanctuaries Act of 1972 (P.L. 92-532), a marine sanctuary can be established for the purpose of preserving or restoring marine areas for various values. To date, there are no designated marine sanctuaries within New Jersey. The Office of Coastal Zone Management within NOAA is presently reviewing all recommendations, including those within the Mid-Atlantic states. DEP submitted six recommendations to NOAA in 1977, including the Hudson Canyon, Shrewsbury Rocks, Great Bay estuary, shipwrecks, inlets, and offshore sand ridges. Designation of one or more of these areas as Estuarine or Marine sanctuaries in New Jersey's nearshore and offshore areas requires joint actions by the Governor of New Jersey and the U.S. Secretary of Commerce, and could take place during 1981. New Jersey is currently pursuing the nomination of an estuarine, but not a marine sanctuary.

(b) Policy

Management principles in the selected areas will serve to preserve and protect the areas, as well as indicate what actions are not permissible in the area. Non-permissible uses will be dependent on the five basic purposes for designation, which include: habitat areas, species areas, research areas, recreational and esthetic areas, and unique or exceptional areas. After designation, activities not compatible with the basic purposes will be prohibited or restricted, but in general all other uses are allowed. Final policy in marine sanctuaries must be approved jointly by the Governor of New Jersey and the U.S. Secretary of Commerce.

(c) Rationale

Certain portions of the Atlantic Ocean and adjacent estuaries are of special national and regional value which could be adversely impacted by development likely to take place in the future, especially activities related to offshore oil and gas development. It is in the long-term interest of the people of the Nation to identify, protect, and manage these special areas.

7:7E-3.15 Wet Borrow Pits

(a) Definition

Wet borrow pits are scattered perennial man-made lakes that are the results of surface mining for coastal minerals extending below groundwater level to create a flooded depression. This includes but is not limited to, flooded sand, gravel and clay pits, and stone quarries.

(b) Policy

1. Proposed uses which would promote the wildlife habitat and scenic amenity values of wet borrow pits are encouraged.

2. Surface mining is conditionally acceptable provided the Use Policies for Mining are complied with.

3. Recreational use of wet borrow pits is acceptable provided that wildlife habitat disturbance in minimized.

4. Disposal of dredge spoil is conditionally acceptable provided that:

   (i) the spoil is clean and non-toxic, of an appropriate particle size for the site, and will not disturb groundwater flow or quality.

   (ii) at least half of the water area in existence at the time of the first coastal permit application for filling of the pit remains as surface water in pattern designed to maximize wildlife habitat value and create wetland areas, except that the entire lake may be filled if necessary to prevent the lake from acting as a channel for salt water intrusion into aquifers.

5. Filling of wet borrow pits for residential construction is conditionally acceptable provided that:

   (i) the fill is clean and will not degrade groundwater quality,

   (ii) at least half of the water area in existence at the time of the first coastal permit application for filling of the pit is left as open water,

   (iii) land-water edges are maximized and vegetated to promote native wildlife,

(iv) there is designation of a water quality buffer zone around water areas of at least fifty feet. Structures and paving, except at limited water access points, are prohibited in the water quality buffer. In general, the water quality buffer area shall be allowed to succeed naturally to water's edge wetland and forest with minimum disturbance and runoff,

(v) a program for water quality monitoring and maintenance is included with the application, and

(vi) that recreational uses in water and water quality buffer areas minimize wildlife disturbance.

6. Discharge of liquid or solid waste, other than clean dredge fill of acceptable particle size, is prohibited.

(c) Rationale

Wet Borrow Pits are a special category of the General Water Area type Lakes, Ponds and Reservoirs. The Special Area Policies for Wet Borrow Pits are less restrictive than the policies for other Lakes, Ponds and Reservoirs in that they allow Sand and Grave Extraction, Dredge Spoil Disposal and Filling, under specified conditions. This is because they are already disturbed sites. Also, they are of relatively recent origin and, typically, vegetative succession is not as far advanced as along natural lakes. Wet Borrow Pits, therefore, tend to be less important as wildlife habitats than natural lakes. Finally, they are not connected to the wider estuarine system by streams.

On the other hand, their separation from streams means that they are most susceptible to water quality impacts caused by runoff. The water is still, and the only water loss is through groundwater seepage and evaporation. Sediment collects quickly, enlarging marsh areas, and the eutrophic conditions that lead to sudden oxygen loss are concentrated by evaporation. Low levels of toxicity are quickly bio-magnified to fatal levels. In general, these still waters are much more sensitive to impacts of all kinds than flowing water.

Undisturbed wet borrow pits can become wildlife habitats for aquatic, amphibian and terrestrial species, offering productive edges, shallow waters, wetland areas and important breeding and migratory habitats. Proposals that include borrow pits as wildlife preserves are, therefore, encouraged. Low intensity recreation which takes advantage of the scenic amenities of these lakes is also desirable if wildlife disturbance is minimized.

Wet borrow pits were created by mining operations. Continued mining of sand and gravel at these sites would be less environmentally disruptive than mining operations at new sites.

There is a severe shortage of dredge spoil disposal sites in New Jersey. The filling of wet borrow pits is essentially a reverse of the mining operation which created them, and is less impactive than filling natural

depressions, provided that the spoil is clean and non-toxic and the particle size matches the neighboring natural substrates closely enough as not to disturb groundwater movement. If the filling of wet borrow pits is designed to retain some surface water area, and to maximize land-water edges, much of the wildlife value can be preserved while providing needed spoil disposal sites.

The value of Wet Borrow Pits as wildlife habitat may be enhanced by limited fingers of fill to enlarge the land-water interface. Filling can also create sites for waterfront housing. Since residential construction sites near surface water are much in demand, it is desirable to allow some residential and related uses, provided that housing is consistent with Location and Use Policies, water quality is maintained, and a water quality buffer is preserved along the water's edge. The buffer would not block visual or physical access to the water, but would preserve water quality and provide wildlife habitat. Medford Lakes provides an example of an attractive residential community built around Wet Borrow Pits, but siltation and eutrophication provide evidence for the need for a water quality buffer area.

7:7E-3.16 Intertidal Flats

(a) Definition

Intertidal Flats are extensive areas between the mean high water line and mean low water line along tidal bayshores. Intertidal flats are found along Delaware Bay in Cape May County and in other tidal bayshores.

(b) Policies

1. Development, filling, new dredging or other disturbance of intertidal flats is discouraged.

2. Submerged infrastructure is conditionally acceptable, provided that (i) there is no feasible alternative route that would not disturb intertidal flats, (ii) the infrastructure is buried deeply enough to avoid exposure or hazard, and (iii) all trenches are backfilled with naturally occuring sediment.

(c) Rationale

Intertidal flats play a critical role in estuarine ecosystems. They are a land-water ecotone, or ecological edge where many material and energy exchanges between land and water take place. They are critical habitats for many benthic organisms and are critical forage areas for many migrant waterfowl. The sediments laid down in intertidal flats contain much organic detritus from decaying land and water's edge vegetation, and the food webs in these areas are an important link in the maintenance of estuarine productivity. Preservation is, therefore, the intent of these policies, with limited exceptions to allow for needed water-dependent uses and submerged infrastructure.

# SPECIAL WATER'S EDGE TYPES – MAINLAND

**(Schematic of Typical Stream Corridor Outside Bay and Ocean Shore Area)**

Figure 13

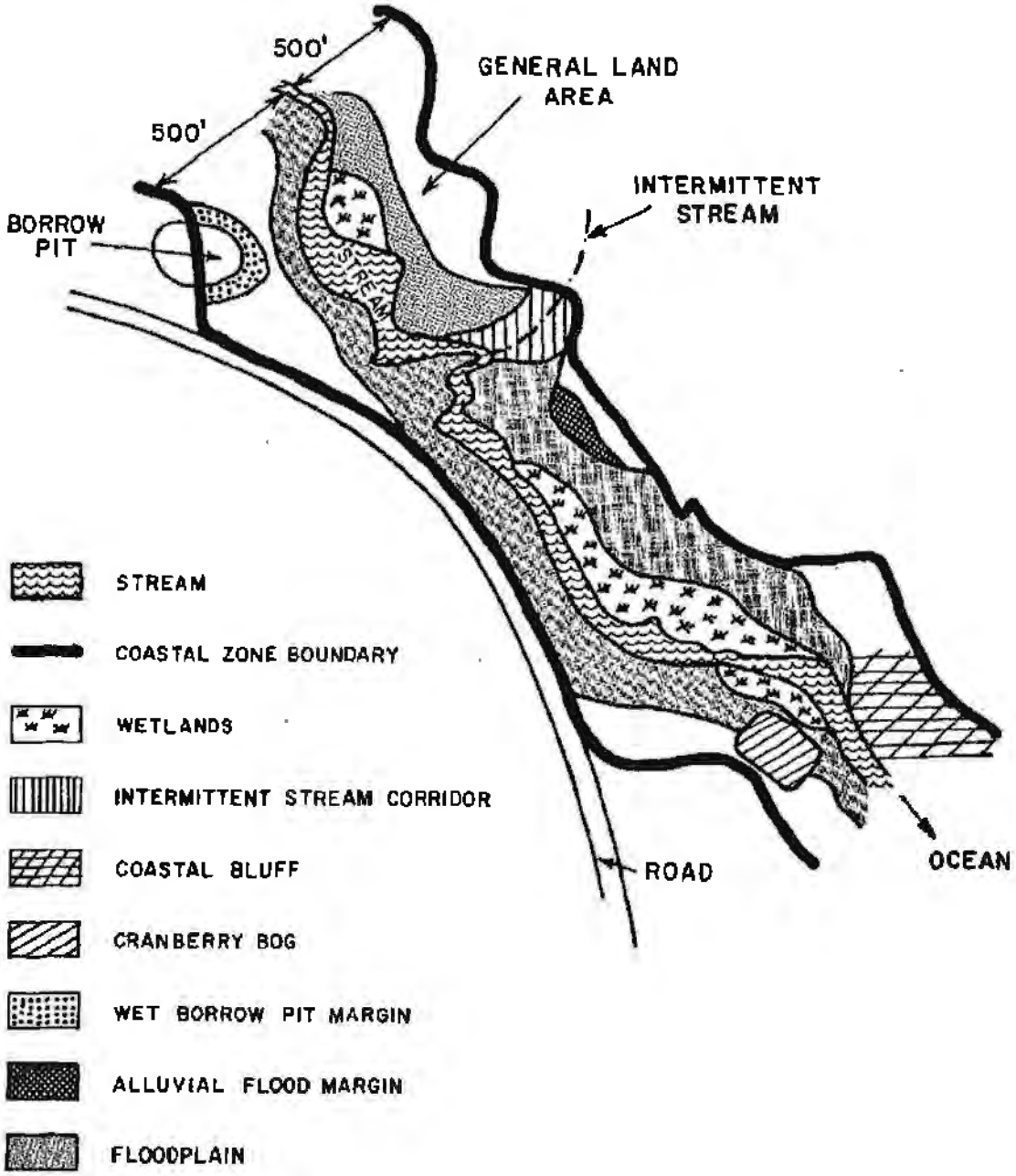
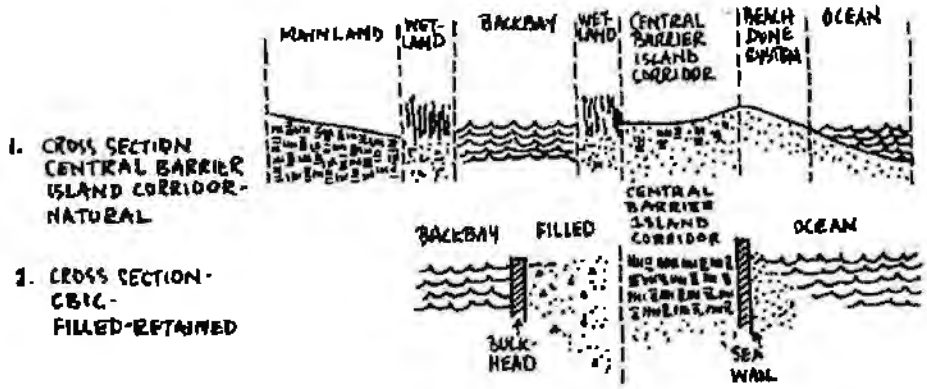
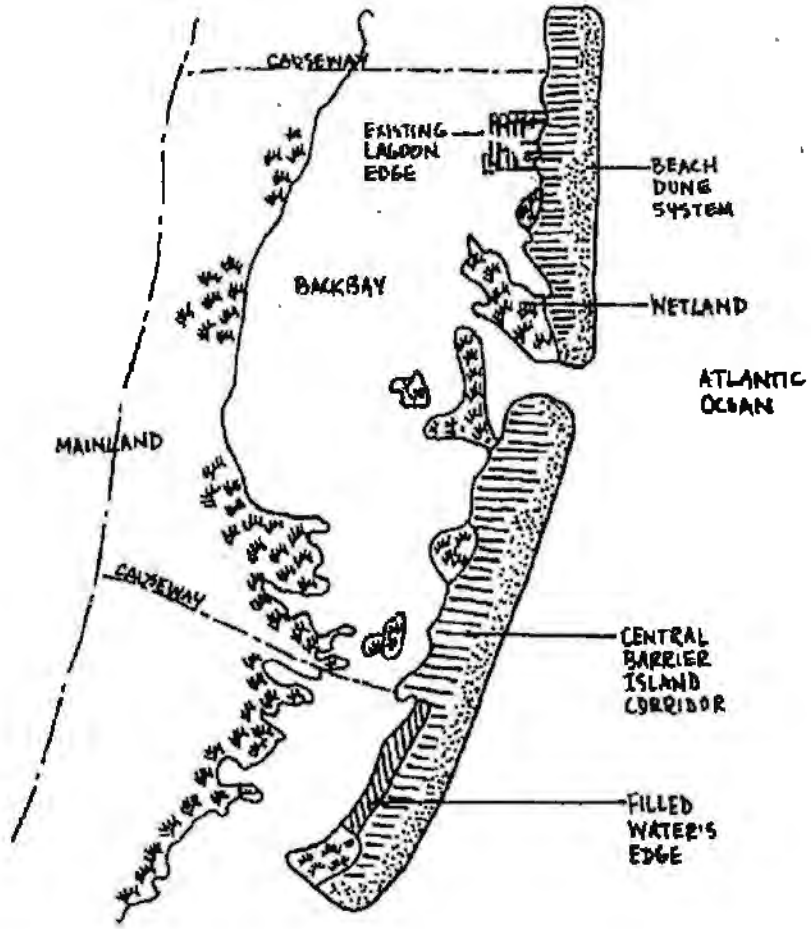


FIGURE 14: SPECIAL WATER'S EDGE TYPES - BARRIER ISLAND



7:7E-3.17 Filled Water's Edge

(a) Definition

Filled Water's Edge areas are existing filled areas lying between Wetlands or Water Areas, and either: (1) the upland limit of fill, or (2) the first public road or railroad landward of the adjacent Water Area, whichever is closer to the water. Some existing or former dredge spoil and excavation fill areas are Filled Water's Edge Area.

(b) Policies

1. Water dependent (see section 7:7E-1.6(c) for definition) uses are acceptable in the Filled Watecs' Edge.

2. Non-water dependent development in the Filled Water's Edge is conditionally acceptable provided (a) it would not preempt use of the waterfront portion of the Filled Water's Edge for potential water dependent uses, and (b) it would not prevent public access along the water's edge.

(c) Rationale

Filled Water's Edge areas are of less environmental concern than undisturbed water's edge areas. The buffering functions of the water's edge have already been largely lost through excavation, filling and the construction of retaining structures. It is acceptable to allow certain kinds of development up to the limit of fill. Because the waterfront is a scarce resource, it is desirable to limit waterfront development in these areas to uses that are water dependent unless, because of their location, they do not have the potential to attract water dependent uses.

7:7E-3.18 Existing Lagoon Edge

(a) Definition

Existing Lagoon Edges are defined as existing, undeveloped, man-made land areas resulting from the dredging and filling of wetlands, bay bottom and other estuarine areas for the purpose of creating waterfront lots along lagoons for residential and commercial development. The land area may be stabilized by a retaining structure. Existing Lagoon Edges extend upland to the limit of fill, or the first public road or railroad generally parallel to the Water Area, whichever is less (Figure 15).

(b) Policy

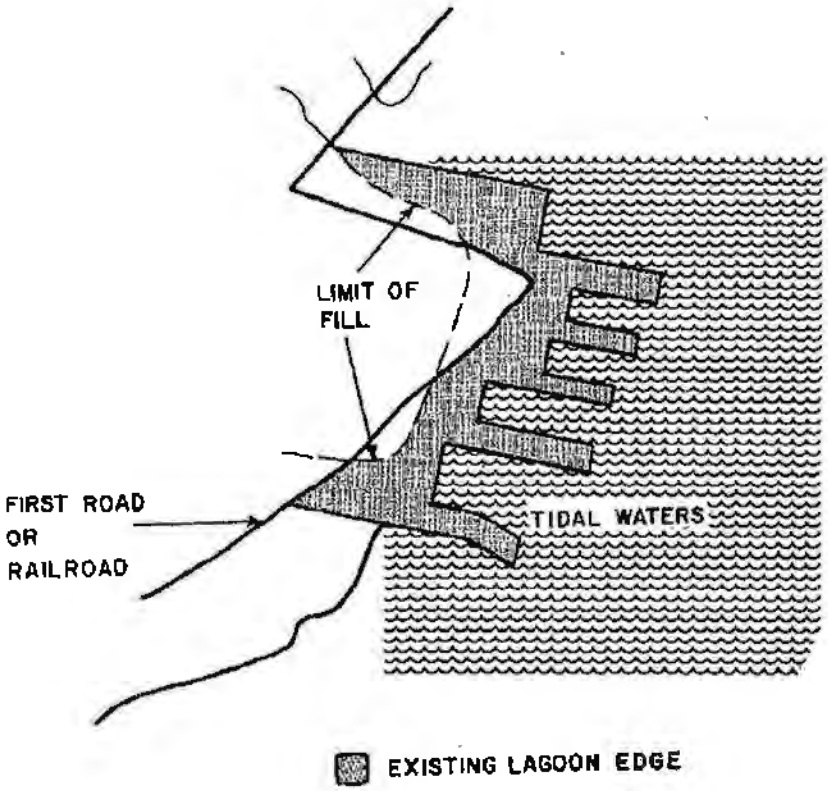
Development of Existing Lagoon Areas is acceptable provided that:

1. reclamation of the site to its natural state is infeasible,

2. the proposed development is compatible with adjacent land and water uses,

Figure 15

## EXISTING LAGOON EDGE



3. existing unstabilized slopes are stabilized using vegetation, to the maximum extent practicable, and

4. existing retaining structures are adequate to protect the proposed development, or appropriate improvements are proposed for the retaining structure.

(c) Rationale

This policy is designed to promote the reclamation of as much filled land as possible. Filled lands adjacent to water areas, especially existing, undeveloped lagoons, represent potential problems for water quality. The slope must be stabilized in order to prevent erosion, turbidity and loss of estuarine productivity. These problems have been well documented in Grant F. Walton, et al., Evaluation of Estuarine Site Development Lagoons (New Brunswick, N.J.: Rutgers-Water Resources Research Institute, 1976). Thousands of undeveloped building lots exist along stabilized and unstabilized lagoons created by destroying wetlands in the 1950's and 1960's. Development of these residential lots is acceptable provided that water quality standards are met and the banks of the filled areas are revegetated, or retained, since the fundamental and near irretrievable damage to the natural environment of these areas took place a decade or more ago. State coastal policy now precludes the development of new lagoons for residential development.

7:7E-3.19 Natural Water's Edge-Floodplains

(a) Definition

Natural Water's Edge-Floodplains are the Flood Hazard Areas around rivers, creeks and streams as delineated by DEP under the Flood Hazard Area Control Act (N.J.S.A. 58:16A-50), or by the Federal Emergency Management Agency (FEMA); or the Flood Hazard Area around other coastal water bodies as defined by FEMA. Floodplains include the areas subject to both tidal and fluvial flooding. Where Flood Hazard Areas have been delineated by both DEP and FEMA, the DEP delineations shall be used. Where Flood Hazard Areas have been delineated by neither DEP nor FEMA, the 10-foot contour line shall be used as the inland boundary of the Floodplain. The seaward boundary shall be the mean high water line.

The Natural Water's Edge-Floodplain policy shall not apply on Barrier Islands, Spits or Headlands nor in portions of a Floodplain which meet the definition of another Special Water's Edge type (Filled Water's Edge, Existing Lagoon Edge, Alluvial Flood Margins, Beach and Dune Systems, Central Barrier Island Corridor, Wetlands, Cranberry Bogs, Wet Borrow Pit Margins, Coastal Bluffs, Intermittent Stream Corridors).

A complete list of streams where DEP has delineated the Flood Hazard Area can be found at N.J.A.C. 7:13-1.11 et seq.

The U.S. Army Corps of Engineers has delineated the tidal Floodplain for FEMA in most Coastal Zone municipalities. The geographic extent of the tidal flood hazard areas are indicated on USGS topographic maps at a scale of 1:24,000 as "flood prone" areas.

(b) Policies

1. Development is prohibited in the Natural Water's Edge-Floodplains within 100 feet of a navigable water body, unless the use is water dependent. NOTE: "Navigable" and "water dependent" are defined at 7:7E-1.6(c).

2. Development elsewhere in the Natural Water's Edge-Floodplains is discouraged unless:

   (i) it has no feasible alternate site, and

   (ii) it would not preempt use of the waterfront portion of the Floodplain for potential water dependent use.

3. Development must be consistent with all other coastal policies, in particular the performance standards found in the Flood Hazard Area Resource Policy (7:7E-8.23).

4. Detention basins are prohibited in river floodplains.

(c) Rationale

The goal of this policy is to reduce losses of life and property resulting from unwise development of floodplains, but to allow uses compatible with periodic flooding -- agriculture and forestry, recreation, and fish and wildlife habitat -- and uses which require a Water's Edge location. This policy is consistent with national objectives as expressed in the President's Executive Order 11988 on Floodplain Management. It is also consistent with the State Waterfront Development Law's objective of safeguarding port facilities and waterfront resources for the public's overall economic advantage. The policy will ensure that the State's waterfront is not pre-empted by uses which could function equally well at inland locations.

River Floodplains are subject to flooding in severe fluvial storms. They are also critical elements of the coastal ecosystem, providing flood storage capacity, physical and biochemical water filtration, primary productivity and wildlife habitats.

For these reasons, the preferred policy is to preserve these corridors in their natural state with native adapted forest vegetation, allowing limited exceptions for water dependent uses and uses for which there is no feasible alternate location.

This policy applies only to Floodplains which have not been disturbed by filling. Sites subject to this policy, therefore, tend to be in a more natural state than sites subject to the Filled Water's Edge Policy. Accordingly, this policy is more restrictive, discouraging development which has an alternate feasible location or which would unnecessarily disturb vegetation, and requiring water dependency within 100 feet of a navigable water body.

By discouraging development which has a feasible alternate location, this policy will tend to be most restrictive in undeveloped parts of the state, where there will tend to be more alternate locations for proposed development. An alternate location will not be considered feasible if it conflicts with adopted State policy. For example, if a commercial development is proposed in an urban downtown, which happens to be a Natural Water's Edge-Floodplain, a suburban location would not be considered a satisfactory feasible alternative. Development found acceptable in Floodplains would, of course, have to be found consistent with public safety objectives and would have to meet the floodproofing requirement of the Flood Hazard Area Resource Policy.

7:7E-3.20 Alluvial Flood Margins

(a) Definition

Alluvial Flood Margins are mainland areas adjacent to, and upland from, Floodplains. They extend inland to the limit of alluvial soils with a seasonal high water table equal to, or less than, one foot. Alluvial soils are those developing in recent sediment deposited by surface water and exhibiting essentially no modification of the deposited materials.

NOTE: Where an Alluvial Flood Margin is also an Intermittent Stream Corridor, only the Intermittent Stream Corridor Policies (Section 7:7E-3.27) shall apply.

(b) Policy

1. Wildlife refuge and low intensity recreational use is encouraged.

2. Development is discouraged in Alluvial Flood Margins unless no feasible alternative site exists, or it is a landward extension of a water dependent use.

(c) Rationale

Alluvial flood margins are parts of floodplains. Although above the 100 year flood level, they have been deposited by flood waters and do provide flood storage capability in the severest storms. If left undisturbed they contribute to the critical water quality buffering and wildlife habitat functions of floodplains and provide some primary productivity to estuaries through nutrients flushed to adjacent bays, rivers or streams. The high water table and compressiblility of these areas make them costly for development. Conservation is the preferred use.

7:7E-3.21 Beach and Dune Systems

(a) Definition

Beach and Dune Systems include five components: Beaches, Dunes, High Risk Beach Erosion Areas, Sand Accretion Areas, and Overwash Areas (See Figure 16). These components are defined as follows:

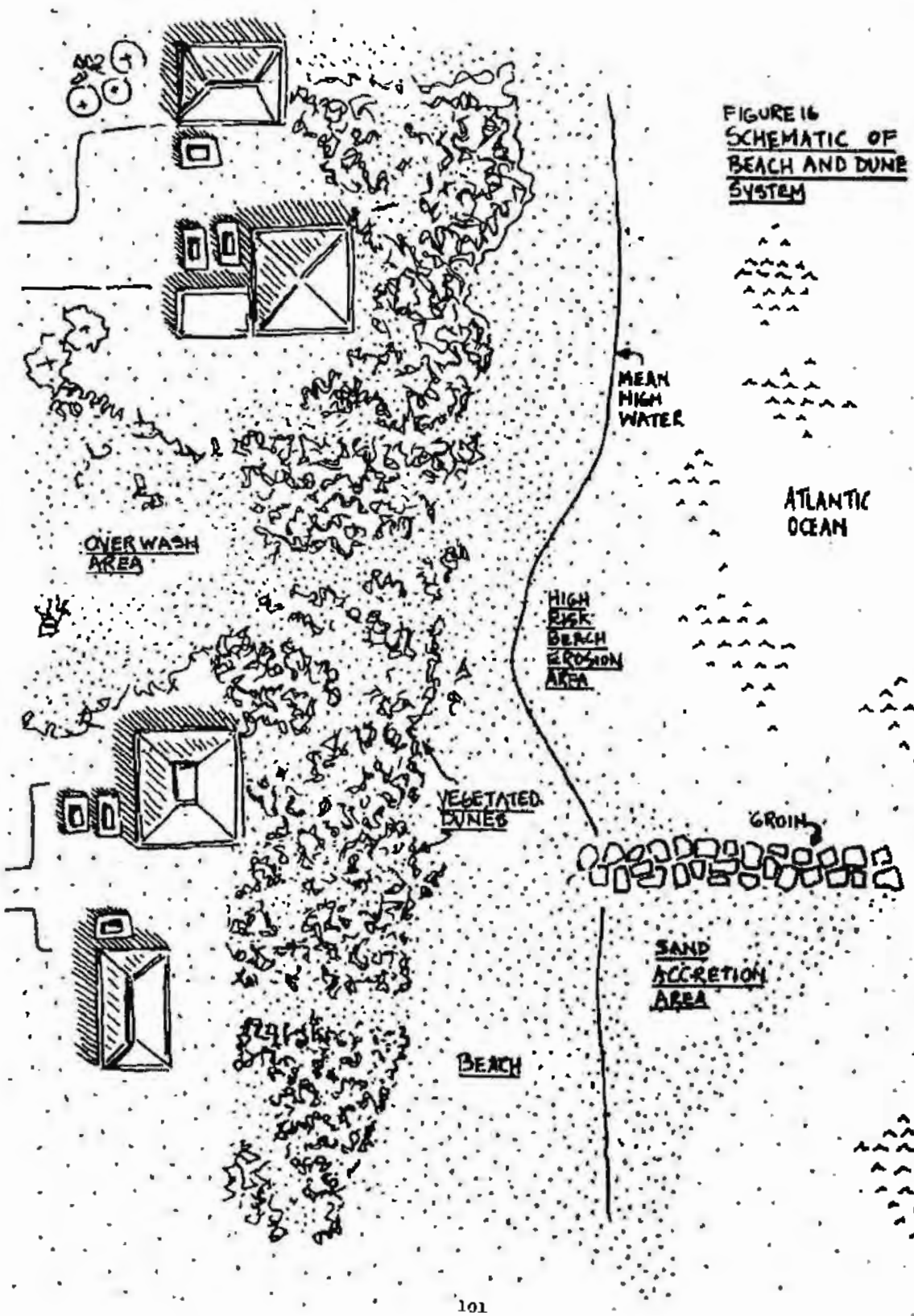


FIGURE 16
SCHEMATIC OF BEACH AND DUNE SYSTEM
MEAN HIGH WATER
ATLANTIC OCEAN
OVERWASH AREA
HIGH RISK BEACH EROSION AREA
VEGETATED DUNES
GROIN
SAND ACCRETION AREA
BEACH

1. Beaches are gently sloping areas of unconsolidated material, typically sand, that extend landward from the water to the area where a definite change takes place either in material or physiographic form, or to the line of vegetation. The upland limit of beaches is typically defined by the vegetation line or the first cultural feature, such as a road, seawall, or boardwalk. Beaches are divided into the "wet beach", the area at and below the mean high water line, and the "dry beach", the area above the mean high water line. The wet beach area is impressed with the Public Trust Doctrine. While New Jersey Beaches are located primarily along the Delaware and Raritan Bays and the Atlantic Ocean, a few beach areas also exist elsewhere -- in Perth Amboy and along the Delaware River, for example.

2. A dune is a ridge or mound of loose wind-blown material, usually sand, sometimes vegetated, roughly parallel and upland from a beach. Its inland limit is the landward extent of the deposited material.

   Dunes include the following subcategories:

   (i) foredunes or primary dunes. These are the front dunes immediately behind the backshore of the beach,

   (ii) primary backdunes and secondary and tertiary dunes. These are backslope of the foredune and extend from the dune ridges immediately landward of the foredune to the inland toe of the most inland slope,

   (iii) migrating dunes. These are dunes which have changed location through time. Coastal dunes generally migrate inland,

   (iv) artificial dunes. These are accumulation of sediment in dune form which have been built by any non-natural process such as bulldozing or sand fencing,

   (v) stabilized dunes. These are dunes maintained in a fixed location by artificial means,

   (vi) dune fields. These include but are not limited to any combination of the dune types defined in this section.

3. High Risk Beach Erosion Areas are ocean or inlet shorelines that are eroding and/or have a history of erosion, causing them to be highly susceptible to further erosion and damage from storms. High Risk Beach Erosion Areas may be identified by any one of the following characteristics:

   (1) Lack of beaches
   (2) Lack of beaches at high tide
   (3) Narrow beaches
   (4) High beach mobility
   (5) Foreshore extended under a boardwalk
   (6) Low dunes or no dunes
   (7) Escarped foredune

(8) Gaps in dune fields
(9) Steep beach slopes
(10) Cliffed bluffs adjacent to beach
(11) Insufficient dune or bluff vegetation
(12) Exposed, damaged or breached jetties, groins or seawalls
(13) High long-term erosion rates
(14) Pronounced downdrift effects of groins (jetties)

High Risk Beach Erosion Areas extend inland to the limit of the area likely to be eroded in less than 50 years or to the first public paved road, whichever is less. The illustrative High Risk Beach Erosion Areas identified by DEP in 1977 may become Overwash Areas, Guts, Ocean or some other land or water type after a storm.

4. Sand Accretion Areas are areas where littoral offshore or other natural currents or storms have deposited sufficient sand that new land is forming. In some cases dune grasses and other water's edge vegetation may be starting to grow.

5. Overwash Areas consist of an overwash fan and throat. An overwash fan is a gently sloping, conical accumulation of sediment deposited landward of the beach by the overwash processes that result from storm wave activity. An overwash throat is a low narrow area through the foredune where water passes during storms and carries sediment to the overwash fan. The seaward limit of overwash sediment is the throat. The landward limit of overwash is the inland limit of sediment transport.

(b) Policies

1. Activities that adversely affect the natural functioning of the Beach and Dune System are discouraged unless, specifically permitted by policies 2, 3, 4, or 5.

2. The following activities are conditionally acceptable in the Beach and Dune System.

(i) Demolition and removal of paving and structures,

(ii) Sediment deposition to create new dunes,

(iii) Planting of adapted vegetation,

(iv) Development of limited unpaved pedestrian walkways through dunes and overwash areas to the beach,

(v) Shore Protection Structures which meet the Use conditions of Section 7:7E-7.11(e).

3. Public access to beaches is encouraged. Coastal development that unreasonably restricts public access to beaches is prohibited.

4. If a Sand Accretion Area obstructs a navigation channel, maintenance dredging is conditionally acceptable provided that an acceptable dredge spoil disposal site is used (See Sections 7:7E-4.10(g) and 7:7E-7.12).

5. Shore protection structures or other waterfront developments in or adjacent to High Risk Beach Erosion Areas that would contribute to significant updrift or downdrift erosion or accretion are discouraged.

(c) Rationale

1. Beaches

Undeveloped beaches are vital to the New Jersey resort economy. Unrestricted access for recreational purposes is desirable so that the beaches can be enjoyed by all residents and visitors of the state. Public access will be required for any beaches obtaining state funds for shore protection purposes. Beaches are subject to coastal storms and erosion from offshore currents. Public health and safety considerations require that structures be excluded from beaches to prevent or minimize loss of life or property from storms and floods, except for some shore protection structures and linear facilities, such as pipelines, when nonbeach locations are not prudent or feasible. Wet sand beaches have been designated a Geographic Area of Particular Concern (GAPC) by DEP under the federal Coastal Zone Management Act.

2. Dunes

Ocean and bayfront dunes are an irreplaceable physical feature of the natural environment possessing outstanding geological, recreational, scenic and protective value. Protection and preservation in a natural state is vital to this and succeeding generations of citizens of the State and the Nation. The dunes are a dynamic migrating natural phenomenon that helps protect lives and property in adjacent landward areas, and buffers barrier islands and barrier beach spits from the effects of major natural coastal hazards such as hurricanes, storms, flooding and erosion. Natural dune systems also help promote wide sandy beaches and provide important habitat for wildlife species.

Extensive destruction of dunes has taken place in this century along most of the coast. This disruption of the natural processes of the beach dune system has led to severe erosion of some beach areas, jeopardized the safety of existing structures on and behind the remaining dunes and upland of the beaches; increased the need to manage development in shorefront areas no longer protected by dunes; interfered with the sand balance that is so essential for recreational beaches and the coastal resort economy; necessitated increased public expenditures by citizens of the entire State for shore protection structures and programs; and increased the likelihood of major losses of life and property from flooding and storm surges.

The policy encourages the natural functioning of the dune system and encourages restoration of destroyed dunes, to protect and enhance the coastal beach dune areas, and to devote these precious areas to only those limited land uses which preserve, protect and enhance the natural environment of the dynamic dune system.

3. High Risk Beach Erosion Areas

As a result of continuing rising sea levels and active storm-induced sand movement and offshore currents (littoral drift), the Atlantic coastline of New Jersey is a retreating shore. Coastal erosion also affects the bayshores of New Jersey. The rate of retreat, or erosion, is not uniform, and varies locally depending upon the nature and magnitude of coastal processes operating within individual parts of the shoreline. Certain parts of the shoreline have a higher risk for further erosion. Development other than restoration measures should be sharply restricted in these areas in order to protect public safety and prevent loss of life and property.

In 1977, The Center for Coastal and Environmental Studies at Rutgers University completed a study commissioned by DEP entitled Coastal Geomorphology of New Jersey, which analyzed the problems of shoreline erosion, classified the shoreline and identified fourteen specific examples of high risk erosion areas:

1. Cumberland County - Delaware Bay Shore (developed portions along bayshore)
2. Middle Township (developed portions of bayshore), Cape May County
3. Cape May City
4. Northern Wildwood (where Hereford Inlet fronts beach)
5. Strathmere (Putnam Avenue to end of developed island)
6. Ocean City (3rd St. to 18th St.)
7. Ocean City (E. Atlantic Blvd. to Newcastle Rd.)
8. Atlantic City (where Absecon Inlet fronts beach, Oriental Ave. to Parkside)
9. Barnegat Light (8th to 4th St.)
10. Loch Arbour to Elberon
11. Long Branch
12. Sea Bright and Monmouth Beach
13. Raritan Bay (developed portions along bayshore)
14. Sea Isle City (southern half)

4. Sand Accretion Areas

Natural shoreline processes transport sand eroding in one place and deposit it in another. The sand accretes in deposition areas to form new beaches and dunes. This process is an important part of the natural shore protection against storms and should not be hindered. The practice of bulldozing these accretion areas for beach nourishment or other purposes is specifically against the intent of this policy.

5. Overwash Areas

Overwash Areas indicate weaknesses in natural and built shore protection. Hazard has been demonstrated, often with extensive property damage. This is a natural shoreline movement process associated with storms and rising sea level and is one of the processes by which barrier islands migrate inland. Overwash Areas

are unsuitable locations for further development, and public funds should not be used to rebuild damaged shore protection structures. The return of these areas to a natural state, particularly if new dune formation is promoted is, therefore, desirable.

7:7E-3.22 Central Barrier Island Corridor

(a) Definition

The Central Barrier Island corridor is that portion of barrier islands and spits or peninsulas (narrow land areas surrounded by both bay and ocean waters and connected to the mainland) that lies upland of Wetlands, Beach and Dune Systems, Filled Water's Edges, and Existing Lagoon Edges that line the ocean and bay sides of a barrier island or spit. Central Barrier Island Corridor does not apply to the headlands of northern Ocean County, Monmouth County, and the tip of Cape May County, which are part of the mainland.

(b) Policies

1. New or expanded development within the Central Barrier Island Corridor is conditionally acceptable provided that the criteria for High Development Potential are met, as defined in the policy for Land Areas (see Section 7:7E-5.5).

2. The acceptable density of new development shall be determined using the high-rise policy for residential structures.

(c) Rationale

All of New Jersey's barrier islands and spits, except for Pullen Island in the Brigantine National Wildlife Refuge, are developed to varying degrees, largely as a result of incremental decisions made beginning more than one hundred years ago. Because the public facilities (roads and utilities) necessary to support urban and resort development already exist, and should be protected on New Jersey's barrier islands, and because development pressure is intense on barrier islands, the acceptability for development is to be determined by the Location Policy's criteria for residential development on Land Areas. Use of the high development potential criterion will generally accept infill projects and discourage extensions of development on barrier islands and spits. The high-rise policies will limit sharp increases in density on the presently developed islands.

The policy recognizes the diversity of New Jersey's barrier islands, from Absecon Island with the resort city and urban center of Atlantic City to Long Beach Island with largely single-family seasonal homes. Implementation of the policy is expected to reinforce the existing character of New Jersey's developed barrier islands and not add appreciably to the public service costs and emergency evacuation (in times of hurricanes) problems of these islands.

7:7E-3.23 Wetlands

(a) Definition

Wetlands are areas where the substrate is inundated or saturated by surface or groundwater water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions which are subject to the Wetlands Act, or the Coastal Area Facility Review Act (CAFRA) or the Waterfront Development Law.

Wetlands regulated under the Wetlands Act of 1970 are delineated at a scale of 1:2,400 on official maps as listed at N.J.A.C. 7:7A-1.13. All coastal wetlands situated in the Raritan Basin, south along the Atlantic Ocean and north along Delaware Bay and River are subject to the Wetlands Act.

Under CAFRA, DEP regulates freshwater wetlands and forested wetlands such as white cedars on sites proposed for the major developments requiring a CAFRA permit.

Generalized location maps of White Cedar Stands and other woody wetlands can be found in J. McCormick and L. Jones, The Pine Barrens Vegetation (1973), and forest type maps within DEP's Bureau of Forestry, and, in some areas, in the vegetation maps prepared by the N.J. Pinelands Commission for the Comprehensive Management Plan.

The Waterfront Development Law under the proposed rules will regulate all wetlands north of the Raritan Basin, except for some areas within the Hackensack Meadowlands District, and all coastal wetlands along the Delaware River not regulated under the Wetlands Act.

Generalized locations of some wetland types can be found in county soil surveys prepared by the U.S. Department of Agriculture, Soil Conservation Service.

(b) Policy

1. In general, development of all kinds is prohibited in wetlands, unless DEP can find that the proposed development meets the following four conditions (see also N.J.A.C. 7:7A-1.5 and 1.7):

   (i) Requires water access or is water oriented as a central purpose of the basic function of the activity (this policy applies only to development proposed on or adjacent to waterways),

   NOTE: This means that the use must be water dependent as defined in Section 7:7E-1.6(c)8.

   (ii) Has no prudent or feasible alternative on a non-wetland site,

(iii) Will result in minimum feasible alteration or impairment of natural tidal circulation (or natural circulation in the case of non-tidal wetlands), and

(iv) Will result in minimum feasible alteration or impairment of natural contour or the natural vegetation of the wetlands.

2. In particular, dumping solid or liquid wastes and applying or storing certain pesticides on wetlands are prohibited.

3. Both the restoration of degraded wetlands as a mitigation measure for certain types of approved wetlands development and the creation of new wetlands in non-sensitive areas are encouraged. The Division of Coastal Resources previously has required restoration of temporarily disturbed wetlands and will continue to do so on a case-by-case basis.

4. Under the Wetlands Act, the activities of DEP, the Tidelands Resource Council, the State Mosquito Control Commission and county mosquito control commissions are exempted from the coastal wetlands policies within mapped coastal wetlands. Voluntary administrative compliance with the regulations adopted by DEP under to the Act is not, however, precluded.

5. Development that adversely affects white cedar stands is prohibited.

(c) Rationale

The environmental values, and fragility of coastal wetlands have been officially recognized in New Jersey since the passage of the Wetlands Act of 1970 (N.J.S.A. 13:9A-1 et seq.) Coastal wetlands are the most environmentally valuable land areas within the coastal zone.

Coastal wetlands contribute to the physical stability of the coastal zone by serving as: (i) a transitional area between the forces of the open sea and upland areas that absorb and dissipate wind-driven storm waves and storm surges, (ii) a flood water storage area, and, (iii) a sediment and pollution trap.

Also, wetlands naturally perform the wastewater treatment process of removing phosphorous and nitrogenous water pollutants, unless the wetlands are stressed.

The biological productivity of New Jersey's coastal wetlands is enormous and critical to the function of estuarine and marine ecosystems. The emergent cord grasses and associated algal mats convert inorganic nutrients into organic plant material through the process of photosynthesis. In this way, the primary base for estuarine and marine food webs is provided. The principal direct dietary beneficiaries of organic wetland detritus are bacteria and protozoan, which are in turn fed upon by larger invertebrates. Important finfish, shellfish, waterfowl, and other resources feed upon these invertebrates. New Jersey's Coastal Wetlands are prime wintering habitat annually for hundreds of thousands of migratory waterfowl. Approximately two-thirds of marine finfish and shellfish are known to be estuarine, and, therefore, wetlands-dependent.

Inland herbaceous wetlands, such as bogs, play an important role in regulating the quality of water in streams that flow to the estuaries. They retard runoff and store storm waters. They are important areas of primary productivity for estuarine systems. They are critical habitats for several species of plants and animals that are endangered or threatened. They are productive habitats for other game and non-game animals, such as deer. These wetlands also serve as fire breaks, and may limit the spread of forest, brush, or grass fires. They are inappropriate development sites due to poor drainage and load bearing capacity of the underlying soils.

Forested Wetlands play a critical role in coastal ecosystems. Roots and trunks stabilize shorelines and trap sediment. They are physical and biochemical water filter areas maintaining tidal stream water quality. They provide primary protection to estuarine areas from decaying plant material flushed down by streams. They are critical habitats, breeding areas and movement corridors for many coastal species including rare and endangered species. High productivity, high water availability and high edge to area ratio make these areas especially productive wildlife areas.

White cedar stands, as well as other lowland swamp forests, play an important role in purifying water in coastal streams, retarding runoff, providing scenic value, and serving as a rich habitat for many and endangered plant and animal species, as well as game species, such as deer. White cedars also act as forest fire breaks. White cedar stands most commonly occur in flood plains and in the fringe areas of drainage ways and bogs, which are frequently underlain with saturated organic peat deposits. This material is particularly unsuited for development unless highly altered. Many of these locations are Natural Water's Edge Areas.

White cedar is New Jersey's most valuable timber species and grows in discrete stands. The wood has a long tradition of maritime and local craft uses. Unfortunately, white cedars have been eliminated from much of their previous range in New Jersey.

7:7E-3.24 Cranberry Bogs

(a) Definition

Cranberry Bogs are areas around streams which have been impounded and are now, or have formerly been, used for cranberry farming. These areas are intermittently flooded in the process of cranberry growing.

(b) Policy

1. Cranberry farming is encouraged provided that water quality and diversion standards are satisfied.

2. Wildlife refuges in former Cranberry Bogs are encouraged.

3. Other uses of former Cranberry Bogs shall conform to the policies for Wetlands (7:7E-3.23).

(c) Rationale

Cranberry farming is a small but locally significant part of the coastal economy and should be protected and promoted. Growing cranberries requires plentiful supplies of high quality ground and surface water. Care must be taken, therefore, so that cranberry growing does not unacceptably impact local hydrology or water quality.

Abandoned Cranberry Bogs are ideal wildlife refuges if properly managed since habitat quality can be improved by intermittent flooding and the mechanisms to do this exist. Proposals that include wildlife management programs within Cranberry Bogs will therefore be favored. Abandoned Cranberry Bogs, if undisturbed, take on wetlands characteristics.

7:7E-3.25 Wet Borrow Pit Margins

(a) Definition

Wet Borrow Pit Margins are areas surrounding Wet Borrow Pits (see definition 7:7E-3.15(a)). They extend from normal water level in the borrow pit below to the inland limit of a Water Quality Buffer. The width of this buffer will vary by substrate texture. Where soils are coarse, i.e. sands or gravels, the width will be 100 feet; elsewhere, it will be 50 feet.

(b) Policy

1. Surface mining is conditionally acceptable provided that other coastal policies, particularly the Use Policies on Mining, are satisfied.

2. Wildlife habitat uses are encouraged.

3. Non water dependent uses are prohibited unless acceptable filling (See Section 7:7E-3.15(b) 3 and 4) in the Wet Borrow Pit removes these areas from the Water's Edge and reclassifies them.

4. If residential development takes place landward of the Wet Borrow Pit Margin, use of the margin must be consistent with the requirements for a water quality buffer around Wet Borrow Pits (see Section 7:7E-3.15(b) 4(v)).

5. All proposed uses shall grade all banks at the immediate water's edge, except those in acceptable water access areas, to a slope not greater than 33 percent, and shall stabilize the surface and initiate succession of native vegetation adapted to water's edge conditions.

6. Limited recreational use of the Wet Borrow Pit Margin is acceptable providing that the water buffer disturbance is limited in extent and wildlife habitat disturbance is minimized.

(c) Rationale

Wet Borrow Pit Margins are the water quality buffer areas of Wet Borrow Pits. The still water in the lakes is very susceptible to all types of impacts. A Water Quality Buffer provides a biophysical filter and bank stabilization. Preserving this area also maximizes the important wildlife habitat value of the land-water interface.

The policy on Wet Borrow Pits allows limited filling of the lakes and this may remove Wet Borrow Pit Margins from the water's edge. The former margin areas shall then be reclassified as appropriate, and policy analysis shall proceed on the new classes.

Mixed use projects that include wildlife habitats, and low and high intensity waterfront recreation are an acceptable use of some former borrow pits, since they realize the scenic and recreational value of the lakes and waterfront while preserving wildlife value. Care should be taken in the layout and design of the site to provide adequate separation and barriers to protect wildlife areas from human disturbance.

Recreational use of Wet Borrow Pit Margins is possible without losing the wildlife value, provided that intensive disturbance is limited to occasional concentrated water access points, and elsewhere banks are stabilized, native habitats promoted and human access controlled.

7:7E-3.26 Coastal Bluffs

(a) Definition

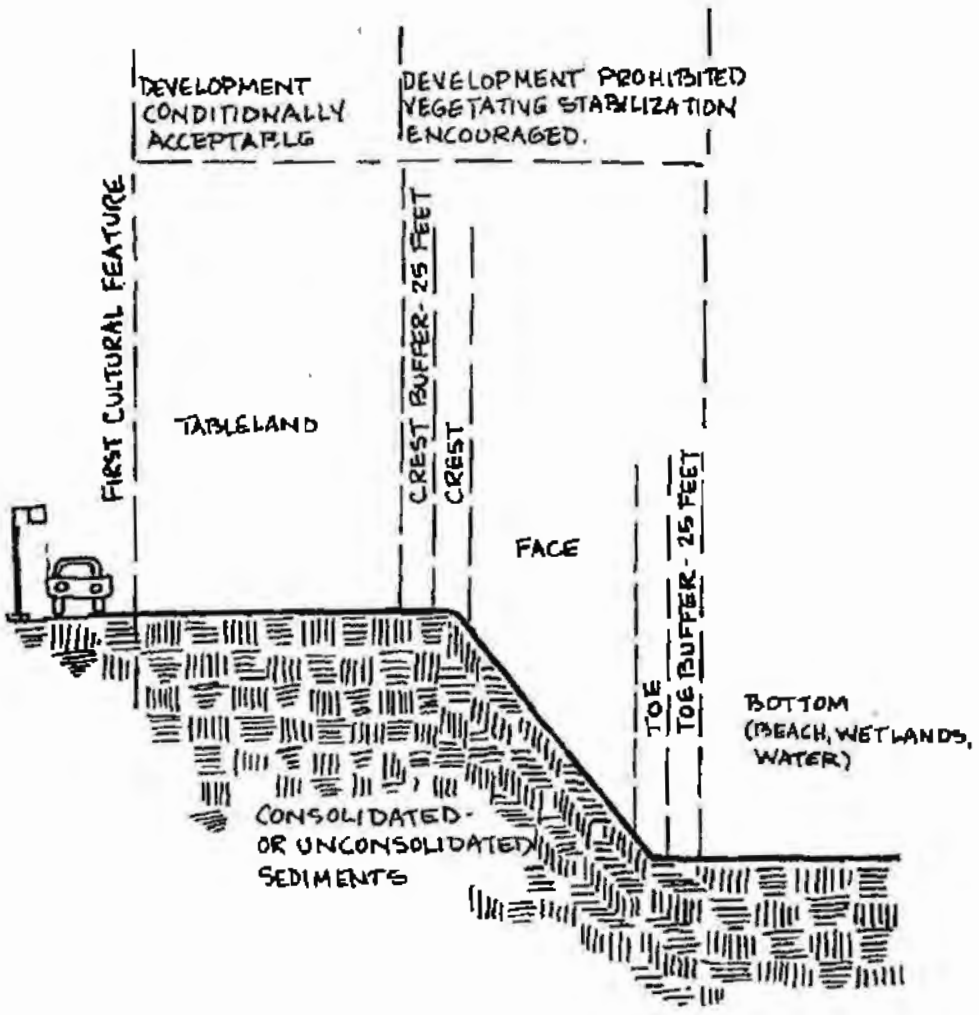
A coastal bluff is a steep slope of consolidated (rock) or unconsolidated (sand, gravel) sediment that is formed by wind and water erosion forces, and which is adjacent to the shoreline or demonstrably associated with shoreline processes. A bluff is composed of three main features (see Figure 17): (1) the toe or the interface of the beach or other bottom area (water, wetlands, etc.), (2) the face of the slope, and (3) the crest of the top of the slope where the bluff becomes the flat tableland. The waterward limit of the bluff is the toe buffer, which extends 25' waterward of the toe of the bluff face. The inland limit is the first cultural feature, such as a road or structure. The term "cliff" will be used as a synonym for bluff, and the same policies will apply, although the cliff face is typically steeper than the bluff face, presenting an almost vertical surface. Steep slopes (Section 7:7E-3.29) are isolated inland areas with slopes greater than 15 percent. All steep slopes associated with shoreline processes, i.e. adjacent to the shoreline or contributing sediment to the system, will be considered coastal bluffs.

(b) Policy

1. All development on bluffs, from the waterward limit of the toe buffer to the first cultural feature, that will endanger the health, safety and welfare of people and property, is prohibited.

Figure 17

# COASTAL BLUFFS




"BLUFF PROFILE"

2. All development is prohibited on the bluff face and within the crest and toe buffer areas. The stabilization of the face and buffer areas through vegetation is encouraged for the protection of the health, safety and welfare of people and property.

3. Structural mitigation measures designed for the purpose of slowing bluff erosion are conditionally accepted, provided that they do not interfere with natural shoreline sediment supply.

4. All development on the tableland is conditionally acceptable, based on the rate of bluff erosion. In general, structures are prohibited in areas which will be eroded during the life of the structure. If a bluff has an erosion history of five feet a year and the projected life of the structure is fifty (50) years, then the structure is prohibited within 250 feet (50 x 5) of the crest buffer. Applicants shall submit historical evidence recording bluff movement and submit a realistic estimate of the life of the structure, noting that most structures are used well beyond their nominal lifetimes.

(c) Rationale

Coastal bluffs are most prominent in New Jersey along the Delaware River at Roebling and Florence and along the Raritan Bay at Aberdeen Township and Atlantic Highlands. They have a significant function in storm damage prevention and flood control, by eroding in response to wave action and resisting erosion caused by wind and rain runoff. Bluff erosion is also an important source of beach sediment where the coastal bluff faces an open water body. Disturbance of coastal bluffs which undermine their natural resistance to wind and rain erosion increase the risk of their collapse and cause cuts in the bluff. This increases danger to structures at the top of the bluff and reduces the bluff's ability to buffer upland areas from coastal storms. Vegetation helps stabilize bluffs and can reduce the rate of erosion caused by wind and rain runoff.

7:7E-3.27 Intermittent Stream Corridors

(a) Definition

Intermittent Stream Corridors are areas including and surrounding surface water drainage channels in which there is not a permanent flow of water. They are also called swales and ephemeral stream corridors. The inland extent of these corridors is either the inland limit of soils with a seasonal high water table equal to, or less than one foot, or a distance of 25 feet on either side of the channel, whichever is greater (see Figure 18).

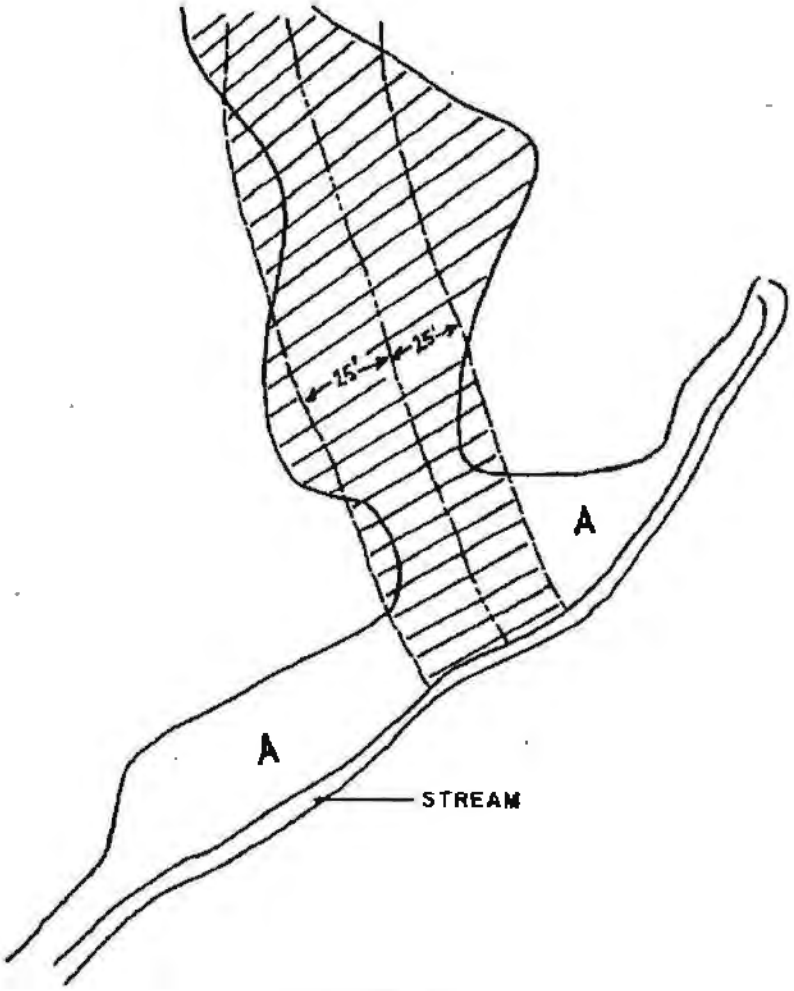
(b) Policy

1. Uses that promote undisturbed growth of native vegetation and wildlife habitat value are encouraged.

2. Cutting, filling, damming, detention basins for runoff recharge paving, structures or any other activities that would directly degrade the function of Intermittent Stream Corridors, except for linear infrastructure for which there is no feasible alternate route, is prohibited.

Figure 18

INTERMITTENT STREAM CORRIDOR




Intermittent Stream

25 foot margin on each side of corridor

Limit of soils with seasonal high water table equal to, or less than, one foot

Intermittent Stream Corridor

Note: Although Area A has a high water table, that high water table is associated with the stream rather than with the intermittent stream. Area A, therefore, would be some Special Water Edge type other than Intermittent Stream Corridor

(c) Rationale

Intermittent Stream Corridors are the spring areas for coastal streams. They are very susceptible to surface and subsurface disturbance. The water quality of coastal streams and estuaries depends in part on undisturbed spring areas. They are productive areas since water is at or near the surface, and are important wildlife habitats. For these reasons the intention of the policies is preservation.

7:7E-3.28 Farmland Conservation Areas

(a) Definition

Large, contiguous areas of 20 acres or more (in single or multiple tracts) with soils of classifications in the Capability Classes I, II and III as mapped by the U.S. Department of Agriculture, Soil Conservation Service, in National Cooperative Soil Surveys,and Special Soils for Blueberries and Cranberries which are actively farmed, suitable for farming, or forested, and located in Cape May, Cumberland or Salem Counties are defined as Farmland Conservation Areas.

(b) Policy

1. Farmland Conservation Areas shall be maintained and protected for open space or farming purposes to the maximum extent practicable.

2. Continued, renewed, or new farming is encouraged in Farmland Conaervation Areas.

3. Conversion of Farmland Conservation Areas to development is acceptable only when the predominant surrounding pattern of development is urban or suburban and continued, renewed, or new farming is likely to produce unacceptable urban-agricultural conflict.

(c) Rationale

Farmland Conservation Areas are an irreplaceable natural resource essential to the production of food and fiber, particularly in the "Garden State." Conservation of large, contiguous areas of these lands for farming serves both private and public interests, particularly in terms of ready access to locally-grown food, jobs and open space preservation. At the same time, the policy here recognizes the desirability of minimizing conflicts between farm and urban areas.

In the coastal zone, only Cape May, Cumberland and Salem Counties, have significant acreage of agricultural soils located in a manner generally compatible with present or future farming. In Cape May County, approximately 40 percent of the county's soils qualify as Capability Classes I and II (including areas outside of the coastal zone boundary). Some of these irreplaceable soil resources have already been converted to urban uses. Other areas which are of a sufficiently large scale to make farming feasible should be reserved for farming purposes, provided that rural-urban conflicts are minimized.

7:7E-3.29 Steep Slopes

(a) Definition

Steep slopes are areas with slopes greater than 15 percent, which are not coastal bluffs (7:7E-3.26).

(b) Policy

Development on steep slopes greater than 20% is prohibited, unless the regrading of a very small part of a site (typically, less than 5%) is essential to the overall landscaping plan for the site, in which case the grading shall be done to less than a 10% slope.

Man-made steep slopes above the slope at which the sediments normally stabilize (angle of repose) shall either be regraded to a slope at least 20% below the angle of repose, or stabilized and planted with native woody vegetation.

(c) Rationale

Only a few Steep Slopes Areas exist in the relatively flat Coastal Plain of New Jersey. Isolated steep slope areas are found near headwaters of coastal streams.

Preservation of steep slopes controls soil erosion, protects up-slope lands, minimizes pollution of surface waters, reduces flooding, preserves banks of streams and intermittent streams and maintains water flow in headwaters. When vegetation is stripped, rainfall strikes surface soils causing soil particle movement through surface water flow and gravity, which result in increased surface runoff and downstream flooding. When this silty water enters a surface water body, increased turbidity and sedimentation usually follow which can cause reduction of productivity and flood water storage capacity. Aesthetics are also affected when erosion occurs and topsoil is lost.

Slope maps are available from NJDEP-DGR based on U.S.G.S. Topographic Quadrangle sheets (1:24,000 scale). These maps show slopes in the following ranges. 0-2%, 2-5%, 5-10%, 10-15%, and more than 15% in the coastal plain; and 0-3%, 3-8%, 8-15%, and 15-25% in other parts of the State.

There are some man-made steep slopes left after such activities as mining and road grading. If such slopes are above the angle of repose of the sediments, there is danger of slumping.

7:7E-3.30 Dry Borrow Pits

(a) Definition

Dry Borrow Pits are excavations for the purpose of extracting coastal minerals which have not extended below the ground water level. This includes, but is not limited to, dry sand, gravel and clay pits, and stone quarries.

(b) Policy

1. Surface mining is conditonally acceptable, provided the Mining Use Policies (7:7E-7.8) are complied with.

2. Channeling clean surface runoff into dry sand and gravel pits for the purposes of aquifer recharge is encouraged. Pavement runoff may be channelled into dry borrow pits provided that it is adequately filtered to remove pavement contaminants.

3. Discharge of clean effluent from liquid waste treatment facilities for aquifer recharge is encouraged (e.g. tertiary sewage effluent) provided ground water quality is monitored and maintained.

4. Storing water in impermeable dry borrow pits is conditionally acceptable.

5. Dredge spoil disposal is conditionally acceptable provided that:

   (i) the spoil will not degrade groundwater quality,

   (ii) the spoil is of a particle size that will not disturb ground water hydrology, and

   (iii) spoil disposal is compatible with neighboring uses.

6. Solid waste disposal other than clean dredge spoil and not including radioactive or carcinogenic waste, is conditionally acceptable on a case by case basis provided that:

   (i) waste disposal is compatible with neighboring uses,

   (ii) the borrow pit is lined with clay, plastic or other impermeable material; leachate is collected, treated and discharged to the ground through an injection well or other technique that will not degrade groundwater quality; and maintenance will be available for the life of the landfill,

   (iii) the solid waste is stacked and interlayered with inert material,

   (iv) a reclamation plan is submitted with the application showing naturalistic final grading, surface improvement with topsoil and organic additives and planting to initial native successions with guarantees of survival for the first five years,

   (v) Elevations of landfill do not exceed original surface elevations before mining,

   (vi) The reclamation proposals are worked towards during dumping and completed at conclusion, and

   (vii) The applicant can demonstrate that even during accidental failure of a treatment plant, the leachate cannot degrade ground or surface water.

7. Filling or grading for construction is conditionally acceptable provided that:

(i) Other coastal policies are satisfied, and

(ii) The fill is clean and of a texture not to disturb local ground water flow.

8. All proposed uses must reduce all banks to a slope of less than one in three, stabilize them, prepare them for planting and initiate native successions.

(c) Rationale

Dry borrow pits have been used successfully in Long Island to recharge depleted aquifers by channeling surface runoff and tertiary sewage effluent into them. These uses are encouraged in New Jersey's coastal areas, especially where there is a history of saline intrusion. Water shall be discharged, wherever possible, into the aquifer layer most impacted by saline intrusion. There is a critical shortage in coastal areas of disposal sites for dredge spoil and solid waste. Dry Borrow Pits offer opportunities of low-impact disposal if they are compatible with existing uses, the leachate is carefully controlled and the site reclaimed on conclusion. Dry Borrow Pits have comparatively low environmental value and so are acceptable sites for development if all other policies are satisfied.

7:7E-3.31 Historic and Archeological Resources

(a) Definition

Historic and Archeological Resources include objects, structures, neighborhoods, districts, and man-made or man-modified features of the landscape, including archaeological sites, which either are on or are eligible for inclusion on the State or National Register of Historic Places. The criteria for eligibility are defined at N.J.A.C. 7:4-4.2.

(b) Policy

1. Development that detracts from, encroaches upon, damages, or destroys the value of Historic and Archeological Resources is discouraged.

2. Development that incorporates Historic and Archeological Resources in adaptive reuse is encouraged.

3. Scientific recording and/or removal of the Historic and Archeological Resources or other mitigation measures must take place, if the proposed development would irreversably and/or adversely affect Historic and Archeological Resources.

4. New development in undeveloped areas near Historic and Archeological Resources is conditionally acceptable, provided that the design of the proposed development is compatible with the appearance of the Historic or Archeological Resource.

(c) Rationale

The range of Historic and Archeological Resources along the coast is broad and diverse, from the oceanfront Victorian "gingerbread" architecture, to examples of New Jersey's maritime heritage, to colonial homes, to Indian artifacts. The public interest requires the preservation of both representative and unique examples of Historic and Archaeological (cultural) resources of the coast, in order to provide present and future generations with a sense of the people who lived, worked, and visited the coast in the past. DEP's Office of Historic Preservation maintains an up-to-date list of properties on the New Jersey State Register of Historic Places (N.J.S.A. 13:1B-15.128 et seq.) and the National Register of Historic Places. As the State Historic Preservation Officer, the Commissioner of DEP, and staff of DEP's Office of Historic Preservation and Office of Environmental Review advise DEP's Division of Coastal Resources on the historic resources aspects of coastal decisions.

7:7E-3.32 Specimen Trees

(a) Definition

Specimen trees are the largest known individual trees of each species in New Jersey. The DEP-Bureau of Forestry maintains a list of these trees (see New Jersey Outdoors, September-October 1977 for a listing of specimen trees). In addition, large trees approaching the diameter of the known largest tree shall be considered Specimen Trees.

(b) Policy

Development is prohibited that would significantly reduce the amount of light reaching the crown, alter drainage patterns within the site, adversely affect the quality of water reaching the site, cause erosion or deposition of material in or directly adjacent to the site, or otherwise injure the tree. The site of the tree extends to the outer limit of the buffer area necessary to avoid adverse impacts, or 50 feet from the tree, whichever is greater.

(c) Rationale

Many interested citizens have assisted DEP, over decades, in locating specimen trees. This process includes reporting large trees that can be considered specimens even though they may not be the largest in New Jersey of a species. Specimen trees are an irreplaceable scientific and scenic resource. Often these trees have also been associated with historical events.

7:7E-3.33 Endangered or Threatened Wildlife or Vegetation Species Habitats

(a) Definition

Land, Water's Edge; or Water Areas known to be the habitat of any wildlife (fauna) or vegetation (flora) identified as "endangered" or "threatened" species on official federal or state lists of endangered or threatened species, or under active consideration for state or national

listing, are considered special areas. The definition also includes a sufficient buffer area to insure continued survival of the species. DEP intentionally restricts dissemination of data showing the geographic distribution of these species habitats, in order to protect the habitats.

(b) Policy

Development that would adversely affect the habitats of endangered or threatened species is prohibited. DEP will review proposals on a case-by-case basis.

(c) Rationale

Endangered and threatened species are organisms which are facing possible extinction in the immediate future due to loss of suitable habitat, and past overexploitation through human activities or natural causes. Extinction is an irreversible event and represents a loss to both future human use, education research and to the interrelationship of all living creatures with the ecosystem.

At present, the official list of endangered wildlife (fauna) species in New Jersey, available from DEP, Division of Fish, Game and Wildlife (see N.J.A.C. 7:25-11.1), includes the following species: Shortnose sturgeon, Blue-spotted salamander, Eastern tiger salamander, Bog turtle, Bald Eagle, Peregrine Falcon, Osprey, Cooper's Hawk, and Indiana Bat, as well as various marine mammals and marine reptiles. Additional species have threatened status. No official state or federal list of endangered or threatened vegetation (flora) species exists, although the Smithsonian Institution did submit a report to the U.S. Fish and Wildlife Service in 1975 identifying seventeen species of New Jersey plants for consideration for adoption on federal lists (see 40 FR, No. 1217: 27863-27864, July 1, 1975). Habitats of species eligible to be on the list are included in the definition so that the policy will apply to species identified since the last promulgations of the official list.

7:7E-3.34 Critical Wildlife Habitats

(a) Definition

Critical Wildlife Habitats are specific areas known to serve an essential role in maintaining wildlife, particularly in wintering, breeding, and migrating. Rookeries for colonial nesting birds such as herons, egrets, ibis, terns, gulls, and skimmers, stopovers for migratory birds, such as the Cape May Point region, and natural corridors for wildlife movement merit a special management approach through designation as a Special Area. Ecotones, or edges between two types of habitats, are a particularly valuable Critical Wildlife Habitat. Many Critical Wildlife Habitats, such as salt marsh water fowl wintering areas, and muskrat habitats, are singled out as Water or Water's Edge Areas.

Definitions and maps of Critical Wildlife Habitats are currently available only for colonial waterbird habitat in 1979 Aerial Colony Nesting Waterbird Survey for New Jersey (NJDEP, Division of Fish, Game and Wildlife). Until additional maps are available, sites will be considered on a case by case basis by the NJDEP Division of Fish, Game and Wildlife.

(b) Policy

Development that would adversely affect Critical Wildlife Habitats is discouraged, unless: (i) minimal feasible interference with the habitat can be demonstrated, (ii) there is no prudent or feasible alternative location for the development, and (iii) the proposal includes appropriate mitigation measures. DEP will review proposals on a case by case basis.

(c) Rationale

The State of New Jersey, as custodian of a particular portion of the national wildlife heritage, has the obligation of stewardship on behalf of the people of the state and nation to perpetuate wildlife species within its borders for the use, education, research, and enjoyment by future generations.

7:7E-3.35 Public Open Space

(a) Definition

Public Open Space constitutes land areas owned and maintained by state, federal, county and municipal agencies or non-profit private groups (such as conservation organizations and homeowner's associations) and dedicated to conservation of natural resources, public recreation, or wildlife protection or management. Public Open Space also includes State Forests, State Parks, and State Fish and Wildlife Management Areas and designated Natural Areas (N.J.S.A. 13:1B-15.12a et seq.) within DEP-owned and managed lands.

(b) Policy

1. New or expanded public or private open space development is encouraged at locations compatible or supportive of adjacent and surrounding land uses.

2. Development that adversely affects existing public open space is discouraged.

3. Development within existing public open space, such as campgrounds and roads, is conditionally acceptable, provided that the development complies with the Coastal Resource and Development Policies and is consistent with the character and purpose of the public open space, as described by the park master plan when such a plan exists.

(c) Rationale

As the rapid urbanization of New Jersey continues and leisure time increases, open space will play an increasingly important role in maintaining a desirable living environment for the residents of New Jersey. Even though the supply of open space has decreased under the growing pressure for development, the State's expanding population will require more public open space to satisfy its needs.

Not only is open space the basic resource for recreation facility development, it also performs other worthwhile functions. Open space can create public spaces in densely settled areas, shape urban growth, provide buffers for incompatible uses, retain contiguous farmland, insure the preservation of wildlife corridors, increase the economic value of adjacent land, and preserve distinct architectual, historic, and geologic sites.

The distribution of open space should not only be centered around the preservation of unique areas, but must also respond to the needs of people. Where possible, open spaces should be contiguous both visually and physically to promote a sense of continuity and to afford users continued movement through the public open spaces.

7:7E-3.36 Special Hazard Areas

(a) Definition

Special Hazard Areas include areas with a known actual or potential hazard to public health, safety, and welfare, or to public or private property, such as the navigable air space around airports and seaplane landing areas and potential evacuation zones around major industrial and energy facilities.

(b) Policy

Coastal development, especially residential and labor-intensive economic development, within Special Hazard Areas is discouraged. All development within Special Hazard Areas must include appropriate mitigating measures to protect the public health and safety.

(c) Rationale

Management of the coastal zone requires a concern for development that would directly or indirectly increase potential danger to life and property. Mitigating measures such as height limits near airports and evacuation plans for industrial and energy facilities may adequately address the concern in this area.

7:7E-3.37 Excluded Federal Lands

(a) Definition

Excluded Federal Lands are those lands that are owned, leased, held in trust or whose use is otherwise by law subject solely to the discretion of the United States of America, its officers or agents, and are excluded from New Jersey's Coastal Zone as required by the federal Coastal Zone Management Act.

(b) Policy

Federal actions on Excluded Federal Lands that significantly affect the coastal zone (spillover impacts) shall be consistent with the Coastal Resource and Development Policies, to the maximum extent practicable.

(c) Rationale

While the federal Coastal Zone Management Act requires that federal lands be excluded from a state's coastal zone, it is important that New Jersey's Coastal Resource and Development Policies explicitly note the location of these special areas in order that the spillover impacts of actions in these areas may be properly evaluated.

7:7E-3.38 Special Urban Areas

(a) Definition

Special urban areas are those areas defined in urban aid legislation (N.J.S.A. 52:27D-178) which designate municipalities qualified to receive State aid to enable them to maintain and upgrade municipal services and offset local property taxes. This Special Area includes the following 21 coastal municipalities:

| | | | |
|---|---|---|---|
| Asbury Park | Elizabeth | Long Branch | Passaic |
| Atlantic City | Hoboken | Millville | Perth Amboy |
| Bayonne | Jersey City | Neptune Twp. | Rahway |
| Bridgeton | Keansburg | New Brunswick | Trenton |
| Camden | Lakewood | Newark | West New York |
| | | North Bergen | |

(b) Policy

1. Development that will help to restore the economic and social viability of special urban areas is encouraged. Development that would adversely affect the economic well being of these areas is discouraged, when an alternative more beneficial to them is feasible. Development that would be of economic and social benefit and that serves the needs of local residents and neighborhoods is encouraged.

2. Housing, hotels, motels, and mixed use development are acceptable in water areas on existing pilings, and in Filled Water's Edge Areas.

3. Development is prohibited that does not provide public access to the waterfront, except in locations where such access cannot be safely provided.

(c) Rationale

This policy helps link the Coastal Management Program with other State efforts to focus on and restore New Jersey's urban areas. The policy would be applied to State actions on major proposals, such as shopping centers, outside urban areas which could drain resources from nearby urban areas, as well as to projects both in and out of urban areas which could help stimulate social and economic activity in urban areas.

The Filled Water's Edge policy which reserves the waterfront for water dependent uses should not be strictly applied in Special Urban Areas. Housing, hotels, motels and other commercial developments, which benefit from a waterfront location and stimulate the revitalization of a Special Urban Area would be consistent with State coastal objectives.

## 7:7E-3.39 Pinelands National Reserve and Pinelands Protection Area

(a) Definition

The Pinelands National Reserve includes those lands and water areas defined in the National Parks and Recreation act of 1978, Section 502 (P.L. 95-625), an approximately 1,000,000 acre area ranging from Monmouth County in the north, south to Cape May County and from Gloucester and Camden County on the west to the barrier islands of Island Beach State Park and Brigantine Island along the Atlantic Ocean on the east (see Figure 19). The Pinelands Protection Area is a slightly smaller area within the Pinelands National Reserve. It was designated for State regulation by the Pinelands Protection Act of 1979 (N.J.S.A. 13:18-1 et seq). The Pinelands Commission has been mandated by the law to develop a comprehensive management plan for the area by December 15, 1980. Within the Pinelands Protection Area, the law delineates a Preservation Area, where the plan shall "preserve an extensive and contiguous area of land in its natural state, thereby insuring the continuation of a pinelands environment ..." (Section 8c).

Within the Pinelands National Reserve, there is also an area designated a Critical Area under the authority of N.J.S.A. 58:11-43 et seq. DEP has adopted special Central Pine Barrens Ground and Surface Water Quality Standards (N.J.A.C. 7:9-4.6i and j). This Central Pine Barrens Region is also the oil and gas pipeline exclusion area as defined in Use Policy 7:7E-7.4.

The coastal municipalities wholly or partly within the Pinelands National Reserve Area include:

Atlantic County

| | |
|---|---|
| Brigantine City | Hamilton Township |
| Corbin City | Mullica Township** |
| Egg Harbor City* | Port Republic* |
| Egg Harbor Township | Somers Point City |
| Estell Manor Township | Weymouth Township |
| Galloway Township | |

Burlington County

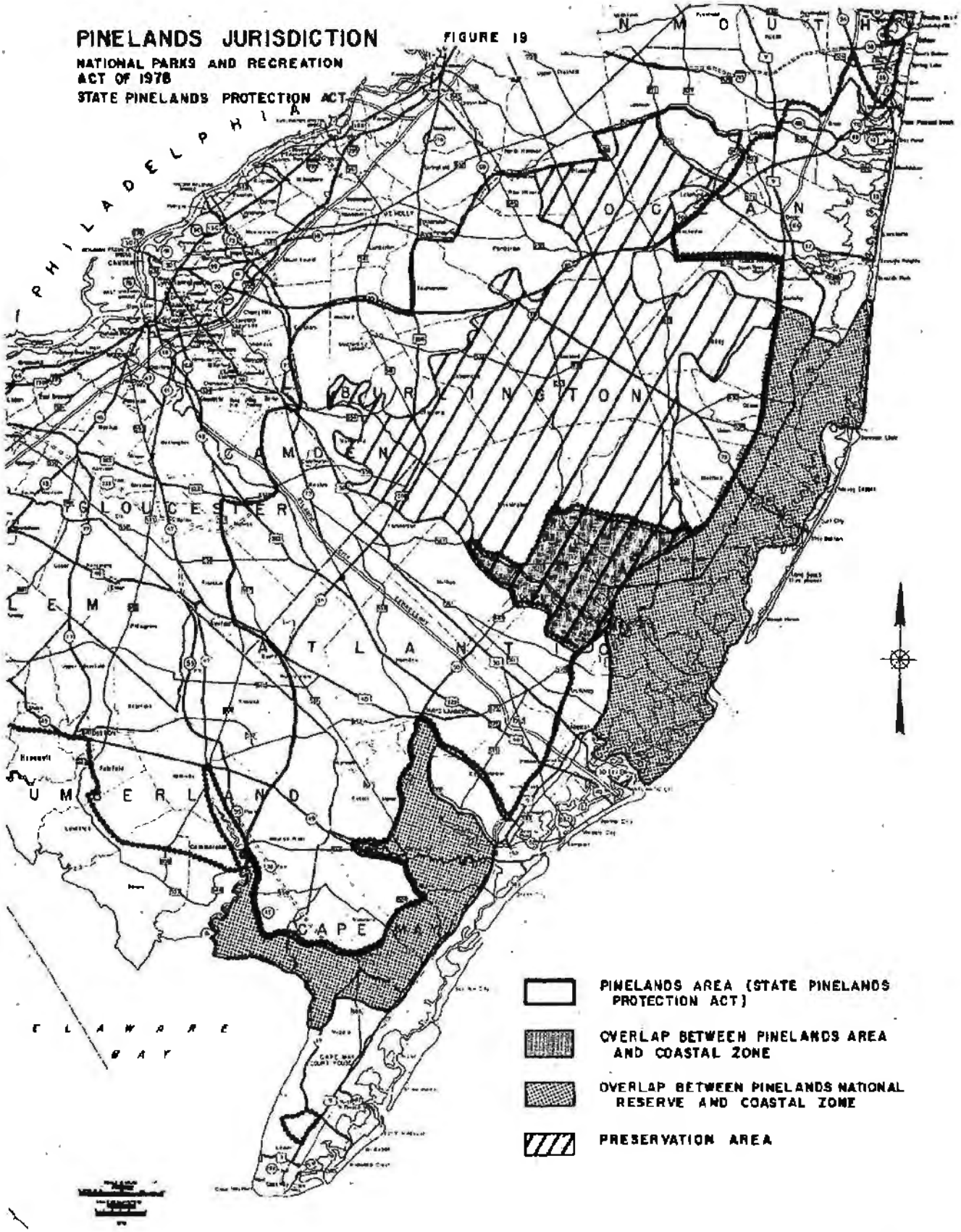
| | |
|---|---|
| Bass River Township** | Washington Township** |

Cape May County

| | |
|---|---|
| Dennis Township | Upper Township |
| Middle Township | Woodbine Borough |

Cumberland County

Maurice River Township


PINELANDS JURISDICTION
FIGURE 19
NATIONAL PARKS AND RECREATION ACT OF 1978
STATE PINELANDS PROTECTION ACT
PHILADELPHIA
NEW YORK
BURLINGTON
CAMDEN
GLOUCESTER
ATLANTIC
CUMBERLAND
CAPE MAY
DELAWARE BAY
PINELANDS AREA (STATE PINELANDS PROTECTION ACT)
OVERLAP BETWEEN PINELANDS AREA AND COASTAL ZONE
OVERLAP BETWEEN PINELANDS NATIONAL RESERVE AND COASTAL ZONE
PRESERVATION AREA

Ocean County

| | |
|---|---|
| Barnegat Township | Lakehurst Borough |
| Beachwood Borough | Little Egg Harbor Township** |
| Berkeley Township | Manchester Township |
| Dover Township | Ocean Township |
| Eagleswood Township* | South Toms River Borough |
| Lacey Township | Stafford Township |
| | Tuckerton Borough |

* municipalities with areas in both the Pinelands Protection Area and the Coastal Zone. These areas are all within the Preservation Area of the Pinelands Protection Area (N.J.S.A. 13:18A-1 et seq.).

** municipalities included within the Pinelands Protection Area area, the Central Pine Barrens Region as defined by N.J.A.C. 7:9-4.6i and j and the Coastal Zone.

(b) Policy

Coastal development shall be consistent with the intent, policies and objectives of the National Parks and Recreation Act of 1978, P.L. 95-625, Section 502, creating the Pinelands National Reserve, and the State Pinelands Protection Act of 1979 (N.J.S.A. 13:18A-1 et seq.).

(c) Rationale

The New Jersey Pinelands contain approximately 1,000,000 acres of high quality surface and groundwater resources. In response to the need to protect, preserve and enhance the unique features of the Pinelands and the significant ecological, natural, cultural, recreational, educational, agricultural and public health resources of the Pinelands area, the federal government passed the National Parks and Recreation Act of 1978, (P.L. 95-625), the Governor issued Executive Order No. 71 in February 1979, and the Legislature passed the Pinelands Protection Act in June, 1979.

Prior to these actions, under Executive Order No. 56, issued on May 28, 1977, the Governor created the Pinelands Review Commiteee to delineate a Pinelands region and develop a plan to guide State actions affecting that Region. The report of the Pinelands Review Committee, completed in February 1979, stressed the need to take strong action to manage development in the Pinelands.

Because the living marine resources in the bays and estuaries of the coastal zone depend on the flow of freshwater from the Pinelands, changes to the quality and quantity of the Pinelands water resource caused by pollution and contamination would have a significant impact on coastal resources.

The Pinelands Protection Act (Section 22) recognized the overlap between Pinelands and coastal management interests and mandated that DEP, in consultation with the Pinelands Commission, review the environmental design for the coastal area prepared as required by CAFRA (see N.J.S.A. 13:19-10) which is also within the boundaries of the Pinelands Area. This overlap area extends from Pleasant Mills to the Garden State Parkway on both sides of the Mullica River.

7:7E-3.40 Hackensack Meadowlands District

(a) Definition

The Hackensack Meadowlands District is a 19,730 acre area of water, coastal wetlands and associated uplands designated for management by a State-level regional agency known as the Hackensack Meadowlands Development Commission (HMDC) by the Hackensack Meadowlands Reclamation and Development Act of 1968 (N.J.S.A. 13:17-1 et seq.) (See Figure 20).

(b) Policy

The HMDC will act as the lead coastal planning and management agency within this Special Area. State coastal management actions within the Hackensack Meadowlands District are governed by the District Master Plan and its adopted components and management plans, and the zoning rules adopted thereunder. The HMDC Master Plan Zoning Rules (N.J.A.C. 19:4-1 et seq.) are adopted as part of the Coastal Management Program (see Appendix I, and the Hackensack Meadowlands District is designated a Geographic Area of Particular Concern (see section on GAPCs in Chapter 4).*

(c) Rationale

The District Master Plan was mandated by the Hackensack Meadowlands Reclamation and Development Act. The Master Plan, together with its components, management plans and zoning regulations, embody adopted State policies for the District. The HMDC has a professional staff of natural scientists, engineers and planners with the experience and expertise to apply State coastal policy to this Special Area.

7:7E-3.41 Wild and Scenic River Corridors

(a) Definition

Wild and Scenic River Corridors are components of the New Jersey Wild and Scenic Rivers System designated by the DEP Commissioner under N.J.S.A. 13:8-45 et seq. River corridors include the river and adjacent upland to the limit of the Flood Hazard Area or to the limit of State owned lands, whichever is furthest inland.

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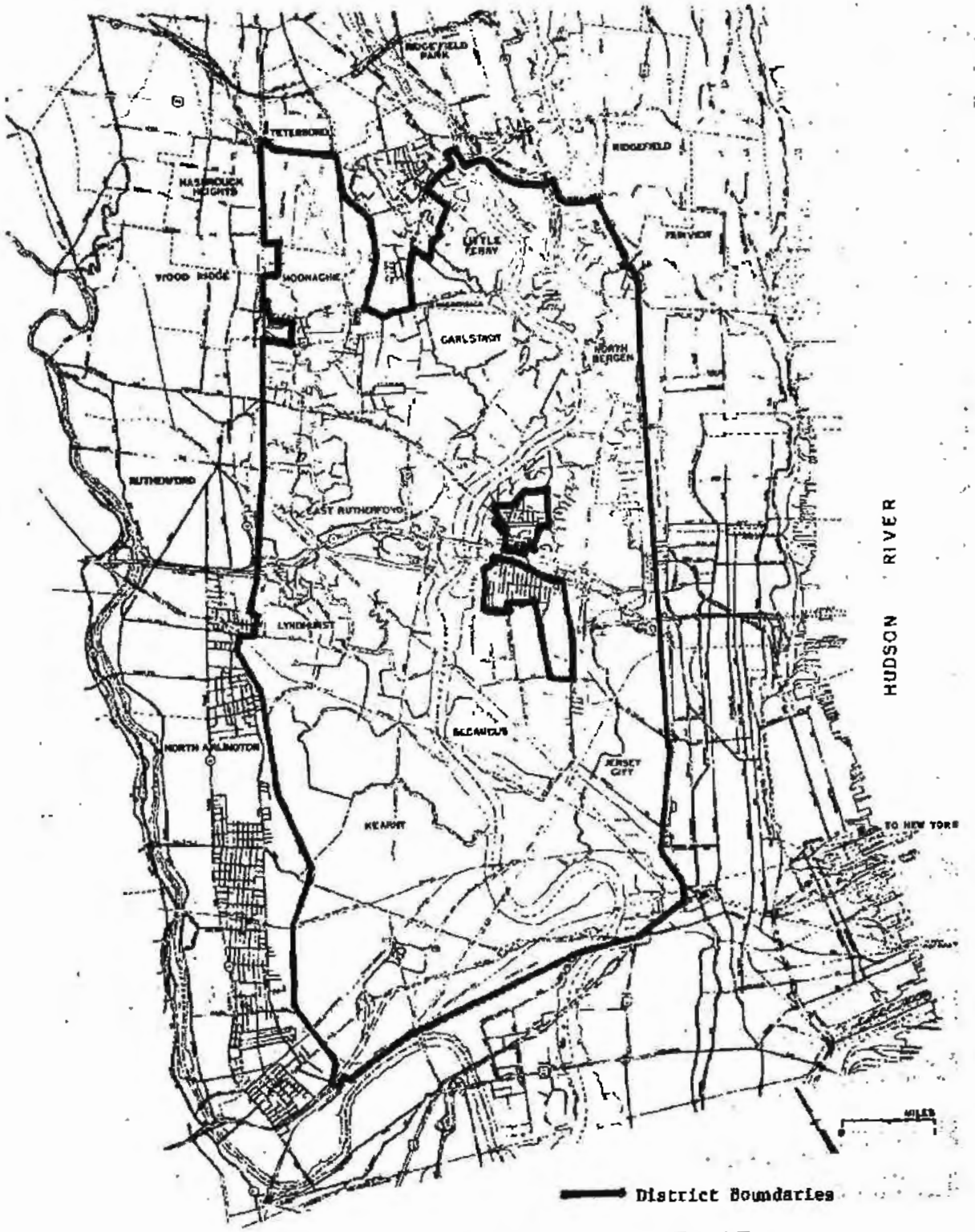
* It should be noted that the Hackensack Meadowlands District designations for wetlands development do not preclude federal agency recommendations and decisions contrary to such development. The Hackensack Meadowlands District Plan does not meet the definition of a "Comprehensive Planning Process" under Section 404(b) (1) of the Clean Water Act and associated regulations. Therefore, federal agencies will evaluate proposed projects in the Hackensack Meadowlands District on a case by case basis. Wetland modification will require proper analysis and documentation under Section 404(b)(1) of the Clean Water Act regardless of adopted plans and ordinances. The 404(b)(1) process currently requires four tests to be met and properly documented through a public process including: 1) acceptance of unavoidable impacts; 2) alternatives analysis; 3) demonstration of water dependency; and 4) demonstration of need.

Figure 20




HACKENSACK MEADOWLANDS DISTRICT

(b) Policy

1. Development may be permitted in designated river areas in accordance with N.J.A.C. 7:38-1.1 et seq., including special regulations for a particular river, or sections thereof, adopted upon designations to the New Jersey Wild and Scenic Rivers System.

2. Development which provides general public recreational use of and access to a designated river area, consistent with classification and flood plain regulations, is encouraged.

3. Development must be consistent with all other coastal policies, in particular the performance standards found in the Flood Hazard Areas Resource Policy (7:7E-8.23) and other Special Areas policies.

(c) Rationale

This policy reflects and incorporates the goals of the New Jersey Wild and Scenic Rivers Act, which recognizes the outstanding scenic, recreational, fish and wildlife, floral, historic, cultural and similar values of certain rivers of the State, in addition to the goals of reducing loss of life and property resulting from unwise development of floodplains. Uses compatible with the recognized values of designated river areas and their classification as "wild", "scenic", "recreational", or "developed recreational" river areas may be allowed to further the use and availability of the open space resources which the river areas represent.

River Corridors will be administered according to N.J.A.C. 7:38-1.1 et seq., according to four classifications:

1. "Wild", meaning a river or section thereof, that is free of impoundment, and generally inaccessible by trail, with watershed or shoreline essentially primitive and undeveloped and water unpolluted. Wild river areas are also consistent with Natural Areas;

2. "Scenic", meaning a river, or section thereof, that is free of impoundment, with watershed or shoreline still largely primitive and undeveloped, but accessible in places by road;

3. "Recreational", meaning a river, or section thereof, that is readily accessible, that may have some shoreline development, and that may have undergone some impoundment or diversion; and

4. "Developed Recreational", meaning a river, or section thereof, that is readily accessible, that may have substantial shoreline development, that may have undergone substantial impoundment or diversion, but which remains suitable for a variety of recreational uses.

## SUBCHAPTER 4 - GENERAL WATER AREAS

### 7:7E-4.1 Definition

General Areas are first divided into Water and Land by the same definitions used for Special Areas, Section 7:7E-3.1. Water and land are further subdivided into General Area types. The water's edge has no General Area types since all water's edge areas are one or more Special Area types.

This subchapter defines General Water types, assigns General Area policies to each and summarizes the rationale and intent of the policies.

In many cases, an area already identified as a Special Area will also fall within the definition of a General Area. In these cases, both General and Special Area policies will apply. In case of conflict between General and Special Area policies, the more specific Special Area Policy shall apply.

General Water Areas are areas which lie below either the Mean High Water Line or the normal water level of non-tidal waters. Except at times of drought or extreme low tide, these areas are permanently inundated.

General Water Areas are divided by volume and flushing rate into: Oceans; Open Bays; Semi Enclosed and Back Bays; Tidal Guts; Large Rivers; Medium Rivers, Creeks and Streams; and Lakes, Ponds and Reservoirs. Some of these types are further divided for policy purposes into different depths.

### 7:7E-4.2 Policy Summary Table

The Policy Summary Table (Figure 21) indicates the Location Policy for the introduction of various uses in each of the General Water Areas. This table is included for quick reference. For further details on conditions for acceptability of uses, see Section 7:7E-4.10.

### 7:7E-4.3 Ocean

(a) Definition

This basin type has two depth levels (0'-18' and 18'+) and includes all areas of the Atlantic Ocean out to the limit of New Jersey's territorial sea, three nautical miles from the shoreline. The ocean extends from the marine boundary with the State of New York in Raritan Bay and Sandy Hook Bay south to the marine boundary with the State of Delaware in Delaware Bay, near Cape May Point (see Figure 22).

(b) Policy

See Policy Summary Table Section 7:7E-4.2.

(c) Rationale

The largest water body found within the coastal zone is the Atlantic Ocean. The vast volume of water together with strong wind induced mixing, surface and subsurface currents, and tidal pulse make the ocean the water body most able to assimilate human induced stresses. The

WATER AREA POLICY SUMMARY TABLE

| Use \ Water Area Type | Ocean | | Open Bay | | | Semi Enclosed and Back Bay | | Tidal Guts | Large Rivers | Medium Rivers, Creeks and Streams | Lakes, Ponds and Reservoirs |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | 18'+ | 0-18' | 18'+ | 6-18' | 0-6' | 6'+ | 0-6' | | | | |
| Aquaculture | C | C | C | C | C | C | C | C | C | C | C |
| Boat Ramps | / | P | / | C | C | C | C | C | C | C | C |
| Docks (cargo) | C | C | C | C | C | C | C | P* | C | C | / |
| Docks (recreation) | C | C | C | C | C | C | C | C | C | C | C |
| Dredging (maintenance) | C | C | C | C | C | C | C | C | C | C | C |
| Dredging (new) | C | C | D | D | D | D | D | D* | C | C | C |
| Spoil Disposal | C | C | C | C | D | C | D | P* | C | P | C |
| Dumping | P | P | P | P | P | P | P | P | P | P | P |
| Filling | D | D | P | D | D | D | D | D | D | D | P |
| Piling | D | C | D | C | C | C | C | C | C | C | D |
| Mooring | C | C | C | C | C | C | C | C | C | C | C |
| Sand, Gravel Extraction | C | D | D | D | D | D | D | P | C | C | P |
| Bridges | / | / | D | D | D | D | D | C | C | C | P |
| Submerged Infrastructure | C | C | C | C | C | C | C | D* | C | C | C |
| Overhead Lines | / | / | P | P | P | P | P | C | D | C | P |
| Dams & Impoundments | / | / | / | / | / | P | D | P | P | D | / |
| Outfalls & Intakes | C | C | C | C | C | C | C | C | C | C | C |
| Realignment | / | / | D | D | D | D | D | D | D | D | D |
| Miscellaneous | C | C | C | C | C | C | C | C | C | C | C |

*Conditionally acceptable in the Arthur Kill and Kill Van Kull

Note: Depths are mean depth of water

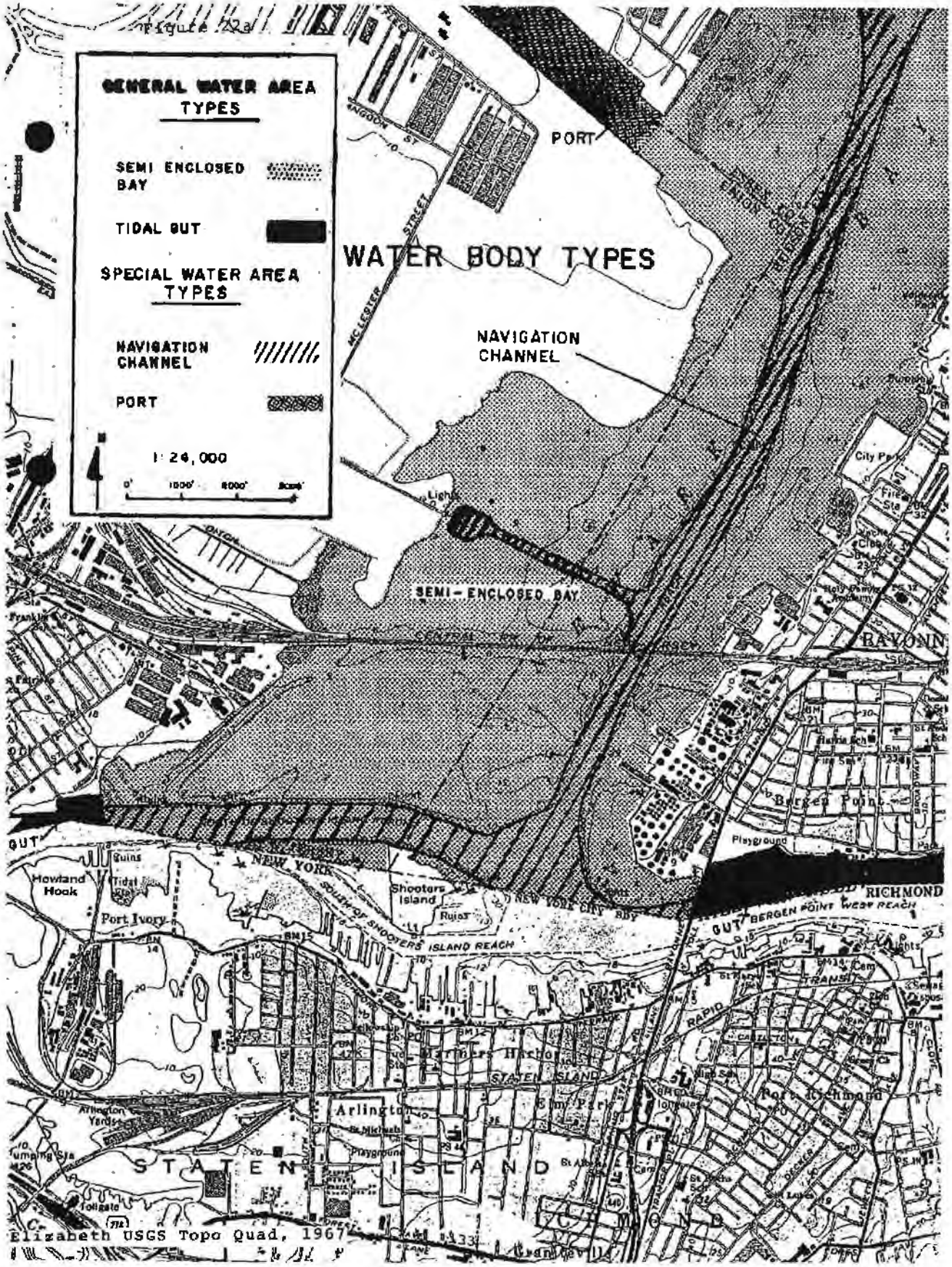
P = Prohibited

D = Discouraged

C = Conditionally Accept

/ = Impractical

Figure 12a


GENERAL WATER AREA TYPES
SEMI ENCLOSED BAY
TIDAL CUT
SPECIAL WATER AREA TYPES
NAVIGATION CHANNEL
PORT
1:24,000
WATER BODY TYPES
NAVIGATION CHANNEL
PORT
SEMI-ENCLOSED BAY
NEW YORK
NEW YORK CITY
RICHMOND
STATEN ISLAND
Howland Hook
Port Ivory
Shooters Island
Bergen Point
Elizabeth USGS Topo Quad, 1967

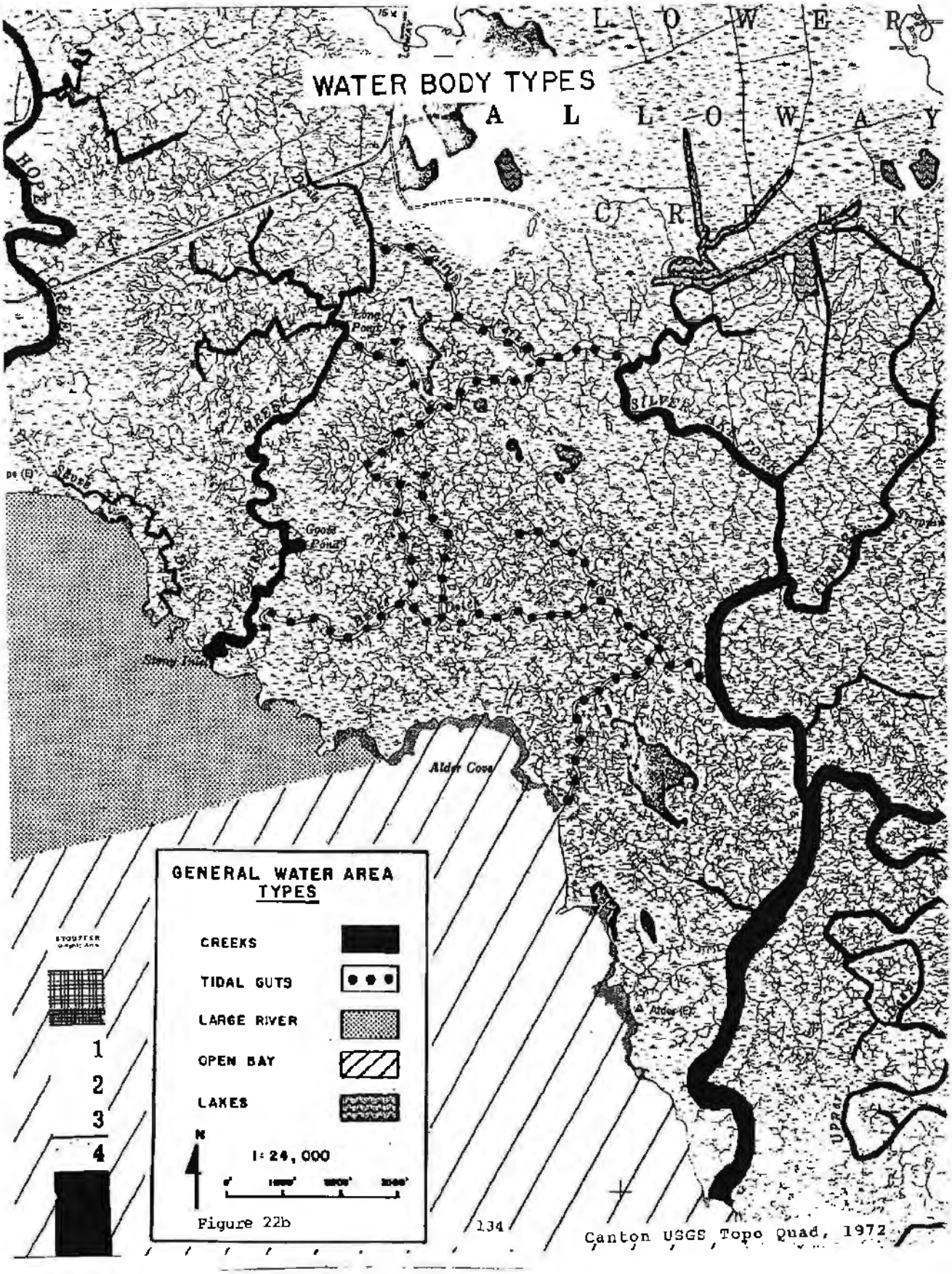
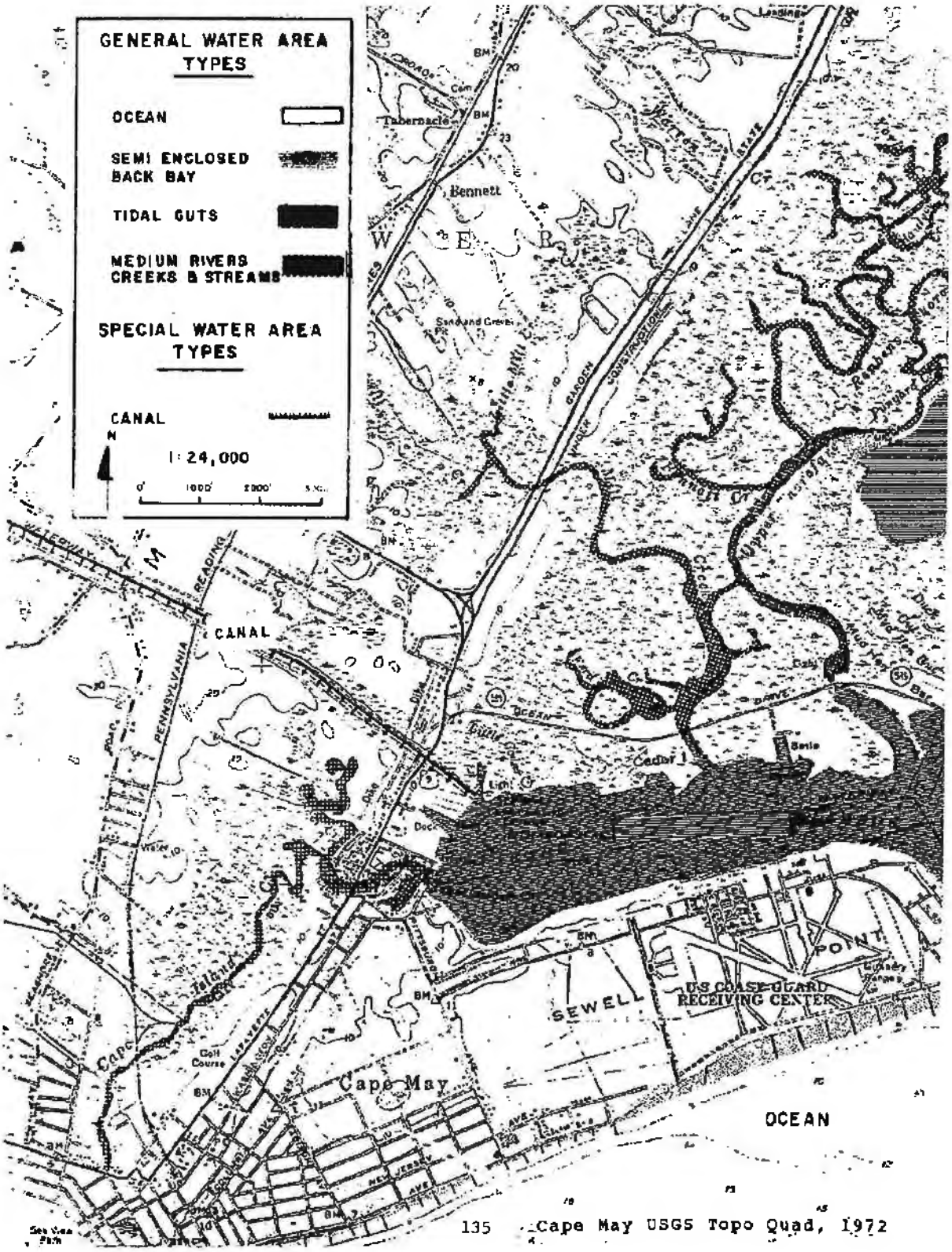

WATER BODY TYPES
L O W E R
A L L O W A Y
C R E E K
Long Pond
Goods Pond
Stony Point
Alder Cove
Alder (E)
GENERAL WATER AREA TYPES
CREEKS
TIDAL GUTS
LARGE RIVER
OPEN BAY
LAKES
N
1:24,000
1
2
3
4
Figure 22b
134
Canton USGS Topo Quad, 1972

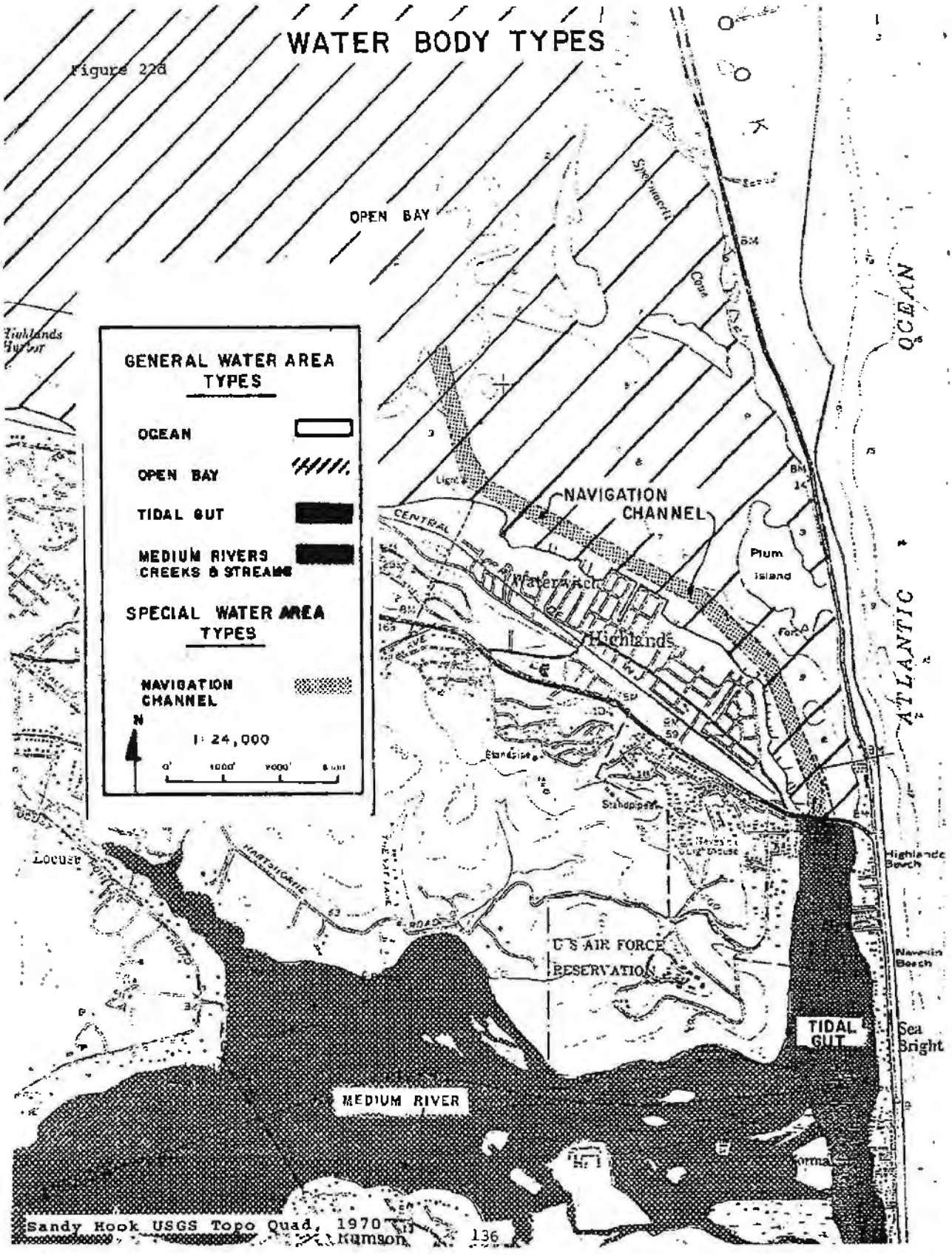
Figure 22c

# WATER BODY TYPES




135 Cape May USGS Topo Quad, 1972

DE24767


WATER BODY TYPES
Figure 22d
OPEN BAY
OCEAN
ATLANTIC
GENERAL WATER AREA TYPES
OCEAN
OPEN BAY
TIDAL GUT
MEDIUM RIVERS CREEKS & STREAMS
SPECIAL WATER AREA TYPES
NAVIGATION CHANNEL
N
1: 24,000
NAVIGATION CHANNEL
Highlands
Plum Island
Sea Bright
TIDAL GUT
MEDIUM RIVER
U.S. AIR FORCE RESERVATION
Sandy Hook USGS Topo Quad, 1970
Rumson
136

DE24768

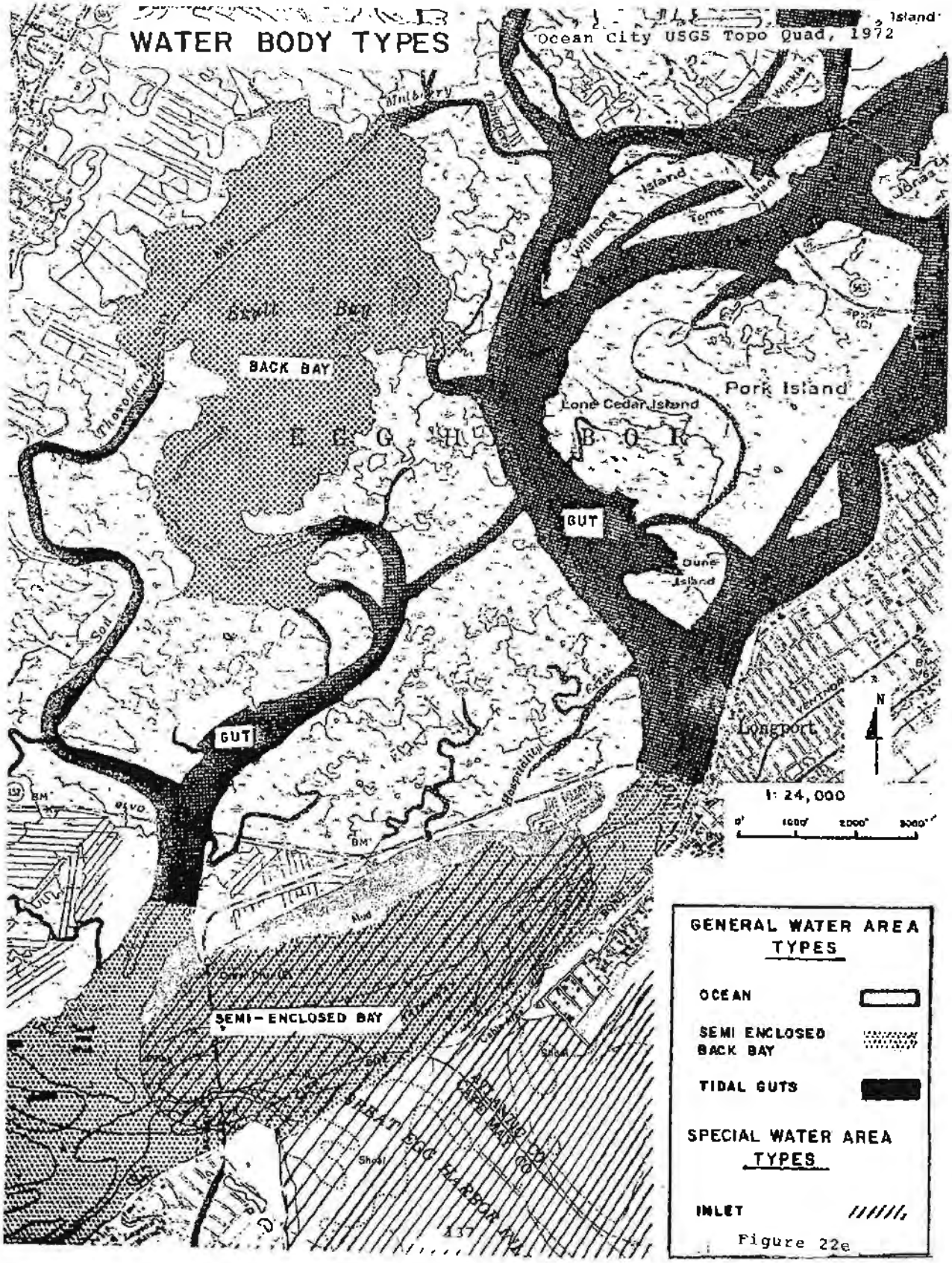

WATER BODY TYPES
Ocean City USGS Topo Quad, 1972
BACK BAY
Egg Harbor Bay
Lone Cedar Island
Pork Island
GUT
GUT
Dune Island
Longport
SEMI-ENCLOSED BAY
GREAT EGG HARBOR BAY
1: 24,000
GENERAL WATER AREA TYPES
OCEAN
SEMI ENCLOSED BACK BAY
TIDAL GUTS
SPECIAL WATER AREA TYPES
INLET

Figure 22e

assimilative capacity of the ocean is not unlimited, nor are all the benthic and pelagic and surface organisms equally resilient to stresses. The high energy marine system simultaneously provides opportunity for various uses such as recreation and navigation and imposes several constraints to human structures.

Marine waters are divided into two depth categories: the shallower portion is most commonly thought of as the surf zone, which is of national recreational value. Uses which would impact the recreational values are consequently discouraged from this location. Uses located within deeper portions have less potential to adversely impact coastal resources or induce impacts such as ocean shoreline instability.

7:7E-4.4 Open Bay

(a) Definition

This basin type has three depth levels (0'-6', 6'-18', and 18+) and is defined as a large, somewhat confined estuary with a wide unrestricted inlet to the ocean and with a major river mouth discharging directly into its upper portion. Delaware Bay, Raritan Bay, Sandy Hook Bay, and Upper New York Bay are the only representatives of this water body type in New Jersey.

(b) Policy

See Policy Summary Table, Section 7:7E-4.2.

(c) Rationale

Open bays are the largest estuarine systems within the New Jersey coastal zone. All estuaries provide critical nursery habitat for marine finfish and shellfish and provide organic nutrients for marine/estuarine food webs.

Open bays have traditionally been used as commercial shipping entrances to the New Jersey/New York harbors and New Jersey/Pennsylvania/Delaware harbors, and have consequently suffered from extensive human perturbations, with the northern area being more severely disturbed.

Open bays have large rivers discharging into their upper portions. Although a less vigorous environment than the coastal sea, surface wave action can be high during strong wind conditions. Open bays are extensively used for commerce and recreation, although recreation and commercial fin and shellfish has been constrained by sewage pollution.

These water bodies are subdivided into three categories based solely on water depth. The criteria of depth was used as this factor is closely related to dilution potential.

7:7E-4.5 Semi-enclosed and Back Bay

(a) Definition

This basin type is a partially confined estuary with direct inlet connection and some inflow of freshwater. Semi-enclosed bays differ from back bays in depth, degree of restriction of inlet and level of freshwater inflow, but the initial location policy is identical for the two water body types. Great Bay and Great Egg Harbor are examples of semi-enclosed bays, Barnegat Bay, Little Egg Harbor, the Shark River estuary and other bays in Atlantic and Cape May Counties are back bays. This combined water body type has two depth levels (0-6', and 6'+).

(b) Policy

See Policy Summary Table, Section 7:7E-4.2.

(c) Rationale

Semi-enclosed water bodies are the estuaries behind barrier beach islands with restricted, indirect, or shallow inlets to the open ocean. This category includes all non-riverine estuarine water bodies including embayments and back bays.

These areas are more sensitive to human disturbance, because of the very limited to moderate freshwater inflow, slower tidal flushing, and smaller water body volume.

The semi-enclosed estuaries are critical to the protection and perpetuation of the coastal ecosystem. Their physically protected geography allows more sensitive or fragile organisms to survive than in the more vigorous ocean and open bays. The vast majority of important marine finfish, shellfish and aquatic birds utilize these areas as critical nursery habitats. The contiguous coastal wetlands perform the essential role of photosynthesis, resulting in natural organic material export into the coastal sea through the action of tidal and storm induced flushing.

These estuarine water bodies are subdivided into three categories based solely upon the criteria of relative water depth. Deeper water portions are the areas most intensively used by man for water surface activities such as navigation. Deeper water areas have a greater physical ability to dilute pollutants and biologically detoxify toxic agents. This assimulative capacity is not unlimited however. Shallow water area generally have less potential dilution and flushing.

7:7E-4.6 Tidal Guts

(a) Definition

This channel type includes tidal waterway connections between two estuarine bodies of water. Also known as thorofares, tidal guts have no significant freshwater drainage, are tidally influenced and vary in flow rates and natural water depths. Examples range from the Arthur Kill and Kill Van Kull in the developed coast, to Clam Thorofare, Beach Thorofare and Wading Thorofare in the Shore region.

(b) Policy

See Policy Summary Table, Section 7:7E-4.2.

(c) Rationale

Tidal Guts are critical areas for estuarine ecology, controlling the mix of salt and fresh water nutrient transport, and movement corridors for aquatic organisms. Guts serve as important access ways for human navigation, physical water circulation and tidal flushing of estuaries.

7:7E-4.7 Large Rivers

(a) Definition

This channel type includes flowing waterways with watersheds greater than 1,000 square miles, which means the Delaware, Hudson, and Raritan Rivers.

The Delaware River is a tidal river from the Bridge Street Bridge in Trenton to its mouth at Delaware Bay, defined as a line between Alder Cove, Lower Alloways Creek Township and the Delaware River Basin Commission River and Bay Memorial at Liston Point, Delaware.

The Hudson River is a tidal river from the New York State Line to its mouth at Upper New York Bay at the Morris Canal, Jersey City.

The Raritan River is a tidal river from the Interstate Route 287 Bridge between Piscataway and Franklin townships to its mouth at Raritan Bay and the Arthur Kill.

(b) Policy

See Policy Summary Table, Section 7:7E-4.2.

(c) Rationale

Large rivers are the principal freshwater input to the Open Bays, and the critical estuarine functions performed by these bays depends, in large part, on maintenance or improvement of water quality and flow patterns in tidal rivers. These water bodies have a long history of intensive human use, especially in commerce. These economic interests must be accommodated. Large rivers are all drained by watersheds in excess of 1,000 square miles, and are tidally influenced within the Bay and Ocean Shore Segment. These factors allow for flushing of pollutants, although extensive portions of each are presently over-stressed with sewage and industrial wastes.

7:7E-4.8 Medium Rivers, Streams and Creeks

(a) Definition

This channel type includes rivers, streams and creeks with a watershed area of less than 1,000 square miles. This includes watercourses such as the Hackensack, Passaic, Oldmans, Big Timber, Pennsauken, Navesink, Manasquan, Toms, Wading, Mullica, Great Egg, Maurice, Cohansey, Salem and Rancocas and smaller streams.

(b) Policy

See Policy Summary Table, Section 7:7E-4.2.

(c) Rationale

Medium rivers have from moderate to small discharge rates. Many are tidally influenced and most are relatively shallow, and of smaller volume than large rivers. These factors combine to render these features more susceptible to degradation through human activities.

7:7E-4.9 Lakes, Ponds and Reservoirs

(a) Definition

This category includes lakes, ponds, and reservoirs, virtually all of which in the unglaciated coastal plain of southern New Jersey are man-made (impoundments). These types are relatively small water bodies with no tidal influence or salinity. Many are groundwater fed, while others are known to serve as surface aquifer recharge areas.

This General Water Area type includes enclosed freshwater basins, both shallow and deep, with little or insignificant flow. Due to the limited extent of this water type, no depth subdivisions are made.

Lakes that are the result of former mining operations are not included here, but are defined separately as Wet Borrow Pits.

(b) Policy

See Policy Summary Table, Section 7:7E-4.2.

(c) Rationale

Lakes, ponds, and reservoirs have a severely limited ability to flush pollutants owing to limited freshwater inflow and lack of tidal inundation. Pollutants which enter these areas can precipitate to the bottom, remaining a continuing source of contamination. Certain lakes, ponds and reservoirs also serve as potable surface water sources.

7:7E-4.10 Acceptability Conditions for Uses

Numerous developments or activities seek locations in New Jersey's coastal waters. Some uses involve locations both above and below the mean high water line, in both Water and Water's Edge areas. This section defines the important uses of water areas managed by the Coastal Management Program and the conditions under which those uses are acceptable. Some projects involve combinations of uses, such as retaining structures, dredging, and filling. Other uses, such as Shore Protection uses, are defined elsewhere under Use Policies.



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(a) Aquaculture

1. Definition

Aquaculture is the use of a permanently inundated water area, whether saline or fresh, for the purposes of growing and harvesting plants or animals in a way to promote more rapid growth, reduce predation, and increase harvest rate. Oyster farming in Delaware Bay is a form of aquaculture.

2. Acceptability Conditions

Aquaculture is conditionally acceptable in all General Water Areas provided that:

(i) It does not unreasonably conflict with resort or recreation uses,

(ii) It does not cause significant adverse off-site environmental impacts, and

(iii) It does not present a hazard to navigation.

(b) Boat Ramps

1. Definition

Boat ramps are inclined planes, extending from the land into a water body for the purpose of launching a boat into the water until the water depth is sufficient to allow the boat to float. Boat ramps are most frequently paved with asphalt or concrete, or covered with metal grates.

2. Acceptability Conditions

(i) Where boat ramps are conditionally acceptable, they must meet the following conditions: (a) there is a demonstrated need that cannot be met by existing facilities, and (b) they cause minimal practicable disturbance to intertidal flats or subaqueous vegetation.

(ii) In all water areas, boat ramps shall be constructed of environmentally acceptable materials, such as concrete or oyster shell, and garbage cans shall be provided near the boat ramp. Public use ramps shall have priority over restricted use and private use ramps.

(c) Docks and Piers (for Cargo Movement)

1. Definition

Docks and piers (for cargo movement) are structures supported on pilings driven into the bottom substrate or floating on the water surface, used for loading and unloading cargo, including fluids,

connected to or associated with a single industrial or manufacturing facility. Policies for docks and piers intended for multiple uses may be found under Use Policies for Ports Uses. Policies for docks composed of fill and retaining structures may be found under the category "Filling".

2. Acceptability Conditions

Docks and Piers for cargo movement are conditionally acceptable in most General Water Areas, provided that: (1) they will not pose a hazard to navigation, and (2) the associated use of the adjacent land meets all Coastal Resource and Development Policies.

(d) Docks and Piers (Recreational and Fishing)

1. Definition

Recreational and fishing docks and piers are structures supported on pilings driven into the bottom substrate, or floating on the water surface, which are used for recreation or fishing or for the mooring of boats which are used for recreation or fishing, including commercial fishing.

2. Acceptability Conditions

Docks and Piers are conditionally acceptable in General Water Areas bodies provided that: (i) there is a demonstrated need that cannot be satisfied by existing facilities, (ii) the associated upland use satisfies the location policies for water's edge areas, (iii) the construction minimizes adverse environmental impact to the maximum extent feasible, (iv) the docks and piers are located so as to not hinder navigation or conflict with overhead transmission lines, and (v) there is minimum feasible interruption of natural water flow patterns.

Docks and piers on pilings shall be preferred to construction on fill. Repairs and maintenance of existing docks and piers are generally acceptable.

(e) Dredging-Maintenance

1. Definition

Maintenance dredging is the removal of accumulated sediment from authorized and currently maintained navigation channels, marinas, or boat moorings, for the purpose of maintaining an authorized water depth and width.

2. Acceptability Conditions

Maintenance dredging is conditionally acceptable to the authorized depth and width in all existing navigation channels, access channels, anchorages and moorings within all General Water Areas to ensure that adequate water depth is available for safe navigation, provided that an acceptable spoil disposal site exists and

turbidity is controlled using best available technology (reference: U.S. Army Waterways Experiment Station, Dredged Material Research Program Report, TR DS-78-22).

As necessary on a case-by-case basis to mitigate adverse impacts upon Shellfish Beds (7:7E-3.2), Surf Clam Areas (7:7E-3.3), Finfish Migratory Pathways (7:7E-3.9), and nursery areas for finfish, and to prevent reduction of ambient dissolved oxygen below critical levels, or the increase of turbidity or the resuspension of toxic substances above critical levels, seasonal limitations may be imposed on maintenance dredging.

Maintenance dredging is necessary to provide access to marinas, docks, ports, and other appropriate water-dependent facilities. Beach nourishment shall be the priority use of clean dredge spoil when economically feasible. Scouring of channels, anchorages and moorings is acceptable on a case-by-case basis to permit small scale water dependent facilities.

(f) Dredging - New

1. Definition

New dredging is the removal of sediment from the bottom of a water body that has not been previously dredged or excavated, for the purpose of increasing water depth, or the widening or deepening of navigable channels to a newly authorized depth or width.

2. Acceptability Conditions

New dredging is conditionally acceptable in Oceans, Rivers, Creeks and Streams for boat moorings, navigation channels or anchorages (docks) providing that: (i) there is a demonstrated need that cannot be satisfied by existing facilities, (ii) the facilities served by the new dredging satisfy the location requirements for Special Water's Edge Areas, (iii) the adjacent water areas are currently used for recreational boating, commercial fishing or shipping, (iv) the dredge area causes no significant disturbance to Special Water or Water's Edge Areas, (v) the adverse environmental impacts are minimized to the maximum extent feasible, (vi) dredging will have no adverse impacts on groundwater resources, (vii) an acceptable dredge spoil disposal site exists, (viii) the dredged area is reduced to the minimum practical and (ix) turbidity is controlled during the dredging operation using best available technology (reference: U.S. Army Waterways Experiment Station, Dredged Material Research Program Report, TR DS-78-22).

As necessary on a case-by-case basis to mitigate adverse impacts upon Shellfish Beds (7:7E-3.2), Surf Clam Areas (7:7E-3.3), Finfish Migratory Pathways (7:7E-3.9), and nursery areas for finfish, and to prevent reduction of ambient dissolved oxygen below critical levels, or the increase of turbidity or the resuspension of toxic substances above critical levels, seasonal limitations may be imposed on new dredging.

New dredging or excavation to create new lagoons for residential development is prohibited. New dredging in Lakes, Ponds and Reservoirs, Bays and Cuts is discouraged.

New dredging is conditionally acceptable to control siltation in Lakes, Ponds and Reservoirs.

(g) Dredge Spoil Disposal

1. Definition

Dredge spoil disposal is the discharge of sediments (spoils) removed during dredging operations.

2. Acceptability Conditions

Dredge Spoil Disposal is prohibited in Tidal Cuts, and Medium Rivers, Creeks and Streams, and discouraged in Open Bays and Semi-Enclosed and Back Bays when the water depth is less than 6 feet. Spoil disposal by sidecasting in these water body types when shallow waters preclude removal of the dredge spoil from the area is conditionally acceptable on a case by case basis.

Disposal of dredge spoils in the ocean and bays deeper than six feet is conditionallly acceptable provided that it is in conformance with USEPA guidelines (40 CFR 230, 40 FR 41291, September 5, 1975) established under Section 404(b) of the Clean Water Act.

EPA guidelines require that consideration be given to the need for the proposed activity, the availability of alternate sites and methods of disposal that are less damaging to the environment, and applicable water quality standards. They also require that the choice of site minimize harm to municipal water supply intakes, shellfish, fisheries, wildlife, recreation, threatened and endangered species, benthic life, wetlands and submerged vegetation, and that it be confined to the smallest practicable area.

Clean dredge sediments of suitable particle size are acceptable for beach nourishment on ocean or open bay shores.

The use of clean dredge spoil to create new wetlands in any General Water Area is conditionally acceptable depending upon an evaluation of the biological value of the wetlands gained compared with the water area lost.

Spoil disposal in Lakes, Ponds and Reservoir is conditionally acceptable provided that the spoil is adequately contained.

Note: Conditions for Dredge Spoil Disposal on land are indicated in Section 7:7E-7.12.

(h) Dumping (Solid Waste or Sludge)

1. Definition

The dumping of solid waste or sludge is the discharge of solid or semi-solid waste material from industrial or domestic sources or sewage treatment operations into a water area.

2. Acceptability Conditions

The dumping of solid or semi-solid waste of any description in any coastal water is prohibited.

(i) Filling

1. Definition

Filling is the deposition of inorganic material (sand, soil, earth, dredge spoils, etc.) into water areas for the purpose of raising water bottom elevations to create land areas.

2. Acceptability Conditions

(i) Filling is prohibited in lakes, ponds, reservoirs, and open bay areas at depths greater than 18 feet.

(ii) In all other water areas, filling is discouraged, but limited filling may be considered for acceptability provided that: (a) the use that requires the fill is water dependent, (b) there is a demonstrated need that cannot be satisfied by existing facilities, (c) there is no feasible or practical alternative site on an existing Water's Edge. (d) the minimum practical area is filled, (e) the adverse environmental impacts are minimized, and (f) minimal feasible interference is caused to Special Areas, and (g) pilings and columnar support or floating structures cannot serve the use.

(iii) Filling to create docks and wharves is conditionally acceptable provided that construction of the dock or wharf on pilings would be infeasible.

(iv) Filling using clean sediment of suitable particle size and composition is acceptable for beach nourishment projects (see the Coastal Engineering Use Policies 7:7E-7.11), and conditionally acceptable for the creation of new wetlands.

(j) Piling

1. Definition

Piling is the insertion of columnar structural members into the water bottom substrate.

2. Acceptability Conditions

When pilings are an element of docks and moorings they must meet the acceptability conditions for those uses. The placement of pilings for other purposes is discouraged in lakes, ponds, reservoirs, and ocean and bay waters greater than 18 feet in depth. Elsewhere pilings are conditionally acceptable provided that they are not a hazard to navigation.

(k) Mooring

1. Definition

A boat mooring is a temporary or permanent, piling or floating anchored facility in a water body for the purpose of attaching a boat.

2. Acceptability Conditions

Temporary or permanent boat mooring areas are conditionally acceptable in all General Water Areas provided that the mooring area is adequately marked and is not a hazard to navigation.

(l) Sand and Gravel Extraction

1. Definition

Sand and gravel extraction is the removal of sand or gravel from the water bottom substrate, usually by suction dredge, for the purpose of using the sand or gravel at another location.

2. Acceptability Conditions

Sand and gravel extraction is prohibited in Lakes, Ponds and Reservoirs, and Tidal Guts.

This activity is discouraged in all other General Water Areas except the deep Ocean and Rivers, Creeks, and Streams. In these General Water Area types, extraction is conditionally acceptable provided that:

(i) Special Areas are not directly or indirectly degraded,

(ii) turbidity and resuspension of toxic materials is controlled throughout the extraction operation through use of the best available mitigation technology,

(iii) there is an acceptable disposal site for the waste from washing operations, and

(iv) in rivers, creeks and streams, the depth of water at the mining site is at least six feet.

(m) Bridges

1. Definition

A bridge is any continuous structure spanning a water body, except for an overhead transmission line.

2. Acceptability Conditions

Bridges are conditionally acceptable over rivers, streams, and tidal guts provided that: (i) there is a demonstrated need that cannot be satisfied by existing facilities, (ii) applicable Location and Resource Policies are satisfied, with special attention to Resource Policies on Secondary Impacts, (iii) pedestrian use is provided for, and (iv) fishing catwalks and platforms are provided to the maximum extent practicable.

(n) Submerged Infrastructure

1. Definition

Cables are solid underwater lines such as telecommunication cables or electrical transmission lines.

Pipelines are hollow underwater pipes laid, buried, or trenched for the purpose of transmitting fluids. Examples would be crude oil, natural gas, water, petroleum products or sewage pipelines. Construction of an underwater pipeline may involve trenching, temporary trench spoil storage, and back filling, or jetting as an alternative to trenching.

2. Acceptability Conditions

Submerged Infrastructure are conditionally acceptable provided that they are not sited within Special Areas, unless no prudent and feasible alternate route exists. In the case of pipelines, the following conditions must also be met. (i) trenching takes place to a sufficient depth and is backfilled, either through natural or mechanical means to avoid puncturing or snagging anchors or sea clam dredges, and (ii) the pipeline is sufficiently deep to avoid uncovering by erosion of water currents, (iii) the conditions outlined for pipelines in the Use Policies (See Section 7:7E-7.4) are satisfied.

Temporary trench spoil storage and back filling as part of pipeline trenching is acceptable provided that bottom contours are reestablished following trench spoil removal to the original bottom contours, to the maximum extent practicable. Jetting pipelines into bottom sediments is conditionally acceptable provided that trenching and backfilling are impractical.

In the case of Cable routes, the following additional conditions must be met:

(i) the route avoids areas where anchors may foul the cable, and (ii) the alignment of the cable route is marked at the landfall and by buoys at the surface.

(o) Overhead Transmission Lines

1. Definition

Overhead transmission lines are electrically conducting wires hung between supporting pylons for the transmission of electrical power from generating plant to the site of consumption.

2. Acceptability Conditions

Overhead transmission lines are prohibited or discouraged, except over Rivers, Streams, Creeks and Tidal Cuts, where transmission lines will be considered for acceptability provided that: (i) there is a demonstrated need that cannot be satisfied by existing facilities, (ii) there is no feasible alternate route that avoids crossing water bodies, (iii) further development likely to be induced by the transmission lines is acceptable, (iv) the transmission line provides adequate vertical clearance for masts, and (v) visual impacts are minimized to the maximum extent practicable.

(p) Dams and Impoundments

1. Definition

Dams and impoundments are structures that obstruct natural water flow patterns for the purpose of forming a contained volume of water. Impoundments include dikes with sluice gates and other structures to control the flow of water.

2. Acceptability Conditions

Dams and impoundments are impractical in many water body types, prohibited in other water body types, and discouraged in specified water body types (see Figure 21), unless essential for water supply purposes or the creation of special wildlife habitats.

(q) Outfalls and Intakes

1. Definition

Outfalls and intakes are opening in pipes that are located in Water Areas for the purpose of intake of water or discharge of effluent including sewage, stormwater and industrial effluents.

2. Acceptability Conditions

Outfalls and intakes are conditionally acceptable in most water bodies provided that the use associated with the intake or outfall meets the Coastal Resource and Development Policies. The Water Areas policy applies only to the location of the mouth of the pipes, not to the effluent or the amount of diversion.

(r) Realignment of Waterways

1. Definition

Realignment of waterways means changing the configuration of any water body.

2. Acceptability Conditions

(i) Realignment of natural (naturally occurring, unaltered) watercourses is discouraged.

(ii) Realignment of previously altered watercourses is conditionally acceptable, provided that is can be demonstrated that no adverse environmental impacts (i.e. water quality, flood hazard, species diversity reduction/alteration) will result, or other Resource Policies will be contravened, by the realignment; that a net recreational/ecological benefit will demonstrably accrue; and that there is no net loss (in linear feet or area) of river bed environment.

(s) Miscellaneous

1. Definition

Miscellaneous includes uses of Water Areas not specifically defined in this section or addressed in the Use Policies.

2. Acceptability Conditions

Uses of Water Areas not identified in the Water Acceptability Table or addressed in the Use Policies will be analyzed on a case-by-case basis.

## SUBCHAPTER 5 - GENERAL LAND AREAS

### 7:7E-5.1 Definition

General Land Areas include all mainland land features located upland of Special Water's Edge Areas.

General Land Areas begin at the inland limit of soils with a seasonal high water table equal to, or less than, one foot; the one hundred year flood hazard line, whether tidal or fluvial; the inland limit of water's edge fill; or the inland limit of coastal bluffs, whichever is farthest inland from the water's edge.

### 7:7E-5.2 Acceptability of Development in General Land Areas

(a) The acceptability for development of Land Areas is defined in terms of three levels of acceptable development intensity. Three factors determine the acceptable development intensity for various locations in Land Areas:

1. Coastal Growth Rating,
2. Environmental Sensitivity, and
3. Development Potential

Assessment of these three factors indicates the appropriate pattern of development from a broad, regional perspective and provides a method for determining the acceptable intensity of development of specific sites, as well as entire regions.

(b) Determination of the specific policy for a Land Area site is a four step process. First, the Coastal Growth Rating is determined. Second, the Environmental Sensitivity and Development Potential of the site are determined. Third, the Land Acceptability Table (Section 7:7E-5.7) for the appropriate region is consulted to determine the acceptable intensity of development of the site, given the three possible combinations of Development Potential and Environmental Sensitivity factors for the site or parts of the sitea. Fourth, the proposed intensity of development of the site is compared with the acceptable intensity of development for the site.

(c) Coastal development which does not conform with the acceptable intensity of development of a site is discouraged.

### 7:7E-5.3 Coastal Growth Rating

(a) Introduction

The coastal zone is classified into thirteen different regions on the basis of the varied pattern of existing coastal development and natural and cultural resources (see Figure 23). For these regions, DEP uses three broad regional growth strategies:

1. Development Region - This region is already largely developed. From a coastwide perspective, development in this region would be in fill development. In accordance with the coastal policy on concentration of development, development in this region is preferred over development in other regions, other factors being equal. Infill, extension and some scattered development is acceptable here. Development in these regions, however, must be consistent with Recreation and Public Access Policies.

2. Extension Region - This region is the region where development should be channelled after full development of the Development Region. Generally, infill and some extension of development is acceptable here.

3. Limited Growth Region - This region contains large environmentally sensitive areas. Generally, only infill development is acceptable here.

(b) Barrier Island Region

The oceanfront barrier islands and spits constitute the Barrier Island Region. The Land Areas Policy does not apply to the Barrier Island Region, which is composed entirely of various Special Areas.

(c) Urban Areas Region

Each of the Urban Aid municipalities identified below is considered an urban area. The urban areas are designated development areas.

Atlantic
- Atlantic City

Camden
- Camden

Cumberland
- Bridgeton
- Millville

Essex
- Newark

Hudson
- Bayonne
- Hoboken
- Jersey City
- North Bergen
- West New York

Mercer
- Trenton

Monmouth
- Asbury Park
- Keansburg
- Long Branch
- Neptune Township

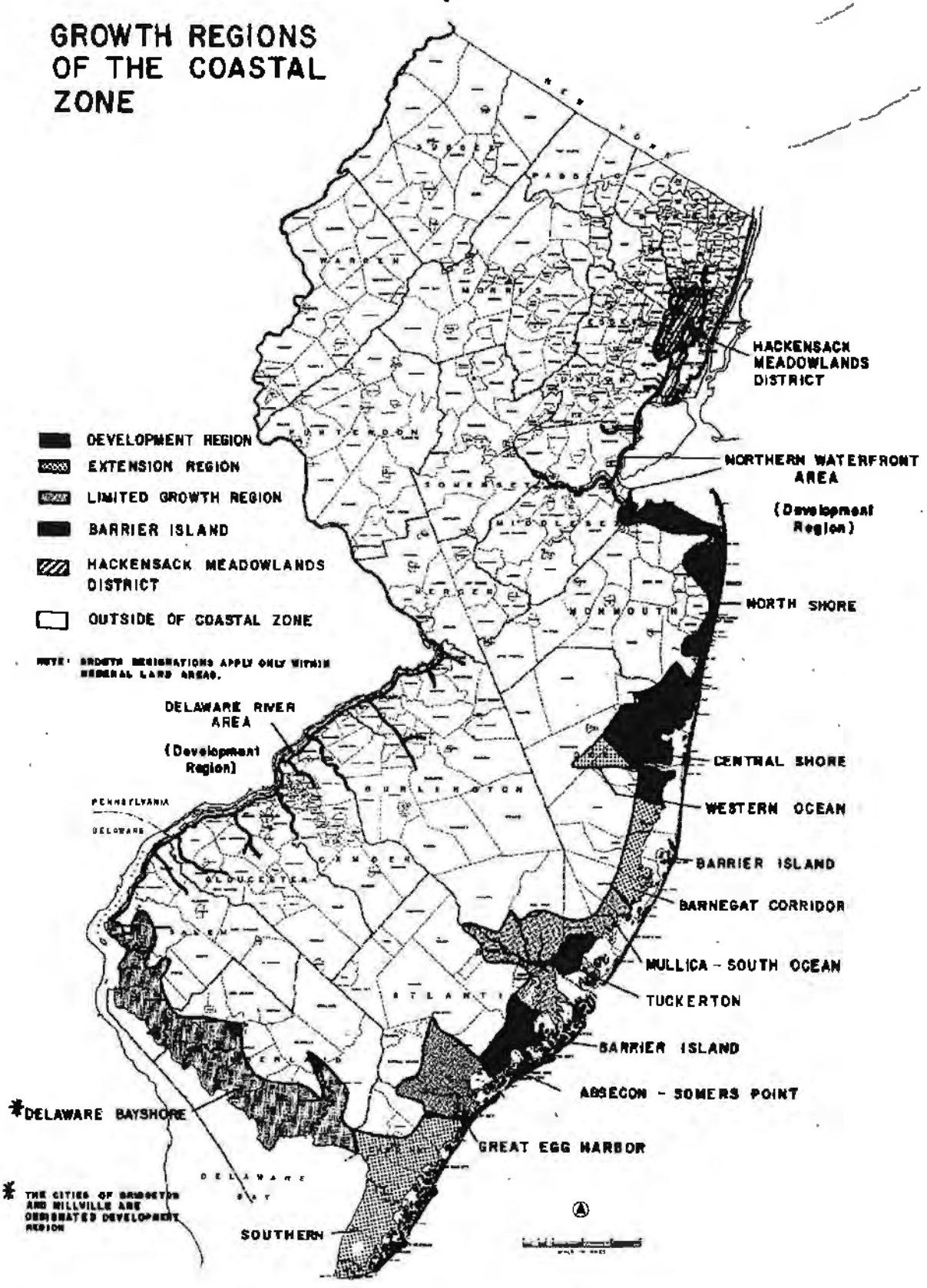
Ocean
- Lakewood

Passaic
- Passaic

Union
- Elizabeth
- Rahway

Middlesex
- New Brunswick
- Perth Amboy

Figure 25


GROWTH REGIONS OF THE COASTAL ZONE
DEVELOPMENT REGION
EXTENSION REGION
LIMITED GROWTH REGION
BARRIER ISLAND
HACKENSACK MEADOWLANDS DISTRICT
OUTSIDE OF COASTAL ZONE
NOTE: GROWTH DESIGNATIONS APPLY ONLY WITHIN GENERAL LAND AREAS.
HACKENSACK MEADOWLANDS DISTRICT
NORTHERN WATERFRONT AREA
(Development Region)
NORTH SHORE
DELAWARE RIVER AREA
(Development Region)
CENTRAL SHORE
WESTERN OCEAN
BARRIER ISLAND
BARNEGAT CORRIDOR
MULLICA - SOUTH OCEAN
TUCKERTON
BARRIER ISLAND
ABSECON - SOMERS POINT
GREAT EGG HARBOR
SOUTHERN
*DELAWARE BAYSHORE
* THE CITIES OF BRIDGETON AND MILLVILLE ARE DESIGNATED DEVELOPMENT REGION
PENNSYLVANIA
DELAWARE
DELAWARE BAY

(d) North Shore Region

The North Shore Region includes those portions of Monmouth and Middlesex County that are within the Bay and Ocean Shore Region and is designated a Development Region.

(e) Central Shore Region

The Central Shore Region includes those portions of Ocean County within the Bay and Ocean Shore Region that are north of State Highway 37 and west of the Garden State Parkway, and those parts of the county north of Cedar Creek and east of the Parkway, and is designated a Development Region.

(f) Western Ocean County Region

The Western Ocean County Region includes those portions of Ocean County west of the Garden State Parkway and south of State Highway 37, and is designated an Extension Region.

(g) Barnegat Corridor Region

The Barnegat Corridor Region includes those portions of Ocean County south of Cedar Creek and north of State Highway 72, and is designated an Extension Region.

(h) Mullica-Southern Ocean Region

The Mullica-Southern Ocean Region those portions of Ocean County south of State Highway 72, all of Burlington County, and those portions of Atlantic County north of County Road 561 (Jimmy Leeds Road), located within the Bay and Ocean Shore Region, and is designated a Limited Growth Region.

(i) Tuckerton Region

The Tuckerton Region is bounded on the west by the Burlington-Ocean County border, on the north by U.S. Highway 9, Otis Bog Road, Nugentown Road and the Tuckerton Borough Line, and on the south and east by Little Egg Harbor, Big Thorofare, Big Creek, Great Bay and the Mullica River The Tuckerton Region is designated an Extension Region.

(j) Absecon-Somers Point Region

The Absecon-Somers Point Region includes those mainland portions of Atlantic County south of County Road 561 (Jimmy Leeds Road), and east of Garden State Parkway, and is designated a Development Region.

(k) Great Egg Harbor River Region

The Great Egg Harbor River Region includes those portions of Atlantic County southwest of County Road Alternate 559 and those portions of Cape May County east of State Highway 50, north of County Road 585, and west of U.S. Highway 9, and is designated a Limited Growth Region.

(l) Southern Region

All of Cape May County, within the Bay and Ocean Shore Region, except for that portion in the Great Egg Harbor River Region and Barrier Island Region, is designated an Extension Region.

(m) Delaware Bayshore Region

All of Cumberland County and Salem County within the Bay and Ocean Shore Region is designated a Limited Growth Region, with the exception of the Cities of Bridgeton and Millville which are designated a Development Region.

(n) Delaware River Region

The area north of the Delaware Memorial Bridge to the coastal zone boundary in Trenton is designated a Development Region, except for land designated as a Low Growth Area by the State Development Guide Plan Concept Map. Such land is along Oldmans Creek eastward of Route I-295, and along Rancocas Creek and its tributaries in Medford and Southampton Townships, and is designated for Limited Growth.

(o) Northern Waterfront Region

The entire coastal zone from Cheesequake Creek in Middlesex County to the New York State boundary is designated a Development Region.

7:7E-5.4 Environmental Sensitivity Rating

(a) Introduction

Environmental Sensitivity is a composite indication of the general suitability of a land area for development based on three factors -- (1) vegetation, (2) fertile soils, and (3) high permeability wet soils -- that are combined to indicate High, Moderate, or Low Environmental Sensitivity on a site or parts of a site. This section first defines these rankings and then defines specifically the three factors.

(b) High Environmental Sensitivity

High Environmental Sensitivity Areas are land areas with: (1) forest vegetation, and (2) high soil productivity or high permeability wet soils adjacent to a stream channel (permanent or ephemeral), as defined below.

All of the following Special Area types shall also be considered High Environmental Sensitivity areas: Farmland Conservation Areas, Steep Slopes, Endangered or Threatened Wildlife or Vegetation Species Habitats, and Critical Wildlife Habitats.

(c) Moderate Environmental Sensitivity

Moderate Environmental Sensitivity Areas are neither High nor Low Environmental Sensitivity Areas.

(d) Low Environmental Sensitivity

Low Environmental Sensitivity Areas are areas with: (1) onsite paving or structures on at least 50% of the project site or (2) areas with bare earth or herbacious vegetation or early successional meadow with low soil fertility, and large depth to seasonal high water table.

(e) Definitions of Environmental Sensitivity Factors

1. Forest vegetation is defined as a natural community of trees and shrubs with tree species predominantly those of the late successional stage for the region with a majority of trees more than ten years old.

2. High soil productivity is defined as soils with Agricultural Capability Class I, as defined by the U.S. Department of Agriculture, Soil Conservation Service in National Cooperative Soil Surveys. Low soil productivity is any soil designated by Agricultural Capability Class IV-VIII.

3. High permeability wet soils are soils with a depth to seasonal high water table of three feet or less and with textures equal to or coarser than loamy sand within a 24 inch depth from the surface, as indicated in National Cooperative Soil Surveys and includes primarily the following coastal soils series: Atsion (At), Hammonton (HaA), Klej (KmA), and Lakehurst [(LaA, LeB, and LeC)] (LmA and LhA).

4. Large depth to seasonal high water table is defined as a depth to seasonal high water table of more than five feet.

(f) Rationale

1. High Environmental Sensitivity

This ranking is given to land areas where combinations of environmental factors either make the area particularly valuable as a resource or particularly sensitive to impacts, or a combination of the two. Two area types are important. First, a combination of valuable resources exists where forest vegetation coincides with the most productive soils. These areas are valuable as open space, for screening, as wildlife habitats, for ground and surface water purification, and as areas that could be used in the future for local food production and/or nutrient absorption. These areas have value both for the functions they now perform in a developing area and as a limited land bank of the most productive soils. Second, where forest vegetation coincides with a rapid soil percolation rate and a shallow depth to water table, there is a combination of resource value and impact sensitivity factors of special concern where there is an adjacent stream or water body. Areas of high soil percolation and shallow depth to water table are especially sensitive to ground water impacts because the rapid percolation offers little pollutant filtration and the distance to ground water is small. When these areas coincide with forest vegetation, itself a valuable resource in developing areas, the physical and biological

processes of tree roots contribute to ground water protection by taking up nutrients and other contaminants. The combination of loss of forest vegetation and degradation of ground water that occurs when these areas are developed raises the level of sensitivity.

2. Medium Environmental Sensitivity

These are land areas that are neither especially sensitive or insensitive to development.

3. Low Environmental Sensitivity

This ranking is given to areas where there would be particularly little loss of valued resources or sensitivity to impacts of concern if development took place. All paved areas are included, because in these areas most of the adverse impacts associated with development have occurred and further development will minimally diminish natural resources or generate new adverse impacts. The second category of low sensitivity has a low resource value since the soils are infertile and there is little or no vegetation. Since the soils are coarse and have low erosion potential, there is a relatively large distance to ground water and therefore little potential for transferring adverse impacts.

7:7E-5.5 Development Potential

(a) Introduction

Development Potential has three levels -- High, Medium and Low -- depending upon the presence or absence of certain development-oriented elements at or near the site of the proposed development, as defined below. The Development Potential rating applies to the entire site. Different sets of Development Potential criteria are defined below for different categories of development. Also, some of the criteria vary depending upon the regional type. If a specific set of Development Potential criteria is not defined for a particular category or type of development, then the Location Policy assumes a Medium Potential for that category until specific criteria are adopted by DEP. Recommended criteria from an applicant or the public may be considered in the course of the permit application process for a particular development prior to adoption by DEP of specific criteria.

(b) Residential Development Potential

1. Scope

The Residential Development category includes housing, including retirement communities, hotels, motels, and minor commercial facilities of a neighborhood or community scale.

2. High Potential sites meet all of the following criteria:

(i) Roads - Direct access from the site to an existing paved public road with sufficient capacity to absorb satisfactorily the traffic generated by the proposed development, or in Development Regions, direct access to roads which either in their

existing state, or with improvements included in the proposed coastal development, provide adequate capacity, or adjacent to roads that have been approved but not built.

(ii) Sewage - Direct access to a wastewater treatment system, including collector sewers and treatment plant, with adequate capacity to treat the sewage from the proposed development, or soils suitable for on-site sewage disposal systems that will meet applicable ground and surface water quality standards, or in Development Regions, access to existing or an approved wastewater treatment system.

(iii) Infill - At least 50% of the boundary length of the site is either immediately adjacent to, or directly across a railroad or public road from any of the following types of development:

- residential development at densities of at least one dwelling unit per 2 acres
- commercial development
- industrial development, including warehouses
- schools and other public institutions
- ballfields
- public park areas developed for recreational use
- transportation facilities including train stations and airfields.

Site boundaries adjacent to wetlands or surface water shall not be included when making infill determinations. (See Figure 24)

Medium Potential sites do not meet all of the criteria for High Potential sites and do not meet any of the criteria for Low Potential sites.

3. Low Potential sites in Low or Moderate Growth Regions meet any one of following criteria:

(i) Roads - Site located more than 1,000 feet from the nearest paved public road,

(ii) Sewage - Site located more than 1,000 feet from an adequate wastewater treatment system, or soils unsuitable for on-site sewage disposal systems,

(iii) Infill - No development at a comparable scale or density is adjacent to the site boundary.

4. In Development Regions, Low Potential sites meet either of the following criteria:

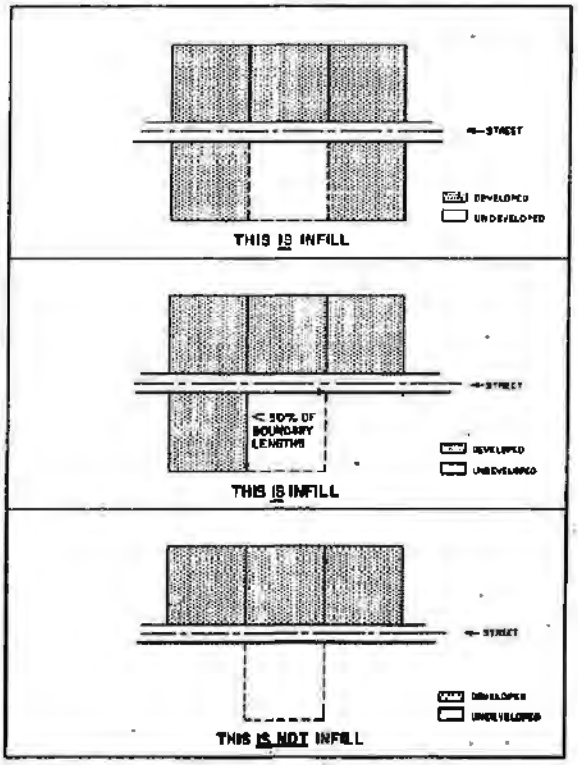
(i) Roads - Site located more than 1,000 feet from the nearest existing paved or proposed public road, or

(ii) Sewage - Site located more than 1,000 feet from existing or approved adequate wastewater treatment system.

(iii) Infill - No requirement.

Figure 24

# INFILL CRITERIA FOR RESIDENTIAL DEVELOPMENT



(c) Major Commercial and Industrial Development Potential

1. Scope

The Major Commercial and Industrial Development category includes all industrial development, warehouses, manufacturing plants, wholesale and major regional shopping centers, and major parking facilities.

2. High Potential sites meet all of the following criteria:

(i) Roads - Direct access from the site to a paved public road with sufficient capacity to absorb satisfactorily the traffic generated by the proposed development, or in Development Regions direct access to roads which either in their existing state, or with improvements included in the proposed development, provide adequate capacity.

Sites shall also be within two miles of an existing intersection with a limited access highway, parkway, or expressway, or for industrial development, be a site within one-half mile of a freight rail line with adequate capacity for the needs of the industrial development and with an agreement to build a spur to serve the industrial development.

(ii) Sewage - Direct access to a wastewater treatment system, including collector sewers and treatment plant, with adequate capacity to treat the sewage from the proposed development, or soils suitable for on-site sewage disposal systems that will meet applicable ground and surface water quality standards. In Development Regions, where the existing sewage collection or treatment capacity is inadequate and the soils are unsuitable for septic systems, an applicant may include an agreement with a sewage authority to increase service to provide the required capacity. This will qualify the proposal for a high potential rating, provided that secondary impact analysis demonstrates that any development likely to be induced by new sewage capacity above the requirements of the proposal is acceptable.

(iii) Infill - A part of the site boundary shall be either immediately adjacent to, or immediately across a road from, existing major commercial or industrial development, or in Development Regions, either the property proposed for development, or an adjacent property, is adjacent to existing commercial or residential devleopments.

3. Medium Potential sites do not meet all of the criteria for High Potential sites and do not meet any of the criteria for Low Potential sites.

4. Low Potential sites meet any one of the following criteria:

(i) Roads - A site located more than 1,000 feet from the nearest paved public road and more than 5 miles from the nearest intersection with a limited access highway, parkway or expressway, except in Development Regions where the site may be located more than 1,000 feet from the nearest paved public road.

(ii) Infill - A site located more than one-half mile from the nearest existing commercial or industrial development of more than 20,000 square feet building area.

(d) Campground Development Potential

1. Scope

A campground development provides facilities for visitors to enjoy the natural resources of the coast. Typically, this type of development seeks sites somewhat isolated from other development and with access to water, beach, forest and other natural amenities.

2. High Potential sites meet all of the following criteria:

(i) Roads - Sites shall have direct access to a paved public or private road of adequate capacity to serve the needs of the development.

(ii) Sewage - Direct access to a wastewater treatment system, including collector sewers and treatment plant, with adequate capacity to treat the sewage from the proposed development, or soils suitable for on-site sewage disposal systems that will meet applicable ground and surface water quality standards.

(iii) Region - The region surrounding the sire is natural, undeveloped and contains either beaches, streams, or forests, and is readily accessible by foot to campground users.

3. Medium Potential sites do not meet all of the criteria for High Potential sites and do not meet any of the criteria for low potential sites.

4. Low Potential sites meet any one of the following criteria:

(i) Roads - More than one-half mile to the nearest public paved road.

(ii) Sewage - More than 1,000 feet to the nearest sewer with sufficient capacity for the needs of the development and soils unsuitable for subsurface sewage disposal systems.

(iii) Region - The region surrounding the site is at least partially developed or is not accessible by foot to campground users.

(e) Energy Facility Development Potential

Development Potential Rankings for energy facilities shall be jointly determined by NJDEP and NJDOE on a case by case basis pending completion of energy facility siting studies.

(f) Rationale

High Development Potential sites satisfy the major siting requirements of coastal uses and may be most desirable from the developer's viewpoint. The Development Potential factor also considers the extent to which the development of a site would carry out the basic coastal policy to concentrate the pattern of development by serving as infill to existing patterns of development, or whether the proposed development site would extend or scatter the pattern of development. DEP recognizes that other factors may be important in siting decisions from a developer's perspective. Use of the development potential factor stresses the advantages of existing settled areas and emphasizes the disadvantages of sparsely settled areas in determining the acceptability of locations. This factor promotes efficient capital investment in public infrastructure and community facilities, as well as conservation of open space.

7:7E-5.6 Definition of Acceptable Intensity of Development

(a) Introduction

The Location Policy for General Land Areas is expressed in terms of three acceptable intensities of development of the site as determined by consulting the Land Acceptability Tables for the appropriate region. The acceptable intensities of development are expressed in terms of maximum and minimum acceptable percentages of the gross area of the site that may be, or must be used for structures, herbs and shrubs, or forests. Permeable paving provides a 10% bonus over the permitted maximum level of structures and impervious paving.

The acceptable maximum and minimum figures are percentages of the gross site area. Thus if a site were 100 acres of land with no special areas and the analysis showed acceptability for high intensity development, 80-90 acres of the site could be developed with paving and structure.

On sites with Special Areas which must remain undeveloped the developable area would be reduced. For example, if a site is 100 acres with 10 acres of wetlands and 20 acres of Endangered Species Habitat, only 70 acres would be acceptable for structures and paving, even if the land analysis showed acceptability for high intensity development which would allow 80-90 acres of a site to be developed (See Figure 25).

In some sites, clustering of development may be necessary if an applicant wishes to realize the acceptable maximum percentages. For example, on a 100 acre site proposed for housing with 20 acres of Floodplain and 30 acres of wetland and an acceptability for moderate intensity development, 30-40 acres of paving and structures would be acceptable. This represents 60%-80% of the General Land Area. These percentages are associated with higher density clustered housing rather than detached structures. In the General Land Area, the minimum vegetation figures are relaxed since vegetation is preserved in the water's edge or special areas.

Figure 25

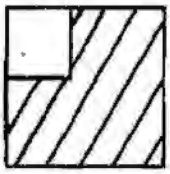
# ACCEPTABLE INTENSITY OF DEVELOPMENT

CASE 1 NO SPECIAL AREAS

CASE 2 SPECIAL AREAS DEVELOPMENT RESTRICTED IN 30 AC.

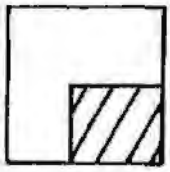
100 AC.

1a. HIGH INTENSITY ACCEPTABILITY 80 - 90 AC.



2a HIGH INTENSITY ACCEPTABILITY 70 AC.

1b. MOD. INTENSITY ACCEPTABILITY 30 - 40 AC.



2b. MOD. INTENSITY ACCEPTABILITY 30 - 40 AC.

1c. LOW INTENSITY ACCEPTABILITY 3 - 5 AC.

2c. LOW INTENSITY ACCEPTABILITY 3 - 5 AC.

AREA WHERE DEVELOPMENT IS ACCEPTABLE

(b) High Intensity Development

This level of development permits extensive development of paving and structures. Typically, if analysis showed that most of a large area was acceptable for intensive development, the landscape that would be produced would be urban or heavily industrialized. The photomaps below show examples of typical High Intensity Development landscapes.

For parts of a site classified for High Intensity Development, the acceptable range of development is:

| High Intensity Development | Structures and Impervious Paving | Permeable Paving | Herb and Shrub | Forest |
|---|---|---|---|---|
| Maximum | 80% | 90% | 95% | - |
| Minimum | - | - | 5% | 5% |

(Dash symbol (-) indicates no maximum or minimum)

This range allows most of each part of the site in this category to be developed with structures or paving, while preserving at least a small minimum of open space in herbs, shrubs and trees for microclimate control, aquifer recharge and visual screening. A developer planning to use pervious paving can, as a bonus, develop a larger percentage of the area.

The required percentage of forest shall either be preserved, or, if there is no forest on the site, shall be planted. Tree species shall be those of the native mature forest, and saplings shall be at least 6 feet high at a minimum density of 1 per 100 sq. ft. Forest areas shall be protected from trampling.

Shrubs and herbs shall be suitable to the substrate conditions. In the acid sandy soils common in the coastal area, this requirement excludes many species common in more inland areas.

High Intensity Development must be compatible in density with its surrounding region.

(c) Moderate Intensity Development

At this level of development, between 30 and 40 percent of a site can be developed in paving and structures. Typically, if analysis showed that most of a large area was acceptable for moderate intensity development, the landscape that would be produced would be suburban. The photomaps below show examples of Moderate Intensity Development landscapes.

For sites classified for moderate intensity development, the acceptable range of development elements is as follows:

| Moderate Intensity Development | Structures and Impervious Paving | Permeable Paving | Herb and Shrub | Forest |
|---|---|---|---|---|
| Maximum | 30% | 40% | 80% | - |
| Minimum | - | - | - | 20% |

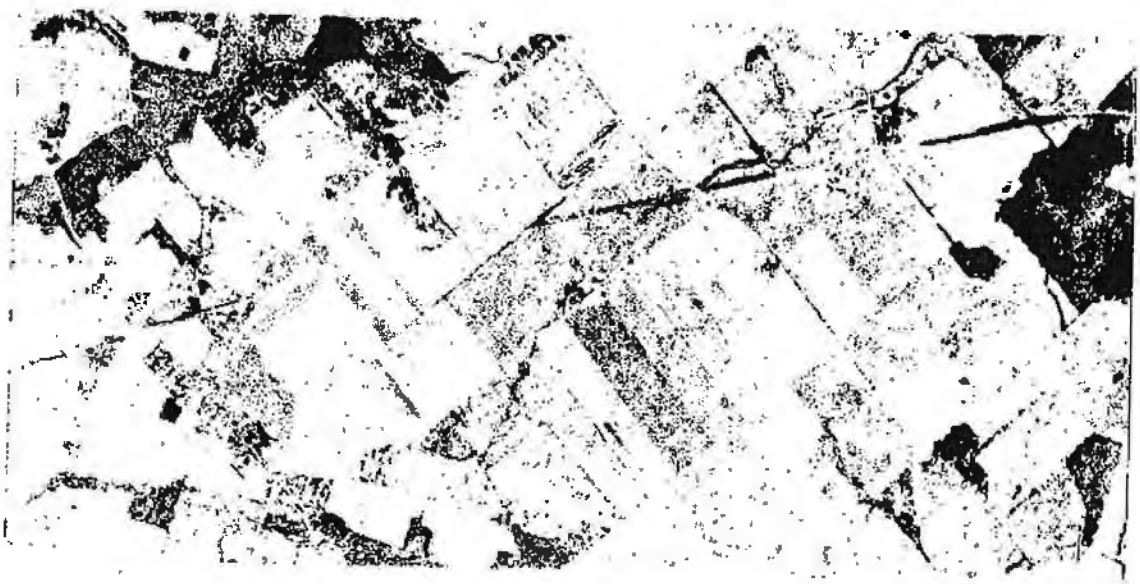
The range allows, for example, development of residential subdivisions of up ro approximately 4 dwelling units per acre or, if the porous paving allowance is used and the dwellings are clustered, up to approximately 8 dwelling units per acre.

A minimum 20 percent of forest is required to ensure that forest vegetation is preserved or planted for microclimate control, energy conservation, soil stabilization, aquifer recharge and wildlife habitat. Where the site has no existing forest, this percentage shall be met by planting native forest species of the mature forest. It is not intended that this should be costly planting. Whip saplings (less than 3 feet high) at a density of 1 per 200 square feet are acceptable. The forested areas shall be protected from trampling. The herbs and shrubs shall be adapted to the environmental conditions of the site to reduce the adverse impacts associated with extensive liming, fertilization and irrigation. The acid sandy soils common in coastal areas exclude many species common in inland areas, including most lawn grasses.

(d) Low Intensity Development

At this level of development intensity, the existing conditions of the site are not to be disturbed, except for selective removal of vegetation for agricultural use or maintenance purposes. Also, no grading, paving or structures would be allowed except for agriculture related use. Typically the landscape of Low Intensity Development areas would be rural, agricultural, or forest, as shown below in the photomaps. An exception to this general rule is the removal of vegetation for agricultural or silvicultual purposes or for recreational use that does not disturb soils. Unless the vegetation is in a special area, the following figures are applicable.

| Low Intensity Development | Structures and Impervious Paving | Permeable Paving | Herb and Shrub | Forest |
|---|---|---|---|---|
| Maximum | 3% | 5% | 95% | - |
| Minimum | - | - | - | 5% |



7:7E-5.7 Land Acceptability Tables

(a) Introduction

The Land Acceptability Tables, one for each of the three regional growth types, indicate the acceptable intensity of development of a site or parts of a site, for each of the nine possible combinations of Environmental Sensitivity and Development Potential factors in each table. Since Development Potential applies to an entire site, each site can have a maximum of three different levels of acceptable intensity, if it has three areas with different levels of Environmental Sensitivity.

Land Acceptability Table: Moderate Growth Region

(Southern, Western Ocean, and Barnegat Corridor Regions)

| | DEVELOPMENT POTENTIAL | | | ENVIRONMENTAL SENSITIVITY | | | ACCEPTABLE DEVELOPMENT INTENSITY | | |
|---|---|---|---|---|---|---|---|---|---|
| Line Number | High | Medium | Low | Low | Medium | High | High Intensity | Moderate Intensity | Low Intensity |
| 1 | X | | | X | | | X | | |
| 2 | X | | | | X | | X | | |
| 3 | X | | | | | X | | X | |
| 4 | | X | | X | | | | X | |
| 5 | | X | | | X | | | X | |
| 6 | | X | | | | X | | | X |
| 7 | | | X | X | | | | | X |
| 8 | | | X | | X | | | | X |
| 9 | | | X | | | X | | | X |

Land Acceptability Table: High Growth Region

(Urban Areas, Northern Waterfront, Northern, Central, [and] Absecon-Somers Point Regions, and Delaware River)

| | DEVELOPMENT POTENTIAL | | | ENVIRONMENTAL SENSITIVITY | | | ACCEPTABLE DEVELOPMENT INTENSITY | | |
|---|---|---|---|---|---|---|---|---|---|
| Line Number | High | Medium | Low | Low | Medium | High | High Intensity | Moderate Intensity | Low Intensity |
| 1 | X | | | X | | | X | | |
| 2 | X | | | | X | | X | | |
| 3 | X | | | | | X | | X | |
| 4 | | X | | X | | | X | | |
| 5 | | X | | | X | | X | | |
| 6 | | X | | | | X | | | X |
| 7 | | | X | X | | | | | X |
| 8 | | | X | | X | | | | X |
| 9 | | | X | | | X | | | X |

Land Acceptability Table: Low Growth Region

(Mullica-Southern Ocean, Great Egg Harbor River Basin, and Delaware Bayshore Regions)

| | DEVELOPMENT POTENTIAL | | | ENVIRONMENTAL SENSITIVITY | | | ACCEPTABLE DEVELOPMENT INTENSITY | | |
|---|---|---|---|---|---|---|---|---|---|
| Line Number | High | Medium | Low | Low | Medium | High | High Intensity | Moderate Intensity | Low Intensity |
| 1 | X | | | X | | | | X | |
| 2 | X | | | | X | | | X | |
| 3 | X | | | | | X | | | X |
| 4 | | X | | X | | | | | X |
| 5 | | X | | | X | | | | X |
| 6 | | X | | | | X | | | X |
| 7 | | | X | X | | | | | X |
| 8 | | | X | | X | | | | X |
| 9 | | | X | | | X | | | X |

(b) Rationale

The Land Acceptability Tables represent a striking of balances between the environmental sensitivity and development potential of sites, and balances among regions, in order to indicate both which land areas are appropriate locations for development and how the design of the development should use the land features of the site.

DEP has categorized the Coastal Zone into fourteen regions because the coastal zone is not uniform. Descriptions of the regions make possible a more graphic, though still generalized, picture of its future. The regions are: Barrier Island, Urban Areas, Northern Waterfront Area, Northern, Central, Western Ocean, Barnegat Corridor, Mullica-South Ocean, Tuckerton, Absecon-Somers Point, Great Egg Harbor, Southern, Bay Shore, and Delaware River Area. Also, different broad growth policies -- Development, Extension of Development and Limited Growth -- are appropriate for these regions.

Environmental Sensitivity is weighed more heavily in Limited Growth Regions than in Development Regions. Development Potential is weighed more heavily in Development Regions.

The fourteen regions of the coast are divided into three regional growth types as follows: Development: Urban, Northern, Central, Absecon-Somers Point, Northern Waterfront and Delaware River Area; Extension of Growth: Western Ocean County, Barnegat Corridor, Tuckerton and Southern; Limited Growth: Delaware Bayshore, Mullica-Southern Ocean and Great Egg Harbor River Basin.

The general growth policies are the basis for the distribution of the development acceptability. The three land acceptability tables show that in Development Regions, development potential is favored to promote growth, and in Limited Growth areas environmental sensitivity is favored to promote conservation. This general policy affects the tables as follows:

1. Development Regions (Urban, Northern Waterfront, Northern, Central, Absecon-Somers Point and Delaware River)

The general policy in these regions is to promote growth through infill and limited extension. In the Northern and Absecon areas, as well as urban areas throughout the coastal zone, most growth will take place in high potential infill sites because of the pattern and density of existing development. In the eastern Central region, growth may occur through both infill and extension. The question here is how much to limit the extension and scattering of development so that orderly growth is promoted that does not induce sprawl without unreasonably interfering with the sequence in which sites are developed.

In this Development category, the criteria of both high and low development potential are changed to make it easier to obtain a high or medium ranking. For example, proposals for residential developments that have adequate access to roads and sewers that have been approved but not built may qualify for high development potential status. Proposals that are within 1,000' of roads and sewers that have been approved but are not built qualify for medium development potential. In these areas of

planned growth, the requirement that a site must be infill to qualify for medium development potential does not apply. This definition identifies areas where growth is currently planned and then assigns acceptable development intensities as if the infrastructure were in place, which allows non-sequential development. The definition of levels of environmental sensitivity is the same throughout the tables.

Area Types 1, 2, 3 In these areas development potential is high. Basically these are infill sites. In a Development Region these are prime development areas, satisfying the policy of concentration, so development potential is weighed heavily.

Area 1. There is no conflict in this area. Sites with high development potential and low environmental sensitivity are suitable for any intensity of development compatible with their surroundings.

Area 2. There is little conflict in this area. In Development Regions the high development potential overrides medium environmental sensitivity. Impacts can generally be contained by mitigation. Development of any intensity compatible with the surroundings is therefore appropriate to promote growth.

Area 3. This is an area of high conflict. Development in these areas encroaches upon fertile forests and forested areas around streams with wet high permeability soils. However, because of the high potential and Development Region designations, moderate intensity development is considered acceptable to promote growth. Development on sites, or parts of sites, that are included on this area shall minimize disturbance to the maximum extent practicable and shall distribute the limited areas of structures and paving acceptable in the moderate intensity class as much as possible in areas with a deeper water table and less valuable forest. Mitigation measures to reduce ground and surface water impacts are essential.

Areas 4, 5, 6 In these three areas the development potential moves to medium. In Development Regions development potential is also weighed heavily, though less than in the first three areas. The balance is designed to conserve the limited areas of high sensitivity that occur in Development Regions as open space for surrounding developments.

Area 4. The environmental sensitivity is low and development of any compatible intensity is appropriate to promote growth.

Area 5. Development potential overrides the moderate environmental sensitivity to promote growth. The acceptable development intensity is high, rather than medium, because the resource loss is moderate and, to promote clustering, intensive growth is desirable. The open space necessary in a developing high growth region is better provided in larger contiguous areas which may also conserve high sensitivity land types, than dispersed through lower density development in moderate sensitivity areas.

Area 6. This is an area of conflict. Here high environmental sensitivity overrides development potential. Almost all the high sensitivity areas in the Development Regions are limited areas of forested Alsion, Lakewood or Klej soils adjacent to streams and water bodies. In these moderate development potential growth extension areas, the preservation of these water related areas is desirable for a number of reasons.

- They are linked to the water's edge corridors and so many become parks and wildlife habitats linked to an integrated non-vehicular movement system providing recreation and diversity for surrounding areas of development.

- They conserve the most valuable and sensitive land areas of a developing region improving water quality and adding to the mitigating effects of the water's edge areas.

- Development of these areas is relatively difficult and expensive: vegetation must be cleared, filling is necessary for foundations and paving and special mitigation measures are necessary for the release of sewage and runoff effluents.

Conservation therefore benefits both the community and the environment.

Areas 7, 8, 9 In these three areas, development potential is low, sites are distant from existing or approved roads and sewers, and soils are unsuitable for septic systems. The criteria for low development potential in Development Regions allows scattered non-sequential development in areas where growth is planned. Environmental sensitivity must be weighed more heavily in these three lines to prevent sprawl into unsewered areas where soils are unsuitable for septic systems. This is particularly common in the sandy soils of Development Regions.



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Area 7. This is the only area of these three where conflict arises between the policy of promoting development in Development Regions and the policy of discouraging sprawl. The criteria for low potential in Development Regions are designed more narrowly than in other areas to allow most sites to qualify for medium development potential. Environmental sensitivity overrides development potential in this area to restrict scattered development in unsewered sandy soils.

Areas 8 & 9 In these two areas, environmental sensitivity overrides development potential to prevent scattered development into areas of low potential where resource loss and impacts are of concern.

2. Extension Regions (Western Ocean County, Barnegat Corridor, Tuckerton and Southern)

The general policy in these areas is to promote nodal growth based on existing centers of development and to limit ribbon and scattered development along minor roads. It is desirable in these areas to promote settlement patterns that could be served by public transportation systems, parricularly buses.

Because of this policy, development acceptability is more limited in areas of extension. Environmental sensitivity is weighed more heavily than in Development Regions. The criteria for inclusion in development and extension categories are also more rigorous for this reason. Sites must be adjacent to existing roads and sewers to qualify for high potential and adjacent to existing developed sites and within 1,000 feet of existing roads and sewers to qualify for medium potential. These more rigorous standards are set to increase the limitations to sprawl in Extension Regions.

Areas 1, 2, 3 In these three areas, development potential is high, sites infill or round off, and the necessary infrastructure is available. These are the nodes where growth is to be promoted. Development potential is weighed more heavily than environmental sensitivity.

Areas 1 & 2 Here development potential overrides environmental sensitivity. The acceptable development intensity is kept high in both areas to promote clustering in the growth nodes.

Area 3. This is an area of conflict, with development encroaching upon highly sensitive areas. In order to promote concentration at nodes, development potential partly overrides environmental sensitivity to permit moderate intensity development. Developers building on sites or parts of sites that are regulated by this

area shall place structures and paving in a way that avoids the most sensitive parts of the area as much as possible and mitigate impacts according to the Resource Policies.

Areas 4, 5, 6 In these three areas, development potential is medium, sites are extensions of existing development and within moderate distances of roads and sewers. If development acceptability is moderate or high, ribbon development along roads is possible conflicting with the policy of nodal development.

In the Southern Region, extensive land areas fall within the Farmland Conservation Area. In western Ocean County, there are few land areas adjacent to existing roads. Little ribbon development is therefore possible. To allow limited growth, development potential partly overrides environmental sensitivity in all but the most sensitive areas to allow moderate intensity development.

Areas 4 & 5 Here moderate intensity development is acceptable to allow very limited extensions of existing roadside developments.

Area 6. Here the most sensitive areas are conserved from ribbon development both to prevent sprawl in Extension Regions and to protect valued and sensitive land areas.

Areas 7, 8, 9 In these areas development potential is low, sites are distant from roads, and sewers and soils are unsuitable for septic tanks. To prevent scattered sprawl development in limited growth areas, the acceptable intensity of development is low.

3. Limited Growth Areas (Delaware Bayshore, Mullica-Southern Ocean Great Egg Harbor River Basin)

The general policy in these areas is that conservation is more important than development and environmental sensitivity is therefore weighed more heavily than other areas. In the Delaware Bayshore, the concern is the conservation of agricultural land. In the Mullica-Southern Ocean and Great Egg Harbor River Basin regions the concern is conservation of the natural environment. The spread of development must, therefore, be highly restricted. In order to satisfy these policies, development has been limited to infilling and rounding off in areas of moderate and low environmental sensitivity.

Areas 1 & 2 These areas show moderate intensity development acceptable in infill sites. This allows a limited amount of growth within existing settlements especially where development had leapfrogged in the past leaving pockets of undeveloped land.

Areas 3 to 9 In these areas development is restricted in Limited Growth Regions either because the lower development potential implies ribbon or scattered sprawl in conflict with the subregional growth policy or, to conserve the environmentally sensitive areas which are more valuable in Limited Growth Regions than elsewhere.

(c) Determination of Location Acceptability

The location acceptability of a coastal development proposed for a General Land Area is determined by comparing the site plan of the proposed development, with the acceptable minimum and maximum percentages of the site for structures, paving, herb and shrub vegetation, and forest vegetation, as specified in the three levels of acceptable development intensity in the Land Acceptability Tables that apply to the site or parts of the site. The percentages of the proposed development's site plan shall conform with the percentages determined using the Land Acceptability Tables, to the maximum extent practicable.



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SUBCHAPTER 6 - GENERAL LOCATION POLICIES

7:7E-6.1 Policy on Location of Linear Development

A linear development, such as but not limited to a road, sewer line, or offshore pipeline, that must connect two points to function shall comply with the specific location policies to determine the most acceptable route, to the maximum extent practicable. If part of the proposed alignment of a linear development is found to be unacceptable under the specific location policies, that alignment (perhaps not the least possible distance) may nonetheless be acceptable, provided the following conditions are met:

(a) there is no prudent or feasible alternative alignment which would have less impact on sensitive areas,

(b) there will be no permanent or long term loss of unique or irreplaceable areas,

(c) appropriate measures will be used to mitigate adverse environmental impacts to the maximum extent feasible, such as restoration of disturbed vegetation, habitats, and land and water features,

(d) the alignment is located on or in existing transportation corridors and alignments, to the maximum extent practicable.

7:7E-6.2 Basic Location Policy

A location may be acceptable for development under the specific location policies above, but the DEP may reject or conditionally approve the proposed development of the location as reasonably necessary to:

(a) promote the public health, safety, and welfare,

(b) protect public and private property, wildlife and marine fisheries, and

(c) preserve, protect and enhance the natural environment.

7:7E-6.3 Secondary Impacts

(a) Definition

Secondary impacts are the effects of additional development likely to be constructed as a result of the approval of a particular proposal.

(b) Policy

Coastal development that induces further development shall demonstrate, to the maximum extent practicable, that the secondary impacts of the development will satisfy the Coastal Resource and Development Policies. The level of detail and areas of emphasis of the secondary impact analysis are expected to vary depending upon the type of development. Minor projects may not even require such an anaylsis. Transportation and

wastewater treatment systems are the principal types of development that require a secondary impact analysis, but major industrial, energy, commercial, residential, and other projects may also require a rigorous secondary impact analysis.

Secondary impact analysis must include an analysis of the likely geographic extent of induced development, its relationship to the State Development Guide Plan Concept Map, an assessment of likely induced point and non-point air and water quality impacts, and evaluation of the induced development in terms of all applicable Coastal Resource and Development Policies. Models for secondary impact analysis may be found in New Jersey Department of Community Affairs, Division of State and Regional Planning, Secondary Impacts of Regional Sewerage Systems (1975) and in USEPA, Manual for Evaluating Secondary Impacts of Wastewater Treatment Facilities (EPA-600/5-78-003, 1978).

(c) Rationale

Further development stimulated by new development and the cumulative effects of coastal development, including development not directly managed by DEP, may gradually adversely affect the coastal environment. The capacity of existing infrastructure does, however, limit the amount and geographic extent of possible additional development. Secondary impact analysis, particularly of proposed infrastructure, enables DEP to ascertain that the direct, short term effects, and the indirect or secondary effects of a proposed development will be consistent with the basic objectives of the Coastal Management Program. Secondary impact analysis enables DEP to evaluate likely cumulative impacts in the course of decision-making on specific projects.

7:7E-7.1 Purpose

Many types of development seek locations in the coastal zone. The second stage in the screening process of the Coastal Resource and Development Policies spells out a set of policies for particular uses of coastal resources. Use policies are policies and conditions addressed to particular kinds of development. Use policies do not pre-empt location policies which restrict development, unless specifically stated. In general, they introduce conditions which must be satisfied in addition to the Location Policies, and the Resource Policies described in the following section.

7:7E-7.2 Housing Use Policies

(a) Definition

Housing includes both large and small developments of single family detached houses, multi-family units with apartments or town houses, high rise buildings and mixed use developments.

(b) Water Area and Water's Edge Housing

1. Policy

(i) New housing development is prohibited in Water Areas outside Special Urban Areas except for reconstruction of existing residential structures on pilings located on guts, canals, lagoons and ports which have been damaged by causes other than wind, water or wave, which is conditionally acceptable. In Special Urban Areas, new housing development is acceptable in Water Areas on existing pilings, provided public access between the residential units and the water body is not restricted.

(ii) New Housing development is conditionally acceptable in the Filled Water's Edge, provided that: (a) it would not preempt use of the waterfront portion of the Filled Water's Edge for potential water dependent uses, (b) the site fulfills the General Land Area criteria for moderate or high intensity development, and (c) public access along the water's edge is not restricted.

(iii) New housing development involving the stabilization of existing lagoons through revegetation, bulkheading or other means is conditionally acceptable provided that the conditions of the Existing Lagoon Edges policy are satisfied.

2. Rationale

Housing is not dependent on water access, and does not generally qualify for exceptions to the policy of restricting non-water dependent development along the water's edge. In addition to this general restriction, most of the Special Area policies contain specific restrictions that have the practical effect of discouraging or prohibiting new development, including housing, from sensitive areas.

(c) Cluster Development

1. Policy

Housing developments are encouraged to cluster dwelling units on the areas of sites most suitable for development.

2. Rationale

Clustering is defined as an increase of net density realized by reducing the size of private lots and retaining or increasing the gross density of a project. The open space that is produced by clustering can be returned to the community as common open space. The location policies define certain sensitive areas where development is limited. When such areas are present on a site, the acceptable gross density may have to be reduced, unless the net density can be increased by clustering. Where municipal zoning requires minimum lot sizes that preclude clustering, applicants are encouraged to seek local approval, through new ordinances and/or variances, to maintain the permissible gross density by clustering. DEP will aid this endeavor by providing a rationale and testimony, as appropriate, especially for the protection of sensitive areas. Cluster developments lessen the impact of construction by preserving valued soil, open space, vegetation and aquifer recharge resources. Some cluster developments also increase insulation and reduce energy consumption due to shared walls between units.

(d) Residential Mix

1. Policy

Housing development that provides for a mix of dwelling types and for persons of different age and income groups is encouraged.

2. Rationale

The quality of life improves when residential areas provide a diversity of dwelling types, at different cost levels, so that people of different ages, life styles, and incomes can live together, rather than the post-war pattern of highly stratified development that has taken place in the process of suburbanization of the coastal zone. At the same time, the coastal region already provides specialized dwelling types for particular groups, such as senior citizens.

(e) Fair Share Housing

1. Policy

Residential development is encouraged to help municipalities to accommodate their fair share of the regional need for low and moderate income housing, as defined in "A Revised Statewide Housing Allocation Report for New Jersey" (Department of Community Affairs,

Division of State and Regional Planning, Bureau of Urban Planning, May, 1978). Residential developments shall provide least cost housing where feasible, especially in Development Regions and in municipalities not presently providing their fair share of low and moderate income housing.

2. Rationale

In March 1975, the New Jersey Supreme Court, in Southern Burlington County NAACP v. The Township of Mount Laurel 67 N.J. 151 (1975) declared that a municipality must "presumptively make realistically possible an appropriate variety and choice of housing ... at least to the extent of the municipality's fair share of the present and prospective regional need ..." In April 1976, the Governor issued Executive Order No. 35, (amended by Executive Order No. 46 of December 1976) which directed the Division of State and Regional Planning in the Department of Community Affairs to prepare a statewide fair share housing allocation plan. Developments in the coastal zone that contribute to meeting judicial intent concerning municipal fair shares are encouraged.

Atlantic City is a unique case in that is has more than its fair share of least cost housing, but as casinos increase the demand for and cost of housing, it is necessary that new least cost housing be provided in the city and its surrounding coastal region to accommodate persons forced out of housing by rising costs as well as people attracted to the region by new jobs.

(f) Housing and Transportation

1. Policy

(a) The development of housing at locations and densities that contribute to the feasibility of public transportation is encouraged.

(b) Residential developments are encouraged to include bicycle paths to activity centers and bicycle storage facilities.

(c) Residential developments are encouraged to provide pedestrian amenities which include lighted walkways with benches, lighted sidewalks with curb ramps and intersections, shade trees, and pedestrian controlled traffic lights.

2. Rationale

Public health and welfare concerns about air quality, as well as the necessity to limit energy consumption, require that public policies and decisions encourage alternatives to reliance on private automobiles.

(g) Housing Rehabilitation

1. Policy

Residential development involving the demolition and redevelopment of existing structures is discouraged, unless rehabilitation of the existing structures is demonstrated to be impractical, infeasible, or contrary to the public interest.

2. Rationale

The preservation, restoration, or rehabilitation of existing structures is preferable to demolition and redevelopment in order to save structures and neighborhoods with historic and aesthetic interest. Rehabilitation is often more labor intensive than construction of a new building. This means that more jobs are created and less energy is consumed through the production of new building materials.

(h) High Rise Housing

1. Policy

All high rise housing developments, defined as structures for residential use more than six (6) stories or more than sixty (60) feet from grade, are encouraged to locate in areas of existing high density, high-rise and/or intense settlements. High rise housing is acceptable subject to the following conditions:

(i) high-rise structures within the view of coastal waters must be separated from coastal waters by at least one public road or an equivalent area physically and visually open to the public,

(ii) the longest lateral dimension of any high-rise structure must be oriented perpendicular to the beach or coastal waters,

(iii) the proposed structure must not block the view of dunes, beaches, horizons, skylines, rivers, inlets, bays, or oceans that are currently enjoyed from existing residential structures, public roads or pathways,

(iv) the structure must not overshadow beaches between May and October, or waterfront parks year round,

(v) the proposed structure must be in character with the surrounding transitional heights and residential densities, or be in character with a comprehensive development scheme requiring an increase in height and density,

(vi) the proposed structure must not have an adverse impact on air quality, traffic, and existing infrastructure.

2. Rationale

Considerable recent residential development along the coast, from the Palisades to the barrier islands, has taken the form of high-rise, high-density towers. While conserving of land, some high-rise structures represent a visual intrusion, cause adverse traffic impacts, and cast shadows on beaches and parks. Under CAFRA, DEP has approved several high-rise structures in Atlantic City and denied two CAFRA applications for high-rise proposals, one in downtown Toms River (Ocean County) and another in Brigantine (Atlantic County). This policy strikes a balance, between banning high-rises and allowing tall residential structures anywhere in the coastal zone.

(i) Large-Scale Residential Development

1. Definition

Large-scale Residential Developments are free standing, planned developments, which include at least 500 residential dwelling units. They may also include commercial, industrial, and recreational, uses.

2. Policy

Large-scale Residential Developments are conditionally acceptable, provided that they carry out the basic coastal policy to concentrate the regional pattern of development, contribute to regional housing needs, and do not cause significant adverse secondary impacts.

Large-Scale Residential Developments need not meet the Land Area Policies, except in the High and Moderate Environmental Sensitivity portions of Limited Growth Regions, where only the roads and sewage criteria will be used in determining if the Development Potential is High, Medium or Low (See Policy 7:7E-5.5(b)).

3. Rationale

Large planned communities offer advantages of scale in creating new modes of development and providing housing. Such large projects may, however, detract from or alter appropriate regional patterns of development.

7:7E-7.3 Resort/Recreational Use Policies

(a) Definition

Resort-recreation uses include the wide range of small and large developments attracted to and often dependent upon locations along the coast. Resort-recreation uses include hotels, motels, marinas, boating facilities, campgrounds, amusement piers, parks and recreational structures such as bath houses, natural areas, open space for active and passive recreation, and linear paths for bicycling and jogging.

(b) Recreation Priority

1. Policy

(i) Each waterfront municipality should contain at least one waterfront park on each body of water within the municipality. Municipalities or private developments that do not currently provide, or have active plans to provide, access to the water will not be eligible for Green Acres or Shore Protection Bond Funding.

(ii) Resort/Recreation Uses shall have priority over all other uses, in Monmouth, Ocean, Atlantic, and Cape May, Cumberland and Salem Counties with highest priority reserved for those uses that serve a greater rather than a lesser number of people, and those uses that provide facilities for people of all ages and for people with physical handicaps.

2. Rationale

The national and state interests in recreation are clearly indicated in the coastal economy and are essential for the quality of life. The coastal environment provides numerous opportunities for recreation which should be expanded by public policy and action, including priority setting.

(c) Recreation Areas Within Developments

1. Policy

Recreation areas shall be incorporated in the design of all residential, industrial and commercial development, to the maximum extent practicable.

2. Rationale

The recent national recognition that recreation is physically and mentally important for people of all ages should be accommodated by new development. Recreational facilities are important near places of employment, as well as in residential areas, since many people only have opportunities for recreation during the working day.

NOTE: See Resource Policy on Public Access to the Shorefront (7:7E-8.13)

(d) Marinas

1. Policy

(i) New or expanded marinas for recreational boating are conditionally acceptable if:

(a) the demonstrated regional demand for recreational boating facilities cannot be met by the upgrading or expansion of existing marinas, and

/

(b) the proposed marina includes the development of an appropriate mix of dry storage areas, public launching facilities, and berthing spaces, depending upon the site conditions and

(c) the proposed marina provides adequate pump out stations for wastewater disposal from boats in a manner consistent with federal and state water quality laws and regulations.

(ii) New marinas or boat launching facilities that provide primarily for sail and oar boating are encouraged.

(iii) Expansions of existing marinas shall be encouraged by limiting non-water dependent land uses that preclude support facilities for boating.

(iv) Publicly funded marinas shall be designed to be part of multiple use parks, to the maximum extent practicable.

(v) Recreational boating facilities are acceptable provided that they are designed and located in order to cause minimal feasible interference with the commercial boating industry.

2. Rationale

The location of marinas requires the use of sensitive lands at the waters edge which exist in only limited supply and are also valued for other activities. The policies aim to ensure that the area devoted to marinas is fully and efficiently utilized to keep the size of the area required to a minimum. Waiting lists for slips at existing marians would be one type of evidence of regional need for additional facilities. Facilities for sail and oar boating are encouraged because such boars consume less energy and have less of a polluting impact on the water than motor boats.

(e) Amusement Piers, Parks and Boardwalks

1. Policy

New amusement piers are prohibited, except in areas with privately held riparian grants, where they are discouraged. Expanded or extended amusement piers, parks, and boardwalks at the water's edge or in the water and the on-site improvement or repair of existing amusement piers, parks and boardwalk areas are discouraged unless the proposed development meets the following conditions:

(i) the amusement pier, parks, or boardwalk does not unreasonably conflict with aesthetic values, ocean views, other beach uses, and wildlife functions, and

(ii) public access to the shorefront is not limited, and

(iii) the surrounding community can adequately handle the activity and uses to be generated by the proposed development.

2. Rationale

Amusement piers, amusement parks, and boardwalks form an essential element of the resort and recreational character of some of the communities fronting on the Atlantic Ocean. The carnival atmosphere of these areas provides fun and excitement annually for hundreds of thousands of people. However, new piers for amusement purposes are an inappropriate use of scarce coastal resources, due to the natural hazard of the desired ocean location and the importance of maintaining the visual quality of the oceanfront. Also, amusement parks are not a water-dependent use; these facilities may be located inland on less sensitive land and water features.

7:7E-7.4 Energy Use Policies

(a) General Definition of Energy Uses

Energy uses include facilities, plants or operations which produce, convert, distribute, or store energy. Under the Department of Energy Act, the term "energy facility" does not include an operation conducted by a retail dealer.

(b) General Energy Facility Siting Procedure

1. Policy

(i) The acceptability of all proposed new or expanded coastal energy facilities shall be determined by a review process that includes both NJDEP and the New Jersey Department of Energy (N.J.S.A. 52:27F-1 et seq.) according to the procedures defined in the Memorandum of Understanding between NJDEP and NJDOE on Coordination of Permit Reviews.

(ii) NJDOE will determine the need for future coastal energy facilities according to three basic standards. NJDOE will submit an Energy Report to DEP with its determination of the need for a coastal energy facility based on three required findings:

- the existing sources of supply will not be adequate to meet future levels of demand, including careful consideration of the potential effects of conservation,

- that no better technological alternative exists to meet future levels of demand,

- that no better locational alternative to the proposed site exists.

(iii) NJDEP will determine the acceptability of coastal energy facilities using the Coastal Resource and Development Policies supported by appropriate, technically sound analyses of alternatives.

(iv) If NJDOE has submitted an Energy Report to DEP, the DEP decision document shall refer to the NJDOE Energy Report and indicate DEP's reasons for differences, if any, between the DEP decision and the NJDOE Energy Report.

(v) Where NJDOE and NJDEP disagree on the acceptability of a specific proposed coastal energy facility (for example, on a specific proposed site for one type of energy facility), the disputed decision shall, in accord with state law, be submitted to the State's Energy Facility Review Board for final administrative action.

2. Rationale

NJDOE and NJDEP share responsibility for carrying out the energy facility siting, planning and project review elements of the New Jersey Coastal Management Program. The State Energy Master Plan and its appendices, the Coastal Resource and Development Policies, and the Memorandum of Understanding between NJDEP and NJDOE provide a clear framework for decision-making by these two State agencies on the review of proposed facilities, as well as a basis for continued consultation and cooperative planning.

(c) Outer Continental Shelf (OCS) Oil and Gas Exploration and Development

1. Policy

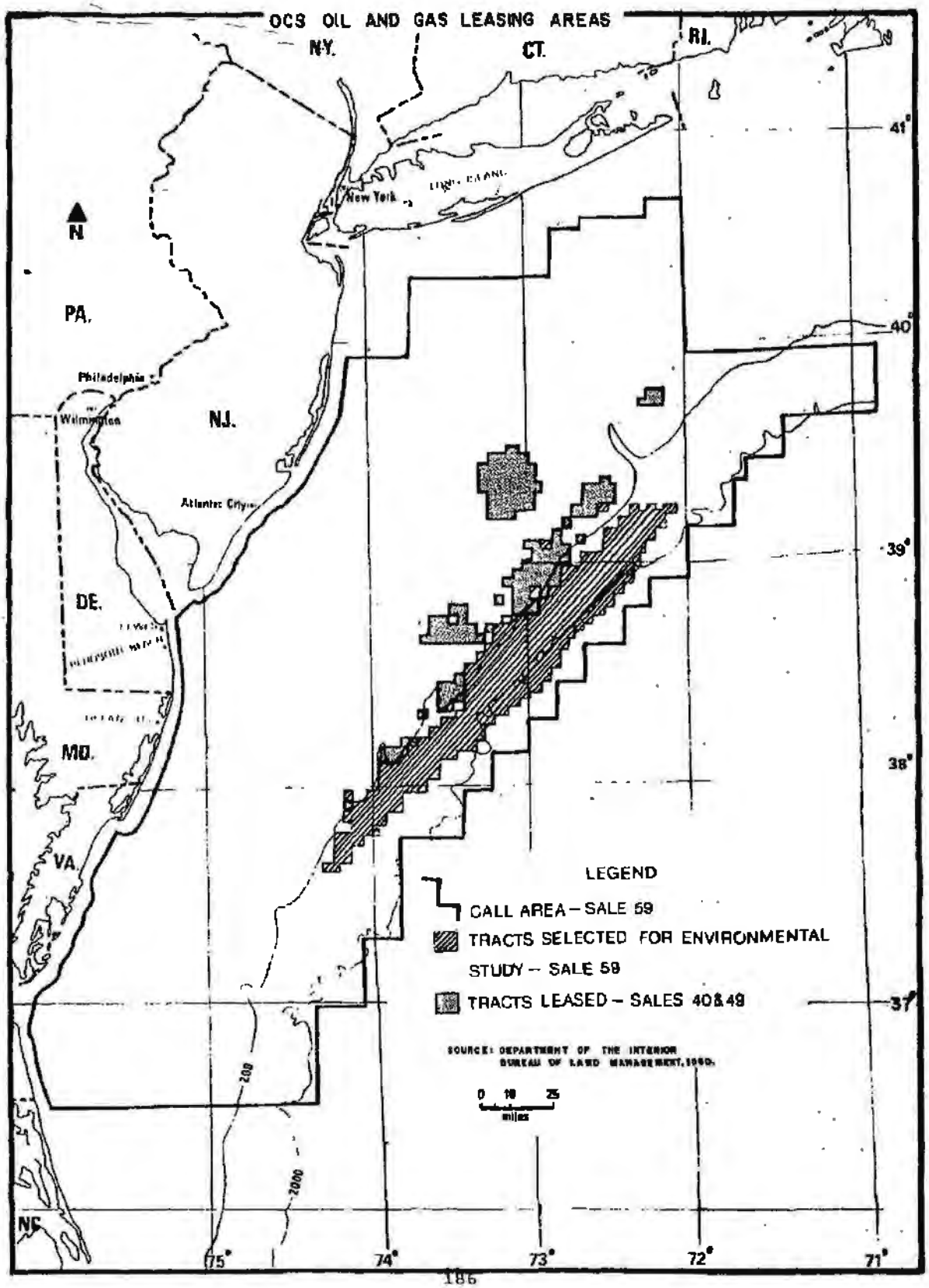
Rapid exploration of the Mid-Atlantic, North Atlantic, and other offshore areas with potential reserves of oil and natural gas is encouraged, as long as no long term adverse impacts will result, onshore or offshore and such activities are conducted in accordance with the policies of the program. Onshore activities related to the exploration, development and production of offshore hydrocarbons shall be carried out according to the specific energy facility policies of this section.

2. Rationale

The decision of the U.S. Department of Interior to lease offshore tracts for oil and natural gas exploration presents New Jersey with new onshore and marina-related environmental problems and opportunities (See Figure 26). New Jersey supports offshore exploration, recognizing the national need to identify new energy supplies, as long as this new industrial activity does not conflict with the State's second most important industry, tourism, which depends upon the maintenance of a high quality coastal environment.

In the event that commercial quantities of natural gas and/or oil are found off the New Jersey coast, there may be considerable onshore and offshore activity during the development stage of OCS operations that is necessary for production of these hydrocarbon resources. Development activity will diminish once production begins.

Figure 26


OCS OIL AND GAS LEASING AREAS
N.Y.
CT.
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PA.
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Wilmington
N.J.
Atlantic City
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MD.
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38°
37°
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73°
72°
71°
200
2000
LEGEND
CALL AREA – SALE 59
TRACTS SELECTED FOR ENVIRONMENTAL STUDY – SALE 59
TRACTS LEASED – SALES 40&49
SOURCE: DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT, 1980.
0 10 25
miles

A number of natural gas strikes have been made on tracts leased in the Mid-Atlantic OCS Region. To date, these strikes do not constitute a commercial discovery.

To minimize the impact of needed facilities, DEP encourages the location of OCS-related facilities, except oil and gas transportation facilities, in developed areas where the infrastructure and labor market already exist to absorb such activity.

During the construction of onshore oil and gas facilities, there may be an influx to the coastal zone of the marine service and engineering industry. This service sector office-oriented activity will be encouraged to locate in urban centers, such as Atlantic City, which because of its proximity to OCS Lease Sale 40 has already been selected by industry as the take-off point for helicopters to the offshore rigs and platforms. Also, the U.S. Geological Survey (U.S.G.S.) has located its mid-Atlantic field office in Atlantic City to supervise and monitor offshore operations.

(d) Onshore Support Bases

1. Policy

New or expanded onshore support bases and marine terminals to support offshore oil and gas exploration, development, and production (including facilities for work boats, crew boats and helicopters, pipelaying barges, pipeline jet barges, ocean-going tugs, anchor handling vessels, and limited, short-term storage facilities), are encouraged at locations in built-up urban coastal areas and discouraged in less developed areas of the coastal zone. Preferable locations for water-dependent onshore support bases include urban waterfront areas, where onshore adverse physical, economic, and institutional impacts will be less than the impacts likely to be placed on less industrially developed areas which are more dependent upon tourism and the resort industry. Small facilities for storing oil spill containment and cleanup equipment for offshore operations and emergency crew transport facilities, including crew boat operations will, however, be acceptable along the Atlantic Ocean or Delaware Bay where such a location would facilitate and expedite offshore emergency operations.

2. Rationale

Offshore exploratory activity began off New Jersey in the Baltimore Canyon on March 29, 1978. If the exploratory drilling is successful, the offshore oil and gas industry is likely to seek onshore support bases closer to the offshore tracts than the present temporary bases established by the major oil, gas, and offshore service and supply companies at Davisville, Rhode Island. Because of shallow inlets in the Bay and Ocean Shore Segment, few locations in this part of New Jersey meet industry's siting requirements. This policy recognizes that the New Jersey coast is favored by proximity to the offshore tracts as a site for onshore staging bases, and carries out the basic policy to concentrate rather than disperse industrial development in the coastal zone.

(e) Platform Fabrication Yards and Module Construction

1. Policy

Platform fabrication yards and module construction are encouraged in built-up coastal areas of the coastal zone, along the Hudson, Raritan and Delaware Rivers which have the requisite acreage, adequate industrial infrastructure, ready access to the open sea, and adequate water depth, and where the operation of such a yard would not alter existing recreational uses of the ocean and waterways in the areas. They are discouraged elsewhere in the coastal zone.

2. Rationale

The development phase of OCS activity in the Mid-Atlantic may require additional platform construction yards. The need for such facilities is dependent on the long term OCS development in frontier areas of the Atlantic Coast and the worldwide demand for such structures. However, platform construction yards require large tracts of land and are labor intensive. The operation of a platform construction yard could severely disrupt the economy and social fabric of less developed communities and areas. For these reasons, offshore platform construction yards are encouraged to seek locations in the already developed areas of the New Jersey coast. However, the height restrictions of bridges on certain other New Jersey waterways may sharply limit the suitability of sites in New Jersey. Existing under-utilized shipyards may be used, however, for platform module construction.

(f) Repair and Maintenance Facilities

1. Policy

Repair and maintenance facilities for vessels and equipment for offshore activities are encouraged in the Delaware River and Northern Waterfront Areas. Repairs can be accommodated on an emergency basis in existing ship repair facilities in the Atlantic Ocean and Delaware Bay area, but not on a continual, long term basis.

2. Rationale

Ship repair yards presently exist in the developed coastal areas and should be utilized by OCS vessels that will be based in the same portion of the coast. Small shipyards within the Bay and Ocean Shore region can serve valuable repair functions on an emergency basis because of their proximity to the offshore leased areas. Utilization of repair yards in this region on a continuing basis, however, is not encouraged because of problems in meeting the OCS vessel draft requirments and because of possible conflicts with recreational vessels.

(g) Pipe Coating Yards

1. Policy

Pipe coating yards are discouraged along the Atlantic Ocean and Delaware Bay and encouraged along the Delaware River and in the port area under the jurisdiction of the Port Authority of New York and New Jersey.

2. Rationale

Pipe coating yards constitute an industrial activity that is generally incompatible with the suburban and rural character of the Delaware Bay and Atlantic Ocean shore region. Further, pipe coating yards typically require 100-150 acres, and wharf space with a preferred depth at the wharf of 20 to 30 feet. These siting requirements suggest that highly industrial port areas are preferred locations.

(h) Pipelines and Associated Facilities

1. Policy

Crude oil and natural gas pipelines to bring hydrocarbons from offshore New Jersey's coast to existing refineries, and oil and gas transmission and distribution systems and other new oil and natural gas pipelines are conditionally acceptable, subject to the following conditions and restrictions:

(i) For safety and conservation of resources, the number of pipeline corridors, including trunk pipelines for natural gas and oil, shall be limited, to the maximum extent feasible, and designated following appropriate study and analysis by the Department of Environmental Protection and the New Jersey Department of Energy, and interested federal, state and local agencies, affected industries, and the general public,

(ii) The pipeline corridors for landing oil or natural gas are to be located in or adjacent to existing already developed or disturbed road, railroad, pipeline, electrical transmission or other rights-of-way, to the maximum extent practicable,

(iii) Oil and gas pipelines are subject to the following restrictions, respectively, regarding the Central Pine Barrens and other particularly sensitive areas:

-- Pipeline corridors for landing oil are prohibited in the Central Pine Barrens area of the Mullica River, Cedar Creek watersheds and portions of the Rancocas Creek and Toms River watersheds, defined as the 760 square mile region adopted by DEP as a "critical area" for sewerage purposes and non-degradation surface and ground water quality standards -- see N.J.A.C. 7:9-4.6(i), (j), and N.J.A.C. 7:9-10.1(b) and Figure 27 -- and discouraged in other undeveloped parts of the Pine Barrens,

-- Pipeline corridors for natural gas are discouraged in the Central Pine Barrens as defined above, unless the developer can demonstrate that construction and operation of the proposed pipeline will meet the adopted nondegradation standards for water quality and cause no long term adverse environmental impacts,

(iv) Proposals to construct offshore oil and gas pipelines, originating on the Outer Continental Shelf and all of the contemplated ancillary facilities along the pipeline route such as, for example, gas separation and dehydration facilities, gas processing plants, oil storage terminals, and oil refineries will be evaluated by DEP and the New Jersey Department of Energy, in terms of the entire pipeline corridor through the State of New Jersey and the adjacent territorial sea,

(v) To preserve the recreational and resort character of the coastal areas, the following conditions and prohibitions shall apply to oil and gas pipeline-related facilities.

-- New major pumping stations and other ancillary facilities associated with offshore oil and gas pipelines shall be discouraged from locations in the Bay and Ocean Shore area.

-- Gas separation and dehydration plants and compressor stations and other facilities associated with natural gas pipelines which are approved shall be protected by adequate visual, sound, and vegetative buffer areas, and

-- Offshore platforms for pumping or compressor stations are encouraged to locate out of sight of the shoreline.

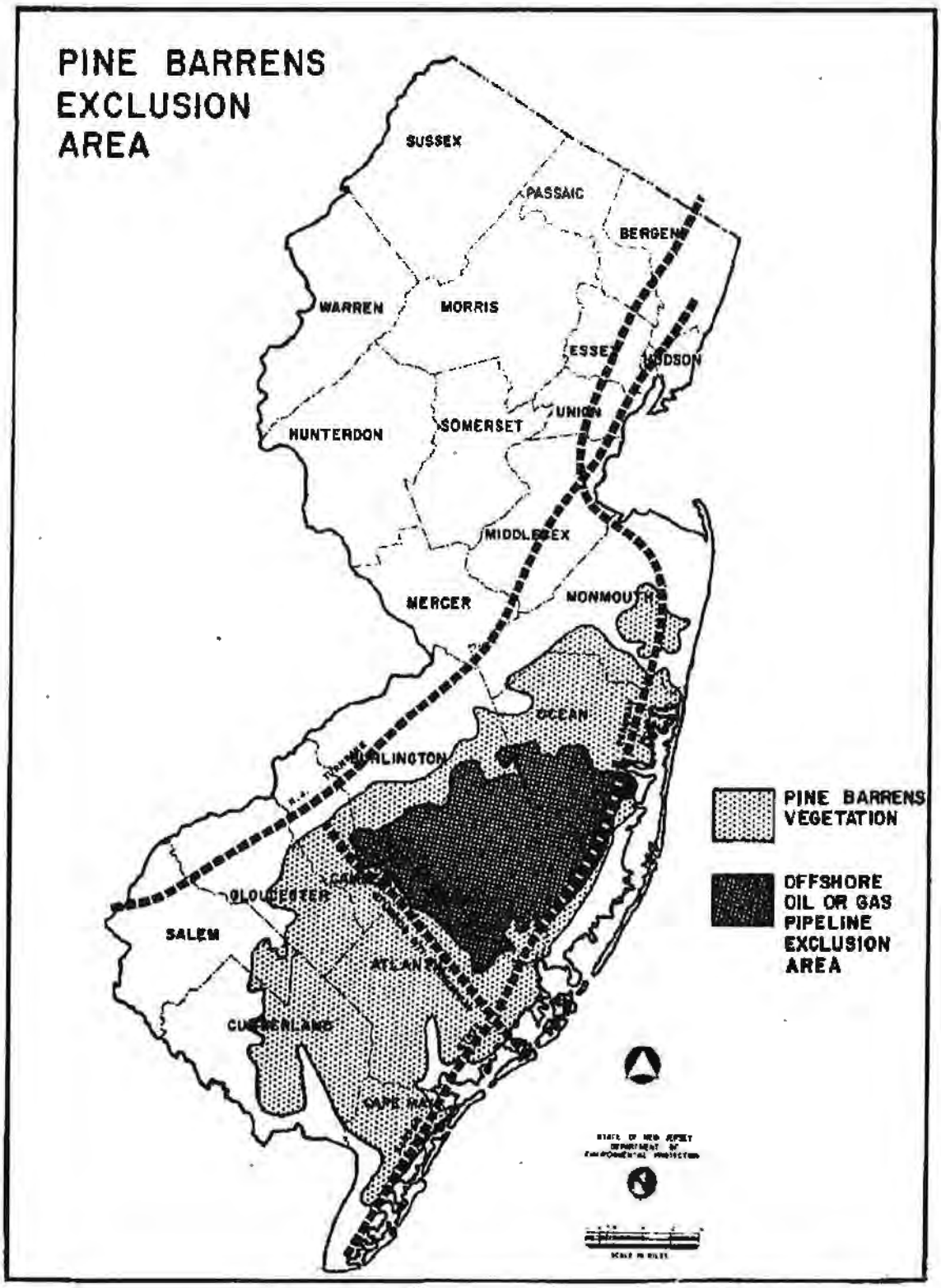
(vi) Pipeline corridors through the state coastal waters shall, at a minimum and to the maximum extent feasible, avoid offshore munitions, chemical and waste disposal areas, heavily used waterways, geological faults, wetlands and significant fish or shellfish habitats.

(vii) Pipelines shall be buried to a depth sufficient to withstand exposure by scouring, shipgroundings, anchors, fishing and clamming and other potential obstacles on the sea floor. Trenching operations shall be conducted in accordance with applicable federal regulations.

2. Rationale

New Jersey recognizes that pipelines, rather than other modes of surface transportation such as tankers and barges, are the preferred and more environmentally sound method of bringing crude oil and natural gas ashore from offshore wells. The impact of pipelines are most evident during the construction phase.

Figure 27


PINE BARRENS
EXCLUSION
AREA
SUSSEX
PASSAIC
BERGEN
WARREN
MORRIS
ESSEX
HUDSON
UNION
HUNTERDON
SOMERSET
MIDDLESEX
MERCER
MONMOUTH
OCEAN
BURLINGTON
GLOUCESTER
SALEM
ATLANTIC
CUMBERLAND
CAPE MAY
PINE BARRENS VEGETATION
OFFSHORE OIL OR GAS PIPELINE EXCLUSION AREA

However, these impacts will generally be short term provided proper construction technologies, mitigating measures, scheduling practices, and restoration efforts are utilized. At the same time, particular attention should be focused on the potential onshore effects of pipelines on the sensitive ecosystem of the coast and the Pine Barrens. These effects and the visual, noise, and odor impacts which may be created by facilities associated with OCS pipelines, require that New Jersey proceed cautiously and prudently in selecting pipeline corridors, specific alignments, and locations for ancillary facilities.

New Jersey, along with the numerous public and private interests at the local, state, and national levels involved in pipeline siting, is participating in the intergovernmental offshore oil and gas transportation planning process being coordinated by the U.S. Department of Interior, Bureau of Land Management (BLM). BLM has promoted the concept of a common carrier pipeline in recent years by including a stipulation in all lease sales which requires pipelines constructed on the OCS to be placed in designated corridors. The Federal Energy Regulatory Commission which has the overriding responsibility for siting natural gas pipelines, has also endorsed the concept of designated utility corridors.

(i) Gas Separation and Dehydration Facilities

1. Definitions

Separation is defined as the removal of free liquids from a gas stream. They may be either hydrocarbon liquids, which may be processed into fuels such as ethane, butane and propane, or free water.

Dehydration is the removal of water vapor from the gas stream after separation of the liquid from the gas.

2. Policy

Separation and dehydrarion facilities are discouraged in the Bay and Ocean Shore area. Such facilities that are approved shall meet all applicable air and water quality standards, and be protected by adequate visual, sound, and vegetative buffers. Separation and dehydration facilities will be reviewed as part of the overall proposed gas transportation system by NJDEP and NJDOE.

3. Rationale

It is anticipated that natural gas extracted from the Mid-Atlantic OCS will contain natural gas (mostly methane) and water, along with relatively small amounts of liquid hydrocarbons. Most of the water can be removed from the natural gas stream on the production platform. The liquid hydrocarbons, or condensate, will be returned to the gas stream downstream of gas measurement equipment on the platform and transported to shore with the gas in a single pipeline. The natural gas liquids and small amounts of water which

reach landfall by the pipeline must be separated from the gas stream before it reaches an existing interstate natural gas transmission line. This can, from a technological standpoint, occur at any point along the onshore corridor.

Separation/dehydration facilities essentially remove water, natural gas liquids, and other impurities from the gas stream. The natural gas liquids are temporarily stored in fixed-roof storage tanks with vapor recovery systems until transported offsite by rail, tank truck or pipeline to a gas processing plant. Water will be disposed of either by deep well injection or by trucking to an approved offsite disposal location.

Basic siting criteria requires up to 50 acres of fairly level land, with 20-30 acres intensively utilized and the remaining acreage serving as a buffer zone around the plant. Additionally, easy access to either highway and/or railroad facilities is desirable.

(j) Gas Compressor Stations

1. Definition

Compressor stations are facilities located along natural gas pipelines which raise the pressure of the gas in order to transport the resource more efficiently and economically.

2. Policy

Compressor stations are encouraged to be located out of the sight of the shoreline on platforms in offshore waters. They are discouraged from locations in the Bay and Ocean Shore area.

3. Rationale

The pressure of the gas at the well is the driving force for pushing the gas through a pipeline to shore, and, once ashore, to a connection with an existing interstate transmission line. In some cases, gas pressure at the well is sufficient to free flow the gas to shore.

Once ashore, the gas will continue through the pipeline to a separation and dehydration facility and then to the interstate transmission line. It is not expected that the pressure losses due to friction and the presence of natural gas liquids and water in the gas stream will be sufficient to require compression of Mid-Atlantic natural gas. However, if they are required, it is feasible to place them anywhere along the pipeline corridor.

(k) Gas Pigging Facility

1. Definition

A pig is a scraping tool that is forced through a pipeline to clean out accumulations of wax, scale, gas liquids or any foreign materials from the inside walls of the pipe. The pig is inserted offshore and would be removed at an onshore location called a pigging facility.

2. Policy

A pigging facility, which may or may not be associated with a separation and dehydration facility, is discouraged in the Bay and Ocean Shore area. The need for and location of the facility will be reviewed within the context of the entire natural gas pipeline system.

3. Rationale

A pipeline must be periodically "pigged" in order to ensure its efficient operation and to safeguard against damage. Water and hydrocarbon vapor may condense as pressures drop along the length of a natural gas pipeline and may collect in low points in the pipeline. The condensate must be removed to maintain efficiency in the transmission of gas.

(1) Gas Processing Plants

1. Definition

A gas processing plant is designed to recover liquifiable hydrocarbons from a gas stream before it enters a commercial transmission line. A gas processing facility may include treatment, recovery and fractionation equipment to separate the recovered liquid hydrocarbon stream into its various components including, for example, ethane, butane and propane.

2. Policy

Gas processing plants proposed for locations between the offshore pipeline landfall and interstate natural gas transmission lines shall be prohibited from sites within the Bay and Ocean Shore area and shall be located the maximum distance from the shoreline. The siting of gas processing plants, will be reviewed in terms of the total pipeline routing system by DEP and NJDOE.

3. Rationale

Gas processing plants may be needed if commercially recoverable quantities of natural gas are found off New Jersey's shore.

These facilities, however, do not require locations on the shoreline. If the amount of liquids separated from the gas stream is minimal, the liquids can be trucked or transported by rail to existing facilities which could process these liquids. A gas processing plant may induce the location and/or expansion of chemical plants since gas and its byproducts often provide the feedstock for the petrochemical industry.

To promote the most efficient use of land, gas processing plants could be located close to existing interstate natural gas transmission pipelines. Alternatively, where natural gas is associated with oil and oil pipelines, gas processing plants should be located close to refineries to which the oil pipeline will be routed. Thus, gas processing plants which are economically and technically feasible and which do not exceed new source and performance standards regarding air and water quality are conditionally acceptable in the Delaware River and Northern Waterfront areas.

(m) Other Gas-Related Facilities

1. Policy

Additional facilities related to a natural gas pipeline such as metering and regulating srations, odorization plants, and block valves are conditionally acceptable in the Bay and Ocean Shore area provided they are protected by adequate visual, sound, and vegetative buffer areas; are approved by DEP and NJDOE; and are in compliance with U.S./DOT regulation.

2. Rationale

Certain ancillary facilities, in addition to pipeline, may be necessary to assure the safe, efficient and economical transportation of natural gas to shore. The impacts of these facilities will be evaluated in the overall analysis of the gas transporration system.

(n) Oil Refineries and Petrochemical Facilities

1. Policy

New oil refineries and petrochemical facilities are conditionally acceptable outside of the Bay and Ocean Shore area provided that: (i) they are consistent with all applicable Location and Resource policies, (ii) there is a need for the facility as determined by NJDOB, and (iii) an EIS determines that the facility will have no unacceptable impacts. New oil refineries and petrochemical facilities outside the Bay and Ocean Shore area are encouraged to locate in established industrial areas accessible to their potential labor force. New oil refineries and petrochemical facilities are prohibited in the Bay and Ocean Shore Segment. Expansion in capacity of existing oil refineries and petrochemical facilities at existing sites, which are all located outside of the Bay and Ocean Shore Region, will be acceptable if such expansion does not violate applicable State air and water water quality standards.

2. Rationale

Refineries are large-scale industrial facilities that are neither coastal-dependent nor compatible with the character of the Bay and Ocean Shore Region. However, new refineries or additions to existing refineries using advanced technology to control air and water pollution and other hazards could be compatible with existing development in the Delaware River Area or northern waterfront.

(o) Storage of Crude Oil, Gases and Other Potentially Hazardous Liquid Substances

1. Policy

The storage of crude oil, gases and other potentially hazardous liquid substances as defined in N.J.A.C. 7:1E-1.1 under the Spill Compensation and Control Act (N.J.S.A. 58:10-23.11) is prohibited on barrier islands and discouraged elsewhere in the Delaware and Raritan Bay and Atlantic Ocean Shore region. In the Northern Waterfront and Delaware River areas, such facilities are conditionally acceptable if they meet air and water Resource Policies and are compatible with or adequately buffered from surrounding uses. They are not acceptable along the water's edge unless they are supplied by ship in which case they are acceptable on the Filled Water's Edge subject to the above conditions. They are not acceptable where they would limit or conflict with a potential recreational use.

2. Rationale

Major storage facilities for potentially hazardous substances are not entirely coastal-dependent and will not be permitted where storage might limit or conflict with recreational or open space uses of the coast.

(p) Tanker Terminals

1. Policy

New or expanded tanker facilities will be acceptable only in existing ports and harbors where the required channel depths exist to accommodate tankers. Multi-company use of existing and new tanker terminals will be encouraged in the Port of New York and New Jersey and in the area bounded by the Delaware River Port Authority, where adequate infrastructure exists to accommodate the secondary impacts which may be generated by such terminals, such as processing and storage facilities. New tanker terminals will be discouraged in other parts of the coast. Offshore tanker terminals and deepwater ports are discouraged from the Bay and Ocean Shore Region, pending a thorough evaluation of the implications of such a facility.

2. Rationale

Onshore tanker facilities pose potential adverse environmental impacts and could encourage secondary development activity that is not necessarily coastal dependent. Also, even medium sized tankers require minimum channel depths of 30 feet, which excludes locations within the Bay and Ocean Shore Region. New or expanded tanker terminals are therefore directed toward New Jersey's established port areas. Deepwater ports appear attractive to industry due to increasingly larger tankers, limitations on dredging and the scarcity of waterfront land. However, a deepwater port may, depending on its location, cause severe adverse primary and secondary impacts on the built, natural, and social environment.

(q) Electric Generating Stations

1. Policy

New or expanded electric generating facilities (for base load, cycling, or peaking purposes) and related facilities are conditionally acceptable subject to the conditions that follow. Conversion or modification of exsiting generating facilities for purposes of fuel efficiency, cost reduction, or national interest are conditionally acceptable provided they meet applicable State and federal laws and standards.

(i) The construction and operation of the proposed facility shall comply with the Coastal Resource and Development Policies, with special reference to air and water quality standards and policies on marine resources and wildlife,

(ii) NJDEP and NJDOE shall find that the proposed location and design of the electric generating facility is the most reasonable alternative for the production of electrical power that NJDOE has determined is needed. The finding shall be based on a comparative evaluation by the applicant of alternative sites within the coastal zone and inland, and of alternative technologies for the transportation and conversion of energy as well as the productive use of plant residuals, including thermal discharges.

(iii) Fossil fuel (coal, oil or gas) and hydroelectric generating stations are discouraged in scenic or natural areas that are important to recreation and open space purposes,

(iv) Nuclear generating stations shall be located in generally remote, rural, and low density areas, consistent with the criteria of 10 CFR 100 (U.S. Nuclear Regulatory Commission rules on siting nuclear generating stations) and/or any other related federal regulations. In addition, NJDEP shall find that the nuclear generating facility is proposed for a location where the appropriate low population zone and population center distance are likely to be maintained around the nuclear generating facility, through techniques such as land use controls or buffer zones,

(v) The construction and operation of a nuclear generating station shall not be approved unless DEP finds that the proposed method for disposal of the spent fuel to be produced by the facility: (i) will be safe, (ii) conforms to standards established by the U.S. Nuclear Regulatory Commission, and (iii) will effectively remove danger to life and the environment from the radioactive waste material. This finding is required under present state law (N.J.S.A. 13:19-11) and will be made consistent with judicial decisions (see Public Interest Research Group v. State of New Jersey, 152 N.J. Super. 191) and federal law.

(vi) The construction of electric generating facilities using renewable forms of energy such as solar radiation, wind, and water, including experimental and demonstration projects, is encouraged in the coastal zone provided that the facilities do not significantly detract from scenic or recreational values. The cogeneration of electricity and process steam for industrial, community and commercial use is also encouraged.

2. Rationale

The siting of an electric generating station is an extraordinary event with far-reaching impacts, when compared with the typical day-to-day decisions made under the State's coastal management program. Such siting decisions therefore require special scrutiny using: (a) the State's authority in its management of state-owned tidelands and submerged lands contemplated as sites for all or part of an electric generating station, (b) the State's regulatory authority, and (c) the State's influence in federal proceedings on aspects of the siting process.

New Jersey's coastal zone, especially along Barnegat Bay and Delaware Bay, has experienced the consequences of several major siting decisions in the past decade and already has a diverse mix of existing, proposed, and potential fossil fuel and nuclear generating facilities, both onshore and offshore.

For example, in 1980 two nuclear generating units were in operation in the coastal zone: Salem Unit I on Artificial Island on the Delaware River in Salem County and at Oyster Creek near Barnegat Bay in Ocean County. Four additional nuclear generating units are under construction in the Bay and Ocean Shore Segment and have received the appropriate federal and State approvals, including Forked River on the Oyster Creek site in Ocean County, and Salem 2 and Hope Creek 1 and 2 on Artificial Island. The Hope Creek project, which DEP approved under CAFRA in 1975, had its genesis in a project contemplated at Newbold Island in the Delaware River, less than five miles south of Trenton. In 1973, the U.S. Atomic Energy Commission (the predecessor to the Nuclear Regulatory Commission), acting in accord with the view of New Jersey, recommended that Artificial Island would be a more suitable site than Newbold Island because of population density concerns. Until PSE&G decided to withdraw its proposal, New Jersey's coastal zone was also the site of two proposed floating nuclear reactors, the Atlantic Generating Station, Units 1 and 2, at a site in the Atlantic Ocean east of Little Egg Harbor. The coastal zone also includes generating stations that have used various fossil fuels depending upon the price and availability of fuel as well as well as upon the applicable air quality rules.

New Jersey recognizes the interstate nature of the electric power system. Some electricity is produced in New Jersey at facilities owned partially by utilities in other states and exported to those states. New Jersey also imports electricity produced in adjacent

states. In short, New Jersey is an integral part of the Pennsylvania-New Jersey-Maryland interconnecting grid system, importing and exporting electricity from the system at different times of the day, season and year in order to generate electricity efficiently and achieve the lowest achievable cost to electricity users throughout this multi-state region.

The need for converting some existing facilities from oil-fired to coal-fired generation is recognized by the Powerplant and Industrial Fuel Use Act of 1978 (FUA) P.L. 95-620. The FUA restricts, through mandatory and discretionary prohibitions, the use of natural gas and petroleum as primary energy sources in existing powerplants. In the FUA, the national objective to decrease dependency on imported fuel is combined with the desire to achieve self-sufficiency in a manner that minimizes environmental and social costs. These objectives are considered sufficiently flexible in their achievement as to ensure that the environmental impacts are acceptable (see Fuel Use Act, EIS, April 1979, U.S. DOE).

New Jersey also recognizes that most electric generating facilities may not be coastal-dependent but do require access to vast quantities of cooling waters, a siting factor that, from the perspective of utilities, increases the attractiveness of coastal locations. This siting policy strikes a balance among various competing national, regional, and state interests in coastal resources, and recognizes some of the differences in the siting requirements of fossil fuel and nuclear generating stations.

The policy directs fossil fuel stations toward built up areas in order to preserve and protect particularly scenic and natural areas important to recreation and open space purposes. New Jersey has articulated this policy with a conscious recognition of the state's progress in attaining and maintaining high air quality. Given the use of appropriate control technology, coal-fired generating stations, for example, appear feasible at various coastal locations. The siting of coal-fired power plants in urban areas also promotes efficient energy use due to the proximity of power plants to load centers.

The nuclear siting policy recognizes public concern for the disposal of spent fuel, as mandated in 1973 by the New Jersey Legislature in CAFRA.

(r) Liquefied Natural Gas (LNG) Facilities

1. Policy

(i) New marine terminals and associated facilities that receive, store, and vaporize liquefied natural gas, for transmission by pipeline to a base load electric generating station are discouraged in the coastal zone unless (a) a clear and precise

justification for such facilities exists in the national interest, (b) the proposed facility is located and constructed so as to neither unduly endanger human life, property nor otherwise impair the public health, safety and welfare, as required by N.J.S.A. 13:19-10f, (c) such facilities comply with the Coastal Resource and Development Policies.

LNG facilities shall be sited in accordance with the standards set forth in P.L.96-129, Title I Subtitle B, Pipeline Safety Act of 1979, Section 6(a)(3) which states that no new LNG facility may be operated unless an accident contingency plan is found to be adequate by the Department of Transportation under the Natural Gas Act.

In determining the acceptability of proposed LNG facilities, DEP will consider siting criteria such as: (a) the risks inherent in tankering LNG along New Jersey's water ways, (b) the risks inherent in transferring LNG onshore, and (c) the compatibility of the facility with surrounding land uses, population densities, and concentrations of commercial or industrial activity.

(ii) New LNG facilities that liquefy, store and vaporize LNG to serve demand during peak periods shall be located in generally remote, rural, and low-density areas where land use controls and/or buffer zones are likely to be maintained.

2. Rationale

The Pipeline Safety Act of 1979, P.L. 96-129, amended the Natural Gas Pipeline Safety Act of 1968 and sets forth requirements for the safe operation of pipelines transporting natural gas and liquefied petroleum gases, and provides standards with respect to the siting, construction, and operation of liquefied natural gas facilities.

The State recognises the responsibilities of various federal agencies, including the U.S. Coast Guard and Office of Pipeline Safety Operations in the U.S. Department of Transportation, the Economic Regulatory Administration in the U.S. Department of Energy (US DOE), and the independent Federal Energy Regulatory Commission within USDOE, for management of various aspects of the siting and operations of LNG facilities.

Importation facilities for LNG are discoursged in view of the present sources of LNG from politically unstable counties. The use of natural gas for base load electric generation purposes is inconsistent with the Power Plant and Industrial Fuel Use Act of 1978, P.L. 95-620. The availability of domestic sources of LNG and a demonstrated need that such importation facilities are in the national interest dictate considering applications for such facilities on a case by case basis.

The tankering, transfer, and storage of LNG pose significant risks to public health, safety and welfare and may cause serious adverse environmental impacts which may not be restricted to one state, given the likely potential locations of LNG terminals along interstate waterways. New Jersey therefore recommends that the siting of LNG facilities be treated as a regional issue on an interstate basis.

7:7E-7.5 Transportation Use Policies

(a) Roads

1. Policy

New road construction shall be limited to situations where:

(i) a clear need exists, taking into account the alternatives of upgrading existing roads and of using public transportation to meet the need,

(ii) provision is made to include construction of bicycle and foot paths, except where these would not be feasible,

(iii) provision is made for coordinated construction of public transportation rights-of-way and facilities, such as bus lanes, rail lines, and related transit stop or station facilities and parking, except where such construction would not be feasible,

(iv) surrounding land does not lose its recreational and aesthetic opportunity, and

(v) induced development in conflict with coastal policies would not be expected to result.

2. Rationale

This policy is based on two assumptions: (i) that the coastal zone, is for the most part adequately served already by the existing road network, and (ii) that further capital investment in transportation facilities for the coastal region should emphasize those kinds of facilities which would minimize environmental damage and energy use. Consequently, new road construction should be undertaken only where the burden of proving need is met after less damaging and more fuel efficient alternatives have been considered. In addition, further investment in road construction should include coordinated investment in low-damage, highly fuel-efficient modes whereever possible.

(b) Public Transportation

1. Policy

New and improved needed public transportation facilities, including bus, rail, air, and boat travel and related parking facilities, are encouraged.

2. Rationale

A basic premise of the coastal management program is concentrating the pattern of development, in part to facilitate public transportation. While new air transportation facilities appear unlikely in the Delaware Bay, Raritan Bay and Atlantic Ocean shore areas, bus facilities and parking systems appear appropriate, particularly as a solution to the transportation problems of barrier island resorts.

In the more developed parts of the coastal zone, expansion, improvement and new construction of all forms of public transportation are the most appropriate ways to meet the new transportation needs generated by goods and people.

(c) Bicycle and Foot Paths

1. Policy

(i) The construction of internal bicycle paths, foot paths and sidewalks in residential, commercial, and industrial developments is required to the maximum extent practicable.

(ii) Linear bicycle and foot paths are encouraged along the edges of all water bodies, provided they would not disturb Special Areas or subject the user to danger.

(iii) Existing bicycle and foot paths must be continued around development when it is not practical to pass through development.

2. Rationale

Paths for pedestrians and bicycles provide active outdoor recreation and may lead to reduced dependency on cars, especially if settlement patterns are made more compact.

(d) Parking Facilities

1. Definition

Parking facility policies apply to all parking facilities, in part or wholly within the area subject to the Waterfront Development Act, and to parking facilities for 300 or more cars elsewhere in the coastal zone.

2. Policy

Parking lots, garages and large paved areas are conditionally acceptable, provided that they will not interfere with existing or planned mass transit services, the extent of paved surfaces is minimized, and landscaping with indigenous or preferred species is maximized, the development satisfies the Resource Policies for air, water, and runoff, and the development is compatible with its surroundings and satisfies the Location Policies.

3. Rationale

Parking facilities provide a necessary transportation facility, but one that may cause air and water impacts.

7:7E-7.6 Public Facility Use Policies

(a) Definition

Public Facilities includes a broad range of public works for the production, transfer, transmission, and recovery of water, sewerage and other utilities. The presence of an adequate infrastructure makes possible future development and responds to the needs created by present development.

(b) General Public Facilities

1. Policy

New or expanded public facility development is conditionally acceptable provided that:

(i) The public facility would serve a demonstrated need that cannot be met by an existing public facility at the site or region,

(ii) Alternate technologies, including conservation, are an impracical or infeasible approach to meeting all or part of the need for the public facility,

(iii) The public facility would not generate significant secondary impacts inconsistent with the Coastal Resource and Development Policies, and

Upgrading existing facilities to meet development and redevelopment needs in developed waterfront areas is encouraged.

2. Rationale

Public facilities provide all important public services, but can also adversely affect the coastal environment and economy if improperly located, designed, or constructed. In particular, the secondary impacts of new public facility construction and the need for the facility require scrutiny. In developed areas, some inadequate public facilities need to be upgraded and improved.

(c) Solid Waste

1. Policy

Solid waste conservation techniques such as recycling, resource and energy recovery and volume reduction, must be explored and proved infeasible before a new or expanded sanitary landfill preferably at a regional scale, is deemed acceptable.

Sanitary landfills that locate in the upland must demonstrate that the leachate will not adversely impact the ground or surface waters, by using a lining and/or a leachate filtration plant. Acceptable plans for restoring the site must be submitted with the original proposal.

2. Rationale

Solid waste is a resource whose potential for recovery must be evaluated before locating new sanitary landfills. Further, regional solutions to solid waste management are mandated under State law. In addition, the development of new landfills is subject to the regulations of DEP's Solid Waste Administration.

(d) Wastewater Treatment

1. Policy

(i) Coastal development that does not employ the most energy-efficient wastewater treatment system practicable is discouraged. Energy efficient systems are encouraged.

(ii) On-site sewage disposal systems which recycle nutrients and water for productive use are encouraged where the design, installation, operation, and maintenance will be consistent with applicable ground and surface water quality statutes and regulations.

(iii) Wastewater treatment systems that rechatge the groundwater with highly treated effluents are encouraged, provided that consistently high quality effluents and acceptable recharge techniques are demonstrated.

(iv) Wastewater treatment facilities shall, to the maximum extent feasible, provide for multiple use of the site, including open space and recreation use.

2. Rationale

Wastewater treatment systems range in scale from on-site sewage disposal systems to regional treatment systems with centralized plans, major interceptors, and ocean outfalls. In the past decade considerable wastewater treatment system construction has taken place or been authorized in developing parts of the coastal zone with corresponding improvements in water quality. New wastewater treatment systems must be carefully evaluated in terms of water quality impacts and secondary impacts.

The federal Clean Water Act encourages federally funded wastewater treatment facilities to provide for multiple use of the site. The Coastal Policies support and extend this federal policy by requiring that all new wastewater treatment facilities in the coastal zone consider the feasibility of multiple use.

7:7E-7.7 Industry Use Policies

(a) Definition

Industry uses include a wide variety of industrial processing, manufacturing, storage and distribution activities Industry is defined by Standard Industrial Classification (SIC) categories 2011 to 3999, except for 2991 (petroleum refining), which is covered by Use Policy 7:7E-7.4(i).

1. Policy

(i) Industry is encouraged in Special Urban Areas and conditionally acceptable elsewhere provided it is compatible with all applicable Location and Resource Policies. Particular attention should be given to Location Policies which reserve the water's edge for water dependent and water related uses (Sections 7:7E-3.17 and 7:7E-3.21); to Resource Policy 7:7E-8.15, which requires that the use be compatible with existing uses in the area or adequate buffering be provided; and to Resource Policy 7:7E-8.13, which places public access requirements upon the use.

(ii) New industrial development is encouraged to locate at or adjacent to existing sites, to the maximum extent practicable.

(iii) Industry that is easily accessible to its labor force by foot or public transportation is encouraged.

(iv) Marine resource dependent industry, such as commercial fishing, is encouraged and shall have priority over other waterfront uses, except for recreation.

(v) The cogeneration of electricity with process steam is encouraged.

2. Rationale

A strong industrial base is vital if an area is to be healthy and vibrant. Many of the developed parts of the coast are suffering from a declining industrial base. Land which had been productive is now vacant and in need of redevelopment. The industrial policies encourage industry to locate in the vacant areas of the the cities of the Northern and Delaware waterfronts. However, the policies recognize that a healthy waterfront will host a mix of uses. By asking waterfront industries to create public access to the water and to make sites they would vacate available to the public, the policies also recognize the waterfront as a valuable public resource.

The industrial policies address the conflicting demands and effects of industrial waterfront development. The policies recognize several factors which must be considered in the decision making process. First, water dependent industry must locate somewhere along the waterfront. Other industry which needs water for operating or processing, some or all of the time, might also require a

location near the waterfront, but landward of the water's edge. Second, as a result of environmental degradation, urban areas are suffering from unmet recreation and open space needs. Third, urban areas typically suffer from high unemployment and deteriorating tax bases. Fourth, city dwellers must be supported in their efforts to rejuvenate and revitalize their cities, making them pleasant and economically viable places to live.

7:7E-7.8 Mining Use Policies

1. Policy

New or expanded mining operations on land, and directly related development, for the extraction and/or processing of construction sand, industrial sand, gravel, ilmenite, glauconite, and other minerals are conditionally acceptable, provided that the following conditions are met (mining is otherwise exempted from the General Land Areas policy, but shall comply with the Special Areas, and General Water Areas):

(i) the location of mining operations, such as pits, plants, pipelines, and access roads, causes minimal practicable disturbance to significant wildlife habitats, such as lowland swamp forests and stands of mature vegetation,

(ii) the location of new or expanded mining operations is generally contiguous with or adjacent to sites of existing mining operations, or probable locations of mineral resources on nearby sites, in order to concentrate and not scatter the location of mineral extraction areas within a region, recognizing that mineral resources occur only in certain limited areas,

(iii) adequate buffer areas are provided, using existing vegetation and/or new vegetation and landscaping, to provide maximum feasible screening of new on-land extractive activities and related processing from roads, water bodies, marshes, and recreation areas,

(iv) the mine development and reclamation plan, including the timetable, phasing, and activities of the new or expanded mining operations, has been designed with explicit and adequate consideration of the ultimate reclamation, restoration, and reuse of the site and use of its surrounding region, once the mineral resource is depleted,

(v) the mineral extraction areas shall be reclaimed, contoured and replanted, to ensure slope stability, control erosion, afford adequate drainage, provide as natural an appearance as possible, and increase the recreation potential of the restored site,

(vi) the mining operations control and minimize to the maximum extent practicable adverse impacts from noise and dust, surface water pollution, and disposal of spoils and waste materials and conform to all applicable federal, state, and local regulations and standards,

(vii) the mineral extraction will not have a substantial or long-lasting adverse impact on coastal resources including local economies, after the initial adverse impact of removal of vegetation, habitat, and soils, and not including the long term irretrievable impact of use of the non-renewable mineral resource.

2. Rationale

New Jersey's coastal zone includes important deposits of minerals. Mining these non-renewable resources is vital to certain sectors of the economy of selected regions of the coastal zone, the entire state and in some cases the nation, depending upon the specific type of mineral. For example, the high quality silica sands of Cumberland County supply an essential raw material for New Jersey's glass industry. Other industrial sands mined and processed in Cumberland County serve as basic ingredients in the iron and steel foundry industry. Ilmenite deposits in Ocean County produce titanium dioxide which is used in paint pigment. Construction grade sands are used in virtually all construction activity.

The extraction and processing of minerals from mines on land also produces short and long term adverse environmental impacts. For example, open-pit mining removes all vegetation and soil, destroys wildlife habitat, changes the visual quality of the landscape, and irretrievably consumes the depletable mineral resource. Many of these impacts can be ameliorated by incorporating proper, imaginative and aggressive reclamation and restoration planning into the mine development process. However, the location of mineral deposits is an unquestionably limiting factor on the location of mining operations. Reasonable balances must therefore be struck between competing and conflicting uses of lands with mineral deposits.

Depending upon the diversity and strength of a local economy, depletion of mineral deposits through extraction may lead to serious adverse long term economic consequences, particularly if the planned reclamation does not replace the direct economic contribution of the mining industry. The non-renewable nature of mineral resources must also be considered carefully in light of the uses of some of the mined minerals.

7:7E-7.9 Port Use Policies

(a) Definition

Port uses are concentrations of shoreside marine terminals and transfer facilities for the movement of waterborne cargo (including fluids), and including facilities for loading, unloading and temporary storage.

(b) Policies

(i) Port related development and marine commerce is encouraged in and adjacent to established port areas. Water dependent development shall not be preempted by non-water dependent development in these areas.

(ii) New port use outside of existing Ports (see definition, Section 7:7E-3.11) are acceptable only when there is a clear demonstration of need, and when suitable land and water area is not available in or adjacent to an existing port.

(iii) New or expanded ports must be compatible with surrounding land uses and provide for maximum open space and physical and visual access to the waterfront, provided that this access does not interfere with port operations or endanger public health and safety. New or expanded ports must also not interfere with national, state, county or municipal parks, recreation areas, or wildlife refuges.

(iv) New, expanded or redeveloped port facilities must have direct access to navigation channels of sufficient depth for anticipated vessel access with minimal dredge and fill requirements, adequate access to road, rail transportation, and adjacent land with sufficient load bearing capacity for structures.

(v) Limited water-dependent, port-related activity, such as commercial fishing, support facilities and emergency oil spill clean up storage, is acceptable at the small commercial harbors in the coastal zone.

(c) Rationale

New Jersey's port areas are a regional, national and international resource. The existing ports, located largely in the Delaware and Northern Waterfront Areas contain unused and underused areas which can be refurbished to meet increases in demand. The state must nevertheless allow for possible unanticipated future needs for port area.

As in the past, port activities will continue to be a vital part of the economy of New Jersey. However, changes in shipping technology have caused once thriving ports such as Jersey City and Hoboken to become the scene of dilapidated docks and piers and acres of vacant land.

The port policies recognize the changing ship technology and will encourage new or expanded needed modern facilities in areas where port facilities would be compatible with existing uses. The policies recognize modern facilities require large expanses of land to accommodate specialized equipment and host a full array of services. However, the policies seek to avoid construction of a modern facility which meets the needs of today but could become obsolete tomorrow. For this reason, facilities are encouraged not to over-specialize. At the same time, the policies recognize the need to have large bulk cargo facilities to avoid construction of numerous small port facilities.

Recognizing the value of the water as a public resource and the need for environmental controls, the policies require facilities to be designed with provision for minimum environmental degradation. The policies endorse the concept of multimodalism and encourage port facilities to make use of existing infrastructure. In addition, the policies encourage an integrated port system which uses container ships where ship channels are deep enough to accommodate these vessels, but provides for use of smaller barges to move goods to inland waterways or along shallower channels.

Recognizing the value of the waterfront to the public, the policies require port facilities to provide for the maximum public visual and physical access to the waterfront consistent with safety and security concerns. The policies accommodate port usage of the waterfront, where needed and appropriate, while encouraging redevelopment and other uses which would be in the best interest of the public.

7:7E-7.10 Commercial Facility Use Policies

(a) Hotels and Motels

1. Definition

Hotels and motels are commercial establishments, known to the public as hotels, motor-hotels, motels, or tourist courts, primarily engaged in providing lodging, or lodging and meals, for the general public. Also included are hotels and motels operated by membership organizations, whether open to the general public or not.

2. Policy

(i) New, expanded or improved hotel-motel developments are conditionally acceptable provided that the development: (i) complies with all Location and Resource Policies and with the policy for high-rise housing, and (ii) is compatible in scale, site design, and architecture with surrounding development.

(ii) Hotels and motels are not water dependent.

Hotel and motel development is encouraged if it promotes revitalization of an urban area and meets all policy requirements. In special Urban Areas, new hotel and motel development is acceptable in the Filled Water's Edge on existing pilings, provided public access between the hotel or mote and the water body is not restricted.

3. Rationale

Hotels and motels enable New Jersey residents and tourists to visit the coast. They support the tourist economy of the area. The buildings must be located, however, so they do not harm or threaten the resources which attract people to the coast.

(b) Casino Hotels

1. Definition

Casino hotels are hotels with casinos as provided for in the Casino Control Act (P.L. 1977, c. 100, as amended).

2. Policy

Hotel-casino development in Atlantic City shall be located in the city's traditional resort area (along the Boardwalk), and in the State Marina area to the maximum extent practicable. Hotel-casino development is discouraged in existing residential areas and in areas where access by public transportation between the proposed hotel-casino and the Boardwalk is limited. Hotel-casino development is discouraged along the access highways to Atlantic City. Hotel-casino development shall comply with the high-rise housing policy. Hotel-casino development and new residential development are encouraged in Atlantic City to ensure that the objectives of the 1976 constitutional referendum on casino gambling, including the stimulation of new construction and the revitalization of Atlantic City and its region, are achieved. The policies of the program shall be interpreted consistent with these objectives.

3. Rationale

This hotel-casino location policy serves several purposes: (1) protecting Atlantic City's existing diverse neighborhoods, (2) facilitating public transportation solutions (such as bus, jitney, park-and-ride, or rail) to the problem of increased access to and in Atlantic City, (3) promoting pedestrian movements, (4) reducing pressure on vehicular systems, and (5) preserving the historic and low-rise residential character of the Gardner's Basin and Inlet area.

(c) Retail Trade and Services

1. Definition

Retail trade and service is a broad category including establishments selling merchandise for personal and household consumption, such as food stores and clothing stores; service establishments such as banks and insurance agencies; establishments such as restaurants and night clubs; and establishments for participant sports such as bowling alleys and indoor tennis courts.

2. Policies

(i) In Special Urban Areas, new or expanded retail trade and service establishments are encouraged in Filled Water's Edge Areas as part of mixed use developments, provided that the development:

(a) is compatible in scale, site design and architecture with surrounding development

(b) promotes public use of the coast, and

(c) promotes revitalization of the urban area

(ii) Elsewhere in the coastal zone, new or expanded retail trade and service establishments are conditionally acceptable in Filled Water's Edge Areas, provided that the development:

(a) is water related, and

(b) adjacent to, and compatible with, existing Water's Edge Development

(iii) New or expanded retail trade facilities are prohibited in most Special Water's Edge Areas, other than the Filled Water's Edge.

3. Rationale

Commercial development in the urban waterfront area is consistent with the state's economic development policy to target loans and bond assistance for commercial and retail establishment to urban areas. Commercial development, however, must be situated so it does not harm or threaten the resources which attract people to the waterfront.

(d) Convention Centers and Arenas

1. Definition

Convention centers are facilities designed primarily for holding conventions. Arenas are commercial facilities designed primarily for spectator sporting events. Arenas do not include indoor tennis courts, bowling alleys and other facilities primarily designed for participant sports, nor arenas affiliated with schools and colleges.

2. Policy

New convention centers and arenas are encouraged in Special Urban Areas, and conditionally acceptable in Development regions, provided that the development: (a) is compatible in scale, site design, and architecture with surrounding development, and (b) is accessible by public transportation. New convention centers and arenas are discouraged in Barrier Island, Extension and Limited Growth regions.

3. Rationale

Convention centers and arenas would provide social and cultural benefit to residents and visitors to the waterfront areas. They would also support the economy of the area. However, they can also generate traffic and induce additional development. They must, therefore, be located so that such impacts can be easily absorbed. The buildings must be located, however, so they do not harm or threaten the resources which attract people to the coast.

7:7E-7.11 Coastal Engineering

(a) Definition

Coastal Engineering includes a variety of structural and non-structural measures to manage water areas and the shoreline for natural effects of erosion, storms, and sediment and sand movement. Beach nourishment, sand fences, pedestrian control on dunes, stabilization of dunes, dune restoration projects, dredged spoil disposal and the construction of retaining structures such as bulkheads, revetments and seawalls are all examples of coastal engineering.

The Location Policies on General Water Areas and Special Areas are directly relevant to most coastal engineering uses. These Coastal Engineering Use policies do not apply to uses associated with ports, commerce, and industry.

(b) Shore Protection Priorities

1. Policy

Non-structural solutions to shoreline erosion problems are preferred over structural solutions. The infeasibility and impracticality of a non-structural solution must be demonstrated before structural solutions may be deemed acceptable.

2. Rationale

Past reliance on costly structural shore protection measures, such as groins and jetties to retard the longshore transport of sand by the littoral drift, and seawalls, bulkheads and revetments to prevent waves from reaching erodible materials has proven to be an inadequate and incomplete solution. Bulkheads are deteriorating. Groins are starving the natural longshore transport of sand. Man has modified and destroyed dunes that provide natural protection against storm surges. Inlets frequently develop shoals which prevent safe navigation. The natural processes along the shoreline must be carefully evaluated over reaches or regions of the coast to determine the likely long term effects of shore protection measures. Non-structural measures realistically recognize the inevitability of the ocean's advancement and the migration of barrier islands. Yet this concern must be balanced against the short term benefits of structures to protect the present intense recreational use of the narrow strip of oceanfront land in New Jersey.

(c) Dune Management

1. Policy

Dune restoration and maintenance projects as a non-structural shore protection measure, including sand fencing, revegetation, additions of non-toxic appropriately sized material, control of pedestrian and vehicular traffic, are encouraged.

2. Rationale

A natural dune field provides a strong measure of natural protection for adjacent land uses.

(d) Beach Nourishment

1. Policy

Beach nourishment projects, as a non-structural shore protection measure, are encouraged, provided that: (i) the particle size of the fill material is compatible with the existing beach material to ensure that the new material will not be removed to a greater extent than the existing material would be by normal tidal fluctuations, (ii) the elevation, width, slope, and form of proposed beach nourishment project are compatible with the characteristics of the existing beach, and (iii) the sediment deposition will not cause unacceptable shoaling in downdrift inlets and navigation channels.

2. Rationale

Beach nourishment depends upon an adequate quantity and suitable quality of beach nourishment material, otherwise the material may quickly return to the ocean.

(e) Structural Shore Protection

1. Policy

(i) The construction of new shore protection structures including jetties, groins, seawalls, bulkheads, and other retaining structures to retard longshore transport and/or to prevent tidal waters from reaching erodible material acceptable only if it meets all of the following six policies:

(1) The structure is essential to protect water dependent uses or heavily used public recreation beach areas in danger from tidal waters or erosion, or the structure is essential to protect existing structures and infrastructure in developed shorefront areas in danger from erosion.

(2) The structure is designed to eliminate or mitigate adverse impacts on local shoreline sand supply.

(3) The structure will not create net adverse shoreline sand movement conditions downdrift, including erosion or shoaling.

(4) The structure will cause minimum feasible adverse impact to living marine resources.

(5) The structure is consistent with the State Shore Protection Master Plan.

(6) If the proposed project requires filling of a Water Area it must also be consistent with the General Water Area Policy for Filling (Section 7:7E-4.10(i)).

(ii) A new, short retaining structure that connects two existing lawful retaining structures is normally acceptable provided that extensive filling is not involved.

(iii) Maintenance or reconstruction of an existing retaining structure is conditionally acceptable, provided it does not result in extension of the structure by more than 18 inches in any direction. Maintenance or reconstruction of an existing retaining structure which results in extension by more than 18 inches shall be considered new construction.

(iv) Rip-rap is a preferred construction material for retaining structures as it provides a habitat for aquatic life and helps absorb wave energy.

2. Rationale

Structural solutions to shore protection are appropriate and essential at certain locations, given the existing pattern of urbanization of New Jersey's shoreline. However, the creation, repair, or removal of publicly-funded shore protection structures must serve clear and broad public purposes and must be undertaken only with a clear understanding of the regional consequences of natural shoreline sand systems.

Retaining structures are necessary in some cases to stabilize existing development or to allow limited appropriate infill or new development. This is particularly important in an area between two existing bulkheads where a connecting structure could halt the formation of a trap situation, which could trap debris, produce odors, and eliminate the opportunity for use of the land.

7:7E-7.12 Dredge Spoil Disposal on Land

(a) Definition

Dredge spoil disposal is the discharge or of sediments, known as spoils, removed during dredging operations. The following policies govern Land and Water's Edge disposal only; the policies regulating dredge spoil disposal in Water Areas are found in Section 7:7E-4.10.

(b) Policy

Dredge spoil disposal is conditionally acceptable under the following conditions: (i) sediments are covered with appropriate clean material that is similar in texture to surrounding soils, and (ii) the sediments will not pollute the groundwater table by seepage, degrade surface water quality, present an objectionable odor in the vicinity of the disposal area, or degrade the landscape.

Dredge spoil disposal is prohibited on natural undisturbed wetlands, and on formerly spoiled wetlands that have revegetated with wetland species.

The use of uncontaminated dredge material of appropriate quality and particle size for beach nourishment is encouraged. Creation of useful materials such as bricks and light weight aggregate from the dredge material is encouraged.

The use of uncontaminated dredge material for purposes such as restoring landscape, enhancing farming areas, creating recreation oriented landfill sites including beach protection and general land reclamation, building islands, creating marshes, capping contaminated spoil areas, and making new wildlife habitats is encouraged.

Effects associated with the transfer of the dredged materials from the dredging site to the disposal site shall be minimized to the maximum extent feasible.

Dredge spoil disposal in wet and dry borrow pits is conditionally acceptable, see policies 7:7E-3.15, 7:7E-3.25 and 7:7E-3.30.

(c) Rationale

Dredge spoil disposal is an essential coastal land and water use that is linked inextricably to the coastal economy and has serious impacts on the coastal environment. Evolving state and federal policies on protection of the marine and estuarine coastal environment have sharply limited the creation of new water area dredge spoil disposal areas in the past decade. Yet selective dredging must continue if inlets and navigation channels are to be maintained. The coastal policy recognizes the importance of this use of coastal resources and the need for land disposal sites.

Use of inefficient equipment and methods in the movement of dredge spoils, and resulting spillage of fuels, emission of toxic or noxious gases, loss of dredged materials, and noise and vibrations produced by faulty or worn out equipment and machinery may cause water pollution, air pollution and discomfort both for the crews and for the human population along the disposal route and in nearby areas.

7:7E-7.13 National Defense Facilities Use Policy

(a) Definition

A national defense facility is any building, group of buildings, marine terminal, or land area owned or operated by a defense agency (Army, Navy, Air Force, Marines, Coast Guard) and used for training, research, material support, or any other defense-related use.

(b) Policy

National Defense facilities are conditionally acceptable, and will be approved if one of two findings can be made:

1. The proposed facility is consistent with all relevant Coastal Resource and Development Policies; or

2. The proposed facility is coastal dependent, will be constructed and operated with maximum possible consistency with Coastal Resource and Development Policies, and will result in minimal feasible degradation of the natural environment.

The construction of new facilities or expansion of existing facilities on land not owned by a defense agency is discouraged, unless it can be shown that the facility cannot feasibly be accommodated on an existing base.

(c) Rationale

Providing for the national defense is the responsibility of the federal government, and the New Jersey Coastal Management Program will not question the findings of a federal defense agency with respect to national security needs.

The requirements that a coastal dependent facility comply with the Coastal Resource and Development Policies only to the maximum extent feasible is in keeping with Section 306(c)(8) of the Federal CZMA, which requires consideration of the national interest in the siting of facilities necessary to meet requirements which are other than local in nature.

## SUBCHAPTER 8 - RESOURCE POLICIES

### 7:7E-8.1 Purpose

The third step in the screening process of the Coastal Resource and Development Policies involves a review of a proposed development in terms of its effects on various resources of the built and natural environment of the coastal zone, both at the proposed site as well as in its surrounding region. These policies serve as standards to which proposed development must adhere.

### 7:7E-8.2 Marine Fish and Fisheries

(a) Policy

Coastal actions are conditionally acceptable to the extent that minimal feasible interference is caused to the natural functioning of marine fish and fisheries, including the reproductive and migratory patterns of estuarine and marine estuarine dependent species of finfish and shellfish.

(b) Rationale

Finfish (freshwater, estuarine, and marine) and shellfish resources provide significant recreation experiences for residents of New Jersey and interstate visitors. These resources also help the State's economy, by leading to expenditures of approximately $375.8 million per year, with fishing yielding approximately $217.2 million and shellfishing yielding $158.6 million. DEP also estimates that 1,868,000 people participated in marine/estuarine recreational fishing in 1976 in New Jersey. Commercial landings for all finfish and shellfish in New Jersey during 1978 were 163,603,000 lbs., valued at $44.35 million dockside and an estimated $110.9 million retail value, according to Department of Commerce statistics. The 1956 landings of 540 million pounds of all finfish and shellfish indicate the true potential of this industry.

Interference with fish resources includes blockage of diadromous finfish spawning runs, reduction in the critical capacity of estuaries to function as finfish nursery areas, reduction of summer dissolved oxygen level below 4 ppm stimulating anoxic phytoplankton blooms, introduction of heavy metals or other toxic agents into coastal water, rise in ambient water temperature regime especially during summer and fall periods, unacceptable increases in turbidity levels, siltation, or resuspension of toxic agents, and introduction of untreated effluents from domestic and industrial sources.

### 7:7E-8.3 Shellfisheries

(a) Definition

Shellfisheries are estuarine bay and river bottoms which are potentially productive for hard clams, soft clams, eastern oyster, bay scallops or blue mussels. Potentially productive areas are those which do not have a history of natural recruitment for any of the above species, but could be used as a shellfish culture planting area.

NOTE: Presently productive shellfish beds, and those with a history of natural recruitment, are addressed by Special Area policy 7:7E-3.2.

(b) Policy

(i) Any development which would result in the destruction of a potentially productive shellfish area is discouraged. (The term destruction is defined in 7:7E-3.2.)

(ii) Any development which would result in the contamination or condemnation of a potentially productive shellfish area is prohibited. Water dependent development which requires new dredging in these areas is discouraged. Maintenance dredging in these areas is conditionally acceptable.

(iii) Any project which would discharge untreated or improperly treated domestic or industrial waste waters or toxic or hazardous substances directly into waters so as to adversely affect a potentially productive shellfishing area is prohibited.

(c) Rationale

Estuarine shellfish are harvested by both commercial and recreational fishermen, with the sport group concentrating on hard clams almost exclusively. Hard clams are a very significant species. Oysters, bay scallops and soft clams are predominantly commercial species. Commercial dockside landing values in New Jersey for 1978 were $3.43 million for estuarine mollusks, with an estimated retail industry value of $8.7 million. The commercial harvest is estimated to support employment of 1,500 persons in fishing, distribution, processing, and retail. Sport clammers numbered 17,000 in 1976. In addition to direct human consumption, shellfish play an important role in the overall ecology of the estuary. Young clams are important forage foods for a variety of finfish such as winter flounder, and crabs and migratory waterfowl, especially the diving species.

Hard clams are widely distributed in New Jersey's coastal estuaries, inhabiting most waters where the salinity is about 15 parts per thousand or greater. Suitable bottom substrate and dissolved oxygen are also important determining factors. Hard clams usually recolonize areas that are dredged, provided that anoxic conditions are not present, although it may take a number of years.

Water presently condemned for shellfishing may not be directly or immediately important to human economics although these areas have been used as resource recovery programs, relay and depuration, source areas. These areas however serve for restocking fishable areas through production of motile larvae. Shellfish in condemned waters also are not lost to estuarine ecological food-webs, but serve as a food source to other species of wildlife.

7:7E-8.4 Water Quality

(a) Definition

As required by Section 307(f) of the Federal Coastal Zone Management Act, federal, state and local water quality requirements established under the Clean Water Act shall be the water resource standards of the coastal management program. In the Delaware River Area, water quality standards established by the Delaware River Basin Commission shall also be standards of the coastal management program. State surface and groundwater quality statutes, regulations and standards, are established and administered by DEP's Division of Water Resources (see N.J.A.C. 7:9-4.0 et seq.).

(b) Policy

Coastal development which would prevent attainment of the defined standards for surface or groundwater is prohibited. Coastal development in conflict with any State certified Areawide Water Quality Management (208) Plan is also prohibited.

(c) Rationale

Most of the natural, commercial, recreational, industrial, and aesthetic resources of the coastal zone affect or are affected by surface and ground water quality. Specific coastal zone water quality problems include pollution by nutrients, pathogenic organisms, toxic and hazardous wastes, thermal discharges, suspended sediments, and saline intrusion into freshwater resources. These pollutants can lower water quality sufficiently to prevent desired water uses. This policy incorporates by reference New Jersey's water quality related statutes and regulations adopted as required by the federal Clean Water Act of 1977.

7:7E-8.5 Surface Water Use

(a) Definition

Surface water is the water in lakes, ponds, streams, rivers, bogs, wetlands, bays, and ocean that is visible on land.

(b) Policy

Coastal development shall demonstrate that the anticipated surface water demand of the facility will not exceed the capacity, including phased planned increases, of the local potable water supply system or reserve capacity and that construction of the facility will not cause unacceptable surface water disturbances, such as drawdown, bottom scour, or alteration of flow patterns. Coastal development which use design processes and fixtures which minimize consumptive water use will be encouraged. Coastal development shall conform with all applicable DEP and, in the Delaware River Area, Delaware River Basin Commission, requirements for surface water diversions.

(c) Rationale

The surface waters of the New Jersey coastal zone are an invaluable natural resource. Fresh waters maintain the propagation of established and natural biota. They serve as commercial, recreational, industrial, agricultural, and aesthetic resources. Any development that affects surface water quantity and quality will have a negative impact on these uses.

7:7E-8.6 Groundwater Use

(a) Definition

Groundwater is all water within the soil and subsurface strata that is not at the surface of the land. It includes water that is within the earth that supplies wells and springs.

(b) Policy

Coastal development shall demonstrate, to the maximum extent practicable, that the anticipated groundwater withdrawal demand of the development will not cause salinity intrusions into the groundwaters of the zone, will not degrade groundwater quality, will not significantly lower the water table or piezometric surface, or significantly decrease the base flow of adjacent water courses. Groundwater withdrawals shall not exceed the aquifer's safe yield.

Coastal developments which use design, processes and fixtures which minimize consumptive water use are encouraged. Development plans are also encouraged to incorporate aquifer recharge techniques.

Coastal development shall conform with all applicable DEP and, in the Delaware River Area, Delaware River Basin Commission, requirements for groundwater withdrawal and water diversion rights.

(c) Rationale

Groundwater is a primary source of water for drinking and industrial use. In some areas of the coastal zone, especially areas in Essex, Middlesex, Monmouth, Salem, Camden, and Cape May Counties, excessive amounts of groundwater are being withdrawn. The problem stems from the overpumping of groundwater, industrial, agricultural and municipal landfill leakage into groundwater and reduction of aquifer recharge caused by increased development and population. This has led to a progressive lowering of the water table or piezometric surface, altered groundwater flow patterns, changed groundwater recharge/discharge relationships, is increasing salt water intrusion into the groundwaters, may damage the base flow conditions of streams, and may lead to well closings because of contamination.

7:7E-8.7 Runoff

(a) Definition

Runoff is that portion of precipitation on the land is not absorbed by the soil, but instead runs off to surface water bodies.

(b) Policy

(i) Coastal development shall use the best available technology to minimize off-site storm water runoff, increase on-site infiltration, simulate natural drainage systems, and minimize offsite discharge of pollutants to ground or surface water and encourage natural filtration functions. Best availabe technology may include measures such as retention basins, recharge trenches, porous paving and piping, contour terraces, and swale lagoon systems provided such techniques can be demonstrated to satisfy these policies. Provisions for elimination of curbs, reduction of roadway widths, and rooftop recharge basins are strongly encouraged.

(ii) The goal of runoff control methods shall be to prevent the rate of off-site storm water runoff during the construction and operation of a development under any storm conditions, from exceeding the rate of runoff that would occur under the existing predevelopment conditions of the site. For some sites, with existing predevelopment conditions such as cultivated land, bare earth, or partial paving, the goal of runoff control methods shall be to achieve the runoff standard for good condition pasture land (SCS TR-55 Curve Number 39), which may result in a greater quantity of on-site retention and infiltration than under the existing predevelopment conditions.

(iii) the off-site stormwater sewers may not discharge into sanitary sewer systems,

(iv) the amount of pollutants in the stormwater runoff discharge to surface water bodies shall be minimized and the discharge shall satisfy the applicable DEP-established surface water quality standards of the receiving water body using measures such as sediment traps, oil skimmers and vacuum street cleaners. Pollutants of major concern include petrochemicals and heavy metals from vehicle spillage, de-icing salts, aromatic hydrocarbons from blacktop paving, and pesticides, herbicides and fertilizers from lawn and garden areas.

(v) the volume and quality of stormwater discharged offsite will not cause adverse impacts to the receiving water body, and must conform with the requirements of the DEP Stream Encroachment Permit Program (N.J.S.A. 58:1-26 and rules).

(vi) Groundwater infiltration areas such as detention ponds or swales shall be sited as far horizontally from surface water and as far vertically from groundwater as is practicable. Infiltration areas are discouraged in soils with a seasonal high water table between 1 1/2 and 3 feet. Limited infiltration swales may be acceptable on a case by case basis provided that:

- swales in these areas are not the principal infiltration areas and only serve to recharge runoff generated with the area of soils with seasonal high water tables between 1 1/2 and 3 feet.

- maximum swale slopes are 2%.
- time of concentration is maximized by maximizing the length of the swale.
- swales are planted with native woody species at sufficient densities to delay surface water flow and promote evapotranspiration. Infiltration and water retention areas of all kinds are prohibited in soils with a seasonal high water table of 1 1/2 feet or less.

Infiltration areas, detention and retention basins, or any other techniques of delaying runoff are prohibited in soils with a seasonal high water table of 1 1/2 feet or less.

(vii) In designing the site plan, including detention and retention facilities, the stormwater runoff calculations shall be based on 24 hour storms of 25 years and 100 years frequencies, using standard methods of calculation, such as the so-called "Rational Method" or the SCS Tabular Method of Determining Peak Discharge, as defined in U.S. Department of Agriculture, Soil Conservation Service, Urban Hydrology for Small Watersheds, Technical Release No. 55, January 1975.

(c) Rationale

Stormwater runoff is a natural process of surface hydrology. Development changes this process as the volume and rate of runoff increase as the natural landscape is modified and replaced by impervious surfaces. Unless managed properly, stormwater runoff will adversely affect the coastal environment in several ways: increased erosion, increased storm surges in streams, destruction of flood plain vegetation, degraded water quality from contaminants in runoff from paving, increased turbidity, decreased aquatic productivity, lowered water tables, reduced groundwater quality and supply. The policies anticipate these concerns and treat a development site as a closed system within which drainage systems must be designed to contain runoff and ground and surface water pollution increases within the site in order to minimize offsite impacts. Examples of stormwater runoff management techniques may be found in two source books: J. Tourbier and R. Westmacott, Water Resources Protection Measures in Land Development - A Handbook (Newark, Delaware: University of Delaware, Water Resources Center, April 1974) and New Jersey State Soil Conservation Committee, Standards for Soil Erosion and Sediment Control in New Jersey, Trenton, New Jersey: State Soil Conservation Committee, revised 1975).

7:7E-8.8 Soil Erosion and Sedimentation

(a) Definition

Erosion is the detachment and movement of soil or rock particles by water, wind, ice or gravity, while sedimentation is the action or process of depositing soil or rock particles.

(b) Policy

Coastal development is required to restrict soil loss and control soil erosion and sedimentation during the construction of development to the standards specified in Standards for Soil Erosion and Sediment Control in New Jersey adopted by the State Soil Conservation Committee in 1972, revised in 1975 and any other soil conservation standards or plans adopted by State Soil Conservation Committee, local Soil Conservation Districts or municipalities pursuant to the Soil Erosion and Sediment Control Act (N.J.S.A. 4:24-39 et seq.).

In addition, development on slopes between 8-15 percent is discouraged, unless:

(i) limited stabilization structures and measures, such as terracing and paving, are consistent with the natural character of the site, to the maximum extent practicable,

(ii) The design of the development is compatible with the slope characteristics of the site in visual, physical, and engineering terms,

(iii) Minimal feasible site disturbance and maximum practicable revegetation take place.

(c) Rationale

Erosion is the detachment and movement of soil or rock particles by water, wind, ice or gravity. Erosion can be significantly increased by human activities including construction practices such as the clearance of vegetation, excavation, grading, and stockpiling, agricultural cultivation and silviculture (timber harvesting).

Erosion and sedimentation cause numerous adverse environmental impacts, such as loss of productive soils, destabilization of slopes, increased flooding due to reduced capacity of storm sewers and natural drainage channels, increased turbidity and siltation of streams, and decreased wetland productivity. By controlling the erosion generated on a site within the site boundary, these adverse impacts are contained and prevented from reaching and affecting coastal waters.

Many techniques are available to control sediment loss, including minimizing the area of soil exposed at one time, baling and contour terracing the edge of construction, mulching and using swale lagoon drainage systems, and building wet and dry detention basins. Other illustrative techniques are found in Standards for Soil Erosion and Sediment Control in New Jersey available from the State Soil Conservation Committee. See also the Special Area Policies on Steep Slopes and Coastal Bluffs.

7:7E-8.9 Vegetation

(a) Definition

Vegetation is the plant life or total plant cover that is found on a specific area, whether indigenous or introduced by humans.

(b) Policy

Coastal development shall preserve, to the maximum extent practicable, existing vegetation within a development site. Coastal development shall plant new vegetation, particularly appropriate native coastal species, to the maximum extent practicable.

(c) Rationale

The steady loss of vegetation is a nearly inevitable result of urbanization. Terrestrial vegetation stabilizes soil, retards erosion and runoff, promotes infiltration of surface water, reduces the force of wind, provides foods, shelter and breeding sites for wildlife, and adds to aesthetic values for recreation and domestic life. Trees release life-giving oxygen, filter particulate pollutants, provide foods and fuel, with no energy input necessary by man. Because each site is unique, the degree of vegetative preservation required will depend upon the environmental conditions within and adjacent to the development site. In general, the greater the intensity of development permitted, the less vegetation preservation required.

"Appropriate native coastal species" means that species selection must reflect the natural physiological limitations of species to survive in distinct habitats, which include all environmental processes (natural and artificial) that operate within a site. Non-suitable species plantings will do poorly or die, or, if preserved through an intensive maintenance program of 'ph' adjustment fertilization and irrigation, will cause unacceptable ground and surface water impacts.

New vegetative plantings should reflect regional geophysical suitability. Illustrative appropriate species can be grouped into three categories:

(i) Barrier Beach Sites - Plants tolerant of salt spray and occasional saline flooding, such as American holly, red cedar, black cherry, beach plum, beach grass, bayberry, beach heather, etc.

(ii) Pine Barrens Sites - Plants tolerant of infertile sandy soils, frequent fires, and acidic water, such as pitch and short-leaf pines, Atlantic white-cedar, dogwood, American holly, oaks, blueberry, etc.

(iii) Inner Coastal Plain and Southern Outer Coastal Plain - Plants compatible with fertile, well drained soils; such as oaks, beach, hickory, dogwood, black cherry, white pine, gray birch, laurel, etc.

(iv) Piedmont Sites - Oak, hickory, beech, ash, elm, hemlock, dogwood and laurel cherry.

Within these regional groupings, the selection of individual species should take into consideration the depth to seasonal high groundwater table. Species which provide food for wildlife or other desirable traits are favored for new planting.

7:7E-8.10 Important Wildlife Habitat

(a) Definition

Important wildlife habitats are areas of general importance to the maintenance of a range of wildlife species, providing high primary productivity, good mixes of habitat types, surface water, cover, or movement corridors. These areas are not as critical as Critical Wildlife Habitats. If they were depleted the effect on wildlife population would not be as catastrophic as the loss of a Critical Habitat, but serious depletions of wildlife populations would occur. Definitions and maps of Important Wildlife Habitats are currently available from DEP-DCR only for Cape May County. Until additional maps are available, sites will be considered for importance on a case by case basis by the NJDEP Division of Fish, Game and Wildlife.

(b) Policy

(i) Coastal development which does not incorporate management techniques which minimize disturbance to important wildlife habitats, is discouraged.

(ii) Development that would significantly restrict the movement of wildlife through the site to adjacent habitats and open space areas is discouraged.

(c) Rationale

Important Wildlife Habitats are areas that provide primary productivity or primary habitat for a wide range of game and non-game species. Depletion of this resource would cause a general population decline of species that are not rare or endangered.

Wildlife is an important natural resource of the coast. Desirable on-site wildlife management techniques which could mitigate adverse impacts, and favor minimal feasible interference include preservation and dedication to open space of sensitive habitats of sufficient width, especially along drainageways and waterways, to preserve wildlife movement corridors, placement of nesting boxes, and planting of vegetative wildlife food species.

7:7E-8.11 Air Quality

(a) Definition

The protection of air resources refers to the attainment of State and federal air quality goals and the prevention of degradation of current levels of air quality.

(b) Policies

Coastal development shall conform to all applicable state and federal emissions regulations, ambient air quality standards, prevention of significant deterioration criteria, nonattainment criteria, any other policies of New Jersey's State Implementation Plan, and other regulations and guidelines established to meet requirements of the federal Clean Air Act as amended in 1977.

(c) Rationale

The attainment and maintenance of high air quality is vital for the health of and welfare of New Jersey's residents and visitors. The federal Clean Air Act Amendments of 1977 require almost all states to develop a State Implementation Plan (SIP) to attain National Ambient Air Quality Standards (NAAQS) for photochemical oxidants.

DEP's Division of Environmental Quality administers the State's air quality program and determines compliance with the coastal policy on air quality.

Furthermore, the federal Coastal Zone Management Act, Section 307(f) requires that the air resource standards of the coastal management program be the local, state and federal policies established in fulfillment of the Clean Air Act and its amendments.

Since the principal source of hydrocarbons and oxides of nitrogen, the precursors of oxidants, is the automobile, the strategies to attain the NAAQS must include, in addition to emission control on vehicles and industrial sources, measures to reduce vehicle miles travelled, by inducing a shift to car pools and other modes of transportation. The Coastal Program policies on transportation address these objectives, as do the policies concerning concentration of development.

Furthermore, new major stationary sources of hydrocarbons will continue to be subject to restrictions, such as the current requirement to offset emissions. Emission tradeoffs may allow for the siting of new facilities in non attainment areas of the coastal zone. The severity of the restrictions will depend on the progress made in reducing emissions during the next decade.

The problem of attainment and maintenance of carbon monoxide NAAQS in urban areas such as Atlantic City and Toms River is one primarily of traffic congestion.

Also, under the Clean Air Act Amendments of 1977, major wilderness areas of over 5,000 acres are mandatory Class I-Prevention of Significant Deterioration (PSD) or Pristine Areas. In New Jersey's Delaware Bay and Atlantic Ocean Shore areas, this designation applies to the wilderness areas of the Brigantine National Wildlife Refuge, and restricts industrial activities within the region that could significantly affect the air quality of the wilderness areas. This may pose conflicts in the future as the pace and intensity of the development of the Atlantic City region increases.

The entire proposed Northern Waterfront and Delaware River areas of the proposed coastal zone violates the NAAQS for carbon monoxide and ozone, and most of the area violates particulate standards. Such widespread nonattainment results from the area's density of residential, commercial and industrial development and the heavy amounts of traffic generated.

The State Implementation Plan does not suggest halting all further development. The Plan outlines policies which will serve to locate and control new development as well as regulate and minimize the emissions of existing pollution sources. Policies which will specifically apply to new development in the areas of the coastal zone which violate the NAAQS are: Emissions Offset, New Source Performance Standards, Prevention of Significant Deterioration for Class II areas, regulations for industrial emissions of particulates and organic substances which contribute to ozone production, and a series of strategies aimed at the control of emissions generated by motor vehicles.

The Prevention of Significant Deterioration (PSD) system allows development to generate incremental amounts of certain pollutants for which the area is in compliance. For the developed areas of the coastal zone, this means that moderate growth generating a limited increase in sulfer dioxide is sanctioned.

The Emissions Offset policy, allowing for emissions tradeoffs between proposed new and existing sources in nonattainment areas, can also be called upon to allow development that might not otherwise be permitted. Finally, a variance system exists which allows the Administrator of the EPA to waive requirements if it is determined that the State is making progress in achieving the NAAQS and other federal-mandated requirements.

7:7E-8.12 Public Services

(a) Definition

Public services include a variety of essential facilities provided by either public or private institutions. Health, education, welfare, fire, police and community facilities are principal examples. Others such as child care and home services for the elderly may be important for certain developments.

(b) Policy

Coastal development shall insure, to the maximum extent practicable, that adequate levels of public services will be provided to meet the additional demands for public services likely to be generated by the proposed development.

(c) Rationale

New development places additional demands on public services. Unless the existing supply can satisfy these demands or extensions to the supply can be available when development is complete, the deficiencies may adversely affect the health, safety, or welfare of the proposed new users.

In coastal areas there are special problems associated with the high seasonal population fluctuation and the relatively high percentage of senior citizens who typically make greater demands on health services. These coastal issues make the demonstration of adequate service supply during peak demand periods an especially critical issue.

7:7E-8.13 Public Access to the Shorefront

(a) Definition

Public access to the shorefront is the ability of all members of the community at large to pass physically and visually to, from and along the ocean shore and other waterfronts.

(b) Policy

Coastal development adjacent to all coastal waters, including both natural and built-up waterfront areas, shall provide perpendicular and linear access to the waterfront to the maximum extent practicable, including both visual and physical access. Shorefront development that limits public access and the diversity of shorefront experiences is discouraged.

All development adjacent to water shall, to the maximum extent practicable, provide, within its site boundary, a linear waterfront strip accessible to the public. If there is a linear waterfront path on either side of the site, and the use, due to operation or security reasons, cannot allow continuation of passage along the water's edge, a pathway around the site must be designed that connects to the other parts, or potential parts of the waterfront path system in adjacent parcels.

Municipalities or private development that do not currently provide, or have active plans to provide, access to the water will not be eligible for Green Acres or Shore Protection Bond funding.

(c) Rationale

New Jersey's coastal waters and adjacent shorelands are valuable public resources which are limited in area. They are protected by New Jersey's Shore Protection and Waterway Maintenance Program and patrolled by the New Jersey Marine Police which are both financed by all State residents. Past developments have often blocked the waters from public view and/or made physical access to the waterfront difficult or impossible. In addition, some municipalities which own land immediately inland of the state-owned riparian land have enacted laws or regulations making waterfront access inconvenient, expensive or impossible for non-residents. These policies have served to limit the opportunity of inland residents for waterfront recreational activities.

Projects such as the experimental Beach Shuttle, funded by DEP each summer since 1977, to Island Beach State Park from Toms River serve to carry out the policy of providing maximum practical public access to the shorefront.

The basis for the Shorefront Access policy came in part from the research in the report entitled Public Access to the Oceanfront Beaches: A Report to the Governor and the Legislature of New Jersey, April 1977, prepared in part by DEP-OCZM.

The developed waterfront, due to its past industrial utilization, has been closed to the people that live adjacent to the waterfront. DEP intends to promote a horizontal network of open space at the water which could be visualized as a narrow strip used for walking, jogging, bicycling, sitting, or viewing, which is continuous, even if the path must detour around existing or proposed industry due to security needs or the lack of pre-existing access. The path or strip will connect future and existing waterfront parks, open space areas, and commmercial activities. The goal of this policy is the piecing together of a system that will provide continuous linkages and access along the entire waterfront.

7:7E-8.14 Scenic Resources and Design

(a) Definition

Scenic resources include the view of the natural and/or man made landscape, while design is defined as the elements that compose the man-made landscape such as structures, including their geometry, texture and color.

(b) Policy

New coastal development that is visually compatible, in terms of scale, height, materials, color, rexrure, and geometry of building and site design, with surrounding development and coastal resources, to the maximum extent practicable, is encouraged. Coastal development that is significantly different in design and visual impact than existing development or adversely affects the scenic resources of the region is discouraged, unless the new development upgrades the scenic and aesthetic resources of a site and its region.

(c) Rationale

Inappropriate design that ignores the coastal landscape and existing patterns and scale of development can degrade the visual environment and appearance of communities. New Jersey's coastal regions have strong architectural traditions which should be encouraged. The visual quality of diverse coastal locations is essential to maintaining a "sense of place".

7:7E-8.15 Buffers and Compatibility of Uses

(a) Definition

Buffers are natural or man made areas, structures, or objects that serve to separate distinct uses or areas. Compatibility of uses is the ability for uses to exist together without aesthetic or functional conflicts.

(b) Policy

Development shall be compatible with adjacent land and water types, as defined in the Location Policies, to the maximum extent practicable.

Development that is likely to adversely affect adjacent areas, particularly Special Areas (7:7E-3.1 through 7:7E-3.41), is discouraged unless an adequate buffer is provided. The purpose, width and type of the required buffer shall vary depending upon the type and degree of impact and the type of adjacent area to be affected by the development, and shall be determined on a case-by-case basis.

Developments that are incompatible with adjacent residental development shall provide vegetated and other types of buffers at the site boundary of sufficient width to reduce the incompatibility, to the maximum extent practicable.

(c) Rationale

The juxtaposition of different uses may cause various problems. One activity may cause people to experience noise, dust, fumes, odors, or other undesirable effects. The most common incompatibility of this type in the Bay and Ocean Shore Segment are housing developments adjacent to industry, high speed roads or railroads. The juxtapositions of very different housing densities or of housing and agriculture also have potential for conflict. Vegetated buffer areas between uses can overcome, or at least ameliorate, many of these problems, especially if earth berms are included. Buffers can beuefit users of both areas. Where farms operate near a residential area, for example, a buffer can protect the residents from the noise and smells of farming, while protecting the farmers from local regulations controlling the hours in which machinery can be used.

Buffers serve several important functions, including maintenance of wildlife habitats, water purification, open space and recreation, and control of runoff. Buffers may include fences, landscaped berms, and vegetated natural areas.

7:7E-8.16 Solid Waste

(a) Definition

"Solid Waste" shall mean garbage, refuse, and other discarded materials from industrial, commercial and agricultural operations and from domestic and community activities, and shall include all other waste materials including liquids except for liquids which are treated in public sewage treatment plants and except for solid animal and vegetable wastes collected by swine producers licensed by the State Department of Agriculture to collect, prepare and feed such wastes to swine on their own farms (N.J.S.A. 13:1E-1 et seq.).

(b) Policy

Coastal development shall recover material and energy from solid waste, to the maximum extent practicable, as required by the New Jersey Solid Waste Management Act (N.J.S.A. 13:1E-1 et seq.) and the federal Resource Conservation and Recovery Act (P.L. 94-580). If resource and energy recovery are impractical, solid waste, including litter, trash, refuse, and demolition debris shall be handled and disposed of in a manner acceptable to the standards of DEP's Solid Waste Administration.

(c) Rationale

Solid waste is a valuable resource to be recovered and managed on a district-wide basis. The review of individual projects in terms of solid waste will consider the waste type and volume expected, disposal method employed, and effects on disposal sites.

The recycling of materials from the waste stream:

- reduces energy used in the industrial process,
- conserves landfill space,
- provides material feedstock for local industries,
- provides a domestic source of energy or fuels, and
- provides a local source of jobs, taxes, and profits.

Recyclable materials can replace scarce or imported resources such as bauxite, iron ore, zinc, soda ash, and oil in the production of new materials or energy. The markets for such resources exist in the State. Recycling is an energy-efficient, environmentally sound, and economically viable industry for the State of New Jersey.

7:7E-8.17 Energy Conservation

(a) Definition

Energy Conservation is the use of techniques which minimize the amount of energy used by a facility and maximize the productivity of the energy that is used.

(b) Policy

Coastal development shall incorporate energy conservation techniques and alternative sources of energy, including passive and active solar power and wind turbines, to the maximum extent practicable.

The technical and economic feasibility of employing such measures shall be evaluated in an energy plan preparedy by the appilcant. The plan shall specify the energy conservation techniques and alternative sources of energy to be utilized as well as anticipated energy requirements for space heating, cooling, ventilation and lighting, industrial processes and other uses.

(c) Rationale

This policy assists the Department of Energy and Community Affairs in implementing New Jersey's Energy Conservation Plan, State Energy Master Plan, and the energy subcode of the Uniform Construction Code (N.J.S.A. 52:27D-119 et seq.). New Jersey's 1977 Energy Conservation Plan administered by the New Jersey Department of Energy derives from the federal Energy Policy and Conservation Act of 1975. The plan contains 22 measures to reduce the state's energy use by 6% by 1980. The measures include thermal and lighting efficiency standards, provision of car and van pools, and waste oil recycling. These measures are intended to save New Jersey approximately 110 trillion British Thermal Units annually (or

the equivalent of 5,000 barrels a day). The Department of Community Affairs is responsible for the implementation of the energy subcode of the state building code. Possible energy conservation techniques include the siting of buildings with an understanding of the micro-climate conditions of a site, use of clustering, provision of bicycle paths, and the location of housing close to public transportation.

7:7E-8.18 Neighborhoods and Special Communities

(a) Definition

Neighborhoods, small towns, and communities are discrete districts and areas with a degree of social stability as well as special architectural, ethnic, cultural, aesthetic, or historical qualities that distinguish these places from other areas along the coast.

(b) Policy

Coastal development that protects and enhances the physical coherence in neighborhoods and special communities is encouraged. Development that would adversely affect neighborhoods and special communities is discouraged.

(c) Rationale

The diversity of the coast is in part due to the existence and vitality of various small towns, communities, and neighborhoods within larger urban areas. These neighborhoods that display a strong sense of community should be valued, reinforced, and preserved.

7:7E-8.19 Traffic

(a) Definition

Traffic is the movement of vehicles, pedestrians and ships along a route.

(b) Policy

Coastal development that induces marine and/or land traffic is conditionally acceptable provided that it does not cause unacceptable congestion and safety problems.

(c) Rationale

The improper location of development may exacerbate existing traffic problems or produce new difficulties in the marine and/or land traffic system. Coastal development should be designed and located in a manner to cause the least possible disturbance to traffic systems, or be rejected.

7:7E-8.20 High Permeability Moist Soils

(a) Definition

High Permeability Moist Soils are soils contiguous with stream channels with a depth to seasonal high water table less than or equal to five feet, and with a loamy sand or coarser soil, as indicated in National Cooperative Soil Surveys prepared by the U.S. Department of Agriculture, Soil Conservation Service. These soils are distinguished from the High Permeability Wet Soils, with a depth to seasonal high water table less than or equal to three feet, which are discussed in the Location Policies.

(b) Policy

Coastal development shall avoid filling, building, paving, disturbing soil, or discharging effluent to groundwater on High Permeability Moist Soils, to the maximum extent practicable. In particular, coastal development shall be designed such that onsite roads, parking lots, structures, subsurface sewage disposal areas, and discharge basins avoid High Permeability Moist Soils, particularly in the proximity of surface water bodies and wells. Development that is determined by DEP to be acceptable in these areas shall conform to the Wet Soils policy (7:7E-8.21).

(c) Rationale

Soils with shallow seasonal high water tables and sandy or gravelly textures facilitate percolation, the vertical and horizontal movement of groundwater. Coarse sediments, however, have a limited capacity to trap and filter contaminants. Further, the high lateral transmissibility along the top of shallow seasonal high water tables aggravates the problems of water borne pollutants eventually reaching surface water bodies or wells. New Jersey's standards for subsurface sewage disposal systems (so-called Chapter 199, N.J.A.C. 7:9-2.1 et seq.) recognize this concern by requiring that the bottom of the trench or bed of disposal fields be at least four feet above the seasonal high groundwater table.

7:7E-8.21 Wet Soils

(a) Definition

Wet soils are soils with a depth to seasonal high water table less than, or equal to, three feet, as delineated by the U.S. Soil Conservation Service in a National Cooperative Soil Survey.

(b) Policy

Development in wet soils is discouraged unless the following conditions are met:

(i) Basements are prohibited.

(ii) Effective engineering techniques are used to ensure the stability of foundations and protect them from movement, including excavating organic substrates and backfilling with less compressible sediments, short-bore piles, special footings and floating slabs. Techniques that minimize interference with natural ground and surface water movement, such as short-bore pile and suspended slab techniques, are encouraged.

(iii) The air spaces beneath ground floor slabs are adequately ventilated, using mechnical ventilation, if necessary.

(iv) The stability of roads and paved areas assured, using techniques such as removal of compressible sediments and replacement with a firmer substrate and thicker than normal road base.

(v) Subsurface pipes are stable and waterproofed to avoid contamination of groundwater, using dewatering of trenches during construction, extra pipe base thickness, waterproof gaskets, sealed joints and other techniques as necessary.

(vi) Porous concrete is prohibited, although other porous pavements such as lattice concrete or gravel are acceptable.

(vii) The lowering of the water table by pumping that would disturb adapted vegetation is prohibited.

(viii) Detention basins, swales and other runoff retention and groundwater recharge areas are discouraged in soils with a seasonal high water table between 1 1/2 feet and 3 feet, although limited swales may be acceptable on a case by case basis (see 7:7E-8.7). Runoff retention and groundwater recharge areas are prohibited in soils with a seasonal high water table of 1 1/2 feet or less.

7:7E-8.22 Fertile Soils

(a) Definition

Fertile soils are soils that have Agricultural Capability Ratings, as defined by the U.S. Department of Agriculture, Soil Conservation Service in the National Cooperative Soil Surveys of I, II, IIIe and a K value of less than 0.20, and IIIw if well drained, or Woodland Suitability Rating of 1.

(b) Policy

Location Policies restrict development in Farmland Conservation Areas. Elsewhere, coastal development shall avoid disturbing fertile soils, to the maximum extent practicable, and shall carefully remove, stockpile and reuse the topsoil when onsite fertile soils cannot be preserved.

(c) Rationale

Fertile soils are the product of millenia of soil forming processes and, once paved, are irraperably lost. The Farm Conservation Special Area policy preserves large contiguous acreages of fertile soils for commercial production of food and fiber, but smaller areas of fertile soils in

the open spaces between development are a natural resource of considerable value. The landscaping of development is promoted by fertile soils but, more importantly, the preservation of fertile soils near development offers the opportunity of home gardens. Applicants shall show the distribution of fertile soils relative to proposed structures and paving in site plans. If these development elements are shown on fertile soils, applicants shall demonstrate why alternative positions are not feasible.

7:7E-8.23 Flood Hazard Areas

(a) Definition

Flood Hazard Areas around rivers, creeks and streams are being delineated by DEP under the Flood Hazard Area Control Act (N.J.S.A. 58:16A-50 et seq.), and by the Federal Emergency Management Agency. The Flood Hazard Area Control Act mandates DEP to "delineate as flood hazard areas, areas as in the judgment of the Department, the improper development and use of which would constitute a threat to the safety, health and general welfare from flooding" (N.J.S.A. 58:16A-52). Where Flood Hazard Areas have been delineated by both DEP and FEMA, the DEP delineations shall be used.

Flood Hazard Areas around water bodies other than rivers, creeks and streams are delineated only by FEMA. Where Flood Hazard Areas have been delineated by neither FEMA nor DEP, the 10-foot contour line shall be used as the inland boundary of the Floodplain. The seaward boundary shall be the mean high water line.

Floodway is defined as "the channel of natural stream and portions of the flood hazard area adjoining the channel, which are reasonably required to carry and discharge the flood water for flood flow of any natural stream" (N.J.S.A. 58:16A-51). Floodways are being delineated by DEP (see Figure 28).

A complete list of streams where DEP had delineated the Flood Hazard Area can be found in the N.J.A.C. 7:13-1.11 et seq.

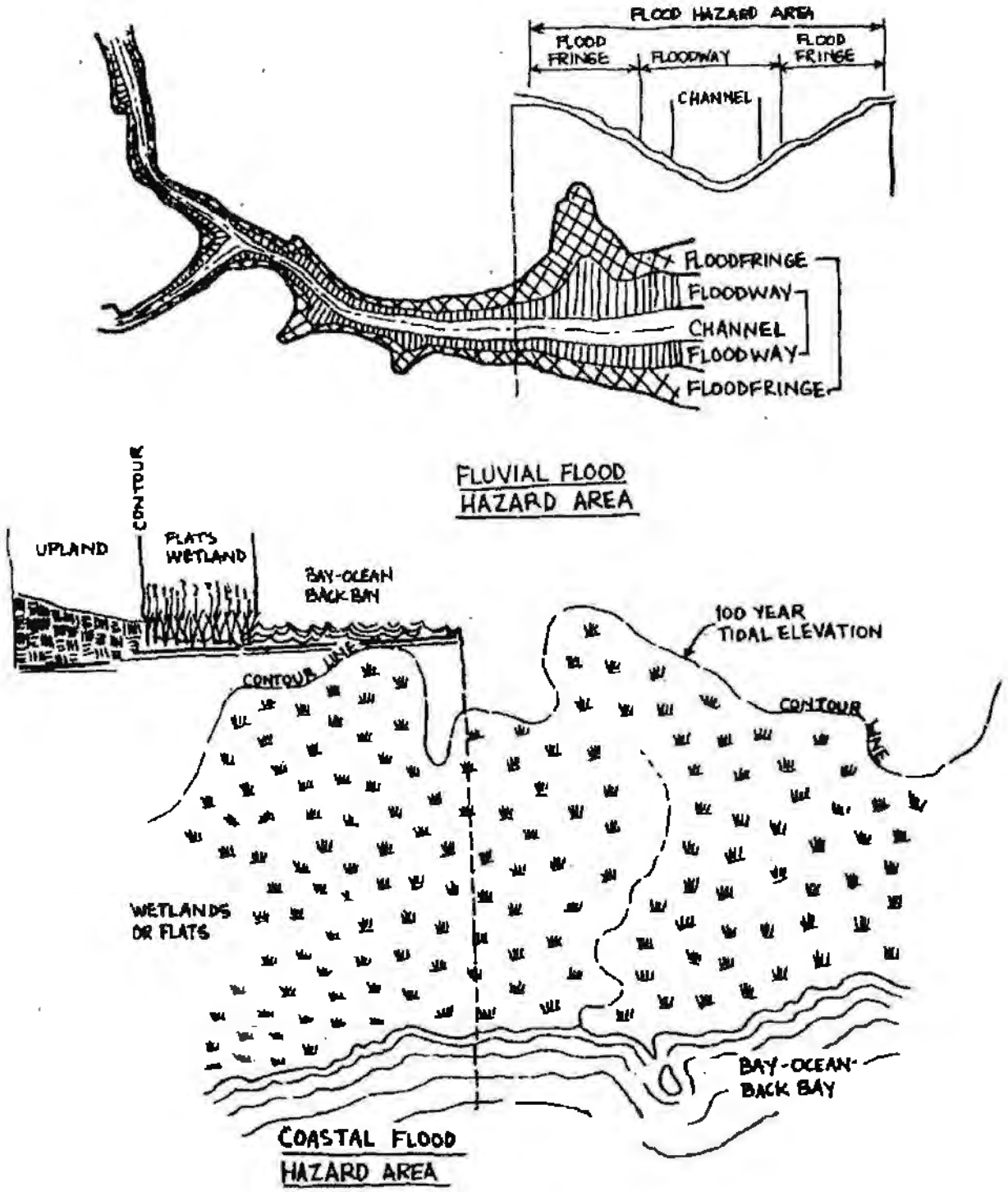
In the tidal areas, 100 year tidal elevations have been identified for FEMA in most municipalities within the coastal zone by the U.S. Army Corps of Engineers, and are known as the Intermediate Regional Tidal Flood. The geographic extent of tidal flood hazard areas are indicated on USGS topographic maps as "flood prone" areas (there are no floodways in tidal flooding).

(b) Policy

(i) Dedication of undeveloped flood hazard areas for purposes of public open space is encouraged, especially where such areas are designated to the New Jersey Wild and Scenic Rivers System.

(ii) Certain land uses are prohibited, under State Flood Plain law and rules, in the Floodway portion of fluvial flood hazard areas, including uses such as placing, depositing or dumping solid wastes on the delineated floodways; processing, storing or disposal of pesticides, domestic or industrial wastes, radioactive materials,

Figure 28




FLOOD HAZARD AREAS

petroleum products or hazardous materials; erection of structures for occupancy by humans or livestock or kennels for boarding of domestic pets; storage of materials or equipment or construction of septic tanks for residential or commercial use (see N.J.A.C. 7:13-1.2 et seq.). Not affected by this policy are hazard-free activities such as recreation, agriculture, soil conservation projects and similar uses which are not likely to cause obstructions, undue pollution, or intensify flooding. According to N.J.A.C. 7:13-1.4(c), any lawful, pre-existing prohibited uses may be maintained in a delineated floodway provided, that if expanded or enlarged, they do not increase the flood damage potential. Property owners in delineated floodways may rebuild damaged structures, providing that any expansion or enlargement will not increase the flood damage potential.

(iii) Most land uses are also regulated, under State Flood Hazard Areas Control law and rules, in the flood fringe. Structures for occupancy by humans are conditionally acceptable provided that: the first habitable elevation is one foot above the 100 year flood prone line established by HUD Flood Insurance Maps, and the structure will not increase flood damage potential, by obstructing flood waters.

(iv) Construction acceptable in flood hazard areas must conform with applicable flood hazard reduction standards, as adopted by the Federal Insurance Administration in HUD (Federal Register, Vol. 41, No. 207, Part II, October 26, 1976), as amended.

(v) In river areas designated as components of the New Jersey Wild and Scenic Rivers System, land uses are regulated or prohibited in accordance with N.J.A.C. 7:38-1.1 et seq. including special regulations adopted for a particular river, or sections thereof, upon designation to the system.

(c) Rationale

Past development of lands susceptible to flooding in New Jersey has led to flood damages, with sometimes tragic social, economic and ecological consequences. Intensive development of Flood Hazard Areas leads to increased runoff, reduction in flood storage capacity, increased size and frequency of downstream flooding, erosion of stream banks and downstream deposition of sediments with consequent reduction in estuarine productivity. Flood plains serve as important wildlife habitat for endangered and threatened species, game and fur-bearing species, and rare species of vegetation. Flood Hazard Areas can also be key elements in the creation of stream corridor-oriented open space, hiking or cycling trails, and passive recreation areas.

7:7E-8.24 Decommissioning of Projects

(a) Definition

Decommissioning is the shutdown of a development and the return of the site to a state suitable for future use.

(b) Policy

Coastal development applications must state the anticipated life of the proposed project and address the steps necessary to adapt the site to another use once the proposed project is no longer functional. Development proposals in which the applicant takes the long-term responsibility for making the site available for another use are encouraged.

(c) Rationale

The coast, particularly in urban areas, is littered with the remains of projects which outlived their usefulness and were abandoned. These derelict piers, deserted warehouses and crumbling buildings depress the immediate surrounding areas and make more difficult the task of rehabilitating the urban waterfront.

This policy is intended to make the long-term future use of a site one of the factors considered when evaluating a current proposal. Applicants should bear at least some of the responsibility for insuring that their use of a site does not eventually render it a hazard to health or the local or regional economy.

7:7E-8.25 Noise Abatement

(a) Definition

Noise is any sound of such level to be injurious to human health or welfare, or which would unreasonably interfere with the enjoyment of life or property throughout the State or in any portion thereof, but excludes noise emanating from residential structures and all aspects of the employer-employee relationship concerning health and safety hazards within the confines of a place of employment (N.J.S.A. 13:1G-3).

(b) Policy

Noise levels must conform with the standards established in N.J.A.C. 7:29-1.1 et seq. and administered by the Office of Noise Control in the Division of Environmental Quality.

(c) Rationale

Noise can be detrimental to the health, safety and welfare of people who live or work in the coastal zone. It can also diminish the enjoyment of people who visit the coast.

7:7E-8.26 Barrier Free Design

(a) Definition

Barrier free design is a plan for a project which would permit a handicapped person to operate independently with comparative ease.

(b) Policy

All development without barrier free design in public areas is prohibited, and multi-family residential developments of more than 250 units without barrier free design in some of the units are discouraged. Further, barrier free design must be included in all buildings and spaces used by the general public according to State Law (N.J.S.A. 52:32-1 and 52:32-5). Barrier free design is encouraged in units of private residential developments. All curb ramping, sidewalks, and grade changes on public property or on private property for public use shall be constructed or reconstructed according to State Law (N.J.S.A. 52:32-14 et seq.) and pursuant standards promulgated by the Department of Transportation.

(c) Rationale

Activities in the coastal zone should be available to all people, including those whose physical handicaps have precluded such accommodation in the past. "Barrier Free Design Regulation", published by the State of New Jersey, Department of the Treasury, Division of Building and Construction on July 15, 1977, defines the barrier free design requirements of public buildings. Design standards for curb ramps for the physically handicapped were published by the Department of Transportation July 19, 1976 and revised July 18, 1977.

Chapter 5: Special Requirements of the federal Coastal zone Management Act

Chapter 6: Next Steps in Coastal Management in New Jersey

## CHAPTER FIVE - SPECIAL REQUIREMENTS OF THE FEDERAL COASTAL ZONE MANAGEMENT ACT

Introduction
Federal Consistency
National Interests
Regional Benefit Decisions
Geographic Areas of Particular Concern
  Hackensack Meadowlands Development Commission District
Areas for Preservation and Restoration
Special Coastal Planning Elements
  Energy Facility Planning Process
  Shorefront Access and Protection Planning Process
  Shoreline Erosion/Mitigation Planning

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### INTRODUCTION

This Chapter addresses the special federal requirements which must be part of a state's coastal management program under the federal Coastal Zone Management Act. The Chapter describes the involvement and consideration of national interests in the development and implementation of the program. It discusses the process of assuring that federal actions are consistent with the Coastal Program to the maximum extent practicable. It then describes how various conflicts between the national interests are balanced in the program and the process to assure adequate consideration of such issues. In addition, this Chapter describes how the New Jersey Coastal Program ensures that uses of regional benefit are not excluded from the coastal zone.

Because some areas in the coastal zone have significant coastal value or face exceptional environmental pressures, they demand special management attention. This chapter describes the areas New Jersey has designated to receive special management consideration as geographic areas of particular concern, including the Hackensack Meadowlands Development Commission District, and areas for preservation or restoration.

In addition, this chapter includes the three special coastal planning elements the 1976 amendments to the Federal Coastal Zone Management Act mandate be included in each State's coastal program. The special planning processes are the energy facility planning process, the shorefront access and protection planning process, and the shoreline erosion/mitigation planning process.

## FEDERAL CONSISTENCY

Federal agencies play a significant role in the coastal zone. They issue permits and licenses for activities such as dredging and the construction and operation of nuclear power plants, as well as activities associated with exploration and development of the Outer Continental Shelf. They also provide financial assistance such as grants for watershed protection and flood prevention, and undertake direct activities and development projects such as national parks and highway construction.

The federal consistency provisions of the Coastal Zone Management Act, Section 307(c)(1) and (2), require that federal activities and development projects in or directly affecting the coastal zone be consistent (in some cases to the maximum extent practicable) with the Srate Coastal Zone Management Program. Section 307(c)(3)(A), 307(c)(B) and 307(d) require federally licensed and permitted activities, federally licensed and permitted activities described in detail in OCS plans and Federal assistance to State and local governments to be consistent with the State coastal program.

New Jersey will use the goals, objectives and policies of the New Jersey Coastal Management Program as the basis for making consistency determinations. Specifically, New Jersey will consider a federal action consistent if it does not conflict with the Coastal Resource and Development Policies as stated in Chapter Four.

### General Procedural Requirements

The Federal consistency requirements outlined in this chapter describe the procedures that will be followed by DEP's Division of Coastal Resources in determining the consistency of federal activities with the Coastal Management Program. These procedures incorporate the mandatory requirements of the federal consistency regulations (15 CFR Part 930) into a review process that is modelled on existing state permit review processes.

In most cases, an activity subject to the requirements of Section 307 of the Federal CZMA will alao require a coastal permit. Consistency for these activities may be demonstrated by receipt of an approved State coastal permit (either a CAFRA, Waterfront Development or Wetlands Permit).

The appropriate state permit application should, therefore, be submitted to DEP prior to or concurrent with the submission to the Federal licensing or permitting agency initiating the Federal review process. Should the Division of Coastal Resources receive a consistency certification for an activity which requires a state permit but for which no application has been submitted, the agency or person proposing to conduct the activity shall be advised that such a permit is required. Such activities will thereafter be reviewed under the State's regulatory authority, and not under Section 307. The Division shall issue, within the time limit relevant to the category of federal activity, a determination stating that the decision to grant or deny the State coastal permit shall constitute a consistency determinaiton. Review of applications for State coastal permits will follow the relevant State procedures.

Activities which would directly affect the coastal zone but are not regulated by a state permit program, activities on federal lands having "spillover impacts" on the coastal zone (see discussion of geographic scope below) and activities described in OCS plans will require reviews independent of any existing permit program.

Geographic Scope

The geographic scope of the consistency review process includes the entire coastal zone and, in some cases, areas outside the coastal boundary. Federal lands within the boundary are excluded from the coastal zone, and are not ordinarily subject to a consistency review. Activities on Federal lands and on other lands outside the zone are subject to consistency review if it is found that they may directly affect the coastal zone (15 CFR 930.33c). Whether these "spillover effects" will have such an impact will depend generally on the type of activity to be conducted, its magnitude, and its proximity to the coastal zone. Persons proposing to conduct an activity with potential spillover impacts should consult with the Division of Coastal Resources early in the planning process in order to avoid later problems.

There are certain geographic areas outside the coastal zone in which activities are likely to have direct and predictable impacts on the coastal zone. Any activity in a riverine area upstream of the coastal zone which reduces or otherwise alters flow, for example, is likely to directly affect downstream areas. This is particularly true where the water body is directly affected by the activity, as with damming, dredging, filling, or construction within the natural high water mark. If the affected downstream areas encompass Wetlands, Floodplains, or any of the other Special Areas listed in the Rules on Coastal Resource and Development Policies then it may be assumed that such activities will directly affect the coastal zone.

Contents of a Consistency Determination or Certification

Federal activities that require a coastal permit are subject to the information requirements of the particular permit program.

When reviewing activities that do not require a coastal permit (e.g. activities directly affecting the coastal zone but not regulated by the state, activities on federal lands and OCS activities), DEP will attempt to base its decision on the document or documents required for compliance with Federal laws and regulations.

Notice of the receipt of Federal consistency determinations, certifications, and notifications, and the subsequent status of each consistency review will be published in the DEP Bulletin in accordance with the 90 Day Construction Permit Rules, N.J.A.C. 7:1C-1.6. A free subscription to the DEP Bulletin may be obtained by writing to the New Jersey Department of Environmental Protection, Documents Distribution Center, P. O. Box 1390, Trenton, New Jersey 08625.

In addition, a public hearing will be held in the local area concerned on all projects requiring a CAFRA permit and on major projects requiring a Wetlands or Waterfront Development Permit. A public hearing will also be held in the event of a serious disagreement between DEP and a federal agency concerning a federally licensed or permitted activity described in OCS oil and gas production and development plans.

DEP will work with each Federal agency to provide joint written notices and public hearings on proposals whenever possible.

Both DEP and the New Jersey Department of Energy (DOE) will participate in the decision of the State of New Jersey to issue a determination of consistency on coastal energy facilities. As required by federal regulations (15 CFR 930.18), DEP shall receive, and forward promptly to DOE, all materials necessary for a consistency determination on coastal energy facilities. In the event of a disagreement, the Energy Facility Review Board will be convened to make a recommendation to the Governor, who shall make the final determination within the applicable time limits as required by the federal consistency determination to the appropriate federal agency.

Preliminary Conferences

The Federal consistency regulations encourage early consultation and coordination between state and Federal agencies or applicants. An agency or applicant may request a preliminary conference in writing or by telephone, advising DEP that the agency has identified an activity as one requiring, or possibly requiring, a consistency review that it wishes to discuss. This request should come at the earliest possible time and should be addressed to the Federal Coordinator, Bureau of Coastal Planning and Development, Division of Coastal Resources.

Below are lists of federal activities and development projects, federally licensed and permitted activities, federally licensed and permitted activities described in OCS Plans, and federal programs providing assistance to state and local governments likely to occur in, or affect, New Jersey's coastal zone.

Direct Federal Activities and Development Projects

Federal activities and development projects which are located in or directly affect the coastal zone must be consistent to the maximum extent practicable with the New Jersey Coastal Management Program. New Jersey will consider an activity consistent to the maximum extent practicable if it does not conflict with the Coastal Resource and Development Policies, unless compliance with New Jersey's program is prohibited based on existing law applicable to the Federal agency's operations.

Agencies and Activities Covered By This Section

Direct activities and development projects include the planning, construction, modification, or removal of Federally owned public works, facilities, or structures, including military facilities; the acquisition, utilization or disposal of land and water resources; Federal agency activities requiring a Federal permit; and Federal assistance to entities other than state and local governments.

Examples of activities in New Jersey's coastal zone that were not previously subject to State review are the housing units presently under construction by the Coast Guard on federally-owned land in Cape May (because of their potential spillover impacts) and the proposed expansion of the Naval Weapons Station, Colts Neck, New Jersey.

The following Federal activities and development projects, when conducted in whole or in part within the coastal zone, are likely to directly affect the coastal zone, and shall be reviewed for consistency.

| | |
|---|---|
| GENERAL SERVICES ADMINISTRATION | - Location and design of proposed government property acquisition and building construction. |
| | - Disposal and transfer of surplus Federal lands. |
| DEPARTMENT OF DEFENSE | |
| Army Corps of Engineers | - Proposed projects authorization for dredging, channelworks, breakwaters, other navigation works, erosion control structures, reservoirs, dams, beach nourishment, and other public works projects in the coastal zone or with the potential to impact coastal lands and waters. |
| Air Force, Army and Navy | - Location, acquisition and design of new or enlarged defense installations. Actions conducted on Federal lands with potential impact on non-Federal coastal lands and waters. |
| DEPARTMENT OF ENERGY | - Management of Coal Conversion Program. |
| Federal Energy Regulatory Commission | - Approval of construction and operation of an interstate natural gas transmission pipeline. |
| DEPARTMENT OF THE INTERIOR | |
| Bureau of Land Management | - OCS Leases and pre-leasing activities. |
| Fish and Wildlife Service | - Management of national wildlife refuges and proposed acquisition. |
| National Park Service | - National Park and seashore management and proposed acquisition. |
| DEPARTMENT OF TRANSPORTATION | |
| Coast Guard | - Location, acquisition and design of new or enlarged installations. |
| Materials Transportation Bureau | - Formation and enforcement of minimal federal safety standards for transportation of oil, gas and pipeline facilities. |
| Federal Highway Administration | - Highway construction. |

Federally Licensed and Permitted Activities

Applicants for Federal licenses or permits for activities directly affecting the coastal zone or for renewals or amendments to such licenses or permits shall provide DEP with a certification that the proposed activity is consistent with the coastal policies. DEP shall make a determination that the activity is or is not consistent with Coastal Policies within six months of receipt of the certifcation. Should DEP fail to make a determination within six months, the State's

concurrence with the certification shall be conclusively presumed. Federal agencies may not issue a license or permit if the State objects unless the U.S. Secretary of Commerce finds that a proposal is consistent with the purpose of the Federal CZMA or is necessary in the interest of national security.

New Jersey will consider an activity consistent if it does not conflict with the Coastal Resource and Development Policies.

In approving the New Jersey Coastal Management Program - Bay and Ocean Shore Segment, the Assistant Administrator for Coastal Zone Management, NOAA, made the following finding:

> "With respect to any Federal license or permit, the State's review of the application for that license or permit, for Federal consistency purposes, will be limited to the scope of the review of that application as established under State and Federal law."*

In order to comply with this finding, DEP examined the legislation and regulations governing the Federal regulatory programs listed in this section and found that Federal agencies are required to examine the potential environmental impacts of their actions, regardless of the scope of review established for the particular permit or license involved. These requirements stem from the National Environmental Policy Act of 1969 (NEPA), the Environmental Quality Improvement Act of 1970, the Fish and Wildlife Coordination Act of 1966, Executive Order 11514 (Protection and Enhancement of Environmental Quality), Executive Order 11990 (Wetlands), and Executive Order 11988 (Floodplains).

The fact that every Federal action is assessed for the significance of its impacts on the environment within the meaning of NEPA (including NPDES permits for new point source discharges), and for its impact on floodplains, wetlands, fish, and wildlife means that the issuance of Federal licenses and permits listed in this section, with two exceptions, will be reviewed with reference to the full range of coastal policies contained in Chapter Four. The two exceptions are NPDES permits for existing point source discharges, which are subject only to Resource Policy 7:7E-8.4 (Water Quality); and decisions under prevention of significant deterioration (PSD) regulations of the Clean Air Act, which are subject only to Resource Policy 7:7E-8.11 (Air Quality).

Licenses and Permits Covered by this Section

Licenses and permits include any authorization, certification, approval, or other form of permission which a Federal agency is empowered to issue to an applicant, including amendments to or renewals of such permits.

Activities under the following Federal permits and licenses, when conducted by an applicant in whole or in part within the coastal zone, are likely to significantly affect the coastal zone and will be subject to a consistency review:

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*Findings of Robert W. Knecht, Assistant Administrator for Coastal Zone Management. Approval of the New Jersey Coastal Management Program - Bay and Ocean Shore Segment, September 29, 1978, p. 47.

Army Corps of Engineers

Permits to regulate construction of any dam or dike across any navigable water of the U.S. under Section 9 of the Rivers and Harbor Act of 1899.

Permits to regulate the obstruction or alteration of, the construction of any structure in or over, and the excavation from or depositing of material in any navigable water of the U.S. under Section 10 of the Rivers and Harbor Act of 1899. (Exception: placement of bulkheads and other retaining structures, construction of docks, piers and boat ramps, or excavation from or depositing material within a man-made lagoon).

Permits and licenses to regulate transportation of dredged material for the purpose of dumping it in ocean waters under Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972.

Permits and licenses for the discharge of dredged or fill materials into the waters and adjacent wetlands of the United States at specified disposal sites under Section 404 of the Federal Water Pollution Control Act of 1972 and amendments unless such permitting activity has been delegated to the State.

Federal Energy Regulatory Commission

Licenses required for non-Federal hydroelectric projects and primary transmission lines under sections 3(11), 4(e), and 15 of the Federal Power Act (16 U.S.C. 796(11), 797(e), and 808).

Orders for interconnection of electric transmission facilities under section 202(b) of the Federal Power Act (16 U.S.C. 824a(b)).

Certificates of public convenience and necessity for the construction and operation of natural gas pipeline facilities including both interstate pipelines and LNG terminal facilities under Section 7(c) of the Natural Gas Act (15 U.S.C. 717f(c)).

Permission and approval for the abandonment of natural gas pipeline facilities under Section 7(b) of the Natural Gas Act (15 U.S.C. 717f(b)).

U. S. Coast Guard

Permits for construction and operation of deepwater ports under the Deepwater Port Act of 1974.

Permits for construction of bridges under 33 USC 401, 491, 525.

Federal Aviation Administration

Permits and licenses for the construction, operation, or alteration of airports.

Environmental Protection Agency

National Pollutant Discharge Elimination System (NPDES) permits under the Federal Water Pollution Control Act of 1972, unless such permitting authority is delegated to the State.

Decisions under Prevention of Significant Deterioration (PSD) regulations under the Clean Air Act of 1976.

Nuclear Regulatory Commission

Permits and licenses required for the construction and operation of nuclear facilities under the Atomic Energy Act of 1954, Sections 6, 7, 8 and 10.

Economic Regulatory Administration

Opinions and orders for permission for delivery of imported LNG.

Licensed and Permitted Activities Described in OCS Plans

The 1976 Amendments to the Federal Coastal Zone Management Act added Section 307 (c)(3)(B), stating in part that:

"...any person who submits to the Secretary of the Interior any plan for the exploration or development of, or production from any area which has been leased under the Outer Continental Shelf Lands Act ... and regulations under such Act shall attach to such plan a certification that each activity which is described in detail in the plan complies with such state's approved management program and will be carried out in a manner consistent with such program".

The Department of the Interior must supply DEP with a detailed description of all proposed Federally licensed or permitted activities and facilities for OCS activities which significantly affect the coastal zone.

Federal Agencies may not issue a license or permit if the state objects, unless the U.S. Secretary of Commerce finds the proposal meets the objectives of the Federal CZMA or is necessary in the interest of national security.

New Jersey will consider an activity consistent if it does not conflict with the Coastal Resource and Development Policies.

Permits and Licenses Covered by this Section

Any Federally licensed or permitted activity described in any OCS plan for all lease sales on the Outer Continental Shelf of the United States under which New Jersey is identified as an "affected state".

Federal Assistance to State and Local Governments

Federal assistance to state and local governments for projects directly affecting the coastal zone may not be granted until DEP certifies that the activity will be consistent with the New Jersey Coastal Management Program unless the Secretary of Commerce finds that the proposal meets the objectives of the Federal

CZMA or is necessary in the interest of national security. DEP will use the A-95 Project Notification and Review Process to monitor proposed Federal assistance projects in the coastal zone. The State also reserves the right to comment on other Federal assistance projects brought to its attention through the media and other avenues.

New Jersey will consider an activity consistent if it does not conflict with the Coastal Resource and Development Policies.

Activities and Agencies Covered by this Section

The term Federal assistance includes grants, contractual arrangements, loans, subsidies, guarantees, insurance, or other forms of financial aid. The term "state or local government" includes public entities such as special purpose districts.

(Note: It is not clear at this time whether Community Development Block Grant and Urban Development Action Grant Program applications fall within the coverage of this section. Such applications often do not provide, nor are they required to provide, a level of detail adequate to enable a consistency determination to be made. DEP, therefore, shall review such applications, but it shall not issue a negative determination for lack of information for these two categories of grant programs. It shall, by letter and by A-95 comment, assess the applicant's consistency with the Coastal Management Program to the fullest extent possible.)

DEP will monitor state and local Federal assistance applications affecting the coastal zone including, but not limited to the following programs (Reference numbers are those used by the Federal Office of Management and Budget). Activities under these grant programs, when conducted in whole or in part in the coastal zone, are likely to significantly affect the coastal zone, and will be reviewed for consistency.

Federal Regulations (15 CFR 930.94) requires that states list the specific Federal assistance programs subject to consistency review in their coastal management programs.

Department of Agriculture

Irrigation, Drainage, and Other Soil and Water Conservation Loans (10.409)

Resource Conservation and Development Loans (10.414)
(Exception: small projects costing under $7500 for erosion and sediment control and land stabilization for rehabilitation and coordination of existing irrigation systems).

Water and Waste Disposal Systems for Rural Communities (10.418)

Watershed Protection and Flood Prevention Loans (10.419)

Community Facilities Loans (10.423)

Department of Commerce

Economic Development: Grants and Loans for Public Works and Development Facilities (11.300)

Economic Development; Public Works Impact Projects (11.304)

Grants to States for Supplemental and Basic Funding of Title I, II, and IV Activities (basic grants only) (11.308)

National Oceanic and Atmospheric Administration - Se Grants

Department of Energy

State Energy Conservation Program

Department of the Interior

Heritage Conservation and Recreation Service

Outdoor Recreation - Acquisition, Development, and Planning Grants (15.400)

U. S. Fish and Wildlife Service

Rare and Endangered Species Conservation (15.612)

Department of Transportation

Federal Aviation Administration

Airport Development Aid Program (20.102)

Federal Highway Administration

Highway Research, Planning, and Construction (20.205)

Urban Mass Transportation Administration

Urban Mass Transportation Capital Improvement Grants (planning and construction only) (20.500)

Urban Mass Transportation Capital Improvement Loans (planning and construction only) (20.501)

Urban Mass Transportation Demonstration Grants (50.506)

Urban Mass Transportation Capital and Operating Assistance Formula Grants (20.507)

Environmental Protection Agency

Construction Grants for Wastewater Treatment Works (66.418)
(Note: Public water treatment facilities in the Bay and Ocean Shore Segment are subject to CAFRA).

## NATIONAL INTERESTS

The federal Coastal Zone Management Act requires that the State's program provide "for adequate consideration of the national interest involved in planning for, and in the siting of, facilities ... which are necessary to meet requirements which are other than local in nature." [Subsection (306) (c)]

The "national interest" is a collection of the diverse, and occasionally conflicting, interests of the 13 United States departments, councils, and commissions with involvement in the preservation or development of New Jersey coastal lands and waters. To determine and balance the national interests, New Jersey has met with representatives of the federal agencies with responsibilities affecting the coastal zone. The comments of those agencies choosing to submit written statements and comments or testimony at public meetings on New Jersey's evolving coastal program have contributed to New Jersey's understanding of the national interests. Contacts with federal agencies are summarized in Appendix A. In addition to the comments of federal agencies, the New Jersey program used Presidential statements, federal legislation, and federal, state, and interstate agency reports to aid its consideration of the national interests.

The New Jersey program recognizes that national, as well as state, interests and priorities may shift in response to new and/or unforseen circumstances. Under an approved program, New Jersey will, therefore, continue to seek and evaluate information from the same sources. Changes in the national interests will be reflected in the Coastal Program through administrative action including amendments to the substantive rules and regulations which incorporate the Coastal Resources and Development Policies.

### The Process for Continued Consideration of National Interest Issues

The process for balancing the national interests in the coastal zone will be the employment of the three-step decision-making process of the Location Policies, Use Policies, and Resource Policies described in Chapter Four, which will be used to guide actions in or affecting the coastal zone. These policies provide for wise management of the coastal zone and represent the State's effort to fulfill the federal mandate to give full consideration to ecological, cultural, historic, and aesthetic values as well as to needs for economic development. In so doing, the State has considered its responsibility to fulfill national needs for national defense, energy production and transmission, recreation and transportation. All decisions made under the program will follow the Coastal Resource and Development Policies described in Chapter Four.

An annual review of the Coastal Resource and Development Policies and the coastal permit application procedures described in Chapter Three will serve as the processes for assuring continued consideration of the national interests in the planning for and siting of facilities which are necessary to meet requirements which are other than local in nature.

All of the facilities identified below (national defense, energy production and transmission, recreation and transportation) are of sufficient size to require a coastal permit if they occur on non-federally controlled land. Furthermore, these facilities and any other development which would significantly affect the eleven resources described below as in the national interest, (e.g. water, air, etc.) are required to receive a coastal permit. Although other state permits would

be needed in some resource areas such as flood plains, the coastal permit would cover all these issues and thus has been identified as the single process during implementation of the Coastal Management Program for assuring the continued consideration of identified national interests.

CAFRA and the Wetlands Act state that the Commissioner of DEP "shall issue a permit only if he finds that the proposed facility...is located or constructed so as to neither endanger human life or property nor otherwise impair the public health, safety and welfare." (N.J.S.A. 13:19-10f) The Commissioner has interpreted "public welfare" and the jurisdiction of the State's Waterfront Development Permit Law (N.J.S.A. 12:5-3) to include a full consideration of national interests as described in this program. This interpretation is contained in Chapter Three of this document (Section 1.3.4) which is proposed as amendments to adopted rules. In addition, the Department of Energy will interpret its mandate "... to contribute to the proper siting of energy facilities necessary to serve the public interest ..." (N.J.S.A. 25:27f.2) as sufficient authority to consider the national interest in the siting of coastal energy facilities.

The following have been defined as facilities or resources which may be in the national interest. Greater specificity on the policies described below can be found in Chapter Four.

National Defense

National defense is of obvious importance to all states. To define the national interest in national defense, DEP shared reports, received comments from, and met with the designated representatives of the U.S. Air Force, U.S. Navy, U.S. Army, and U.S. Army Corps of Engineers.

The New Jersey Coastal Program excludes from the coastal zone all federally owned or leased lands, where defense operations are concentrated. The Coastal Program will actively consider defense activities only when agencies of the Department of Defense propose to buy additional land or to build new facilities with potential impacts beyond the borders of the federally owned land. The New Jersey program will not question the national security justification for such proposals. Rather, DEP will review the proposal for consistency with the Coastal Program, and will approve it if it can make one of two findings:

1. The proposal is consistent with the Coastal Resource and Development Policies, or

2. The proposed facility is coastal dependent and will be constructed with maximum possible consistency with the Coastal Resource and Development Policies.

In addition, the New Jersey program will seek to involve local Department of Defense representatives in planning the use of lands and waters surrounding military installations. The only current or projected defense activity in the area addressed by the Coastal Program is the possible purchase of land by the U.S. Navy in the vicinity of the Naval Weapons Station, Colts Neck. DEP has reviewed the proposed expansion of this site and has made a determination (in September 1979) that it would be conditionally acceptable under the Department's Rules on Coastal Resource and Development Policies.

Energy Production and Transmission

In determining the national interest in energy production and transmission, the following plans and federal agencies were consulted:

- The National Energy Plan, April 29, 1977
- U.S.Department of Energy (formerly ERDA and FEA)
- Federal Energy Regulatory Commission (formerly Federal Power Commission)
- Nuclear Regulatory Commission
- U.S. Department of Interior
  - Bureau of Land Management
  - U.S. Geological Survey
- U.S. Department of Transportation
  - U.S. Coast Guard
  - Office of Pipeline Safety
- Department of Defense
  - U.S. Army Corps of Engineers
- Maritime Administration
- Environmental Protection Agency

The most useful articulation of the national interest in energy is found in the National Energy Plan, which has three overriding objectives:

- as an immediate objective that will become even more important in the future, to reduce dependence on foreign oil and vulnerability to supply interruptions;
- in the medium term, to keep U.S. imports sufficiently low to weather the period when world oil production approaches its capacity limitation; and
- in the long term, to have renewable and essentially inexhaustible sources of energy for sustained economic growth. (Plan Overview, page IX)

The salient features of the National Energy Plan are:

- conservation and fuel efficiency,
- national pricing and production policies,
- reasonable certainty and stability in Government policies,
- substitution of abundant energy resources for those in short supply; and
- development of nonconventional technologies for the future (Plan Overview, page IX-X)

The National Energy Plan also notes that its "cornerstones" are "conservation" (page 35 of the Plan). New Jersey's recognition of the need for energy conservation was one factor leading to the second Basic Coastal Policy which states: "Concentrate rather than disperse the pattern of coastal residential, commercial, industrial, and resort-oriented development, and encourage the preservation of open space". Specifically, the Coastal Program encourages the clustering of development within a site, the use of renewable and recoverable sources of energy, mass transportation, and the incorporation of energy conservation techniques into all proposed coastal development in accordance with the Energy Conservation Plan being administered by the N.J. Department of Energy pursuant to the Energy Policy and Conservation Act of 1975.

Oil and Gas Facilities

New Jersey recognizes its key role in the transportation, transfer, treatment and storage of national oil and gas supplies. In addition, the exploration for crude oil and natural gas in the Baltimore Canyon has presented New Jersey with the propect of new offshore and onshore OCS related activiries. Given the national interest in recreational and resource protection in the coastal zone, pipelines and pumping and compressor stations will be permitted in the entire coastal zone to the extent they can meet existing federal and state requirements. Oil and gas facilities, other than pipelines, are encouraged to locate in the developed areas of the state where the infrastructure and labor market already exist to absorb such activity. The decision to encourage oil and gas facilities including certain OCS related activities in areas of the state which already house many oil and gas production facilities has been reached as a result of weighing the competing and conflicting national interest in recreation and resource protection as called for in the CZMA. A study undertaken for DEP by Rutgers University Center for Coastal and Environmental Studies (Onshore Support Bases for OCS Oil and Gas Development: Implications for New Jersey, 1977) as well as a study done by the Port Authority of New York and New Jersey to identify the New York Harbor's potential for OCS support bases contributed to this decision by indicating that sites which may be acceptable for oil and gas facilities exist along the Raritan Bay and River and the Hudson River.

Electric Power

The Coastal Program directs additional fossil fueled generating stations away from particularly scenic or natural areas that are important for recreation and open space purposes, and directs that they be built consistent with applicable air and water quality standards. (See Chapter Four, Section 7:7E-7.4(m).

In considering the national interest in the development of nuclear power, New Jersey finds applicable the rules and regulations promulgated by the Nuclear Regulatory Commission (10 CFR 100) which provide firm siting criteria with guidelines to prevent siting of future nuclear plants in densely populated locations, in valuable natural areas, or in potentially hazardous locations.

New Jersey was one of the first states to recognize the potential of nuclear power to meet U. S. energy needs. The State has six operating or fully approved nuclear plants, including the Hope Creek I and II Generating Stations which received a CAFRA permit from DEP in 1975. The only other recent application for a nuclear facility filed in New Jersey was a 1974 application to construct two floating plants, which has since been cancelled by the applicant.

The New Jersey Coastal program energy policies considering electric generating stations can be found in Chapter Four, Section 7:7E-7.4(q).

Liquified Natural Gas - The National Energy Plan contains the following statements applicable to New Jersey:

> "Due to its extremely high costs and safety problems, LNG is not a long-term secure substitute for domestic natural gas. It can, however, be an important supply option through the mid-1980s and beyond, until additional gas supplies

may become available...The previous Energy Resources Council guidelines are being replaced with a more flexible policy that sets up no upper limit on LNG imports. Under the new policy, the Federal Government would review each application to import LNG so as to provide for its availability at a reasonable price without undue risks of dependence on foreign supplies. This assessment would take into account the reliability of the selling country, the degree of American dependence such sales would create, the safety conditions associated with any specific installation, and all costs involved." (p. 57)

The New Jersey Coastal Program states that LNG terminals are discouraged unless they are constructed so as to neither unduly endanger human life nor property nor otherwise impair the public health, safety and welfare, and comply with the Coastal Resource and Development Policies. Because the tankering of LNG could pose potential risk to life and property adjacent to New Jersey's waterways which also serve as boundaries with the states of Pennsylvania and Delaware along the Delaware River and the state of New York in the Port of New York and New Jersey, the state considers decisions concerning the siting of LNG terminals to be an interstate matter.

Recreation

The New Jersey coast is a national recreational resource. In considering the national interest in recreation, New Jersey reviewed the Nation-wide Outdoor Recreation Plan, the New Jersey State Comprehensive Outdoor Recreation Plan (SCORP), the Land and Water Conservation Fund Act, and the Historic Preservation Act of 1966 as amended. In addition, New Jersey has offered draft coastal documents for review to the National Marine Fisheries Service, Bureau of Outdoor Recreation and its successor Heritage Conservation and Recreation Service, U.S. Fish and Wildlife Service, National Park Service and staff of Gateway National Recreational Area-Sandy Hook, and the Advisory Council on Historic Preservation.

Major objectives of the national interest in recreation are:

- To consider recreation as an equal among competing uses of the coastal region.
- To provide high quality recreational opportunities to all people of the United States, while protecting the coastal environment.
- To increase public recreation in high density areas
- To improve coordination and management of recreation areas.
- To protect existing recreation areas from adverse contiguous uses.
- To accelerate the identification and no-cost transfer of surplus and underutilized federal property.

New Jersey will consider the recreational potential of a site in each decision under the Coastal Program. The Basic Coastal Policies require each waterfront municipality to provide or plan for at least one waterfront park. Residential, commercial and industrial projects are to be designed to include recreation areas, and public access to the water is to be part of waterfront development, whenever it is feasible. The Policies are consistent with the New Jersey State Comprehensive Outdoor Recreation Plan (SCORP), which was also prepared by DEP.

Recreation is particularly important in New Jersey where tourism is the state's second largest industry. The recreational use of the ocean waterfront has long been recognized, while the use of bay and river waterfront, particularly in urban areas is of growing importance in New Jersey. DEP provides for the national interest in recreation through its ability to acquire and manage state parkland and recreation areas and through the state Green Acres program which makes funds available to local governments for acquisition and development of recreation and open space. The federal government, which owns and operates a public beach and open space area at Gateway National Recreation Area (Sandy Hook), further provides for the national interest in recreation in New Jersey.

Transportation and Ports

The need for adequate transportation both to, and within, the coastal zone is an important national interest. To determine the national interest in transportation, and ports, New Jersey consulted the U.S. Department of Transportation, U.S. Coast Guard, Federal Aviation Administration, Federal Highway Administration, Federal Railroad Administration, Urban Mass Transit Administration, Maritime Administration and U.S. Army Corps of Engineers and the regional Port Authorities. The maintenance of existing transportation facilities is unaffected by the New Jersey Coastal Program. New public transportation facilities will be encouraged while additional roads will be permitted only if a need for them is demonstrated and alternative solutions are not feasible. In addition, other types of proposals, such as residential projects and development in Atlantic City, will be evaluated in terms of their potential impact on transportation.

New Jersey's ports also contribute to the national transportation interest. Ports will be encouraged only in established port areas. New facilities will be permitted when there is a clear demonstration of the inadequacy of an existing port. In New Jersey, the existing ports contain unused and under-used areas which can be refurbished to meet increases in demand. The Coastal Policies nevertheless allow for possible unanticipated future needs for port areas. (See Chapter Four, Sections 7:7E-7.4(i), 7:7E-7.5, 7:7E-7.8 and 7:7E-8.19).

Water

The New Jersey Coastal Program has been designed to support the attainment of national water quality goals. New Jersey has considered the national interest in water quality by review of the Clean Water Act, which provides the water resource standards of the Coastal Program and in consultation with the Environmental Protection Agency, Fish and Wildlife Service, National Marine Fisheries Service and the Council on Environmental Quality. In addition, all coastal development must conform with any state certified areawide water quality management (208) plan. These goals, and the other resources in which there is a national interest which follow in this section, are recognized by the first Basic Coastal Policy which states "Protect and enhance the coastal ecosystem", as well as by other more specific policies. Water quality is addressed by the Location Policies on General Water Areas and Special Areas, by Use Policies on Wastewater Treatment, and by Resources Policies on Soil Erosion, Runoff, Ground and Surface Water Use, Water Quality, and Marine Fish and Fisheries. DEP's Division of Coastal Resources has a close working relationship with DEP's Division of Water Resources. The former has responsibility for the Coastal Zone Management Act in New Jersey and the latter administers New Jersey's participation under the Federal Water Pollution Control Act of 1977, as amended (Clean Water Act) and the Safe Drinking water Act (See Chapter Three).

## Air

The New Jersey Coastal Program supports the attainment and maintenance of clean air. The State has considered this national interest through review of the federal Clean Air Act and consultation with the Environmental Protection Agency and the Council on Environmental Quality. A policy on Air in the Resources Policies section of the Coastal Resource and Development Policies requires that all development subject to the Coastal Program must conform with the Clean Air Act, the State Implementation Plan and any other applicable air regulations and standards. DEP's Division of Environmental Quality is responsible for improving and maintaining air quality in New Jersey. (See Chapter Four, Section 7:7E-8.11).

## Wetlands

The New Jersey Coastal Program has considered the national interest in wetlands through review of the President's Executive Order 11990 on Protection of Wetlands of May 24, 1977, Section 404 of the Federal Water Pollution Control Act, and the National Environmental Policy Act, as well as through consultation with the Soil Conservation Service, U.S. Army Corps of Engineers, Fish and Wildlife Service, Environmental Protection Agency, National Marine Fisheries Service, and the Council on Environmental Quality.

The major objectives of the national interest in wetlands are:

- To protect basic values of wetlands as habitat and food sources for waterfowl and aquatic life;
- To protect the functioning of wetlands for flood prevention, storm buffering, water supply, and nutrient exchange, and as a recreational resource.
- To regulate alteration of wetlands and the disposal of dredged materials in U.S. waters and associated wetlands.

The New Jersey Coastal Program addresses the national interest in protection of coastal wetlands through their designation as a Geographic Area of Particular Concern. Wetlands are also addressed in a Use Policy on Housing discouraging lagoon development, a Resource Policy on "Buffers" which states that adjacent development must allow a buffer to protect sensitive areas such as wetlands, and the Location Policy which specifically identifies coastal and freshwater wetlands as areas where development proposals must meet very high standards. The use of New Jersey's Wetlands Act of 1970 in the Coastal Program will allow enforcement of these policies. In New Jersey, considerable wetlands acreage was being lost to development each year until the Wetlands Act was passed. (See Chapter Four, Sections 7:7E-3.23, 7:7E-7.2 and 7:7E-8.15).

## Endangered Flora and Fauna, and Wildlife Refuges and Reserves

New Jersey has addressed the national interest in endangered flora and fauna, and wildlife refuges and reserves by reviewing the Endangered Species Act of 1973, and the Federal Aid to Wildlife Restoration Act of 1938 (Pittman-Robinson), and by seeking the advice and comments of the U.S. Forest Service, Environmental Protection Agency, Fish and Wildlife Service and the Council on Environmental Quality.

The major objectives of the national interest in endangered flora and fauna are:

- To provide a means whereby the ecosystems upon which endangered and threatened species depend may be conserved.
- To provide a program for the conservation of such endangered and threatened species.
- To take steps as may be appropriate to achieve the purposes of treaties and conventions in which the United States has pledged its support for the worldwide conservation of wild flora and fauna.

The national importance of wildlife is addressed in the Coastal Program by the Special Areas Policies on "White Cedar Stands", "Endangered or Threatened Wildlife or Vegetation Species Habitats" and "Critical Wildlife Habitats" and by Resource Policies on "Vegetation", "Important Wildlife Habitat", and "Buffers" which state that development must protect and preserve vegetation and wildlife by use of buffers and other techniques to the maximum extent practicable. The Coastal Program also discourages development of sites with endangered species. (See Chapter Four, Sections 7:7E-3.33, 7:7E-3.34, 7:7E-8.9, 7:7E-8.10 and 7:7E-8.15) New Jersey has four National Wildlife Refuges located on excluded federal land in the coastal zone. In addition, the State operates several fish and wildlife management areas within the coastal zone.

Living Marine Resources

In determining the national interest in living marine resources, the following documents, specific legislation, and agencies were consulted:

- Fishery Conservation and Management Act of 1976.
- A Compilation of Federal Laws relating to Conservation and Development of our Nation's Fish and Wildlife Resources, Environmental Quality, and Oceanography. The Library of Congress, Congressional Research Service. January, 1975.
- Living Coastal Resources; A Marine Fisheries Program for the Nation. U.S. Department of Commerce/NOAA, National Marine Fisheries Service and U.S. Department of Interior, Fish and Wildlife Service; July, 1976.
- U.S. Fish and Wildlife Service.
- U.S. Army Corps of Engineers
- National Marine Fisheries Service
- Marine Mammal Commission

The major objectives of the national interest in living marine resources are expressed as follows:

- To conserve, enhance and manage in a rational manner commercial fishing which constitutes a major source of employment and contributes significantly to the food supply, economy and health of the nation.
- To strengthen the contribution of marine resources to recreation and other social needs.
- To develop and protect all species of wildlife and their habitat, and to control losses by damage to habitat areas through coordination with other features of water resource development programs.

The key features of the national interest in living marine resources are, therefore:

- emphasis on commercial fisheries
- relationship of marine resources to recreation
- protection of marine resources
- protection of wildlife habitat

The Coastal Program addresses these issues in the Location Policies and Resource Policies in Chapter Four. Development will be discouraged in shellfish beds, submerged vegetation, surf clam areas, navigation channels, finfish migration pathways, and prime fishing areas. In addition, development will be required to cause minimal feasible interference with marine fish and fisheries. In addition to continuing coordination with the appropriate federal agencies, DEP is working with NOAA to identify and plan for the management of marine sanctuaries in the state.

Floodplain and Erosion Hazard Areas

New Jersey has considered the national interest in floodplains and erosion hazard areas through review of the Flood Disaster Protection Act (P.L. 93-234), National Flood Insurance Act of 1968 and the President's Executive Order of May 24, 1977 on Floodplain Management, and through consultation with the Federal Insurance Administration, U.S. Army Corps of Engineers, U.S. Geological Survey, Federal Disaster Assistance Administration, National Heritage Program and the Soil Conservation Service. The major objectives of the national interest in these areas is to avoid the long and short term adverse impacts associated with the occupancy and modification of floodplains and high risk erosion areas.

The national interest in flood control is reflected in the Coastal Program's designation of floodplains as a Special Area in the Location Policies in Chapter Four, Section 7:7E-3.19. Floodplain protection is also addressed by the Resource Policy on Flood Hazard Areas. (See Chapter Four, Section 7:7E-8.23) Development in High Risk Beach Erosion Areas is addressed in Chapter Four, Section 7:7E-3.21.

Barrier Islands

The national interest in barrier islands was considered through consultation of the same sources noted under "Floodplain and Erosion Hazard Areas" as well as participation in the efforts of the national Barrier Island Task Force. This national interest is directly reflected in the Coastal Program through the Special Areas designated as the Beach and Dune System and the Central Barrier Island Corridor which restrict or prohibit major development, and through the Use Policy on "Coastal Engineering" which gives preference to non-structural over structural approaches to shore protection. The protection of barrier islands is particularly crucial in New Jersey after the damaging winter storms of 1977-78. (See Chapter Four, Sections 7:7E-3.21, 7:7E-3.22, and 7:7E-7.11)

Historic Sites and Districts and Areas of Unique Cultural Significance

The national interest in historic sites and districts and areas of unique cultural significance, including shipwrecks, was considered through review of the Archaeological and Historical Preservation Act of 1974 (P.L. 93-291) and National Historic Preservation Act of 1966, and consultation with the National Park Service, the Heritage Conservation and Recreation Service and the Advisory Council on Historic Preservation.

The major objectives of the national, state and local interests in archaeological historic sites and districts are:

- To afford protection from adverse impacts to designated historic and archaeological sites.
- To consider cultural resources in assessing the environmental impacts of proposed activities.

The New Jersey Coastal Program recognizes the national interest of preserving representative and unique archaeological, historical and cultural resources of the coast. The Program reflects this recognition, through the designation of Historic and Archaeological Resource sites as a Special Area which encourages the protection of historic and cultural resources. (See Chapter Four, Sections 7:7E-3.13, 7:7E-3.31 and 7:7E-8.18)

Minerals

New Jersey has considered the national interest in minerals through consultation with the U.S. Bureau of Mines and the U.S. Geological Survey. Although mining is not a major industry in New Jersey, its national importance is reflected by the Use Policy on "Mining" which spells out conditions on the acceptability of mining. DEP will continue to coordinate with U.S. Bureau of Mines on the Coastal Management Program. (See Chapter Four, Section 7:7E-7.8)

Prime Agricultural Lands

New Jersey has considered the national interest in agriculture through consultation with the Soil Conservation Service and the Fish and Wildlife Service. The national importance of prime and unique agricultural lands is reflected in the Coastal Program by the Location Policy on Farmland Conservation Areas in Chapter Four which discourages development of prime farmland unless continued farming is infeasible or incompatible with surrounding land uses. The Location Policies also consider soil fertility as an important variable in determining the acceptability for development of a site, and there is a Resource Policy to protect fertile soils. (See Chapter Four, Sections 7:7E-3.28 and 7:7E-8.22)

Forests

New Jersey has considered the national interest in forests through consultation with the National Forest Service. The state's major forest -- the Pine Barrens -- is located in the south-central portion of New Jersey. A small part of this area overlaps with the coastal zone. The Coastal Program, through a Pinelands Special Area Policy, General Land Area Policies and the General Location Policy on Secondary Impacts, encourages the protection of the Pine Barrens and the State's other prime forest areas. (See Chapter Four, Sections 7:7E-3.39, 7:7E-5.3 and 7:7E-6.3)

## REGIONAL BENEFIT DECISIONS

The federal Coastal Zone Management Act requires that states provide a "method of assuring that local land and water use regulations within the coastal zone do not unreasonably restrict or exclude land and water uses of regional benefit." (Subsection 306(e)(2)). This method should include: (1) a definition of what constitutes unreasonable restrictions or exclusions, and (2) an identification of the methods that will be employed to isnure that such unreasonable restrictions or exclusions do not occur (15 CFR 923.12, comment).

The comment to this regulation describes "use of regional benefit" as those which have a direct and significant impact on coastal waters and also affect more than one unit of local, county, or intrastate government. Using these criteria, the comment lists electric utilities, regional waste treatment plants, multi-county garbage disposal sites or landfills, state highways, or multi-county parks and beaches as uses of regional benefit.

New Jersey agrees with both the criteria and the list as an accurate description of uses that are of regional benefit, with the addition of beaches located entirely within one municipality. Many, if not most of the visitors to New Jersey's beaches come from non-coastal communities, yet many of these beaches lie entirely within one municipality. The beaches offer important recreational opportunities for a wide geographic area, and are therefore considered as uses of regional benefit.

In New Jersey, therefore, uses of regional benefit include energy generating and distribution facilities operated by public utilities (not refineries and tank farms), water and sewer facilities, solid waste collection and disposal systems, roads and highways, ports, parks, housing for people with low or moderate incomes, facilities necessary for state or national defense, and the use of wetlands and wet beach areas.

Three methods exist through which local governments are prevented from unreasonably excluding these uses. The most significant of these is the State's power to overrule local decisions which seek to deny approval to any public utility or solid waste facility.

The Board of Public Utilities in the Department of Energy has broad regulatory authority over public utilities, which comprise the bulk of the defined uses of regional benefit. This authority includes the power to supercede local zoning laws when necessary if the service conveniences the welfare of the public (N.J.S.A. 40:55D-19). The standard of necessity has been defined by the courts as that service "reasonably requisite to service public convenience" (Petition of Public Service Coordination Transport, 103 N.J. Super 505, 1968). The term public utility includes roads, street railway, traction railway, autobus, canal, express subway, pipeline, gas, electric light, heat power, water, oil, sewer, solid waste collection, solid waste disposal, telephone or telegraphic system, or plant or equipment for public use (N.J.S.A. 48:2-13). This override authority can be applied only to projects that have received all required State approvals.

The authority of the Board of Public Utilities to override local siting decisions can be invoked at the request of the aggrieved utility whenever "reasonably requisite to service public convenience". This is an effective method of protecting uses of regional benefit from unreasonable restriction or exclusion by local governments. The agreement between NJDEP and NJDOE on the energy siting policies and processes for resolving conflicts ensures that the coastal management program's policies concerning uses of regional benefit will be recognized by the Board, because the NJDOE intervention authority may be used in proceedings before the Board.

Under the Solid Waste Management Act, (N.J.S.A. 13:1E-1 et seq.), DEP also has authority to override the local exclusion of a solid waste facility.

In addition to these authorities, the State of New Jersey has the power of eminent domain for any facilities necessary for state or national defense (N.J.S.A. 20:1-3.1), airports (N.J.S.A. 20:1-3.1), State highways (N.J.S.A. 27:7-44.6) and parks and open space under the Green Acres Program (N.J.S.A. 13:8A-24).

Third, recent judicial rulings have held that low and moderate income housing is a use of regional benefit which municipalities must recognize through their zoning authority. The New Jersey Supreme Court has established in Southern Burlington County NAACP v. Township of Mt. Laurel, 67 N.J. 151 (1975) that municipalities must "presumptively make realistically possible an appropriate variety and choice of housing ... at least to the extent of the municipality's fair share of the present and prospective regional need ...". The State is developing guidelines to implement this ruling. A developer whose application is denied local permits to build such housing has legal standing to appeal the denial on the grounds that the municipality has not provided its fair share of low cost housing.

## GEOGRAPHIC AREAS OF PARTICULAR CONCERN

Section 305 (b)(3) of the Federal Coastal Zone Management Act requires that the state provide "an inventory and designation of areas of particular concern within the coastal zone." A draft paper prepared by NOAA-OCZM (May 24, 1976) indicates that the designation must lead to "specific recognition and action within the framework of the management program".

New Jersey has designated Geographic Areas of Particular Concern (GAPC) on the basis of the following three criteria:

A. Regional or state-wide significance of the area;

B. Need for special attention based on threat to the preservation of the area or obstacles to its development consistent with the policies of the New Jersey Coastal Program, and

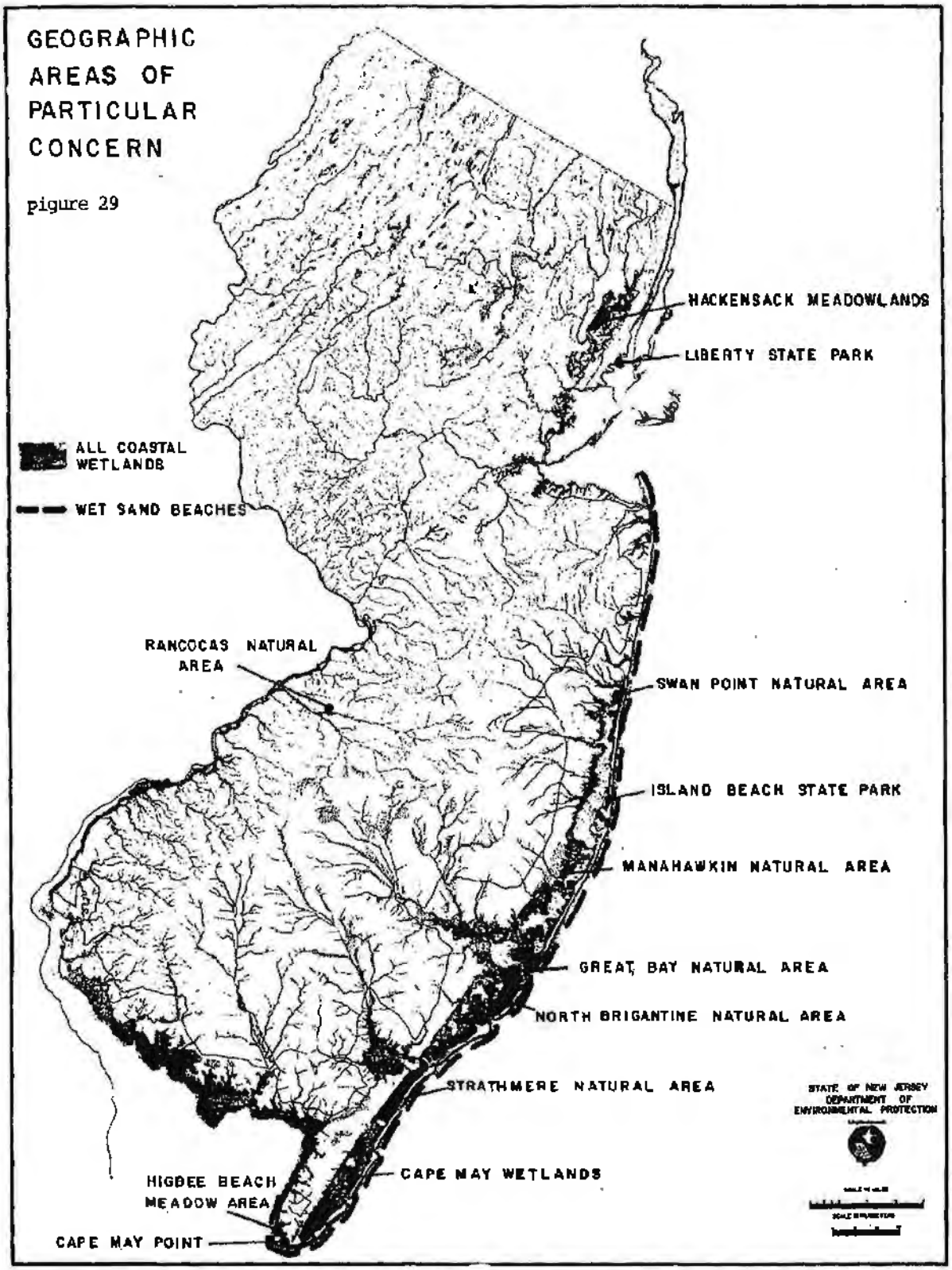
C. Availability of State legal authorities to promote desired uses of the areas.

Using these criteria, New Jersey proposes two generic GAPC's and thirteen specific GAPC's (see Figure 29). Clearly, many other areas in the coastal zone are important, but designation of them as GAPC's would not be meaningful or feasible, due to criterion C above. The New Jersey Coastal Management Program, therefore, relies primarily upon the Coastal Resource and Development Policies in Chapter Four and the Management System in Chapter Three to promote the wise use of each site in the Coastal Zone.

When DEP asked the public in 1977 to nominate areas of particular concern, virtually every possible site in the potential coastal zone was mentioned. The Department used the public nominations to confirm, develop, and refine the Coastal Resource and Development Policies. In addition, the Department distributed a report entitled Nominated Areas of Public Concern in the New Jersey Coastal Zone (December 1977) to other State, municipal, county and federal agencies. The Department prepared a supplement to this report describing how each nominated area was addressed by the Coastal Management Program - Bay and Ocean Shore Segment. Copies of both the report and the supplement Nominated Areas of Public Concern and the New Jersey Coastal Management Program - Bay and Ocean Shore Segment (December 1978) are available from DEP.

New Jersey's Geographic Areas of Particular Concern are the following: all coastal wetlands, Higbee Beach, Pond Creek Meadow Area, wet sand beaches, ten state owned natural areas, and the Hackensack Meadowlands. Because management of the Meadowlands is more complex than management of the other areas, it is discussed under a separate heading at the end of this Section.

1. All Coastal Wetlands - Wetlands are valuable to New Jersey because they serve as natural flood controls, water purifiers, and essential nurseries for marine creatures. (See also the rationale for the Wetlands policies in Chapter Three). The threat to wetlands posed by development was recognized by the Governor and Legislature in 1970 when they enacted the Wetlands Act. This Act has effectively reduced the average annual loss of wetlands to development from 1900 acres to 57 acres, with only 0.7 acres destroyed in 1979. Under the Coastal Program, New Jersey will continue to use the Wetlands Act to preserve coastal wetlands.


GEOGRAPHIC AREAS OF PARTICULAR CONCERN
pigure 29
HACKENSACK MEADOWLANDS
LIBERTY STATE PARK
ALL COASTAL WETLANDS
WET SAND BEACHES
RANCOCAS NATURAL AREA
SWAN POINT NATURAL AREA
ISLAND BEACH STATE PARK
MANAHAWKIN NATURAL AREA
GREAT BAY NATURAL AREA
NORTH BRIGANTINE NATURAL AREA
STRATHMERE NATURAL AREA
STATE OF NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION
CAPE MAY WETLANDS
HIGBEE BEACH MEADOW AREA
CAPE MAY POINT

The priority of uses in coastal wetlands is as follows:

(a) Open Space (No development or disturbance).

(b) Development which (1) requires water access or is water oriented as a central purpose of the basic function of the activity, (2) has no prudent or feasible alternative on a non-wetland site, (3) will result in minimum feasible alteration or impairment of natural tidal circulation, and (4) will result in minimum feasible alteration or impairment of the natural contour of the natural vegetation of the wetlands.

(c) Other development has lowest priority.

2. Higbee Beach - Pond Creek Meadow Area - This unique area of 424 acres, in Lower Township in Cape May, includes five mini-ecosystems of bayshore beaches, dunes, wooded uplands, fields, and freshwater and tidal meadows (Figure 30). The area is valued by residents of, and visitors to southern New Jersey as a place to sunbathe and swim, and to observe wildlife. Over 200 species of birds have been recorded in the area. The area has been threatened by repeated efforts to build a campground within it. New Jersey has used the CAFRA permit program and funding from the Green Acres Program and the Endangered Species Act administered by the Division of Fish, Game and Shellfisheries described in Chapter Three, to protect the area exclusively for recreation and wildlife.

The set of uses with priority in the Higbee Beach-Pond Creek Area includes only recreation compatible with protection of the area's wildlife. All other uses have lowest priority.

3. Wet Sand Beaches - New Jersey's 126 miles of ocean shorefront form a natural resource which is valued directly by residents and indirectly as the mainstay of the state's tourism industry. The wet sand beach area seaward of the mean high water line is known as Public Trust Land and is a Geographic Area of Particular Concern. This area is owned by the State of New Jersey unless the State has conveyed a "riparian grant" for the tide-flowed land. In all parts of the area, whether or not it is owned by the State, public access must be provided for navigation, commerce and recreation, and any new development requires a Waterfront Development Permit, as described in Chapter Two.

The priority of uses in the wet sand beaches areas is:

(a) recreation

(b) navigation and commerce

(c) development with no prudent or feasible location on a non-beach (wet sand) location

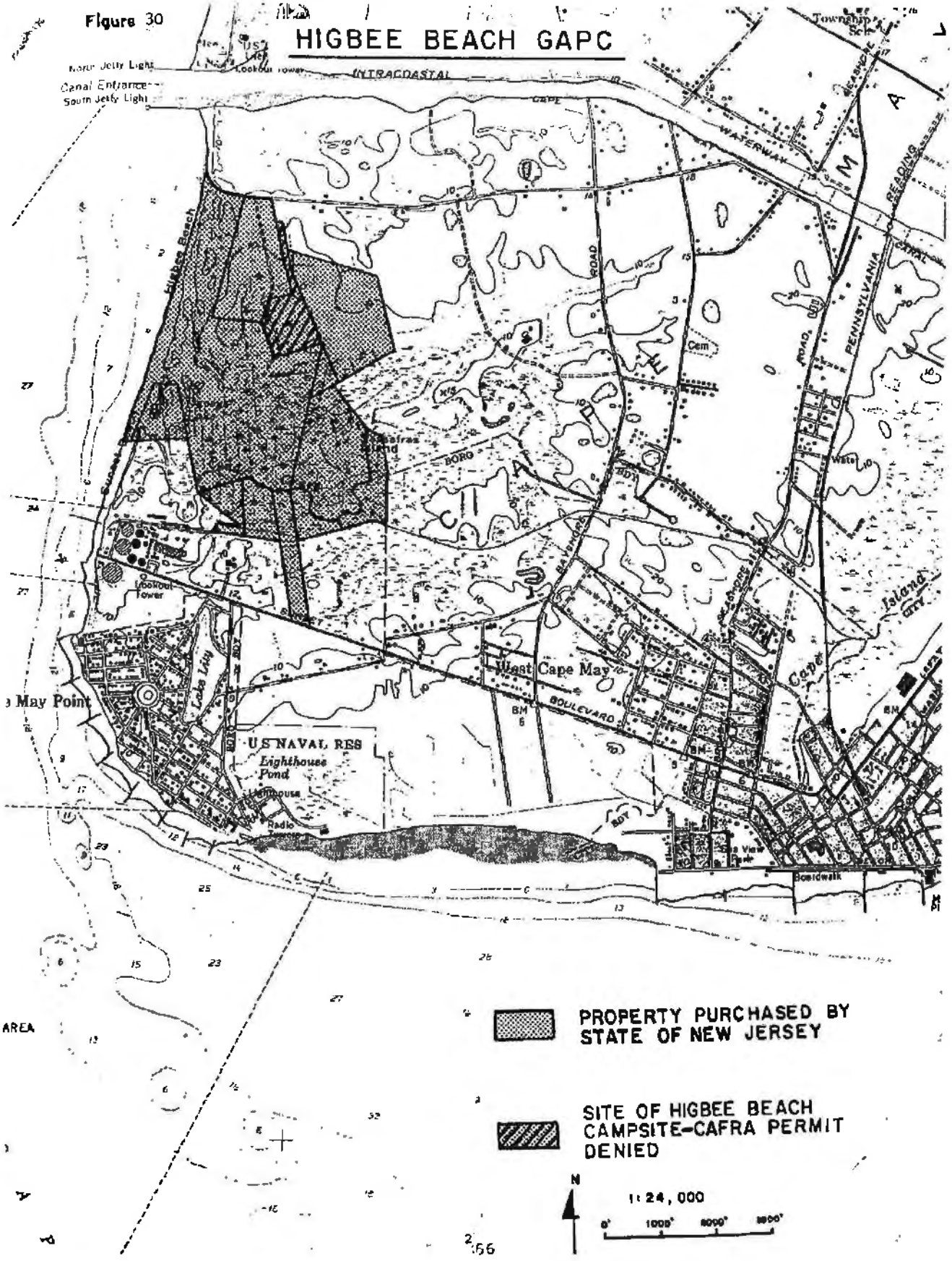
(d) all other uses have lowest priority.

Natural Areas

In addition to the three GAPCs listed above and the Hackensack Meadowlands, ten specific state-owned areas in the coastal zone have been labelled "natural areas" under the Natural Areas System Act of 1976, N.J.S.A. 13:1B-15.12(a) et seq., and its regulations (N.J.A.C. 7:2-11.1 et seq.). A natural area is defined as "an

Figure 30

# HIGBEE BEACH GAPC

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area of land or water which has retained its natural character, although not necessarily completely undisturbed, or having rare or vanishing species of plant and animal life or have similar features of interest which are worthy of preservation for the use of present and future residents of the State." N.J.A.C. 7:2-11.2(A).

The Department of Environmental Protection, Green Acres Program, on July 13, 1978, designated 38 State owned areas to be preserved and managed as natural environments. The ten areas which are in the coastal zone are also designated CAPCs under the federal Coastal Zone Management Act. Two of the areas are parts of Island Beach State Park, an oceanfront natural barrier island.

The Natural Areas system regulations divide the areas into three types for management purposes (7:2-11.5.B):

> Class I Natural Areas: (a) The Department shall manage such areas for ecological research and study. When compatible with other uses they may be used for guided nature tours; and (b) All of Class I natural areas shall be restricted to entry by permit or with a designated Department employee.
>
> Class II Natural Areas: (a) The Department shall manage Class II areas for the specific purpose of interpretation of natural processes, flora and fauna of this State. Class II areas may be used for ecological research and study; and (b) Use of Class II areas shall be limited to interpretive purposes or shall be restricted to entry by permit for research purposes.
>
> Class III Natnral Areas: (a) The Department shall manage Class III areas for recreational use, interpretive study, wildlife propagation, and succession control; and (b) Use of Class III shall be limited to interpretative purposes, swimming, canoeing, rowboating, hiking, trailside camping, and recreational hunting, fishing and trapping as provided in the natural areas system rules and regulations.

The ten geographic areas of particular concern in the coastal zone and descriptions from the Natural Areas regulations are lisred below:

4. Cape May Point Natural Area: An area of 100 acres in Cape May State Park, it demonstrates typical southern New Jersey sand dune and freshwater marsh habicats, and is a bird sanctuary.

5. Cape May Werlands Natural Area: An area of 2,000 acres acquired through the Green Acres program, it demonstrates the ecosystem complex of saltmarsh habitats, and is a sanctuary for colonial nesting and migratory birds.

6. Strathmere Natural Area, Corson Inlet, Cape May County. An area of 80 acres, it demonstrates dune habitat and the erosion effect of tidal movements confluent with ourwash currents.

7. North Brigantine Natural Area: An area of 968 acres acquired with Green Acres funds and adjoining the Brigantine National Wildlife Refuge, it demonstrates both sand dune and salt marsh habitats and serves as a refuge for coastal birds.

8. Great Bay Natural Area, Bass River, Ocean County. An area of 330 acres, it is a salt marsh habitat and an excellent example of New Jersey Bay ecosystem. It is a highly productive oyster area, and is a resting area for coastal birds.

9. Island Beach State Park: The New Jersey State Legislature has statutorily recognized that Island Beach State Park is one of the few natural expanses of barrier beach remaining along the eastern edge of North America, that Island Beach State Park is highly valued for its topography, flora and fauna, and that Island Beach State Park serves the citizens of the State as a unique recreational and educational resource (N.J.S.A. 13:6-2 et seq.). This Act, requiring the park's continued preservation, further provides that the Park "shall be preserved, maintained and improved in such a manner as the Division of Parks and Forestry in the Department of Environmental Protection determines will best perpetuate the park's present physical state".

Through State ownership of Island Beach State Park and the terms of the law, New Jersey will manage the entire Park as a Geographic Area of Particular Concern. In addition, two parts of the park are designated "Natural Areas" under the Natural Areas System Act of 1976. Permissible uses of these areas are defined more specifically below:

(a) Island Beach Research Area and Wildlife Sanctuary: An area of 1,200 acres encompassing the width of Island Beach State Park and running north for 3.3 miles, it demonstrates a sand dune habitat, it is a wildlife sanctuary, and will serve as a research area.

(b) Island Beach Natural Area: An area of 1,000 acres of the State park, encompassing its width and running 3.3. miles south (excepting maintenance area and offical residence), it demonstrates dune habitat and is a botanical preserve.

10. Swan Point Natural Area, Brick Township, Ocean County: An area of 104 acres acquired through the Green Acres program, it demonstrates salt marsh habitat, and is a part of the Barnegat Bay ecosystem.

11. Manahawkin Natural Area: An area of 64 acres and a national natural landmark, it demonstrates a mature bottomland hardwood forest.

12. Liberty Park Natural Area: An area of 60 acres which is included within the master plan for Liberty Park, it demonstrates salt-marah habitat for a variety of water fowl. It is a valuable study area for tolerance to urban encroachment.

13. Rancocas Natural Area: An area of 80 acres, located in Westhampton Township, Burlington County, it demonstrates freshwater marsh and southern flood plain habitats. The north Branch of the Rancocas Creek follows along the southern and eastern boundaries of the area and the Timbuctoo Feeder of the North Branch follows the western boundary. To the north and west of the natural area is additional land belonging to Rancocas State Park.

(Maps of designated natural areas are available from the Green Acres Program, New Jersey, DEP, Box 1389, Trenton, N.J. 08625)

## 14. THE HACKENSACK MEADOWLANDS DISTRICT

The Hackensack Meadowlands District is the fourteenth geographic area of particular concern and is proposed as a distinct unit of the Coastal Zone with its own management system and policies. The District consists of uplands and coastal wetlands interlaced by tidal rivers and streams. Inclusion of at least part of the District within the New Jersey Coastal Zone is, therefore, required by the federal Coastal Zone Management Act, which states that a coastal zone must include coastal waters and adjacent shorelands with a direct and significant impact on the waters, transitional and intertidal areas, salt marshes, wetlands and beaches. The District was defined by the State Legislature in 1968 in the Hackensack Meadowlands Reclamation and Development Act, which established the three goals of orderly development, solid waste management and environmental protection in the District. This occurred five years before the Legislature addressed the issue of development in the Raritan and Delaware Bays and Atlantic Ocean parts of the Coastal Zone through CAFRA, and four years before the enactment of the federal Coastal Zone Management Act.

Under the Coastal Management Program, the Hackensack Meadowlands District will be treated differently than other parts of the coastal zone. This is because the District is the only part of the coastal zone, in which comprehensive land use decision-making is governed by a powerful regional agency which is part of the State government and has objectives and policies generally compatible with the proposed coastal management program.

Despite a location six miles from midtown Manhattan, pre-1968 use of the Meadowlands was limited to an unplanned scattering of landfills, warehouses and other uses not requiring dry soils. The region was underutilized, yet the uses present were severely degrading to the potentially valuable wetlands environment. Natural resource management and planned filling for development were both stymied by the division of the 31 square mile meadowlands into fourteen separate municipalities in two counties. Because of the need for central planning direction if the wetlands environment were to be restored, and if the region were to meet its potential as a supplier of jobs and housing, the Legislature recognized the Meadowlands as a unique area where local zoning would have to be superseded by regional controls. The response was the Hackensack Meadowlands Reclamation and Development Act (N.J.S.A. 13:17-1 et seq.), which defined the boundary of the Meadowlands District, and established a management system which led to the adoption of a Master Plan Zoning Ordinance in 1972 and other management plans defining policies for resource management and development. It is this boundary, management system under the direction of the Hackensack Meadowlands Development Commission (HMDC), and policies which the State is adopting as elements of the Coastal Management Program.

The boundary and management system will be discussed first, followed by a discussion of policies for the District and their implications for coastal zone management. Lastly, the relationship between HMDC and the Division of Coastal Resources under an approved coastal management program will be described.

### Boundary

The boundary of the Hackensack Meadowlands District of the Coastal Zone is depicted in Figure 31. In general, the District extends to the first major road or railroad upland of the tidally influenced meadowlands. The area of the district is

Figure 31

HACKENSACK MEADOWLANDS DISTRICT

19,730 acres of which, in 1972, 7,800 acres (40 percent) were developed, between 6,200 and 7,500 acres (31-38 percent) were vegetated coastal wetlands, and 1,400 acres (7 percent) were tidal waters.

Management System

The Hackensack Meadowlands Reclamation and Development Act established the Hackensack Meadowlands Development Commission (HMDC) as a political subdivision of the State, in but not of, the Department of Community Affairs. Among the Commission's authorities are the power to issue bonds or notes, and to acquire or lease lands and to exercise the power of eminent domain; the power to reclaim, develop, redevelop and improve the land in its district; the power to recover the cost of improvement by special assessments based on the resultant increase in property values; the power to establish an inter-municipal tax sharing formula so that all municipalities will share equitably in the financial benefits of new Meadowlands development; and the powers to adopt and implement a master plan for the physical development of the District, to adopt and enforce codes and standards to implement the plan, and to review and regulate plans for any subdivision or development within the District. The HMDC is also both empowered and required to provide facilities for the disposal of the same large quantities of solid waste from within the State which was being deposited as of January, 1969.

The HMDC consists of seven members, one of whom is the Commissioner of the Department of Community Affairs or an alternate. The other six members are appointed by the Governor subject to the requirement that two be residents of Bergen County municipalities within the District, two be residents of Hudson County municipalities within the District, and the remaining two consist of one resident of Hudson County and one resident of Bergen County. Four members of the Commission constitute a quorum and the Commission may exercise its power through the affirmative vote of a majority.

The HMDC is provided with technical support by a twenty-three member professional staff headed by an executive director. The executive staff is a multidisciplinary team composed of a four member administrative branch, a thirteen member engineering branch and a six member environmental branch.

The legislation creating the HMDC also created a Hackensack Meadowlands Municipal Committee consisting of the Mayor or elected chief executive of each constituent municipality of the District. The HMDC must submit the District master plan and amendments thereto, development and redevelopment plans, improvement plans, and codes and standards to the Committee for its review. The HMDC may not take final action on any proposal formally rejected by the Committee, except by a vote of 5/7 of the full membership. A public hearing is also required before any change may be made to the Master Plan.

To insure that implementation of the master plan will not only balance uses, but will also preserve the most valuable wetlands, share the fiscal benefits of the plan among all the 14 constitutent municipalities, and, most importantly, put an end to pollution so that the Hackensack Estuary will once again become an attractive place to both people and wildlife, a system of interlocking administrative tools were written.

The Master Plan Zoning Ordinance (1972; N.J.A.C. 19:4-1) delineates what, where, and how development may take place.* The accompanying Open Space Map (1972) specifies which areas are to be left as marshland preservation and, which are to be parkland, and identifies the water courses for special protection, while the Wetlands Order (1972) defines the manner in which those wetlands will be respected. Since most of the Hackensack Meadowlands District is privately owned, the Open Space Plan assembles a number of interdependent techniques -- zoning, tax sharing, riparian claim, easements, and cluster principle planning -- to maximize open space preservation without the infusion of extensive public dollars for purchase. The supporting administrative framework is completed with the Inter-municipal Tax Sharing Formula, the Building Code (1969), the Subdivision Regulations (1969), the Environmental Performance Standards (part of the zoning ordinance), the Socio-Economic/Environmental Impact Assessment Guidelines (1973), and the Ecological and Resource Management Plan (1978).

Construction plans for major or minor subdivisions are reviewed by the Chief Engineer of HMDC for consistency with the Master Plan Zoning Regulations, the HMDC Subdivision Code, Building Code, Foundation Regulations, and the Wetlands Order. If the subdivision is to be built on lands to which the State has a riparian claim, the prospective developer must provide evidence of a riparian grant, lease or license and of a Waterfront Development Permit if applicable. When the complexity of the proposal warrants, the Chief Engineer is assisted in his determination by a member of an Environmental Design Committee, a committee of professionals in the field of environmental and architectural matters appointed by the Commission. A written decision of the Chief Engineer may be appealed by the prospective developer to the HMDC, which can overrule the decision by a majority vote of a panel of at least three Commissioners. The detailed approval process is depicted in Figures 32 and 33.

Variances from HMDC Zoning Regulations are decided by the Executive Director, but full or conditional approval of a variance requires a concurring vote of a majority of Commission members. The Master Plan Zoning Regulations require that six findings be made before a variance can be approved: (1) the variance request is the result of a unique situation of the property in question, (2) granting of the variance will not adversely affect the rights of adjacent property owners or residents, (3) failure to grant the variance will result in exceptional practical difficulties or hardships for the applicant, (4) the variance will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare, (5) the variance will not have an adverse environmental impact, and (6) the variance will not substantially impair the intent of the Master Plan Zoning

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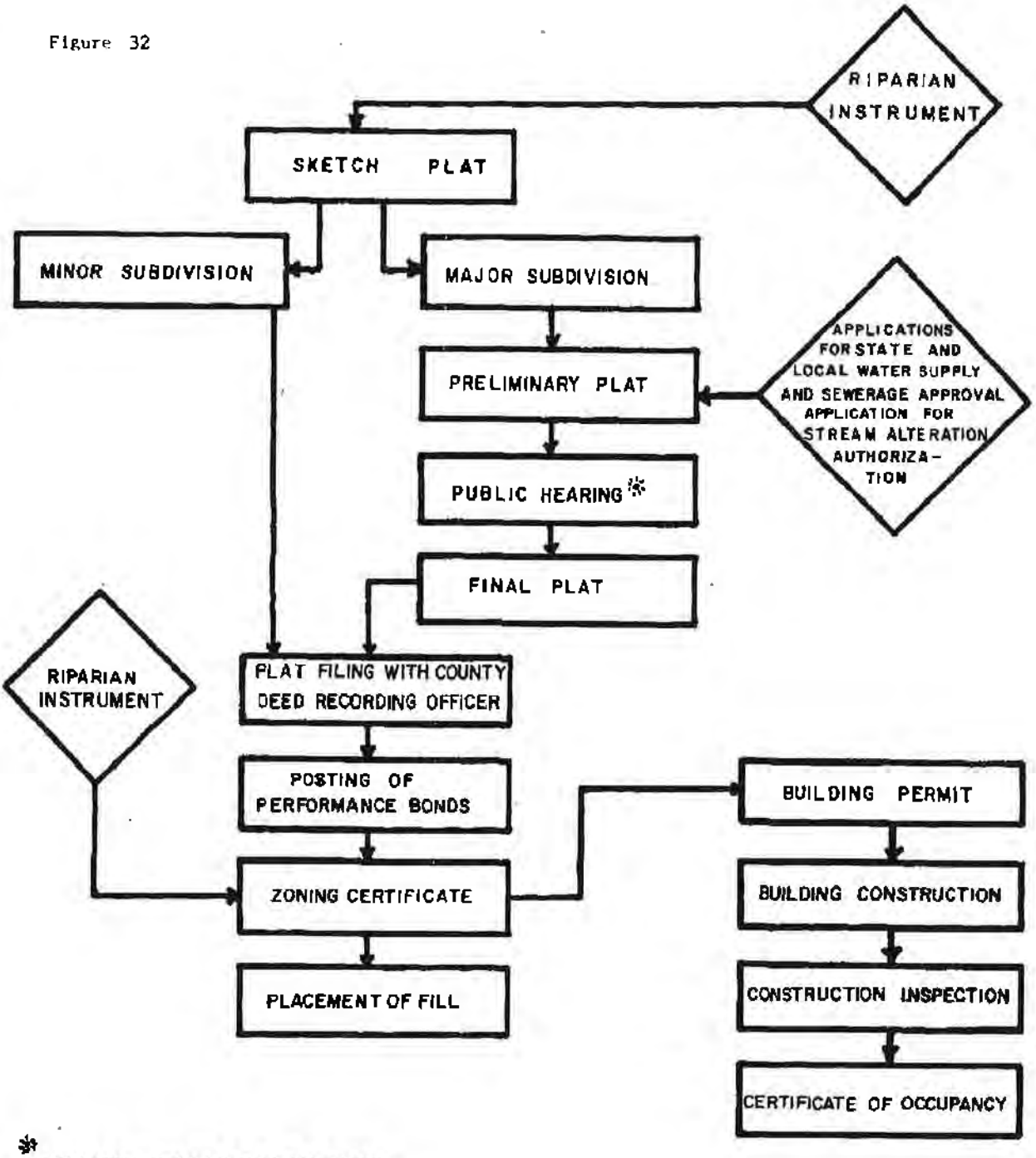
* It should be noted that the Hackensack Meadowlands District designations for wetlands development do not preclude federal agency recommendations and decision contrary to such development. The Hackensack Meadowlands District Plan does not meet the definition of a "Comprehensive Planning Process" under Section 404(b)(1) of the Clean Water Act and associated regulations. Therefore, federal agencies will evaluate proposed projects in the Hackensack Meadowlands District on a case by case basis. Wetland modification will require proper analysis and documentation under Section 404(b)(1) of the Clean Water Act regardless of adopted plans and ordinances. The 404(b)(1) process currently requires four tests to be met and properly documented through a public process including: 1) acceptance of unavoidable impacts; 2) alternatives analysis; 3) demonstration of water dependency; and 4) demonstration of need.

HACKENSACK MEADOWLANDS DEVELOPMENT COMMISSION
**APPROVAL PROCESS FOR SUBDIVISION OUTSIDE OF SPA**

Figure 32

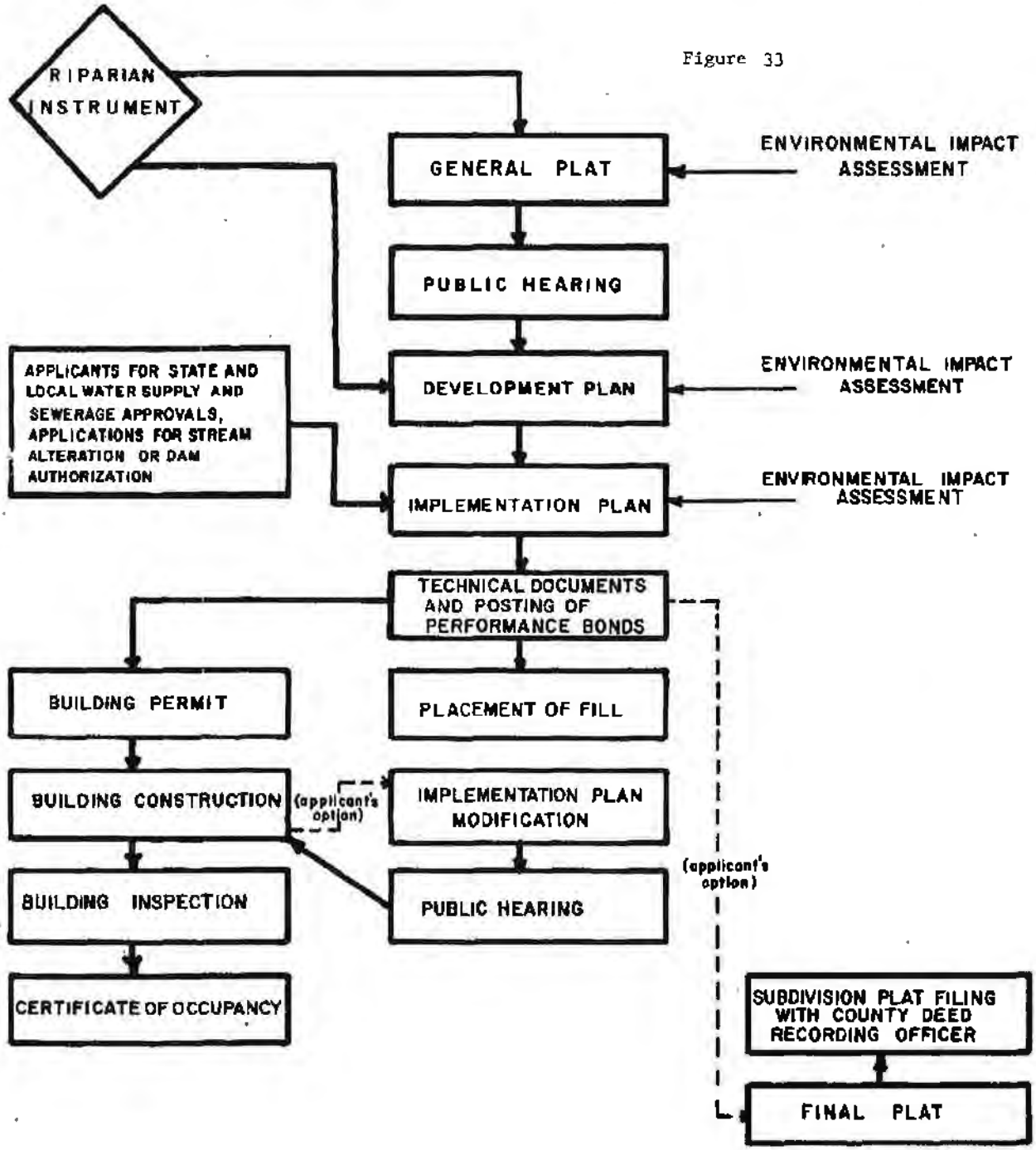



* MANDATORY UNLESS A PUBLIC HEARING ON THE PROPOSAL IS HELD BY THE MUNICIPALITY

273

## HACKENSACK MEADOWLANDS DEVELOPMENT COMMISSION
## APPROVAL PROCESS FOR SPA AND PLANNED UNIT DEVELOPMENTS

Figure 33



Regulations or result in substantial detriment of the public good. Appeals from variance disapprovals may be made to the Commission with a majority vote of at least four Commissioners required to overrule the Executive Director. Between 1973, the first full year during which the Master Plan Zoning Regulations were in effect, and 1977, 459 variance decisions were made. Seventy-two decisions involved applications for use variances (variances for a non-permitted use), and 53 (74 percent) of these use variances were approved. The remaining applications sought variances to bulk requirements (variances to bulk standards for a permitted use); 82 percent of these were approved. Public hearings must be held before a decision is made on use variance applications. A hearing is required on bulk variance applications only when requested by a person filing an adverse comment.

Within the Meadowlands District there are twelve Specially Planned Areas (SPA) where planning and development must be carried out in a unified manner for the entire area (100 to 600 acres) consistent with the HMDC planning process and in compliance with the purpose and specific requirements of the individual zones. Six are to be predominantly residential SPAs, of which one, Harmon Cove, is already partially developed. Of the remaining six areas, two are to be transportation centers accommodating major commuter transfer centers and office buildings; three are planned as special use areas for land uses of regional importance; and one is to be the Berry's Creek Center, intended to be a shopping, civic, cultural and transportation center which would serve as the focal point of the Meadowlands.

A developer proposing a project for a Specially Planned Area must control at least 80 percent of the land in the SPA. Approval is granted in a multi-stage process with General, Development, and Implementation Plans as increasingly specific review stages. Such large projects typically are built in sections over a period of years. If a development is staged, all regulations applicable to the entire area must be satisfied by each stage.

First, the applicant must file a General Plan covering the entire Specially Planned Area. An environmental and socio-economic impact assessment in accordance with HMDC guidelines must accompany the applicant's General Plan, and a public hearing on the General Plan must be held. If the SPA is to be built on lands to which the State has a riparian claim, the general plan must be accompanied by evidence of a riparian grant, lease or license, and of a Waterfront Development Permit if applicable. Action, in the form of approval, approval subject to certain conditions, or disapproval must be taken by a Development Board composed of the Executive Director, the Chief Engineer, a Mayor of a constituent municipality selected by the Hackensack Meadowlands Municipal Committee, and two HMDC Commissioners selected by the Commission. In reaching its decision, the Development Board is to consider: (1) the HMDC Zoning Regulations for SPAs, (2) the HMDC Wetlands Order, which describes the various inventory, conservation, and environmental protection steps required within each SPA, (3) the HMDC Open Space Map, and (4) the HMDC Environmental Impact Assessment Guidelines, which are keyed to every step in the planning, construction and operation of SPAs. Figure 33 depicts the approval process for SPAs.

Variances from SPA requirements specified in the Master Plan may only be granted if the Development Board finds that the "quality of development in the SPA will not be adversely affected", "the Comprehensive Land Use Plan for the Meadowlands will not be adversely affected", and "the intent and purposes of all the applicable SPA regulations will not be impaired by the variance".

Following approval or conditional approval of a General Plan, the developer must file Development Plans for sections of the SPA in accordance with a timetable given by the Development Board in approving the General Plan. These Development Plans are more detailed plans which are reviewed by the Development Board for compliance with General Plan, with Development Plan requirements, and for any necessary riparian instruments or permits. Additional requirements may be imposed based upon the findings of an Environmental Design Committee. A decision of the Development Board regarding General and Development plans is subject to certification by the full Commission.

Next, the prospective developer must file a highly detailed set of plans called Implementation Plans for each section of the SPA. These Plans must be filed in accordance with a timetable for development specified in the approval of the Development Plans. The General Plan, Development Plans and Implementation Plans must all include an assessment of the environmental impact of the proposed project. The Implementation Plans are reviewed by the Development Board and by the Environmental Design Committee for consistency with the Development Plans as well for consistency with specific Implementation Plan requirements. Should an Implementation Plan be approved in full or with conditions, construction may commence following approval of engineering drawings by the Chief Engineer, approval of a final plat by the Development Board and the municipality, and posting of performance bonds.

HMDC Policies and Their Implications

The Hackensack Meadowlands Reclamation and Development Act directed HMDC to respond to a three-fold mandate:

-- to provide jobs, homes, and open spaces with need calculated at regional scale;

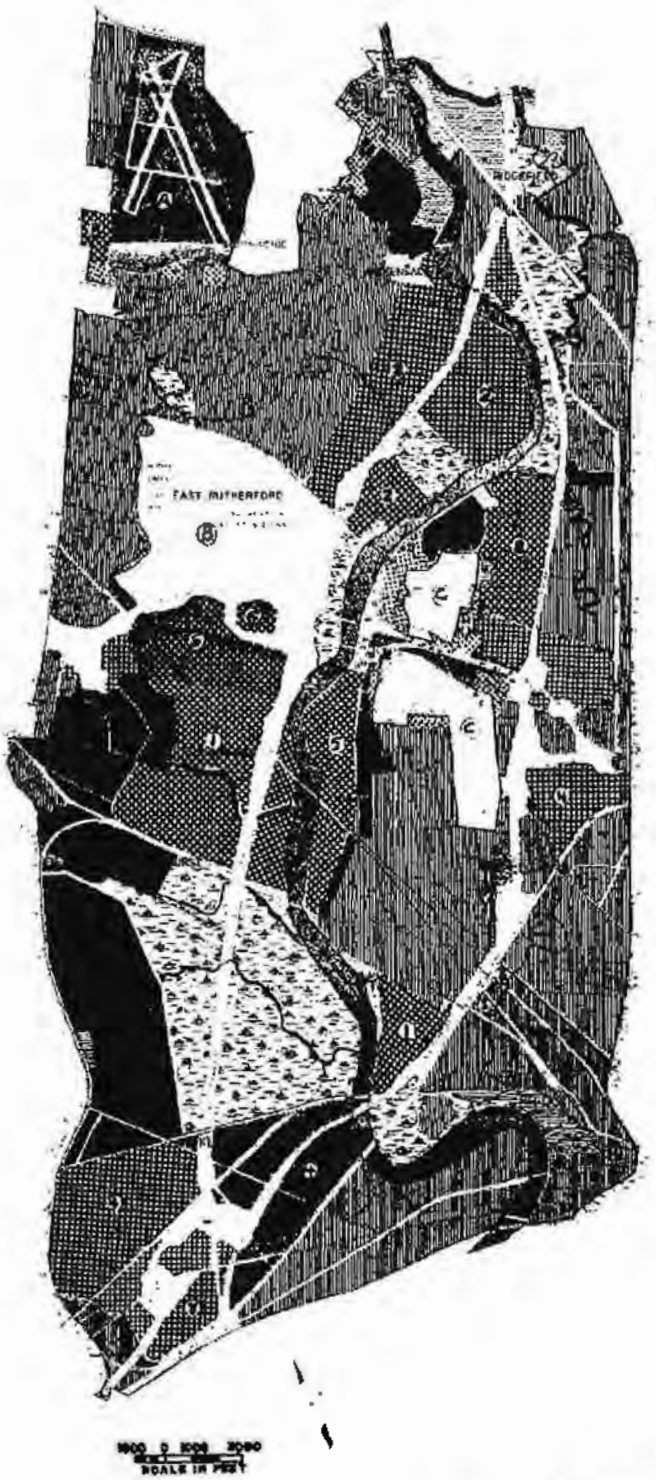
-- to protect the delicate balance of nature and to protect against air and water pollution;

-- to provide for solid waste management in perpetuity for all New Jersey municipalities then dumping in the Meadowlands.

With the goals in mind, the HMDC was directed by the Act to develop, adopt and from time to time amend a master plan for the physical development of the Meadowlands District. The result was a Comprehensive Land Use Plan developed by HMDC staff in December, 1971 and adopted in a revised form by the Commissioners in November, 1972 following a two-year construction moratorium. The Zoning Map has been revised following public hearings three times since 1972. In April 1977 the zoning classification of thirty-nine parcels of land was changed; in the Fall of 1978 the classification of eight parcels was changed; and in November, 1979 another five parcels were rezoned. These fifty-two changes involved about 2,250 acres of land or eleven percent of the total area of the Meadowlands District. The most significant changes involved the expansion of park and marshland preservation zones to create Richard de Korte State Park, at the expense of a planned research and distribution park and a parkside residential SPA. To compensate the loss of this residential zone, an Island Residential SPA was expanded into an area formerly designated for marshland preservation. Also, one Transportation Center SPA was replaced by industrial zoning, while a new Special Use SPA was created in an area designated for light industry and marshland preservation (see Figure 34).

Figure 34

# HACKENSACK MEADOWLANDS DISTRICT
## OFFICIAL ZONING MAP




**ZONES**

- Marshland Preservation Zone
- Park and Recreation Zone
- Waterfront Recreation Zone
- Low Density Residential Zone
- Commercial Zones
- Research, Industrial and Distribution Zones
- Public Utility Zones
- (A) Airport Facilities
- (B) Sports Complex

**SPECIALLY PLANNED AREAS**

- (1) Parkside Residential
- (2) Island Residential
- (3) Transportation Center
- (4) Special Use
- (5) Island Residential - Harmon Cove
- (6) Berrys Creek Center

(C) Secaucus (Outside District)

Proposed December 28, 1971.
Includes all amendments through January 16, 1980.

277

DE24909

Table I - Developed Land Uses in Hackensack Meadowlands District (1972)

| | | |
|---|---|---|
| Transportation | 3,393 | acres (includes Teterboro Airport) |
| Industry | 2,384 | acres |
| Utilities | 786 | acres |
| Commercial | 254 | acres |
| Residential | 206 | acres |
| Vacant building and buildings under construction | 133 | acres |
| Quarry | 115 | acres |
| Marinas | 42 | acres |

Source: HMDC: "Open Space for the Hackensack Meadowlands", 1972.

If the Meadowlands Master Plan were to be fully implemented in its present form, the amount of land in developed uses would increase from 8,260 acres in 1972 to 13,104 acres (Figure 35). Most of the increase in developed land would be in the residential Specially Planned Areas, in light industrial, distribution, research and commercial zones, and in the already developed New Jersey Sports Complex.

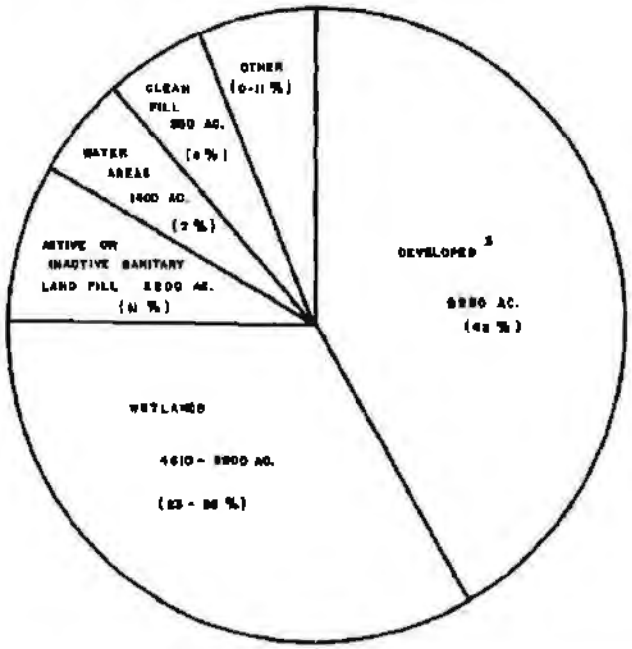
The amount of open space would decline from about 8,000 acres in 1972 (not counting sanitary landfills) to 6,626 acres. This is the maximum amount that the Meadowlands Commission believes can be designated for open space given the Legislative mandate to provide for the orderly development of the District, and the constitutional mandate that the Commission not deprive property owners of the use of their land without compensation. This open space is to be preserved by a combination of techniques including the zoning of publicly owned land for open space use, the purchase of additional public lands, the regulation of a fifty foot wide natural buffer strip along stream corridors, and a requirement that a certain amount of land be preserved as open space in each SPA. This open space requirement ranges from 50 percent in Island Residential Areas to 15 percent in Transportation Centers. Land use and zoning consultants calculated that because of the strong demand for developable land in the Meadowlands District, intensive, planned development of the remainder of the SPAs would allow the landowners a reasonable economic return on their land.

Most of the loss in open space in the Hackensack Meadowlands District will involve wetlands. In 1972, DEP estimated that there were 6,900 + 690 acres of vegetated wetlands in the District, based on "Wetlands Ecological Value Overlay" maps produced for the purpose of tidelands delineation. In 1980 the HMDC estimated that these were 4,772 acres of wetlands in the District in April 1980.* However, the HMDC calculates that this represents a net gain in wetlands area of 162.6 acres. Between 1972 and 1980, 494.5 acres of wetlands were filled -- including 147.3 acres on the Sports Authority site and 97.1 acres by the Turnpike Authority. However, 657.1 acres of new brackish and fresh water wetlands have formed, primarily at the Kearny Marsh as the result of a man-made dike. The difference between the DEP and HMDC estimates of 1972 wetland area is largely attributable to

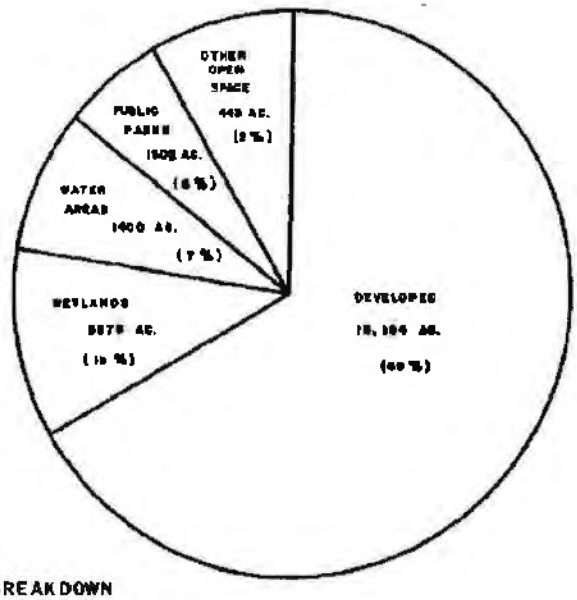
* Hackensack Meadowlands Development Commission, Wetland Bio-Zones of the Hackensack Meadowlands: An Inventory, July, 1980. This report supercedes a report by the same name published in April, 1975, and quoted in the Proposed New Jersey Coastal Management Program and Draft Environmental Impact Statement.

Figure 35

# 1972 MEADOWLANDS DISTRICT LAND USE




PROJECTED MEADOWLANDS DISTRICT LAND USE UPON IMPLEMENTATION OF THE MASTER PLAN

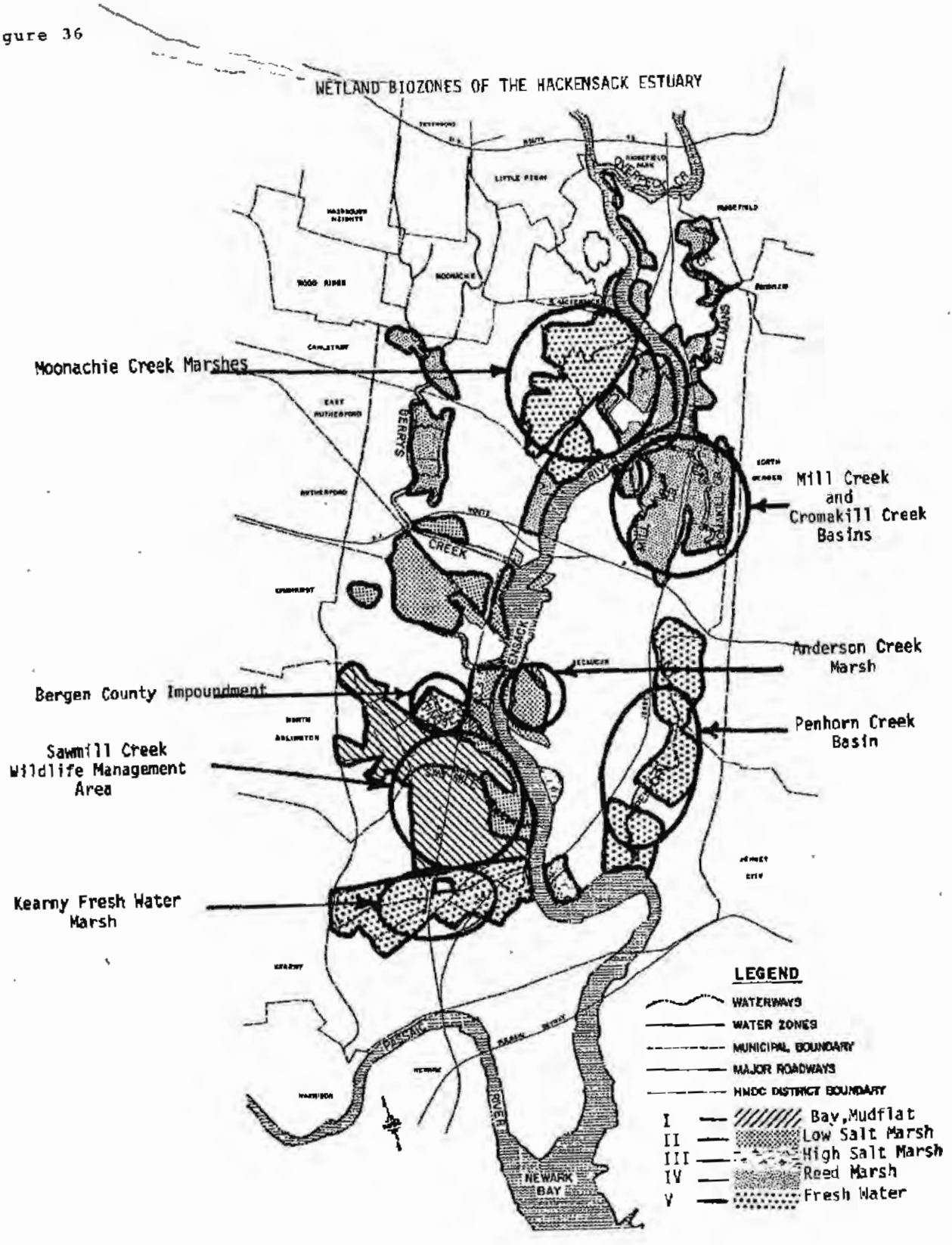



* SEE TABLE ONE BREAKDOWN



DE24911

Figure 36






DE24912

different wetlands definitions, with DEP including fields of Phragmites at elevations less than 1 foot above local extreme high water, many of which HMDC has classified as upland fields. It is also possible that there has been some loss of wetlands through upland succession of fields from which tidal flow had long ago been excluded. In any event, use of DEP's 1972 methodology for wetlands delineation would yield a figure higher than 4,772 acres.

The HMDC Wetland Bio Zone Report divides the wetlands into six zones (see Figure 36):

| | | |
|---|---|---|
| 1. | Shallow Tidal Bays and Flats | 988.0 acres |
| 2. | Low Salt Marsh | 874.8 acres |
| 3. | High Salt Marsh | 54.8 acres |
| 4. | Reed/Cattail Marsh | 1,906.9 acres |
| 5. | Fresh Water Marsh | 533.5 acres |
| 6. | Brackish Impoundments | 414.0 acres |
| | | 4,772.0 acres |

Of the 4,772 acres of wetlands, 533.5 acres (12 percent) are fresh water wetlands, separated from the estuarine system by dikes or tidal gates, and 1,862.8 acres (39 percent) are within the intertidal zone (between mean high water and mean low water).

Of the 3,576 acres (75 percent) of wetlands designated for preservation, at least 1,500 will be within SPAs as part of the open space requirement, and about 1,200 acres will be within the shallow tidal bays, fresh water marsh and Sawmill Creek State Wildlife Management Area of the proposed 2,000 acre Richard de Korte State Park.

The amount of public parkland will be increased from fifteen acres to about 1,500 acres. Five hundred and thirty-five of these acres will be the open space areas required within Parkside Specially Planned Area. Eight hundred of these acres will be within the Richard de Korte State Park and will be created by the landscaping and vegetating of sanitary landfills. One hundred acres will be within Losen Slote State Park. The Commission's Solid Waste Management Plan (revised draft, March 1979) provides for the replacement of landfills by baling and resource recovery facilities, and for the transformation of existing landfills into parkland.

Finally, the requirement that a fifty foot buffer strip along watercourses be kept in a natural state will result in the preservation of only fifty acres of open space, but these fifty acres will be the most biologically productive acreage in the District, as well as serving as filters for stormwater runoff.

At the inception of planning for the Meadowlands District, the Hackensack River Estuary was a highly stressed ecosystem. Sewage and industrial discharges were allowed to flow untreated into the river and its tributaries; oil spills were a frequent occurrence; garbage and toxic wastes were dumped into landfills that were encroaching ever further into virgin marshland. By existing local zoning, the Hackensack Meadowlands were destined to disappear into a complex of industrial development and landfill.

Adopted HMDC policy documents form an enforceable land use regulation system which has enabled the Commission to institute a massive revival effort in the Hackensack Estuary. Discharges into the river have been limited by performance standards specifying type, amount, and location.

Sanitary landfills have been restricted in size, with liquid wastes prohibited, ultimately to be replaced altogether by baling and resource recovery facilities. And most importantly, 1,100 acres of salt marsh, tidal bay and mudflat, once destined for garbage dumps, is now dedicated by the State as the Sawmill Creek Wildlife Area.

Improvement of water quality in the District, over the last 10 years, has been documented in an on-going joint monitoring program by the Commission and the New Jersey Institute of Technology. Yet the most significant and impressive evidence of the system's revival can be seen in the reappearance of blue claw crabs and crabbers, striped bass, and alewife herring; in the increasing utilization by over 230 species of wildfowl, shore and wading birds; in the discovery three years ago, of the first pair of breeding marsh hawks to be found in the state in thirty years; and in the desire of people to live and play on the banks of the Hackensack River. The Hackensack Meadowlands District is thus a case where balanced land use planning and regulation has produced not only an attractive human development, but one which coexists with a fast-recovering, manageable wetland ecosystem as well.

Under the supervision of the HMDC, over $600 million of new construction was undertaken between 1970 and 1977, almost two thirds of it by private enterprise. One of the twelve Specially Planned Areas, Harmon Cove, is partially developed. This Island Residential SPA by Hartz Mountain Industries, Inc. now includes 626 townhouse units, a major hotel, a hospital and office buildings. Across the Hackensack River from Harmon Cove is the New Jersey Sports Complex with a racetrack and a professional football/soccer stadium already constructed and an indoor sports arena under construction. Employment space for nearly 25,000 people has been created since 1970. A result has been a decrease in wetlands areas, but the decrease is less than it would have been without the HMDC policy of wetland preservation in SPA, encouragement of cluster development and the policy prohibiting the horizontal expansion of landfills.

Nothwithstanding HMDC's record of environmental preservation and recovery linked with meeting development needs, it is clear that implementation of the HMDC Master Plan would result in a lesser degree of preservation of environmentally sensitive land and water areas than would the Coastal Resource and Development Policies applied elsewhere in the coastal zone. The Coastal Policies, however, were not developed with a district that is one-third tidal marsh or water area in mind, nor for an area under intense development pressure because it represents the largest block of undeveloped land within ten miles of the center of the nation's largest metropolitan area. Literal application of the Coastal Policies in the Meadowlands District would violate the will of the State Legislature, which has called for the orderly development of the Meadowlands in compliance with the HMDC Master Plan and which specifically exempted the Meadowlands District from the Wetlands Act. The promulgation of different resource policies for different parts of the State in response to different needs has a precedent in the Coastal Policies for the rest of the coastal zone, which differentiate between developed, extension and limited growth areas based upon existing development, environmental sensitivity and State policies toward development patterns. State environmental policy, therefore, envisages a continuum of regions, ranging from sections of the Delaware Bay and Atlantic Ocean shores where low levels of growth and extensive preservation

are encouraged, up to the Meadowlands District where the HMDC Master Plan calls for extensive development consistent with an ecological and Resource Management Plan, Open Space Plan and Wetlands Order. The Department of Environmental Protection, therefore, adopts by reference the Master Plan and its associated policy documents, with their dual concerns of promoting development and preserving the most productive wetlands, as coastal policy for the District.

Relationship Between Division of Coastal Resources and Hackensack Meadowlands Development Commission

The HMDC is the lead agency for planning and regulation of development in the Meadowlands District under the New Jersey Coastal Management Program. The Division of Coastal Resources will be guided by the HMDC Master Plan, its adopted components and management plans in making decisions on Waterfront Development Permit applications (the only Division permit applicable in the Meadowlands), and will consult with HMDC staff concerning interpretation of these policies. The Division will be guided by adopted HMDC policies in its recommendations to the Tidelands Resource Council concerning tidelands grants, leases and licenses, but the Council will also be guided by the need to obtain either a fair market price to benefit the School Fund (a requirement of the New Jersey Constitution), or to obtain lands of equal or greater value to the public, in exchange for lands alienated.

The Department will work together with HMDC to preserve wetlands and other Open Space designated for preservation by the HMDC Master Plan, and to identify additional parcels of land which because of their biological productivity or value for recreational purposes, should also be considered for preservation. The Department and the HMDC will explore public acquisition and other techniques for the preservation of these lands. Working together, the Department and HMDC will be able to ensure the preservation of at least as much wetlands and other open space as presently called for by the HMDC Master Plan.

Amendments to the Zoning Regulations of the Hackensack Meadowlands District will be considered amendments to the Coastal Management Program, when they meet the definition for amendments found in 15 CFR 923.80(c):

> "amendments are defined as substantial changes in, or substantial changes to enforceable policies or authorities related to: (1) boundaries; (2) Uses subject to the management program; (3) Criteria or procedures for designating or managing areas of particular concern or areas for preservation or restoration; and (4) Consideration of the national interest involved in the planning for and in the siting of, facilities which are necessary to meet requirements which are other than local in nature."

It should be noted that the Master Plan has been amended three times since its adoption in 1972.

In compliance with 15 CFR 923.53(a)(1), the Division of Coastal Resources will determine the consistency of federal activities with the Coastal Management Program in the Hackensack Meadowlands as elsewhere in the State. However, no federal consistency determination will be made in the Meadowlands District without first consulting with the HMDC concerning the consistency of the federal activity with the District Master Plan and other adopted HMDC policy documents.

## AREAS OF PRESERVATION AND RESTORATION

Section 306 (c)(9) of the federal Coastal Zone Management Act requires that a State's program "makes provision for procedures whereby the specific areas may be designated for the purpose of preserving or restoring them for their conservation, recreational, ecological or esthetic values". This is a requirement that a process to identify areas for preservation or restoration, rather than a list of areas themselves, be available to the state coastal agency.

The Department of Environmental Protection administers several approved programs through which areas can be designated for preservation or restoration. Because these programs are all in the same Department, administrative procedures are already in place to insure their coordination with the coastal program.

Through the Green Acres Administration (N.J.S.A. 13:8A-35 et seq.), DEP can purchase land or provide grants to local governments for land purchase and park development. The amount of money available is established by voter approved bond issues and legislative appropriations.

The Green Acres Administration also administers three other programs which provide DEP with the ability to indicate concern for the preservation or restoration of an area without the absolute certainty of success provided by land purchase. Under the Natural Areas Systems Act (N.J.S.A. 13:1B-15.12a et seq.) described in the Geographic Areas of Particular Concern section, DEP can identify additional natural areas within DEP-owned and managed lands in need of preservation or protection and available implementation options. The Wild and Scenic Rivers System Act, passed in 1977, permits DEP to classify, designare, and administer river areas as wild, scenic, recreational, or developed recreational rivers. The rules and regulations for these two programs further describe the process for designation. Under the Heritage Program, Green Acres is beginning a historic and archaeological inventory in the area of overlap between the Pinelands and the coastal zone.

The Division of Fish, Game and Wildlife can apply funding available under the federal Endangered Species Act to the preservation of species habitats through land purchase or management. This is one of the major tools being used ro preserve the Higbee Beach - Pond Creek Geographic Area of Particular Concern.

Another procedure for the designation of areas for preservation or restoration is through the New Jersey Register of Historic Places and the National Register of Historic Places. The Commissioner of DEP, as the State Historic Preservation Officer, may approve nominations to the keeper of the National Register of publicly or privately owned areas and sites for inclusion on the Register. Such inclusion prohibits any federal, state, county or municipal agency from undertaking a project which would harm the historic place, without the approval of DEP, and, in the case of the National Register, the approval of the Advisory Council on Historic Preservation. These historic places are also identified as a Special Land Area in the Location Policies of Chapter Four.

## SPECIAL COASTAL PLANNING ELEMENTS

The Coastal Zone Management Act amendments of 1976 require a State's coastal program to include special planning processes. These include a planning process for siting energy facilities in or affecting the coastal zone and managing their impacts, a planning process to provide for shorefront access and protection and a planning process to evaluate and mitigate shoreline erosion problems.

## ENERGY FACILITY PLANNING PROCESS

### Introduction

Section 305 b (8) of the Coastal Zone Management Act as amended requires states to develop a planning process to anticipate and manage the impacts of energy facilities in or affecting the coastal zone. As defined by NOAA's rules (15 CFR 923.13), the plan should address the following four elements (1) Identification of energy facilities likely to locate in or which may significantly affect the state's coastal zone; (2) Procedure for assessing the suitability of sites for such facilities and their impacts; (3) Articulation of state policies for managing energy facilities and their impacts and (4) Identification of how affected public and private parties may be involved in the process. These four elements are discussed below.

### I. Identification of Energy Facilities Likely to Locate in or Significantly Affect the State's Coastal Zone

Energy facilities referred to in the New Jersey Coastal Area Facility Review Act (N.J.S.A. 13:19-1 et seq.), the New Jersey Department of Energy Act (N.J.S.A. 52:27-S-1 et seq.) and the federal Coastal Zone Management Act (P.L. 92-583) are those most likely to be proposed in or signficantly affect New Jersey's coastal zone.

They include but are not limited to electric generating plants fueled by coal, uranium, oil and gas; transmission lines; facilities relating to the development of outer continental oil and gas such as support bases or marine terminals, pipeline, compressor stations, gas processing, refineries, tank farms, pipe-coating yards and platform assembly yards; terminals for the transfer, storage and conversion of liquid natural gas (LNG) to natural gas (See also Figure 37). A more detailed resource list is contained in the Energy Use Policies of Chapter Four.

To be located in the coastal zone, these facilities must comply with the relevant local, state and federal regulations and with the Coastal Resource and Development Policies in Chapter Four to be adopted as rules by DEP. Facilities likely to be located in New Jersey's coastal zone have also been addressed in a DEP 1977 Staff Working Paper on Energy Facility Siting Issues in New Jersey's Coastal Zone.

### II. Procedures to Assess the Suitability of Sites

The general energy facility siting procedures are articulated in the Energy Use Policies in Chapter Four of Part II. The acceptability of all proposed new or expanded coastal energy facilities shall be determined by a review process that involves both the New Jersey Department of Environmental Protection and the New Jersey Department of Energy. The New Jersey Department of Energy is responsible for determining the need for a proposed energy facility, and the Department of Environmental Protection is responsible for determining the acceptability of coastal energy facility sites.

FIGURE 37
Energy Facilities which may be located in New Jersey's Coastal Zone and their Major Impacts

MAJOR IMPACTS

| | Land Requirements | | | Water's Edge Siting Requirement | Emissions | | | | Buffe Require |
|---|---|---|---|---|---|---|---|---|---|
| | 15 acres or less | 15 acres or more | ROW[1] | River/Coast/Channel | Air | Water | Radiation | Noise | |
| **ELECTRIC GENERATING PLANTS FUELED BY:** | | | | | | | | | X |
| Coal | | X | | X | X | X | | | X |
| Uranium | | X | | X | | X | X | | X |
| Oil | | X | | X | | X | | | X |
| Gas Turbines (Peakload) | | X | | X | | X | | | X |
| Hydroelectric | X | | | X | | | | | |
| **ASSOCIATED FACILITIES:** | | | | | | | | | |
| Transmission Lines | | | X | | | | | | |
| **OUTER CONTINENTAL SHELF RELATED FACILITIES:** | | | | | | | | | |
| Primary | | | | | | | | | |
| Support Base | X | | | X | | | | | |
| Submarine Pipeline Landfall and Right-of-Way | | | X | | | | | | |
| Pumping/Compressing Stations | X | | | | | | | | |
| Gas Separation/Dehydration Facilities | | X | | | | X | | X | X |
| Secondary | | | | | | | | | |
| Gas Processing | | X | | | X | X | | X | X |
| Refineries | | X | | | X | X | | X | X |
| Tank Farm | X | | | | | | | | |
| Marine Terminal | | | | X | | | | | |
| Tertiary | | | | | | | | | |
| Pipe-Coating | | | | | X | | | | |
| Platform Assembly | | X | | X | | | | | |
| LNG | | X | | X | X | | | | X |
| Deepwater Ports[2] | | | | X | | | | | |
| Uranium Enrichment Plants[3] | | | | | | | | | |
| Gasification[3] | | | | | | | | | |

[1] ROW-right-of-way
[2] Deepwater ports require water site; associated facilities could include either pipelines or marine terminals and storage tanks
[3] Impacts not yet identified; none proposed for New Jersey

The Department of Environmental Protection will use the Coastal Resource and Development Policies, the three step decision making process discussed in detail in Chapter Three, to determine the suitability of proposed energy facility sites. In general, proposed facilities must comply with the Location, Energy Use and Resource Policies.

The first step in the CLAM method involves identification of the land and water features on a proposed site and a review of the coastal policies for the combination of features of which the site is composed. The Location Policies classify land and water features into three categories: Special Areas, General Water Areas and General Land Areas. The Coastal Resource and Development Policies identify several Special Areas in which development should be restricted, modified, or prohibited to insure their protection.

The Location Policy for General Water Areas varies according to the depth of the water basin, flow of the water channel and proposed use of the water areas. The Waters Area Policy Summary Table presents policies for 18 types of uses in seven types of General Water Areas.

In General Land Areas, the acceptable intensity for development is determined by the coastal region in which the site is located, environmental sensitivity of the site, and development potential of the site, using the Land Acceptability Tables in Section 7:7E-5.6.

Once the location acceptability has been determined according to the location policies, a proposed development must pass through the second and third stages in the screening process, the Use and Resource Policies. For example, a proposed energy facility must comply with the Energy Use Policies. The Resource Policies, which involve a review of the proposed development's effect on the resources of the built and natural environment, serve as standards to which proposed developments must adhere.

III. Articulation of State Policies and Authority for Managing Facilities and Their Impacts

New Jersey's two major industries are the petrochemical and tourism industry, which occupy first and second place respectively in the state's economy. As long as energy facilities were clustered in the northern waterfront close to the ports of New York, Elizabeth and Newark and along the Delaware close to the Philadelphia - Camden port area, the perceived potential conflicts with siting were few. But as utilities in recent years have turned to the building of larger energy facilities such as nuclear facilities, in the undeveloped sections of the State traditionally devoted to conservation, recreation, tourism and less land intensive uses, and as the need and potential for waterfront recreation in urban areas has been demonstrated, the potential for conflict among competing interests concerning land use has increased.

The policy in New Jersey has been to promote energy production as long as it is not at the expense of the environment. This policy has been stated several times in the context of outer continental shelf development. For example, in January 1977, Governor Byrne said in his annual message to the Legislature:

> Although promoting new sources of energy is a primary goal of this Administration, we will not sacrifice our national resources in the name of energy exploration. We are in favor and will actively endorse development of fuel resources on the outer continental shelf -- in an environmentally and aesthetically sound manner.

(See also statements by the Governor before the Department of the Interior in Atlantic City in January 1976; before the House Ad Hoc Committee on the Outer Continental Shelf May 10, 1977, and before the American Bar Association in New York City August 8, 1978.) Such statements have consistently expressed New Jersey's need to balance energy with environmental safeguards.

While articulating the State policy concerning energy development, the energy policies in the New Jersey Coastal Management Program represent the consideration of various conflicting, competing and contradictory local, state and national interests in the diverse coastal resources and in the diverse uses of coastal locations. By balancing the competing interests, the coastal energy policies provide a means to facilitate energy facility siting decisions in New Jersey's coastal zone.

Under the Coastal Area Facility Review Act of 1973, the Wetlands Act of 1970, the Waterfront Development Permit Law, and the Riparian Statutes, DEP has planning responsibility and exercises regulatory authority over the siting of energy facilities in the coastal zone. DEP was also designated by the Governor as the lead agency to plan for and implement the State's coastal program pursuant to the provisions of the federal Coastal Zone Management Act. Under Sections 305 and 306 of the CZMA, a State's coastal program must specifically address planning for and siting of energy facilities.

In 1977 the New Jersey Legislature created the Department of Energy (DOE) to address the energy issues which gained public prominence during the 1973-1974 OPEC embargo and in 1976 when a shortage of gas threatened the state's economy. DOE was conferred with co-extensive jurisdiction with any other state agency regulating energy facilities, which, in most cases, is DEP, administrator of the laws noted above.

Because of their overlapping interests in the siting of energy facilities, DEP and DOE developed a memorandum of understanding to define their respective energy-related responsibilities. A signed copy is contained in Appendix C to the Coastal Management Program and in the DOE Energy Master Plan.

Briefly, the memorandum of understanding states that once permit applications submitted under the CAFRA, Wetlands and Waterfront Development Permit Laws have been declared complete by DEP, the Department will forward a copy of the application to DOE for review.

DOE will then make its findings on the need for the facility and relay these (in the form of an Energy Report) back to DEP 30 days before a decision is due. At the same time, DEP will invite DOE to attend any pre-application conferences or hearings that DEP may schedule.

Should the two agencies disagree concerning the disposition of a proposed energy facility, they must (according to the Department of Energy Act of 1977) inform the Governor who must convene an Energy Facility Review Board made up of the Director of the Division of Energy Conservation and Planning (in the Department of Energy) the head of the agency disagreeing with DOE, and a third person to be appointed by the Governor.

Since DOE was created in 1977, there have been no disputed energy facility decisions.

Municipal and county governments retain their traditional land use authority with respect to the approval or denial of permits for energy facilities.

Coastal Energy Impact Program

The Coastal Energy Impact Program (CEIP), which provides assistance to states and localities to mitigate potentially adverse effects of energy installations is another technique for managing energy facilities and their impacts. Although the CEIP program is administered by DOE, DEP as the designated lead state agency on coastal zone management reviews all CEIP applications for consistency with the coastal program. In addition, DEP is a member of the Intrastate Allocation Committee which selects CEIP projects for funding. Other members of the Committee include representatives from the Departments of Energy, Community Affairs, the Treasury; the County and Municipal Government Study Commission and Advisory Council on Energy Planning and Conservation.

As already mentioned, energy facilities have wide ranging implications for the social economy of a region. The federal Coastal Management Act requires states participating in the federal coastal program to consider the national interest that energy facilities located in their state might have. Although each states is not mandated to approve such facilities, the State must demonstrate that facilities in the national interest have been considered and it must indicate the process used to consider such facilities.

The process by which New Jersey will consider the national interest in its energy planning is explained in the National Interest section of this Chapter and in Appendix A of the NJ DOE Master Plan. Briefly, DEP and DOE have agreed to consider the national interest in reviewing permit applications. DOE will also address the issue in the Energy Reports it prepares and in the implementation of the State Energy Master Plan. This arrangement was formalized in the Memorandum of Understanding between the two agencies.

IV. Identification of How Interested and Affected Public and Private Parties may be Involved in the Planning Process

In New Jersey, participation in the coastal energy planning process takes place in several forms.

A. Public Hearings and Meetings

The CAFRA statute requires that a public hearing be held on each permit application. In addition, DEP may at its discretion hold public hearings as part of the review process for other permits issued by the Department. Interested persons may express their views at such meetings, which are usually arranged in close proximity to the site of a proposed project. Notice of public hearings and meetings on permit applications are contained in the DEP Bulletin and the local press.

B. Informal Meetings

DEP sometimes schedules meetings on controversial issues to obtain public comments to help in its decision-making. For example, DEP held a meeting in October 1978 in Forked River, Ocean County on the proposed salt-water cooling tower for the Nuclear Generating facility there. This meeting drew about 500 people.

As part of the coastal planning process, over the past four years, DEP has held several series of public meetings to receive public comments on proposed coastal policies and regulations.

Before drafting the Energy Master Plan, DOE held several public meetings to solicit the views of the public concerning what the Master Plan should contain.

C. Regularly Scheduled Meetings

Environmental Advisory Group

DEP meets regularly with an environmental advisory group which includes active representatives from the American Littoral Society, League for Conservation Legislation, the Natural Resource Defense Council, Association of N.J. Environmental Commissions, Sierra Club, N.J. Conservation Foundation, League of Women Voters and Public Interest Research Group and occasional representatives of other statewide environmental groups. Citizens who are unable to attend such meetings, but who wish to express their views may do so through one of these representatives or directly through DEP's Division of Coastal Resources.

The Tidelands Resource Council

The agency which serves as trustee over riparian lands is the Tidelands Resource Council. This is a group of twelve citizens appointed by the Governor, in but not of DEP, which meets twice a month to review applications for riparian grants, leases and licenses submitted under the State's Riparian Statutes. The meetings are open to the public.

Advisory Council on Energy Planning and Conservation

DOE meets monthly with the statutory Advisory Council on Energy and Conservation. The 15-member Council is made up of representatives of the following interest groups: natural gas, bottled gas, home heating oil and coal, terminal operators, refiners, utilities, environmental and consumer. Council meetings are closed to the public although a favorable vote of the Council might permit an individual to attend on a particular issue.

As part of the coastal planning and implementation process, DEP and DOE also meet on request with particular interest groups such as the petroleum industry, utilities, consumer and environmental groups to discuss the implications that proposed energy policies and regulations may have on their activities.

D. Call for Information

In 1975, DEP involved the energy industry early in the coastal planning process by issuing a "Call for Information". Through this, DEP solicited information from industry concerning their projected plans to build energy facilities in New Jersey's coastal zone. One of the goals was to learn more about the siting and technical requirements for outer continental shelf development. While the oil and gas industry response was disappointing and not site specific, the state electric and gas utilities submitted some sites which they indicated they were holding for future construction and/or expansion. From the information received from industry, DEP compiled a document Call for Information on Coastal Energy Facility Siting: An Analysis of Responses which is available to the public.

E. Newsletters and Written Comments

Members of the public may follow energy issues through newsletters issued by DEP and DOE which report on meetings, hearings and recent publications. The Jersey Coast is issued at least quarterly by the Division of Coastal Resources. DOE publishes a monthly Energy Line which is devoted exclusively to energy issues in the state.

DEP's Division of Coastal Resources also maintains a mailing list of over 5,000 names to which it sends the newsletter and other information of interest to the public.

Members of the public wishing to comment in writing on various issues are urged to send comments to DEP and DOE. Comments in response to proposed rules will also be considered under the New Jersey Administrative Procedures Act.

F. Office of Public Participation

DEP established a special Office of Public Participation in 1979 which is staffed with an office chief and an assistant. This office serves as a formal mechanism to coordinate all public participation efforts in the Department.

DEP Division of Coastal Resources public participation activities for all issues including energy facility siting are described in greater detail in Appendix A.

## SHOREFRONT ACCESS AND PROTECTION PLANNING PROCESS

Section 305(b)(7) of the Coastal Zone Management Act and rules adopted thereunder (15 CFR 923.21) require coastal states to develop a planning process that will identify public shorefront areas appropriate for access or protection. The process must include the following elements:

I. A definition of the term "beach" and an identification of public areas meeting that definition.

II. A procedure for assessing public beaches and other public areas, including State owned lands, tidelands and bottom lands, which require access or protection, and a description of appropriate types of access and protection.

III. Identification and description of enforceable policies, legal authorities, funding programs and other techniques that will be used to provide such shorefront access.

These elements are outlined below.

Beach access has not always been a controversial issue in the past, when many urban waterfronts were pre-empted by industrial uses. Access to the shoreline in built-up areas outside beach resorts has recently emerged, however, as an important issue. With new lifestyles and technologies and changing residential settlement patterns, much of the waterfront has become vacant and ready for reuse providing opportunities for urban revitalization and recreation. Shorefront access in this context includes both physical and visual access to the beach and along the urban waterfront. Before continuing, it may be useful to define what is meant by "beach" and the various forms of "access".

### I. DEFINITION OF "BEACH" AND IDENTIFICATION OF PUBLIC AREAS MEETING THAT DEFINITION

The Beach Access Study Commission, staffed by DEP, recommended the following definition of beaches in 1977. "Beaches include both the dry sand area landward from the mean high water line to the vegetation line as well as the wet sand seaward of the mean high water line." Where there is no vegetation, the beach area ends at a seawall, road, parking lot or boardwalk. The wet sand area is known as the public trust land. It belongs to the state of New Jersey unless the state has conveyed a so-called riparian grant for the tide-owned land. (The public trust or commons refer to property to which all members of the community have a right). Access to the ocean for fishing, navigation and transportation has traditionally been regarded as a protected right.

During the 1800's and early 1900's, the State of New Jersey sold riparian grants along about one third of the Atlantic Ocean. Even where sold by the State, tide-flowed (wet sand) or riparian lands remained impressed with a public trust and had to be open to the public for purposes of navigation and commerce.

Tidelands which have been granted to a private entity may be built upon or filled in to the exclusion of the general public only upon issuance of a special riparian "waterfront development" permit. The grant of tidelands excludes any person other than the grant owner from seeking such a permit.

Access relates to legal, physical, and visual and financial considerations. These types are defined below:

A. Legal Access.

According to New Jersey law, land extending seaward of the mean high tide line is held in trust by the State on behalf of the public. These "public trust lands" include the wet portion of the beach that is uncovered six of the 12 hours in a tidal cycle. In recent years, however, courts have come to recognize that the public trust doctrine extends to the dry portion of the beach, at least where that beach is municipally owned.

In the haste to encourage growth and industrialization after the Nation's founding, portions of the beach were often granted to private interests and to municipalities. As increases in leisure time and improvements to transportation in the late 1960's and early 1970's attracted increasing numbers of people to the shore for recreation, efforts to exclude the general public from beach areas led to numerous lawsuits.

The New Jersey courts have not regarded the public trust doctrine - which originally recognized only the public's right to use trust lands for fishing and navigation - as immutable. Rulings favoring increasing public access to municipally owned dry beaches have recognized the important role that recreation plans in today's post-industrial society. Legal access, is less of a problem in New Jersey today than physical or visual access.

B. Physical Access.

Physical access relates to the difficulties of reaching the water's edge because of lack of transportation to the water's edge and/or lack of parking facilities. Physical access to the shoreline, beach and ocean has also been blocked by private construction precluding access to the water for fishing, walking or simply viewing.

C. Visual Access.

Visual access is impeded where construction blocks off views to the beach and water. The protection of views can enhance the character of a place and contribute to protecting its natural features and property values. Views overlooking water also offer intangible social benefits to the public at large which have been recognized as worthy of protection.

D. Fees, Changing Rooms and Parking.

Merely getting to the beaches was a challenge in the past because of limited transportation facilities. Later when highways were built they brought large numbers of people to the shore. In response, some municipalities and residents sought to restrict tourists by imposing various types of fees. While the New Jersey Supreme Court ruled as unconstitutional the imposition of differential beach fees (Neptune vs. Avon 61 NJ 296) between residents and non-residents, most municipalities have imposed fees along the entire shorefront, with the exception of Keansburg,

Atlantic City (which levies an 8 percent luxury tax in its hotels), the Wildwoods and Upper and Lower Township in Cape May County. Because of the wide range in fee schedules, the New Jersey Beach Access Study Commission recommended to the Governor and Legislature in 1977 that beach fees be in line with the actual cost to the local government of maintaining and operating these beaches so that high fees should not deter potential visitors.

Access to the shorefront has also been impeded in the past in some communities by the imposition of high fees for parking and changing facilities. In light of adverse press publicity of such practices, successful litigation and the need for State funding by shorefront communities to cope with storm damage, and recently adopted state review policies as to how to maximize public funds, high parking and changing room fees are not expected to be a factor in the future.

## II. PROCEDURE FOR ASSESSING PUBLIC BEACHES AND OTHER PUBLIC AREAS, INCLUDING STATE OWNED LANDS, TIDELANDS AND BOTTOM LANDS, WHICH REQUIRE ACCESS OR PROTECTION, AND A DESCRIPTION OF APPROPRIATE TYPES OF ACCESS AND PROTECTION

New Jersey's small shoreline must serve the dense population of the state and region. This makes it desirable that as much of it as possible be visually and physically accessible to the public. This applies especially to those stretches closest to large seasonal and/or year-round populations. Much of the shorefront in the beach segment (Sandy Hook to Cape May) is open to the public. In the one county - Monmouth - where beach access is particularly restricted, the issue is being litigated by the Department of the Public Advocate.

Along the rivers, much of the adjacent waterfront is in private ownership belonging to industrial, commercial or residential interests. Where this is the case, municipalities are encouraged in the Coastal Resource and Development Policies to take into account the need for providing visual and physical access where new waterfront development is contemplated. Because much of the waterfront in urban areas is vacant and in a state of decay (having been abandoned by railroads and formerly water-dependent facilities), the opportunity exists to bring urban populations back to waterfronts to enjoy the recreational amenities they afford.

Diversity characterizes New Jersey's shorefront with different types of shorefront exhibiting different needs and requiring different management strategies. These types are characterized below.

### A. Shorefront Types

There are two major types of shorefront in New Jersey: beach and urban waterfront.

#### 1. Ocean Beach

a. These include the ocean beaches between Sandy Hook and Cape May Point which are the magnets for the state's coastal resort economy. They are located in Monmouth, Ocean, Atlantic and Cape May Counties, and extend for about 124 miles. Of these, 32.6 miles or 26 percent are in private ownership or use; 63 miles or 51 percent are in municipal ownership, 11.5 miles or 9.2% are in state ownership and

16 miles of 13.4% are in federal government ownership. Most of the private or restricted beaches are located in Monmouth County which is also closest to the densely populated urban areas in the northeast. Overcrowding of beaches in Monmouth County is aggravated by the narrowness of the peninsula on which the beaches are located and the lack of ample parking space in an area where automobiles are the most common mode of transportation to the beach. Bay Head in Ocean County, whose entire beachfront is private, is being challenged in the courts by the Department of the Public Advocate. Public debate and legal action related to the beach access issue have to date focused primarily on the beaches located in the counties cited above.

2. Bay Beach

Bay beaches are protected by barrier beaches located along the mainland fronting the Atlantic Ocean. These include the beaches bordering the Manasquan, Navesink, Metedeconk and Shark Rivers; Barnegat Bay; Great and Little Bay; Absecon Bay, Great Egg Harbor and the Intra-coastal Waterway. Bay beaches also include those located along Raritan Bay going north toward the harbor of New York and New Jersey and along the Delaware Bay and River going towards Trenton.

An inventory of the status of ownership and use of 345 miles of bay beaches was made by the U.S. Army Corps of Engineers in 1973. This inventory indicated that much of the land bordering the bays was inaccessible because of extensive wetlands. In the interests of conservation, such land will probably continue to remain inaccessible to conform with the state's policy to protect wetlands which have been identified as geographic areas of particular concern. (The U.S. Army survey (National Shoreline Study) extended up to South Amboy in Raritan Bay and Pennsgrove on the Delaware River).

B. Urban Waterfronts Lacking Beaches

Waterfronts in the Harbor of New York and New Jersey, along portions of the Delaware River near Camden, the Arthur Kill, Newark Bay, and the Hudson, Rahway, Hackensack and Passaic Rivers typically do not have beach access, although exceptions do exist, such as at Perth Amboy.

Railroads and industries have dominated the urban waterfront along the Hudson River, Arthur Kill and along the urban sections of the Delaware River near Camden. With the demise of ferries and waterfront terminals and the decline of railroads, much of this waterfront is abandoned and unused. To the extent that publicly-owned lands become candidates for redevelopment, state and local governments have an opportunity to stipulate, as a condition for issuing public funds, that access to the waterfront will be available to the public.

C. Supply and Demand

Ensuring the adequacy of access depends on the demand for access and the availability of land to supply these needs. New Jersey's shorefront is finite, while the number of people using it is expected to increase in the future. The 1977 edition of the State Comprehensive Outdoor Recreation Plan

(SCORP) predicts that the demand for swimming in salt water will increase from 61,884,252 occasions in 1976 to 68,525,884 occasions in 1985, an 11 percent increase. In 1996, the number of swimming occasions is expected to increase to 77,008,248, a 24 percent increase over 1976. As pressure on the finite waterfront increases, it becomes more important than ever to insure that the waterfronts remain open and accessible to the public.

Recognizing such pressures, the state has taken steps to increase the opportunities for waterfront uses. In the harbor which New Jersey shares with New York, Liberty State Park opened in 1976. While partially finished, it is already serving a demand for waterfront recreation in the densely populated northeastern counties of New Jersey. In addition, its proximity to historic Ellis Island and the Statue of Liberty and its view of lower Manhattan, has made it a major regional, if not a national resource.

D. Local Government Designation of Access Points and Corridors

To the extent that public land will be needed in the future to furnish public access to beaches, based on projections and municipal resource inventories, local governments in the urban waterfront segment may have an opportunity, once New Jersey's coastal management program has been approved, to review the adequacy of existing access points and corridors as defined below and recommend where available access points and corridors may be needed.

Access Corridors are paths or open space systems running parallel to the coast where they may link up with access points.

Access points are paths which run perpendicular to the water from the first inland cultural feature to the water's edge where they may link up with the parallel corridors as defined below.

In recommending access corridors or points of access, municipalities will be asked, at a minimum, to consider the following:

1. The amount and adequacy of shorefront that is available given the resident population and regional demand, using SCORP and/or other supply and demand figures.

2. Identification of access corridor and points of access in terms of their contemplated uses. (i.e. fishing, bicycling, viewing, picnicking, boat launching, photography, historic sites visitations, walking, etc.).

3. Identification of existing corridors in adjacent communities to encourage, to the extent possible, the planning for acquisition of a continuous public access corridor across the boundaries of several municipalities sharing a common waterfront.

4. Provision by each municipality bordering a waterfront beach or bay of at least one public waterfront park for some of the uses outlined above in accordance with the Basic Coastal Policies.

5. That access points serve the largest number of people without creating adverse impacts on the surrounding environment.

6. That access points not impinge on the rights of adjacent private property owners.

## III. MANAGEMENT TECHNIQUES: IDENTIFICATION AND DESCRIPTION OF ENFORCEABLE POLICIES, LEGAL AUTHORITIES, FUNDING PROGRAMS AND OTHER TECHNIQUES TO PROVIDE SHOREFRONT ACCESS

The state has a variety of enforceable policies, legal authorities, funding programs and monitoring techniques which help maintain and increase public waterfront access in New Jersey. These are described below:

### A. Public Trust Doctrine

As delineated in Appendix F (Legal Commentary), maintaining public access to the shorefront in the coastal zone evolved from the Public Trust Doctrine. This is property to which all members of a community traditionally had a right to use for fishing and navigation. The New Jersey Supreme Court extended the public trust doctrine to include recreation in its Neptune vs. Avon (61 NJ 296) decision of 1972.

Until 1978, the Public Trust Doctrine did not apply to New Jersey's dry sandy beaches owned by either local, state or federal government or by private individuals or associations. In 1978 a New Jersey Supreme Court decision (Van Ness v. Deal [78 NJ 174]) extended the Public Trust Doctrine to apply to the dry sand of municipally-owned beaches:

> "whether natural, or man-made the beach is an adjunct to ocean swimming and bathing and is subject to the Public Trust Doctrine."

It should be noted that the cases to date relate exclusively to publicly-owned lands.

However, if New Jersey's coastal management program is approved, planning funds for the acquisition of waterfront sites would be available under Section 306 of the Act which could be combined with State Green Acres program funds to acquire, design and and develop shorefront access systems.

### B. Coastal Permit Review

The authority to promote public access through regulatory action is contained in the four fundamental coastal laws summarized in Chapter Three: CAFRA, the Wetlands Act, the Waterfront Development Law, and the Tideland Statutes.

Several applications for CAFRA permits were denied in 1976 and 1977 for, among other reasons, not giving adequate consideration to the issue of shorefront access. The reasons for denial are stated in the following published opinions: Opinion 1 - Lehigh Construction (Toms River Condominium); Opinion 27 - Tranquillity Park; Opinion 35 - Riverview Heights; and Opinion 37 - Shark River Island development. Copies are available from the Bureau of Coastal Planning and Development.

In addition, the State has an opportunity through its capital spending programs (See Chapter Three) to insure that funds will be used to maximize the public's access to the shorefront.

C. Capital Spending

1. State Program

(a) The Green Acres Program administered by DEP determines how funds from the federal Land and Water Conservation Fund and State Green Acres bond issues may be spent for park and open space acquisition and development. Green Acres funds have been used to acquire several waterfront sites for public use. These include Higbee Beach (Cape May County), Seven President's Park (Monmouth County), Cattus Island (Ocean County) and Liberty State Park (Hudson County).

(b) The New Jersey Conservation Foundation, a private organization, sometimes assists the state by acquiring options on land in emergency situations for later acquisition by DEP's Green Acres Administration.

(c) The Beaches and Harbor Fund Act provides funds to municipalities to restore shorefronts damaged by storms, hurricanes and the like. In administering the Shore Protection Program, State policy since 1972 has been to make the disbursement of funds to municipalities conditional upon their making the shorefront open to the public. This policy is also reflected in proposed rules under the Beaches and Harbor Fund Act of 1977.

2. Federal

In Section 315 of the federal Coastal Zone Management Act, as amended in 1976, Congress authorized the acquisition of lands to provide public access along shorefronts containing environmental, recreational, historical, scenic, ecological or cultural benefits. Unfortunately, these funds have not been appropriated to date.

D. Other Techniques to Provide Shorefront Access

A. Monitoring

New Jersey's short 126 mile oceanfront beach stretch makes it possible to inspect it periodically by foot and/or by air. In 1976 and 1978, members of DEP and citizen representatives walked the length of the 124 mile shorefront to assess the state of the beaches with respect to erosion, storm damage and access. Along the way, they met with heads of municipal governments. Recommendations from these inspection tours were included in a report to the Governor and Legislature in April 1977 by the Beach Access Study Commission which was appointed by the Governor in 1976 to study the issue of beach access. These recommendations have been incorporated into the policies of the Coastal Management Program. Similar beachwalks and surveys which will be continued in the future will form the basis for evaluating where additional points of access are needed and should be acquired.

Resulting from the 1976 beachwalk and the Beach Access Study Commission report was the publication in 1977 and annual updates in 1978, 1979, and 1980 of A Guide to New Jersey Beaches. This provides an inventory of New Jersey beaches, and the resources and facilities they afford. The inventory, which was distributed widely to the public, includes the schedule of beach fees charged by various municipalities and indicates if parking and mass transit (mostly bus) are available.

B. Beach Shuttle

In 1977, DEP, with financial assistance from NOAA-OCZM, instituted a beach bus shuttle from the heavily travelled Garden State Parkway in Toms River to Island Beach State Park. The purpose of this experiment was to increase the use of the State Park whose limited parking facilities do not reflect the actual number of people that the park can safely and ecologically accommodate. The shuttle transported 7,594 people in 1977 at a cost of $50,000 or $6.08 per person and 7,714 people in 1978 at a cost of $42,000 or $4.95 per person (these costs were in addition to a per capita charge of $.50).

The beach shuttle was also operated with State funds during the summers of 1978 and 1979 and is being operated during the summer of 1980. Because the shuttle allows more people to use Island Beach State Park and with a potential fuel shortage, DEP hopes to continue operating the beach shuttle each summer.

The first year of the program was subsidized by the federal Office of Coastal Zone Management as a pilot project. The project has continued through the involvement of several units of government, including the New Jersey Departments of Transportation and Energy, the New Jersey Highway Authority, Ocean County, Dover Township, and the Dover Township Sewerage Authority.

C. Enforceable State Policies Pertaining to Shorefront Access and Protection

The State policies pertaining to shorefront access and protection (see Chapter Four) include the Special Area Policies for Beaches (7:7E-3.21); Coastal Wetlands (7:7E-3.23); and Central Barrier Island Corridors (7:7E-3.22). The Resource Policies address Public Access to the Shorefront (7:7E-8.13) and Scenic Resources and Design (7:7E-8.14).

As outlined in an earlier section of this Chapter, New Jersey has designated the following shorefront areas as being of particular concern:

Coastal Wetlands (generic)
Wet Sands
Higbee Beach
Cape May Point Natural Area
Cape May Wetlands Natural Area
Strathmere Natural Area
North Brigantine Natural Area
Great Bay Natural Area
Island Beach State Park
Swan Point Natural Area
Manahawkin Natural Area

Liberty State Park
Rancocas Natural Area
Hackensack Meadowlands Development Commission District

They have been singled out for special treatment because of their recognized ecological sensitivity and uniqueness under the Natural Areas System Regulation (N.J.A.C. 7.2-11.5-B); their regional, state and/or national significance and, not least, because of the availability of state legal authorities to protect them.

## CONCLUSIONS

The most important aspects of the shorefront planning process will be to identify where access is or is not available. This will constitute the first step towards developing strategies, such as a possible acquisition schedule, to ensure adequate access to and along New Jersey's shorefront. Such planning becomes more feasible within the framework of a comprehensive coastal program and will become an implementation task after New Jersey's entire coastal management program is approved.

## SHORELINE EROSION/MITIGATION PLANNING

### Introduction

Under the federal Coastal Zone Management Act, state coastal management programs must include a planning process for assessing the effects of shoreline erosion and studying ways to control the impact of such erosion and to restore areas adversely affected by such erosion. These specific federal requirements are defined in Section 305(b)(9) of the Act. The pertinent federal rules on this requirement are identified at 15 CFR 923.25. This planning process must include two parts:

(1) A method for assessing the effects of shoreline erosion and evaluating techniques for mitigating, controlling or restoring areas adversely affected by erosion, and

(2) Identifying and describing enforceable policies, legal authorities, funding techniques and other techniques that will be used to manage the effects of erosion as the State's planning process indicates is necessary.

### Background

Since the early 1920's, the State of New Jersey has been giving financial and technical assistance to help shorefront municipalities cope with shoreline erosion. In the early 1940's, new State legislation (P.L. 1940, C. 52; N.J.S.A.) authorized and empowered the then Department of Conservation and Economic Development, now the Department of Environmental Protection, to repair, reconstruct or construct bulkheads, seawalls, breakwaters, groins, jetties, beachfills, dunes, and any or all appropriate structures for shore protection purposes. The annual appropriation for this work was $1.0 million. In recent years, the need for shoreline erosion planning has been heightened as a result of major coastal storms, particularly the March 1962 storm, the cumulative effects of minor storms in the past decade and increased shoreline development. The New Jersey Capital Budgeting Commission recognized the annual $1 million appropriations for State aid to municipalities for shore protection purposes was inadequate and in 1977 the voters of the State approved a $30 million Beaches and Harbor Bond Issue, which provides $20 million for State aid for shore protection purposes.

In brief, the State of New Jersey has had a shoreline erosion planning and management process in place for several decades. This section of the New Jersey Coastal Management Program documents the process and outlines the work underway today and also that work likely to be undertaken in the future as the State continues to confront the challenge of shoreline erosion.

### 1. Shoreline Erosion Assessment Method

The New Jersey approach to assessing the effects of shoreline erosion has four components: First, review previous studies of shoreline erosion; second, initiate shoreline erosion studies; third, participate in ongoing shoreline erosion studies by other agencies and organizations; and fourth, review site-specific development proposals in the coastal zone that may affect shoreline erosion.

The most significant previous studies of shoreline erosion in New Jersey that have been reviewed were conducted by the U.S. Army Corps of Engineers, both the New York and Philadelphia Districts. In 1953, the Corps of Engineers, New York District conducted a comprehensive study and issued a report for the shore protection required along the Atlantic oceanfront from Sandy Hook to Barnegat Inlet. In 1956, the Corps of Engineers, Philadelphia District completed a similar study for the area from Barnegat Inlet to Cape May Point. More recently, the Cape May County Planning Board prepared a report on its beaches and inlets called Inlets and Beaches, Cape May County, March 1977.

As part of the coastal planning process funded since 1974 under the federal Coastal Zone Management Act, the Department of Environmental Protection has initiated staff and consultant studies of shoreline erosion. The most comprehensive work to date, entitled Coastal Geomorphology of New Jersey, was completed in 1977, under contract to DEP, by the Center for Coastal and Environmental Studies at Rutgers University. Additional minor staff studies have been carried out in the past and are likely to be initiated in the future. The most significant study initiated by DEP currently is the preparation of a statewide Shore Protection Master Plan, by Dames and Moore, Inc. of Cranford, New Jersey, consulting engineers and scientists, who are assisting the Department of Environmental Protection and the Department of Treasury, Division of Building and Construction in carrying out the shore protection portion of the 1977 Beaches and Harbors Bond Issue. The Center for Coastal and Environmental Studies has begun a technical study to determine the protective capacity of natural and man modified dune areas for the purpose of delineating dune management areas. As necessary, additional analytical studies will be initiated in the future.

Third, the Department of Environmental Protection participates in ongoing shoreline erosion studies carried out by other agencies, particularly the U.S. Army Corps of Engineers and relevant county and municipal agencies. The entire process of shore protection in New Jersey is a cooperative state-municipal, and often federal-state-county-municipal effort. As specific shoreline studies are completed to protect specific inlets, replenish beaches, or propose additional measures, these studies are closely coordinated by the Department of Environmental Protection as the lead agency in shore protection. Similar participation in joint studies will continue in the future.

Fourth, the Department of Environmental Protection reviews site specific development proposals along the waterways (ocean, bays and rivers, etc.) of the State for a number of considerations, including shore protection. This site specific review provides opportunities for review of individual projects at specific locations.

Fifth, field staff of the Department of Environmental Protection visually monitor the shoreline frequently, from the ground and the air in order to identify shoreline erosion problems. This surveillance method for assessing the effects of shoreline erosion will continue and will become an increasingly important monitoring method. DEP has also received updates on important local issues from the Coast Watchers, a group of concerned citizens organized by the American Littoral Society who live in and monitor the coast.

The general conclusion of all these reports is that the problem is quite severe, since the shoreline is receding with an annual loss of sand from the New Jersey beaches of approximately 2,600,000 cubic yards.

The main problem is that there is no natural external supply of material to offset the annual loss of sand. This means that the sand available for accumulation on the updrift sides of groins and jetties is being eroded from existing beaches. It also means that to provide adequate shore protection to beaches the sand has to be transported by hydraulic dredging or by trucking in the material.

The source of sand material required for the artificial nourishment of the beach comes from nearby borrow areas in the interior bays and lagoons. When this source of sand material is not available, nearby land borrow areas will have to be used.

Ultimately, the time will come when these nearby sources of sand material, i.e. bays, lagoons, and nearby land borrow sites for artificial beach nourishment, are depleted. Then it will be necessary to find sand on the mainland or offshore in the Atlantic Ocean.

An economic way of removing sand from the ocean floor is under study by the Corps of Engineers, and as part of this study a pilot project of direct pump out of hopper dredges of the Philadelphia District was initiated at Sea Girt in 1962 to explore the utilization of offshore sand source.

Presently the Division of Coastal Resources works with local engineers in the design of the needed jetties, groins, seawalls, bulkheads, revetments and beachfill. The Division then advertises for bids and administers the contract and supervises their construction. Field personnel from the Division constantly monitor New Jersey's beaches, watching for developments which may be the forerunner of serious beach erosion problems.

The creation of the Shore Protection Master Plan is the initial major task of the Bond Program. The Shore Protection Master Plan will be a regional statewide shoreline plan, to be financed by the Beach and Harbors Fund (1977). It will outline a method for designating areas for erosion control, mitigation and/or restoration. Some of the criteria for the study are listed below. The major objectives are to maintain and protect beaches through the identification of areas of concern for program development, including identification of State agencies involved, procedures for program administration and funding strategies, identification of legal authorities and funding programs and other techniques that can be used to meet management need. In part, the master plan will identify:

1) Coastal Features and Processes

2) The Status of the New Jersey Shore

3) Alternative Responses to Coastal Erosion and Public Policy

4) Shore Erosion Control Alternatives

5) Comparative Evaluation of Alternative Responses to Erosion

The Phases of the Bond Program will be: a) a comprehensive regional design phase creating a master plan, b) a municipal coordination phase, c) an individual reach design phase and d) a construction phase for each reach.

A major task will be the survey and assessment of the extent of damage or threat of damage and a priority listing of facilities, projects and programs, dealing with this damage. The objective is to physically alter the shoreline to correct for storm damage, retard or arrest erosion and increase the accretion process. This process will correct emergency conditions of storm damage, create larger protected beaches, provide additional and future shoreline protection from storms, rehabilitate existing shore protection structures and provide routine maintenance for shore protection facilities.

The program will also increase public participation, appreciation and awareness of shoreline uses by providing greater beach access, increasing public ownership of shorefront lands, providing stimuli for initiating and improving local beach protection laws, providing incentives for increased local government land use planning and increasing State tourism and recreational use of the shoreline.

A community's eligibility for fundable projects will be determined by whether it has: 1) an acceptable beach access policy and planning process, 2) an acceptable beach/dune protection policy and other management techniques and 3) an acceptable high risk beach erosion policy and other management techniques.

The Division of Coastal Resources funded Rutgers University, Center for Coastal Environmental Studies in 1979 to delineate dune management areas.

From 1952 to 1971, aerial photographs were taken by the Division of Coastal Resources in the spring and in the fall. These photographs created an excellent historical record of the shoreline. During 1972, the funds used for shore protection flights were diverted to wetlands photography, which produced coastal photography for 1972. Between 1973 and 1976, no flights were made. Half of the 1977-78 flight was flown in the fall of 1977 and the other half was flown in the Spring of 1978. All of the photography produced by the Division has enabled careful assessment of the effects of shoreline erosion.

To meet the specific "geographic areas of particular concern" requirements of the federal Coastal Zone Management Act (Section 305(b)(3)), New Jersey has designated all coastal wetlands, the Higbee Beach-Pond Creek Meadow Area, wet sand beaches and the Hackensack Meadowland District as "geographic areas of particular concern" as defined under federal law. New Jersey has also defined ten areas under the State Natural Area System Act of 1976 as "geographic areas of particular concern". New Jersey has decided not to designate any geographic areas of particular concern, under federal law, for erosion purposes, although the wet sand beaches clearly are areas where erosion sometimes occur. Under the federal Coastal Zone Management Act, states must also establish a process for identifying various preservation and restoration areas. The chief process employed by New Jersey for identifying such areas in terms of shoreline erosion is the shore protection master plan currently underway. The aim of the master plan is to identify on a reach-by-reach basis, those areas in need of various types of shore protection. Areas appropriate for restoration will be included as part of this process.

New Jersey's basic procedure for managing the effects of shoreline erosion is the ongoing program of analyzing the shore protection needs of the State and responding to those needs, within the limits of available technical and financial resources, with appropriate construction activity. Each year, DEP's Division of Coastal Resources makes an annual determination on the projects likely to be funded in a particular year. Depending upon the availability of funds and the need for and the urgency of shoreline erosion, projects may range widely in scope.

For example, current projects under consideration in 1979 include construction of three low profile groins at Sea Isle City (Cape May County), replacing the deteriorated timber bulkheads with aluminum bulkheads in Shark River in Neptune Township (Monmouth County), replacing steel bulkheads with reinforced slab bulkhead at Belmar (Monmouth County), replacing and repairing a stone seawall along Ocean Drive at the northern tip of Avalon (Cape May County), constructing a jetty at Bidwells Creek Harbor of refuge at Middle Township (Cape May County), constructing a bulkhead at Wills Hole Thorofare, Point Pleasant Beach (Ocean County), repairing the seawall at Sea Bright (Monmouth County), and beach replenishment in Atlantic City (Atlantic County). These illustrative projects are all managed jointly by DEP in conjunction with the appropriate municipality.

In addition, DEP undertakes emergency shore protection action as necessitated by storms and natural disasters. Also, shore protection needs that develop through the ongoing inspection programs of the Division of Coastal Resources are addressed in this manner.

Enforceable Policies, Legal Authorities and Funding Techniques for Shoreline Erosion Management

New Jersey has proposed five key policies on shoreline erosion, which are contained in Chapter Four. The Special Area Policies on High Risk Erosion Areas, Beaches and Dunes (7:7E-3.19), Use Policies on Coastal Engineering (7:7E-7.11), and the Resource Policy on Flood Hazard Areas (7:7E-8.23) are the applicable policies. In addition, the more general policy on shoreline erosion, and the appropriation of shore protection funds can be found in the enabling legislation for the 1977 Beaches and Harbor Bond Issue.

The statutory basis for New Jersey's shoreline erosion planning and management efforts rests upon several State laws. First, P.L. 1940, C. 42 authorized and empowered the Department of Environmental Protection to repair, construct or reconstruct bulkheads, seawalls and other shore protection structures, including beachfills and dunes as necessary to protect the environment. The Beaches and Harbors Fund established by the 1977 Beaches and Harbors Bond Issue also explicitly authorizes this Department to undertake shore protection planning and to implement the plan that is developed. The first appropriation of funds from the bond issue reiterated the importance of and reauthorized the Department's efforts. In addition, the enabling legislation establishing the Department in 1970 authorized the preparation of comprehensive plans for natural resource management. The planning mandate of the Coastal Area Facility Review Act also authorizes the Department to prepare a management strategy for the coastal environment, which includes the shoreline. The chief funding program available for shoreline erosion planning and management is the 1977 Harbors and Beaches Bond Issue which provides for $20 million in funds that may be made available to municipalities on a matching basis. In previous years, an annual appropriation of $1 million was made available for shore protection purposes, a sum that proved inadequate to the task. In

addition, funds may be available for large scale projects that are part of an approved federal project financed by the U.S. Army Corps of Engineers. This applies particularly to protective work for the major inlets along the Jersey shoreline.

Finally, the land management activities regulated through New Jersey's coastal management program also address shoreline erosion planning to the extent that inappropriately located development is carefully scrutinized and prohibited where necessary, when it would adversely effect shoreline erosion problems.

In 1977, recognizing the severity of the problem and the limited resources available, the Beach and Harbor Bond Act (P.L. 1977, c. 208) was passed. The Act authorized the creation of a debt of the State of New Jersey by the issuance of bonds of the state in the aggregate principal in the amount of $30,000,000 for the purposes of researching, planning, acquiring, developing, constructing and maintaining beach (and harbor) restoration.

In 1978, the Commissioner of the New Jersey Department of Environmental Protection, under the authority of "Beaches and Harbors Bond Act of 1977" P.L. 1977, c.208, N.J.S.A. 12:6A-1 et seq., and N.J.S.A. 13:1-11 et seq. proposed to adopt regulations to establish procedures for governing the operation of shore protection construction projects and research design programs that are financed, in part or in whole, by funds from the Beaches and Harbor Fund. The rules proposed prescribe procedures for application, selection, award, and administration of matching grants and design or construction contracts; provide guidance for determining site specific considerations for locating shore protection structures; establish policies and procedures for distribution of operational funds for the purpose of making State matching grants to local governmental agencies for the planning, design and construction of shore protection facilities, dune restoration, and beachfill projects; establish procedures for contract construction. Also, the proposed rules provide guidance in developing a comprehensive shore protection plan.

## CHAPTER SIX - NEXT STEPS IN COASTAL MANAGEMENT IN NEW JERSEY

Introduction
Management System
Coastal Policies
Data Management and Information System
New Legislation
Conclusion

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### Introduction

New Jersey has devoted growing attention to the management of its coastal zone over the last ten years. This New Jersey Coastal Management Program and Final Environmental Impact Statement presents the results of the efforts to date. The anticipated federal approval of the New Jersey Coastal Management Program will be an important step forward. New Jersey will then become eligible for increased grants to implement the program throughout the coastal zone under Section 306 of the CZMA. These grants will enable the State to apply the program and to refine and improve it as necessary. The coastal activities New Jersey plans to pursue following program approval are summarized below. They are grouped into four general areas: Management System, Coastal Policies, Data Management and Information System, and New Legislation.

### Management System

New Jersey will continue to work to improve the clarity and efficiency of its coastal regulatory programs. This will include following up the reorganization of the Division of Coastal Resources (formerly Marine Services) in the summer of 1979, with the preparation of one set of procedural rules to govern the CAFRA, Wetlands and Waterfront Development permit programs, and with further efforts to insure that only one review process is required for an applicant needing any number of approvals from the Division.

In addition, the Division will further develop its monitoring and enforcement activities which were substantially upgraded by the Division reorganization. Staff will be added to the new Bureau of Coastal Enforcement and Field Services so that the Bureau will be able to insure that coastal activities subject to DEP regulation are, in fact, regulated and that coastal regulatory decisions made by the Division are followed.

The Division of Coastal Resources will also work with other parts of DEP and other State agencies to maximize the use of the Coastal Resource and Development Policies, and to create additional procedures for the joint review of projects requiring permits and/or funding from several state sources. Similarly, the Division will continue to seek such opportunities with federal, regional, county and municipal agencies. The application of "federal consistency" to projects in New Jersey once the Coastal Management Program is approved should enhance State-Federal coordination.

The Division of Coastal Resources will also continue to seek specific local projects which can help further the Coastal Resource and Development Policies. The Division will pass through a limited number of small grants from its CZMA grants to municipalities and counties in the coastal zone. In addition, the Division will provide advice and technical support to regional and interstate agencies, municipalities, counties for projects such as the review of plans, ordinances and specific coastal proposals, and to help identify and coordinate other state, regional and federal agencies which may be able to collectively help realize a local coastal project.

Lastly, DEP will continue its public participation program to insure that people affected by the Coastal Management Program are aware of it and understand it, and that interested people have opportunities to help improve it. DEP, therefore, will continue to publish The Jersey Coast, to produce reports, displays, and slide shows focused on coastal issues and to speak frequently at public meetings and events.

Coastal Policies

DEP will continue to develop the Coastal Resource and Development Policies to make them increasingly specific, predictable and easily understandable. At least once each year, the Department will consider whether revisions should be proposed to the administrative rules under which the policies will be adopted.

The Department will incorporate the work products received from two contractual studies completed in 1979: an estuarine study and a development potential study. In addition, DEP will continue to seek and explore techniques to more fully integrate social and economic information into coastal decision making. DEP will also continue to analyze specific coastal issues of importance including fisheries management, the development of a shore protection master plan, and the appropriate location for marine and estuarine sanctuaries in New Jersey. The Department will then use the results of these analyses to propose revisions to the Coastal Resource and Development Policies and to take other steps which may be indicated.

Data Management and Information System

One major current and continuing activity of the New Jersey Coastal Management Program is the development of a geographic information system which would be useful for coastal planning and decision making by the Division of Coastal Resources and valuable for as many other DEP programs, and programs in other State, Federal and local agencies, as possible. One important goal of such a system is that it be stored on a computer so that information could be readily used for a wide variety of calculations and could also be routinely updated relatively easily and cheaply.

The Coastal Location Acceptability Method (CLAM), the automating of CLAM (Auto-CLAM), and further adaptations require a wide variety of geographic and tabular data from a number of sources. Output quality is limited by the accuracy and updatedness of these data. Remote sensing data, both optical and digital, ground truth surveys, monitoring station data and published data must all be integrated and combined in a single analysis. This requires better survey updating and better indexing and cross referencing of geo-data than now exists.

## New Legislation

The New Jersey Coastal Management Program is based entirely on existing State laws. In the course of administering these laws and of preparing the Coastal Management Program, interested citizens and DEP staff have suggested potentially desirable changes which could not take effect without enactment of one or more new laws. While such changes are not necessary to achieve federal approval of the coastal management program, DEP will work to explore in detail the desirability and feasibility of such changes to improve the effectiveness and efficiency of the Program.

In Options for New Jersey's Developed Coast (March 1979), DEP included for public comment a description of one possible new coastal law (pages 43-49). This is just one of the legislative options DEP will consider. In brief, the issues which DEP will pursue which may require new legislation include the following:

- Protection of sand dunes and restriction of building in areas subject to storm damage.

- Restriction of development which threatens or blocks public access to, or mars the view presented, by the Palisades.

- Consolidation of the three current State coastal permits -- CAFRA, Wetlands and Waterfront Development -- into one permit program. This would include a reevaluation of the types of development subject to DEP regulation so that, for example, environmentally sensitive areas could be regulated more intensively than they now are, while less vulnerable areas would be less intensively regulated.

- Delegation of some DEP regulatory responsibilities to county or municipal governments. This delegation would be proposed only for local governments with adopted plans and ordinances consistent with the New Jersey Coastal Management Program, and only if DEP retained the right to overrule local variances, amendments or modifications to local plans it had certified.

## Conclusion

Changes to the program will be fully discused in public before they are adopted, and will be incorporated according to the National Oceanic and Atmospheric Administration Final Regulations for Amendments to and Termination of Approved Management Programs (CFR 9, Chapter IX, Part 923, Subpart 1).

As this Chapter has demonstrated, Federal approval of the New Jersey Coastal Management Program will accelerate, rather than conclude, coastal planning and coastal management in the State.

# PART III

DESCRIPTION OF THE NEW JERSEY COASTAL ZONE -
AFFECTED ENVIRONMENT

## PART III - DESCRIPTION OF THE NEW JERSEY COASTAL ZONE: AFFECTED ENVIRONMENT

Introduction
Delineating the Boundary
Municipalities Within the Coastal Zone
Description and Visions of the Coastal Zone
  Northern Waterfront Area
  Bay and Ocean Shore Area
  Delaware River Area

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### Introduction

This part of the Final EIS describes the geographic area affected by the management program for the New Jersey Coastal Zone. The criteria used to delineate the coastal zone will be discussed, followed by a description of the coastal zone as it is today, together with a general vision of what the zone is likely to become following implementation of the Coastal Management Program.

### Delineation of the Boundary

New Jersey's coastal zone extends from the New York border south to Cape May Point and then north to Trenton. It encompasses the waters and waterfronts of the Hudson River and related water bodies south to the Raritan Bay, the Atlantic Ocean and some inland areas from Sandy Hook to Cape May, the Delaware Bay and some inland areas, and the waterfront of the Delaware River and related tributaries. The coastal zone encompasses areas in which the State, through the Department of Environmental Protection, has the authority to regulate land and water uses that have a significant impact on coastal waters. These authorities include the Coastal Area Facility Review Act (CAFRA), the Wetlands Act, the Waterfront Development Law, riparian statutes, and the Hackensack Meadowlands Reclamation and Development Act.

The inland boundary for the portion of the coast traditionally regarded as the "Jersey Shore" from Sandy Hook to Cape May, plus adjacent areas along Raritan Bay and Delaware Bay (consisting of parts of Middlesex, Monmouth, Ocean, Burlington, Atlantic, Cape May, Cumberland and Salem Counties) is defined as:

> the landward boundary of the Coastal Area as defined in the Coastal Area Facility Review Act (CAFRA), or the upper boundary of coastal wetlands located landward of the CAFRA boundary along tidal water courses flowing through the CAFRA area, whichever is more landward, including State-owned tidelands.

In the more developed portions of the State (including portions of Salem, Gloucester, Camden, Burlington, Mercer, Middlesex, Somerset, Union, Hudson, Essex, Passaic and Bergen Counties) the coastal zone boundary is defined as:

> the landward boundary of the State's jurisdiction under the Waterfront Development Act (N.J.S.A. 12:5-3) or the Wetlands Act (N.J.S.A. 13:9A-1), or the landward boundary of State-owned tidelands, whichever extends farthest inland.



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The boundary in these parts of the coastal zone coincides with the geographic jurisdiction of the Waterfront Development Law (discussed in "Principal Implementation Programs" section of Chapter Three).

The boundary of the Hackensack Meadowlands region is defined as:

> the boundary of the area defined as the Hackensack Meadowlands District by the Hackensack Meadowlands Reclamation and Development Act (N.J.S.A. 13:17-1 et seq.).

The seaward boundary of the coastal zone is the three nautical mile limit of the United States Territorial Sea, and the interstate boundaries of the States of New York, and Delaware and the Commonwealth of Pennsylvania.

A generalized view of the New Jersey Coastal Zone is shown in Figure 38.

The federal Coastal Zone Management Act establishes the following general standards which states must meet in selecting a coastal zone boundary.

> "'coastal zone' means the coastal waters (including the lands therein and thereunder) and the adjacent shorelands (including the waters therein and thereunder), strongly influenced by each other and in proximity to the shorelines of the several coastal states, and includes islands, transitional and intertidal areas, salt marshes, wetlands, and beaches. The zone extends ... seaward to the outer limit of the United States territorial sea. The zone extends inland from the shorelines only to the extent necessary to control shorelands, the uses of which have a direct and significant impact on the coastal waters. Excluded from the coastal zone are lands the use of which is by law subject solely to the discretion of or which is held in trust by the Federal Government, its officers or agents." (Section 304 (1))

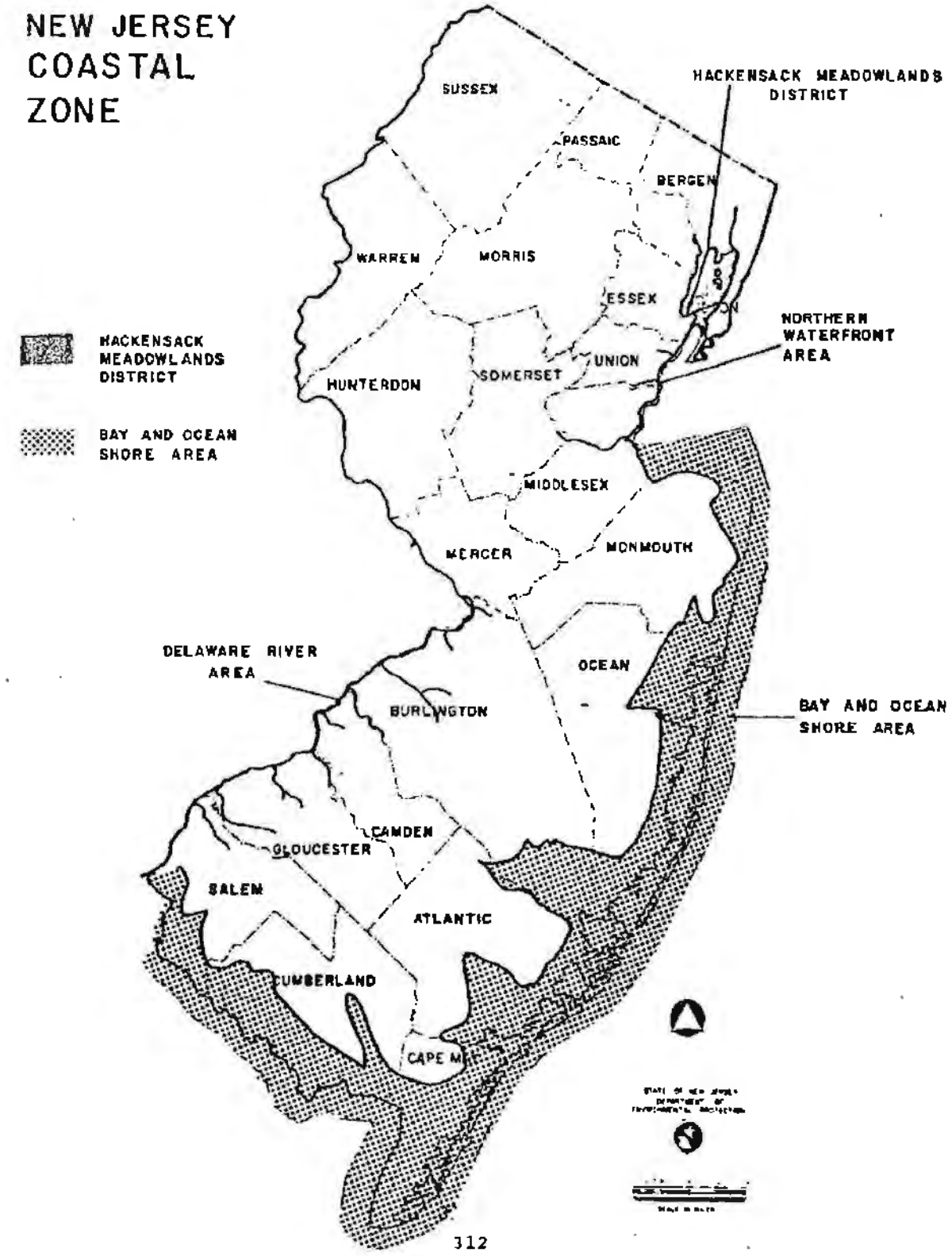
DEP first publicly analyzed the selection of the coastal zone boundary in December 1976 in a staff working paper entitled "Alternative Boundaries for New Jersey's Coastal Zone". This 55 page paper, which was widely circulated and discussed, described possible boundaries and included a preliminary recommendation.

The coastal zone boundary is a detailed refinement of the preliminary recommendation. Comments by interested individuals and groups, particularly County Planning Boards, suggested specific modifications, some of which have been incorporated into the boundary. The most significant change has been the restriction of the Coastal Zone to areas over which the Department has jurisdiction.

Coastal Waters include tidal portions of the Atlantic Ocean, Hudson River, Passaic River, Hackensack River, Raritan River, Delaware River, Newark Bay, Upper New York Bay, Raritan Bay, Arthur Kill, Kill Van Kull, Delaware Bay and their tidal tributaries, and other tidal streams of the Coastal Plain.

The upstream extent of coastal waters can be defined either by the limit of waters containing a specified percentage of salinity, the extent of the salt wedge, or tidal influence. DEP has chosen the landward penetration of tidal influence in a watercourse because this provides a readily measurable dividing line for coastal and non-coastal waters. (The tidal limit also coincides with the extent of State-owned tidelands under the tidelands management program). Salinity levels are

Figure 38




312

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highly variable geographically throughout the seasons and from year-to-year, and therefore not appropriate for fixed boundaries, given the complexity and diversity of New Jersey's estuaries.

Two methods have been used to define the upstream limit of tidal activity. First, the approximate tidal limits specified in the annual Compendium of New Jersey Fish Laws, published by DEP's Division of Fish, Game and Wildlife have been used where available. These limits are typically defined as bridges or dams. Second, the point where the 20 foot contour interval crosses the water course is used to define the approximate limit of tidal influence along other tidal water courses. The 20 foot contour line criterion was suggested by DEP's Office of Environmental Analysis, since most of tidal influence is within the first 20 foot elevation.

The Office of Environmental Analysis is currently working to define precisely and legally New Jersey's tidal limits and also the State's claim to tide-flowed lands. This delineation is now complete for the Hackensack Meadowlands District. When this work is completed for other parts of the coastal zone, DEP will consider amendments to the coastal zone boundary. The New Jersey Supreme Court recently upheld DEP's method for delineation in the case of City of Newark v. Natural Resource Council (May 15, 1980).

Tidal influence makes the Delaware River region immediately adjacent to these waters "coastal" in the sense intended by the federal Coastal Zone Management Act. Although the Coastal Area Facility Review Act (CAFRA) boundary stops south of the Delaware Memorial Bridge, the tidal influence on the Delaware River extends 60 miles further north to Trenton. Because of the flat topography of the Coastal Plain, tidal tributaries from the Delaware River extend up to 10 miles inland. NOAA-OCZM does not require inclusion of the Delaware River within New Jersey's coastal zone as the quantity of seawater is less than five parts per thousand. However, the State of New Jersey does today manage the wetlands and riparian lands along this part of the coast and DEP chose to include these areas within the coastal zone because they can benefit from the application of the Coastal Resource and Development Policies to State decisions and from the increased attention and funding available to areas within the coastal zone.

As part of their contracts with DEP, several coastal county planning boards suggested a coastal zone boundary for their county. These suggestions were summarized and analyzed by DEP in Options for New Jersey's Developed Coast.

One other comment on the boundary is worthy of note. That is the boundary modification suggested by the Wave Hill Center for Environmental Studies, the Waterfront Coalition of Hudson and Bergen, and others, to include the Palisades area in the coastal zone. This area, extending from the New York-New Jersey boundary on the north, could be defined in several ways to include the magnificent cliffs which can be seen from the Hudson River and New York and which provide a fine waterfront view from New Jersey. DEP has not included this area in the coastal zone because it lacks authority to regulate or manage development affecting the view presented by the Palisades. This area is, however, discussed in the "Next Steps" chapter of Part II (Chapter Six).

## Municipalities Within the New Jersey Coastal Zone

The coastal zone includes at least a small part of a total of 245 municipalities in seventeen of New Jersey's twenty-one counties. Only Hunterdon, Morris, Sussex, and Warren counties have no coastal waters and are entirely excluded from the coastal zone. This relatively large zone, united by the presence of coastal waters, is quite diverse, stretching from the port at Camden to the vast wetlands along Delaware Bay, to the beaches of the barrier islands along the ocean, to the industrialized waterfront of northern New Jersey.

The municipalities are listed below by region and by county beginning with the Northern Waterfront Area (which includes the Hackensack Meadowlands District) continuing into the Bay and Ocean Shore area and then into the Delaware River Area.

### NORTHERN WATERFRONT AREA

#### Bergen County

Alpine Borough
Bogota Borough
Carlstadt Borough
East Rutherford Borough
Edgewater Borough
Englewood Cliffs Borough
Fairview Borough
Fort Lee Borough
Garfield City
Hackensack City
Little Ferry Borough
Lodi Borough
Lyndhurst Township
Moonachie Borough
New Milford Borough
North Arlington Borough
Oradell Borough
Ridgefield Borough
Ridgefield Park Village
River Edge Borough
Rutherford Borough
South Hackensack Township
Teaneck Township
Teterboro Borough
Wallington Borough

#### Essex County

Belleville Town
Newark City
Nutley Town

#### Hudson County

Bayonne City
East Newark Borough
Guttenberg Town
Harrison Town
Hoboken City
Jersey City
Kearny Town
North Bergen Township
Secaucus Town
West New York Town

#### Middlesex County

Carteret Borough
East Brunswick Township
Edison Township
Highland Park Borough
New Brunswick City
Old Bridge Township
Perth Amboy City
Piscataway Township
Sayreville Borough
South Amboy City
South River Borough
Woodbridge Township

Passaic County

Clifton City

Passaic City

Somerset County

Franklin Township

Union County

Elizabeth City
Linden City

Rahway City

BAY AND OCEAN SHORE AREA

### Atlantic County

Absecon City
Atlantic City
Brigantine City
Corbin City
Egg Harbor City
Egg Harbor Township
Estell Manor Township
Galloway Township
Hamilton Township
Linwood City
Longport Borough
Margate City
Mullica Township
Northfield City
Pleasantville City
Port Republic City
Somers Point City
Ventnor City
Weymouth Township

### Burlington County

Bass River Township
Washington Township

### Cape May County

Avalon Borough
Cape May City
Cape May Point Borough
Dennis Township
Lower Township
Middle Township
North Wildwood City
Ocean City
Sea Isle City
Stone Harbor Borough
Upper Township
West Cape May Borough
West Wildwood Borough
Wildwood City
West Wildwood Crest Borough
Woodbine Borough

### Cumberland County

Bridgeton City
Commercial Township
Downe Township
Fairfield Township
Greenwich Township
Hopewell Township
Lawrence Township
Maurice River Township
Millville City
Stow Creek Township

### Middlesex County

Old Bridge Township (Madison)
(Also in Northern Waterfront Area)

### Monmouth County

Aberdeen Township (Matawan)
Matawan Borough
Allenhurst Borough
Asbury Park City
Atlantic Highlands Borough
Avon-by-the-Sea Borough
Belmar Borough
Bradley Beach Borough
Loch Arbour Village
Long Branch City
Manasquan Borough
Middletown Township
Monmouth Beach Borough
Neptune City
Neptune Township
Ocean Township

Monmouth County - Cont.

Brielle Borough
Deal Borough
Eatontown Borough
Fair Haven Borough
Hazlet Township
Highlands Borough
Holmdel Township
Interlaken Borough
Keansburg Borough
Keyport Borough
Little Silver Borough
Oceanport Borough
Red Bank Borough
Rumson Borough
Sea Bright Borough
Sea Girt Borough
Shrewsbury Borough
South Belmar Borough
Spring Lake Borough
Spring Lake Heights Borough
Union Beach Borough
Wall Township
West Long Branch Borough

Ocean County

Barnegat Light Borough
Barnegat Township (Union)
Bay Head Borough
Beach Haven Borough
Beachwood Borough
Berkeley Township
Brick Township
Dover Township
Eagleswood Township
Harvey Cedars Borough
Island Heights Borough
Pine Beach Borough
Point Pleasant Beach Borough
Point Pleasant Borough
Seaside Heights Borough
Seaside Park Borough
Jackson Township
Lacey Township
Lakehurst Borough
Lakewood Township
Lavallette Township
Little Egg Harbor Township
Long Beach Township
Manchester Township
Mantoloking Borough
Ocean Gate Township
Ocean Township
Ship Bottom Borough
South Toms River Borough
Stafford Township
Surf City Borough
Tuckerton Borough

Salem County

Alloway Township (not in CAFRA Area)
Elsinboro Township
Lower Alloways Creek Township
Mannington Township
Pennsville Township
Quinton Township
Salem City
Carneys Point Township
(Upper Penns Neck)

## DELAWARE RIVER AREA

### Burlington County

Beverly City
Bordentown City
Bordentown Township
Burlington City
Burlington Township
Chesterfield Township
Cinnaminson Township
Delanco Township
Delran Township
Edgewater Park Township
Fieldsboro Borough
Florence Township
Hainesport Township
Lumberton Township
Mansfield Township
Maple Shade Township
Medford Township
Moorestown Township
Mount Holly Township
Mount Laurel Township
Palmyra Borough
Riverside Township
Riverton Borough
Southampton Township
Westhampton Township
Willingboro Township

### Camden County

Audubon Borough
Barrington Borough
Bellmawr Borough
Brooklawn Borough
Camden City
Cherry Hill Township
Gloucester City
Gloucester Township
Haddon Township
Hi-Nella Borough
Laurel Springs Borough
Lindenwold Borough
Magnolia Borough
Mount Ephraim Borough
Pennsauken Township
Runnemede Borough
Somerdale Borough
Stratford Borough

### Gloucester County

Deptford Township
East Greenwich Township
Greenwich Township
Logan Township
Mantua Township
National Park Borough
Paulsboro Borough
Swedesboro Borough
Wenonah Borough
West Deptford Township
Westville Borough
Woodbury City
Woolwich Township

### Mercer County

Hamilton Township
Trenton City

### Salem County

Carneys Point Township*
Mannington Township*
Oldmans Township
Pennsgrove Township
Pilesgrove Township
Penneville Township*

* Also in Bay and Ocean Shore Area

## Description and Visions of the Coastal Zone

This Chapter describes the character of the geographic area addressed by this report and presents visions of the future which DEP considers both desirable and achievable through implementation of the Coastal Management Program. It should be noted at the outset that the visions represent subjective judgements based upon visits to the areas, discussions with local residents and officials, and review of previously prepared reports, studies and plans.

The length and diversity of the coast suggests that it be described in segments. In this section, the Northern Waterfront Area is discussed first, followed by the Bay and Ocean Shore Area, and then the Delaware River Area.

### The Northern Waterfront Area

The Northern Waterfront is marked by diversity in its 60-mile stretch from Piscataway Township in Middlesex County to Alpine Borough in Bergen County. Present vistas of the waterfront range from high-rise apartments above the Palisades to broad tidal wetlands along the Raritan and South Rivers. The only common feature of the Northern Waterfront is that it has all been touched by human activity. The Coastal Management Program for the Northern Waterfront will seek to maintain the diverse character which sets apart the different sections of the waterfront, but it will also promote some changes in the use of the waterfront.

Much of the waterfront is currently occupied by underutilized or abandoned industrial or transportation facilities. Some of these sites will be assembled for new labor-intensive industrial uses while others will be redeveloped as park land or for commercial use. Much more of the waterfront should be made accessible to the public, while water quality should be improved to allow recreational boating at many points. Residential areas near the waterfront would then become more desirable places to live, both because of improved access to a cleaner waterfront and because of buffering from industrial and transportation facilities.

The Northern Waterfront will be addressed in this section by first traveling down the outer waterfront from the Palisades to Raritan Bay and then moving up the tidal portions of the region's rivers. Although the character of the northern waterfront can change dramatically in a short distance, segments of different rivers often show similar characteristics. The Upper New York Bay and Arthur Kill-Newark Bay regions -- the core area of the Northern Waterfront -- are similar industrial port districts which have known better days, but they are physically separated by the residential waterfront of Bayonne. The Upper Hackensack, Passaic and Rahway River segments, likewise, have similar urban/suburban waterfronts, while the Elizabeth and Perth Amboy Waterfronts have a similar urban residential character.

The Hudson River Region - The Hudson River shoreline from the New York State line to the George Washington Bridge, a distance of ten miles, is protected from development as part of the Palisades Interstate Park. In the future, it will remain unspoiled and continue to provide a spectacular vista of the Palisades Cliffs as they rise from the river.

Below the George Washington Bridge, the northern waterfront takes on a two-tiered character, with uses on top of the Palisades entirely different from those below. For the twelve miles from the Bridge to Liberty State Park in Jersey City, the narrow waterfront between the cliffs and river is in large part the scene of

railroad yards and docks, many of them underutilized or abandoned. One town, the Borough of Edgewater, is also below the cliffs. At the top of the cliffs are suburban-type residential neighborhoods with an increasing number of high-rises. Because not all of the waterfront area is needed for rail and ship transportation facilities or for new industrial facilities, the creation of waterfront parks to meet the recreational needs of the densely populated neighborhoods atop the cliffs is both desirable and feasible. Because of severe traffic congestion on top of the cliffs and the lack of a mass transit system, an end to the indiscriminate construction of high rises in this area is desirable. In particular, some have suggested that no new high rises should be constructed between Route 505 (Boulevard East) and the River, as such construction would further limit public access to the waterfront. As noted above, the Coastal Management Program will not contain the authority to prevent such construction.

Liberty State Park in Jersey City, already the most popular facility of the state park system, will continue to be a chief recreational facility for the inner core of the Northeast New Jersey Metropolitan Region. Planning is underway for future recreational development of the park and for the transformation of the abandoned Central Railroad of New Jersey terminal within the Park into an activity center, as part of the revitalization of surrounding residential development in Jersey City. The City of Hoboken is pursuing similar plans for the Erie-Lackawanna terminal.

Upper New York Bay Region - South of the Park is Caven Point. Of a total of 440 acres, 230 acres upland and 210 are a tidal flat. This area is important because it is a wintering spot for waterfowl and a nursery for juvenile fish. This tidal flat, along with the 60 acre Natural Area at Liberty State Park, are the last remaining tidal flats of this type in the Hudson River Region. At low tide, a broad, flat area is exposed along much of the shoreline. Caven Point's special value to fish lies in its shallow depth and natural shoreline. The site is a natural cove, bounded by a sandy beach area. Adjacent to the cove is a pier used for fishing, which is about 3/4 mile in length.

Inland of Caven Point, the waterfront is much the same as it is to the north except that the transportation-oriented waterfront area is wider and the residential sections of Jersey City are separated from the waterfront by the New Jersey Turnpike. This area has been suggested for industrial redevelopment because it is separated from residential sections of the city. One such proposal was made by the Port Authority of New York and New Jersey, for an industrial park at Greenville Yards. At the same time, neighborhood groups in Jersey City have proposed that housing or mixed use development would be more appropriate. Further south, in Bayonne, industrial facilities and oil storage tanks occupy the Kill Van Kull waterfront, with residential neighborhoods in close proximity. In this area, buffering of residential from industrial uses will be the best way to improve the quality of the urban neighborhood. Along Bayonne's western waterfront of Newark Bay and also along part of Kill Van Kull, residential neighborhoods are adjacent to the water's edge. Also, two parks line the bayfront. This area is likely to be little changed in the future, although the parks, which offer a place to watch the busy commercial activities of Newark Bay, may be improved and possibly expanded. At the northern end of Newark Bay in Jersey City, a regional shopping center and other business occupy the waterfront. As the water quality of the Bay is improved, the waterfront should change from a parking lot to an asset attracting people to these businesses.

Newark Bay-Arthur Kill Region - Newark Bay divides into the Hackensack and Passaic Rivers between Jersey City and Newark. Along the two-mile stretch before both rivers enter the Hackensack Meadowlands District, the shorelines are heavily industrialized with the exception of the half-mile waterfront of Lincoln Park in Jersey City. Because of the proximity of these rivers to the Newark and Jersey City labor force, this area should continue to be a good location for industry.

On the western shore of Newark Bay is the City of Newark. Most of its bay frontage consists of the rundown vestiges of an industrial waterfront. The waterfront is separated from Newark's residential neighborhoods by several blocks but is near enough to the City's labor force to make it a prime location for industrial redevelopment. At the southern end of Newark's waterfront and the northern end of Elizabeth's is a modern container port. It is a major employer and an example of the potential of a modernized waterfront. South of the container port in Elizabeth is a large tract of vacant waterfront served by rail. This land is being considered by the Port Authority of New York and New Jersey for promotion under its industrial park development program.

Continuing south, Newark Bay gives way to Arthur Kill. The northernmost three-fourths of a mile of the Kill is bordered by an old, urban residential neighborhood within the City of Elizabeth. Creation and enhancement of public open space in the narrow sector between homes and the Kill will enhance this neighborhood and encourage its preservation. From Elizabeth south to the Middlesex County boundary (City of Linden), the shoreline of the Kill has considerable amounts of wetlands which have been developed. Petroleum tank farms are the most prevalent developed use. In the future, this portion of waterfront is likely to have continued industrial use, but stronger measures to preserve those wetlands which are undeveloped (all the undeveloped coastal wetlands in Linden are owned by adjacent industries) are desirable.

Middlesex County has docks and warehouses along the shoreline, but also about as much vacant land as in Union County. Wetlands are found primarily along Woodbridge Creek, a small tidal tributary. Also, as in Union County, water dependent industry is the major use for the waterfront, but lands not needed by industry should be preserved in order to maintain the estuarine ecosystem. In the City of Perth Amboy is a site which is being evaluated for its potential as a support base for offshore oil and gas operations. Further south in Perth Amboy, residential neighborhoods and a park extend to the waterfront.

Across the Raritan River, the entire Raritan bayfront, with the exception of a residential neighborhood in South Amboy, consists of vacant land separated from residential neighborhoods by the North Jersey Shore rail line. Because of its proximity to existing residential neighborhoods and public transportation, this land has potential for residential, commercial or industrial development (if properly buffered from residences), as well as for public open space.

At the end of this sector of vacant land along Raritan Bay is the beginning of the Bay and Ocean Shore Segment. This analysis will, therefore, turn to the tidal portions of the rivers which flow into this "outer" northern waterfront.

Upper Hackensack River Region - Beginning in the north, the first river is the Hackensack which is tidal to Oradell, Bergen County. For the first 4 1/2 miles from Oradell to Hackensack, the river is surrounded by suburban residential neighborhoods with some commercial uses. Some people have suggested a cycling or hiking path in this area, and Bergen County is considering plans for impoundment of the river at Hackensack to create a lake-park complex.

Where the Hackensack River enters the Meadowlands District it is joined by the Overpeck Creek, a tributary which is tidal for the four miles to Leonia. For the upper two miles, the shoreline is public open space -- Overpeck Park. From the park to the river's juncture with the Hackensack, land uses along the creek include industry, a small amount of commercial and residential property and a large percentage of vacant land. This vacant land, like vacant land on the nearby portion of the Hackensack, will provide for recreation such as boat launching or fishing provided that water quality is brought up to state standards. It could also be a site for water-oriented commercial uses, or minimally polluting industries.

Passaic River Region - The Passaic River is tidal from the Dundee Dam at Clifton to Newark Bay. North of Newark the river is bordered by suburban and urban residential neighborhoods, but much of the immediate waterfront is given over to industries, especially textiles and related printing and dyeing. On the west bank, public access is also denied by State Highway 21. Wherever possible along this stretch of river, public access will be acquired, and where feasible a foot or cycling path system will be developed to enhance the recreational opportunities of the densely populated cities and towns along the banks, while water-dependent industries would continue to provide employment. The Saddle River which flows into the Passaic at the Garfield-Hasbrouck Heights border is tidal for about two miles. The shores of this river are largely undeveloped although residential and commercial uses do encroach certain sections. Because of its less developed shoreline, this river segment has more potential than the Passaic for ecologically sound, planned development, which will encompass a number of different but compatible uses. As the Passaic River reaches Newark, industrial uses become dominant although much of the immediate waterfront is vacant or is occupied by abandoned structures. Revitalization of industry and commerce where possible, and development of small parks or river access paths elsewhere is a desirable future for the Passaic as it passes between Newark on the west and Kearny, East Newark and Harrison on the east.

Elizabeth River Region - In the City of Elizabeth, the Elizabeth River is tidal for two miles as it flows into Arthur Kill, although the length of tidal waters may be diminished by a current U.S. Army Corps of Engineers flood control project. There is some riverfront park land as well as vacant land along the shore, but for the most part homes and apartments line its banks, limiting the potential for public access. In the future, parks will be improved and public access provided where feasible, although greater improvement in the river's environment will be a result of improvement in water quality.

Rahway River Region - The Rahway River is tidal for five miles from Grand Avenue in Rahway to the Arthur Kill. Above Grand Avenue on the non-tidal portion of the river, Union County has acquired the river corridor for public open space, and the river provides opportunities for canoeing, hiking and other forms of recreation. In the tidal portion of the river, however, there is a wide assortment

of land uses, few of which take advantage of the river. In Rahway itself, single-family homes, commercial establishments, and a marina line the river, while closer to the Arthur Kill the shoreline becomes marshy and vacant with the exception of some tank farms which do not appear to be water dependent. In the future, the wetlands near the Kill should be preserved, and improvements should be made along the riverfront in Rahway to make it more of an asset to adjacent neighborhoods and businesses.

Raritan River Region - The Raritan River's tidal reach extends inland to Interstate Route 287 in Piscataway Township. From Route 287 to New Brunswick, the Raritan is paralleled on the south by the Delaware and Raritan Canal. On the north, much of the land is park land, although in some areas the riverfront is residential. Under the direction of the Delaware and Raritan Canal Commission, DEP and the Middlesex County Park Department, the canal should be restored and the Park maintained. Access to the riverfront will, however, be limited in some areas by construction designed to make State Highway 18 a limited access highway. In New Brunswick, the riverfront has already been separated from urban neighborhoods by Route 18, but a pedestrian bridge provides access to public open space along the banks. Public and private emphasis should be placed on assuring continued public access despite highway construction.

East of New Brunswick is an extensive river wetland area. The area extends along the Raritan and up its tributary, the South River. This wetland should be preserved as an open space resource for surrounding residential neighborhoods, as well as for a source of nourishment for the Raritan estuary system.

Further east, the south bank of the Raritan is the scene of shipping and industrial facilities, many of them abandoned. On the north bank is a former arsenal which is being redeveloped as an industrial park. Industry is likely to remain the dominant use of the area near the mouth of the Raritan in this vision of the future Northern Waterfront.

Hackensack Meadowlands District - Within the Northern Waterfront Area is the Hackensack Meadowlands District, a thirty-one square mile area of tidal wetlands, fresh water wetlands and upland located along the Hackensack River six miles west of midtown Manhattan. Until 1968, the District was largely undeveloped except for huge landfills, warehouses, and some light industry and electrical generating facilities. In that year, the Legislature created the Hackensack Meadowlands Development Commission (HMDC), a state agency intended to direct the orderly and comprehensive development of this area. In the ten years of the Commission's existence, the Meadowlands Sports Complex, consisting of a football/soccer stadium and a racetrack, and new commercial and light industrial buildings have been erected on the west bank of the Hackensack River. On the east bank, the Harmon Cove area, including a planned unit residential development, the Meadowlands Hilton Hotel and several office and industrial buildings, have been developed. Much of the Meadowlands, however, still remains undeveloped.

A vision for the Meadowlands has already been created by the HMDC, which was given full planning and zoning authority for the District by its enabling legislation. In 1972, the HMDC introduced a master plan which foresees the development of additional planned residential-commercial-office complexes designed to both take

advantage of the wetlands environment and preserve it to the maximum extent possible. The plan also calls for the preservation of several large wetlands preserves and the creation of one major and several smaller parks. The Commission's Open Space Plan calls for the preservation of 6,626 acres of open space, of which 3,576 acres are wetlands.

The Master Plan was substantially amended in 1977, 1978 and 1979 and will no doubt be amended in the future. DEP has elected to adopt this evolving vision, as the vision of the State's Coastal Management Program.

The Bay and Ocean Shore Area

This Coastal Management Program envisions a future Bay and Ocean Shore Area which will reflect the historic development of the region as part intense recreation area, part natural, undeveloped area, and part built-up area. The patterns and intensity of development will be better managed in the future. For example, to minimize conflict between noncompatible uses, similar activities will be located near each other. New developments will be designed to take advantage of increased understanding of natural, as well as economic and social, processes and will therefore have a greater net positive impact on the coast and the entire State than some past development.

New developments will be heavily concentrated in, or immediately adjacent to, existing developed areas. Recreation and tourism will continue to be the largest industry in the coastal zone, and will perhaps expand as a result of development in Atlantic City. Other urban areas in the coastal zone may be revitalized as well, as a result of efforts to concentrate new construction, to develop urban waterfronts, and to encourage expansion of recreational activities in urban areas.

Other industries will be located in inland parts of the coast. Single family detached housing will continue to be common, but the coastal zone will have increasing numbers of cluster developments, contributing to more efficient settlement patterns.

The ocean waterfront from Sandy Hook to Cape May will be devoted almost exclusively to recreation and commercial fishing. An exception is the possible location of offshore pipeline crossings in a very small number of shorefront areas. The inland areas of the coastal zone nearest the ocean will continue to provide housing and commercial services for seasonal and year round residents. Portions of the coastal zone further inland will also provide housing and locations for some industries, as well as land for agriculture, preservation of plant and wildlife, and recreation.

As this program is implemented and this vision becomes reality, some positive results will be immediate and directly visible, such as the halt in the indiscriminate high-rise construction along the Atlantic Ocean shoreline. Other changes in the coastal zone will be less visible, and perhaps take more time, such as changes in water quality making possible renewed swimming in now polluted waters, and a revised public attitude towards the value and need to protect the ocean and the coast.

Barrier Beach Region - The Barrier Beach Region includes the Sandy Hook Spit south to Monmouth Beach, headlands from Monmouth Beach to Bayhead, and the barrier island chain of Island Beach, Long Beach, Little Beach, Brigantine, Absecon, Pecks, Ludlum Beach, Seven Mile Beach, and Four Mile Beach Island. The inland boundary of the parts of the Barrier Beach Region that do not have a west waterbody is the first cultural feature.

The islands, headlands, and spits are considered one region due to their oceanfront locations. The issues associated with these areas far outweigh the differences between them. The ocean shorefront in the northern part of the segment, for example, although it is not strictly speaking a barrier island, responds to development and natural events in a manner similar to the barrier island locations adjacent to the ocean or bay.

The future of the Barrier Beach Region will be a continuation of the present. Recreation will be the dominant use of this part of the coastal zone, and only small amounts of new development directly associated with recreation will be constructed. Such development will be located on sites which have been previously developed; undeveloped sites in this region will, for the most part, remain as open space. The focus of shore protection efforts will continue to shift from structural to nonstructural measures, including a halt to development most likely to be destroyed by storms or floods.

Northern Shore Region - The Northern Shore Region includes all of the CAFRA area north of the Manasquan River (the boundary between Monmouth and Ocean Counties), exclusive of the Barrier Island Region described above.

This section of the coastal zone is part of a more general suburban ring in the New York-Northern New Jersey Metropolitan area. Once a relatively undeveloped place of seasonal homes with a tourism-oriented economy, this region, like much of Monmouth and parts of Middlesex counties, became a "bedroom" suburb after World War II for more mobile and affluent people working in New York City. More recently, as industry and commerce have also suburbanized, this area has developed an economic base of its own. The region includes Asbury Park and Long Branch, which have experienced some of the decline typical of older Northeastern cities.

While designated a Development Region (see Part II, Chapter 4, Section 7:7E-5.3), this region is likely to change little in the foreseeable future. New developments will include housing development, possibly senior citizen developments, and light industry, and will occupy suitable sites which fill in largely developed areas. Initiatives at all levels of government may stimulate increased activity in Asbury Park and Long Branch.

Central Region - The Central Region is bounded in the north by the Monmouth-Ocean County Boundary, on the west by State Highway 37 and the Garden State Parkway in the south by Cedar Creek, and in the east by the back bay waters. Since 1950, this High Growth Region has held the position of the fastest growing area in the state. Relatively young, formerly urban families and senior citizens have constituted the bulk of Ocean County's population growth over the past twenty years. Population is currently growing faster than employment. Retail trade for both summer visitors and year round residents is the largest single source of employment.

Due to the availability of large, easy to develop and relatively low cost tracts of land, the region is still experiencing a housing boom. This type of largely residential, commercial, and light industrial development is likely to continue. The pattern of development in the region will one day form a relatively smooth transition between the densely populated Northern Region and the less developed Barnegat Corridor Region.

Western Ocean Region - Located west of the Garden State Parkway and southwest of State Highway 37, this small region has both large undeveloped, forested lands, large-scale senior citizen communities and areas devoted to ilmenite mining. New development in this region is expected to extend slowly beyond the current reach of development, avoiding the heavily forested Central Pine Barrens areas.

The Barnegat Corridor - This Extension Region, located south of Cedar Creek (the boundary between Berkeley and Lacey townships), north of State Highway 72, west of the back bay systems and east of the Garden State Parkway has experienced pockets of new development in the past decade. A regional sewage treatment system with collector systems to serve existing settled areas is under construction. Designation of this area as an Extension Region recognizes that a gradual pace of infill and some extension development is appropriate here, rather than the more intense and scattered development pattern acceptable in central and northern Ocean County. Additional residential development attracted by the regional center of Toms River is likely in the Barnegat Corridor and Western Ocean regions.

Mullica-Southern Ocean County Region - This Low Growth Region is bounded to the north by Route 72, to the west by the coastal zone boundary, to the south by Route 561 in Atlantic County, and to the east by the back bay systems. It excludes the Tuckerton Region, centered on the Borough of Tuckerton. This is the largely undeveloped Mullica Watershed and Southern Ocean County. The environmental value of the watershed and the inclusion of parts of the Pine Barrens and rural southern Ocean County suggest that this area should remain largely undeveloped. Limited amounts of new development may occur near existing development along U.S. Route 9 and the Garden State Parkway interchanges.

Tuckerton Region - The Tuckerton Region is bounded on the west by the Burlington-Ocean County border, on the north by U.S. Highway 9, Otis Bog Road, Nugentown Road and the Tuckerton Borough border, and on the south and east by the back bay system. The Tuckerton Region is a small region with the Borough of Tuckerton in the northeast area the Mystic Island Lagoon Development in the southwest. The region is designated for Extension of development. Commercial development is encouraged in the Tuckerton Central Business district while multi-family residential development is encouraged as infill in surrounding portions of the Borough. Planned residential development is encouraged as infill between Tuckerton and Mystic Island. The intent is to allow the develoment of a concentrated growth area within commuting range of Atlantic City.

Absecon-Somers Point Region - The Absecon-Somers Point Region is bounded on the north by the Mullica River watershed, to the west by the Garden State Parkway, to the south by Great Egg Harbor and to the east by the back bay water systems. This Development Region is likely to experience the most change of any part of the Bay and Ocean Shore Region as a result of the casino gambling industry in Atlantic

City. The region will be devoted to housing, tourist industries and other light to moderare industry. Because the existing infrastructure of Atlantic City once supported a population much larger than the present population, new development in this region should be able to locate in already developed, downtown areas of Atlantic City. However, unless land prices in Atlantic City reverse the upward trend which began after the Casino Referendum passed, housing and support facilities for people who work in Atlantic City will have to be located in surrounding towns.

Great Egg Harbor River Basin Region - This Limited Growth Region includes those portions of Atlantic County southwest of County Road Alternate 559 and those portions of Cape May County east of State Highway 50, north of County Road 585, and west of U.S. Route 9. In both its current and likely future character, it resembles the Mullica-South Ocean Region. It is a largely natural area which provides environmental benefits to the surrounding area and is likely to be developed at low residential densities.

Southern Region - The Southern Region is all of Cape May County within the coastal zone except that portion in the Great Egg Harbor River Basin Region and Barrier Island Region. Tourism accounts for approximately 90 percent of this Extension (of growth) Region's economic base, and has also played a major role in the region's development pattern. The region's ocean front municipalities and, to a lesser extent, several of its Delaware Bay shore municipalities are very highly developed, while haphazard, low density sprawl is the rule on the mainland. Due to the region's relative isolation and the absence of economic bases other than tourism, there is little year-round employment. This seasonality accounts for the region's low annual income. The Southern Region will be relatively unchanged. Small amounts of new development will fill in pockets of vacant land, and tourism will continue to be the dominant industry. A modest trend of converting summer homes into year-round housing, particularly for senior citizens, may expand.

Bayshore Region - The Bayshore Region encompasses all of the Bay and Ocean Shore Area in Cumberland and Salem Counties and, except for the Special Urban Areas of Bridgeton and Millville, which are designated Development areas, is designated a Limited Growth Region. This region is the least developed part of the coastal zone and includes large expanses of wetlands along Delaware Bay. These parts of the state are too far from major employment centers to have developed as suburbs. Unlike most other parts of the coastal zone, tourism has never played an important role in this area's economy. The Region is largely agricultural land, forests and wetlands, and sparsely populated with little existing infrastructure. The population and economic activity in these counties are concentrated in the small, manufacturing-oriented cities of Millville, Bridgeton and Salem, which lie on the inland boundary of the coastal zone.

This region is likely to remain largely undeveloped, and to continue to rely on agriculture and sand mining as major industries. Efforts to clean up the Delaware Bay and River may also revitalize the fish and shellfish industries. If additional energy facilities requiring location remote from large population centers are built in New Jersey, this Region offers potential sites. The Region will accommodate construction of small numbers of housing adjacent to existing development and possibly several larger developments and new industries. The large expanses of agricultural land, wetlands, forests, and the historical community of Greenwich will remain largely unchanged.

## The Delaware River Area

The Delaware River Area resembles the Northern Waterfront Area in size and diversity in its 60 mile stretch from Trenton to Pennsville. Like the Northern Waterfront, it has an urban center with densely populated residential areas, industry and shipping; it has abandoned piers and factories; it has residential suburbs; and it has undeveloped land and undisturbed wetlands. The difference between this area and the Northern Waterfront lies in the proportion of land devoted to different uses. The urban/industrial area centered in Camden is relatively limited, while the amount of undeveloped land is relatively large. The Delaware River Area also tends to extend further inland than the Northern Waterfront Area, due to the greater penetration of tidal water up the numerous creeks which flow into the Delaware from the Coastal Plain. The Coastal Zone extends several miles up such major streams as Crosswicks Creek, Rancocas Creek, Cooper River, Big Timber Creek and Oldmans Creek.

The same basic policies will be applied to the Delaware River Area as to the Northern Waterfront Area. These policies will be designed to maintain the present diversity of uses with each use in its optimal location. The following analysis examines what this means for the specific regions of the Delaware River Area, starting at Trenton and moving southward.

The Burlington-Mercer Region - The Burlington-Mercer Region includes all of the coastal zone along the Delaware River north of the Camden-Philadelphia metropolis. This region, traversed by Route 130, Interstate 295 and the N.J. Turnpike, has been extensively suburbanized.

The waterfront is primarily residential, with the most intensive residential use in Trenton and from Burlington City southward. Much of the coastal zone here is a very narrow strip of shoreland rising from the river to the first road. Landward of that road are private homes. A few parks, public facilities and industrial facilities (some abandoned) also front the river. The coastal zone in this region also includes the shores of most tributaries. Some open space, as well as most of the Region's wetlands, remain near the mouths of these streams.

The principal tributary in this region is Rancocas Creek. The proposed coastal zone along this stream is quite wide in some places. Much of it is undeveloped upland or wetlands, although some suburban residential development is also present. The stream corridor could be preserved both for the sake of water quality and to meet the recreational needs of this growing suburban region. The creek has great potential for canoeing and hiking, as well as for development of small parks and picnic areas along its banks.

North of Burlington is the Crosswicks Creek, a stream which flows through extensive marshland. Part of this wetland, known as the Trenton Marsh, is in the Mercer County Park system. Preservation of portions of the marsh which are not presently under public ownership will be an objective of the Coastal Management Program.

In addition, plans of the New Jersey Department of Transportation call for completion of Interstate Highways 195 and 295 and State Highway 29 through this area.

For the most part, the future of the Burlington-Mercer Region should mirror its present. New industry will locate in or near the areas used by existing industrial facilities. Additional residential development will be built as infill, as higher density replacement in existing residential areas, or as new planned clustered unit developments.

The most important changes foreseen are preservation of open space along the Delaware and its tributaries, including those narrow shorelands where people can walk along and see the river; encouraging more widespread public access to the river and riverfront; and increasing recreational opportunities on the river and releted lands for boating, fishing, picnicking and, when water quality permits, swimming.

The Camden Region - This region consists of the three Camden County waterfront municipalities of Camden, Pennsauken and Gloucester City as well as several suburban communities located along tributaries of the Delaware. It includes a densely developed, urbanized riverfront which currently accommodates significant shipping and industrial activities. The region also includes the high density residential areas between the Ben Franklin and Betsy Ross Bridges and suburban housing along Pennsauken Creek, Big Timber Creek, and the Newton Creek further inland.

The proposed Coastal Policies would encourage and reinforce city and county waterfront redevelopment programs in Camden. These programs are designed to help create new industrial, shipping and wholesale commercial activities; to rejuvenate existing, but underutilized or vacant industrial sites; and to improve the City's waterfront parkland. The policies of the Coastal Management Program will also encourage other uses on the waterfront in appropriate places, including new high-density housing, commercial and retail activities, and new parks and recreation opportunities. The suggested Coastal Policies would also encourage increased public access to the riverfront, provided the public is not endangered and access does not interfere with other legitimate activities. The preservation of the few remaining areas still relatively open and undisturbed in the Region will also be a goal of the Coastal Program. These include the lower reaches of Big Timber Creek, the marina area on the Cooper River, and Fisherman's Cove, which could be maintained as natural areas for carefully managed recreational activities.

The Gloucester - Salem Region - This region extends south from the Big Timber Creek to the boundary of the Bay and Ocean Shore Segment in Salem County. Most of the riverfront area in this region is industrially owned. The northern part of Gloucester's coastal zone includes two major refineries, extensive bulk storage facilities and large petro-chemical complexes. Further south, a few heavy industries are located intermittently along the riverfront, including large DuPont and Monsanto facilities in Gloucester and another DuPont complex in Salem County.

Yet this region is by far the least developed and most sparsely populated area outside the Bay and Ocean Shore Segment. Between National Park in Gloucester County and Penns Grove in Salem County, the active energy and industrial complexes are typically separated by large tracts of vacant land including extensive wetlands and lowland forests. Although the Delaware River lies within one to three miles of Interstate 295, road access to the waterfront is almost non-existent. In the entire stretch from Paulsboro in Gloucester County to Penns Grove in Salem County, there are no public sewer systems in place immediately adjacent to the Delaware River, although the region's areawide waste treatment management plans call for sewering a two-mile stretch of riverfront in Greenwich Township.

The central portion of this region, for the most part, contains industrial activities and vacant undeveloped tracts. The region's population, focused at the two ends, can be seen as extensions of two large metropolitan areas -- the Camden-Philadelphia Area to the north and the Wilmington area to the south. Parts of the southern area, which includes Penns Grove, Pennsville and Salem City, have recently lost industry -- creating high unemployment and leaving behind vacant or underutilized facilities. New waterfront industry and port development would be most appropriate in those areas where there are existing infrastructure, an available labor force and underutilized industrial facilities. Vacant land along the waterfront and close to the population centers must also be evaluated in terms of its potential for meeting the recreational needs of the people living in these areas.

The central part of the Gloucester-Salem region is quite wide due to the inland penetration of coastal streams. Demand for industrial, residential and commercial development is expected a few miles inland of the waterfront along Routes 130 and 295. The proposed Coastal Policies would have this development take place in concentrated form and as infill rather than sprawling the entire length of the Camden/Philadelphia - Salem/Wilmington corridor. In addition, the many stream corridors, wetlands and lowland forests in this region would be preserved. The stream corridors, the undeveloped portion of the Delaware River waterfront and other undeveloped lands are suitable for parks, campgrounds and perhaps new marinas, while wetlands, lowland forests and other sensitive areas should be preserved as natural areas.

ALTERNATIVES TO THE PROPOSED ACTION

# PART IV

## PART IV - ENVIRONMENTAL, ECONOMIC AND INSTITUTIONAL CONSEQUENCES OF FEDERAL APPROVAL

Introduction
Direct Effects
  Environmental Consequences
  Economic Consequences
  Institutional Consequences
Possible Conflicts Between Coastal Program and the Plans or
  Policies of Local Governments, Regional and Interstate Agencies

**********

### INTRODUCTION

This part of the environmental impact statement examines the environmental, economic and institutional consequences of federal approval of the New Jersey Coastal Management Program. Such an analysis is valuable because it indicates any general changes that will take place in the coastal zone, as a result of federal approval of the program. It cannot predict, however, specific effects likely to be felt by particular individuals or at particular locations.

Environmental Impact Statements are traditionally prepared for individual projects and examine the impacts of one defined action on an immediate and defined area. A state coastal program covers a large and diverse area of land and water, and the impacts of the program vary greatly from one location to another depending on the type of particular activity taking place or proposed. The consequences of all these activities of the program can only be discussed, therefore, in general terms since the number of combinations of possible individual actions is far too great to consider.

As suggested by the Federal regulations for implementing the procedural provisions of the National Environmental Policy Act, this part of the EIS does not repeat the Coastal Resource and Development Policies, but discusses the general effects on the coastal zone. It examines the effects of federal approval on the environment including both direct affects such as preservation, conservation, and development of particular areas, and indirect effects, such as increased pressure for development in areas outside the coastal zone, and the economic effects, including the indirect effects of redistributing jobs and growth in the coastal zone. Lastly, the institutional effects are examined. These include increased cooperation between federal, state and local agencies and co-ordinated decision-making at the state level.

### DIRECT EFFECTS

#### Environmental Consequences

The proposed federal action will result in approval of a coastal management program for New Jersey. The criterion for assessing the environmental consequences of this action should be the CZMA's declaration of policy: "to achieve wise use of land and water resources of the coastal zone giving full consideration to ecological, cultural, historic and aesthetic values as well as the need for economic development".

Protection of the coastal zone is to be achieved through the implementation of the Coastal Resource and Development Policies in the New Jersey Coastal Management Program. These policies do not affect the operation of existing facilities, but guide future activities within the coastal zone.

Specifically, coastal resources, such as fish and shellfish spawning grounds, sanctuaries, beaches, wetlands, high risk beach erosion areas, dunes, historic resources, specimen trees, endangered species habitats and farmland conservation areas are termed "Special Areas" in the Coastal Management Program. Approval and implementation of the program will protect these areas and discourage further inappropriate development in hazardous areas which could result in destruction of property and loss of life.

The Coastal Resource and Development Policies will help preserve the coast's aesthetic qualities for public enjoyment and promote various types of recreational opportunities along the shore and waterfronts. The policies are intended to preserve natural processes and resources; however, DEP also recognizes that the coast will continue to experience significant new growth. Water dependent energy development, off-shore mineral mining, and port and harbor development with their attendant dredging, spoil disposal and bulkheading activities will be permitted in certain locations and under certain conditions. The potential impacts of these activities, which must be controlled before New Jersey will approve the activity, include a possible reduction in water quality, a possible reduction in fishery productivity as a result of habitat destruction and increased water turbidity, deterioration of coastal aesthtetic amenities, and potential interference with recreational uses of the waterfront.

Regional environmental consequences of the program will result from planned growth patterns for the coastal zone, with development largely concentrated in existing developed areas and with preservation of areas which are now primarily open space. The secondary impacts policy will help to control sprawl through prohibiting new infrastructure which would induce growth incompatible with coastal policies. Large scale development will conform to the Coastal Policies, thus preserving sensitive environmental areas from destruction. Prevention of construction on flood plains and the consequential reduction in flood potential will have beneficial environmental consequences for the surrounding region. Additional regional benefits are discussed under economic consequences.

The Location Policies include a methodology for determining the acceptability of a site for development. Implementing this method should have a positive long term environmental impact by preserving unique, exceptionally productive or irreplaceable resources and assuring that development will be compatible with the environment in which it is located. In particular, development will be restricted in areas with a high potential to degrade water quality.

The implementation of this Coastal Management Program will most likely involve a reduction in the development or destruction of relatively scarce coastal natural resources and an increase in the development of inland natural resources, which are less sensitive to such development and more abundant. Thus, the location of activities away from the coast will require the commitment of resources in other parts of New Jersey outside the coastal zone.

Under the Use Policies, most types of major development located in the coastal zone will be regulated by the State of New Jersey. However, the policies leave land use decisions of predominantly local impact to the discretion of local governments. For example, the regulation of housing developments of 24 units or less, outside the jurisdiction of the waterfront development law and not on coastal wetland locations, will remain the responsibility of local governments. Thus, residential or commercial developments that may not be detrimental individually and are not regulated by the State could well have cumulative adverse impacts on the coastal zone. This problem is not remedied by the Coastal Management Program, but is a subject of immediate study by the State.

The Resource Policies address the prevention or mitigation of adverse environmental impacts on both natural and cultural resources. Implementating these policies should result in long-term beneficial environmental impacts related to protecting water quality and water supply, preventing the loss of prime agricultural land through erosion, protecting air quality, protecting historic sites and other recreational attractions, and increasing effective management of fisheries and wildlife resources.

The implementation of these policies may help to direct future development away from currently undeveloped portions of the coastal zone and into already developed portions of both the coastal zone and inland areas. Resultant concentration of development should have a long-term positive impact by decreasing energy use for transportation and the energy supply of scattered housing, and consequently decreasing transportation related and energy generation related pollution. Pollution sources may locate in already developed areas to a greater extent than without the coastal management program, thus making it more difficult for these already stressed areas to attain or maintain ambient air and water quality standards. In some cases it may be necessary to strengthen emissions or effluent controls as a mitigating measure. Conversely, there should be a long-term beneficial effect in presently less developed areas, making it easier for these areas to maintain compliance with environmental standards.

New development inevitably has environmental consequences which differ in urban and rural areas. In rural areas, environmental effects are focused on the land, and air water quality. In urban areas, impacts on the land are less because the area is already built-up, but reductions in air and water quality will occur. In areas where there is substantial development and the area is designated as high growth, these impacts may adversely affect day to day living. The policies in the Proposed Coastal Management Program are intended to mitigate these impacts; air and water quality standards will be enforced to prevent significant environmental damage, but some adverse impacts of development will be unavoidable.

Federal approval of the Coastal Program will give New Jersey federal funds under the CZMA to ensure that effective monitoring and inspection of sites can occur where development may be subject to State regulation or where coastal permits have been granted.

Economic Consequences

The Coastal Resource and Development Policies of the New Jersey Coastal Management Program have been designed to conserve and protect key renewable natural resources and recreational areas while encouraging new development to locate in existing built up areas. The implementation of these policies will not

reduce development pressures or the statewide rate of growth in New Jersey. Policy implementation will, however, encourage development to locate in the more developed areas of New Jersey's coastal zone, and some developers may seek to avoid the actual or imagined restrictions of the Coastal Management Program by building more intensively in non-coastal parts of the State.

Landowners will receive medium and long-term positive benefits from the consequences of owning land adjacent to well planned development. Development which has not been controlled by the Coastal Resource and Development Policies may, for example, cause flooding or run-off on adjacent land, thus leading to detrimental effects. Conversely, land that has been developed in an environmentally sensitive fashion, or where open space has been preserved can raise the property values of surrounding sites.

Development subject to regulation under the Coastal Management Program also benefits from that regulation. In many cases, conditions placed upon a coastal permit decrease the costs of owning and maintaining the development by, for example, requiring that the development be built near adequate infrastructure and that energy conservation techniques be considered. Project design policies related to buffers and compatibility of uses, scenic resources, design and others are likely to make developments more aesthetically pleasing places to live or work. In fact, at least one coastal developer, after receiving a multi-conditioned CAFRA permit used these conditions as a marketing product by promoting the project as an "environmentally sensitive" development. His promotional material boasted of the specific features added to the project as a result of the DEP CAFRA permit review process.

The encouragement of growth in developed areas, and the conservation of more sensitive land areas will have an effect on land values both in and, to a lesser extent, outside the coastal zone. Areas that are particularly sensitive will be protected from most development and consequently the land values will in many instances decrease. Development is likely to be attracted to areas designated as medium and high growth areas, raising land values in these areas. In addition, development may be directed to areas outside the coastal zone as some developers seek to avoid regulation. Encouragement of growth in some areas while restricting it in others will have indirect economic consequences such as redirecting jobs and industry, but these effects are impossible to calculate in any meaningful way for such a large area.

Shifting land values and economic activity are a constant factor in the development of every area. State programs concerning a large area will add to the changing pattern of development pressures. The unplanned and rapid development which has taken place in New Jersey over the last few decades has resulted in pollution of the air and water and destruction of valuable natural resources. The costs of cleaning up this pollution must be borne by residents of the state, and will directly effect some residents more than others. Individual people and towns will benefit while others may lose, but the net effect should be beneficial to the State.

One price of the Coastal Management Program is that some land owners may not realize the economic return that they had expected from their land. But so long as some reasonable use of the land may be made, the consititutional rights of land owners are protected. There is a distinction between the reasonable use of land and the speculative gain that a buyer may have hoped to receive.

Institutional Consquences

Approval of the the New Jersey Coastal Management Program will have implications for federal, state and local decision making processes. Federal approval of the program requires that Federal projects and permits must conform to the state's coastal program. In New Jersey, federal consistency will apply throughout the entire coastal zone when the Coastal Management Program is approved. This will create greater communication and consistency between federal and state agencies and actions.

At a state level, the approved coastal management program will serve as a focal point for all State agency actions in or affecting the coast. Rather than just responding on a case by case basis to crises or other events, all state agencies will be able to refer to adopted Coastal Resource and Development Policies. These policies will be most important for the activities of the Department of Environmental Protection where they provide uniform, predictable, binding policies for CAFRA, Wetlands, and Waterfront Development permits.

One major institutional change made possible by the formulation of these policies is the reorganization of the Division of Marine Services into the Division of Coastal Resources. The reorganized division has one permit review office, instead of three, which will lead to more efficient and less confusing processing of development applications.

A second major change is the addition of a narrow upland area to the jurisdiction of the Waterfront Development Permit Law. This redefinition of jurisdiction was done by a regulation (see Appendix D) whigh requires the first development upland from the water's edge to get a permit from DEP. This change would only affect development outside the area regulated by CAFRA. Much of this area is quite built-up already, so that the anticipated number of added development proposals requiring a Waterfront Development Permit is not great. Since such permit applications will also be reviewed on the basis of the Coastal Resource and Development Policies, DEP will be able to review efficiently these proposal as soon as the change takes effect.

The Coastal Resource and Development Policies also give the State a basis for working cooperatively with local governments, and responding to local initiatives and proposals. Previously, a local agency seeking State advice or assistance on acceptable coastal development would not have known where to turn and might have been given conflicting advice depending on the people consulted. The Coastal Policies provide a written, consistent standard which can be used by a local government, with State assistance when requested, to design a site-specific environmentally acceptable waterfront plan.

Adverse institutional impacts will be minimal. Some land owners in the Delaware River and Northern Waterfront areas will now need a Waterfront Development Permit for developments along the water's edge, but otherwise the Coastal Management Progam will not increase the number of permits needed by anyone. The application of the Coastal Policies as Administrative Rules to the entire coastal zone will have solely beneficial institutional impacts.

## POSSIBLE CONFLICTS BETWEEN COASTAL PROGRAM AND PLANS OR POLICIES OF LOCAL GOVERNMENTS, REGIONAL AND INTERSTATE AGENCIES

### Introduction

The final sections of Part IV indicate New Jersey's compliance with Section 923.56(a) of the Federal Regulations for the federal Coastal Zone Management Act, requiring states to consider the consistency of their coastal programs with federal, regional, state and local land use plans, policies and controls. This Part of the EIS analyzes consistency with local, regional, and interstate agencies; consistency with federal programs is discussed in the National Interest Section of Chapter Four of Part II and consistency with other state programs is discussed in the Management System Section of Chapter Three of Part II.

### Local Governments

The New Jersey Department of Environmental Protection has conducted a review of the zoning and land use ordinances of municipalities in the coastal zone to identify possible conflicts with the New Jersey Coastal Management Program, as well as to identify techniques used by local governments to implement goals compatible with the program.

This study represents, in large part, a re-evaluation of reports received from ten coastal counties under the State-County Coordination Program funded by NJ DEP with funds awarded New Jersey from Section 305 of the CZMA. In these reports the County Planning Boards and, in one case, County Environmental Agency, supplied a summary of municipal master plans and zoning ordinances. Additional information was obtained from county land use studies and plans, and through a review of municipal plans and ordinances on file with County Planning Boards. The results of this review appears in Figure 39.

### Explanation of Chart Categories

The New Jersey Municipal Land Use Law, (N.J.S.A. 40:55D-1 et seq.) authorizes a municipality to enact a zoning ordinance. A land use element of a municipal master plan must first have been adopted by the municipal planning board, and the zoning ordinance must be in "substantial compliance" with the land use element.

The Municipal Land Use Law also authorizes the enactment of subdivision and/or site plan review ordinances. Among the required subdivision ordinance elements are provisions for adequate water, drainage, shade trees, sewage facilities and soil protection. Site plan review ordinances must include provisions for the preservation of existing natural resources, screening and landscaping. Discretionary elements of these ordinances include the designation of open space areas, the regulations of flood areas, and design standards. These ordinances provide some assurance that environmental features will be conserved.

Five specific policies embodied in the coastal program and considered most likely to conflict with municipal policies are identified: Floodplain Regulations, Dune Protection, Wetlands Protection, provision for public access to beaches and waterfront areas, and waterfront parks. It must be noted that, in certain cases, the determination as to whether a municipality has a particular ordinance is somewhat subjective. For example, almost all coastal zone municipalities have flood plain ordinances containing construction regulations designed to meet the

P-proposed (-) No
D-draft N.A.-not applicable
+-yes

# MUNICIPAL GOVERNMENT POLICIES

| Municipality | Master Plan | Date | Subdivision ordinance | Site plan review | Flood plain ordinance | Dune protection | Wetland Protection | Public Access | Waterfront Park | Other features of zoning law compatible w/Coastal Management Program |
|---|---|---|---|---|---|---|---|---|---|---|
| County - Atlantic | | | | | | | | | | |
| Absecon | + | 78 | - | - | + | - | - | - | | High-rise restrictions |
| Atlantic City | + | 78 | + | + | - | - | + | - | + | Clustering |
| Brigantine | + | 78 | + | - | - | + | - | - | + | High-rise restrictions |
| Corbin City | + | 78 | + | - | - | - | - | - | | High-rise restrictions |
| Egg Harbor City | + | 75 | + | - | - | - | - | - | | High-rise restrictions |
| Egg Harbor Twp. | + | 75 | + | + | - | - | - | - | | PUD |
| Estell Manor | + | 77 | + | - | - | - | - | - | | |
| Galloway Twp. | + | 78 | + | - | + | - | - | - | | Natural Resource Inventory, Clustering, PUD, High-rise restrictions |
| Hamilton Twp. | + | 67 | + | + | + | - | - | - | | Conservation district, High-rise restrictions |
| Linwood | + | 78 | + | + | - | - | - | - | | High-rise restrictions |
| Longport | + | 76 | + | + | - | - | - | - | + | High-rise restrictions |
| Margate | + | 78 | + | + | - | - | - | - | + | Clustering, High-rise restrictions |
| Mullica | + | 67 | + | + | - | - | - | - | | High-rise restrictions |
| Northfield | + | 78 | + | + | - | - | - | - | | High-rise restrictions |
| Pleasantville | + | 71 | + | + | - | - | - | - | | Preservation of natural features, High-rise restrictions |
| Port Republic | D | 78 | + | - | - | - | - | - | | |
| Somers Point | D | 78 | + | + | + | - | + | - | | High-rise restrictions |



2975

DE24971

Figure 36

P-proposed (-) No
D-draft N.A.-not applicable
+-yes

| Municipality | Master Plan | Date | Subdivision ordinance | Site plan review | Flood plain ordinance | Dune protection | Wetland Protection | Public Access | Waterfront Park | Other features of zoning Law compatible w/Coastal Management Program |
|---|---|---|---|---|---|---|---|---|---|---|
| Ventnor | + | 63 | - | - | - | + | + | - | + | Clustering, PUD |
| Weymouth Twp. | + | 76 | + | - | - | - | - | - | | High-rise restrictions |
| **County - Bergen** | | | | | | | | | | |
| Alpine Borough | + | 78 | + | + | - | N.A. | N.A. | - | + | High-rise restrictions, EIS required |
| Bogota Borough | + | 69 | + | - | - | N.A. | N.A. | - | + | High-rise restrictions |
| Carlstadt Borough | + | 78 | + | - | - | N.A. | N.A. | - | | |
| East Rutherford Boro | + | 67 | + | - | + | N.A. | N.A. | - | | High-rise restrictions |
| Edgewater Borough | D | 66 | + | + | - | N.A. | N.A. | - | + | |
| Englewood Cliffs Borough | + | 78 | + | + | - | N.A. | N.A. | - | + | |
| Fairview Borough | + | 78 | - | - | - | N.A. | N.A. | - | | |
| Fort Lee Twp. | + | 78 | + | + | + | N.A. | N.A. | - | + | |
| Garfield City | + | 56 | + | + | - | N.A. | N.A. | - | | High-rise restrictions, Buffer requirements |
| Hackensack City | + | 78 | | | - | N.A. | N.A. | - | | |
| Little Ferry Boro. | + | 64 | + | - | + | N.A. | N.A. | - | | High-rise restrictions |
| Lyndhurst Twp. | + | 79 | + | + | + | N.A. | N.A. | - | + | High-rise restrictions |
| Moonachie Borough | + | 78 | + | + | - | N.A. | N.A. | - | | Buffer requirements |
| New Milford Boro. | P | 78 | + | + | +- | N.A. | N.A. | - | | |
| North Arlington Boro | + | 71 | + | - | + | N.A. | N.A. | - | + | High-rise restrictions |





DE24972

Figure 38

P-proposed (-) No
D-draft N.A.-not applicable
+-yes

| Municipality | Master Plan | Date | Subdivision ordinance | Site plan review | Flood plain ordinance | Dune protection | Wetland Protection | Public Access | Waterfront Park | Other features of zoning law compatible w/Coastal Management Program |
|---|---|---|---|---|---|---|---|---|---|---|
| Oradell Borough | + | 78 | + | - | + | N.A. | N.A. | - | | High-rise restrictions, Conservation/ Recreation zone |
| Ridgefield Borough | | | + | + | + | N.A. | N.A. | - | + | High-rise restrictions, MIS |
| River Edge Borough | + | 71 | + | - | - | N.A. | N.A. | - | + | |
| Rutherford Borough | + | 77 | + | + | + | N.A. | N.A. | - | | High-rise restrictions, Buffer requirements |
| Teaneck Twp. | + | 78 | | | - | N.A. | N.A. | - | + | |
| Tenafly Borough | + | 77 | + | + | - | N.A. | N.A. | - | | |
| Wallington Borough | + | 60 | + | + | + | N.A. | N.A. | - | | |
| County - Burlington | | | | | | | | | | |
| Bass River Twp. | + | 73 | + | + | P | N.A. | P | - | | Environmental Impact Statements, County Natural Resource Inventory |
| Beverly City | P | 77 | - | - | - | N.A. | - | - | + | |
| Bordentown City | + | 58 | + | - | - | N.A. | - | - | + | Buffer requirements |
| Bordentown Twp. | + | 78 | + | + | - | N.A. | - | - | | Buffer requirements, cluster provision |
| Burlington City | + | 66 | + | + | - | N.A. | - | - | + | |
| Burlington Twp. | + | 73 | + | + | - | N.A. | - | - | - | |
| Chesterfield Twp. | + | 73 | + | + | - | N.A. | - | - | - | |
| Cinnaminson Twp. | + | 65 | + | + | + | N.A. | - | - | + | Buffer requirements |
| Delanco Twp. | + | 76 | + | + | - | N.A. | - | - | = | |
| Delran Twp. | + | 79 | + | + | - | N.A. | - | - | - | |





DE24973

Figure 38

P-proposed (-) No
D-draft N.A.-not applicable
+-yes

| Municipality | Master Plan | Date | Subdivision ordinance | Site plan review | Flood plain ordinance | Dune protection | Wetland Protection | Public Access | Waterfront Park | Other features of zoning law compatible w/Coastal Management Program |
|---|---|---|---|---|---|---|---|---|---|---|
| Edgewater Park Twp. | + | 78 | + | + | - | N.A. | - | - | - | |
| Fieldsboro Borough | + | 78 | - | - | + | N.A. | - | - | - | Conservation District |
| Florence Twp. | + | 76 | + | + | - | N.A. | - | - | + | |
| Delanpert Twp. | D | | + | + | - | N.A. | - | - | + | |
| Lumberton Twp. | P | 77 | + | + | + | N.A. | N.A. | - | - | |
| Mansfield Twp. | + | 78 | + | P | - | N.A. | - | - | | |
| Maple Shade Twp. | + | 78 | + | + | - | N.A. | - | - | + | Flood plain zone |
| Medford Twp. | + | 75 | + | + | + | N.A. | - | - | | Clustering; High-rise restrictions, Buffer requirements, Natural Features Protection |
| Moorestown Twp. | + | 76 | + | + | - | N.A. | - | - | | |
| Mount Holly Twp. | + | 78 | + | - | - | N.A. | + | + | + | |
| Mount Laurel Twp. | + | 79 | + | + | + | N.A. | + | + | + | PUD, Flood Plain Protection (through conservation district) |
| Palmyra Borough | + | 79 | + | + | + | N.A. | - | - | - | |
| Riverside Twp. | + | 78 | + | + | + | N.A. | + | + | - | |
| Riverton Borough | - | - | - | - | - | N.A. | - | + | + | |
| Southampton Twp. | - | - | | | - | N.A. | - | | | |
| Washington Twp. | + | 78 | + | P | P | N.A. | P | P | | |
| Westhampton Twp. | + | 79 | + | + | + | N.A. | - | - | + | |
| Willingboro Twp. | - | - | + | + | + | N.A. | + | + | + | |

P-proposed (-) No
D-draft N.A.-not applicable
+-yes

| Municipality | Master Plan | Date | Subdivision ordinance | Site plan review | Flood plain ordinance | Dune protection | Wetland Protection | Public Access | Waterfront Park | Other features of zoning law compatible w/Coastal Management Program |
|---|---|---|---|---|---|---|---|---|---|---|
| County - Camden | | | | | | | | | | |
| Audubon Borough | | | | | | N.A. | - | - | | |
| Bellmawr Borough | + | 77 | + | - | - | N.A. | - | - | + | High-rise restrictions |
| Brooklawn Borough | - | - | - | - | - | N.A. | - | - | - | High-rise restrictions |
| Camden City | + | 78 | + | + | - | N.A. | - | - | + | Clustering, Buffer requirement |
| Cherry Hill Twp. | + | 64 | - | + | + | N.A. | - | - | + | Clustering, Buffer requirement |
| Gloucester City | + | 65 | + | - | - | N.A. | - | - | - | High-rise restrictions |
| Gloucester Twp. | + | 78 | - | - | + | N.A. | + | - | - | Clustering, Buffer requirement |
| Haddon Twp. | + | 75 | - | + | + | N.A. | - | - | + | Buffer requirements, High-rise restriction |
| Hi-Nella Borough | - | - | - | - | - | N.A. | - | - | - | High-rise restrictions |
| Lindenwold Borough | + | 61 | | + | - | N.A. | - | - | - | |
| Mount Ephraim Boro. | + | 68 | - | + | - | N.A. | - | - | + | High-rise restrictions, Cluster Buffer requirements |
| Pennsauken Twp. | + | 69 | | - | + | N.A. | - | - | + | Clustering, Buffer requirement |
| Oaklyn Borough | | | | | | | - | - | + | |
| Runnemede Borough | + | 71 | | + | - | N.A. | - | - | - | Buffer requirements, High-rise restrictions |
| Stratford Borough | + | 67 | | + | + | N.A. | - | - | - | High-rise restrictions |
| Woodlynne Borough | - | - | | | - | N.A. | + | - | - | Buffer requirements, High-rise restrictions |

P-proposed (-) No
D-draft N.A.-not applicable
+-yes

| Municipality | Master Plan | Date | Subdivision ordinance | Site plan review | Flood plain ordinance | Dune protection | Wetland Protection | Public Access | Waterfront Park | Other features of zoning law compatible w/Coastal Management Program |
|---|---|---|---|---|---|---|---|---|---|---|
| County - Cape May | | | | | | | | | | |
| Avalon | D | 78 | + | + | + | + | - | + | + | Clustering, High-rise restricti |
| Cape May City | + | 78 | + | + | - | - | - | + | + | Preservation of natural feature Clustering, High-rise restricti |
| Cape May Point | + | 78 | + | - | + | + | - | + | + | High-rise restrictions |
| Dennis Twp. | + | 78 | + | + | - | - | + | - | | Clustering, Buffer requirements High-rise restrictions |
| Lower Twp. | D | 78 | + | + | - | + | + | + | + | Conservation district, Open spa cluster development regulations |
| Middle Twp. | + | 69 | + | - | - | - | + | - | | Clustering, High-rise restricti |
| N. Wildwood | D | 78 | + | - | - | + | - | + | + | Clustering, High-rise restricti |
| Ocean City | D | 78 | + | + | + | + | - | + | + | High-rise restrictions |
| Sea Isle City | D | 78 | + | - | + | + | - | + | + | High-rise restrictions |
| Stone Harbor | + | 78 | + | - | + | P | - | + | + | High-rise restrictions |
| Upper Twp. | + | 78 | + | + | - | N.A. | + | + | + | High-rise restrictions, Cluster Buffer requirements |
| W. Cape May | D | 78 | + | - | + | N.A. | - | - | | High-rise restrictions |
| W. Wildwood | D | 78 | + | - | - | N.A. | - | + | | High-rise restrictions |
| Wildwood | + | 78 | + | + | - | N.A. | - | + | + | Clustering |
| Wildwood Crest | D | 78 | + | - | + | - | - | + | + | Buffer requirements |
| Woodbine | + | 76 | + | - | - | N.A. | N.A. | - | | Clustering, High-rise restricti |

P-proposed (-) No
D-draft N.A.-not applicable
+-yes

| Municipality | Master Plan | Date | Subdivision ordinance | Site plan review | Flood plain ordinance | Dune protection | Wetland Protection | Public Access | Waterfront Park | Other features of zoning law compatible w/Coastal Management Program |
|---|---|---|---|---|---|---|---|---|---|---|
| County - Cumberland | | | | | | | | | | |
| Bridgeton | + | 78 | + | + | + | N.A. | - | - | + | Open space |
| Commercial Twp. | + | 78 | + | + | + | N.A. | - | - | | |
| Downe Twp. | + | 78 | + | + | + | N.A. | - | - | | Conservation district |
| Fairfield Twp. | + | 78 | + | + | P | N.A. | - | - | | |
| Greenwich Twp. | + | 78 | + | + | + | N.A. | - | - | | Alternative energy use design requirement |
| Hopewell Twp. | + | 78 | + | + | - | N.A. | + | - | | Farmland preservation (proposed), woodlands protection, (clustering) |
| Lawrence Twp. | D | 78 | + | - | + | N.A. | + | - | + | |
| Maurice River Twp. | D | 78 | + | + | + | N.A. | - | - | | |
| Millville | + | 78 | + | + | + | N.A. | - | - | + | Land conservation district |
| Stow Creek Twp. | + | 78 | + | + | + | N.A. | - | - | | |
| County - Essex | | | | | | | | | | |
| Belleville Town | + | 79 | - | + | + | N.A. | N.A. | - | - | High-rise restrictions |
| Newark City | + | 79 | + | P | P | N.A. | N.A. | - | + | |
| Nutley Town | + | 76 | + | - | + | N.A. | N.A. | - | - | |



2981

DE24977

P-proposed (-) No
D-draft N.A.-not applicable
+-yes

| Municipality | Master Plan | Date | Subdivision ordinance | Site plan review | Flood plain ordinance | Dune protection | Wetland Protection | Public Access | Waterfront Park | Other features of zoning law compatible w/Coastal Management Program |
|---|---|---|---|---|---|---|---|---|---|---|
| County - Gloucester | | | | | | | | | | |
| Deptford Twp. | + | 77 | + | + | - | N.A. | - | - | - | Flood plain provision, Buffer requirements, Clustering |
| East Greenwich Twp. | D | - | D | - | - | N.A. | - | - | - | |
| Greenwich Twp. | + | 77 | + | + | - | N.A. | - | - | + | Conservation district |
| Logan Twp. | + | 79 | + | + | - | N.A. | - | - | - | PUD ordinance |
| Mantua Twp. | + | 73 | + | + | - | N.A. | - | - | - | Clustering, Flood Plain Provis |
| National Park Borough | - | - | - | - | - | N.A. | - | - | + | |
| Paulsboro Borough | D | - | - | - | - | N.A. | - | - | + | |
| Swedesboro Borough | + | 73 | + | - | - | N.A. | - | - | - | |
| Wenonah Borough | + | 77 | D | D | - | N.A. | - | - | - | |
| West Deptford Twp. | + | 77 | + | + | - | N.A. | - | - | - | Cluster Development Provision Buffer requirements |
| Westville Borough | + | 78 | - | - | - | N.A. | - | - | - | Parks & Conservation District |
| Woodbury City | + | 78 | + | + | - | N.A. | - | - | + | |
| Woolwich Twp. | + | 78 | + | + | + | N.A. | - | - | - | PUD ordinance |
| County - Hudson | | | | | | | | | | |
| Bayonne City | + | 69 | + | + | + | N.A. | N.A. | - | + | Buffer requirements |
| East Newark Boro. | - | - | - | - | - | N.A. | N.A. | - | - | |

P-proposed (-) No
D-draft N.A.-not applicable
+-yes

| Municipality | Master Plan | Date | Subdivision ordinance | Site plan review | Flood plain ordinance | Dune protection | Wetland Protection | Public Access | Waterfront Park | Other features of zoning law compatible w/Coastal Management Program |
|---|---|---|---|---|---|---|---|---|---|---|
| Guttenberg Town | - | - | - | - | + | N.A. | N.A. | - | - | |
| Harrison Town | - | - | - | - | + | N.A. | N.A. | - | - | |
| Hoboken City | + | 78 | | - | - | N.A. | N.A. | - | - | |
| Jersey City | + | 66 | + | - | - | N.A. | N.A. | - | + | Buffer requirements |
| Kearny Town | + | 74 | + | + | - | N.A. | N.A. | - | + | Buffer requirements b/w zones |
| North Bergen Twp. | D | - | | | + | N.A. | N.A. | - | - | |
| Weehawken | + | 73 | + | + | + | N.A. | N.A. | - | - | PUD provision |
| West New York Town | + | | + | - | - | N.A. | N.A. | - | - | Controlled Water Development Zone |
| County - Mercer | | | | | | | | | | |
| Hamilton Twp. | + | 78 | + | + | + | N.A. | - | - | + | Conservation District, Buffer requirements |
| Trenton City | | | | | | N.A. | - | - | | |
| County - Middlesex | | | | | | | | | | |
| Carteret Borough | + | 73 | + | + | - | N.A. | N.A. | - | + | High-rise restrictions |
| East Brunswick Twp. | + | 76 | + | + | + | N.A. | N.A. | - | - | High-rise restrictions, Steep Slopes, PUD, Clustering, Buffer requirements, Historic Sites, Bike or Pedestrian Paths |
| Edison Twp. | + | 78 | + | + | - | N.A. | N.A. | - | - | Buffer requirements, High-rise restrictions |

Figure 30



2983

DE24979

P-proposed (-) No
D-draft N.A.-not applicable
+-yes

| Municipality | Master Plan | Date | Subdivision ordinance | Site plan review | Flood plain ordinance | Dune protection | Wetland Protection | Public Access | Waterfront Park | Other features of zoning la compatible w/Coastal Manage Program |
|---|---|---|---|---|---|---|---|---|---|---|
| Highland Park Boro. | + | 69 | + | + | - | N.A. | N.A. | - | + | |
| New Brunswick City | + | 79 | + | + | - | N.A. | N.A. | - | + | |
| Old Bridge Twp. | + | 78 | + | + | + | N.A. | N.A. | + | - | Clustering, PUD, Buffers, H restrictions, Steep Slopes, Features Protection |
| Perth Amboy City | P | 79 | + | + | - | N.A. | - | - | + | Buffer requirements |
| Piscataway Twp. | + | 78 | + | + | - | N.A. | N.A. | - | + | Clustering, PUD, High-rise ions, Bike or Pedestrian Pa Buffers |
| Sayreville Borough | + | 78 | | | + | N.A. | - | - | - | PUD, High-rise restrictions |
| South Amboy City | + | 77 | + | + | - | N.A. | - | - | - | High-rise restrictions |
| South River Borough | + | 79 | + | + | + | N.A. | N.A. | - | - | PUD, Clustering, Buffers, H restrictions |
| Woodbridge Twp. | + | 78 | + | + | - | N.A. | N.A. | - | + | Pedestrian or Bike Paths, H High-rise restrictions |
| County - Monmouth | | | | | | | | | | |
| Aberdeen Twp. (formerly Matawan) | + | | + | | + | - | + | - | | Clustering, Critical Enviro areas |
| Matawan Borough | + | | + | | - | - | - | - | | |
| Allenhurst | + | | + | | - | - | - | + | + | |
| Asbury Park | D | 78 | + | | - | - | - | + | + | High-rise restrictions |
| Atlantic Highlands | + | | + | | - | - | - | - | | High-rise restrictions |

Figure 30

P-proposed (-) No
D-draft N.A.-not applicable
+-yes

| Municipality | Master Plan | Date | Subdivision ordinance | Site plan review | Flood plain ordinance | Dune protection | Wetland Protection | Public Access | Waterfront Park | Other features of zoning law compatible w/Coastal Management Program |
|---|---|---|---|---|---|---|---|---|---|---|
| Avon by the Sea | D | 78 | + | | - | - | - | + | + | |
| Belmar | + | | + | | - | - | - | + | + | |
| Bradley Beach | + | 75 | + | | - | - | - | + | + | |
| Brielle | + | | + | | - | - | - | - | | Natural Resource Inventory |
| Deal Twp. | - | | + | | - | - | - | + | + | |
| Eatontown | + | 77 | | | + | - | - | - | | Clustering |
| Fairhaven | + | | | | - | - | - | - | | |
| Harlet Twp. | D | | | | + | - | - | - | | PRD |
| Highlands | + | | - | | - | - | - | + | | |
| Holmdel | + | | - | | - | - | - | - | | |
| Interlaken | + | | - | | - | - | - | - | | |
| Keansburg | + | | - | | - | - | - | - | + | |
| Keyport | + | | + | | + | - | - | - | | PRD |
| Little Silver | + | 69 | | | - | - | + | - | | |
| Loch Arbour | + | | - | | - | - | - | - | + | |
| Long Branch | + | | - | | + | - | - | + | + | High-rise restrictions |
| Manasquan | + | | + | | - | + | + | + | + | Clustering, PRD, critical areas |
| Middletown Twp. | + | | - | | + | + | + | + | | Natural Resource Inventory, Clustering, High-rise restrictions, Critical areas |



DE24981

Figure 38

P-proposed (-) No
D-draft N.A.-not applicable
+-yes

| Municipality | Master Plan | Date | Subdivision ordinance | Site plan review | Flood plain ordinance | Dune protection | Wetland Protection | Public Access | Waterfront Park | Other features of zoning law compatible w/Coastal Management Program |
|---|---|---|---|---|---|---|---|---|---|---|
| Monmouth Beach | + | 78 | - | | - | - | - | + | + | Natural Resource Inventory |
| Neptune City | D | 78 | + | | - | - | - | - | | High-rise restrictions |
| Neptune Twp. | D | | | | - | - | - | + | | |
| Ocean Twp. | + | | | | - | - | + | - | | Clustering, tree removal, Natural Resource Inventory |
| Oceanport | + | 74 | - | | - | - | - | - | + | |
| Red Bank | + | 78 | + | + | - | - | - | - | | Preservation of natural areas |
| Rumson | D | 78 | - | | - | - | - | - | | |
| Sea Bright | + | | - | | + | - | - | + | + | |
| Shrewsbury | + | | - | + | - | - | - | - | | Preservation of natural areas |
| Spring Lake Boro. | + | | + | - | - | - | - | + | + | |
| Spring Lake Heights | + | | + | - | - | - | - | - | | High-rise restrictions, FRD |
| South Belmar | D | 78 | - | - | - | - | - | - | | |
| Wall Twp. | + | | - | - | + | - | - | - | | Critical environmental areas, Preservation of natural areas |
| Union Beach | D | 78 | - | - | - | - | - | - | | |
| West Long Branch | D | 78 | + | + | + | - | - | - | + | Soil protection, Preservation of natural features, Critical area |
| Sea Girt | + | | - | - | - | - | - | + | + | |

Figure 38

P-proposed (-) No
D-draft N.A.-not applicable
+-yes

| Municipality | Master Plan | Date | Subdivision ordinance | Site plan review | Flood plain ordinance | Dune protection | Wetland Protection | Public Access | Waterfront Park | Other features of zoning law compatible w/Coastal Management Program |
|---|---|---|---|---|---|---|---|---|---|---|
| County - Ocean | | | | | | | | | | |
| Barnegat Light | + | 63 | + | - | + | + | - | - | + | Rural Preservation Districs |
| Barnegat Twp. (Union) | + | 73 | + | + | - | - | - | - | | Cluster, Natural Resource Inventory |
| Bay Head | + | 63 | + | + | + | - | - | - | + | |
| Beach Haven | + | 68 | + | + | + | + | - | - | + | |
| Berkeley | + | 74 | + | + | + | - | - | - | + | Soil erosion, Shade trees, Cluster |
| Brick Twp. | | | | | | | | | | Environmental Impact Assessment for sub-divisions, Tree cutting, Shade tree |
| Englewood Twp. | + | 74 | + | - | + | - | - | - | | Tree cutting |
| Harvey Cedars | P | 78 | - | - | + | - | + | - | + | |
| Island Heights | + | 70 | - | - | - | - | + | - | | |
| Lower Twp. | + | 75 | + | + | + | - | + | + | + | Cluster, Natural Resource Inventory, Tree cutting, Open Space |
| Jackson Twp. | + | 68 | - | - | + | - | - | - | | |
| Long Twp. | P | 78 | + | + | + | - | - | - | | |
| Lakehurst | + | 78 | + | + | + | - | + | - | | |
| Lakewood Twp. | + | 78 | + | + | | - | - | - | | |
| Lavallette | + | 77 | + | - | + | - | - | - | + | Natural Resource Inventory |
| Little Egg Harbor | + | 78 | + | + | + | - | - | - | | |
| Long Beach Twp | + | 71 | + | + | + | + | + | - | + | |





DE24983

Figure 38

P-proposed (-) No
D-Draft N.A.-not applicable
+-yes

| Municipality | Master Plan | Date | Subdivision ordinance | Site plan review | Flood plain ordinance | Dune protection | Wetland Protection | Public Access | Waterfront Park | Other features of zoning law compatible w/Coastal Management Program |
|---|---|---|---|---|---|---|---|---|---|---|
| Manchester | + | 67 | + | + | + | - | - | - | + | |
| Mantoloking | | | - | - | + | - | - | - | | |
| Ocean Gate | D | 78 | + | + | - | - | - | - | | |
| Ocean Twp. | + | 73 | + | + | - | - | - | - | | |
| Pine Beach | - | | - | + | - | - | - | - | | |
| Point Pleasant | + | 62 | + | + | - | - | - | - | + | |
| Point Pleasant Beach | + | 63 | + | + | + | - | - | - | + | |
| Seaside Heights | - | | - | - | - | - | - | - | + | |
| Seaside Park | - | | - | - | - | - | - | - | + | |
| Ship Bottom | D | | + | + | - | - | - | - | + | |
| South Toms River | + | 72 | + | - | + | - | - | - | | |
| Stafford Twp. | + | 76 | + | + | - | - | - | - | + | Tree cutting |
| Surf City | + | 70 | + | - | - | + | - | - | + | |
| Tuckerton | D | 78 | + | - | + | - | - | + | | |
| Beachwood | + | 78 | | + | | | | | | |
| County - Passaic | | | | | | | | | | |
| Clifton City | + | 78 | + | + | - | N.A. | N.A. | - | - | Buffer requirements, High-rise restrictions |
| Passaic City | + | 78 | + | + | - | N.A. | N.A. | - | + | FHU, High-rise restrictions |





DE24984

P-proposed (-) No
D-draft N.A.-not applicable
+-yes

Figure 38

| Municipality | Master Plan | Date | Subdivision ordinance | Site plan review | Flood plain ordinance | Dune protection | Wetland Protection | Public Access | Waterfront Park | Other features of zoning law compatible w/Coastal Management Program |
|---|---|---|---|---|---|---|---|---|---|---|
| County - Salem | | | | | | | | | | |
| Lower Alloways Creek Twp. | + | 79 | + | + | + | - | - | - | - | Wildlife sanctuary |
| Carney's Point Twp. | + | 79 | + | + | - | - | - | - | - | Conservation district, Flood Plain Development Regulations |
| Elsinboro | + | 79 | + | + | + | - | - | - | - | Preservation of natural features |
| Hamnington Twp. | + | 79 | + | + | + | - | + | - | - | Preservation of natural features, Conservation District |
| Oldmans Twp. | + | 79 | + | + | - | N.A. | - | - | - | Wetland Construction Regulated |
| Penns Grove Boro. | + | 77 | + | + | - | N.A. | - | - | + | |
| Pennsville Twp. | + | 77 | + | + | - | N.A. | - | - | - | Wildlife Sanctuary |
| Pilesgrove Twp. | + | 77 | + | + | - | N.A. | - | - | - | Flood plain development restrictions |
| Quinton Twp. | + | 77 | + | + | - | - | - | - | | Provisions restricting development on flood plains |
| Salem City | + | 76 | + | + | + | - | + | - | - | Historic preservation district, Clustering, Preservation of natural features |
| County - Somerset | | | | | | | | | | |
| Franklin Twp. | + | 78 | + | + | + | N.A. | N.A. | - | | Cluster, PUD, Buffer requirements Natural Features Protection |



2989

DE24985

Figure 38

P-proposed (-) No
D-draft N.A.-not applicable
+-yes

| Municipality | Master Plan | Date | Subdivision ordinance | Site plan review | Flood plain ordinance | Dune protection | Wetland Protection | Public Access | Waterfront Park | Other features of zoning law compatible w/Coastal Management Program |
|---|---|---|---|---|---|---|---|---|---|---|
| County - Union | | | | | | | | | | |
| Elizabeth City | + | 78 | + | - | + | N.A. | N.A. | - | + | Buffer requirements |
| Linden City | + | 76 | + | + | - | N.A. | N.A. | - | - | |
| Rahway City | + | 74 | - | + | + | N.A. | N.A. | - | + | Open space zone, Buffer requirements |





DE24986

requirements of the Federal Flood Insurance Program. Only those ordinances which protect the floodplain area itself are indicated on the chart. Similarly, high rise restrictions were noted both if a municipality prohibits high rise housing in the proposed coastal zone or if it has a maximum building height under 60 feet.

Conflicts

The absence of a "+" in any of the four specific categories for a given municipality indicates a potential conflict with the New Jersey Coastal Management Program, in that a municipality is not prevented from approving projects inconsistent with the Coastal Resources and Development Policies.

Since municipal zoning defines acceptable uses for specified land areas, while coastal policies specify development conditions based upon a matrix of generic location, proposed use and affected resource, the presence or absence of conflicts between the two policies cannot be determined by simple comparison, but is dependent upon a nature and location of proposed development.

Conflict Resolution

The major mechanism for conflict resolution is the direct State authority available through the state riparian laws, the Waterfront Development Law, the Wetlands Act of 1970, and the Coastal Area Facility Review Act. The Coastal Resource and Development Policies shall apply to these areas of DEP regulatory authority, as well as to other management actions of DEP affecting the coastal zone, to the extent statutorily permissible.

Planning assistance and cooperation by the Division of Coastal Resources with local governments may also prove to be an effective method of conflict resolution. The present revision of most municipal master plans is occuring with the assistance of county planning officials, who have worked closely with DEP on coastal policies. Local officials received the DEP-OCZM Interim Land Use and Density Guidelines - 1976 and subsequent documents, including the State of New Jersey Coastal Management Program - Bay and Ocean Shore Segment (August 1978) which, in turn, were based in large part on county planning information. Furthermore, the Municipal Land Use Law requires that the land use element of a master plan take into account natural conditions including but not limited to "topography, soil conditions, water supply, drainage, flood plain areas, marshes and woodlands", as well as the other master plan elements, including a "conservation element" providing for "the preservation, conservation and utilization of natural resources, including, to the extent appropriate, open space, waters, forests, soil, marshes, wetlands, harbors, rivers and other waters, fisheries, wildlife and other natural resources ..." [N.J.S.A. 55D-19(a)(8)]. As municipalities include these considerations in their master plans, conflicts between local and state policies will be minimized.

NJDEP will continue to work with counties and will increase its efforts to work with individual municipalities to maximize the consistency between state and local plans and decisions.

Regional and Interstate Agencies

Local governments designated pursuant to regulations established under Section 204 of the Demonstration Cities and Metropolitan Development Act of 1966 and regional and interstate agencies with plans affecting the coastal zone are listed on the next page. Coordination has been carried out with each of these agencies in development of Coastal Policies.

The county governments have limited authority to regulate development in accordance with their plans. There is no conflict between their use of this authority and coastal zone management (See Figure 40). Coordination of county policies with Coastal Policies is discussed in Part Two, Chapter Three. The three regional planning agencies with A-95 review functions in the proposed Coastal Zone have no regulatory authority. Each was given an opportunity to comment on draft Coastal Policies presented in the proposed Coastal Management Program. The Delaware River Basin Commission holds significant regulatory authority for implementing its Comprehensive Plan. NJDEP has conducted a coordination project with DRBC which found no inconsistencies between the DRBC Comprehensive Plan and the Coastal Policies.

| Local Governments Which Function as A-95 Clearinghouses and Regional and Interstate Agencies | Plan | Regulatory Authority | Conflicts with Plans of a Regulatory Nature |
|---|---|---|---|
| County of Atlantic | County Master Plan | Authority to review all subdivisions of land within the county and to approve those subdivisions affecting county roads or drainage facilities N.J.S.A. 40:27-6.2 | None |
| County of Cape May | County Master Plan | | None |
| County of Cumberland | County Master Plan | | None |
| County of Ocean | County Master Plan | | None |
| Delaware Valley Regional Planning Commission | Land Use Plan<br>Open Space Plan<br>Housing Allocation Plan<br>Water Supply Plan<br>Transportation Plans | None | None |
| Tri-State Regional Planning Commission | Regional Development Guide, 1977-2000 | None | None |
| Wilmington Metropolitan Area Planning Coordination Council | Regional Land Use Plan | None | None |
| Delaware River Basin Commission | Comprehensive Plan for the Delaware River Basin | Intrastate Allocation of Delaware River Basin Waters<br>Review authority over proposed facilities with the potential for significant impact on water quality in the Basin. Enforcement authority over effluent standards required to attain water quality standards described in the Comprehensive Plan. | No conflicts discovered through coordination project with DRBC. |

# ENVIRONMENTAL, ECONOMIC AND INSTITUTIONAL CONSEQUENCES OF FEDERAL APPROVAL

# PART V



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## PART V - ALTERNATIVES TO THE PROPOSED ACTION

All alternatives to the proposed action, approving the New Jersey Coastal Management Program, involve a decision to delay or deny approval. Delay or denial of approval would be based on failure of the Program to meet any one of the requirements of the federal Coastal Zone Management Act (CZMA). In approving a coastal management program, affirmative findings must be made by the Assistant Administrator for Coastal Zone Management on over twenty such requirements.

Normally, at the time a program is submitted for approval, most of the substantive decisions regarding policies, how the program is to be implemented, etc., will have been made by State executive or legislative branches of government. In many instances in other states, changes have been made after state program approval. As a result of what is now termed the scoping process under CEQ's regulations implementing NEPA, OCZM has tried to identify the major issues discussed during the public review process. OCZM's alternatives to approval are to delay or deny approval for a number of reasons. These reasons are limited to those identified in the review process and those that OCZM feels are potentially valid reasons.

Additional valid alternatives are those which can be carried out by the state. They are to modify parts of the program or withdraw their application for federal approval. While these were not specifically elaborated on in the DEIS because the consequences coincide with those of the federal alternatives, they remain throughout the process as valid alternatives.

With respect to the "no action" alternatives, OCZM has generally considered that federal denial or state withdrawal of the program, and "no action" are synonymous. State participation under the CZMA is voluntary and when a state participates in program development, it decides whether or not program approval and implementation is in its best interests. A few states have chosen the alternative of non-participation. This alternative may be chosen by a state at any time. Some states have decided not to participate during the legislative hearings on various coastal bills. The impacts of the "no action" alternative are described below under the "Loss of Federal Funds to Implement the Program" and "the Loss of Consistency of Federal Actions with the Program". OCZM believes that these descriptions are sufficient for an understanding of the impacts associated with this particular alternative.

The proposed action is federal approval of the New Jersey Coastal Management Program. The federal alternatives are to delay or deny approval. Before federal approval can occur, the Assistant Administrator must determine that the New Jersey Coastal Management Program meets the requirements for appoval under the Federal Coastal Zone Management Act. This determination ultimately requires that discretion be used in interpreting the intent of Congress as expressed in the Act. Based upon careful consideration of the Proposed New Jersey Coastal Management Program and Draft Environmental Impact Statement and upon comments received on that DEIS, the Assistant Administrator has made a preliminary determination that New Jersey has met the requirements for approval under the Federal Coastal Zone Management Act.

This discussion of alternatives will first consider the generalized impacts that would result from delay or denial of approval for any reason. It will next consider possible reasons for denial.

Delay or denial, for whatever reason, would not prevent New Jersey from implementing the Coastal Program. It would not prevent the State from enforcing its Coastal Resource and Development Policies which meet a number of federal concerns such as preservation of natural and cultural resources and adequate consideration of the national interest in the siting of facilities of greater than local importance. It would, however, limit the State's ability to fully implement its Coastal Management Program by curtailing funds for program implementation and removing the requirement that federal actions be consistent with State coastal policies. The general impacts of delay or denial of approval, regardless of the reason, are as follows:

1. Loss of Federal Funds to Administer the Program

If approval of the program is delayed or denied, New Jersey will lose an estimated $1.8 million per year in program implementation funds, beginning in October, 1980. Loss of these funds would prevent adequate staffing of the permit programs which are the backbone of the Coastal Management Program. The State might be unable to implement the Waterfront Development Permit program over a reinterpreted jurisdiction. The State would also be forced to curtail its coastal planning activities, making it more difficult to revise coastal policies as new problems are identified. It might not be possible to implement whatever recommendations result from the federally funded Cumulative Impact study. Finally, delay or denial of program approval would mean an estimated annual loss of up to $6 million in CEIP funds for planning to deal with the impacts of offshore energy production.

2. Loss of Consistency of Federal Action With New Jersey's Coastal Resource and Development Policies

Denial or delay of program approval would render ineffective Section 307(c) of the CZMA, which requires that Federal actions in or affecting New Jersey's Coastal Zone be consistent with State coastal policies.

Although the Assistant Administrator has made a preliminary determination that New Jersey has met the requirements for approval under Section 306 of the Coastal Zone Management Act, this section identifies possible deficiencies in the Coastal Program which might require delay or denial of program approval to insure that the Assistant Administrator's initial decision is correct.

Alternative 1: The Assistant Administrator could delay or deny approval if the boundary is not adequate to meet the requirements of Section 304(1) - definition of coastal zone and 923.31(a) of the CZM regulations - inland boundaries.

Section 304(1) of the Coastal Zone Management Act states that the coastal zone shall extend inland from the shoreline only to the extent necessary to control shoreland uses which have a direct and significant impact on coastal waters. The state has established a boundary in the area north of the Raritan Bay (except for the Hackensack Meadowlands District) and north of the Delaware Memorial Bridge on the Delaware River which would extend 100 to 500 feet inland of all tidal waters through the administration of the Waterfront Development Act (N.J.S.A. 12:5-3).

Specifically, the boundary in these areas is a minimum of 100 feet inland and a maximum of 500 feet, or an intervening property line, public road or railroad if one lies between 100 and 500 feet inland. Within the area from the Raritan Bay to the Delaware Memorial Bridge, which is subject to the Coastal Area Facility Review Act, the coastal zone boundary includes the area under the jurisdiction of CAFRA or the Wetlands Act, whichever extends farther landward. While the CAFRA boundary varies considerably, it extends inland no less than one half mile and averages about six miles in width. The boundary of the coastal zone in the Hackensack Meadowlands will be the same as that of the HMDC District.

The issue can be raised of the adequacy of regulating in urban areas only up to 100 feet from the shoreline. Federal CZMA regulatinns 923.31(c) (general comments), however, clearly allow for a narrower boundary in urban areas by stating that "in many urban areas or where the shoreline has been modified extensively, natural system relationships between land and water may be extremely difficult, if not impossible, to define in terms of direct and significant impact". Because of the nature of the New Jersey coastline in the area north of the Raritan Bay, and along the Delaware River, its extensive bulkheading, high density, existence of infrastructure, and generally built-up character, the administrator has preliminarily determined that the State will be regulating in an area adequate to cover all uses that have a direct and significant impact on coastal waters. In addition to the Waterfront Development Permit Program, the State will regulate activities through the Wetland Act N.J.S.A. 13:9A-1 et seq. and tidelands grants, leases and licenses. The procedures for review of activities within the boundary is outlined in further detail in Chapter 4 of this document. Reviewers of this FEIS are especially encouraged to comment on any land uses which could occur inland of this boundary, which may have direct and significant impact on coastal waters.

Alternative 2: The Assistant Administrator could delay or deny approval if the inclusion of the Hackensack Meadowlands Commission's policies on wetlands violate the provisions of 923.3(b)(ii) - regarding wetlands and floodplains.

CZMA regulations 923.3(b)(ii) state that a program must include policies that address uses of or impacts on wetlands and floodplains and that these policies shall minimize the destruction, loss or degradation of wetlands and preserve and enhance their natural values in accordance with the purposes of Presidential Executive Order 11990 - pertaining to wetlands. The Hackensack Meadowlands Development Commission's (HMDC) Master Plan allows for the possible filling of 25% (1,196 acres) of the remaining wetlands for water dependent activities and housing. About 75% (3,576 acres) of the wetlands are to be preserved under the plan. The acreage of wetlands proposed for possible filling, however, amounts to a small percentage of the overall coastal wetlands in the coastal zone. The State has an estimated 256,000 acres of coastal wetlands under the direct jurisdiction of the Coastal Management Program. The 1,196 acres identified by the HMDC for possible filling represent approximately 0.5% of the entire State's regulated wetlands. The Commission will allow selected filling of wetlands in accordance with the District Master Plan, adopted in 1972, and last amended in November, 1979, after a thorough review of alternative sites.

The issue has been raised as to whether the policies of the Hackensack Meadowlands Development Commission violate the provisions of the CZMA, or the President's Executive Order on Wetlands. In regard to the CZMA, Section 303 and Regulation 923.3 do not prohibit all filling of wetlands, but call for programs to minimize the destruction, loss or degradation of wetlands. It is the preliminary conclusion of the Assistant Administrator that the Hackensack Meadowlands plan minimizes the destruction of wetlands. The President's Executive Order on Wetlands applies to Federal activities in wetlands; it will come into effect when federal permits, such as permits under Section 404 of the Clean Water Act are applied for.

It is important to note that the Hackensack Meadowlands Commission Plan is not a special management plan of the type allowed for in Section 230.10(a)(3)(ii) of the 404(b)(1) guidelines to the Clean Water Act. The Hackensack Meadowlands plan was prepared without necessarily meeting the comprehensive planning process called for in those guidelines. It is expected that decisions for 404 permits will continue to be made by federal agencies on a case-by-case basis, taking into account the wetland values and responsibilities under the Executive Order.

CZM regulation 923.21 allows for the designation as an Area of Particular Concern of any area where there are regulatory or permit requirements which apply only to that area. The State has designated the HMDC as an Area of Particular Concern based on the particular policies adopted by the Commission, and upon the Commission's regulatory jurisdiction. The plan adopted by the Commission calls for the creation of unified marshland preservation districts and restored shoreline buffer areas, and requires improvements to existing water quality facilities. Chapter 5 of the FEIS/Program document details the regulations of the HMDC.

Alternative 3: The Assistant Administrator could delay or deny approval if the Waterfront Development Permit Program does not meet the requirements of Section 306(c)(7) - adequate authorities necessary to implement program.

CZMA regulations 923.41(b)(1) allow for the Assistant Administrator to request a State Attorney General's opinion when there is a need for verification of an intecpretation of any of the authorities proposed to be part of the management program. An Attorney General's opinion was requested on the interpretation of the Waterfront Development Permit Program's jurisdiction to regulate all uses in the coastal zone up to 500 feet inland of tidal waters, or to the first property line, road or railroad, whichever is less extensive, subject to a minimum jurisdiction of 100 feet. The Attorney General responded to this request and his opinion is in Appendix D of the FEIS/Program document.

The Attorney General's opinion states that DEP does have the legal authority to define the jurisdiction of the Waterfront Development Permit Program to regulate all uses in the coastal zone up to a minimum of 100 and a maximum of 500 feet inland. Based on the Attorney General's opinion, DEP has adopted this interpretation of the Waterfront Development Permit Program as a rule. This rule may be found in Appendix D of the FEIS/Program document.

APPENDICES

[redacted]

## APPENDIX A - THE COASTAL PLANNING PROCESS: 1973-1979

The New Jersey Coastal Management Program is based on DEP staff research, contractual studies by private consultants, university research teams, and state and local government agencies, and considerable public debate, suggestions, questions, and comments over the past six years. The most tangible evidence of the coastal planning process are the federally-approved Coastal Management Program - Bay and Ocean Shore Segment, Options for New Jersey's Developed Coast, Proposed New Jersey Coastal Management Program and other coastal reports published by DEP. Many of the planning reports produced and widely distributed by DEP are available upon request from the Division of Coastal Resources, while others, intended as in-house working documents, are available for review by interested people. Other evidence of the coastal planning process may be less visible, but just as significant as printed documents. This appendix sketches some of the highlights of the coastal planning process to date, both the clearly tangible reports and the public participation efforts.

The coastal management program has been prepared in two phases. The first, addressing the Bay and Ocean Shore Segment, received approval from the National Oceanic and Atmospheric Administration in September 1978. The second, combining the Developed Coast with the Bay and Ocean Shore Segment and proposed in this document, is based on studies prepared for the entire coast during the past six years.

### Major Planning Documents

Since 1975, DEP has prepared several major coastal planning reports which were widely shared with public groups, individuals, and agencies. These reports and the reaction to them have shaped the direction and policies of the Coastal Program.

In September 1975, DEP published an Inventory of the New Jersey Coastal Area which defines and discusses the diverse resources, problems and opportunities of New Jersey's coast in order to indicate the range of issues that constitute the agenda for coastal zone management.

In July 1976, DEP released Interim Land Use and Density Guidelines for the Coastal Area of New Jersey, prepared with the assistance of Rivkin Associates of Washington, D.C. This document classifies land and water features in the coastal area in terms of relative suitability for development. The Interim Guidelines and the companion publication, Guiding the Coastal Area of New Jersey -- The Basis and Background for Interim Land Use and Density Guidelines, provided an advance indication to developers, municipal officials, and others, of the likely decision on CAFRA permit applications, and have also served as a focal point for discussion and debate in the development of the Coastal Management Strategy (September 1977), the Coastal Management Program - Bay and Ocean Shore Segment (August 1978) and Options for New Jersey's Developed Coast (March 1979).

In October 1976, Alternatives for the Coast - 1976 was published to indicate the scope of policy alternatives DEP was evaluating for the coastal zone, their implications and the principles that helped shape them. DEP expanded upon the policy alternatives in twenty-two issue papers published between November 1976 and early 1977. The topics covered were: Agriculture and the Coast, Air Resources,

Cultural Resources, Flooding, Groundwater Quantity and Quality in the New Jersey Coastal Zone, Housing, Ocean Resources (Living, Mineral, and Physical Resources), Sand Movement and the Shoreline, Solid Waste and the Coast, Surface and Coastal Water Resources of New Jersey, Upland Living Resources (Endangered, Threatened and Rare Animals, Endangered and Rare Vegetation, and Upland Wildlife Habitats), and Upland Mineral Resources and the Coast. A separate paper on the value of Atlantic White-Cedar Stands was completed in May 1976.

In December 1976, DEP released Alternative Boundaries for New Jersey's Coastal Zone. This report presented ten possible coastal zone boundaries and served as a basis for debate on the issue.

DEP submitted the Coastal Management Strategy for New Jersey-CAFRA Area to the Governor, Legislature, and public in the fall of 1977. The Strategy introduced the Coastal Location Acceptability Method (CLAM), a method of coastal resource management developed by DEP-OCZM in 1976-1977 using a pilot study area in lower Cape May County. Prepared in part to satisfy the statutory mandate of the Coastal Area Facility Review Act of 1973 that called for the selection of an environmental management strategy for the coastal area in four years, the document also served as a discussion draft of the Coastal Management Program for the Bay and Ocean Shore Segment. DEP distributed 3,000 copies of the Coastal Management Strategy, conducted eight public meetings throughout the state to discuss and debate the coastal program, held twenty additional informal meetings with public agencies and received nearly one hundred written statements with comments on the Strategy. DEP then revised the Strategy substantially in the course of preparing the Draft EIS for the Bay and Ocean Shore Segment document.

The formal federal approval process for New Jersey's coastal program began in May 1978 with the publication of the Coastal Management Program - Bay and Ocean Shore Segment and Draft Environmental Impact Statement. DEP distributed more than 3,000 copies of the draft document, and held numerous meetings with various interest groups to discuss and debate the coastal program. In addition, DEP with NOAA-OCZM convened three public hearings to receive testimony on the DEIS. The Final Environmental Impact Statement (August 1978) was the result of revisions made to the May 1978 document, based on public comment gathered at the hearings, in informal meetings, and in written statements, and was approved by NOAA in September 1978. Options for New Jersey's Developed Coast (March 1979) provided a basis for further discussion of a coastal boundary, management system and policies as the coastal management program is expanded to encompass the coastal zone of the entire State.

The discussion of Options led to several changes, including a Coastal zone boundary limited to the area of direct DEP jurisdiction, in the Proposed New Jersey Coastal Management Program and Draft Environmental Impact Statement (May 1980). Three thousand copies of that draft program were distributed and four public hearings were jointly covened by NOAA and DEP. This New Jersey Coastal Management Program and Final Environmental Impact Statement represents the culmination of the coastal planning process, incorporating written and oral comments received throughout the past five years. The coastal planning process, however, is not complete. The Coastal Management Program will be revised as need becomes apparent through public comment, research and implementation experience, and the Coastal Resource and Development Policies, which lie at the core of the program, will be reevaluated annually.

## Public Shorefront Access and Erosion

DEP's Office of Coastal Zone Management served as staff to the Commissioner of DEP in his capacity as an active ex-officio member of the New Jersey Beach Access Study Commission. In 1976-1977, DEP staff helped prepare the Commission's report to the Governor and Legislature on beach access in April 1977. This report, entitled Public Access to the Oceanfront Beaches, examined beach use, budgets, and fees and ownership.

A study on shoreline erosion was prepared under contract to DEP by Rutgers University - Center for Coastal and Environmental Studies. The Coastal Geomorphology of New Jersey, in two volumes printed in December 1977, deals with the management techniques, strategies, and the technical basis and background for shoreline erosion management strategies. The study was a large step forward in understanding how to make decisions regarding development along the shoreline. Its influence is seen in many of the policies (high risk erosion, shore protection, dune protection) of the Coastal Resource and Development Policies.

## Energy

In December 1975, the Department of Environmental Protection invited energy industry representatives to provide basic information on coastal energy siting to be used in preparing the energy facility element of New Jersey's coastal zone management program. The results of this "Call for Information" were published by DEP in March 1977. The state's three major electric utilities responded in considerable depth to the "Call".

DEP's concern with the development of coastal energy facilities is further reflected in two contractual studies undertaken by research groups at Princeton and Rutgers Universities. The study by Princeton's Center for Environmental Studies, entitled Who's in Charge? - Governmental Capabilities to Make Energy Siting Decisions in New Jersey, received financial support from the Federal Energy Administration, which sponsored a similar effort in each of the states associated with the Mid-Atlantic Governors Coastal Resources Council (New York, New Jersey, Delaware, Maryland and Virginia). It was published in September 1977. The Rutgers study, prepared by the Center for Coastal and Environmental Studies and entitled Onshore Support Bases for Offshore Oil and Gas Development: Implications for New Jersey, was released in February 1978. In addition, DEP staff completed a report entitled Energy Facility Siting Issues in New Jersey's Coastal Zone, which was released for distribution in December 1977. DEP staff also prepared a brief "Fact Sheet on Offshore Drilling in New Jersey" in June 1978, and a report on OCS activities in New Jersey (1974-1979) in November 1979.

## Legal Framework

In June 1976, DEP compiled "An Inventory of Environmental Law in New Jersey", which includes a description of major New Jersey land use, water quality, air pollution, and living resources laws related to coastal zone management. This is an in-house working document.

In June 1977, DEP completed "Areawide (208) Water Quality Planning and the New Jersey Coastal Zone Management Program: Opportunities for Interagency Coordination," a paper detailing the relationship between coastal zone management planning and water quality planning being conducted in New Jersey under Section 208 of the Federal Water Pollution Control Act.

Economics and Land Use

NJ DEP had contracts in 1975 and 1976 with the New Jersey Department of Community Affairs (DCA) and the Department of Labor and Industry (DLI) to prepare background land use and socio-economic studies about the coast. DCA produced information concerning: "Coastal Zone Housing Issues", County Land Use Issues in Atlantic, Cape May, Cumberland, Monmouth, Ocean and Salem Counties (six papers), "Growth Centers and Their Implications", "Sewerage Facilities", "Transportation Systems", and "Water Supply".

The Department of Labor and Industry prepared the following papers: "Background Paper: Economic Perspectives on New Jersey Tourist Industry", "Economic Inventory", "Economic Issues and Problems in Northeastern Region of New Jersey Coastal Zone", "Some Taxes", "Economic Profiles" on Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Monmouth, Ocean, and Salem Counties (nine papers), and "Municipalities in Burlington and Middlesex Counties".

Information Systems

In February, 1975, in cooperation with the American Arbitration Association, DEP began an experiment to validate the environmental data for the Coastal Program. This experiment involved two large public meetings and several subsequent workshops. By January 1976, agreement was reached on data in nine natural resource categories. The categories are: bathymetry, flood areas, geology, groundwater, land use, slope, soils, tidal wetlands and vegetation.

NJ DEP also tested the development of information packages on an automated basis, in cooperation with the American Arbitration Association, Rockefeller Foundation, Rutgers University, and Princeton University. The 1976-1977 project, called the "Intuitive-Interactive Model", produced draft information packages on air pollution, construction noise, physical impact, industrial energy demand, odor pollution, residential energy demand, solid waste and waste demand, and urban runoff. One distinctive feature of the model is the ability of interested users such as developers or municipal officials to work directly, or "interact", with the computer. The findings of the project are being used by DEP in considering the ultimate design of an information system to assist coastal and perhaps statewide land and water use decision-making.

Nominated Areas of Public Concern

In December 1977, NJ DEP completed a report for public release entitled Nominated Areas of Public Concern in the New Jersey Coastal Zone. The report describes 176 areas of the state nominated by 140 interested individuals and organizations in 1976-1977, in response to DEP's invitation that the public suggest sites and areas for preservation, development, historic, recreation, visual, or other purposes.

The enthusiastic public response to this invitation led to detailed and wide ranging nominations, which were used in part to confirm and refine the DEP-OCZM staff recommendations on Special Land Areas and Special Water Areas in preparing the Location Policies in the Coastal Management Program - Bay and Ocean Shore Segment and this document. DEP also distributed its report describing the nominations to other state, county and municipal agencies which can make decisions

affecting the sites. Finally, the information DEP gained about specific sites through the Nominated Areas of Particular Concern program has been used in the past and will be used in the future as supplemental information to be reviewed in individual coastal permit decisions.

Coastal Awareness

Rutgers University Center for Coastal and Environmental Studies, under contract to DEP, produced four booklets on coastal issues for public distribution in 1976-1977. The booklets, which are available from DEP are: "State Government and Coastal Zone Management", "Coastal Zone Legislation", "Oil Spills Reaction and Responsibility in New Jersey", and "New Jersey's Fishing Industry".

Mapping

During 1976-1978 DEP published several coastal map series, which are available to the public. The Inventory of the New Jersey Coastal Area - 1975 describes where these maps are located and how to use them. The Third Year Coastal Zone Management Program Development Grant Application provides a detailed list of the mapping in the first two years of the program. During the third year (1976-1977), extensive mapping was also done as part of DEP's pilot study in lower Cape May County, which resulted in the publication of A Method for Coastal Resources Management (July, 1978).

The Interim Land Use and Density Guidelines also includes maps of developed and selected environmentally sensitive areas in the Bay and Ocean Shore Segment. Wetlands maps are on file with each county recording officer and are also available for public inspection or purchase in DEP's Bureau of Coastal Planning and Development. Flood hazard area maps, as delineated by DEP's Division of Water Resources, are available for public inspection.

In addition, DEP funded a study by Rutgers University - Center for Coastal and Environmental Studies to develop an underwater aerial photographic methodology suitable for surveying submerged vegetation in the coastal estuaries of New Jersey. The study culminated in the report, entitled Analysis and Delineation of the Submerged Vegetation of Coastal New Jersey: A Case Study of Little Egg Harbor (January 1978), which describes the aerial underwater photographic method, identifies and maps distributions of species, and discusses the ecological functions and associated problems of each of the dominant species.

In July 1978, DEP released a staff working paper entitled Definition of the Preliminary Coastal Zone Boundary for the Delaware River and Northern Waterfront Regions of New Jersey's Coastal Zone. This paper identifies the process used by DEP to prepare an initial boundary for the coastal zone outside of the Bay and Ocean Shore Segment.

In September 1978, DEP held an all day mapping workshop to begin planning a coordinated effort by state agencies and other interested groups to identify mapping and other data needs, and to devise a system for obtaining, storing, and using the information.

Public Participation

DEP's Division of Coastal Resources is committed to wide public participation by law, by practicality, and by principle. The Division's involvement efforts have two objectives, to raise the level of public awareness regarding both threats to, and attributes of the coast, and to identify and meet with individuals and groups who can contribute knowledge and opinions to coastal planning efforts.

The Division works to involve people early in the planning process and continues to encourage such involvement. Draft documents are made available. Possible policies are discussed in public long before they are even formally proposed, much less adopted. The objective is for the DEP staff to be exposed to as much information as possible, and for initial staff ideas and work products to receive a wide and critical reading. The reason is simple: a coastal zone management program cannot be prepared just from Trenton. The state's coastal zone is too large and too diverse. Public input and feedback is critical. Ideas which appear attractive on a planner's desk may be impossible to apply.

The Division of Coastal Resources uses varied forums and publications to hear and explore varied information and viewpoints. To attract coastal residents, DEP convened several series of public meetings in coastal counties during 1975-1978. The first meetings, held in Toms River and Trenton in February and May 1975, were focused on introducing the program and DEP's Data Validation Project. A second series of meetings were held in the summer of 1976 following publication of the Interim Land Use and Density Guidelines for the Coastal Area. A third series of seven meetings were held in the early winter of 1976 after release of Alternatives for the Coast. A fourth series of eight public meetings took place around the state in November-December 1977, following public release of the Coastal Management Strategy. These public meetings often began with a slide presentation and talk by a DEP staff member and then turned to the specific concerns of the assembled. Discussion at these meetings flows from the questions, and many topics are each discussed relatively briefly. In addition, DEP holds periodic workshops focused on specific, pre-announced subjects. Workshops on Agriculture, for example, were held in October 1976 in two locations (Bridgeton and New Brunswick). Additional workshops were held in February 1977 in Trenton and Toms River on Biological Resources, Physical Resources, Housing, Air Resources and Transportation, and Recreation and Boating.

Upon publication and distribution of the Draft Environmental Impact Statement on the Bay and Ocean Shore Segment in May 1978, DEP held numerous workshops throughout the state with municipal officials, environmentalists, and industry and trade representatives prior to the document's more formal review at public hearings in June. The workshops were held primarily to further acquaint participants with the Coastal Location Acceptability Method (CLAM). DEP staff used a step-by-step process with illustrations to work through a CLAM case study. The workshops also provided a forum for additional comments about the document, so that interested parties could receive clarification on specific points within the document, or suggest and discuss particular issues in greater detail than is possible at hearings. DEP, in conjunction with NOAA-OCZM, then held three public hearings on the Coastal Management Program in June 1978 in Bridgeton, Toms River, and Trenton. Approximately 180 people attended the hearings at which a total of 35 persons offered testimony. DEP presented a slide show at the start of each hearing to serve as an introduction to the coastal program.

Following publication and distribution of Options for New Jersey Developed Coast, another series of public meetings were held in June, 1979. These public meetings explored the issues raised in Options and discussed the implications of completing the coastal management program for the developed parts of the coast.

In the Delaware River Area, DEP has held public meetings in Camden, in 1976, 1977, 1978, and 1979; in Gloucester in 1978 and 1979; and in Burlington in 1979. Speakers from DEP's Office of Coastal Zone Management (OCZM) have attended additional meetings in Gloucester County and Burlington County. DEP-OCZM has shared drafts of documents with the Delaware River Port Authority throughout the planning process and undertook a contract for joint coastal planning with the Delaware River Basin Commission.

In the Northern Waterfront Area of the Developed Coast, DEP-OCZM held public meetings in Hoboken in 1976, New Brunswick in 1976, 1978 and 1979; Jersey City in 1977 and 1978; Hackensack, Edison and Elizabeth in 1978; and Newark in 1979. In 1977, DEP-OCZM met with municipal officials in Hudson and Bergen counties. DEP-OCZM staff have also spoken to environmental, civic and business groups in the area. Drafts of documents have been shared with the New York and New Jersey Port Authority, and DEP-OCZM has a working arrangement with the Hackensack Meadowlands Development Commission to exchange views on planning efforts.

As an additional method of adding local input and perspectives to planning for the Developed Coast, DEP-OCZM passed through two small grants of federal funds available under the Coastal Zone Management Act to coastal counties to conduct studies on energy facility siting, and to provide county suggestions and comments on the direction and content of the State Coastal Management Program. The participating counties in the Developed Coast were Salem, Gloucester, Camden, Burlington (for one year), Middlesex, Union and Hudson.

DEP also meets regularly with representatives of builders and environmental groups. DEP has shared and discussed with these groups early drafts of several coastal reports including the Interim Land Use and Density Guidelines, CAFRA Procedural Rules and Regulations and the Coastal Management Strategy. Prior to the May 1978 publication of the Coastal Management Program - Bay and Ocean Shore Segment and Draft Environmental Impact Statement, DEP distributed 150 copies of a pre-publication version of the document for quick review and comment by other state agencies, coastal county planning boards, builders, and energy, industry and environmental group representatives who had been active in the coastal planning process. Recipients of the pre-publication draft were also invited to a special Saturday review working session.

Since November 1976, DEP has held regular meetings with an Environmental Advisory Group composed of leaders of statewide civic and environmental groups. These meetings have been regularly attended by representatives of the American Littoral Society, American Association of University Women, League for Conservation Legislation, Sierra Club, Association of New Jersey Environmental Commissions, Natural Resources Defense Council, and the League of Women Voters, and occasionally by the Citizens Association to Protect the Environment, New Jersey Audubon Society, New Jersey Conservation Foundation, New Jersey Public Interest Research Group, and the Youth Environmental Society.

DEP also convened a series of workshops on energy involving oil and gas industry representatives from Louisiana and Texas, as well as from the New Jersey Petroleum Council and the American Petroleum Institute in Washington, D.C., county energy planning representatives, researchers from Rutgers and Princeton, fishing groups. As the Newark Star Ledger noted on April 24, 1977, "It comes as somewhat of a surprise to find many of the combatants meeting across tables to discuss the issue informally, almost casually, in New Jersey."

The hearings held by DEP on each CAFRA permit application provide another forum for public input in the Bay and Ocean Shore Segment. The hearings are held near the site proposed for development, and range, depending on the interest aroused by the applicant, from five minute meetings attended only by the applicant to four hour sessions with up to 300 people.

The Coastal meetings and workshops are announced primarily through The Jersey Coast, the Division of Coastal Resources newsletter. This periodical is mailed to all interested persons and organizations known to DEP. The mailing list currently includes more than 7,000 names. Meetings are also announced through press releases and the DEP Bulletin.

The Division recognizes that reliance on a mailing list may neglect many potentially interested persons. To expand interest and knowledge of coastal management issues, the DEP staff have spoken before a wide variety of municipal, county, state, and regional agencies, and civic, interest and professional groups in New Jersey and in other states. This provides an opportunity to talk with many people who may be well aware of some of the problems, but unaware of the coastal zone management program and possible solutions. Through these meetings, proposed policies are debated, interested individuals identified, and new people added to the mailing list who may later contribute to an element of the program.

DEP also participates in other events to raise public awareness of coastal issues and again to identify more people who are interested in participating in the coastal management process. In June, 1976, for example, the DEP Commissioner led federal, state and local officials, interested citizens, and reporters on a six day walk along New Jersey's 125 mile ocean shoreline. This innovative event sparked considerable publicity and interest in the coast both in New Jersey and nationally. The Beach Shuttle experiment operated by DEP in the summer of 1977, and the return of the service in 1978 and 1979, have provided another vehicle for probing public views on selected coastal management issues. In addition, DEP has had exhibits at boat shows and county fairs. In May 1978, DEP developed a portable display describing New Jersey's coastal management program. This display can be easily updated as DEP completes the Federal approval process and begins to emphasize different areas of the State's coastal zone. The exhibit has been placed at several environmental and ecological fairs around the state, in libraries, and in the rotunda of the State House.

## APPENDIX B - EXCLUDED FEDERAL LANDS

Under the federal Coastal Zone Management Act, lands that are owned, leased, held in trust or whose use is otherwise by law subject solely to the discretion of the Federal Government, its officers, or agents are excluded from New Jersey's coastal zone. The major federal holdings located within New Jersey's Coastal Zone and, therefore, excluded under federal law, are listed below. "Major" is defined as greater than 100 acres. These areas are indicated in Figure 41. In addition to the areas noted, numerous Coast Guard stations and smaller federal land holdings are excluded from the coastal zone. The listing below notes the federal agency responsible for the land and the county in which it is located.

### Army Corps of Engineers

National Park Disposal Area (Gloucester)
Pedricktown Disposal Area (Salem)
Penns Grove Disposal Area (Salem)
Penns Neck Disposal Area (Salem)
Killcohook Spoil Disposal Area (Salem)
Artificial Island Disposal Area (Salem)
Cape May Canal (Cape May)

### Army

U.S. Military Reservation - Caven Point Marine Terminal (Hudson)
Military Ocean Terminal (Hudson)
Fort Monmouth (Monmouth)
Highlands Army Air Defense Site (Monmouth)
Philadelphia Air Defense Site - USA Reservation (Salem)

### Navy

Naval Weapons Station, Colts Neck

### Fish and Wildlife Service

Barnegat National Wildlife Refuge (Ocean)
Brigantine National Wildlife Refuge (Atlantic)
Killcohook National Wildlife Refuge (Salem)
Supawana Meadows National Wildlife Refuge (Salem)

### National Park Service

Gateway National Recreation Area - Sandy Hook (Monmouth)

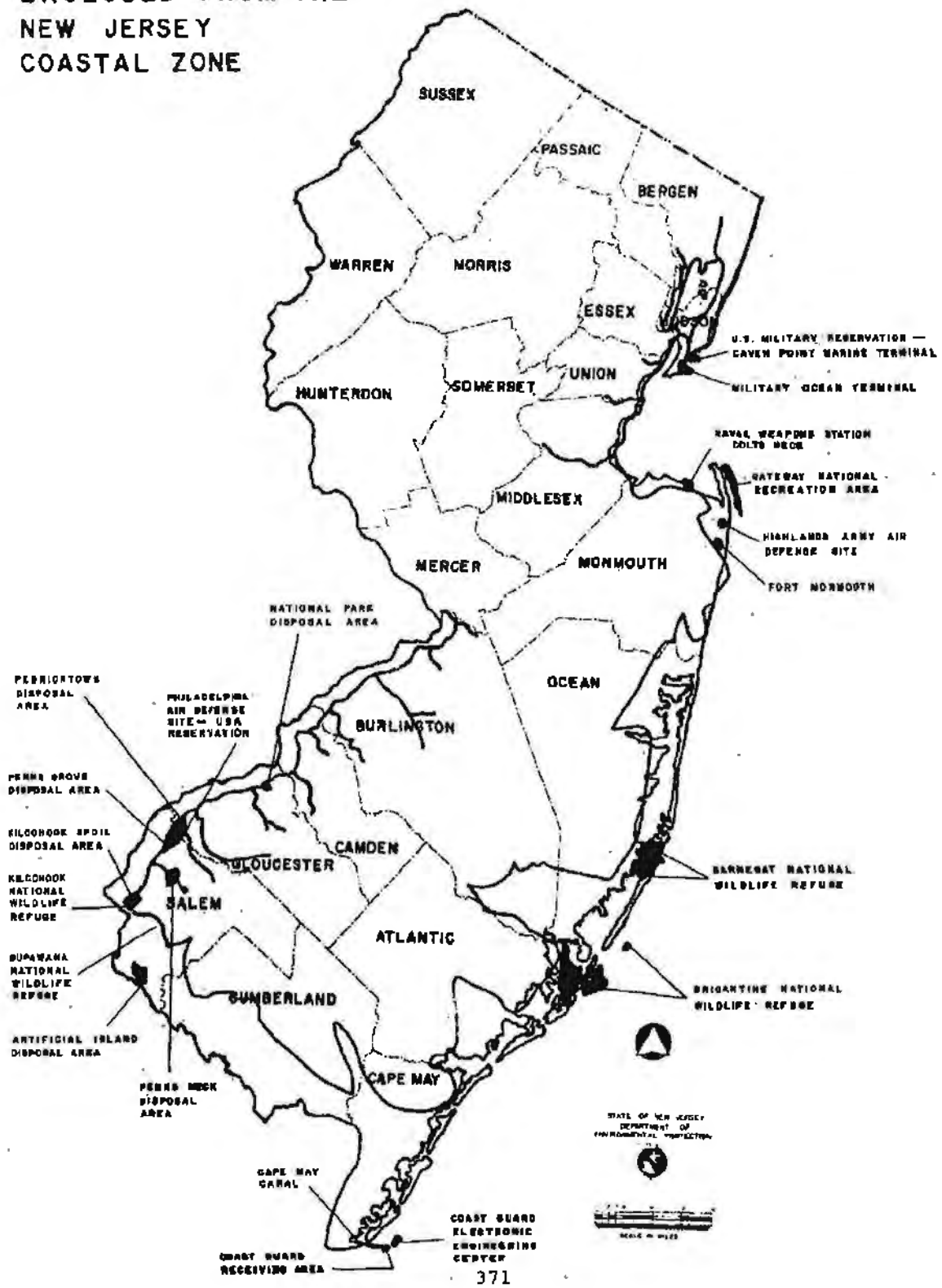
### Coast Guard

Coast Guard Receiving Center - Cape May (Cape May)
Coast Guard Electronic Engineering Center (Cape May)

The State of New Jersey considers the acquisition of new federal lands to be a direct federal action subject to the consistency provisions of Section 307 of the federal Coastal Zone Management Act. Also, federal actions on excluded lands that have spillover impacts that significantly affect coastal resources must be consistent with State coastal policies.

Figure 41

# MAJOR FEDERAL LANDS EXCLUDED FROM THE NEW JERSEY COASTAL ZONE



APPENDIX C - DOE-DEP MEMORANDUM OF UNDERSTANDING

Memorandum of Understanding
Between
New Jersey Department of Energy
and
New Jersey Department of Environmental Protection
on
Coordination of Permit Reviews

A. Purpose

This Memorandum of Understanding sets forth the areas of responsibilities and operating procedures to be followed effective immediately by the Department of Energy (DOE) and Department of Environmental Protection (DEP) under the State of New Jersey's coastal management program, as developed and as to be administered under the federal Coastal Zone Management Act of 1972 as amended (16 U.S.C. 1451 et seq.).

The DOE and DEP agree to the procedures and responsibilities that follow, recognize the statutory limitations of both agencies, and do not intend this Memorandum of Understanding to expand or limit their existing statutory powers in any way.

B. Definitions

As used in the Memorandum of Understanding, the following words and definitions shall have the following meanings unless the context indicates or requires another or different meaning or intent.

1. Complete for Review means that supplemental information requested by either the Department of Environmental Protection and Department of Energy on permit applications has been submitted and both agencies are satisfied as to form and content of such information.

2. Energy Report means the report in form and content specified by the Department of Energy Act N.J.S.A. 52:27F-13(c) or as further specified by Administrative regulation of the Department of Energy.

3. Energy Facility means any facility which produces, converts, distributes or stores energy or converts one form of energy to another consistent with applicable statutory authority and regulations of the DOE and DEP.

4. Final Agency Action means a final decision of the Commissioner of Environmental Protection or designated representative on a pending permit application except as noted in Section F.

5. Permits means administrative regulatory instruments issued by the Department of Environmental Protection on the construction or location of energy facilities, under the Coastal Area Facility Review Act (N.J.S.A. 13:19-1 et seq.), Wetlands Act (N.J.S.A. 13:9A-1 et seq.), and waterfront development permit program (N.J.S.A. 12:5-3). The definition of "Permits" may be extended by mutual agreement between DEP and DOE.

C. Statement of Existing Agency Responsibilities

1. The DEP is responsible for formulating comprehensive policies for the conservation of the natural resources of the State, promoting environmental protection, and preventing pollution of the environment (N.J.S.A. 13:1D-9).

2. The DEP is the agency designated by the Governor to develop and administer the State's coastal management program under Sections 305 and 306 of the federal Coastal Zone Management Act.

3. The DEP has selected and presented to the Governor and Legislature the Coastal Management Strategy for New Jersey - CAFRA Area (September 1977) as required by the Coastal Area Facility Review Act (hereafter CAFRA) (N.J.S.A. 13:19-16).

4. The DEP exercises regulatory responsiblity over the construction of energy facilities in the coastal zone under three coastal permit programs: the Coastal Area Facility Review Act (N.J.S.A. 13:19-1 et seq.), the Wetlands Act (N.J.S.A. 13:9A-1 et seq.), and waterfront development permit program (N.J.S.A. 12:5-3).

5. The Coastal Area Review Board (hereafter CARB), in but not of DEP, may hear appeals of CAFRA permit decisions by DEP (N.J.S.A. 13:19-13, N.J.A.C. 7:7D-1 et seq.). DEP also provides a plenary hearing appeals procedure complying with the Administrative Procedures Act for CAFRA (N.J.A.C. 7:7D-2.8), Wetlands (DEP Administrative Order No. 12, December 8, 1977), and waterfront development (N.J.A.C. 7:1C-1.9(b)) permit decisions by DEP's Division of Marine Services.

6. The DOE is responsible for the coordinated regulation and planning of energy-related matters in the State (C. 146, L. 1977, N.J.S.A. 52:27F-1 et seq.).

7. The DOE, through its Division of Energy Planning and Conservation, is preparing the State Energy Master Plan for the production, distribution, consumption, and conservation of energy in the State, which will include the siting of energy facilities in the coastal zone (N.J.S.A. 52:27F-12).

8. The DOE, Division of Energy Planning and Conservation is empowered and directed to intervene in any proceeding and appeal from any decision of DEP with respect to the siting of energy facilities in the coastal zone. The DOE is a party of interest in any proceeding before DEP on coastal energy facility siting (N.J.S.A. 52:27F-13(a)).

9. The DOE has coextensive jurisdiction with DEP over permit applications on the siting of any energy facility in the State, including the coastal zone. The DEP must solicit the views of DOE prior to making a decision on the siting of an energy facility in the coastal zone. DOE's views must be transmitted to DEP in a report (hereafter Energy Report) within 90 days of DOE's receipt of the application. If the Energy Report differs from the decision of DEP, the conflict shall be referred for resolution to the Energy Facility Review Board (N.J.S.A. 52:27F-13(c)).

10. The DOE is the agency designated by the Governor to administer the State's participation in the Coastal Energy Impact Program (CEIP) under Section 308 of the federal Coastal Zone Management Act. DEP, as the state coastal management agency, must be involved in the CEIP Intrastate Allocation Process.

D. Coastal Planning and Energy Planning

DOE and DEP agree to work together, to the maximum extent practicable, to formulate, review, and revise plans, policies, and guidelines on the siting of energy facilities in the coastal zone, including but not limited to planning documents such as the State Energy Master Plan, Coastal Mangement Strategy for New Jersey - CAFRA Area, and New Jersey Coastal Management Program - Bay and Ocean Shore Segment.

E. Joint DEP-DOE Coastal Permit Application Processing Sequence

DEP and DOE agree that coastal permit applications for energy facilities over which DOE has coextensive jurisdiction shall be processed according to the following sequence of steps and timetable.

1. DEP receives energy facility permit application and begins internal DEP permit application review process.

2. When complete for review, DEP promptly refers a copy of the energy facility permit application to DOE, Division of Energy Planning and Conservation for its review. The Division shall submit an Energy Report on the application to DEP within 90 days of DOE receipt of the complete application. The DOE Energy Report shall be transmitted to DEP at least thirty (30) days prior to the application statutory or regulatory deadline for decisions by DEP on CAFRA, Wetlands, or waterfront development permits (see the 90 Day Construction Permits Law, C. 232, L. 1975, N.J.A.C. 7:1C-1.8) in order to insure both timely consideration by DEP of DOE's views as well as expeditious decision-making on energy facility permit applications. The time period may be extended by mutual consent of both agencies and the applicant as deemed appropriate. Consistent with the provisions of the 90 Day Construction Permits Law C. 232, L. 195, no decision will be made on energy facility permit applications until the DOE Energy Report or a memorandum from the DOE Commissioner that such a report will not be issued, is received by DEP.

3. For CAFRA permit applications, DEP shall request additional information from applicants, as reasonably requested in a timely manner by DOE, prior to declaring an application complete for filing (N.J.A.C. 7:7D-2.3(e)1.), at the required public hearing (N.J.A.C. 7:7D-2.3 (e)5.iv.), or within 15 days after the public hearing (N.J.A.C. 7:7D-2.3 (e)6.i.), prior to declaring the application complete for review (N.J.A.C. 7:7D-2.3(e)6.iii.), to insure that DOE has adequate information to prepare its Energy Report. At its discretion, DOE may submit a Preliminary Energy Report to DEP at least 15 days prior to the date of a scheduled public hearing on a CAFRA permit application, in order to assist DEP in preparing its Preliminary Analysis of the application (N.J.A.C. 7:7D-2.3(e)4.).

4. For Wetlands and waterfront development permit applications, DEP shall request additional information from applicants, as reasonably requested in a timely manner by DOE, before declaring an application complete (N.J.A.C. 7:1C-1.7(a)2.), to insure that DOE has adequate information to prepare its Energy Report.

5. For proposed coastal energy facilities that require a CAFRA permit and either or both of a Wetlands and waterfront development permit, DEP shall coordinate the review process, including review of the adequacy of submitted information, public hearings, and decision documents, under the auspices of the review process for the CAFRA permit application, including its information requirements. Specifically, a Wetlands or waterfront development permit application shall not be declared complete, triggering the 90 day permit decision period under the 90 Day Construction Permits Law (C. 232, L. 1975), until the CAFRA permit application is declared complete for review (N.J.A.C. 7:7D-2.3(e)6.iii.).

6. DEP issues decision on the energy facility permit application. If DOE has submitted an Energy Report in a timely manner, the DEP decision document shall refer to the Energy Report and indicate DEP's reasons for differences, if any, between the DEP decision and the DOE Energy Report.

F. Appeals of DEP Coastal Energy Facility Permit Application Decisions

DEP's decisions on CAFRA, Wetlands, and waterfront development permit applications may be appealed administratively by an applicant or an interested third party. DOE shall refer a DEP decision that differs with DOE's Energy Report to the Energy Facility Review Board for a decision binding upon DEP. Since multiple possible avenues of appeal exist on DEP coastal energy facility permit applications, DEP and DOE agree that appeals shall be heard according to the following procedure, to be incorporated by appropriate regulations of DEP: the Coastal Area Review Board, the Natural Resource Council and the Energy Facility Review Board.

1. DOE may convene the Energy Facility Review Board only if its Energy Report submitted to DEP differs with the DEP decision.

2. If an applicant and/or an inreresred third party appeals a CAFRA permit decision to the Coastal Area Review Board, or appeals a CAFRA or Wetlands decision by DEP's Division of Marine Services to the Commissioner for a plenary (quasi-judicial) hearing, or appeals a waterfront development permit decision by DEP's Division of Marine Services to the Natural Resource Council (N.J.A.C. 7:1C-1.9(b)), DOE shall be a party of interest at the appeal. If the final decision on appeal of either the Coastal Area Review Board, Commissioner, or Natural Resource Council differs with the DOE Energy Report submitted to DEP before the initial administrative decision, then DOE shall convene the Energy Facility Review Board.

3. The Energy Facility Review Board may affirm, reverse, or modify the initial DEP administrative decision or the decision on appeal. The DOE and DEP members of the Board agree that DOE shall, by September 28, 1978, promulgate regulations to establish the operating procedures of the Board, including, but not limited to a provision binding the Energy Facility Review Board to limit its review to the DEP decision and the

Energy Report, prepared pursuant to Section C of this Memorandum of Understanding, and to follow the New Jersey Administrative Procedures Act.

4. Appellant parties may seek judicial relief as appropriate.

G. Basis of Energy Report

1. DOE and DEP agree to accept the New Jersey Coastal Management Program - Bay and Ocean Shore Segment (and subsequent segment), as approved by the Governor, and particularly its Coastal Resource and Development Policies, and the State Energy Master Plan, as the basis for the formulation of the DOE Energy Report with respect to the siting of energy facilities in the coastal zone.

2. DOE and DEP agree that the DOE Energy Report shall include an evaluation of the need for the proposed energy facility, considering local, state, regional, and national interests, as one of many factors to be considered in preparation of the Energy Report and decision, respectively.

H. Coastal Energy Impact Program

1. DOE and DEP agree to work cooperatively in DOE's administration of the federal Coastal Energy Impact Program in New Jersey.

2. DEP will participate fully in the New Jersey CEIP Intrastate Allocation Committee's deliberations, as the designated lead state agency for coastal zone management.

3. One copy of all CEIP applications submitted to DOE shall be referred by DOE to DEP for an initial review of the application's compatibility or consistency, as appropriate, with the State's developing or approved coastal management programs (15 CFR 932.26(a)(3), Federal Register, Vol. 43, No. 37 - February 23, 1978, p. 7554).

4. One copy of all final work products and reports prepared with financial assistance under the Coastal Energy Impact Program shall be transmitted to DEP, as a standard condition of CEIP grants passed through to state agencies and units of local governments by DOE.

I. National Interests in Energy Facility Siting

DEP and DOE agree to consider the national interests in New Jersey's coastal zone, as defined in the New Jersey Coastal Management Program - Bay and Ocean Shore Segment, as approved by the Governor, in the DEP permit application processes and the DOE Energy Report preparation process and the DOE State Energy Master Plan. DEP agrees to interpret the opportunity under CAFRA to consider the "public health, safety and welfare" (N.J.S.A. 13:19-4) as sufficient authority to consider these national interests. DOE agrees to interpret its mandate to "... contribute to the proper siting of energy facilities necessary to serve the public interest ..." (N.J.S.A. 25:27F-2) as sufficient authority to consider the national interests in the siting of coastal energy facilities.

J. Federal Consistency

DEP and DOE agree that both agencies shall participate in the State's decision to issue a determination of consistency under Section 307 of the Federal Coastal Zone Management Act for coastal energy facilities. As required by federal regulations (15 CFR 930.18), DEP shall receive, and forward promptly to DOE, all materials necessary for consistency determinations on coastal energy facilities. In the event of a disagreement between DEP and DOE, the Energy Facility Review Board shall be convened and shall make a recommendation to the Governor, who shall make the final determination within the applicable time limit. As required by federal regulations (15 CFR 930.18), DEP will then transmit the final federal consistency determination to the appropriate federal agency.

K. Effective Date

This Memorandum of Understanding shall take effect on September 28, 1978. DOE and DEP agree to continue discussions and agree to agree on a revision of this Memorandum of Understanding to extend its scope to other DEP permits.

Joel R. Jacobson
Commissioner
Department of Energy

AUG 22 1978
Date

Daniel J. O'Hern
Commissioner
Department of Environmental Protection

AUG 22 1978
Date

## APPENDIX D - WATERFRONT DEVELOPMENT RULES AND ATTORNEY GENERAL'S OPINION

### Rules on Waterfront Development Permits
### N.J.A.C. 7:7-2.1 et seq.

7:7-2.1 Authority: Unless otherwise expressly noted, all provisions of this subchapter were adopted pursuant to authority of N.J.S.A. 12:5-1 et seq.

7:7-2.2 Purpose and Scope: These rules and regulations are intended to implement N.J.S.A. 12:5-3 by defining a boundary for "waterfront" areas and by defining "waterfront development".

7:7-2.3 Definitions: The following words and terms, when used in this subchapter, shall have the following meanings, unless the content clearly indicates otherwise.

"Navigable": Those waters of the State which are subject to the ebb and flow of the tide shoreward to the mean high water line.

7:7-2.4 Waterfront Area Described: The waterfront area to be regulated under these rules shall consist of:

a. A "Water Area", which shall include any navigable waterway or stream of this State and all lands lying thereunder up to the mean high water line and

b. An "Upland Area", which shall include all lands extending landward from the mean high water line of such water area to the first surveyable property line existing on the effective date of these Rules, public road, railroad right-of-way, or other cultural feature generally parallel to the waterway; provided that the landward boundary of such area shall be at least 100 feet and no greater than 500 feet from the waterway except where lands formerly flowed by the tide (i.e. tidelands) extend more than 500 feet from the mean high water line. In such cases the boundary of the upland fringe area shall be the upland boundary of such tidelands.

7:7-2.5 Applicability in Man-Made Waterways: These rules shall apply to all man-made waterways and lagoons connected to tidal waters.

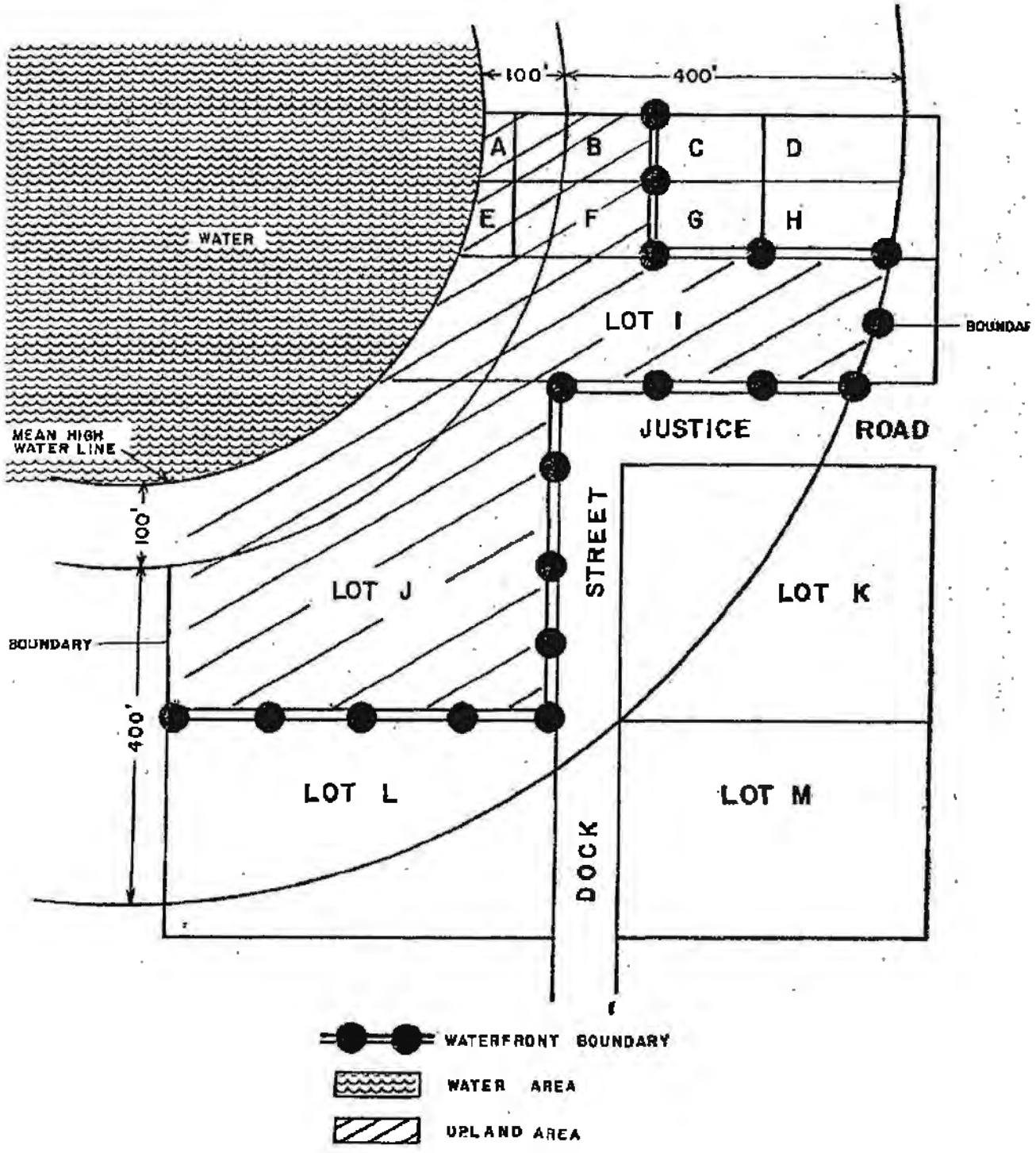
7:7-2.6 Inapplicability in Coastal Area and Hackensack Meadowlands Development District. The Upland Area described by this rule shall not include any part of the Coastal Area as defined by the Coastal Area Facility Review Act at N.J.S.A. 13:19-4, or any part of the Hackensack Meadowlands Development District as delineated at N.J.S.A. 13:17-4.1

7:7-2.7 Activities Requiring Permits: The following activities will require a permit in the Waterfront:

a. the removal or deposition of Sub-aqueous materials (dredging);

JURISDICTION OF PROPOSED RULE FOR WATERFRONT DEVELOPMENT LAW — SKETCH

Figure 42a



# JURISDICTION OF PROPOSED RULE FOR WATERFRONT DEVELOPMENT LAW – SAMPLE MAP

Figure 42b

▨ – JURISDICTION

b. the construction or alteration of a dock, wharf, pier, bulkhead, bridge, piling, mooring dolphin, pipeline, cable, or other similar structure or;

c. the construction, reconstruction, or enlargement, of any building or other structure, or of any excavation or landfill.

7:7E-2.8 Activities not Requiring Permits: The following activities will not require a permit in the waterfront:

a. the construction of an individual single family home or appurtanent structure, when constructed more than 100 feet inland from the mean high water line,

b. the reconstruction or enlargement of any structure more than 100 feet inland from the mean high water line, or

c. the conversion of any structure to a different use.

7:7-2.9 Exemptions for Development in Progress on Effective Date: These rules shall not apply to any development in the Upland Area for which on-site construction, including site preparation, was in progress on or prior to the effective date of these rules.

Any person who believes that a proposed facility is exempt from the requirements of these rules due to on-site construction may request in writing a determination of exemption from the Division of Coastal Resources.

Exemptions shall be applied for and considered upon submission of information sufficient for the Commissioner to determine that physical work was actually performed on the proposed facility, including site preparation, prior to September 26, 1980, the effective date of these rules. Any interruption in the process of construction and completion of the facility may be cause for denial of an exemption request by the Commissioner unless caused by factors beyond the developer's control, provided good faith efforts were made by the developer to overcome such delay or interruption. Interruptions caused by financial, labor, or legal factors must be documented in the exemption request.

7:7-2.10 Permits: Any person proposing to undertake or cause to be undertaken any development in the Waterfront Area shall first obtain a permit from the Division of Coastal Resources. Permit application forms may be obtained upon request from the Division of Coastal Resources, Department of Environmental Protection, Box 1889, Trenton, New Jersey 08625.

Permit applications shall be reviewed by the Division in accordance with the 90 Day Construction Permit Rules, N.J.A.C. 7:1C-1.1 et seq.

7:7-2.11 Exemptions Request for Finding on Geographic Applicability: Any person proposing to undertake or cause to be undertaken any development in or near the Waterfront Area may request in writing a determination that that proposal is exempt from the requirements of these Rules on the basis that the proposed facility's site is located outside the Waterfront Area.

The requesting party shall provide the Division with a map depicting the project site in a scale of not less than 1:2,400 (one inch equals 200 feer) and a project description. When the exemption request is based on a proposed facility's location landward of the first surveyable property line more than 100 feet from the waterway, the map shall depict that property line as it is depicted on the official local tax map as of the effective date.

The Division shall, within 30 days of receipt, return the map to the requesting party, indicating on the map the waterfront area boundary and its relationship to the project site.

7:7-2.12 Procedure for Development Entirely Within Regulated Wetlands: No waterfront development permit shall be required for a proposed development located entirely within a wetland area regulated under the Wetlands Act (N.J.S.A. 13:9A-1 et seq.).

7:7-2.13 Criteria for Permit Decisions: Waterfront Development permit applications shall be approved, modified or denied on the basis of the Rules on Coastal Resource and Development Policies, N.J.A.C. 7:7E-1.1 et seq.

7:7-2.14 Appeals: Appeals of permit decisions shall be taken to the Commissioner in accordance with the 90 Day Construction Permit Rules, N.J.A.C. 7:1C-1.9.

Rationale

The source of the Waterfront Development Law is Chapter 123 of the Laws of 1914, entitled "An Act to Create the New Jersey Harbor Commission and to Define its Powers and Duties." The Commission was to be concerned with "the condition of waterfront and harbor facilities and any other matter incident to the movement of commerce upon all navigable rivers and watere within this state or bounding thereon". (N.J.S.A. 12:5-1). It authorizes the State to regulate land and water uses in the waterfront area, but defines neither the area nor the uses to be regulated with precision. It is left to the Executive branch to establish by rule the parameters of its authority, and to do so in a manner that is reasonably related to the goals established by law.

A. The regulation of waterfront development is an appropriate exercise of the State's police power.

"The legislative history of the Law reveals that it was passed in response to a need for the State to assume a direct role in the regulation of harbor development for competitive economic reasons. In its 1914 Fourth Preliminary Report to the Legislature prior to passage of the legislation, the temporary New Jersey Harbor Commission recommended direct State control over the 'waterfront, the waterways and the upland adjacent thereto'. Fourth Preliminary Report of the New Jersey Harbor Commission, p. 6 (1914). Clearly, then, the perceived need for this remedial law was to regulate uplands as well as water areas."*

The proposed Upland Area encompasses a narrow, largely developed area which is entirely within 500 feet of the water' edge. Because of the restricted size of the waterfront and its proximity to the water's edge, small-scale development can have a proportional impact as great as a major development in other areas of the State,

particularly in terms of reducing the range of sites available for other, perhaps competing uses. A small parking lot or commercial development built directly on the water can effectively preclude access to the water's edge and can, in more developed areas, consume the last vacant waterfront site in the immediate area.

Experiences in other cities have shown that the economic vitality of waterfront areas often depends on a well coordinated planning and management program which insures that industrial, maritime and other water-related uses may be accommodated in an orderly fashion, with room left for recreational and other, multipurpose uses.

These factors make it clear that it is necessary to regulate development in the waterfront in order to enforce the intent of the Waterfront Development Law. This will not preclude the concentration of growth in developed areas of the coast and the use of the waterfront for a variety of uses, including well designed commercial activities. Both of these uses are acceptable under the Department's Rules on Coastal Resource and Development Policies for the Bay and Ocean Shore Region (N.J.A.C. 7:7E-1.1 et seq., effective September 28, 1978).

The Rules on Coastal Resource and Development Policies favor the concentration of development away from relatively undeveloped areas. Consequently, many of the types of development described in this rule will seek to locate in the developed coast. The fact that these Rules on Coastal Resource and Development Policies will be in place throughout the coast when these rules take effect means that DEP will have an existing substantive basis for efficiently regulating the activities defined in this proposed rule.

The Coastal Resource and Development Policies were originally developed by DEP as the substantive basis for decision-making under a number of statutes in the State's Bay and Ocean Shore region. They address a variety of considerations, both environmental and economic. Those rules are being amended concurrently with the proposed adoption of these rules, and if adopted will apply throughout the State (see Section 7:7-2.13 of these proposed rules). The amendments are designed to incorporate the purposes of the Waterfront Development Law, by insuring that water-dependenr and maritime dependent uses will not be precluded by haphazard waterfront development.

B. The boundary described by this rule is an appropriate delineation of the waterfront area.

A boundary delineation utilizing property lines, cultural features and/or distances determined by measurement is a traditional method of delineation. The CAFRA boundary is delineated in this manner. The proposed boundary accomplishes three things:

1. It encompasses a land area of sufficient width to control the first land use adjacent to the waterway;

2. It encompasses a land area that is sufficiently limited in width as to avoid over-reaching into areas that are not waterfront in character;

3. It describes a boundary which may be readily delineated and mapped.

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* Attorney General's Formal Opinion No. 6 (February 29, 1980), page 2.

C. The use of different standards for the regulation of waterfront activities inside and outside the CAFRA area and Hackensack Meadowlands District is reasonable and appropriate.

The Coastal Area Facility Review Act (N.J.S.A. 13:19-1 et seq.) recognizes the special character of New Jersey's Bay and Ocean Shore areas, and seeks to preserve and protect that character by regulating major facilities. The findings made under that Act constitute the State's land use priorities within the defined coastal area, and should, therefore, apply to the Waterfront Development Law as administered in that area.

The Act does not affect the State's authority under N.J.S.A. 12:5-3 outside the CAFRA area, and so the Department may, as part of its concern for "any matter incident to the movement of commerce upon all navigable rivers and waters within this state or bounding thereon" (N.J.S.A. 12:5-1), define appropriate uses for other waterfront areas. Such a dual system is particularly appropriate because the greater portion of the state's commercial or industrialized waterfront is in the Developed Coast, outside the CAFRA area.

Similarly, the Hackensack Meadowlands Reclamation and Development Act (N.J. S.A. 13:17-1.1 et seq.) constitutes the State's land use priorities in the Meadowlands District. It adopts a regional approach to reducing and resolving the development pressures on a seriously strained estuarine system. It applies only in a limited area, and does not affect the State's authority under the Waterfront Development Law outside the District.

State of New Jersey

DEPARTMENT OF LAW AND PUBLIC SAFETY

DIVISION OF LAW
ENVIRONMENTAL PROTECTION SECTION

609-292-1360

February 29, 1980

Jerry F. English, Commissioner
Department of Environmental Protection
P. O. Box 1390
Trenton, New Jersey 08625

FORMAL OPINION NO. 6 - 1980

Dear Commissioner English:

Our advice has been requested on certain questions pertaining to the expanded implementation of the permit requirements of the Waterfront Development Law. N.J.S.A. 12:5-1, et seq. The threshold question is whether the Waterfront Development Law authorizes the Department of Environmental Protection to regulate development on uplands adjacent to navigable waters or streams. It is our opinion that the statute provides jurisdiction to regulate any development on the "water-front" portion of uplands adjacent to navigable waters or streams.

N.J.S.A. 12:5-3, the key operative provision of the law, provides as follows:

> "All plans for the development of any water-front upon any navigable water or stream of this State or bounding thereon, which is contemplated by any person or municipality, in the nature of individual improvement or development or as a part of a general plan which involves the construction or alteration of a dock, wharf, pier, bulkhead, bridge, pipe line, cable, or any other similar or dissimilar water-front

> development shall be first submitted to the Department of Environmental Protection. No such development or improvement shall be commenced or executed without the approval of the Department of Environmental Protection first had and received, or as hereinafter in this chapter provided."

Thus, the statute requires State approval for any "water-front development" that is either similar or dissimilar to the specifically mentioned types of development. The inquiries therefore are, what area is physically encompassed by the term waterfront and what constitutes development.

The Waterfront Development Law was passed in 1914. The legislative history reveals that it was passed in response to a need for the State to assume a direct role in the regulation of harbor development for competitive economic reasons. In its 1914 Fourth Preliminary Report to the Legislature prior to passage of the legislation, the temporary New Jersey Harbor Commission recommended direct State control over the "waterfront, the waterways and the upland adjacent thereto". Fourth Preliminary Report of the New Jersey Harbor Commission, p. 6 (1914). Clearly, then, the perceived need for this remedial law was to regulate uplands as well as water areas.

This conclusion is reinforced by the unambiguous dictionary meaning accorded to the term waterfront. According to Webster's New Collegiate Dictionary (1977 ed.) it means "land, land with buildings, or a section of a town fronting or abutting on a body of water". Black's Law Dictionary (4th ed. 1968), defines waterfront as "land or land with buildings fronting on a body of water". See, City of Long Beach v. Eisenby, 175 Cal. 375, 166 P. 333, 335, cited in Blacks. Thus, without reasonable doubt the term waterfront as used in the Waterfront Development Law, was intended to include the uplands adjacent to navigable waters or streams.

On the ancilliary question of what constitutes "development" requiring a permit, the listing of specific structures in N.J.S.A. 12:5-3 followed by the statement "or any other similar or dissimilar water-front development", can reasonably be viewed as inclusive of all structures of whatever type under the permit requirement. Under this view, the specific examples are seen as merely illustrative of typical waterfront structures, but by no means intended by the Legislature as exhaustive or limiting in any way. In its Fourth Preliminary Report the Harbor Commission

also touched upon this issue and called for State approval of any improvement or construction whatever. Fourth Preliminary Report of the New Jersey Harbor Commission, p. 9 (1914). Thus, consistent with the expressed legislative purpose to remedy the perceived evil of unregulated waterfront development, it may be concluded that the Legislature intended to require a permit for all structures erected in the waterfront area. To conclude otherwise and give the term development a limited meaning would obviously tend to frustrate the essential underlying purpose of the Waterfront Development Law.

Your second inquiry is to what extent does the waterfront extend, and in particular, may the Department extend it by rule or otherwise to 1000 feet from the water. While it is certain that the concept of regulating a waterfront includes regulating development on uplands, the concept or term waterfront is elusive in its precise spatial definition. However, in light of the purpose of the law in promoting and safeguarding water oriented activities and in light of the direct waterfront nature of the specific examples of development mentioned in N.J.S.A. 12:5-3, it must be concluded that the waterfront to be regulated under the law is no larger than the area of the first substantial land use that directly adjoins the water and not an area extending 1000 feet inland. Since regulation of the first substantial land use (or area where that potential use will take place) is enough to promote and protect water oriented activities by insuring access, availability of dockage, etc., and since it is also large enough by definition, to encompass any development as called for by N.J.S.A. 12:5-3, the law does not contemplate regulation extending automatically 1000 feet inland.*

It is also necessary to address the nature of the substantive standards to be adopted by the Department in its administration of the permit requirements of the Waterfront Development Law. The permissible scope of such regulations lies in an understanding of the legislative purpose in enacting the Waterfront

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*More precise definition of the waterfront should be undertaken by administrative rule. For example, a rule regulating at least the first 100 feet would be appropriate since it can reasonably be assumed that the first significant land use will occupy at least that large an area (a typical building lot is in excess of 100 feet deep). Moreover, the rule could indicate that where the potential area for the first significant land use extends more than 100 feet inland, a permit will be required for that entire use of the waterfront, subject to a reasonable maximum distance limitation.

Development Law. That purpose was to promote the development and revitalization as well as to safeguard the port facilities and waterfront resources for the public's overall economic advantage. Fourth Preliminary Report, supra. The Waterfront Development Law therefore justifies the adoption of standards to insure access to the State's waterways for all water-dependent uses and, conversely, standards discouraging nonwater-dependent uses from usurping the waterfront. Furthermore, a variety of other considerations may come into play in the determination of an appropriate use in a particular case so long as they are in furtherance of the essential purposes underlying the Waterfront Development Law. For example, the development of extensive high rise housing on the waterfront would not be consistent with the legislative purpose to insure access to waterways for water dependent uses and at the same time denial of a permit may serve the purpose of protecting the scenic or aesthetic appearances of the waterfront. In summary, therefore, so long as regulations adopted under the Waterfront Development Law are designed to carry out and are in furtherance of the primary intent of the Waterfront Development Law, they may be permissibly used to control the exercise of administrative discretion in the issuance of waterfront development permits.

In summation, it is our advice that the Department may regulate the portion of uplands adjacent to the State's navigable waterways that constitutes the waterfront, but that the waterfront is a relatively narrow strip of land whose precise geographical limit should be defined by rule in accordance with the criteria set forth in this opinion. In addition the substantive standards that are to be used to guide Department permit decisions under the Waterfront Development Law must be in accord with the Legislature's intent to promote the development, revitalization and safeguarding of the waterfront for the public's overall economic wellbeing.

Very truly yours,

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## APPENDIX E - LEGAL AUTHORITIES

### Introduction

The New Jersey Coastal Management Program relies upon certain New Jersey State laws and adopted rules for its legal authority and the enforceability of its Coastal Resource and Development Policies. This Appendix briefly describes these key legal authorities and gives the appropriate citation reference to either the New Jersey Statutes Annotated (N.J.S.A.) or the New Jersey Administrative Code (N.J.A.C.). In addition, this Appendix concludes by reprinting four laws in their entirety: the Coastal Area Facility Review Act, the Wetlands Act, the Waterfront Development Law, and the Department of Energy Act. The CAFRA Procedural Rules and Regulations and regulations governing the wetlands and riparian permit processes are also published in the New Jersey Administrative Code and are available upon request from DEP.

### Coastal Area Facility Review Act

#### Law

N.J.S.A. 13:19-1 et seq. enacted June 20, 1973; effective September 19, 1973 (reprinted in this Appendix).

#### Rules

N.J.A.C. 7:7D-1.0 et seq. - Coastal Area Review Board; effective November 18, 1975. These rules establish the procedures of the Coastal Area Review Board, a body composed of three cabinet members and created by N.J.S.A. 13:19-13, and which may hear appeals from decisions on CAFRA permit applications by the Director of the Division of Marine Services.

N.J.A.C. 7:7D-2.0 et seq. - CAFRA Procedural Rules and Regulations; effective April 5, 1977. These rules establish the permit application and exemption request procedures of DEP under the Coastal Area Facility Review Act.

#### Administrative Orders

No. 32, November 3, 1975, by DEP Commissioner David J. Bardin; effective November 10, 1975. This Administrative Order delegated decision-making authority on CAFRA permit applications from the Commissioner to the Director, Division of Marine Services (now Coastal Resources).

No. 35, December 4, 1975, by DEP Commissioner David J. Bardin, effective December 8, 1975. This Administrative Order established the Office of Coastal Zone Management in DEP's Division of Marine Services. Under the Administrative Order, the Chief of the Office of Coastal Zone Management reports directly to the DEP Commissioner with respect to planning under N.J.S.A. 13:19-16 and under the Federal Coastal Zone Management Act, but reports to the Director of the Division of Marine Services with respect to the CAFRA permit program. Superceded in part (see the following).

No. 17, June 22, 1979; effective July 3, 1979. Re-organizes the Division of Marine Services into five bureaus and continues its operation as the Division of Coastal Resources.

Wetlands Act

Law

N.J.S.A. 13:9A-1 et seq.; effective November 5, 1970 (reprinted in this Appendix)

Rules

N.J.A.C. 7:7A-1.1 et seq.; effective April 13, 1972. The New Jersey Wetlands Order Basis and Background, adopted in 1972, defined the rationale for the regulation of coastal wetlands. Independent contractors for DEP prepared maps of wetlands at a scale of 1:2,400 (one inch = 200 feet). DEP then adopted the Wetlands Order, including the maps delineating wetlands areas, on a county-by-county rule-making process, with notice to affected property owners, from 1972-1977 (N.J.A.C. 7:7A-1.2). The order defines regulated activities, and prohibits certain activities on wetlands, while the Procedural Regulations (N.J.A.C. 7:7A-1.3 et seq.) establish permit application procedures and project review criteria, and list the wetlands maps.

Administrative Order

No. 12, December 8, 1977, by DEP Commissioner Rocco D. Ricci; effective December 8, 1977. This Administrative Order delegated decision-making authority on Wetlands permit applications from the Commissioner to the Director, Division of Marine Services and specified that appeals of the Director's decision shall be submitted to the Commissioner.

Waterfront Development Permit

Law

N.J.S.A. 12:5-1 through 12:5-11; enacted at various dates beginning 1914. These laws define the procedures and standards for the management of waterfront and harbor facilities, including waterfront development permits (N.J.S.A. 12:5-3, reprinted in this Appendix).

Tidelands Statutes

Law

N.J.S.A. 12:3-1 through 12:3-71; enacted at various dates beginning 1869. These laws define the procedures and standards for leases, grants, and conveyances of tidelands.

N.J.S.A. 13:1B-10, 11, 12; enacted at various dates beginning 1948. These laws define the powers, functions, and duties of the Tidelands Resource Council, which decides tidelands management real estate matters.

N.J.S.A. 13:1B-13; enacted 1948. This law defines the procedure for approval of tidelands leases and grants.

N.J.S.A. 13:1B-13.1 through 13:1B-13.51; enacted 1968. This law, part of the statute creating the Hackensack Meadowlands Development Commission, mandates tidelands delineation studies and the surveys in the Meadowlands and defines procedures for conveyances of State-owned tidelands in the Meadowlands.

90 Day Construction Permit Law

Law

C.232, L. 1975 (supplements N.J.S.A. 13:1D-1 et seq., amends N.J.S.A. 12:5-2, 12:5-3, 58:1-26 and 58:1-27, and repeals N.J.S.A. 12:5-4); enacted October 23, 1975; effective December 22, 1975. The law provides for the approval, conditional approval, or disapproval of applications under five DEP-administered construction permit programs within 90 days of completion of an application, otherwise the application is deemed approved.

Rules

N.J.A.C. 7:1C-1.0 et seq.; effective December 22, 1975; revised October 10, 1977. These rules implement the 90 Day Construction Permits Law, and govern the waterfront development permit process.

Shore Protection

Law

N.J.S.A. 12:6A-1 et seq.; enacted at various dates beginning 1940. The law authorizes DEP to carry out structural and non-structural shore protection programs and undertake dredging of waterways and streams.

Department of Energy

Law

N.J.S.A. 52:27-1 et seq.; enacted and effective July 11, 1977. This law created a new cabinet-level executive department, with co-extensive jurisdiction with other State agencies, including DEP, on energy facility siting. It should be noted that pending State legislation (s-1179) would amend the Department of Energy Act and increase and clarify the authority of the Commissioner of Energy.

N.J.S.A. 40:55D-19; effective August 1, 1976. This section of the municipal Land Use Law empowers the Board of Public Utilities to supercede any local action taken with respect to a public utility if the Board finds the service "necessary for the service, convenience, or welfare of the public".

Rules

N.J.A.C. 14A:8-1.1, effective December 3, 1979. Procedural Rules of the Energy Facility Review Board.

## Hackensack Meadowlands Development Commission Law

### Law

N.J.S.A. 13:17-1 et seq. Creates the Hackensack Meadowlands Development Commission, defines the district, and authorizes development and management activities.

### Rules

N.J.A.C. 19:4. District Zoning Regulations and procedural rules.

## Reprinted Laws

The Coastal Area Facility Review Act, the Wetlands Act, the Waterfront Development Law, and the Department of Energy Act are reprinted in full on the following pages.

CHAPTER 185

AN ACT to provide for the review of certain facilities in the coastal area and making an appropriation therefor.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

C. 13:19-1 Short title

1. This act shall be known and may be cited as the "Coastal Area Facility Review Act."

C. 13:19-2 Declaration of policy.

2. The Legislature finds and declares that New Jersey's bays, harbors, sounds, wetlands, inlets, the tidal portions of fresh, saline or partially saline streams and tributaries and their adjoining upland fastland drainage area nets, channels, estuaries, barrier beaches, near shore waters and intertidal areas together constitute an exceptional, unique, irreplaceable and delicately balanced physical, chemical and biologically acting and interacting natural environmental resource called the coastal area, that certain portions of the coastal area are now suffering serious adverse environmental effects resulting from existing facility activity impacts that would preclude or tend to preclude those multiple uses which support diversity and are in the best long-term, social, economic, aesthetic and recreational interests of all people of the State; and that, therefore, it is in the interest of the people of the State that all of the coastal area should be dedicated to those kinds of land uses which promote the public health, safety and welfare, protect public and private property, and are reasonably consistent and compatible with the natural laws governing the physical, chemical and biological environment of the coastal area.

CHAPTER 185, LAWS OF 1973

It is further declared that the coastal area and the State will suffer continuing and ever-accelerating serious adverse economic, social and aesthetic effects unless the State assists, in accordance with the provisions of this act, in the assessment of impacts, stemming from the future location and kinds of facilities within the coastal area, on the delicately balanced environment of that area.

The Legislature further recognizes the legitimate economic aspirations of the inhabitants of the coastal area and wishes to encourage the development of compatible land uses in order to improve the overall economic position of the inhabitants of that area within the framework of a comprehensive environmental design strategy which preserves the most ecologically sensitive and fragile area from inappropriate development and provides adequate environmental safeguards for the construction of any facilities in the coastal area.

C. 13:19-3 Definitions.

3. For the purposes of this act, unless the context clearly requires a different meaning, the following words shall have the following meanings:

a. "Commissioner" means the State Commissioner of Environmental Protection.

b. "Department" means the State Department of Environmental Protection.

c. "Facility" includes any of the facilities designed or utilized for the following purposes:

(1) Electric power generation—
Oil, gas, or coal fired or any combination thereof.
Nuclear facilities.
(2) Food and food byproducts—
Beer, whiskey and wine production.
Fish processing, including the production of fish meal and fish oil.
Slaughtering, blanching, cooking, curing, and pickling of meats and poultry.
Trimming, cutting, juicing, and blanching of fruits and vegetables.
Animal matter rendering plants.
Operations directly related to the production of leather or furs such as, but not limited to, unhairing, soaking, deliming, baiting, and tanning.
Curing and pickling of fruits and vegetables.

CHAPTER 185, LAWS OF 1973

Pasteurization, homogenization, condensation, and evaporation of milk and cream to produce cheeses, sour milk, and related products.
Coffee bean and cocoa bean roasting.
(3) Incineration wastes—
Municipal wastes (larger than or equal to 50 tons per day).
Automobile body (20 automobiles per hour or larger).
(4) Paper production—
Pulp mills.
Paper mills.
Paperboard mills.
Building paper mills.
Building board mills.
(5) Public facilities and housing—
Sanitary landfills.
Waste treatment plants (sanitary sewage).
Road, airport, or highway construction.
New housing developments of 25 or more dwelling units or equivalent.
Expansion of existing developments by the addition of 25 or more dwelling units or equivalent.
(6) Agri-chemical production—
Pesticides manufacture and formulation operations or either thereof.
Superphosphate animal feed supplement manufacture.
Production of normal superphosphate.
Production of triple superphosphate.
Production of diammonium phosphate.
(7) Inorganic acids and salts manufacture—
Hydrofluoric acid and common salts.
Hydrochloric acid and common salts.
Nitric acid and common salts.
Sulfuric acid and common salts.
Phosphoric acid and common salts.
Chromic acid, including chromate and dichromate salts.
(8) Mineral products—
Asphalt batching and roofing operations including the preparation of bituminous concrete and concrete.
Cement production, including Portland, natural, masonry, and pozzolan cements.
Coal cleaning.
Clay, clay mining, and fly-ash sintering.

CHAPTER 185, LAWS OF 1973

Calcium carbide production.
Stone, rock, gravel, and sand quarrying and processing.
Frit and glaze production.
Fiberglass production.
Slag, rock and glass wool production (mineral wool).
Lime production, including quarrying.
Gypsum production, including quarrying.
Perlite manufacturing, including quarrying.
Asbestos fiber production.
(9) Chemical processes—
Ammonia manufacture.
Chlorine manufacture.
Caustic soda production.
Carbon black and charcoal production, including channel, furnace, and thermal processes.
Varnish, paint, lacquer, enamel, organic solvent, and inorganic or organic pigment manufacturing or formulating.
Synthetic resins or plastics manufacture including, but not limited to, alkyd resins, polyethylene, fluorocarbons, polypropylene, and polyvinylchloride.
Sodium carbonate manufacture.
Synthetic fibers production including, but not limited to, semi-synthetics such as viscose, rayon, and acetate, and true synthetics such as, but not limited to, nylon, orlon, and dacron, and the dyeing of these semi and true synthetics.
Synthetic rubber manufacture, including but not limited to, butadiene and styrene copolymers, and the reclamation of synthetic or natural rubbers.
The production of high and low explosives such as, but not limited to, TNT and nitrocelluloses.
Soap and detergent manufacturing, including but not limited to, those synthetic detergents prepared from fatty alcohols or linear alkylate.
Elemental sulfur recovery plants not on the premises where petroleum refining occurs.
Used motor or other oil or related petroleum product reclamation operations.
Petroleum refining, including but not limited to, distillation, cracking, reforming, treating, blending, polymerization, isomerization, alkylation, and elemental sulfur recovery operations.
Organic dye and dye intermediate manufacturing.
Hydrogen cyanide or cyanide salts manufacture or use.

Glue manufacturing operations.

Manufacturing, fabricating, or processing medicinal and pharmaceutical products including the grading, grinding, or milling of botanicals.

(10) Storage—

Bulk storage, handling, and transfer facilities for crude oil, gas and finished petroleum products not on the premises where petroleum refining occurs.

Bulk storage, handling, transfer and manufacturing facilities of gas manufactured from inorganic and organic materials including coal gas, coke oven gas, water gas, producer, and oil gases.

(11) Metallurgical processes—

Production of aluminum oxide and aluminum metal and all common alloys, such as those with copper, magnesium, and silicon.

Production of titanium metal, salts, and oxides.

Metallurgical coke, petroleum coke, and byproduct coke manufacturing.

Copper, lead, zinc, and magnesium smelting and processing.

Ferroalloys manufacture such as, but not limited to, those combined with silicon, calcium, manganese and chrome.

Integrated steel and iron mill operations including, but not limited to, open hearth, basic oxygen, electric furnace, sinter plant, and rolling, drawing, and extruding operations.

Melting, smelting, refining, and alloying of scrap or other substances to produce brass and bronze ingots.

Gray iron foundry operations.

Steel foundry operations.

Beryllium metal or alloy production, including rolling, drawing and extruding operations.

Operations involving silver, arsenic, cadmium, copper, mercury, lead, nickel, chromium, and zinc including, but not limited to, production, recovery from scrap or salvage, alloy production, salt formation, electroplating, anodizing, and metallo-organics compound products preparation.

Stripping of oxides from and the cleaning of metals prior to plating, anodizing, or painting.

(12) Miscellaneous—

Operations involving the scouring, desizing, cleaning, bleaching, and dyeing of wool.

Wood preserving processes which use coal or petroleum based products such as, but not limited to, coal tars and/or creosotes.



Manufacture, use, or distillation of phenols, cresols, or coal tar materials.

Manufacture of lead acid storage batteries and/or storage batteries produced from other heavy metals, such as nickel or cadmium.

Installation of above or underground pipelines designed to transport petroleum, natural gas, and sanitary sewage.

Operations involving the dyeing, bleaching, coating, impregnating, or glazing of paper.

Dyeing, bleaching, and printing of textiles other than wool. Chemical finishing for water repelling, fire resistance, and mildew proofing, including preshrinking, coating and impregnating.

Sawmill and planing mill operations.

Marine terminal and cargo handling facilities.

d. "Person" means and shall include corporations, companies, associations, societies, firms, partnerships and joint stock companies as well as individuals and governmental agencies.

a. "Governmental agencies" means the Government of the United States, the State of New Jersey, or any other states, their political subdivisions, agencies, or instrumentalities thereof, and interstate agencies.

C. 13:19-4 "Coastal area" defined.

4. The "coastal area" shall consist of all that certain area lying between the line as hereinafter described and the line formed by the State's seaward (Raritan Bay and Atlantic ocean) territorial jurisdiction on the east thereof, the State's bayward (Delaware Bay) territorial jurisdiction on the south and southwest thereof, and the State's riverward (Delaware River) territorial jurisdiction on the west thereto. Beginning at the confluence of Cheesequake Creek with the Raritan Bay; thence southwesterly along the center line of Cheesequake Creek to its intersection with the Garden State Parkway; thence southeasterly along the Garden State Parkway to Exit 117 at State Highway 36; thence northeasterly along State Highway 36 to the intersection of Middle Road (County 516); thence easterly along Middle Road to the intersection of Palmer Avenue (County 7); thence northeasterly on Main Street to the intersection of State Highway 36; thence easterly on State Highway 36 to the intersection of Navesink Avenue; thence southerly on Navesink Avenue to the intersection of Monmouth Avenue at Navesink; thence westerly on Monmouth Avenue to its intersection with Browns Dock Road; thence southerly on Browns Dock



Road to its intersection with Cooper Road; thence southwesterly on Cooper Road to the intersection of State Highway 35; thence southerly on State Highway 35 to its intersection with State Highway 71; thence southeasterly on State Highway 71 to its crossing of the Central Railroad of New Jersey tracks; thence southerly along the Central Railroad of New Jersey tracks to its intersection of 6th Avenue (County 2); thence westerly on 6th Avenue (County 2) to the intersection of State Highway 33; thence westerly along State Highway 33 to the crossing of State Highway 18; thence southerly on State Highway 18 to its intersection of Marconi Road; thence southeasterly on Marconi Road to Adrienne Road, continuing south on Adrienne Road to Belmar Boulevard; thence easterly on Belmar Boulevard and 16th Avenue to the intersection of State Highway 71; thence southerly on State Highway 71 to the intersection of State Highway 35; thence northwesterly along State Highway 35 to State Highway 34 at the Brielle Circle; thence northwesterly along State Highway 34 to the Garden State Parkway at Exit 98; thence southwesterly along the Garden State Parkway to the intersection of the Monmouth, Ocean County boundary; thence westerly along said boundary to the intersection of the Central Railroad of New Jersey tracks; thence southwesterly along the tracks of the Central Railroad of New Jersey to its junction with the tracks of the Pennsylvania Railroad near Whiting; thence easterly along the tracks of the Pennsylvania Railroad to its intersection with the Garden State Parkway near South Toms River; thence southerly along the Garden State Parkway to its intersection with County Road 539 at Garden State Parkway exit 58; thence northerly along County Road 539 to its intersection with Martha-Stafford Forge Road; thence westerly along Martha-Stafford Forge Road to its intersection with Spur 563; thence northerly along Spur 563 to its intersection with County Road 563; thence southerly along County Road 563 to its intersection with County Road 542 at Green Bank; thence northwesterly along County Road 542 to its intersection with Weekstown-Pleasant Mills Road; thence southeasterly along Weekstown-Pleasant Mills Road to its intersection with County Road 563 at Weekstown; thence southeasterly along County Road 563 to its intersection with Clarks Landing Road leading to Port Republic; thence easterly along Clarks Landing Road to its intersection with the Garden State Parkway; thence southerly along the Garden State Parkway to its intersection with Alt. 559, and thence northwesterly along Alt. 559 to its intersection with County Road 559 at Gravelly Run; thence



northwesterly along County Road 559 to its intersection with U. S. 40 and S. R. 50 at Mays Landing; thence westerly along combined U. S. 40 and S. R. 50 to its intersection with S. R. 50; thence southerly on S. R. 50 to its intersection with Buck Hill Road near Buck Hill; thence westerly along Buck Hill (River Road) Road to its intersection with S. R. 49; thence southeasterly along S. R. 49 to its intersection with S. R. 50; thence southeasterly along S. R. 50 to its intersection with County Road 585; thence southwesterly along County Road 585 to its intersection with S. R. 47 at Dennisville; thence northwesterly along S. R. 47 to its intersection with State Road 49 at Millville; thence through Millville along State Road 49 to its intersection with County Road 555; thence southerly along County Road 555 to its intersection with County Road 27; thence southerly along County Road 27 to its intersection with County Road 70; thence southerly on County Road 70 to the Center of Mauricetown; thence through Mauricetown westerly on County Road 648 to its intersection with the tracks of the Central Railroad of New Jersey; thence northwesterly on the tracks of the Central Railroad of New Jersey to its intersection with County Road 98; thence easterly along County Road 98 to the intersection with County Road 38; thence northerly along County Road 38 to its intersection with S. R. 49 east of Bridgeton; thence westerly along S. R. 49 through Bridgeton to its intersection with County Road 5 (Roadstown Road); thence westerly along County Road 5 (Roadstown Road) to Roadstown; thence northwesterly along the Roadstown Road to County Road 47; thence southwesterly along County Road 47 to its intersection with County Road 19; thence along County Road 19 northwesterly to Gum Tree Corner; thence northwesterly along County Road 19 from Gum Tree Corner across Stowe Creek to its intersection with Salem County Road 59 (Hancock's Bridge Road); thence northwesterly along County Road 59 to its intersection with County Road 51 at Coopers Branch; thence northeasterly along County Road 51 to its intersection with S. R. 49 at Quinton; thence northwesterly along S. R. 49 to its intersection with County Road 50; thence southwesterly along County Road 50 to its intersection with County Road 58; thence southerly on County Road 58 to its intersection with County Road 24; thence westerly along County Road 24 to its intersection with County Road 65; thence northerly along County Road 65 (Walnut Street) to its intersection with County Road 4; thence westerly along County Road 4 and northerly along



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County Road 4 and thence easterly along County Road 4 to its intersection with State Road 49; thence northerly along State Road 49 (Front Street) to its intersection with County Road 57; thence easterly along County Road 57 to its intersection with State Road 45; thence northerly along State Road 45 to its intersection with County Road 540 at Pointers; thence northerly and northwesterly along County Road 540 (Deepwater-Slapes Corner Road) to its intersection with the New Jersey Turnpike; thence westerly along the New Jersey Turnpike to its intersection with County Road 33; thence northerly along County Road 33 to its intersection with State Road 49; thence southeasterly along S. R. 49 to its intersection with County Road 26; thence northwesterly along County Road 26 to the Killcohook National Wildlife Refuge; thence northwesterly along this northeasterly boundary to the limits of the State's territorial jurisdiction on the Delaware River; provided, however, that the coastal area shall not include all that certain area in Cape May County lying within a line beginning at the intersection of S. R. 47 and County Road 54; thence westerly on County Road 54; to the intersection of County Road 3; thence southeasterly on County Road 3 through the intersection of County Road 3 with County Road 13 to the intersection with County Road 47; thence easterly and northerly along County Road 47 to its intersection with State Road 9; thence northerly along State Road 9 to its intersection with State Road 47; thence westerly along State Road 47 to its intersection with County Road 54.

C. 13:19-6 Permit to construct facility.

6. No person shall construct or cause to be constructed a facility in the coastal area until he has applied for and received a permit issued by the commissioner; however, the provisions of this act shall not apply to facilities for which on-site construction, including site preparation, was in process on or prior to the effective date of this act.

C. 13:19-6 Application for permit.

6. Any person proposing to construct or cause to be constructed a facility in the coastal area shall file an application for a permit with the commissioner, in such form and with such information as the commissioner may prescribe. The application shall include an environmental impact statement as described in this act.

C. 13:19-7 Contents of environmental impact statement.

7. The environmental impact statement shall provide the information needed to evaluate the effects of a proposed project upon the environment of the coastal area.



The statement shall include:

a. An inventory of existing environmental conditions at the project site and in the surrounding region which shall describe air quality, water quality, water supply, hydrology, geology, soils, topography, vegetation, wildlife, aquatic organisms, ecology, demography, land use, aesthetics, history, and archeology; for housing, the inventory shall describe water quality, water supply, hydrology, geology, soils and topography;

b. A project description which shall specify what is to be done and how it is to be done, during construction and operation;

c. A listing of all licenses, permits or other approvals as required by law and the status of each;

d. An assessment of the probable impact of the project upon all topics described in a.;

e. A listing of adverse environmental impacts which cannot be avoided;

f. Steps to be taken to minimize adverse environmental impacts during construction and operation, both at the project site and in the surrounding region;

g. Alternatives to all or any part of the project with reasons for their acceptability or unacceptability;

h. A reference list of pertinent published information relating to the project, the project site, and the surrounding region.

C. 13:19-8 Declaration of completeness of application.

8. a. Within 30 days following receipt of an application, the commissioner shall notify the applicant in writing regarding its completeness. The commissioner may declare the application to be complete for filing or may notify the applicant of specific deficiencies. The commissioner, within 15 days following the receipt of additional information to correct deficiencies, shall notify the applicant of the completeness of the amended application. The application shall not be considered to be filed until it has been declared complete by the commissioner.

b. The commissioner, within 15 days of declaring the application complete for filing, shall set a date for the hearing. The date for the hearing shall be set not later than 60 days after the application is declared complete for filing.

C. 13:19-9 Hearing.

9. a. The commissioner, or a member of the department designated by him, shall hold a hearing to afford interested parties standing and the opportunity to present, orally or in writing, both their



position concerning the application and any data they may have developed in reference to the environmental effects of the proposed facility.

b. The commissioner, within 15 days after the hearing, may require an applicant to submit any additional information necessary for the complete review of the application.

C. 13:19-10 Review of applications; required findings.

10. The commissioner shall review filed applications, including the environmental impact statement and all information presented at public hearings. He shall issue a permit only if he finds that the proposed facility:

a. Conforms with all applicable air, water and radiation emission and effluent standards and all applicable water quality criteria and air quality standards.

b. Prevents air emissions and water effluents in excess of the existing dilution, assimilative, and recovery capacities of the air and water environments at the site and within the surrounding region.

c. Provides for the handling and disposal of litter, trash, and refuse in such a manner as to minimize adverse environmental effects and the threat to the public health, safety, and welfare.

d. Would result in minimal feasible impairment of the regenerative capacity of water aquifers or other ground or surface water supplies.

e. Would cause minimal feasible interference with the natural functioning of plant, animal, fish, and human life processes at the site and within the surrounding region.

f. Is located or constructed so as to neither endanger human life or property nor otherwise impair the public health, safety, and welfare.

g. Would result in minimal practicable degradation of unique or irreplaceable land types, historical or archeological areas, and existing scenic and aesthetic attributes at the site and within the surrounding region.

C. 13:19-11 Grounds for denial of permit; application; conditional permit; approval of nuclear electricity generating facility.

11. Notwithstanding the applicant's compliance with the criteria listed in section 10 of this act, if the commissioner finds that the proposed facility would violate or tend to violate the purpose and intent of this act as specified in section 2, or if the commissioner finds that the proposed facility would materially contribute



to an already serious and unacceptable level of environmental degradation or resource exhaustion, he may deny the permit application, or he may issue a permit subject to such conditions as he finds reasonably necessary to promote the public health, safety and welfare, to protect public and private property, wildlife and marine fisheries, and to preserve, protect and enhance the natural environment. In addition, the construction and operation of a nuclear electricity generating facility shall not be approved by the commissioner unless he shall find that the proposed method for disposal of radioactive waste material to be produced or generated by such facility will be safe, conforms to standards established by the Atomic Energy Commission and will effectively remove danger to life and the environment from such waste material.

C. 13:19-12 Notification to applicant.

12. The commissioner shall notify the applicant within 90 days after the hearing as to the granting or denial of a permit. The reasons for granting or denying the permit shall be stated. In the event the commissioner requires additional information as provided for in section 9, he shall notify the applicant of his decision within 90 days following the receipt of the information.

C. 13:19-13 Coastal Area Review Board; creation, membership, voting, powers.

13. There is hereby created the Coastal Area Review Board, in but not of the Department of Environmental Protection, which shall consist of three voting members who shall be the Commissioner of Environmental Protection or his designated representative, the Commissioner of Labor and Industry or his designated representative and the Commissioner of Community Affairs or his designated representative. No vote on a permit request shall be taken unless all voting members are present.

The Coastal Area Review Board shall have the power to hear appeals from decisions of the commissioner pursuant to section 12. The board may affirm or reverse the decision of the commissioner with respect to applicability of any provision of this act to a proposed one; it may modify any permit granted by the commissioner, grant a permit denied by him, deny a permit granted by him, or confirm his grant of a permit. The board shall review filed applications, including the environmental impact statement and all information presented at public hearings and any other information the commissioner makes available to the board prior to the affirmation or reversal of a decision of the commissioner.

C. 13:19-14 Continuance to terms of issued permit.

14. In the event of rental, lease, sale or other conveyances by an applicant to whom a permit is issued, such permit, with any conditions, shall be continued in force and shall apply to the new tenant, lessee, owner, or assignee so long as there is no change in the nature of the facility set forth in the original application.

C. 13:19-15 Effect of denial of application.

15. The denial of an application shall in no way adversely affect the future submittal of a new application.

C. 13:19-16 Environmental inventory; alternate environmental management strategies; environmental design for coastal area.

16. The commissioner shall, within 2 years of the taking effect of this act, prepare an environmental inventory of the environmental resources of the coastal area and of the existing facilities and land use developments within the coastal area and an estimate of the capability of the various areas within the coastal area to absorb and react to man-made stresses. The commissioner shall, within 3 years of the taking effect of this act, develop from this environmental inventory alternate long-term environmental management strategies which take into account the paramount need for preserving environmental values and the legitimate need for economic and residential growth within the coastal area. The commissioner shall, within 4 years of the taking effect of this act, select from the alternate environmental management strategies an environmental design for the coastal area. The environmental design shall be the approved environmental management strategy for the coastal area and shall include a delineation of various areas appropriate for the development of residential and industrial facilities of various types, depending on the sensitivity and fragility of the adjacent environment to the existence of such facilities. The environmental inventory, the alternate long-term environmental management strategies and the environmental design for the coastal area shall be presented to the Governor and the Legislature within the time frame indicated herein.

C. 13:19-17 Rules and regulations.

17. The department is hereby authorized to adopt, amend and repeal rules and regulations to effectuate the purposes of this act.

C. 13:19-18 Injunctive relief; penalties.

18. If any person violates any of the provisions of this act, rule, regulation or order promulgated or issued pursuant to the provisions of this act, the department may institute a civil action in the Superior Court for injunctive relief to prohibit and prevent such violation or violations and said court may proceed in a summary manner. Any person who violates any of the provisions of this act, rule, regulation or order promulgated or issued pursuant to this act shall be liable to a penalty of not more than $2,000.00 to be collected in a summary proceeding or in any case before a court of competent jurisdiction wherein injunctive relief has been requested. If the violation is of a continuing nature, each day during which it continues shall constitute an additional, separate and distinct offense. The department is hereby authorized and empowered to compromise and settle any claim for a penalty under this section in such amount in the discretion of the department as may appear appropriate and equitable under the circumstances.

C. 13:19-19 Applicability of act.

19. The provisions of this act shall not be regarded as to be in derogation of any powers now existing and shall be regarded as supplemental and in addition to powers conferred by other laws, including municipal zoning authority. The provisions of this act shall not apply to those portions of the coastal areas regulated pursuant to enforceable orders under the Wetlands Act, C. 13:9A-1 et seq., section 16 however shall apply to the entire area within the boundaries described herein.

C. 13:19-20 Construction of act.

20. This act shall be liberally construed to effectuate the purpose and intent thereof.

C. 13:19-21 Partial invalidity.

21. If any provision of this act or the application thereof to any person or circumstances is held invalid, the remainder of the act and the application of such provision to persons or circumstances other than those to which it is held invalid, shall not be affected thereby.

22. There is hereby appropriated to the Department of Environmental Protection for the purposes of this act the sum of $100,000.00.

23. This act shall take effect 90 days from the date of enactment, except that section 21 shall take effect immediately.

Approved June 20, 1973.



DE25030

## CHAPTER 272

AN ACT concerning the protection of natural resources in coastal wetlands, providing for the designation by the Commissioner of Environmental Protection of certain coastal wetlands after public hearing, and requiring permits from the commissioner prior to the dredging, removing, filling or otherwise altering or polluting coastal wetlands.

*BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:*

C. 13:9A-1 Legislature's findings and declaration of policy; inventory and mapping of tidal wetlands; filing of maps.

1. a. The Legislature hereby finds and declares that one of the most vital and productive areas of our natural world is the so-called "estuarine zone," that area between the sea and the land; that this area protects the land from the force of the sea, moderates our weather, provides a home for water fowl and for ¾ of all our fish and shellfish, and assists in absorbing sewage discharge by the rivers of the land; and that in order to promote the public safety, health and welfare, and to protect public and private property, wildlife, marine fisheries and the natural environment, it is necessary to preserve the ecological balance of this area and prevent its further deterioration and destruction by regulating the dredging, filling, removing or otherwise altering or polluting thereof, all to the extent and in the manner provided herein.

b. The Commissioner of Environmental Protection shall, within 3 years of the effective date of this act, make an inventory and maps of all tidal wetlands within the State. The boundaries of such wetlands shall generally define the areas that are at or below high water and shall be shown on suitable maps, which may be reproductions of aerial photographs. Each such map shall be filed in the office of the county recording officer of the county or counties in which the wetlands indicated thereon are located. Each wetland map shall bear a certificate of the commissioner to the effect that it is made and filed pursuant to this act. To be entitled to filing no wetlands map need meet the requirements of R. S. 47:1-6.

C. 13:9A-2 Authority to regulate alteration of coastal wetlands; definitions.

2. The Commissioner may from time to time, for the purpose of promoting the public safety, health and welfare, and protecting public and private property, wildlife and marine fisheries, adopt, amend, modify or repeal orders regulating, restricting or prohibiting dredging, filling, removing or otherwise altering, or polluting, coastal wetlands. For the purposes of this act the term "coastal wetlands" shall mean any bank, marsh, swamp, meadow, flat or other low land subject to tidal action in the State of New Jersey along the Delaware bay and Delaware river, Raritan bay, Barnegat bay, Sandy Hook bay, Shrewsbury river including Navesink river, Shark river, and the coastal inland waterways extending southerly from Manasquan Inlet to Cape May Harbor, or at any inlet, estuary or tributary waterway or any thereof, including those areas now or formerly connected to tidal waters whose surface is at or below an elevation of 1 foot above local extreme high water, and upon which may grow or is capable of growing some, but not necessarily all, of the following: Salt meadow grass (Spartina patens), spike grass (Distichlis spicata), black grass (Juncus gerardi), saltmarsh grass (Spartina alterniflora), saltwort (Salicornia Europaea, and Salicornia bigelovii), Sea Lavendar (Limonium carolinianum), saltmarsh bulrushes (Scirpus robustus and Scirpus paludosus var. atlanticus), sand spurrey (Spergularia marina), switch grass (Panicum virgatum), tall cordgrass (Spartina pectinata), hightide bush (Iva frutescens var. oraria), cattails (Typha angustifolia, and Typha latifolia), spike rush (Eleocharis rostellata), chairmaker's rush (Scirpus americana), bent grass (Agrostis paludris), and sweet grass (Hierochloe odorata). The term "coastal wetlands" shall not include any land or real property subject to the jurisdiction of the Hackensack Meadowlands Development Commission pursuant to the provisions of P. L. 1968, chapter 404, sections 7 through 84 (C. 13:17-1 through C. 13:17-86).

C. 13:9A-3 Adoption, change or repeal of order; hearing, notice; recording, indexing and filing of order; mailing.

3. The commissioner shall, before adopting, amending, modifying or repealing any such order, hold a public hearing thereon in the county in which the coastal wetlands to be affected are located, giving notice thereof to each owner having a recorded interest in such wetlands by mail at least 21 days prior thereto addressed to his address as shown in the municipal tax office records and by publication thereof at least twice in each of the 3 weeks next preceding the date of such hearing in a newspaper of general circulation in the municipality or municipalities in which such coastal wetlands are located.



Upon the adoption of any such order or any order amending, modifying or repealing the same, the commissioner shall cause a copy thereof, together with a plan of the lands affected, including reference to the filed wetlands map or maps on which the same are shown and a list of the owners of record of such lands, to be recorded in the office of the county clerk or register of deeds, where it shall be indexed and filed as a judgment, and shall mail a copy of such order and plan to each owner of record of such lands affected thereby.

C. 13:9A-4 "Regulated activity" defined; permit; application; summary; impervious effect of work to be considered.

4. a. For purposes of this section "regulated activity" includes but is not limited to draining, dredging, excavation or removal of soil, mud, sand, gravel, aggregate of any kind or depositing or dumping therein any rubbish or similar material or discharging therein liquid wastes, either directly or otherwise, and the erection of structures, drivings of pilings, or placing of obstructions, whether or not changing the tidal ebb and flow. "Regulated activity" shall not include continuance of commercial production of salt hay or other agricultural crops or activities conducted under section 7 of this act.

b. No regulated activity shall be conducted upon any wetland without a permit.

c. Any person proposing to conduct or cause to be conducted a regulated activity upon any wetland shall file an application for a permit with the commissioner, in such form and with such information as the commissioner may prescribe. Such application shall include a detailed description of the proposed work and a map showing the area of wetland directly affected, with the location of the proposed work thereon, together with the names of the owners of record of adjacent land and known claimants of rights in or adjacent to the wetland of whom the applicant has notice. All applications, with any maps and documents relating thereto, shall be open for inspection at the office of the Department of Environmental Protection.

d. In granting, denying or limiting any permit the commissioner shall consider the effect of the proposed work with reference to the public health and welfare, marine fisheries, shell fisheries, wildlife, the protection of life and property from flood, hurricane and other natural disasters, and the public policy set forth in section 1. a. of this act.



C. 13:9A-5 Remedies of violations.

5. The Superior Court shall have jurisdiction to restrain violations of orders issued pursuant to this act.

C. 13:9A-6 Filing of complaint; determination of issue exclusive.

6. Any person having a recorded interest in land affected by any such order or permit, may, within 90 days after receiving notice thereof, file a complaint in the Superior Court to determine whether such order or permit so restricts or otherwise affects the use of his property as to deprive him of the practical use thereof and is therefore an unreasonable exercise of the police power because the order or permit constitutes the equivalent of a taking without compensation. If the court finds the order or permit to be an unreasonable exercise of the police power, the court shall enter a finding that such order or permit shall not apply to the land of the plaintiff; provided, however, that such finding shall not affect any other land than that of the plaintiff. Any party to the suit may cause a copy of such finding to be recorded forthwith in the office of the county clerk or register of deeds, where it shall be indexed and filed as a judgment.

The method provided in this section for the determination of the issue shall be exclusive, and such issue shall not be determined in any other proceeding.

C. 13:9A-7 Certain powers and duties not to be restricted.

7. No action by the commissioner under this act shall prohibit, restrict or impair the exercise or performance of the powers and duties conferred or imposed by law on the State Department of Environmental Protection, the Natural Resource Council and the State Mosquito Control Commission in said Department, the State Department of Health, or any mosquito control or other project or activity operating under or authorized by the provisions of chapter 9 of Title 26 of the Revised Statutes.

C. 13:9A-8 Riparian rights or obligations not affected.

8. Nothing in this act or any permit issued hereunder shall affect the rights of the State in, or the obligations of a riparian owner with respect to, riparian lands.

C. 13:9A-9 Liability in event of violation; penalty.

9. Any person who violates any order by the commissioner, or violates any of the provisions of this act, shall be liable to the State for the cost of restoration of the affected wetland to



DE25031

3035

its condition prior to such violation insofar as that is possible, and shall be punished by a fine of not more than $1,000.00, to be collected in accordance with the provisions of the Penalty Enforcement Law (N. J. S. 2A:58-1 et seq.).

c. 13:9A-10 Short title.

10. This act may be cited as "The Wetlands Act of 1970."

11. This act shall take effect immediately.

Approved November 5, 1970.

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## WATERFRONT DEVELOPMENT LAW

### 12:5-3. Submission to board of plans for water-front development

All plans for the development of any water-front upon any navigable water or stream of this State or bounding thereon, which is contemplated by any person or municipality, in the nature of individual improvement or development or as a part of a general plan which involves the construction or alteration of a dock, wharf, pier, bulkhead, bridge, pipe line, cable, or any other similar or dissimilar water-front development shall be first submitted to the Department of Environmental Protection. No such development or improvement shall be commenced or executed without the approval of the Department of Environmental Protection first had and received, or as hereinafter in this chapter provided.

Amended by L.1975, c. 232, § 8.

1977 Senate No. 3179 (*Official Copy Reprint*)

AN ACT concerning the production, distribution, conservation, and consumption of energy, establishing a Department of Energy as a principal department in the Executive Branch of State Government *and repealing parts of the statutory law*.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. This act shall be known and may be cited as the "Department of Energy Act."

2. The Legislature hereby finds and determines that a secure, stable, and adequate supply of energy at reasonable prices is vital to the State's economy and to the public health, safety, and welfare; that this State is threatened by the prospect of both near- and long-term energy shortages; that the existing dispersion of responsibilities with respect to energy and energy-related matters among various State departments, divisions, agencies, and commissions inhibits comprehensive and effective planning for our future energy needs; and that the State government does not now possess either sufficient information or adequate authority to provide for and insure the wise and efficient production, distribution, use, and conservation of energy.

The Legislature further finds and determines that only an agency with comprehensive powers can collect, collate, and analyze the information necessary to determine the amount of energy that is or may be available; develop mechanisms to insure a fair and equitable distribution of existing supplies; conduct the long-term planning and management needed to eliminate or alleviate the potential adverse effects of a supply of energy insufficient to meet legitimate needs or from practices of production, distribution, and consumption detrimental to the quality of life or the environment; *"contribute to the proper siting of energy facilities necessary to serve the public interest;"* coordinate New Jersey's energy policies and actions with Federal energy policies; and secure for New Jersey the maximum amount of Federal funding available for energy related research, development, and demonstration projects.

The Legislature further finds and determines that shortages of energy have the potential at certain times and in certain places to so seriously affect the public interest that it is necessary for State government to possess emergency powers sufficient to prevent or minimize health disasters and grave economic disruptions which could occur during said times.

The Legislature, therefore, declares it to be in the best interest of the citizens of this State to establish a principal department in the Executive Branch of State Government to coordinate authority*,* *regulation*" and planning by the State in energy related matters.

3. As used in this act:

a. "Commissioner" means the Commissioner of the Department of Energy;

b. "Department" means the Department of Energy established by this act;

c. "Distributor" means and includes each person, wherever resident or located, who imports into this State fuels for use, distribution, storage, or sale in this State after the same shall reach this State; and also each person who produces, refines, manufactures, blends, or compounds fuels and sells, uses, stores, or distributes the same within this State. In no case, however, shall a retail dealer be construed to be a distributor;

d. "Energy" means all power derived from, or generated by, any natural or man-made agent, including, but not limited to, petroleum products, gases, solar radiation, atomic fission or fusion, mineral formations, thermal gradients, wind, or water.

e. "Energy facility" means any plant or operation which produces, converts, distributes or stores energy or converts one form of energy to another; in no case, however, shall an operation conducted by a person acting only as a retail dealer be construed as an energy facility;

f. "Energy information" means any statistic, datum, fact, or item of knowledge and all combinations thereof relating to energy;

g. "Energy information system" means the composite of energy information collected by the office;

h. "[("Energy")] "*Energy*" industry" means any person, company, corporation, business, institution, establishment or other organization of any nature engaged in the exploration, extraction, transportation, transmission, refining, processing, generation, distribution, sale or storage of energy;

i. "Fuel" means coal, petroleum products, gases and nuclear fuel, including enriched uranium, U235 and U238, and plutonium, U239;

j. "Gases" means natural gas, methane, liquefied natural gas, synthetic natural gas, coal gas and other manufactured gases;

k. "Person" means natural persons, partnerships, firms, associations, joint stock companies, syndicates and corporations, and any receiver, trustee, conservator or other officer appointed pursuant to law or by any court, State or Federal; "person" also means the State of New Jersey, counties, municipalities, authorities, other political subdivisions, and all departments and agencies within the aforementioned governmental entities;

l. "Petroleum products" means and includes motor gasoline, middle distillate oils, residual fuel oils, aviation fuel, propane, butane, natural gasoline, naphtha, gas oils, lubricating oils and any other similar or dissimilar liquid hydrocarbons;

m. "Public building" means any building, structure, facility or complex used by the general public, including, but not limited to, theaters, concert halls, auditoriums, museums, schools, libraries, recreation facilities, public transportation terminals and stations, factories, office buildings, business establishments, passenger vehicle service stations, shopping centers, hotels or motels and public eating places, owned by any State, county or municipal government agency or instrumentality or any private individual, partnership, association or corporation;

n. "Purchase" means and includes, in addition to its ordinary meaning, any acquisition of ownership or possession, including, but not limited to, condemnation by eminent domain proceedings;

o. "Retail dealer" means any person who engages in the business of selling fuels from a fixed location such as a service station, filling station, store, or garage directly to the ultimate users of said fuel;

p. "Sale" means and includes, in addition to its ordinary meaning, any exchange, gift, theft, or other disposition. In each case where fuels are exchanged, given, stolen, or otherwise disposed of, they shall be deemed to have been sold;

q. "Supplier of fuel" means any refiner, importer, marketer, jobber, distributor, terminal operator, firm, corporation, wholesaler, broker, cooperative or other person who supplies, sells, consigns, transfers, or otherwise furnishes fuel. In no case, however, shall a retail dealer be construed to be a supplier of fuel;

r. "Trade secret" means the whole or any portion or phase of any scientific, technical or otherwise proprietary information, design, process, procedure, formula or improvement which is used in one's business and is secret and of value; and a trade secret shall be presumed to be secret when the owner takes measures to prevent it from becoming available to persons other than those selected by the owner to have access thereto for limited purposes;

s. "Wholesale dealer" means any person who engages in the business of selling fuels to other persons who resell the said fuel. In no case shall a retail dealer be considered as a "[wholesale]" "*wholesale*" dealer.

4. There is hereby established in the Executive Branch of the State Government a principal department which shall be known as the Department of Energy.

5. The administrator and chief executive officer of the department shall be a commissioner who shall be a person qualified by training and experience to perform the duties of his office. The commissioner shall be appointed by the Governor with the advice and consent of the Senate, and shall serve at the pleasure of the Governor and until the appointment and qualification of the commissioner's successor. He shall devote his entire time to the duties of his office and shall receive such salary as shall be provided by law. Any vacancy occurring in the office of the commissioner shall be filled in the same manner as the original appointment.

*5.1.a. There is hereby established in the department the Board of Public Utilities; provided, however, that such board shall be independent of any supervision or control by the department or by any officer or employee thereof, except as otherwise expressly provided in this act.*

*b. The Department of Public Utilities is abolished and its functions, powers and duties are hereby transferred to the Board of Public Utilities, except as provided in section 25 of this act.*

*c. The Board of Public Utility Commissioners and the positions of president and commissioners thereof shall be continued as the Board of Public Utilities and the president and commissioners thereof in the Board of Public Utilities. This act shall not affect the terms of office of, nor the salaries received by, the present mem-*

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

*bers of the Board of Public Utility Commissioners, or of any officers or employees thereof. The Department of Civil Service shall not reclassify any title or position transferred from the Department of Public Utilities pursuant to this act without the approval of the board. The President and Commissioners of the Board of Public Utilities shall be appointed in the manner provided by existing law for the appointment of the President and Commissioners of the Board of Public Utility Commissioners, and shall receive such salaries as shall be provided by law.*

*d. All functions, powers and duties now vested in the Board of Public Utility Commissioners and in the positions of president and commissioners thereof are hereby transferred to and assumed by the Board of Public Utilities and the president and commissioners thereof.*

*e. Whenever in any law, rule, regulation, order, contract, document, judicial or administrative proceeding or otherwise, reference is made to the Department of Public Utilities or the Board of Public Utility Commissioners, the same shall mean and refer to the Board of Public Utilities.*

*5.a. There is hereby established in the department the Division of Energy Planning and Conservation.*

*b. The Division of Energy Planning and Conservation shall be under the immediate supervision of a director who shall be appointed by the Governor, with the advice and consent of the Senate, and who shall serve at the pleasure of the Governor during the Governor's term of office and until the appointment and qualification of his successor. The director shall receive such salary as shall be provided by law.*"

6. The commissioner shall organize the work of the department and establish therein such administrative subdivisions as he may deem necessary, proper and expedient. He may formulate and adopt rules and regulations and prescribe duties for the efficient conduct of the business, work and general administration of the department. He may delegate to subordinate officers or employees in the department such of his powers as he may deem desirable to be exercised under his supervision and control.

7. Subject to the provisions of Title 11 of the Revised Statutes, and within the limits of funds appropriated or otherwise made available, the commissioner may appoint such officers and employees of the department as he may deem necessary for the performance of its duties, fix and determine their qualifications, duties, and compensation and retain or employ engineers and private consultants on a contract basis or otherwise for rendering professional or technical assistance.

8. "a." The commissioner shall make an annual report to the Legislature and the Governor of the department's operations and render such other reports as they shall from time to time request or as may be required by law. These reports shall include, but not be limited to, an analysis of existing problems and guidelines relating to future energy use and availability.

*"b. Within 6 months of the effective date of this act, the commissioner, after consultation with the Director of the Division of Energy Planning and Conservation, the Board of Public Utilities, the Attorney General, and the commissioners of appropriate executive departments, including but not necessarily limited to the Departments of Environmental Protection and Transportation, shall prepare and submit a report to the Legislature and the Governor identifying (1) those functions and duties currently exercised by other departments, divisions, agencies, commissions, councils, boards, or bureaus of State Government relating to energy that might be appropriately transferred to the department; and (2) those functions and duties transferred to the department pursuant to the provisions of this act that might be appropriately transferred to other departments. Such transfers may be effectuated by executive order or law, as the case may be."*

9. The commissioner shall, "[by and]" on behalf of the department *"through the Division of Energy Planning and Conservation"*:

a. Manage the department as the central repository within the State Government for the collection of energy information;

b. Collect and analyze data relating to present and future demands and resources for all forms of energy;

c. Have authority to require all persons, firms, corporations or other entities engaged in the production, processing, distribution, transmission or storage of energy in any form to submit reports setting forth such information as shall be required to carry out the provisions of this act;

d. Have authority to require any person to submit information necessary for determining the impact of any construction or development project on the energy and fuel resources of this State;

e. Charge other State Government departments and agencies involved in energy-related activities", *including the Board of Public Utilities,"* with specific information gathering goals and require that said goals be fulfilled;

f. Establish an energy information system which will provide all data necessary to insure a fair and equitable distribution of available energy, to permit a more efficient and effective use of available energy, and to provide the basis for long-term planning related to energy needs;

g. Design, implement, and enforce a program for the conservation of energy in commercial, industrial, and residential facilities, which program shall provide for the evaluation of energy systems as they relate to lighting, heating, refrigeration, air-conditioning, building design and operation, and appliance manufacturing and operation; and may include, but shall not be limited to, the requiring of an annual inspection and adjustment, if necessary, of oil-fired heating systems in residential, commercial and industrial buildings so as to bring such systems into conformity with efficiency standards therefor prescribed by the department; the setting of lighting efficiency standards for public buildings; the establishment of mandatory thermostat settings and the use of seven-day, day-night thermostats in public buildings; the development of standards for efficient boiler operation; and, the preparation of a plan to insure the phased retrofitting of existing gas furnaces with electric ignition systems and to require that new gas "[furnaces,]" ranges"[,]" and dryers be equipped with electric ignition systems", *and new gas furnaces with electric ignition systems and automatic vent dampers*";

h. Conduct and supervise a State-wide program of education including the preparation and distribution of information relating to energy conservation;

i. Monitor prices charged for energy within the State, evaluate policies governing the establishment of rates and prices for energy, and make recommendations for necessary changes in such policies to other concerned Federal and State agencies", *including the Board of Public Utilities,"* and to the Legislature;

j. Have authority to conduct and supervise research projects and programs for the purpose of increasing the efficiency of energy use, developing new sources of energy, evaluating energy conservation measures, and meeting other goals consistent with the intent of this act;

k. Have authority to distribute and expend funds made available for the purpose of research projects and programs;

l. Have authority to enter into interstate compacts in order to carry out energy research and planning with other states or the Federal Government where appropriate;

m. Have authority to apply for, accept, and expend grants-in-aid and assistance from private and public sources for energy programs; notwithstanding any other law to the contrary, the commissioner is designated as the State official to apply for, receive, and expend Federal and other funding made available to the State for the purposes of this act;

n. Require the annual submission of energy utilization reports and conservation plans by State Government departments and agencies, "*including the Board of Public Utilities,*" evaluate said plans and the progress of the departments and agencies in meeting those plans, and order changes in the plans or improvement in meeting the goals of the plans;

o. Carry out all duties given him under other sections of this act or any other law;

p. Have authority to conduct hearings and investigations in order to carry out the purposes of this act and to issue subpoenas in furtherance of such power. Said power to conduct investigations shall include, but not be limited to, the authority to enter without delay and at reasonable times the premises of any energy industry in order to obtain or verify any information necessary for carrying out the purposes of this act;

q. Have authority to adopt, amend or repeal, pursuant to the "Administrative Procedure Act" (C. 52:14B-1 et seq.) such rules and regulations necessary and proper to carry out the purposes of this act;

r. Administer such Federal energy regulations as are applicable to the states, including, but not limited to, the mandatory petroleum allocation regulations and State energy conservation plans.

s. Have authority to sue and be sued;

t. Have authority to acquire by purchase, grant, contract or eminent domain title to real property for the purpose of demonstrating facilities which improve the efficiency of energy use, conserve energy or generate energy in new and efficient ways;

u. Have authority to construct and operate, on an experimental or demonstration basis, facilities which improve the efficiency of energy use, conserve energy or generate power in new and efficient ways;

v. Have authority to contract with any other public agency or corporation incorporated under the laws of this or any other state for the performance of any function under this act;

w. Determine the effect of energy and fuel shortages upon consumers, and formulate proposals designed to encourage the lowest

possible cost of energy and fuels consumed in the State consistent with the conservation and efficient use of energy;

x. Keep complete and accurate minutes of all hearings held before the commissioner or any member of the "[department]" "*Division of Energy Planning and Conservation*" pursuant to the provisions of this act. All such minutes shall be retained in a permanent record and shall be available for public inspection at all times during the office hours of the department.

10. There is created in the "[department]" "*Division of Energy Planning and Conservation*" an Advisory Council on Energy "*Planning and Conservation*" which shall consist of "[10]" "15" members representing the following: the natural gas industry, the bottle gas industry, the home heating oil and coal industry, terminal operators, oil refiners, gasoline retailers, electrical utilities, nuclear fuel suppliers, "[the Department of Public Utilities and the consuming public]" "*environmental organizations, the solar energy industry, manufacturing industrial consumers, commercial consumers, residential consumers, the transportation industry and the academic community*". Members shall be appointed by the Governor, with the advice and consent of the Senate, and as practicably as possible represent the several geographical areas of the State.

The council shall elect a chairman, vice chairman and secretary from its membership. Of the members first appointed, "[three]" "*five*" shall serve for terms of 2 years, "[three]" "*five*" for terms of 3 years and "[four]" "*five*" for terms of 4 years. Thereafter all appointments shall be made for terms of 4 years. Members shall serve after the expiration of their terms until their respective successors are appointed and shall qualify, and any vacancy occurring in the membership of the council by expiration of term or otherwise, shall be filled in the same manner as the original appointment for the unexpired term only.

Members of the council shall serve without compensation but shall be reimbursed for expenses actually incurred in attending meetings of the council and in performance of their duties as members thereof. The council shall meet at least four times each year, at the call of its chairman, and at such other times, at the call of the commissioner, as he deems necessary.

11. The Advisory Council on Energy "*Planning and Conservation*" is empowered to:

a. Request from the commissioner "*and from the Director of the Division of Energy Planning and Conservation*" such energy information as it may deem necessary;

b. Consider any matter relating to the production, distribution, consumption or conservation of energy;

c. From time to time submit to the commissioner any recommendations which it deems necessary for the long-term planning and management of energy;

d. Study energy programs and make its recommendations thereon to the commissioner;

e. Review, prior to their promulgation, proposed rules and regulations of the department, and make its recommendations thereupon, except such rules and regulations determined by the commissioner to be emergency measures essential to preserve the public health, safety, or welfare.

f. Hold public hearings in regard to existing statutes and regulations governing the production, distribution, consumption or conservation of energy.

12. a. The department, "*through the Division of Energy Planning and Conservation,*" within 1 year of the effective date of this act, shall prepare or cause to be prepared, and, after public hearings as hereinafter provided, adopt a master plan for a period of 10 years on the production, distribution, consumption and conservation of energy in this State. Such plan shall be revised and updated at least once every 3 years. The plan shall include long-term objectives but shall provide for the interim implementation of measures consistent with said objectives. The department may from time to time and after public hearings amend the master plan. In preparing the master plan or any portion thereof or amendment thereto the department shall give due consideration to the energy needs and supplies in the several geographic areas of the State, and shall consult and cooperate with any Federal or State agency having an interest in the production, distribution, consumption or conservation of energy.

b. Upon preparation of such master plan, and each revision thereof, the department shall cause copies thereof to be printed, shall transmit sufficient copies thereof to the Governor and the Legislature, for the use of the members thereof, and shall advertise, in such newspapers as the commissioner determines appropriate to reach the greatest possible number of citizens of New Jersey, the existence and availability of such draft plan from the offices of the department for the use of such citizens as may request same. In addition, the department shall:

(1) Fix dates for the commencement of a series of public hearings, at least one of which shall be held in each geographical area delineated in the master plan. Each such public hearing shall concern the overall content of the plan and those aspects thereof that have relevance to the specific geographical area in which each such public hearing is being held;

(2) At least 60 days prior to each public hearing held pursuant to this section, notify each energy industry and each State department, commission, authority, council, agency, or board charged with the regulation, supervision or control of any business, industry or utility engaged in the production, processing, distribution, transmission, or storage of energy in any form of the time and place for the hearing and shall publish such notice in a newspaper of general circulation in the region where the hearing is to be held, and in such newspapers of general circulation in the State as the commissioner determines appropriate to reach the greatest possible number of citizens of New Jersey.

c. Upon the completion of the requirements of subsection b. of this section, the department shall consider the testimony presented at all such public hearings and adopt the energy master plan, together with any additions, deletions, or revisions it shall deem appropriate.

d. Upon the adoption of the energy master plan, and upon each revision thereof, the department shall cause copies thereof to be printed and shall transmit sufficient copies thereof to the Governor and the Legislature, for the use of the members thereof, and to each State department, commission, authority, council, agency, or board charged with the regulation, supervision or control of any business, industry or utility engaged in the production, processing, distribution, transmission, or storage of energy in any form. In addition, the department shall advertise in the manner provided in subsection b. of this section the existence and availability of the energy master plan from the offices of the department for the use of such citizens of New Jersey as may request same; provided, however, that the department may charge a fee for such copies of the energy master plan sufficient to cover the costs of printing and distributing same.

13. a. The "[department]" "*Division of Energy Planning and Conservation*" is "[further]" empowered and directed to intervene in any proceedings before, and appeals from, any State department, "*division,*" commission, authority, council, agency or board (hereinafter referred to as "*State instrumentalities*") "*including the Board of Public Utilities*" charged with the regulation, supervision or control of any business, industry or utility engaged in the production, processing, distribution, transmission or storage of energy in any form, when, in the discretion of the commissioner, such intervention is necessary to insure the proper consideration by such State instrumentalities of the State energy master plan, or any part or aspect thereof, adopted by the department pursuant to section 12 of this act, or any rule or regulation promulgated by the department pursuant to the provisions of this act. To facilitate the intervention provisions of this section, each such State instrumentality shall consider the department a party of interest in any proceedings before such instrumentality with respect to energy and shall give the same notice to the department as is given to every other party of interest in such proceedings of any meeting, public hearing or other proceeding of such instrumentality in implementing its regulatory, supervisory or control powers, responsibilities and duties with respect to such businesses, industries or utilities.

b. It being the intention of the Legislature that the actions, decisions, determinations and rulings of the State Government with respect to energy shall to the maximum extent practicable and feasible conform with the energy master plan adopted by the department pursuant to section 12 of this act, the department shall prepare, periodically revise and distribute to each State instrumentality charged with the regulation, supervision or control of any business, industry or utility engaged in the production, processing, distribution, transmission or storage of energy in any form, such guidelines as the department determines to be relevant to assist each such instrumentality in conforming with said energy master plan in implementing its regulatory, supervisory or control powers, responsibilities and duties with respect to such businesses, industries or utilities.

"*c. With respect to the siting of any energy facility in any part of New Jersey, the department shall, the provisions of any law to the contrary notwithstanding, have jurisdiction coextensive with that of any other State instrumentality, and to that end, no State instrumentality with the power to grant or deny any permit for the construction or location of any energy facility shall exercise its powers without referring to the Division of Energy Planning and Conservation, for its review and comments, a copy of such application and all papers, documents and materials appurtenant thereto filed by the applicant with such State instrumentality. Prior to making a final decision with respect to any such application, the State instrumentality with power of approval over such application shall solicit the views of the department thereupon. Such views*

*shall be communicated to the State instrumentality with the power of approval over such application in the form of a report describing the findings of the department with respect to such application. Such report shall be prepared by the Director of the Division of Energy Planning and Conservation and shall be signed by said director and by the commissioner. In the event that such report is not prepared and transmitted to the State instrumentality with power of approval over such application within 60 days after the department's receipt of such application, such State instrumentality shall act upon such application pursuant to the law providing its power of approval thereof. In the event that the views of the department, as contained in its report, with respect to any such application differ from the views of the State instrumentality with the power of approval over such application, there shall be established an Energy Facility Review Board which shall consist of the Director of the Division of Energy Planning and Conservation, the director or chief executive officer of the State instrumentality with the power of approval over such application, and a designee of the Governor. The decision of the Energy Facility Review Board created with respect to a specific energy facility application shall be binding with respect to such facility and shall be implemented forthwith by the State instrumentality with the power of approval over such application.*

*In implementing its responsibilities pursuant to this subsection, the department shall have the power to adopt, by regulation, a fee schedule for reviewing applications for the construction or location of energy facilities; provided, however, that fees shall be charged to applicants for permits to construct or locate energy facilities only in those instances where the nature and extent of the proposed energy facility are such as to necessitate the employment of consultants or other expert personnel from without the department before the department can make its determination with respect to any such application, and that such fees shall in any event be the minimum amount necessary to, permit the department to fulfill its responsibilities under this section.*

*The provisions of this section shall not be regarded as to be in derogation of any powers now existing and shall be regarded as supplemental and in addition to powers conferred by other laws, including municipal zoning authority.*"

14. The commissioner shall prepare and adopt an emergency allocation plan specifying actions to be taken in the event of an impending serious shortage of energy which poses grave threats to the public health, safety, or welfare. The commissioner shall direct all State Government departments and agencies', *including the Board of Public Utilities,*" to develop, subject to his approval, contingency plans for dealing with said emergencies.

15. a. Upon a finding by the commissioner that there exists or impends an energy supply shortage of a dimension which endangers the public health, safety, or welfare in all or any part of the State, the Governor is authorized to proclaim by executive order a state of energy emergency for a period of up to 6 months. The Governor may limit the applicability of any such state of emergency to specific kinds of energy forms or to specific areas of the State in which such a shortage exists or impends.

b. During the duration of a state of energy emergency the commissioner to the extent not in conflict with applicable Federal law or regulation but notwithstanding any State or local law or contractual agreement, shall be empowered to:

(1) Order any person to reduce by a specified amount the use of any energy form; to make use of an alternate energy form, where possible; or to cease the use of any energy form;

(2) Order any person engaged in the distribution of any energy form to reduce or increase by a specified amount or to cease the distribution of such energy form; to distribute a specified amount and type of energy form to certain users as specified by the "[administrator]" "*commissioner*"; or to share supplies of any energy form with other distributors thereof;

(3) Establish priorities for the distribution of any energy form;

(4) Regulate and control the distribution and sale of any energy form by:

(a) Establishing such limitations, priorities, or rationing procedures as shall be necessary to insure a fair and equitable distribution of available supplies;

(b) Establishing minimum and maximum quantities to be sold to any purchaser;

(c) Fixing the days and hours of access to retail dealers;

(d) Compelling sales to members of the general public during times when a retail dealer is open for the sale of an energy form;

(e) Establishing methods for notifying the public by flags, symbols, or other appropriate means whether such retail dealers are open and selling the subject energy form;

(5) Direct the heads of those departments and agencies within State Government that were ordered to develop contingency plans pursuant to section 14 of this act to implement said plans;

(6) Adopt and promulgate such rules and regulations as are necessary and proper to carry out the purposes of this section.

c. During the existence of a state of energy emergency, the Governor may order the suspension of any laws, rules, regulations, or orders of any department or agency in State Government or within any political subdivision which deal with or affect energy and which impede his ability to alleviate or terminate a state of energy emergency.

d. Any aggrieved person, upon application to the commissioner shall be granted a review of whether the continuance of any order issued by the commissioner pursuant to this section is unreasonable in light of then prevailing conditions of emergency.

e. During a state of energy emergency the commissioner may require any other department or other agency within State Government to provide such information, assistance, resources, and personnel as shall be necessary to discharge his functions and responsibilities under this act, rules and regulations adopted hereunder, or applicable Federal law and regulations.

f. The powers granted to the Governor and the commissioner under this section shall be in addition to and not in limitation of any emergency powers now or hereafter vested in the Governor, the commissioner, or any other State Government department or agency pursuant to any other laws, including but not limited to any power "[now]" vested in the Board of Public "[Utility Commissioners]" "*Utilities*" to require utility companies to allocate available supplies of energy; provided, however, that upon declaring a state of energy emergency, the Governor may supersede any other such emergency powers.

g. The state of energy emergency declared by the Governor pursuant to this section shall remain in effect until the Governor declares by a subsequent executive order that the state of energy emergency has terminated.

16. a. The commissioner shall adopt rules and regulations requiring the periodic reporting by energy industries of energy information which shall include but not be limited to the following:

(1) Electrical generating capacity in the State; long-range plans for additions to said capacity; efficiency of electrical generation; price and cost factors in electrical generation; types and quantities of fuels used; projections of future demand, consumption of electricity by sectors; times, duration, and levels of peak demand;

(2) Petroleum refining capacity; amount and type of fuel produced; amount and type of fuel sold; interstate transfers of fuel; price and cost factors in refining, production, and sale; long-term plans for alterations or additions to refining capacity; location, amount, and type of fuel storage;

(3) Storage capacity for gases; amount and end uses of gases sold; price and cost factors in the sale and use of gases; and

(4) Such other information as the commissioner may determine necessary for carrying out the purposes of this act.

b. The commissioner shall at least annually publish a report analyzing all energy information collected.

c. The commissioner shall have the discretion to obtain energy information from an affiliate of any energy industry or from an association or organization of industries of which any such energy industry is a member. Whenever energy information supplied by an energy industry is so obtained by the commissioner, the energy industry to which such information pertains shall be promptly notified of the energy information so obtained and shall be given an opportunity to correct or amplify such information.

d. Trade secrets collected under this section shall be exempt from the requirements of P. L. 1963, c. 73 (C. 47:1A-1 et seq.). The commissioner shall promulgate rules and regulations for the conduct of administrative hearings on the issue of whether certain energy information should not be disclosed to the public.

17. No person who is an official or employee of the department shall participate in any manner in any decision or action of the department wherein he has a direct or indirect financial interest.

18. The commissioner may issue subpenas requiring the attendance and testimony of witnesses and the production of books, documents, papers, statistics, data, information, and records for the purpose of carrying out any of his responsibilities under this act. Whenever there arises a refusal to honor his subpena, the commissioner may petition a court of competent jurisdiction for an order requiring the attendance and testimony of a witness or the production of the requested books, documents, papers, statistics, data, information, and records. Any failure to obey such an order issued by a court shall be punished, by the court as a contempt thereof.

19. Upon a violation of this act or of any rules, regulations, or orders promulgated hereunder, the commissioner, the county prosecutor of the county in which the violation occurs if he has the approval of the commissioner, or any aggrieved person shall be entitled to institute a civil action in a court of competent jurisdiction for injunctive relief to restrain such violation and for such

other relief as the court shall deem proper. The court may proceed in a summary manner. Neither the institution of such action, nor any of the proceedings therein shall relieve any party to such proceedings from other fines or penalties prescribed for such a violation by this act or by any rule, regulation or order adopted hereunder.

20. Any person who fails to provide energy information in his official custody when so required by the commissioner shall be liable for a penalty of not more than $3,000.00 for each offense. If the violation is of a continuing nature, each day during which it continues shall constitute an additional and separate offense. Penalties shall be collected in a civil action by a summary proceeding under the Penalty Enforcement Law (N. J. S. 2A:58-1 et seq.).

21. Any officer or employee of the State who, having obtained by reason of his employment and for official use, any confidential energy information, publishes or communicates such information for reasons not authorized by this or any other act shall be fined not more than $2,000.00 or imprisoned not more than 2 years or both.

22. a. Any person purchasing or attempting to purchase energy in violation of section 15 of this act or any rules, regulations, or orders promulgated thereunder, shall be subject to a penalty of not more than $25.00 for the first offense, not more than $100.00 for the second offense, and not more than $200.00 for the third offense or subsequent offenses.

b. Any retail dealer who violates section 15 of this act or any rules, regulations, or orders promulgated thereunder, shall be subject to a penalty of not more than $25.00 for the first offense, not more than $200.00 for the second offense, and not more than $400.00 for the third offense or subsequent offenses.

c. Any distributor or any other supplier of energy who violates any of the provisions of section 15 of this act or of any rule, regulations, or orders promulgated thereunder, shall be subject to a penalty of not more than $1,000.00 for the first offense, not more than $5,000.00 for the second offense, and not more than $10,000.00 for the third offense or subsequent offenses.

d. In addition to any other penalties provided under this or any other act, the commissioner may recommend to the appropriate agency the suspension or revocation of the license of any retail dealer, gasoline jobber, wholesale dealer, distributor, or supplier of fuel, who has violated this act or any rules, regulations, or orders promulgated hereunder.

e. All penalties imposed pursuant to this section shall be collected in a civil action by a summary proceeding under the Penalty Enforcement Law (N. J. S. 2A:58-1 et seq.). If the violation is of a continuing nature, each day during which it continues shall constitute an additional and separate offense.

*[23.] The department shall transmit copies of all rules and regulations proposed pursuant to this act* **by or on behalf of the Division of Energy Planning and Conservation** to the Senate and General Assembly on a day on which both Houses shall be meeting in the course of a regular or special session. The provisions of the "Administrative Procedure Act" or any other law to the contrary notwithstanding, no such rule or regulation, except a rule or regulation adopted pursuant to an energy emergency declared by the Governor, shall take effect if, within 60 days of the date of its transmittal to the Senate and General Assembly, the Legislature shall pass a concurrent resolution stating in substance that the Legislature does not favor such proposed rule or regulation.*

23. a. All appropriations, grants, and other moneys available to the State Energy Office are hereby transferred to the department created hereunder and shall remain available for the objects and purposes for which appropriated, subject to any terms, restrictions, limitations or other requirements imposed by Federal or State law.

b. The employees of the State Energy Office are hereby transferred to the department created hereunder. Nothing in this act shall be construed to deprive said employees of any rights or protections provided them by the civil service, pension, or retirement laws of this State.

c. All files, books, paper, records, equipment, and other property of the State Energy Office are hereby transferred to the department created hereunder.

d. The rules, regulations, and orders of the State Energy Office shall continue with full force and effect as the rules, regulations, and orders of the department created hereunder until further amended or repealed.

e. Except as otherwise provided by this act, all the functions, powers, and duties of the existing State Energy Office and its administrator are hereby continued in the department and the "[commissioner thereof]" *"Director of the Division of Energy Planning and Conservation"* created hereunder.

f. This act shall not affect actions or proceedings, civil or criminal, brought by or against the State Energy Office and pending on the effective date of this act, but such actions or proceedings may be further prosecuted or defended in the same manner and to the same effect by the department created hereunder.

g. Whenever in any law, rule, regulation, order, contract, document, judicial or administrative proceedings, or otherwise, reference is made to the State Energy Office or the administrator thereof, the same shall be considered to mean and refer to the State Department of Energy and the "[commissioner thereof]" *"Director of the Division of Energy Planning and Conservation"* created hereunder.

24. All the functions, powers and duties heretofore exercised by the Department of Community Affairs and the Commissioner thereof relating to the adoption, amendment and repeal of the energy subcode of the State Uniform Construction Code pursuant to P. L. 1975, c. 217 (C. 52:27D-119 et seq.) are hereby transferred to, and vested in the Department of Energy and the Commissioner of the Department of Energy; provided, however, that nothing in this section shall be construed so as to interfere with the enforcement of such energy subcode by the Commissioner of the Department of Community Affairs pursuant to the aforecited P. L. 1975, c. 217*; provided further, however, that this section shall not take effect until 90 days after the effective date of this act, and any energy subcode adopted by the Department of Community Affairs within said 90 days shall continue in force and effect until amended or repealed by the department as herein provided*".

25. The Bureau of Energy Resources in the Department of Public Utilities, together with all of its functions, powers and duties, is hereby transferred to the *"Division of Energy Planning and Conservation in the"* Department of Energy established pursuant to this act.

26. The transfer of responsibilities directed by this act, except as otherwise provided herein, shall be made in accordance with the "State Agency Transfer Act," P. L. 1971, c. 375 (C. 52:14D-1 et seq.).

27. All acts and parts of acts inconsistent with any of the provisions of this act are, to the extent of such inconsistency, superseded and repealed.

28. If any section, part, phrase, or provision of this act or the application thereof to any person be adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the section, part, phrase, provision, or application directly involved in the controversy in which such judgment shall have been rendered and it shall not affect or impair the validity of the remainder of this act or the application thereof to other persons.

29. The object and design of this act being the protection of the public health, safety and welfare by means of the coordination of State planning", *regulation"* and authority in energy related matters, this act shall be liberally construed.

30. This act shall take effect immediately.

## APPENDIX F - LEGAL COMMENTARY

### Introduction

This Appendix provides a legal commentary to the principal recent judicial decisions involving the laws concerning coastal management in New Jersey.

Judicial decisions in New Jersey courts have upheld the constitutionality of the Coastal Area Facility Review Act (N.J.S.A. 13:19-1 et seq.) and the Wetlands Act (N.J.S.A. 13:9A-1 et seq.). New Jersey courts have also expanded a common law doctrine protecting public rights in riparian lands (the "Public Trust Doctrine") to include the rights of beach access and recreational use in addition to the traditionally recognized rights of navigation, commerce and fishing on the water and at the water's edge. Also, the State of New Jersey is actively establishing its claim of ownership of the riparian lands now or formerly flowed by the mean high tide.

### Coastal Area Facility Review Act

The Appellate Division of the New Jersey Superior Court upheld the constitutionality of CAFRA in the case of Toms River Affiliates and Lehigh Construction Company v. Department of Environmental Protection and Coastal Area Review Board, 140 N.J. Super 135 (App. Div.), cert. den. 71 N.J. 345 (1976). The case involved the denial by DEP of a CAFRA permit for a ten story, high-rise luxury apartment complex on a 9.5 acre tract of land in Toms River, Ocean County. The plaintiff, a developer, contended that the Act: (1) did not provide adequate standards for the administration of the Act in violation of Article III, Paragraph I of the New Jersey Constitution; (2) granted zoning powers to the DEP in contravention of the constitutional delegation of such powers to a municipality; (3) created an invalid classification by designating a delineated coastal area and omitting other coastal areas; (4) denied equal protection of the laws; and (5) constituted the taking of property in violation of Article I, Paragraph 20 of the Constitution of New Jersey.

The Court rejected all five arguments, finding that: (1) Sections 10 and 11 of the Act set forth specific criteria by which the Environmental Impact Statement required for a CAFRA permit could be evaluated; (2) the police power of the State was not exhausted by the delegation of zoning power to the municipality (the State retained a quantum of reserved police power to delegate such authority to one or more agencies of the State government as the Legislature may deem appropriate); (3) the limitation of the Act to the portion delineated by the statutory boundaries constituted a valid exercise of discretionary power vested in the Legislature (The Court noted that the Act should be read in light of the intention of the Legislature which recognized that the coastal area was a unique and irreplaceable region of the state); (4) the mere fact that the property of the appellants is subject to the Act's provision, while property in other parts of the state is not, does not establish a Fourteenth Amendment deprivation of equal protection; and (5) The taking issue in this case was specious (A particular use of property may be frustrated, but so long as alternative uses for development exist, no taking of private property can be claimed by the appellants).

In the case of Public Interest Research Group of New Jersey, et. al. v. Department of Environmental Protection and Public Service Electric and Gas Co., 152 N.J. Super 191 (App. Div.), certif. den. 73 N.J. 538 (1977), the Court upheld the decision of the Department and the Coastal Area Review Board to approve a CAFRA permit for the Hope Creek Nuclear Generating Station (Units 1 and 2) at Artificial Island in Lower Alloways Creek Township, Salem County. The Court rejected the appellants' procedural contention that DEP should have conducted an adversarial hearing with cross-examination of witnesses and findings of fact and conclusions of law, instead of the two quasi-legislative, fact-finding hearings held before the DEP decision. The Court also ruled that the decision to grant a conditional permit was reasonable. The Court concurred with the Department's finding that Public Service Electric and Gas Co. complied with the findings of Section 10 and 11 of the Act.

The Court also rejected the contention of appellants and the Public Advocate, who submitted an amicus brief, that the environmental impact statement submitted by Public Service Electric and Gas Company was legally deficient.

The Court further rejected appellants claim that the Commissioner's finding in the method for disposal of radioactive waste, as required by N.J.S.A. 13:19-11, was unsupported by the available data in the record. The Court noted the comprehensive federal legislation and regulations in the area of radiation hazards and stated that the Commissioner must satisfy himself that the applicant has conformed to the standards of the Nuclear Regulatory Commission. If such standards are met, the Court noted, the Commissioner has no authority to impose either lower or higher safety standards to regulate radiation (152 N.J. Super. at 216).

Wetlands Act

In American Dredging Co. v. State of New Jersey, 161 N.J. Super. 405 (1978), the Chancery Division, Superior Court held that the Wetlands Act and 1973 Wetlands Order was a valid exercise of the State's police power as applied to a wetlands site on the Delaware River. The plaintiff owns a 2,500 acre site in Dover Township, Gloucester County, of which approximately 159 acres are regulated wetlands. The site is used primarily for dredge spoil disposal, and DEP had issued prior permits allowing fill on all but 80 acres. The plaintiff argued that the denial of a permit for the last 80 acres so diminished their value as to constitute a constructive taking. The Court responded by saying that a diminution in value was only one factor to be considered and weighed against the need for regulation by the State. The Court looked at the site as a whole (i.e. the entire 2,500 acres) and found that the restricted use of 3% of the land (80 acres) was not unreasonable when weighed against the destruction of an entire wetland area. The decision was affirmed by the Superior Court's Appellate Division in June 1979 (167 N.J. Super. 18).

The Wetlands Act was also upheld in the case of Sands Point Harbor, Inc. v. Sullivan, 136 N.J. Super. 436 (1979). In that case a private developer alleged that both the statute and regulations both deprived him of equal protection under the law as guaranteed by the Constitutions of the United States and New Jersey, and further that the statutes and regulations constituted a taking of property without just compensation in violation the New Jersey Constitution.

The applicant's equal protection argument was predicated upon the fact that only coastal wetlands were regulated by the Wetlands Act, and that wetlands subject to the Hackensack Meadowlands Development Commission (N.J.S.A. 13:17-1 et seq.) were specifically excluded. The Court noted that classification in legislation is not constitutionally prohibited, and that the Legislature is granted a wide range of discretion to treat subject matter of legislation differently, so long as the classification is reasonable and related to the basic object of the legislation. The Court stated further that classifying coastal wetlands as a separate object of protection was reasonable, considering that wetlands north of Raritan Bay are characterized by heavy industrial, commercial, or residential development. The only other broad contiguous area of wetlands in the state was within the special legislatively defined Hackensack Meadowlands Development District, and a classification by statute of this area afforded reasonable grounds for the disparate treatment of land in these different areas of the State.

On the so-called "taking issue", the applicant relied upon a New Jersey Supreme Court case which struck down a municipal zoning ordinance severely restricting the use of swamp land (Morris County Land, Parsippany-Troy Hills Township, 40 N.J. 539, 1963). The restrictions in this case, however, were of such a nature that the only practical use which could be made of the property was as a hunting or fishing preserve. The taking test, as defined by the New Jersey Supreme Court, was whether no practical use could be made of the land so as to constitute a taking without just compensation.

The Court found that the only activities absolutely prohibited under the Wetlands Act were the dumping of solid waste, discharging of sewage, and storage and application of pesticides. Since the Commissioner of Environmental Protection must consider the effect of a proposed activity upon the public health and welfare, marine and shellfisheries, wildlife, and the protection of property from flood, hurricane or other disasters, such criteria were reasonable and did not so restrain virtually all activities so as to be in violation of the New Jersey Constitution.

In an unreported decision, Carton et al vs. State of New Jersey (Docket No. A-638-763, 1978), the Superior Court, Appellate Division rejected the contention of a wetlands owner that the Wetlands Act constituted a taking of private property without just compensation. The plaintiffs contended that the Act was vague, unreasonable and unconstitutional, but the Court, citing Sands Point Harbor held that the Act was a valid exercise of governmental power and did not constitute a taking. A petition for appeal was denied by the New Jersey Supreme Court on May 16, 1978.

In a recent Administrative Action, the Commissioner upheld a decision denying a wetlands permit for a lagoon development on Long Beach Island (Loveladies Harbor, Inc. - Unit D, Wetlands Permit No. 77-0050-2). The site, which is adjacent to an existing barrier island lagoon development, contains both regulated wetlands and an upland area. DEP rejected the developer's proposal for single family homes on the entire site, but indicated that clustering in the upland area would be acceptable. The local zoning code prohibits clustering, however, and despite the DEP denial, no variance has been granted. The applicant appealed the decision to the Superior Court's Appellate Division in May, 1979 (in the matter of Loveladies Harbor, Inc., Docket No. A-3020-78).

In June, 1980 another decision denying a wetlands permit was appealed to the Superior Court's Appellate decision. In this case the appellant had sought to develop a shopping center by filling 11 acres of regulated wetlands in Lower Township, Cape May County. The permit was denied in December, 1977 in a decision (77-0045-2) which noted the availability of alternative non-wetlands sites. The denial was affirmed on appeal to a hearing officer in Augusta, 1979.

Tidelands Cases

Numerous issues concerning tidelands management in the coastal zone of New Jersey are not expressly addressed or resolved in Titles 12 and 13 of the Revised New Jersey Statutes, which contain the bulk of tidelands statutory authority. The case law decisions described in this section have established key principles in tidelands law.

The case of O'Neill v. State Highway Department 50 N.J. 307 (1967) involved an ownership dispute of lands along the Hackensack River. The State asserted title to these lands. In its opinion, the Court laid down several principles. First, the State owns in fee simple all lands that are flowed by the tide up to the high water line or mark (The high water line or mark is the line formed by the intersection of the tidal plain of mean high tide with the shore). In establishing this line, the average to be used should be, if possible, the average of all the high tides over a period of 18.6 years. Second, the State cannot acquire interior land by the construction of artificial works, such as ditching, which enables the tide to ebb and flow on lands otherwise beyond it. The riparian owner cannot, however, enlarge his holdings by excluding the tide. Third, the party who challenges the existing scene must satisfy the court that the tidelands status of the property was changed by artificial measures.

Rules concerning erosion and its effect on riparian ownership were discussed in the case of Leonard v. State Highway Department of New Jersey, 29 N.J. Super 188 (App. Div. 1954). Where erosion is by natural means, the riparian owner loses title to the State. The owner suffers no such loss, however, in the event of a sudden and perceptible loss of land. The high water mark may shift from time to time through erosion, and persons who own or purchase tide-flowed land are well aware of this natural process. Where there is erosion, they lose title to the State. Where there is accretion, they gain title at the expense of the State.

The State's procedure for tidelands delineation was reviewed in a series of decisions beginning with the City of Newark v. Natural Resources Council (133 N.J. Super 245, Law Div. 1974, affirmed 152 N.J. Super. 458 (Appellate Division, 1977)). Two tidelands statutes relevant to the State's tideland delineation procedure provided that "the (Natural Resource) Council is hereby directed to undertake title studies and surveys of meadowlands throughout the State and to determine and certify those lands which it finds are State owned lands." (N.J.S.A. 13:1B-13.2.) "Upon completion of each separate study and survey the Council shall publish a map portraying the results of its study and clearly indicating those lands designated by the Council as state owned lands". (N.J.S.A. 13:1B-13.4).

In 1970 the State issued a map which designated those portions of the State in which it claimed an interest. In 1971, the Superior Court held that these maps did not comply with the intent of the legislation, and prohibited their use.

The State then began a new delineation process based on aerial photography. This mapping procedure resulted in maps for thirty-seven panels of land, each of approximately 964 acres, drawn at a scale of 1:2,400. In 30 of the 37 panels the maps produced resulted in substantial State claims to land. However, in seven of the panels it was very difficult for the State to determine ownership, and so these areas were characterized as "hatched" (areas of filled meadowlands adjacent to virgin meadowlands). The "hatched" areas indicated a claim by the State that the filled areas were once tide flowed and were therefore likely to be state owned.

The court held that the "hatching" procedure did not conform with the statutory requirement that the State define its interests in unequivocal terms. (N.J.S.A. 13:1B-1 et seq.), and once again ordered the preparation of new maps clearly indicating State interests in tidelands. The Office of Environmental Analysis in DEP began the mapping based on new overlay techniques, and filed these maps with the Appellate Division of the Superior Court in January 1978. The Appellate Division upheld the method used by the State in May, 1979. That decision was appealed to the New Jersey Supreme Court by appellants who sought to suppress the maps. One May 15, 1980, the Court, in a 6-0 decision (City of Newark v. Natural Resource Council in DEP) affirmed the Appellate court's decision stating that "the evidence adduced indicates only a difference of opinion between the appellants' and NRC's experts", and citing the presumptive valid of an agency's actions. The Court also noted that the case did not seek to quiet any titles and wrote that "We do not broach the question of what evidentiary effect these maps should be given in subsequent quiet title suits involving private owners."

Waterfront Development

An appeal by an owner of a tideland grant whose application for a waterfront development permit was denied by the Natural Resource Council (now the Tidelands Resource Council) was reviewed in Kupper v. Bureau of Navigation, Council of Resources, etc., Docket No. A-737-71 (unpublished opinion of Appellate Division, decided April 9, 1976). The application involved a request to construct a bulkhead connecting two existing bulkheads in a substantially developed residential area. The Court observed that although they were sympathetic to DEP's efforts to preserve the ecological balance in any area of the State, they were equally sympathetic to the rights of individual property owners who would be deprived of the economic use of their land. The Court felt that the trial evidence indicated that granting of a permit in this case would not result in detrimental impacts on the immediate environment, as claimed by DEP.

Public Access to Shorefront Areas

Increasing and maintaining public access to the shorefront in the coastal zone of New Jersey is a public policy derived from the Public Trust Doctrine. That doctrine, as defined by New Jersey case law, holds that the public retains certain limited rights in tidelands, even where those lands have been conveyed to individuals or to municipalities. (See Martin v. Waddel's Lessee 81 U.S. (PET) 367 (1842), Arnold v. Mundy 6 NJL 1 (Sup. Ct. 1821), and Avon v. Borough of Neptune by the Sea 61 N.J. 296 (1972).)

The cases concerning shorefront access have so far dealt only with public access to publicly owned, rather than privately owned land. However, the New Jersey Superior Court is expected to discuss this issue in Matthews v. Bay Head Improvement Association, (Docket No. L-23410-73).

The decision in Avon v. Borough of Neptune is significant in that it expanded the Public Trust Doctrine beyond the traditional public rights of navigation, commerce, and fishing to include recreational uses of the shoreline. The New Jersey Supreme Court held that municipally owned tidal lands below mean high water are subject to these public rights, and for a municipality to charge a discriminatory fee to users of the beach was analogous to erecting a physical barrier.

Two more recent decisions by the New Jersey Supreme Court have expanded public access rights in beachfront areas considerably.

In Van Ness et al. v. Borough of Deal, 78 N.J. 174 (1978) the Supreme Court held that municipally owned upland or dry sand areas are subject to the Public Trust Doctrine, and that a municipality cannot exclude a non resident from using those areas upon payment of a reasonable fee. The Court struck down the Borough's practice of roping off the beach area above the high tide line for the use of residents, saying that "whether natural or man-made, the beach is an adjunct to ocean swimming and bathing and is subject to the public trust doctrine".

In a companion case, Hyland v. Borough of Allenhurst, 78 N.J. 190 (1978), the Court ruled that the exclusion of the general public from the restrooms of a municipally owned beach club was an arbitrary and unreasonable exercise of municipal authority. This decision was not based on the public trust doctrine.

The practice of offering rates to early purchasers of beach badges was recently upheld by the Superior Court, Appellate Division in Hyland v. Township of Long Beach et al. (160 N.J. Super 201, 1978), cert. denied 78 N.J. 395 (1978). The Court found no evidence to support the State's contention that the practice of offering beach badges early in the season favored the township residents over non-residents, and therefore violated the public trust doctrine.

Finally, a recent Superior decision overturned a zoning ban which prohibited the recreational use of beachfront land unless the adjacent upland was developed for single family dwellings. The decision in Lusardi v. Curtis Point Property Owners Association and Township of Brick (Docket No. C-3515-63(C-1101), letter opinion August 13, 1979, Kaplan, CSJ), concerned the use of a dry beach area for bathing and recreation where the area's primary zoning purpose was reserved for single family dwellings.

The Court relied on the Rules on Coastal Resource and Development Policies (Public Access to the Shoreline), on language in the Beaches and Harbors Bond Act of 1977, and on the Neptune, Deal, and Allenhurst decisions as evidence of an affirmative public policy on shoreline access, and found that:

> "In the light of judicial, legislative and executive pronouncements since 1972 ... I conclude that a zoning ban of the recreational use of undeveloped beachfront property unless a primary use exists contravenes state policy and is therefore an unreasonable exercise of the police power."

Board of Public Utilities

It has been held that the Board of Public Utilities, when exercising its authority under N.J.S.A. 40:55D-19 to supercede local actions taken with respect to utilities when necessary if the service conveniences the welfare of the public, may make a finding that such service is necessary if found to be "reasonably requisite to service public convenience" (emphasis added). Petition of Public Service Coordinated Transport, 103 N.J. Super 505 (1968). Under the Coastal Management Program, the Board's authority insures that key "uses of regional benefit" will not be unreasonably excluded by actions of local governments.

## APPENDIX C - SECRETARIAL FINDINGS INDEX

The Federal Coastal Zone Management Act of 1972, as amended (16 U.S.C. 1451 et seq.) and the program approval regulations adopted as an interim final rule by NOAA-OCZM (15 CFR Part 923, Federal Register, Vol. 44, No. 61, March 28, 1979, pp. 18590-18624) define twenty-six required findings that must be made before the Secretary of Commerce may approve a state's coastal management program. This appendix identifies these requirements and provides an index to the appropriate section or sections in Part II where the New Jersey Coastal Management Program presents the information required for the secretarial findings.



DE25045

| TION OF THE FEDERAL COASTAL MANAGEMENT ACT | | ASSOCIATED SECTION(S) OF PROGRAM APPROVAL REGULATIONS | PROGRAM SECTION |
|---|---|---|---|
| (b)(1) | boundaries | 923.31, 923.32, 923.33, 923.34 | Chapter Two, Appendix D |
| (b)(2) | uses subject to management | 923.11, 923.12 | Chapters Three, Four |
| (b)(3) | areas of particular concern | 923.21, 923.23 | Chapter Five |
| (b)(4) | means of control | 923.41 | Chapter Three |
| (b)(5) | guidelines on priorities of uses | 923.22 | Chapter Four |
| (b)(6) | organizational structure | 923.45 | Chapter Three |
| (b)(7) | shorefront planning process | 923.25 | Chapter Five |
| (b)(8) | energy facility planning process | 923.14 | Chapter Five |
| (b)(9) | erosion planning process | 923.26 | Chapter Five |
| (c)(1) | notice; full participation; consistent with section 303 | 923.58, 923.51, 923.55, 923.3 | Appendix A |
| (c)(2)(A) | plan coordination | 923.56 | Chapter Three |
| (c)(2)(B) | continuing consultation mechanisms | 923.57 | Chapter Three |
| (c)(3) | public hearings | 923.58 | Appendix A |
| (c)(4) | gubernatorial review and approval | 923.47 | Part II |
| (c)(5) | designation of recepient agency | 923.46, 923.47 | Chapter Three |
| (c)(6) | organization | 923.45, 923.47 | Chapter Three |
| (c)(7) | authorities | 923.41, 923.47 | Chapter Three |
| (c)(8) | adequate consideration of national interests | 923.52 | Chapter Five |
| (c)(9) | areas for preservation/restoration | 923.24 | Chapter Five |
| (d)(1) | administer regulations, control development; resolve conflicts | 923.41 | Chapter Three |
| (d)(2) | powers of acquisition, if necessary | 923.41 | Chapter Three |
| (e)(1) | technique of control | 923.41, 923.42 | Chapter Three |
| (e)(2) | uses of regional benefit | 923.13, 923.41, 923.43 | Chapter Five |
| (f) | incorporation of air and water quality requirements | 923.44 | Chapter Four |
| (h) | segments | 923.61 | Chapters Two, Three |
| (b) | adequate consideration of federal agency views | 923.51 | Chapter Five |

E: Chapter numbers refer to Part II.

APPENDIX H - COMMENTS AND RESPONSES ON THE PROPOSED NEW JERSEY COASTAL MANAGEMENT PROGRAM AND DRAFT ENVIRONMENTAL IMPACT STATEMENT

TABLE OF CONTENTS


I. INTRODUCTION

II. LIST OF COMMENTORS

III. GENERAL COMMENTS

1. Economic Impacts
2. Waterfront Development Law - Need for Proposed Rule
3. Waterfront Development Law - Legality of Proposed Rule
4. Extension of Bay and Ocean Shore Program to Developed Coast
5. Pinelands Comprehensive Management Plan
6. Hackensack Meadowlands District - Master Plan as Coastal Policy for District
7. Hackensack Meadowlands District - Consistency with Federal Rules
8. Public Comment Period

IV. COMMENTS BY TOPIC FROM NEW JERSEY AGENCIES, GROUPS, INDUSTRY, AND INDIVIDUALS

1. COASTAL POLICIES - by Policy Number

| Comment Number | Policy Number (In DEIS) | Topic |
|---|---|---|
| 1 | | Policies - General |
| 22 | | Basic Coastal Policies |
| 30 | 1.3 | Jurisdiction |
| 31 | 1.6 | Coastal Decision-Making Process |
| 46 | 2.2 | Classification of Land and Water Types |
| 48 | 2.3 | Mapping and Acceptability Determination |
| 51 | Subchapter 3 | SPECIAL AREAS |
| 56 | 3.2 | Shellfish Beds |
| 61 | 3.3 | Surf Clam Areas |
| 62 | 3.4 | Prime Fishing Areas |
| 63 | 3.5 | Finfish Migratory Pathways |
| 64 | 3.6 | Submerged Vegetation |
| 65 | 3.7 | Navigation Channels |
| 68 | 3.8 | Canals |
| 69 | 3.9 | Inlets |
| 71 | 3.11 | Ports |
| 76 | 3.13 | Shipwrecks and Artificial Reefs |
| 78 | 3.14 | Estuarine or Marine Sanctuary |
| 79 | 3.15 | Wet Borrow Pits |
| 86 | 3.17 | Filled Water's Edge |
| 90 | 3.18 | Existing Lagoon Edge |
| 93 | 3.19 | Beach and Dune Systems |
| 102 | 3.20 | Wetlands |
| 108 | 3.21 | Floodplains |

TABLE OF CONTENTS - Continued


| Comment Number | Policy Number (In DEIS) | Topic |
|---|---|---|
| 111 | 3.22 | Central Barrier Island Corridor |
| 114 | 3.24 | Wet Borrow Pit Margins |
| 117 | 3.25 | Alluvial Flood Margins |
| 118 | 3.26 | Coastal Bluffs |
| 119 | 3.27 | Intermittent Stream Corridors |
| 121 | 3.28 | Farmland Conservation Areas |
| 124 | 3.29 | Steep Slopes |
| 126 | 3.30 | Dry Borrow Pits |
| 130 | 3.31 | Historic and Archeological Resources |
| 131 | 3.33 | Endangered or Threatened Wildlife or Vegetation Species Habitat |
| 133 | 3.34 | Critical Wildlife Habitats |
| 135 | 3.38 | Special Urban Areas |
| 149 | 4.2 | Policy Summary Table |
| 150 | 4.9 | Lakes, Ponds, and Reservoirs |
| 151 | 4.10 | Acceptability Conditions for Uses |
| 170 | 5.1 | General Land Areas - Definition |
| 171 | 5.3 | Coastal Growth Rating |
| 182 | 5.4 | Environmental Sensitivity Rating |
| 184 | 5.5 | Development Potential |
| 190 | 5.6 | Definition of Acceptable Intensity of Development |
| 194 | 5.7 | Land Acceptability Tables |
| 197 | 6.3 | Secondary Impacts |
| 200 | 6.4 | Transferred Impacts |
| 201 | Subchapter 7 | Use Policies |
| 203 | 7.2 | Housing Use Policies |
| 224 | 7.3 | Resort/Recreational Use Policies |
| 229 | 7.4 | Energy Use Policies |
| 266 | 7.5 | Transportation Use Policies |
| 270 | 7.8 | Mining Use Policies |
| 271 | 7.9 | Port Use Policies |
| 277 | 7.10 | Commercial Use Policies |
| 282 | 7.11 | Coastal Engineering |
| 286 | 7.12 | Dredge Spoil Disposal |
| 289 | Subchapter 8 | Resource Policies |
| 291 | 8.4 | Shellfisheries |
| 293 | 8.6 | Groundwater Use |
| 295 | 8.7 | Runoff |
| 305 | 8.11 | Air Quality |
| 307 | 8.12 | Public Services |
| 308 | 8.13 | Public Access to the Shorefront |
| 313 | 8.16 | Solid Waste |
| 314 | 8.17 | Energy Conservation |
| 315 | 8.20 | High Permeability Moist Soils |
| 317 | 8.21 | Wet Soils |
| 318 | 8.22 | Fertile Soil |
| 319 | 8.23 | Flood Hazard Areas |
| 320 | 8.24 | Decommissioning of Projects |
| 322 | 8.25 | Noise Abatement |
| 323 | 8.27 | Aquifer Recharge Areas |

2. MANAGEMENT SYSTEM AND DEIS


| Comment Number | Page Number (In DEIS) | Topic |
|---|---|---|
| 325 | | General |
| 348 | pg. 17 | Boundary |
| 362 | pg. 29 | Principal Implementation Programs |
| 386 | pg. 44 | Supplementary Programs in DEP |
| 389 | pg. 55 | Other Agencies |
| 402 | pg. 248 | Federal Consistency |
| 408 | pg. 257 | National Interests |
| 410 | pg. 257 | Regional Benefit Decisions |
| 411 | pg. 269 | Geographic Areas of Particular Concern |
| 412 | pg. 291 | Energy Facility Planning Process |
| 413 | pg. 313 | Next Steps |
| 416 | | DEIS - General |
| 425 | pg. 317 | DEIS - Description of the Coastal Zone |
| 431 | pg. 337 | DEIS - Consequences of Program Approval |
| 434 | pg. 363 | DEIS - Alternatives |

V. COMMENTS FROM FEDERAL AGENCIES BY ORGANIZATION

| Page Number | |
|---|---|
| 437 | Department of Agriculture - Soil Conservation Service |
| 444 | Department of the Army - Corps of Engineers |
| 456 | Department of Commerce - NOAA, National Marine Fisheries Service |
| 462 | Department of Energy |
| 465 | Department of the Interior |
| 501 | Department of the Navy |
| 506 | Environmental Protection Agency |
| 514 | Federal Energy Regulatory Commission |

## I. INTRODUCTION

This appendix identifies the commentors and presents responses to the issues raised during the public review period for the Proposed New Jersey Coastal Management Program and Draft Environmental Impact Statement (May 1980). This appendix includes comments on the Proposed New Jersey Coastal Management Program, or Program, prepared by NJDEP, comments on the Draft Environmental Impact Statement (DEIS) prepared by NOAA-OCZM, and comments on the Proposed Waterfront Development Rules to be promulgated by NJDEP.

For a list of the recipients of the combined Program-DEIS, see Appendix H of the DEIS (May 1980).

The responses to these comments have been coordinated by NOAA-OCZM and DEP. A list of commentors is presented in Section II.

Eight general comments were raised by a number of commentors; these comments are given detailed responses in Section III. Names of commentors contributing to the general comments are listed, followed by those comments related to the general comments. Those related comments that are not adequately addressed by the general response are answered by an individual response. All comments not related to the eight general comments are answered individually in Section IV, often with reference to specific changes from the Proposed Program or revisions reflected in the Final Environmental Impact Statement. Comments by federal agencies are answered separately in Section V.

## II. LIST OF COMMENTORS

NOAA-OCZM and DEP received comments from public agencies, interest groups, companies, and individuals both in writing and at the four public hearings conducted jointly by NOAA-OCZM and DEP officials at Trenton and Jersey City on June 11 and at Camden and Toms River on June 12. Verbatim transcripts of the hearings, prepared by certified shorthand reporters, may be consulted at the NOAA-OCZM and DEP-DCR offices. This appendix identifies all commentors, and indicates whether the comments were made in writing or at a public hearing. In some cases, the same source provided comments on several occasions, but is counted as only one source. Comments were received from the following sources:

| | |
|---|---|
| Federal Agencies | 9 |
| State Agencies | 5 |
| Regional Agencies | 2 |
| County and Municipal Agencies | 14 |
| Organizations | 31 |
| Individuals | 12 |
| TOTAL | 73 |

| Commentor | Date | Hearing | Written |
|---|---|---|---|
| **FEDERAL AGENCY** | | | |
| Department of Agriculture<br>Soil Conservation Service<br>P.O. Box 2890<br>Washington, D.C. 20013<br>Norman A. Berg, Chief | July 3 | | X |
| Department of Agriculture<br>Soil Conservation Service<br>1370 Hamilton street<br>P.O. Box 219<br>Somerset, New Jersey 08873<br>Plater T. Campbell<br>State Conservationist | July 7 | | X |
| Department of the Army<br>Office of the Chief of Engineers<br>Washington, D.C. 20314<br>George F. Boone, Asst. Director<br>of Civil Works | July 7 | | X |
| Department of Commerce<br>National Marine Fisheries Service<br>Washington, D.C. 20235 | Undated | | X |
| Department of Energy<br>Deputy Assistant Secretary<br>Resource Development and Operations<br>Washington, D.C. 20461<br>R. D. Langenkamp | July 25 | | X |

| Commentor | Date | Hearing | Written |
|---|---|---|---|
| FEDERAL AGENCIES - Continued | | | |
| Department of the Navy<br>Fourth Naval District<br>Philadelphia, Pa. 19112<br>W. B. Britt, Deputy Director<br>Civil Engineer | June 27 | | X |
| Department of the Interior<br>Washington, D.C. 20240<br>Larry E. Meierotto<br>Asst. Secretary - Policy,<br>Budget and Administration | July 7 | | X |
| Environmental Protection Agency<br>Region II<br>26 Federal Plaza<br>New York, N.Y. 10007<br>Anne Norton Miller, Director<br>Office of Federal Activities | Undated | | X |
| Federal Energy Regulatory Commission<br>Washington, D.C. 20426<br>Carl N. Shuster, Jr. - Ph.D.<br>Coordinator, Coastal Zone Affairs | July 7 | | X |
| STATE AGENCIES | | | |
| Department of Community Affairs<br>363 West State Street<br>Trenton, N.J. 08625<br>Joseph A. LaFante, Commissioner | July 9 | | X |
| Department of Energy<br>Office of Planning and Policy<br>Analysis<br>101 Commerce Street<br>Newark, N.J. 07102<br>Edward J. Linky, Administrator | July 7 | | X |
| David Atkin, Ph.D.<br>CEIP Coordinator | July 10 | | X |
| Nancy Fiordalisi<br>CEIP Coordinator | June 11 | X | |
| Department of Health<br>P.O. Box 1540<br>Trenton, N.J. 08625<br>Joanne E. Finley, Commissioner | July 9 | | X |

| Commentor | Date | Hearing | Written |
|---|---|---|---|
| STATE AGENCIES - Continued | | | |
| Department of Labor and Industry<br>Labor and Industry Building<br>Trenton, N.J. 08625<br>John J. Horn, Commissioner | July 2 | | X |
| Department of the Public Advocate<br>Division of Public Interest Advocacy<br>P.O. Box 141<br>Trenton, N.J. 08625<br>Michael Bryce, Assistant Deputy<br>Public Advocate | July 7 | | |
| REGIONAL AGENCIES | | | |
| Delaware River Port Authority<br>World Trade Division<br>Bridge Plaza<br>Camden, N.J. 08101<br>William Bennington | June 12 | X | |
| The Port Authority of New York<br>and New Jersey<br>One World Trade Center<br>New York, N.Y. 10048<br>Stuart F. Millendorf<br>Environmental Coordinator | July 14 | | X |
| COUNTY AND MUNICIPAL AGENCIES | | | |
| Camden Department of Community<br>Development<br>City Hall - 10th Floor<br>Camden, N.J. 08101<br>William P. Hankowsky, Director | July 9 | | X |
| Cape May County Planning Board<br>Cape May County Court House, N.J.<br>08210<br>Elwood Jarmer, Director | July 8 | | X |
| Borough of Edgewater<br>916 River Road<br>Edgewater, N.J. 07020<br>Charles Susskind, Borough Clerk | June 11 | X | |
| Elizabeth Department of Community<br>Development<br>50 Winfield Scott Plaza<br>Elizabeth, N.J. 07201<br>Dennis W. Hudacsko, City Planner | July 2 | | X |

| Commentor | Date | Hearing | Written |
|---|---|---|---|
| **COUNTY AND MUNICIPAL AGENCIES** - Continued | | | |
| Gloucester County Planning Board<br>Woodbury, N.J. 08096<br>Robert V. Scolpino, Director | July 12 | | X |
| Borough of Lavallette<br>P.O. Box 67<br>Lavallette, N.J. 08735<br>Mayor Ralph J. Gorga | June 12 | X | |
| Township of Logan<br>73 Main Street<br>Logan, N.J. 08014<br>John C. Wright, Mayor | July 2 | | X |
| Borough of Mantoloking<br>Ocean Court, N.J. 08738<br>Donald D. Tubbs, Mayor | July 9 | | X |
| Middlesex County Planning Board<br>40 Livingston Avenue<br>New Brunswick, N.J. 08901<br>John Bernat, Jr. | July 11 | | X |
| Monmouth County Environmental Council<br>Monmouth County Planning Board<br>One Lafayette Place<br>Freehold, N.J. 07728<br>Kathleen H. Rippere<br>Chairman | July 14 | | X |
| City of Perth Amboy<br>City Hall<br>Perth Amboy, N.J. 08861<br>George J. Otlowski, Mayor | June 18 | | X |
| City of Rahway<br>1470 Campbell Street<br>Rahway, N.J. 07065<br>Daniel L. Martin, Mayor | May 19 | | X |
| Salem County Planning Board<br>Old Courthouse<br>Salem, N.J. 08079<br>Christopher J. Warren, Director | July 8 | | X |
| **ORGANIZATIONS** | | | |
| American Littoral Society<br>Sandy Hook<br>Highlands, N.J. 07732 | | | |
| Paul Dritsas | June 12 | X | X |
| D. W. Bennett | July 16 | | X |

| Commentor | Date | Hearing | Written |
|---|---|---|---|
| ORGANIZATIONS - Continued | | | |
| American Society of Civil Engineers<br>New Jersey Section<br>Fred J. Hofmann, President Elect<br>Box 1698 - Lyons Road<br>Basking Ridge, N.J. 07920 | July 7 | | X |
| Association of New Jersey Environmental Commissions<br>300 Mendham Road, Route 24<br>Box 157<br>Mendham, New Jersey 07945<br>Candace Ashmun, Executive Director | July 8 | | X |
| Atlantic City Development Corp.<br>205 Dover Plaza<br>West Atlantic City, N.J. 08232<br>Matthew C. Hudson | June 12<br>July 2 | X | X |
| Atlantic City Electric Co.<br>1600 Pacific Avenue<br>Atlantic City, N.J. 08404<br>Morgan T. Morris, III<br>Manager of Environmental Affairs | July 9 | | X |
| Bayonne Against Tanks<br>Nancy Richardson, President<br>Box 119<br>Bayone, N.J. 07002 | June 12 | X | |
| Cape May County Emergency Beach Restoration Association<br>John G. Federico<br>337 47th Place<br>Sea Isle City, N.J. | June 11 | X | |
| Federation of Beach Associations<br>P.O. Box 431<br>Brielle, N.J. 08730<br>Alba Kupper, President | July 2 | | X |
| GATX Terminals Corporation<br>Suit 201 - 195 Main Street<br>Metuchen, N.J. 08840<br>D. L. Moyer<br>Eastern & Midwest Operations Manager | July 8 | | X |
| Historic Paulus Hook Association<br>Joseph Duffy, President<br>108 Grand Street<br>Jersey City, N.J. 07302 | June 11 | X | |

| Commentor | Date | Hearing | Written |
|---|---|---|---|
| ORGANIZATIONS - Continued | | | |
| Hartz Mountain Industries, Inc.<br>1 Harmon Plaza<br>P.O. Box 1411<br>Secaucus, N.J. 07094<br>Morton Goldfein<br>Vice President/General Counsel | July 10 | | X |
| League of Conservation Legislation<br>Box 605<br>Teaneck, N.J. 07666<br>Richard Willinger, Esq., President | July 7 | | X |
| League of Women Voters of New Jersey<br>460 Bloomfield Avenue<br>Montclair, N.J. 07042<br>Joan Crawley, President | July 8 | | X |
| Mining Industry Representatives:<br>George F. Pettinos, Inc.<br>Mays Landing Sand and Gravel<br>Jesse S. Morie & Sons, Inc.<br>Pennsylvania Glass Sand Corp<br>Ricci Brothers Sand and Gravel<br>Unimin Corp<br>Whitehead Brothers Co. | July 3 | | X |
| Natural Resources Defense Council<br>122 East 42nd Street<br>New York, N.Y. 10017<br>Gary Grant | June 11 | X | |
| Written testimony also submitted on behalf of:<br>The American Littoral Society<br>The New Jersey Conservation Foundation | Undated | | X |
| New Jersey Alliance for Action<br>Suite 201-20<br>Highland Avenue<br>Metuchen, N.J. 08840 | | | |
| Lewis Caccese | June 12 | X | |
| Ellis S. Viesar | June 20 | | X |
| New Jersey Business and Industry Association<br>50 Park Place<br>Newark, N.J. 07102<br>Gene Deutsch | June 11 | | X |
| New Jersey Builders Association<br>1000 Route 9<br>Woodbridge, N.J. 07095<br>David Fisher | June 11 | X | |
| | July 14 | | X |

| Commentor | Date | Hearing | Written |
|---|---|---|---|
| ORGANIZATIONS - Continued | | | |
| New Jersey Conservation Foundation<br>300 Mendham Road<br>Morristown, N.J. 07960 | July 8 | X | |
| New Jersey Independent Liquid Terminal Association<br>60 Park Place<br>Newark, N.J. 07102<br>Albert F. Mogerly, Chairman | June 11 | X | |
| New Jersey Marine Sciences Consortium<br>Sandy Hook Field Station<br>Building 22<br>Fort Hancock, N.J. 07732<br>Robert B. Abel, Vice President | June 30 | X | |
| New Jersey Petroleum Council<br>170 West State Street<br>Trenton, N.J. 08608<br>G. Oliver Papps<br>Associate Director | June 25 | | X |
| New Jersey State Chamber of Commerce<br>5 Commerce Street<br>Newark, N.J. 07102<br>Edward Lenihan, Chairman<br>Economic Development Committee | July 3 | | |
| Private Citizens Action Team (PACT)<br>Pat Castagno<br>384 Princeton Avenue<br>Jersey City, N.J. 07305 | June 11 | X | |
| Public Service Electric and Gas Company<br>80 Park Place<br>Newark, N.J. 07101<br>James A. Shissias, General Manager<br>Environmental Affairs | June 11 | X | X |
| Pureland Industrial Complex<br>603 Heron Drive<br>Bridgeport, N.J. 08014<br>A. Carl Helwig, Manager | June 12 | X | X |
| Save the Hudson - Our Riverland Environment (SHORE)<br>Helen Thompson<br>6050 Blvd. East<br>West New York, N.J. | June 11 | X | |

| Commentor | Date | Hearing | Written |
|---|---|---|---|
| ORGANIZATIONS - Continued | | | |
| Sierra Club<br>New Jersey Chapter<br>360 Nassau Street<br>Princeton, N.J. 08540<br>Vivian Li, Vice-Chair. | July 7 | | X |
| North Jersey Group<br>241 River Road<br>Nogota, N.J. 07603<br>Clare C. Dudley | June 11 | X | |
| West Jersey Group<br>1305 Walnut Avenue<br>W. Collingswood, N.J. 08107<br>Carol Barrett, Chairman | June 12<br>July 9 | X | X |
| South Jersey Shellfish Association<br>P.O. Box 134<br>Oceanville, N.J. 08231<br>Richard Crema, Secretary | April 16<br>July 7 | | X<br>X |
| The Penjerdel Council<br>Suite 1960<br>1617 John F. Kennedy Boulevard<br>Philadelphia, Pa. 19103 | June 12 | X | |
| INDIVIDUALS | | | |
| Helen Bicher<br>Normandy Beach, N.J. 08739 | June 12 | X | |
| Isabelle Dietz<br>Whiting, N.J. | June 12 | X | |
| Catherine Grimm<br>250 Woodlawn Avenue<br>Jersey City, N.J. 07305 | June 11 | X | |
| William J. McDevitt<br>305 N. 2nd Street<br>Surf City, N.J. 08008 | June 12 | X | |
| Michael D. Miller<br>Representative of State Senator<br>Raymond Zane<br>44 Cooper Street<br>Woodbury, N.J. | June 12 | X | |
| Daniel W. Myers<br>The Provincial Executive<br>Suite 800<br>2201 State Highway 38<br>Cherry Hill, N.J. 08034 | July 7 | | X |

| Commentor | Date | Hearing | Written |
|---|---|---|---|
| INDIVIDUALS - Continued | | | |
| Bill Meyenhouse<br>Toms River, N.J. | June 12 | X | |
| Myron Portenar<br>227 Carey Street<br>Lakewood, N.J. 08701 | June 12 | X | |
| Pearl Schwartz<br>25 Green Twig Drive<br>Toms River, N.J. | June 12 | X | |
| W. Elmer Seaman, Jr.<br>P.O. Box 12<br>Barnegat, N.J. 08005 | June 12 | X | |
| | July 8 | | X |
| Chris Theodos<br>141 E. Main Street<br>Tuckerton, N.J. 08087 | June 12 | X | |
| Roger Wells<br>Roger Wells Inc.<br>18 Kings Highway West<br>Haddonfield, N.J. 08033 | June 12 | X | |
| | July 7 | | X |
| R. C. Westmoreland, Esq.<br>535 Tilton Road<br>P.O. Box 175<br>Northfield, N.J. 08225 | June 27 | | X |

## III. GENERAL COMMENTS AND RESPONSES

Many of the statements made by the many individuals and groups who commented on the Proposed New Jersey Coastal Management Program and Draft EIS raised a number of common concerns. This section of the Comments and Responses Appendix includes eight general comments which were each raised by several commentors and provides a detailed response to each. Each response is followed by a list of persons or organizations making the comment, and by related comments and responses.

### General Comment No. 1

1. The Proposed Coastal Management Program will have a negative impact on economic development of the State's Coastal Zone, and the Environmental Impact Statement does not adequately address economic impacts.

This comment was made by:

1. New Jersey State Chamber of Commerce
2. Daniel W. Myers
3. L. Caccese, New Jersey Alliance for Action
4. A. Helwig, Pureland Industrial Complex
5. J. Deitz, The Penjerdel Council
6. A. Mogerly, N.J. Independent Liquid Terminals Assoc.

Response: The Coastal Management Program has been in operation for two years in the Bay and Ocean Shore Segment of the State. While an economic analysis has not been performed, we cannot detect any decline in development activity separate from that attributable to high interest rates and other national factors. Rather than causing a decrease in the quantity of development activity, we believe that the Coastal Management Program has resulted in a changed spatial distribution of development in the coastal zone, with environmentally sensitive areas being preserved and those areas with the greatest development potential being developed. The development which has taken place is also more environmentally sensitive and energy efficient than that which would have occurred in the absence of a Coastal Management Program.

In the Developed Coast, the proposed policies are not as preservation-oriented as in the Bay and Ocean Shore Segment. They have been drafted to ensure the wise development of coastal resources, while preserving wetlands and other critical areas. The water's edge in the developed coast is a finite resource, much of which has already been consumed by uses which could have located on inland sites. The result is that there are fewer sites left for port or water-related industrial development, for mixed-use development, or for recreation. One of the objectives of the Coastal Management Program in the developed coast is to reserve most remaining sites for water dependent uses, so that the northern waterfront and Delaware River areas can attract new jobs, and so mixed-use development (commercial/residential/recreational) and waterfront parks can make the region's cities more attractive places to live and work. The existing reliance on municipal zoning has failed to bring new water related jobs to the water's edge because many municipalities, by permitting any ratable that came their way, have precluded a later opportunity to attract a form of development which could make a better use of the water's edge. The extent of economic redevelopment and waterfront revitalization efforts of most of the cities of the developed coast contrasts poorly with that of the Hackensack Meadowlands District where regional planning has led to 28,000 new permanent jobs.

Yet what the Coastal Management Program is proposing for the developed coast is less ambitious than what is being undertaken in the Meadowlands. DEP is proposing to require a permit only for a narrow strip of land along the water's edge for the purpose of reserving this resource for uses which would benefit from a waterfront location, and to preserve any environmentally sensitive areas located in this narrow strip. To complement this regulatory program, DEP, in conjunction with NJDOE, will be making planning and implementation grants from the federal grants the State will receive as a result of program approval to waterfront municipalities for the purposes of waterfront redevelopment and the creation of recreational facilities. Under the State's Program Development Grant from NOAA, six such planning grants have already been "passed through" to local governments in the Developed Coast. Based on the experience of other urbanized states with approved Coastal Management Programs, notably Michigan and Massachusetts, the mix of limited state regulation together with redevelopment aid to local governments leads to economic redevelopment as well as environmental protection.

The discussion of the environmental, economic and institutional consequences of federal approval must, because of the nature of the program, be general and descriptive rather than precise and quantitative. The Coastal Management Program is not a discrete action with a limited number of direct consequences. It is the application of a specified set of policies to a set of permit decisions and management actions, which would have to be made even in the absence of a coastal program. It is also the channeling of grants to an as yet undetermined group of municipalities for still to be selected projects. It is impossible to predict what permit and management decisions would be made in the absence of a program, and we also cannot foresee what decisions will result from the application of specific and predictable policies to permit decisions involving still unknown proposals for development. Unlike zoning, the Coastal Management Program does not define a class of acceptable uses for specified land areas. Under the program, the pattern of coastal development will be a result of the interaction of private market decisions with a set of location, use and resource policies, and of the development actions taken by local governments and private entrepreneurs in response to Local Coastal Grants aimed at waterfront redevelopment. Precise economic impacts cannot be predicted without knowing what the private and local decisions will be. We can only make the general statement that the Coastal Management Program is not expected to change the overall quantity of housing starts or commercial and industrial investment in the State, but that it will have some effect on the distribution of that development by (1) encouraging the concentration of development in existing built-up areas, (2) reserving the water's edge water dependent uses, (3) preserving environmentally sensitive areas, and (4) by focusing public attention on the waterfront.

The following comments are related to General Comment 1:

| Comments | Commentor | Response |
|---|---|---|
| An objectionable aspect of the proposed CMP is its expansion to include great areas outside the Bay and Ocean Shore, enlarging DEP's jurisdiction and giving it authority to regulate construction in the navigable | The Penjerdel Council | See General Response. |

| Comments | Commentor | Response |
|---|---|---|
| waters and the adjacent waterfront. This will adversely affect all of those areas utilized for a hundred or more years to support commerce and industry. | | |
| The Attorney General's opinion concerning the Waterfront Development Law allows DEP to regulate the waterfront for "the public's overall economic well-being" and states the act was promulgated to provide a state role in "harbor development for economic reasons". The proposed rules actually place New Jersey at a competitive disadvantage. | Al Mogerly - N.J. Independent Liquid Terminals Assoc. | See General Response. |
| Not only are the present CAFRA rules extended to the developed areas, they also are made more economically restrictive in this proposal. (See amendments to Policies 7:7E-3.7/ Maintenance Dredging, 7:7E-3.20/Wetlands, 7:7E-8.6/Groundwater Use). | Al Mogerly - N.J. Independent Liquid Terminals Assoc. | The "CAFRA rules" are not extended to developed areas; rather the Waterfront Development Permit rules are extended to limited upland areas in the developed waterfront as provided for in the Waterfront Development Act. Dredging policies have become more permissive since borrow pits may now be acceptable disposal sites. Wetlands rules have not changed, neither have groundwater use policies since the old policies also stated that other DEP rules, now more explictly stated, should also be observed. |
| The combined impact of the State's land use control programs upon the economy is harmful because they undermine investor confidence. This plethora of regulations evidences an undesirable adversary atmosphere in public/ private sector relationships in New Jersey. | New Jersey State Chamber of Commerce | The CMP represents a consolidation of regulations to make permit decisions more consistent and predictable to the investor. DEP does not regard the private sector as an adversary, and does not wish to be viewed as an adversary by the private sector. |

General Comment No. 2

The proposed rules under the Waterfront Development Law will add another layer of regulation in conflict with the State's home-rule traditions.

This comment was made by:

1. New Jersey Section, American Society of Civil Engineers
2. Township of Logan
3. Charles Susskind, Clerk, Borough of Edgewater
4. J. Deitz, The Penjerdel Council
5. A. Helwig, Pureland Industrial Complex
6. Mayor Ralph Gorga, Lavallette Borough
7. A. Mogerly, N.J. Independent Liquid Terminals Association

Response: It is true that the proposed rule under the Waterfront Development Law will expand the area which requires a waterfront development permit along a narrow water's edge in the northern waterfront and the Delaware River areas. However, we believe that on balance, implementation of the Coastal Management Program will result in less permit-related frustration for prospective developers. There are two reasons why the permit process will be simplified under the proposed program:

1) The Waterfront Development permit program is already in operation for tide flowed lands. Permit applications are made to the Bureau of Coastal Project Review, the same Bureau that administers CAFRA and Wetlands permits. Prior to July 1, 1979 developers had to apply to three separate offices for each of the three coastal permits.

2) The Waterfront Development permit criteria are the rules on Coastal Resource and Development Policies, the same as for CAFRA and Wetlands Permits. Therefore, if a project meets the criteria for one permit, it meets the criteria for all three. The result is that predictable, consistent permit decisions will be made under the Waterfront Development Permit program, as well as under CAFRA and the Wetlands Act.

With regard to the issue of expanded State jurisdiction versus home rule, municipalities are chartered by the State and given their authority under State law. Early in this century the Legislature chose to delegate extensive land use regulatory authority to the municipalities. In recent years the Legislature has determined that municipal land use decisions often have regional impacts. Therefore, legislation has been enacted to transfer the regulation of many resources of regional or State importance to regional bodies or to the State. In the case of the waterfront, the importance to the State's economy of this narrow interface of land and water was recognized by the Legislature in 1914 when it granted regulatory authority to a predecessor of DEP. More recently, the Legislature recognized the need for regional planning in the Hackensack Meadowlands and in 1969 created a regional agency to assume zoning authority. In 1970, the Legislature recognized a State interest in coastal wetlands and delegated DEP regulatory authority over them. In 1973, CAFRA was enacted because of a recognition of a statewide interest in the wise use of coastal resources. Finally, in 1979, the State delegated planning and regulatory authority to the Pinelands Commission because of a State and national interest in the preservation of part of the Pinelands, and the careful development of the remainder.

To the extent that development does not impact resources of regional, State or national concern, the Legislature has allowed land use regulation to remain at the municipal level. In the case of CAFRA, the Wetlands Act and the Waterfront Development Act, State authority supplements but does not supplant home-rule. The State may deny a permit to an activity which would destroy a resource of statewide importance, but it may not require development which local zoning prohibits with the rare exception of uses of regional benefit. The State and municipality, therefore, have mutual vetoes over activities affecting resources of statewide significance.

The ability to manage activities significantly affecting coastal waters of a state is required by NOAA before it will approve a state's coastal management program. In practice, NOAA requires that a state be able to manage all development within at least 100 feet of coastal waters in developed areas and a wider jurisdiction in undeveloped areas. New Jersey does not have to seek federal approval for its coastal management program. The state has elected to do so both to make itself eligible for federal coastal management funds, and more importantly because it recognizes a state interest in managing the coastal zone to ensure optimal use of its resources. To obtain federal approval and to complete its coastal management program, the State has elected to define its jurisdiction under the Waterfront Development Law.

The following comments are related to General Comment 2:

| Comments | Commentor | Response |
|---|---|---|
| The City of Perth Amboy objects to the expansion of regulatory jurisdiction. Our present system of permitting plant locations is long and complicated enough, without making it more complex and time consuming. Delays involve amounts of money which can swing the decision balance in favor of other locations. | Mayor George Otlowski, Perth Amboy | See General Response. |
| We favor home rule and oppose the proposed CMP. It is unnecessary and autonomous. | Joseph R. Duffy - Historic Paulus Hook Association | See General Response. |
| Extension of State's regulatory powers as proposed in the N.J. CMP is not in the best interests of the State of New Jersey and thus should be reconsidered. | New Jersey Section, American Society of Civil Engineers | See General Response. |

| Comments | Commentor | Response |
|---|---|---|
| The Proposed Management Program introduces yet another regulatory agency with powers that in many areas overlap existing agencies such as the Delaware River Basin Commission, CAFRA, and Wetlands. | M. Hudson, Atlantic City Development Corp. | CAFRA and Wetlands are not separate agencies but component laws of the Coastal Management Program. No new agency is being created -- all three coastal permit programs are consolidated in DEP's Division of Coastal Resources. |
| Remove those properties already zoned for commercial and industrial use from the scope of the proposed regulations. | M. Hudson, Atlantic City Development Corp. | The fact that a municipality has zoned a site for commercial or industrial use does not ensure that such development would be a wise use of a resource of statewide importance. |
| Perform coordination with local municipal zoning laws now rather than later. | A. Helwig, Pureland Industrial Complex | Extensive discussion and coordination have already been incorporated. For example, under the State-County Coastal Coordination Project, eleven county planning boards served as links between DEP and local planning officials in developing the CMP. |
| The proposed definition of the inland boundary is 100 feet from the wetlands limit or mean high tide. In Gibbstown on June 5, 1979 this was explained to us as "the depth of a residential lot". What about other uses? The distance seems arbitrary. | A. Helwig, Pureland Industrial Complex | The boundary is intended to include the first use adjacent to the water. A standard residential lot is 100' in depth, but some uses extend further inland, thus the 500' maximum. The upland jurisdiction is proposed along tidal water bodies only, not along wetlands. |

General Comment No. 3

The proposed rules under the Waterfront Development Law amount to an illegal extension of DEP's authority. The Department should seek new legislation to operate a permit program in the developed coast.

This comment was made by:

1. A. Helwig, Pureland Industrial Complex
2. New Jersey Petroleum Council
3. L. Caccese, New Jersey Alliance for Action
4. GATX Terminals Corporation

5. Atlantic City Electric Company
6. The Port Authority of N.Y. and N.J.
7. Township of Logan
8. Gloucester County Planning Board
9. D. Fisher, N.J. Builders Association
10. Michael D. Miller, Representative of State Senator Zane

Response: The Department did not wish to seek new legislation until it had inventoried existing legislation to determine its authority. The Waterfront Development Law (N.J.S.A. 12:5-3), with its delegation of authority to DEP to regulate "any waterfront upon any navigable water or stream of this state or bounding thereon", appeared to give the Department adequate authority to regulate a narrow water's edge in the northern waterfront and Delaware River area. However, before basing a program upon this statute, the Department sought an opinion from the Attorney General. Formal Opinion No. 6 of 1980 (See Appendix D) affirmed the Department's jurisdiction under this law. Having received an opinion from the State's chief legal authority "that the Department may regulate the portion of uplands adjacent to the State's navigable waterways that constitutes the waterfront, but that the waterfront is a relatively narrow strip of land whose precise geographical limit should be defined by rule in accordance with the criteria set forth in this opinion" the Department felt on sound legal ground in defining its regulatory authority by rule. As discussed in Chapter 6, DEP may, at some future date, seek new legislation to consolidate existing permit programs, delegate regulatory responsibilities to local governments, and close loopholes in its existing authority. In June, 1980, legislation was introduced (A-1825) to give DEP authority to regulate development which would destroy the natural protection offered by dunes. Other gaps in DEP authority are its inability to control the cumulative impacts of developments of less than 24 units and its inability to protect the Palisades from poorly planned development. NOAA-OCZM, however, believes the State's existing authority is adequate to meet the requirements of the FCZMA.

The following comments are related to General Comment 3:

| Comments | Commentor | Response |
|---|---|---|
| We recognize the 500 foot boundary (inland of high water) as being necessary to ensure proper regulation. | Michael Bryce, Department of the Public Advocate | Agreed. |
| Is interpreting the term "navigable water" within the Waterfront Development Law to include all tidally influenced streams within the legislative intent of the Law? | Gloucester County Planning Board | Yes. This is consistent with definition of navigable water adopted by federal agencies and upheld in State courts. |
| We approve extension of CAFRA boundaries to limits of tidewater along the Delaware and northern section of coast. | League of Women Voters of N.J. | Thank you for support. CAFRA is not being extended, but the authority cited in the comment is pursuant to the Waterfront Development Law. |



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| Comments | Commentor | Response |
|---|---|---|
| The Penjerdel Council objects strongly to an agency of New Jersey Government and a department of the Federal Government proposing regulations without the oversight and need for approval of the General Assembly. Adoption of the Proposed New Jersey CMP should be prevented. | J. Deitz, The Penjerdel Council | See General Response. |
| The 1914 Waterfront Development Law cannot justify the regulations and amendments in the DEIS. | A. Mogerly, N.J. Independent Liquid Terminals Assoc. | See General Response. |
| DEP should withhold action on the proposed waterfront development regulations and CAFRA amendments while the present legislative inquiries are pending. | A. Mogerly, N.J. Independent Liquid Terminals Assoc. | Hearings on Waterfront Development Rule concluded before promulgation. No legislative inquiries were held regarding amendment of coastal policies. |
| Is the Waterfront Development Law valid? The law must be tested before basing a management plan on it. | Joseph R. Duffy, Historic Paulus Hook Assoc. | If a court test is to occur, it can only occur after a law or rule is implemented. |
| The Attorney General's opinion, based on a 1914 law using 1977 and 1968 editions of certain dictionaries to interpret the law, does not seem correct nor prudent. We contend the meaning of words in a language such as English change constantly on a yearly basis and certainly more so in half a century. | A. Helwig, Pureland Industrial Complex | Note that opinion was also based on a 1914 report of the New Jersey Harbor Commission. |
| We object to the Attorney General's interpretation of the Waterfront Development Law. The "essential underlying purpose" of the law was not one of land use but rather was (in 1914) and still remains the promotion of commerce on the waterfront and the protection | C. Deutsch, N.J. Business and Industry Assoc. | NOAA-OCZM sees no conflict between the purpose, the Coastal Resource and Development Policies, and the proposed geographic jurisdiction under the Waterfront Development Act. |

| Comments | Commentor | Response |
|---|---|---|
| of the State's navigable waters from structures and development which might hinder that commerce. | | |
| The Coastal Resource and Development Policies proposed for the northern waterfront are in direct conflict to the intent of the Waterfront Development Law, to safeguard, preserve, and improve ports, navigation, and commerce. The intent of the WDL cannot be stretched to include the land use reviews of the coastal program. | J. Shiasias, Public Service Electric and Gas Co. | By reserving the waterfront for water dependent uses, the CNP will safeguard, preserve and improve ports, navigation and commerce. |
| I disagree with the Deputy Attorney General's interpretation of the Waterfront Development Law. Only construction related to water should be regulated. | David Fisher, N.J. Builders Association | If only construction related to the water were regulated, the waterfront could be fully developed with non-water related uses, contrary to the clear intent of the Waterfront Development Act. |
| On what basis did DEP choose the distance of 500 feet, particularly considering that even the Attorney General's opinion did not specifically recommend such a distance, but rather discussed establishing an administrative rule "regulating at least the first 100 feet"? | Gloucester County Planning Board | The opinion also recommended "a reasonable maximum distance limitation" (footnote on p. 3 of opinion). The maximum of 500 foot was thought necessary to regulate the first land use inland from the water. For more developed areas, the boundary would be narrower due to the presence of a road or property line. |
| Nowhere in Chapter 5 of Title 12 (12:5-1 et seq.) are there any standards which could be applied by the DEP in its determination as to whether a permit should be issued for the construction or alteration of any building or structure on the uplands of the coast. | N.J. Petroleum Council | For that reason, the rules on Coastal Resource and Development Policies are proposed as standards. |

| Comments | Commentor | Response |
|---|---|---|
| DEP has inappropriately chosen this proposal as the forum in which it introduces proposed Rules on Waterfront Development Permits prior to promulgation. Since this action is the subject of an EIS, any final action prior to release of the FEIS would appear to violate the provisions of the National Environmental Policy Act (NEPA). | GATX Terminals Corporation | The FEIS will be presented to EPA in August, 1980. The Waterfront Development Rules will be promulgated on September 26, 1980. |
| DEP should strongly consider legislative review and approval of the document. Why undertake such a task, which could be subject to extensive litigation, when approval of the legislature would eliminate such a problem? | A. Helwig, Pureland Industrial Complex | Two legislative hearings have been held on the Waterfront Development Rules and a formal Attorney General's opinion was received before promulgation. |
| The index on page iii, 4.B.3 includes the words "... to reinterpret the Waterfront Development Law ..." which connotes a change in the meaning of the law instituted by DEP. It appears the DEP arrived at a conclusion then looked for a law to support that conclusion. | Pureland Industrial Complex | That is not the case and the language has been changed. |
| In reality, NJDEP is proposing the defacto expansion of the CAFRA program outside of its statutory boundary. | J. Shissias, Public Service Electric & Gas Co. | Disagree. The program in the Developed Coast is based on the Waterfront Development Act, not on CAFRA. The Waterfront Development Act already relies on coastal policies in its application below mean high water. |
| The expansion of authority under the Waterfront Development Act seems to exceed the intent of the Legislature which establishes very specific CAFRA boundaries along New Jersey's coast. | Commissioner John J. Horn, New Jersey Department of Labor and Industry | See General Response and above response to J. Shissias. |

General Comment No. 4

The Coastal Management Program in operation in the Bay and Ocean Shore Segment of the State is not suited for extension into the Developed Coast.

This comment was made by:

1. New Jersey Section, American Society of Civil Engineers
2. New Jersey State Chamber of Commerce
3. James A. Shissias, Public Service Electric and Gas Co.
4. New Jersey Petroleum Council
5. A. Mogerly, N.J. Independent Liquid Terminals Assoc.

Response: The proposed Rules on Coastal Resource and Development Policies will be the basis for permit decisions under all three coastal permit programs anywhere in the coastal zone. This will result in simplified, consistent and predictable permit administration, but it will not result in permit decisions which disregard regional differences. The Coastal Resource and Development Policies are a matrix of Location, Use and Resource Policies which will yield different permit decisions in different parts of the state. This will especially be the case following adoption of the changes proposed to the policies which are currently in effect in the Bay and Ocean Shore Segment of the State.

In the Limited Growth Regions of the Coast, which are almost entirely within the Bay and Ocean Shore Segment, there tend to be a large number of Special Areas and General Water Area types where development is prohibited or discouraged. In General Land Areas of Low Growth Regions, development tends to be discouraged unless it can be considered infill.

In the Extension Regions, there tend to be less Special Areas, and development in General Land Areas may be acceptable if it is an extension of existing development or infill.

In the Development Regions, which include almost all of the developed coast, there are few Special Areas or General Water areas where development is prohibited or discouraged. In General Land areas of Development Regions, development is normally acceptable provided Use and Resource Policies are met.

In the developed coast, oil refineries and tank farms are conditionally acceptable, for example, while in the Bay and Ocean Shore Segment they are discouraged or prohibited.

In the Hackensack Meadowlands District, the proposed policies adopt the HMDC Master Plan, which promotes a balance between orderly development and preservation of the region's delicate ecological balance, in accordance with the Legislature's 1968 mandate to HMDC.

Finally, in Special Urban Areas, the proposed policies are more concerned with development than with preservation, allowing mixed use developments on Filled Water's Edges and residential development on pilings, when the development promotes the revitalization of the area.

A single set of policies, administered under a uniform Coastal Management Program, will, therefore, result in a particular balance between preservation and development which is appropriate for each of the diverse regions of the State ranging from the Mullica River estuary or the pristine wetlands along Delaware Bay on the one extreme to the Jersey City, Newark and Camden waterfronts on the other. The policies describe every type of location or potential activity in the coastal zone. A potential developer will only need to be concerned with those policies that describe a particular intended site or project.

General Comment No. 5

The Coastal Management Program must be coordinated with the Pinelands Plan.

This comment was made by:

1. David Fisher, New Jersey Builders Association
2. Chris Theodos
3. Mining Industry Representatives

Response: Within the Coastal Zone, there is one area, roughly described as that portion of the Mullica River watershed west of the Garden State Parkway and east of Pleasant Mills, which is under the jurisdiction of the State Pinelands Protection Act as well as under the jurisdiction of the Coastal Management Program. The remainder of the Pinelands in the Coastal Zone are part of the Pinelands National Reserve, but are not under the regulatory jurisdiction of the State Pinelands Commission.

In the Mullica River watershed, major developments will require both the approval of the Pinelands Commission and a CAFRA permit. Smaller developments will require only Pinelands approval. Because few, if any, major developments are likely to be proposed in this area, and because the Coastal Management Program defines it as a Limited Growth Area and the draft Pineland Comprehensive Management Plan defines it as a Preservation Area, no conflicts between the Pinelands Plan and the Coastal Management Program are anticipated.

The draft Comprehensive Management Plan for the Pinelands also includes the portion of the National Reserve not under the jurisdiction of the Pinelands Commission. In this area, the Coastal Management Program will of necessity be the principal instrument for implementing the Plan, and the rules on Coastal Resource and Development Policies will remain the criteria for permit decisions. Meetings with the Pinelands Commission will be held to discuss potential amendments to the coastal policies and to the draft Pinelands Plan to bring about a greater degree of consistency. Under the FCZMA (Section 307) the Pinelands Plan must be certified as consistent with the State's Coastal Management Program before the federal action of plan approval may be taken. Similarly, the State Pinelands Act (Section 22) requires DEP to "review the environmental design for the coastal area" and make revisions necessary "to effectuate the purposes of this act and the Federal Act". DEP believes that the Coastal Management Program is consistent with the objectives of State and Federal Pinelands legislation, but that some specific elements of the draft Pinelands Plan are not yet fully consistent with the State's adopted Coastal Resource and Development Policies. These issues will be resolved before the Pinelands Plan takes effect, and any resulting changes to the Coastal Management Program will be formally proposed and publicly debated before being adopted.

The following comments are related to General Comment 5:

| Comments | Commentor | Response |
|---|---|---|
| We are anxious that implementation of both the CMP and the Pinelands Management Plan be accomplished with great care and cooperation between the two agencies. It is imperative that the defined coastal area agency be as determined as the Pineland Commission in preserving the integrity of the natural resources in their boundaries. | Carol Barrett, Sierra Club, West Jersey Group | See General Response. |
| The Comprehensive Management Plan of the Pinelands Commission, once approved, should be the guiding rule for any coastal permit decisions in the Pine Barrens. | Carol Barrett, Sierra Club, West Jersey Group | See General Response. |
| DEP has announced land use proposals designating only 4.5% out of one million acres appropriate for High Growth, most of which is adjacent to the Great Egg Harbor River Region, along alternate 559. It is inappropriate for one branch of DEP to designate one side of Alternate 559 as High Growth while another DEP branch designated the other side so as to effectively prohibit any development. | M. Hudson, Atlantic City Development Corporation | Alternate Route 559 generally defines the northern limit of the Great Egg Harbor watershed and is an appropriate boundary between a regional growth district and a Limited Growth area. Such a Pinelands/CMP regional growth strategy is also consistent with the Atlantic County Master Plan. |
| It is hoped that CAFRA will eventually change the designation for parts of Egg Harbor Township to be in conformity, at least as to density, with Pinelands' designation of its adjacent jurisdictional land. | R. C. Westmoreland, Esquire | Disagree. Coastal and Pinelands policies taken together channel development on the upland north of the Great Egg Harbor watershed, while protecting the more sensitive, and less accessible area within the watershed. |

General Comment No. 6

DEP should implement the Coastal Management Program in the Hackensack Meadowlands District as in the remainder of the coastal zone.

This comment was made by:

1. Catherine P. Grimm
2. Carol Barrett, Sierra Club, West Jersey Group
3. Natural Resources Defense Council
4. The League for Conservation Legislation
5. Vivian Li, Sierra Club, New Jersey Chapter

Response: Outside of the Hackensack Meadowlands District, coastal policies are not uniform from region to region. The acceptability of development in General Land Areas is dependent upon the regional Growth Rating as well as upon site specific factors. In accordance with the State's Urban Policy and the Coastal Program's policy of concentration of development, new residential, commercial and industrial development is generally encouraged to seek sites in the Northern Waterfront Area, the Delaware River Area, the North Shore and Central Shore and the Absecon-Somers Point area rather than in less developed parts of the coast. Development is also encouraged to locate in the Hackensack Meadowlands District because of its location near the core of the northeastern New Jersey metropolitan area.

The Hackensack Meadowlands District Master Plan has represented State policy for the District since its adoption in 1972. The Plan was developed in response to the three-fold mandate of the Hackensack Meadowlands Reclamation and Development Act of 1968 (N.J.S.A 13:17-1 et seq.), which directed the Hackensack Meadowlands Development Commission (HMDC) to:

1) provide jobs, homes and open space with need calculated at regional scale,

2) protect the delicate balance of nature and to protect air and water pollution, and

3) to provide for solid waste management in perpetuity for all New Jersey municipalities then dumping in the Meadowlands.

DEP finds the plan to be a sensitive solution to the need to balance orderly growth and resource protection. As changing conditions dictate, amendments can be made to the plan by a majority vote of the HMDC. In accordance with the wishes of the Legislature, DEP believes that the HMDC, a regional agency appointed by the Governor, should make land use decisions for the region, but DEP will, from time to time, make recommendations concerning amendments to the Master Plan. DEP also believes that the HMDC, with its interdisciplinary staff of planners, administrators and scientists, is best qualified to serve as lead management agency in implementing the Master Plan.

It is true that the HMDC Master Plan is not as protective of wetlands as coastal policies applied in the remainder of the state. Should the Master Plan be fully implemented, 3576 acres of wetlands out of 4772 presently existing acres will be preserved (these figures are based upon a new survey by HMDC since publication of the Proposed Coastal Management Program). The HMDC has sought to preserve the maximum wetland area possible, concentrating on the most productive

wetlands, with the goal of creating a viable estuarine-wetlands system, while also designating sufficient area for development to meet the Legislature's 1968 mandate. Under the State's 1981 Coastal Implementation Grant, DEP has proposed passing through $100,000 to the HMDC for a number of projects and studies to improve the environment of the Meadowlands District. One of the studies would develop techniques to expand the wetland acreage to be protected, while still providing sufficient area for development. Other studies will develop plans for a series of waterfront parks, recommend flora suitable for the revegetation of closed landfills, and make recommendations for protection of viewsheds. DEP believes that by incorporating the HMDC Master Plan into the Coastal Management Program and working with HMDC to improve the management of coastal resources in the District, it can lead to more efficient State government by having one state regional voice for the Meadowlands rather than two and moreover that that voice, the HMDC's plans and policies, produce an environmentally sound program. Should the HMDC change their program, NOAA and DEP would consider that a change in the Coastal Management Program requiring full public review and comment.

| Comments | Commentor | Response |
|---|---|---|
| We see the possible positive effects of your inclusion of HMDC's Master Plan in the Coastal Management Program as: (1) renewing State support of a tested mechanism in regional land use controls that has become a model of reasonable environmental management; (2) providing a mechanism for federal agency concurrence in State permit decisions; and (3) avoiding the imposition of yet another layer of regulatory authority on development activity. | Hartz Mountain Industries, Inc. | See General Response. |
| Your expressed intention to incorporate the HMDC Master Plan and regulatory scheme into the CMP is well-founded in the results that the Commission has produced. As the U.S. EPA has pointed out, extensive development has taken place while the environment has improved; people have come to live and work where it was long thought only garbage should go. | Hartz Mountain Industries, Inc. | See General Response. |

| Comments | Commentor | Response |
|---|---|---|
| Adoption of the HMDC Plan conflicts with State coastal policies on Filling and the Filled Water's Edge. | Natural Resources Defense Council | See General Response. |
| If the HMDC retains the management responsibility under the CMP, it should have wetlands regulations identical to DEP's. | Clare C. Dudley, Sierra Club, North Jersey Group | See General Response. |
| We understand the reason for excluding the Hackensack Meadowlands from other state laws affecting the coast, but hope that preservation of additional wetlands over and beyond that of the Master Plan can be achieved. | League of Women Voters of N.J. | DEP will be working with HMDC in 1981 to improve the Master Plan's ability to protect wetlands and other estuarine resources. In addition, all activity related to wetlands is subject to the provisions and permits of Section 404 of the Clean Water Act and the guidelines related to Section 404(b)1 on dredging and filling. See also general Comment Number 7. |
| HMDC Wetlands Order of 1972 does not afford the District's wetlands the same protection as the state's Wetlands Act of 1970. There should be a Memorandum of Agreement between HMDC, NJDEP, and federal agencies which would either place the Hackensack Meadowlands District under the Wetlands Act or provide conditions that strengthen the regulations protecting wetlands from non-water dependent fills. | American Littoral Society | Placing the HMDC under the Wetlands Act would require new State legislation. Strengthening HMDC regulations would require a rule change by HMDC. DEP and HMDC will continue to examine possible changes to HMDC Wetlands policy, although NOAA considers the present policy adequate for approval as part of New Jersey's CMP. |

General Comment No. 7

Several commentors questioned the inclusion of the Hackensack Meadowlands Master Plan in the N.J. Coastal Management Program as being 1) inconsistent with Executive Order 11990 (Protection of wetlands); 2) inconsistent with 923.3(b)(ii) of the CZMA regulations; and 3) inconsistent with Section 307(f) of the CZMA by not reflecting the environment guidelines developed under Section 404(b)(1) of the Clean Water Act.

Comments made by:

1. U.S. Department of the Interior
2. Natural Resources Defense Council
3. National Marine Fisheries Service, NOAA

Response: The President's Executive Order on Wetlands (Executive Order 11990, May 24, 1977 requires in Section I(a) that:

> "Each agency shall provide leadership and shall take action to minimize the destruction, loss, or degradation of wetlands ..."

Section 923.3(b)(ii) of the CZMA regulations call for:

> "The management program must include policies that address uses of or impacts on wetlands ... The particular policies shall minimize the destruction, loss, or degradation of wetlands ..."

The Hackensack Meadowlands Master Plan was adopted in 1972 after extensive public review and comment. The Master Plan preserves over 3,576 acres of wetlands as open space (representing 75% of the remaining wetlands in the Meadowlands District), while the Commission has designated 1,196 acres (25%) of the remaining wetlands as areas that could be filled. The 1,196 acres of wetlands where filling now take place represent only 0.5% of the 256,000 estimated acres of regulated wetlands in the Statewide Coastal Zone.* OCZM feels that in light of the location of the Meadowlands District (five miles from New York City) and the Commission's threefold mandate from the New Jersey Legislature to: 1) provide jobs, homes, and open spaces, 2) protect the delicate balance of nature and protect against air and water pollution and 3) provide for solid waste management in perpetuity, that the overall State Coastal Program, including the Hackensack Meadowlands Development Commission Master Plan, has met the spirit and intent of the President's Executive Order and the CZM regulations on wetlands by "minimizing the destruction, loss or degradation of wetlands".

Section 307(f) of the CZMA states that nothing in CZMA programs shall in any way affect any requirements of the Clean Water Act and Clean Air Act. In particular, the commentors noted that the Hackensack Meadowlands Plan could be inconsistent with Section 404(b)(1) guidelines issued for the Federal Water Pollution Control Act. It is OCZM's position that approval of the New Jersey Coastal Management Plan, including the Hackensack Meadowlands Plan, does not affect the application of the Water Pollution Control Act or the 404 (b)(1) guidelines, which apply to federal permits issued for dredging and fill activities.

Each Federal agency will need to evaluate proposed projects in the Hackensack Meadowlands District on a case by case basis. There may be cases where Federal agencies disagree with a wetlands permit decision by the Hackensack Meadowlands Commission. In this instance wetland modification will require proper analysis and documentation under Section 404(b(1) of the Clean Water Act regardless of prior Commission actions. Each applicant for wetlands modification in the District will be required to meet and properly document through a public process the tests for

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* Based on data from Wetland Biozones of the Hackensack Meadowlands, HMDC, July, 1980. This report updates wetlands data presented in the DEIS.

alternatives, need, water dependency, cumulative impact and public interest required by Section 404(b)(1) of the Clean Water Act. As a result, in each case the stronger standards, State or federal, will prevail. See the discussion on page 272.

It should be noted that the Hackensack Meadowlands designations for wetlands development do not preclude federal agency recommendations and decisions contrary to such development. The Hackensack Meadowlands Commission Master Plan does not meet the definition of a "Comprehensive Planning Process" or Special Area Management Plan under Section 404(b)(1) of the Clean Water Act.

The following comment is related to General Comment 7:

| Comments | Commentor | Response |
|---|---|---|
| Federal approval of a coastal management program containing the current policies of the HMDC plan in regard to wetlands would be contrary to Section 307(f) of the Coastal Zone Management Act and Section 923.3 (b)(2)(ii) of the CZMA final Rules, which require state CZM programs to provide environmental protection consistent with those required by Section 404 of the Clean Water Act and Executive Order 11990 on Wetlands, respectively. | Natural Resource Defense Council | See General Response. |

General Comment No. 8

The time frame for public comment on the proposed Coastal Management Program is too short.

This comment was made by:

1. New Jersey State Chamber of Commerce
2. Daniel W. Myers
3. Donald D. Tubbs, Mayor of Mantoloking
4. A. Helwig, Pureland Industrial Complex
5. James A. Shissias, Public Service Electric and Gas Co.

Response: NOAA-OCZM and DEP met and exceeded the legal requirements for allowing comment. The July 7, 1980 deadline for comments allowed a 45-day comment period plus a 15-day extension (in fact, NOAA-OCZM granted a two-week grace period, responding to comments received through July 18).

Publication of the Proposed Program in May was not the beginning of the public review process. Rather, it was the culmination of a six year public participation program which includes distribution of many draft publications including NJCMP-BOSS FEIS in August 1978, Options for New Jersey's Developed Coast (March, 1979) and literally hundred of public meetings all across the State.

We are gratified by the quantity and detail of the comments we received. It appears thoughtful review of the Proposed Coastal Management Program occurred. This review has led to significant improvements to a number of aspects of the final program.

The following comments are related to General Comment 8:

| Comments | Commentor | Response |
|---|---|---|
| In the public's interest, DEP should extend the stated review period because of its coincidence with the release of the Draft Comprehensive Management Plan of the Pinelands Commission. | M. Hudson, Atlantic City Development Corp. | The coincidence of the review periods of the two programs is beneficial as it allows their consistency to be examined. However, extension of the review period for the CMP would result in delay of federal approval for a period of several months. |
| Scheduling all these N.J. DEP Management programs together (Pinelands, CZM, Shore Protection, etc.) all covering the same basic area automatically deprives people most concerned any chance of objecting and being heard. The proposals should be heard after the tourist and farming season when people most concerned can participate. | W. Elmer Seaman | See General Response. Furthermore, scheduling the comment period during the summer increased the opportunity for summer residents to comment. |

## IV. COMMENTS BY TOPIC

This section of the Comments and Responses Appendix first addresses comments on the Coastal Resource and Development Policies, and then addresses comments on the CMP/DEIS in the order in which that document was presented.

| Comments | Commentor | Response |
|---|---|---|
| **1. COASTAL POLICIES** | | |
| **POLICIES - GENERAL** | | |
| 1.<br>I endorse an update and strengthening of the Coastal Management Program. | Pearl Schwartz | Thank you. |
| 2.<br>I am concerned with the establishment of rigid rules which do not take into account reality, new technology and techniques and the widely varying characteristics of the different areas along the Jersey coast from Sandy Hook to Cape May. | Daniel Myers | The rules are not rigid but change as development patterns change. There are numerous examples where best available technology is called for. The rules vary by region to recognize differences in existing settlement. The rules will be reviewed every year to assess the need for changes. This EIS represents the first review of the Bay and Ocean Shore Segment. |
| 3.<br>The preference for water related industries or development in the 500 foot area may make sense on a large scale, however, New Jersey cities which are fighting for their economic life require a rational mix of economic activities to minimize the impact of business cycles on the local economy. Cities must be free to pursue this objective. | Mayor George Otlowski, Perth Amboy | Agreed. See the revised policies on Filled Water's Edges 7:7E-3.17 and Special Urban Areas 7:7E-3.36 (Perth Amboy is included). These policies give great flexibility for mixed waterfront uses which promote economic revitalization. |
| **POLICIES - GENERAL** - Continued | | |
| 4.<br>If New Jersey's program will regulate only the first use directly adjacent to the water in urban areas according to its coastal policies, those policies must be capable of achieving coastal objectives in a comprehensive fashion. Objectives such as the reservation of sites for water-dependent activities, parks, and open space must not be sacrificed for the achievement of non-coastal objectives related to the urban area as a whole. We believe that coastal objectives are not adequately met by the policies. | Natural Resources Defense Council | Disagree. Some ur have more than eno waterfront for wat dependant uses, an public access is n other uses can be able. The use of permissive policie Special Urban Are promote revitaliz important; elsewh policies are care aside the waterfr conservation, rec water dependent u |
| 5.<br>CAFRA assumes that growth (change) and environmental protection are mutually exclusive. It does not recognize, through specific assessment standards, the nature of different environments to successfully absorb change. | Roger Wells, Roger Wells, Inc. | CAFRA, one of the permit jurisdicti stored using NJCN assumes no such t Throughout, devel protection needs anced and each de with appropriate is acceptable. |
| 6.<br>The State's many policies both encourage and discourage the development of barrier islands and the shore areas. | Myron Fortener | The Program favor recreation along public access as barrier islands, allow infill deve occur in the Cent Island Corridor. |
| 7.<br>Water-related uses should be the primary use of the waterfront. | Helen Thompson, Save the Hudson, Our Riverland Environment | Agreed. Water-de are so designated policies. |
| 8.<br>Guidelines for the development and redevelopment of New Jersey's ports, harbors and rivers, if deemed necessary, should be based upon broader concerns than those in the CMP. | New Jersey State Chamber of Commerce | The concerns of t ment are quite b resource protecti front revitaliza maintenance of n creation of jobs, more. |

| Comments | Commentor | Response |
|---|---|---|
| **POLICIES - GENERAL - Continued** | | |
| 9.<br>The regulations in the proposed CMP are too restrictive and discourage economic growth. | L. Gaccese, N.J. Alliance for Action | Disagree. Economic needs are balanced with environmental protection in the Coastal Policies. |
| 10.<br>The proposed program is deficient in covering urban riverfronts. The proposed policies are too broad and contain few specific standards. The proposed program need details for waterfront parks and open space. | Sally Aaronson | Disagree. The program policies are specific and can be used to critically review proposals. |
| 11.<br>The proposed program stereotypes the northern waterfront as developed. The uses encouraged by the program for this area could discourage people from living in the northern waterfront cities. | Pat Costagno, Positive Action Citizens Team | Disagree. The program explicitly states that the northern waterfront is not all developed (see Part II(I). The northern waterfront area is much more developed at the present time than other areas of New Jersey, but the prospect of public access to the waterfront and waterfront parks could encourage people to live in the northern waterfront region. |
| 12.<br>Beneficial development should be encouraged and implemented in a comprehensively planned and orderly fashion. | New Jersey Section, American Society of Civil Engineers | NOAA-OCZM believes the coastal policies do this through specifying conditions under which development is encouraged, conditionally acceptable, discouraged or prohibited. |
| 13.<br>Sierra Club supports the proposed CMP because of the long-range benefits, for both industry and people, which will result from regulated development. | Carol Barrett, Sierra Club, West Jersey Group | No response necessary. |

| Comments | Commentor | Response |
|---|---|---|
| **POLICIES - GENERAL - Continued** | | |
| 14.<br>The document's failing is a tendency to use ambiguous words and policies plus insufficient provision for public involvement when the permit process progresses. | Carol Barrett, Sierra Club, West Jersey Group | One of the objecti present, and futur revisions is to ti language and reduc guity. Public hea held on all CAFRA decisions and are on Wetlands and Wa Development permit |
| 15.<br>The inability or unwillingness of the Department to reduce the definitions and Location Policies to graphic form for each area of the State severely limits the understanding of the implications of this management document by local elected officials. | Salem County Planning Board | Limited resources time is needed for tion. Cape May Co parts of Ocean Cou been mapped. Geog information is now digitized that wil coast-wide policy computer, a much m accurate and flexi technique. The ti for this work depe funding availabil |
| 16.<br>Has any consideration been given to a new type of entrepreneurial activity that is beginning to take place in other states and which may be extended to New Jersey, wherein old boats of rather large size are permanently moored and converted to seafood restaurants, boutiques, aquatic-related shops, marinas, etc.? | N.J. Marine Sciences Consortium | DEP's Bureau of Co Project Review has various applicatio conversion of boat restaurants and ha on this type of us combination favora depending on the s site improvements to make the ventur operational. |
| 17.<br>Page 3, first paragraph - Don't "Use Policies" preempt local zoning? | A. Helwig, Pureland Industrial Complex | No. Use policies specify one use on particular locatio Proposed uses must meet local zoning ments, unless they designated uses of benefit as describ Chapter Five. |

| Comments | Commentor | Response |
|---|---|---|
| **POLICIES - GENERAL - Continued** | | |
| 18.<br>We would hope that a flexible posture will be maintained in applying, for example, nothing more restrictive than a "conditionally acceptable" location, use or resource policy where appropriate in the encouragement of port activity. | The Port Authority of N.Y. and N.J. | Special Area policies will be applied as written to all areas. The permissive language that encourages port development will also be applied as written. The importance of port activity is clearly recognized. |
| 19.<br>The Township of Logan strenuously opposes the present form of the proposed CMP because it ... ignores unique physical features of Logan Township and will cause Logan Township and its residents economic harm. | The Township of Logan | Location Policies will result in different acceptability conditions based upon local conditions. In Logan Township, where the coastal zone generally consists of a filled water's edge along a large river, a variety of water dependent uses will be permitted. |
| 20.<br>The CMP needs to more specifically define Riparian rights. Will the filling of water-covered land be allowed? | Helen Thompson, Save the Hudson, Our Riverland Environment | Riparian rights are defined in the Management System chapter and in a separate DEP publication called Riparian Rights Handbook. The rules for use of water areas are specified in Figure 21. Filling is either prohibited or discouraged in all water bodies. |
| 21.<br>The South Jersey environment must be protected. Critical areas should be identified and a No Growth policy should be stated for those areas. | Roger Wells, Rogers Walls, Inc. | Many Special Areas have such a policy, but the intention of New Jersey's coastal laws is to control and direct growth, rather than to stop it. |

| Comments | Commentor | Response |
|---|---|---|
| **BASIC COASTAL POLICIES** | | |
| 22.<br>Atlantic Electric agrees that, wherever feasible, the pattern of industrial development should be concentrated rather than dispersed, and that the active industrial facilities should be maintained by providing for necessary expansion in adjacent areas. | Atlantic City Electric Co. | No response nece |
| 23.<br>The word "enhance" has been added to page 10 as one of the first coastal policies. We can find no legislative authority for including the word "enhance" in the coastal policies. It is stated that the word "enhance" is meant to apply only to the urban waterfront, but this is not clearly stated in the policy and should be so stated. | David Fisher, New Jersey Builders Association | Although the urba front may be most "enhancement", th applicable wherev resources have be degraded. The st authorizing the c coastal permit pr enacted to preser resources of the zone while allowi ment requiring a location. If the ment of these thr results in enhanc coastal resources would certainly n inconsistent with Legislature's int |
| 24.<br>We support Basic Coastal Policies 1, 3, 5. | Nancy Richardson, Bayonne Against Tanks | No response nece |
| 25.<br>The proposed policies need more emphasis on the population density of an area in order to determine what is possible, practical, and safe development. | Helen Thompson, Save the Hudson, Our Riverland Environment | The population de indirectly addres Location and Reso policies which de carrying capacity and human systems zoning of density pre-empt the zoni municipalities. |

| Comments | Commentor | Response |
|---|---|---|
| BASIC COASTAL POLICIES - Continued | | |
| 26.<br>We suggest that DEP reconsider Basic Coastal Policies 2, 4, and 6. The concentration of development as suggested in Policy 2 is inconsistent with protecting the health and safety of people as stated in Policy 4. We are against overbuilding which Policy 6 could encourage. | Nancy Richardson, Bayonne Against Tanks | The degrading effects of sprawl development on human and environmental health, safety and welfare are well documented. Clustering significantly lessens environmental and overall human impacts. Over-building in Development Areas is prevented through the resource policies, especially the air and water policies. |
| 27.<br>The statement that "DEP insures that the facilities ... are located on sites without threatening the health or welfare of area residents or natural resources" is quite unrealistic. Every activity has a degree of risk and for DEP to think it can preclude such risk is without support. An in-depth risk/cost benefit analysis to support these statements should be conducted. | James A. Shissias, Public Service Electric and Gas Co. | Such risk is a given, but the statement serves as a goal. |
| 28.<br>The proposed policies favor farming over housing and recreational uses. | Roger Wells, Roger Wells, Inc. | Not entirely true. Farming is favored over housing only in Farmland Conservation Areas; recreational uses which preserve the soil resource are also acceptable in these areas. |
| 29.<br>It is evident from the proposed changes made in these rules and from the rules as previously adopted, that the Division of Coastal Resources is putting itself in a position where it can deny almost any proposed development application based upon the myriad of sometimes conflicting policies it has established. | D. Fisher, N.J. Builders Association | Disagree. The revised policies limit the quite wide discretion granted to DEP by the coastal permit laws. |

| Comments | Commentor | Response |
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| 7:7E-1.3 JURISDICTION | | |
| 30.<br>We oppose the inclusion of filled land within the meaning of "formerly flowed by the tide". | The Port Authority of N.Y. and N.J. | This is the legal d of riparian land in Jersey. |
| 7:7E-1.6 COASTAL DECISION-MAKING PROCESS | | |
| 31.<br>We recommend the strict interpretation of any policy, rule, or regulation that prohibits a particular use in a particular area; there should be no exemptions made. | Camden Department of Community Development | Agreed. The defini "prohibited" does n for administrative tion. |
| 32.<br>(c) Definitions - The policy on "discouraged" uses should be stricter in terms of urban areas. In cases where a proposed use is in the public interest despite its discouraged status, an Environmental Assessment Statement (EAS) should be completed and circulated. | Audrey Zapp, Hudson County Citizens for Clean Air | Definition of "disc has been changed to clearer, but the re remain uniform thro the coastal zone. not feel an EAS is when a proposed use an urban area. |
| 33.<br>It is suggested that the information requirements found on page 80 be revised because mapping of a site is usually not productive and since all sites are subject to a site inspection prior to a hearing it is submitted that this mapping requirement produces more paper work than is warranted. | David Fisher, N.J. Builders Association | Disagree. Mapping essential to unders implications of pro Source maps are ava from the Division o Resources. The req mapping is not comp highly time consumi a normal part of a design process. |
| 34.<br>We insist that this program contain direct, understandable policies and regulations so that ambiguity will not allow construction which is not in the best interest | Carrol Barrett, Sierra Club, West Jersey Group | This program has be praised for the spe and clarity of its "Water dependent" which has been unli in practice. The |

| Comments | Commentor | Response |
|---|---|---|
| 7:7E-1.6 COASTAL DECISION-MAKING PROCESS - Continued | | |
| 34. - Continued of the resource. "Water dependent" and "water related" need to be spelled out specifically as to whether the primary need of the development fits these terms. Also, "encouraged" and "discouraged" can be misleading or lead to undesirable developments. | | related" language has been deleted. We believe that the definitions for the remaining words, as found in Section 7:7E-.16, and in the glossary, provide a reasonable balance between precision and the need for some flexibility in response to unexpected conditions. |
| 35. (c) Definitions - The definition for "water related development" is too broad, and should be deleted. It would be difficult to think of any development which would not conform to such a definition. The existing Bay and Ocean Shore Segment policy which uses a criteria of water-dependent uses is appropriate. | Vivian Li, Sierra Club, New Jersey Chapter, League for Conservation Legislation, Natural Resource Defense Council | Agreed. "Water Related" has been deleted. |
| 36. The general phraseology of subsection (a) implies that policy applications could be frivolous or implies a lack of consistency. See page 73, paragraph 7:7E-1.1, stating the intent of the document to increase the predictability of limiting administrative discretion. | N.J. Marine Science Consortium | The language does not imply frivolous application of policy, only that all sites will not contain all location types nor all applications propose all uses. Therefore, not all policies will apply to a particular proposal. |
| 37. (c) Definitions - There is a statement that housing is not water dependent or related. There should be some recognition of the attractiveness of housing in terms of market economics on the waterfront. | David Fisher, New Jersey Builders Association | The term "water-related" is not used in the amended policies. Housing remains defined as a non-water dependent use, but is now permitted near the waterfront in many cases. |

| Comments | Commentor | Response |
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| 7:7E-1.6 COASTAL DECISION-MAKING PROCESS - Continued | | |
| 38. (c) Definitions - Does "navigable" apply to streams which are not navigable at low tide? | Pureland Industrial Complex | No. See revised |
| 39. (c) Definitions - Authorization for DEP to permit otherwise "discouraged" activity on the basis of its being considered "in the public interest" is too broad. Concerns of public interest in need of special attention should be specifically listed and provided for in the program, not distinguished on a case-by-case basis by DEP. The last sentence of (c)(4) must be deleted, or a detailed definition of "public interest" must be provided including criteria for the determination that a particular public interest outweighs the intent in enforcing existing program policies. | Natural Resource Defense Council | The public inter defined by the N Policies. This tion has proved allow review of unanticipated pr it is sufficient to prevent destr coastal resource that the revised also requires mi compensating mea that there is a in the quality o affected ecosyst |
| 40. (c) Definitions - Is it really legitimate to use the words "action", "project", and "proposal" interchangeably! In common practice, they mean quite different things. A definition for the word "approval" might be inserted between paragraphs 7:7E-1.6(c)(6) and (7). | N.J. Marine Sciences Consortium | The meaning of in the context document is cle they may mean di things in commo See glossary. |
| 41. (c) Definitions - The report has difficulty in establishing a clear distinction between "water dependent" and "water related". For instance, it appears that, in the | The Port Authority of N.Y. and N.J. | Agreed. Distinc been eliminated an automobile a would not be co water dependent its shipping fa could be. |

| Comments | Commentor | Response |
|---|---|---|
| **7:7E-1.6 COASTAL DECISION-MAKING PROCESS - Continued** | | |
| 41. - Continued<br>automobile assembly plant example, the classification should be water dependent, not water related. The distinction should be strengthened or eliminated. | | |
| 42.<br>(c) Definitions - The proposed definition of water-related and development weakens the former policies which allowed only water-dependent development. | Natural Resources Defense Council<br>Littoral Society | Agreed. The "water related" category has been deleted. |
| 43.<br>(c) Definitions - It should be made clear that the definitions apply only to areas that are within the direct jurisdiction of the Division by specific statute. | David Fisher,<br>New Jersey Builders Association | This is made clear by Section 7:7E-1.3 of the Rules. |
| 44.<br>(f) Information Requirements - The requirements for information, while logical and necessary, are rather complicated. Is there such a thing as an ombudsman in this State to assist the small practitioner who wants to extend his pier or, even more to the point, an individual resident who happens to have a small dock in his back yard? | N.J. Marine Sciences Consortium | A Coastal Developers' Handbook is to be developed under New Jersey's 1981 CMP grant. In the interim, DEP's Bureau of Coastal Project Review and Bureau of Coastal Enforcement and Field Services (based in Toms River) will assist the applicant by explaining information requirements. |
| **7:7E-2.1 INTRODUCTION** | | |
| 45.<br>What is a "built environment"? | N.J. Marine Sciences Consortium | The structures and paving built by people, as opposed to areas undeveloped by man. |

| Comments | Commentor | Response |
|---|---|---|
| **7:7E-2.2 CLASSIFICATION OF LAND AND WATER TYPES** | | |
| 46.<br>The new language is certainly a great improvement over its predecessor, which was quite ambiguous. Who designates a "special area"? | N.J. Marine Sciences Consortium | Thank you. Speci<br>are designated by<br>the mandate of th<br>State Legislature<br>the Wetlands Act<br>Waterfront Develo<br>and with the appr<br>National Oceanic<br>spheric Administra<br>the advice of the |
| 47.<br>We encourage the mapping and inventory of Special Areas. The developed coast wetlands should be delineated by DEP. | Audrey Zapp,<br>Hudson County Citizens for Clean Air | These are tasks t<br>considered for in<br>future N.J. coast<br>applications. |
| **7:7E-2.3 MAPPING AND ACCEPTABILITY DETERMINATION** | | |
| 48.<br>Has New Jersey already been so mapped, e.g. according to "zones"? | N.J. Marine Sciences Consortium | "Zone" is an inap<br>word for CLAM ana<br>does not "zone" i<br>of allocating one<br>location. Cape M<br>and parts of Ocea<br>have been mapped. |
| 49.<br>"CLAM Location Policy Analysis:" What is the time table for accomplishment of all these steps? | N.J. Marine Science Consortium | This mapping is d<br>applicants to the<br>is whenever appli<br>made. DEP has ma<br>maps of Cape May<br>of Ocean County f<br>and proposes to e<br>whole coastal are<br>computer when fun<br>available. |
| 50.<br>The CLAM analysis procedure does not clearly incorporate Subchapter 6 - General Location Policies. Explicit provision should be made for utilizing these policies during the CLAM analysis. | Natural Resources Defense Council | Incorrect. Steps<br>CLAM address the<br>policies. |

| Comments | Commentor | Response |
|---|---|---|
| **SUBCHAPTER 3 SPECIAL AREAS** | | |
| 51.<br>Caven Point should be treated as a special area and should be protected. | Catherine Grimm, Helen Thompson, Audrey Zapp | The Caven Point area is discussed on page 320 of this FEIS. Because only a portion of the site is within the coastal zone, Caven Point cannot be cited as a Geographic Area of Particular Concern in the Coastal Program. However, the DEP will continue to explore possible methods for preservation of at least a portion of this site. The Green Acres Administration is now considering purchasing part of Caven Point. |
| 52.<br>Bluffs directly landward of the beach should be included as a special area. | Audrey Zapp, Hudson County Citizens for Clean Air | Agreed. They are included as either bluffs (7:7E-3.26) or as dunes (7:7E-3.21 formerly 7:7E-3.19). |
| 53.<br>It is proposed that the water's edge be divided into eleven special Water's Edge Areas. This proposed change appears to be advantageous. | Cape May County Planning Board | Thank you. This change is in part, the result of previous comments by the Cape May Planning Board and staff. |
| 54.<br>There are proposed changes in the Location Policies which recognize that a good portion of the Northern Waterfront Area is largely industrialized and economically depressed. These changes are limited in scope, however, and do not provide guidance as to how the program should be administered. | N.J. Petroleum Council | The policies as modified to address the special conditions of the Northern and Delaware Waterfronts and provide adequate guidance for program administration. |

| Comments | Commentor | Response |
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| **7:7E-3.1 INTRODUCTION** | | |
| 55.<br>Don't these regulations, for practical purposes, just about terminate all marina development in New Jersey? | N.J. Marine Science Consortium | No. Water depen such as marinas, many prohibition discouragements ment in the wate DEP has proposed marina siting fo year. |
| **7:7E-3.2 SHELLFISH BEDS** | | |
| 56.<br>(b)(4) - Why delete the phrase, "Coastal development which would directly discharge untreated domestic sewage, or industrial wastes, toxic or carcinogenic agents ..." | N.J. Marine Science Consortium | All point source are regulated by DEP - Division o Resources throug Permit Discharge System program. discharges would hibited through under the Clean and therefore wo redundant if sta |
| 57.<br>The definition of shellfish beds should be revised to include both beds that are presently productive or that have a prior history of natural recruitment. | Natural Resources Defense Council | This is incorpor into the definit policy 7:7E-3.2. tive bed is one shown to have a natural recruitm |
| 58.<br>The basic shellfish policies are sound although the Proposal does not specifically address the permits or controls necessary to remove shellfish from condemned areas when dredging is conducted (7:7E-3.2). The Proposal should identify the permits required by the Division of Water Resources, Bureau of Shellfish Control, and the Division of Fish, Game and Shellfisheries. | Commissioner Finley, Department of Health | The New Jersey A tive Code would unwieldly if ref made to all rele Removal of shell contaminated are covered by N.J.A et seq. and 7:25 |

| Comments | Commentor | Response |
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| **7:7E-3.2 SHELLFISH BEDS - Continued** | | |
| 59.<br>We wonder about the wisdom of the "presently productive "definition. You are not excluding the possibility of eventually restoring water quality in the Meadowlands. This goal should be applied to Raritan Bay. | League of Women Voters of N.J. | Potentially productive Shellfish Beds, such as those in Raritan Bay, are protected by the Shellfish Bed Resource Policy. |
| 60.<br>We note it is required that there be no resuspension of toxic materials. Is there a technique to control that? If so, refer to specific methods or sources of information. | League of Women Voters of N.J. | Silt curtains in low water velocity waters have been shown to reduce turbidity as much as 80 to 90% in subaqueous disposal of spoils. This type of information will be included in a Developers' Handbook to be prepared in 1981. |
| **7:7E-3.3 SURF CLAM AREAS** | | |
| 61.<br>Could not this policy result in termination of new bathing beaches and oceanographic research which would need docks? | N.J. Marine Science Consortium | No. Beach nourishment to create new bathing beaches would not conflict with this policy. Would oceanographic research really choose docking facilities on an unprotected beach? Surely a sheltered harbor in the backbay adjacent to the intracoastal waterway would be more appropriate and, generally, acceptable to coastal policies. |
| **7:7E-3.4 PRIME FISHING AREAS** | | |
| 62.<br>The Consortium is particularly grateful for your reference to Lionel Walford's Angler's Guide. | N.J. Marine Science Consortium | Thank you. It is a very professional data source for this determination. The co-author Bruce L. Freeman is now Administrator for the N.J. Bureau of Marine Fisheries. |

| Comments | Commentor | Response |
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| **7:7E-3.5 FINFISH MIGRATORY PATHWAYS** | | |
| 63.<br>Doesn't the change of "discourage" to "prohibited" constitute an over-usage of the word "prohibited" and will it not stall useful development? Suppose, someone struck oil on the property encompassed in this paragraph! | N.J. Marine Science Consortium | The exact wordin<br>hibited unless a<br>mitigating measu<br>taken". The cha<br>striking, and on<br>able to pump oil<br>finfish migratin<br>itself is rather<br>this occurred o<br>should be suffic<br>build a fish lad<br>mitigation. |
| **7:7E-3.6 SUBMERGED VEGETATION** | | |
| 64.<br>(b) - Who determines what is a "feasible alternative site"? | N.J. Marine Science Consortium | NJDEP and NJDOE<br>analysis of corr<br>alternatives. |
| **7:7E-3.7 NAVIGATION CHANNELS** | | |
| 65.<br>"Definition" - On the second line add "by the Army Corps of Engineers" after "maintained". On the eleventh line change "dock" to "moor", and add "awaiting high tide, better weather, fuel and terminal availability" after "transferring cargo". | The Port Authority N.Y. and N.J. | Agreed. See rev<br>7:7E-3.7. Navig<br>channels maintai<br>DEP have also he |
| 66.<br>The policy on maintenance dredging of existing navigation channels should remain encouraged. | Cape May County Planning Board | "Conditionally e<br>is more appropri<br>to conditions un<br>maintenance dred<br>(see Section 7:7 |
| 67.<br>(b) Policy - Add "and new dredging" after "maintenance dredging" on first line. | The Port Authority of N.Y. and N.J. | Agreed. See rev<br>which incorporat<br>comment. |

| Comments | Commentor | Response |
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| **7:7E-3.8 CANALS** | | |
| 68.<br>(b)(1) - Do you expect this paragraph to cause any collisions with the shellfishing industry? | N.J. Marine Science Consortium | Shellfish harvesting could satisfy these policies. The limited area of boating canals is not suitable for aquaculture. |
| **7:7E-3.9 INLETS** | | |
| 69.<br>(b) Policy - Does the document anywhere define "infrastructure"? | N.J. Marine Science Consortium | "Infrastructure" is now defined in the Glossary of this document. |
| 70.<br>This policy should allow for submerged infrastructure in inlets if no feasible alternative is available. | Cape May County Planning Board | Agreed. The policy does allow for this possibility by discouraging rather than prohibiting infrastructure in inlets. |
| **7:7E-3.11 PORTS** | | |
| 71.<br>Boat ramps should be "discouraged", not "prohibited", and then only in port facilities, not in ports themselves. | The Port Authority of N.Y. and N.J. | Agree in part. Ports are usually not appropriate locations for the launching of small recreational craft, but the policy has been changed to "discouraged" to allow for the possibility that there might be suitable launching sites in some ports. Boat ramps are discouraged throughout Port Areas because they could interfere with commercial shipping. |
| 72.<br>(b) Policy - Why should boat ramps be included? Isn't this overly prohibited? | N.J. Marine Science Consortium | Same answer as above. |

| Comments | Commentor | Response |
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| **7:7E-3.11 PORTS** | | |
| 73.<br>State that "Port facilities are to be found in municipalities along the Hudson, Passaic, Hackensack and Raritan Rivers, and Arthur Kill van Kull, Newark Bay ..." | The Port Authority of N.Y. and N.J. | Disagree. There a "concentrations of marine termials" a these waterbodies. port facilities ar considered ports. |
| 74.<br>Add the following at the end of the ports definition: "Underutilized areas where the potential for modern port operations has been deemed unfeasible are not included in this definition". | The Port Authority of N.Y. and N.J. | Disagree. This un complicates the de |
| 75.<br>Rationale - On the seventh line, (a) change "preventing" to discouraging" and (b) insert "unjustified" before "sprawl". | The Port Authority of N.Y. and N.J. | (a) Agreed. (b) T "Sprawl" connotes hazard growth. D extension of devel is not sprawl. |
| **7:7E-3.13 SHIPWRECKS AND ARTIFICIAL REEFS** | | |
| 76.<br>What is "weighted" non-toxic material? | N.J. Marine Science Consortium | An example of weig ("weighed" was a t non-TOXic material used automobile t fastened together blasted with concr as those previous by NMFS - Sandy H tory in construct artificial reefs a mouth Beach and S |
| 77.<br>Do you really expect commercial salvage of wrecks to destroy ecological or physical stability? | N.J. Marine Science Consortium | Yes, removal of h strates will propo reduce suitable a habitat and shelt which is naturall New Jersey's coas offshore. Shipwr prime sport fishi Loss of wreck mat reduce that site value for a host |

| Comments | Commentor | Response |
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| **7:7E-3.14 ESTUARINE OR MARINE SANCTUARY** | | |
| 78.<br>Definition - Delete "Hudson Canyon" from the NOAA recommendations. This is based on a February 25, 1980 letter from Mr. John Weingart to Mr. Alfred Hammon of the Port Authority that states that "the State of New Jersey has not nominated the Hudson Canyon or any area for designation as a marine sanctuary". | The Port Authority of N.Y. and N.J. | The Hudson Canyon was among DEP's six nominations in 1977, but note the additional language stating that New Jersey is not currently pursuing the nomination of a marine sanctuary. |
| **7:7E-3.15 WET BORROW PITS** | | |
| 79.<br>It is suggested that the words "sand and gravel extraction" be removed and the words "surface mining" be inserted so as to remain consistent with other language referring to extraction of minerals. | Mining Industry Representatives | Agreed. See revised language. |
| 80.<br>This Rationale is particularly splendid and deserving of special mention in this regard. | N.J. Marine Science Consortium | Thank you. |
| 81.<br>Is the policy saying that all areas where mining may take place are dry borrow pits? | Mining Industry Representatives | No. The policy states that mining is conditionally acceptable in Wet Borrow Pits. It is acceptable in other areas if consistent with the Use Policy on Mining. |
| 82.<br>Language should be added to clarify the fact that while mining is in progress in one of these areas, the other special policies do not apply. | Mining Industry Representatives | In the selection of new mining areas, even if adjacent to existing mining, Special Area policies would apply. In areas where approved mining is taking place Resource Policies would apply. |

| Comments | Commentor | Response |
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| **7:7E-3.15 WET BORROW PITS - Continued** | | |
| 83.<br>The term borrow pit has an accepted meaning both within the industry and beyond which doesn't include industrial mining type operations, therefore all references to the term "borrow pit" should be replaced with "mining pit" so as to maintain consistency with accepted definition. | Mining Industry Representatives | This change has no made due to the vi the term "borrow p |
| 84.<br>What is meant by the "original lake area" in policy 3(ii)? | Mining Industry Representatives | See Revised Policy clarifies that thi area before approv activity began. |
| 85.<br>We wonder if permitting fill in wet borrow pits is wise even if it is placed in "fingers" that would create additional shoreline. Cutting down on the size of lakes and adding shoreline vegetation might speed the eutrophication process. | League of Women Voters of N.J. | Limited clean fill reasonable compro these artificial w bodies. Wildlife, recreational benef preserved or enhan some urgently need sion is made for d posal. The requir buffer, (see 7:7E- that recommended b Ketchmick and Asso preventing eutrophi wet borrow pits. |
| **7:7E-3.17 FILLED WATERS EDGE** | | |
| 86.<br>Policy fails to distinguish priorities among, or standards applicable to, water dependent and non-water dependent activities. This policy functionally exempts all activities other than housing development from the 100' set | Natural Resources Defense Council | Disagree. There is reason to require arbitrary 100 foot set Filled Water's Edge by definition is al disturbed. However sufficient setback public access must allowed. |

| Comments | Commentor | Response |
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| 7:7E-3.17 FILLED WATERS EDGE - Continued | | |
| 86. - Continued back. This is unacceptable. Coastal policies must give clear priority to water dependent facilities, parks and open space. A setback requirement of at least 100' should be applied to all non-water dependent activities without exception, especially in the bay and ocean shore area. | | |
| 87. Proposed policy changes for Filled Water's Edge will weaken the criteria for regulating development in this zone. The policy regulating development in the Filled Water's Edge within 100 feet of a navigable water body should be extended to the entire defined boundary. We recommend that the criteria for Filled Water's Edge remain as written in the Bay and Ocean Shore Segment document of August 1978 and not contain the changes proposed in the May 1980 document. | American Littoral Society | Disagree. The filled water's edge is by definition less environmentally sensitive and therefore coastal policies should be more permissive toward development. |
| 88. We would like to see a 50 foot buffer instead of 100 feet, which appears to have no basis or a 50 to 100 foot requirement depending upon the circumstances of each case. | David Fisher, N.J. Builders Association | Agree. See revised policy. |
| 89. There also seems to be an inconsistency between the Water's Edge Policy, the Water's Edge Rationale, and the House Use Policy. | David Fisher, N.J. Builders Association | See revised policies. Housing is acceptable in the Filled Water's Edge, provided it meets the three conditions of Housing Use Policy 7:7E-7.2(b)(1)ii. |

| Comments | Commentor | Response |
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| 7:7E-3.18 EXISTING LAGOON EDGE | | |
| 90. Glad to see the new polices for managing the lagoon edge. Reclamation is the desirable choice, but stabilization of slopes with vegetation is a step toward reclamation of as much filled land as feasible. | League of Women Voters of N.J. | Thank you for supp |
| 91. It is assumed that "ports" are not intended for inclusion in the term "commercial" on the fourth line of the definition. | The Port Authority of N.Y. and N.J. | This assumption is |
| 92. This definition is ambiguous as to what the limit of fill is. The policy on reclamation of existing lagoon edges is also unclear. Reclamation of the site to its natural state should be based on economic feasibility. | Cape May County Planning Board | The definition is unclear provided the distribution is kn Economic feasibili implicit, leaving judge on a case by basis. |
| 7:7E-3.19 BEACH AND DUNE SYSTEMS (Now Policy 7:7E-3.21) | | |
| 93. We strongly support restrictions on new building in high risk erosion areas and on the repair of structures heavily damaged by storms. | League of Women Voters of N.J. | Comment accepted. |
| 94. This section needs to be upgraded to meet the intent of the proposed dune and shorefront protection bill. Under the proposed plan, activities adversely affecting the dune system would merely be discouraged, rather than prohibited as under the Bay and Ocean Shore Segment. | League for Conservation Legislation | The rules and reg for the Proposed Shorefront Protec be written if the passed and they t incorporated into document. |

| Comments | Commentor | Response |
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| 7:7E-3.19 BEACH AND DUNE SYSTEMS (New Policy 7:7E-3.21) - Continued | | |
| 95.<br>The use of "discouraged" for beach and dune system represents a substantial downgrading from the EDGE program which prohibited activities adversely affecting the beach and dune system. Considering the limited jurisdiction of CAFRA, any permit issued which allows development in beach and dune systems will have substancial adverse impacts on the functioning of such systems and will conflict with the management objectives as stated in the program. The controlling term must remain "prohibited" rather than "discouraged". | Natural Resources Defense Council | Disagree. The policy, which applies to the whole system, provides the flexibility to allow a facility such as a pipeline crossing. The intention, made clear by the rationale is clearly not to allow adverse development. The suggested term "prohibit" would not allow the state to approve even a pipeline crossing. Moreover, developments built after CAFRA permit approval often incorporate conditions increasing the environmental sensitivity of the design. |
| 96.<br>Any activity which adversely affects the natural functioning of the dune system should be prohibited. Shore protection structures and retaining structures should not be conditionally approved. Development in high risk beach erosion areas should be prohibited. | Vivian Li,<br>Sierra Club,<br>New Jersey Chapter | See above responses to League for Conservation Legislation and Natural Resources Defense Council. |
| 97.<br>We strongly favor protection of our few remaining natural beach and dune areas, including undeveloped sections of barrier islands and spits. However, in view of past failures, we wonder about the new construction of groins mentioned in page 311. | League of Women Voters of N.J. | The groin construction you mention are reasonable efforts to protect the shoreline on a case by case basis. The Shore Protection Master Plan currently being prepared will deal with the benefit and harm of all techniques and will recommend coordinated State Protection. |

| Comments | Commentor | Response |
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| 7:7E-3.19 BEACH AND DUNE SYSTEMS (New Policy 7:7E-3.21) - Continued | | |
| 98.<br>Based on findings of the Army Corps of Engineers Dredged Material Research Program that turbidity is short lived, add "when especially sensitive environmental resources are impacted" after "turbidity is controlled". | The Port Authority of N.Y. and N.J. | The turbidity claus<br>been deleted in re<br>this comment becau<br>bidity is not a co<br>it is sand that is<br>dredged. |
| 99.<br>The phrase "and inlet areas" should be added to the definition of high risk beach erosion areas following the words "ocean shorelines". | Cape May County Planning Board | Agreed. See new w |
| 100.<br>The Beach and Dune Systems policy is generally consistent with previous positions of the Planning Board and Environmental Council. The Planning Board recommended the designation of a coastal hazard buffer area to be determined through the use of historical flood data and the substitution of disaster relocation assistance for Federal flood insurance. | Monmouth County Environmental Council | No response needed. |
| 101.<br>This proposed change combines into a single Special Area the policies on "Beaches", "High Risk Beach Erosion Areas", "Accretion Areas", "Overwash Areas", and "Dunes". This combination results in the formulation of one coherent policy on "Beach and Dune Systems". | Cape May County Planning Board | Thank you. |

| Comments | Commentor | Response |
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| 7:7E-3.20 WETLANDS (Now Policy 7:7E-3.23) | | |
| 102.<br>Glad to see bogs and white cedar forests included under policies that apply to coastal wetlands. | League of Women Voters of N.J. | Thank you. |
| 103.<br>Would it not be possible to make a written agreement with the State Mosquito Control Commission similar to the one between DEP and DOE, and, if so, would developed policies be able to influence county commissioners? | League of Women Voters of N.J. | DEP intends to pursue a Memorandum of Understanding with the State Mosquito Control Commission regarding the mitigation of impacts in wetlands. |
| 104.<br>While the proposal to regulate up to 500 feet from tidal waters under the Waterfront Development Law may include portions of the 3,500 acres of tidal wetlands in Middlesex County, this new proposal is not a viable substitute for comprehensive wetlands protection nor does it meet the obligation of the State to provide wetland protection. | Middlesex County Planning Board | Disagree. Before publishing the DSIS, DEP specifically asked the Planning Board staff to identify wetland areas which would not be subject to the Waterfront Development Law, and they identified no such areas, nor were any such areas identified in the comments. |
| 105.<br>Wetlands have been grouped together into one definition, and all wetlands have been designated unusable for anything. This is too general; the facts do not support such a sweeping confiscatory position. | Roger Wells, Roger Wells, Inc. | The various wetlands types, which were listed separately in CMP-3058, were recommended for aggregation into one special area by Wapora Inc. (1979) The Estuarine Study. Most importantly, the policy has been revised to a more restrictive "generally ... prohibited" for all wetlands in the coastal zone. Such a restrictive policy is justified by the fragility and significance to the ecosystem of both tidal and inland wetlands. |

| Comments | Commentor | Response |
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| 7:7E-3.20 WETLANDS (Now Policy 7:7E-3.23) | | |
| 106.<br>The policies on "Bogs and Freshwater Wetlands", "White Cedar Stands", and "Coastal Wetlands" are proposed to be combined into a single special area policy for "Wetlands". This change is an improvement since these special areas are interrelated. | Cape May County Planning Board | No response neces |
| 107.<br>For NJDEP to efficiently regulate coastal wetlands, all official wetland maps must be issued. The complete set of wetland maps must include the areas now regulated under the jurisdiction of the proposed N.J. Coastal Management Plan. | American Littoral Society | Federal regulatio (a)8 do not requi by parcel mapping prior to federal only require a de that they are sub the CMP. Wetland will be conducted 1981 for the area to the Wetlands A This does not inc northern waterfro Hackensack Meadow are not subject t Wetlands Act. |
| 7:7E-3.21 FLOODPLAINS (Now Policy 7:7E-3.19, titled Natural Water's Edge-Floodplains) | | |
| 108.<br>Policies concerning floodplain areas have been strengthened considerably. The Planning Board has long discouraged development in flood hazard areas and was pleased that the new Flood Hazard Areas Control Act provides the statutory foundation for better floodplain management. | Monmouth County Environmental Council | No response neces |

| Comments | Commentor | Response |
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| **7:7E-3.21 FLOODPLAINS** (now Policy 7:7E-3.19, titled Natural Water's Edge-Floodplains) - Continued | | |
| 109.<br>Is the prohibition of non-water dependent development within 100' of the water's edge in floodplains too strong? Certain development, such as roads, driveways or recreational areas, might be acceptable if properly undertaken. | Pureland Industrial Complex | Linear development may override this prohibition in some cases (see 7:7E-6.1). |
| 110.<br>The policy on Floodplains appears to be more restrictive than the floodplain regulations issued by the Division of Water Resources. Since the Division of Water Resources has primary jurisdiction of this area, it is inconceivable that CAFRA could enact regulations more restrictive than Water Resource's regulations. | D. Fisher, N.J. Builders Association | The Divisions of Coastal Resources and Water Resources are in agreement that the floodplains of tidal rivers and streams merit more careful management than inland floodplains because of the special relationship that these areas have with estuarine habitats and breeding areas. DWR regulations have public safety rather than environmental protection as their primary objective, thus the difference. |
| **7:7E-3.22 CENTRAL BARRIER ISLAND CORRIDORS** | | |
| 111.<br>When the policy on barrier island corridors is read in conjunction with policies 7:7E-3.19(b) on beach and dune systems and 7:7E-3.11(c) on shore protection structures, a peculiar circular logic emerges: shore protection structures are conditionally acceptable on beaches and dunes when they are built for the protection of existing buildings, while new structures can be built in the barrier island corridor without attention to potential hazards which may well result in further construction of protection devices | Natural Resources Defense Council | This cycle is the result of the need to protect existing developments, many of which are inappropriately located. The proposed Dune and Shorefront Protection Act is one attempt by DEP to break this cycle. In the interim, the Central Barrier Island Corridor Policy prevents the hap-hazard extension of development on barrier islands by limiting development to areas that meet the high development potential criteria, which include roads, sewage and infill requirements. Beaches and dunes are more rigorously |

| Comments | Commentor | Response |
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| **7:7E-3.22 CENTRAL BARRIER ISLAND CORRIDORS** - Continued | | |
| 111. - Continued<br>and destruction of beaches and dunes. This cycle must not be permitted to continue under a program which purports to preserve beaches and dunes. | | protected under th Beaches and Dune S Policy (7:7E-3.19 formerly 7:7E-3.21 |
| 112.<br>The policies invoke the same standards for development on barrier islands as are applied to development in urban areas on the mainland. Policies for central barrier island corridors should prohibit new construction in any area which is not adequately protected from reasonably foreseeable future coastal hazards during its useful lifetime. The term "adequately protected" should mean that the construction is protected by previously existing and effective shore protection structures or is located such that it will not be threatened by natural processes. | Natural Resources Defense Council | See response above discussed in the r infill development expected to add ap ciably to public s ments or emergency ation problems. |
| 113.<br>It does not appear that figure 6 referred to on page 113 shows the central barrier island corridors. | David Fisher, N.J. Builders Association | The brackets, as c on page 67 (and pa indicated that the text has been dele The barrier island dors are shown in of the DEIS and FE |
| **7:7E-3.24 WET BORROW PITS MARGIN** (Now Policy 7:7E-3.25) | | |
| 114.<br>What is meant by the Water Quality Buffer? This area, referred to with capital letters, does not appear elsewhere in the document. | Mining Industry Representatives | The Water Quality an area around Wat Pits where develop restricted to main surface water qual Around natural wat various water's ed areas, notably flo perform the same f |

| Comments | Commentor | Response |
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| **7:7E-3.24 WET BORROW PITS MARGIN (Now Policy 7:7E-3.25) - Continued** | | |
| 115.<br>The 100' and 50' buffer zones are arbitrary and unsupported by good land use policies and should therefore be removed. | Mining Industry Representatives | These distances are not arbitrary, they are the results of studies done by Jack McCormick and Associates for the Warner Company to establish minimum setbacks to prevent eutrophication in borrow pits. |
| 116.<br>This language is particularly restrictive in the area of future land use in a mined out area after reclamation has been completed. A paragraph should be added which would permit variances in order that land planned for future utilization may be used for its intended purpose. | Mining Industry Representatives | Disagree. The language restricts only a narrow strip around the water body. Water quality, scenic amenity and wildlife habitat quality cannot be assured without this water quality buffer. |
| **7:7E-3.25 ALLUVIAL FLOOD MARGINS** | | |
| 117.<br>Development should be allowed in alluvial flood margins if proper mitigating techniques are utilized. It is arbitrary to merely discourage development without allowing proper mitigating techniques. | David Fisher, N.J. Builders Association | It is not arbitrary since no mitigation is available which preserves the primary productivity, water filtration and wildlife habitat functions of these areas if they are developed. |
| **7:7E-3.26 COASTAL BLUFFS** | | |
| 118.<br>It would help if in the definition of the "crest" of a bluff, the "crest" and "buffer" were each spelled out in terms of feet as in the diagram on page 118. There seems to be no distinction between the "crest" and the "tableland". | League of Women Voters of N.J. | The crest and toe of the slope are the limited areas where there is a rapid change of slope. A single figure would not be applicable since the width of this area varies. |

| Comments | Commentor | Response |
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| **7:7E-3.27 INTERMITTENT STREAM CORRIDORS** | | |
| 119.<br>Is it correct to assume that mining is acceptable in intermittent stream corridors since it is not *mentioned*? | Mining Industry Representatives | No. Mining would … acceptable if it w… "directly degrade … function of" the c… |
| 120.<br>The need for the prohibition on use of intermittent stream corridors for "run-off recharge" is not clearly demonstrated. Where practical, it is often desirable to encourage use of swales and similar areas for recharge and stormwater runoff detention purposes. | Middlesex County Planning Board | Intermittent or ep… stream corridors. … any other topograph… depressions which … are channels for f… surface water, are… able sites for run… detention because … water infiltration … take place in satu… substrates. |
| **7:7E-7.28 FARMLAND CONSERVATION AREAS** | | |
| 121.<br>We question the jurisdiction of CAFRA to regulate Farmland Conservation Areas. | David Fisher, N.J. Builders Association | Section 11 of CAFR… DEP to deny a pro… "resource exhausti… threatened. The r… the soil. Soil lo… takes thousands of… the world food sit… farming economy of… dramatically in th… quarter century an… value to society of… irreplaceable reso… entirely if develop… rise steadily. |
| 122.<br>Glad to see agricultural soils along water courses included in areas for restricted activities. This is consistent with approach encouraged by Department of Agriculture and considered by Congress. | League of Women Voter of N.J. | Farmland Conservat… Special Area Polic… Fertile Soils Reso… Policy restrict ac… on agricultural so… whether or not the… along water course… you for support. |

| Comments | Commentor | Response |
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| **7:7E-3.28 FARMLAND CONSERVATION AREAS - Continued** | | |
| 123.<br>We recommend rewording Policy Statement number "3" to read, "Conversion of Farmland Conservation Areas to development is acceptable only when the predominant surrounding pattern of development is urban or suburban and such development is consistent with adopted zoning and land use plans." The criteria of "unacceptable urban - agricultural conflict" is impossible to define. | Middlesex County Planning Board | Disagree. The coastal policies are State policy and cannot be subject to municipal policies. |
| **7:7E-3.29 STEEP SLOPES** | | |
| 124.<br>The policy is unreasonable insofar as it is prohibits development on steep slopes greater than 15%. If in fact the problems relating to soil erosion, protection of up-slope lands, pollution of surface waters, and flooding are mitigated or eliminated by development on slopes of greater than 15%, such development should be conditionally acceptable. | David Fisher, N.J. Builders Association | Mitigation becomes increasingly ineffective as the slope rises. See revised language. |
| 125.<br>It is very difficult to define the words "very small part of a site" and therefore the definition is vague and arbitrary. | David Fisher, N.J. Builders Association | See revised policy, which incorporates your comment. |

| Comments | Commentor | Response |
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| **7:7E-3.30 DRY BORROW PITS** | | |
| 126.<br>We question the use of runoff to recharge aquifers because of heavy metals and hydrocarbons. Would the runoff be treated or simply allowed to infiltrate? There is a problem of the pits becoming clogged with decaying vegetation, and in handling the dredge material from these pits. A clearer statement would help. | League of Women Voters of N.J. | See revised policy 3.30(b)2. |
| 127.<br>Is it correct to assume that mining is acceptable in dry borrow pits since it is not mentioned? | Mining Industry Representatives | Mining is condition acceptable provided use policies for mi are complied with. revision to 7:7E-3. |
| 128.<br>Add language to indicate that "surface mining is conditionally acceptable provided the Use Policies for Mining are complied with". By adding this language, it would merely make dry borrow pit and wet borrow pit sections consistent. | Mining Industry Representatives | Agreed. See new po 7:7E-3.30(b)1. |
| 129.<br>Policy Stmt 5(ii) regarding disposal of solid waste should be qualified to read: "Leachate is collected, treated and discharged to the ground through an injection well or other technique that does not in any way result in leachate entering an aquifer system used now or potentially useable in the future for potable water supply. | Mining Industry Representatives | Agreed. See revise which incorporates suggestion. |

| Comments | Commentor | Response |
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| **7:7E-3.31 HISTORIC AND ARCHEOLOGICAL RESOURCES** | | |
| 130.<br>Caven Point should be included on the New Jersey State Register of Historic Places. | Audrey Zapp,<br>Hudson County Citizens for Clean Air | This suggestion has been directed to the Office of Historic Preservation, but it does not appear to be eligible. |
| **7:7E-3.33 ENDANGERED OR THREATENED WILDLIFE OR VEGETATION SPECIES HABITAT** | | |
| 131.<br>How are species eligible to be on list to be determined? | Mining Industry Representatives | Species appearing on the State list are arrived at (and periodically revised) by a group of experts representing a variety of public and private agencies and organizations. The full list of advisors is listed on pages 2 and 3 of State of New Jersey 'Endangered, Threatened, Peripheral, Declining, Undetermined and Extirpated Wildlife Species in New Jersey Official List" (March 29, 1979) available from DEP, Division of Fish, Game and Wildlife. |
| 132.<br>Delete "or eligible to be on the list". This phrase is very broad and lacks specific definition. Also there are separate procedures outlined in the Endangered and Non-Game Species list. By including it in with these regulations, we are creating a duplication of authority. | Mining Industry Representatives | See revised definition in 7:7E-3.33, which responds to your suggestion. |

| Comments | Commentor | Response |
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| **7:7E-3.34 CRITICAL WILDLIFE HABITAT** | | |
| 133.<br>Caven Point should be considered a Critical Wildlife Habitat. | Audrey Zapp,<br>Hudson County Citizens for Clean Air | The Proposed NJDEP specifically ident sites which may be sidered as a Criti Wildlife Habitat, examples of some t provided. Identif consequently done by site review dur application and th consultation with Division of Fish, Wildlife. |
| 134.<br>This prohibition against building in certain habitats is unreasonable unless there are sightings of the actual type of wildlife that is supposed to be associated with such habitats. | David Fisher,<br>N.J. Builders Association | The designation of areas is based on tions by DEP's Div Fish, Game and Wil which in turn are sightings. |
| **7:7E-3.36 SPECIAL URBAN AREAS** | | |
| 135.<br>Mixed use development in special urban areas should not necessarily be encouraged. Such development in urban areas would encompass nearly every usage, and it does not necessarily have to be along urban coasts. | Vivian Li,<br>Sierra Club,<br>New Jersey Chapter | Disagree. The use in the State 21 Sp Areas is already d Mixed use redevelo acceptable unless inconsistent with coastal policies. |
| 136.<br>We are pleased to note the wide range of development that is encouraged to locate in the Special Urban Areas. The flexibility that results from the mixed development policies of these areas is important to the City of Camden in terms of the future development of our City Centre Urban Renewal Area. | Camden Department of Community Development | No response neces |

| Comments | Commentor | Response |
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| 7:7E-3.38 SPECIAL URBAN AREAS - Continued | | |
| 135.<br>This section should establish a priority of recreation, rather than development, along the coast. We support the call for a park and open space for each community along the coast, and hope this emphasis is reflected in this section as well. | Vivian Li,<br>Sierra Club,<br>New Jersey Group | Redevelopment and public open space are both encouraged in Special Urban Areas. See Policy 7:7E-3.3(b)(1). |
| 137.<br>Sierra Club supports the rejuvenation of urban areas. | Carol Barrett,<br>Sierra Club<br>West Jersey Group | No response necessary. |
| 138.<br>The imposition of a new permit and approval process is counter-productive to the encouragement of development. Those properties already zoned for commercial and industrial use should be removed from the scope of the proposed regulations. | G. Deutsch,<br>N.J. Business & Industry Assoc. | The program represents State policy and cannot rely upon municipal zoning. It does not add a new approval process but rather adds clarity and specificity to an existing process. |
| 139.<br>The emphasis on siting water-dependent uses and public open space areas along the water's edge should not be reduced in Special Urban Areas. Water-dependent uses and open space should be given priority over mixed use development even in Special Urban Areas. | Natural Resources Defense Council | Open space is one of the uses required in mixed use development. Public access to the waterfront is a criterion for the acceptability of all waterfront development. The special conditions in decayed port areas and the potential of the waterfront resource to revive depressed economies demands special use considerations in these areas. |
| 140.<br>Special Urban Areas should not be exempt entirely from the 100 foot setback requirement for water-related (as opposed to water-dependent) projects on the Filled Water's Edge. The exemption should be limited to waterfront areas which are already built up. | Monmouth County Environmental Council | See above response to Natural Resources Defense Council. The waterfronts of Special Urban Areas are almost entirely developed. |

| Comments | Commentor | Response |
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| 7:7E-3.38 SPECIAL URBAN AREAS - Continued | | |
| 141.<br>The definition of Special Urban Areas may work a hardship upon industrialized urban municipalities which do not meet the state's statutory aid test. A more flexible standard for designating special growth zones which considers a number of factors, such as the existing character and usage of the waterfront, should be formulated. | A. Mogerly, N.J. Independent Liquid Terminals Assoc. | The relaxation of dependency require is appropriate onl developed waterfro need of revitaliza i.e. for urban aid |
| 142.<br>The Council supports this policy which encourages development to promote the economic well-being of these communities and discourages project (such as suburban shopping centers) which would affect the local economy adversely. | Monmouth County Environmental Council | Thank you for supp |
| 143.<br>The proposed plan includes changes recommended by DCA's Division of Statewide Planning, such as the designation of Urban Aid municipalities within the region as High Growth Areas. | Department of Community Affairs | No response necess |
| 144.<br>The Special Urban Areas definition should be expanded to include other smaller cities. | Salem County Planning Board | The Special Urban Policy is designed small group of cit have developed wate which are in need vitalization. |

| Comments | Commentor | Response |
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| 7:7E-3.38 SPECIAL URBAN AREAS - Continued | | |
| 145.<br>Salem City and Penns Grove should be listed as part of the urban areas region to attract needed new investment. Although Penns Grove is within the high growth area of the Delaware River, Salem City is not listed as high growth under the Delaware Bayshore Region even though it was listed as a high growth area in previous documents and as a growth area on the State Development Guide Plan. | Salem County Planning Board | Salem and Penns Grove do not meet the criteria for urban aid cities. Salem's classification as a Limited Growth Region means that only infill residential development is likely to be acceptable, but since the small coastal zone area within the city is already largely developed with industry and housing, this infill criteria is likely to be met. |
| 146.<br>An urban impact analysis should be required for all development proposed outside of the high growth areas, and for major development outside the Special Urban Areas. | Camden Department of Community Development | Secondary impact analysis will be required for all development with potential to induce growth inconsistent with coastal policies. An impact analysis may be required of any project that would adversely affect the economic welfare of a Special Urban Area. Such an analysis was required by the MUDC before conditional concept approval of a new residential/commercial/industrial center in the Meadowlands District. |
| 147.<br>We strongly disagree with the policy relating to development outside of those (urban) areas. It is also almost impossible to ascertain whether development outside of an urban area would be more beneficial within an urban area. Obviously a developer has made a market determination that it would be more applicable outside of the urban area and this market determination should not be disturbed. | David Fisher, N.J. Builders Association | A more permissive development policy in urban areas is appropriate to promote revitalization for the public benefit. Beyond this, however, it is appropriate to review development outside urban areas for their potential effects on cities. |

| Comments | Commentor | Response |
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| 7:7E-3.38 SPECIAL URBAN AREAS - Continued | | |
| 148.<br>The definition of Special Urban Areas is overly restrictive, and should be extended to additional urban areas such as Belmar, Keyport, and Red Bank. Such a policy would help to ensure the continued vitality of the more prosperous commercial centers as well as promote the revitalization of areas which have declined. | Monmouth County Environmental Council | The Special Urban policy is designa primarily to the r tion of the most ically depressed waterfronts. It on state law estab areas eligible fo aid. Areas such mentioned are con acceptable becaus their generally d character. |
| 7:7E-4.7 POLICY SUMMARY TABLE | | |
| 149.<br>*Many policies shown in the* Water Area Policy Summary Table have been downgraded from their predecessor in the SOBS program. Of 16 uses previously "prohibited", 10 are now "discouraged" and 6 are "conditionally acceptable". The program includes no explanation why this is necessary or desirable, or why the bay and ocean shore area should not receive better than the reduced level of protection deemed for urban areas. | *Natural Resource* Defense Council | *Experience in imp* this policy has b unexpected situat a prohibited acti found to be in th interest. Use of ditionally Accept allows DEP to pro activity in an un environment and p in an urban area. |
| 7:7E-4.9 LAKES, PONDS, RESERVOIRS | | |
| 150.<br>The definition of lake should be elaborated upon so as to exclude wet borrow pits. | Mining Industry Representatives | Agreed. See revi 7:7E-4.9. |

| Comments | Commentor | Response |
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| 7:7E-4.10 ACCEPTABILITY CONDITIONS FOR USES | | |
| 151.<br>All of the uses covered by this section (7:7E-4.10) should be first required to meet a general acceptability condition: "There is a demonstrated need for the proposed facility or use that cannot be met by existing facilities and there is no alternative method by which, or location where, the facility or use could accomplish its intended function while creating a lesser adverse impact on coastal resources." | Natural Resources Defense Council | Disagree. This is the entire range of water uses and this would be too stringent a condition for any water use, most of which clearly must locate in water bodies. Adequate conditions to protect coastal resources are included in the separate policies. |
| 152.<br>(e) Dredging-Maintenance - Policy should be revised to permit securing of channels, anchorages, and moorings on a case by case basis since the cost of dredging is prohibitive for many small-scale water-dependent facilities. | Cape May County Planning Board | Agreed. See revised policy 7:7E-4.10(e), which incorporates your suggestion. |
| 153.<br>(e) Maintenance Dredging - The proposed regulations state that dredging of channels to their "authorized depth and width" will be conditionally acceptable. This connotes to us that the intent of DEP is to only tolerate dredging when conditions they impose are met, if they can be met. These conditions remain undefined. | New Jersey Alliance for Action | The intent of this policy is that maintenance dredging shall preserve the dimensions of channels now authorized by State and Federal agencies. There are no hidden conditions. The policy has, however, been revised. |
| 154.<br>(f) New Dredging - Dredging conditions, in particular, the seasonal limitations to dredge spoil disposal, have been arbitrarily established on assumptions that are not supported by data and studies. | E. Wieser, N.J. Alliance for Action | See revised policy. Seasonal dredging limitations will only be applied when necessary to protect a specified resource in a specified area. |

| Comments | Commentor | Response |
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| 7:7E-4.10 ACCEPTABILITY CONDITIONS FOR USES - Continued | | |
| 155.<br>(f) New Dredging - No reason is given for limiting dredging to the period between November and mid-March. We believe seasonal dredging prohibitions should be site specific and appropriately tailored to meet environmental resource requirements. The term "conditionally acceptable" would be preferable. | The Port Authority of N.Y. and N.J. | See above response Wieser. |
| 156.<br>(f) New Dredging - Add "when especially sensitive environmental resources are impacted" after "turbidity is controlled". | | Disagree. "Especi sensitive environm resources" is a ve Note revision to p 7:7E-4.10(f)ix req best available tec for turbidity cont |
| 157<br>(f) New Dredging - A general seasonal restriction on dredging activities is unwarranted and would impose a significant new economic burden to industry. Seasonal restrictions should be imposed only where scientific evidence indicates they are absolutely necessary. | John J. Horn, Commissioner, Department of Labor and Industry | Agreed. Policy ha revised. |
| 158.<br>(f) New Dredging - Add "at width" after "water depth". | The Port Authority of N.Y. and N.J. | Expansion of the t water area means f forming a Land Are Water Area, or re See Policy 7:7E-4. |

| Comments | Commentor | Response |
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| 7:7E-4.10 ACCEPTABILITY CONDITIONS FOR USES - Continued | | |
| 159.<br>(g) Dredge Spoil Disposal - We recommend a revision in policy be made to prohibit Dredge Spoil Disposal in Open Bays and Semi-Enclosed and Back Bays as well as in Tidal Cuts, Medium Rivers, Brooks and Streams, Lakes, Ponds, and Reservoirs. The remainder of the paragraph addressing disposal by side casting should be deleted. | American Littoral Society | Such a change would be in conflict with the conditionally acceptable policy on the use of clean dredge spoil to create new wetlands, marsh islands in any general water area. Also there is often no alternative to sidecasting in dredging channels through shallow waterways. See Policy 7:7E-4.10(g) which has been slightly revised. |
| 160.<br>(i) Filling - Non-Water dependent uses should not be offered special treatment in respect to filling extensions to filled water's edges. | Natural Resources Defense Council | Agreed. See revision to policy 7:7E-4.10(i)2(ii)a, which incorporates this suggestion. |
| 161.<br>(i) Filling - Insert "conditionally acceptable" before "in oceans". | The Port Authority of N.Y. and N.J. | Disagree. Ocean filling is not a desirable practice, particularly since filling is now defined to be for creating new upland. |
| 162.<br>(i) Filling - 2.(ii) - On first line, substitute "conditionally acceptable" for "discouraged". | The Port Authority of N.Y. and N.J. | Disagree. Filling has major environmental impacts. Limited filling is conditionally acceptable as described in the policy. |
| 163.<br>(j) Piling - Delete current fourth line and substitute "ocean waters and acceptable for bay waters. Elsewhere ..." | The Port Authority of N.Y. and N.J. | Disagree. Piling in deep bay waters is undesirable, piling in moderate and shallow bay waters is now conditionally acceptable. |

| Comments | Commentor | Response |
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| 7:7E-4.10 ACCEPTABILITY CONDITIONS FOR USES - Continued | | |
| 164.<br>Under these policies new dredging would be discouraged in bays, which would affect channels, anchorages, and terminals in Raritan and Newark Bays. Filling would be discouraged or prohibited in such water bodies, piling would be discouraged generally in deep open bays, and vessel mooring would be prohibited in ocean waters and discouraged in open bays. | The Port Authority of N.Y. and N.J. | Maintenance dredgi existing channels and ports is prefe the creation of ne Therefore, new dred discouraged in bay of existing port Similarly, filling conditionally acce existing ports (i but discouraged o hibited elsewhere. pilings are always to filling. Propo on mooring has bee to make it conditi acceptable in all bodies. |
| 165.<br>(l) Sand and Gravel Extraction - Does the prohibition in lakes, ponds, reservoirs, and tidal gats apply to man-made bodies of waters or only natural bodies? Would not a more rational distinction be between water bodies created by mining activities and those not created by mining activities. | Mining Industry Representatives | Lakes, Ponds and R include man-made b but do not include Borrow Pits. |
| 166.<br>(o) Overhead Transmission lines - Item (1)(2)(iii) - should be deleted. Electric lines do not induce development. The acceptability of development must be concluded on its own merits. | Public Service Electric and Gas Co. | Surplus infrastruc capacity is a prim tion to further de Analysis of induce is an essential pa infrastructure pro Transmission lines be judged solely o merits since they use in themselves always associated other uses. |

| Comment | Commentor | Response |
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| **7:7E-4.10 ACCEPTABILITY CONDITIONS FOR USES - Continued** | | |
| 167.<br>(o) Overhead Transmission Lines - The overhead transmission line statement should be restated since it is poorly worded and confusing. It was only apparent from the summary table (Table 21) what was intended. It is suggested that the acceptability conditions also specify that the design of the towers should minimize aesthetic and construction impacts on water areas. | Salem County Planning Board | See revised policy 7:7E-4.10(o)(2)(vi), which incorporates your suggestion. |
| 168.<br>(o) Overhead Transmission Lines - (2)(iv) - should be deleted. The requirement for a broken cable is tantamount to requiring that a bridge which breaks not hit the water. There is no record of any safety problem from the hundreds of existing crossings of water bodies by electric lines, none of which meet the above requirement. | James A. Whissen, Public Service Electric and Gas Co. | Agreed. Item deleted. |
| 169.<br>(p) Dams and Impoundments - The water body types in the "Dams and Impoundments" policy are too general; they need to be specified. | Cape May County Planning Board | They are specified in Figure 21. |
| **7:7E-5.1 GENERAL LAND AREAS** | | |
| 170.<br>"Definition" - It is unclear how this definition relates to the proposed 100-500 foot boundary. | The Port Authority of N.Y. and N.J. | Most areas within the 100-500 foot boundary are Special Water's Edge Areas. Those that are not are General Land Areas. |

| Comment | Commentor | Response |
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| **7:7E-5.3 COASTAL GROWTH RATINGS** | | |
| 171.<br>The proposed CMP lacks criteria for changing growth region designations. If designation changes such as those being considered for Galloway and Egg Harbor Townships in Atlantic County take place, they will be changes in the CMP, and as such are subject to federal and public review. | Natural Resources Defense Council | This change is bein through this docume growth region polic all coastal policie rules adopted as pa New Jersey Administ Code. They may only Following notice of amendment in the NJ Register and public Substantive changes the rules are consi amendments to the C Management Program. As such they are su federal review and possible grounds fo drawal of federal ap |
| 172.<br>By existing in Monmouth County, would Sandy Hook be designated a high growth region? If so, why? | N.J. Marine Sciences Consortium | No, because it is a Area as an Excluded Area. Growth Regio apply to General La Areas. |
| 173.<br>Figure 23 on page 159, does not differentiate in its marking between high growth and barrier island. How could one tell them apart on the map? | N.J. Marine Sciences Consortium | Agreed. Graphics a Generally Barrier I can be distinguishe they are islands bu acies on spits and are unclear on the maps. Larger scale available on reques from DCR. |
| 174.<br>I request that the growth regions policy be reevaluated. DEP must supply as part of its EIS the specific basis for its growth policies. | Roger Wells, Roger Wells, Inc. | The growth regions other policies are DEP's experience ad stering CAFRA and t coastal laws. Furt improving rationale stabilizing growth boundaries will be priority after prog approval. |

| Comments | Commentor | Response |
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| 7:7E-5.3 COASTAL GROWTH RATINGS - Continued | | |
| 175.<br>The proposed system of Growth Rating is inadequate. In the absence of specific criteria, it is totally subjective. The growth rating system must be better substantiated. | N.J. Conservation Foundation | Coastal Growth Ratings are based on a balancing of *considerations of existing* development patterns, development needs, and regional resource patterns. The results of such a balancing necessarily involve best professional judgements. |
| 176.<br>*Growth designations* for the coast should be clearly delineated and criteria for changes in such should be included in the plan. There should be adequate public notice for comment about such change. | Richard Willinger, the League for Conservation Legislation | Criteria are the existing pattern of coastal development and natural and cultural resources. Public review of any changes is required by the Administrative Procedures Act, and federal review is required by the federal CZMA. |
| 177.<br>The regional growth types shown in the proposed plan (figure 23, page 159) have been found essentially compatible with the State Department Guide Plan. | Department of Community Affairs | No response necessary. |
| 178.<br>We support redesignation of portions of the Mullica-Southern Ocean and Great Egg Harbor Low Growth Regions to a higher growth rating. These areas can be protected by other coastal policies and are essential to accommodate housing need. | Atlantic City Development Corp. and Roger Wells, Roger Wells, Inc. | Disagree. These regions will continue to be designated Limited Growth Regions (the former term was Low Growth Region), except for a portion of Tuckerton and Little Egg Harbor Township which are now designated as the Tuckerton Region, and Extension Region (the former term was Moderate Growth Region). After study it was determined that to change any more of the Limited Growth Region to a higher growth rating would be inconsistent with the basic coastal policy of protecting |

| Comments | Commentor | Response |
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| 7:7E-5.3 COASTAL GROWTH RATINGS - Continued | | |
| 178. - Continued | | the coastal ecosyst concentrating devel Note, however, that proposed policy fo Scale and Multi-Use opments (7:7E-7.21) changed to make it to develop large-sc planned residential opments in the less ronmentally sensiti portions of Limited Regions. |
| 179.<br>We oppose redesignation of portions of the Mullica-Southern Ocean and Great Egg Harbor Low Growth Regions to a higher growth rating because these regions are environmentally sensitive and crucial to coastal fisheries. | South Jersey Shellfishermen's Assoc.; Assoc. of N.J. Environmental Commissions; New Jersey Conservation Foundation; and Sierra Club, West Jersey Group | Agree in part. On Tuckerton Region h redesignated to a l growth rating. Th was to accomodate demand in a compact sion Region center the Borough of Tuc and extending south on upland toward M Island. |
| 180.<br>The low growth rating of a region essentially makes it a no growth region. A moderate growth rating in effect is a low growth designation and promotes development sprawl. By designating an area as a high growth region, existing neighborhoods may be destroyed by the encouraged new development. | Roger Wells, Roger Wells, Inc. | Note revision to 7:7E-7.2i permitti scale residential ment in Limited (L regions provided c ditions are met. (moderate) Regions Development (High Regions allow deve at 4+ dwelling uni acre, thus discour (low density spraw Existing neighborh protected by Reason 7:7E-8.18 (Neighbo Special Communitie |
| 181.<br>Identification of "growth regions" should consider water supply availability as a major consideration in the criteria for "high potential" classification for land use types. | Middlesex County Planning Board | Water supply avail considered by the Water Use Resource (7:7E-8.5). |

| Comments | Commentor | Response |
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| **7:7E-5.4 ENVIRONMENTAL SENSITIVITY RATING** | | |
| 182.<br>The definition of environmental sensitivity factors should be changed. It does not appear reasonable to have as one aspect of high environmental sensitivity the fact that forest vegetation is a community of trees and shrubs with a tree species of the late successional stage for the region. We would suggest that the definition be changed to reflect that it only refers to mature trees and shrubs. | David Fisher, N.J. Builders Association | See revised policy 7:7E-5.4(e)1, which defines forest vegetation as consisting primarily of trees over ten years old. |
| 183.<br>We strenously object to placing certain special areas automatically into the high environmental sensitivity areas. There is no correlation between a farmland conservation area and high environmental sensitivity. | David Fisher, N.J. Builders Association | Prime agricultural soils are always high environmental sensitivity because of the scarcity and value of this resource. |
| **7:7E-5.5 DEVELOPMENT POTENTIAL** | | |
| 184.<br>(c) "Major Commercial - Criteria", page 165 - If it is the intention of the plan to include ports within the Major Commercial and Industrial Development category, we believe that the criteria for high potential sites in (2) should also include consideration of site size, shape, water access, soils, etc. | The Port Authority of N.Y. and N.J. | Ports are not included within this Category. Ports are a special case, usually requiring Special Area sites. Port policies are adequately detailed in water and water's edge area policies and use policies. |

| Comments | Commentor | Response |
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| **7:7E-5.5 DEVELOPMENT POTENTIAL - Continued** | | |
| 185.<br>(e) "Energy Facility Development Potential" - The statement that, "in the interim, the development potential of energy facilities is assumed to be moderate" is too vague and insufficient for this Draft EIS. | The Port Authority of N.Y. and N.J. | Agreed. See revise in 7:7E-5.5(e), whi that Development Po Rankings shall be j determined by N.JDEP on a case by case b |
| 186.<br>The change in the infill definition appears to again restrict growth. There may be a good reason why there is no development at a comparable scale or density and this consideration should be included in the definition of infill. | David Fisher, N.J. Builders Association | See revised definit Section 7:7E-5.5(b) "Comparable scale o Density" terminolog been deleted. |
| 187.<br>We question why septic systems are not mentioned under the sewage criteria for low potential sites in high growth region. | David Fisher, N.J. Builders Association | Policy is intended t more restrictive in Growth and Extensio than in Development |
| 188.<br>Major Commercial - Criteria, page 166, 2(iii) - Infill" - Substitute "within one quarter mile of an" for "either immediately adjacent to, or immediately across a road from". In addition, we believe this requirement should be waived, where appropriate, to provide flexibility in the potential location of specific industries near or within "Special Hazard Areas", as covered on pages 128, 7:7E-3.36. | The Port Authority of N.Y. and N.J. | Disagree. This woul weaken the infill re ment. These General Area Policies do not in Special Hazard Ar or in any other Spec Areas. |

| Comments | Commentor | Response |
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| 7:7E-5.5 DEVELOPMENT POTENTIAL - Continued | | |
| 189.<br>The regional criterion for low potential sites for "Campground Development Potential" is too restrictive. In Cape May County this criterion would eliminate many potential campground development sites. Since campground sites are essential to our resort/tourist economy, this criterion should be relaxed. | Cape May County Planning Board | Disagree. Under this policy at least five campgrounds have been approved for CAFRA permits in Cape May County, with only one denial. |
| 7:7E-5.6 DEFINITION OF ACCEPTABLE INTENSITY OF DEVELOPMENT | | |
| 190.<br>(b) "High Intensity Development" - Port facilities should be exempted from the 80% maximum structures and pervious paving coverage and 5% minimum herb, shrub and forest coverage. | The Port Authority of N.Y. and N.J. | Disagree. Limited vegetation offers all the benefits in Ports as in other highly developed areas. However, this policy would apply to port facilities only if they extend inland to a General Land Area. |
| 191.<br>(c) - Shouldn't the requirement for a minimum of 20% of forest ... be exclusive of sandy beaches in which it is impractical to try to plant forests? | N.J. Marine Sciences Consortium | No, because sandy beaches are a Special Area not governed by this General Area Policy, as are hetoaceous wetlands. The climax vegetation of all General Areas is forest. |
| 192.<br>"Land Acceptability Table: High Growth Region", page 172 - Change line 7 from "Low Intensity" to "Moderate Intensity". | Port Authority of N.Y. and N.J. | Disagree. Even in development regions this would unreasonably promote sprawl. Moderate intensity development is diffuse and deliberately limited in such regions. |

| Comments | Commentor | Response |
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| 7:7E-5.6 DEFINITION OF ACCEPTABLE INTENSITY OF DEVELOPMENT - Continued | | |
| 193.<br>The example on the top of page 158 is not clear and should be revised. | David Fisher, N.J. Builders Association | It was rewritten, hope, made clear. |
| 7:7E-5.7 LAND ACCEPTABILITY TABLES | | |
| 194.<br>The use of the title "line" in the Land Acceptability Tables was confusing. Aren't you really documenting different types of areas so wouldn't "Areas" or some similar word be clearer and more appropriate? | League of Women Voters of N.J. and N.J. Marine Sciences Consortium | Agreed. "Line" he changed to "Area" policy 7:7E-5.7. |
| 195.<br>(b)(1) - Lines 7, 8, 9 - Why would the sandy soils of high growth regions be unsuitable for septic systems? Aren't these areas of particular good permeability? | N.J. Marine Sciences Consortium | Very high permeabi are a problem for systems because th very little filtra contaminants trave distances and may wells and surface The Soil Conservat Service has now in these soils as hav severe restriction septic systems. |
| 196.<br>Rationale - High Growth Regions, page 175, - On the second line, the word "lightly" appears unnecessary and should be deleted. | The Port Authority of N.Y. and N.J. | Agreed. Word dele |
| 7:7E-6.3 SECONDARY IMPACTS | | |
| 197.<br>(b) - The reference to "secondary impacts of the development ..." was particularly gratifying to me in that secondary and tertiary impacts of development are all too often | N.J. Marine Sciences Consortium | Thank you for supp |

| Comments | Commentor | Response |
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| **7:7E-6.3 SECONDARY IMPACTS - Continued** | | |
| 197. - Continued<br>ignored by planners and developers; yet, these can be crucially important in later stages of residential and professional life. | | |
| 198.<br>Transferred impact in addition to secondary impacts merely confuses the issue of affect of development. | David Fisher, N.J. Builders Association | Agreed. Proposed policy has been deleted. |
| 199.<br>There is no State Development Guide Plan which has been adopted by the Department of Community Affairs. It is inconceivable that Division decisions could be based upon a guide plan that is not yet adopted. | David Fisher, N.J. Builders Association | Agreed. Reference has been changed. |
| **7:7E-6.4 TRANSFERRED IMPACTS** | | |
| 200.<br>The transferred impacts policy is naive and allows DEP to stop any project it wishes since there will always be transferred impacts with any project. | Roger Wells, Roger Wells, Inc. | The policy has been deleted. |
| **SUBCHAPTER 7 USE POLICIES** | | |
| 201.<br>There seems to be a shift in emphasis in the Use Policies to give the Division another rationale for rejecting a permit application. It should be clearly stated that the use policies can only enhance the chances of obtaining a permit and not detract from those chances. | David Fisher, N.J. Builders Association | The suggested statement would not accurately describe the Coastal Policies. An applicant must meet all relevant location, use and resource policies. This has always been the case; there was no shift proposed in the CRIR. |

| Comments | Commentor | Response |
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| **SUBCHAPTER 7 USE POLICIES - Continued** | | |
| 202.<br>The Use Policies introduce conditions which must be satisfied in addition to the Location Policies. We do not consider it appropriate to limit specific uses over such a wide area. Whether a particular use should be established or enlarged in an already developed industrialized area should be judged in relationship to the immediate surrounding area. | N.J. Petroleum Council | The location polic<br>serve the purpose<br>gested of allowing<br>project to be cons<br>terms of its surro<br>development. |
| **7:7E-7.2 HOUSING USE POLICIES** | | |
| 203.<br>DCA supports the proposed revisions to the housing policies. Especially the statement calling for the provision of least-cost housing in high growth regions and in municipalities not presently providing their fair share of low and moderate income housing. | Department of Community Affairs | Thank you for supp |
| 204.<br>Housing does have some water related elements and it should not be dismissed as not being water related or water dependent. | David Fisher, N.J. Builders Association | Water-related defi<br>been deleted. Hou<br>acceptable near or<br>Special Urban Area<br>water. |
| 205.<br>The CMP should include limitations on the height of waterfront buildings. | Helen Thompson, Save the Hudson, Our Riverland Environment | The CMP does set m<br>limitations. See<br>7:7E-7.2h. |
| 206.<br>DCA approves the special acknowledgement of the housing needs of the Atlantic City Region. | Department of Community Affairs | No response needed |

| Comments | Commentor | Response |
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| 7:7E-7.2 HOUSING USE POLICIES - Continued | | |
| 207.<br>(b)(1) - Is the implication here that wind, water and wave damaged homes cannot be reconstructed? What will be the effect on people who have already purchased waterfront lots for the purpose of building homes? Are they out of luck forever? | N.J. Marine Sciences Consortium | This is not the implication here. This issue is now at the heart of the controversy over the Dune and Shorefront Protection Act and is not specifically addressed by this Coastal Management Program. Under the program there is no prohibition on reconstruction of buildings except in water areas. |
| 208.<br>In the past, the Division has insisted that housing is not water dependent or water related. On the other hand, the Division is attempting to control housing as a part of "waterfront development". It is submitted that although housing may be water dependent the waterfront is one of the most desirable places to live in New Jersey and therefore there should be some recognition of this economic and social fact of life which would allow further development of housing along the waterfront. | David Fisher, N.J. Builders Association | DEP proposes to regulate housing because it is not water dependent - to ensure that it does not preempt use of the water's edge from uses requiring a waterfront location. The Program does, however, recognize that people want to live near the water and permit housing near the water on filled water's edges, and extending out into the water on piers in Special Urban Areas, provided public access is not prevented (See revision to Policy 7:7E-7.2(b)). |
| 209.<br>(a) Cluster Development - Does this mean that developers who may build houses where individuals cannot? | N.J. Marine Sciences Consortium | No. The policies apply equally to all development regulated under the coastal program. Larger developments may be better able to meet the Policies in some areas, however. |
| 210.<br>(d) Residential Mix - Does this conflict with 7:7E-7.2(b)(1)(i) and (ii)? | N.J. Marine Sciences Consortium | The two policies are independent, neither reinforcing, nor conflicting with each other. |

| Comments | Commentor | Response |
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| 7:7E-7.2 HOUSING USE POLICIES - Continued | | |
| 211.<br>(c) Fair Share Housing - There really is no longer any viable low income single family or condominium type housing available in New Jersey if not in the United States. The Mt. Laurel decision does not in fact mandate low and moderate income housing but only a fair share of present and prospective regional need, whether that need be low, moderate, or high income housing. Also, the burden should not be placed on the developer, but should remain with the municipality to provide its fair share of regional housing. | David Fisher, N.J. Builders Association | Unless reliance is public housing, the sector developer m the role in providi and moderate income Recognizing the sc the problem the pol requires the provi some "least cost" h however expensive cost" may be, where feasible. |
| 212.<br>(c) Fair Share Housing - Is this realistic to considering the high cost of the lot in such areas, i.e., requiring a sizeable proportion of the less-cost housing. | N.J. Marine Sciences Consortium | This is economical cult, or at least -able, and so litt Addressed by the p sector. The need support to ensure housing for low an income people is, a State objective. |
| 213.<br>(c) Fair Share Housing - Emphasis should not be put on the Housing Allocation Report as the arbiter of a particular municipality's compliance with the intent of the Mt. Laurel decision. | Department of Community Affairs | It is one factor t be considered. |
| 214.<br>Throughout the program, it is stated that housing is not a water-related use. I feel the program should mention the attractiveness of water adjacent to housing. | David Fisher, N.J. Builders Association | The program does waterfront housing policy on wat bord (7:7E-3.15) and th policy for special areas (7:7E-3.18). |

| Comments | Commentor | Response |
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| 7:7E-7.2 HOUSING USE POLICIES - Continued | | |
| 215.<br>Policy fails to recognize that housing can enhance the economic vitality and quality of life within a waterfront community. Enhancement could occur by recycling unused facilities back into productive functions. As the policy is now written this would not be allowed. We strongly urge a change in the language to make possible the realization of substantial public benefits in appropriate cases. | The Port Authority of N.Y. and N.J. | Agreed. See revised language in Housing Use Policy 7:7E-7.2(b). |
| 216.<br>(h) High Rise Housing - We suggest adding the following to policy (vi): "However, consideration will be given to mitigating and compensating measures within an overall development program which would offset any adverse impact related to a specific structure within that development". Also, add the word "overall" before "adverse" on the first line. | The Port Authority of N.Y. and N.J. | This is the effect of the definition of "discouraged" (see 7:7E-1.6(c)(4)). |
| 217.<br>(h) High Rise Housing - Policies (i) through (v) appear overly restrictive. We suggest that they be made flexible enough to permit individual communities to consider appropriate alternative conditions. | The Port Authority of N.Y and N.J. | These policies do not prohibit high rise housing and serve to protect public use and view of the water. |

| Comments | Commentor | Response |
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| 7:7E-7.2 HOUSING USE POLICIES - Continued | | |
| 218.<br>(h) High Rise Housing - No interpretive latitude is permitted. A high rise would not be permitted where it might "block the view of a skyline or river" even though it met all other acceptability conditions. Inasmuch as a high rise is a contributing portion of a skyline, a properly constructed one may enhance the view. | John J. Horn, Commissioner, Department of Labor and Industry | There has been wide public concern abou visual impact of va high rise buildings policy does provide bility, allowing hi in areas where they compatible with exi buildings. |
| 219.<br>(i) Large Scale and Multi-Use Development - We understand that the present document is serving as a request for public comment on whether or not the State should redesignate all or parts of Galloway and Egg Harbor Townships from low growth to high growth areas. That subject should be covered in a separate document, rather than buried among hundreds of pages that few will read and even fewer will realize is so important. | American Littoral Society | While your understa correct that this i legal form for pro amendments to the c policies, many revi did comment upon th proposal in the DEI has been thoroughly in public meetings to preparing the DE |
| 220.<br>(i) Large Scale and Multi-Use Development - It is unclear on what basis a conclusion is reached that a large scale multi-use development should be discouraged in low and moderate growth regions unless that housing is adjacent to an existing developed area in a moderate growth region. In many cases large scale multi-use development is extremely efficient and | David Fisher, N.J. Builders | The policy on Large Multi-Use Developer been changed to en such developments size makes it possi take full advantage the possibility of tract. They are a mitted in Limited Growth Regions exc environmental sensi is high. |

| Comments | Commentor | Response |
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| **7:7E-7.2 HOUSING USE POLICIES - Continued** | | |
| 220. - Continued should probably be allowed in low and moderate growth regions so long as appropriate environmental safeguards are included. | | |
| 221. (i) Large Scale and Multi-Use Development - Large-scale multi-use developments should be conditionally acceptable in any region so long as the other Resource and Development policies are met. Such developments can be designed to foster energy conserving life styles, protect open spaces, minimize clearing, use community sewerage systems, and are extremely cost effective. | Atlantic City Development Corporation | Agree. See revised policy 7:7E-7.2(i). |
| 222. (i) Large Scale and Multi-Use Development - If the policy on large scale development is changed, the change should not apply to projects consisting of large scale assemblies made under the existing policy. Such developments should be exempted from the policy change provided a formal pre-application meeting was held prior to implementation of the new rules. | M. Hudson, Atlantic City Development Corp. | The policy that applies is that in place at the time an application found complete for review. The policy has been changed, but has been made more explicit, not more restrictive. |
| 223. (i) Large-Scale and Multi-Use Development - I request that CAFRA specifically and thoroughly address the probable and statistical, primary and secondary impacts (natural, social and economic) of discouraging innovative large scale projects in low-moderate growth regions while encouraging a proliferation of uncontrolled, 24 lot traditional subdivisions. | Roger Wells, Roger Wells, Inc. | Note revised Large-Scale Planned Residential Development Policy which does not discourage such projects. The purpose of the policy on regional Growth Ratings is to encourage development to concentrate prima in areas nearest emp ment centers (Downto Regions) and secondar in areas slightly fu away (Extension Reg Goals include energy through reduced cons tion and least cost through clustering. |
| **7:7E-7.3 RESORT/RECREATIONAL USE POLICIES** | | |
| 224. Public access to the waterfront can be achieved through regional facilities; a park in every town is not necessary. In towns with totally developed commercial waterfronts how would DEP decide whose land to condemn? What funds are available for property compensation? | Al Mogerly, N.J. Independent Liquid Terminals Assoc. | The CMP does not in that commercial/indu properties be conde parks. It requires lands are available first choice, if cha recreation, be park This implies a gradu process, so that wa parks would not be with the passage of program, but as lan available. |
| 225. (b) Recreation Priority - I encourage the provision that parkland should be developed in each community on the northern waterfront. Additional development of parklands should take place throughout the rest of the coastal zone in a feasible manner. | Department of the Public Advocate | Agreed. Policy 7:7 calls for a waterfr in each municipality less of where the mu pality is located. |
| 226. (d) Marinas - I would hope that maximum encouragement can be provided to entrepreneurs who are willing to undertake new marinas if they can demonstrate use of modern technology. | N.J. Marine Sciences Consortium | Agreed. The encour of new technology w require further stu cannot be included policies proposed a time. However, dur DEP will be undertak marina siting study will lead to revisi the Marine Use Poli |

| Comments | Commentor | Response |
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| 7:7E-7.2 HOUSING USE POLICIES - Continued | | |
| 227.<br>(e) - Amusement Piers - We disagree with the policy on amusement piers, parks, and boardwalks found in N.J.S.A. 7:7E-7.3(e). There is no appreciation of the fact that amusement piers are an essential part of the economic base of the tourist industry in New Jersey, one industry unusually protected by the Division. This should be recognized and new amusement parks should be conditionally acceptable. | David Fisher, N.J. Builders Association | This policy does not deny that amusement piers are vital to the tourist economy. It places conditions on their expansion, and discourages new piers since there is adequate capacity for amusement activity on existing piers and boardwalks. |
| 228.<br>(e) Amusement Piers - The phrase "and the on-site improvement or repair of existing amusement piers, parks and boardwalk areas" should be deleted from the policy on "Amusement Piers, Parks and Boardwalks". Contrary to the proposed policy, the upkeep and maintenance of the above mentioned areas enhance their value to the area and maintain an adequate safety level. | Cape May County Planning Board | Disagree. This policy does not prohibit the maintenance of the use, but only sets out criteria for this maintenance, repair or expansion. |
| 7:7E-7.4 ENERGY USE POLICIES | | |
| NOTE: The New Jersey Department of Energy provided detailed comments which were used to revise the Energy Use Policies. These revisions made the policies more specific and clarified, rather than changed the intent and direction of the policies. Specifically, Policy 7:7E-7.4(e) was revised to include language that OCS oil and gas exploration is encouraged only if no long-term adverse impacts will result; Policies 7:7E-7.4(i) Gas Separation and Dehydration Facilities, 7:7E-7.4(k) Gas Pigging Facility, and 7:7E-7.4(l) Gas Processing Plants were drafted in response to NJDOE comments; Policies 7:7E-7.4(i) Gas Separation and Dehydration Facilities and 7:7E-7.4(m) Other Gas-Related Facilities were drafted by NJDOE and adopted without substantive change; and Policy 7:7E-7.4(r) LNG Facilities cites the standards of the Pipeline Safety Act in response to NJDOE comment. | | |

| Comments | Commentor | Response |
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| 7:7E-7.4 ENERGY USE POLICIES - Continued | | |
| 229.<br>The new policy on the storage of crude oil, gas, and potentially hazardous liquid substances would deem such facilities "not acceptable along most of the water's edge as they are not water dependent". This conclusion as applied to our business is wrong. We are water dependent. We handle water-borne commodities and must locate along the water's edge. | Al Hogecly, N.J. Independent Liquid Terminals Assoc. | This is recognized policy which states acceptable on fille edge"; any docking satisfies this test Landing LNG is wate pendent, while stor not. |
| 230.<br>Policies related to onshore support bases, platform fabrication yards, pipe coating yards and tanker terminals should explicitly prohibit such uses in the BOSS area. Policies leave openings by which OCS development might enter the Bay and Atlantic Coast area. Use of "case-by-case" review and the undefined terms "built up" and "less developed" areas creates a potential for misinterpretation of coastal policies. The distinction between the BOSS area and the urban coast should be used consistently. | Natural Resources Defense Council | Disagree. The poli remain as it was in BOSS because while and ocean shore are significant, and pe unique, opportuniti enjoyment of natura it likewise represe tinct opportunities related activities water and/or port d However the CMP rec the general incompa of the OCS-related cited and natural r based activities, regard, the distinc between the BOSS ar the urban coast is appropriate since p of the bay and ocea are clearly urban. |
| 231.<br>We are pleased that the Division's agreement with DOE lets it retain considerable control over the siting of pipelines so that destruction of wetlands and shellfish habitats can be prevented. | League of Women Voters of N.J. | No response necessa |

| Comments | Commentor | Response |
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| 7:7E-7.4 ENERGY USE POLICIES - Continued | | |
| 232. In order to deal with air pollution problems, I suggest non-development of coal-fired generating plants in urban areas of the coastal region. | Michael Bryce, Department of the Public Advocate | Coal-fired electric generating plants are subject to State and federal air quality standards which are designed to either maintain or improve air quality. Air emissions from coal-fired plants generally exceed allowable limits in urban areas, and therefore, plant development would be precluded. |
| 233. No input from environmental groups was included in County Coastal Energy Studies, used in forming the proposed Energy policies. The energy studies do not reflect local opinions. | Audrey Zapp, Hudson County Citizens for Clean Air | The county energy facility planning studies conducted in 1978 to which you refer were intended to secure the perspective of the individual counties and their constituents which include "local" and environmental interests. Although the extent to which these views were incorporated into the studies varies, the State uses several other mechanisms for securing these views on a continuing basis. These include both formal and informal means such as public hearings, citizen advisory committees, workshops and individual correspondence. See Appendix A. |
| 234. The entire chapter on energy siting should be deleted until the Hudson River Waterfront Commission and the Mayors of Hudson municipalities can make an acceptable energy facility plan with DEP. | Nancy Richardson, Bayonne Against Tanks | Disagree. While additional views of the residents and public officials of the Northern Waterfront are welcome, the issue of what energy facilities should be placed where is clearly a statewide concern. Thus, the views of Northern Waterfront residents and officials must be considered in conjunction with those of residents elsewhere in the State, and in the nation. |

| Comments | Commentor | Response |
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| 7:7E-7.4 ENERGY USE POLICIES - Continued | | |
| 235. Should any mention be made of relations to the Coastal Energy Impact Program or Coastal Energy Impact Fund anywhere in this sub-chapter? | N.J. Marine Sciences Consortium | The CEIP is descri under item 6, "Reg and Planning of En Facilities", withi section entitled " Program Authoritie Management System Although the CEIP funding essential implementation of policies, it does itself create ener which is made by D DEP. |
| 236. (b) General Energy Facility Siting Procedure - (iii) - A federal/state conflict in preemption could occur with those energy facilities that are federally controlled. At some time, it would appear that the courts will have to resolve this issue if they have not yet done so. Recognition of this should be included in the DEIS. | James A. Palmisano, Public Service Electric and Gas Co. | There are no energy ties from which St is completely pre- Policies on siting electrical generat tions and LNG faci cite relevant fede mitting requiremen the relationship b federal and State mitting is discuss the section on Fed Consistency (Part Chapter 5). |
| 237. (b) General Energy Facility Siting Procedure - A policy for the DEP to conduct an analysis of practicable alternatives should be added to (iii). | Natural Resources Defense Council | See revised langua which incorporates suggestion. |
| 238. (d) Onshore Support Bases - A conditional approval was suggested in the draft for emergency oil spill tanks in the Ray-Ocean Shore Region. In view of the sensitive nature of this area we would recommend that this conditional approval be reconsidered. | Michael Bryce, Department of the Public Advocate | The policy allows containment equipm cifically because tivity of the Atla and Delaware Bay c an immediate respo spills. |

| Comments | Commentor | Response |
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| 7:7E-7.4 ENERGY USE POLICIES - Continued | | |
| 239.<br>(a) Platform Fabrication Yards and Module Construction - (1) It is unclear what is meant by "built up coastal areas of the coastal zone". If the intention is to limit this activity to areas of certain growth potential this should be specified. | The Port Authority of N.Y. and N.J. | The term "built-up" refers to areas where development, specifically industrial development, has already occurred. Growth potential is not implied. |
| 240.<br>(d) Onshore Support Bases - "Crewboats and helicopters" are important components of the onshore support of OCS related facilities and should be included in the list of facilities. | The Port Authority of N.Y. and N.J. | Agreed. See revised Policy 7:7E-7.4(d)(1). |
| 241.<br>(h) Pipelines and Associated Facilities - The policies on oil and gas pipelines in the Central Pine Barrens Area are inconsistent with the apparent intention of the Plan to guide new growth to already developed locations. We recommend that those policies be amended to provide that, once a pipeline corridor is designated for any use, it ought to be concurrently evaluated for all possible uses. | The Port Authority of N.Y. and N.J. | This is the intent of the policies to minimize the number of pipeline corridors and to locate them near existing rights of way. |
| 242.<br>(h) Pipelines and Associated Facilities - 7(iii) - The prohibition of pipeline corridors for landing oil, and discouragement of natural gas pipelines corridors, in the Central Pine Barrens of New Jersey, are based on N.J.A.C. 7:9-4.6(i), (j), and N.J.A.C. 7:9-10.1(b). These references are not included in the Plan's Appendix E of legal authorities and they should be added. | The Port Authority of N.Y. and N.J. | The cited rules are not a basis for the Pipelines and Associated Facilities policy, but are water quality standards with which the coastal policy is consistent. These standards are described in the Management System Chapter. |

| Comments | Commentor | Response |
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| 7:7E-7.4 ENERGY USE POLICIES - Continued | | |
| 243.<br>(h) Pipelines and Associated Facilities - 1(v) - Evaluation of OCS pipelines in terms of the potential New Jersey pipeline corridor is unclear. The implications are that the evaluation will be solely based on impacts of the whole pipeline. Policy should recognize the national implications of the pipeline as stipulated in the Memorandum of Understanding Between New Jersey DOE and DEP (August 22, 1978). | The Port Authority of N.Y. and N.J. | As stated in the M is responsible for mining the necessi energy facilities, into consideration national interest. is then responsibl evaluating the alig for pipelines and facilities found needed by DOE. Th policy on pipeline consists of siting tr intended to account national interest |
| 244.<br>(h) Pipelines and Associated Facilities - If a pipeline is built from off-shore drilling the tightest of controls should be utilized. The impact oil slicks could have on the tourism industry would be devastating. The declining fish industry could also be further impacted by varied oil spills. | Michael Bryce, Department of the Public Advocate | Agreed. Pipelines most reliable metho transporting oil f offshore production Concerns about both and the fisheries were the basis for piping to tankering barging of offshor |
| 245.<br>(h) Pipelines and Associated Facilities - 1(i) - The quantity of recoverable reserves and the offshore location of geologic structures should play a role in the number and designation of pipelines, in addition to considerations of safety and conservation of resources. Policy should also acknowledge the probability of natural gas pipelines from the OCS, and estimate how many may be necessary. | The Port Authority of N.Y. and N.J. | NJDEP is currently ducting a pipeline study, but a truly prehensive, regiona planning approach transporting OCS a resources would no possible until the tion, amount and n these resources ar explored and under In the interim the policy ensures a b between the nation cost in exploring t the interest in pr New Jersey's coast |

| Comments | Commentor | Response |
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| 7:7E-7.4 ENERGY USE POLICIES - Continued | | |
| 246.<br>(i) Oil Refineries and Petrochemical Facilities - Why must the State Department of Energy "determine" that there is a need before a new petrochemical facility can become "conditionally acceptable" in areas outside of the Bay and Ocean Shore? | G. Deutsch, N.J. Business and Industry Assoc. | It would be immaterial to approve an energy facility, conditionally or otherwise, if there is no need for the facility. Note that "need" is defined very broadly in this context. See Section 7.4(b)1.(ii). |
| 247.<br>(j) Oil Refineries and Petrochemical Facilities - We agree that locating refineries and petrochemical facilities in the Delaware River or Northern Waterfront Areas would help protect less developed portions of the coastal zone. The Plan, however, does not address the problems of finding sufficient vacant space in these areas to accommodate new facilities or even expansion of existing facilities. | The Port Authority of N.Y. and N.J. | The Program does address this issue by requiring that water's edge development not preclude a potential water dependent activity. |
| 248.<br>(i) Oil Refineries and Petrochemical Facilities - No oil refineries and onshore facilities should be located in Jersey City. | Joseph R. Duffy, Historic Paulus Hook Assoc. | DEP and DOG will have to respond to specific proposals. Some onshore facilities have minimal environmental impacts and could benefit Jersey City. If such facilities are needed, they should be located in accordance with the second Basic Coastal Policy which requires a concentrated rather than dispersed pattern of development. However, they would also have to be consistent with policy 7:7E-8.15, Buffers and Compatibility of Uses. |

| Comments | Commentor | Response |
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| 7:7E-7.4 ENERGY USE POLICIES - Continued | | |
| 249.<br>We object to the encouragement of oil refineries, petrochemical facilities, and gas processing plants in the industrial areas of the coast. | Nancy Richardson, Anyone Against Tanks | See above response to R. Duffy. |
| 250.<br>(i) - The policies encourage oil refineries, etc. to locate in developed, industrial areas of the coast. Jersey City's zoning ordinance, however, prohibits oil refineries, petrochemical facilities and gas processing plants. | Catherine F. Grimm | Neither the State nor federal government has authority to override zoning ordinances with respect to the facilities cited except in the case of natural gas pipelines where federal authorities can preempt local and state authority. |
| 251.<br>(j) Gas Processing Plants - Policy should be adjusted to reflect the following intent: "Gas processing plants, including partial processing plants, between the offshore pipeline landfall and commercial natural gas transmission lines shall be excluded from the Central Pine Barrens critical area and shall be discouraged in the Bay and Ocean Shore Segment". | The Port Authority of N.Y. and N.J. | The suggested language differs slightly from intent. Gas processing plants are prohibited in both the Central Pine Barrens critical area and the bay and ocean shore segment. New or expanded facilities are encouraged in existing industrial areas where conflict with recreational and resort areas will be minimal. |
| 252.<br>(j) Gas Processing Plants - To exclude gas processing plans from the Bay and Ocean Shore Segment to the maximum extent practicable seems inconsistent with Policy (h)(vi) on page 199, which specifically excepts "major gas processing plants and required compressor stations" from the prohibition of ancillary facilities associated with offshore oil and gas pipelines in the Bay and Ocean Shore Segment. | The Port Authority of N.Y. and N.J. | Disagree. Policy (j) such facilities only maximum extent practicable. This is consistent with exception for such facilities from prohibition policy (h). |

| Comments | Commentor | Response |
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| 7:7E-7.6 ENERGY USE POLICIES - Continued | | |
| 253.<br>(k) Storage of Crude Oil, Gases and Other Potentially Hazardous Liquid Substances- The new policy on the storage of crude oil, gas and potentially hazardous liquid substances would deem such facilities "not acceptable along most of the water's edge as they are not water dependent". This conclusion as applied to our business is wrong. We are water dependent. We handle water-bourne commodities and must locate along the water's edge. | Al Mogerly, N.J. Independent Liquid Terminals Association | Although many companies that offer storage facilities for such substances handle water-bourne commodities, this is often only one component of their business. Further, while economies of scale may be realized by firms that consolidate land-based and water-bourne commodities, this consolidation (which does require a coastal location) represents added public costs in the form of environmental and recreational losses. See revised language. |
| 254.<br>(k) This policy indicates no comprehension of the nature of terminal business which is clearly water dependent. Without access to ship and barge transportation, most bulk liquid storage terminals would not be economically viable. | GATX Terminals Corporation | See above response to Al Mogerly. |
| 255.<br>(l) Tanker Terminals - It is not clear how the construction and placement of a deepwater port could "cause severe adverse primary and secondary impacts on the built, natural and social environment". | The Port Authority of N.Y. and N.J. | One of the primary objectives of N.J. DOS's deepwater port study is to identify and evaluate the impacts of the facility. A more detailed discussion of the impacts of deepwater ports on the built, natural and social environment must await the study's completion. |
| 256.<br>(l) Tanker Terminals - If a deepwater port were proposed in federal waters, with a pipeline proposed along a right-of-way in the Bay and Ocean Shore | The Port Authority of N.Y. and N.J. | True. Such a project could be approved if it met all other applicable Coastal Policies. |

| Comments | Commentor | Response |
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| 7:7E-7.6 ENERGY USE POLICIES - Continued | | |
| 256. - Continued<br>Segment (outside the Central Pine Barrens area), it would appear to be within the realm of acceptance according to Policy (h)(ii) and (iii) on pipelines. | | |
| 257.<br>Several refinements to 7:7E-7.6(l) are suggested:<br>1. A distinction should be made between deepwater ports and tanker terminals, since a deepwater port is not likely to be proposed in New Jersey State Waters, and a tanker terminal could be.<br>2. A policy on deepwater ports should specify the kinds and magnitudes of impacts on the New Jersey coastal zone that would elicit discouragement from the New Jersey Coastal Management Program.<br>3. The deepwater port policy should distinguish between transportation to shore either by tankers or by a marine pipeline, because the transportation modes have distinctly different implications for the coastal zone.<br>4. Because a deepwater port located beyond state territorial water with a pipeline to shore may have minimal impacts during construction and may actually reduce the frequency of oil spills during operation, the New Jersey Coastal Program should seriously consider conditionally accepting this kind of facility. | The Port Authority of N.Y. and N.J. | 1. Even if a deepw<br>were not constructe<br>the State's 3 mile l<br>would undoubtedly in<br>coastal zone. Requi<br>federal permits and<br>vals would, therefo<br>subject to consistenc<br>New Jersey's Coastal<br>ment Program. Only<br>last sentence of the<br>addresses deepwater<br>2. A deepwater port<br>posal would be a ma<br>unique proposal. It<br>require an environme<br>assessment to deter<br>whether any of its<br>or secondary impacts<br>be inconsistent with<br>coastal policies.<br>3. Tankering would<br>to meet any relevant<br>such as this policy<br>terminals, and poli<br>dredging if required<br>pipeline would have<br>the policy on Pipel<br>Associated Facilitie<br>4. The study refer<br>above will assess b<br>advantages and disa<br>of deepwater ports.<br>tions in marine oil<br>is clearly an import<br>advantage of deepwa<br>which is being cons<br>in the study. Deep<br>ports must remain d<br>until completion of<br>NJDOS study because<br>numerous potential<br>If the study confirm<br>safety the policy w<br>revised. |

| Comments | Commentor | Response |
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| 7:7E-7.4 ENERGY USE POLICIES - Continued | | |
| 258.<br>The policy rationale on page 203 for "storage facilities for hazardous substances" is now amended to include "potentially hazardous substances". What is potentially hazardous and how will that term be applied? | Al Hagerty, N.J. Independent Liquid Terminals Association | The definition of potentially hazardous substances is referenced in the policy 7:7E-7.4(e) (formerly (k)) and is from the Spill Compensation and Control Act (N.J.S.A. 58:10-23.11). The policy will be applied to all new or expanded facilities as detailed in this section. See revised language. |
| 259.<br>(m) Electric Generating Stations - The proposed policy for nuclear generating stations omits any concern for the proposed storage method for spent fuel. There is increasing local concern near the plants that a disposal method will not be available in the near future. I trust that DEP accepts that the proper storage of spent fuel is a relevant concern in approving nuclear plants if there is no permanent disposal method in the foreseeable future. | Salem County Planning Board | While NOAA and DEP share this concern, CAFRA does not give DEP authority to review storage of spent fuel, unless the storage would occur in the coastal zone. This is primarily the responsibility of the NRC licensing process, though DEP may chose to comment through the federal consistency process. |
| 260.<br>(m) Electric Generating Stations - We approve of a buffer zone around nuclear facilities and restrictions on the handling of spent fuel, but are not satisfied that federal regulations are sufficiently strict. | League of Women Voters of N.J. | The effectiveness of both federal regulations and enforcement capabilities is a key issue in the debate on the safety of nuclear power plants. Any concerns about this issue would be best directed to the Nuclear Regulatory Commission. |

| Comments | Commentor | Response |
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| 7:7E-7.4 ENERGY USE POLICIES - Continued | | |
| 261.<br>(n) LNG Facilities (i) - The phrase "unduly endanger human life and property" is extremely broad and does not give applicant a specific goal for risk level. The DEIS should give adequate support for the risk level or danger that it expects to achieve. | Public Service Electric and Gas Co. | The actual language of CAFRA statute is a broader requiring be constructed "so neither endanger h life ..." N.J.S.A. The word "unduly" nition of federal under the Pipeline of 1979 and other regulations regula aspects of LNG ope |
| 262.<br>(n) LNG Facilities - The idea of handling the location of LNG facilities on a regional inter-state basis with due consideration being given to their confinement to non-sensitive areas and those that are not heavily populated seems like the only feasible way of managing the real and potential problems they create. | League of Women Voters of N.J. | Agreed. Considera national interest in accordance with line Safety Act of ensures interstate ations will be giv siting. See also sion of LNG facili the discussion of Interests in Part Chapter 5. |
| 263.<br>(n) LNG Facilities - We are in agreement with the draft's recommendation that LNG facilities should not be located in the coastal zone. Specifically, such facilities should not be located near any form of dense population. | Michael Bryce, Department of the Public Advocate | Disagree. The pol allow LNG in the c zone if need and f safety criteria ar Population density of the factors con in siting. |
| 264.<br>(n) LNG Facilities (i) - "generally remote ... areas where ... buffer zones are likely to be maintained" is meaningless. Without definition, an owner cannot know what is acceptable. Support for the definition should be included. | Public Service Electric and Gas Co. | Disagree. Given t tremely limited nu LNG facilities lik proposed in New Je sites can be deter case by case basis |

| Comments | Commentor | Response |
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| **7:7E-7.4 ENERGY USE POLICIES - Continued** | | |
| 265.<br>(n) Liquefied Natural Gas (LNG) Facilities - Rationale<br>1) We are not aware of any official N.J. policy on LNG facility siting.<br>2) Federal LNG siting standards have been issued by the Department of Transportation.<br>3) Petition RM76-13 has been dismissed by the Federal Energy Regulatory Commission.<br>4) The LNG facility on Staten Island exists in fact and is not a proposal as were those at West Deptford and Logan, which were dismissed and should not be referred to as though they were active proposals.<br>5) The DEIS prepared for West Deptford can't be used to condemn all LNG facilities; it is very site and project specific. The authors appear to have a complete lack of understanding of risk analysis. | James A. Shissias, Public Service Electric and Gas Co. | 1) Agree. This policy is state policy for siting in the coastal zone. Reference to "New Jersey's policy" has been deleted.<br>2) DOT standards are acknowledged in the rationale, paragraph 2.<br>3) Reference to RM76-13 has been deleted.<br>4) Reference to West Deptford and Logan proposals have been deleted.<br>5) See answer to 4) above. DEP will rely on federal guidelines where appropriate, in meeting its mandate to protect public health and safety. |
| **7:7E-7.5 TRANSPORTATION USE POLICIES** | | |
| 266.<br>Develop a new mass transit in the coastal zone, including complete mini-subway through the Hudson River region (Ft. Lee to Bayonne) and reinstate the Ferry Service in the Hudson River region to help deal with air pollution. | Department of the Public Advocate | Such uses are encouraged in the policy document but would not be initated by DEP. |

| Comments | Commentor | Response |
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| **7:7E-7.5 TRANSPORTATION USE POLICIES - Continued** | | |
| 267.<br>We question the statement in the rationale that the coastal zone is adequately served by the existing road network. Anyone who travels the Garden State Parkway in the summertime knows that that road is not adequate and therefore the assumption in the rationale is faulty. | David Fisher, N.J. Builders Association | To provide services for very high, short peak loads that are needed for the rest the year but that in growth further overl peak flow, is questi policy. |
| 268.<br>We question the insistance on construction of bicycle and foot paths under certain circumstances as found in N.J.A.C. 7:7E-7.5, because bicycle and foot paths are certainly not unique to the coastal area and therefore not within the jurisdiction of the Division. | David Fisher, N.J. Builders Association | While not uniquely c bicycle and foot pat consistent with the of promoting public to, and use of the c zone. |
| **7:7E-7.8 MINING USE POLICIES** | | |
| 269.<br>The last sentence of the rationale is "insulting to the mining industry" and can be removed, especially since the previous sentence makes the intended point. | Mining Industry Representatives | The sentence has bee removed. |
| **7:7E-7.9 PORT USE POLICIES** | | |
| 270.<br>(a) 1, (iv) - On the second line insert "existing and potential" before "depth". | The Port Authority of N.Y. and N.J. | Disagree. Port fac should not be locat waters with inadequ depths, even if navi could potentially be |

| Comments | Commentor | Response |
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| 7:7E-7.9 PORT USE POLICIES - Continued | | |
| 271.<br>Rationale - It does not appear to us that New Jersey's waterfront industrial structure, with the prime exception of petrochemicals, is conducive to the barge transfer of ocean dry cargoes. | The Port Authority of N.Y. and N.J. | Agreed. However, the industrial capacities of the waterfront may increase. |
| 272.<br>As the ability to dredge becomes hampered through objections, regulations, and the consumption of acceptable disposal areas, it will be necessary for some port activities to relocate to areas with naturally deep water or where dredging requirements are minimized. In contrast to this, the proposed regulations enunciate a policy which looks to freeze present port activities to present locations. | New Jersey Alliance for Action | The policy permits new port activities outside of existing ports where expansion of the existing port is not feasible. |
| 273.<br>Definition - Delete "publicly utilized". | The Port Authority of N.Y. and N.J. | Agreed. See revised definition. |
| 274.<br>Policies - (iii) The question of responsibility for cost needs resolution. | The Port Authority of N.Y. and N.J. | The inclusion of some public waterfront access in port and other development proposals should not add significantly to development costs and should be paid for by the developer. |
| 275.<br>Policies - (ii) - On the third line substitute "suitable" for "sufficient". | The Port Authority of N.Y. and N.J. | Agreed. See revised language. |

| Comments | Commentor | Response |
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| 7:7E-7.9 PORT USE POLICIES - Continued | | |
| 276.<br>Policies - (v) - This policy should be expanded to rate the listed activities as also acceptable in the Northern Waterfront Area. In particular, commercial fishing is an important economic development opportunity which should be permitted and encouraged, where feasible, in the Northern Waterfront Area. | The Port Authority of N.Y. and N.J. | See revised policy rates the activiti acceptable in smal cial harbors throu the coastal zone. |
| 7:7E-7.10 COMMERCIAL FACILITY USE POLICIES | | |
| 277.<br>(e) Parking Facilities - To deal with air pollution problems, parking lot development or enlargement in in the coastal zone should be formally discouraged rather than conditionally approved. | Department of the Public Advocate | Parking lot develo contribute to hea and public transpo in the case of par lots. Parking lo reasonable size ar in conjunction wit ment not adequatel by public transpor Note that parking is now part of Tra tion Use Policy, s 7:7E-7.5. |
| 278.<br>It is difficult to understand why barrier islands, as a generic category, are lumped together with the high growth regions in the commercial facility use policy which states that convention centers and arenas are conditionally acceptable in these areas. Major facilities on barrier islands should be discouraged. If it is found desirable to make exceptions in special cases such as Atlantic City, these areas should be identified by name. | Monmouth County Environmental Council | Agreed. See revis which states that tion centers and discouraged on bar islands. |

| Comments | Commentor | Response |
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| **7:7E-7.10 COMMERCIAL FACILITY USE POLICIES - Continued** | | |
| 279.<br>The policy for "Convention Centers and Arenas" is too restrictive. The reason for this is two-fold. First, Cape May County is a moderate growth region therefore these facilities would be discouraged. Second, the requirement of the facility being capatible in scale, size design, and architecture with surrounding development is, for the most part, infeasible for Cape May County. | Cape May County Planning Board | Disagree. New convention centers or arenas in barrier island cities such as Ocean City or Wildwood would induce further growth on already crowded barrier islands. New convention centers outside of a highly developed commercial/recreational area would lead to recreational sprawl. Note that improvements to existing convention centers are not discouraged. |
| 280.<br>In the policy for "Parking Facilities" the phrase "landscaping with indigenous or preferred species is maximized", should be added following the words "surfaces is minimized". | Cape May County Planning Board | Agreed. See Policy 7:7E-7.5(e). |
| 281.<br>There may be instances where a hotel or motel may not be consistent with all of the listed conditions but may still be beneficial to the local community and contribute to the significant physical and economic improvement of the Coastal Zone. | The Port Authority of N.Y. and N.J. | See revision to policy dealing with hotels or motels in Special Urban Areas. |
| **7:7E-7.11 COASTAL ENGINEERING** | | |
| 282.<br>(e) Structural Shore Protection - The clarification of the Use Policy which deals with the maintenance or reconstruction of existing retaining structures is beneficial. | Cape May County Planning Board | Thank you. |

| Comments | Commentor | Response |
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| **7:7E-7.11 COASTAL ENGINEERING - Continued** | | |
| 283.<br>We note that the Department has eliminated the requirement that structures "protect and enhance" public access and hope that the Department will consider this need in reviewing future applications. | Monmouth County Environmental Council | This is not a weak public access poli recognition that a protection structu in the public inte our "encouraging" pu All public monies be spent at the le edge that deal wit tial restriction o will require that structures provide access. Where no monies are involve development must m the requirements o Public Access Reso Policy. |
| 284.<br>We question from where the eighteen inch criteria was derived for the reconstruction of existing remaining structures. | David Fisher, N.J. Builders Association | It was derived fro Corps of Engineers regulations on mai and expansion of e bulkheads. |
| 285.<br>Riprap may be impractical when it is between two existing bulkheads. | David Fisher, N.J. Builders Association | Riprap is preferre policy does not in its use between tw bulkheads. |
| **7:7E-7.12 DREDGE SPOIL DISPOSAL** | | |
| 286.<br>Policy - Since the environmental implications of ocean vs. land disposal are still under study, this policy should be held in abeyance until the major issue is resolved. | The Port Authority of N.Y. and N.J. | The present polici disposal on land o are conditionally a able. New require which may result fr studies will be inc into revision of p |

| Comments | Commentor | Response |
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| 7:7E-7.12 DREDGE SPOIL DISPOSAL - Continued | | |
| 287.<br>In Policy (1), clean dredged material should be exempted from the capping requirement. | The Port Authority of N.Y. and N.J. | To insure that adopted vegetation of surrounded area can succeed on the area that has been filled, the top soil should have a similar texture with the surrounding soils. This will result in more rapid restoration of the site. |
| 288.<br>The dredge spoil disposal policy seems appropriate and reasonable, as amended. However, there are substantial impacts of Federal dredge spoil areas which are not being regulated. As stated on page 249, "activities on federal lands having spillover impacts ... will require review independent of any existing program." It is unclear how, or if, the Division of Coastal Resources intends to enforce regulations with respect to these dredge spoils disposal areas. | Salem County Planning Board | NOAA regulations require Federal Consistency Certification for activities on federal lands which have spillover impacts. Federal agencies are required to notify states of proposed activities in or affecting a state's coastal zone, and New Jersey DEP will review and comment upon such proposals in terms of their consistency with the Coastal Resource and Development Policies. |
| SUBCHAPTER 8 RESOURCE POLICIES | | |
| 289.<br>The application of the Resource Policies on a generalized basis to the industrialized areas is inappropriate. This area is not a source or habitat for fish and wildlife and is not a source for drinking water. There are sufficient controls on industry under present air and water pollution statutes. Further regulation along this line is going to discourage location or expansion in these areas by commercial or industrial interests. | N.J. Petroleum Council | If an area does not contain particular resources, the policies on those resources are not used. If a particular area is not the location of particular special areas, then those policies could not apply to project reviews in this area. |

| Comments | Commentor | Response |
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| SUBCHAPTER 8 RESOURCE POLICIES - Continued | | |
| 290<br>7:7E-8.1, 8.2, 8.3 - Is not this treatment redundant upon paragraphs 7:7E-3.2, 3.3, 3.4, and 3.5? | N.J. Marine Sciences Consortium | The resource polic reinforces the loc policies. While t tion policies ref specific areas of concern, the resou policies are more their intent and p tool to manage im fisheries and shel which may not be s strictly to impact limited areas. |
| 7:7E-8.4 SHELLFISHERIES | | |
| 291.<br>Policy, page 224 - Delete the word "potentially" from the three places it appears (once each in (i), (ii) and (iii). | The Port Authority of N.Y. and N.J. | Disagree. Deletio "potentially" woul this policy apply Special Area "Shel Beds". This polic deliberately weake Shellfish Beds Spe policy because it potentially produc areas. |
| 292.<br>We recommend that any development which would result in the destruction of a potentially productive shellfish area be prohibited rather than discouraged. With the present contamination and condemnation of many productive shellfish areas, the protection of potential new areas is vital. | American Littoral Society | Disagree. Such a would restrict dev in virtually all e waters. The "prob status should appl where there is a p productive shellfi which is insured t the Special Area P |

| Comments | Commentor | Response |
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| **7:7E-8.6 GROUNDWATER USE** | | |
| 293.<br>It is understood that availability of fresh water has been a serious consideration in shore-side development in New Jersey for a long time. Should not the quantity and quality of existing water tables be a serious consideration in granting permits for new development of all kinds? | N.J. Marine Sciences Consortium | It is. Policy 7:7E-8.6 is to be applied to all proposals and the Division of Water Resources reviews applications to establish that groundwater policies are satisfied. |
| 294.<br>The basis of the policy seems to be that all groundwater should be potable. We object to that premise and refer you to DEP. Docket No. 010-80-02 for comments by GATX and other on this case. | GATX Terminal Corporation | There is no such premise explicit or implicit. The goal is to prevent more potable groundwater from becoming non-potable from pollution or saline. |
| **7:7E-8.7 RUNOFF** | | |
| 295.<br>We find it inacceptable that there is no rationale given for the easing of runoff standards. As it stands this policy lacks the substance to guarantee that runoff standards will be adhered to. Under this policy a developer could use some aspect of best available technology claiming that he/she is meeting the spirit of the program, while the actual project runoff might be totally out of control. | N.J. Conservation Foundation | The best available technology requirement is needed to allow project review officers the flexibility to require the best feasible technique to deal with a specific situation. |

| Comments | Commentor | Response |
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| **7:7E-8.7 RUNOFF - Continued** | | |
| 296.<br>(a)(vi) should be modified to provide that detention basins or swales should avoid soils with a seasonal high water table less than three feet to the maximum extent practicable since the run-off policy can be met by placing detention facilities in the areas with seasonal high groundwater tables of less than three feet. This may adversely affect infiltration but the extent of this adverse affect must be based on a case by case analysis. | David Fisher, N.J. Builders Association | See Revised Wet Sc 7:7E-8.21, which i this concern. |
| 297.<br>We question the statement that porous paving is the best available technology, since this technology has not been proven in the field except in one isolated instance at a parking lot at the University of Delaware. We also question whether the standard in curve 39 is a practical one. | David Fisher, N.J. Builders Association | Porous paving is r quired, but is cit an example of a be available technolo with suitable subs conditions, tests this out. Experie shows that runoff 39 is practical wi reasonable runoff |
| 298.<br>We question the change in the Rationale from the word "may" to the word "will" because in certain circumstances storm runoff may not have an adverse affect on the items mentioned depending on the degree, etc. We also think that the sentence which is stricken indicating a degree of flexibility in storm water management should remain within the Rationale. | David Fisher, N.J. Builders Association | There is sufficie that improperly ma runoff causes degr impacts to merit ' The flexibility pe the performance ra has not diminished the deletion of a |

| Comments | Commentor | Response |
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| 7:7E-8.7 RUNOFF - Continued | | |
| 299.<br>We question the change in the slope percentage in 7:7E-8.8(b) from a minimum to 10 to 8 percent. | David Fisher, N.J. Builders Association | The original indication of 10% was an error. Slope maps have an 8% cutoff. |
| 300.<br>There should be a statement that CAFRA will defer to decisions of the Soil Conservation Service. As a practical matter this is CAFRA's practice and there is no necessity to attempt to usurp the jurisdiction of the Soil Conservation Service in this area. | David Fisher, N.J. Builders Association | This is not necessary because the Coastal Policies (7:7E-8.8) adopt the standards set by the State Soil Conservation Committee and local Soil Conservation Districts. |
| 301.<br>We question the definition of run-off because we believe that all precipitation except that which is evaporated eventually reaches surface water. | David Fisher, N.J. Builders Association | See revised definition which incorporates this concern. |
| 302.<br>The existing flexibility as now applied in CAFRA area is proposed to be deleted. No such deletion should take place since some interpretive latitude should properly be maintained. | John J. Horn, Commissioner, Department of Labor and Industry | The existing flexibility is not deleted. The language of the FEIS calls for Best Available Technology to minimize offsite runoff and sets out goals for maximum offsite impacts. This reflects current DEP practice. |
| 303.<br>N.J.A.C. 7:7E-8.7(b)(vii) provides for a design for twenty-four hour storm of twenty-five and one hundred years. When is the one hundred year design appropriate? We question the twenty-four hour portion of the standard, since this injects a factor that merely complicates calculation and does not have any real beneficial effect. | David Fisher, N.J. Builders Association | The 24 hour storm is a more rigorous requirement because the duration of heavy precipitation is longer. This was strongly advocated by the Soil Conservation Service to ensure that prolonged rainfall does not overflow the system. |

| Comments | Commentor | Response |
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| 7:7E-8.7 RUNOFF - Continued | | |
| 304.<br>We applaud the Department's goal of preventing excessive runoff. However, whereas flexibility is included in other sections of the proposed program, the flexibility in the provision is to be removed. The phrase "to the maximum extent practicable" provides flexibility and a necessary element of realism. We suggest that it be retained in Section 8.7ii. | G. Deutsch, N.J. Business and Industry Association | The runoff standa stated as goals n inflexible requir The chief requirem best available te used. |
| 7:7E-8.11 AIR QUALITY | | |
| 305.<br>Suggest a total reevaluation of the transportation plans for the coastal zone, because under present conditions and procedures it may be impossible for the ambient air quality standards to be met in numerous parts of the coastal zone. | Department of the Public Advocate | DEP will not unde reviews since it responsibility. T a requirement for approval since an portation facilit to receive a coas which would requi sistency with amb quality standards |
| 306.<br>We question the revision of the air quality policy. An analysis of air quality should be excluded except in the areas that are urban in nature or "hot spots" as defined by Federal EPA. | David Fisher, N.J. Builders Association | Disagree. Since of New Jersey is air-quality non-a area for at least pollutant and sta still becoming mo gent on the annua ment schedule req the federal guvec suggested revisio been made. |

| Comments | Commentor | Response |
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| **7:7E-8.12 PUBLIC SERVICES** | | |
| 307. We believe that CAFRA is overstepping its jurisdiction insofar as health services and educational services are within the province of the Department of Health and the Department of Education respectively. | David Fisher, N.J. Builders Association | Health, safety and welfare obligations are to be considered by DEP in reviewing CAFRA permit applications (Section 11 of CAFRA). |
| **7:7E-8.13 PUBLIC ACCESS TO THE SHOREFRONT** | | |
| 308. I encourage the provision that public access and enjoyment of the coastal region shore must be ensured. | Department of the Public Advocate | No response necessary. |
| 309. Improve present roadways in heavily populated areas to allow better access to the waterfront. However, great caution should be exercised in promoting another expressway through the northern waterfront area. | Department of the Public Advocate | Improvement of pedestrian and bike access is needed to improve waterfront access and is included in the coastal policies and secondary impact analysis would be required for any new road. |
| 310. I don't find anything in the proposed GMr addressing access to riverfronts. | Helen Richer | See policy 7:7E-8.13 Public Access to the Shorefront which addresses all coastal waterfronts including rivers. |
| 311. DEP is proposing linear waterfront strips for public access. What happens in the case of existing development like Colgate-Palmolive in Jersey City? | Catherine Grimm | Colgate-Palmolive has already contributed funds to the development of a DEP-sponsored park at the foot of York Street. More generally, in other cases of existing industry where waterfront access is not possible, the path will detour inland, until waterfront space is again available. |

| Comments | Commentor | Response |
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| **7:7E-8.13 PUBLIC ACCESS TO THE SHOREFRONT - Continued** | | |
| 312. We generally commend the plan's sensitivity to public needs along the developed waterfront by providing access wherever possible. Specifically it is suggested that the last sentence on page 233 might be better stated as "Shorefront development that promotes public access and the diversity of shorefront experiences is encouraged." | The Port Authority of N.Y. and N.J. | Disagree. The sug language would act weaken the propos because it would enable the State projects which bl access. The poli promotes public a |
| **7:7E-8.16 SOLID WASTE** | | |
| 313. The solid waste policy is unrealistic because this is not within the control of the developer and therefore the developer should not have to suffer for the lack of solid waste facilities. | David Fisher, N.J. Builders Association | CAFRA explicitly permits shall be if the proposed f "provides for the and disposal of trash and refuse manner as to mini adverse environm effects and the t the public health, and welfare (emph added). DEP cann fore, approve coa development until condition is met over, wise use of coastal zone deve sideration of the bility of such fa the review of oth |

| Comments | Commentor | Response |
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| **7:7E-8.17 ENERGY CONSERVATION** | | |
| 314.<br>8.17 implies that the State will have final say as to which energy conservation techniques will be implemented in coastal development areas and will determine the "anticipated energy utilization" for industrial processes. This will unreasonably interfere with industry's efforts to achieve energy conservation goals. | G. Deutsch, N.J. Business and Industry Associates | The policy has been revised to clarify that applicants will prepare energy plan. |
| **7:7E-8.20 HIGH PERMEABILITY MOIST SOILS** | | |
| 315.<br>The definitions and policy for high permeability moist soils is lacking clarity in certain areas. Questions as to which soils series are high permeability moist soils remain unanswered. The definition and policy for "High Permeability Moist Soils" needs to be modified in order to answer such questions. | Cape May County Planning Board | The policy on moist soils is a Resource Policy independent of Location Policies. These areas may be determined from the County Soil Survey or site inspection. Where moist soils overlap with Special Areas, the most restrictive policy applies. |
| 316.<br>We question why there should be any prohibitions on building in areas with seasonal high water table of three to five feet and also question what type of development would be acceptable in these areas. | David Fisher, N.J. Builders Association | There is no blanket prohibition. Development is to avoid these soils to the maximum extent practicable. The concern is rapid, unfiltered transmission of contaminants to wells and surface water. Development that does not endanger these resources would be accepta |

| Comments | Commentor | Response |
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| **7:7E-8.21 WET SOILS** | | |
| 317.<br>Detention basins, swales and other runoff recharge areas may in fact be viable in wet soils depending upon the nature of these facilities. These should not be prohibited but should be conditionally acceptable based upon a case by case analysis. | David Fisher, N.J. Builders Association | Disagree. One goa runoff policy is t that runoff passes the ground and is before reaching su water. This cannot wet soils. |
| **7:7E-8.22 FERTILE SOIL** | | |
| 318.<br>We strongly object to the policy on fertile soils since traditionally fertile soils are also the best soils for development. There should be an analysis of how prevalent these fertile soils are in the coastal area and why fertile soils are unique to the coastal area or should be regulated. This type of regulation goes way beyond the CAFRA statute. | David Fisher, N.J. Builders Association | Such analysis has by the Soil Conse Service. Prime a soils are prevale of the coastal ar regulation is est prevent depletion soil resource whi critical for food The fertile soil not in any case p development. |
| **7:7E-8.23 FLOOD HAZARD AREAS** | | |
| 319.<br>We are gratified to see that the flood hazard area policy is designed to comply with the law on flood hazard areas and regulations promulgated thereunder. | David Fisher, N.J. Builders Association | No response neces |

| Comments | Commentor | Response |
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| **7:7E-8.24 DECOMMISSIONING OF PROJECTS** | | |
| 320.<br>Coastal development (e.g., port facilities) for which another future use is not envisioned or predictable should be allowed to so certify and thus be exempted from this requirement. It is also suggested that the plan impose some property maintenance standards to avoid future waterfront blight and decay. | The Port Authority of N.Y. and N.J. | When no future use is planned decommission becomes especially important as the abandoned port areas of the Northern Waterfront show. Proper demolition and site reclamation of discontinued uses should avoid blight in the future. The suggestion for property maintenance standards is well taken and will be further explored by DEP, and if appropriate, revisions will be incorporated to the coastal program at a later time, according to 923.80 of the Federal Regulations. |
| 321.<br>This should not be applied to housing since it is completely unrealistic for a developer to address steps necessary to adapt the site to another use once the proposed project is no longer functional. The rationale for this policy seems to be geared towards the developed coast and not the CAFRA area. | David Fisher, N.J. Builders Association | Disagree. The policy does not call for steps to adapt to another use, but for the removal of existing uses to make the site available for further use. Past experience, especially in the Northern Waterfront, but also in other areas, shows that this is essential. |
| **7:7E-8.25 NOISE ABATEMENT** | | |
| 322.<br>It should be emphasized that only activities covered by noise regulations of the Office of Noise Control should be considered. For instance, the Office of Noise Control does not cover any noise emanating from residential structures and it should be clearly stated that this noise is not to be considered in the resource policies. | David Fisher, N.J. Builders Association | Agreed. The description has been revised so that this point is now clear. |

| Comments | Commentor | Response |
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| **7:7E-8.27 AQUIFER RECHARGE AREAS** | | |
| 323.<br>(b)4. should include recommendation of installation of dry wells for rooftop runoff as an effective recharge mechanism. Drip lines under roofs as called for in the present wording may cause erosion and structural maintenance problems which can be avoided through effective use of dry wells. | Middlesex County Planning Board | Policy on aquifer [illegible] areas has been del[illegible] |
| 324.<br>The last word on the third line of the first policy should be changed from "possible" to "practicable". There should also be an indication that porous pavement shall be used whenever practicable, not "possible" and that one of the criteria for determining practicability is that the municipality allow such paving. | David Fisher, N.J. Builders Association | Policy on aquifer [illegible] areas has been del[illegible] |
| **GENERAL** | | |
| 325.<br>Developers often rail at the imposition of additional layers of governmental regulation. Our experience with NJDC suggests that, for the most part, regulation is reasonable and in the hands of professionals. The private development community has come to see the benefits of such regional management programs and has acknowledged the wisdom of seeking to implement programs and has acknowledged the wisdom of seeking to implement such schemes in other areas. | Hartz Mountain Industries, Inc. | No response necess[illegible] |

| Comments | Commentor | Response |
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| **GENERAL** - Continued | | |
| 326.<br>Had we been able to appear at the June public hearings, we would have expanded on our earlier testimony and expressed continued support for your effort to bring rationale planning to New Jersey's coastal areas. | Harris-Mountain Industries, Inc. | Thank you. |
| 327.<br>We strongly urge that care be exercised to assure that the coastal management program not emerge as a separate and distinct layer of regulations. Our hope is that the management potential of the proposed program be employed to expedite permit and other review processes, facilitate decision making and reduce delays. The pre-application conference appears to address this issue, and we commend that D&P innovation. | The Port Authority of N.Y. and N.J. | Agreed. |
| 328.<br>Why are the constitutional property rights, as guaranteed by both the U.S. and N.J. Constitutions never mentioned? | W. Elmer Seaman | Constitutional property rights are fully protected and maintained by the Coastal Program. These rights prevent the taking of private property without compensation, but they do not include immunity from regulation in the public interest which may increase or decrease the value of that property. |
| 329.<br>At a time when the President of the U.S. and Congress are trying to reduce regulations and red tape, why is N.J. trying to increase it? | W. Elmer Seaman | This program is designed to make use of existing laws more productive and efficient. |

| Comments | Commentor | Response |
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| **GENERAL** - Continued | | |
| 330.<br>Isn't all this management inflationary? | W. Elmer Seaman | No. In the long r<br>will lead to more<br>use of limited re<br>Also, see Economic<br>sequences section<br>IV. |
| 331.<br>The second full paragraph on page 8, the first paragraph on page 9, are excellent descriptions of how much of the Northern Waterfront Area requires special coastal management attention. We hope that implementation of the plan will assure recognition of the stated fact that the "economic revitalization of New Jersey's cities is an increasingly recognized coastal issue". | The Port Authority of N.Y. and N.J. | No response neces |
| 332.<br>The over-abundance of governmental regulations makes it impossible for developers to represent the public interest. | M. Hudson, Atlantic City Development Corp. | The Program is int<br>insure that the co<br>efforts of governm<br>developers achieve<br>public interest.<br>ment regulations p<br>the specificity to<br>public laws consis<br>efficiently. |
| 333.<br>Introduction, page 16 - In the third paragraph, the suggestion that Coastal Policies could "be used to guide other decisions not strictly subject to the New Jersey Coastal Management Program" is presumed to be voluntary and without statutory significance. | The Port Authority of N.Y. and N.J. | The Coastal Resour<br>Development Polic<br>Departmental Rules<br>other divisions of<br>be guided by them<br>the extent that th<br>conflict with the<br>divisions' legisla<br>mandates. |

| Comments | Commentor | Response |
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| GENERAL - Continued | | |
| 334.<br>Section 305 of the Federal Coastal Zone Management Act offers each state a choice in deciding which method to use in exercising land and water use control in its coastal zone. We question why New Jersey considers management technique "B" - direct state regulation and planning - to be the "only feasible approach". | The Port Authority of N.Y. and N.J. | After careful consideration and wide public participation, DEP has concluded that technique "B" is the most appropriate approach for New Jersey. This approach was adopted after concluding that techniques "A" or "C" would require State approval of local coastal regulation decisions, which was considered objectionable by local governments. |
| 335.<br>In regards to the legality of this regional planning effort, land use planning and zoning has been recently upheld as constitutional by the Supreme Court. | Pearl Schwartz | No response necessary. |
| 336.<br>It should be specifically included in this document that public notice and hearings will take place when there are changes contemplated. Also, policies should not be permitted to be altered because a locality changes its zoning or master plans. | Carol Barrett,<br>Sierra Club,<br>West Jersey Group | The federal CZMA requires that revision to an approved coastal program have wide public review. This is described in the management system and next steps chapters. Furthermore, the New Jersey Administrative Procedures Act requires notification and public review of proposed rule changes. A change in municipal zoning or a municipal master plan is not, by itself, a change in the coastal management program. |

| Comments | Commentor | Response |
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| GENERAL - Continued | | |
| 337.<br>We hope that approval of this program and additional grants will not be given unless there is evidence submitted that enforcement and implementation can be carried forth. That means enough staff and qualified personnel will be used. We would also like to be assured that the federal agency responsible for the financing and approval of New Jersey's Coastal Management Program will exert sufficient control in the present and future so that it will be adhered to in spirit and letter. | Carol Barrett,<br>Sierra Club,<br>West Jersey Group | A major aspect of federal program is evaluation called Section 312 of the of each approved program. The basi evaluation is the program as impleme that year's grant, proper enforcement laws. The State m fully follow the p as well as show th laws which serve i are adequately enf |
| 338.<br>We are strongly opposed to the coastal management plan and urge and expect it not to be passed. | Federation of Beach Associations | This opposition is The Program has be effect since Septe in the Bay and Oce Segment of the Sta beneficial results approval will cont extend to the rest coastal zone. |
| 339.<br>The proposed program appears to be well organized, and in general we feel that it will aid New Jersey in protection of its valuable coastal resources. | N.J. Conservation Foundation | Thank you. |
| 340.<br>The proposed CMP is too much regulation. | Elmer Seaman | DEP believes the t is needed to prote sources of regiona statewide interest |
| 341.<br>The proposed CMP is a positive step towards a sound management program, and final federal approval of the CMP is important. | Natural Resources Defense Council | No response needed |

| Comments | Commentor | Response |
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| GENERAL - Continued | | |
| 342. I must concede that something other than home rule must be tried. I support regional planning and this Coastal Zone Management Plan. | Isabell Dietz | Thank you for your support. |
| 343. Does the document cover somewhere procedures for self modification at a later date as events might dictate? Can such procedures be effected at the executive level of government or are they restricted to the legislative authority? | N.J. Marine Sciences Consortium | The Federal CZMA mandates a procedure for review of changes to the document. This is described in Section 923.80 of the Federal Regulations. In addition, the rules governing coastal permit decisions will be reviewed annually and updated as necessary. No legislative approval is required for rule changes, but public notice and opportunity for comment would be provided. |
| 344. The Coastal Management Program smacks of land use regulation, the authority for which was not granted to it under the CAFRA Act. It ignores the mandate to recognize economic aspirations of the area, and it is of no legal effect until it complies with the enabling legislation (CAFRA) by submitting the CMP to the Legislature for review and approval. | R. C. Westmoreland, Esquire | The requirement that DEP submit a management strategy under CAFRA to the Legislature was fulfilled in 1977. The enabling legislation for the CMP is not only CAFRA, but also the Wetlands Act, Waterfront Development Act and Riparian Statutes. |
| 345. Our office has for the most part been satisfied with the functioning of the Bay and Ocean Shore segment. A review of the expanded area and regulations, initially indicates this proposed program should function as well. | Michael Bryce, Department of the Public Advocate | No response needed. |

| Comments | Commentor | Response |
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| GENERAL - Continued | | |
| 346. It is absolutely necessary that a time frame be established between the date of adopting a Coastal Management Program and a date when it becomes effective. We suggest a one year time frame. | A. Helwig, Pureland Industrial Complex | Adequate comment p been provided in t years of program d ment. Adoption wi will occur Septemb 1980 at which time program will becom tive. |
| BOUNDARY | | |
| 348. Seaward and Interstate Boundaries, page 18 - In the last paragraph the need is stressed for coordination between Delaware and New Jersey. We believe it is of equal importance to have similar joint efforts developed for coastal zone cooperation between New York and New Jersey, but found no such evidence in the report. | The Port Authority of N.Y. and N.J. | Delaware was singl because the Delawa extends to the mea water line on the Shore, thus creati unique permit coor situation. Policy rion with the New Pennsylvania coast ment programs will continues to be ca out. |
| 349. Page 2, Figure 1 - Could DEP supply large-scale maps? Figure 1 is impossible to read. | A. Helwig, Pureland Industrial Complex | Contact DEP's Bur Coastal Planning opment for detail tion about any pa segment of the co boundary. |
| 350. This boundary is far more appropriate than the previously proposed boundary which would have included extensive inland areas. However, the document makes no attempt to map the boundary, which will tend to create misunderstandings and confusion. The boundary should be delineated on a regional basis by the Division of Coastal Resources to eliminate most boundary discussions. | Salem County Planning Board | Thank you. Maps proposed during 1 Under the Federal 923.31(a)8 of its states must be ab indicate whether ticular piece of pr is within the coa within a reasonabl of time, and DEP this. |

| Comments | Commentor | Response |
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| **BOUNDARY** - Continued | | |
| 351. Recommend that head of salinity rather than head of tide be coastal zone boundary in Delaware River area. | A. Helwig, Pureland Industrial Complex | DEP elected to use the head of tide rather than the limit of salinity in defining the coastal zone for these reasons: (1) DEP-DCR already regulates tidal waters and tidally influenced wetlands, (2) consistency with the proposed Pennsylvania CMP, and (3) the sensitivity of the aquatic habitats, breeding and spawning areas of the Delaware Bay to impacts originating higher up the river demands some degree of upstream control. |
| 352. It is suggested that NJDEP delete the proposed expanded Delaware River Area from the proposed coastal zone boundary. The Federal Coastal Zone Management Act of 1972 does not require the inclusion of the Delaware River Area, and the intent of Congress was not to include substantial areas of freshwater within the coastal zone. | J. Shissias, Public Service Electric & Gas Co. | The potential of waterfront development along the Delaware causing degradation of the critical Delaware Bay estuarine areas is high. Management to ensure water quality is essential. Also, see response above to Helwig on why N.J. chose to set boundaries at the head of tide. |
| 353. It appears that the proposed expansion of the CMP to include the Delaware River area will not significantly restrict new development along the river but rather will affect the manner of development in that area. The use and location policies of the document generally acknowledge the growth potential of the region and recognize it as a region suited for development, in deference to other coastal municipalities. | Salem County Planning Board | Agreed. |
| 354. How accurately can DEP determine extent of tidal influence by using the very gross guideline of including all waters up to where the 20 feet contour crosses a stream? | Gloucester County Planning Board | The 20-foot contou was recommended by of Environmental A as a rough approxi of the maximum hea The coastal zone b will be refined as becomes available Tideland Delineati |
| 355. We believe it is an unfair burden of proof to require a property owner to show that land within 500 feet of tidal water is not within the waterfront boundary. This burden of asserting jurisdiction should be on the Division. | David Fisher, N.J. Builders Association | This burden will b by the Division at request of a land |
| 356. We are pleased to note the addition of property lines as part of the boundary definition. | Camden Department of Community Development | Thank you for supp |
| 357. I disagree with the definition of the waterfront as 500 Ft. from the waterway. Only the first substantial size lot should be regulated. | David Fisher, N.J. Builders Association | In most cases only lot adjacent to a will be regulated. a maximum jurisdic should the first l deeper than 300'. |
| 358. The coastal zone boundary is inadequate; a minimum of 100 feet is too little. | Helen Thompson, Save the Hudson, Our Riverland Environment | This minimum only parts of the devel waterfront, where character of the a already been large mined and the "cas concern applies ga the first inland c other parts of the zone, the boundary wider. |

| Comments | Commentor | Response |
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| BOUNDARY - Continued | | |
| 359. The character of the Northern Waterfront and Delaware River Area is industrial and developed, an extension of the Coastal Management Program outside of the Bay and Ocean Shore Segment and the current proposals are unnecessary. | L. Caccese, N.J. Alliance for Action | The Northern and Delaware River waterfront areas have the capacity to have direct and significant impacts on the coastal zone and must, therefore, be included in the coastal zone under the Federal CZMA (see Federal Regulation 923.11). |
| 360. The elimination of the Delaware River Area would not delay or deny federal approval of a Coastal Management Program nor would it result in a loss of federal funding or other benefits that may accrue to the State under the CZM Act of 1972. | J. Khissias, Public Service Electric and Gas | The exclusion of the Delaware River area would definitely result in the loss of CZM and CEIP funds for that area. Furthermore, this area would benefit from application of consistent coastal policies and federal consistency. |
| 361. The coastal zone boundary outlined in the Proposed CMP is inadequate; the Palisades are not included and a 500 foot boundary is not wide enough. | Sally Aaronson | The Palisades are not included in the Coastal Zone because uses on the Palisades do not have a direct or significant impact on coastal waters. (See 923.11 of Federal Regulations). In addition, DEP lacks the authority to regulate or manage development affecting the Palisades. In Part II, Chapter 6, "Next Steps in Coastal Management in New Jersey" it is suggested that while new legislation is not necessary to achieve federal approval of the Coastal Management Program, it may be desirable in the future to improve the effectiveness and the efficiency of the program. Legislation to protect the Palisades could therefore be developed at a later date. |

| Comments | Commentor | Response |
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| PRINCIPAL IMPLEMENTATION PROGRAMS | | |
| 362. DEP has proposed that Waterfront Development Permit decision appeals be made to the Commissioner rather than to the Tidelands Resource Council. The Commissioner of DEP, however, is also a Commissioner for the Port Authority of N.Y. and N.J. How can the Commissioner fairly evaluate any appeals which involve the Port Authority? | Pat Castagno, Positive Action Citizen's Team (PACT) | Both DEP and the Authority are pub non-profit agenci both capacities, sioner of DEP wou striving to devel coordinated polic benefit to New Je |
| 363. A ninety-day permitting process for a proposed industrial user is too long a period of time. Once a firm has made the decision to establish a new facility, it is in its best interest to do so quickly. Ninety days for a permit will cause him to look to Delaware or Pennsylvania for his site. New Jersey will then lose jobs and ratables. | A. Walvig, Pureland Industrial Complex | 90 days is a maxi frame set to ensu permit decisions. major project, it that other local, Federal permits require a longer period that the Permits. The Sc permits should be the same time as required permits overall review ti |
| 364. Both the Coastal Area Facility Review Act and the Waterfront Development Law contain serious deficiencies which must be noted ... In each act, the jurisdiction restrictions bear no rational relation to the intent of the CZMA to regulate uses and areas having a "direct impact on coastal resources". | Natural Resources Defense Council | NOAA-OCZM has de that DEP jurisdic CAFRA and the Wa Development Act to manage all la which have a dir significant impac coastal waters. does not require land use to be m under the progra section 923.11(b Section 304(1) o CZMA states that zone extends inl shorelines only extent necessary shore lands, the which have a dir significant impa coastal waters. |

| Comments | Commentor | Response |
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| **PRINCIPAL IMPLEMENTATION PROGRAMS - Continued** | | |
| 365.<br>We believe that appeals regarding Waterfront Development permit decisions should continue to be directed to the Tidelands Resource Council since. As a body of twelve Governor appointed citizens, it is representative of a broader public interest. The Commissioner would still maintain veto power over the Council. | The Port Authority of N.Y. and N.J. | The Tidelands Resource Council has the responsibility for protecting the public interest in state owned tidelands, and should be left free to deal with major issues regarding alienation of these lands, without being burdened by detailed permit reviews. |
| 366.<br>The streamlining of the permit procedure is very important. The pre-application conference, single permit office and the "90 Day Construction Permit Law" will assist with simplifying and speeding up the permit process. | Camden Department of Community Development | No response needed. |
| 367.<br>The state should continue the unfinished Sea Isle City Jetty Project. | John Federico, Cape May County Emergency Beach Restoration Assoc. | The Sea Isle City Jetty project is a decision based on the results of the Shore Protection Master Plan to be released this fall and is not a direct outcome of the Coastal Program. |
| 368.<br>Some scheme of exempting commercial and industrial zoned properties in the areas covered by the Waterfront Development Law and/or a method for grandfathering future modifications to existing facilities should be considered to minimize the impact of expanded permit authority. | John J. Horn, Commissioner, Department of Labor and Industry | Disagree. This would run counter to the intent of the Program to provide State review, in addition to municipal review of waterfront proposals. |

| Comments | Commentor | Response |
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| **PRINCIPAL IMPLEMENTATION PROGRAMS - Continued** | | |
| 369.<br>Public Trust Doctrine - In 1978, the courts ruled that sand beaches owned by a municipality are in the Public Trust. Ocean Acres, therefore, should acquire 20 additional acres of water edge uplands of Coven Point. | Audrey Zapp, Hudson County Citizens for Clean Air | The Coastal Progra will not affect Co selection process projects they inte except to prevent which would be inc with Coastal Polic Comments on this i should be (and hav directed to DEP C Acres. |
| 370.<br>New Jersey should have a federally-approved coastal management program in order to obtain the benefits of the Coastal Energy Impact Program. | Nancy Fiordaliai, NJDOE, Coastal Energy Impact Program | Agreed. |
| 371.<br>There seems to be a dichotomy between points of the proposed CMP that want to stop development of barrier beaches and a federal program that gives money to states for coastal management. | Helen Bieber, Normandy Beach Improvement Assoc. | The funds received State under the FC been used to develo cies and a managem to regulate growth barrier islands an unwise development efforts will conti throughout the coa with approval of t gram. In general, ment funds cannot for construction o acquisition. |
| 372.<br>The acceptance of jurisdiction over waterfront development activities by the Division should be accompanied by a restructuring of the review personnel of the Division. We strongly oppose any further burden on the review staff until it has been bolstered and has been awarded salaries commensurate with its experience, expertise, etc. | David Fisher, N.J. Builders Association | The review staff o expanding as rapid civil service resp permit. Meanwhile day rule assures t developer will be delayed by the per process. Federall of the CMP will pr added funds to hir tional staff. |

| Comments | Commentor | Response |
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| PRINCIPAL IMPLEMENTATION PROGRAMS - Continued | | |
| 373.<br>The federal government should not be in the business of giving money to the states to restrict local government. | Elmer Seaman | The purpose of the program is not to restrict local governments, but to implement State policies for its coast, as provided by the CZMA. |
| 374.<br>Is there any provision in this plan which would direct Coastal Energy Impact funds to areas of the state suffering from the greatest adverse impacts due to coastal energy facilities? | The Port Authority of N.Y. and N.J. | While CEIP funds are to be expended in coastal areas, the CMP does not directly indicate how CEIP funds would be allotted in the State, except to provide that they not be given to projects inconsistent with the Coastal Policies. Section 308(g)(2) of the Federal CZMA requires each state to develop an allocation process for CEIP funds. This process is administered by NJDOE, and does direct funds to areas of the State suffering the greatest adverse impacts. |
| 375.<br>The commitment by DEP in striving toward a consolidated/streamlined permit system addresses a real need of the business community in New Jersey. It is hoped that the Intra-Departmental coordination that is referred to as a means of implementing these proposed coastal policies could be intensified for the purpose of providing a truly consolidated environmental permit system in New Jersey. | John J. Horn, Commissioner, Department of Labor and Industry | Agreed. |

| Comments | Commentor | Response |
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| PRINCIPAL IMPLEMENTATION PROGRAMS - Continued | | |
| 376.<br>CAFRA regulations can be avoided by splitting a proposal into two separate units too small to be covered by CAFRA. This is not the intent of the Act and this situation should be addressed in the proposed CMP. | Thomas Meyenhouse | This is not the c<br>property subdivid<br>developments belo<br>threshold of CAFR<br>intent of avoidin<br>regulation is sub<br>CAFRA for all uni<br>the first 24. Th<br>of one project wi<br>than 25 units has<br>to avoid CAFRA re<br>and this is a pro<br>recognizes and ha<br>to address in pro<br>and shorefront pr<br>legislation. See<br>Steps" Chapter. |
| 377.<br>The State of New Jersey should reexamine its present policy of embracing the obligations of federally-funded regulatory programs simply because of the availability of substantial funding. Would State Government be willing to shoulder the full burden of financing the developed coast program administration if federal funds were curtailed? | New Jersey State Chamber of Commerce | DEP would seek su<br>Whether sufficien<br>would be made ava<br>the Legislature t<br>quately manage th<br>uncertain. Congre<br>established the C<br>address perceived<br>in achieving a wi<br>coastal goals and<br>states through th<br>as the best level<br>ment to take charg<br>management proble<br>coast and resolve |
| 378.<br>Page 37, Section 4, second paragraph - Since DEP has not yet completed the tidelands delineation program, isn't this proposed Coastal Management Program putting the cart before the horse and opening DEP to litigation? | Pureland Industrial Complex | Independent of th<br>delineation proce<br>Jersey will have<br>to regulate the w<br>under the rules to<br>12:5-3 which appli<br>tidelands, but is<br>riparian statute. |

| Comments | Commentor | Response |
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| PRINCIPAL IMPLEMENTATION PROGRAMS - Continued | | |
| 379.<br>Does DEP's mandate allow it to exercise regional control or state-wide zoning? | Roger Wells,<br>Roger Wells, Inc. | DEP does not zone. No policy limits an area to a specific use. Instead locations and intensities of major developments are managed to preserve critical regional resources, as mandated by CAFRA, the Wetlands Act, and the Waterfront Development Law. |
| 380.<br>The goal of unifying and simplifying the permit system is unrelated to the extension, or non-extension of the Coastal Zone into the Upper Delaware River and Northern New Jersey area. This can be done without adopting the present proposals. | N.J. Alliance for Action | The extension of the coastal zone to these areas is a requirement of federal approval because they have a direct and significant impact on coastal waters. The comment is technically correct, although federal approval provides funding for permit simplification and other activities. |
| 381.<br>A suggestion has been made that three of the coastal permitting systems be integrated into one permit system. We would strongly recommend this, in the interest of clarity and efficiency. | Michael Bryce,<br>Department of the Public Advocate | DEP will consider preparation of proposed legislation to accomplish this purpose during 1981. |
| 382.<br>Sierra Club supports predictability in the permit process for developers. DEP, however, should strictly enforce its rules once they are established. | Carol Barrett,<br>Sierra Club,<br>West Jersey Group | Agreed. NOAA-OCZM will assure that this is the case through grant review, appropriate grant conditions where necessary and review carried out under the annual evaluation authorized under Section 312 of the CZMA. |

| Comments | Commentor | Response |
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| PRINCIPAL IMPLEMENTATION PROGRAMS - Continued | | |
| 383.<br>The proposed amendment to N.J.A.C. 7:7E-1.3(f) on pages 75 and 76 is a back door way of gaining jurisdiction over less than 25 housing units. We feel this is overreaching. | David Fisher,<br>N.J. Builders Association,<br>Al Hagerley,<br>N.J. Independent Liquid Terminals Assoc.,<br>GATX Terminals Corporation | Disagree. This i to insure the co of DEP decision- affecting the co |
| 384.<br>Is there a provision for a Master Waterfront Development Permit whereby a developer would have the flexibility of changing specific details on the site as changes take place during the course of the project? | Parsland Industrial Complex | There is not now provision. Howe cedural rules fo coastal permit p be prepared in 1 rules will deal question of chan or a "Master Per future developme tracts of land. |
| 385.<br>On page A1 relating to the CZIP program, the text indicates that New Jersey CZIP staff approves project applications; this is not the case. | David Atkin,<br>MUDOE, Coastal Energy Impact Program | Agreed. Revisio |
| SUPPLEMENTARY PROGRAMS | | |
| 386.<br>We are pleased with the initiative taken to coordinate Division actions and decisions with other DEP branches, and with the extension of coordination process to regional and federal agencies. | League of Women Voters of N.J. | No response nece |

| Comments | Commentor | Response |
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| SUPPLEMENTARY PROGRAMS - Continued | | |
| 387. Municipal consistency with Coastal Resource and Development Policies should not be a condition for the award of Harbor Clean-Up funds. This project has regional and national objectives related to navigation safety and environmental enhancement, objectives which should be pursued by New Jersey without regard to a municipality's consistency with coastal policies. | The Port Authority of N.Y. and N.J. | Agreed. Sentence deleted. |
| 385. We would like a clarification of the statement on page 46 that no Waterfront Development or Wetlands permits will be granted which conflict with a certified 208 plan. We do not think that this should apply to CAFRA permits and would like a clarification that this policy does not apply to CAFRA permits. | David Fisher, N.J. Builders Association | The 208 plans and CZMA plans have been compared and are fully consistent. Revised language indicates that CAFRA permits too must be consistent with 208 plans. This is required by the N.J. Water Quality Planning Act (N.J.S.A. 58:11A-10). |
| OTHER AGENCIES | | |
| 389. There should be provision for coordination with other government departments at the state and county level which has not always been apparent in the past. | Daniel Myers | DEP makes, and will continue to make, extensive efforts at such coordination. See Appendix A. |

| Comments | Commentor | Response |
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| OTHER AGENCIES - Continued | | |
| 390. How will the Hudson River Waterfront Commission be interacting with the Coastal Management Program? | Department of the Public Advocate | The Commission is body with no stat power. The recom it recommends wil be considered by lature and Govern is created, its H Plan would be req consistent with State policies, i the Coastal Manag |
| 391. The recommendations of the Hudson River Waterfront Study, Planning, and Development Commission should be included in the CMP. | Sally Aaronson | "See Northern Wat Area" section of Three, which summ the work and reco of the Commission its recommendatio advisory and are change by the Leg they have not bee in full. |
| 392. Salem County is strongly opposed to the statement in this revision that any project in the area must be consistent with both Delaware's and New Jersey's coastal programs and obtain permits from two states. | Salem County Planning Board | This disagreement but DEP has found solution availabl administrative ac address the pecul Delaware Boundary County, where the State line reache tide on the New J |
| The administrative development of rules and regulations by persons other than elected officials has a tendency to erode traditional concepts of home-rule and true political responsibility. It would be urged, therefore, that any proposed system for regulation involve the local governmental units of each municipality and county on a meaningful basis and on a basis where full and complete discussion and analysis can be had. | Daniel Myers | On the contrary, tive agencies at of government tra prepare rules and tions in response lation enacted by officials. Local ments have been i commenting upon D coastal program t the planning proc Appendix A. |

| Comments | Commentor | Response |
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| OTHER AGENCIES - Continued | | |
| 393.<br>The role of the Department of Health should be discussed in the section "Other State Agencies". | Commissioner Finley, Department of Health | Agreed. See revised section. |
| 394.<br>Northern Waterfront Area - page 61 - In the second paragraph, please expand the description of the Port Authority's role by inserting, after -- "and industrial facilities", the following: "and its mandate to protect and promote commerce through the Port of New York and New Jersey". | The Port Authority of N.Y. and N.J. | Agreed. Section revised. |
| 395.<br>In the description of regional entities and authorities which affect land use, the Delaware River and Bay Authority is omitted. The DRBA has recently analyzed various new rules that is could fulfill along the Delaware River and Bay and therefore should be mentioned in the report. | Salem County Planning Board | See revised discussion of Regional Land Use Authority in Delaware River Area. |
| 396.<br>We are glad to submit the study sites of the Delaware River Port Study for inclusion in the NJCMP. By doing this, there will be no conflict in the Delaware River master plan and the NJCMP. | Delaware River Port Authority | See discussion of regional agencies in the Delaware River Area (Part II, Chapter 3), which describes this submission. |

| Comments | Commentor | Response |
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| OTHER AGENCIES - Continued | | |
| 397.<br>The document lists the possibility of delegating some regulatory responsibilities to county or municipal governments. The county supports authority delegation to the County provided a Plan consistent with the Coastal Zone program is adopted. I urge pursuit of the suggested new legislation by the Department. | Salem County Planning Board | DEP will review t noted in the Prog |
| 398.<br>The mayors of municipalities involved in the Hudson River Waterfront Commission Study were led to believe that Hudson River waterfront towns would be excluded from the CMP. It is unreasonable for these towns to be covered by both. | Charles Swaskind, Clerk, Borough of Edgewater | This is inaccurat Hudson River Wate Commission and th Program will achi results of benefi region. The Comm cannot replace th Program, in that recommending a pe agency to oversee development of th front and to prep specific master p the Coastal Prog more general, and policies will rec protection of coa resources and enc general types of ment. The polici mended by the Com however, are cons the Coastal Resou Development Polic |

| Comments | Commentor | Response |
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| OTHER AGENCIES - Continued | | |
| 399.<br>The document should identify that New Jersey Laws of 1979, Chapter 359, (S 1694) allows for the delegation of stream encroachment, flood plain, riparian, wetlands and CAFRA regulations to the Counties pursuant to State established standards. A coastal zone policy should call for the development of these standards by the NJDEP to allow for County assistance in implementation where appropriate. | Middlesex County Planning Board | This is the responsibility of NJDEP's Divisions of Water Resources and Environmental Quality and is distinct from the purposes of this Coastal Program. |
| 400.<br>The County Environmental Health Act, Chapter 443, Laws of 1977 permits State pollution control authority to be delegated to County Health agencies pursuant to State standards. This could also be a valuable tool in coastal zone protection which should be identified in the document. | Middlesex County Planning Board | See above response. |
| 401.<br>We note on page 56 that there is a reference to the Soil Erosion and Sediment Control Act. This was amended in 1980 to delete the jurisdictional requirement of the municipal building permit. | David Fisher, N.J. Builders Association | Agreed. See revised language. |

| Comments | Commentor | Response |
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| FEDERAL CONSISTENCY | | |
| 402.<br>Page 248 - The second paragraph of the Section entitled "Federal Consistency" suggests that federally licensed and permitted activities should consider CZM programs, but are not necessarily bound by them. | James Shiesias, Public Service Electric and Gas Co. | Under Section 307 of the FCZMA, cer of consistency wi approved State CM required before a license or permit issued. |
| 403.<br>Page 250 - The paragraph entitled "Direct Federal Activities and Development Projects" seems to further support the case for federal preemption. (Refer to comments on page 193 and 248). Also refer to page 251 under "Federally Licensed and Permitted Activities". | J. Shiesias, Public Service Electric and Gas Co. | It is correct tha Federal activitie consistent with a CMP to the maximu practicable. How noted in final Fe Regulations (15 C and related intro comments, this is extremely strict that can be devia only under the mo circumstances. |
| 404.<br>Must state actions be consistent with federal policies? What control does the federal government exert over New Jersey's actions? | Carol Barrett, Sierra Club, West Jersey Group | The CMP must be c with the stated g FCZMA. Failure t federal coastal c could lead to los federal approval management funds. reviews of compli held under the au Section 312 of th CZMA. |
| 405.<br>The scope of federal consistency review is constrained both inside and outside of the defined coastal zone to the scope of regulations which are directly supportable under state law. | J. Shiesias, Public Service Electric and Gas Co. | Limiting federal to the scope of r which are directl able under state makes it meaningle this was not the sional intent. |

| Comments | Commentor | Response |
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| **FEDERAL CONSISTENCY** - Continued | | |
| 406.<br>The Division is improperly using the federal consistency provision by extending its jurisdiction to the developed coast, not presently under state regulation, and to non-coastal areas having only minimal or indirect impacts. | J. Shissias, Public Service Electric and Gas Co. | DEP is extending the coastal program to the developed coast because its direct and significant impacts on coastal values are required to be managed for federal approval. This is being done under the jurisdiction of the Waterfront Development Act, not by using federal consistency. The program is not being extended to any area more than 500' from coastal waters. Federal consistency will apply outside the coastal zone only where a proposed federal activity would have spillover impacts on the coastal zone. |
| 407.<br>Congress intended pre-existing facilities to be exempt from federal consistency review as they are exempt from the requirements for new facilities under the Clean Air Act and Clean Water Act. | James Shissias, Public Service Electric and Gas Co. | Existing facilities do not require consistency determination or new State permits unless the approvals they received require amending or renewal. The permit renewal is not a mere paper-shuffling exercise, but rather an opportunity to decide anew whether the permitted activity complies with current laws and policies. As such, they may raise issues of legitimate concern to a State coastal management program. |
| **NATIONAL INTERESTS** | | |
| 408.<br>Page 261 - Second paragraph - Restates incorrect statements concerning LNG addressed on page 206, 207, item (a). | James A. Shissias, Public Service Electric and Gas Co. | See revision on page 255. |

| Comments | Commentor | Response |
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| **NATIONAL INTERESTS** - Continued | | |
| 409.<br>Page 260 - Liquified Natural Gas - The reference to the National Energy Plan is inappropriate since it was superceded by acts passed by Congress. Safety was addressed in Public Law 96-129 passed November, 1979. The Energy Act of 1978 addresses pricing as well as Section 3 of the Natural Gas Act. The 1977 plan has been superceded by the 1979 plan, and will be superceded by the proposed 1981 plan. | James A. Shissias, Public Service Electric and Gas Co. | Although it is ac certain portions National Energy P been replaced wi quent acts of Co revised documents objectives cited applicable. Howe revisions to the LNG. |
| **REGIONAL BENEFIT DECISIONS** | | |
| 410.<br>The inclusion of energy facilities as "uses of regional benefit" will be meaningless if N.J. doesn't provide the necessary tools to insure that local differences don't restrict or exclude such critical uses. | James A. Shissias, Public Service Electric and Gas Co. | See "Uses of Regi Benefit" section Chapter Five. Fa treated as uses o regional benefit be arbitrarily re by local governme according to Sect 306(e)(2) of the The annual review under Section 312 CZMA will monitor with this provisi |
| **GEOGRAPHIC AREAS OF PARTICULAR CONCERN** | | |
| 411.<br>On the map on page 270, Caven Point should be specifically indicated. | Audrey Zapp, President, Hudson County Citizens for Clean Air | The CZM regulatio 923.20(b)) state number and types to be designated are directly rele degree of comprehe controls applied. Jersey has an ext comprehensive pro further designati GAPCs are not a r for federal appro |

| Comments | Commentor | Response |
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| **ENERGY FACILITY PLANNING PROCESS** | | |
| 412.<br>Page 297 - The paragraph on the Hudson River Waterfront Commission should make it clear that the Commission did not come up with the proposals for petrochemical storage along the Hudson. | Pat Castagno,<br>Positive Action Citizen's Team | Now that the Commission has completed its work, this paragraph has been deleted. |
| **NEXT STEPS** | | |
| 413.<br>Page 315, New Legislation - It appears that DEP has only two alternatives; 1) Submit the Coastal Management Program (with necessary revisions) to the legislature, and b) Since the program is based on present laws, administer these laws as it has been doing perhaps with some in-house procedural streamlining. | A. Kelvig,<br>Pureland Industrial Complex | Alternative b is what was proposed by the DEIS, although new legislation as discussed in the DEIS may be proposed after program approval. Upon federal approval, the state becomes eligible for implementation grants and the federal consistency provision takes effect. |
| 414.<br>Page 5, first paragraph - Does the management program take effect when approved by NOAA-OCZM or does it take effect when submitted? Page 313, Once again, the timetable does not establish a date when DEP proposed to adopt the program. | A. Kelvig,<br>Pureland Industrial Complex | Proposed revisions to Rules on Coastal Resource and Development Policies and proposed rules under Waterfront Development Act take effect on promulgation, on September 26, 1980. With their effectuation the Coastal Management Program may be considered to have taken effect. Federal approval is expected shortly thereafter, but before October 1, 1980. |

| Comments | Commentor | Response |
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| **NEXT STEPS** - Continued | | |
| 415.<br>In order to provide consistency with Section 306(f) of the 1972 Coastal Zone Management Act as amended in 1976, the words "regional and interstate agencies" should be inserted before "municipalities" on the fifth line of the fourth paragraph on page 314. | The Port Authority of N.Y. and N.J. | Agreed. Change |
| **DEIS - GENERAL** | | |
| 416.<br>Penjerdel Council objects to the added control and restriction which will be imposed by bringing the Federal Government into New Jersey's coastal management program by seeking its approval. | J. Deitz,<br>Penjerdal Council | The federal law the coastal mana program gives le the State with a of discretion in approach and pol in development o There are broad goals which must by the State but oversight follow is primarily rel effective admini the State laws. actions must be with the approv |
| 417.<br>The CAFRA EIS does not discuss or analyze demand factors in any depth; instead, it proposes policies which assume that a detailed, segmented and allocated demand analysis using accepted statistical and impact probability assessments be incorporated into the revised EIS. | Roger Wells,<br>Roger Wells, Inc. | Demand is not i factored into g policies and is noted by polici development. T are intended to demand by steer ment to appropr |

| Comments | Commentor | Response |
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| DEIS - GENERAL - Continued | | |
| 418.<br>We believe it would help if the index were more specific. | League of Women Voters of N.J. | See new index at back of document. |
| 419.<br>The present DEIS is not a rational approach to coastal management and should be reevaluated. | Roger Wells,<br>Roger Wells, Inc. | The proposed CMP is the result of seven years of study. It is the professional judgement of DEP and NOAA that it is a rational approach to managing the coast. |
| 420.<br>Page 426, Preparers of the Proposed Document - Could the experience of candidates be broken down to years of government/quasi-government service and service in industry or consulting? | Pureland Industrial Complex | With the exception of Messrs. Yoskin and McKenzie, who spent two years and four years, respectively, in the private sector, the relevant experience of preparers has been entirely government, quasi-government and academic service. |
| 421.<br>NOAA should withhold action on the DEIS until New Jersey clarifies DEP's legal authority for planning and regulation outside the CAFRA zone through the legislature. | Al Mogerly,<br>N.J. Independent Liquid Terminals Association | Disagree. DEP has clarified this through regulation as provided by legislation, and has obtained the Attorney General's opinion to support the legal interpretation as indicated in the comment to Section 923.41 of the Federal Regulations. |
| 422.<br>A statement such as this DEIS should be prepared by someone separate from the person who is going to be charged with ultimate control. | Daniel Myers | DEP has separate planning and regulatory staffs. The interaction of these staffs insures that the Coastal Program is clear from a regulatory viewpoint, and reflects the experience of regulation. |

| Comments | Commentor | Response |
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| DEIS - GENERAL - Continued | | |
| 423.<br>Prepare an objective, independent analysis of utilizing in-house mechanics to efficiently administer the present laws, thereby giving Federal approval to what we believe is a much simpler, less costly approach. | A. Helwig,<br>Pureland Industrial Complex | This is essentiall<br>New Jersey did pro<br>the DEIS and in th<br>The reorganization<br>Division of Marine<br>into the Division<br>Resources has alre<br>improved efficienc<br>existing laws. N<br>laws are proposed. |
| 424.<br>This document represents an enormous improvement in both coverage, treatment, and language from its predecessor. A particularly admirable feature is its treatment of "balance" and multiple use of the coastal zone. | N.J. Marine Sciences Consortium | No response neces |
| DEIS - DESCRIPTION OF THE COASTAL ZONE | | |
| 425.<br>Change the description of the Claremont Terminal and the Greenville Yards, which has been proposed for industrial development by the Port Authority, to reflect that community groups have proposed the land for residential uses. | Audrey Zapp,<br>President, Hudson County Citizen for Clean Air | Agreed. See revi<br>tion. |
| 426.<br>I am pleased to note that NJDEP and the City agree on the types of improvements that should be made to the Rahway River in Rahway. | Daniel L. Martin,<br>Mayor, City of Rahway | No response neces |
| 427.<br>Page 325 - Is Logan Township (Gloucester County) excluded by intent? | Pureland Industrial Complex | No. Note correct<br>FEIS. |

| Comments | Commentor | Response |
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| **DEIS - DESCRIPTION OF THE COASTAL ZONE - Continued** | | |
| 428.<br>Page 320, second paragraph - The 20 feet contour has no bearing whatever on tidal influence in Logan Township, New Jersey. Why use it? | A. Maleig, Pureland Industrial Complex | Until DEP's Office of Environmental Analysis establishes surveyed and computed mean head of tide lines for each coastal stream, the coastal program accepts their expert advice that the 20' contour is an appropriate interim approximation. |
| 429.<br>Page 327 - The proposed CMP discusses the Greenville Yards as an area for future development. I feel the Greenville Yards should not be developed for industry. I support new housing on Jersey City's waterfront. | Pat Castagna, Positive Action Citizen Team | See revised discussion which notes this position. The Coastal Program does not address the best use of specific sites, but instead receives proposals for consistency with the Coastal Policies. |
| 430.<br>Page 336, first paragraph - There is a public sewer in place (Logan Township MUA) in the form of a force main between Raccoon Creek and High Hill Road on U.S. Route 130 in Logan Township. | Pureland Industrial Complex | This is more than a mile from the Delaware River, and outside the area being described in the section. |
| **DEIS - CONSEQUENCES** | | |
| 431.<br>Page 340, last paragraph - Will the Coastal Management Program insure that owners/developers recoup their costs to date if DEP preempts the development of this land? | Pureland Industrial Complex | CMP regulates rather than preempts development. CMP will not compensate land owners if this regulation is alleged to prevent them from achieving increased property value, just as other state agencies do not expect compensation from land owners when publicly funded infrastructure increases land value. |

| Comments | Commentor | Response |
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| **DEIS - CONSEQUENCES - Continued** | | |
| 432.<br>Shouldn't an analysis of zoning laws in individual municipalities be made? | Pureland Industrial Complex | Municipal zoning d<br>acceptable uses fo<br>land areas, while<br>Policies specify d<br>conditions based u<br>matrix of generic<br>proposed use and a<br>resource. The pre<br>absence of conflic<br>the two policies c<br>determined by simp<br>parison, but is de<br>upon the nature an<br>of proposed develo |
| 433.<br>The state's objectives and policies for waterfront redevelopment and environmental protection are consistent with the adopted plans and policies of the Planning Board of the City of Elizabeth. However, the "Municipal Government Profiles" chart (Figure 38, page 358) incorrectly states that Elizabeth has no site plan review ordinance. The "Land Development Control Ordinance of the City of Elizabeth, New Jersey" includes all subdivision, site plan review and flood control ordinance elements. | Department of Community Development - City of Elizabeth | We are pleased tha<br>Planning Board fi<br>conflict between<br>policies and thos<br>Proposed Coastal<br>Program. Figure<br>revised to includ<br>the Site Plan Rev<br>gory for Elizabet |
| **DEIS - ALTERNATIVES** | | |
| 434.<br>The alternatives to the proposed action have not been properly discussed. The "No Action" alternative is a reasonable course of action. | L. Caccese, N.J. Alliance for Action | Under the "No Act<br>alternative, NOAA<br>approve the propo<br>As discussed on<br>page of Part V,<br>not terminate New<br>CMP, since DEP wo<br>be mandated to ma<br>coast by State la |

| Comments | Commentor | Response |
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| **DEIS - ALTERNATIVES - Continued** | | |
| 434. - Continued | | of federal approval would, however, limit the State's ability to fully implement its CMP by curtailing funds and denying the use of federal consistency. |
| 435.<br>Isn't a summary of existing laws and DEP's methods of enforcing them an acceptable alternative since DEP has concurred the de facto extension of the CAFRA boundary is not necessary for federal funding? (For example, the DEP has a one day permitting process already in place for minor waterfront development projects.) | Pureland Industrial Complex | Essentially, the Proposed CMP is a summary of existing coastal laws, criteria for enforcement decisions (policies), and a proposed boundary in which they will be enforced. Continued funding of the Bay and Ocean Shore Segment is dependent upon approval of the management program for the remainder of the State's coastal areas that meets Federal approval under 15 CFR 923.93. |
| 436.<br>Alternatives to the proposed action should not be limited to consequences of federal rejection of the program, and the department should not view the proposed Coastal Program as a fait accompli as stated on page 363. The DEIS does not adequately examine alternatives to the proposed action, and is inadequate. | GATX Terminals Corporation | Because of its mandate under CAFRA, the Wetlands Act, the Waterfront Development Act and the Tidelands statutes, DEP will have to manage the coast, with or without federal approval. As noted above, denial or delay of federal approval would materially affect the efficiency and capability of the state to manage its coastal resources. |



## V. COMMENTS FROM FEDERAL AGENCIES

| Comments | Response |
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| **USDA - SOIL CONSERVATION SERVICE** | |
| 437.<br>Page 109, fifth paragraph - Soil Surveys do not show "wetlands types". Soil surveys show locations of wet soils and soils that flood, such as soils with high water tables. | Revision made. Soil surveys tidal marshes. |
| 438.<br>Page 116, 7:7E-3.25, paragraph (a), third line - The sentence beginning with "Alluvial soils are ..." would be more acceptable as "Alluvial soils are those developing in recent sediment deposited by surface water and exhibiting essentially no modification of the deposited materials." | Agreed. See revised paragra |
| **PLATT T. CAMPBELL, U.S.D.A. STATE SOIL CONSERVATIONIST** | |
| 439.<br>Page 18, Seaward and Interstate Boundaries - shouldn't the Seaward boundary of the coastal zone be redefined? The United State Territorial Sea is now set at a 200 nautical mile limit. The seaward boundary still may be at 3 miles but terminology is no longer consistent. | The State has no jurisdictio its 3-mile territorial sea. |
| 440.<br>Page 73, DEP Management Actions, no mention is made of the interim Guidelines for the Preparation of Sludge Management Plans, DEP, Division of Water Resources, Office of Sludge Management and Industrial Pretreatment. Should your rules cover these guidelines also? | Preparation of plans is not a management action. |
| 441.<br>7:7E-3.19, page 105-2(v) - Definition of stabilized dunes. Dunes are not only maintained in a fixed location by artificial means, but may also be stabilized through the use of vegetation, such as American beach-grass. No dune will remain stable for ever. Every major hurricane and storm alters a dune, whether it is stabilized or not. | The section the comment refe specifically defines dunes t bulldosed, fenced and mainta actively in a fixed position sections speak to the proces migration. |

| Comments | Response |
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| **FLAVER T. CAMPBELL, STATE SOIL CONSERVATIONIST - Continued** | |
| 442.<br>Page 265, under Floodplain and Erosion Hazard Areas, several federal agencies were consulted, however, the USDA-Soil Conservation Service is not mentioned. The Soil Conservation Service is the agency with the most expertise in identifying and treating erosion hazard areas. The Soil Conservation Service also prepares flood hazard studies and manages the Small Watershed Protection Program PL566. | We regret the omission. Materials prepared by SCS were used in preparation of the CMP. |
| 443.<br>Page 43 - The South Jersey Resource Conservation and Development Council (RC&D) and the Cape-Atlantic Soil Conservation District with technical assistance from the USDA-Soil Conservation Service have worked with several municipalities on dune stabilization and dune management. The municipalities have done this work with State matching fund grants. The RC&D council and the various Soil Conservation Districts should also be mentioned along with the Corps of Engineers. | Thank you for this information. It is now noted in Chapter Three, discussion of Department of Agriculture role. |
| **DEPARTMENT OF ARMY, CORPS OF ENGINEERS** | |
| 444.<br>Development in the national interest is "conditionally acceptable" in surf clam areas. This is not the case with the shellfish policies, although both policies' rationales are based on similar economic considerations. Recommend that the last sentence in surf clam policy be incorporated in shellfish policies to recognize national interest concerns. | Agreed. See change in policy, 7:7E-3.2, which incorporates your comment. |
| 445.<br>Finfish Migratory Pathways - Based on the definitions of "prohibited" and "discouraged", pages 78 and 79, it appears that under the referenced policy, development should be "discouraged" rather than "prohibited" since mitigation is recognized in the context of the policy statement. | The present language displays a stronger concern. Development creating a physical barrier is prohibited unless acceptable mitigating measures are taken. |

| Comments | Response |
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| **DEPARTMENT OF ARMY, CORPS OF ENGINEERS - Continued** | |
| 446<br>Page 108, Paragraph 5, Overwash Areas - Barrier island migration by overwash is a hypothesis posed by scientists associated with the National Park Service. Engineering investigations of the validity of the hypothesis for several of the lower elevation islands of the outer banks of North Carolina do not support the hypothesis. These investigations indicate both ocean and bay shorelines are eroding with no significant overall increase in the marsh areas. Unless the hypothesis has been substantiated by analysis of factual data on the New Jersey barrier islands, the phrase "and is the principal technique by which barrier islands migrate inland" should be deleted. Without remedial action, overwash may result in inlet formation in some instances. | Barrier islands do migrate v overwash mechanism which can substantiated in post 1962 a aerial photography of New Je |
| 447.<br>7:7E-4.10 (f) Dredging - Nav -<br>We object to the proposed dredging restrictions indicated on page 149. It is recommended that any references to time restrictions be deleted until the recently established Federal-State interagency and public task force on dredging and disposal problems in New Jersey reaches a final recommendation on this issue. | Seasonal restrictions have b fied. See revised policy. dredging limitations will on applied when necessary to pr a specified resource in a sp area. |
| 448.<br>Please explain the rationale for the filling criterion of 18 feet. | Policy revised. Filling is discouraged at all depths t administrative discretion. |
| 449.<br>Coastal Engineering, 7:7E-7.11, (b), Shore Protection Priorities - a. Policy. The second sentence should be deleted. There may be instances where both non-structural and structural solutions are feasible and the structural solution provides a desirable advantage over the non-structural solution. | Disagree. The Program favo structural solutions and wa as to their infeasibility b structural solutions are co |

| Comments | Response |
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| DEPARTMENT OF ARMY, CORPS OF ENGINEERS - Continued | |
| 450.<br>Coastal Engineering, 7:7E-7.11, Structural Shore Protection, Item (iii). This is unreasonably restrictive and is not compatible with item (iv). | Item (iii) only states that construction which does not result in extension of a structure by more than 18 inches is acceptable. It does not impose any additional conditions on construction resulting in an extension of more than 18" and does not conflict with item (iv). |
| 451.<br>Shore Protection Priority - The rationale is not rational. It provides an indictment of those responsible for maintaining the structures and those who destroyed the dunes, but it does not provide a rationale for preferring non-structural solutions over structural solutions. A substitute is offered. | Thank you for revised language, but the purpose of the rationale is not to criticize previous decisions to provide structural solutions. The Shore Protection Master Plan in its final draft will begin to provide a complete rationale for structural vs. nonstructural shore protection measures. |
| 452.<br>7:7E-7.12, Dredge Spoil Disposal - Policy. Condition (i) is expensive "window dressing" when combined with item (ii). Recommend item (i) be deleted. | Disagree. To insure that adapted vegetation of surrounding area can succeed on the area that has been filled, the top soil should have a similar texture with the surrounding soils. This way restoration of the site will occur more rapidly. |
| 453.<br>Page 243, Decommissioning of Projects. Further clarification is requested. Would such a requirement apply to Corps projects or only to projects requiring an explicit application? | Such a requirement would apply to Corps and other Federal projects which require a consistency determination, as well as to projects requiring a DEP coastal permit. |
| 454.<br>Page 249, Federal Consistency. Under Geographic Scope, it should be revised to reflect current regulations; significantly affect should be changed to directly affect. | Agreed. See revised language. |
| 455.<br>The final EIS should include coverage of mosquito control programs located within the coastal zone. | Such programs are specifically excepted from Wetlands Act jurisdiction and therefore cannot be included. |

| Comments | Response |
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| DEPARTMENT OF COMMERCE - NATIONAL MARINE FISHERIES SERVICE | |
| 456.<br>It is our understanding that the term "water related" development will be applied to projects requesting permits in areas which are already filled. By definition, this term considers development such as a hotel or restaurant as water related. The effect of this broadened definition will be to allow more development along the filled water's edge. Utilization of these areas for non-water dependent development will ultimately create greater pressure on natural areas. | The water-related definition deleted. In New Jersey, the them enough waterfront to ac water dependent uses. The r policy aims to insure that t activities are sited before preempt their sites. |
| 457.<br>The proposed program allows wetland alterations for water-related and non-water dependent activities and therefore is less restrictive in the protection of wetlands than the current federal habitat protection program. The effect of CZM approval of the program could be construed to be an endorsement of weaker state laws. | See General question #7. |
| 458.<br>State-Federal conflicts will probably increase in the Hackensack Meadows Area if the State permits decisions that are not allowed under federal permit criteria, such as 404(b)(1). | See General Question #7. Ap a wetlands permit by the Hac Meadowlands Development Comm does not preclude a Federal contrary to approval. |
| 459.<br>We recommend that a grant condition include a mapping task for all coastal wetlands. | A task in the proposed New J under the approved program i update the State wetlands ma upland coastal boundary. |
| 460.<br>A pollution block in Philadelphia-Camden area of the Delaware River prevents anadromous fish from migrating upstream to spawn because of low dissolved oxygen concentrations. We recommend the NJCMP provide added emphasis to existing efforts to reduce pollution within the area by designating the "block" as a geographical area of particular concern in need of restoration. | DEP will work with DRBC and Pennsylvania CMP to address tion block. It cannot be de de a GAPC by New Jersey beca State does not have full aut the areas, as required by CZ |

| Comments | Response |
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| **DEPARTMENT OF COMMERCE - NATIONAL MARINE FISHERIES SERVICE** | |
| 461.<br>We also suggest that the Delaware River Co-op be utilized to identify priority tasks. | The Co-op will be utilized to identify tasks but implementation would be through DRBC. |
| **DEPARTMENT OF ENERGY** | |
| 462.<br>Passive and active solar power are encouraged as an energy conservation measure in part 7:7E-8.17. The program does not, however, specifically recognize that some larger scale solar technologies, possibly large scale wind turbines, may require coastal energy sites. | See revised language, Policy 7:7E-8.17 which adds such recognition. |
| 463.<br>The proposed program does not appear to distinguish geothermal fluid from general ground water resources. 7:7E-8.6 should include recognition of possible future location of geothermal resources. | At present this technology is highly speculative except near very active plate boundaries where heat is near the surface. If in the future this, or other innovative energy technology such as harnessing the tides, appears to be both technically and economically feasible, the close working relationship between DEP and DOE will be used to produce recommendations and policy revisions. At present the opportunities and possible impacts of such technology are not sufficiently well documented to prepare general policy for this presently remote possibility. |
| 464.<br>Geothermal energy projects should be recognized in the identification of energy facilities stated on page 291. | Page 291 lists energy facilities likely to be proposed in or significantly affecting the coastal zone. Geothermal energy production is not likely to be proposed in or affecting the coastal zone in the foreseeable future. |

| Comments | Response |
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| **DEPARTMENT OF THE INTERIOR** | |
| 465.<br>We commend DEP for the way in which they have integrated the previously approved Bay and Ocean Shore Segment and the remainder of the State's defined coastal zone. The DEP is also to be commended for their efforts to develop a program document which provides an overview of the full State program and an indicator of the changes made to the previously approved program segment. | Thank you. |
| 466.<br>We are seriously concerned that the Hackensack Meadowlands Master Plan may be inconsistent with Section 307(f) of the CZMA because it fails to reflect the environmental guidelines developed under Section 404(b)(1) of the Clean Water Act. | See General Question 7. The not preclude disapproval by a agency of action in wetlands the Hackensack Meadows. |
| 467.<br>Neither the Plan nor its associated documents, which would become the State's enforceable policies for Meadowlands District, are included in the program document for Federal agency review and comment. | The Master Plan Zoning Map i Figure 36. The Zoning Regul N.J.A.C. 19:4-1.1 et seq. ar available on request from th 200 Murray Hill Parkway, East ford, NJ 07073. Inclusion o would have added unnecessari length of the document, viol NEPA regulations. |
| 468.<br>The Plan apparently was developed without opportunity for full participation by Federal agencies, as required by Section 305(c)(1) of the CZMA. | At the time the HMDC plan wa the CZMA had not been consid Congress. The possible role plan in New Jersey's coastal was raised for federal conse Options for New Jersey's Dev Coast (March, 1979) and in t |
| 469.<br>It does not appear that any memorandum of understanding or other binding agreement has been executed between DEP and HMDC to ensure the HMDC manages the Meadowlands in a manner consistent with the CZMA, to ensure that national and Statewide interests are considered by HMDC, and to provide for the resolution of differences between DEP and HMDC. | The Division of Coastal Reso be guided by the policies of Master Plan in making decisi Waterfront Development Law. will make all federal consis determinations. Such an act be superfluous since the two are mandated by their respec to protect the area. |

| Comments | Response |
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| DEPARTMENT OF THE INTERIOR - Continued | |
| 470.<br>We are concerned that approval of this part of the NJCMP may constitute a violation of the President's Executive Order on Protection of Wetlands because it permits substantial filling of wetlands for non-water dependent purposes. | See General Response #7. |
| 471.<br>While the Department is in agreement with the decision designating the Meadowlands as an area of particular concern (APC), we object to the State's use of the APC provisions of the regulations (e.g. 923.20(a)) to achieve program approval by NOAA, which apparently could not be achieved without such a designation. The Department believes that this approach to coastal zone management violates the intent of the APC process, the spirit of the CZMA, and is inconsistent with the proposed OCZM goals for special area planning, which includes increased permit predictability and improved intergovernmental coordination. | The Meadowlands fit the criteria for APC designation. The policies of the Master Plan are consistent with the special management goals of an APC. Such designation was not required prior to approval by the CZMA and the document carefully explains that the Meadowlands are not a special area management plan as described in 404(b)(1) guidelines. |
| 472.<br>We would like to emphasize the ecological and recreational importance of Hackensack Meadowlands, particularly the Kearny Marsh. We consider this an extremely important issue which requires prompt reevaluation and resolution. | The Hackensack Master Plan recognizes the importance of this man-made marsh. Present zoning (special Use) would preserve at least 40% of the marsh, but HMDC is negotiating with the owner to preserve a higher percentage should it be developed. |
| 473.<br>We recommend that the last sentence in the definition of "water dependent" be revised to include hotels, casinos, and restaurants as examples of uses which are not water dependent. | Agreed. See revised policy. |

| Comments | Response |
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| DEPARTMENT OF THE INTERIOR - Continued | |
| 474.<br>We also recommend that the term "water related" be either more precisely defined or deleted. Many projects, including house developments, would "benefit economically" from direct access to a water body and yet housing is specifically excluded. The definition does not acknowledge that significant economic benefits may accrue from something less than direct physical access, such as visual access. We would not object to this term if the definition were supplemented by the statement "water related development is acceptable provided that it is located on *fastlands* and does not modify in any way the water or wetlands". | Agreed. Definition was delet |
| 475.<br>Policy 7:7E-3.12 states that an activity which would increase the likelihood of infrastructure (pipeline) damage or breaking or interfere with the maintenance of operations is prohibited. We question whether or not New Jersey plans to adhere strictly to this policy and prohibit bottom trawls and scallop dredges which at times disturb the subsea bottoms in pipeline corridors. | The CMP does not have regulat authority over fishing and Sh fishing methods. |
| 476.<br>We would like to point out that some borrow pits in Southern New Jersey provide the only breeding habitat for the southern gray tree frog and tiger salamander, both of which are on New Jersey's endangered species list. We recommend that the policy be revised to include this information. | Endangered species habitats s protected by 7:7E-3.33. Thar need to list habitat for each |
| 477.<br>We question why the Floodplain Policy does not apply to barrier islands. Given the serious threat to life and property on barrier islands posed by periodic severe storms, a stronger State policy than that evidenced by the Central Barrier Island Corridor Policy would seem warranted. We do not believe that the existence of structures should be used as a justification for permitting additional development in hazardous areas. | As noted in the rationale tha recognizes that infill develop Central Barrier Island Corrid not add appreciably to public and emergency evacuation cost |

| Comments | Response |
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| DEPARTMENT OF THE INTERIOR - Continued | |
| 478.<br>We believe that this policy would allow and encourage re-establishment of old navigation channels. Many channels in New Jersey backbays have not been dredged for a number of years, and have been repopulated with submerged vegetation beds. We recommend that the policy be revised as follows: "Maintenance dredging is conditionally acceptable in authorized and currently maintained local, State and Federal navigation channels. Otherwise, maintenance dredging is discouraged but in any case must comply with all other coastal policies". | Disagree. The intent of the policy is not to encourage the re-establishment of abandoned channels, thus the definition refers to "maintaining" rather than "restoring" authorized water depth and width. The alternative language suggested fails to mention access channels, anchorages and moorings, all of which require maintenance dredging. |
| 479.<br>We recommend that the NJCMP develop a strong policy against new overboard disposal of dredge material. We suggest that the policy be revised to state that dredge spoil disposal is prohibited in Open Bays and Semi-Enclosed and Back Bays as well as in Tidal Cuts, Medium Rivers, Creeks and Streams, Lakes, Ponds, and Reservoirs, and that the remainder of this paragraph be deleted. | Many bays are dredged for shipping and the bay itself is the only feasible area for disposal, especially if sidecasting is necessary. Lakes, ponds and reservoirs are dredged to remove silt and sometimes a contained portion of the lake is the only suitable disposal site. |
| 480.<br>We believe that a strong policy covering fill (the major environmental pollutant which permanently eliminates habitat) is needed. We recommend that part 2(ii) of the Filling Policy be revised to state: "in all other areas, filling is discouraged unless the project can meet all of the following conditions: (a) ..." | This will weaken the policy. Under the policy filling is not acceptable unless all the conditions are met. |
| 481.<br>We are concerned about the potential change in the low growth designation for parts of Galloway and Egg Harbor Townships in Atlantic County. We urge DEP to give careful consideration to the precedent-setting implications of any change in designation. Should a pattern of such designation changes develop, we believe that it could effectively negate a major thrust of the NJCMP. | Agree. However, a change was made to the Limited Growth (formerly called Low Growth) designation of a portion of the Mullica-South Ocean Region to create the Tuckerton Region, which has been designated an Extension (Moderate Growth) Region. The Tuckerton Region was designated to meet housing needs by allowing development to extend out from the Borough of Tuckerton through an upland area to the already developed Mystic Island section of Lower Egg Harbor Township. |

| Comments | Response |
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| DEPARTMENT OF THE INTERIOR - Continued | |
| 482.<br>Energy facilities in the State are to be sited using the Coastal Location Acceptability Method (CLAM) consistent with the Energy Use Policies and other applicable policies. A problem arises, however, due to the fact that DEP has not weighed or ranked the various policies. The failure to rank these priorities becomes crucial when a proposed land use is affected by policies which "encourage" and others which "discourage" a given use. | All policies must be met; non violated, even for an encoura use. |
| 483.<br>The organization of the program into sections on areas, uses, and resources becomes confusing in attempting to interpret the State's policies. In particular, pipelines are conditionally acceptable" provided that they are not sited within any of the 39 Special Areas (which essentially cover all potential pipeline landfall sites). While the prohibition on destruction of submerged vegetation beds is expressly lifted to provide for the conditional acceptability of pipeline placement, the section on beaches does not discuss pipelines at all. This general problem could be avoided by a statement at the beginning of Chapter 4, Section 7:7E-1.6, that where a specific use is not mentioned in the area section, the state policies in regard to it in the use section will prevail. | Location Policies normally do refer to specific uses and a intended to be applied to an proposed at the location. P siting, however, would be de by the Policy on Location of Development (7:7E-6.1). |
| 484.<br>Wet sand beaches (which cover the entire 126 mile Atlantic Coastline) are a special case in that they are designated as Geographic Areas of Particular Concern (GAPC). The priority of uses for these beaches indicates that a pipeline right-of-way would have "lowest priority". Would this classification have the effect of precluding any pipeline landfall on a beach area? If so, we believe that the NJCMP fails to make adequate provisions for national interest in OCS oil production. | If possible, a pipeline shou come onshore on a wet sand While such use would be a l ity, it may be allowed under Fied conditions. |

| Comments | Response |
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| DEPARTMENT OF THE INTERIOR - Continued | |
| 485.<br>Policy 7:7E-7.4(h)(iv) states that pipeline corridors for natural gas are discouraged in the Central Pine Barrens, yet the Pinelands National Reserve and Pinelands Protection Area Policy label this area as the "Offshore Oil or Gas Pipeline Exclusion Area". If pipelines are excluded in this area, then Policy 7:7E-7.4(h)(ii) which discusses pipelines using established right-of-way would be invalidated. | Under "Pipelines and Associated Facilities", a pipeline is prohibited in certain defined areas and allowed within limits in others. If it is in the latter areas the policy 1(ii) applies. |
| 486.<br>The document fails to incorporate the findings of a recently completed study by the Center for Coastal and Environmental Studies of Rutgers University entitled OCS Natural Gas Pipelines: An Analysis of Routing Issues. The study identified three pipeline routing scenarios which would "enable the State to amend and/or resolve its policies where needed and to develop new policies where they did not exist previously". | DEP is familiar with this study and is now conducting a follow-up Pipeline siting study. |
| 487.<br>We take exception to the last paragraph entitled Rationale. We believe that mining use policies should be designed to provide for the prudent development of minerals having local, regional, or national significance, while at the same time ensuring that acceptable environmental standards are maintained. The end use of a product derived from mined materials may be dictated by economics and consumer demand and should have no bearing on NJCMP's mining use policies. | The sentence has been deleted. |
| 488.<br>Section 306(e)(2) of the CZMA requires that an approvable program must provide for "a method of assuring that local land and water use regulations within the coastal zone do not unreasonably restrict or exclude land and water uses of regional benefit." In order to meet the requirements of this section for public utilities (which comprise the | The procedure seems somewhat complicated largely because the issue of unreasonable exclusion of energy facilities has never risen in New Jersey and the process has, therefore, never been used. The comment, however, underestimates the power of N.J. DOE in relation to the Board of Public Utilities. N.J. DOE has |

| Comments | Response |
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| DEPARTMENT OF THE INTERIOR - Continued | |
| 488. - Continued<br>bulk of New Jersey's defined uses of regional benefit), DEP cites the authority of the Board of Public Utilities (BPU) in the Department of Energy (DOE) to overrule local zoning decisions. We consider the process by which this authority is invoked to be both complicated and uncertain for the following reasons. First, it appears that only the "aggrieved utility" can request action by the Board. Second, although the BPU is in the DOE, the BPU retains the stature of an independent regulatory board. Therefore, the adoption of a Memorandum of Understanding between DEP and DOE has not in our opinion bound the BPU to the policies developed by DEP in this program. The NJCMP maintains that DOE "intervention authority" can be used to ensure that the program's policies on uses of regional benefit "will be recognized" by the Board, but does not explain under what circumstances this authority would be invoked or what effect it would have. | the express power "to intervene any proceeding before ... any Department ... including the [illegible] of Public Utilities ... to [illegible] the proper consideration ... [illegible] State energy master plan" (N.J. [illegible]:27F-13a). The policies of Energy Master Plan and the Coastal Management Program are identical as established by the MOU incl[illegible] in both documents. |
| 489.<br>The statement expressing New Jersey's policy regarding Federal consistency determinations contains a clause which should be deleted in the interest of both clarity and accuracy. The full statement in question asserts that "New Jersey will consider an activity consistent if it does not conflict with the Coastal Resources and Development Policies and is the available alternative most supportive of New Jersey's coastal program". If the underlined clause is not intended to add new meaning, it should be deleted as a redundancy with confusing implications. | Agreed. The clause has been [illegible] |

| Comments | Response |
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| DEPARTMENT OF THE INTERIOR - Continued | |
| 490. The procedure for Federal consistency as described in this section may have been too simplified to reflect the actual requirements in 15 CFR 930. For example, the time-frame of the State's consistency certification process and the requirements of "conclusively presumed" in the absence of timely State response are not discussed. | New Jersey has discussed this in detail in its Federal Consistency Handbook. Its procedures are consistent with federal law and regulations and have been used without complaint for two years in the Bay and Ocean Shore Segment. |
| 491. The phrase "significantly affect" is used where the correct phrase as used in 15 CFR 930 is "directly affect" or "affect". | Agreed. Changes have been made. |
| 492. The format of this section is confusing. A case in point is the term "Licensed and Permitted Activities Described in OCS Plans" which looks as if it were a part of the Economic Regulatory Administration responsibilities. In fact, of course, the Department of the Interior, through the U.S. Geological Survey, is responsible for OCS plans. | Agreed. Format changed. |
| 493. The second paragraph on page 256 states that applicants for permits described in OCS plans must supply the State with a description of the proposed activities. The description of the proposed activities (i.e., the OCS Plan) will be provided by the DOI and not the applicant. We request that this paragraph be rephrased to reflect the correct requirements. | Agreed. See revised language. |
| 494. In the section on shorefront access/recreation regarding the three areas of islands, rivers, and trails, the subject of resources is of course addressed, but their particular place in a comprehensive state-wide resource vision for the long-range is not clear, and the initiatives which might foster and nurture desirable future objectives are not discernible. Their interrelationship with the Coastal and Bay Area zones should be more clearly delineated. | Those initiatives are ongoing in DEP and the Legislature. Since this document can only address the coastal zone, where the DEP has authority under the legislation, a broader picture was not possible. |

| Comments | Response |
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| DEPARTMENT OF THE INTERIOR - Continued | |
| 495. We believe that the DEIS does not adequately respond to our concerns for protection of the Hackensack Meadowlands. | See general question #6. |
| 496. We would also like to point out that the State alternatives considered on page III of the document are not covered in the alternative discussion in Part V. We request that these alternatives be examined, with particular emphasis on including choices that would better protect the Hackensack Meadowlands District. | The CZMA does not require t document to consider State a natives. See General Questi 6 and 7. |
| 497. We believe that the DEIS would benefit from more comprehensive discussion of how the coastal policies will affect various economic sectors and further qualification and quantification of environmental impacts. | Because the document address cies without knowing definit a specific site, discussion nomic impacts would be gues environmental impacts are co as much as possible for dev a broad program. See also g question #1. |
| 498. It would be useful to have, in addition to the general Table of Contents provided, an appropriate general index to the subject document, as a matter of practical convenience of those who are to review it as well as those who are to work with it. | Agreed. This has been adde |
| 499. Before finalization of the FEIS process, the State Historic Preservation Officer should be invited to comment on policies and procedures which significantly impact areas of concern. | Agreed. This officer, as p was part of the State prepa review process. |
| 500. We are pleased to see that this Coastal Zone Management document clearly recognizes that the starved littoral drift system deprives Sandy Hook of its natural sand supply and that: "the focus of shore protection efforts will continue to shift from structural to non-structural measures, including a halt to development most likely to be destroyed by storms and floods". | Thank you. |

| Comments | Response |
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| **DEPARTMENT OF THE NAVY** | |
| 501.<br>Page 248, third paragraph - There is no requirement that a federal action is consistent only if it is "the available alternative most supportive of the (New Jersey) coastal program. Accordingly, the second requirement of your two prong test for consistency seems inappropriate. | This phrase has been deleted throughout the Program. |
| 502.<br>Page 248, fifth paragraph - The words "if required by Federal law or regulation" should follow the last sentence of this paragraph to clarify the fact that federal agencies are required to obtain state (coastal) permits only when directed by Federal law or regulation. | Disagree. The suggested change would be confusing. The point of the sentence is to make the federal consistency determination process easier for those activities which do otherwise require State coastal permits. |
| 503.<br>Page 248, sixth paragraph - The first two sentences should be modified to include the underlined phrases:<br>"The appropriate state permit application should, therefore, be submitted to DEP prior to or concurrent with the submission to the Federal licensing or permitting agency initiating the federal review process. Should the Division of Coastal Resources receive a consistency certification for an activity which requires a state permit by Federal law or regulations but for which .... | The first suggested change has been made; the second has not for the reason noted directly above. |
| 504.<br>Page 249, second and third paragraphs - The phrase "significantly affect the coastal zone" has been deleted in the amended consistency regulations. (See Federal Register, Volume 44, Number 123, June 25, 1979 (15 CFR 930)). | Agreed. See revised language. |
| 505.<br>Page 250, Page 258 and Page 375, also Map on page 376 - The Navy activity referred to as either Leonardo-Earle Naval Ammunition Depot or Earle Naval Supply Depot should be the Naval Weapons Station, Colts Neck. | Agreed. See change. |

| Comments | Response |
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| **U.S. ENVIRONMENTAL PROTECTION AGENCY** | |
| 506.<br>7:7E-3.18, Existing Lagoon Edge - We suggest additional conditions for development: availability of adequate waste collection, treatment and disposal; and shallow lagoon design to prevent anoxia and odor problems caused by poor tidal flushing and drainage of street runoff and septage. | Adequate solid waste disposa required for new development out the coastal zone (7:7E-3 policy applies only to exist lagoons. Filling to create for residential development hibited. |
| 507.<br>7:7E-3.19, Beach and Dune Systems - The discussion of beach and dune systems (page ID3-102) appears consistent with federal efforts to preserve these systems (Reference Department of Interior; "Alternative Policies for Protecting Barrier Islands Along the Atlantic and Gulf Coasts of the United States", Dec. 1979). | No response necessary. |
| 508.<br>7:7E-3.22, Central Barrier Island Corridor - We suggest that (1) the "infill" criterion be very strictly applied on barrier islands to limit growth to already developed areas and to discourage sprawl, and (2) consideration be given to applying more rigorous criteria to barrier island development. Barrier islands, themselves, could reasonably be classified as Special Hazard Areas. | New infill policies group Ba Islands with limited growth extension regions as areas w infill requirements are most rigorous. |
| 509.<br>7:7E-3.26, Coastal Bluffs - Makes no allowance for a particularly severe series of events during which bluffs and structures could erode at an unusually high rate. We suggest, therefore, the inclusion of an appropriate buffer zone into the applicable formula (page 117). | There is no agreed defensible figure which would be appropr Very severe erosion from sto of low statistical probabili possible but legally accepta calculations are hard to mak the reference to erosion haz Buffer Resource Policy provi additional protection. |
| 510. | |

| Comments | Response |
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| **U.S. ENVIRONMENTAL PROTECTION AGENCY - Continued** | |
| 510.<br>7:7E-5.3, Coastal Growth Rating - The designation of the Trenton-Philadelphia corridor, especially in development centers, as part of a high growth region does not appear to recognize the groundwater quality and quantity problems currently experienced. We recommend that the coastal management plan consider the need to protect available drinking water resources from further overdraft. Although the policy under subchapter 7:7E-8.6 recognizes this need, we believe that an attempt should be made to resolve conflicting policy directions. | Most of the coastal areas in this corridor are on the water's edge and so are governed by Special Area policies which do not vary by Growth Region. Policy 7:7E-8.6 on Groundwater Use, as noted, offers protection to groundwater which would increase dramatically if a validated aquifer model of the Coastal Plain were available to calculate safe sustained yields. |
| 511.<br>7:7E-3.6, Definition of Acceptable Intensity of Development - The example used on page 168 for Special Area types delineates possible minimum areas for endangered species habitat. We recommend provision for the fact that endangered species are endangered because, among other factors, they cannot coexist with intense development; buffer areas may be appropriate. | Provisions for such buffers is included in 7:7E-8.15 Buffers and Compatibility of Uses. |
| 512.<br>7:7E-8.6, Groundwater Use - Please explain the definition of aquifer safe yield used on page 226. | That level of continued pumpage which would not lower water tables or piezometric surfaces to levels that would cause saline intrusion changes of vegetation or drying of streams. |
| 513.<br>7:7E-8.11, Air Quality - Recommend that consideration be given to the designation of Air Quality Management Areas and Air Quality Nonattainment Areas as Geographic Areas of Concern so that a potential developer will be informed early in project processing that a site has air quality constraints and that he should seek a determination from the state Bureau of Air Pollution Control. | To satisfy NOAA requirements the State must have jurisdiction over land areas of GAPC's, precluding the addition of the large areas suggested. The State Implementation Plan available for DEP provides some guidance in this direction. |

| Comments | Response |
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| **FEDERAL ENERGY REGULATORY COMMISSION** | |
| 514.<br>Page 207 states that "the tankering, transfer, and storage of LNG pose significant risks to public health, safety and welfare". This statement is unacceptable, and if intended as a conclusion from the FERC (FPC)/DEIS on the formerly proposed West Deptford LNG terminal is grossly inaccurate, since none of the conclusions on page 207 can be derived from the cited DEIS. Only tankering is identified as an unacceptable risk to public safety, and this was only in a certain segment of the river. | The discussion of potential was not intended to represe clusion of the cited FERC d However, this section has b to add clarity. |
| 515.<br>In accordance with the requirements of section 307(c)(3)(A) of the CZMA, a decision on consistency certification for Federal license must be made by the State within six months after receipt of its copy of the applicant's certification. Otherwise, the State's concurrence with the certification shall be conclusively presumed. This time limit on consistency review should be clearly defined in the NJCMP (page 248). | Note revision to discussion ally licensed and permitted |
| 516.<br>The statement on page 249 implies that Federal licenses for hydroelectric projects located on river segments upstream and outside of the coastal zone would require consistency certification. Hydroelectric powerplants, however, are not identified in the energy facility planning process (page 291) as energy facilities likely to locate in, or significantly affect New Jersey's coastal zone. | Hydroelectric plants have n listed among facilities di the section on the energy f planning process. |
| 517.<br>Revise list of FERC licenses and permits subject to federal consistency. | Agreed. Revision made. |
| 518.<br>Figure 36 should indicate possible impacts from LNG facilities; for example, the thermal impacts of cooling or heating water effluents. | Agreed. Appropriate change made in Figure 36. |

| Comments | Response |
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| FEDERAL ENERGY REGULATORY COMMISSION - Continued | |
| 519.<br>7:7E-7.4, Energy Use Policies - (n) - [illegible] - The information on the Staten Island application (page 307) should be updated, from the "mid-1978" citation. | Agreed. As indicated by brackets in the draft document, the mid-1978 citation was to be deleted and is not included in the FEIS. |
| 520.<br>The FERC is receiving a great number of applications for small-scale hydroelectric power development at existing dams in the U.S. A list of retired hydropower plants in the U.S., maintained by the FERC, shows 19 retired small-scale hydropower plants in New Jersey, some of which appear to be located within the New Jersey coastal area or near its boundary. | No response necessary. |
| 521.<br>Should it be the intent of the NJCMP that Federal licenses for hydroelectric projects, which are located outside of the State's coastal zone, be subject to consistency certification? | Any federal approvals for projects which will directly affect the coastal zone are subject to consistency certification. |

APPENDIX I: GLOSSARY

Introduction

This glossary is intended to provide the reader with understandable definitions of technical terms used and undefined in the text. Terms which have been previously defined include a reference to the appropriate section of Part II.

acceptable - See Chapter Four, 7:7E-1.6(c).

acceptable intensity of development - See Chapter Four, 7:7E-5.6.

accretion - the process of gradual and imperceptible addition of solid material, thus extending the shoreline.

action - See Chapter Four, 7:7E-1.6(c).

activity - See Chapter Four, 7:7E-1.6(c).

adverse impact - a negative effect.

algae - non-vascular simple aquatic plants, without true roots, stems, or leaves, that vary from single celled to large multicellular forms; most noted groups are: green, brown, red, blue-green and diatoms.

alluvial - deposits of flowing water; clay, silt, sand, gravel, and/or organic detritus.

alluvial flood margins - See Chapter Four, 7:7E-3.25.

aquaculture - See Chapter Four, 7:7E-4.10(a).

aquifer - a water-bearing underground layer of sand, gravel, or rock; a porous sub-terranean water-bearing stratum of unconsolidated sediments.

anadromous - marine or estuarine species of finfish that spawns in freshwater.

approved - a CAFRA, Wetlands, or Waterfront Development permit has been granted by NJDEP to develop a site as proposed by an applicant.

archaeological resources - See Chapter Four, 7:7E-3.31.

area - See Chapter Four, 7:7E-1.6(c).

artificial reef - See Chapter Four, 7:7E-3.13.

assimilative capacity - the amount of adverse impacts (pollutants) that a water body or land area can absorb and neutralize before it begins to display a significant reduction in biological diversity, chemical, and/or physical quality.

back bay - See Chapter Four, 7:7E-4.5.

backfilling - the action of removing trench spoil from its temporary spoil storage site(s) by a bucket-type piece of trenching equipment and replacing it in the trench. This activity follows pipeline placement.

bathymetry - the measurement of depths of water areas; underwater topography.

beach - See Chapter Four, 7:7E-3.19.

benthic - occurring or living on or in the bottom of a water body.

biota - the plant and animal assemblage of a biological community.

bluffs - See Chapter Four, 7:7E-3.26.

boat ramp - See Chapter Four, 7:7E-4.10(b).

bog - See Chapter Four, 7:7E-3.20.

borrow pit - See Chapter Four, 7:7E-3.15 and 7:7E-3.30.

brackish - partially saline water.

bridge - See Chapter Four, 7:7E-4.10(m).

built-up urban area - land areas already intensely developed for housing, commerce, industry, etc.

cable route - See Chapter Four, 7:7E-4.10(n).

canal - See Chapter Four, 7:7E-3.8.

carcinogen - capable of causing cancer in humans.

central barrier island corridor - See Chapter Four, 7:7E-3.22.

clay lense - a lense-shaped deposit of clay.

coastal bluff - See Chapter Four, 7:7E-3.26.

coastal region - See Chapter Four, 7:7E-5.3.

coastal water - all tidally influenced waters under New Jersey State jurisdiction.

coastal wetlands - See Chapter Four, 7:7E-3.20.

conditionally acceptable - See Chapter Four, 7:7E-1.6(c).

cranberry bogs - See Chapter Four, 7:7E-3.23.

creek - See Chapter Four, 7:7E-4.8.

critical wildlife habitat - See Chapter Four, 7:7E-3.34.

dam - See Chapter Four, 7:7E-4.10(p).

datum - a reference point, line or plane used as a basis of measurements.

depuration - the process by which potentially contaminated shellfish are cleansed prior to human consumption. After harvest shellfish are held in controlled conditions for a sufficient length of time until pathogenic organisms are purged.

detritus - particulate matter, especially of organic vegetative origin in varying stages of decomposition.

development - a facility, use, or alteration as defined in enabling legislation. See Chapter Four, 7:7E-1.6(c).

development potential - See Chapter Four, 7:7E-5.5.

direct impact - a change in the built or natural environment that is either the immediate result of an impacting activity or is linked to the impacting activity through an identified chain of cause and effect without further human intervention.

discouraged - See Chapter Four, 7:7E-1.6(c).

disturbance - a disruption or perturbation; significant changes in the equiplibrium of natural or social processes and resources from artificial or natural causes.

diversity - the variety of species present in a habitat or ecosystem. High diversity indicates environmental health.

dock - See Chapter Four, 7:7E-4.10(c) and (d).

dredge spoil disposal - See Chapter Four, 7:7E-4.10(g).

dreging (maintenance) - See Chapter Four, 7:7E-4.10(e).

dredging (new) - See Chapter Four, 7:7E-4.10(f).

dry borrow pit - See Chapter Four, 7:7E-3.30.

dumping - See Chapter Four, 7:7E-4.10(h).

dune - See Chapter Four, 7:7E-3.19.

ecosystem - the complex of a community and its environment functioning as an ecological unit.

ecotone - an edge or border zone between different habitats usually with high diversity of species.

effluent - a discharge of pollutants into the environment; untreated or partially or completely treated.

encouraged - See Chapter Four, 7:7E-1.6(c).

endangered - See Chapter Four, 7:7E-3.33.

environmental sensitivity - See Chapter Four, 7:7E-5.4.

ephemeral - lasting only a short time; temporary; transient. (See Chapter Four, 7:7E-3.27).

erosion - the wearing away of the land surface by running water, wind, or other geological agents. (See Chapter Four, 7:7E-8.8).

escarped foredune - wave eroded sand dune, with steep slope in ocean front adjacent to beach.

estuarine - of, relating to, formed, or living within an estuary.

estuarine sanctuary - See Chapter Four, 7:7E-3.14.

estuary - any confined coastal water body with a connection to the sea and measurable quantity of marine salt in the waters; greater than 0.5 parts per thousand (ppt).

euthrophication - nutrient enrichment, leading to excessive growth of aquatic plants, usually resulting in anoxic (lack of dissolved oxygen) water conditions.

excluded federal land - See Chapter Four, 7:7E-3.37.

farmland conservation area - See Chapter Four, 7:7E-3.28.

fauna - a collective term for the animal species present in an ecosystem.

feasible - See Chapter Four, 7:7E-1.6(b).

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| feasible alternative | - an action possible using current technology and resources. |
| filled water's edge | - See Chapter Four, 7:7E-3.17. |
| filling | - See Chapter Four, 7:7E-4.10(i). |
| finfish migratory pathway | - See Chapter Four, 7:7E-3.5. |
| floodplain | - See Chapter Four, 7:7E-3.21. |
| flora | - a collective term for the plant species present in an ecosystem. |
| flushing rate | - the rate at which the water in a water body is replaced, usually expressed at the time needed for one complete replacement. |
| food chain | - the step-by-step transfer of food energy and materials, by consumption, from the primary source in plants through increasingly higher forms of animals. |
| food web | - the network of feeding (trophic) relationships in and between (a) biological community(ies). |
| forage | - food source. |
| freshwater wetlands | - See Chapter Four, 7:7E-3.20. |
| gabion | - loose rock held together with wire mesh used to promote groundwater recharge. |
| growth rating | - See Chapter Four, 7:7E-5.3. |
| gut | - See Chapter Four, 7:7E-4.6. |
| habitat | - place of residence of plants and animals; community of species. |
| Hackensack Meadowlands District | - See Chapter Four, 7:7E-3.40. |
| hazardous substances | - includes petroleum and petroleum products; all pesticides designated as "prohibited", "restricted" or "specially restricted" pursuant to New Jersey Pesticide Control Act of 1971 (N.J.S.A. 13:1F-1 et seq.) and N.J.A.C. 7:30-1.5 through 1.7 (Appendix A); and substances identified as hazardous by the Federal Environmental Protection Agency at 40FR 59961 December 30, 1975 proposed pursuant to Section 311(b)(2)(A) of the Federal Water Pollution Control Act Amendments of 1972, 33 USC 1251 et seq. (Appendix B). This definition conforms to that in N.J.A.C. 7:1E-1.1 pursuant to the Spill Compensation and Control Act of 1976 N.J.S.A. 58:1-23.11. |

high risk beach erosion area - See Chapter Four, 7:7E-3.19.

historic resources - See Chapter Four, 7:7E-3.31.

housing - See Chapter Four, 7:7E-7.2.

impact - ecological or sociological effect; impinge; an impelling or compeling effect.

impinge - to hold fast, as with finfish being held against a screen within a water intake system.

impoundment - See Chapter Four, 7:7E-4.10(p).

indigenous - having originated in and being produced, growing, or living naturally in a particular region or environment; native species.

industrial wastes - an extremely wide variety of chemicals which must be disposed; potential pollutants not usually of residential origin.

infill - development of vacant land within general built-up area; development of land parcel with at least 50% of boundary of site presently developed in the same way as that type proposed. (See Chapter Four, 7:7E-5.5(iii).

infrastructure - a facility, frequently linear, which transports people, materials, energy or information, and directly associated point facilities.

inlet - See Chapter Four, 7:7E-3.9.

inorganic - non-living or of non-organic origin; mineral.

intensity - See Chapter Four, 7:7E-5.6.

intermittent stream - See Chapter Four, 7:7E-3.27.

intertidal - the area between high and low tide levels, twice daily exposed and flooded.

intertidal flats - See Chapter Four, 7:7E-3.16.

invertebrate - animals wirhout backbones. This composite term covers a wide variety of organisms.

jetting - the action of liquefying and lightening of marine bottom sediments by blowing high pressure air and water into sediments from a specially designed jet sled. This alternative trenching technique has been used for laying pipelines.

lagoon - an artificially created linear waterway sometimes branched ending in deadend with no significant upland drainage. See Chapter Four, 7:7E-3.18.

lake - See Chapter Four, 7:7E-4.9.

large river - See Chapter Four, 7:7E-4.7.

littoral - shoreline; related to edge of the water body.

littoral drift - the movement of sedimentary material, e.g.: sand, silt, gravel, parallel to shoreline under the influence of wind, waves, and currents; commonly used as synonymous with longshore transport.

location - See Chapter Four, 7:7E-1.6(c).

long - a word sometimes used to describe state programs prepared under Federal law in the format of environmental impact statements.

major development - a facility as defined by New Jersey Coastal Area Facility Review Act of 1973 (N.J.S.A. 13:19-3 et seq.).

marina - a waterfront facility predominantly used for the dockage (wet or dry stack) or moorage for recreational boats, for which dockage or moorage fee is charged.

marine sanctuary - See Chapter Four, 7:7E-3.14.

maximum extent practicable - the use on consideration of best available technology and mitigation measures resulting in selection of measures, technique, or level which produces most environmentally desirable effect. See Chapter Four, 7:7E-1.6(c).

mean high water (MHW) - a tidal datum; the arithmetic average of the high water heights observed over a specific 18.6 year Metonic cycle (the National Tidal Datum Epoch).

mean high water line - the line formed by the intersection of the tidal plane of mean high water with the shore.

mean low water (MLW) - a tidal datum; the arithmatic average of the low water heights observed over a specific 18.6 water Metonic Cycle (the National Tidal Datum Epoch).

medium river - See Chapter Four, 7:7E-4.8.

mitigation - a measure or system of measures taken to make an action less severe.

mooring - See Chapter Four, 7:7E-4.10(k) and 7:7E-3.10.

multi-purpose marina - a small harbor facility that maximized diversity of user groups and activities.

multi-use developmet - See Chapter Four, 7:7E-7.2(i).

navigable - See Chapter Four, 7:7E-1.6.

navigational channel - See Chapter Four, 7:7E-3.7.

ocean - See Chapter Four, 7:7E-4.3.

open bay - See Chapter Four, 7:7E-4.4.

organic - living, related to living substance or living organisms. Chemical compounds formed of carbon united with hydrogen (hydrocarbons).

outfalls - See Chapter Four, 7:7E-4.10(q).

overhead transmission lines - See Chapter Four, 7:7E-4.10(o).

overwash - an area on barrier island which has a history or potential to be inundated by ocean storm waves.

pathogenic - capable of causing disease.

perennial - present at all seasons; persisting for several years; continuing without interruption.

permit - a writing, issued by a person in authority, empowering the grantee to do some act not forbidden by law, but not allowed without such authorization.

photosynthesis - the vegetative manufacture of organic carbohydrates from carbon dioxide and water in the presence of chlorophyll by utilizing light energy and releasing oxygen.

phytoplankton - the single-cell plant component of plankton.

piers - See Chapter Four, 7:7E-4.10(d).

Pine Barrens - See Chapter Four, 7:7E-3.39.

Pinelands - See Chapter Four, 7:7E-3.39.

piling - See Chapter Four, 7:7E-4.10(j).

pipeline route - See Chapter Four, 7:7E-4.10(n) and 7:7E-6.1.

pipes - See Chapter Four, 7:7E-7:7E-4.10(q).

plankton - small suspended aquatic plants and animals which passively drift or swim weakly.

pond - See Chapter Four, 7:7E-4.9.

potential - existing in possibility; capable of development into actuality. (See Chapter Four, Section 7:7E-5.5 for discussion of Development Potential).

port - See Chapter Four, 7:7E-3.11.

practicable - See Chapter Four, 7:7E-1.6(c).

pre-application conference - informal meeting with Division of Coastal Resources staff member, prospective permit application and consultant to discuss development proposal prior to formal application, to determine consistency with coastal policies and define specific application requirements. (See Chapter Four, 7;7E-1.6(d)).

preservation - to maintain in existing condition; protection from permanent alteration by human activity.

prime fishing - See Chapter Four, 7:7E-3.4.

productivity - (primary or biological) - The amount of organic matter produced by photosynthesis usually expressed as weight per area over a given period of time.

prohibited - See Chapter Four, 7:7E-1.6(c).

project - See Chapter Four, 7:7E-1.6(c).

proposal - See Chapter Four, 7:7E-1.6(c).

prudent - a wise choice. (See Chapter Four, 7:7E-1.6(b).

public launching facility - a facility available for use by the general public or on a free or fee basis, used for launching and returning recreational boats.

public open space - See Chapter Four, 7:7E-3.35.

regional impact- an economic, environmental, or sociological effect extending beyond the municipal boundary in which the causative use is located.

reservoir - See Chapter Four, 7:7E-4.9.

resource recovery - the extraction and utilization of materials and energy from the waste stream. Materials would include, for example, metals and glass which can be used as "raw materials" in the manufacture of new products.

retained water's edge - See Chapter Four, 7:7E-3.17.

retaining structure - See Chapter Four, 7:7E-7.11.

riparian lands - land now or formerly flowed by the mean high tide.

riprap - a foundation of stones or rocks loosely placed together without order to prevent scour and erosion.

river - See Chapter Four, 7:7E-4.8.

rookery - a communal breeding site for certain species of aquatic birds.

runoff - the portion of precipitation on land that flows over the land surface; overland flow (See Chapter Four, 7:7E-8.7).

salinity - a measure of the quantity of dissolved salts in water expressed in parts per thousand of water (ppt).

salt water intrusion - the movement of salt water inland into subterranean aquifers.

salt wedge - estuarine water mass of higher salinity found along the bottom over which lighter fresher waters move.

sand and gravel extraction - See Chapter Four, 7:7E-4.10(1).

seasonal home - a non-year round residence frequently without insulation or heating system.

secondary impacts - See Chapter Four, 7:7E-6.3.

sediment - material deposited by water, wind, or glaciers.

sedimentation - the process of gravitational deposition of organic and/or inorganic suspended particles by water (See Chapter Four, 7:7E-8.8).

semi-enclosed bay - See Chapter Four, 7:7E-4.5.

sensitivity - the capacity of an organism, community, or area to respond to stimulation; susceptibility to disturbance and change. (See Chapter Four, 7:7E-5.4).

shellfish - a misnomer of common use for a group of organisms none of which are true vertebrate finfish; includes mollusks and crustaceans such as clams, oysters, scallops, conchs, squid, crabs, lobsters, and shrimp. (See Chapter Four, 7:7E-3.2, 3.3, and 8.3).

shellfish beds - See Chapter Four, 7:7E-3.2.

shipwrecks - See Chapter Four, 7:7E-3.13.

significant - a measurable change in the built or natural environment that is cause for concern.

silt - fine particulate matter suspended in water and later deposited on water body bottom.

sludge dumping - See Chapter Four, 7:7E-4.10(h).

spawn - the reproductive act of lower organism where fertilization of eggs is usually external.

special hazard area - See Chapter Four, 7:7E-3.36.

special urban area - See Chapter Four, 7:7E-3.36.

specimen tree - See Chapter Four, 7:7E-3.32.

steep slope - See Chapter Four, 7:7E-3.29.

storm surge - the piling up of water against (or withdrawal from) a coast by strong winds and reduced atmospheric pressure such as that accompanying a hurricane or ther intense storms.

streams - See Chapter Four, 7:7E-4.8.

submerged infrastructure - See Chapter Four, 7:7E-4.10(n).

submerged vegetation - See Chapter Four, 7:7E-3.6.

successional - plant species or vegetative community which will be successively replaced by more stable communities. A sub-climax vegetation type.

surf clam area - See Chapter Four, 7:7E-3.3.

surface water runoff - See runoff (See Chapter Four, 7:7E-8.7).

surrounding region - See Chapter Four, 7:7E-1.6(c).

swale - a low lying or depressed land area commonly wet or moist; an intermittent drainage way.

tertiary water treatment - a process following secondary treatment involving filtration, activated carbon, and chlorination. In the process, the effluent is subjected to denitrification and phosphorus precipitation.

tidal flooding - inundation of land caused by an abnormally high tidal water having an average frequency of once in 100 years, although the event may occur in any year.

tidal influence- water which measurably rises and falls with twice-daily tides.

tide - the periodic rise and fall of the water resulting from gravitational interaction between the sun, moon, and earth. The vertical component of the particulate motion of a tidal wave. In each lunar day of 24 hours and 49 minutes there are two high tides and two low tides.

tidelands - those lands now or formerly flowed by the mean high tide, held in trust by the State unless alienated.

toxic substance - a poison.

transferred impacts - See Chapter Four, 7:7E-8.4.

trenching - the action of removing sediments or substrate for the purpose of installing a linear facility accomplished by use of a backhoe, bucket, clam, dragline, shovel or similar method.

turbidity - reduced water clarity resulting from presence of suspended matter.

use - See Chapter Four, 7:7E-1.6(c).

water areas - See Chapter Four, 7:7E-4.1.

water access - direct physical availability to water body.

water dependent- use which requires navigation in, or direct physical contact with, water body. (See Chapter Four, 7:7E-1.6(c)).

water disturbance - measurable change in biological, chemical, or physical water quality.

water oriented - use with strong need for water access.

waterfowl - a group of aquatic birds within the family Anatidae which includes ducks, geese, swans, and mangansers.

wet borrow pits- See Chapter Four, 7:7E-3.15 and 7:7E-3.25.

wetlands - inundated areas supporting emergent aquatic plants (See Chapter Four, 7:7E-3.23 and Chapter Five.

white cedar stands - See Chapter Four, 7:7E-3.23.

wildlife - a collective term used for living organisms neither human or domesticated (See Chapter Four, 7:7E-3.33, 3.34, and 8.10).

zooplankton - the animal component of the plankton.

INDEX


A - 95 Review - 17, 356
Acceptability Conditions for Uses - 141
Acceptability Intensity of Development - 162
Acceptability of Development in General Land Areas - 151
Agriculture, Dept. of - 58, 249
Air Quality - 56, 225, 257
Alluvial Flood Margins - 100
Amusement Piers - 183
Aquaculture - 142
Army Corps of Engineers - 245, 247
Artificial Reefs - 89

Barrier Free Design - 237
Barrier Islands - 95(i), 106, 259, 325
Basic Coastal Policies - 10-12
Bays - 138, 139
Bay and Ocean Shore Area - 324
Beach and Dune Systems - 100-106, 101
Beach Shuttle - 299
Beaches - 100-106, 101(i), 213, 265, 292, 294
Bicycle Paths - 202
Bluffs - 112, 114(i)
Boat Ramps - 142
Boardwalks - 183
Bogs - 108-111
Borrow Pits - 90, 116
Borrow Pits Margins - 110
Boundary - 2(i), 19-21, 21(i), 310-313, 312(i)
Bridges - 48
Buffers - 229

CAFRA - 3, 4, 19, 32, 36(i), 38(i)
Campgrounds - 161
Canals - 86
Casino Hotels - 210
CEIP - 5, 43, 46, 289, 376
Channels - 85
CLAM - 3, 79-80, 308
Clams - 82
Coast Guard - 247
Coastal Permit Jurisdiction - 40(i)
Coastal Zone Management Act - 4, 24, 226, Chapter 5 - 241
Commercial Development Potential - 160
Commercial Facilities - 209
Community Affairs, Dept. of - 58
Conflict Resolution - 66
Convention Centers - 221
Counties - 59
Cranberry Bogs - 109

Dams - 149
Decommissioning of Projects - 237
Definitions - 76
Delaware - 20
Delaware and Raritan Canal - 51, 52(i), 53(i)
Delaware River Area - 60, 328
Delaware River Basin Commission - 60, 61, 62(i)
Delaware River Port Authority - 63
Development Potential - 157
Development Region - 169
Docks - 142, 143
Dredge Spoil Disposal - 92, 117, 145, 214
Dredging - 82, 86, 87, 88, 143, 144
Dumping - 146
Dunes - 100-106, 101(i), 212

Economic Development Authority - 59
Economic Regulatory Administration - 248
Electric Power - 197, 254
Endangered or Threatened Vegetation - 119, 257
Endangered or Threatened Wildlife - 119, 257
Energy - 9, 12, 253, 364
Energy Conservation - 231
Energy, Dept. of (U.S.) - 250
Energy, Dept. of (N.J.) - 12, 42, 43
Energy, Dept. of-Memorandum of Understanding - 372-377
Energy Facility Planning Process - 42
Energy Use Policies - 184-201
Engineering - 212
Environmental Advisory Group - 290
Environmental Protection Agency (EPA) - 248, 250
Environmental Quality, Division of - 29, 226, 238, 259
Environmental Sensitivity, Rating - 155
Erosion - 102, 105, 222, 301
Estuaries - 85, 90

Fair Share Housing - 178, 262
Farmland - 115, 260
Federal Agency Authority - 64
Federal Consistency - 64, 242-250, 358
Federal Energy Regulatory Commission - 247
Federal Lands - 122, 370, 371(i)
Fertile Soils - 234
Filled Waters Edge - 96, 123
Filling - 87, 88, 91, 93, 146
Fish, Fishing, Fisheries - 83, 217
Fish, Game, Wildlife, Division of - 30
Fishing Platforms - 148
Forests - 260
Flood Hazard Areas - 49, 235
Flood Margins, Alluvial - 100
Floodplains - 98
Foot Paths - 202

Gas - 192, 193, 194, 196
Gas Processing Plants - 194
General Areas - 79
Geographic Areas of Particular Concern - 263, 264(i)
Green Acres - 17, 30, 31, 44, 284, 298
Ground Water - 220
Growth Rating - 151-155, 153(i)

Hackensack Meadowlands - 2(i), 3, 20, 21(i), 31, 42, 75, 127, 128(i), 269-283, 270(i), 277(i), 279(i), 280(i), 323, 359, 384
Hazard Areas, Special - 122
Higbee Beach - 265
High Rise Housing - 180
Historic and Archeological Resources - 118, 259
Hotels - 209
Housing - 177

Impoundments - 147
Industrial Development Potential - 160
Industry - 205
Infill - 159(i)
Infrastructure, Submerged - 87, 89, 148
Inlets - 87
Intakes - 149
Interior, Dept. of the - 250
Intermittent Stream Corridors - 113, 114(i)
Intertidal Flats - 93

Labor and Industry, Dept. of - 59
Location Policies - 79, 175
Lagoon Edge - 96, 97(i)
Lakes - 141
Land Acceptability Tables - 167, 168(i)
Land Areas, General - Subchapter 5 - 151
Legal Authority - 9, 297, 390
Limited Growth Regions - 152
Linear Development - 175
Location Policy, Basic - 175
LNG Facilities - 199-201, 254

Marinas - 88, 182
Mining - 91, 110, 206, 260
Mooring - 147
Mosquito Control - 108
Municipalities - 60, 314-318, 337-354

National Defense - 215, 252
National Interests - 251-260
Natural Areas - 265
Natural Areas System Act - 56
Navigation - 85, 86
Neighborhoods - 232
Noise Abatement - 238
Northern Waterfront Areas - 63, 319-324
NPDES - 47
Nuclear Regulatory Commission (NRC) - 197, 198, 248

Ocean - 131
Oil & Gas - 185, 186(i), 196, 254
Oil Refineries - 195
Onshore Support Bases - 187
Open Space - 11, 121
Outer Continental Shelf Development - 185, 186(i)
Outfalls - 149
Overhead Transmissions Lines - 149

Parking Facilities - 202
Parks - 11, 183
Parks and Forestry, Division of - 29
Pennsylvania - 20
Pesticides - 108
Petrochemical Facilities - 195
Piling - 146

Pinelands, Pine Barrens - 51, 54, 55, 124, 125(i), 189, 191(i)
Pipe Coating Yards - 188
Ports - 12, 88, 207, 256
Port Authority of NY & NJ - 63
Pre-Application Phase - 77
Program History - 3
Project Application - 77
Public Access - 228, 292-294, 296, 297, 363
Public Comments -
Public Facilities - 203
Public Participation - 65, 289-290, 361
Public Services - 227
Public Transportation - 201

Recreation - 181, 255
Regional Benefit Decisions - 261, 262
Regional Land Use Authority - 60
Residential Development, Large-Scale - 181
Residential Development Potential - 157
Resorts - 181
Resource Policies - Subchapter 8 - 217
Retail Trade & Services - 210
Roads - 201
Rivers - 140
Rivers, Wild and Scenic - 50, 127
Runoff - 113, 220

Sand & Gravel Extraction - 147
Scenic Resources & Design - 229
Secondary Impacts - 175
Shellfish - 81, 217
Shipwrecks - 89
Shore Protection - 3, 17, 31, 45, 212-214, 292, 301-306
Soil Erosion & Sedimentation - 222
Soils, High Permeability Moist - 233
Soils, Wet - 233-234
Solid Waste - 57, 108, 117, 203, 230, 262
Special Areas - 79, Subchapter 3 - 81
Special Hazard Areas - 122
Special Urban Areas - 122, 205
Special Waters Edge Types - 94(i), 95(i), 96-115
Specimen Trees - 119
State-Owned Land - 56
Steep Slopes - 116
Submerged Infrastructure - 87, 89, 148
Submerged Vegetation - 85
Surf Clam Areas - 82
Surface Water - 219

Tanker Terminals - 196
Tidal Cuts - 139
Tidelands - 3, 39, 41(i)
Traffic - 232
Transportation - 179, 201, 256
Transportation, Dept. of - 59
208 Plans - 48, 219

Urban Areas - 123, 205
Urban Waterfronts - 12, 123, 295
Use Policies - Subchapter 7 - 177

Vegetation Habitats - 119
Vegetation, Submerged - 85

Wastewater Treatment - 48
Water Areas - Subchapter 4 - 131
Water Area Policy Summary Table - 131, 132(i)
Water Body Types - 133, 137(i)
Waterfront Development Law/Permit - 3, 6, 32, 33(i), 34(i), 66, 360, 378-388, 379(i), 380(i)
Waterfront Parks - 11
Water Quality - 46-49, 219, 256
Water Resources, Division of - 28
Wetlands - 107-109, 257, 263, 280(i)
Wetlands Act - 4, 35(i), 37, 107-109
White Cedar Stands - 107, 109
Wildlife Habitats - 119, 120, 225

## APPENDIX J - PREPARERS OF THE NEW JERSEY COASTAL MANAGEMENT PROGRAM AND FINAL ENVIRONMENTAL STATEMENT

The National Oceanic and Atmospheric Administration - Office of Coastal Zone Management (NOAA-OCZM) in the United States Department of Commerce together with the Bureau of Coastal Planning and Development in the Division of Coastal Resources, New Jersey Department of Environmental Protection prepared this document with the assistance of present and former staff of the entire Department of Environmental Protection, other state, federal and local agencies, interest groups and citizens. The preparers are listed below and, as required by regulations of the Council on Environmental Quality (1502.17), academic degrees and the number of years of relevant experience of the primary authors are listed in parentheses.

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RE: Request for total federal funding allocated to the New Jersey Coastal Management Program from 1980 through the present.

Dear Ms. Gibbons,

This letter is in response to your email request dated 11/27/2006 regarding the New Jersey Coastal Management Program. According to our best available records, the New Jersey Coastal Management Program has received $70,684,500 total federal funding under the Coastal Zone Management Act since 1980.

This number is calculated from a funding spreadsheet that our office maintains. There is not a published source that includes compiled annual funding for each state coastal zone management program. Annual funding figures are published in the Biennial Report to Congress.

Should you have any additional questions, please contact Kris Wall at kris.wall@noaa.gov or at (301) 713-3155 extension 168.

Sincerely,

John King, Chief
Coastal Programs Division

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DE32725

**No. 134, Original**

IN THE
Supreme Court of the United States

STATE OF NEW JERSEY,
*Plaintiff,*

v.

STATE OF DELAWARE,
*Defendant.*

# DELAWARE'S APPENDIX ON CROSS-MOTIONS FOR SUMMARY JUDGMENT

**VOLUME 5 (Pages 3173 – 3784)**


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December 22, 2006

**TABLE OF CONTENTS**
**VOLUME 5**

**PAGE**

**Memorandum of Agreement Documents**


Draft Memorandum of Agreement between NJDEP and Delaware Department of Natural Resources and Environmental Control ("DNREC") (Oct. 18, 1993) ..... 3173

Draft Memorandum of Agreement between NJDEP and DNREC (Oct. 28, 1993) ..... 3179

Draft Memorandum of Agreement between NJDEP and DNREC (Nov. 5, 1993) ..... 3187

Draft Memorandum of Agreement between NJDEP and DNREC (June 16, 1994) ..... 3201

Inter-Office Memorandum and attachments from Lawrence J. Baier to Steven C. Whitney, NJDEP (Oct. 29, 1991) ..... 3207

Inter-Office Memorandum and attachments from Rick Sinding to Management Team, NJDEP (Nov. 1, 1991) ..... 3229

Inter-Office Memorandum and attachments, from Steven Whitney to Management Team, NJDEP (July 7, 1994) ..... 3237

Handwritten Notes and attached Oct. 28, 1993 Draft Memorandum of Agreement between NJDEP and DNREC (Undated) ..... 3249

Handwritten Notes and attached Oct. 28, 1993 Draft Memorandum of Agreement between NJDEP and DNREC (Undated) ..... 3257

Inter-Office Memorandum and attachment, from Terry Fowler to Steven Whitney NJDEP (Aug. 3, 1993) ..... 3265

Handwritten Note and attachment to Steven Whitney, NJDEP (Oct. 28, 1991) ..... 3277

Email from Ruth Ehinger to Dorina Frizzera (July 18, 1994) ..... 3281

Email from Terry Fowler to Ruth Ehinger (July 19, 1994) ..... 3283

Email from JoAnn Cubberly to Steven Whitney (July 20, 1994) ..... 3285

Letter from Helen C. P. Grady, NOAA, to Dorina Frizzera, NJDEP (July 17, 1996) ..... 3287

Handwritten Notes (Undated) ..... 3295

Handwritten Notes (May 26, 1994) ..... 3301

Email from Terry Fowler to Ruth Ehinger (July 19, 1994) ..... 3303

Handwritten Notes (Jan. 12, 1994) ..... 3305

Email to Steven Whitney (Nov. 5, 1993) ..... 3307

Memorandum of Agreement between NJDEP and DNREC, Division of Coastal Resources and the New Jersey Pinelands Commission (Feb. 8, 1988) ..... 3309

Handwritten Notes (Undated) ..... 3313

Email from Steven Whitney to Ruth Ehinger (May 7, 1993) ..... 3315

Email from Ruth Ehinger to Dorina Frizzera (July 18, 1994) ..... 3317

**Permit-Related Documents**

**Pipelines**

Twenty-year Subaqueous Lands Lease between the State of Delaware and SunOlin Chemical Company (Jan. 11, 1962) ..... 3319

Ten-year Subaqueous Lands Lease between the State of Delaware and Colonial Pipeline Company (Oct. 9, 1963) ..... 3323

Renewal of Subaqueous Lands Lease (SL-0508/81) issued to SunOlin Chemical Company (Nov. 14, 1981) ..... 3331

DNREC Subaqueous Lands Lease (SL-0203/87) issued to Colonial Pipeline Company (1987) ..... 3337

Burlco Engineering Associates Application for a Request For A Coastal Zone Status Decision for Colonial Pipeline Company to DNREC (Jan. 8, 1987) ..... 3345

Letter from William F. Moyer, DNREC, to T. H. Norris, Colonial Pipeline Co. DNREC (July 21, 1987) ..... 3349

DNREC Subaqueous Lands Lease (SL-0204/87) issued to Columbia Gas Transmission Corporation (July 28, 1987) ..... 3351

DNREC Subaqueous Lands Lease (SL-0203/87) issued to Colonial Pipeline Company (Aug. 3, 1987) ..... 3357

Memorandum from Charles A. Lesser, DNREC, to Bill Moyer, DNREC (Aug. 11, 1987) ..... 3363

Memorandum from Charles A. Lesser, DNREC, to Bill Moyer, DNREC (Sept. 17, 1987) ..... 3365

Letter from William F. Moyer, DNREC, to J. R. Arnold, Colonial Pipeline Company (Sept. 24, 1987)....3367

Letter from William F. Moyer, DNREC, to J. R. Arnold, Colonial Pipeline Company (Mar. 8, 1988)....3369

Renewal of Subaqueous Lands Lease (SL-1203/91) issued to Sun Refining and Marketing Company (Oct. 15, 1991)....3371

DNREC Subaqueous Lands Lease (SL-1310/94) issued to Colonial Pipeline Company (Oct. 9, 1994)....3375

Letter from James Chaconas, DNREC, to Colonial Pipeline (Dec. 23, 1994)....3381

DNREC amended water allocation permit issued to Logan Generating Company, L.P. (No. 91-0012M2) (Jan. 13, 1995)....3383

Letter from Jennifer Cross, DNREC, to Paul Wagner, P.E., U.S. Generating Company (Jan. 21, 1998)....3387

Renewal of Subaqueous Land Lease (SL-404/01, a renewal of SL-1203/91) to Sunoco Inc. (May 15, 2002)....3389

**DuPont**

Letter from B.E. Lane, DNREC, to P.H. Collins, DuPont (Jan. 29, 1971)....3395

Letter from B.E. Lane, DNREC, to Col. Carroll D. Strider, U.S. Army Corps of Engineers (Jan. 29, 1971)....3397

Letter from John C. Bryson, DNREC, to Laird Stabler, Attorney General of Delaware (Feb. 19, 1971)....3399

Letter from B.E. Lane, DNREC, to James Kelly, U.S. Army Corps of Engineers (Apr. 5, 1971)....3401

Delaware Subaqueous Lands Lease (SL-558/1971) issued to DuPont (Sept. 29, 1971)....3403

Letter from George Cassedy, DuPont, to James Johnson, NJDEP (July 13, 1977)....3409

Application Form for Stream Encroachment Permit from DuPont to NJ Div. of Water Resources (Oct. 11, 1977)....3413

Letter Receipt of Stream Encroachment Permit Application Form from NJDEP to DuPont (Oct. 25, 1977)....3427

Letter of Authorization from William F. Moyer, DNREC, to Lewis A. Caccese, P.E., S. T. Hudson Engineers, Inc. (Mar. 18, 1982) ..... 3429

Letter from William F. Moyer, DNREC, to J. Curry, DuPont (Oct. 15, 1982) ..... 3431

Letter of Authorization from William F. Moyer, DNREC, to William N. Malin, S. T. Hudson Engineers, Inc. (Jan. 5, 1987) ..... 3433

Letter from William F. Moyer, DNREC to Reinhold Betschel, DuPont (Feb. 9, 1988) ..... 3435

DNREC Subaqueous Lands Permit (SP-071/01) issued to DuPont (May 4, 2001) ..... 3439

Technical Briefing Meeting Agenda, Treatment and Disposal of Neutralized VX at DuPont Chambers Works (Mar. 10, 2004) ..... 3445

Letter from Ruth Ann Minner, Governor of Delaware and James E. McGreevey, Governor of New Jersey, to Les Brownlee, Secretary of the Army (Apr. 7, 2004) ..... 3447

Letter from John A. Hughes, DNREC to Jesse L. Barber, Colonel, Newport Chemical Stockpile Outreach Office (Apr. 19, 2004) ..... 3449

Letter from Kevin Donnelly, DNREC, to Bernard Reilly, DuPont (May 19, 2004) ..... 3453

DNREC Subaqueous Lands Permit issued to DuPont to dredge at the Chamber Works Facility (Mar. 7, 2006) ..... 3455

Letter from John Hughes, DNREC, to Alan Muller, Green Delaware (Mar. 29, 2006) ..... 3461

**El Paso**

Letter from El Paso Eastern Company to David R. Keifer, Director of Delaware State Planning Commission (Dec. 21, 1971) ..... 3469

Letter from David Keifer, Director of Delaware State Planning Commission, to W. Laird Stabler, Attorney General of Delaware (Dec. 29, 1971) ..... 3473

Letter from David Keifer, Director of Delaware State Planning Commission, to Barry Huntsinger, El Paso Eastern Company (Dec. 29, 1971) ..... 3475

Letter from W. Laird Stabler, Attorney General of Delaware, to David Keifer, Director of Delaware State Planning (Jan. 20, 1972) ..... 3477

Memo from David Keifer, Director of Delaware State Planning Commission, to Russell Peterson, Governor of Delaware (Feb. 16, 1972) ..... 3479

Letter from David Keifer, Director of Delaware State Planning Commission, to Richard Sullivan, Commissioner of NJDEP (Feb. 17, 1972) ..... 3481

Letter from David Keifer, Director of Delaware State Planning Commission, to Barry Huntsinger, El Paso Eastern Company (Feb. 23, 1972) ..... 3483

Letter from Richard Sullivan, Commissioner, NJDEP, to David Keifer, Director of Delaware State Planning Commission (Mar. 2, 1972) ..... 3485

Letter from Barry Hunsaker, El Paso Eastern Company, to David Keifer, Director of Delaware State Planning Commission (Mar. 3, 1972) ..... 3487

Letter from David Keifer, Director of Delaware State Planning Commission, to Barry Hunsaker, El Paso Eastern Company (Mar. 17, 1972) ..... 3489

Report on Coastal Zone Act Administration, June 28, 1971 - June 30, 1977, DE State Coastal Zone Industrial Control Board (Nov. 1977) ..... 3491

**Keystone**

Letter from John A. Hughes, DNREC to George Franklin, Sun Refining and Marketing Co. (Undated) ..... 3503

Letter from Edward H. Clark, DNREC, to Richard V. Ciliberti, Keystone Cogeneration Systems, Inc. (Nov. 19, 1990) ..... 3505

DNREC Coastal Zone Status Decision, CZA Project No. 2375D (Nov. 19, 1990) ..... 3507

Letter from Steven Whitney, NJDEP, to Anthony P. Pratt, DNREC (Mar. 14, 1991) ..... 3511

Letter from James Johnson, NJDEP, to Richard Long, S. T. Hudson Engineers, Inc. (Aug. 1, 1991) ..... 3513

NJDEP Memorandum from Robert Tudor to James Johnson (Aug. 28, 1991) ..... 3515

NJDEP Summary Analysis of Keystone waterfront development permit application (Sept. 24, 1991) ..... 3517

NJDEP permit to Keystone for waterfront development (Sept. 24, 1991) ..... 3549

DNREC Subaqueous Lands Lease and attached application form issued to Keystone Cogeneration Systems, Inc. (Sept. 30, 1991) ..... 3557

Application Form of Keystone Cogeneration Systems, Inc. for Subaqueous Lands Permit (Sept. 30, 1991) ..... 3563

Letter from Tracy Skrabal, DNREC, to Keystone Cogeneration Systems (Oct. 7, 1991).....3601

DNREC Industrial Water Allocation Permit issued to Keystone Cogeneration Systems, Inc. (No. 91-0012) (Oct. 17, 1991).....3603

DNREC Coastal Zone Permit issued to Keystone Cogeneration Systems, Inc. (Dec. 13, 1991).....3607

DNREC Supplemental Lease Approval granted to Keystone Energy Service Company, L.P. (Apr. 6, 1992).....3609

DNREC Supplemental Lease Approval granted to Keystone Energy Service Company, L.P. (May 28, 1993).....3611

Letter from Robert J. Taggert, DNREC, to R. V. Ciliberti, Keystone Energy Service Company (Sept. 2, 1994).....3613

DNREC Notice of Authorization issued to Keystone Energy Service Company, L.P. (Sept. 30, 1994).....3615

DNREC Supplemental Lease Approval granted to Keystone Energy Service Company, L.P. (Jan. 6, 1995).....3617

Letter from James T. Chaconas and William F. Moyer, DNREC, to Janine Kelly, Logan Generating Company, L.P. (Mar. 15, 1995).....3619

Letter from William F. Moyer and Laura M. Herr, DNREC, to Logan Generating Company, L.P. (Keystone) (Nov. 12, 1997).....3621

DNREC Subaqueous Lands Lease and attached application form issued to Logan Generating Company, L.P. (Nov. 9, 2001).....3623

Letter from Sarah W. Cooksey, DNREC, to Thomas W. Fromm, PG&E National Energy Group (Mar. 14, 2002).....3629

**Fort Mott**

NJDEP Division of Parks and Forestry Land Use Regulation Program Application JDEP for Fort Mott Pier renovation (Sept. 19, 1995).....3631

Map of proposed Fort Mott Pier renovation (Sept. 13, 1995).....3649

DNREC Subaqueous Lands Lease Application and Letter of Authorization Request to NJDEP for Fort Mott Pier Rehabilitation Project (Sept. 20, 1995).....3651

Letter from Faye L. Stocum, DNREC, to Frank J. Cianfrani, U.S. Army Corps of Engineers

(Nov. 14, 1995) ..... 3709

Letter from Sarah W. Cooksey, DNREC, to Lawrence R. Horan, S. T. Hudson Engineers, Inc. (Dec. 15, 1995) ..... 3711

Letter from William F. Moyer, DNREC, to NJDEP, Dept. of Parks and Forestry (Jan. 4, 1996) ..... 3713

DNREC Subaqueous Lands Lease (SL-1110/95) issued to the State of New Jersey Department of Environmental Protection Division of Parks and Forestry (Feb. 7, 1996) ..... 3715

NJDEP Permit issued to NJDEP Div. of Parks and Forestry (Jan. 24, 1996) ..... 3723

Letter from Mark R. Chura, DNREC, to Carl Nordstrom, NJDEP (Apr. 4, 1996) ..... 3727

Letter from Carl Nordstrom, NJDEP Division of Parks and Forestry, to David Hazelton, Delaware River & Bay Authority (Mar. 6, 1997) ..... 3729

New Jersey State Park Service Subaqueous Lands Lease Renewal Application (Aug. 16, 2006) ..... 3731

DNREC Memorandum from Wetlands and Subaqueous Lands Section to DNREC Distribution List (Dec. 13, 2006) ..... 3735

**Delmarva Power**

Letter from William Moyer, DNREC, to Moira Donoghue, Delmarva Power & Light Co. (Apr. 6, 1987) ..... 3739

Joint application of Delmarva Power & Light Co. to DNREC for subaqueous lands, wetlands, and marina projects (May 17, 1997) ..... 3741

DNREC Subaqueous Lands Lease (SL-0109/97) issued to Delmarva Power & Light Co. (Dec. 9, 1997) ..... 3755

Letter from Sarah W. Cooksey, DNREC, to Juan S. Crofton, Crofton Diving Corp. (Feb. 24, 1998) ..... 3761

DNREC Supplemental Lease Approval granted to Conectiv Communications, Inc. (Mar. 11, 2002) ..... 3763

**Salem River**

Letter from William Moyer, DNREC, to Roy Denmark, U.S. Army Corps of Engineers (Apr. 12, 1991) ..... 3765

Letter from William Moyer and Tracy Skrabal, DNREC, to H. Ronald Kreh, U.S. Army Corps of Engineers (Apr. 7, 1992) ..... 3767

Letter from William Moyer to H. Ronald Kreh, U.S. Army Corps of Engineers (Apr. 27, 1992) ..... 3769

Letter from Robert Callegari, U.S. Army Corps of Engineers, to David Carter, DNREC (Mar. 10, 1994) ..... 3771

Letter from William Moyer, DNREC, to U.S. Army Corp of Engineers (Dec. 15, 1994) ..... 3773

Letter from William Moyer and James Chaconas, DNREC, to U.S. Army Corps of Engineers (Dec. 15, 1994) ..... 3775

Letter from Sarah Cooksey, DNREC, to U.S. Army Corps of Engineers (Jan. 10, 1995) ..... 3777

**Marcus Hook**

Letter from Sarah Cooksey, DNREC, to Thomas McVeigh, Roy F. Weston, Inc. (Mar. 7, 2001) ..... 3779

Letter from Sarah Cooksey, DNREC, to Thomas McVeigh, Roy F. Weston, Inc. (Mar, 7, 2001) ..... 3781

Letter from Sarah Cooksey, DNREC, to Sonny Rutkowski, Weston Solutions, Inc. (July 30, 2003) ..... 3783

Draft 10/18/93

**Memorandum of Agreement**
**Between**
**New Jersey Department of Environmental Protection and Energy**
**and**
**Delaware Department of Natural Resources and Environmental Control**

Purpose and Applicability

This Memorandum of Agreement between the New Jersey Department of Environmental Protection and Energy and the Delaware Department of Natural Resources and Environmental Control is intended to formalize a framework for coordinating the policies and activities of the New Jersey Coastal Management Program (program rules and decisionmaking process) and the Delaware Coastal Management Program in the area at which the common state boundary is defined by the mean low water line of the New Jersey shoreline. This memorandum applies to those portions of the Delaware River and Delaware Bay which are transected by the common state boundary.

The New Jersey Department of Environmental Protection and Energy and the Delaware Department of Natural Resources and Environmental Control agree to the principles, procedures, and responsibilities that follow, recognize the statutory limitations of both agencies, and do not intend this memorandum of agreement to expand, limit, or bind their existing statutory powers in any way.

Points of Agreement

Regulatory Consistency/Inconsistency

1. The New Jersey Department of Environmental Protection and Energy (DEPE) and the Delaware Department of Natural Resources and Environmental Control (DNREC) agree that the New Jersey and Delaware Coastal Management Programs are generally consistent with respect to the area of the Delaware River and Delaware Bay transected by the common state boundary.

**(identify points of inconsistency and how will resolve)**

Sharing of Development Applications

2. Within the area at which the common state boundary is defined by the mean low water line of the New Jersey shoreline, both DEPE and DNREC shall administer their respective statutorily mandated permit and review functions. DEPE shall, within five working days of receipt of a completed application proposing waterfront development in the area at which the common state boundary is defined by the mean low water line of the New Jersey shoreline, notify DNREC of the application for development by sending a copy of the application to DNREC for comment. DNREC shall, within five working days of receipt of a completed application proposing development in the water area at which the common state boundary is defined by the mean low water line of the New Jersey shoreline, notify DEPE

of the application for development by sending a copy of the application to DEPE for comment. Both agencies recognize that each agency has the independent authority to approve or deny applications pursuant to its own regulations.

**(This doesn't really solve the problem - just leaves it the same. Inconsistent regs, applicants faced w/two sets of regs & two application processes, each State hassling w/ 1/2 a project, doesn't address secondary impacts which are out-of-state.)**

Sharing of Rulemaking Process

3. In the event that one or both agencies propose to amend their adopted coastal regulations or policies, they will consult with the other to determine how the amendments will affect the administration of their respective programs, and will attempt to resolve any differences prior to taking action.

4. Where inconsistencies are identified between those portions of the New Jersey and Delaware Coastal Zone Programs which apply to the area at which the common state boundary is defined, DEPE and DNREC shall work together to make the two sets of policies more complementary, including, if necessary, eliminating inconsistencies through amendments to either or both sets of policies. In order to identify, discuss, and resolve policy and interpretation inconsistencies, and to ensure success of the cooperative application review and

comment procedures, designated representatives of the DEPE and DNREC staffs shall meet periodically at a time and location to be mutually agreed upon, to discuss permit review coordination and specific policies and their interpretation. A report of each meeting shall be prepared for review by the appropriate administrators of DEPE and DNREC.

Sharing of Data

5. DEPE and DNREC recognize similarity in their data bases and needs, and agree to share data whenever possible.

6. The appropriate administrators of DEPE and DNREC may jointly propose revisions to the terms and procedures of this Memorandum of Agreement from time to time.

7. This MOA shall take effect upon signing by both parties and subsequent to the Governors' review for a period of ten business days. This agreement may be terminated by either party by providing notice of termination on the other party sixty (60) days prior to termination.

_____

Acting Commissioner
New Jersey Department of
Environmental Protection and Energy

_____
Date

_____
**XXXXXXXXXXXXXX**
Delaware Department of Natural
Resources and Environmental Control

_____
Date

Approved as to form only by:

_____
Deputy Attorney General
State of New Jersey

_____
Date

_____
Deputy Attorney General
State of Delaware

_____
Date

G

Draft 10/28/93

**Memorandum of Agreement**
**Between**
**New Jersey Department of Environmental Protection and Energy**
**and**
**Delaware Department of Natural Resources and Environmental Control**

Purpose and Applicability

This Memorandum of Agreement between the New Jersey Department of Environmental Protection and Energy and the Delaware Department of Natural Resources and Environmental Control is intended to formalize a framework for coordinating the policies and activities of the New Jersey Coastal Management Program (program rules and decisionmaking process) and the Delaware Coastal Management Program in the area at which the common state boundary is defined by the mean low water line of the New Jersey shoreline. This memorandum applies to those portions of the Delaware River and Delaware Bay which are transected by the common state boundary.

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Points of Agreement

Regulatory Consistency/Inconsistency

1. The New Jersey Department of Environmental Protection and Energy (DEPE) and the Delaware Department of Natural Resources and Environmental Control (DNREC) agree that the New Jersey and Delaware Coastal Management Programs are generally consistent with respect to the area of the Delaware River and Delaware Bay transected by the common state boundary.

   A comparison of New Jersey's and Delaware's Coastal Zone Management Program policies and water quality criteria is located in Attachment A. **(Perhaps this shouldn't be in an MOU because it refers to a point in time and the MOU is indefinite.)**

   Agreed upon methods of resolving current and future inconsistencies between the above referenced policies and criteria include the following:
   **(Work on the following list. Need to address inconsistent regs, applicants faced w/two sets of regs & two application processes, each State hassling w/ 1/2 a project, secondary impacts which are out-of-state.)**

   a. Sharing of development applications
   b. Sharing of rulemaking process

c. Sharing of data

d. Joint review of applications

e. Binding Federal Consistency Review

(40 CFR 122.4: No permit may be issued when the imposition of conditions cannot ensure compliance with applicable water quality requirements of all affected states.

40 CFR 123.24: No waiver of [EPA] review [of NPDES Permits] may be granted for discharges which may affect the waters of a state other than the one in which the discharge originates.)

f. Sharing of other Coastal Zone Management activities (public access, water quality, wetlands mitigation)

g.

Sharing of Development Applications

2. Within the area at which the common state boundary is defined by the mean low water line of the New Jersey shoreline, both DEPE and DNREC shall administer their respective statutorily mandated permit and review functions. DEPE shall, within five working days of receipt of a completed application proposing waterfront development in the area at which the common state boundary is defined by the mean low water line of the New Jersey shoreline, notify DNREC of the application for development by sending a copy of the application to DNREC for comment. DNREC shall, within five working days of receipt of a completed application proposing development in the water

area at which the common state boundary is defined by the mean low water line of the New Jersey shoreline, notify DEPE of the application for development by sending a copy of the application to DEPE for comment. Both agencies recognize that each agency has the independent authority to approve or deny applications pursuant to its own regulations.

Sharing of Rulemaking Process

3. In the event that one or both agencies propose to amend their adopted coastal regulations or policies, they will consult with the other to determine how the amendments will affect the administration of their respective programs, and will attempt to resolve any differences prior to taking action.

4. Where inconsistencies are identified between those portions of the New Jersey and Delaware Coastal Zone Programs which apply to the area at which the common state boundary is defined, DEPE and DNREC shall work together to make the two sets of policies more complementary, including, if necessary, eliminating inconsistencies through amendments to either or both sets of policies. In order to identify, discuss, and resolve policy and interpretation inconsistencies, and to ensure success of the cooperative application review and comment procedures, designated representatives of the DEPE and DNREC staffs shall meet periodically at a time and location to be mutually agreed upon, to discuss permit review coordination and specific policies and their interpretation. A

report of each meeting shall be prepared for review by the appropriate administrators of DEPE and DNREC.

Sharing of Data

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6. The appropriate administrators of DEPE and DNREC may jointly propose revisions to the terms and procedures of this Memorandum of Agreement from time to time.

7. This MOA shall take effect upon signing by both parties and subsequent to the Governors' review for a period of ten business days. This agreement may be terminated by either party by providing notice of termination on the other party sixty (60) days prior to termination.

_____

Acting Commissioner
New Jersey Department of
Environmental Protection and Energy

_____

Date

XXXXXXXXXXXXXX
Delaware Department of Natural
Resources and Environmental Control

Date

Approved as to form only by:

Deputy Attorney General
State of New Jersey

Date

Deputy Attorney General
State of Delaware

Date

STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL
DIVISION OF SOIL AND WATER CONSERVATION
89 KINGS HIGHWAY
P.O. BOX 1401
DOVER, DELAWARE 19903

OFFICE OF THE DIRECTOR

TELEPHONE: (302) 739 - 4411

May 9, 1994

Ms. Terri Fowler, Planner NJDEP
Office of Land and Water Protection
CN 423
Trenton, NJ 08628

Re: MOA NJ/DE Permit Coordination

Dear Ms. Fowler:

As we discussed earlier on the phone, I have read the Draft MOA and have comments. Once these comments have been incorporated into another draft, I will circulate that draft to other members of DNREC for comments.

My comments are as follows:

1. Was this MOA meant to affect all activities along the state boundary or just the section of the Delaware River next to New Jersey's land? I think we should have the MOA affect activities along the entire state boundary. Although there may not be as many state decisions concerning activities in the Delaware River, they may be important and we may want/need to coordinate.

2. Whatever the answer is to the above, perhaps we should reference a legal description of this boundary.

3. Would you consider setting up the MOA in this fashion:

    a. Keep the Purpose and Applicability section.

    b. Include section that starts off with -- It is mutually agreed by the parties that:

Followed by the specific things Delaware will do and the specific things New Jersey will do. This could include the comparison on water quality standards/criteria and CMP policies (this is work that needs to be done right)?

4. I think that we should list the permits we know we want to be involved with (i.e., NPDES). Then we can flag these somehow.

5. New Jersey is probably interested in reviewing the following types of Delaware permits/activities:

   a. NPDES Permits
   b. Delaware Coastal Zone Permits
   c. Air Permits
   d. Wetland Mitigation
   e. Hazard Mitigation Plans
   f. Solid Waste/Hazardous Waste Plans
   g. DCMP Federal Consistency Reviews

6. Please put "Secretary" below the signature line, and above the Delaware Department of Natural ..... line.

7. I hate to say this, but do we have to have the AG's sign this? I am afraid it will never be signed if they have to sign it too.

Please make any changes you see fit, and send me another copy when you have finished. I will return it quickly back to you, and then send it out for others to review.

I apologize for the time it took me to respond. We finally finished our Threshold Review Document so now I can return to my normally busy schedule/workload.

Sincerely,

Sarah W. Cooksey, Administrator
Delaware Coastal Management

Draft 11/5/93

**Memorandum of Agreement**
**Between**
**New Jersey Department of Environmental Protection and Energy**
**and**
**Delaware Department of Natural Resources and Environmental Control**

Purpose and Applicability

This Memorandum of Agreement between the New Jersey Department of Environmental Protection and Energy and the Delaware Department of Natural Resources and Environmental Control establishes a framework for coordinating the policies and activities of each state's Coastal Management Program in the area at which the common state boundary is defined by the mean low water line of the New Jersey shoreline. This memorandum applies to all portions of the Delaware River shared by New Jersey and Delaware. **(Need to decide on specific area and be consistent)**

The New Jersey Department of Environmental Protection and Energy and the Delaware Department of Natural Resources and Environmental Control agree to the principles, procedures, and responsibilities that follow, recognize the statutory limitations of both agencies, and do not intend this memorandum of agreement to expand, limit, or bind their existing statutory powers in any way.

Points of Agreement

Regulatory Consistency/Inconsistency

1. The New Jersey Department of Environmental Protection and Energy (DEPE) and the Delaware Department of Natural Resources and Environmental Control (DNREC) agree that the New Jersey and Delaware Coastal Management Programs are generally consistent with respect to the area of the Delaware River and Delaware Bay transected by the common state boundary.

A comparison of New Jersey's and Delaware's Coastal Zone Management Program policies and water quality criteria is contained in Attachment A.

Agreed upon methods of resolving current and future inconsistencies with SWQS & CMPs' ~~between the above referenced~~ policies and ~~criteria include the following:~~

Del & NJ agree to share applications under the following ~~Programs~~ authorities:

~~a.~~ Sharing of permit applications for regulated activities

~~Applicable New Jersey Laws and Programs~~

NJDEPE

Waterfront Development Law Permit

Coastal Area Facility Review Act Permit

Wetlands Act Permit

Tidelands Management Conveyances ~~Applications~~.

Green Acres Funding

~~Shore Protection~~

~~(Energy?)~~

Coastal Program Funding

NJPDES Permits

~~Areawide Water Quality Management Plans~~

Wastewater Treatment Facilities: Regulation & Funding

Stream Encroachment and Flood Hazards

~~Wild and Scenic Rivers~~

~~Regulation of State Owned Lands~~

Air Quality ~~Regulation~~ Permits

~~Solid Waste~~

~~b.~~ Sharing of proposed rules

c. Sharing of data

d. Sharing of other Coastal Zone Management activities (public access, water quality, wetlands mitigation)

DNREC

Sharing of Development Applications

2. Within the area at which the common state boundary is defined by the mean low water line of the New Jersey shoreline, both DEPE and DNREC shall administer their respective statutorily mandated permit and review functions. DEPE shall, within five working days of receipt of a completed application proposing a regulated activity which would extend into or discharge into the mainstem of the Delaware River in the area at which the common state boundary is defined by the mean low water line of the New Jersey shoreline, notify DNREC of the application for development by sending a copy of the application to DNREC for comment. DNREC shall, within five working days of receipt of a completed application proposing a regulated activity which would extend into or discharge into the mainstem of the Delaware River in the water area at which the common state

boundary is defined by the mean low water line of the New Jersey shoreline, notify DEPE of the application for development by sending a copy of the application to DEPE for comment. Both agencies recognize that each agency has the independent authority to approve or deny applications pursuant to its own regulations.

Sharing of Rulemaking Process

3. In the event that one or both agencies propose to amend their adopted coastal regulations or policies, they will share the proposed amendment(s) with the other agency to determine how the amendments will affect the administration of their respective programs, and will attempt to resolve any differences prior to taking action.

4. Where inconsistencies are identified between those portions of the New Jersey and Delaware Coastal Zone Programs which apply to the area at which the common state boundary is defined, DEPE and DNREC shall work together to make the two sets of policies more complementary, including, if necessary, eliminating inconsistencies through amendments to either or both sets of policies. In order to identify, discuss, and resolve policy and interpretation inconsistencies, and to ensure success of the cooperative application review and comment procedures, designated representatives of the DEPE and DNREC staffs shall meet periodically at a time and location to be mutually agreed upon, to discuss permit review

coordination and specific policies and their interpretation. A report of each meeting shall be prepared for review by the appropriate administrators of DEPE and DNREC.

Sharing of Data

5. DEPE and DNREC recognize similarity in their data bases and needs, and agree to share data whenever possible.

Sharing of Other Coastal Zone Management Activities

6.

6 ~~6~~. The appropriate administrators of DEPE and DNREC may jointly propose revisions to the terms and procedures of this Memorandum of Agreement from time to time.

7 ~~8~~. This MOA shall take effect upon signing by both parties and subsequent to the Governors' review for a period of ten business days. This agreement may be terminated by either party by providing notice of termination on the other party sixty (60) days prior to termination.

_____

Acting Commissioner
New Jersey Department of
Environmental Protection and Energy

_____

Date

XXXXXXXXXXXXXX
Delaware Department of Natural
Resources and Environmental Control

Date

Approved as to form only by:

Deputy Attorney General
State of New Jersey

Date

Deputy Attorney General
State of Delaware

Date

Draft 11/5/93

**Memorandum of Agreement**
**Between**
**New Jersey Department of Environmental Protection and Energy**
**and**
**Delaware Department of Natural Resources and Environmental Control**

Purpose and Applicability

This Memorandum of Agreement between the New Jersey Department of Environmental Protection and Energy and the Delaware Department of Natural Resources and Environmental Control establishes a framework for coordinating the policies and activities of each state's Coastal Management Program along the states' common boundary in the area at which the common state boundary is defined by the mean low water line of the New Jersey shoreline. This memorandum applies to all portions of the Delaware River shared by New Jersey and Delaware. **(Need to decide on specific area and be consistent)** cite S.C. case

The New Jersey Department of Environmental Protection and Energy and the Delaware Department of Natural Resources and Environmental Control agree to the principles, procedures, and responsibilities that follow, recognize the statutory limitations of both agencies, and do not intend this memorandum of agreement to expand, limit, or bind their existing statutory powers in any way.

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A comparison of New Jersey's and Delaware's Coastal Zone Management Program policies and water quality criteria ~~contained in Attachment A.~~ With the NJ + Del agree to mutually compare their C.Z.M. policies + wqc on a biannual basis.

Agreed upon methods of resolving current and future inconsistencies between the above referenced policies and criteria include the following:

a. Sharing of permit applications for regulated activities

Applicable New Jersey Laws and Programs

Waterfront Development Law

Coastal Area Facility Review Act

Wetlands Act

Tidelands ~~Management~~ Conveyance

Green Acres Funding

~~Shore Protection~~

~~(Energy?)~~

~~Coastal Program Funding~~

NJPDES Permits

~~Areawide Water Quality Management Plans~~

~~Wastewater Treatment Facilities: Regulation & Funding~~ TWA

Stream Encroachment and Flood Hazards

~~Wild and Scenic Rivers~~

~~Regulation of State Owned Lands~~

Air Quality ~~Regulation~~ Permits

~~Solid Waste~~

b. Sharing of proposed rules

c. Sharing of data

d. Sharing of other Coastal Zone Management activities (public access, water quality, wetlands mitigation)

Sharing of Development Applications

2. Within the area at which the common state boundary is defined by the mean low water line of the New Jersey shoreline, both DEPE and DNREC shall administer their respective statutorily mandated permit and review functions. DEPE shall, within five working days of receipt of a completed application proposing a regulated activity which would extend into or discharge into the mainstem of the Delaware River in the area at which the common state boundary is defined by the mean low water line of the New Jersey shoreline, notify DNREC of the application for development by sending a copy of the application to DNREC for comment. DNREC shall, within five working days of receipt of a completed application proposing a regulated activity which would extend into or discharge into the mainstem of the Delaware River in the water area at which the common state

boundary is defined by the mean low water line of the New Jersey shoreline, notify DEPE of the application for development by sending a copy of the application to DEPE for comment. Both agencies recognize that each agency has the independent authority to approve or deny applications pursuant to its own regulations.

Sharing of Rulemaking Process

3. In the event that one or both agencies propose to amend their adopted coastal regulations or policies, they will share the proposed amendment(s) with the other agency to determine how the amendments will affect the administration of their respective programs, and will attempt to resolve any differences prior to taking action.

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coordination and specific policies and their interpretation. A report of each meeting shall be prepared for review by the appropriate administrators of DEPE and DNREC.

Sharing of Data

5. DEPE and DNREC recognize similarity in their data bases and needs, and agree to share data whenever possible.

Sharing of Other Coastal Zone Management Activities

~~6.~~ Coastal Nonpoint Pollution Program authorized under C Z A R A

~~6~~ 6. The appropriate administrators of DEPE and DNREC may jointly propose revisions to the terms and procedures of this Memorandum of Agreement from time to time.

7 ~~6~~. This MOA shall take effect upon signing by both parties and subsequent to the Governors' review for a period of ten business days. This agreement may be terminated by either party by providing notice of termination on the other party sixty (60) days prior to termination.

_____

Acting Commissioner
New Jersey Department of
Environmental Protection and Energy

_____

Date

XXXXXXXXXXXXXX Secretary
Delaware Department of Natural
Resources and Environmental Control

Date

Approved as to form only by:

Deputy Attorney General
State of New Jersey

Date

Deputy Attorney General
State of Delaware

Date

State of New Jersey
Department of Environmental Protection and Energy

Robert C. Shinn, Jr.
*Commissioner*

MEMORANDUM

TO: Distribution

FROM: Steven Whitney, Manager Steven

DATE: July 7, 1994

RE: New Jersey/Delaware Memorandum of Agreement

Attached please find a draft Memorandum of Agreement (MOA) between the New Jersey Department of Environmental Protection (NJDEP) and Delaware Department of Natural Resources and Environmental Control (DNREC). The purpose of this MOA is to establish a framework within which NJDEP and DNREC share relevant information regarding certain regulatory programs and actions along the states' common boundary. This boundary is somewhat unusual; a large stretch of it is demarcated by the mean low water line on the New Jersey side. As a result, activities within one state can have a significant impact on the other and an MOA is necessitated.

A few representatives of NJDEP and DNREC have reviewed previous drafts. I would appreciate it if you would now provide us with your comments and suggestions. I would like to come to agreement and formalize the content of the MOA by August 15, 1994.

Thank you for your attention to this matter.

Distribution:
Sarah Cooksey, DNREC
Robert Tudor, USEPA
John Weingart, NJDEP
Martin Bierbaum, NJDEP
Ernest Hahn, NJDEP
Ruth Ehinger, NJDEP
Theresa Fowler, NJDEP
Dennis Hart, NJDEP
Bill O'Sullivan, NJDEP
Tom Wells, NJDEP
JoAnne Cubberly, NJDEP

EXHIBIT
Whitney-17
S. Oakley 10/10/06

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EXHIBIT
CASTAGNA-20
10-24-06

DE27930

Draft 6/16/94

# Memorandum of Agreement
# Between
# New Jersey Department of Environmental Protection
# and
# Delaware Department of Natural Resources and Environmental Control

Purpose and Applicability

This Memorandum of Agreement between the New Jersey Department of Environmental Protection (DEP) and the Delaware Department of Natural Resources and Environmental Control (DNREC) establishes a framework for coordinating the policies and activities of each state's Coastal Management Program in the area of the Delaware River and Delaware Bay transected by the common state boundary [as defined in State of New Jersey v State of Delaware 295 US 694(1934)].

DEP and DNREC agree to the principles, procedures, and responsibilities that follow, recognize the statutory limitations of both agencies, and do not intend this memorandum of agreement to expand, limit, or bind their existing statutory powers in any way.

Points of Agreement

It is mutually agreed by the above parties that:

Regulatory Consistency/Inconsistency

1. The New Jersey and Delaware Coastal Management Programs

are generally consistent with respect to the area of the Delaware River and Delaware Bay transected by the common state boundary.

New Jersey and Delaware will mutually compare their coastal zone management policies and water quality standards on a biannual basis.

Sharing of Development Applications

2. DEP and DNREC shall administer their respective statutorily mandated permit and review functions. DEP shall, within five working days of receipt of a completed application proposing a regulated activity which would extend into or discharge into the area of the Delaware River and Delaware Bay transected by the common state boundary, notify DNREC of the application for development by sending a copy of the application to DNREC for comment. DNREC shall, within five working days of receipt of a completed application proposing a regulated activity which would extend into or discharge into the area of the Delaware River and Delaware Bay transected by the common state boundary, notify DEP of the application for development by sending a copy of the application to DEP for comment. Both agencies recognize that each agency has the independent authority to approve or deny applications pursuant to its own regulations. DEP and DNREC will share applications under the following authorities:

New Jersey Department of Environmental Protection

Waterfront Development Permits

Coastal Area Facility Review Act Permits

Wetlands Permits

Tidelands Conveyances

Green Acres Funding

NJPDES Permits

Treatment Works Approvals

Stream Encroachment Permits

Air Quality Permits

Delaware Department of Natural Resources and Environmental Control

NPDES Permits

Delaware Coastal Zone Permits

Air Permits

Wetland Mitigation

DCMP Federal Consistency Reviews

Sharing of Rulemaking Process

3. In the event that one or both agencies propose to amend their adopted coastal regulations or policies, they will share the proposed amendment(s) with the other agency to determine how the amendments will affect the administration of their respective programs, and will attempt to resolve any differences prior to taking action.

4. Where inconsistencies are identified between those

portions of the New Jersey and Delaware Coastal Zone Programs which apply to the area at which the common state boundary is defined, DEP and DNREC shall work together to make the two sets of policies more complementary, including, if necessary, eliminating inconsistencies through amendments to either or both sets of policies. In order to identify, discuss, and resolve policy and interpretation inconsistencies, and to ensure success of the cooperative application review and comment procedures, designated representatives of the DEP and DNREC staffs shall meet periodically at a time and location to be mutually agreed upon, to discuss permit review coordination and specific policies and their interpretation. A report of each meeting shall be prepared for review by the appropriate administrators of DEP and DNREC.

Sharing of Data

5. DEP and DNREC recognize similarity in their data bases and needs, and will share data whenever possible.

Sharing of Other Coastal Zone Management Activities

6. DEP and DNREC will share, when requested, information relevant to each state's Coastal Nonpoint Pollution Program authorized by the federal Coastal Zone Act Reauthorization Amendments.

7. The appropriate administrators of DEP and DNREC may

jointly propose revisions to the terms and procedures of this Memorandum of Agreement from time to time.

8. This Memorandum of Agreement shall take effect upon signing by both parties and subsequent to the Governors' review for a period of ten business days. This agreement may be terminated by either party by providing notice of termination on the other party sixty (60) days prior to termination.

| | |
|---|---|
| Commissioner<br>New Jersey Department of<br>Environmental Protection | Secretary<br>Delaware Department of<br>Natural Resources and<br>Environmental Control |
| Date | Date |

**MEMORANDUM**

**To:** Steven C. Whitney, Assistant Director
Office of Regulatory Policy

**From:** Lawrence J. Baier, Principal Planner
Office of Regulatory Policy

**Subject:** Delaware - New Jersey Coastal Zone Management Plans

**Date:** October 29, 1991

I have completed a review of the information forwarded by Mr. Anthony Pratt concerning Delaware's coastal zone management program. I have attached a synopsis of the Delaware program for your information.

In general, the Delaware program is consistent with New Jersey's coastal zone management program. I have not detected any major policies or regulations of the Delaware program that would be in direct conflict with New Jersey's CMP or vice versa. However, there are several minor policy differences which need to be resolved.

Some of these differences include: benthic resources, prop wash dredging, use of creosote timbers, sediment quality, dredging for private docks, and minimum frontage for private docks. I have prepared the attached program comparison to assist in identifying policy differences. Also, both states' coastal management programs reference surface water quality standards. Therefore, I have also prepared and attached a comparison of the two states' water quality standards. These documents should be reviewed by yourself and Mr. Pratt for accuracy and also information deficiencies. After review, these comparisons should form the basis for a discussion of potential solutions to the minor program differences.

Options to improve consistency between the states include: a memorandum of agreement between the states to effect a joint review of those projects which affect both states; rule refinement and refinement of water quality standards by the two states to make the programs consistent; and including the Delaware River and Bay as a Special Area, similar to the Pinelands, requiring that projects also demonstrate consistency with Delaware's coastal management program.

I have drafted the attached letter for your signature, addressed to Mr. Andrew T. Manus asking him to review the synopsis of Delaware's CMP, the Policy comparison, and the water quality standard comparison for accuracy. I have also attached a synopsis of New Jersey's CMP for his information.

Please do not hesitate to contact me if you have any questions in this regard, or any suggested changes to the attached documents.

**State of New Jersey**
**Department of Environmental Protection and Energy**
Environmental Regulation
Office of Regulatory Policy
CN 401
Trenton, NJ 08625-0401

Scott A. Weiner
*Commissioner*

Martin A. Bierbaum
*Director*

November 8, 1991

Mr. Anthony T. Manus, Deputy Director
Dept. of Natural Resources and Environmental Control
Division of Soil and Water Conservation
89 Kings Highway, P.O. Box 1401
Dover, Delaware 19903

Re: N.J. - Del. section 309 Program Consistency Grant

Dear Mr. Manus:

As you are aware, the State of New Jersey received a grant from NOAA, pursuant to section 309 of the federal Coastal Zone Management Act, to assess the compatibility of our respective states' coastal management programs as they affect the shared boundary of the states in the Delaware River and Bay. Once areas of inconsistency have been identified, we are to formulate a mechanism for interstate coordination and conflict resolution.

New Jersey has completed an initial assessment of the compatibility of our coastal programs, with the possible exception of Delaware's coastal act addressing industrial development. Our preliminary analysis of the two programs finds that they are generally consistent concerning major policy areas. However, there are some differences between the information requirements of each program and the specific regulations used to evaluate development proposals. For example, New Jersey routinely requires sediment quality testing prior to dredging, Delaware apparently does not. Delaware routinely requires an assessment of the benthic community prior to dredging, New Jersey does not. Both states' coastal programs reference the water quality standards in their regulations; therefore, a comparison of the two states' water quality standards has also been performed. Also I suspect that many of Delaware's policies may be subject to interpretation, as New Jersey's are.

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Copies of the following draft documents are enclosed for your review and comment: a synopsis of Delaware's coastal management program, a synopsis of New Jersey's coastal management program, a comparison of the two states' coastal regulations, and a comparison of the two states' water quality standards. These documents, once finalized, should identify consistencies and inconsistencies between our programs, and form the basis for discussing potential mechanisms for coordinating program activities and resolving conflicts. These documents could also be valuable for presentation to the public at the required hearings.

I would like to meet with you later this month, or in early December, to discuss the differences in our programs and to begin to develop a procedure for their resolution. I will call you in a couple of weeks to arrange that meeting.

Please feel free to contact me, at (609) 984-0058 if you have any questions in this regard, or if you have revisions to the enclosed documents.

Thank you for your time and assistance.

Sincerely,

Steven C. Whitney, Assistant Director
Office of Regulatory Policy

# SYNOPSIS of DELAWARE'S COASTAL PROGRAM

Delaware Beach Preservation Act, ( Chapter 69, Title 7 )

This Act provides for the regulation of development along Delaware's beaches. Beaches are defined by the Act as all that area along the Atlantic Ocean and Delaware Bay shores within 1000 feet inshore and 2500 feet outshore of the mean high water line. The Act also provides for the regulation of an area 200 feet landward and 300 feet bayward of the mean high water line of Rehobeth, Indian River, Little Assawoman, and Assawoman Bays excluding their tributaries. The Act directs the Department of Natural Resources and Environmental Control, (DNREC) to promulgate a building line, seaward of which construction would be prohibited unless approved by DNREC. Other interesting aspects of this Act are : DNREC may remove any violations at the expense of the property owner, and the Act makes private beach owners liable for any expenses associated with mitigating shoreline erosion.

The Regulations Governing Beach Protection and the Use of Beaches redefine the landward boundary of a beach as extending 1000 feet from the mean high water line or to the first public street whichever is closer. The regulations require a permit for any construction seaward of the building line. Generally a permit to build seaward of the building line will be issued for any lot in existence on the date the law was enacted, ( 8/13/81) if no opportunity exists to move the structure landward of the building line. Parcels subdivided after 8/13/81 will not receive approval for construction seaward of the building line. The regulations also allow DNREC to require mitigation including beach nourishment, dune construction or dune maintenance as a condition of approval for construction seaward of the building line. DNREC also requires that construction landward of the building line but, within the beach area receive a letter of approval. The criteria for permit decisions include: comments received; the effect of the proposal on beach erosion, flooding, and the potential for damage to the property or adjacent properties; feasibility of alternative protection from storm damage; historical rate of shoreline change; design modifications that may reduce the impact of the structure on the part of the beach seaward of the building line; and any other information DNREC determines to be relevant.

Submerged Lands Act, ( Chapter 72, Title 7 )

The Submerged Lands Act gives DNREC exclusive jurisdiction over all ungranted subaqueous lands , except that in the case of a proposed commercial use the Governor of the State of Delaware shares that authority. No appeal of the decision of a denial of permission to use these lands is possible under the Act. The Act also requires that private owners of granted subaqueous lands obtain a permit from DNREC before undertaking any activity which would contribute to the pollution of public waters, infringe on the rights of the public or other private owners, or make connection to public subaqueous lands. Subaqueous Lands are defined as all lands lying below mean high water together with the beds of non-tidal navigable rivers, lakes and streams.

The regulations implementing the Subaqueous Lands Act are broken into two sets: Marina Regulations and the Regulations Governing the Use of Subaqueous Lands. The Marina Regulations apply to any facility with 5 or more boat slips. The regulations include siting criteria which require that the permit applicant explore alternatives which utilize dry storage of boats. Wet slips for boat storage are considered to be non-water dependent uses under these regulations. The siting criteria also address issues such as shellfish resources, wetlands, submerged aquatic vegetation, critical habitats and benthic communities. The marina regulations also require an assessment of the water quality impacts of the proposal singularly and cumulatively. The primary parameters for water quality assessments are fecal coliform and dissolved oxygen. The regulations prohibit the construction of marinas if designated uses or numeric criteria in the State's surface water quality standards are contravened, if the marina would necessitate the closure of shellfish grounds not already closed or closed areas that may be opened in the future due to point and non-point pollution control, if construction would destroy more than 1 acre of wetlands, if the marina would shade SAV, if the marina is located in a critical habitat, or if the benthic community diversity and abundance is rated greater than a 3 on a scale of 0-8 ( Luchenbach, Diaz and Schaffner, Virginia , 1989 ). The Marina Regulations also contain planning and design requirements such as: prohibiting the use of creosoted timbers, requiring adequate dredged spoil disposal capacity for 30 years, basin depths, shore protection alternatives, waste water facilities including pumpout and restroom facilities, stormwater management, fuel storage and boat maintenance.

The Regulations Governing the Use of Subaqueous Lands apply to all activities over or upon subaqueous lands except marinas. These regulations prohibit structures constructed over water for non-water dependent uses, gazebos over water and dockominiums. The regulations exempt drainage ditches, reconstruction of currently serviceable structures, the anchoring of

not more than 2 boats by a waterfront property owner. These regulations also provide standards for dock construction for private use, dredging, and shore protection structures. The regulations prohibit dredging for a private boat docking facility and prohibit prop wash dredging. The regulations also require that a lot have at least 40 feet of frontage on subaqueous lands in order to qualify for a boat dock. The dredging regulations also prohibit any project which would contravene Delaware's water quality standards excluding whatever temporary and minimal turbidity is unavoidable using sound dredging practices. Applications for approval under these regulations are evaluated for two types of impacts; public use impacts and environmental impacts..

The Wetlands Act, ( Chapter 66, Title 7 )

Delaware's Wetlands Act is very similar to New Jersey's Wetlands Act of 1970. Wetlands are defined by the Act as all lands above the mean low water elevation including any bank, marsh, flat, etc. subject to tidal action up to an elevation of 2 feet above local mean high water.which may grow or are capable of growing any of the hydrophytic plants listed in the Act. The Act also regulates nontidal wetland areas containing 400 or more contiguous acres excluding narrow stream valleys. Wetlands were delineated on maps and officially promulgated after public hearings. Only mosquito control, aids to navigation, duck blinds, foot bridges, hunting, fishing , trapping, hay harvesting and livestock grazing activities are exempt from regulation by the Act

The Wetlands Regulations provide for type I permits for projects with minimal impacts, and type II permits for projects with more substantial impacts. Applications for permits are evaluated in terms of the project's effects on the following wetland values and functions: Tidal ebb and flow values, (nutrient cycling, food chain production, storm protection); Habitat values, (rare and endangered plants and animals, fur-bearers, migratory birds, finfish and shellfish); Aesthetic values; Impact of supporting facilities; Effects on neighboring land uses; Consistency with planning; Economic impacts; and Alternatives to the proposal.

The Coastal Zone Act, ( Chapter , Title )

Delaware's Coastal Zone Act describes the State's coastal zone as an area approximately two miles wide along the State's shoreline. The Act authorizes direct State control over land use in this area. However, the Act prohibits all new heavy industry within this area. Heavy industry is defined by the Act as a use characteristically involving more than 20 acres of land and employing smokestacks, tanks, distillation or reaction columns, chemical processing, or waste lagoons. These uses include oil refining, steel mills,

paper mills and chemical plants. Manufacturing facilities, such as garment factories and automobile assembly lines are not included in this definition. The Act also prohibits offshore bulk product transfer facilities except those which are ofr a single industrial or manufacturing facility. The Port of Wilmington is exempt from the Act.

# SYNOPSIS of NEW JERSEY'S COASTAL PROGRAM

New Jersey Coastal Area Facility Review Act, ( N.J.S.A. 13:19-1 et seq. )

The Coastal Area Facility Review Act, ( CAFRA ), provides for the regulation of all major development proposals in the coastal area. The coastal area, as defined by CAFRA, extends from the confluence of Cheesequake Creek and the Raritan Bay along the Raritan and Sandy Hook Bay shores, down the state's Atlantic Ocean coast around Cape May and up the Delaware Bay shore to Pennsville. The seaward boundary of the coastal area extends to the state's territorial jurisdiction. The landward boundary generally includes the tidal portions of the streams and rivers in the geographic area previously described. The exact inland boundary is defined by identifiable public roads and railroads in section 4 of the Act. Regulated activities in the coastal area include all types of industrial facilities, public infrastructure, and new housing developments of 25 or more dwelling units. CAFRA requires that a permit be issued only for those facilities which demonstrate: compliance with all air and water quality standards; provides for the disposal of refuse in a manner which minimizes adverse impacts; results in minimal impairment to aquifer recharge and ground and surface water supplies; causes minimal interference with natural plant, animal, fish and human life processes; does not endanger human life or property; and results in the minimum practical degradation of scenic, aesthetic, historic or natural attributes.

Two sets of regulations govern all coastal permit programs: the Coastal Permit Program Rules, ( NJAC 7:7-1 et seq. ), and the Rules on Coastal Zone Management, ( NJAC 7:7E- 1 et seq. ). The Coastal Permit Program Rules provide clarification of the regulatory jurisdiction exercised under the three acts that make up New Jersey's coastal management program. For example, these rules clarify that any facility providing 300 or more parking spaces or paving an area of 3 acres or more is regulated under CAFRA. These rules also specify time frames and procedures for application review and the appeal of decisions

The Rules on Coastal Zone Management are the policies used to evaluate applications under any of the three acts. A project's consistency or inconsistency with these policies forms the basis for the decision to approve or deny an application. These policies address Special Areas such as Wetlands, Submerge Aquatic Vegetation, Shellfish, Dunes, Beaches and Farmland; General Water Areas such as Rivers, Lakes, Streams, Open Bays and Back Bays,and allowable uses such as dredging, and docks; General Land Areas which ascribe

an acceptable intensity of development to a site based upon available infrastructure, natural resources, and surrounding land uses; Use Policies which assess the suitability of a site for a particular use such as Housing, Resort/Recreation, Commercial and Industrial Uses; and lastly Resource Policies which specify project design standards necessary to minimize any impacts on adjacent sites and natural resources such as Stormwater Management, Buffers, Vegetation and Public Access.

Waterfront and Harbor Facilities Act, ( R.S. 12:5-1 et seq. )

The Waterfront and Harbor Facilities Act was enacted in 1914 is also referred to as the Waterfront Development Statutes. The act requires all plans for the development of any water-front of any navigable water or stream involving the construction or modification of a dock, pier , wharf, bulkhead, bridge, cable or other similar or dissimilar development be submitted to the Department of Environmental Protection for approval prior to construction. This act is found in the navigation statutes, but has been subject to interpretation, which has broadened the scope of review to include environmental considerations for projects regulated under the act. Conveyances of tidelands and submerged lands are authorized under a separate statute at R.S. 12:3-1 et seq.

Currently, the geographic jurisdiction exercised under the Waterfront Development statutes differs in the coastal area defined by CAFRA and in the balance of the state's tidal waterways. In the coastal area, a Waterfront Development Permit is only required for those activities proposed outshore of the mean high water line. Along tidal waters not in the coastal area, the NJ DEPE regulates an adjacent upland area that extends between 100 and 500 feet inland from the mean high water line in addition to the area outshore of the mean high water line. All construction and grading within this area is regulated, unlike the 25 unit jurisdictional threshold that exists under CAFRA. All Waterfront Development applications are evaluated in terms of the Rules on Coastal Zone Management described above.

Wetlands Act of 1970, ( N.J.S.A. 13:9A- 1 et seq. )

Wetlands are defined by the Act as any bank, marsh, swamp, flat etc. subject to tidal action, along the Delaware River and Bay, the Atlantic coast and the Sandy Hook and Raritan Bays up to an elevation of 1 foot above local extreme high water and which is capable of growing hydrophytic vegetation. Regulated wetlands were required to be delineated on officially promulgated maps. Only the continuance of commercial salt and hay or other agricultural production and mosquito control activities are exempt from regulation by the

Act. In 1987 the Freshwater Wetlands Protection Act was enacted in New Jersey, ( see N.J.S.A. 13:9B-1 et seq. ).

The Coastal Permit Program Rules provide for type A permits for projects which have a minor impact on wetlands. Projects qualifying for these expedited permits include: new agriculture, an individual mooring slip, maintenance of public infrastructure, and the construction of docks and footbridges. Type B permits are required for projects with more extensive wetland impacts. Only projects which are water dependent or water oriented, which have no feasible or prudent alternative on a non-wetland site, and result in the minimum feasible alteration to the natural circulation and vegetation are permissible under the Rules on Coastal Zone Management.

## Delaware - New Jersey CZMP
## Policy Comparison

| POLICY | DELAWARE | NEW JERSEY |
|---|---|---|
| MARINAS | wet slips not considered to be water dependent - must evaluate upland alts. | wet slips are water dependent |
| | water quality assessment required including flushing rates, dissolved oxygen, & fecal coliform. Violation of WQ standards prohibited | water quality assessments are not required for marinas but development violating WQ standards is prohibited |
| | benthic resources must be sampled - marinas cannot be constructed on site with high diversity / abundance of benthos | no benthic sampling required |
| | pumpout facilities required at all marinas that dock type III MSD vessel. | pumpout required at all marinas with 25 or more slips. |
| | adequate restrooms must be provided - peak wait of not less that 5 minutes | restroom facilities required no standards promulgated |
| | has specific sections dealing with boat maintenance areas, fueling facilities, and parking (.5 spaces per slip) | general references to adequate upland areas for parking, boat storage and maintenance |
| | required operation and maintenance plan and spill contingency plan | no required operation and maintenance or spill contingency plan |

| | | |
|---|---|---|
| DREDGING | marina basin depth shall not exceed adjacent channel | marina basin depth shall not exceed adjacent channel |
| | dredge area shall be limited to the minimum needed | dredge area shall be limited to the minimum needed |
| | Delaware surface water quality standards must not be exceeded, excluding minimal unavoidable turbidity | NJ surface water quality standards must not be exceeded without exception |
| | prop wash dredging prohibited | prop wash dredging discouraged but allowed where no alternative is feasible |
| | may seasonally restrict to protect aquatic life | may seasonally restrict to protect aquatic life |
| | not permitted in areas requiring frequent ( 4 yrs ) maintenance dredging | maintenance frequency is not considered |
| | dredge disposal site must have capacity for 30 year project life | disposal site evaluated for capacity for current dredging project only |
| | no requirement for sediment quality testing | may require sediment quality testing |
| | dredging for a private residential boat docking facility is prohibited - extend dock to reach deeper water | private residential slip dredging is not prohibited dock extension must be considered as an alternative |
| | dredging dead end lagoons 3L:1W is prohibited | dredging new dead end lagoons discouraged |

| | | |
|---|---|---|
| SHORE PROTECTION | structural shore protection not allowed where erosion is minimal or wetlands exist | structural shore protection only allowed to protect water dependent uses or threatened structures |
| | nonstructural measures preferred over structural measures | nonstructural measures preferred over structural measures |
| | sloped rip-rap revetments preferred over vertical structures | sloped rip-rap revetments preferred over vertical structures |
| | shore protection structures must not adversely affect down drift areas | shore protection structures must not adversely affect down drift areas |
| | no criteria for replacement of structures | replacement bulkheads must be within 18 inches of the original structure |
| FILLING WATER AREAS | no specific policy, but must be designed to maintain or improve aquatic environment | only allowable for water dependent use with no alt. filled area must be mitigated |
| DOCKS & PIERS | only water dependent structures allowable - no restaurants, decks or appurtenances allowed | no explicit prohibition of structures, but they must meet size limits for docks and piers |
| | no private docking facility allowed in a development with a community marina | no prohibition on private facilities, but must demonstrate need for the facility |
| | underwater portions of structures cannot be creosoted | no prohibition of creosoted timbers |

| | | |
|---|---|---|
| DOCKS & PIERS ( cont. ) | where adequate draft exists dock shall not extend more than 10% across waterway - in no case shall docks extend more than 20% of the width or more than 250 feet - generally docks may not extend beyond adjacent structures or further than necessary to attain depth for a boat suited to the waterway | docks shall not extend more than 20% across lagoons - docks shall not interfere with navigation |
| | minimum of 40 feet frontage on subaqueous lands to qualify for dock - must also meet all zoning requirements | no minimum frontage requirement |
| | no specific design criteria must minimize impacts - shading of SAV to be avoided, minimize shading of other vegetation | spacing between planks required 3/8" to 1" for 4" to 12" planks - maximum width of 8' unless commercial, 6' over wetland - width shall not exceed 2X the height unless floating - must be at least 4' high over wetlands |
| SHELLFISH | prohibit marinas where closure area (NSSP) would intersect open shellfish grounds or grounds that are reasonably expected to be opened in the future - shellfish grounds are submerged lands that are capable of sustaining shellfish. | any development that would contaminate or result in the condemnation of shellfish beds is prohibited - shellfish beds are tidelands that are productive for bivalve mollusks |

| | | |
|---|---|---|
| SHELLFISH ( cont. ) | dredging is prohibited in shellfish beds | new dredging in shellfish beds is prohibited - maintenance dredging in shellfish beds is conditionally accepteble |
| SUBMERGED AQUATIC VEGETATION | destruction for a marina must be mitigated | destruction of SAV beds is prohibited - mitigation required for upland developments that increase erosion and turbidity |
| | shading of SAV shall be avoided | no specific shading policy exists |
| WETLANDS | prohibits all activities unless water dependent and no alternative upland site exists | prohibits all activities unless water dependent and no alternative upland site exists - mitigation required at a ratio of 2:1 |
| | exempts mosquito control, agriculture, and fish and wildlife projects | exempts mosquito control and agriculture projects |
| | two types of permits - type I for projects with less than 1 acre of wetland disturbance or maintenance of public infrastructure - type II permits for any project over 1 acre of wetlands or involving a structure | two types of permits - type A for minor impacts 1 boat slip and maintenance of public infrastructure - type B for all other activities |
| | marinas are allowable in low value wetlands if no alternatives exist, disturbance is less than 1 acre, and 2:1 mitigation is offered | new marinas are prohibited in wetlands unless the disturbance is minimal and mitigation is required |

| | | |
|---|---|---|
| CRITICAL HABITATS | marinas are prohibited in recognized critical habitats | development that adversely effects endangered or threatened species is prohibited - development that would adversely effect critical habitats is discouraged |
| STORMWATER MANAGEMENT | detain the first 1/2 inch of runoff and release over a 24 hour period | detain 1and1/4 inch 2 hour rainfall runoff and release over 36 hours |
| | preferred method of runoff treatment is artificial wetlands - infiltration is acceptable if created wetland is not feasible | infiltration of the 1 inch storm is acceptable alt. to detention - infiltration is encouraged at appropriate sites |
| | other methods of water quality treatment which remove 80% of suspended solids may be considered | |
| INDUSTRIAL USES | new heavy industry is prohibited within 2 miles of the shoreline - heavy industry is defined as 20 acres or more and involves smokestacks, tanks, chemicals, waste lagoons | all industry in the coastal area is regulated, but not necessarily prohibited |
| | manufacturing plants are not considered heavy industry. | |
| | offshore bulk product transfer facilities are prohibited except in the Port of Wilmington and docks for a single industrial facility | all port facilities are regulated, but not necessarily prohibited. |

# Comparison of Water Quality Standards
# New Jersey & Delaware

## Designated Uses

| Reach | Delaware | New Jersey |
|---|---|---|
| Delaware River river mile 78.8-48.2 | Industrial Water Supply | Industrial Water Supply After Reasonable Treatment |
| | Fish, Aquatic Life, and Wildlife | Wildlife<br>Migration of Anadromous Fish<br>Maintenance of Resident Fish and Other Aquatic Biota<br>Propagation of Resident Fish from RM 70.0 to 48.2 |
| | Primary Contact Recreation | Primary Contact Recreation from RM 59.5 to 48.2 |
| | Secondary Contact Recreation | Secondary Contact Recreation |
| | | Navigation |
| DELAWARE BAY river mile 48.2-0.0 | Industrial Water Supply | Industrial Water Supply After Reasonable Treatment |
| | Fish, Aquatic Life and Wildlife | Wildlife<br>Maintenance and Propagation of Resident Fish, Shellfish and Other Aquatic Biota<br>Migration of Anadromous Fish |
| | Primary Contact Recreation | Primary Contact Recreation |
| | Secondary Contact Recreation | Secondary Contact Recreation |

| Reach | Delaware | New Jersey |
|---|---|---|
| Delaware Bay | Exceptional Recreational or Ecological Significance | Category One |
| | Harvestable Shellfish Waters | |
| | | Navigation |

**Water Quality Criteria**

| Parameter | Delaware | New Jersey |
|---|---|---|
| Enterococcus | 10/100ml | none |
| Fecal coliform | see use designation | 14/100ml - shellfish<br>200/100ml - all other |
| Dissolved oxygen | daily mean 6 mg/l<br>minimum 5 mg/l<br>RM 59.5 - 0.0 | daily mean 6 mg/l<br>minimum 5 mg/l<br>RM 48.2 - 0.0 |
| | | daily mean 3.5 mg/l<br>RM 78.0 - 70.0<br>daily mean 4.5 mg/l<br>RM 70.0 - 59.5<br>daily mean 6.0 mg/l<br>RM 59.5 - 48.2<br>between 4/1 - 6/15 and 9/16 - 12/31 seasonal mean 6.5 mg/l |
| Temperature | max increase 4*F<br>between 10/1 - 5/31<br>max daily mean 84*F<br>max daily temp 86*F | max increase 4*F<br>between 9/1 - 5/31<br>max increase 1.5*F<br>between 6/1 - 8/31<br>max temp 86*F<br>RM 78.8 - 48.2<br>max temp 85*F<br>RM 48.2 - 0.0 |

| Parameter | Delaware | New Jersey |
|---|---|---|
| Detergents | | max 30 day avg 1 mg/l |
| pH | | between 6.5 - 8.5 |
| Phenols | | max .01 mg/l |
| Radioactivity | | Alpha max 3 pc/l<br>Beta max 1000 pc/l |
| Total Solids Dissolved | | not to exceed 133% of background |
| Threshold Odor Number | | 24 at 60*F |
| Turbidity | | 30 day avg 40 NTU<br>max 150 NTU at any time |

**CRITERIA for TOXICS ( a = acute; c = chronic) mg/l**

| Substance | Delaware | New Jersey |
|---|---|---|
| General | Waters shall not be acutely or chronically toxic to aquatic life except in mixing zones | Toxics shall not exceed values in the US Public Health Service Drinking Water Standards |
| Arsenic | .069 a; .036 c | .05 |
| Barium | | 1 |
| Cadmium | .043 a; .0093 c | .01 |
| Chlordane | .00009 a; .000004 c | |
| Chromium | 1.1 a; .05 c | .05 |
| Copper | .0029 a | |
| Cyanide | .001 a | |

| Substance | Delaware | New Jersey |
|---|---|---|
| Lead | .140 a; .0056 c | .05 |
| Malathion | .0001 c | |
| Mercury | .0021 a; .000025 c | .005 |
| Nickel | .075 a; .0083 c | |
| Selenium | .300 a; .071 c | .01 |
| Silver | .0023 a | .05 |

( note: additional toxic substance criteria are found in the Delaware Surface Water Quality Standards. Those standards also provide human health criteria for fish and shellfish consumption. The New Jersey criteria listed here are from the Delaware River Basin Commission Basin Regulations - Water Quality. New Jersey is currently working toward proposed criteria for additional substances anticipated to be released for comment in December 1991. For those substances which no criteria have been adopted, New Jersey may use the best available scientific information in establishing effluent limitations)

# MEMORANDUM

TO: Management Team
FROM: Rick Sinding
RE: Meeting with Delaware Officials
DATE: November 1, 1991

In preparation for the meeting with environmental officials from the State of Delaware on Friday, November 15, here is a list of agenda items submitted by Delaware. I have indicated in parentheses the Management Team/staff member responsible for the preparation of briefing materials on each item.

- Ramsar designation for Delaware Bay [John Keith/Mary Gastrich]
- Delaware Estuary Program [John Keith/Mary Gastrich]
- Weakfish & other fisheries management in Delaware Bay [Jim Hall/Bob McDowell]
- Cooperative enforcement in Delaware Bay [Jim Hall/Bob McDowell; Ed Neafsey/Jim Hamilton]
- Joint proposals for use of Delaware River and Bay Authority funds [Jim White/Ron Tuminski; John Keith/Mary Gastrich]
- Impingement and entrainment policies [John Weingart/Dennis Hart]
- Oil spill contingency/response activities [John Keith; Lance Miller]
- Delaware permitting of facilities on New Jersey Shore [John Weingart/Steve Whitney]
- PCB's in Delaware Bay fish [Jim Hall/Bob McDowell; John Keith/Bob Tucker]
- Waste transportation issues [John Keith/Steve Gabel; John Weingart/Frank Coolick]
- 45-foot channel [John Weingart/Steve Whitney; John Keith/Bob Tucker]
- Joint Coastal Zone Consistency Reviews [John Weingart/Steve Whitney]

If there are additional topics that you feel should be discussed at this meeting that do not appear on this list, please let me know as soon as possible. All briefing documents must be in my hands by Tuesday, November 12. There will be a pre-meeting briefing for the Commissioner on November 14.

## Delaware Estuary Toxics Management Program

### Objective

To develop policies and procedures to control the discharge of substances toxic to humans and aquatic biota from point sources discharging to the tidal portions of the Delaware River from the tide at Trenton, NJ to Liston Point, DE.

### Historical Background

The Estuary Toxics Management Subcomittee was established in 1989 to jointly review water quality criteria for toxic pollutants for the Estuary, and develop the policies and procedures including a water quality model for implementation of the recommended criteria. It was agreed that all three states each would need to contribute its fair share based on on a formula to the program.

### Major Issues

A subcommittee report entitled "Recommended Water Quality Criteria for Toxic Pollutants for The Delaware River Estuary" has been completed for review. Development of water quality models for implementation are being undertaken by NJDEPE. Request for additional funding from the states for the third and fourth year budget will be forthcoming. NJ intends to supplement in-kind services (modeling) as part of its share.

### New Jersey's Position

Due to the administrative delays, cash contribution from NJ for the first and second years is still in process. Schedule of NJDEPE's in-kind services contribution has been affected by the delay of the monitoring program to be conducted in the summer time. An internal meeting (NJDEPE) to examine concerns regarding NJ's funding to the program has been scheduled for Nov. 18, 1991

### Next Steps

(1) The recommended criteria resulting from the two-year work need to be reviewed by the Water Quality Advisory Committee.

(2) Monitoring program for the summer time needs to be conducted in 1992.

(3) Issues related to funding from three states to the program need to be resolved soon.

(4) Criteria, policies and procedures, permit requirements and toxic models needs to be established in a coordinated manner through the cubcommittee.

## IMPINGEMENT AND ENTRAINMENT

Impingement is the dashing (or trapping) of aquatic organisms upon barriers (e.g., trash racks and/or screens associated with cooling water intakes).

Entrainment is the transport of aquatic organisms through an intake or cooling water system.

Subsection 316(b) of the Federal Clean Water Act provides:

> (b) Any standard established pursuant to section 301 or section 306 of this Act and applicable to a point source shall require that the location, design, construction, and capacity of cooling water intake structures reflect the best technology available for minimizing adverse environmental impact.

### Federal Regulations Under Section 316(b)

EPA promulgated Section 316(b) regulations at 40 CFR 402.10 to 402.12. These regulations provided that, in determining the best technology available for a given permitted intake, the "information in the Development Document shall be considered." In November 1977 the cooling water intake regulations were remanded to EPA (Appalachian Power Co. v. Train, 566 F. 2d 451 [4th Cir.,1977][10 ERC 1965]). The Court, in this case, found that the Development Document was not published in the Federal Register, and nor was the "information" in it; and that the 316(b) regulations, therefore, violated the Federal Administrative Procedure Act, 5 U.S.C. 552.

Because EPA has not acted to re-promulgate such regulations, technology based limitations implementing 316(b) are supposed to be established on a case by case basis when NJPDES permits are issued for discharges from facilities with cooling water intakes.

### New Jersey Section 316(b) Experience

NJDEP staff working on Section 316 consists of a single full-time permanent professional.

Section 316 Demonstrations have been submitted for approximately a dozen facilities. These Demonstrations are both complex and lengthy.

New Jersey efforts in regard to thermal discharges have been centered around the review of the Section 316 Demonstrations for the Salem Nuclear Generating Station, the Oyster Creek Nuclear Generating Station, and 3 fossil fueled stations on the Hackensack. The Department of the Treasury was requested to extend our Term Contract with Versar, Inc., Thus far, contract review costs have been billed to utilities pursuant to a Stipulation of Dismissal, which provides that applicants for 316 variances will be assessed

individually and will not be included in NJPDES thermal fee schedules.)

Facilities on the Delaware

The Salem Nuclear Generating Station (operated by Public Service Electric and Gas Company) withdraws an average of more than 2 Billion Gallons per Day from the Delaware Estuary, heats this water by 27.5 degrees F, and discharges the heated effluent to the Delaware. The Draft NJPDES Permit for this facility, issued last year, addressed the issue of impingement and entrainment at Salem. The Draft Permit contained limitations achievable with a recirculating cooling tower. The Draft Permit was based on staff recommendations that large losses of aguatic organisms (i.e., fish) from this facility were not consistent with the statutory intent of protecting balanced, indigenous populations and the recirculating cooling towers clearly constituted an available technology which would significantly reduce adverse effects upon the beneficial uses (fishing) of the receiving waters.

The cumulative impacts of impingement and entrainment from other sources (including fossil fueled generating stations located inside and outside the State of New Jersey) have not been assessed. We would recommend that the Delaware River Basin Commission or the Federal Government have a lead role in assessing such impacts and in coordinating the efforts of all Basin States in controlling such impacts.

## Hazardous Waste Transportation Issues

Delaware and NJ are in the 12 state Northeast region for capacity assurance planning, which supposedly was to be the vehicle to eliminate waste transportation issues. Since the existing CAP process is flawed, and since one of the core issues is equity, not capacity, the process has not produced the desired result.

We believe the existing law requiring the CAP processes should not be enforced. We are supportive of differential fees (as long as they are not so great as to equal a ban) as the mechanism for dealing with the equity issue.

The northeast is continuing to plod ahead with the CAP and we presently are settling on a position that has the region focusing on waste minimization, looking at what an open siting and/or permitting process should entail, but not taking significant steps to proactively site new facilities.

# PROGRAM NARRATIVE
# STATE OF DELAWARE AND STATE OF NEW JERSEY
# SECTION 309 FEDERAL GRANT

INTRODUCTION:

The State of Delaware and the State of New Jersey share over 75 miles of Delaware River and Delaware Bay. About 25 miles of this common boundary from the northern boundary of Delaware where it intersects the Delaware River down river to Alloway Creek near Artificial Island, New Jersey is the New Jersey shoreline at mean low water mark (see map 1).

The New Jersey shore is lined with various land uses including industrial, residential and recreational development that may, due to the proximate boundary, have a direct and significant affect on the State of Delaware's coastal zone (i.e. I.E. Dupont operates a large chemical facility that is served by waterborne vessels and discharges waste in the adjacent waters). Conversely, the State of Delaware's coastal managment program may directly and significantly affect activities within New Jersey that are inconsistent with New Jersey's coastal managment program.

The State of New Jersey and State of Delaware received a federal grant in the amount of $10,000 to review the the two state coastal management programs to determine whether the programs are compatable in managing overlapping coastal uses and coastal resources.

TASK DESCRIPTION:

It is in the best interests of each state that the agencies responsible for the coastal managment programs set up a series of inhouse workshops to:

1. Assess the compatabilities of the two programs and identify areas of compatability and incompatability of the two programs. (NEW JERSEY TASK)

2. Convene State interagency workshops to review plans.
   State of Delaware:
   Department of Natural Resources and Environmental

## Delaware Estuary Combined Sewer Overflow Management

### Objective

The major objective is to develop a comprehensive CSO Assessment and Control Strategy for the entire Delaware Estuary.

### Historical Background

Combined Sewer Overflows (CSOs) discharging from major cities in the Delaware Estuary watershed (Pennsylvania: 201, NJ: 36, and Delaware: 30 points) are considered significant sources of bacteria and other pollutants during both wet-weather and dry-weather periods. Recently, DRBC has been granted $525,000 from EPA III for developing an effective control strategy to abate the CSOs impact.

### Major Issues

The pollution caused by CSO discharges in Delaware Estuary has been a concern for the public health threat via primary contact recreation. In order to achieve stated objectives a comprehensive CSO program will be developed for the Estuary complex.

### New Jersey's Position

The Delaware Estuary Combined Sewer Overflow Management Subcommittee was formed as part of the DRBC Water Quality Advisory Committee. Through this subcommittee, all three estuary states will be working together with EPA and DRBC to ensure program consistency. NJDEPE is being considered for possible lead role in water quality assessment and modeling.

### Next Steps

(1) The decision as to whether NJDEPE or an outside oonsultant will be contracted to perform the technical work.

(2) Determination of CSO impacts.

(3) Development of control strategies.

(4) Developing CSO permit conditions.

State of New Jersey
Department of Environmental Protection and Energy

Robert C. Shinn, Jr.
*Commissioner*

MEMORANDUM

TO: Distribution

FROM: Steven Whitney, Manager

DATE: July 7, 1994

RE: New Jersey/Delaware Memorandum of Agreement

Attached please find a draft Memorandum of
the New Jersey Department of Environmental Prote
Department of Natural Resources and Environmenta
purpose of this MOA is to establish a framework wit
DNREC share relevant information regarding certain
actions along the states' common boundary. This bo
unusual; a large stretch of it is demarcated by the m
New Jersey side. As a result, activities within one st
impact on the other and an MOA is necessitated.

A few representatives of NJDEP and DNREC
drafts. I would appreciate it if you would now provide
suggestions. I would like to come to agreement and
MOA by August 15, 1994.

Thank you for your attention to this matter.

Distribution:
Sarah Cooksey, DNREC
Robert Tudor, USEPA
John Weingart, NJDEP
Martin Bierbaum, NJDEP
Ernest Hahn, NJDEP
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Theresa Fowler, NJDEP
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Tom Wells, NJDEP
JoAnne Cubberly, NJDEP

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*Recycled Paper*

Draft 6/16/94

**Memorandum of Agreement**
**Between**
**New Jersey Department of Environmental Protection**
**and**
**Delaware Department of Natural Resources and Environmental Control**

Purpose and Applicability

This Memorandum of Agreement between the New Jersey Department of Environmental Protection (DEP) and the Delaware Department of Natural Resources and Environmental Control (DNREC) establishes a framework for coordinating the policies and activities of each state's Coastal Management Program in the area of the Delaware River and Delaware Bay transected by the common state boundary [as defined in State of New Jersey v State of Delaware 295 US 694(1934)].

DEP and DNREC agree to the principles, procedures, and responsibilities that follow, recognize the statutory limitations of both agencies, and do not intend this memorandum of agreement to expand, limit, or bind their existing statutory powers in any way.

Points of Agreement

It is mutually agreed by the above parties that:

Regulatory Consistency/Inconsistency

1. The New Jersey and Delaware Coastal Management Programs



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are generally consistent with respect to the area of the Delaware River and Delaware Bay transected by the common state boundary.

New Jersey and Delaware will mutually compare their coastal zone management policies and water quality standards on a biannual basis.

Sharing of Development Applications

2. DEP and DNREC shall administer their respective statutorily mandated permit and review functions. DEP shall, within five working days of receipt of a completed application proposing a regulated activity which would extend into or discharge into the area of the Delaware River and Delaware Bay transected by the common state boundary, notify DNREC of the application for development by sending a copy of the application to DNREC for comment. DNREC shall, within five working days of receipt of a completed application proposing a regulated activity which would extend into or discharge into the area of the Delaware River and Delaware Bay transected by the common state boundary, notify DEP of the application for development by sending a copy of the application to DEP for comment. Both agencies recognize that each agency has the independent authority to approve or deny applications pursuant to its own regulations. DEP and DNREC will share applications under the following authorities:

New Jersey Department of Environmental Protection

Waterfront Development Permits

Coastal Area Facility Review Act Permits

Wetlands Permits

Tidelands Conveyances

Green Acres Funding

NJPDES Permits

Treatment Works Approvals

Stream Encroachment Permits

Air Quality Permits

Certain other criteria should be included so that we do not send every application in their jurisdiction! Size of facility New/existing facility major mod to facility ??

Delaware Department of Natural Resources and Environmental Control

NPDES Permits

Delaware Coastal Zone Permits

Air Permits

Wetland Mitigation

DCMP Federal Consistency Reviews

Sharing of Rulemaking Process

3. In the event that one or both agencies propose to amend their adopted coastal regulations or policies, they will share the proposed amendment(s) with the other agency to determine how the amendments will affect the administration of their respective programs, and will attempt to resolve any differences prior to taking action.

4. Where inconsistencies are identified between those

portions of the New Jersey and Delaware Coastal Zone Programs which apply to the area at which the common state boundary is defined, DEP and DNREC shall work together to make the two sets of policies more complementary, including, if necessary, eliminating inconsistencies through amendments to either or both sets of policies. In order to identify, discuss, and resolve policy and interpretation inconsistencies, and to ensure success of the cooperative application review and comment procedures, designated representatives of the DEP and DNREC staffs shall meet periodically at a time and location to be mutually agreed upon, to discuss permit review coordination and specific policies and their interpretation. A report of each meeting shall be prepared for review by the appropriate administrators of DEP and DNREC.

Sharing of Data

5. DEP and DNREC recognize similarity in their data bases and needs, and will share data whenever possible.

Sharing of Other Coastal Zone Management Activities

6. DEP and DNREC will share, when requested, information relevant to each state's Coastal Nonpoint Pollution Program authorized by the federal Coastal Zone Act Reauthorization Amendments.

7. The appropriate administrators of DEP and DNREC may

jointly propose revisions to the terms and procedures of this Memorandum of Agreement from time to time.

8. This Memorandum of Agreement shall take effect upon signing by both parties and subsequent to the Governors' review for a period of ten business days. This agreement may be terminated by either party by providing notice of termination on the other party sixty (60) days prior to termination.

| | |
|---|---|
| Commissioner<br>New Jersey Department of<br>Environmental Protection | Secretary<br>Delaware Department of<br>Natural Resources and<br>Environmental Control |
| Date | Date |

State of New Jersey
Department of Environmental Protection and Energy

Robert C. Shinn, Jr.
*Commissioner*

MEMORANDUM

TO: Distribution

FROM: Steven Whitney, Manager Steven

DATE: July 7, 1994

RE: New Jersey/Delaware Memorandum of Agreement

Attached please find a draft Memorandum of Agreement (MOA) between the New Jersey Department of Environmental Protection (NJDEP) and Delaware Department of Natural Resources and Environmental Control (DNREC). The purpose of this MOA is to establish a framework within which NJDEP and DNREC share relevant information regarding certain regulatory programs and actions along the states' common boundary. This boundary is somewhat unusual; a large stretch of it is demarcated by the mean low water line on the New Jersey side. As a result, activities within one state can have a significant impact on the other and an MOA is necessitated.

A few representatives of NJDEP and DNREC have reviewed previous drafts. I would appreciate it if you would now provide us with your comments and suggestions. I would like to come to agreement and formalize the content of the MOA by August 15, 1994.

Thank you for your attention to this matter.

Distribution:
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John Weingart, NJDEP
Martin Bierbaum, NJDEP
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*New Jersey is an Equal Opportunity Employer*
*Recycled Paper*

Draft 6/16/94

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DEP and DNREC agree to the principles, procedures, and responsibilities that follow, recognize the statutory limitations of both agencies, and do not intend this memorandum of agreement to expand, limit, or bind their existing statutory powers in any way.

Points of Agreement

It is mutually agreed by the above parties that:

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7. The appropriate administrators of DEP and DNREC may

jointly propose revisions to the terms and procedures of this Memorandum of Agreement from time to time.

8. This Memorandum of Agreement shall take effect upon signing by both parties and subsequent to the Governors' review for a period of ten business days. This agreement may be terminated by either party by providing notice of termination on the other party sixty (60) days prior to termination.

| | |
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| Commissioner<br>New Jersey Department of<br>Environmental Protection | Secretary<br>Delaware Department of<br>Natural Resources and<br>Environmental Control |
| Date | Date |

Activities in the area which require Waterfront Devit ~~Area~~ Permit

shared boundary on Delaware River

share permit applications - comment, not veto power

all activities which would extend into or discharge ~~flow~~ into mainstem of Delaware River

NJPDES
~~Wetlands~~
WDevt
Fed Cons Review
} Include

list all of them from Coastal Mgmt Program

Draft 10/28/93

**Memorandum of Agreement**
**Between**
**New Jersey Department of Environmental Protection and Energy**
**and**
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This Memorandum of Agreement between the New Jersey Department of Environmental Protection and Energy and the Delaware Department of Natural Resources and Environmental Control ~~is intended to formalize~~ establishes a framework for coordinating the policies and activities of ~~the New Jersey~~ each state's Coastal Management Program ~~(program rules and decisionmaking process) and the Delaware Coastal Management Program~~ in the area at which the common state boundary is defined by the mean low water line of the New Jersey shoreline. This memorandum applies to ~~these~~ all portions of the Delaware River shared by NJ & Dela. ~~and Delaware Bay which are transected by the common state boundary.~~

The New Jersey Department of Environmental Protection and Energy and the Delaware Department of Natural Resources and Environmental Control agree to the principles, procedures, and responsibilities that follow, recognize the statutory limitations of both agencies, and do not intend this memorandum of agreement to expand, limit, or bind their existing statutory powers in any way.



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Points of Agreement

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1. The New Jersey Department of Environmental Protection and Energy (DEPE) and the Delaware Department of Natural Resources and Environmental Control (DNREC) agree that the New Jersey and Delaware Coastal Management Programs are generally consistent with respect to the area of the Delaware River and Delaware Bay transected by the common state boundary.

A comparison of New Jersey's and Delaware's Coastal Zone Management Program policies and water quality criteria is contained located in Attachment A. **(Perhaps this shouldn't be in an MOU because it refers to a point in time and the MOU is indefinite.)**

Agreed upon methods of resolving current and future inconsistencies between the above referenced policies and criteria include the following:

will agree to share and work towards consistency

**(Work on the following list. Need to address inconsistent regs, applicants faced w/two sets of regs & two application processes, each State hassling w/ 1/2 a project, secondary impacts which are out-of-state.)**

will remain

a. Sharing of ~~development applications~~ permit applications for required permits - list from Coastal Management Program

b. Sharing of rulemaking process - Shared proposed rule

c. Sharing of data

d. Joint review of applications

e. Binding Federal Consistency Review

(40 CFR 122.4: No permit may be issued when the imposition of conditions cannot ensure compliance with applicable water quality requirements of all affected states.

40 CFR 123.24: No waiver of [EPA] review [of NPDES Permits] may be granted for discharges which may affect the waters of a state other than the one in which the discharge originates.)

f. Sharing of other Coastal Zone Management activities (public access, water quality, wetlands mitigation)

g.

Sharing of Development Applications

2. Within the area at which the common state boundary is defined by the mean low water line of the New Jersey shoreline, both DEPE and DNREC shall administer their respective statutorily mandated permit and review functions. DEPE shall, within five working days of receipt of a completed application proposing waterfront development in the area at which the common state boundary is defined by the mean low water line of the New Jersey shoreline, notify DNREC of the application for development by sending a copy of the application to DNREC for comment. DNREC shall, within five working days of receipt of a completed application proposing development in the water

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_____
Acting Commissioner
New Jersey Department of
Environmental Protection and Energy

_____
Date

XXXXXXXXXXXXXX
Delaware Department of Natural
Resources and Environmental Control

Date

Approved as to form only by:

Deputy Attorney General
State of New Jersey

Date

Deputy Attorney General
State of Delaware

Date

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Draft 10/28/93

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**(Work on the following list. Need to address inconsistent regs, applicants faced w/two sets of regs & two application processes, each State hassling w/ 1/2 a project, secondary impacts which are out-of-state.)**

will research

a. Sharing of ~~development applications~~ permit applications & requirements - list from Coastal Mgmt Program

b. Sharing of rulemaking process - Shared proposed rule

c. Sharing of data

d. Joint review of applications

e. Binding Federal Consistency Review

(40 CFR 122.4: No permit may be issued when the imposition of conditions cannot ensure compliance with applicable water quality requirements of all affected states.

40 CFR 123.24: No waiver of [EPA] review [of NPDES Permits] may be granted for discharges which may affect the waters of a state other than the one in which the discharge originates.)

f. Sharing of other Coastal Zone Management activities (public access, water quality, wetlands mitigation)

g.

Sharing of Development Applications

2. Within the area at which the common state boundary is defined by the mean low water line of the New Jersey shoreline, both DEPE and DNREC shall administer their respective statutorily mandated permit and review functions. DEPE shall, within five working days of receipt of a completed application proposing waterfront development in the area at which the common state boundary is defined by the mean low water line of the New Jersey shoreline, notify DNREC of the application for development by sending a copy of the application to DNREC for comment. DNREC shall, within five working days of receipt of a completed application proposing development in the water

area at which the common state boundary is defined by the mean low water line of the New Jersey shoreline, notify DEPE of the application for development by sending a copy of the application to DEPE for comment. Both agencies recognize that each agency has the independent authority to approve or deny applications pursuant to its own regulations.

Sharing of Rulemaking Process

3. In the event that one or both agencies propose to amend their adopted coastal regulations or policies, they will consult with the other to determine how the amendments will affect the administration of their respective programs, and will attempt to resolve any differences prior to taking action.

4. Where inconsistencies are identified between those portions of the New Jersey and Delaware Coastal Zone Programs which apply to the area at which the common state boundary is defined, DEPE and DNREC shall work together to make the two sets of policies more complementary, including, if necessary, eliminating inconsistencies through amendments to either or both sets of policies. In order to identify, discuss, and resolve policy and interpretation inconsistencies, and to ensure success of the cooperative application review and comment procedures, designated representatives of the DEPE and DNREC staffs shall meet periodically at a time and location to be mutually agreed upon, to discuss permit review coordination and specific policies and their interpretation. A

report of each meeting shall be prepared for review by the appropriate administrators of DEPE and DNREC.

Sharing of Data

5. DEPE and DNREC recognize similarity in their data bases and needs, and agree to share data whenever possible.

6. The appropriate administrators of DEPE and DNREC may jointly propose revisions to the terms and procedures of this Memorandum of Agreement from time to time.

7. This MOA shall take effect upon signing by both parties and subsequent to the Governors' review for a period of ten business days. This agreement may be terminated by either party by providing notice of termination on the other party sixty (60) days prior to termination.

_____
Acting Commissioner
New Jersey Department of
Environmental Protection and Energy

_____
Date



NJPRIVLOG 34

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_____

**XXXXXXXXXXXXXX**
Delaware Department of Natural
Resources and Environmental Control

_____
Date

Approved as to form only by:

_____
Deputy Attorney General
State of New Jersey

_____
Date

_____
Deputy Attorney General
State of Delaware

_____
Date

**State of New Jersey**
**Department of Environmental Protection and Energy**
Environmental Regulation
Office of Land and Water Planning
CN 423
Trenton, NJ 08625-0423

Jeanne M. Fox
*Acting Commissioner*

Martin A. Bierbaum
*Administrator*

MEMORANDUM

TO: Steve Whitney, Manager

FROM: Terry Fowler, CZIS1 TF

DATE: August 3, 1993

RE: DE/NJ Regulatory Comparison

Attached please find a very rough first draft of an MOA between NJ and Delaware. Basically, I mimicked portions of the Pinelands MOA which seemed applicable. However, because we are dealing with adjacent jurisdictions, rather than overlapping ones, as in the Pinelands, it leaves a number of issues unresolved. (See bold type.) It seems to me that these questions would be good agenda material for a meeting between the two states. When you give the go-ahead, I'll call Delaware and find out who should attend.

Regulatory.

Share ~~not~~ development review process/share applications.
Jointly review applications
Be bound by more stringent review standard- ie Federal Consistency Review.

Jointly share 2nd tier (CZM rules)
Jointly share other CZM activities- public access, water quality wetlands mitigation.

Talk w/Ruth E. for other options

Draft 8/3/93

**Memorandum of Agreement**
**Between**
**New Jersey Department of Environmental Protection**
**and Energy**
**and**
**Delaware Department of Natural Resources and**
**Environmental Control**

Purpose and Applicability

This Memorandum of Agreement between the New Jersey Department of Environmental Protection and Energy and the Delaware Department of Natural Resources and Environmental Control is intended to formalize a framework for coordinating the policies and activities of the New Jersey Coastal Management Program [(Program Rules, Process & Decision-making; ~~(N.J.A.C. 7:7E-1.1 et seq.)~~ and the Delaware Coastal Management Program ~~(XXXXXXXXXXXXXXXXX)~~ in the area at which the common state boundary is defined by the mean low water line of the New Jersey shoreline. [This memorandum applies ~~only~~ only to the area at which the common state boundary is defined by the mean low water line of the New Jersey shoreline.] [This memorandum applies to the Delaware River and Delaware Bay transected by the shared common state boundary.

The New Jersey Department of Environmental Protection and Energy and the Delaware Department of Natural Resources and Environmental Control agree to the principles, procedures, and responsibilities that follow, recognize the statutory limitations of both agencies, and do not intend this memorandum of agreement to expand, ~~or~~ limit, or bind their existing statutory powers in any way.



NJ09979

NJPRIVLOG 35

3266

Points of Agreement

1. The New Jersey Department of Environmental Protection and Energy (DEPE) and the Delaware Department of Natural Resources and Environmental Control (DNREC) agree that the New Jersey and Delaware Coastal Management Programs are generally consistent with respect to the area at which the common state boundary ~~is defined by the mean low water line of the New Jersey~~ as described in section X shoreline.

**(identify points of inconsistency and how will resolve)**

2. Within the area at which the common state boundary is defined by the mean low water line of the New Jersey shoreline, both DEPE and DNREC shall administer their respective statutorily mandated permit and review functions. DEPE shall, within five working days of receipt of a completed application proposing waterfront development in the area at which the common state boundary is defined by the mean low water line of the New Jersey shoreline, notify DNREC of the application for development by sending a copy of the application to DNREC for comment. DNREC shall, within five working days of receipt of a completed application proposing development in the water area at which the common state boundary is defined by the mean low water line of the New Jersey shoreline, notify DEPE of the application for development by sending a copy of the application to DEPE for comment. Both agencies recognize that

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**(This doesn't really solve the problem - just leaves it the same. Inconsistent regs, applicants faced w/two sets of regs & two application processes, each State hassling w/ 1/2 a project, doesn't address secondary impacts which are out-of-state.)**

Lawsuit of Rule Making Process

3. In the event that one or both agencies propose to amend their adopted coastal regulations or policies, they will consult with the other to determine how the amendments will affect the administration of their respective programs, and will attempt to resolve any differences prior to taking action.

4. ~~Should further~~ Where inconsistencies ~~be~~ and identified between those portions of the New Jersey and Delaware Coastal Zone Programs which apply to the area at which the common state boundary is defined ~~by the mean low water line of the New Jersey shoreline,~~ DEPE and DNREC shall work together to make the two sets of policies more complementary, including, if necessary, eliminating inconsistencies through amendments to either or both sets of policies. In order to identify, discuss, and resolve policy and interpretation inconsistencies, and to ensure success of the cooperative application review and comment procedures, designated representatives of the DEPE and DNREC staffs shall meet periodically at a time and

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7. This MOA shall take effect upon signing by both parties and subsequent to the Governors' review for a period of ten business days. This agreement may be terminated by either party by providing notice of termination on the other party sixty (60) days prior to termination.

_____

Acting Commissioner
New Jersey Department of
Environmental Protection and Energy

_____

Date



NJPRIVLOG 35 NJ09982

3269

XXXXXXXXXXXXXX
Delaware Department of Natural
Resources and Environmental Control

Date

Approved as to form only by:

Deputy Attorney General
State of New Jersey

Date

Deputy Attorney General
State of Delaware

Date

State of New Jersey
Department of Environmental Protection and Energy
Environmental Regulation
Office of Land and Water Planning
CN 423
Trenton, NJ 08625-0423

Jeanne M. Fox
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Martin A. Bierbaum
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Dave Carter, DENRC

Draft 8/3/93

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**Between**
**New Jersey Department of Environmental Protection and Energy**
**and**
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**(identify points of inconsistency and how will resolve)**

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_____
Acting Commissioner
New Jersey Department of
Environmental Protection and Energy

_____
Date

_____

XXXXXXXXXXXXXX
Delaware Department of Natural
Resources and Environmental Control

_____

Date

Approved as to form only by:

_____

Deputy Attorney General
State of New Jersey

_____

Date

_____

Deputy Attorney General
State of Delaware

_____

Date

10-28-91

Steve Whitney -

Please attend the attached as per J. Wingait. 11/15 at 10:00 in Comm of C.

Thanks -

Trudie

NJPRIVLOG 2

NJ09922

11/13
10:00

## ISSUES - DELAWARE/NEW JERSEY

1 Ramsar designation for Delaware Bay
2 Delaware Estuary Program
3 Weakfish & other fisheries management in Delaware Bay
4 Cooperative enforcement in Bay
5 Joint proposals for use of River and Bay Authority funds
6 Impingement and entrainment policies
7 oil spill contingency/response activities
8 Delaware permitting of facilities on New Jersey Shore
9 PCB's in Delaware Bay fish
10 Waste transportation issues
11 45' Channel
12 Joint Coastal Zone Consistency Reviews

## STAFF ATTENDING FROM DELAWARE

Edwin H. Clark, II, Secretary
Mark Chura, Executive Assistant
Gerard Esposito, Director, Division of Water Resources
Andrew Manus, Deputy Director,
Division of Soil & Water Conservation
Division of Air & Waste Management representative
William Wagner, Director
Division of Fish & Wildlife
Robert Zimmerman, Environmental Program Administrator
Division of Water Resources

See Toby Clark of Delaware
Carol Brown
Commissioner
Steve Whitney
DE Comm. Rpt.

RECEIVED
OCT 1991
CHIEF OF STAFF

11/15 8:00 am

Issues identified by Commissioner Toby Clark of Delaware as topics they would like to see discussed at a meeting between our respective staffs. These issues should be circulated to the management team and Rick should be coordinating the preparation of a single comprehensive briefing dealing with these issues. ( Needless to say, the management team should also be invited to indicate any additional issues they would like to discuss with the State of Delaware. )

VS OFFICE Monday 07/18/94 11:54 am

To: Dorina Frizzera 401 4W
From: Ruth Ehinger Security: General
Subject: t. fowler - marinas Date Received: 07/18/94

---

roxanne sachleben 4-0921 knows about ordering the signs. she can give you the specifics. they are made by the state prison.
regarding the nj/delaware moa, i wanted to talke to you about limiting the number of applications which we send to delaware to larger applications. it doesn't make sense to me to send all small docks for example

---------- Original Memo ----------

To: Ruth Ehinger From: Dorina Frizzera
Subject: t. fowler - marinas Date Sent: 07/12/94

Ruth, Terry Fowler here. I don't know whether JRW told you, but he decided that my application for marina pumpout $ should say that priority would be given to marinas which charge renters their pumpout fee as part of their slip fee. We'll see what comes of that.

New issue: do you know who orders the blue beach access and fishing access signs? I'm going to need to order pumpout signs and have no clue who to contact. I figured your sign orderer could point me in the right direction. Thanks. Terry

Intended For: This Item is In Progress
Author: Dorina Frizzera
Subject: DE/NJ Comp

---

Ruth, Before I talk w/Steve about which permit applications should get shared w/Delaware, it would be helpful to know what you and Ernie think the threshold should be. What're your thoughts? Thanks. Terry Fowler

VS OFFICE Thursday 07/21/94 10:13 am

To: Steven Whitney 401 4W
From: JoAnn Cubberley Security: General
Subject: Draft MOA/NJ & DE Date Received: 07/20/94

---

I have no problem with sending applications to DNREC in this area - but it would be helpful to know exactly what the boundaries of "the area" are and to whom the applications should be sent, once this agreement is in effect.

Terry
I told JoAnn that these are
good points that will be
added.
Steve

OPTIONAL FORM 99 (7-90)

FAX TRANSMITTAL # of pages ▸ 7

| | |
|---|---|
| To Dorina Frizzera | From Helen Grady |
| Dept./Agency NJDEP/OEP | Phone # 301-713-3105 x 180 |
| Fax # 609-292-4608 | Fax # 301-713-4367 |

NSN 7540-01-317-7368 5099-101 GENERAL SERVICES ADMINISTRATION

**UNITED STATES DEPARTMENT OF COMMERCE**
**National Oceanic and Atmospheric Administration**
NATIONAL OCEAN SERVICE
OFFICE OF OCEAN AND COASTAL RESOURCE MANAGEMENT
Silver Spring, Maryland 20910

JUL 17 1996

Dorina Frizzera
Environmental Scientist
Office of Environmental Planning
New Jersey Department of Environmental Protection
CN 418
Trenton, New Jersey 08625-0418

Dear Ms. Frizzera:

The Office of Ocean and Coastal Resource Management (OCRM) received the New Jersey Department of Environmental Protection's (NJDEP) draft FY96 award application on June 24, 1996. Based on our review of the draft application, we offer the following comments.

In general, this year's award application is very similar to the FY95 application, with the exception of considerable additional costs and person months for certain tasks and object class categories. Many of the specific comments made below will request that the NJDEP provide an explanation for the added costs either through additional detail on work products and benchmarks for proposed activities, or in the justification statements for certain object class categories.

I. OBJECT CLASS CATEGORIES

1. Travel.

a. NJDEP is proposing a $25,000 increase in section 306 travel costs from FY95. The justification should explain this increase, e.g., what additional trips are being planned, etc. → check

b. The "Transportation Out-of-State" justification should continue to explain how the expenses are estimated. OK

c. $10,000, or an estimated 20 out-of-state trips have been identified under section 309 funding. Based on the section 309 task descriptions, it is not clear what out-of-state travel is associated with these activities. An explanation of travel costs should be provided under the appropriate section 309 task description(s). → check $ should be in state-travel

d. Please specifically identify travel for two staff to attend the annual Program Manager's Meeting held in Washington, D.C. OK

2. Supplies. There have been considerable increases in the cost of various supplies from previous years awards. The following increases should be explained in the justification section:

a. Office supplies - section 306 and 309

b. Xerox reproduction expenses - section 309

c. Printing - the $25,000 in section 309 printing expenses must be explained.

3. Contractual.

a. The cost of court reporters has doubled from last year's cost of $2,200. Please explain what activities are anticipated for the coming year that would increase the cost to this extent.

b. The pass-through grants are currently listed on page 14 under section 306A funding. As we have discussed, the appropriate category for the pass-through grants is section 306.

4. Other.

a. The Office of the Inspector General has recently begun increasing its review and denial of expenditure of federal funds on lobbying organizations. Since the Coastal States Organization conducts lobbying in Congress, according to federal guidelines, federal funds cannot be specifically expended for these membership dues.

b. The following cost categories have increased substantially and require further explanation:

(1) Staff training - section 306 and 309. NJDEP has only specified $5,000 of staff training activities, which leaves $20,000 unidentified. Additional detail is required since this is a substantial increase over last year's funding request. In addition, in order to include staff training requirements under section 309, specific discussion on how the staff training under the proposed task(s) will contribute to development of a program change is required.

(2) Advertising for public meetings

(3) Telephone expenses

## II. SPECIFIC TASK COMMENTS

1. Task 1.1, Administer Coastal Permit Program.

a. One of the new expected products for this activity is proposing rules to clarify jurisdictional issues in municipalities known as "Qualifying Municipalities" that receive urban aid. Further information on qualifying municipalities, the project's relationship to coastal zone management, and the law which is being used as the source for these rules is required. As you are aware, NJDEP can not expend coastal zone management funds on developing rules for, and implementation of laws which have not been incorporated into the State's coastal zone management program, nor in areas outside of the designated coastal zone.

b. The Wetlands Mitigation Tracking Database (WETMIT) used for monitoring wetland mitigation projects was not included in this year's award application. NOAA has been providing funding to NJDEP for several years to develop and update the database. Please either include the planned activities for WETMIT this year, or provide an explanation regarding why this activity will no longer be pursued. In the FY91 award, NJDEP provided a report to the Governor evaluating state-of-the-art wetlands mitigation in New Jersey. NJDEP may want to consider using FY96 funds to update this information and determine the level and success of wetlands mitigation over the last five years.

2. Task 1.2, Administer Appeals. Since the NJDEP is proposing an additional $26,500 in federal/state funds for this task, we request that information on the activities associated with these additional costs be identified. It appears that part of the additional effort will involve updating the appeals tracking system and developing an alternative dispute resolution form and written procedures and guidance. Please provide more specific benchmarks for these activities.

3. Task 2.1, Permit Monitoring and Compliance. We would again note that the WETMIT activity conducted by the Bureau of Coastal and Land Use Enforcement has not been included in this year's award application. Please see the comments at 1.b. above.

4. Task 3.1, Policy Refinement.
a. The award application lists several new focus areas for policy issues, including urban redevelopment, special urban areas, traffic, and making permit decisions more efficiently by revising procedures. NJDEP's proposed activities that will focus on these policy issues should be described in more detail, i.e., the activities the State will be conducting, their specific relationship to coastal zone management, and proposed benchmarks and products for these activities. For example, it would useful to identify NJDEP's overall plan, goals and steps for integrating land and water issues through watershed management.

b. Please revise the second expected product to read "Submission of a request for approval for Program Changes..."

5. Task 3.2, Technical Assistance.
a. Another seven person months and $20,000 have been added over last year's task costs. Please identify the activities associated with these additions. Also, please include the $250.000 in contractual costs in the "Federal Cost" of the project on page 32.

b. As part of the background section, please identify what activities conducted in previous years in delegating permitting programs to local levels of government. Is this an activity that

NJDEP will continue pursuing this year? If not, please explain why.

c. Please define what activities are included in "providing technical assistance to local governments and interested citizens." We would also note that providing technical assistance on the State Plan consistency effort is redundant with activities proposed in Task 3.4, State Plan Consistency.

d. Further detail should be provided on the local coastal planning grants. For example, if NJDEP anticipates allocating these awards to "two or three" specific geographic areas, the State should identify which areas it is targeting, and what will be required of the applicants. Guidelines and benchmarks for issuing the awards should be included in the award application. Also, while the task description discusses making local coastal planning grants available primarily for watershed management plans, under "activities" watershed management is not mentioned. Providing the additional detail on these activities should address this issue.

6. Task 3.3, Public Participation and Education.

a. Please describe in greater detail the specific activities that will increase the total cost of this project by an additional $43,000 and 6 person months over last year's budget. Identify any specific benchmarks and work products.

b. It is our understanding that since Barnegat Bay has been approved as a National Estuary Program (NEP), activities associated with the NEP will be funded by the U.S. Environmental Protection Agency. Please revisit the language in this task, and in tasks 3.2, and 3.5.

7. Task 3.4, State Plan Consistency.

a. Additional detail should be provided for this task. While this is an excellent activity, the plan for revising local master plan and ordinances to reflect the State Plan should be better defined. For example, in the task description, the State should specify the number of pilot projects and the names of the municipalities. Activities and benchmarks should focus on how the State will conduct the task, e.g., dates by which municipalities will be selected; how, when, and what guidance and technical assistance will be provided; dates for accomplishing steps in developing municipal reports and draft ordinances, etc.

b. Two of the expected products, public meetings throughout the grant year to evaluate the implementation of the rule amendments and coordinated efforts with the Office of State Planning to ensure that the coastal rules are implemented in accordance with the State Plan were listed as activities for FY95. Are these products still associated with specific FY96 activities?

8. Task 3.5, Intra-State Coordination. The cost of this task in FY96 has increased by a total of approximately $28,500 and 4 person months, while the actual description and listed activities have remained virtually the same. The background section should identify progress that has been made in the last year under this task, and identify the next steps for continuing these initiatives in FY96. For example, it would be helpful to describe what has been accomplished through coordination on estuary studies and water quality monitoring, and what follow-up is proposed this year. What results have been achieved through cooperation between NJDEP agencies on developing a protocol for review of dredging applications? Please identify specific activities that will be pursued in FY96 that necessitate the added cost in funds and personnel. The listed activities and expected products should more closely reflect the various efforts identified in the task description.

9. Task 3.6, Inter-State Coordination. Additional information is required under the task description and activities to reflect why there is a proposed increase in this task of almost $80,000 and 10 person months. For example, NJDEP may want to describe what specific activities it is proposing in FY96 to continue improving the working relationship between New Jersey and its bordering states.

10. Task 3.7, Federal Consistency. Please explain why the total cost for this standard activity is expected to increase by $41,000 and six person months over last year's federal consistency task. Are there particular issues the State anticipates focussing on that require additional staff time and funds? If so, please describe.

11. Task 4.1 and 4.2, Grants Management and Performance/ Financial and other Reporting. While the actual proposed activities under these tasks have not changed from previous years, the cost has increased considerably over the FY95 award by $45,296 and $21,464, respectively. Please provide an explanation and a description of the new activities and expected products associated with the increase in costs and person months.

12. Section 309 Tasks. OCRM received New Jersey's revised section 309 Strategy on July 12, 1996, and has not yet had the opportunity to review it. Therefore, please be advised that any comments made in this letter as well as approval of the proposed tasks are ultimately contingent upon approval of the revised Strategy, as well as NJDEP's response to the comments listed below.

a. Task 5.1, Coastal Hazards - Identification of Jurisdictional Inland Dune Line. Please place the proposed activities in bullets and identify benchmarks/a schedule for when they will be completed.

DONE



b. Task 5.2, Cumulative and Secondary Impacts.

(1) We recommend narrowing the scope of the proposed activity in order to meet section 309 requirements. As written, the proposed task and activities do not result in a clearly defined section 309 "program change." In order to receive further consideration, the project should identify specific program changes that will result from the collection and mapping of data. Only those guidelines, procedures and policy documents which are enforceable through New Jersey's Coastal Zone Management Program are eligible for section 309 funding.

(2) The activities leading up to the program change should be clearly identified and be associated with benchmarks throughout the award year.

(3) In the current list of activities, NJDEP lists convening workshops and meeting with various agencies and local governments to implement best management practices to minimize loadings. Please be advised that workshops and public education must serve as a tool in developing the program change, and can not be conducted to implement or explain the proposed changes after they have been adopted.

(4) We would note that under "Expected Products," the digital and mapped products showing phosphorous and nitrogen loadings is currently scheduled for completion in the third quarter. This conflicts with the State's intention to prioritize the watersheds by phosphorous and nitrogen impacts, currently scheduled for the first quarter.

c. Task 5.3, Public Access.

(1) Similar to tasks 5.1 and 5.2 above, please revise the activities schedule to identify the steps NJDEP will follow to develop new guidelines, procedures and policies.

(2) Please clarify what is meant by "the following activities will be incorporated into the plan." It appears that the State is proposing new guidelines and procedures, rather than a "plan."

(3) The current purpose for the workshops is to introduce municipal and county governments and not-for-profit organizations and the public to the coastal public access guidance document. Since this is the ultimate product, as indicated for Task 5.2, workshops and public education/ outreach are fundable under 309 only for the purpose of developing the program change, not implementing it.

(4) Please remove the language in the last paragraph of page 56 referring to "in the guise of" providing new guidelines.

(5) Under "Expected Products," please identify in advance which policies and procedures will be amended to incorporate the standards and guidance. This information should be included in the application.

(6) The task activities and expected products indicate that a tracking system for public access will be secured through the regulatory process. Please provide additional information on this. How does it contribute to the program change? What will be involved in developing the tracking system? How will it be used?

We hope these comments are helpful as you continue to develop your final award application. Please be advised that the National Oceanic and Atmospheric Administration's Grants Management Division may provide additional comments once they have completed their review of the draft application. Please do not hesitate to contact me at (301) 713-3105, extension 150 if you have any questions or if you would like to discuss our comments further.

Sincerely,

Helen C. P. Grady
Coastal Program Specialist

Chapter 64 Title 7 Beach Preservation Act.
Delaware's Conservation and Preservation Easement Act of 1978

Atlantic & Delaware
Beach = 1,000' inland of MHW and 2,500' offshore of MHW.

Bay shores: 200' inland and 300' seaward of MHW

Building line: regulatory line -> DNREC may remove violations

DNREC shall prevent and repair damages from erosion public beaches.

Private Beach owners are liable for upkeep.

Rules.

Beach: 1,000' or first road for automobiles
Reconstruction landward of the building line requires permit. -> must be beyond building line if possible or as far landward as possible

Building seaward of the building line is allowable if the portion of the lot landward of the line is too small to accomodate the building or must be so placed to accomplish ~~its~~ ~~intent~~ the structure's intent.

No building seaward of line if parcel was subdivided after 8/13/81;

NJPRIVLOG 25a

NJ09961

DNREC may require mitigation including beach nourishment, dune construction or maintenance

Letter of approval required for construction land. sale of building setback but within the beach area

NJPRIVLOG 25a

NJ09962

Chapter 72 Title 7 -> Subaqueous Lands <-

Must have permit, lease or letter of approval before occupation of tidelands and submerged lands

Governor to make decisions on Commercial projects. -> and Secretary.

Denial is not appealable.

- Marina Regulations. -

Regulations apply to any facility w/ 5 or more slips

New marinas siting criteria -> Siting + Design Study
- Must explore Combinations of wet & dry boat storage
- Permit only for the least damaging alternative
* - Boat storage (wet slips) presumed to be non-water dependent
- Permit only if water qual are maintained in + outside of the basin -> minimum assessment of fecal coliform and D.O. including modeling & monitoring of flushing rates, extent of shellfish closure, ave D.O. 5 hr and minimum D.O. 1 hr.
- Cumulative impact consideration
- Less than 1 acre wetland disturbance
- No marinas where Closure zones intersect shellfish grounds not already prohibited or restricted -> or if those areas may be opened in future due to non point and point source controls.

NJPRIVLOG 25a

NJ09963

- SAV must be compensated for - 110 Shading Allowed.
- Benthic Community diversity and abundance must be evaluated - only 0-3 on a 0-8 scale may be used for marinas.
- Prohibited in critical areas.

Marinas - Planning + Design Requirements.

No creosoted timber underwater.

Regulations Governing Subaqueous Land Uses.

All streams or waterways having a defined bank and navigable to the approximate line of mean high water.

Prohibits

No overwater structure non water dependent.
No gazebos.
No docominiums

Exempts

drainage ditches
reconstruction -> serviceable within past 6 mos.
2 moorings

docks. 20% of the width
250 feet maximums

Dredging to obtain depth for a private facility is prohibited

NJPRIVLOG 25a

NJ09964

Chapter 66 Title 7 Delaware Wetlands
Above mean low water to 2ft. above MHW

Must receive municipal approval first.

Exempt: mosquito control, navigation aids, duck blinds, foot bridges, grazing, hayings, hunting, fishing & trapping
→ Rules ←

No permit to dredge deeper than adjoining channel.
No channels w/ only one outlet unless equipped w/ aerators.
Fill slopes must be 1V:3H

Must be water dependent + no alternative on adjoining uplands in common ownership

No bulkhead above existing ground.

Type I permits (Abbreviated)
less than 1 acre + no structure
- maintenance of public facilities
- maintenance dredging w/ no spoil in wetlands
- wildlife mgmt. maintenance

Type II permits
> 1 acre, involves structure, const. of access roads, with gas + petrol lines

Creosoted timbers prohibited
Minimum frontage for boat docks. 40'

No structural shore protection where wetland exist unless a treatment will not harm the adjacent environment

Dredging must not contravene Delaware's water quality standards - numeric or designated uses.

Prohibit dredging new lagoons w length : width, 3:1 or greater

Prohibits prop wash dredging.

Zone 5 + 6 Liston St.
↳ = C1

NJPRIVLOG 25a

NJ09966

5/26/94 Mtg w/Steve

1) meant to cover Bay + River
2) cite Supreme Court case
3) MOA say that we will compare reqs/standards every X years - not include comparison as appendix - or as part of MOA
4) remove DAG's signature lines
5) don't want DE Plans - Solid + Hazardous Waste

Intended For: This Item is In Progress
Author: Dorina Frizzera
Subject: DE/NJ Comp

---

CC: Dorina Frizzera From: Dorina Frizzera
Subject: DE/NJ Comp Date Sent: 07/19/94

Ruth, Before I talk w/Steve about which permit applications should get shared w/Delaware, it would be helpful to know what you and Ernie think the threshold should be. What're your thoughts? Thanks. Terry Fowler

---------- Reply ----------

Ruth, any ideas? Thanks. Terry Fowler

mtg - Steve + Terry

1/12/94

Responses to Ruth E.'s comments
DE isn't giving permits for projects starting in NJ

(Sarah Coksey - DE Mgmt Program)

We need to consider water quality issues & habitat issues, not just construction

We should share info w/DE when we deem it appropriate, not just when they ask for it

Send DE proposed rules + regs that could in any way affect their waters - not just coastal rules

Be aware of R E's comments - don't include at this time
Bring to JRW's attention, when appropriate

(Feb 2 interstate mtg w/ PA & DE Re: 6217 - Sarah maybe coming)

Steve will call to set up mtg w/ DE

Re type standards - new $H_2O$ quality standards

Commissioner - NJ
Sec'y - DE

To: Whitney
Subject: DE/NJ comparison

Distribution:

None, this item is In Progress

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I met w/ Ruth Ehinger on 11/5/93. We discussed the latest draft of the MOA between Delaware and New Jersey. Her comments were as follows:
1) We should change the rules so that the applicant sends copies of information to DE. It would be too cumbersome to have staff do it.

2) She doesn't want to look at DE's applications, except for activities in the waterway on NJ side of centerline and large scale projects

3) We should tell DE what we want from them and let them tell us what they want from us, rather than defining now what we'll give to them

4) We could condition our permits on people getting applicable DE permits

5) Does DE presently get permits for development starting in NJ?

6) We should say that we'll share data when DE asks for it

7) With regard to proposed rule changes, if we're only going to refer to coastal ones, then we could send the proposals to them. If we're going to include other programs, we should send them the NJ Register.

EXAMPLE

Memorandum of Agreement
Between
The New Jersey Department of Environmental Protection,
Division of Coastal Resources
and the
New Jersey Pinelands Commission

Purpose and Applicability

This Memorandum of Agreement between the New Jersey Division of Coastal Resources and the New Jersey Pinelands Commission is intended to formalize a framework for coordinating the policies and activities of the Coastal Management Program (N.J.A.C. 7:7E-1.1 et seq.) and the Pinelands Comprehensive Management Plan (N.J.A.C. 7:50-1 et seq.) in those portions of the Pinelands National Reserve which lie within the coastal zone. This memorandum applies only to those portions of the coastal zone within the Pinelands National Reserve.

The Pinelands Commission and Department of Environmental Protection, Division of Coastal Resources agree to the principles, procedures, and responsibilities that follow, recognize the statutory limitations of both agencies, and do not intend this memorandum of agreement to expand or limit their existing statutory powers in any way.

Points of Agreement

1. The Pinelands Commission and the Department of Environmental Protection, Division of Coastal Resources (DEP-DCR) agree that the Pinelands Comprehensive Management Plan and the Coastal Management Program are generally consistent with respect to those portions of the Pinelands National Reserve which lie within the coastal zone as defined in New Jersey's Coastal Management Program.

2. The Department of Environmental Protection, Division of Coastal Resources (DEP-DCR), agrees to implement the Pinelands Comprehensive Management Plan within the coastal zone to the extent of its statutory authority, and in accordance with DEP-DCR's Special Area Policy which states that coastal development "shall be consistent with the intent, policies, and objectives" of both Federal and State Pinelands legislation (N.J.A.C. 7:7E-3.42). In carrying out this agreement, DEP-DCR shall refer to the Pinelands Land Capability Map, relevant standards contained in the Plnelands Comprehensive Management Plan, and review comments submitted by the Pinelands Commission on applications for development within the Pinelands National Reserve.

3. The Department of Environmental Protection, Division of Coastal Resources (DEP-DCR) will consider the Pinelands Commission to be a reviewing agency for any CAFRA permit applications affecting the Pinelands National Reserve. The DEP-DCR shall also transmit for Commission review, certifications pursuant to Section 307 of the Coastal Zone Management Act of 1972, and Wetlands and Waterfront Development permit applications in the Pinelands National Reserve, where such applications involve major development as defined in the Pinelands Comprehensive Management Plan, and all applications in the Pinelands Area except for those activities specified in N.J.A.C. 7:50-4.1.

4. Where the DCR is reviewing a permit application involving land in the Pinelands National Reserve, the DCR shall ensure an opportunity for the Commission as well as the municipality in which the project is located to comment on the manner in which Pinelands standards apply to the subject application. Prior to any application being declared complete for filing, the DCR shall transmit to the Commission a copy of the application, site plans and environmental impact statement, if required, and request comments on the application which will be considered in the Division's decision on the application.

5. Within the portion of the State Pinelands Area which lies within the coastal zone, both DEP-DCR and the Pinelands Commission shall administer their respective statutorily mandated permit and review functions. The Pinelands Commission shall, within five working days of receipt of a completed application proposing development in the coastal zone, notify DEP-DCR of the application for development by sending a copy of the application to DEP-DCR for comment. DEP-DCR, prior to accepting a CAFRA, Waterfront Development, or Wetlands application for filing, shall require the applicant to furnish either a Certificate of Compliance, or a Certificate or Notice of Filing issued by the Pinelands Commission, whichever is appropriate. Both agencies recognize that each agency has the independent authority to approve or deny applications pursuant to its own regulations.

6. In the event that one or both agencies propose to amend their adopted regulations or policies, they will consult with the other to determine how the amendments will affect the administration of their respective programs, and will attempt to resolve any differences prior to taking action. In particular, the Commissioner of the Department of Environmental Protection signed Executive Order No. 70 on September 18, 1987, designating DEP-DCR

as the agency responsible for implementation of the Freshwater Wetlands Protection Act (N.J.S.A. 13:9B-1 et seq.) and the Flood Hazard Area Control Act (N.J.S.A. 58:16A-50 et seq.). DEP-DCR will consult with the Pinelands Commission, first to evaluate the level of consistency between the Pinelands Comprehensive Management Plan and the rules and standards of the Flood Hazard Area Control Act, second, to coordinate in the development of rules and standards to implement the Freshwater Wetlands Protection Act, and third, to develop specific recommendations and an implementation agenda for improving, where possible, the level of consistency throughout the entire Pinelands National Reserve and Pinelands Area where the regulatory jurisdictions of these statutes overlap.

7. Should inconsistencies between the Pinelands Comprehensive Management Plan and DEP's Rules on Coastal Resources and Development Policies be identified, the Pinelands Commission and DEP-DCR shall work together to make the two sets of policies more complementary, including, if necessary, eliminating inconsistencies through amendments to either or both sets of policies. In order to identify, discuss, and resolve policy and interpretation inconsistencies, and to ensure success of the cooperative application review and comment procedures, designated representatives of the DEP-DCR and Pinelands Commission staff shall meet periodically at a time and location to be mutually agreed upon, to discuss permit review coordination, specific policies and their interpretation, and growth area designation inconsistencies. A report of each meeting shall be prepared for review by the Director of the Division of Coastal Resources and the Executive Director of the Pinelands Commission.

8. DEP-DCR and the Pinelands Commission recognize similarity in their data bases and needs, and agree to share data whenever possible. To streamline the process, the Pinelands Commission and DEP-DCR will cooperatively work to standardize their respective data bases. In addition, the two agencies will work together in the development of a State Geographic Information System, and will coordinate long range planning and research agendas involving federal grant programs.

9. The Executive Director of the Pinelands Commission and the Director of the Division of Coastal Resources may jointly propose revisions to the terms and procedures of this Memorandum of Agreement from time to time.

10. This MOA shall take effect upon signing by both parties and subsequent to the Governor's review for a period of ten (10) business days. This agreement may be terminated by either party by providing notice of termination on the other party sixty (60) days prior to termination.

Commissioner
Department of Environmental Protection

1/8/88
Date

Executive Director
Pinelands Commission

2/3/88
Date

Approved as to form only by:

Deputy Attorney General
State of New Jersey

Dec. 28, 1987
Date

what about $H_2O$ quality?

projects extend from one state to another - different from Pinelands/CAFRA

- not overlapping.

Old 309 - Interstate grants
$1 to 2 M to NJ + Del
Purpose: review coastal programs
compare to determine if compatible
do we need MOA to review projects
common to both states

State boundary of DE goes to MLW in NJ
to Salem NG Station

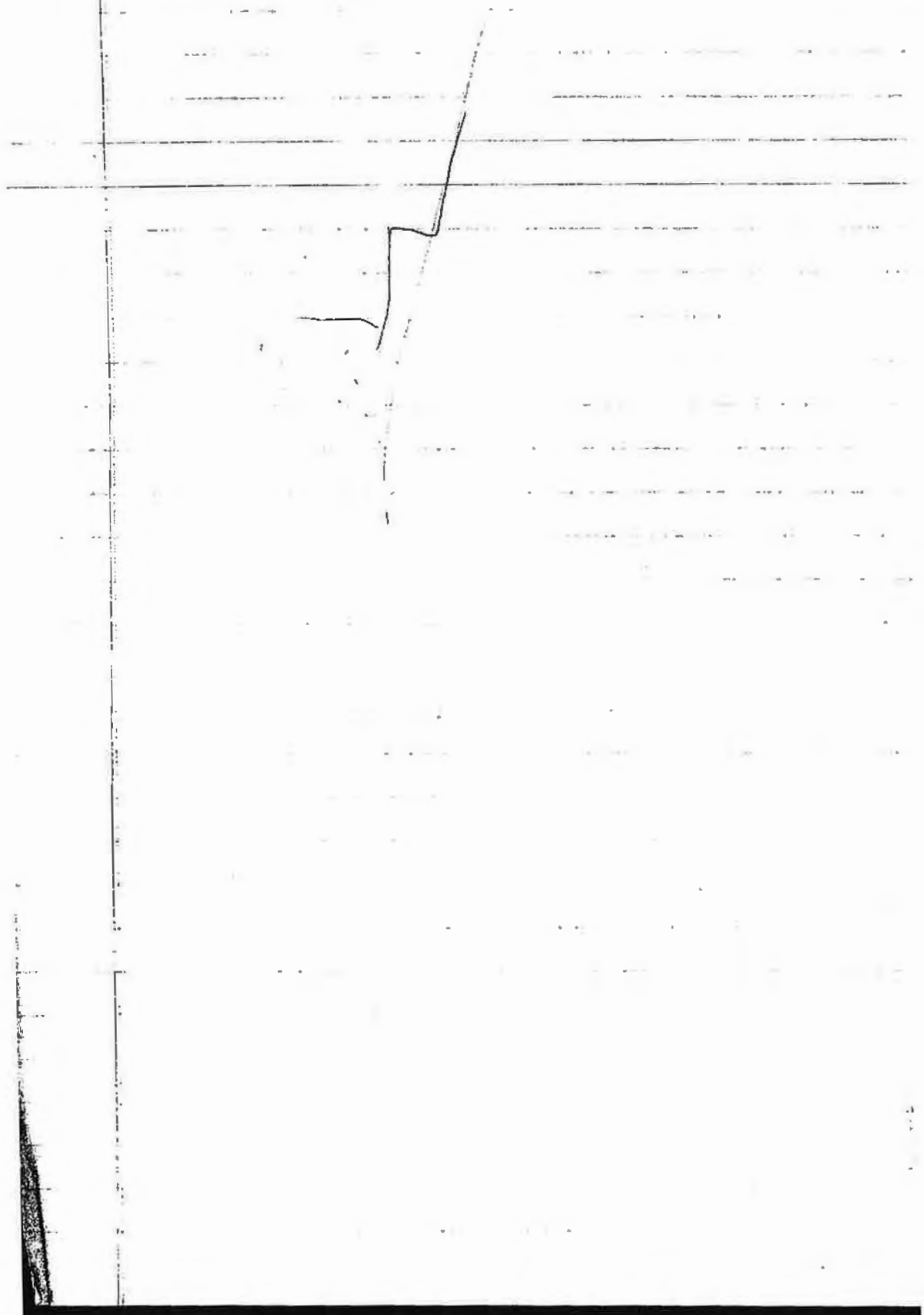
We have allowed projects to proceed
which reach into DE

L. Baier did comparison
Sent to Andy Manus

and Similar to Finlands MOA
Define how would go about dealing w/ inconsistencies
spell out a review procedure
how share info
binding a non-binding

contact Sarah Cooksey for mtg

NPS mtg Dec 4



VS OFFICE Electronic Mail Friday 05/07/93 04:19 pm

CC: Steven Whitney 401 4W
From: Steven Whitney
Subject: Navy Dredging/Salem Nuc. Date: 05/07/93

Terry
FYI re:
Delaware
Project.
Steve

Distribution:

Not Requested

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Ruth, I attended the annual coastal program manager's meeting this week and have a few questions for you that were asked of me. Laurie McGilvery asked about the status of the Navy dredging proposal. Apparently she knows something about the meetings DEPE is holding with the Navy. Laurie would like our preliminary views about the proposal and ongoing process. Is this something you are at liberty/comfortable at providing? Secondly, David Carter from the Delaware Department of Natural Resources and Environmental Control mentioned that PSE&G is meeting with DNREC today about the proposed Salem Cooling Tower. David wanted to know our position about the tower and who is NJ's contact. I suggested that you may be the contact but wanted to check with you before confirming with him. I am preparing a summary of the coastal program managers meeting and will send to you a copy. Thanks.

VS OFFICE Monday 07/18/94 11:54 am

To: Dorina Frizzera 401 4W
From: Ruth Ehinger Security: General
Subject: t. fowler - marinas Date Received: 07/18/94

---

roxanne sachleben 4-0921 knows about ordering the signs. she can give you the specifics. they are made by the state prison.
regarding the nj/delaware moa, i wanted to talke to you about limiting the number of applications which we send to delaware to larger applications. it doesn't make sense to me to send all small docks for example

---------- Original Memo ----------

To: Ruth Ehinger From: Dorina Frizzera
Subject: t. fowler - marinas Date Sent: 07/12/94

Ruth, Terry Fowler here. I don't know whether JRW told you, but he decided that my application for marina pumpout $ should say that priority would be given to marinas which charge renters their pumpout fee as part of their slip fee. We'll see what comes of that.

New issue: do you know who orders the blue beach access and fishing access signs? I'm going to need to order pumpout signs and have no clue who to contact. I figured your sign orderer could point me in tbe right direction. Thanks. Terry

L.&L.
-22-61

W-68 - 508

DEED

THIS DEED, made this 11th day of January, A. D. ~~1961~~ 1962, between THE STATE OF DELAWARE (herein referred to as "Grantor"), and SUNOLIN CHEMICAL COMPANY, a Delaware corporation (herein referred to as "Grantee").

Whereas, the Grantor is the owner of certain subaqueous lands lying beneath the waters of the Delaware River, off-shore from the SunOlin Chemical Company property, situate in Brandywine Hundred, New Castle County, Delaware, at a point immediately South of the Delaware-Pennsylvania boundary line; and

Whereas, the Grantee is the owner of 13.2 acres of land of which approximately 10.63 acres constituted the foreshore property of the Grantee, as it existed in 1932 and prior thereto; and

Whereas, the Grantee has filed a petition in accordance with the provisions of Title 7 Delaware Code § 4520 in which it asks that a quitclaim deed be executed and delivered to the aforesaid 13.2 acres of land of any proprietary interest, right or claim which the State of Delaware may have and of any rights which the public may have in fishing and navigation, appurtenant to the aforesaid 13.2 acres and has also requested a conveyance in fee simple by the State of Delaware of 0.44 acres of subaqueous land adjacent to the above tract, for the purpose of straightening the frontage owned by the Grantee on the Delaware River; and

Whereas, under the provisions of Title 7 Delaware

DE06523

Code, 1953, § 4520, a Special Commission has found it to be in the public interest to grant such request of the Grantee.

NOW, THEREFORE, BE IT WITNESSETH AS FOLLOWS:

That the Grantor, in accordance with the provisions of Title 7 Delaware Code, 1953, § 4520, and for and in consideration of the sum of SEVEN THOUSAND ONE HUNDRED DOLLARS ($7,100.00) lawful money of the United States of America, the receipt whereof is hereby acknowledged, does hereby grant, convey, release and forever quitclaim unto the Grantee, its successors and assigns, all of its proprietary interests, rights or claims together with all rights of the public for purposes of fishing or navigation, in and to

ALL that certain piece and parcel of land, situate in Brandywine Hundred, New Castle County, Delaware, being in large portion the foreshore of the property of SunOlin Chemical Company abutting the Delaware River as the same existed in 1952 and prior thereto and now high land having been filled in by the SunOlin Chemical Company's predecessor in title, and more particularly bounded and described as follows:

BEGINNING at a point in the division line between the property of SunOlin Chemical Company and Allied Chemical & Dye Corporation (said point being South 32 degrees, 0 minutes, 27 seconds East 125 feet distant from a permanent monument in said division line, said permanent mobument being North 32 degrees, 0 minutes, 27 seconds West 523 feet, more or less, from the corner of a wooden bulkhead of Allied Chemical & Dye Corporation), thence from said Beginning point North 60 degrees, 19 minutes, 36.2 seconds East 1050 feet, more or less, to a point in the division line between the property of SunOlin Chemical Company and Sun Oil Company; thence South 31 degrees, 22 minutes, 41 seconds East 530 feet, more or less, to a point in the Pennsylvania bulkhead line as extended; thence along the said extended bulkhead line South 60 degrees, 19 minutes, 36.2 seconds West 1043.66 feet, more or less, to a point; thence North 32 degrees, 0 minutes, 27 seconds West 528.79 feet, more or less, along the division line between said property of SunOlin Chemical Company and Allied Chemical & Dye Corporation to the point and place of Beginning.

To have and to hold the same, together with all and singular the appurtenances and privileges thereunto belonging or in anywise appertaining thereunto including all littoral, riparian and shore rights, liberties and privileges whatsoever; and all the estate, right, title, interest and claim whatever of the Grantor, or the public, either in law or in equity, to the only proper use, benefit and behoof of the Grantee, its successors and assigns, forever.

IN WITNESS WHEREOF, The State of Delaware has caused its name by Elbert N. Carvel, the Governor of the State of Delaware, to be hereunto set and the seal of The State of Delaware to be hereunto affixed, duly attested by the Secretary of State of The State of Delaware, the day and year first above written.

Sealed and Delivered
in the presence of:

Josephine K. Morris

THE STATE OF DELAWARE

By _____
Governor

Attest:
Elisha P. Dukes
Secretary of State

REC'D W-68 PAGE 511

STATE OF DELAWARE )
) SS.
KENT COUNTY )

BE IT REMEMBERED that on this 11th day of January A. D. ~~1961~~ 1962, personally came before me, the undersigned, a Notary Public of the State of Delaware, ELBERT N. CARVEL, Governor of The State of Delaware, known to me personally to be such, and acknowledged this Indenture to be his act and deed and the act and deed of The State of Delaware, that the signature of the Governor thereto is his own proper handwriting and the seal affixed is the Seal of The State of Delaware, and that his act of sealing, executing, acknowledging and delivering said Indenture has been duly authorized under the provisions of Title 7, Delaware Code, 1953 § 4520.

GIVEN under my Hand and Seal of office the day and year aforesaid.

Notary Public

FILED FOR RECORD Jan 18 10:24 AM RECORDER

AGREEMENT OF LEASE

between

THE STATE OF DELAWARE

and

COLONIAL PENNSYLVANIA COMPANY

DE05810

THIS AGREEMENT OF LEASE made in duplicate this Ninth day of October A.D. 1963, by and between the STATE OF DELAWARE, party of the first part,

-A N D-

COLONIAL PIPELINE COMPANY, a Delaware corporation, party of the second part.

WHEREAS the State of Delaware is the proprietary owner of certain subaqueous public lands lying beneath the mean low water lines of the waters of the Delaware River;

WHEREAS the Colonial Pipeline Company has made application, pursuant to Title 7 of the Delaware Code, Section 4520, to use a part of those subaqueous public lands for the purposes of constructing, maintaining, inspecting, operating, protecting, renewing, replacing, repairing, improving and removing a submarine pipe line for the transportation of refined petroleum products;

WHEREAS in the opinion of the Governor of the State of Delaware it is in the public interest for Colonial Pipeline Company to use a part of the subaqueous public lands beneath the waters of the Delaware River for the said pipe line; and

WHEREAS, pursuant to Title 7 of the Delaware Code, Section 4520, the Governor has appointed a special commission which has determined and recommended in writing to the Governor that the subaqueous public lands beneath the waters of the Delaware River as hereinafter described, be leased to Colonial Pipeline Company for said pipe line on the terms and conditions herein set forth; and that the said lands are not [illegible] Code

WITNESSETH:

1. The State of Delaware by the Governor of the State of Delaware, pursuant to Title 7 of the Delaware Code, Section 4520, hereby leases to Colonial Pipeline Company all that certain piece or parcel of subaqueous public land, lying in the bed of the Delaware River, situate in the State of Delaware, from the vicinity of Claymont, New Castle County, Delaware to the vicinity of Oldmans Creek, Logan Township, Gloucester County, State of New Jersey, being 25 feet on either side of a center line 5,921 feet in length, by reference to a survey furnished by American Dredging Company, Philadelphia, Pennsylvania, and information appearing on United States Army Corps of Engineers, Delaware River Datum Map 25602, Sheet No. 6, being more particularly described as follows, to-wit:

From a point known as Pipeline Station 70 + 40.7 situate on the West bank of the Delaware River, said point being a set 2 x 2 hub at coordinates N. 489,304.8 E. 124,153.4 a distance of 2,816.52 feet on azimuth bearing 128° 21' 14" from the southeast chimney of Phoenix Steel Corporation, said chimney being at coordinates N. 491,052.5 E. 121,944.7; thence from said point N. 23° 32' 52" West, 283.2 feet to a point known as Pipeline Station 67 + 57.5; thence from said point N. 43° 40' 55" West, 437.5 feet to a point in mean low water elevation on the West bank of the Delaware River, being Pipeline Station 63 + 20 and the point and place of BEGINNING: thence from said point of Beginning, continuing N. 43° 40' 55" West, and along the imaginary centerline of said 50 foot wide right of way, 5,921 feet to a point in mean low water elevation on the East bank of said River, being Pipeline Station 3 + 99, said point also being situate on the boundary line between the States of Delaware and New Jersey.

2. Colonial Pipeline Company shall pay annually as rent for the premises leased herein the sum of Two Thousand Nine Hundred Sixty Dollars and Fifty Cents, ($2,960.50) in lawful money of the United States of America. Colonial Pipeline Company shall make the first annual payment to the Treasurer of the State of Delaware, Dover, Delaware, upon the execution of this lease, and like payment shall be so made on the anniversary date of such payment during the term of this lease or any extension thereof.

3. The term of this lease shall be for twenty (20) years, commencing on the 9th day of October, A. D. 1963, and terminating on the 9th day of October, A. D. 1983, provided, however, that this lease shall automatically be extended for succeeding periods of ten (10) years each, unless one (1) year prior to the date of termination of the original twenty (20) year term or any ten (10) year extension thereof, either party gives to the other notice in writing that this lease shall not be extended.

4. The State of Delaware agrees to deliver possession of the premises to Colonial Pipeline Company as soon as Colonial Pipeline Company has made payment to the Treasurer of the State of Delaware.

5. Colonial Pipeline Company agrees to take actual possession of the premises and to use the premises for the purposes of constructing, maintaining, inspecting, operating, protecting, renewing, replacing, repairing, improving and removing a submarine pipe line for the transportation of refined petroleum products.

6. If the use of the lease for the purposes herein [illegible] shall be [illegible] by reason of [illegible] by any [illegible], Colonial

Pipeline Company, (if demand is made upon it by the State of Delaware to do so), will remove the pipe line or such portion thereof as may be considered to be an obstruction either to navigation or to the free use of the Delaware River, within six months from the date of demand.

7. Colonial Pipeline Company will maintain the pipe line in a good and safe condition and will protect and save the State of Delaware harmless from any loss, cost or damages caused by reason of such pipe line and/or its maintenance.

8. Upon failure or refusal to comply with the demand by the State of Delaware to remove the pipe line should Colonial Pipeline Company abandon the pipe line as set forth in paragraph 6 above or upon the failure of Colonial Pipeline Company to maintain the pipe line in a safe condition as set forth in paragraph 7 above, this lease shall immediately terminate and all the rights and privileges therein shall thereupon revert to the State of Delaware. In that event, Colonial Pipeline Company will promptly quit, surrender and vacate the premises and should it neglect or fail to remove such obstructions as may exist, the State of Delaware may remove or cause to be removed the obstructions at the expense and cost of Colonial Pipeline Company, which hereby agrees to reimburse the State of Delaware for the full amount of the expense incurred in causing such removal.

9. Colonial Pipeline Company shall at all times comply with such rules and regulations relating to navigation as may from time to time be promulgated by the United States Corps of Engineers as the same may affect such pipe line. It is understood that failure to comply shall constitute a breach of this lease agreement which, at the option of the State of Delaware, may cause a termination of this lease.

10. The terms, covenants and provisions of this lease shall extend and be binding upon the successors and assigns of the parties hereto.

IN WITNESS WHEREOF the State of Delaware has caused its name by Elbert N. Carvel, the Governor of the State of Delaware, to be hereunto set, and the seal of the State of Delaware to be hereunto affixed, duly attested by the Secretary of State of the State of Delaware, and Colonial Pipeline Company, a Delaware corporation, has caused its name by K. T. Feldman its Executive Vice President, to be hereunto set and its corporate seal to be hereunto affixed, duly attested by the secretary of the corporation the day and year first above written.

Sealed and delivered in the presence of:

THE STATE OF DELAWARE

By _____
Elbert N. Carvel,
Governor

Attest _____
Elishe C. Dukes,
Secretary of State

COLONIAL PIPELINE COMPANY

By K. T. Feldman
EXECUTIVE VICE PRESIDENT

Attest Howard O. McCloud
Secretary

- 5 -

STATE OF DELAWARE )
: SS.
NEW CASTLE COUNTY )

BE IT REMEMBERED, That on this Ninth day of October in the year of our LORD one thousand nine hundred and sixty-three personally came before me, the Subscriber, a Notary Public for the State of Delaware, ELBERT N. CARVEL, Governor of the State of Delaware, party to this Agreement of Lease, known to me personally to be such, and acknowledged this Agreement of Lease to be his act and deed and the act and deed of the State of Delaware, that the signature of the Governor thereto is in his own proper handwriting and the seal affixed is the seal of the State of Delaware, and that his act of sealing, executing, acknowledging and delivering this Agreement of Lease is duly authorized by virtue of the provisions of Title 7 of the Delaware Code, Section 4520.

GIVEN under my Hand and Seal of Office the day and year aforesaid.

Elsie A. Biddle
Notary Public



DE05816

STATE OF GEORGIA )
: SS.
COUNTY OF Fulton )

BE IT REMEMBERED, that on this 15th day of October in the year of our LORD one thousand nine hundred and sixty-three personally came before me, the Subscriber, a Notary Public for the State and County aforesaid, I. T. FELDMAN EXECUTIVE VICE President of Colonial Pipeline Company, a corporation existing under the laws of the State of Delaware, party to this Agreement of Lease, known to me personally to be such, and acknowledged this Agreement of Lease to be his act and deed and the act and deed of said corporation, that the signature of the president thereto is in his own proper handwriting and the seal affixed is the common and corporate seal of said corporation, and that his act of sealing, executing and acknowledging said

81-0508/81

SUBAQUEOUS LANDS LEASE

GRANTED TO

SUNOLIN CHEMICAL COMPANY

FOR

REISSUANCE OF A SUBAQUEOUS LANDS LEASE ISSUED OCTOBER 10, 1961

AND NOW, to-wit this 14th day of September A.D. 1981, the State of Delaware does hereby accept the November 10 approval by the Secretary of the Department of Natural Resources and Environmental Control upon the application of SunOlin Chemical Company, submitted to the Department of Natural Resources and Environmental Control and dated July 30, 1981, copy of which is attached hereto and made a part hereof.

WHEREAS, the State of Delaware is the owner of ungranted subaqueous lands lying beneath the waters of the Delaware River; and

WHEREAS, SunOlin Chemical Company, owner of certain adjoining lands to the Delaware River, has applied for the reissuance of a Subaqueous Lands Lease to maintain eight (8) submarine pipelines for the transportation of petroleum products in accordance with the terms of that lease; and

WHEREAS, pursuant to the provisions of Title 7, Section 6151, Delaware Code, the Secretary of the Department of Natural Resources and Environmental Control finds that it is not contrary to the public interest if this lease is reissued subject to the terms and conditions herein set forth,

NOW, THEREFORE, the State of Delaware hereby leases to SunOlin Chemical Company and SunOlin Chemical Company hereby leases from the State of Delaware,

All that certain piece or parcel of subaqueous land, lying in the bed of the Delaware River, situate in Brandywine Hundred, New Castle County, State of Delaware, adjoining lands of SunOlin Chemical Company, near the Delaware-Pennsylvania boundary line, more particularly bounded and described as follows: Being a strip of underwater land in said River twenty-five (25) feet on each side of a line, said line beginning at a point on the property of the SunOlin Chemical Company, Claymont, New Castle County, Delaware, having the U.S. Army Corps of Engineers coordinates 490075.7 north and 127323.9 east, said point being identified as SUNOLIN No. 2 on SunOlin Chemical Company Drawing No. SCJ-101, revision 2, and further located as being S 76°, 14', 46" E 27.93' and N 63°,



DE06554

38', 57" E 10,602.96' from U.S. Army Corps of Engineers monument "RUINS," coordinates 485376.0 north and 117795.6 east; thence extending across the Delaware River S 22°, 50', 09" E 6100.87' to a point identified as JERSEY No. 3 on said plan, having U.S. Army Corps of Engineers coordinates 484453.0 north and 129691.8 east, said point in Gloucester County, New Jersey, being N 65°, 45', 53" E 3138.71' from the U.S. Army Corps of Engineers monument "MALLOW SIXTANT," coordinates 483164.7 north and 126829.8 east. The lease of the aforesaid premises is not intended to include any rights in the upland and is issued subject to the approval of the Department of the Army.

This lease shall be continued for a period of ten (10) years or so long as the conditions attached to the lease are adhered to, whichever is the shorter in time. Upon the expiration of the ten-year term, this lease shall expire and become null and void, unless prior thereto the lessee shall have applied for and received a renewal of this lease. A renewal may be denied if the State determines that the lease is no longer in the public interest.

1. Change of Location or Abandonment. This Agreement of Lease is granted upon the further conditions:

(a) That if, in the opinion of the Governor of the State of Delaware, or of the governing body of such agency of the State of Delaware, it shall be necessary in the public interest to require a change in the location of said pipelines, SunOlin Chemical Company shall promptly, at its own expense, lower or otherwise move said pipelines to such new location as is or may be determined or indicated by the State of Delaware or with the approval of the Department of the Army;

(b) That SunOlin Chemical Company will maintain said pipelines in a good and safe condition and will protect and save the State of Delaware harmless from any loss, cost or damage by reason of said pipelines and/or their maintenance;

(c) That if the use of such pipeline facilities shall be abandoned, or shall remain abandoned for a period of one year, SunOlin Chemical Company will remove the aforesaid pipelines or such portion thereof as may be considered to be an obstruction, either to navigation or the free use of the Delaware River, if demand is made upon it by the State of Delaware to so do;

(d) Upon failure or refusal to comply with the demand to lower or otherwise move the pipelines, as set forth in sub-paragraph (a) above, or upon failure to maintain the pipelines in safe condition, as prescribed in sub-paragraph (b) above, or upon abandonment, as provided in sub-paragraph (c) above, this lease shall immediately cease, terminate and come to an end, and this instrument shall become void and all the rights and privileges herein shall thereupon revert to the State of Delaware. In the event of such termination, SunOlin Chemical Company will promptly quit, surrender and vacate the premises and should it neglect or fail to remove such obstructions as may exist, the State of Delaware may remove, or cause the same to be removed, at the expense and cost of SunOlin Chemical Company, which hereby agrees to reimburse the State of Delaware for the full amount of the expenses incurred in causing such removal.

2. During the term of this lease, SunOlin Chemical Company agrees to pay the State of Delaware the sum of $22,518.60 per year for a period of ten years commencing on the 15th day of October, 1981 and a payment of the same amount on the same day every year thereafter until a formal termination hereof.

3. This lease does not authorize modifications or additions to any structure(s) located on subaqueous lands. An application for supplemental approval to this lease must be submitted for any modification or addition.

4. This lease does not cover the structural stability of the project units.

5. Any actions, operations or installations which are considered by the Department to be contrary to the best interests of the public shall constitute reason for the discontinuance and/or removal of said action, operation or installation.

6. The lessee shall maintain any structure on public subaqueous lands in good and safe condition and will protect and save the State of Delaware harmless from any loss, cost or damage by reason of said structures.

7. The lessee shall at all times comply with such rules and regulations relating to navigation as may from time to time be promulgated by the United States Corps of Engineers as the same may affect such structures.

8. The issuance of this lease does not imply approval of any other part, phase, or portion of any overall project the lessee may be contemplating.

9. This lease shall not be construed to grant or confer any right, title, easement, or interest in, to, or over any land belonging to the State of Delaware other than that of a tenant.

10. This lease is subject to the terms and conditions contained in any easement, license or lease that may have been granted by the State or any political subdivision, board, commission or agency of the State in the vicinity of the leased premises.

11. Nothing contained herein shall in any manner affect the rights of any riparian land owner now existing under the laws of the State of Delaware.

12. This lease and authorization are granted for the purposes as stated herein. Any other use without prior approval shall constitute reason for this lease being revoked.

13. This lease will be revoked upon violation of any of the above conditions.

IN WITNESS WHEREOF, WE, SunOlin Chemical Company, have caused this instrument to be executed on this _____ day of _____, 1981.

By: James P Hagan
Applicant

SWORN and subscribed before me on this 27th day of July, 1981.

_____
Notary Public

IN WITNESS WHEREOF, I, John E. Wilson, III, Secretary, Department of Natural Resources and Environmental Control, have hereunto set my hand and seal this 7th day of August, 1981.

_____
By Secretary of the Department of Natural Resources and Environmental Control

IN WITNESS WHEREOF, I, Pierre S. du Pont, IV, Governor of the State of Delaware, have hereunto set my hand and the Great Seal of the State of Delaware has been hereunto affixed by the Secretary of State, at Dover, on this 14th day of August, in the year of our Lord One Thousand Nine Hundred and Eighty-one.

_____
By the Governor

_____
By the Secretary of State

SL-0203/87

SUBAQUEOUS LANDS LEASE

GRANTED TO

COLONIAL PIPELINE COMPANY

TO

CONSTRUCT A 30" SUBMERGED PETROLEUM PRODUCTS PIPELINE ACROSS THE DELAWARE RIVER

AND NOW, to-wit this _____ day of _____, A. D. 1987, the State of Delaware does hereby accept the _____ approval by the Secretary of the Department of Natural Resources and Environmental Control upon the application of Colonial Pipeline Company, submitted to the Department of Natural Resources and Environmental Control (hereinafter "the Department") and dated January 26, 1987, a copy of which is attached hereto and made a part hereof.

WHEREAS, the State of Delaware is the owner of ungranted subaqueous lands lying beneath the waters of the Delaware River; and

WHEREAS, Colonial Pipeline Company, has applied for permission to construct a 30" submerged petroleum products pipeline across the Delaware River; and

WHEREAS, the State of Delaware, by and through the Department certifies that the permitted activity will be conducted in a manner which will not violate the applicable water quality standards of the State of Delaware; and

WHEREAS, pursuant to the provisions of 7 Del. C., §7203, the Secretary of the Department of Natural Resources and Environmental Control (hereinafter "the Secretary") finds that it is not contrary to the public interest if this project is approved subject to the terms and conditions herein set forth.

NOW, therefore, the State of Delaware hereby permits Colonial Pipeline Company to construct a 30" submerged petroleum products pipeline across the Delaware River.

This lease shall be continued for a period of ten (10) years or so long as the conditions attached to the lease are adhered to, whichever is the shorter in time. Upon the expiration of the ten-year term, this lease shall expire and become null and void, unless prior thereto the lessee shall have applied for and

received a renewal of this lease. A renewal may be denied if the State determines that the lease is no longer in the public interest.

THIS lease shall be subject to the following conditions:

1. During the term of this lease, Colonial Pipeline Company agrees to pay the State of Delaware the sum of $5,023.50 per annum commencing on the _____ day of _____ and a payment of the same amount on the same day of each and every year thereafter until a formal termination hereof. This annual fee is subject to change at such time as the State of Delaware duly adopts amendments to its fee schedule for public subaqueous lands.
2. Colonial Pipeline Company agrees to pay the State of Delaware the sum of $75,000 per 100,000 cubic yards of material to be dredged from the public subaqueous lands of the Delaware River. This lease shall not become effective until this payment has been made and acknowledged in writing by the State of Delaware. The number of cubic yards of material actually removed shall be verified by documents that the Department may require.
3. All excavated material not suitable for the backfilling of the trench shall be placed in scows and transported to the approved American Dredging Company dredged material disposal area in Logan, New Jersey.
4. Prior to the use of explosives for trench excavation a written description of the procedures to be utilized must be submitted and approved in writing by the Secretary before blasting can begin.
5. There shall be no excavation or use of explosives between the months of April and June in order to minimize the impact on anadramous fish passage.
6. The pipeline shall be built in accordance with the requirements of the federal "Hazardous Liquid Pipeline Safety Act" as amended.

7. The conditions contained herein shall be included in the construction contract and other documents.

8. Sediment and erosion controls shall be implemented so as not to violate the "State of Delaware Water Quality Standards for Streams" adopted December 23, 1985.

9. The project is to be undertaken in accordance with the plans and specifications submitted to include the following:

   a. Application dated January 26, 1987, drawings with revised Sheet 1 of 2 and Sheet 2 of 2 dated April 21, 1987 and Sheet 3 of 3 dated January 22, 1987 with attached project statement dated February, 1987;

   b. "Agreement and Technical Specifications for constructing a 30" OD Pipeline across the Delaware River AFE7385;"

   c. Drawing "proposed 30" spare mainline Delaware River crossing" Sheet 1; BEA-CP-0001 dated April 30, 1987;

   d. Three aerial photographs: "Proposed 30" spare mainline Delaware River crossing" Sheet 1, 8-DWR-SK3 date April 7, 1987; "Delaware River crossing north bank" Sheet 1, 8-DWR-SK1 dated April 7, 1987; "Delaware River crossing south bank" Sheet 1, 8-DWR-SK2 dated April 7, 1987.

   e. Colonial Pipeline Company, Woodbury Area, "Emergency Directory Index," dated 5/85.

   f. Letter to the Department's Division of Water Resources from Burlco Engineering Associates dated May 7, 1987 regarding clarification of specifications.

10. A copy of this lease must be available on site during all phases of construction activity, and the Department's Notice of Authorization displayed in a highly visible location at all times.

supplemental approval issued prior to actual revised plans must be construction.

12. Representatives of the Department may inspect such work at any time and may collect any samples or conduct any tests that are deemed necessary.

13. This lease does not cover the structural stability of the project units.

14. Prior to the expiration of this lease, the lessee shall remove all structures covered under this lease unless the lease has been renewed in accordance with the

terms.

15. Any actions, operations or installations which are considered by the Department to be contrary to the best interests of the public or as are specified by regulation shall constitute reason for the revokation of the permit and discontinuance and/or removal of said action, operation or installation.

16. The lessee shall notify the Department of the date work will be commenced and completed in advance of the time of commencement and completion within the period the Department specifies in writing

17. The lessee shall maintain any structure on public subaqueous lands in good and safe condition and will protect and save the State of Delaware harmless from any loss, cost or damage by reason of said structures.

18. The lessee shall at all times comply with such rules and regulations relating to navigation as may from time to time be promulgated by the United States Corps of Engineers as the same may affect such structures.

19. The issuance of this lease does not imply approval of any other part, phase, or portion of any overall project the lessee may be contemplating.

20. This lease shall not be construed to grant or confer any right, title, easement, or interest in, to, or over any land belonging to the State of Delaware other than that of a tenant.

21. This lease is subject to the terms and conditions contained in any easement, license or lease that may have been granted by the State or any political subdivision, board, commission or agency of the State in the vicinity of the leased premises.

22. Nothing contained herein shall in any manner affect the rights of any riparian land owner now existing under the laws of the State of Delaware.

23. This lease and authorization are granted for the purposes as stated herein. Any other use without prior approval shall constitute reason for this lease being revoked.

24. This lease is void if the project has not been completed within three (3) years from the date of issuance.

25. If the lessee considers three (3) years insufficient for completion of the project, the lessee may submit a project time schedule for consideration by the Department. If the time schedule is approved it shall be attached hereto and made a part hereof.

26. All representations, promises, specifications conditions or other statements made by or on behalf of lessee or submitted in connections with lessee's application for this lease are expressly incorporated herein by reference and compliance therewith or satisfaction thereof are warranted to be true and connect and are made a condition of this lease. It is agreed that lessee's representations, promises, specifications or

conditions will be fully complied within the completion of the project described herein.

27. Violation of any of the above conditions is grounds for revocation of this lease.

IN WITNESS WHEREOF, I, Roy Hanson, have caused this instrument to be executed on this _____ day of _____, 1987.

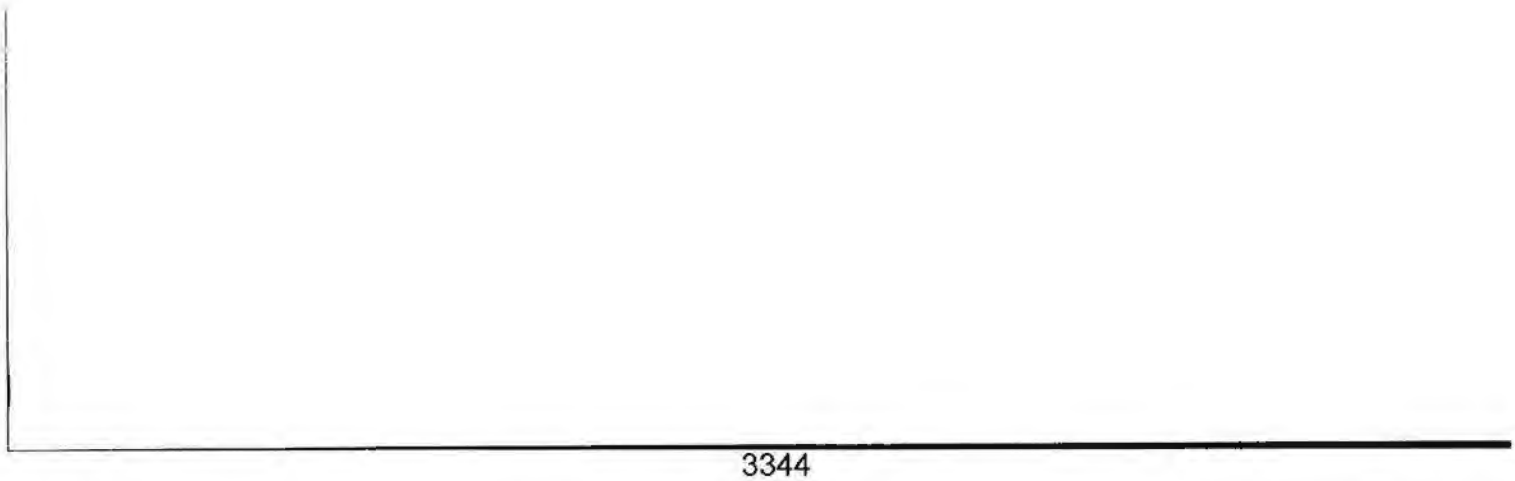
By: _____
Applicant

SWORN and subscribed before me on this _____ day of _____, 1987.

_____
Notary Public

IN WITNESS WHEREOF, I, John E. Wilson, III, Secretary, Department of Natural Resources and Environmental Control, have hereunto set my hand and seal this _____ day of _____, 1987.

_____
By Secretary of the Department of Natural Resources and Environmental Control



DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

JAN 8 1987
Date Received
(for Secretary's use)

207
Project Number
(for Secretary's use)

REQUEST FOR A COASTAL ZONE STATUS DECISION

Identification of the Applicant:

Name (Agent) BURLCO ENGINEERING ASSOCIATES

Address P. O. Box 2, Riverton, NJ 08077

Telephone (609) 795-2651

Signature Henry R. Sykes

If the applicant is not the project owner but is authorized to act for the owner, state that below and give the owner's name and address
(Owner) COLONIAL PIPELINE COMPANY
3990 Peach Tree Road, Lennox Towers, P.O. Box 18855, Atlanta, GA 30326

| Project Identification and Description | Yes | No |
|---|---|---|
| 1. a. Is the project entirely or partly a new or improved or extended pier or other ship docking facility? | — | X |
| b. If yes, will the pier or docking facility extend beyond mean low water? | — | X |
| c. If yes, will it be used for bulk cargo transfers solely by the applicant company? | — | — |
| 2. a. Is this project entirely for pollution control purposes? | — | X |
| b. If yes, briefly describe, and attach a copy of any order, notice, or regulation if the Delaware Department of Natural Resources and Environmental Control or (federal) Environmental Protection Agency has required this pollution control measure. | | |
| 3. a. Will the plant or project meet the following definition of Manufacturing in the Coastal Zone Act: "Manufacturing means the mechanical or chemical transformation of organic or inorganic substances into new products, characteristically using power driven machines and materials handling equipment, and including establishments engaged in assembling component parts of manufactured products, provided the new product is not a structure or other fixed improvement". | — | X |
| b. If no to question 3.a., briefly explain what kind of activity will be carried on at the project site. | | |
| 4. a. If yes to Question 3.a., will the plant have the following equipment? | | |
| smoke stacks | — | — |
| tanks | — | — |
| distillation or reaction columns | — | — |
| chemical processing equipment | — | — |
| scrubbing towers | — | — |
| pickling equipment | — | — |
| waste treatment lagoons | — | — |
| b. Will the project site use twenty acres or more? | — | — |

Doc. No. 40-08-82-11-04

continued .....

| | | YES | NO |
|---|---|---|---|
| c. | Does the plant have the potential to pollute the environment when there is equipment malfunction or human error? | X | |

If no, briefly explain the reasons why you can assure that there is no possibility of environmental pollution

The potential for pollution only exists if the proposed, or existing pipeline were to rupture. The precaution against such an event is that the pipe is placed 18 feet below the ship channel and protected with a minimum of 10 feet of cover with heavy granular material. This protects against damage by ship anchor. Any rupture or leak due to any cause would be detected by a drop in pressure and the line would be valved shut at the ends.

| | | | |
|---|---|---|---|
| 5. | Is the plant or project part of a manufacturing use that was in operation prior to and on June 28, 1971? | | X |

| | | | |
|---|---|---|---|
| 6. | Does the plant or project involve any change in existing: | | |
| | processes? | | X |
| | facilities? | | X |
| | buildings? | | X |

If the answer is yes to any of the parts of Question 6, answer Questions 7, 8, 9, and 10.

| | | | |
|---|---|---|---|
| 7.a. | Will any land not currently occupied by plant facilities or used for present plant operations be required for this project? | | X |
| b. | If yes, how much land is involved and how much land is now used for plant operations? | | |

| | | | |
|---|---|---|---|
| 8.a. | Will this project increase plant production capacity? | | X |
| b. | If yes, explain in what way and by how much. | | |

| | | | |
|---|---|---|---|
| 9. | Will this project have any negative environmental effects on: | | |
| | air quality | | X |
| | water quality | | X |
| | ground water quantity | | X |
| | solid waste disposal | | X |
| | dredge spoil disposal | | X |
| | alteration or diminishing of wetland or upland wildlife habitat | | X |
| | flooding from storm water run-off | | X |
| | soil erosion | | X |
| | other environmental effects | | X |

| | YES | NO |
|---|---|---|
| 10. Will this project produce any of the following environmental effects noticeable beyond the plant property lines: | | |
| noise | ___ | X |
| vibration | ___ | X |
| radiation | ___ | X |
| electromagnetic interference | ___ | X |
| glare | ___ | X |
| heat | ___ | X |
| obnoxious odors | ___ | X |

11. If the answer is yes to any parts of Questions 9 or 10, briefly explain the process, equipment, and the environmental impacts involved (use quantitative terms where possible).

12. Please attach a concise but complete description of the proposed project, and indicate how it is related to existing manufacturing operations and facilities (if it is not an entirely new manufacturing plant). Explain what effects there will be on land use acreage, manufacturing production capacity, and environmental effects.

w. Fees
Sent
Fed Express

STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES
& ENVIRONMENTAL CONTROL
DIVISION OF WATER RESOURCES
89 KINGS HIGHWAY, P.O. BOX 1401
DOVER, DELAWARE 19903

SURFACE WATER MANAGEMENT
SECTION

TELEPHONE: (302) 736-5731

July 21, 1987

Mr. T. H. Norris
Vice President of Operations
Colonial Pipeline Company
3390 Peachtree Road, N.E.
Lenox Towers, P.O. Box 18855
Atlanta, Georgia 30326

RE: Subaqueous Lands Lease
SL-0203/87

Dear Mr. Norris:

Enclosed please find amended pages 2 and 3 for the above referenced lease. Two changes have been made. Condition 1 has been changed to reflect this Division's revised fee schedule (enclosed) that became effective July 15, 1987.

Condition 2 has been changed to charge a fee for material that is dredged for the area to be occupied by the pipeline.

Please insert these revised pages in the lease forwarded to you under my cover letter of June 23, 1987. The lease should be executed and notarized and returned to thia office with the appropriate fees as soon as possible.

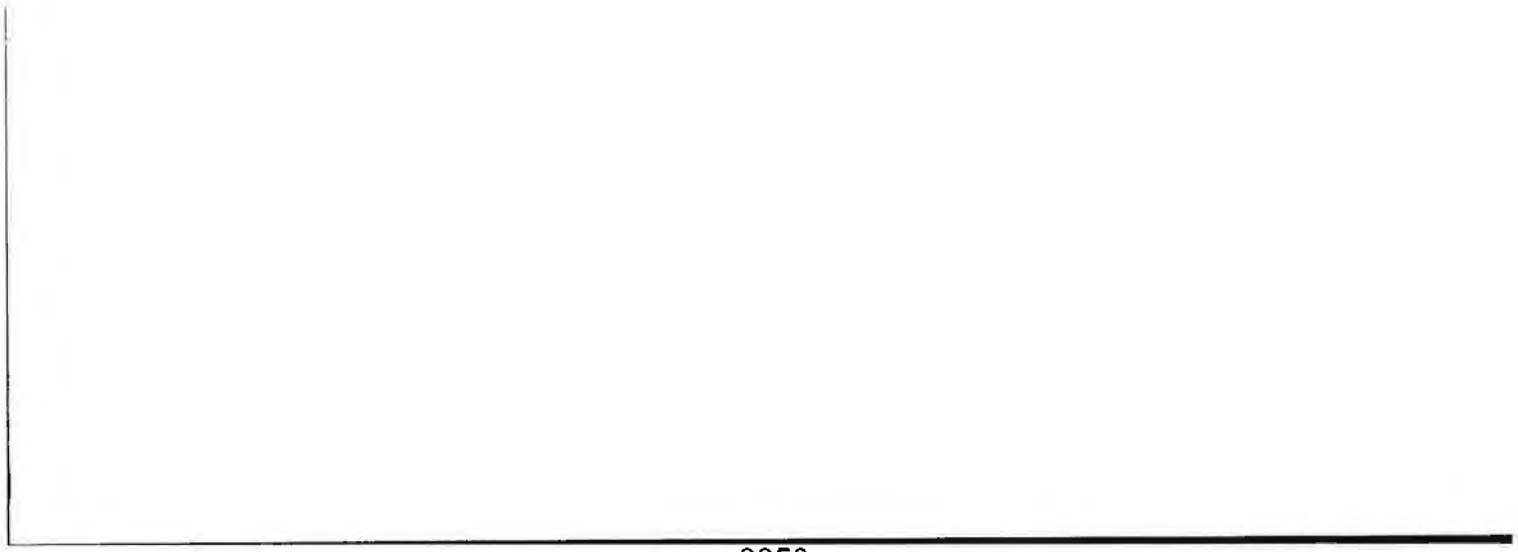
Sincerely yours,

William F. Moyer

William F. Moyer
Supervisor
Wetlands and Underwater Lands
Branch
(302) 736-4691

cc: R. Wayne Ashbee

DE05684



SL-0204/87

SUBAQUEOUS LANDS LEASE

GRANTED TO

COLUMBIA GAS TRANSMISSION CORPORATION

TO

CONSTRUCT A 20" SUBMERGED NATURAL GAS PIPELINE ACROSS THE DELAWARE RIVER, NEW CASTLE COUNTY, DELAWARE

AND NOW, to-wit this 28th day of July, A. D. 1987, the State of Delaware does hereby accept the July 27 approval by the Secretary of the Department of Natural Resources and Environmental Control upon the application of Columbia Gas Transmission Corporation, submitted to the Department of Natural Resources and Environmental Control (hereinafter "the Department") and dated March 18, 1987, a copy of which is attached hereto and made a part hereof.

WHEREAS, the State of Delaware is the owner of ungranted subaqueous lands lying beneath the waters of the Delaware River; and

WHEREAS, Columbia Gas Transmission Corporation, has applied for permission to construct a 20" submerged natural gas pipeline; and

WHEREAS, the State of Delaware, by and through the Department certifies that the permitted activity will be conducted in a manner which will not violate the applicable water quality standards of the State of Delaware; and

WHEREAS, pursuant to the provisions of 7 Del. C., §7203, the Secretary of the Department of Natural Resources and Environmental Control (hereinafter "the Secretary") through his duly authorized representative finds that it is not contrary to the public interest if this project is approved subject to the terms and conditions herein set forth.

NOW, therefore, the State of Delaware hereby permits Columbia Gas Transmission Corporation to construct 6,810 feet of a 20 inch submerged natural gas pipeline across the Delaware River, New Castle County, Delaware.

This lease shall be continued for a period of ten (10) years or so long as the conditions attached to the lease are adhered to, whichever is the shorter in

time. Upon the expiration of the ten-year term, this lease shall expire and become null and void, unless prior thereto the lessee shall have applied for and received a renewal of this lease. A renewal may be denied if the State determines that the lease is no longer in the public interest.

THIS lease shall be subject to the following conditions:

1. During the term of this lease, Columbia Gas Transmission Corporation agrees to pay the State of Delaware the sum of $5,107.50 per annum commencing on the 15th day of September and a payment of the same amount on the same day of each and every year thereafter until a formal termination hereof. This annual fee is subject to change at such time as the State of Delaware duly adopts amendments to its fee schedule for public subaqueous lands.

2. Columbia Gas Transmission Corporation agrees to pay the State of Delaware the sum of $552.00 for the 552 cubic yards of material to be dredged from the public subaqueous lands of the Delaware River to be occupied by the pipeline. This lease shall not become effective until this payment has been made and acknowledged in writing by the State of Delaware. The number of cubic yards of material actually removed shall be verified by documents that the Department may require.

3. All excavated material not suitable for the backfilling of the trench shall be placed in scows and transported to the approved American Dredging Company dredged material disposal area in Logan, New Jersey.

4. Prior to the use of explosives for trench excavation a written description of the procedures to be utilized must be submitted and approved in writing by the Secretary before blasting can begin.

5. There shall be no excavation or use of explosives between the months of April and June in order to minimize the impact on anadramous fish passage.

6. The project is to be undertaken in accordance with the plans and specifications submitted to include the following:

   a. Application dated March 18, 1987, with drawing dated February 19, 1987, Sheet 1 of 1 undated and Sheet 2 of 2 undated attached to the application.

   b. Application of Columbia Gas Transmission Corporation to the Federal Energy Regulatory Commission dated December 4, 1986.

   c. "Environmental Assessment: Delaware - South Jersey Pipeline Project" prepared by the Federal Energy Regulatory commission dated June, 1987.

   d. Letter dated April 14, 1987, to the Department's Division of Water Resources from Dr. Donald Gartman regarding disposal of excavated material removed from the Delaware River.

   e. Letter dated May 20, 1987 to the Department's Division of Water Resources from Dr. Donald Gartman regarding cubic yards of material to be removed from the Delaware River for upland disposal.

7. The conditions contained herein shall be included in the construction contract and other documents.

8. Sediment and erosion controls shall be implemented so as not to violate the State of Delaware Department of Natural Resources and Environmental Control, "Water Quality Standards for Streams" dated December 23, 1985.

9. A copy of this lease must be available on-site during all phases of construction activity, and the Department's Notice of Authorization displayed in a highly visible location at all times.

10. All representations, promises, specifications, conditions or other statements made by or on behalf of lessee or submitted in connections with lessee's application for this lease are expressly incorporated herein by reference and compliance therewith or satisfaction thereof are warranted to be true and connect and are made a condition of this lease. It is agreed that lessee's representations, promises, specifications or conditions will be fully complied within the completion of the project described herein.

11. The project is to be undertaken in accordance with the plans submitted. If changes are necessary, revised plans must be submitted and a supplemental approval issued prior to actual construction.

12. Representatives of the Department of Natural Resources and Environmental Control may inspect such work during any phases of the construction.

13. This lease does not cover the structural stability of the project units.

14. Prior to the expiration of this lease, the lessee shall remove all structures covered under this lease unless the lease has been renewed in accordance with its terms.

15. Any actions, operations or installations which are considered by the Department to be contrary to the best interests of the public shall constitute reason for the discontinuance and/or removal of said action, operation or installation.

16. The lessee shall notify the Department of Natural Resources and Environmental Control as to the date work will be commenced, as far in advance of the time of commencement as the Department may specify, and the completion date.

17. The lessee shall maintain any structure on public subaqueous lands in good and safe condition and will protect and save the State of Delaware harmless from any loss, cost or damage by reason of said structures.

18. The lessee shall at all times comply with such rules and regulations relating to navigation as may from time to time be promulgated by the United States Corps of Engineers as the same may affect such structures.

19. The issuance of this lease does not imply approval of any other part, phase, or portion of any overall project the lessee may be contemplating.

20. This lease shall not be construed to grant or confer any right, title, easement, or interest in, to, or over any land belonging to the State of Delaware other than that of a tenant.

21. This lease is subject to the terms and conditions contained in any easement, license or lease that may have been granted by the State or any political subdivision, board, commission or agency of the State in the vicinity of the leased premises.

22. Nothing contained herein shall in any manner affect the rights of any riparian land owner now existing under the laws of the State of Delaware.

23. This lease and authorization are granted for the purposes as stated herein. Any other use without prior approval shall constitute reason for this lease being revoked.

24. This lease is void if the project has not been completed within three (3) years from the date of issuance.

25. If the lessee considers three (3) years insufficient for completion of the project, the lessee may submit a project time schedule for consideration by the Department. If the time schedule is approved it shall be attached hereto and made a part hereof.

26. This lease will be revoked upon violation of any of the above conditions.

IN WITNESS WHEREOF, I, Edward B. Calland, have caused this instrument to be executed on this 17th day of July, 1987.

Columbia Gas Transmission Corporation

By: _____
Applicant
Its Vice President

SWORN and subscribed before me on this 17th day of July, 1987.

_____
Notary Public

IN WITNESS WHEREOF, I, John E. Wilson, III, Secretary, Department of Natural Resources and Environmental Control, have hereunto set my hand and seal this 27th day of July, 1987.

_____
By Secretary of the Department of Natural Resources and Environmental Control

Witness:

_____

DE06038

.-0203/87

SUBAQUEOUS LANDS LEASE

GRANTED TO

COLONIAL PIPELINE COMPANY

TO

CONSTRUCT A 30" SUBMERGED PETROLEUM PRODUCTS PIPELINE ACROSS THE DELAWARE RIVER

AND NOW, to-wit this 3rd day of August, A. D. 1987, the State of Delaware does hereby accept the July 30, 1987 approval by the Secretary of the Department of Natural Resources and Environmental Control upon the application of Colonial Pipeline Company, submitted to the Department of Natural Resources and Environmental Control (hereinafter "the Department") and dated January 26, 1987, a copy of which is attached hereto and made a part hereof.

WHEREAS, the State of Delaware is the owner of ungranted subaqueous lands lying beneath the waters of the Delaware River; and

WHEREAS, Colonial Pipeline Company, has applied for permission to construct a 30" submerged petroleum products pipeline across the Delaware River; and

WHEREAS, the State of Delaware, by and through the Department certifies that the permitted activity will be conducted in a manner which will not violate the applicable water quality standards of the State of Delaware; and

WHEREAS, pursuant to the provisions of 7 Del. C., §7203, the Secretary of the Department of Natural Resources and Environmental Control (hereinafter "the Secretary") finds that it is not contrary to the public interest if this project is approved subject to the terms and conditions herein set forth.

NOW, therefore, the State of Delaware hereby permits Colonial Pipeline Company to construct a 30" submerged petroleum products pipeline across the Delaware River.

This lease shall be continued for a period of ten (10) years or so long as the conditions attached to the lease are adhered to, whichever is the shorter in time. Upon the expiration of the ten-year term, this lease shall expire and become null and void, unless prior thereto the lessee shall have applied for and

received a renewal of this lease. A renewal may be denied if the State determines that the lease is no longer in the public interest.

THIS lease shall be subject to the following conditions:

1. During the term of this lease, Colonial Pipeline Company agrees to pay the State of Delaware the sum of $8,372.50 per annum commencing on the 15TH day of September and a payment of the same amount on the same day of each and every year thereafter until a formal termination hereof. This annual fee is subject to change at such time as the State of Delaware duly adopts amendments to its fee schedule for public subaqueous lands.

2. Colonial Pipeline Company agrees to pay the State of Delaware the sum of $1,217.00 for the 1,217 cubic yards of material to be dredged from the public subaqueous lands of the Delaware River to be occupied by the pipeline. This lease shall not become effective until this payment has been made and acknowledged in writing by the State of Delaware. The number of cubic yards of material actually removed shall be verified by documents that the Department may require.

3. All excavated material not suitable for the backfilling of the trench shall be placed in scows and transported to the approved American Dredging Company dredged material disposal area in Logan, New Jersey.

4. Prior to the use of explosives for trench excavation a written description of the procedures to be utilized must be submitted and approved in writing by the Secretary before blasting can begin.

5. There shall be no excavation or use of explosives between the months of April and June in order to minimize the impact on anadramous fish passage.

6. The pipeline shall be built in accordance with the requirements of the federal "Hazardous Liquid Pipeline Safety Act" as amended.

7. The conditions contained herein shall be included in the construction contract and other documents.

8. Sediment and erosion controls shall be implemented so as not to violate the "State of Delaware Water Quality Standards for Streams" adopted December 23, 1985.

9. The project is to be undertaken in accordance with the plans and specifications submitted to include the following:

   a. Application dated January 26, 1987, drawings with revised Sheet 1 of 2 and Sheet 2 of 2 dated April 21, 1987 with attached project statement dated February, 1987;

   b. "Agreement and Technical Specifications for constructing a 30" OD Pipeline across the Delaware River APE7385;"

   c. Drawing "proposed 30" spare mainline Delaware River crossing" Sheet 1; BEA-CP-0001 dated April 30, 1987;

   d. Three aerial photographs: "Proposed 30" spare mainline Delaware River crossing" Sheet 1, 8-DWR-SK3 date April 7, 1987; "Delaware River crossing north bank" Sheet 1, 8-DWR-SK1 dated April 7, 1987; "Delaware River crossing south bank" Sheet 1, 8-DWR-SK2 dated April 7, 1987.

   e. Colonial Pipeline Company, Woodbury Area, "Emergency Directory Index," dated 5/85.

   f. Letter to the Department's Division of Water Resources from Burlco Engineering Associates dated May 7, 1987 regarding clarification of specifications.

10. A copy of this lease must be available on site during all phases of construction activity, and the Department's Notice of Authorization displayed in a highly visible location at all times.

11. The project shall be undertaken in accordance with the plans submitted. If changes are necessary, revised plans must be submitted and a supplemental approval issued prior to actual construction.

12. Representatives of the Department may inspect such work at any time and may collect any samples or conduct any tests that are deemed necessary.

13. This lease does not cover the structural stability of the project units.

14. Prior to the expiration of this lease, the lessee shall remove all structures covered under this lease unless the lease has been renewed in accordance with its terms.

15. Any actions, operations or installations which are considered by the Department to be contrary to the best interests of the public or as are specified by regulation shall constitute reason for the revokation of the permit and discontinuance and/or removal of said action, operation or installation.

16. The lessee shall notify the Department of the date work will be commenced and completed in advance of the time of commencement and completion within the period the Department specifies in writing

17. The lessee shall maintain any structure on public subaqueous lands in good and safe condition and will protect and save the State of Delaware harmless from any loss, cost or damage by reason of said structures.

18. The lessee shall at all times comply with such rules and regulations relating to navigation as may from time to time be promulgated by the United States Corps of Engineers as the same may affect such structures.

IN WITNESS WHEREOF, I, T. H. Norris, have caused this instrument to be executed on this 22nd day of July, 1987.

By: _____
Applicant

T. H. Norris, Vice President-Operations
Colonial Pipeline Company

SWORN and subscribed before me on this 22nd day of July, 1987.

_____
Notary Public
Notary Public, Georgia, State at Large
My Commission Expires June 3, 1988

IN WITNESS WHEREOF, I, John E. Wilson, III, Secretary, Department of Natural Resources and Environmental Control, have hereunto set my hand and seal this 30th day of July, 1987.

_____
By Secretary of the Department of
Natural Resources and Environmental
Control

DEPARTMENT OF NATURAL RESOURCES & ENVIRONMENTAL CONTROL

DIVISION OF FISH AND WILDLIFE

Fill. Columbia Pipeline

M E M O R A N D U M

August 11, 1987

TO: William F. Moyer

FROM: Charles A. Lesser VIA: William C. Wagner II

RE: Blasting Plan of Operations, Columbia's 20" pipeline

---

The Division of Fish and Wildlife has reviewed the Blasting Plan of Operations for the placing of a 20" natural gas pipeline by Columbia Gas across the Delaware River in the vicinity of Naaman's Creek. We suggest additional conditions be considered to lessen the impact on fishes.

The following species of fishes can be present in the Naaman's Creek area of the Delaware River throughout the remainder for 1987; blueback herring, alewife, American shad, channel catfish, white perch, striped bass, weakfish, spot, Atlantic croaker and menhaden. No blasting should take place after October 1 to minimize losses of juvenile American American shad which will be migrating down the Delaware River after October. This is a species of considerable concern to the Mid-Atlantic Region. Striped bass also is a species in need of added protection.

The employment of an air curtain around each blast evidently decreases the concussion of the blast on fishes. The air curtain was successful for the DP&L blasting program just completed in the Delaware River. DP&L also used side scan sonar to detect any large concentrations of fish in a blast area. Blasting was delayed until "scare charges" caused any large concentrations of fishes to leave the immediate area as verified by sonar.

Recovery crews should be on hand to pick up all dead and stunned fish in order to allow any larger fish such as channel catfish to recover without being subjected to sea gull predation. It is also good public relations to recover any dead fish.

We feel the precautions taken by DP&L to protect spawning striped bass and migrating shad when they blasted in the Delaware River in May of 1987 were effective. Similar precautions could be taken by Columbia Gas prior to October 1. If blasting is to take place after October 1, then the program should be approved with the conditions of using an air curtain, side scan sonar, scare charges and recover crews.

CAL:ef

STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES
& ENVIRONMENTAL CONTROL
DIVISION OF FISH AND WILDLIFE
89 KINGS HIGHWAY
P.O. BOX 1401
DOVER, DELAWARE 19903

OFFICE OF THE
DIRECTOR

RECEIVED
SEP 22 1987
WETLANDS AND UNDERWATER LANDS
BRANCH

M E M O R A N D U M

TO : Bill Moyer

FROM : Charles A. Lesser CAL

SUBJECT : Colonial Pipeline Company (Supplemental Blasting Plan)

DATE : September 17, 1987

The supplemental blasting plan for the Colonial Pipeline crossing of the Delaware River still requires some additions to provide more safeguards for fishes.

We request that in addition to a recovery vessel to pick up dead and stunned fish, the crew should have a qualified fisheries biologist to identify and count all dead and dying fish. If any dead juvenile American shad are encountered, all blasting should cease until all juvenile shad have emigrated past the area and out of the Delaware River.

All fish killed should be reported back to DNREC-Division of Fish and Wildlife. If any significant number of Striped bass are killed, appropriate mitigation shall be in order since Striped bass are in the recovery stage of a decimated population in the Delaware River.

The Division of Fish and Wildlife should be notified at least 24 hours before any blasting occurs so that a Division of Fish and Wildlife biologist can randomly field check the effects of blasting on fishes.

It is highly probable that high numbers of juvenile American shad could be effected by blasting in October-November. Blasting should be curtailed unless absolutely necessary.

CAL:b

STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES
& ENVIRONMENTAL CONTROL
DIVISION OF WATER RESOURCES
89 KINGS HIGHWAY, P.O. BOX 1401
DOVER, DELAWARE 19903

SURFACE WATER MANAGEMENT
SECTION

TELEPHONE: (302) 736-5731

September 24, 1987

Mr. J. R. Arnold
Colonial Pipeline Company
3390 Peachtree Road N.E.
Lenox Towers
Atlanta, Georgia 30326

RE: Subaqueous Lands Lease SL-0203/87

Dear Mr. Arnold:

The supplemental blasting plan described in your letter of September 8, 1987 has been reviewed and has been approved subject to the following conditions:

1. In addition to the recovery vessel for picking up dead and stunned fish, a qualified fisheries biologist should identify and count all dead and dying fish. During October and November the result of these counts should be submitted on a weekly basis to Mr. Roy Miller of the Division of Fish and Wildlife.

2. If any dead juvenile American shad are encountered, all blasting shall cease until all juvenile shad have emigrated past the area.

3. The Division of Fish and Wildlife shall be notified at least 24 hours before any blasting occurs or a schedule shall be submitted for our records prior to the blasting (Telephone 302-736-3441).

4. All blasting shall cease if high numbers of juvenile American shad are in the area as indicated by sonar, fish affected by blasting or reports received by the Division of Fish and Wildlife. The Division reserves the right to order all blasting stopped if there is a threat to the shad migration. Permission to resume blasting will be given by the Division of Fish and Wildlife.

5. There shall be mitigation if any significant number of Striped bass are killed since Striped bass are in the recovery stage of a decimated population in the Delaware River.

If you have any questions, please feel free to contact this office.

Sincerely,

William F. Moyer

William F. Moyer
Supervisor
Wetlands and Underwater Lands Branch
(302) 736-4691

cc: Mr. Charles Lesser

WFM/kls

STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES
& ENVIRONMENTAL CONTROL
DIVISION OF WATER RESOURCES
89 KINGS HIGHWAY, P.O. BOX 1401
DOVER, DELAWARE 19903

SURFACE WATER MANAGEMENT
SECTION

TELEPHONE: (302) 736-5731

March 8, 1988

Mr. J. R. Arnold
Colonial Pipeline Company
3390 Peachtree Road N.E.
Lenox Towers P. O. Box 18855
Atlanta, Georgia 30326

Re: Subaqueous Lands Lease SL-0203/87
Pipeline Construction Permit WPCC 3023/87

Dear Mr. Arnold:

On March 4, 1988 a meeting was convened in the District Offices of the Corps of Engineers in order to discuss your request for an extension of time to conduct pipeline construction activity in the Delaware River under the above referenced permits. These permits restrict dredging and use of explosives during the months of April, May and June.

After a review and discussion of the methods available for predicting the movement of shad up the Delaware River and after consultation with experts in the field of shad migration it was agreed that the permits could be modified in accordance with the following conditions and still minimize any adverse impacts on the fishery:

1. Beginning immediately daily river water temperatures shall be taken and submitted to this office. When the river water temperature at the Delaware Memorial Bridge reaches 9°C at mid-depth, all dredging, filling and blasting shall cease immediately until May 16, 1988.

2. In the event that shad sampling in the vicinity of Pea Patch Island indicates that shad have begun their migration, Colonial will cease all dredging, filling and blasting upon verbal notification from the Department of Natural Resources and Environmental Control until May 16, 1988. This condition shall preclude condition #1 above if the temperature has not reached 9°C.

All other terms and conditions of the above permits remain in place. If you have any questions, please feel free to call. Please indicate your acceptance of this plan by signing in the below designated space and returning this letter to this office.

Sincerely,

William F. Moyer

William F. Moyer

cc: Frank Cianfrani
Brad Smith
Roy Miller
Gerard Esposito

_____

J. R. Arnold
Assistant Manager - Engineering

STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES
& ENVIRONMENTAL CONTROL
DIVISION OF WATER RESOURCES
89 KINGS HIGHWAY, P.O. BOX 1401
DOVER, DELAWARE 19903

SURFACEWATER MANAGEMENT SECTION (302) 739-5726
WATERSHED ASSESSMENT BRANCH (302) 739-4590
POLLUTION CONTROL BRANCH (302) 739-5731
FACILITY SUPPORT BRANCH (302) 739-5081
WETLANDS & AQUATIC PROTECTION BRANCH (302) 739-4691

NOV 1 9 2001

Subaqueous Lands Lease: SL-1203/91
Effective Date: 10/15/91
Construction Expiration Date: 10/15/94
Amended Date:

**RENEWAL OF SUBAQUEOUS LANDS LEASE 0508/81
GRANTED TO SUN REFINING AND MARKETING COMPANY
TO MAINTAIN 8 PETROLEUM PIPELINES 6,100 FEET ACROSS
THE DELAWARE RIVER SOUTHEAST OF U.S. ROUTE 13 AND
DELAWARE ROUTE 92, CLAYMONT, NEW CASTLE COUNTY, DELAWARE**

Sun Refining and Marketing Company
1801 Market Street
Philadelphia, PA 19103-1699

Pursuant to the provisions of 7 Del. C. §7203, and the Department's Regulations Governing the Use of Subaqueous Lands, permission is hereby granted on this 15 day of OCTOBER A.D. 1991, to Sun Refining and Marketing Company to maintain 8 petroleum pipelines 6,100 feet across the Delaware River southeast of U. S. Route 13 and Delaware Route 92, Claymont, New Castle County, Delaware in accordance with plans titled "Proposed Submarine Pipeline", dated 11/9/60, and received by this Division on 3/4/91, and application received 3/4/91.

WHEREAS, the State of Delaware is the owner of ungranted subaqueous lands lying beneath the waters of the Delaware River; and

WHEREAS, Sun Refining and Marketing Company, owner of certain adjoining lands to the Delaware River has applied for permission to maintain a petroleum pipeline; and

WHEREAS, the State of Delaware, by and through the Department of Natural Resources and Environmental Control, certifies that the permitted activity will be conducted in manner which will not violate the applicable water quality standards of the State of Delaware; and

WHEREAS, pursuant to the provisions of 7 Del. C., §7203, the Secretary of the Department of Natural Resources and Environmental Control through his duly authorized representative finds that it is not contrary to the public interest if this project is approved subject to the terms and conditions herein set forth.

This approval is in accordance with plans and application submitted to Department of Natural Resources and Environmental Control, a copy of which is attached hereto and made a part hereof.

This lease shall be continued for a period of ten (10) years or so long as the conditions attached to the lease are adhered to, whichever is the shorter in time. Upon the expiration of the ten-year term, this lease shall expire and become null and void, unless prior thereto the lessee shall have applied for and received a renewal of this lease. A renewal may be denied if the Sate determines that the lease is no longer in the public interest.

THIS lease is issued subject to the following conditions:

SPECIAL CONDITIONS

1. The conditions contained herein shall be included in the construction contract and other ancillary documents associated with earth disturbance and construction activities which may impact subaqueous lands associated with this project.

2. Construction shall be conducted so as not to violate the State of Delaware Department of Natural Resources and Environmental Control, "Surface Water Quality Standards" dated February 2, 1990.

3. The pipeline shall be constructed in a manner so as not to impair water access to the adjoining property and a minimum of five (5) feet from the adjacent properties.

4. A copy of this lease must be available on-site during all phases of construction activity.

5. The structure on subaqueous lands shall be for the explicit purpose of transporting petroleum products as stated in Section (6) six of the application.

6. All construction debris, excavated material, brush, rocks and refuse incidental to such work shall be placed above the influence of surface waters.

7. The pipeline shall at no time impair navigability in the Delaware River during the term of this lease.

8. During the term of this lease (the Lessee) agrees to pay the State of Delaware the sum of $36,600.00 per annum for a total of $366,000.00 for the 48,000 linear feet of public subaqueous lands utilized commencing on the 15 day of October of 1991, and a payment of the same amount on the same day of each and every year thereafter for the term of this lease. This annual fee is subject to change at such time as the State of Delaware duly adopts amendments to its fee schedule for public subaqueous lands.

NOV 1 9 2001

GENERAL CONDITIONS

1. The project is to be undertaken in accordance with the plans submitted and attached hereto. If changes are necessary, revised plans must be submitted and a supplemental approval issued prior to actual construction.

2. Representatives of the Department of Natural Resources and Environmental Control may inspect such work during any phases of the construction and may collect any samples or conduct any tests that are deemed necessary.

3. This lease does not cover the structural stability of the project units.

4. Prior to the expiration of this lease, the lessee shall remove all structures covered under this lease unless the lease has been renewed in accordance with its terms.

5. Any actions, operations or installations which are considered by the Department to be contrary to the best interests of the public shall constitute reason for the discontinuance and/or removal of said action, operation or installation.

6. The lessee shall notify the Department of Natural Resources and Environmental Control within ten (10) days of the date work will be commenced.

7. The lessee shall maintain any structure on public subaqueous lands in good and safe condition and will protect and save the State of Delaware harmless from any loss, cost or damage by reason of said structures.

8. The lessee shall at all times comply with such rules and regulations which are promulgated by the United States Corps of Engineers.

9. The issuance of this lease does not imply approval of any other part, phase, or portion of any overall project the lessee may be contemplating.

10. This lease shall not be construed to grant or confer any right, title, easement, or interest in, to, or over any land belonging to the State of Delaware other than that of a tenant.

11. This lease is subject to the terms and conditions contained in any easement, license or lease that may have been granted by the State or any political subdivision, board, commission or agency of the State in the vicinity of the leased premises.

12. Nothing contained herein shall in any manner affect the rights now existing of any riparian land owner under the laws of the State of Delaware.

13. This lease and authorization are granted for the purposes as stated herein. Any other use without prior approval shall constitute reason for this lease being revoked.

NUMBER: SL-1203/91

APPLICANT -> SUN REFINING & MARKETING CO.

ADDRESS MANAGER, REAL ESTATE 1801 MARKET STREET
CITY/STATE/ZIP PHILADELPHIA PA 19103-1699

PROPERTY OWNER -> H. S. ROE PRESIDENT

CONTRACTOR -> E.E. BAILEY,

DESCRIPTION:
NCC, CLAYMONT, DELAWARE RIVER SE U.S. RT. 13 & DELAWARE RT. 92
RENEWAL-MAINTAIN 8 PETROLEUM PIPELINES 6,100 FT ACROSS
$36,600.00 ANNUM DUE 10/15/91

APPLICATION RECEIVED: 03/04/91
DATE SITE INSPECTED: 04/12/91 BY WHOM? MB

SUP APPROVAL?: SUP APPROVAL DATE: / /

CORPS PERMIT: CONDITIONS: COND DATE: / /

CURRENT STATUS: A

DATE ISSUED: 05/23/91

COMMENTS: TIME IN DAYS: 57

Lease Lot 2

STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES
& ENVIRONMENTAL CONTROL
DIVISION OF WATER RESOURCES
89 KINGS HIGHWAY, P.O. BOX 1401
DOVER, DELAWARE 19903

WETLANDS & SUBAQUEOUS
LANDS SECTION

TELEPHONE (302) 739-4691
FACSIMILE (302) 739-3491

Subaqueous Lands Lease: SL-1310/94
Date of Issuance: 10/9/94
Expiration Date: N/A

**SUBAQUEOUS LANDS LEASE**
**GRANTED TO COLONIAL PIPELINE**
**TO RENEW A LEASE TO MAINTAIN 8000 FEET OF 30 INCH**
**DIAMETER PIPELINE ACROSS THE DELAWARE RIVER AT**
**MARCUS HOOK, NEW CASTLE COUNTY, DE**

Colonial Pipeline Company
945 East of Paces Ferry Road
Atlanta, GA 30326-1125

Pursuant to the provisions of 7 Del. C. 7203, and the Department's Regulations Governing the Use of Subaqueous Lands, permission is hereby granted on this 20th day of January A.D. 1995, to construct the above-referenced project in accordance with plans titled "Delaware River Crossing", dated 8/31/65, and received by this Division on 9/26/94; and application dated 8/31/94, and received by this Division on 9/26/94.

WHEREAS, the State of Delaware is the owner of ungranted subaqueous lands lying beneath the waters of Delaware River; and

WHEREAS, Colonial Pipeline, owner of certain adjoining lands to Delaware River has applied for permission to maintain a lease for a pipeline; and

WHEREAS, pursuant to the provisions of 7 Del. C., 7203, the Secretary of the Department of Natural Resources and Environmental Control through his duly authorized representative finds that it is not contrary to the public interest if this project is approved subject to the terms and conditions herein set forth.

This approval is in accordance with plans and application submitted to Department of Natural Resources and Environmental Control, a copy of which is attached hereto and made a part hereof.

This lease shall be continued for a period of ten (10) years or so long as the conditions attached to the lease are adhered to, whichever is the shorter in time. Upon the expiration of the ten-year term, this lease shall expire and become null and void, unless prior thereto the lessee shall have applied for and received a renewal of this lease. A renewal may be denied if the State determines that the lease is no longer in the public interest.

THIS lease is issued subject to the following conditions:

**SPECIAL CONDITIONS**

1. The conditions contained herein shall be included as part of the main body of the construction contract and other ancillary documents associated with earth disturbance and any other activities directly or indirectly associated with construction which may impact subaqueous lands associated with this project. The permittee is responsible for ensuring that the contractor and/or workers executing the activities authorized by this permit have full knowledge of the terms and conditions of this permit.

2. Construction shall be conducted so as not to violate the State of Delaware Department of Natural Resources and Environmental Control, "Surface Water Quality Standards" dated February 26, 1993.

3. The pipeline shall be constructed in a manner so as not to impair water access to the adjoining property and a minimum of ten (10) feet from the adjacent properties.

4. There shall be no alteration or addition made to the permitted structure without prior approval from the Department.

5. The structure on/or adjacent to subaqueous lands shall be for the explicit purpose of petroleum transport as stated in the lease renewal application.

6. Removal of wetlands and/or aquatic vegetation adjacent to the permitted construction by burning, cutting, herbicide treatments or other methods is prohibited. Removal of wetlands and/or aquatic vegetation in the path of construction shall be minimized.

7. All construction debris, excavated material, brush, rocks and refuse incidental to such work shall be placed above the influence of surface waters.

8. **During the ten-year term of this lease the lessee shall agree to pay the State of Delaware the sum of $16,000 per annum for a total of $160,000 for the 8000 linear feet of public subaqueous lands utilized for the above-referenced project. The first payment of this lease shall be $16,000 for the remainder of this billing term (through September).**

GENERAL CONDITIONS

1. The project is to be undertaken in accordance with the plans submitted and attached hereto. Any activities not specifically authorized herein may require a supplemental approval from this office prior to the initiation of construction. A determination on the need for a supplemental approval will be made by this office pursuant to the permittee submitting written notification and revised plans indicating project changes to this office.

2. Representatives of the Department of Natural Resources and Environmental Control may inspect such work during any phases of the construction and may collect any samples or conduct any tests that are deemed necessary.

3. This lease does not cover the structural stability of the project units.

4. Prior to the expiration of this lease, the lessee shall remove all structures covered under this lease unless the lease has been renewed in accordance with its terms.

5. Any actions, operations or installations which are considered by the Department to be contrary to the best interests of the public shall constitute reason for the discontinuance and/or removal of said action, operation or installation.

6. The lessee shall notify the Department of Natural Resources and Environmental Control within ten (10) days of the date work will be commenced.

7. The lessee shall maintain any structure on public subaqueous lands in good and safe condition and will protect and save the State of Delaware harmless from any loss, cost or damage by reason of said structures.

8. The issuance of this lease does not imply approval of any other part, phase, or portion of any overall project the lessee may be contemplating.

9. This lease shall not be construed to grant or confer any right, title, easement, or interest in, to, or over any land belonging to the State of Delaware other than that of a tenant.

10. This lease is subject to the terms and conditions contained in any easement, license or lease that may have been granted by the State or any political subdivision, board, commission or agency of the State in the vicinity of the leased premises.

11. This lease and authorization are granted for the purposes as stated herein. Any other use without prior approval shall constitute reason for this lease being revoked.

12. This lease shall expire if the project has not been completed within three (3) years from the date of issuance.

13. If the lessee considers three (3) years insufficient for completion of the project, the lessee may submit a project time schedule for consideration by the Department. If the time schedule is approved it shall be attached hereto and made a part hereof.

14. This lease is not assignable or transferable without the prior written consent of the Department. Prior to the transfer of the property, it is the responsibility of the lessee to provide the new owner with a copy of the lease or to remove all structures. Prior to property conveyance, the lessee must also notify the Department of the change in ownership.

15. The lessee shall at all times comply with all applicable laws and regulations of the Department of Natural Resources and Environmental Control.

16. The issuance of this lease does not constitute approval for any of the activities as may be required by any other local, state or federal governmental agency.

17. This lease will be revoked upon violation of any of the above conditions.

18. Application for renewal must be submitted six (6) months prior to the expiration date of this lease.

SI-1310/94

IN WITNESS WHEREOF, We , Colonial Pipeline, have caused this instrument to be executed on this 20 day of January, 1995

By: _____
Applicant

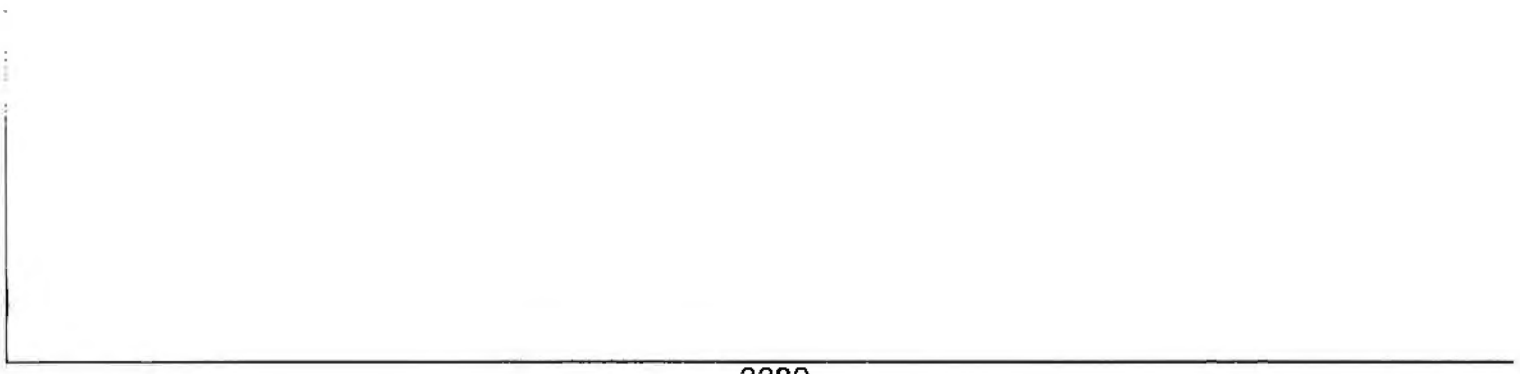
APPROVED:
Description &
Terms
Form

SWORN and subscribed before me on this 20 day of Jan., 1995.

_____
Notary Public
Notary Public, Fulton County, Georgia
My Commission Expires January 11, 1998

IN WITNESS WHEREOF, I, Christophe A.G. Tulou, Secretary, Department of Natural Resources and Environmental Control, have hereunto set my hand and seal this 26 day of January, 1994 95

_____
By Secretary of the Department of
Natural Resources and
Environmental Control



STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES
& ENVIRONMENTAL CONTROL
DIVISION OF WATER RESOURCES
89 KINGS HIGHWAY, P.O. BOX 1401
DOVER, DELAWARE 19903

WETLANDS & SUBAQUEOUS LANDS SECTION

TELEPHONE (302) 739-4691
FACSIMILE (302) 739-3491S

December 23, 1994

*Colonial Pipeline Company*
*945 East of Paces Ferry Road*
*Atlanta, GA 30326-1125*

*Dear Sir/Madam:*

*Enclosed is the subaqueous lands lease which has been prepared in accordance with the recommendations of the Secretary of the Department of Natural Resources and Environmental Control.*

*Please sign and have notarized the three originals on the lines indicated on the last page of the leases and return the entire package to this office within thirty (30) days.*

*Unless this office is notified, leases not returned to this office within thirty (30) days will be invalidated and the application returned to the applicant. Please sign the last pages only. Be sure to return all copies of the lease. You will receive the original after it has been fully executed.*

*If you have any questions, please feel free to call this office.*

*Sincerely,*

*James T. Chaconas*
*Program Manager*
*Wetlands & Subaqueous*
*Lands Section*

*JTC/fr*
*Enclosure*

STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES
& ENVIRONMENTAL CONTROL
DIVISION OF WATER RESOURCES
89 KINGS HIGHWAY, P.O. BOX 1401
DOVER, DELAWARE 19903

# INDUSTRIAL WATER ALLOCATION

**ALLOCATION NO: 91-0012M2**
**EFFECTIVE DATE: October 17, 1991**
**EXPIRATION DATE: October 17, 2021**
**MODIFICATION DATE: January 13, 1995**

Pursuant to the provisions of 6010f, 7 Del. C., an allocation of water is hereby granted to:

**LOGAN GENERATING COMPANY, L.P.**
**BOX 169-C RT 130 SOUTH**
**SWEDESBORO, NJ 08085-9300**

for the withdrawal and use of water from the following water facility:

| INTAKE | LOCATION | STREAM | LATITUDE | LONGITUDE | CAP. |
|---|---|---|---|---|---|
| AM-P001A | R.M. 78.8 | Delaware River | 38°47'50" | 75°24'53" | 3000 gpm |
| AM-P001B | R.M. 78.8 | Delaware River | 38°47'50" | 75°24'53" | 3000 gpm |

## OTHER APPROVALS

1. This approval is subject to review every five years from effective date by the Division of Water Resources.

2. Approval for discharge of this water must be obtained from the Division of Water Resources.

3. This approval is subject to all appropriate regulations and approvals of the Delaware River Basin Commission (DRBC)

4. Approval for use for this water for human consumption must be obtained from the Bureau of Environmental Health.

## EQUIPMENT REQUIREMENTS

1. Each of these intakes must be equipped with either flow integrators, or, where feasible, flow meters, to compute withdrawal rates and cumulative volume of pumpage to a design

precision of +-5%.

REPORTING REQUIREMENTS

1. For each of these wells: readings of pumping rates and cumulative volume of pumpage must be made and recorded at least daily. Readings of pmping water-levels must be made and recorded at least weekly. This and other relevant information, such as water purchases and sales is to be recorded on a form provided by the Division of Water Resources and submitted by the permit holder to the Division annually by January 31 or more frequently if requested

ALLOCATION

1. **In any twenty-four (24) hour period:** Total combined pumpage from these intakes must not exceed **4,320,000 gallons**.

2. **In any thirty (30) day period:** Total combined pumpage from these intakes must not exceed **105,00,000 gallons**.

3. **In any twelve (12) month period:** Total pumpage from these intakes must not exceed **990,000,000 gallons**.

4. Withdrawals for the sources listed below shall not exceed the following limits:

| INTAKE NO. | DNREC ID NO. | PUMPING RATE (GPD) |
|---|---|---|
| AM-P001A | 8236 | 4,320,000 |
| AM-P001B | 8237 | 4,320,000 |

5. These intakes may be used only for the purpose of industrial supply and related uses. Any change in the intended use, or in the physical characteristics of the above facilities must receive prior approval from the Division of Water Resources.

6. All laws and regulations governing the construction, operation, maintenance, and repair of water supply facilities in the State of Delaware must be obeyed.

7. Representatives of the Division of Water Resources, Delaware Geological Survey and the U.S. Geological Survey may inspect these facilities, conduct any tests, and collect any samples at any time deemed necessary.

8. This allocation is specifically subject to the requirements of 7 Del. C. §6031.

9. If the withdrawal of water pursuant to this permit has significant adverse affects

including, but not limited to, reduction of streamflows, lowering of water levels, migration of pollutants, or encroachment of salt water, the Division of Water Resources may require action to rectify the problem.

10. This permit is transferable only if the requirements of the Regulations Governing the Allocation of Water are met and, written approval is obtained from the Division.

11. Violations of conditions of this permit are subject to penalties provided in 7 Del. C., Chapter 60.

WATER CONSERVATION MEASURES

This approval is contingent on practice by the permit holder of reasonable efforts to minimize the unnecessary use and/or waste of water. The permit holder must:

A. Establish a program of periodic monitoring and evaluation of water usage,

B. Establish a systematic leak detection and control program which is responsive to high unaccounted for water usage rates, routine maintenance, or discovery of leaks,

C. Use the best practical methods and devices to conserve water,

D. Alert employees of the need to conserve water and reduce wasteful usage, including posting conservation suggestions, and

E. Develop a contingency plan to be implemented in the event of water shortage emergencies. This plan should include:

1. Identification of emergency water sources,
2. Priorities of water usage, and
3. Emergency measures to curtail water usage.

The permittee must demonstrate compliance with these conditions upon request hy the Division of Water Resources.

Signed: Stewart Lovell

Stewart Lovell, P.G.
Manager
Water Supply Section

Date: Jan 30, 1998

c: U.S. Geological Survey
Delaware River Basin Commission

STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES
& ENVIRONMENTAL CONTROL
DIVISION OF WATER RESOURCES
89 KINGS HIGHWAY, P.O. BOX 1401
DOVER, DELAWARE 19903

Paul Wagner, P.E.
U.S. Generating Company
Box 169 C, Route 130 South
Swedesboro, NJ 08085-9300

January 21, 1998

Dear Mr. Wagner,

Please find enclosed the modified allocation permit reflecting your change in name/ownership. In reference to our conversation upon your visit to our office, it has been decided by our office that both inlets at your facility will remain permitted as two surface water intakes, permit numbers 8237 and 8236. Because they are considered individual intakes, our office requires that they be reported on annual water use reports separately and referred to on the reports by their intake permit numbers. Their individual pumpage totals should then be combined to determine the annual system summary. If you have any questions concerning this matter please do not hesitate to call my office (302) 739-4793.

Sincerely,

J. Cross

Jennifer Cross
Environmental Scientist
Water Allocations
Water Supply

*Delaware's good nature depends on you!*

STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES &
ENVIRONMENTAL CONTROL
DIVISION OF WATER RESOURCES

WETLANDS & SUBAQUEOUS LANDS SECTION
89 KINGS HIGHWAY
DOVER, DELAWARE 19901
TELEPHONE (302) 739-4691
FACSIMILE (302) 739-6304

Subaqueous Lands Lease No.: SL-404/01
Renewal of Subaqueous Lands Lease No.: SL-1203/91
Date of Issuance: 5/15/02
Lease Expiration Date: October 15, 2021
Amended Date:

**SUBAQUEOUS LANDS LEASE**
**GRANTED TO SUNOCO INC. R & M TO MAINTAIN EIGHT 6100 LINEAR FOOT PIPELINES, WITH DIAMETERS BETWEEN 6 INCHES AND 12 INCHES, BENEATH THE DELAWARE RIVER NEAR NEW CASTLE, NEW CASTLE COUNTY, DELAWARE**

Joel H. Maness
Sunoco Inc. R & M
1800 Market Street
Philadelphia, PA 19103-1699

Pursuant to the provisions of 7 Del. C. 7203, and the Department's Regulations Governing the Use of Subaqueous Lands, permission is hereby granted on this 15th day of May A.D. 2002, to maintain the above-referenced project in accordance with the approved plans for this lease (2 sheets), as approved on 4/19/02, and received by this Division on 11/19/01; and application dated 11/13/01, and received by this Division on 11/19/01.

WHEREAS, the State of Delaware is the owner of ungranted subaqueous lands lying beneath the waters of the Delaware River; and

WHEREAS, Sunoco, Inc. R & M, has applied for permission to maintain a submarine pipelines under the Delaware River; and

WHEREAS, pursuant to the provisions of 7 Del. C., 7203, the Secretary of the Department of Natural Resources and Environmental Control through his duly authorized representative finds that it is not contrary to the public interest if this project is approved subject to the terms and conditions herein set forth.

This approval is in accordance with plans and application submitted to Department of Natural Resources and Environmental Control, a copy of which is attached hereto and made a part hereof.

This Lease shall be continued for a period of twenty (20) years or so long as the conditions attached to the Lease are adhered to, whichever is the shorter in time. Upon the expiration of the twenty-year term, this Lease shall expire and become null and void, unless prior thereto the lessee shall have applied for and received a renewal of this Lease. A renewal may be denied if the State determines that the Lease is no longer in the public interest.

THIS Lease is issued subject to the following conditions:

**SPECIAL CONDITIONS**

1. The conditions contained herein shall be included as part of the main body of the construction contract and other ancillary documents associated with earth disturbance and any other activities directly or indirectly associated with construction or maintenance which may impact subaqueous lands associated with this project.

2. This Lease authorizes the lessee to maintain the approved structures on public subaqueous land from October 16, 2001through October 15, 2021.

3. The approved submarine pipelines include 37,760 linear feet on public subaqueous lands. During the twenty-year term of this lease, the lessee shall agree to pay the State of Delaware the sum of $75,520.00 per annum, for a total of $1,510,400.00 for the 37,760 linear feet of public subaqueous lands utilized for the above-referenced project. Annual billing will continue with the adjusted fee.

4. This Lease represents a renewal of Subaqueous Lands Lease No. SL-1203/91 granted to the Sun Refining and Marketing Company. All special and general conditions contained in this Lease shall supersede conditions set forth in Subaqueous Lands Lease No. SL-1203/91, which shall become null and void.

5. Maintenance shall be conducted so as not to violate the State of Delaware Department of Natural Resources and Environmental Control's "Surface Water Quality Standards," as amended August 11, 1999.

6. The leased structure shall be maintained in a manner so as not to impair water access.

7. This Lease does not authorize any repairs, additions, or modifications to the existing structures authorized herein. Such activities require separate written authorization from the Department of Natural Resources and Environmental Control.

8. The structures on subaqueous lands shall be for the explicit purpose of conveyance of chemicals.

9. All debris, excavated material, brush, rocks, and refuse incidental to maintenance of the leased structure shall be placed above the influence of surface waters.

## GENERAL CONDITIONS

1. The project is to be undertaken in accordance with the plans submitted and attached hereto. Any activities not specifically authorized herein may require a supplemental approval from this office prior to the initiation of construction. A determination on the need for a supplemental approval will be made by this office pursuant to the lessee submitting written notification and revised plans indicating project changes to this office.

2. Representatives of the Department of Natural Resources and Environmental Control may inspect the leased structure and may collect any samples or conduct any tests that are deemed necessary.

3. This Lease does not cover the structural stability of the project units.

4. Prior to the expiration of this Lease, the lessee shall remove all structures covered under this Lease unless the Lease has been renewed in accordance with its terms.

5. Any actions, operations or installations which are considered by the Department to be contrary to the best interests of the public shall constitute reason for the discontinuance and/or removal of said action, operation or installation.

6. The lessee shall maintain any structure on public subaqueous lands in good and safe condition and will protect and save the State of Delaware harmless from any loss, cost or damage by reason of said structures.

7. The issuance of this Lease does not imply approval of any other part, phase, or portion of any overall project the lessee may be contemplating.

8. This Lease shall not be construed to grant or confer any right, title, easement, or interest in, to, or over any land belonging to the State of Delaware other than that of a tenant.

9. This Lease is subject to the terms and conditions contained in any easement, license or lease that may have been granted by the State or any political subdivision, board, commission or agency of the State in the vicinity of the leased premises.

10. This Lease and authorization are granted for the purposes as stated herein. Any other use without prior approval shall constitute reason for this Lease being revoked.

11. This Lease is personal and may not be transferred without the prior written consent of the Department. Prior to the transfer of the utility line, the lessee shall obtain the written consent of the Department to transfer this Lease to the new utility line owner. Failure to obtain such written consent may result in the revocation of this Lease and the removal of all structures authorized by this Lease at the expense of the lessee.

12. The lessee shall at all times comply with all applicable laws and regulations of the Department of Natural Resources and Environmental Control.

13. The issuance of this Lease does not constitute approval for any of the activities as may be required by any other local, state or federal governmental agency.

14. Application for renewal must be submitted six (6) months prior to the expiration date of this Lease.

15. This Lease may be revoked upon violation of any of the above conditions.

IN WITNESS WHEREOF, I, Joel H. Maness, Senior Vice-president of Refining and Supply, Sunoco Inc. R & M, have caused this instrument to be executed on this 2nd day of May, 2002.

By: _____
Applicant

Notarial Seal
Anita V. Andre, Notary Public
City Of Philadelphia, Philadelphia County
My Commission Expires Apr. 8, 2006
Member, Pennsylvania Association Of Notaries

Anita V. Andre
Notary
My commission expires: April 8, 2006

(Notary Seal)

By the authority invested in me under 7 Del.C.§7203(a), I hereby grant this Lease for the use of the State owned subaqueous lands to the Lessee(s) by setting my hand on this 15th day of May, 2002.

Nicholas A. DiPasquale
Secretary, Department of Natural Resources
and Environmental Control

STATE OF DELAWARE

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

Dover, Delaware 19901

Austin N. Heller,
*Secretary*

January 29, 1971

Division of Environmental Control

Mr. P. H. Collins
Engineering Site Division
E. I. duPont de Nemours & Company
Chambers Works
Deepwater, New Jersey 08023

Dear Mr. Collins:

Please note the attached copy of a letter to Colonel Strider, U. S. Army Corps of Engineers, regarding your company's application for an Army permit to construct an oil storage tank in the Delaware River at your Chambers Works facility. The Department of Natural Resources and Environmental Control has taken this action because of the necessity for your company to first obtain a permit from the State of Delaware and also to obtain a waiver of the moratorium on such projects in the Delaware River and Bay.

For your information and use, I am enclosing a copy of the declaration of the moratorium and also an application form for State approval of subaqueous lands projects. Please submit complete engineering plans for the proposed project with the application.

If you have any questions regarding this matter, please feel free to contact this office.

Sincerely,

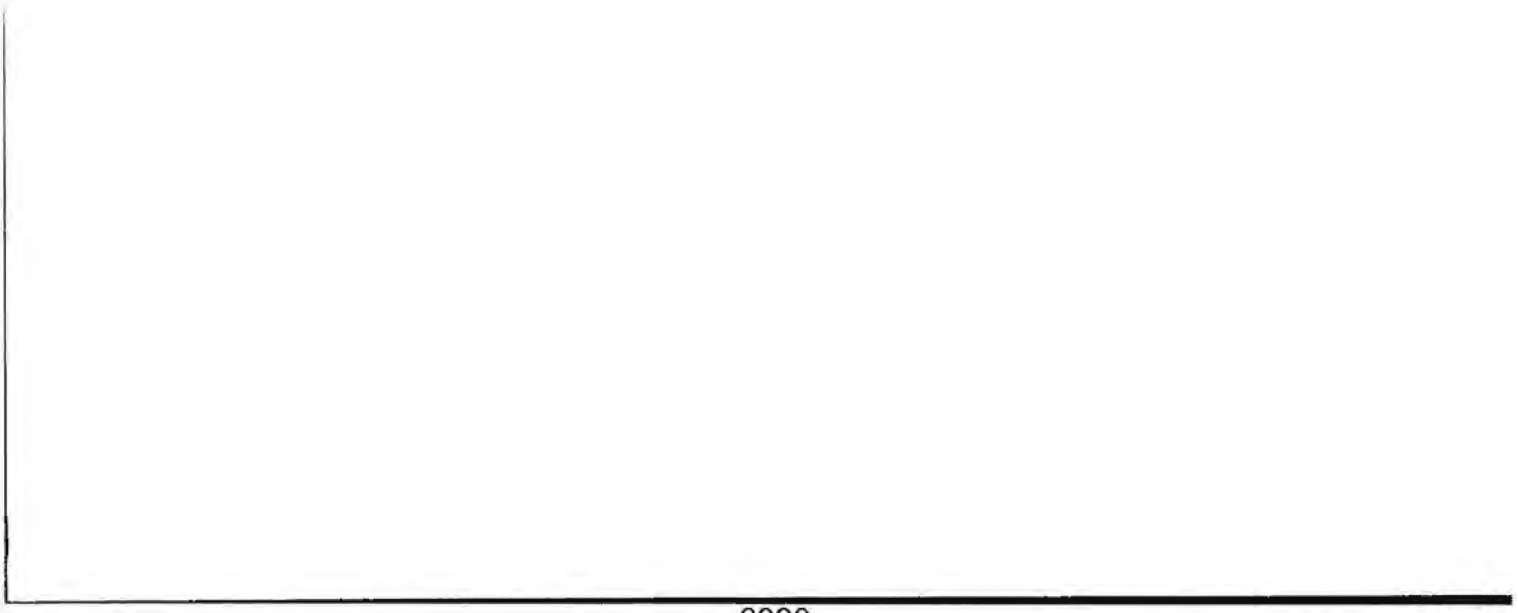
B. Lane

B. E. Lane, Staff Geohydrologist
Water Resources & Subaqueous Lands

BEL:gr

cc: The Honorable Austin N. Heller
Corps of Engineers

Enclosures



January 29, 1971

Colonel Carroll D. Strider
District Engineer
Department of the Army
Philadelphia District
Corps of Engineers
Custom House
2nd and Chestnut Streets
Philadelphia, Pennsylvania 19106

RE: NAPOP-N-184, Public Notice dated 8 January 1971.

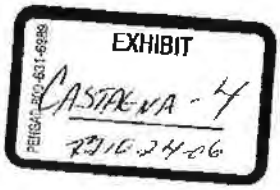
Dear Colonel Strider:

This letter is in reference to the application submitted by E. I. duPont de Nemours & Company, for a Department of the Army permit to construct a bulkhead, to fill, and to construct a fuel oil storage tank in the Delaware River at the Company's Chambers Works facility, Deepwater, New Jersey.

With this letter the Department of Natural Resources and Environmental Control requests that a permit for this project be withheld, for the following reasons:

1. A permit must first be obtained from the State of Delaware. As of this date, no application has been submitted to this Department.

2. This proposal falls under the jurisdiction of the moratorium that was placed on subaqueous lands projects in the Delaware River and Bay by the Delaware Legislature (see attached copy). This moratorium must be waived before a permit can be issued.




DE19301

We are writing a letter to Mr. P. H. Collins at Chambers Works to inform the Company of our action in this matter. We will provide State application forms and a copy of the moratorium, in order that the Company may submit an application to this Department.

If you have any questions regarding this matter, please feel free to contact this office.

Sincerely,

B. E. Lane, Staff Geohydrologist
Water Resources & Subaqueous Lands

BEL:gr

cc: The Honorable Austin N. Heller
Mr. P. H. Collins, Chambers Works

DE19302

February 19, 1971

The Honorable Laird Stabler
Attorney General
Department of Justice
Dover, Delaware 19901

RE: E. I. duPont de Nemours & Company, Chambers Works, Deepwater, New Jersey, application for Corps of Engineers permit to construct fuel oil storage tank on underwater lands within the State of Delaware at Deepwater Point, New Jersey.

Dear Mr. Stabler:

In reference to the above project, I am enclosing the following material:

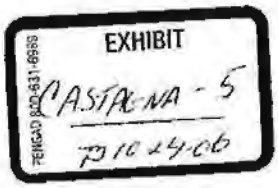
1. Public Notice, dated 8 January 1971, from Corps of Engineers containing a description and general plans of the project proposed by the duPont Company at its Chambers Works facility in New Jersey.

2. Letter dated 10 February 1971 addressed to Mr. John C. Bryson, Director of the Division of Environmental Control, by Mr. Alan Skinner, of the duPont Legal Department, and including seven letters attached thereto.

3. Copy of the Delaware River and Bay moratorium.

In response to the receipt of the Public Notice, the Department of Natural Resources and Environmental Control, on behalf of the State of Delaware, requested that the Corps of Engineers withhold a permit until the duPont Company shall have received approval of the project from the State of Delaware, in accordance with Sections 6451 and 6452 of the Water and Air Resources Act of 1966, Title 7, Part VII, Delaware Code, and the moratorium that was declared by the Delaware Legislature.

Mr. Skinner has stated that the duPont Company need only receive permission from the State of New Jersey and the Corps of Engineers.

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DE19304

Please note on the plans that area I have marked in red. This area lies below the mean low water (MLW) line, which places approximately one-half of the project into Delaware waters.

It is our position that if we are to discharge our duties as they are mandated in Sections 6451 and 6452 of the Delaware Code, then it will be necessary for the duPont Company to submit an application and receive Delaware's approval of this project. However, if the legal language of the 1905 Treaty and the Supreme Court decision of 1933 negates or supersedes the provisions of the Water and Air Resources Act of 1966, then it is not our intent to unnecessarily delay this project.

It is respectfully requested, therefore, that you review this matter to determine whether the State of Delaware has any jurisdiction over projects of this nature that involve underwater lands at or below the MLW line on the New Jersey side of the Delaware River within the 12-mile arc.

If you have any further questions, I would be pleased to answer them.

Respectfully yours,

John C. Bryson, Director
Division of Environmental Control

JCB:EEL:gr

Enclosures

cc: The Honorable Austin N. Heller

DE19305

April 5, 1971

Mr. James Kelly
Department of the Army
Philadelphia District
Corps of Engineers
Custom House
2nd and Chestnut Streets
Philadelphia, Pennsylvania 19106

Dear Mr. Kelly:

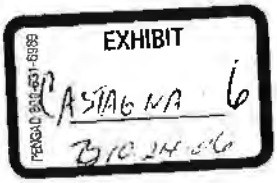
This letter is to inform you of the status of the following two projects that are being proposed for construction on the New Jersey side of the Delaware River.

1. E. I. duPong Company, Chambers Works, New Jersey - construction of an oil storage tank in the Delaware River, re: public notice NAPOP-N-184, 8 January 1971. The company's attorney requested that we obtain an opinion of Delaware's Attorney General. In that opinion, the Attorney General stated that Delaware has no jurisdiction between the mean high and mean low water marks on the New Jersey shore and that the moratorium declared by the Delaware Legislature does not apply to the New Jersey shore.

   However, any proposed work in the Delaware River which will extend below the mean low water mark is within Delaware waters and will require a permit from the State of Delaware.

   The Company's attorney has been notified of this decision and they were again notified that the Company would have to make application to this Department.

2. Liquified natural gas terminal near Oldmans Creek, New Jersey - this is a proposal to perform test borings in the Delaware River for a proposed pier facility to serve the LPG plant, which will be located wholly within New Jersey.



Naturally, Delaware does not have jurisdiction over the LPG plant but, as in Project #1, above, any work within Delaware waters will require a permit from Delaware. I have enclosed a copy of the letter sent to the Company's attorney.

If you have any questions regarding this information, please feel free to contact this office.

Sincerely,

B. E. Lane, Staff Geohydrologist
Water Resources and Subaqueous Lands

BEL:gr

Enclosure

SL-558/1971

LEASE GRANTED TO

E. I. DU PONT DE NEMOURS AND COMPANY

TO

DREDGE, CONSTRUCT A BULKHEAD, FILL BEHIND SAID BULKHEAD, CONSTRUCT A DOCK, AND CONSTRUCT A FUEL OIL STORAGE TANK AT ITS "CHAMBERS WORKS" FACILITY ALONG THE DELAWARE RIVER

AND NOW, to wit, this _____ day of _____, A.D. 1971, the State of Delaware (hereinafter referred to as Lessor) does hereby accept the June 21, 1971, resolution of the Water and Air Resources Commission approving the application of E. I. du Pont de Nemours and Company (hereinafter referred to as Lessee) submitted to the Water and Air Resources Commission and dated June 7, 1971, a copy of which is attached hereto and made a part hereof; and

WHEREAS, Lessor claims title to certain subaqueous lands lying beneath the waters of the Delaware River, the subject matter of this lease; and

WHEREAS, Lessee also claims title to the same subaqueous lands;

WHEREAS, the granting of this lease is necessary for the construction of certain storage facilities which are necessary for the use of low sulphur fuel, an environmentally desirable goal;

It is understood by both parties to this agreement that both the application for this lease and the granting of this lease are filed and granted without prejudice to the title claim of either party; and

WHEREAS, Lessee, owner of certain lands referred to as the "Chambers Works" and adjacent to the Delaware River, has applied for permission to dredge, construct a bulkhead, fill behind

said bulkhead, construct a dock, and construct a fuel oil storage tank on the subaqueous lands adjacent to the "Chambers Works"; and

WHEREAS, pursuant to the provisions of Title 7, Part VII, Section 6451, Delaware Code, the Water and Air Resources Commission finds that it is not contrary to the public interest, and that the granting of this lease is hereby approved subject to the terms and conditions herein set forth.

NOW, THEREFORE, Lessor hereby grants permission to the Lessee to dredge from the Delaware River approximately sixty thousand (60,000) cubic yards of subaqueous material;

AND, to construct approximately nine hundred (900) feet of bulkhead;

AND, to fill approximately thirty thousand six hundred forty-seven (30,647) square feet of subaqueous land behind said bulkhead;

AND, to construct a six (6) foot by ten (10) foot dock;

AND, to construct a two hundred thousand (200,000) barrel fuel oil storage tank, part of which will be constructed on the aforementioned subaqueous lands, all in accordance with the plans submitted, drawings DWM-1655, DW-22779, DW-22780, and DW-23045, copies of which are attached hereto and become a part hereof;

AND, hereby leases to Lessee the approximately thirty thousand six hundred forty-seven (30,647) square feet of subaqueous land to be filled and the approximately sixty (60) square feet of subaqueous land upon which the six (6) foot by ten (10) foot dock is to be constructed.

THIS lease and authorization shall be continued for a period of ten (10) years beginning the _____ day of

_____, 1971, or so long as the conditions attached to the lease are adhered to, whichever is the shorter in time. Upon the expiration of the ten-year term, this lease shall expire and become null and void, unless prior thereto Lessee shall have applied for and received a renewal of this lease. A renewal may be denied if Lessor determines that the lease is no longer in the public interest.

THIS lease shall be subject to the following conditions:

1. The Lessee agrees to pay the Lessor, subject to the terms of paragraph 1(a) below, thirty thousand dollars ($30,000.00) for the approximately sixty thousand (60,000) cubic yards of subaqueous material to be dredged, thirty thousand six hundred forty-seven dollars ($30,647.00) for a ten-year lease for the approximately thirty thousand six hundred forty-seven (30,647) square feet of subaqueous land to be filled, and an annual rental charge of sixty dollars ($60.00) for a ten-year lease for the approximately sixty (60) square feet of subaqueous land upon which a six (6) foot by ten (10) foot dock is to be constructed.

1(a) Lessee agrees to pay Lessor the amounts, with 6% annual interest from the date of this agreement, as scheduled in the preceding paragraph in the event that the disputed title to the subaqueous lands in question is resolved in favor of Lessor at some future date under a final judgment of a federal court of competent authority. Lessor agrees to defer the collection of the fees, herein referred to, until the title question is resolved as herein agreed.

2. The bulkhead is to be completed prior to any filling of lands contained by said bulkhead.

3. The project is to be undertaken in accordance with the plans submitted. If changes are necessary, revised plans must be submitted and a supplemental approval issued prior to actual construction.

4. Representatives of the Water and Air Resources Commission may inspect such work during the term of this lease, including construction and may collect any samples or conduct any tests that are deemed necessary.

5. This instrument does not purport to constitute an approval of the design or structural stability and safety of the proposed installation and Lessee agrees to save harmless Lessor in the event of design or structural failures which cause injury to person(s) or property.

6. Lessee shall maintain any structures on subaqueous lands in a good and safe condition and will protect and save Lessor harmless from any loss, cost or damage by reason of said structural condition.

7. All construction debris, excavated material, brush, rocks, and refuse incidental to such work shall be placed either on shore above the influence of flood waters or on some suitable and approved dumping ground.

8. Any actions, operations or installations associated with the subject matter of this instrument, which are considered by the Water and Air Resources Commission to be contrary to the best interests of the public shall constitute reason for the discontinuance of, and/or

removal of, said action, operation or installation.

9. Approval from the Corps of Engineers, where its jurisdiction is in effect, shall be obtained within one (1) year of the date of execution of this lease.

10. Lessee shall at all times comply with such rules and regulations relating to navigation as may from time to time be promulgated by the United States Corps of Engineers as the same may affect such structures and the activity related to said structures.

11. The issuance of this lease does not imply approval of any other part, phase, or portion of any overall project which Lessee may be contemplating.

12. This lease shall not be construed to grant or confer any right, title, easement, or interest in, to, or over the aforementioned subaqueous lands (the subject matter of this lease) other than that of a tenant.

13. Lessee hereby agrees to waive and to release forever any increased claim to title and/or jurisdiction over the lands presently lying below the mean low water line which, because of the rights granted by this instrument, will be raised above the mean low water line.

14. This lease is subject to the terms and conditions contained in any easement, license or lease that may have been granted by the State to any person(s), political subdivision, Board, Commission or Agency of the State in the vicinity of the leased premises.

15. This lease and authorization are granted solely for the purposes as stated herein. Any other use without prior approval shall constitute reason for this lease being revoked.

16. This lease is void if the project has not been initiated by one (1) year from the date of issuance.

17. This lease will be revoked upon violation of any of the above conditions.

IN WITNESS WHEREOF, E. I. du Pont de Nemours and Company has caused this instrument to be executed and its corporate seal affixed by its respective proper officers thereunto duly authorized on this the day and year first above written.

E. I. DU PONT DE NEMOURS AND COMPANY

ATTEST: By _____

Assistant Secretary

IN WITNESS WHEREOF, I _____, Chairman of the Delaware Water and Air Resources Commission have hereunto set my hand and seal this 17th day of September, 1971.

_____ (SEAL)
By Chairman of Delaware Water and Air Resources Commission

IN WITNESS WHEREOF, I, RUSSELL W. PETERSON, Governor of the State of Delaware, have hereunto set my hand and the Great Seal of the State of Delaware has been hereunto affixed by the Secretary of State, at Dover, on this 29th day of September in the year of Our Lord One Thousand Nine Hundred and Seventy-one.

Russell W. Peterson
By The Governor

_____
by the Secretary of State

DUP0000776

cc: Jean A. McDonough
Municipal Clerk
90 North Broadway
Municipal Bldg.
Pennsville, N. J. 08070

ECD 13.07

E. I. du Pont de Nemours & Company
INCORPORATED
CHAMBERS WORKS
PENNS GROVE, NEW JERSEY 08069

TELEPHONE
AREA CODE 609-299-5000

July 13, 1977

bcc: P. F. Brown, N-10404
C. E. Lorenz, N-10404
P.M.Humanick/R.A.Shinn/D.F.Gilbert
W. F. Lippincott, Admin. Bldg.
E. T. Fogg, Admin. Bldg.
J. Curry, 1094 Building
H. W. Heath, 1094 Bldg.
D. S. Dunagan, 1094 Bldg.

James R. Johnson, Superintendent
Office of Riparian Lands Management
Division of Marine Services
Department of Environmental Protection
P. O. Box 1889
Trenton, New Jersey 08625

Dear Mr. Johnson:

We would like to request approval of a revision to our Ice Repair Permit No. T-25 for our waste water outfall line in the Delaware River.

The ice-damaged portion of the line has now been dismantled and removed. The design for the repair of the line has been completed. In order to avoid future ice damage, the above-water portion of the line which was damaged will not be replaced. Instead, a transition section will be installed to carry the discharge under the water to four 30" diameter steel lines to disperse the waste water into the river (see attached Figures 1 & 2).

Since our new Waste Water Treatment facilities are now operating satisfactorily, the quality of the wastewater has improved to attain the limits established by our NPDES Permit No. NJ-0005100. Thus, the original problems of acidity, color and foam which required dispersion further out in the river no longer exist.

This repair work can be accomplished within our existing riparian rights and the total cost will be the same as originally estimated, $500,000. The shorter above-water portion of the outfall line will also reduce the navigational hazard in the river.

The construction of the new section, which will require two months, is expected to start in July, 1977 and can be completed by October 1, 1977. We would appreciate your expediting the approval of this permit revision so that construction can proceed on schedule to insure completion before the coming winter.

Very truly yours,

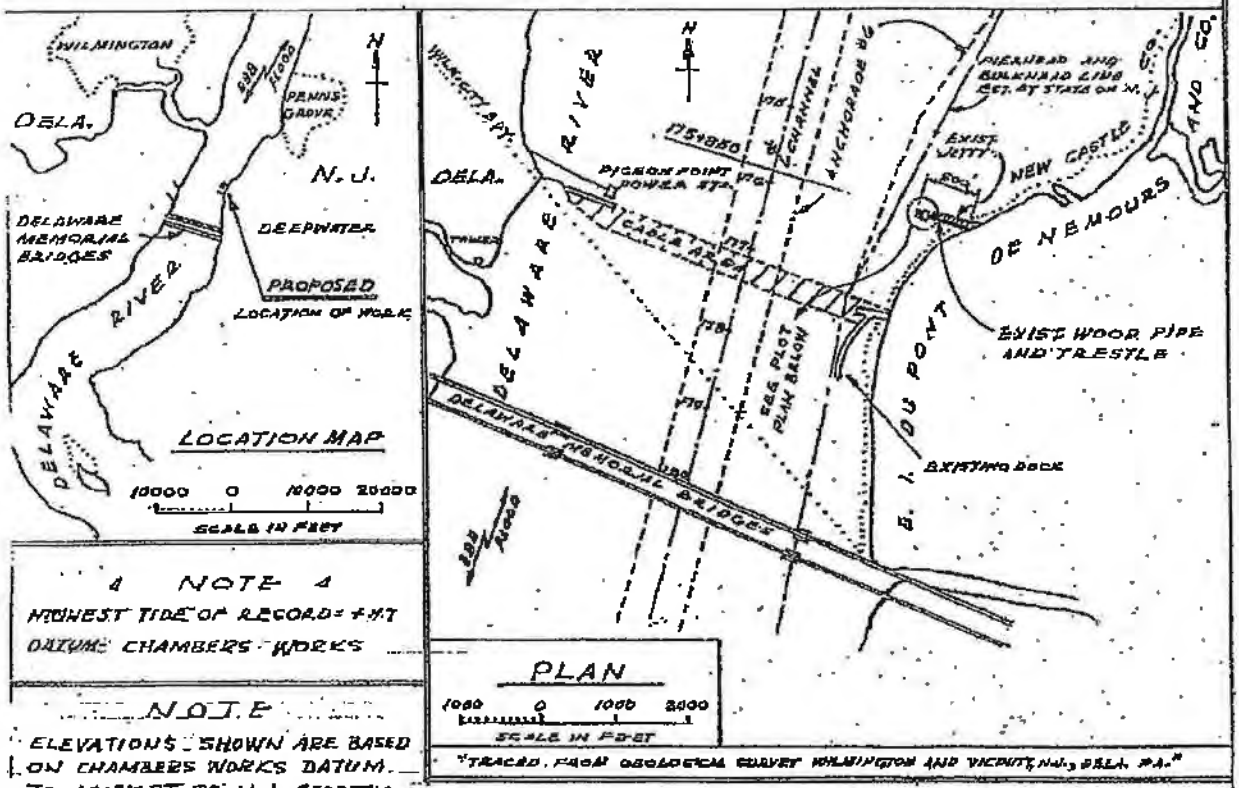
George H. Cassedy

George H. Cassedy, Superintendent
Environmental Control Division

bjs

BETTER THINGS FOR BETTER LIVING ... THROUGH CHEMISTRY
THIS PAPER IS COLORED WITH DU PONT DYES

DUP0000776



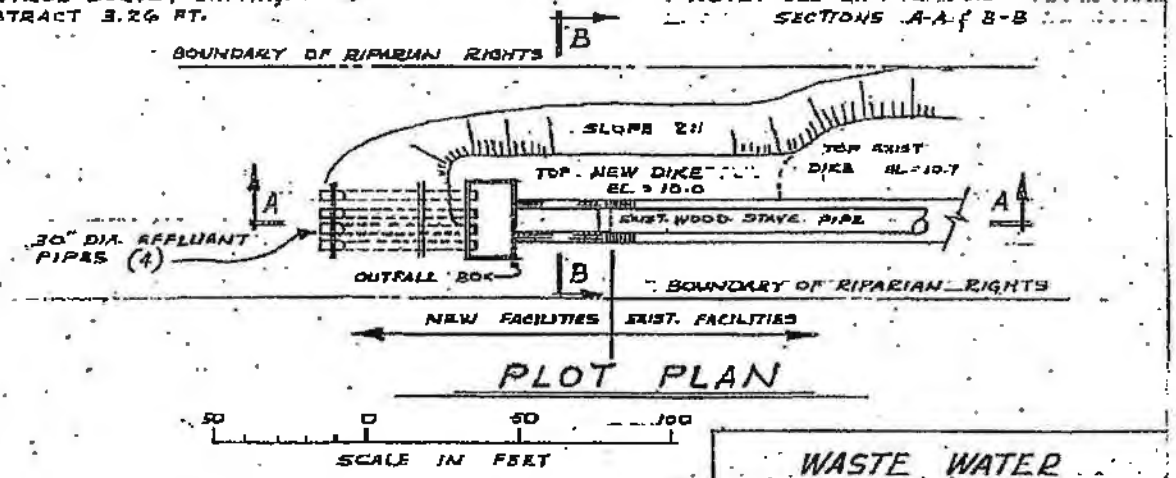

**NOTE**

HIGHEST TIDE OF RECORD = +11.7
DATUM: CHAMBERS WORKS

**NOTE**

ELEVATIONS SHOWN ARE BASED ON CHAMBERS WORKS DATUM. TO CONVERT TO N.J. GEODETIC CONTROL SURVEY DATUM, SUBTRACT 3.26 FT.

NOTE: SEE SHT. # 2 FOR SECTIONS A-A & B-B




I HEREBY CERTIFY TO THE ACCURACY OF THE DATA SHOWN ON THIS DRAWING, WHICH WAS MADE UNDER MY DIRECTION & SUPERVISION.

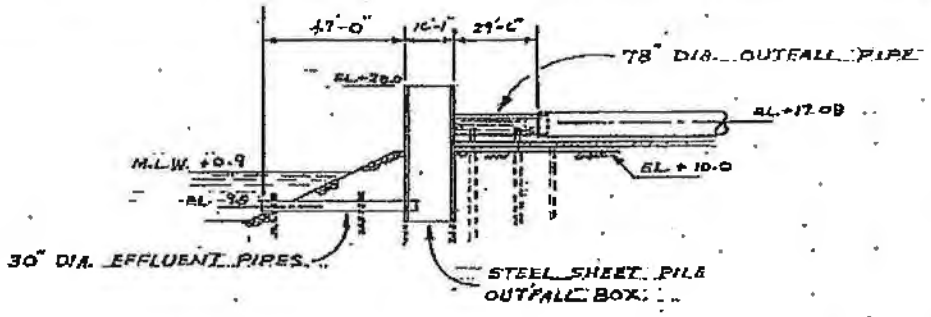
William F. Lippincott P.E. # 11228

WM. F. LIPPINCOTT, P.E. N.J. LIC. # 11228

# WASTE WATER FLUME & PIER IN DELAWARE RIVER AT CHAMBERS WORKS DEEPWATER, N.J.

APPLICATION BY
E. I. DU PONT DE NEMOURS & CO.
JULY 1977 SHEET 1 OF 2

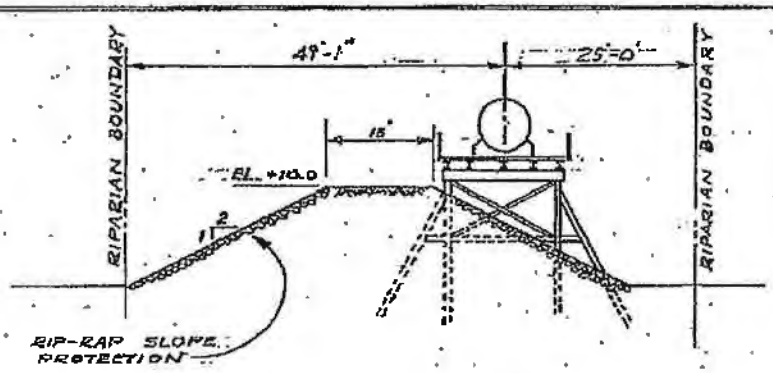
DUP0000777




SECTION A-A

50 0 50 100

SCALE IN FEET




SECTION B-B

20 10 0 20 60

SCALE IN FEET

NOTE

ELEVATIONS SHOWN ARE BASED ON CHAMBERS WORKS DATUM. TO CONVERT TO N.J. GEODETIC CONTROL SURVEY DATUM, SUBTRACT 3.26 FT.

William F. Lyford PE #11228

WASTE WATER FLUME & PIER IN DELAWARE RIVER AT CHAMBERS WORKS DEEPWATER, N.J.

APPLICATION BY E. I. DuPONT DE NEMOURS & CO.

JULY 1977 SHEET 2 OF 2

DUP0000778

(2/77) DUP0000779

Sent James R. Johnson, Supv.
Office of Riparian Lands Management
P.O. Box 1889 - Trenton, N.J. 08625

OFFICE USE ONLY
FILE NO.
DATE FILED:

APPLICATION FOR REVOCABLE PERMIT
(ICE DAMAGE REPAIRS)

2/18/77
P.E. Brown N-10404

bcc J.C.Breckenridge, N-10404
P.M.Humanick/R.A.Shinn/D.F.Gilbert
W.F.Lippincott,Ad.Bldg.
G.L.Porter,Ad.Bldg.
E.T.Fogo,Ad.Bldg.
ECD File 13.04

JC
DSD

STATE OF NEW JERSEY
DEPARTMENT OF ENVIRONMENTAL PROTECTION
DIVISION OF MARINE SERVICES
OFFICE OF RIPARIAN LANDS MANAGEMENT
P. O. BOX 1889
TRENTON, NEW JERSEY 08625

Gentlemen:

DATE: 2/18/77

Application is hereby made for issuance of a revocable permit to carry out the following work.

1. APPLICANT/OWNER
(NAME) E. I. DU PONT DE NEMOURS & CO., INC.

(ADDRESS) CHAMBERS WORKS, DEEPWATER, N.J. 08023

2. LOCATION OF WORK:
(MUNICIPALITY) PENNSVILLE TOWNSHIP (COUNTY) SALEM

(NAME OF WATERWAY) DELAWARE RIVER

(LOT & BLOCK NUMBER) LOT NO. 1, BLOCK NO. 1 (STREET ADDRESS) CHAMBERS WORKS

3. GENERAL DESCRIPTION OF REPAIR & REPLACEMENT WORK CONTEMPLATED: DISMANTLING AND REMOVAL OF ICE DAMAGED PORTION OF WASTEWATER OUTFALL LINE (001) AND REPAIR(1) OR REPLACEMENT(2) OF THE LINE FOR WHICH DESIGN IS BEING DEVELOPED.

4. ESTIMATED COST OF REPAIR(1) OR REPLACEMENT(2) $500,000(1) TO $1,500,000(2)

5. Attached hereto is a survey or sketch showing structure to be repaired or replaced

6. Attached is a picture of structure to be repaired or replaced.

NOTICE: IT IS HEREBY UNDERSTOOD AND AGREED UPON BY THE APPLICANT OR OWNER THAT IF THE STRUCTURE TO BE REPAIRED OR REPLACED, UNDER THIS PERMIT, IS FOUND TO BE A TRESPASS ON RIPARIAN LANDS, I WILL AGREE TO FILE A COMPLETED APPLICATION PER RIPARIAN STATUTES.

(1) Assumes repair of existing line

(2) Assumes complete replacement

Respectfully yours,

DUP0000779

E. I. DU PONT DE NEMOURS & COMPANY
INCORPORATED
CHAMBERS WORKS
DEEPWATER, NEW JERSEY 08023

TELEPHONE
AREA CODE 609-299-5000

October 11, 1977

Mr. William Rogers
Division of Water Resources
P.O. Box 2809
Trenton, New Jersey 08625

Dear Mr. Rogers:

As requested, we are submitting the application forms for a stream encroachment permit for the repair of our ice damaged waste water outfall line. This will supplement the construction permit we submitted to the Office of Riparian Lands Management on August 26, 1977.

We would appreciate prompt approval so that the work can be completed before the remaining portion of the outfall line is further damaged by ice this winter. Could we have your acquiesence to begin the work by November 1, 1977, pending final issuance of the permit?

Very truly yours,

G. H. Cassedy, Sup't.
Environmental Control Div.

JC:gt

attachments

cc James R. Johnson, Sup'v.
Office of Riparian Lands Management
Division of Marine Services
Department of Environmental Protection
P.O. Box 1889
Trenton, N.J. 08625

bcc J. Curry
D. S. Dunagan
G. L. Porter
J. R. McGraw/W.F.Lippincott
R.A.Shinn/TCKuchler/PMHumanick
E. T. Fogg
E. C. Nelson
ECD File ~~2.0482~~ 13.04

2.0421

FORM CP-1

APPLICATION FORM FOR PERMIT

State of New Jersey
Department of Environmental Protection
(See Instructions for Appropriate Address)
Division of Water Resources
P.O. Box 2809
Trenton, New Jersey 08625
PLEASE TYPE OR PRINT

OFFICE USE ONLY

Agency Project No. _____
Date Assigned _____
Application Fee $ _____
Date Supplemental Information Filed _____

1. Applicant E. I. du Pont de Nemours & Co., Inc. Telephone No. (609) 299-5000, Ext. 445

Address G. H. Cassedy, Superintendent, ECD, 1094 Bldg., Chambers Works
Permanent Legal Address

Municipality Deepwater State New Jersey Zip Code 08023

2. Type of Permit Applied For: (Check only one block - Separate application form and fee is required for each permit.)

Attached is a complete stream encroachment permit application.

| | Check One | All Other Permits | Status or Project Number |
|---|---|---|---|
| Sanitary Sewer Facility | | | |
| Stream Encroachment | X | | |
| Riparian | | revocable construction | 77-0356-1 |
| Wetlands | | | |
| Coastal Area Facility (CAFRA) | | | |
| Other State Permits | | Ice Repair | T-25 |

3. Location of Work:

Street Chambers Works

Lot No. 1 Block No. 1

Municipality Pennsville County Salem

Stream or Waterway (if applicable) Delaware River

4. Fee: (Basis for Fee submitted - See Section 5 of Rules and Regulations) Indicate how calculated.

$ 50.00 - fee for minor project

5. Has an application for this site been submitted before? YES NO

6. If yes, (A) Enter previous Agency Project Number. Ice Repair T-25
(B) Previous decision. Approved

7. I have included certifications of all public notifications. YES NO

DUP0000818

8. Engineer's Name William F. Lippincott

Address Chambers Works

Municipality Pennsville County Salem State N.J. Zip Code 08070

9. Brief Description of Proposed Project and the Intended Use: The effluent from the Wastewater Treatment Plant was conducted through an outfall line on a pier into the Delaware River and discharged below the surface. The river end of this line and pier was damaged on February 9, 1977, and was removed under Ice Permit I-25. Design has now been completed to provide a transition section with under water discharge pipes at the river end of the remaining line and pier. The existing dike on the north side of the pier will be extended for future ice protection, all as shown on the attached sketches. The quality of the effluent wastewater meets the requirements of NPDES Permit No. NJ 0005100.

10. I hereby authorize:

Name Same as applicant Telephone No.

Street

Municipality County State Zip Code

to act as my agent or representative in all matters pertaining to my application.

I hereby certify that the information furnished on this application and the attachments are true and have been offered in order to induce the Department to issue the permit which is the subject of same. I am aware that false swearing is a crime in this State and subject to prosecution.

Signature of Applicant

Sworn before me
this day of
, 197 .

Notary Public

I agree to serve as agent for the above-named applicant.

Signature of Agent

## No. 554641

**RECEIPT FOR CERTIFIED MAIL**

NO INSURANCE COVERAGE PROVIDED—NOT FOR INTERNATIONAL MAIL (See Reverse)

SENT TO: U.S. District Engineer
STREET AND NO.: 2nd & Chestnut St.
P.O., STATE AND ZIP CODE: Phila, PA 191

| | |
|---|---|
| POSTAGE | $ 24 |
| CERTIFIED FEE | 60 ¢ |
| SPECIAL DELIVERY | ¢ |
| RESTRICTED DELIVERY | ¢ |
| SHOW TO WHOM AND DATE DELIVERED | 25 ¢ |
| SHOW TO WHOM, DATE, AND ADDRESS OF DELIVERY | ¢ |
| SHOW TO WHOM AND DATE DELIVERED WITH RESTRICTED DELIVERY | ¢ |
| SHOW TO WHOM, DATE AND ADDRESS OF DELIVERY WITH RESTRICTED DELIVERY | ¢ |
| TOTAL POSTAGE AND FEES | $ 1.09 |

CONSULT POSTMASTER FOR FEES — OPTIONAL SERVICES — RETURN RECEIPT SERVICE

POSTMARK OR DATE: DEEPWATER, NJ SEP 6 1977 USPO

PS Form 3800, Apr. 1976

## No. 554632

**RECEIPT FOR CERTIFIED MAIL**

NO INSURANCE COVERAGE PROVIDED—NOT FOR INTERNATIONAL MAIL (See Reverse)

SENT TO: Mr. James Johnson
STREET AND NO.: Dept. E.P. Box 1889
P.O., STATE AND ZIP CODE: Trenton, N.J. 08625

| | |
|---|---|
| POSTAGE | $ 1.23 |
| CERTIFIED FEE | 60 ¢ |
| SPECIAL DELIVERY | ¢ |
| RESTRICTED DELIVERY | ¢ |
| SHOW TO WHOM AND DATE DELIVERED | 25 ¢ |
| SHOW TO WHOM, DATE, AND ADDRESS OF DELIVERY | ¢ |
| SHOW TO WHOM AND DATE DELIVERED WITH RESTRICTED DELIVERY | ¢ |
| SHOW TO WHOM, DATE AND ADDRESS OF DELIVERY WITH RESTRICTED DELIVERY | ¢ |
| TOTAL POSTAGE AND FEES | $ 2.08 |

CONSULT POSTMASTER FOR FEES — OPTIONAL SERVICES — RETURN RECEIPT SERVICE

POSTMARK OR DATE: DEEPWATER, NJ AUG 26 1977 USPO

PS Form 3800, Apr. 1976

## No. 554402

**RECEIPT FOR CERTIFIED MAIL**

NO INSURANCE COVERAGE PROVIDED—NOT FOR INTERNATIONAL MAIL (See Reverse)

SENT TO: Mr. Charles [illegible]
STREET AND NO.: Salem County Planning Board
P.O., STATE AND ZIP CODE: Court House, Salem, N.J. 08079

| | |
|---|---|
| POSTAGE | $ 24 |
| CERTIFIED FEE | 60 ¢ |
| SPECIAL DELIVERY | 25 ¢ |
| RESTRICTED DELIVERY | ¢ |
| SHOW TO WHOM AND DATE DELIVERED | ¢ |
| SHOW TO WHOM, DATE, AND ADDRESS OF DELIVERY | ¢ |
| SHOW TO WHOM AND DATE DELIVERED WITH RESTRICTED DELIVERY | ¢ |
| SHOW TO WHOM, DATE AND ADDRESS OF DELIVERY WITH RESTRICTED DELIVERY | ¢ |
| TOTAL POSTAGE AND FEES | $ 1.09 |

CONSULT POSTMASTER FOR FEES — OPTIONAL SERVICES — RETURN RECEIPT SERVICE

POSTMARK OR DATE: DEEPWATER, NJ AUG 16 1977 USPO

PS Form 3800, Apr. 1976

## No. 554401

**RECEIPT FOR CERTIFIED MAIL**

NO INSURANCE COVERAGE PROVIDED—NOT FOR INTERNATIONAL MAIL (See Reverse)

SENT TO: G. A. McDonough
STREET AND NO.: Municipal Clerk, 70 N. Broadway
P.O., STATE AND ZIP CODE: Pennsville, N.J. 08070

| | |
|---|---|
| POSTAGE | $ 24 |
| CERTIFIED FEE | 60 ¢ |
| SPECIAL DELIVERY | 25 ¢ |
| RESTRICTED DELIVERY | ¢ |
| SHOW TO WHOM AND DATE DELIVERED | ¢ |
| SHOW TO WHOM, DATE, AND ADDRESS OF DELIVERY | ¢ |
| SHOW TO WHOM AND DATE DELIVERED WITH RESTRICTED DELIVERY | ¢ |
| SHOW TO WHOM, DATE AND ADDRESS OF DELIVERY WITH RESTRICTED DELIVERY | ¢ |
| TOTAL POSTAGE AND FEES | $ 1.09 |

CONSULT POSTMASTER FOR FEES — OPTIONAL SERVICES — RETURN RECEIPT SERVICE

POSTMARK OR DATE: AUG 16 1977 USPO

PS Form 3800, Apr. 1976

Application No. _____

STATE OF NEW JERSEY
DEPARTMENT OF ENVIRONMENTAL PROTECTION
DIVISION OF WATER RESOURCES

Trenton, New Jersey 08625

APPLICATION FOR PERMIT FOR STREAM ENCROACHMENT

To the Division of Water Resources

Gentlemen:

In compliance with the provisions of Title 58:1-26 of the Revised Statutes, application is hereby made by E. I. du Pont de Nemours & Company, Inc.
(Applicant's Name & Permanent Legal Address)
Chambers Works, Deepwater, New Jersey 08023

for approval of plans and the issuance of a permit for repairing ice damaged outfall line and extending existing dike to protect from future ice damage.
(Description of Encroachment)

in, along, across or under Delaware River
(Name of Stream or Other Body of Water)
at a point Pennsville Twp., Salem County, about 1 mile north of Delaware Memorial Bridge.
(Give Location by County, Municipality and Nearest Street or Highway)

This application must be accompanied by appropriate drawings, specifications and data which should be prepared by a New Jersey licensed engineer or land surveyor (as provided by law).

I hereby certify that E. I. du Pont de Nemours & Co., Inc.
(Owner of Property)
is the owner of the property upon which the proposed work is to be done. (If work is to be done within an easement, this should be indicated). Please certify whether any part of the entire project (i.e. pipeline, roadway, cable, transmission line, etc.) will be located within property belonging to the State of New Jersey. Yes ___ No X

G. H. Cassedy, Superintendent, Env.Con.Div.
Name of Owner (To Be Typed)

Signature of Owner

Deepwater, New Jersey, 08023
Permanent Legal Address (To Be Typed)

DATE 10/12, 1977

Area Code ( 609) 299-5000 Ext. 445
Telephone Number

(This application, with signed and sealed drawings and data filed in connection therewith will remain on file in the office of the Division of Water Resources).

DUP0000821

STREAM ENCROACHMENT APPLICATION
ENGINEERING DATA SHEET

This sheet must be completed by the Engineer and be attached to the application.

Note: ONE APPLICATION FORM REQUIRED and the following DATA and SIGNED AND SEALED DRAWINGS MUST BE FILED with the application unless specifically waived. Failure to furnish complete information will result in the application being returned and no review will be made.

(a) Key map showing location of proposed work. USGS Quadrangle map required.
See Sheet #1 attached.

(b) Five (5) sets of drawings (maximum sheet size 24" x 36") scale of plans must be appropriate and small scale drawings are discouraged. Minimum scales for cross-sections to be 1"=10' horizontal and 1"=5' vertical. Smaller scales will not be accepted.
See Sheet #2 attached.

(c) Drawings must be folded with title block showing. Maximum size 8½" x 14".

(d) All drawings must have title block and be signed, sealed and dated.

(e) All property lines must be clearly shown and owners indentified.

(f) Plan, profile and cross-sections of stream within the limits of the proposed work and for a minimum of 500 feet both upstream and downstream from the limits of the proposed work.
Ref: U.S. C.&GS Chart #294

1. Stream bottom elevations must be shown on the stream profile.
See Sheet #2 attached.

2. Cross-sections of the stream must show invert, bottom of bank and top of bank elevations. Cross-sections must be submitted at 100 foot stations and extend so as to include the entire normal channel and primary flood plain but no less than 50 feet beyond top of bank on each side of stream and be on cross-section paper to a minimum scale of 1"=10' horizontal and 1"=5' vertical. Where grade changes or fill is involved, proposed sections should be super-imposed on existing sections. Small scale drawings are unacceptable.

(g) Contour map of area along stream is required and where fill is involved, proposed and existing contours and grades must be shown. Where a subdivision is involved the drawings must also show the lot layout and indicate finish grade at all structures, basement and first floor elevation and minimum opening elevations. Lowest floor including basement must be at least one (1) foot above 100 year flood level and be noted as "lowest floor or basement" on drawings.
Not Applicable

(h) All fill and other earth work must be stabilized according to "Standards for Soil Erosion and Sediment Control in New Jersey" and details must be shown on drawings together with a schedule for construction and removal.

Calculations must also be supplied. A letter from the local Soil Conservation Service office indicating their acceptance of proposed soil erosion methods may be substituted. See Item (e) under Pipelines/ Cables.

Not Applicable.

(i) Encroachment lines must be described by metes and bounds, labeled and described on the drawings.

See Sheet #3 attached.

(j) Where riprap is to be used, a detail drawing must indicate specifications of stone. Riprap on slopes must have a 3' x 3' toe wall and 3' x 3' cutoff walls on both upstream and downstream ends. If channel bottom is to be riprapped 3' x 3' cutoff walls are required on both upstream and downstream ends. Ungrouted riprap must be on a slope of 2 horizontal to 1 vertical or flatter.

See Sheet #2 attached.

(k) Profile of road where a new or replacement bridge or culvert is involved.

Not Applicable.

1. Existing span=____ Rise=____ Underclearance elevation=____

2. Replacement =____ Rise=____ Underclearance elevation=____

(l) Pertinant details of all proposed work. (Note that top of footings for bridges and walls must be minimum of 3 feet below streambed except where stub abutments are used with appropriate slope protection).

(m) Walls - Stability analysis must be submitted.

Not Applicable.

(n) ELEVATIONS based on the New Jersey Geodetic Control Survey datum. Use of any other datum must be supported by an explanatory statement and an equation to N.J.G.C.S. datum.

(o) Drainage area to a Point in Question= Main Stream of Delaware River.

(p) Cost of that portion of project that constitutes the encroachment $275,000.

(q) Hydrology - Attached form must be completed. Not Applicable.

(r) Dimensions of waterway opening of nearest bridges upstream and downstream of the proposed project. Span should be measured normal to stream flow and should not be skew distance.

Not Applicable.

1. Upstream Distance=____ Span=____ Rise=____ Underclearance Ele.=____

2. Downstream Distance=___ Span=____ Rise=____ Underclearance Ele.=____

(s) Photographs looking upstream and downstream from proposed project.

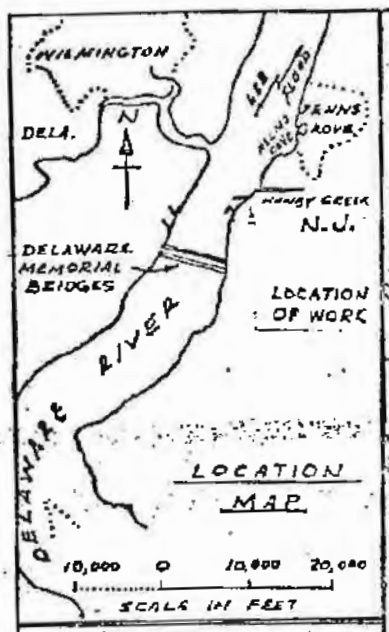
See Sheet #4 Attached.

(t) Is structure new or replacement of an existing encroachment?

Replacement - repair of ice damaged outfall line.

(u) Channel relocation and major fill projects require that two (2) copies of an Environmental Impact Statement be submitted with application.

Not Applicable.

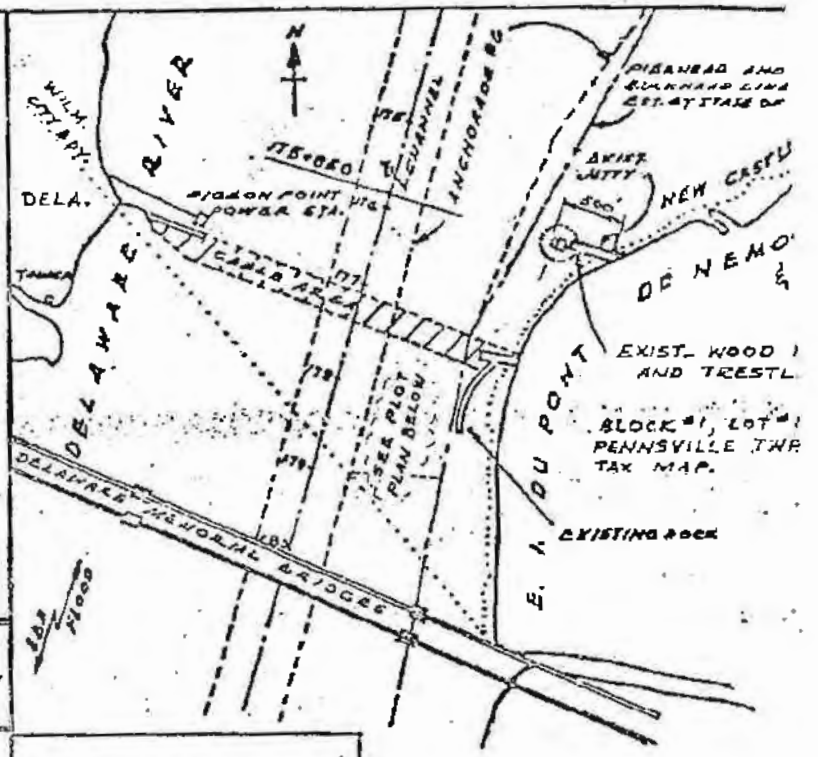



NOTE

HIGHEST TIDE OF RECORD = +11.7
DATUM = CHAMBERS WORKS

NOTE

ELEVATIONS SHOWN ARE BASED ON CHAMBERS DATUM. TO CONVERT TO N.J. GEODETIC CONTROL SURVEY DATUM, SUBTRACT 3.26 FT. TO CONVERT TO CORPS OF ENGINEERS DATUM SUBTRACT 0.36 FT.



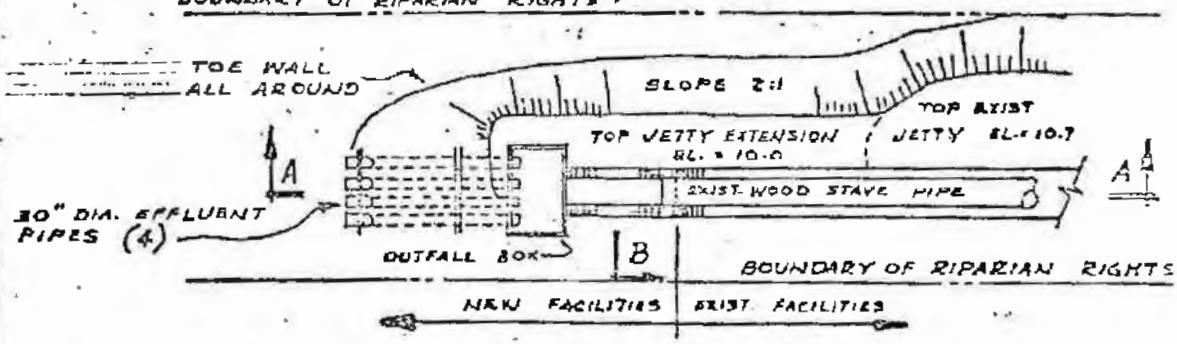

PLAN

1000 0 1000 2000
SCALE IN FEET

"TRACED FROM GEOLOGICAL SURVEY WILMINGTON AND VICINITY, N.J.-DEL."

NOTE: SEE SHT. # 2 FOR SECTIONS A-A & B-B

BOUNDARY OF RIPARIAN RIGHTS




PLOT PLAN

50 0 50 100
SCALE IN FEET

I HEREBY CERTIFY TO THE ACCURACY OF THE DATA SHOWN ON THIS DRAWING, WHICH WAS MADE UNDER MY DIRECTION & SUPERVISION.

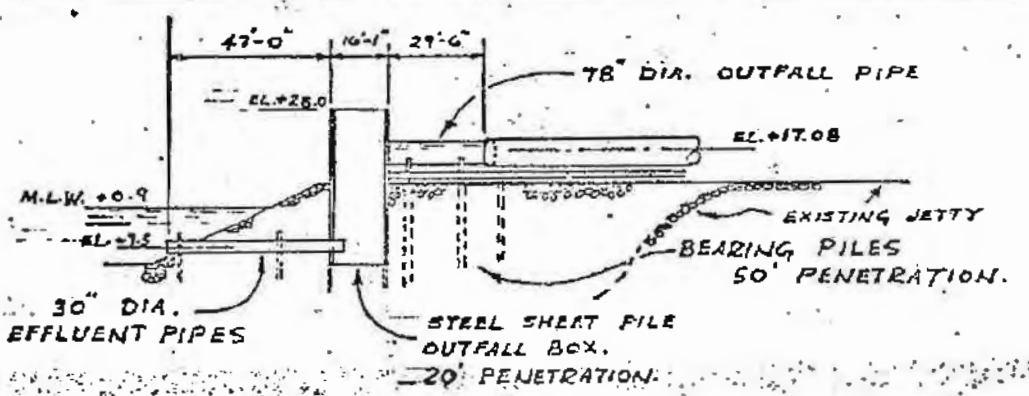
William F Lippincott 10/11/77

WM. F. LIPPINCOTT, P.E. N.J. LIC. # 11228

# WASTE WATER FLUME & PIER IN DELAWARE RIVER AT CHAMBERS WORKS DEEPWATER, N.J.

APPLICATION BY
E. I. DUPONT DE NEMOURS & CO.
JULY 1977 SHEET 1 OF 2

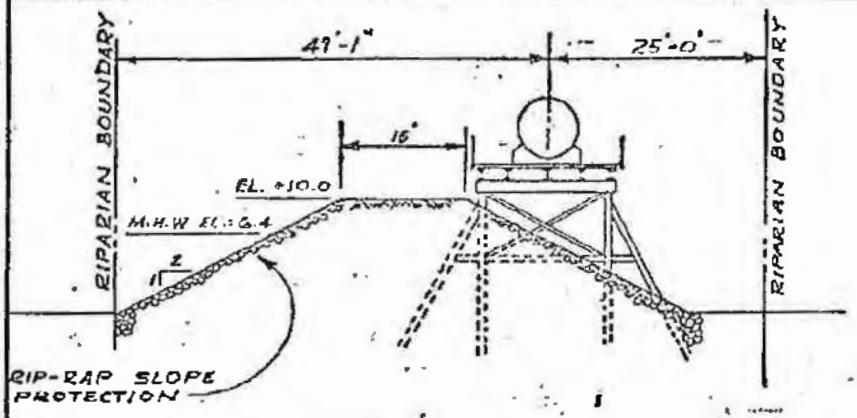
DUP0000824




SECTION A-A

50 0 50 100

SCALE IN FEET




SECTION B-B

20 10 0 20 60

SCALE IN FEET

* NOTE *

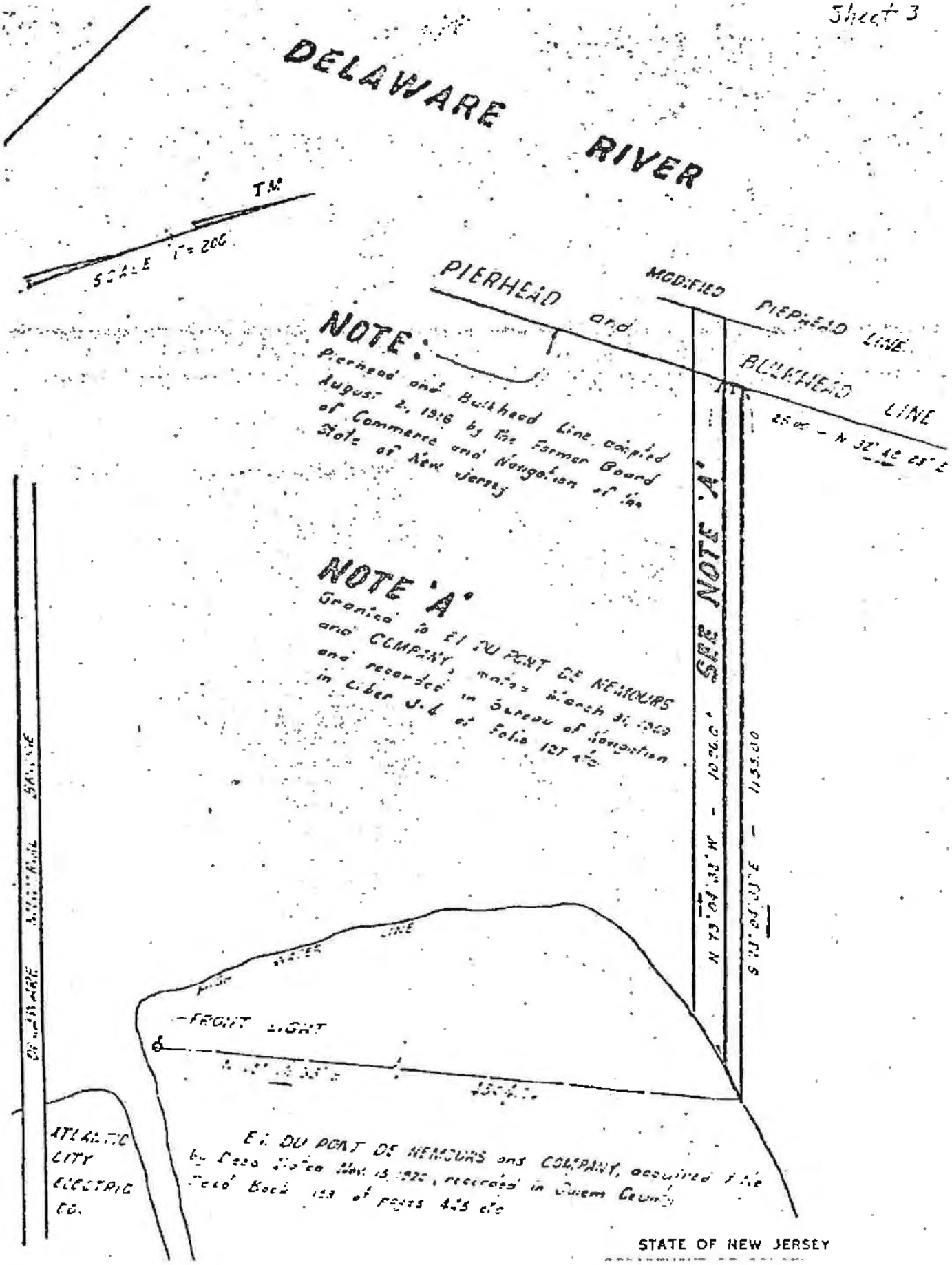
ELEVATIONS SHOWN ARE BA
ON CHAMBERS WORKS DATU
TO CONVERT TO N.J. GEODE
CONTROL SURVEY DATUM,
SUBTRACT 3.24 FT.

TO CONVERT TO CORPS OF ENGINEERS DATUM SUBTRACT 0.36 FT.

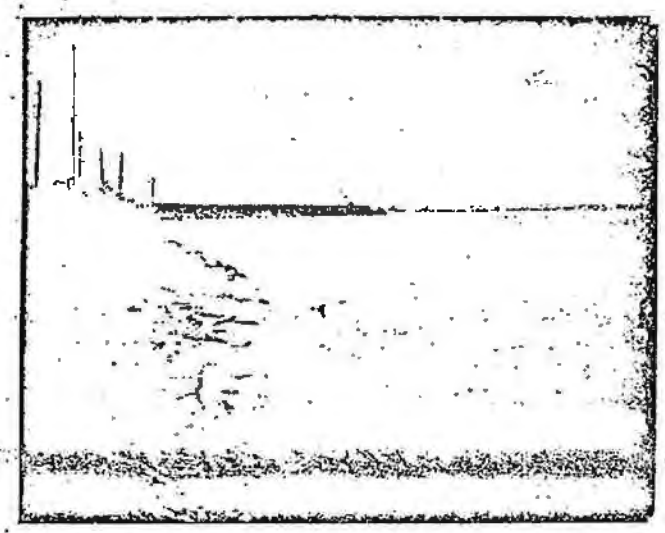
WASTE WATER
FLUME & PIER
IN DELAWARE RIVER
AT CHAMBERS WORKS
DEEPWATER, N.J.

APPLICATION BY
E. I. DuPONT DE NEMOURS & C
JULY 1977 SHEET 2 OF 2

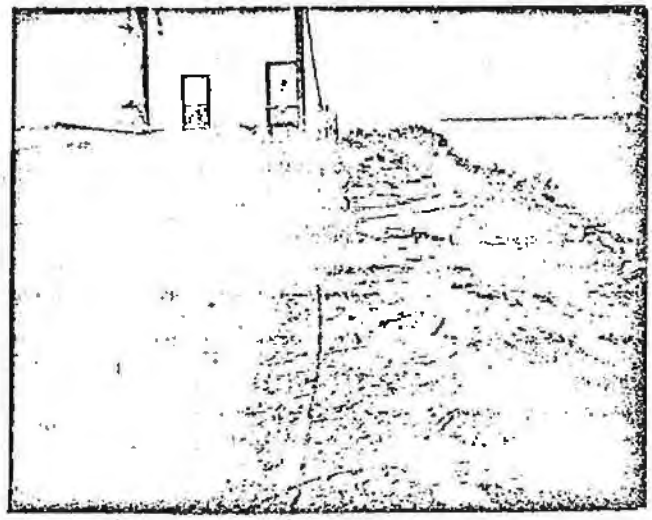
DUP0000825


DELAWARE RIVER
T.M.
SCALE 1" = 200'
PIERHEAD and BULKHEAD LINE
MODIFIED PIERHEAD LINE
NOTE:
Pierhead and Bulkhead Line adopted August 2, 1916 by the former Board of Commerce and Navigation of the State of New Jersey
NOTE 'A'
Granted to E. I. DU PONT DE NEMOURS and COMPANY, under date March 31, 1920 and recorded in Bureau of Navigation in Liber J-4 at Folio 127 &c
SEE NOTE 'A'
N 73° 04' 32" W - 1056.0'
S 13° 04' 00" E - 1155.10
MEAN HIGH WATER LINE
FRONT LIGHT
ATLANTIC CITY ELECTRIC CO.
E. I. DU PONT DE NEMOURS and COMPANY, acquired title by Deed dated Nov. 15, 1920, recorded in Camden County Deed Book 183 at Page 425 &c
STATE OF NEW JERSEY

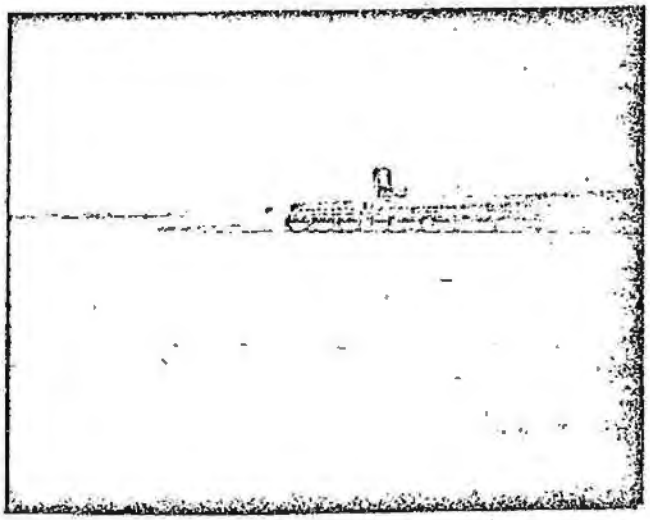
PHOTOGRAPHS OF OUTFALL LIN



Chambers Works outfall lin looking down river from New Jersey side toward Delaware Memorial Bridge



Upstream, north, side of outfall line showing 500' long dike to protect from ice damage



Downstream, south side of outfall line

E. I. DU PONT DE NEMOURS & COMPANY
INCORPORATED
No. 241-02218

ORGANIC CHEMICALS DEPT., CHAMBERS WORKS, DEEPWATER, N.J. 08023
ALWAYS REFER TO OUR CHECK NUMBER IN YOUR CORRESPONDENCE

| OUR NO. | VENDOR'S NO. | VENDOR'S DATE MO. | DAY | YR. | AMOUNT | DISCOUNT | FREIGHT | NET AMOUNT |
|---|---|---|---|---|---|---|---|---|
| | | 10 | 12 | 77 | 50 00 | | | 50 00 |

Fee for stream encroachment permit to repair ice damaged Outfall Line
Prob. No. 7126
Proj. No. M-4971-2
Outfall Line Building 1110

DU PONT

TR 1-30

E.I.du Pont de Nemours & Company
INCORPORATED

No. 241-02218

8-26
430

DEEPWATER, N.J. October 12, 1977

Pay $**50.NO**

To the order of

**TREASURER STATE OF NEW JERSEY**
Environmental Services Fund
Division of Water Resources
Department of Environmental Protection
P.O. Box 2809
Trenton, New Jersey - 08625

TO
MELLON BANK N.A.
PITTSBURGH, PENNSYLVANIA

NOT GOOD FOR MORE THAN $3000.00
E.I. DU PONT DE NEMOURS & COMPANY—
CASHIER ACCOUNT NO. 241

BETTER THINGS FOR BETTER LIVING . . . THROUGH CHEMISTRY

⑈241022181⑈ ⑆043000261⑆ 127⑈8098⑈

DUP0000828

E. I. DU PONT DE NEMOURS & COMPANY
INCORPORATED

DU PONT S.V. NO.

RECEIPTED EXPENSE BILL MUST ACCOMPANY ALL CHARGES FOR TRANSPORTATION

ORCHEM 50 - Chambers Works

DU PONT ORDER NO.

SHIPPED VIA

SELLER'S INVOICE NO. DATE October 10, 1977

SHIPPING WEIGHT

BOUGHT OF Treasurer State of New Jersey
Environmental Services Fund
Division of Water Resources

F. O. B.

STREET AND NO. Department of Environmental Protectic
P.O. Box 2809

TERMS

CITY AND STATE Trenton, New Jersey 08625

_____ PER CENT _____ DAYS _____ DAYS NET

| QUANTITY | DESCRIPTION | AMOUNT | |
|---|---|---|---|
| | Fee for stream encroachment permit to repair ice damaged outfall line | 50 | 00 |
| | Problem No. 7126 | | |
| | Project No. M-4971-2 | | |
| | Outfall Line Building #1110 | | |
| | | | |
| | | | |
| | | | |
| | | | |

CHARGE
8003-01-4605

MATERIAL OR SERVICES REC'D BY

CHECKED BY

APPROVED BY

PAID

DATE 10-12-77

CHECK NO. 02-218

AMOUNT OF BILL 50 00

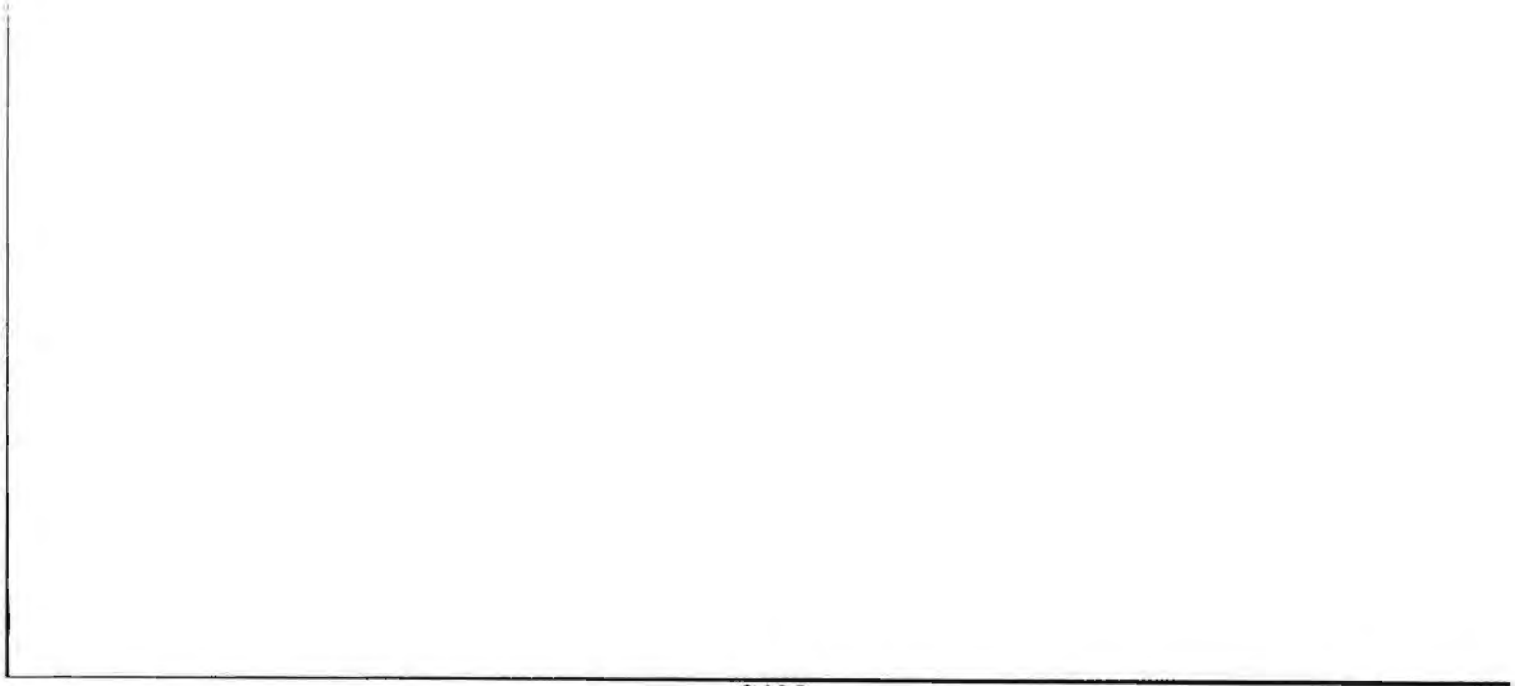
DISCOUNT

NET

RECEIVED OF
E. I. DU PONT DE NEMOURS & Co. _____ DOLLAR

DATE _____ SIGNATURE OF PAYEE _____

DUP0000829



Rev. 6/1/76

File - 2.0421
13.04
K - NFL

State of New Jersey

DEPARTMENT OF ENVIRONMENTAL PROTECTION

DIVISION OF WATER RESOURCES

POST OFFICE BOX 2809
TRENTON, NEW JERSEY 08625

STREAM ENCROACHMENT APPLICATION NO. 7949

STREAM ENCROACHMENT YEAR NO. 77-585

An application has been received by this office for approval of a project along a stream as follows:

APPLICANT: E. I. du Pont de Nemours & Co., Inc.

ADDRESS: 1094 Bldg., Chambers Works, Deepwater, N. J. 08023

PROJECT: water pumps and pier

STREAM: Delaware River

LOCATION: Along stream on Chambers Works

MUNICIPALITY: Pennsville

COUNTY: Salem

The application will be reviewed by the engineering staff as soon as the workload permits. All inquiries should be addressed to Bill Weaver, the engineer assigned to this project. Reference should always be made to Application No. 7949 and year No. 77-585 so as to facilitate locating the file and obtaining a proper answer.

Very truly yours,

William F. Rogers

William F. Rogers
Acting Supervising Engineer
Stream Encroachment Section
Bureau of Flood Plain Management
Telephone (609) 292-2402

WFR/JRM:mc

DATE 10-25-77

DUP0000816

cc: J. R. McGraw / C. E. Ow
~~R. A. Bogajian~~ / ~~L. A. Man~~
~~A. A. Pizano~~ / ~~G. Ulcassady~~
EC File
6201000
~~Original in 6281500~~

STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES
& ENVIRONMENTAL CONTROL
DIVISION OF ENVIRONMENTAL CONTROL
WETLANDS SECTION
BLUE HEN MALL
ROOM 203
DOVER, DELAWARE 19901

TELEPHONE (302) 736 - 4691

March 18, 1982

LETTER OF AUTHORIZATION

Lewis A. Caccese, P.E.
Vice President
S. T. Hudson Engineers, Inc.
Widener Bldg.
1339 Chestnut St.
Phila., PA 19107

RE: Repair and replace existing 36-pile cluster with a filled steel sheet structure (20-foot diameter), E. I. du Pont DeNemours Co., Inc., Deepwater, New Jersey

Dear Mr. Caccese:

Please be advised that the Department of Natural Resources and Environmental Control hereby authorizes the reconstruction of the above-referenced subaqueous lands structure to the extent that the dimensions or intended use are not changed. Changes in either the dimensions or use shall require a permit pursuant to 7 Del. C., Chapter 61, Section 2.01 of Delaware's Regulations Governing the Use of Water Resources and Public Subaqueous Lands.

You may still need a permit from the U.S. Army Corps of Engineers. For information, please contact Mr. Frank Cianfrani, Permit Branch, Philadelphia District.

If you have any questions, please feel free to contact this office.

Sincerely,

William F. Moyer

William F. Moyer
Manager

WFM:CNM:jb

cc: Mr. Frank Cianfrani
Mr. Curry
Mr. Charles McNally

DUP0001334

STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES
& ENVIRONMENTAL CONTROL
DIVISION OF ENVIRONMENTAL CONTROL
WETLANDS SECTION
BLUE HEN MALL
ROOM 203
DOVER, DELAWARE 19901

TELEPHONE: (302) 736-4691

October 15, 1982

E.I. DuPont de Nemours & Co.
c/o J. Curry Environmental Control Div.
Chambers Works
Deepwater, New Jersey 08023

RE: Maintenance dredging of
85,000 square yards of
material from Delaware River
at Deepwater, New Jersey

Dear Sirs:

Your October 12, 1982 request to conduct the above-referenced maintenance dredging of the material from the Delaware River has been reviewed by the Department of Natural Resources and Environmental Control. The Department hereby authorizes the maintenance dredging in accordance with the plans submitted subject to the following conditions:

1. Sediment and erosion controls shall be implemented so as not to violate the State of Delaware Department of Natural Resources and Environmental Control, Water Quality Standards for Streams dated March 25, 1979.

2. No dredge spoils shall be placed on tidal wetlands at any time.

3. This Section shall be notified 24 hours prior to any dredging.

If you have any further questions, please feel free to call this office.

Sincerely,

William F. Moyer

William F. Moyer
Manager

WFM:CNM:dml
cc: Charles Campbell
Charles McNally

DUP0001021

STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES
& ENVIRONMENTAL CONTROL
DIVISION OF WATER RESOURCES
89 KINGS HIGHWAY, P.O. BOX 1401
DOVER, DELAWARE 19903

SURFACE WATER MANAGEMENT SECTION

TELEPHONE (302) 736-5731

January 5, 1987

Mr. William N. Malin, Engineer
S. T. Hudson Engineers, Inc.
Widener Building
1 39 Chestnut Street
Philadelphia, Pennsylvania 19107

RE: Repair and Replace timber docking and stringers on approachway of [redacted] Chambers Works, Delaware River, Deepwater, New Jersey

Dear Mr. Malin:

Please be advised that the Department of Natural Resources and Environmental Control hereby authorizes the reconstruction of the above-referenced subaqueous lands structure to the extent that the dimensions or intended use are not changed. Changes in either the dimensions or use shall require a permit pursuant to 7 Del. C., Chapter 72, and Section 2.01 of Delaware's Regulations Governing the Use of Water Resources and Public Subaqueous Lands.

1. Sediment and erosion controls shall be implemented so as not to violate the State of Delaware Department of Natural Resources and Environmental Control, Water Quality Standards for Streams dated December 23, 1985.

2. This authorization shall be valid for a period of one (1) year beyond this letter date.

3. A copy of this Repair and Replace must be available on-site during all phases of construction activity.

If you have any questions regarding this authorization, please feel free to contact this office.

Sincerely,

William F. Moyer

William F. Moyer
Supervisor
Wetlands and Underwater Lands Branch
(302) 736-4691

cc: Frank Cianfrani
Charles McNally

STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES
& ENVIRONMENTAL CONTROL
DIVISION OF WATER RESOURCES
89 KINGS HIGHWAY, P.O. BOX 1401
DOVER, DELAWARE 19903

SURFACE WATER MANAGEMENT
SECTION

TELEPHONE (302) 736-5731

MD- 0002/88

February 9, 1988

Reinhold Betschel
Area Consultant/Environmental Affairs
E. I. du Pont de Nemours & Company, Inc.
Chambers Works
Deepwater, NJ 08023

RE: Maintenance dredging of 80,000 cubic yards of material from the Delaware River at the Chambers Works, Deepwater, New Jersey

Dear Mr. Betschel,

Your January 21, 1988 request to conduct the above-referenced maintenance dredging of the material from the Delaware River has been reviewed by the Department of Natural Resources and Environmental Control. The Department hereby authorizes the maintenance dredging in accordance with the plans submitted subject to the following conditions:

1. Sediment and erosion controls shall be implemented so as not to violate the State of Delaware Department of Natural Resources and Environmental Control, Water Quality Standards for Streams dated December 23, 1985.

2. No dredge spoils shall be placed on tidal wetlands at any time.

3. This Section shall be notified 24 hours prior to any dredging.

Be advised that this letter of Authorization for maintenance dredging of a previously dredged site is a one time authorization for the above work only. Any subsequent maintenance dredging at this site will require a new letter of Authorization.

Please call me if you have any questions or if I can be of any further help.

Sincerely,

William F. Moyer

William F. Moyer
Supervisor
Wetlands and Underwater
Lands Branch
Telephone (302) 736-4691

WFM:gg

cc: Dick Hassel
Charles McNally

SKETCH 1

LOCATION PLAN

TAKEN FROM C.&G.S. - 294

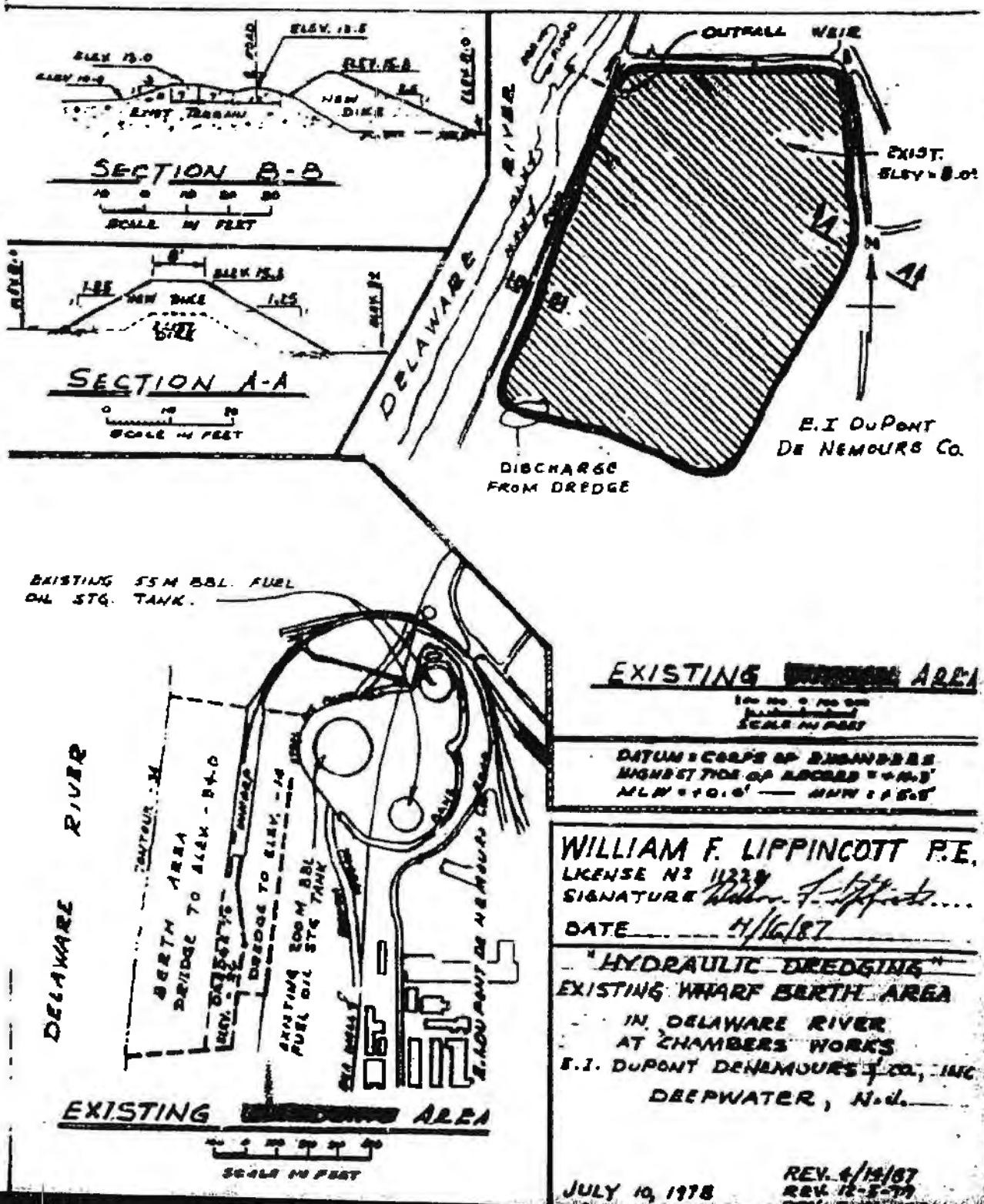
"HYDRAULIC DREDGING"
EXISTING WHARF BERTH AREA
IN DELAWARE RIVER
AT CHAMBERS WORKS
E.I. DUPONT DENEMOURS & CO., INC.
DEEPWATER, N.J.

DEC. 5, 1979 REV. 7-16-82

WILLIAM F. LIPPINCOTT P.E.
LICENSE Nº 11228
SIGNATURE William F. Lippincott
DATE 4/16/87

DE19395

# SKETCH 2


SECTION B-B
SCALE IN FEET
SECTION A-A
SCALE IN FEET
DELAWARE RIVER
OUTFALL WEIR
EXIST. ELEV. = 8.0±
E.I DUPONT DE NEMOURS CO.
DISCHARGE FROM DREDGE
EXISTING 55M BBL. FUEL OIL STG. TANK.
DELAWARE RIVER
BERTH AREA DREDGE TO ELEV. -34.0
DREDGE TO ELEV. -34
EXISTING 200M BBL FUEL OIL STG TANK
EXISTING AREA
SCALE IN FEET
EXISTING AREA
SCALE IN FEET
DATUM = CORPS OF ENGINEERS
MLW = +0.1' — MHW = +5.5'
WILLIAM F. LIPPINCOTT P.E.
LICENSE Nº 11228
SIGNATURE
DATE 4/16/87
HYDRAULIC DREDGING
EXISTING WHARF BERTH AREA
IN DELAWARE RIVER
AT CHAMBERS WORKS
E.I. DUPONT DENEMOURS & CO., INC
DEEPWATER, N.J.
JULY 10, 1978
REV. 4/14/87
REV. 12-5-79

STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES &
ENVIRONMENTAL CONTROL
DIVISION OF WATER RESOURCES
89 KINGS HIGHWAY
DOVER, DELAWARE 19901

WETLANDS & SUBAQUEOUS
LAND SECTION

TELEPHONE (302) 739-4691
FACSIMILE (302) 739-6304

Subaqueous Lands Permit: SP-071/01
Date of Issuance: 5-4-01
Construction Expiration Date: 5-4-04
Amended Date:

**SUBAQUEOUS LANDS PERMIT**
**GRANTED TO DUPONT CHAMBERS WORKS**
**TO DREDGE APPROXIMATELY 4,650 CUBIC YARDS OF MATERIAL AND TO BACKFILL TO EXISTING ELEVATIONS IN A 0.71 ACRE SITE IN THE DELAWARE RIVER; AND TO INSTALL A TEMPORARY SHEET PILE WALL SURROUNDING THE EXCAVATION IN THE DELAWARE RIVER, NEAR DEEPWATER, NEW JERSEY, IN NEW CASTLE COUNTY, DELAWARE**

Mr. Norman Merkosky
DuPont Chambers Works
Route 130
Deepwater, N.J. 08023

Pursuant to the provisions of 7 Del. C. 7203 and the Department's Regulations Governing the Use of Subaqueous Lands, permission is hereby granted on this 4th day of May A.D. 2001, to construct the above-referenced project in accordance with the approved plan for this permit (1 Sheet), as approved on May 2, 2001, and titled "Final Grading Plan Sheet 1 of 2, DuPont Chambers Works Solid Waste Management, Units 5 & 43," Drawing No. 5, dated October 2000; and application dated February 8, 2001 and received by this Division on February 14, 2001.

WHEREAS, pursuant to the provisions of 7 Del. C. 7203, the Secretary of the Department of Natural Resources and Environmental Control through his duly authorized representative finds that it is not contrary to the public interest if this project is approved subject to the terms and conditions herein set forth.

This permit is issued subject to the following conditions:

## SPECIAL CONDITIONS

1. The conditions contained herein shall be incorporated into any and all construction contracts and other ancillary documents associated with earth disturbance and any other activities directly or indirectly associated with construction which may impact subaqueous lands associated with this project. The permittee and contractor are responsible to ensure that the workers executing the activities authorized by this Permit have full knowledge of, and abide by, the terms and conditions of this Permit.

2. The construction schedule for this project shall be arranged so as to minimize the impact on anadromous fish passage. Specifically, the authorized activities shall not be undertaken between March 15 and June 1 annually.

3. Construction shall be conducted so as not to violate the State of Delaware Department of Natural Resources and Environmental Control, "Surface Water Quality Standards," as amended August 11, 1999.

4. The work authorized by this permit is part of a larger contaminated materials clean-up for the site, most of which is being undertaken in the State of New Jersey. The work in the State of Delaware subaqueous lands is authorized for the explicit purpose of removing contaminated material as stated in the permit application.

5. In order to contain the dredged material and to minimize the turbidity from the excavation and fill operation, a steel sheet pile wall shall be constructed in the Delaware River around the excavation site prior to the start of the excavation activities. The sheet pile wall shall be removed after the restored riverbed is stabilized.

6. Turbidity shall be monitored in the Delaware River during excavation and restoration. Details of the proposed turbidity monitoring program shall be submitted to this office for approval within 10 days of the issuance of this Permit.

7. All dredged materials shall be de-watered and then disposed on-site at the A-Basin Vault, a NJDEP approved disposal facility. The disposal area shall be contained in a manner that prevents the release of the contaminants into the environment.

8. Water shall be collected during de-watering of the contaminants and shall be treated at the DuPont Chambers Works Waste Water Treatment Plant.

9. The dredged area shall be returned to pre-dredging conditions, including streambed elevations and substrate. A post-dredging bathymetry survey of the disturbed area shall be submitted within 90 days of completion of the restoration.

10. All dredging and filling is to be conducted in a manner consistent with sound conservation and water pollution control practices.

11. There shall be no movement of equipment within state regulated subaqueous lands not specifically authorized by this permit.

12. All construction debris and refuse incidental to this activity shall be appropriately contained at all times to prevent its entry into surface waters or wetlands.

13. All fill material associated with the proposed project and included in the above-referenced plans shall be clean and free from oils, grease, asphalt and other contaminants.

14. A copy of this permit must be available on-site during all phases of construction activity.

**GENERAL CONDITIONS**

1. The project is to be undertaken in accordance with the plans submitted and attached hereto. Any activities not specifically authorized herein may require a supplemental approval from this office prior to the initiation of construction. A determination on the need for a supplemental approval will be made by this office pursuant to the permittee submitting written notification and revised plans indicating project changes to this office.

2. Representatives of the Department of Natural Resources and Environmental Control may inspect such work during any phase of the construction and may collect any samples or conduct any tests that are deemed necessary.

3. This permit does not cover the structural stability of the project units.

4. Any actions, operations or installations which are considered by the Department to be contrary to the best interests of the public shall constitute reason for the discontinuance and/or removal of said action, operation or installation.

5. The issuance of this permit does not imply approval of any other part, phase, or portion of any overall project the permittee may be contemplating

6. This permit is subject to the terms and conditions contained in any easement, license or lease that may have been granted by the State or any political subdivision, board, commission or agency of the State in the vicinity of the project.

7. This permit and authorization are granted for the purposes as stated herein. Any other use without prior approval shall constitute reason for this permit being revoked.

8. This permit shall expire if the project has not been completed within three (3) years from the date of issuance.

9. If the permittee considers three (3) years insufficient for completion of the project, the permittee may submit a project time schedule for consideration by the Department. If the time schedule is approved it shall be attached hereto and made a part hereof.

10. The permittee shall notify the Department of Natural Resources and Environmental Control within ten (10) days of the date work will be commenced.

11. The permittee shall at all times comply with all applicable laws and regulations of the Department of Natural Resources and Environmental Control.

12. This Permit is personal and may not be transferred without the prior written consent of the Department. Prior to the transfer of the adjacent upland property, the permittee shall obtain the written consent of the Department to transfer this Permit to the new upland property owner. Failure to obtain such written consent may result in the revocation of this Permit and the removal of all structures authorized by this Permit at the expense of the permittee.

13. The issuance of this permit does not constitute approval for any of the activities as may be required by any other local, state or federal governmental agency.

14. This permit may be revoked upon violation of any of the above conditions.

IN WITNESS WHEREOF, I, Laura M. Herr, the duly authorized representative of Nicholas A. DiPasquale, Secretary, Department of Natural Resources and Environmental Control, have hereunto set my hand and seal this 4th day of May, 2001.

By Laura M. Herr, the duly authorized representative of the Secretary of the Department of Natural Resources and Environmental Control

IN WITNESS WHEREOF, I, William F. Moyer, the duly authorized representative of Nicholas A. DiPasquale, Secretary, Department of Natural Resources and Environmental Control, have hereunto set my hand and seal this 4th day of May, 2001.

By William F. Moyer, the duly authorized representative of the Secretary of the

**DEPARTMENT OF NATURAL RESOURCES**
**AND**
**ENVIRONMENTAL CONTROL**

# NOTICE OF AUTHORIZATION

**Permit/Lease No. and Description: SP-071/01 To dredge approximately 4,650 cubic yards of material a backfill to existing elevations in a 0.71 acre site in the Delaware River; and to install a temporary sheet wall surrounding the excavation in the Delaware River, near Deepwater, New Jersey, in New Castle Co Delaware**

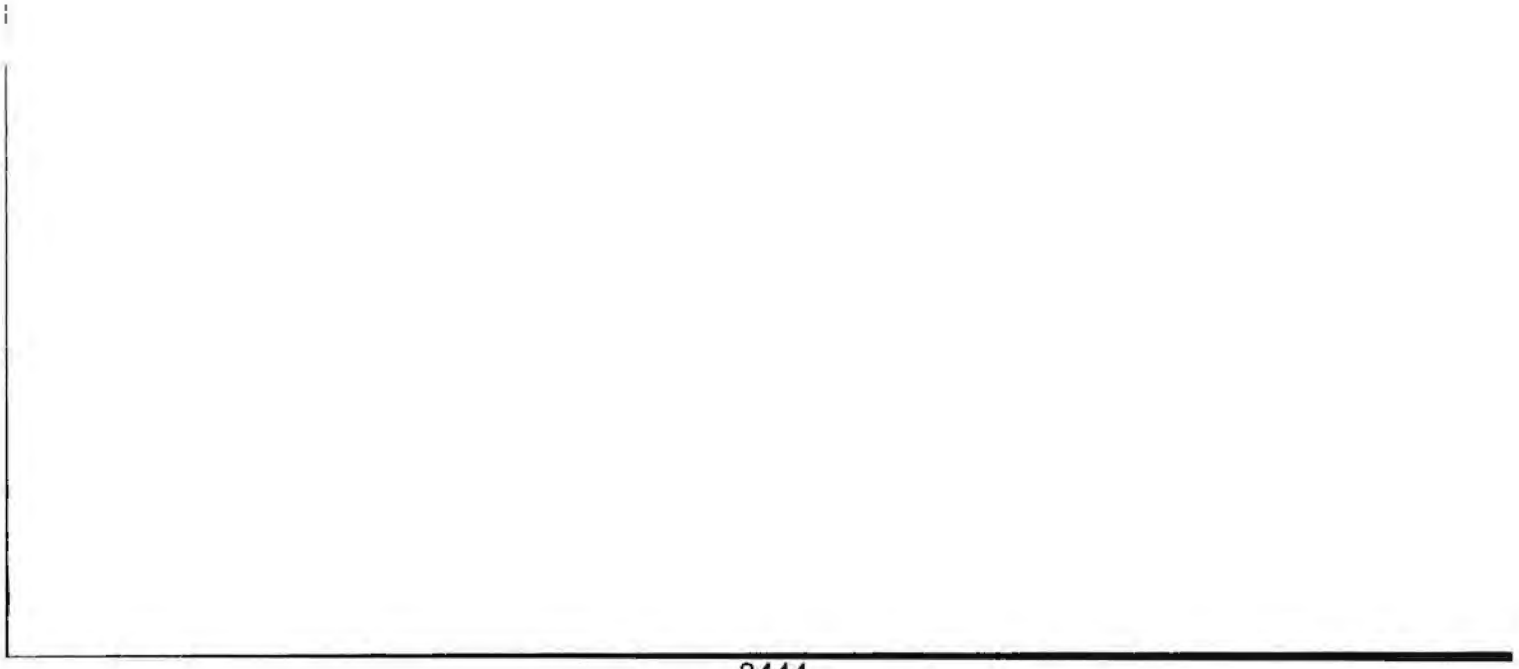
**Issued to:** DuPont Chambers Works
**Location of Work:** Same as above

**Date of Expiration:** May 4, 2004

**DISPLAY THIS CERTIFICATE IN A HIGHLY VISIBLE LOCATION ON THE JOB SITE.**

William F. Moyer

**William F. Moyer, Section Manager**
**Wetlands & Subaqueous Lands Secti**



# AGENDA

## Technical Briefing Meeting

## Treatment and Disposal of Neutralized VX at DuPont Chambers Works

Location: Delaware DNREC Office, 391 Lukens Drive, New Castle, DE
Date: March 10, 2004
Time: 9:30 a.m. – 1:00 p.m.

**Purpose:** To discuss the results of the treatability studies, toxicity assessment, and fate and effects evaluation for the Delaware River

**Expected Attendance:** Technical staff from EPA, DRBC, NJDEP, DE DNREC, the U.S. Army, and the DuPont Co.

| | |
|---|---|
| • Welcome and Introductions | DE DNREC |
| • Overview | U.S. Army |
| • Results of Treatability Studies | DuPont |
| • Toxicity of Treated Wastewater | DuPont |
| • Fate and Transport in the Delaware River | DuPont |
| • Questions and Answers | All |
| • Follow-up Actions | |
| • Adjourn | |

DRAFT

3/10/04

Technical Meeting

| Name | Affiliation | Phone | EMAIL |
|---|---|---|---|
| Kevin Donnelly | DNREC | 739-4860 | Kevin.Donnelly@state.de.us |
| Rick Greene | DNREC | (302) 739-4590 | richard.greene@state.de.us |
| Thomas Fiklin | ORBC | (609) 883-9500 x215 | thomas.fiklin@drbc.state.nj.us |
| Bob Tudor | DRBC | 883-9500 x260 | robert.tudor@drbc.state.nj.us |
| Bill Muszynski | DRBC | 609 883 9500 x221 | William.Muszynski@DRBC.state.nj.us |
| Sam Wolfe | NJDEP | 609 292-2795 | SAMUEL.WOLFE@DEP.STATE.NJ.US |
| Susan Rosenwinkel | NJDEP | 609-292-4860 | susan.rosenwinkel@dep.state.nj.us |
| Pilar Patterson | NJDEP | 609-292-4860 | Pilar.Patterson@DEP.state.NJ.US |
| Philip Carmand | DE Gov's Office | 302 744-4101 | Philip.Canaud@state.de.us |
| Andrea Kreiner | DE Gov's Office | 302 744-4101 | andrea.kreiner@state.de.us |
| Ellan Wharton | DuPont | 202-728-3601 | ellan.k.wharton@usa.dupont.com |
| Bob Reich | DuPont | 302-774-8022 | robert.a.reich@usa.dupont.com |
| Jim Pesek | DuPont | 302-992-3774 | jim.e.pesek@usa.dupont.com |
| Mike McCabe | DuPont Consultant | (h) 388-9625 | wmccabe@earthlink.net |
| Maria Angelo | DUPONT | (856) 540-2012 | maria.s.angelo@usa.dupont.com |
| Rick Vickery | DuPont | (856)540-3285 | richard.s.vickery-1@usa.dupont.com |
| Robert Hoke | DuPont | 302-451-4566 | robert.a.hoke@usa.dupont.com |
| Bernie Reilly | DuPont | 302.774.5445 | bernard.j.reilly@usa.dupont.com |
| Scott Rowden | Systems Contractor Newport Chemical Agent Disposal Facility | 765-245-5811 | scott.rowden@Parsons.com |
| PAM MEITNER | DUPONT | 302-774-8720 | PAMELA.R.MEITNER@DUPONT.COM |
| Gary Jepson | DuPont | 302-451-0010 | gary.w.jepson-1@usa.dupont.com |
| Jesse Barber | U.S. Army, PMATA | 410-436-1438 | jesse.barber@us.army.mil |
| KURT REUTHER | DNREC | 302-739-5071 | KURT.REUTHER@STATE.DE.US |
| Shawn M. Garvin | EPA, Region III | 215-814-2998 | garvin.shawn@epa.gov |
| Richard Ward | Army (PMATA) | 410 436 6597 | dick.ward@us.army.mil |
| William G. Kavanagh | ARMY (SAIC) | 443-402-9065 | william.g.kavanagh@SAIC.com |
| Ciara O'Connell | DuPont Consultant | 302-984-0681 | cmoconnell@comcast.net |

DE25975

STATE OF DELAWARE
Office of the Governor
Carvel State Office Bldg.
820 N. French Street, 12th Fl.
Wilmington, DE 19801
(302) 744-4101

Ruth Ann Minner,
Governor

STATE OF NEW JERSEY
Office of the Governor
P.O. Box 001
125 West State Street
Trenton, NJ 08625
(609) 292-8000

James E. McGreevey,
Governor

April 7, 2004

The Honorable Les Brownlee
Acting Secretary of the Army
The Department of Defense
The Pentagon
Washington, DC 20310

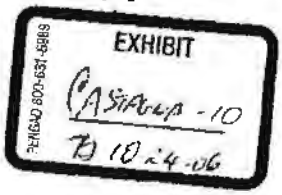
Dear Secretary Brownlee:

As Governors of states having vital military facilities, we recognize the importance of meeting the United States' commitment to eliminate stockpiles of the nerve agent VX now stored at Newport, Indiana. This commitment must be met, however, in a manner that comports with current law and with full protection of human health and the environment.

As Governors, we share a responsibility for stewardship of the natural resources of the Delaware River, as well as for the public health and safety of the communities in our two states potentially affected by the shipment and treatment of this waste. As Governors, we share the responsibility for the protection and health of the Delaware Estuary. Our citizens swim and fish in it, our businesses conduct commerce in it. The Delaware River and Bay combine to form the Delaware Estuary, which is a part of the national estuary program. This program, and the pertinent requirements of the federal Clean Water Act, direct our states to reduce, not increase, the amounts and types of pollutants discharged into the Delaware River and Delaware Bay. Due to a coordinated effort by our two states, we can report that Delaware Bay is an estuary on the road to recovery.

It is from these perspectives that we must share our concerns and questions about the proposal, as written, to transport and dispose of neutralized VX nerve agent from the United States Army's Newport, Indiana depot at the DuPont's Chambers Works Secure Environmental Treatment Plant. Scientists and engineers from Delaware, New Jersey and the Delaware River Basin Commission have spent the last month reviewing the technical information provided by the Army and DuPont on March 5, 2004. Our state experts have met and discussed the proposed project with the technical experts from the Army and DuPont. Numerous related reports and technical information, provided in some cases by the Army, have been evaluated.

As proposed, the discharge will include ethyl-methyl phosphonic acid (EMPA) and methyl phosphonic acid (MPA), which have been identified in the Chemical Weapons Convention as posing significant risk. We are concerned that DuPont's treatability report indicates an inappropriate method of handling these phosphorus-based acids. If approved, this proposal would result in the discharge of 2.3 tons per day of EMPA and MPA into the Delaware River. DuPont's treatment process dilutes, but does not substantially treat, the levels of EMPA and MPA that arrive by tanker truck from Indiana. There is little, if any, published information about



the environmental effects of these organic acids and we are concerned about using the Delaware River and Bay as the testing grounds.

The treatability report failed to take into account the proximity of United Water Delaware's drinking water intake to the Chambers Works discharge. This facility provides drinking water to over 100,000 customers per day and it is located within the periphery of the 12 mile daily tidal movement in this region of the river.

We are concerned that this proposal, if approved, is projected to increase substantially the concentration of phosphorus in portions of the Delaware Estuary. DuPont's treatability report has failed, in our opinion, to characterize correctly the downstream effects of this plant nutrient. There has been no evaluation of the potential for the phosphorus discharged from Chambers Works to stimulate algal blooms in the phosphorus-limited reaches of the Delaware Bay. Such blooms diminish dissolved oxygen levels in the water and therefore may affect fish and other aquatic organisms.

In addition, the Army has failed to provide adequate assurances regarding the levels of residual VX in the waste stream that will be transported to Chambers Works. This is of concern because the discharge is projected to contain VX at levels at or near the detection limit, a level at which lethal effects in striped bass have been identified. There is a major juvenile striped bass breeding area in the Cherry Islands Flats area of the Delaware River and we cannot expose this recovering and sensitive fishery to the potential risks associated with this discharge.

Finally, given the absence of any technical basis on which to conclude that the Chambers Works facility offers treatment capacity that is unique or particularly suited to this material, we question the safety and wisdom of transporting this material, which will require daily shipments of several thousand gallons of waste for up to two years, from Indiana to Chambers Works. The attendant risks, and the impacts to roads and communities, simply have not been justified.

We believe that the Department of the Army and its contractors should reconsider their proposed plan to neutralize 1,269 tons of the VX nerve agent stored in Newport, Indiana and truck it to DuPont's Chambers Works wastewater plant. We believe that it is in the best interests of the citizens and natural resources of the States of Delaware and New Jersey that the ultimate compliance with the requirements of the Chemical Weapons Convention takes place in close proximity to the Newport, Indiana depot. The assessment of the potential impacts of a discharge to the Delaware Estuary is, in our opinion, neither complete in its execution nor conservative in its assumptions. We are concerned that if this project goes forward it would result in additional toxicity, nutrients, salt, and metals being added to the Delaware Estuary. Consistent with the goal of our state water quality regulations, as well as the requirements of the federal Clean Water Act, we want to reduce rather than increase the levels of pollutants being discharged into the Delaware River and Bay.

Thank you for this opportunity to comment on this very important project.

Sincerely,

Ruth Ann Minner
Governor
State of Delaware

James E. McGreevey
Governor
State of New Jersey

cc: The Honorable Bradley M. Campbell
The Honorable John A. Hughes
Delaware Congressional Delegation
New Jersey Congressional Delegation

STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES
AND ENVIRONMENTAL CONTROL

OFFICE OF THE
SECRETARY

89 KINGS HIGHWAY
DOVER, DELAWARE 19901

PHONE: (302) 739-4403
FAX: (302) 739-6242

April 19, 2004

Colonel Jesse L. Barber c/o
Newport Chemical Stockpile Outreach Office
P.O. Box 279
Newport, Indiana 47966-0517

Dear Colonel Barber:

This letter is in response to the U.S. Army Chemical Materials Agency's (Army) proposal to ship wastewater (Vx hydrolysate) resulting from the destruction of Vx nerve agent from its Newport, Indiana Chemical Depot to the DuPont Secure Environmental Treatment Facility (SET) at the Chambers Works site in Deepwater, New Jersey.

This letter is also in response to the draft Environmental Assessment Statement (EAS) and Finding of No Significant Impact (FONSI) issued in support of the proposal. The Delaware Department of Natural Resources and Environmental Control has worked closely with the New Jersey Department of Environmental Protection (NJDEP) and the Delaware River Basin Commission (DRBC) to review and assess the technical data and information forwarded to us by the Army and DuPont. Based upon this review, we conclude that the information presented does not support a "Finding of No Significant Impact".

Our basis for this conclusion is based on the following:

- The failure to provide any technical justification for transporting several thousands of gallons of hydrolysate waste every day for up to two years from Indiana to New Jersey.
- An unacceptably low level of treatment (overall reduction of EMPA plus MPA) of only 21.4% by the DuPont's Chambers Works Secure Environmental Treatment facility.
- The unknown environmental effects of discharging 2.3 tons per day of EMPA and MPA into the Delaware River for as long as two years.
- The treatability study conducted by DuPont focused exclusively on ethylmethylphosphonic acid (EMPA), methylphosphonic acid (MPA), Total Organic Carbon (TOC) and oxygen demand while failing to quantify the numerous other compounds, metals and elements in the hydrolysate.
- No documentation or analysis to support the claims that the level of Vx residual in the hydrolysate will be at or below 20 parts per billion. We are concerned about the possible effects of a discharge containing residual amounts of Vx on the area of the Delaware River known as Cherry Island Flats; the "Flats" is considered to be an important striped bass spawning area.
- The Army and DuPont failed to assess the possible impact of the proposal on the public water supply intake owned and operated by United Water Delaware.
- The information provided by the Army and DuPont failed to assess the effects of discharging 1,316 pounds of phosphorus per day into the Delaware River and Bay during seasonal low flow

conditions. This loading represents a 42% increase in the concentration of Total Phosphorus during critical summer conditions and we believe it will result in algal blooms and disruption of the normal oxygen balance downstream of the discharge.

- The information provided by the Army and DuPont failed to assess the effects of the brine discharge on the ion balance in the Delaware River..
- The proposal is inconsistent with the DuPont's Delaware River Basin Commission's Docket No. 88-85 which does not provide for the acceptance of materials for treatment and disposal from the Department of Army weapons destruction operations.
- The proposal should demonstrate the ability to comply with the NJDEP National Pollutant Discharge Elimination System (NPDES) permit that will be in effect when the operations are proposed rather than with the existing expired, but administratively extended permit.
- The DRBC has determined that the acute toxicity tests conducted by DuPont's consultants to evaluate the toxicity of the final effluent during hydrolysate treatment were not performed in accordance with U.U. EPA guidelines, NELAC 1999 standards, and NJDEP testing requirements for whole effluent toxicity testing. DRBC's analysis suggests that the final effluent will not meet the current NJDEP permit limit on an LC50 greater than 50% effluent by volume.
- No documentation in the treatability study that the proposed project will break the carbon-phosphorus bonds in the EMPA and MPA leading us to question if the project, as proposed, is in compliance with the requirements of the Chemical Weapons Convention.

Finally, attached is the letter to Acting Secretary of the Army Les Brownlee signed by the Governors of New Jersey and Delaware. This letter states their concerns with and opposition to, many aspects of the proposal, identifies its shortcomings, and concludes by stating that the Governors' "believe that it is in the best interests of the citizens and natural resources of the States of Delaware and New Jersey that the ultimate compliance with the requirements of the Chemical Weapons Convention takes place in close proximity to the Newport, Indiana depot." The Chambers Works facility is not "in close proximity" to the Newport depot.

Sincerely,

John A. Hughes
Secretary

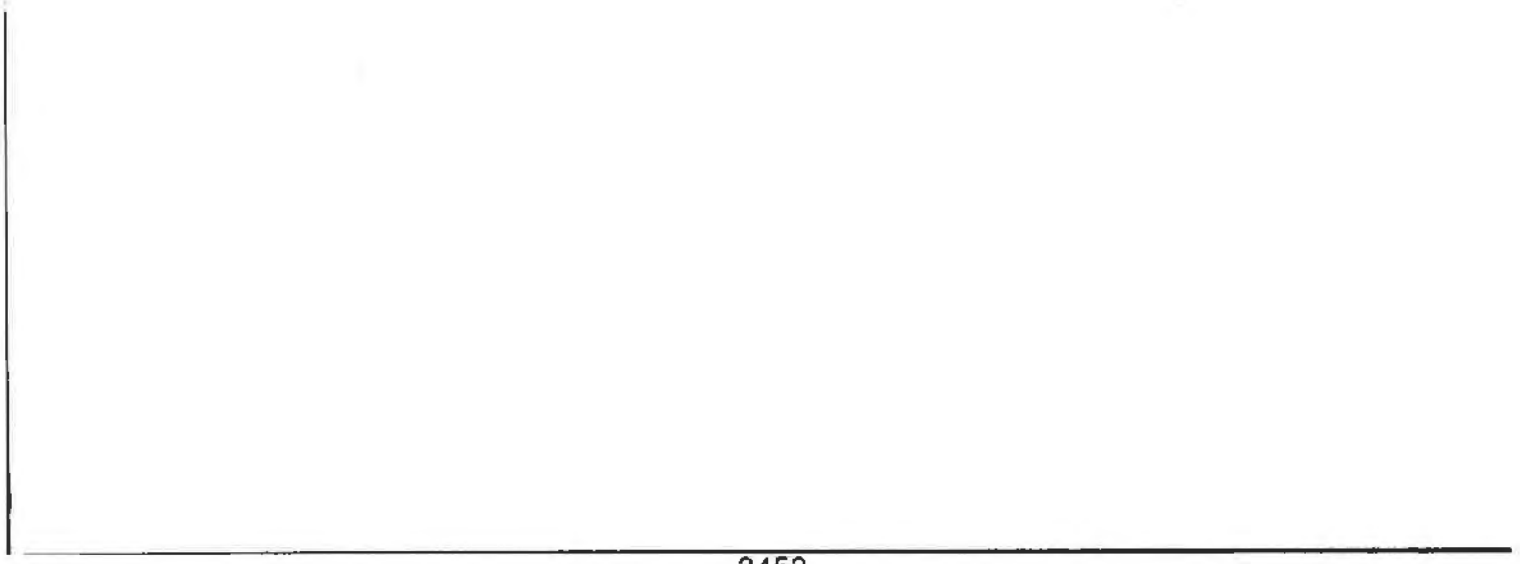
Attachments

pc: Governor Ruth Ann Minner
Bradley M. Campbell, Commissioner, NJ DEP
Carol R. Collier, Executive Director, DRBC
Delaware Congressional Delegation

April 23, 2004 DNREC-DuPont Meeting

Discussion Points

- The failure to provide any technical justification for transporting several thousands of gallons of hydrolysate waste every day for up to two years from Indiana to New Jersey.
- An unacceptably low level of treatment (overall reduction of EMPA plus MPA) of only 21.4% by the DuPont's Chambers Works Secure Environmental Treatment facility.
- The unknown environmental effects of discharging 2.3 tons per day of EMPA and MPA into the Delaware River for as long as two years.
- The treatability study conducted by DuPont focused exclusively on ethylmethylphosphonic acid (EMPA), methylphosphonic acid (MPA), Total Organic Carbon (TOC) and oxygen demand while failing to quantify the numerous other compounds, metals and elements in the hydrolysate.
- No documentation or analysis to support the claims that the level of Vx residual in the hydrolysate will be at or below 20 parts per billion. We are concerned about the possible effects of a discharge containing residual amounts of Vx on the area of the Delaware River known as Cherry Island Flats; the "Flats" is considered to be an important striped bass spawning area.
- The Army and DuPont failed to assess the possible impact of the proposal on the public water supply intake owned and operated by United Water Delaware.
- The information provided by the Army and DuPont failed to assess the effects of discharging 1,316 pounds of phosphorus per day into the Delaware River and Bay during seasonal low flow conditions. This loading represents a 42% increase in the concentration of Total Phosphorus during critical summer conditions and we believe it will result in algal blooms and disruption of the normal oxygen balance downstream of the discharge.
- The information provided by the Army and DuPont failed to assess the effects of the brine discharge on the ion balance in the Delaware River.
- The proposal is inconsistent with the DuPont's Delaware River Basin Commission's Docket No. 88-85 which does not provide for the acceptance of materials for treatment and disposal from the Department of Army weapons destruction operations.
- The proposal should demonstrate the ability to comply with the NJDEP National Pollutant Discharge Elimination System (NPDES) permit that will be in effect when the operations are proposed rather than with the existing expired, hut administratively extended permit.
- The DRBC has determined that the acute toxicity tests conducted by DuPont's consultants to evaluate the toxicity of the final effluent during hydrolysate treatment were not performed in accordance with U.S. EPA guidelines, NELAC 1999 standards, and NJDEP testing requirements for whole effluent toxicity testing. DRBC's analysis suggests that the final effluent will not meet the current NJDEP permit limit on an LC50 greater than 50% effluent by volume.
- No documentation in the treatability study that the proposed project will break the carbon-phosphorus bonds in the EMPA and MPA leading us to question if the project, as proposed, is in compliance with the requirements of the Chemical Weapons Convention.



STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES
& ENVIRONMENTAL CONTROL
DIVISION OF WATER RESOURCES
89 KINGS HIGHWAY,
DOVER, DELAWARE 19903

OFFICE OF THE
DIRECTOR

PHONE: (302) 739-4860
FAX: (302) 739-7564

May 19, 2004

RECEIVED
MAY 20 2004
LEGAL

Mr. Bernard J. Reilly, Corporate Counsel
E. I. DuPont de Nemours and Company
Legal Environmental Group, D-7082A
1007 Market Street
Wilmington, DE 19808

RE: Chambers Works S.E.T. Outfall Structure

Dear Mr. Reilly:

This letter is in response to your, April 19, 2004 request regarding Delaware's Subaqueous Lands Act (SLA) requirements for the Chambers Works Secure Environmental Treatment outfall structure.

Your assessment that the construction of the outfall in 1958 below the mean low water (MLW) line of the Delaware River precluded the enactment of the 1969 SLA is correct. However, the extensive documentation which you provided to me on April 20th leads my staff and me to believe that the 1977 repairs to the outfall structure that included the removal of the original outfall pipe and the installation of new one required a lease from the State of Delaware for that portion of the outfall located below MLW. I am enclosing an application for a lease which should be submitted to the Wetlands and Subaqueous Lands Section of the Division of Water Resources.

If you have any further questions regarding this matter, please feel free to call me or William Moyer, manager of the Wetlands and Subaqueous Lands Section at 739-4691.

Sincerely,

Kevin C. Donnelly
Director of Water Resources

Enclosures
cc: William Moyer w/o Enclosures

REDACTED

*Delaware's good nature depends on you!*

STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES &
ENVIRONMENTAL CONTROL
DIVISION OF WATER RESOURCES
89 KINGS HIGHWAY
DOVER, DELAWARE 19901

WETLANDS & SUBAQUEOUS
LANDS SECTION

TELEPHONE (302) 739-9943
FACSIMILE (302) 739-6304

March 1, 2006

Mr. John D. Strait
E.I. DuPont de Nemours and Company
Route 130 and Canal Road
Deepwater, NJ 08023

Mr. Albert Boettler
E.I. DuPont de Nemours and Company
4417 Lancaster Pike, BMP-19 Room 1166
Wilmington, DE 19805

MAR 7 2006

Dear Sirs:

Enclosed is the Subaqueous Lands Permit granted by the State of Delaware. Please read carefully all Special and General Permit Conditions. The Permit holder is responsible to ensure that all conditions, responsibilities and requirements are strictly adhered to.

A copy of this approval and letter will be forwarded to the Army Corps of Engineers. If you have any questions, please feel free to contact this office.

Sincerely,

Laura M. Herr
Section Manager
Wetlands & Subaqueous
Lands Section

*Delaware's good nature depends on you!*

STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES &
ENVIRONMENTAL CONTROL
DIVISION OF WATER RESOURCES
89 KINGS HIGHWAY
DOVER, DELAWARE 19901

WETLANDS & SUBAQUEOUS
LANDS SECTION

TELEPHONE (302) 739-9943
FACSIMILE (302) 739-6304

Subaqueous Lands Permit: SP-458/05
Date of Issuance: 3/7/06
Expiration Date: 3/7/07
Amended Date:
Tax Parcel No.: Block 185 Lot 1

**SUBAQUEOUS LANDS PERMIT**
**GRANTED TO E.I. DUPONT DE NEMOURS AND COMPANY, INC., TO DREDGE 1,800 CUBIC YARDS OF MATERIAL, DREDGING TO A MAXIMUM DEPTH OF 3 FEET BELOW MEAN LOW WATER, IMPACTING 4, 356 SQUARE FEET OF SUBAQUEOUS LANDS BEYOND THE MEAN LOW WATERLINE WITHIN THE STATE OF DELAWARE, IN THE DELAWARE RIVER ADJACENT TO DUPONT CHAMBERS WORKS, BLOCK 185, LOT 1 SHELL ROAD, CARNEY'S POINT, SALEM COUNTY, NEW JERSEY**

Mr. John D. Strait
E.I DuPont de Nemours and Company
Route 130 and Canal Road
Deepwater, NJ 08023

Mr. Albert Boettler
E.I DuPont de Nemours and Company
4417 Lancaster Pike, BMP-19 Room 1166
Wilmington, DE 19805

Pursuant to the provisions of 7 Del. C. 7203 and the Department's Regulations Governing the Use of Subaqueous Lands, permission is hereby granted on this 7th day of March A.D. 2006 to perform the above referenced project in accordance with the approved plans for this Permit (9 Sheets), as approved on February 24, 2006; and the application dated December 2, 2005 and received by this Division on December 15, 2005, with additional information received on December 27, 2005.

Whereas, pursuant to the provisions of 7 Del. C. 7203, the Secretary of the Department of Natural Resources and Environmental Control through his duly authorized representative finds that it is not contrary to the public interest if this project is approved subject to the terms and conditions herein set forth.

This Permit is issued subject to the following conditions:

SPECIAL CONDITIONS

1. The conditions contained herein shall be incorporated into any and all construction contracts and other ancillary documents associated with earth disturbance and any other activities directly or indirectly associated with construction which may impact subaqueous lands associated with this project. The permittee and contractor are responsible to ensure that the workers executing the activities authorized by this Permit have full knowledge of, and abide by, the terms and conditions of this Permit.

2. Dredging shall be conducted so as not to violate the State of Delaware Department of Natural Resources and Environmental Control Surface Water Quality Standards, as amended July 11, 2004.

3. **The dredging shall be scheduled so as to minimize the impact to anadromous fish species. *Dredging shall not be undertaken between the period of March 1 to June 30, 2006.* In-water activities shall be conducted to minimize impacts during the fall migratory period between September 1 to November 30, 2006.**

4. The dredged materials shall be contained, transported and disposed of as described in the permit application. The agglomerated material will be removed and disposed of at an approved off-site Transfer, Storage and Disposal Facility; and the remaining contaminated material/soils will be disposed of at the designated A-Basin Vault on the adjacent upland facility owned by the permittee.

5. There shall be no excavation channelward of the permitted alignment either before, during or after the installation of the 207 square feet of rip-rap beyond the mean high waterline.

6. **In accordance with the attached fee sheet, an additional payment of $2,700, payable to the State of Delaware for dredging public subaqueous lands, shall be submitted to the Wetlands and Subaqueous Lands Section prior to the commencement of dredging.**

7. All dredging and filling is to be conducted in a manner consistent with sound conservation and water pollution control practices. Spoils and fill areas are to be contained in a manner that prevents the entrance of the dredged material into any surface water or wetland.

8. This Permit does not authorize the movement of equipment or placement of structures in tidal wetlands.

9. There shall be no movement of equipment within State subaqueous lands not specifically authorized by this Permit.

10. Disturbance of wetlands and/or aquatic vegetation adjacent to the permitted construction by burning, cutting, herbicide treatment, mechanical impacts or other methods is prohibited.

11. No dredged materials shall be deposited on wetlands or waters.

12. All construction debris, excavated material, brush, rocks and refuse incidental to such work shall be placed above the influence of surface waters, so that such material does not enter into surface waters or subaqueous lands.

13. The permittee shall employ measures during dredging and construction activities to prevent spill of fuels or lubricants. If spill should occur, efforts shall be taken to prevent its entry into wetlands and aquatic areas. Any spills entering wetlands and aquatic areas shall be removed immediately. This office shall be notified of any spill(s) within six hours of their occurrence. This office will determine the effectiveness of spill and contamination removal and specify remediation efforts as necessary.

14. Erosion and sediment control measures shall be implemented in accordance with the specifications and criteria in the current Delaware Erosion and Sediment Control Handbook, so as to minimize entry and dispersal of sediment and other contaminants in surface waters.

15. The authorized activity in subaqueous lands shall be for the explicit purpose of environmental remediation of contaminated materials/soils as indicated in the permit application.

16. This Permit shall be valid for a one (1) year period. One dredging event is authorized during that period.

17. A copy of this Permit must be available on site during all phases of dredging activity.

18. The permittee must obtain appropriate permits from the Army Corps of Engineers prior to commencement of dredging at the locations authorized by this Permit.

GENERAL CONDITIONS

1. The project is to be undertaken in accordance with the plans submitted and attached hereto. Any activities not specifically authorized herein may require a supplemental approval from this office prior to the initiation of dredging and construction. A determination on the need for a supplemental approval will be made by this office pursuant to the permittee submitting written notification and revised plans indicating project changes to this office.

2. Representatives of the Department of Natural Resources and Environmental Control may inspect such work during any phase of the dredging and construction and may collect any samples or conduct any tests that are deemed necessary.

3. This Permit does not cover the structural stability of the project units.

4. Any actions, operations or installations which are considered by the Department to be contrary to the best interests of the public shall constitute reason for the discontinuance and/or removal of said action, operation or installation.

5. The issuance of this Permit does not imply approval of any other part, phase, or portion of any overall project the permittee may be contemplating.

6. This Permit is subject to the terms and conditions contained in any easement, license or lease that may have been granted by the State or any political subdivision, board, commission or agency of the State in the vicinity of the project.

7. This Permit and authorization are granted for the purposes as stated herein. Any other use without prior approval may constitute reason for this Permit being revoked.

8. The permittee shall notify the Department of Natural Resources and Environmental Control within ten (10) days of the date work will be commenced.

9. This Permit shall expire if the project has not been completed within one (1) year from the date of issuance.

10. If the permittee considers one (1) year insufficient for completion of the project, the permittee may submit a project time schedule for consideration by the Department. If the time schedule is approved it shall be attached hereto and made a part hereof.

11. The permittee shall at all times comply with all applicable laws and regulations of the Department of Natural Resources and Environmental Control.

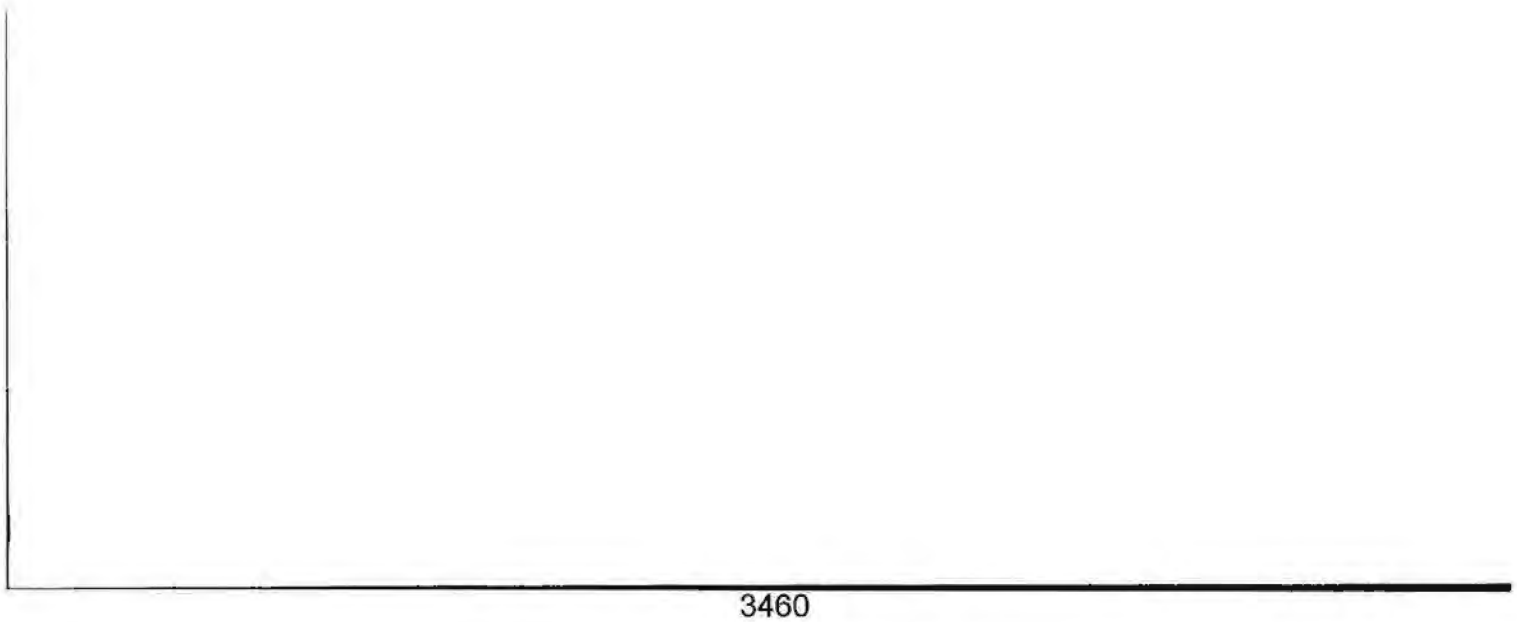
12. The issuance of this Permit does not constitute approval for any of the activities as may be required by any other local, state or federal governmental agency.

13. This Permit is personal and may not be transferred without the prior written consent of the Department. Prior to the transfer of the adjacent upland property, the permittee shall obtain the written consent of the Department to transfer this Permit to the new upland property owner. Failure to obtain such written consent may result in the revocation of this Permit and the removal of all structures authorized by this Permit at the expense of the permittee.

14. This Permit may be revoked upon violation of any of the above conditions.

IN WITNESS WHEREOF, I, Laura M. Herr, the duly authorized representative of John A. Hughes, Secretary, Department of Natural Resources and Environmental Control, have hereunto set my hand this 7th day of March, 2006.

By Laura M. Herr, the duly authorized
Representative of the Secretary of the
Department of Natural Resources and
Environmental Control



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DNREC OFFICE
DIVISION OF WATER RESOURCES

STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES
AND ENVIRONMENTAL CONTROL
OFFICE OF THE SECRETARY
89 KINGS HIGHWAY
DOVER, DELAWARE 19901
PHONE (302) 739-9000
FAX (302) 739-6242

March 29, 2006

Mr. Alan Muller
Executive Director, Green Delaware
P. O. Box 69
Port Penn, DE 19731

Dear Mr. Muller:

RE: DRBC Docket No. D-88-85-2, E. I. du Pont de Nemours and Co.
DuPont Chambers Works' Industrial Waste Water Treatment Plant

Thank you for your continuing interest in improving the environment in Delaware as well as in the actions taken by the Delaware River Basin Commission (DRBC). The following responds to your extensive comments and questions which are indicated by italics and are printed as received by us, including minor typographical errors:

*"We have been looking at the decision of the Delaware River Basin Commission on March 1, 2006, in the above matter. (All the following quotes are from the DRBC document.) It is frustrating that we were not made aware of it in time to comment to the Commission."*

**ANSWER:**

- The DRBC has consistently noticed its Commission meetings in the Delaware Register of Regulations, New Jersey Register, New York Register, Pennsylvania Code and Bulletin, and Federal Register for more than a decade. Please refer to the Delaware Register of Regulations http://www.delregs.state.de.us/html/register.html. With respect to the specific docket that interests you, the meeting was noticed in the Delaware Register of Regulations 9 (8) 1117 (02-01-06) and Delaware Register of Regulations 9 (8) 1282 (02-01-06). You can review DRBC dockets at the web site http://www.state.nj.us/drbc under "What's New?" in advance of each Commission meeting.

*"It appears that DuPont seeks to extend it's outfall (discharge pipe) from approximately 50 feet offshore to 1800 feet offshore and install a diffuser. This outfall is used to dump about 15 million gallons per day of industrial effluent into the already-impaired Delaware River. The actual permitted flow limit is much higher yet."*

**ANSWER:** *Delaware's Good Nature depends on you!*

- Actual flows have been decreasing from DuPont Chambers Works (DPCW) steadily over the years.

- The Chambers Works Industrial Waste Water Treatment Plant (IWTP) is designed for a 47.5 mgd discharge and is currently discharging between 9 and 11 mgd. NJPDES Permit No. NJ0005100 and DRBC Docket No. D-88-85-2 are based on an average flow of 17 mgd rather than the design flow of 47.5 mgd. Generally, the allowable effluent limits are based on 17 mgd. DuPont also has approximately 25 mgd of non-contact cooling water that merges with the effluent from the Chambers Works IWTP. The combined flows are discharged through the current outfall, DSN001, which may be extended at some point and modified by the addition of a diffuser. DNREC has not received an application from DuPont to date to extend the outfall pipe or add a diffuser.

- Zone 5 of the Delaware River is currently listed as impaired for PCBs. DuPont continues to be an active participant on both the DRBC Toxics Advisory Committee, which advised the Commission on the development of the December 15, 2003 TMDL for PCBs in the Estuary ("TMDL"), and the Implementation Advisory Committee, which is developing recommendations for implementing the TMDL. Chambers Works is designated a Category 1 PCB discharger by the TMDL. As a consequence, in the latest NJPDES permit, it is required to develop and implement a Pollutant Minimization Plan (PMP) for PCBs in accordance with Section 4.30.9 of DRBC's Water Quality Regulations.

- The Delaware Estuary (Zones 2-5) is currently being studied to determine whether it is impaired for chronic toxicity. The Chambers Works facility, along with 45 other dischargers (30 in NJ, 12 in PA, and 3 in DE), is participating in an effluent monitoring study for chronic toxicity. Depending on the outcome of the study, recommendations to the Commission may be made for chronic toxicity wasteload allocations for discharges to the Estuary.

*"Since all this construction would be (and all the discharge is and would continue to be) into Delaware waters it appears to us that a subaqueous lands permit should be required under Delaware law."*

**ANSWER:**

- There has been no construction to date on an extension to the outfall pipe or the diffuser. We agree that DuPont will need to apply for and obtain all relevant and appropriate permits and approvals from DNREC should it decide to modify its outfall pipe. The Docket explicitly does not exempt DuPont from obtaining all State and local approvals, including those required by Delaware. Condition C.II.o in the Decision section of the Docket reads: "Nothing herein shall be construed to exempt the docket holder from obtaining all necessary permits and/or approvals from other State, Federal or local government agencies having jurisdiction over this project."

- Moreover Condition C.II.i of the docket provides: "Prior to the initiation of construction of the outfall extension and diffuser, the final plans for construction, confirming that such plans are consistent with the approved criteria, will be submitted to DRBC for review by the Executive Director. The Executive Director will review the plans promptly and furnish

an approval or list of concerns to DuPont in writing." For your information, a preliminary public hearing is not required in the case of an action by the Executive Director; however actions of the Executive Director are subject to appeal in accordance with the Commission's Rules of Practice and Procedure.

*"Since the new outfall would be 36 times as long as the original, it would not seem to be reasonably "grandfathered," regardless of the date of original construction. Please inform us of the Department's view of this matter."*

**ANSWER:**

- The DRBC regulations contain no "grandfathering" provisions applicable to the DuPont discharge, and the docket reflects no allowance for grandfathering. The docket does not exempt DuPont from obtaining all State and local approvals, including those required by DNREC.

*Is is stated that "The added depth and diffuser ports will increase the rate of diffusion and mixing of the effluent with the waters of the Delaware River." Doubtless so, but there is no statement as to why this is considered necessary at this time. What is the view of the Department of this matter?"*

**ANSWER:**

- As indicated in the docket, an extended outfall and new diffuser are expected to increase the rate of diffusion and mixing of the effluent with the waters of the Delaware River. This will enable DuPont to achieve the water quality based effluent limitations (WQBELs) for copper, cyanide and zinc at DSN001A that are required to be met in accordance with the 59-month schedule of compliance contained in the NJPDES permit and incorporated into the DRBC docket by reference. The NJDEP would consider removing or modifying the effluent limitations for copper, cyanide and zinc if DuPont submitted any or all of the following information for review and consideration:

i. Additional effluent data using an approved quantification level equal to or better than the Department's Recommended Quantification Level (RQL)
ii. Acceptable site specific ambient data (e.g. hardness) collected in accordance with a NJDEP approved work plan.
iii. Acceptable site specific criteria or translators developed in accordance with a NJDEP approved work plan.
iv. Updated 1Q10, 7Q10, 75$^{th}$ percentile, and/or other appropriate stream flow values where applicable.
v. Updated regulatory mixing zone dilution factors where applicable.

*"Further, the Docket mentions a mechanism for the establishment of alternate effluent limitations for certain parameters calculated as a result of the operation of these new facilities." This appears to be a reference to authorization of additional discharges by the State of New Jersey contingent upon improvements in dilution."*

**ANSWER:**

- Condition C.II.k of the docket reads: "The Executive Director is authorized to approve revised effluent limitations that reflect the installation of the extension and diffuser

consistent with the Commission's Water Quality Regulations." This authority is intended to allow for effluent limit adjustments that may be made to copper, cyanide and zinc limits by NJDEP, consistent with the terms of the NJPDES permit. The docket limits the Executive Director's authority to adjustments to the effluent limitations that would be consistent with the Commission's Water Quality Regulations (WQR). Thus, it explicitly precludes the Executive Director from making any adjustment that would result in a violation of the WQR.

*"We are not fans of the "dilution is the solution to [water] pollution" theory."*

**ANSWER:**

- We agree; however, DRBC's Water Quality Regulations (WQR) contain mixing zone provisions that allow exceedances of stream quality objectives established for the protection of aquatic life from acute effects in small areas near outfall structures, provided that certain criteria are met. The resulting mixing zone is generally referred to as an Acute Mixing Zone (AMZ). The existing outfall has four discharge pipe outlets, and the current effluent dilution factor is a minimum of 2.61 to 1. The proposed outfall diffuser is projected to produce an effluent dilution factor of greater than 17 to 1. In general, this will result in a smaller AMZ, which will benefit the Delaware River. DNREC and NJDEP have similar requirements and defer to DRBC to define the AMZ in shared waters.

*"Considering the magnitude of present discharges from Chamber Works (approximating one million pounds per year of 'TRI' toxins and many millions of pounds per year of other harmful pollutants) and the level of public concern about these discharges, we doubt that the Department should take any actions facilitating additional discharges."*

**ANSWER:**

- Effluent limitations in the previous docket were based on an average discharge from the IWTP facility of 34 mgd, whereas the current docket effluent limitations are based on an average discharge of 17 mgd. The total discharge from the plant measured in pounds will continue to vary from day to day and year to year. However, the discharge is at all times required to comply with the effluent limitations contained in the permit and the docket. The overall effects of the new permit and docket are to reduce the discharge of pollutants.

- Docket No. D-1985-85-2 also contains requirements for TSS and BOD5 at DSN662A, an internal outfall at the conclusion of the Chambers Works treatment process but which is situated prior to the addition of millions of gallons of non-contact cooling water that dilute the plant's effluent before it is discharged to the river. The previous docket did not contain requirements for the listed parameters at the internal effluent monitoring location (DSN662A). In these respects, the docket again represents an updated and improved regulatory vehicle for controlling discharges from the Chambers Works facility.

*"Most of these pollutants are known to be harmful, and DuPont Chambers Works is known to be one of the largest point sources of water pollutants in the US if not the world. Please advise us as to the Department's view on the above, particularly as to what additional discharges might*

*result from the implementation of "alternate effluent limitations. We are concerned that DuPont apparently plans to begin treating approximately 2.75 million gallons per day of sanitary sewage from Penns Grove and Carney's Point. This plant was not designed to treat sanitary (domestic) sewage, and we are concerned about the possible interactions of the constituents of this sewage with the industrial (chemical) effluents now being treated, as well as possible industrial discharges into the Penns Grove and Carneys Point collection systems. Has the Department evaluated this situation? If so, what conclusions have been reached?"*

**ANSWER:**

- Upon the construction of a new pump station by Penns Grove, wastewater will be conveyed to the Carneys Point wastewater treatment plant, where it will be combined with the wastewater from the Carneys Point collection system. The combined wastewater streams will receive primary treatment at the Carneys Point wastewater plant, and will then be conveyed via a pumping station and force main to the Chambers Works IWTP for secondary and tertiary (or further) treatment and discharge.

- The Chambers Works facility is designed to remove BOD, TSS, etc. at a higher percent removal than the municipal plants and should therefore result in less loading to the river. The Chambers Works facility will not receive any additional loading allocation if it accepts the flows from these plants. That is, the wasteload allocations currently assigned to the municipal plants will not be transferred to Chambers Works. Rather, effluent from the plants will consume a portion of the Chambers Works IWTP's approved allocation. Thus, overall permitted and docketed loadings to the river will actually be reduced.

- Chambers Works operates as a Centralized Waste Treatment (CWT) facility, as defined and certified by EPA. Chambers Works accepts wastes in three CWT subcategories: metals, oils and organics. Included in the organics subcategory is non-hazardous organic wastewater. This type of wastewater is introduced into the head of the Chambers Works primary treatment system. Chambers Works has effectively treated varying quantities of on-site (e.g., employee-generated) sanitary sewage for several decades.

- Penns Grove and Carneys Point will still be required to maintain their Significant Industrial User Pretreatment programs. If the Penns Grove and Carneys Point municipal treatment wastes are sent to DuPont's Chambers Works for treatment and discharge, the wastes will receive primary treatment at the Carneys Point plant and then will be introduced into the Chambers Works treatment system after the primary treatment tanks.

*"We are also concerned that "DuPont currently receives approximately 100,000 gpd [gallons per day] of out-of-basin commercial waste." DuPont is effectively using the Delaware River as a sewer for waste waters from all over the continent. (Aside from DuPont's relentless campaign to dump VX nerve poison residues into the Delaware....) What is the Department's view of this situation?"*

**ANSWER:**

- The Commission generally discourages the importation of out-of-Basin wasteloads. Accordingly, it assigns no allocation for out-of-Basin wasteloads where it has established assimilative capacity limitations. The docket holder is required to indicate compliance

with its DRBC wasteload allocation for BOD5 by demonstrating that 100 percent of the pollutant load attributable to out-of-Basin wastes has been removed (see Condition II.d. in the Decision section).

- In accordance with DRBC Resolution No. 91-9, codified at Section 2.3.5A.18 of the Commission's Rules of Practice and Procedure, the docket holder must comply with its DRBC wasteload allocation for BOD5 by demonstrating that 100 percent of the BOD5 load attributable to out-of-Basin wastes and similar wastes from in-Basin sources (which have been removed by treatment processes regulated by discharge permits at other wastewater treatment plants prior to transfer to the DuPont Chambers Works facility for treatment and discharge) have been removed by applying the following formula: Calculate the total BOD5 removal across the IWTP and the weighted average BOD5 removal requirement based on the waste source (87.5% for in-Basin and 100% for out-of-Basin). The docket holder shall then confirm that 100 percent removal of the BOD5 from out-of-Basin waste is achieved, reflecting the total BOD5 loading directly attributable to out-of-Basin sources and the specified percent removal requirements. The docket holder shall maintain records demonstrating compliance with its DRBC-issued BOD5 wasteload allocation and the percent removal for the project discharge and shall produce such records upon the request of the Executive Director.

*"We are concerned that the Department apparently did not make any attempt to advise the people of Delaware that this action was in progress. While we understand that this was a DRBC action, not a DNREC action, yet we receive from DNREC announcements of many events of lesser importance such as fishing contests and political events supporting the Governor. Given the Department's expenditures for 'information and education' we think it could and should be doing better in keeping the public informed about the full range of developments impacting Delaware's environment."*

**ANSWER:**

- We try very hard to inform people but it is impossible for DNREC to publish every single action in the Delaware River Basin that may be of interest to Delaware citizens. We have been advised that NJDEP received no requests for a public hearing when it advertised the current NJPDES permit for the Chambers Works facility. The public is able to review the schedule of DRBC meetings and dockets at the Commission's web site http://www.state.nj.us/drbc under "What's New?" in advance of each Commission meeting. All meetings of the Commission are posted in the Delaware Register of Regulations http://www.delregs.state.de.us/html/register.html.

- Be advised that DRBC has added your organization to the "Interested Parties List" for the Dupont Chambers Work IWTP docket. In the future, you will receive notices associated with any Commission actions related to Docket No. D-1985-085-2 directly from the DRBC.

*"Finally, we are concerned by reports that Delaware's representative to the DRBC failed to vote, against or at all, on the approval of this docket."*

**ANSWER:**

- DNREC's representative Kevin Donnelly voted to abstain on the docket in response to concerns raised at the docket hearing by John Flaherty, Maryann McGonegal, and the Delaware River Keeper Network's representative Mary Ellen Noble. Mr. Donnelly's comments are a part of the hearing record for this Docket. DNREC's Wetlands and Subaqueous Lands Section has not received an application for installation of the outfall extension with the new diffuser referenced in DRBC Docket No. D-1985-085-2. It is the Department's position that DuPont must apply for and obtain a Wetlands and Subaqueous permit before the installation of a new outfall and/or diffuse would be allowed to proceed. Also, please recognize that the existing outfall at the DuPont Chambers Works facility consists of a 78-inch diameter barrel stave pipe extending 50 feet out into the Delaware River. This existing outfall was constructed prior to enactment of Delaware's Subaqueous Lands Law and is "grandfathered" in its present dimensions under the current permit system.

**For your information** DRBC Docket No. D-1985-085-2, Condition C.II.v., specifically states, "This docket does not authorize the acceptance of VX Hydrolysate for treatment and discharge at the DuPont Chambers Works Facility."

If there are any specific questions regarding the NJPDES permit, you may want to contact Susan Rosenwinkle at 609-292-4860 at the New Jersey Department of Environmental Protection.

Sincerely,

John A. Hughes
Secretary

pc: Aldona Shankie
NCC Civic League

c: Kevin C. Donnelly, DNREC
Harry Otto, DNREC
Carol Collier, DRBC
Pamela Bush, DRBC
William Muszynski, DRBC

DEC 28 1971

EL PASO EASTERN COMPANY
2727 ALLEN PARKWAY
HOUSTON, TEXAS 77019

December 21, 1971

Mr. David R. Keifer
Director of State Planning
Thomas Collins Building
Dover, Delaware

Dear Mr. Keifer:

The continued growth of U.S. population and industry is imposing increasing demands on the need for energy. Concerned representatives of government and industry know that an adequate supply of energy, particularly clean energy, is necessary to achieve the national goals of healthy economic growth and continued improvement in the quality of life. During the next 15-year period, U.S. energy consumption will probably grow at a rate of about 4.5 percent per year. This means that by 1985 we will be consuming almost 80 percent more energy than in 1970. These increasing needs are already exceeding the ability of the U.S. sources of supply to meet them and this is true for oil and natural gas supplies. The desire of both public and private sectors to improve air quality is creating a need for additional supplies of natural gas at a time when current discovery rates are less than half of that required to maintain reserve capacity at current rates of use. Even with increased exploration and development, it will take years to develop and deliver gas from new U.S. sources and even so, all experts agree we will still have to import huge quantities of natural gas.

In an effort to improve the natural gas supply, our affiliate, El Paso Algeria Corporation, in 1969 reached an agreement with Sonatrach, the Algerian oil and gas company, on a project to import to the East Coast of the United States a billion cubic feet per day of natural gas in liquid form over a 25-year period. This new and important source of supply will help toward meeting the growing requirements for this premium fuel. Even this project will not provide enough gas for the growing requirements of the eastern United States. El Paso Algeria Corporation has purchased additional supplies of gas in liquid form to be delivered to the East Coast in an effort to supply additional premium fuel for United States East Coast consumers.

A typical liquefied natural gas (LNG) project requires an adequate source of gas and, depending upon the location of the gas field, a gas transmission pipeline and liquefaction plant with storage and loading facilities for the liquefied natural gas. The liquefied natural gas is then loaded upon LNG tankers for transportation to a terminal located in the market area. At the terminal, the LNG is unloaded and stored in insulated cryogenic storage tanks.

As needed, the LNG is withdrawn from storage by pumps and transferred to vaporizers where it is regasified and delivered to the gas pipeline transmission facilities and ultimately to the gas consumers.

The terminal and its location are vital and important segments of the LNG project as the project cannot go forward without the assurance of a suitable terminal location. The terminal must be located at a site where LNG tankers can be readily received, berthed, unloaded, serviced and disembarked. The terminal must lie within reasonable pipeline distance of major gas transmission facilities so that the gas can be delivered at the lowest cost possible to the United States consumer.

El Paso Eastern Company has plans to locate such a terminal in the Delaware River area. The terminal site which we are considering has adequate water depth for the tankers, is adjacent to major pipeline transportation facilities and has adequate surface for the storage area.

As indicated on the attached map, the location of this terminal would be in the State of New Jersey. The site is near other heavy industrial locations and itself is zoned for heavy industry. However, since the site is located at a place where Delaware's jurisdiction extends to the low water mark on the New Jersey side of the river, the pier facilities would extend into waters controlled by the State of Delaware. The terminal would be located near an area which is dredged and maintained as an anchorage by the Corps of Engineers. In addition to the pier, the berthing facilities would require that the river be dredged in an area about 600-800 yards off the main channel, which would in effect be an extension of the area now maintained by the Corps of Engineers.

El Paso Eastern Company is aware of the Coastal Zone Zoning Act and the moratorium imposed on dredging activities by the State of Delaware. It has been brought to our attention that the purpose of the Act is to control the land use in the State of Delaware and, secondly, to maintain control on the environmental aspects of the use of the land. El Paso Eastern Company will, therefore, seek approval for the installation and operation of the terminal from the States of Delaware and New Jersey.

The LNG terminal will be constructed in such a manner as to meet all state requirements for both states. The operation of the LNG terminal can be characterized as an extremely clean industry where no waste materials are created. The LNG tankers are designed so that no discharge of waste or other material will be made while the tankers are in port. The operation of the LNG terminal will create no water or air pollution problems, no smoke, smog or obnoxious fumes will be given off and the operation will not generate loud noises. The plant will be constructed so that a clean, pleasant-appearing site can be maintained.

certain approvals are also required from other agencies of the United States Government such as the U.S. Coast Guard and Corps of Engineers, and it would be expected that El Paso Eastern Company could meet the requirements for these approvals. The liquefied natural gas will be transported from Algeria to the United States under long-term contracts at prevailing rates for the full cargo capacity of each transporting vessel. Accordingly, all transportation will be performed by contract carriers, and none will be performed by common carriers. Since on-shore facilities of the project will be used in connection with the transportation or sale of gas in interstate commerce, all such facilities, and services performed therewith, will be subject to regulation by the Federal Power Commission under the Natural Gas Act.

Because the importation of liquefied natural gas will provide an important source of clean energy for consumers on the U.S. East Coast and because the impact on the environment will be highly positive, El Paso Eastern Company will request favorable consideration from the State Planning Board, State of Delaware.

You have suggested that we write you concerning the project so that you can consider it and comment thereon in the context of the Coastal Zone Zoning Act. If we can supply any additional information which would be helpful to you in this regard, please advise us.

Very truly yours,

BH:jfb
Attachment
cc: Mr. Robert Halbrook
Secretary of Commerce
State of Delaware
The Green
Dover, Delaware

Mr. Ronald Heymann
Commissioner of Labor and Industry
Labor and Industry Building
Trenton, New Jersey

EL PASO EASTERN
PROPOSED LNG TERMINAL
December 23, 1971
NEW JERSEY
Camden
Philadelphia
Chester
SITE
Wilmington
PENNSYLVANIA
DELAWARE
Texas Eastern Pipeline
Transcontinental Gas Pipeline Corp.
0
5
10 Miles
Scale

DE06259

December 29,
1971

The Hon. W. Laird Stabler
Attorney General
State of Delaware
P. O. Box 1708
Public Building
Wilmington, Delaware 19801

Dear Laird:

RE: Coastal Zone Act - Bulk Product Transfer Facility
El Paso Eastern Company

Attached please find a copy of a letter that I received today from the El Paso Eastern Company outlining the scope of a project they propose to carry out in northern Delaware. Very briefly, they propose to construct a terminal for liquified natural gas in New Jersey across the river from Claymont. In order to make this terminal viable they must construct an offshore bulk product transfer facility in Delaware water. Since our territory in that area extends into the low water mark in the Jersey shore, in my judgement, the proposed project is an offshore bulk product transfer facility prohibited by the Coastal Zone Act.

They are attempting to contend that they are not prohibited because of the sentence in Section 7002(f) that says "not included in this definition is a docking facility or pier for a single industrial or manufacturing facility for which a permit is granted of which is a nonconforming use." That is why they mention in their letter (Page 3) that the facility will not used by common carriers but by contract transportation. It would seem to me that their statement that the onshore facilities will be used "in connection with the transportation or sale of gas in interstate commerce" indicates some common carrier or at least other than single industry utilization of the facility.

In any event, I would appreciate receiving your thoughts on this before I render my status decision under the Coastal Zone Act.

Sincerely,

David B. Keiter
Director

Encl.

DBK:gma

December 29, 1971

Mr. Barry Huntsinger
El Paso Eastern Co.
2727 Allen Parkway
Houston, Texas 77019

Dear Mr. Huntsinger:

This is to acknowledge receipt of your letter concerning your proposed liquified natural gas terminal. We will review this as quickly as possible relative to the Coastal Zone Act.

Sincerely,

David R. Kotter
Director

DRK:ams

JAN 2 1972

STATE OF DELAWARE
DEPARTMENT OF JUSTICE

W. LAIRD STABLER, JR.
ATTORNEY GENERAL

Wilmington, Delaware

January 20, 1972

Mr. David R. Keifer, Director
Planning Office
Executive Department
State of Delaware
Dover, Delaware 19901

Re: Coastal Zone Act - Bulk
Transfer Facility
(El Paso Eastern Company)

Dear Dave:

I have reviewed the material submitted to you with regard to the liquid natural gas (LNG) terminal which El Paso Eastern Company proposes to built in New Jersey with docking facilities extending into the Delaware River. I agree with your determination that this facility is an offshore bulk product transfer facility as that term is defined by the Coastal Zone Act. However, there may be some question as to whether or not the terminal is excepted from 7 Del. C. §7002(f) by virtue of the fact that it is "a docking facility or pier for a single industrial or manufacturing facility for which a permit is granted".

It is my opinion that the El Paso Eastern terminal does not fit within the "single industrial or manufacturing facility" exception. The Delaware courts have uniformly held that the meaning of a statute depends on the intent of the legislature and that such intent must be ascertained from an interpretation of the act as a whole. The facts contained in the letter from the El Paso Eastern Company indicate that the LNG terminal in question is merely a way station in the natural gas transportation system which El Paso Eastern is endeavoring to develop. It is quite clear that the legislative intent was to permit docking facilities where such facilities would benefit such industries as would be granted permits to operate in the Coastal Zone. Here the situation is reversed. The terminal will only exist as an adjunct to the docking facility. In other words, the important part of the project to El Paso Eastern is not the "industrial facility" but the docking facility. Further, I assume that the facility proposed by El Paso Eastern is not the type of "single industrial or manufacturing facility" for which your office would grant a permit under 7 Del. C. §7004. The statute specifically mandates that such approval is necessary.

DE12947

With specific reference to situations similar to the one here in issue, it is my recommendation that your office more clearly define "single industrial or manufacturing facility". The definition should explicate the legislative intent to allow an exception for docking or pier facilities only where the facilities are to be used in conjunction with industries of the type permitted under 7 Del. C. §7003. The definition I envisio will permit your office to evaluate applications for construction onthe New Jersey shore as if they were applications for construction on the Delaware shore. Such a standard would negate claims that applications which require the approval of more than one governmental agency are acted upon by Delaware in an arbitrary or capricious manner. However, it must be clear that Delaware is not attempting to regulate development beyond the state boundary. Therefore, any reference to potential development in New Jersey should be avoided.

If you should wish to discuss this matter further, please do not hesitate to contact me. Also at this time I would like to stress that this is an informal advisory opinion. Please advise me if a formal opinion becomes necessary.

Sincerely,

W. Laird Stabler, Jr.
Attorney General

WLSJr:ls

STATE OF DELAWARE
EXECUTIVE DEPARTMENT
PLANNING OFFICE
DOVER

RUSSELL W. PETERSON
GOVERNOR

DAVID R. KEITER
DIRECTOR

MEMORANDUM TO: The Honorable Russell W. Peterson

FROM: David R. Keiter

SUBJECT: Coastal Zone El Paso Eastern Company

A matter has come up recently with regard to coastal zoning administration which affects the interests of both New Jersey and Delaware and the relationship between these states at the highest level.

In brief, the matter concerns a plan of the El Paso Eastern Company of Houston, Texas to construct a terminal for the off-loading and storage of liquified natural gas imported from North Africa and the conversion of the gas from a liquified to a gaseous state for transport through pipeline to gas customers. The terminal plant would be located in New Jersey approximately 1.5 miles north of Penns Grove (opposite Claymont). The terminal pier, however, would be in Delaware territory since Delaware's boundary is the mean low water mark on the New Jersey side of the Delaware River at this point.

An official of the El Paso Eastern Company has written to me regarding status of the terminal pier under the Coastal Zone Act. I have requested an opinion from Attorney General Stabler concerning whether or not the pier would be an "offshore bulk product transfer facility" prohibited by the Act.

Before making a coastal zoning status decision on this project, I think that it is important to contact Governor Cahill to find out whether or not he is familiar with the project, how he feels about it, and what decisions have been made about it, if any. It would also be useful to identify a New Jersey official who would be the contact person for the State Planning office to work with.

The importance of this matter as it affects good political relationships between the two States and a coordinated policy for development along the Delaware River, I believe, calls for personal contact between yourself and Governor Cahill. This is the first project under our coastal zoning law directly involving interstate interests. The establishment of a friendly and coordinated working relationship between New Jersey and Delaware officials at this point would be of great value to resolving future matters of this sort in a mutually satisfactory way.

DRK:jl
Enclosures

February 17, 1972

Hon. Richard Sullivan
Commissioner
Dept. of Environmental Protection
P. O. Box 1390
Trenton, N. J. 08625

Dear Mr. Sullivan:

RE: El Paso Eastern Company

Please find a letter that we received from the subject firm for a status decision under our Coastal Zone Act. Before I render a decision telling them whether they are prohibited or need a permit or do not fall within the scope of the Act, I would like to have your reaction to their proposal. In general terms, do you control projects of this type under New Jersey law at this time. If so, have you approved the project or will you?

I would like to receive New Jersey's views on the project since a part of the project would be located in New Jersey but the pier which is necessary for the project to be undertaken is located in Delaware. In addition to getting your reaction to the subject project, I think it would be helpful if we could establish a system of communications for other projects of this type that will undoubtedly develop.

If you have any questions or would like to discuss the project, please call me.

Sincerely,

David R. Kaiser
Director

DRK:cmd
Encl.

DE06264

STATE OF DELAWARE
EXECUTIVE DEPARTMENT
PLANNING OFFICE
DOVER

RUSSELL W. PETERSON
GOVERNOR

DAVID R. KEIFER
DIRECTOR

February 23, 1972

Mr. Barry Huntsinger
El Paso Eastern Company
2727 Allen Parkway
Houston, Texas 77019

Dear Mr. Huntsinger:

This is to inform you of my status decision regarding the El Paso Eastern Company proposed project for a pier within Delaware's jurisdiction in the Delaware River to serve as a tanker berthing facility in connection with a Liquified natural gas terminal near Penns Grove, New Jersey.

The status of the pier facility for this El Paso Eastern Company project is that it is an offshore bulk product transfer facility which is prohibited in the Delaware coastal zone by the terms of Section 7003 of the Coastal Zone Act (Chapter 70, Title 7, Delaware Code). No coastal zone permit may be issued for such a use. This opinion is based on the advice of Attorney General Stabler and my examination of the descriptive material provided in your letter of December 21, 1971.

If you wish to file an appeal from this decision it should be filed within fourteen (14) days of your receipt of this notice on the appeal form provided herein. Items A, B, and E on the appeal form should be filled in, as well as the date of the appeal application. At this time there is no appeal fee required. The appeal should be sent to the State Coastal Zone Industrial Control Board at the address shown on the appeal application form.

If you have any questions, please contact me.

Sincerely,

David R. Keifer
Director

DRK/daf

Enclosure

CC: Secretary Austin N. Heller
Commissioner Richard Sullivan

State of New Jersey

DEPARTMENT OF ENVIRONMENTAL PROTECTION

OFFICE OF THE COMMISSIONER

March 2, 1972

Mr. David R. Keifer
Director of State Planning
Thomas Collins Building
Dover, Delaware

Dear Mr. Keifer:

Under the riparian laws of New Jersey, anyone proposing to alter or build upon lands below mean high tide must have the necessary approval from this Department. It is our policy to consider applications with respect to the degree of true public interest to be served and to the degree of environmental damage to be rendered.

On major proposals such as that apparently contemplated by El Paso Eastern Company we would require a complete environmental impact statement including base line studies before any decision is made. This would apply not only to that part of the proposal situated below mean high tide, but to the entire project.

In this case it is difficult to be more specific as to the status of the case and the probability of our decision, since El Paso has not made any application to this Department and we have no specific knowledge of their proposal.

I agree it would be useful to communicate on matters of joint interest. You can expect to hear from Richard D. Goodenough, Director of the Division of Marine Services whenever an application appears to effect the statutes of both of our States.

Very truly yours,

Richard J. Sullivan
Commissioner

7

MAR 8 1972

El Paso Eastern Company

[illegible] Allen Parkway

[illegible] Transportation

[illegible]

March 3, 1972

Mrs. David R. Keifer
Director of State Planning
Thomas Collins Building
Dover, Delaware

Dear Mrs. Keifer:

Thank you for your letter of February 23, 1972 rendering your status opinion that the pier facility of the LNG plant which El Paso Eastern Company had proposed is prohibited by the Delaware Coastal Zoning Act.

Your letter was presumably written in response to our letter dated December 21, 1971. We did not intend our letter to be a formal application for a permit under the Coastal Zoning Act. Rather, we merely sought your preliminary advice concerning the applicability of the Act to the project in order to assist us in deciding what course of action we should take.

A few days before your letter of February 23, 1972 was received, a decision was made by El Paso to abandon the project. Consequently, we will not be making a formal application under the Coastal Zoning Act and the matter will not be before you for decision.

Under the circumstances, we respectfully request that you withdraw your decision on the project in order to eliminate any contention that we have acquiesced in your decision by our failure to appeal.

We regret the misunderstanding and very much appreciate the assistance you have given us.

Very truly yours,

BH:bg

cc: Mr. James P. Lister
Mr. David T. Burleson
Mr. Kenneth G. Johnson
Mr. Dickinson R. Debevoise

Certified Mail No. P 1000

March 17, 1972

Mr. Barry Hunsaker
Vice President
El Paso Eastern Company
2727 Allen Parkway
Houston, Texas 77019

Dear Mr. Hunsaker:

This is in reply to your letter of March 3, 1972, on the subject of the dredging for your proposed liquified natural gas terminal and your request regarding my letter of February 29, 1972, rendering a decision on that project proposal under the Coastal Zone Act.

Following our meeting where you outlined the project, in your letter of December 21, 1971, you stated, "El Paso Eastern Company will, therefore, seek approval for the installation and operation of the terminal from the states of Delaware and New Jersey." In that letter you elaborated that I had suggested "that you write to me concerning the project so that I could consider it and comment on it in the context of the Coastal Zone Act." My comment on the project was the status decision in my letter of February 29, 1972.

In your letter of March 3, 1972, you said that it was decided a few days prior to receiving my letter of February 29, 1972, to abandon the project. Certainly you have the right to abandon the project. However, I do not feel that I can withdraw my status decision. Since, as you say, the decision to abandon this project was made prior to your having any knowledge of my status decision the reason for abandoning the project cannot be my decision. It would seem to be illogical to expect an appeal from a decision prohibiting a project which had previously been voluntarily abandoned. Your failure to appeal my status decision is understandable in the light of the situation, rather than an acquiescence to the decision.

DE06270

Mr. Danny Hunsaker -2- March 17, 1972

If I should now withdraw my decision and you decide at some time to go ahead with this project, you would already know my present decision and would, therefore, have more than the time specified by the Act and more time than allowed to all other applicants to prepare your appeal.

The Coastal Zone Act provides that a final decision of the State Planner can be appealed. A state decision that a project is prohibited in the coastal zone is a final decision; otherwise it would not be operative. My decision in this letter denying your request to withdraw the state decision of February 23, 1972, is not covered by appeal provisions of the law. I believe that my decision here is proper under terms of the Coastal Zone Act.

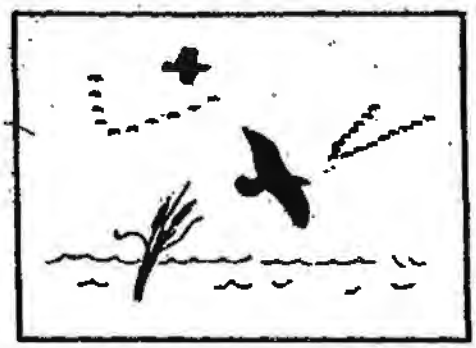
Sincerely,

David H. Kelley
Director

DHK:ldm

# COASTAL ZONE ACT ADMINISTRATION

## JUNE 28, 1971 - JUNE 30, 1977



## STATE COASTAL ZONE INDUSTRIAL CONTROL BOARD
## AND
## OFFICE OF MANAGEMENT BUDGET AND PLANNING
## FORMERLY DELAWARE STATE
## PLANNING OFFICE

NOVEMBER, 1977

DE27805

Project Number 5 - El Paso Eastern Company

In a letter to the State Planner, December 21, 1971, the vice-president of the El Paso Eastern Company described a project for a liquified natural gas (LNG) terminal in New Jersey opposite Claymont involving a pier extending into Delaware waters beyond mean low water on the New Jersey side of the Delaware River. The project involved importation of North African liquified natural gas by tanker, storage and regassification at this terminal, and shipment by pipeline to customers in the Northeast. The letter suggested that the State Planner examine the project in the context of the Coastal Zone Act.

Prior to his status decision, the State Planner sought the Attorney General's legal advice on this project. On January 20, 1972, the Attorney General advised that the pier would be a (prohibited) off-shore bulk product transfer facility and that it was not exempt from prohibition by reason of the clause in Section 7002(f) of the Law providing for piers or docking facilities to be used solely by a single industrial or manufacturing user. (See Appendix 3.)

On February 23, 1972, the State Planner informed the vice-president of El Paso Eastern Compnay that the pier for the LNG terminal would be a prohibited off-shore bulk product transfer facility. On March 3, 1972, the Company vice-president replied that El Paso had abandoned the project a few days prior to the State Planner's decision and requested a withdrawal of the status decision saying that he had merely sought information advice on the status of the project. The State Planner refused to withdraw his status decision on March 17, 1972. No appeal was filed, and since the project had apparently previosuly been dropped by the Company, no appeal could logically have been expected.

Project Number 6 - Sun Olin Chemical Company

This project consisted of construction of a Stretford Sulfur Recovery Unit at the Sun Olin Chemical Plant in Claymont. This unit would remove hydrogen sulfied from a by-product stream and convert it to elemental sulfur thus removing sulfur dioxide as an emission to the atmosphere. Sun Olin was under orders by the Department of Natural Resources and Environmental Control to remove sulfur dioxide emissions in order to meet State air quality requirements by January 1973.

The status decision request was received on January 26, 1972, and the decision was made on March 9, 1972; the decision was that as expansion or extension of a non-conforming use, this project did not require a coastal zone permit because it had no significant effect on land use area, plant production, or (negative) environmental impact. There was no appeal.

1. Deny a request by the Defense Fuel Supply Center to withdraw its status decision application; and
2. Approve a request to withdraw the appeal application.

There was no further appeal or other action on this project. The proposed facility off Pickering Beach was not built.

Project Number 69 - Feralloy Corporation

On April 3, 1975, Feralloy Corporation asked the State Planner if a coastal zone permit would be required for a 40,000 square foot addition to its sheet steel cutting plant in the New Castle Industrial Park near Pigeon Point. Prior to this a coastal zone permit had been granted to construct the original 80,000 square foot plant. The State Planner informed the company on April 4, 1975, that a coastal zone permit would be required for this major plant expansion. On April 14 the permit application was filed.

After the required public hearing the State Planner granted the coastal zone permit on May 12, 1975.

No appeal was filed.

Project Number 70 - Townsend's Inc.

Townsend's Inc. requested a status decision on a proposed structure alteration from 80' x 62' to 96' x 62' at its soybean processing plant near Millsboro. The State Planner's decision of April 23, 1975, stipulated that the project was not a significant expansion; that it was not prohibited; and that it needed no coastal zone permit.

No appeal was received on this decision.

Project Number 71 - Captain Gray Smith

Application for a status decision was made on May 8, 1975 by Captain Gray Smith for a project to manufacture a fish product at an existing facility on the banks of the Lewes-Rehoboth Canal in Rehoboth Beach west of Route 14. The buildings had formerly been occupied by an oyster shucking operation.

Specifically, the applicant proposed to bring fresh fish by truck to the plant and to wash and box some of the fish and ship it out and to wash, filet, and ship out the remainder of the fish. Fish byproducts would be resold for pet food and fertilizer.

The State Planner on May 9 decided that this would be a new manufacturing use requiring a coastal zone permit because some of the fish would be processed in a way that met the definition of "manufacturing" in the law.

Captain Gray Smith never applied for a coastal zone permit and did not appeal this decision.

Project Number 72 - Standard Chlorine of Delaware, Inc.

A status decision application was filed on September 10, 1975, by Standard Chlorine of Delaware, Inc. for a project involving modification of its distillation system for production of benzenes at its Delaware City plant by inserting a continous crystallization train system within the production process. Also involved was the construction of six storage tanks, a benzene tank, and a cooling tower. The project would improve production of certain benzene products and decrease the quantity of fuel oil used. The State Planner decided that a permit would be required and on September 30, 1975, a permit application was filed.

After a public hearing, the State Planner granted the coastal zone permit on October 29, 1975.

There was no appeal.

Project Number 73 - Amoco Chemicals Corporation

On October 22, 1975, Amoco Chemicals Corporation requested a status decision on a proposed project to recover vent gas then flared to the atmosphere and to separate the gas into hexane for use in the manufacturing process and utilize the remainder as a boiler fuel at its plant south of New Castle. Atmospheric emissions would be reduced due to burning sulfur-free flare gas in lieu of fuel oil and less potential for unburned hydrocarbon emissions.

After checking with the Department of Natural Resources and Environmental Control, the State Planner decided on October 27 that the project was not regulated by the Coastal Zone Act, that it was not an expansion or extension of a nonconforming use due to its not being significant in terms of negative environmental impacts, land use impact, or effect on production capacity.

No appeal was filed.

Project Number 74 - Energy Transporters, Inc.

Energy Transporters, Inc. on January 12, 1976 applied for a status decision on a proposal to install a ten inch petroleum pipeline from the Wilmington Marine Terminal petroleum dock to the nearby oil tank farm of Energy Transporters. The project was a modification of Project Number 23 previously given a status decision that was appealed and then decided by mutual agreement between the parties involved.

The State Planner's status decision was that the new pipeline was not regulated by the Coastal Zone Act. The pipeline was neither a heavy industry use or manufacturing use and the docking facilities at the Marine Terminal were exempt from regulation by Section 7002(f) of the Act.

No appeal was made.

Project Number 75 - Air Products and Chemicals Company

New facilities for the manufacture of medical nitrous oxide were proposed by Air Products and Chemicals Company at its Delaware City plant in a status decision application of February 10, 1976.

The status decision of February 12, 1976, required application for a coastal zone permit for new manufacturing. On April 14, 1976, the permit application was made.

The Division of Environmental Cotnrol advised that environmental impacts would not be significant.

A coastal zone permit was granted on May 7, 1976.

There was no appeal.

On August 2, 1977, this new nitrous oxide facility was destroyed by an explosion.

Project Number 76 - Diamond Shamrock Chemical Company

A status decision application was filed on June 28, 1976, by Diamond Shamrock for expansion of its PVC (polyvinyl chloride) paste production facilities near Delaware City.

Environmental impacts involved vinyl chloride monomer emissions to the air, a small amount of additional PVC solid waste, and increased wastewater flow. New pollution control equipment would reduce emissions from previous levels, the solid wastes would go to a licensed solid waste landfill, and the wastewater increase was minor according to the advice of the Division of Environmental Control.

The State Planner's status decision of July 15, 1976, was that this was not new manufacturing, and that it was not a regulated expansion or extension of a nonconforming use due to the insignificant land use, environmental, and production capacity effects. No coastal zone permit was required and the project was not prohibited.

No appeal was filed.

Project Number 77 - Delaware Terminal Company

On September 17, 1976, Delaware Terminal Company filed an application for a coastal zone status decision on a project involving a new railroad loading rack and petroleum storage tank and pipeline between the two at a petroleum tank farm adjacent to the Wilmington Marine Terminal. Port facilities of the Marine Terminal were not involved.

The status decision of September 22 was that this project was not regulated by the Coastal Zone Act.

There was no appeal.

Project Number 78 - Hoover Ball and Bearing Company

Hoover Ball and Bearing Company applied for a status decion on October 28, 1976, to move into the former American Can Company plant in southwest New Castle, install new plastic melting and bottle forming machinery, and produce plastic bottles.

Between 1966 and March 1976 American Can had produced plastic bottles there. From March 1976 to October 1976 the plant had been idle. Hoover planned to buy the 46 acre site from American Can.

The State Planner's status decision of October 29, 1976, was that a coastal zone permit for a new manufacturing use would be required. The fact that American Can manufactured plastic bottles at the site prior to and on the date of enactment of the coastal zone law did not carry forward its legal nonconforming status to the new Hoover operation.

On November 8, 1976, Hoover Ball and Bearing Company applied for a permit and on December 6, after a public hearing, was granted the permit.

No appeal was filed.

Project Number 79 - DelVal Asphalt Corporation

DelVal Asphalt applied for a status decision on December 15, 1976, for a project at its Edgemoor asphalt tile plant to improve materials handling equipment, build a new warehouse to increase indoor storage capacity, and improve lighting and fencing for 24-hour-a-day operations. Asphalt roofing production capacity would not increase, but actual production would increase because of the change from one shift to three daily shifts. The company would comply with all area air quality regulations.

The status decision of January 6, 1977, was that this project did not require a coastal zone permit and was not prohibited.

No one filed an appeal.

✓ Project Number 80 - Airco Inc., Industrial Gas Division

On December 10, 1976, Airco Inc. requested a status decision on a project to erect a liquid carbon dioxide ($CO_2$) plant at the Sun Olin Chemical refinery in Claymont to take $CO_2$ vented to the atmosphere by Sun Olin, liquify it and ship it as chemical feedstock by tank truck and railroad tank car.

The status decision of December 13, 1976, was that this would be a new manufacturing use requiring a coastal zone permit.

There was no appeal and nothing further was heard from Airco Inc.

Project Number 81 - Getty Oil Company

Getty Oil Company on December 20, 1976, requested the State Planner's advisory opinion on a project at its Delaware City refinery to modify a production unit so as to produce high purity benzene. Overall refinery production capacity would not increase.

The State Planner advised on December 23 that the project would not be regulated by the Coastal Zone Act. Getty had not made a formal application, so no formal decision was made and no legal notice was published.

Project Number 82 - Standard Chlorine of Delaware, Inc.

Modification and expansion of waste water treatment facilities to improve water pollution control at the Delaware City plant of Standard Chlorine of Delaware, Inc. was the subject of a status decision on January 31, 1977.

The March 3 status decision was that the project was not regulated by the Coastal Zone Act, plant production capacity was not involved and the project was solely for pollution control purposes to meet State and federal requirements.

No appeal was filed.

Project Number 83 - E.I. duPont deNemours and Company, Inc.

The status decision application of February 1, 1977, was for a project at duPont's Edgemoor titanium dioxide plant to remove carbon monoxide oxidation units from the chloride plant tail gas system. No significant adverse air quality effects would result.

The March 3 status decision was that this project was not regulated by the Coastal Zone Act.

There was no appeal.

Project Number 84 - Diamond Shamrock Corporation

Diamond Shamrock Corporation on February 18, 1977, applied for a status decision on a project at its plant near Delaware City to increase PVC (polyvinyl chloride) production by more than 100%. This project was a change of plans from Project Number 76 given a status decision in July 1976 by increasing the proposed PVC production expansion. The previous project was not required to obtain a permit. New controls over VCM (vinyl chloride monomer) emissions would be part of Project Number 84.

Air emissions and wastewater flow would not be significant, but PVC solid waste disposal would be environmentally significant. Two types of PVC solid wastes - grits and sludge - would result from this project.

A status decision of April 25, 1977, stated that a coastal zone permit would be required due to the significance of the amount of PVC production capacity increase and the potential for significant adverse environmental impact from PVC solid waste disposal and the lack of a company plan for disposal of the time of this decision.

At Diamond Shamrock's request the State Planner agreed on April 28 to reconsider this status decision if: (1) a complete description of alternatives for disposal of PVC solid wastes with a schedule for implementation was provided; (2) assurance that PVC wastes would be disposed of out-of-State if there was no feasible Delaware alternative; and (3) if additional information on new PVC Plant facilities was provided.

On May 9, 1977, Diamond Shamrock and the State Planner reached a legal agreement to the effect that:

1. All new PVC solid wastes would be disposed of at an out-of-state landfill pending the Company's decision on alternative disposal methods;
2. Prior to choosing any alternaitve disposal methods or sites in Delaware, Diamond Shamrock would notify the State Planner of the alternative chosen and would request the Department of Natural Resources and Environmental Control (DNREC) approval;
3. The State Planner would have the right of approval of any disposal site in the coastal zone that was not a DNREC approved landfill; and
4. Diamond Shamrock would not dispute in legal proceedings of the State Planner's right to approve any disposal site in the coastal zone per terms of this agreement.

As part of the agreement Diamond Shamrock provided additional information on equipment changes due to the change of PVC expansion plans since Project Number 76.

On May 17 a reconsidered status decision, subject to the above agreement, was issued. No coastal zone permit was required.

There was no appeal.

Diamond Shamrock on August 12 notified the State Planner that the PVC solid waste would be disposed of within the coastal zone at one of the two DNREC approved landfill sites.

Project Number 85 - Ludwig Honold Manufacturing Company

A status decision application was made by Ludwig Honold Manufacturing Company for transfer of metalwdrking operations from its Folcroft, Pennsylvania plant to its plant at Edgemoor and for renovation and repair of buildings at the Edgemoor site to be used for the transferred operations.

The principal products made by the Company are large covers for turbines and bus-like vehicles called Plane Mates for transporting passengers from airline terminals to parked aircraft. At Folcroft, Pennsylvania

metal cutting and fabricating operations were conducted, while assembly of metal panels and welding or riveting was carried on at Edgemoor. The applicant proposed to move its Folcroft operations to Edgemoor so that all Ludwig Honold metalwork would be done at one site. No overall production capacity increase would result from the move.

The applicant also proposed to construct a new pier on the Delaware River for occasional barge shipping of finished turbine covers and Plane Mates and for docking of hydrofoil boats at some future time if these were produced by Ludwig Honold Manufacturing as planned.

The status decision of June 29, 1977, was that this transfer of operations would be a new manufacturing use in Delaware's coastal zone requiring application for a coastal zone permit.

Ludwig Honold Manufacturing applied for a permit which was granted on July 27 after the required public hearing. A condition of the permit was that the pier would be used exclusively by Ludwig Honold Manufacturing for its own purposes in accordance with applicable provisions of the Coastal Zone Act. This was expressed in the property deed agreed to by Ludwig Honold Manufacturing. In this way the pier could be allowed under the singe user exemption in Section 7002(f) of the Act avoiding the prohibition of an offshore bulk product transfer facility in Section 7003 of the Coastal Zone Act.

No appeal was filed.

Project Number 86 - Carbonaire Company, Inc.

In a status decision application of April 29, 1977, Carbonaire Company proposed to lease a small site from Sun Olin Chemical Company at its Claymont plant and install machinery to purify, compress and refrigerate carbon dioxide ($CO_2$) gas and to liquefy it for shipment to industrial customers. Carbon dioxide gas is vented to the atmosphere from Sun Olin chemical plant operations. Carbonaire would capture this gas for processing and commercial sale. The nature and site of this project was the same as the Airco proposal in Project Number 80, which apparently was never carried out.

The status decision of May 26, 1977, was that a permit would be required for this new manufacturing use in the coastal zone.

A permit application was filed on May 26, 1977.

No negative environmental effects were anticipated from the project by the Division of Environmental Control; in fact, carbon dioxide emissions in the Claymont area would be considerably reduced.

On July 7 a coastal zone permit was granted to Carbonaire Company, Inc.

There was no appeal.

Project Number 87 - Allied Chemical Corporation

The Industrial Chemicals Division of Allied Chemical Corporation applied on April 27, 1977, for a status decision on a project at its Claymont plant to produce a small amount of electrical energy for in-plant use by means of a Rankine Cycle low level waste heat recovery system. That is, waste heat lost from operations of the sulfuric acid plant would be captured to produce electrical energy.

No production capacity increase was involved, the land area involved was small, and negative environmental effects were not expected.

As of the end of the period covered by this report, no status decision had been made on this application.

Project Number 88 - Allied Chemical Corporation

On May 2, 1977, Allied Chemical Corporation, Industrial Chemicals Division, applied for a coastal zone status decision to relocate an aqeous hydroflouric acid operation within its Claymont plant site for the purpose of more efficient operation. There would be no change of aqeous hydroflouric acid production capacity, no negative environmental impact -- in fact, reduced emissions - and an insignificant land use impact.

The May 23 status decision was that this project was not regulated by the Coastal Zone Act, based on the definition of expansion or extension of a nonconforming use.

Project Number 89 - Townsends, Inc.

Townsends proposed to construct two large silos for soybean meal storage at its soybean plant near Millsboro. The silos would increase storage capacity and allow the soybean processing plant to operate continuously without shutdowns during the eleven month operating season. Insufficient on-site soybean meal storage capacity had required some plant shutdowns that were costly to Townsends.

Capacity of equipment to process soybeans would not be increased due to these two new storage silos. Environmental impacts were insignificant. The silos would be built well within the present plant operating area.

The status decision of June 20, 1977, was that this project was not regulated by the Coastal Zone Act; it was not an expansion or extension of a nonconforming use as defined.

There was no appeal.

JAN 25 1972

STATE OF DELAWARE
DEPARTMENT OF JUSTICE

ALBERT STADLER, JR.
ATTORNEY GENERAL

Wilmington, Delaware

January 20, 1972

Mr. David R. Keifer, Director
Planning Office
Executive Department
State of Delaware
Dover, Delaware 19901

Re: Coastal Zone Act - Bulk
Transfer Facility
(El Paso Eastern Company)

Dear Dave:

I have reviewed the material submitted to you with regard to the liquid natural gas (LNG) terminal which El Paso Eastern Company proposes to built in New Jersey with docking facilities extending into the Delaware River. I agree with your determination that this facility is an offshore bulk product transfer facility as that term is defined by the Coastal Zone Act. However, there may be some question as to whether or not the terminal is excepted from 7 Del. C. §7002(f) by virtue of the fact that it is "a docking facility or pier for a single industrial or manufacturing facility for which a permit is granted".

It is my opinion that the El Paso Eastern terminal does not fit within the "single industrial or manufacturing facility" exception. The Delaware courts have uniformly held that the meaning of a statute depends on the intent of the legislature and that such intent must be ascertained from an interpretation of the act as a whole. The facts contained in the letter from the El Paso Eastern Company indicate that the LNG terminal in question is merely a way station in the natural gas transportation system which El Paso Eastern is endeavoring to develop. It is quite clear that the legislative intent was to permit docking facilities where such facilities would benefit such industries as would be granted permits to operate in the Coastal Zone. Here the situation is reversed. The terminal will only exist as an adjunct to the dockin facility. In other words, the important part of the project to El Paso Eastern is not the "industrial facility" but the docking facility. Further, I assume that the facility proposed by El Paso Eastern is not the type of "single industrial or manufacturing facility" for which your office would grant a permit under 7 Del. C §7004. The statute specifically mandates that such approval is necessary.

With specific reference to situations similar to the one here in issue, it is my recommendation that your office more clearly define "single industrial or manufacturing facility". The definition should explicate the legislative intent to allow an exception for docking or pier facilities only where the facilities are to be used in conjunction with industries of the type permitted under 7 Del. C. §7003. The definition I envision will permit your office to evaluate applications for construction onthe New Jersey shore as if they were applications for construction on the Delaware shore. Such a standard would negate claims that applications which require the approval of more than or governmental agency are acted upon by Delaware in an arbitrary or capricious manner. However, it must be clear that Delaware is not attempting to regulate development beyond the state boundary. Therefore, any reference to potential development in New Jersey should be avoided.

If you should wish to discuss this matter further, please do not hesitate to contact me. Also at this time I would like to stress that this is an informal advisory opinion. Please advise me if a formal opinion becomes necessary.

Sincerely,

Laird

W. Laird Stabler, Jr.
Attorney General

WLSJr:ls.

STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES
& ENVIRONMENTAL CONTROL
89 KINGS HIGHWAY
P.O. Box 1401
DOVER, DELAWARE 19903

OFFICE OF THE
SECRETARY

TELEPHONE: (302) 736-4403

George Franklin
Sr. Real Estate Representative
Sun Refining and Marketing Company
1801 Market Street
Philadelphia, PA 19103

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Dear Mr. Franklin:

My decision on your Coastal Zone Status Decision application of December 15, 1989 to construct and use a pier from the New Jersey shoreline into the Delaware River is that the proposed use is a prohibited Offshore Bulk Product Transfer Facility in accordance with 7 Del. Code 7003.

The proposed pier cannot be considered as "a docking facility or pier for a single industrial or manufacturing facility for which a permit is granted or which is a nonconforming use," and, therefore, exempted from the definition of Bulk Product Transfer Facility (7002F), because the industrial or manufacturing facility (which the pier will serve) is not a facility "for which a permit is granted or which is a nonconforming use" (second phrase of the 7002(f) exemption clause). Inasmuch as the industrial or manufacturing facility is in the State of New Jersey and not Delaware, it can never meet those conditions. Therefore, your proposed pier does not fit either condition for exemption and must be considered as a prohibited bulk product transfer facility.

You have the right to appeal this decision to the state's Coastal Zone Industrial Control Board within fourteen (14) days following the date of the legal notice.

There will be a newspaper legal notice of this decision within a few days of this letter. If no appeal is received within fourteen (14) days following the date of the legal notice, this decision becomes final and you will receive a notice to that effect. Your company will be billed for the legal notice.

If you have any questions about this decision or the appeal process, please call Dennis Brown at 736-5409.

Sincerely,

John A. Hughes
Acting Secretary

STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES
& ENVIRONMENTAL CONTROL
89 KINGS HIGHWAY
P.O. BOX 1401
DOVER, DELAWARE 19903

OFFICE OF THE SECRETARY

TELEPHONE (302) 736-4403

November 19, 1990

Richard V. Ciliberti, Vice President
Keystone Cogeneration Systems Inc.
313 Chestnut Street
Philadelphia, PA 19106

Dear Mr. Ciliberti:

Please find enclosed my decision on your Coastal Zone Act status decision application of July 13, 1990.

My decision is that the proposed pier is not a prohibited offshore bulk product transfer facility provided a Coastal Zone Act permit is granted for the Cogeneration plant (including the intake and outfall). Obtaining such a permit is necessary for the pier to qualify for the single industrial use exemption found in the Delaware Coastal Zone Act's definition of bulk product transfer facility.

You have the right to appeal this decision to the state's Coastal Zone Industrial Control Board within fourteen (14) days following the date of the legal notice.

There will be a newspaper legal notice of this decision within a few days of this letter. If no appeal is received within fourteen (14) days following the date of the legal notice, this decision becomes final and you will receive a notice to that effect. Your company will be billed for the legal notices.

If you have any questions about this decision or the appeal process, please call Dennis Brown at 739-5409.

Sincerely,

Edwin H. Clark, II
Secretary

EHC:RHM:bh

EXHIBIT
Whitney 8
S. Oakley 10/10/06

DE02180

Coastal Zone Status Decision
CZA Project No. 23750

THE PROJECT

1. The proposed project is an adjunct to a power generation facility to be constructed in New Jersey. Keystone Cogeneration Systems, Inc., proposes to construct a 200 megawatt coal fueled cogeneration facility in Logan Township, Gloucester County, New Jersey, and an 1100 foot pier in the Delaware River. Electric power will be sold to Atlantic City Electric Co. and steam will be sold to neighboring Monsanto Chemical Company (Delaware River Plant).

2. The power generation plant facilities are those normally associated with power plants such as a turbine building, a boiler building, an administration facility, maintenance shop and warehouse building, water treatment building, transformers, cooling tower, pumphouse, tanks, pumps, flue gas desulfurization systems, chimney or stack, fly ash silo, switchyard, wastewater systems, and lime and coal storage, and handling systems.

3. The status decision application seeks a ruling on (1) a pier which will extend into the Delaware River, (2) a raw water intake system, consisting of two vertical turbine pumps located on this pier platform, and (3) one wastewater outfall located in the pier area for the discharge of stormwater runoff, treated wastewater, and cooling tower blowdown.

4. The pier will be owned and used by the applicant for the single purpose of offloading coal and lime from vessels docked at the pier and for onloading ash. The applicant acknowledges that no other entity will use the pier for the offloading/onloading of any bulk product and that the coal, lime and ash will be utilized/generated solely by the power plant.

PROJECT HISTORY

5. On December 18, 1988, Sun Refining and Marketing Company applied for a Coastal Zone Act status decision to determine, prior to final sale, whether or not a pier extending from the New Jersey shoreline into the Delaware River beyond the mean low water mark, is regulated by the act.

6. Acting Secretary Hughes' May 5, 1989, status decision stated that the proposed pier is a prohibited offshore bulk product transfer facility in accordance with Section 7003 of the act.

7. On May 17, 1989, the applicant appealed the decision, and a hearing before the Coastal Zone Industrial Control Board was scheduled for June 27, 1989. By stipulation of the parties, dated June 15, 1989, the Secretary's decision was withdrawn and vacated, the hearing was canceled, the applicant withdrew his appeal, and the status decision application was remanded to the Secretary for further consideration of additional information to be provided by the applicant. On September 13, 1990, the applicant supplemented its application with additional information, and the review process was reinstituted.

## LEGAL FINDINGS

9. The pier constitutes a prohibited bulk product transfer facility, unless it will serve a single industrial or manufacturing facility for which a permit is granted by the Department.

9. The plant, including the intake and the outfalls, is a manufacturing facility which could receive a coastal zone permit from the Department if it satisfies the requirements of 7 Del. C. Section 7004.

## ORDER

10. The Department hereby grants applicant a conditional coastal zone status decision that the pier does not constitute a prohibited bulk product transfer facility.

11. This status decision is expressly conditioned on the applicant eventually receiving a coastal zone permit for the plant. The failure to procure such permit for the plant will render applicant's conditional coastal zone status decision null and void.

12. The Department has the further understanding regarding the Department's future coastal zone permit decision for the plant:

(a) That any Department permit encompass the entirety of the plant, not only the coastal zone components; and

(b) That the Department will consider the plant's impact on the coastal zone only for the purposes of rendering its coastal zone permit decision.

Edwin H. Clark, II
Secretary

Date:

Legal Notice Concerning
Coastal Zone Act Status Decision

Under authority of the Regulations adopted pursuant to the Coastal Zone Act (Title 7, Chapter 70, Delaware Code), the Secretary of the Department of Natural Resources and Environmental Control has made a status decision on an application from Keystone Cogeneration Systems Inc.

The status decision application seeks a ruling on (1) a pier which will extend into the Delaware River, (2) a raw water intake system, consisting of two vertical turbine pumps located on the pier platform, and (3) one wastewater outfall located in the pier area for the discharge of stormwater runoff, treated wastewater, and cooling tower blowdown.

The pier will be owned and used by the applicant for the single purpose of offloading coal and lime from vessels docked at the pier and for onloading ash. The applicant acknowledges that no other entity will use the pier for the offloading/onloading of any bulk product and that the coal, lime and ash will be utilized/generated solely by the power plant.

The Secretary has determined that:

a. The pier constitutes a prohibited bulk product transfer facility, unless it will serve a single industrial or manufacturing facility for which a Coastal Zone Act permit is granted by the Department.

b. The plant, including the intake and the outfalls, is a manufacturing facility which could receive a coastal zone permit from the Department if it satisfies the requirements of 7 Del. C. §7004.

DECISION ORDER

The Secretary hereby grants applicant a conditional Coastal Zone status decision that the pier does not constitute a prohibited bulk product transfer facility. The status decision is expressly conditioned on the applicant eventually receiving a coastal zone permit for the plant. The failure to procure such permit for the plant will render applicant's conditional coastal zone status decision null and void.

The Department has the further understanding regarding the Department's future Coastal Zone permit decision for the plant:

(1) That any Department permit encompass the entirety of the plant, not only the coastal zone components; and

(2) That the Department will consider the plant's impact on the Coastal Zone only for the purposes of rendering its Coastal Zone permit decision.

Copies of this Status Decision and application are available for public inspection at the New Castle County Department of Planning located in the County Engineering Building on Capitol Trail and at the offices of the Department of Natural Resources and Environmental Control in Dover and near New Castle at 715 Grantham Lane.

Anyone wishing to appeal this decision to the State Coastal Zone Industrial Control Board must do so within fourteen (14) days following the date of this legal notice. Appeal application forms are available by calling the Department of Natural Resources and Environmental Control at 739-5409. There is a one hundred dollar ($100.00) appeal application fee. If no appeal is received within the allowed time, this Status Decision will become final.

Edwin H. Clark, II, Secretary
Department of Natural Resources
and Environmental Control

---

Instructions:

1. Please publish in Wilmington Morning News on November 21, 1990.

2. Send bill to: Richard V. Ciliberti, Vice President
Keystone Cogeneration Systems Inc.
313 Chestnut Street
Philadelphia, PA 19106

3. Send affidavit, with clipped legal notice, to:
Dennis Brown
DNREC
Division of Water Resources
Planning & Support Section
89 Kings Hwy., P. O. Box 1401,
Dover, DE 19901

Let's protect our earth

# State of New Jersey

DEPARTMENT OF ENVIRONMENTAL PROTECTION
TRENTON

Division of Coastal Resources

*Please address reply to:*
CN 401
Trenton, N.J. 08625-0401

March 14, 1991

Anthony P. Pratt — (302) 739-4411
Division of Soil and Water Conservation
Department of Natural Resources and Environmental Control
89 Kings Highway
Dover, Delaware 19903

**RE: Joint Review of Project within the States of Delaware and New Jersey**
**Keystone Cogeneration Systems**

Dear Tony:

The Division of Coastal Resources recently received an application for several coastal permits for a coal fired cogeneration facility with a coal handling pier. This mooring and offloading pier is shown in the application to be located in the State of Delaware.

Considering our federal Coastal Zone Management Grant task to produce a better coordination effort for development of this kind, I am forwarding to you this application for your review. This application might be a good prototype for us to scope out some the details we will need to address.

The Division project reviewer is Dave Fanz. He can be reached at the above address or (609) 984-0266,. He can provide you with details of this particular application. Any matters related to coordination should be addressed through me for the time being while we proceed with the CZM grant task.

Delaware Contact
Dennis Brown: "Coastal Zone Coordinator"
(302) 739-5409

Sincerely,

Steven

Steven Whitney
Assistant Director

c: Dave Fanz

EXHIBIT 10
Johnson-8
11/1/05 SPW

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NJ07744

Dave

State of New Jersey

DEPARTMENT OF ENVIRONMENTAL PROTECTION
TRENTON

Division of Coastal Resources

Please address reply to:
CN 401
Trenton, N.J. 08625-0401

August 1, 1991

Mr. Richard A. Long
Manager, Environmental Services
S. T. Hudson Engineers, Inc.
800 Cooper Street
Camden NJ 08102

RE: KEYSTONE COGENERATION SYSTEMS, INC., Long-Term Lease and Interim License, Delaware River, Block 1, Lots 2.0 and 2.1, Logan Township, Gloucester County

Permits 0809-91-0010.1, - .2, -.3 & - .4

FILE: 91-0190-T

Dear Mr. Long:

Receipt of your letter of July 30, 1991, enclosing revised documents to allow Keystone Cogeneration Systems, Inc., to be the applicant in place of Sun Refining and Marketing Company.

Sincerely,

ORIGINAL SIGNED BY
/S/ JAMES R. JOHNSON

James R. Johnson
Assistant Director, Tidelands
Division of Coastal Resources

/jec

cc: BU OF REVENUE
BU OF REGULATIONS - Kevin Broderick

EXHIBIT ID
Johnson-7
11/05 SPW

NJ07742

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Tideland Letter

MEMORANDUM

August 28, 1991

To: James Johnson

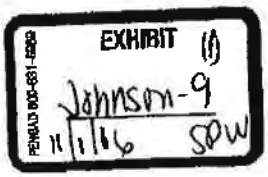
From: Robert Tudor

Subject: Keystone Cogeneration Facility
Logan Township, Gloucester County
File #0809-91-0010.1

Please find attached a copy of the Staff Preliminary Analysis for this project that was prepared by my staff. That document recommends approval of the Keystone facility pending the resolution of several issues. As of this date the applicant has satisfied a majority of those issues and a permit for this facility will be issued within the statutory requirement of 90 days (September 23, 1991). Those items that are not completely satisfied will become a condition to the permit.

The applicant has indicated that due to the nature of the facility it is not feasible to fully comply with the policy on Public Access to the Waterfront. As you are aware the Division has attempted to create "linear walkways" along certain waterfronts (Hudson River). I would like to suggest that you attempt to incorporate a deed restriction into the tidelands instrument that would allow for a 50 foot public access right-of-way adjacent to the Delaware River. That deed restriction would allow future public access should site conditions change.

If you should have any questions regarding the permit application please contact David Fanz of my staff at 984-0266.




NJ07741

STATE OF NEW JERSEY
DEPARTMENT OF ENVIRONMENTAL PROTECTION AND ENERGY
LAND USE REGULATION ELEMENT
BUREAU OF COASTAL REGULATION

Summary Analysis

September 24, 1991

Keystone Cogeneration Systems, Inc.
901 Market Street, Suite 721
Wilmington, Delaware 19801

Waterfront Development Permit Application
0809-91-0010.1

Wetlands Permit "Type A"
0809-91-0010.2

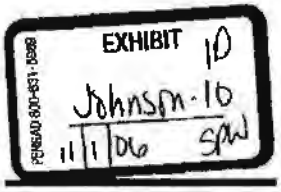
Individual Freshwater Wetlands Permit Application
0809-91-0010.3

Stream Encroachment Permit Application
0809-91-0010.6

Decision of the Adminstrator conditionally approving a Waterfront Development Permit, a Wetlands Type A Permit, a Stream Encroachment Permit, an Individual Freshwater Wetlands Permit and a Water Quality Certificate.

Based upon the analysis which follows and subject to the conditions expressed herein, the Adminstrator is able to make the positive findings required by the Waterfront Development Law as embodied by the Rules on Coastal Zone Management. This project also satisfies the requirements of the Freshwater Wetlands Protection Act and the Flood Hazard Area Control Act. The permit is expressly contigent upon compliance with all permit conditions and failure to comply with any or all of the permit conditions may result in appropriate enforcement actions, or suspension or revocation of the permits.

This permit includes conditions to ensure compliance with the following policies; Intertidal and Subtidal Shallows (7:7E-3.16), Wetlands (7:7E-3.27), Historic and Archaeological Resources (7:7E-3.36), Endangered or Threatened Wildlife or Vegetation Species Habitats (7:7E-




NJ07709

3.38), Acceptability Conditions for Uses (7:7E-4.11), Dredge Spoil Disposal on Land (7:7E-7.11), Water Quality (7:7E-8.4) and Public Access to the Waterfront (7:7E-8.11).

## I. INTRODUCTION

The Waterfront Development Law of 1914 (N.J.S.A. 12:5-3), the Freshwater Wetlands Protection Act of 1987 (N.J.S.A. 13:9B-1 et seq.), the Wetlands Act of 1970 (N.J.S.A. 13:9A-1 et seq.) and the Flood Hazard Area Control Act (N.J.S.A. 58:16A-50); require that a permit be obtained from the Department of Environmental Protection and Energy-Land Use Regulation Element for: the filling or dredging of, or placement or construction of, structures, pilings or other obstructions in any tidal waterway, or in certain upland areas adjacent to tidal waterways and, the alteration or disturbance in and around freshwater wetland areas and the discharge of dredged or fill material into State open waters within the State of New Jersey.

Section 401 of the Federal Clean Water Act (33 U.S.C. 1251 et seq.) requires that a Water Quality Certificate be obtained from the State of New Jersey for all projects which require a federal permit or license and which propose to discharge fill or dredge material into Waters of the United States. The purpose of the certification is to insure that all such activities are consistent with New Jersey Water Quality Standards (N.J.A.C. 7:9-4.1 et seq.), and the Federal Clean Water Act. The Land Use Regulation Element is the agency of the State of New Jersey responsible for the issuance of Water Quality Certificates.

## II. SUMMARY ANALYSIS

Based upon the analysis that follows the Administrator is able to make a positive finding as required pursuant to the Rules on Coastal Zone Management. However this approval is contingent upon the permittee satisfying the conditions of the attached permit.

The Administrator is also able to make a positive finding as required by the Freshwater Wetlands Protection Act Rules, the Flood Hazard Area Control Act and the Wetlands Act of 1970 subject to the conditions contained herewith. Furthermore, the Department, acting under Section 307 of the Federal Coastal Zone Management Act (P.L. 92-583) as amended, certifies that this project is consistent with the approved New Jersey Coastal Management Program.

## III. ADMINISTRATIVE HISTORY

On March 20, 1990 the Element received a Letter of Interpretation request from Keystone Shipping Company to

verify a wetland line on the subject property. The site was inspected on three separate occasions and after several revisions the wetland line was approved via letter dated October 17, 1990.

The Element received applications from Keystone Cogeneration Systems on February 28, 1991 for the proposed coal fired cogeneration facility and related structures. The applications submitted included an Individual Freshwater Wetlands Permit, a Waterfront Development Permit and a Wetlands Type A Permit.

On March 27, 1991 the Element requested additional information. The requested information was received on May 1, 1991 and the applications were determined complete for filing. A fact-finding Waterfront Development public hearing was held on June 26, 1991 at 7:00 p.m. at the Bridgeport Fire Hall, Steelman Avenue, Bridgeport New Jersey.

As specified under Section 7:7E-4.6(c) of the Coastal Permit Program Regulations, for non-CAFRA permit applications on which public hearings are held, the permit application is declared complete for review effective the day of the hearing. Accordingly, the statutory 90-day deadline for this permit application is September 24, 1991.

Keystone Cogeneration Systems also applied for a Stream Encroachment Permit on February 28, 1991. To facilitate a consistent review for the project, the Division suggested to the applicant that it may be prudent to withdraw the Stream Encroachment Permit application and to resubmit that application on the date of the public hearing. Consequently on May 22, 1991, Richard Ciliberti (Vice President, Keystone Cogeneration Systems) requested that the Stream Encroachment Permit application be withdrawn without prejudice. That withdrawal request was accepted by the Element. On June 26, 1991 that application was re-submitted to the Department.

The proposed cogeneration facility includes a barge delivery system that encroaches into the jurisdictions of both the State of New Jersey and the State of Delaware. In 1905 the State's of New Jersey and Delaware entered into a compact regarding riparian jurisdiction for this type of situation. Article VII of that compact authorizes each State, on its own side of the Delaware River to exercise riparian jurisdiction of every kind and nature, and to make grants, leases and conveyances of riparian lands and rights under the laws of the respective states.

As a result of that compact, the State of New Jersey required Keystone Congeneration Systems to obtain a riparian instrument for the barge unloading facility. An interim license and long term lease was issued on September 9, 1991 (File #91-0190-T). The State of Delaware has also assumed

jurisdiction and required a Coastal Zone Permit and a Subaqueous Lands Permit. Those permits were issued on September 13, 1991.

## IV. PROJECT AND SITE DESCRIPTION

Keystone Cogeneration Systems proposes to construct a pulverized coal-fired cogeneration facility that will produce electrical energy for sale to Atlantic Electric Company and thermal energy for sale to Monsanto Company.

The Keystone Cogeneration Project (KCP) will occupy a 105-acre site between Oldmans and Raccoon Creeks in Logan Township, Gloucester County, New Jersey. This site is situated at Delaware River Mile 78.8, about 3 miles downstream of the Commodore Barry Bridge. It extends from U.S. Route 130 to the Delaware River. It's easterly boundary is occupied by a Monsanto chemical plant.

The project site is basically composed of an assemblage of six agricultural fields separated by various drainage ditches, farm roads, and hedgerows. The site was once a dredge spoil disposal area and only the two fields (approximately 34 acres) closest to U.S. Route 130 remain in a natural condition.

### Project Overview

Steam and electricity will be produced, or cogenerated, at the proposed plant. The maximum steam production rate will be 1,575,000 pounds per hour (pph), with up to 50,000 pph exported to Monsanto Company. The electrical output of the generator (224 MW gross, 202 MW) will be sold to Monsanto and Atlantic Electric.

The congeneration facility will require approximately 2,000 tons of eastern bituminous coal per day (sulfur content reported to be 1.5% or less). Coal will be delivered to the facility via barge. The offshore pier will be equipped with a fixed clamshell unloader and conveyor system used to unload and convey the coal from the barge to the upland coal storage building. As fuel is required, the coal will be reclaimed from the enclosed storage pile, conveyed to an enclosed crusher, pulverized and transported to the boiler.

The burned coal gases and ash will be filtered before discharging to the atmosphere through a 430 foot stack. Ash will be collected and pneumatically and mechanically conveyed to silos for storage. At intervals the accumulated ash will be removed by truck and returned to spent coal mines in Pennsylvania for use as reclamation.

Makeup water for both process and cooling at the plant will be withdrawn from the Delaware River via an offshore intake structure suspended from the pier. Water will be withdrawn through one of two water pumps, which will be

housed at the outshore end of the pier. Water withdrawals will range from 5 to 11.2 cubic feet per second (cfs) and average 7 cfs (5,000 gallons per minute).

Following the publication of the Preliminary Staff Analysis (June 26, 1991), the facility was redesigned to incorporate a "Zero Discharge Treatment System". This system will continue to draw water from the Delaware River for processes in the plant but will not discharge any water back into the river other than stormwater runoff. All wastewater streams generated at the facility (including filter backwashes, softener blowdown, demineralizer regeneration wastes, reverse osmosis, brine, cooling tower blowdown, and floor drains), along with runoff from the emergency (inactive) coal pile will be treated and recycled within the facility.

Plant Facility

The major plant facilities will consist of one pulverized coal-fired boiler, a steam turbine, material handling systems, pollution, stormwater, wastewater and sewage treatment control systems and related facilities.

Pier

Coal will be delivered by barge from the Delaware River and unloaded on a pile supported coal handling barge facility consisting of a 1600' long, 22'-6" wide approachway, a 130'x75' platform, four (4) mono-pole breasting dolphins, two (2) mooring dolphins and a water intake. The majority of this structure is located in the State of Delaware.

Dredging

Approximately 40,000 cubic yards of dredge material will be removed from the 910'x150' barge berth. This material will be disposed of on land at an approved upland dredge spoil site in Logan Township. The 1600 foot long pier does not require dredging.

Wetland Impacts

The proposed project requires permanently disturbing approximately 1.6 acres of wetlands regulated pursuant to the Freshwater Wetlands Protection Act. No permanent impact to wetlands regulated pursuant to the Wetlands Act of 1970 is proposed.

## V. ANALYSIS

Analysis of these pending permit applications is based upon the Rules on Coastal Zone Management (N.J.A.C. 7:7E-1.1 et seq.) adopted September 29, 1978 as amended to August 20, 1990 and the Freshwater Wetlands Protection Act Rules (N.J.A.C. 7:7A) as amended July 17, 1989. This analysis

refers to applicable policies by administrative code section.

Location Policies (7:7E-2.0)

Location Policies classify all land and water locations into a General Area and some into one or more Special Areas. Special Areas are areas that constitute a highly valued resource, serve important purposes of human use, or form a significant natural hazard. The Special Areas policies supplement other Location Policies and take precedence in case of policy conflict.

Subchapter 3 - Special Areas

Special Areas are so naturally valuable, or so important for human use, or so hazardous, or so sensitive to impact, or so particular in their planning requirements, as to merit focused attention. This project involves the following Special Areas:

Prime Fishing Areas (7:7E-3.4)

Prime fishing areas include tidal water areas and water's edge areas which have a demonstrable history of supporting a significant local quantity of recreational or commercial fishing activity. Prohibited uses include sand or gravel submarine mining which would alter existing bathymetry to a significant degree so as to reduce the high fishery productivity of these areas.

The applicant has indicated that during the sampling periods of the river, it was not unusual to observe several recreational fishermen in boats at the project site or in the vicinity. It was also noted that a small eel commercial fishing operation exists on the Delaware River. Due to the extensive mud flats at low tide (over 1000') there does not appear to be any significant use of the shoreline for recreational fishing. The Division of Fish, Game and Wildlife (NJDEPE), in their comments to the Element, did not express any concern to indicate that this section of the Delaware River was considered to be a prime fishing area or that the proposed project would have any impact on fishing opportunities at all.

As the pier facility does not appear to significantly impact fishing from boats, either recreational or commercial and there does not appear to be substantial use (or any use) of the shoreline for recreational fishing, the project is in compliance with this policy.

Finfish Migratory Pathways (7:7E-3.5)

Finfish migratory pathways are waterways (rivers, streams, creeks, bays, inlets) which can be demonstrated to serve as passageways for diadromous fish to or from seasonal spawning areas, including juvenile anadromous fish which migrate in autumn and those listed by H.E. Zich (1977) "New Jersey Anadromous Fish Inventory" NJDEP Miscellaneous Report No. 41, and including those portions of the Hudson and Delaware Rivers within the coastal zone boundary are defined as Finfish Migratory Pathways.

Species of concern include river herring (Alosa pseudoharengus), blueback herring (Alosa aestivalis), American shad (Alosa sapidissima), striped bass (Morone saxatilis), Atlantic sturgeon (Acipenser oxyrhynchus), Shortnose sturgeon (Acipenser brevirostrum) and American eel (Anguilla rostrata).

The applicant has documented the occurrence of most species of concern in the vicinity of the project, particularly striped bass. The intent of this policy is to protect migratory fishery resources from activities including dams, dikes, intake pipes and from activities that would lower water quality to the extent that it would interfere with the movement of fish along finfish migratory pathways.

The KCP has the potential to impact migratory fisheries of the Delaware River in several ways:

1. The coal loading facility and pier has the potential to affect the route of migrating fish;

2. The intake system will cause entrainment and impingement of juvenile fish, fish larvae and fish eggs (Entrainment is the passage of small pelagic organisms such as fish eggs and larval through the water intake screen and impingement refers to the capture of aquatic organisms on the surfaces of the water intake screens);

3. Dredging associated with creating the barge berth has the potential to impact the fisheries resource by creating a localized plume of turbidity. This resuspension of sediments could also release toxicants into the water column should they be present (metallic and/or organic).

Impact 1. Migratory Fish Route

The Delaware River is approximately 4000 feet wide at the location of the proposed cogneration facility. The proposed coal unloading facility and the approachway pier have a combined length of approximately 1700 feet. The approachway pier will not impede migrating fish as it is constructed on piles and will not act as a barrier. Given

the width of the river it is unlikely that the structures will impede or restrict the movement of migratory fishes.

Impact 2. Intake Structure

The project has an inherent need for large quantities of water for both processing and cooling purposes. To satisfy this demand it was necessary to site the KCP as close as possible to a large source of water. The applicant considered several alternatives for supplying water to the facility and decided on a system that utilized an offshore screened pump intake that would divert water to the facility via an elevated pipeline suspended from the pier.

To minimize impingement and entrainment the intakes will be fitted with 1 millimeter wedge-wire screens considered to be "state of the art". The intake velocity will not exceed 0.5 feet per second and intakes will be oriented parallel to the flow of the Delaware River. A parallel orientation to the river current, which averages 1.3 to 1.5 fps, reduces the pressure gradient across the screen and further reduces impingement. These design criteria were recommended by the U. S. Fish and Wildlife Service and the New Jersey Division of Fish, Game and Wildlife who have found this design acceptable.

Item 3. Dredging

The National Marine Fisheries Service, the United States Fish and Wildlife Service and the New Jersey Division of Fish, Game and Wildlife have all expressed the concern that the proposed dredging of the barge berth has the potential to impact migrating fishes. All three agencies mutually agreed that dredging could be authorized if the permit were conditioned to allow dredging only during specific "windows". Therefore this permit will be conditioned as recommended by the NJDEPE, Division of Fish, Game and Wildlife to prohibit bucket dredging between the dates of March 15 and November 30 and hydraulic dredging between the dates of April 15 and June 30.

The Bureau of Monitoring Management (NJDEPE) has reviewed the Dredge Spoil Analysis prepared by EMA laboratories and has concluded that there is no need for additional sampling nor does there appear to be any threat of the release of toxicants (metallic and/or organic) into the water column during dredging.

The permit is conditioned to **prohibit bucket dredging between the dates of March 15 and November 30 and hydraulic dredging between the dates of April 15 and June 30.** Provided the permitted maintains compliance with the above referenced condition, the project is in compliance with this policy.

Navigation Channels (7:7E-3.7)

Navigation channels include water areas in tidal rivers and bays presently maintained by NJDEPE or the Army Corps of Engineers and marked by the U.S. Coast Guard with bouys or stakes as shown on NOAA/National Ocean Survey Charts. Navigation channels also include channels marked with buoys, dolphins, and stakes, and maintained by the State of New Jersey, and access channels and anchorages. New or maintenance dredging of existing navigation channels is conditionally acceptable providing that the condition under the new or maintenance dredging policy is met. Development which would cause terrestrial soil and shoreline erosion and siltation in navigation channels shall utilize appropriate mitigative measures. Development which would result in loss of navigability is prohibited.

The applicant has maintained that the dredging of the 910 foot by 150 foot barge berth will not affect the navigation channel of the Delaware River. The coal unloading pier is approximately 2300 feet from the shipping channel of the river and 150 feet from the the Marcus Hook Authorized Anchorage Line.

The permittee has received a U.S. Army Corps of Engineers permit for the KCP (CENAP-OP-R-91-0347-11). That approval required the permittee to notify the Philadelphia Captain of the Port with the dates of commencement and estimated completion of the authorized work. It also required the permittee to submit information of all proposed activites that could affect navigation to the United States Coast Guard at least two (2) weeks prior to commencement of such activities.

As the U.S. Army Corps of Engineers has issued a permit pursuant to Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403), and that permit specifically approved the navigational aspects of this project, and no activity is within a channel or anchorage, the applicant has demonstrated compliance with this policy.

Submerged Infrastructure Routes (7:7E-3.12)

A submerged infrastructure route is the corridor in which a pipe or cable runs on or below a submerged land surface. Any activity which would increase the likelihood of infrastructure damage or breakage, or interfere with maintenance operations is prohibited.

The applicant has indicated that seven underground pipelines transect the project site and that no aspect of the project other than the proposed cleaning of a tidal ditch has the potential to impact those lines. To demonstrate compliance with this policy the applicant

supplied plans of the proposed ditch cleaning that depicted the location and elevations of the underground pipelines as well as the final elevation of the ditch following dredging. The proposed ditch cleaning will not interfere with the pipelines therefore the project is in compliance with this policy.

Intertidal and Subdtidal Shallows (7:7E-3.15)

Intertidal and subtidal shallows means all permanently or twice-daily submerged areas extending from the mean high water line to a depth of 4 feet below mean low water.

Intertidal and subtidal shallows play a critical role in estuarine ecosystems. They are a land-water ecotone, or ecological edge where many material and energy exchanges between land and water take place. They are critical habitats for many benthic organisms and are critical forage areas for fishes and many migrant waterfowl.

Development, filling, new dredging or other disturbance is generally discouraged but may be permitted in accordance with the Use Policy for the applicable water body type. New dredging is conditionally acceptable for the Delaware River which is defined as a large river. If destruction of intertidal and subtidal shallows takes place, mitigation shall be carried out at a ratio of one acre created to one acre lost. Mitigation sites shall be located within the same estuary. Dredging does not require mitigation.

The intertidal area of the KCP site is part of a continuous flat located between the mouths of Raccoon and Oldmans Creeks. At the KCP site the intertidal area is some 1,200 feet wide. This expansive intertidal area is the justification for the 1600 foot approachway pier. The subtidal areas occur immediately offshore of the intertidal area (mean low water line) to a depth of -4.0 feet. Within the project area this includes a band generally ranging from 150 to 400 feet wide.

The total area of intertidal and subtidal habitats permanently destroyed by the installation of the steel pipe piles supporting the approachway pier and by the widening of the present access road is 0.139 acres. Approximately 0.1 acres of subtidal area will require dredging in order to accommodate the barge berth.

As previously stated, the Use Policy for Large Rivers (N.J.A.C. 7:7E-4), conditionally allows new dredging and the placement of piles provided any permanent disturbance to intertidal or subtidal areas (In this case the .139 acres of fill) are mitigated for. The applicant has developed an acceptable draft mitigation proposal for the loss of the

.139 acres and, as a condition to the permit, will be required to have a final mitigation plan approved prior to construction.

Provided the permittee maintain's compliance with the above noted condition the project is in compliance with this policy.

Filled Water's Edge (7:7E-3.16)

Filled Water's Edge areas are existing filled areas lying between Wetlands or Water Areas, and either: (1) the upland limit of fill, or (2) the first public road or railroad landward of the adjacent Water Area, whichever is closer to the water. Some existing or former dredge spoil and excavation fill areas are Filled Water's Edge. The waterfront portion is defined as a contigous area at least equal in size to the area within 100 feet of navigable water, measured from the Mean High Water Line (MHWL). This contiguous area must be accessible to a public road and occupy at least 30 percent of the navigable water's edge.

On Filled Water's Edge sites without direct water access to navigable water, the area to be devoted to water related uses will be determined on a case-by-case basis. Along the Delaware River Region, where water dependent uses are deemed infeasible, some part of the waterfront portion of the site may be acceptable for non-water dependent development if the developed land uses closest to the water's edge are water oriented.

With the exception of the 10.8 and 23.5 acre agricultural fields closest to Route 130, the entire project site is a filled water's edge created as a result of the deposition of dredge spoil material. The filled water's edge portion of this site is bounded along its Delaware River frontage by non-tidal wetlands, tidal emergent wetlands and expansive intertidal and subtidal zones. At normal low tide flats are exposed approximately 1000 feet channelward of the mean high water line.

This site does not have direct access to navigable waters and has limited potential for waterborne commerce or recreational use due to the mudflats that are exposed at low tide. Any development of the site for such projects would require extensive new dredging, frequent maintenance dredging and the filling of wetlands. A recreational marina or a commercial port facility is not suited for this site. Water dependent uses of this site appear not feasible.

The proposed plant utilizes a barge method for coal delivery that would not be feasible were the site not located at the waters edge. This mode of delivery was chosen after residents of Logan Township expressed their concern

and opposition to rail delivery. The facility also requires a high volume source of cooling and process water that can best be satisfied by a large surface water body such as the Delaware River.

The applicant has demonstrated that the site is not suitable for water dependent uses and that aspects of the facility are water oriented. The use of a barge delivery system promotes maritime support services and was instituted because of the opposition to rail delivery by local residents. If the applicant can demonstrate compliance with all other applicable policies, the project will be in compliance with this policy.

Flood Hazard Areas (7:7E-3.25)

Flood hazard areas are the floodway and flood fringe around rivers, creeks and streams as delineated by NJDEPE under the Flood Hazard Area Control Act (N.J.S.A. 58:16A-50), or by the Federal Emergency Management Agency (FEMA); or the flood hazard area around other coastal water bodies as defined by FEMA. They are areas subject to either tidal or fluvial flooding. Where flood hazard areas have been delineated by both DEP and FEMA, the DEP delineations shall be used. Where flood hazard areas have not been delineated by DEP or FEMA, limits of the 100 year floodplain will be established by computation on a case by case basis.

With the exception of the pier structure, 2 stormwater outfalls, the plant access road and the proposed wetland mitigation site, all development activities being part of the completed project, lie above the 100 year floodplain. The applicant withdrew the original Stream Encroachment Permit application on May 22, 1991 and submitted a revised application on June 26, 1991. The project conforms with the standards Flood Hazard Area Control Act and the Stream Encroachment Permit is hereby issued. With the issuance of a Stream Encroachment Permit the project will be in compliance this policy.

Wetlands (7:7E-3.27)

Wetlands or wetland means an area that is inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions, commonly known as hydrophytic vegetation.

Wetlands are regulated and protected under the Wetlands Act of 1970 (N.J.S.A. 13:9A-1 et seq.) or the Freshwater Wetlands Protection Act of 1987 (N.J.S.A. 13:9B-1 et seq.).

The construction of the appproachway pier will cross in a perpendicular fashion, tidal wetlands regulated pursuant to the Wetlands Act of 1970. As a result a Wetlands "Type A" permit is required. In general, development of all kinds is prohibited in such coastal wetlands, unless the Division can find that the proposed development meets the following four conditions:

1. Requires water access or is water oriented as a central purpose of the basic function of the activity;

2. Has no prudent or feasible alternative on a non-wetland site;

3. Will result in minimum feasible alteration or impairment of natural tidal circulation or natural circulation; and

4. Will result in minimum feasible alteration or impairment of natural contour or the natural vegetation of the wetlands.

The permittee has determined that impacts to wetlands regulated pursuant to the Wetlands Act of 1970 will amount to 0.052 acres of shading due to the construction of the approachway pier. No fill is proposed within any tidal wetland. The permittee proposes to construct the approachway pier 14 feet above mean low water to minimize shading impacts. The proposed shading of 0.052 acres of wetlands for the installation of the approachway pier is in compliance with this policy.

**Freshwater Wetlands Protection Act**

Development in wetlands regulated under the Freshwater Wetlands Protection Act of 1987 is prohibited unless the development is found to be acceptable under the Freshwater Wetlands Protection Act Rules. Construction of this facility will impact approximately 1.6 acres of "freshwater wetlands". It should be noted that while the drainage channels and ditches impacted by the plant access road are tidally influenced, these areas are not shown as regulated wetlands by the New Jersey Coastal Wetlands Maps and are therefore regulated pursuant to the Freshwater Wetlands Protection Act. Those impacts are outlined below:

**Freshwater Wetland Impacts**

**Plant Access Road**

| | |
|---|---|
| Filling of tidal agricultural drainage ditch | 0.13 acre |
| Filling of non-tidal wetlands | 0.68 acre |
| Excavation of relocated drainage ditch | 0.23 acre |

| | |
|---|---|
| Vegetation disturbance | 0.16 acre |
| Riprap for road culverts | 0.02 acre |
| Wetland encroachment subtotal | 1.22 acres |

Steam Pipeline and Electrical Distribution Lines

| | |
|---|---|
| Clearing and structural support construction | 0.0838 acre |

Pier

| | |
|---|---|
| Clearing of woody vegetation | 0.2336 acre |

Stormwater Outfall Culverts (2)

| | |
|---|---|
| Clearing and riprap placement | 0.089 acre |

**Total Freshwater Wetland Encroachment for project = 1.64 acres**

7:7A-3.2 **Requirements for Non-water Dependent Activities**

Section 3.2(c) states that it shall be a rebuttable presumption that practicable alternatives exist to any non-water dependent regulated activity which does not involve a freshwater wetland, and that such an alternative to any regulated activity would have less of an impact on the aquatic ecosystem. An alternative shall be practicable if it is available and capable of being carried out after taking into consideration cost, existing technology, and logistics in light of overall project purposes. An alternative shall not be excluded from consideration under this provision merely because it includes or requires an area not owned by the applicant which could reasonably have been, or be obtained, utilized, expanded, or managed in order to fulfill the basic purpose of the proposed activity.

Plant Access Road

**Alternative #1.** This is the preferred alternative and involves widening an existing farm road from one single lane to a two lano roadway. Wetland encroachments for this alternative cannot be avoided as there are existing wetlands on either side of the road. Total wetland disturbance is 1.2 acres with the majority of this area consisting of actively farmed agricultural fields and stands of phragmetes.

**Alternative #2.** This alternative involves constructing a new access road that would involve disturbing forested wetlands as well as agricultural fields. The permittee has

represented that this alternative would have a more significant impact to wildlife habitat than alternative #1 because of the currently undisturbed nature of the habitat.

**Alternative #3.** This alternative considers the construction of a 800 foot bridge to span the wetlands. Given the initial cost and maintenance of such a structure, this was never considered as a viable alternative by the permittee.

The Department recognizes the fact that in order to provide vehicular access to the site it is necessary to construct an access road. Alternative #2 involves destroying forested wetland areas and will bisect wetland areas that have been undisturbed since the area was last used for depositing dredge spoils (approximately 1969). An elevated bridge (Alternative #3) is not a viable alternative due to cost. The Department concurs with the finding that widening the existing farm road is the preferred alternative and that it will minimize wetland impacts. The wetland impacts of this alternative are limited to areas that are currently disturbed (mostly active agricultural fields).

Stormwater Outfall Channels 0.08 acres

Alternative #1. This represents the chosen alternative and involves disturbing 0.08 acres of wetlands for the installation of two stormwater outfall structures. The stormwater for KCP is managed by a series of water quality basins that have been designed to promote water quality and to reduce erosion and sedimentation.

Alternative #2. This represents the no-build alternative and is not acceptable to the Element.

The permittee has satisfied the Coastal Zone Management Policy for Stormwater (7:7E-8.7) by constructing water quality basins. Detention basins require a discharge point that generally involves filling or disturbing wetlands. As a result, to minimize surface water impacts, and to prevent erosion and sedimentation, the applicant has demonstrated that there was no feasible alternative other than disturbing the 0.08 acres of wetlands for the installation of the outfall structures.

Steam Pipeline, Electrical Distribution Line and Approachway Pier

Wetland impacts associated with these activities are linear in nature and involve clearing .31 acres. There will be no permanent disturbance to wetlands, only a change in the wetland type (i.e. forested wetland to scrub-shrub wetland). The permittee has proposed no other alternative for these activities.

The applicant has demonstrated to the satisfaction of the Element that there is no practicable alternative to these activities. If coal is to be delivered by barge it is necessary to cross the band of wetlands that are parallel to the Delaware River. The same situation applies to the steam pipeline and the electrical distribution line. As the entire northern boundary of the site is mapped as a wetland (ditch) it is impossible to provide a steam and electric connection without disturbing wetlands.

The permittee has demonstrated to the satisfaction of the Department that the wetland disturbances associated with this project have been minimized and are approvable pursuant to the Freshwater Wetlands Protection Act (Subchapter 3). Therefore as a condition to this permit and prior to the initiation of any disturbance in freshwater wetlands, the permittee is required to submit a mitigation plan to the Department for review and approval. The permittee is obligated to mitigate for all permanent wetland disturbances (1.3 acres) at a ratio of 2:1 (gained/disturbance). Wetland impacts involving a change from one wetland type to another (.3 acres) will require mitigation at a ratio of 1:1.

Wetlands Buffers (7:7E-3.28)

"Wetlands Buffer or transition area" means an area of land adjacent to a wetland which minimizes adverse impacts on the wetlands and serves as an integral component of the wetlands ecosystem.

Development is prohibited in a wetlands buffer around wetlands regulated pursuant to the Wetlands Act of 1970, unless it can be demonstrated that the proposed development will not have a significant adverse impact and will cause minimum feasible impact through the use of mitigation where appropriate on the wetlands, and the natural ecotone between the wetlands and the surrounding upland.

1. A wetlands buffer of up to 300 feet in width shall be established around wetlands regulated under the Wetlands Act of 1970.

2. A wetlands buffer or transition area of up to 150 feet in width shall be established within all wetland regulated under the Freshwater Wetlands Protection Act.

All wetlands buffers (that is, transition areas) associated with wetlands subject to the Freshwater Wetlands Protection Act shall be regulated in accordance with the Freshwater Wetlands Protection Act Rules, N.J.A.C. 7:7A.

In a Letter of Interpretation (File #0809-90-0008.1-LI) dated October 17, 1990, the Department classified all wetlands on this site regulated pursuant to the Freshwater

Wetlands Protection Act as intermediate resource value and imposed a buffer of 50 feet. This buffer requirement will also be applicable to wetlands regulated pursuant to the Wetlands Act of 1970.

The permittee has provided at least a 50 foot buffer from all wetlands with the exception of those areas that are the subject of the Individual Freshwater Wetlands Permit and the Coastal Wetland Type "A" permit application. The Individual Freshwater Wetlands Permit includes a includes a transition area waiver authorizing disturbance to the transition area for access. The project is in compliance with this policy.

Historic and Archaeological Resources (7:7E-3.36)

"Historic and Archaeological Resources" include objects, structures, neighborhoods, districts, and other features of the landscape and seascape, including archaeological sites, which either are on, or are eligible for inclusion on the State or National Register of Historic Places.

Development that detracts from, encroaches upon, damages, or destroys the value of historic and archaeological resources is discouraged. Scientific recording and/or removal of historic and archaeological resources or other mitigation measures must take place, if the proposed development would irreversibly and/or adversely affect historic and archaeological resources."

The applicant has entered into a contract to have a Phase 1 Archeological Survey conducted at the Keystone site. That survey is being coordinated through the Office of New Jersey Heritage. As a condition to the permit and prior to the start of any construction in the waterfront area, the applicant will forward the results of the Phase 1 survey to the Element for review and comment. Depending on the conclusions of that survey, the Element may require the permittee to conduct additional analysis and incorporate mitigative measures as directed.

Endangered or Threatened Wildlife or Vegetation Species Habitats (7:7E-3.38)

Areas known to be inhabited on a seasonal or permanent basis by any wildlife (fauna) or vegetation (flora) identified as "endangered" or "threatened" species on official Federal or State lists of endangered or threatened species, or under active consideration for Federal or State listing, are considered Special Areas. The definition also includes a sufficient buffer area to insure continued survival of the species. NJDEPE - Division of Fish, Game and Wildlife intentionally restricts dissemination of data

showing the geographic distribution of these species habitats, in order to protect the habitats.

Development of this Special Area is prohibited unless it can be demonstrated that endangered or threatened wildlife or vegetation species habitat would not be adversely affected either directly or through secondary impacts.

The applicant has indicated that the New Jersey Natural Heritage Program has no records of any endangered or threatened vertebrate species occurring at the project site. The Element also has issued a Letter of Interpretation classifying the freshwater wetlands as Intermediate Resource Value. That classification would indicate that the Element's review of the wetlands on-site revealed no documented habitat for threatened or endangered wildlife species.

There are however three species of protected fish that are known to occur near the project site. They include American shad (Alosa sapidissima), Shortnose sturgeon (Acipenser brevirostrum) and Atlantic sturgeon (Acipenser oxyrhynchus). The potential impacts to these species were addressed in a report prepared by T. Lloyd Associates, "Impact Assessment of the Keystone Cogeneration Project on Nearby Aquatic Resources", January 30, 1991. In that report, T. Lloyd Associates concluded that none of the above listed species are believed to spawn in the project area. Therefore any impact to eggs, larvae or juvenile fishes of these species appears to be negligible. T. Lloyd's report also indicates that shad may be sensitive to turbid water that would occur as a result of dredging.

The NJDEPE, Division of Fish, Game and Wildlife recognized the potential for this project to impact the above noted species and consequently requested the Element to impose timing restrictions on dredging. With the exception of the dredging, the permittee has demonstrated to the satisfaction of the Division that the construction and operation of the coal-fired cogeneration facility will have a minimal impact to the above noted endangered and threatened fish species. However to protect the anadromous fishes during migration, and as a condition the Waterfront Development Permit, no bucket dredging will be permitted between the dates of March 15 and November 30 and hydraulic dredging will not be permitted between the dates of April 15 and June 30. With the inclusion of the above noted dredging windows the project is in compliance with this policy.

Subchapter 4 - General Water Areas

General Areas are first divided into Water and Land by the same definitions used for Special Areas, Section 7:7E-3.1. Water and land are further subdivided into General

Area types. The water's edge has no General Area types since all water's edge areas are one or more Special Area types. In many cases, an area already identified as a Special Area will also fall within the definition of a General Area. In these cases, both General and Special Area policies will apply. In cases of conflict between General and Special Area policies, the more specific Special Area Policy shall apply.

General Water Areas are areas which lie below either the Mean High Water Line or the normal water level of non-tidal waters. Except at time of drought or extreme low tide, these areas are permanently inundated. General Water Areas are divided by volume and flushing rate into, Oceans; Open Bays; Semi Enclosed and Back Bays; Tidal Guts; Large Rivers; Medium Rivers, Creeks and Streams; and Lakes, Ponds and Reservoirs. Some of these types are further divided for policy purposes into different depths.

Large Rivers (7:7E-4.7)

This channel type includes flowing waterways with watersheds greater than 1,000 square miles which means the Delaware, Hudson and Raritan Rivers. Large rivers are the principal freshwater input to the Open Bays, and the critical estuarine functions performed by these bays depends, in large part, on maintenance or improvement of water quality and flow patterns in tidal rivers.

Acceptability Conditions for Uses (7:7E-4.11)

(d) Docks and Piers (for Cargo and Commercial Fisheries)

Definition

1. Docks and piers are structures supported on pilings driven into the bottom substrate or floating on the water surface, used for loading and unloading passengers or cargos, including fluids, connected to or associated with a single industrial or manufacturing facility or to commerical fishing facilities. Docks and Piers for cargo are conditionally acceptable in most General Water Areas provided that the width and length of the piers are limited to only what is necessary, they will not pose a hazard to navigation and the associated land use meets all Coastal Zone Management Policies.

The proposed barge facility is not located within any navigational channel or anchorage in the Delaware River and will not pose a hazard to navigation. A 1600' approachway pier is required to reach deep water thereby reducing the amount of new and maintenance dredging. The project is in compliance with this policy.

(g) Dredging - New

Definition

1. New dredging is the removal of sediment from the bottom of a water body that has not been previously dredged, for the purpose of increasing water depth, or the widening or deepening of navigable channels to a newly authorized depth or width. In addition to conditions imposed by this policy, the project must also satisfy all conditions applicable under Dredging - Maintenance 7:7E-4.11(f)2 (i) through (vii).

The applicant is proposing to remove 40,000 cubic yards of material by clamshell method from the 910 foot by 150 foot berth area to a depth of 25 feet below mean low water with 3:1 side slopes. All of the dredged material would be disposed of at the American Dredging Company's approved Logan Township dredged material upland disposal site (U.S. Army Corps of Engineers permit NAPOP-N dated August 15, 1973).

The permittee has indicated that the American Dredging Company's permit for the upland dredge spoil site is currently under review by the ACOE for an extension. The ACOE authorized the dredging for this project via permit dated June 20, 1991 (CENAP-OP-R-91-0347-11) and referenced American Dredging Company's site in that permit. The Department, however, has no documentation that the 1973 ACOE permit has been extended, and what, if any, conditions are imposed on that permit. Therefore, prior to conducting any dredging, and as a condition to the permit, the permittee shall provide the Department with a copy of the referenced ACOE dredge disposal permit. The permittee will also submit to the Department the anticipated dredging schedule noting how that schedule relates to the status of the ACOE dredge permit.

The Department has also determined that this dredging complies with the Acceptablility Conditions for maintenance dredging. However to protect migratory finfish from turbidity associated with dredging, the Department has imposed restrictions on when dredging is authorized to occur (Refer to page 8, Finfish Migratory Pathways).

Subchapter 5 - General Land Areas

7:7E-5.1 Definition

(a) General Land Areas include all mainland features located upland of Special Water's Edge Areas.

With the exception of several small nodes and islands of land located in the two agricultural fields closest to Route 130, the entire project site is composed of Special Water's Edge Areas. Therefore this policy is not applicable.

Subchapter 7 - Use Policies

**7:7E-7.4 Energy Use Policies**

(a) General Definition of Energy Uses

Energy uses include facilities, plants or operations which produce, convert, distribute, or store energy.

(b) General Energy Facility Siting Procedures

1. The acceptability of all proposed new or expanded coastal energy facilities shall be determined by a review process that includes both the Department and the Board of Public Utilities (BPU), (N.J.S.A. 52:27F-6 and 52:27-11 et seq.) according to the procedures defined in the Memorandum of Understanding between NJDEP and the BPU on Coordination of Permit Review.

2. BPU will determine the need for future coastal energy facilities according to three basic standards. BPU will submit an Energy Report to DEP with its determination of the need for a coastal energy facility based on three required findings:

i. The existing sources of supply will not be adequate to meet future levels of demand, including careful consideration of the potential effects of conservation;

ii. That no better technological alternative exists to meet future levels of demand; and

iii. That no better locational alternative to the proposed site exists.

The Public Utility Regulatory Policies Act of 1978 (PURPA) encouraged the development of cogeneration facilities which use fossil fuels more efficiently than traditional utility generating facilities. As a result, the BPU has encouraged the development of cogeneration facilities as an economic, efficient and environmentally sound alternative to traditional utility generating facilities.

In accordance with those policies, in 1987 BPU staff and Atlantic Electric entered into a stipulation which was ultimately approved by the BPU outlining the terms and conditions by which Atlantic Electric would purchase energy

from PURPA qualifying facilities. A part of the stipulation review required the BPU to consider the need for additional capacity including the potential effects of conservation. It was determined that an additional 700 MWs was needed. The stipulation also included a Standard Price Methodology that established a system for ranking projects that considered factors including location, dispatchability and whether or not the facility would use a renewable fuel. Based on this ranking, Keystone was awarded a pricing agreement and ultimately entered into a power purchase agreement with Atlantic Electric which was approved by the BPU on December 28, 1988.

With regards to site location, a cogeneration facility must be located at or near the site of its thermal user (Monsanto). This is required due to the economics related to the cost of running steam lines, and the fact that heat losses increase with the length of lines. Therefore, the site is appropriate given the location of the Monsanto facility. The proposed site is also located near both marine and rail facilities that have the potential to deliver coal.

The KCP has demonstrated conditional compliance with all applicable Coastal Zone Management policies. The BPU has documented that KCP is an approved facility and that is has been sited in an appropriate location based on transportation, energy host location and the need to satisfy regional energy and capacity requirements. Based on the above discussion the permittee has demonstrated compliance with the policy.

(r) Electric Generating Stations

New or expanded electric generating facilities and related facilities are conditionally acceptable provided:

i. The construction and operation of the proposed facility shall comply with the Coastal Resource and Development Policies, with special reference to air and water quality standards and policies on marine resources and wildlife.

ii. NJDEPE and BPU shall find that the proposed location and design of the electric generating facility is the most reasonable alternative for the production of electrical power that BPU has determined is needed. The finding shall be based on a comparative evaluation by the applicant of alternative sites within the coastal zone and inland, and of alternative technologies for the transportation and conversion of energy as well as the productive use of plant residuals, including thermal discharges.

The permittee has demonstrated conditional compliance with all applicable Coastal Zone Management policies. The NJDEPE, Division of Environmental Quality has issued all applicable air permits for this project. The KCP is designed to have zero discharge to the Delaware River which will eliminate the potential for any thermal plume impacts.

To meet the demand for energy in New Jersey, Atlantic Electric petitioned the BPU for additional energy producing facilities. As previously stated, the BPU, as a result of the Public Utility Regulatory Policies Act of 1979, is encouraging the use of cogeneration facilities. Cogeneration facilities are unique in that they have several operational, environmental and location requirements that must be satisfied in order for the facility to properly function. The KCP site was chosen based on those requirements which are discussed below.

The site provides a 110 acre industrial zoned location adjacent to a steam host along the Delaware River. It's remote location away from densely populated areas, provides easy access to Route 295 and Route 130. The majority of the plant will be constructed on an existing 40 acre agricultural field (dredge spoils) which reduces impacts to environmentally sensitive areas. The river location provides the plant with the water volume that is needed for operations.

Based on the above analysis the project is in compliance with this policy.

Dredge Spoil Disposal on Land (7:7E-7.12)

Dredge spoil disposal is the discharge of sediments, known as spoils removed during dredging operations. The criteria applicable to this policy govern Land and Water's Edge disposal only. The policies regulating dredge spoil disposal in Water Areas are found in N.J.A.C. 7:7E-4.11.

The dredge spoils will be disposed of at an approved upland disposal site authorized by the U.S. Army Corps of Engineers. The Bureau of Monitoring Management has determined that the Dredge Spoil Analysis prepared by EMA laboratories do not indicate any contamination. The project is in compliance with this policy. (Please refer to page 29, Acceptability for Use (7:7E-4.11(g) Dredging, New) for a discussion regarding other compliance issues associated with dredge disposal).

High Rise Structures (7:7E-7.14)

All high rise structures more than six stories or more than sixty feet from existing pre-construction ground level

to the mid-point of sloped roof or top of parapet wall on flat roofs. High rise structures are encouraged to locate in an area of existing high density, high-rise and/or intense settlements.

The proposed plant facility contains one structure defined as "high rise" within the waterfront development area. The coal storage enclosure is 80 feet tall and is located 380 feet from the mean high water line. The structure is oriented so that the longest lateral dimension is perpendicular to the Delaware River and it will not block any views of the waterfront currently enjoyed by the public. The Federal Aviation Administration has indicated that no structure in the plant is a hazard to navigation. The applicant has demonstrated compliance with this policy.

SUBCHAPTER 8 - RESOURCE POLICIES

Water Quality (7:7E-8.4)

As required by Section 307(f) of the Federal Coastal Zone Management Act, federal, state and local water quality requirements established under the Clean Water Act shall be the water resource standards of the coastal management program.

Coastal development which would violate the federal Clean Water Act, or State laws, rules and regulations adopted pursuant thereto, is prohibited. In accordance with such rules as may be adopted by the Department concerning the Water Quality Management Planning and Implementation process, coastal development that is inconsistent with an approved Water Quality Management (208) Plan under the New Jersey Water Quality Planning Act (N.J.S.A. 58:11A et seq.) is prohibited.

The Keystone Cogeneration Facility requires and has applied for the following permits or approvals that are applicable to this policy:

1. New Jersey Pollution Discharge Elimination System (NJDEPE);
2. Amendment to the Areawide Water Quality Mgm. Plan (NJDEPE);
3. Delaware River Basin Commission Approval;
4. Subaqueous Land and Coastal Zone Mgmt. (Delaware);
5. Section 10, Rivers and Harbors Act (ACOE);
6. Federal Water Pollution Control Act (ACOE).

The permittee, to demonstrate compliance with this policy and as a condition to this permit, must submit copies of all the above listed permits to the Element prior to conducting any work in the regulated Waterfront Area.

During the course of the application review the design of the project was modified to incorporate zero discharge to the Delaware River. However, there has not been any formal representation to the Department that this method has been adopted, nor have the plans been modified to reflect the change. Therefore, prior to any construction in the waterfront area, and as a condition to this permit, the permittee shall formerly notify the Department of it's intended design modification. In addition, the plans referenced below must be revised to remove all reference to any discharge structures.

1 - Coal Unloading Pier, Keystone Cogneration System Inc., Sections and Elevations, drawing 3 of 5, prepared by Alan L. Flinn, dated January 30, 1991 and last revised May 21, 1991.

2 - Coal Unloading Pier, Keystone Cogneration System Inc., Dredging Plan, drawing 4 of 5, prepared by Alan L. Flinn, dated January 30, 1991, last revised May 24, 1991;

Surface Water Use (7:7E-8.5)

Surface water is the water in lakes, ponds, streams, rivers, bogs, wetlands, bays and ocean that is visible on land. Coastal development shall demonstrate that the anticipated surface water demand of the facility will not exceed the capacity, including phased planned increases, of the local potable water supply system or reserve capacity and that construction of the facility will not cause unacceptable surface water disturbances, such as drawdown, bottom scour, or alteration of flow patterns.

The applicant has applied for a Water Allocation (operation) permit from NJDEPE to divert a maximum of 223.2 million gallons of water during any month (mgm) at a maximum rate of 5,000 gallons per minute (gpm) from the Delaware River and from a low capacity groundwater well (2 gpm) to be screened in the Cape May formation. The surface water diversion is to be used as cooling and process water. The project also requires 3.8 Approval from the Delaware River Basin Commission (DRBC). That approval is contigent upon the applicant obtaining a NJPDES permit and the Water Allocation permit for withdrawal.

To demonstrate compliance with this policy, and as a condition to the permit, the permittee is not authorized to

begin construction within the Waterfront Area until the Water Allocation permit and the 3.8 Approval from the DRBC have been obtained and copies of those permits have been forwarded to eht Element.

Groundwater Use (7:7E-8.6)

Groundwater is all water within the soil and subsurface strata that is not at the surface of the land. It includes water that is within the earth that supplies wells and springs. Coastal development shall demonstrate, to the maximum extent practicable, that the anticipated groundwater withdrawal demand of the development will not cause salinity intrusions into the groundwaters of the zone, will not degrade groundwater quality, will not significantly lower water table or piezometric surface, or significantly decrease the base flow of adjacent water courses. Groundwater withdrawals shall not exceed the aquifer's safe yield.

As previously stated, the permittee has applied for a Water Allocation permit for a low capacity groundwater well (2 gpm) from the NJDEPE. The permittee must provide the Element with a copy of that permit to demonstrate compliance with this policy.

Stormwater Runoff (7:7E-8.7)

Stormwater Runoff is flow on the surface of the ground, resulting from precipitation. Coastal development shall use the best available technology to minimize off-site storm water runoff, increase on-site infiltration, simulate natural drainage systems, and minimize offsite discharge of pollutants to ground or surface water and encourage natural filtration functions. Best available technology may include measures such as retention basins, recharge trenches, porous paving and piping, contour terraces, and swales provided such techniques can be demonstrated to satisfy these policies. Provisions for elimination of curbs, reduction of roadway widths, and rooftop recharge basins are strongly encouraged.-

The project has been designed to incorporate drainage system that will discharge uncontaminated stormwater to the Delaware River via two (2) water quality basins. Stormwater that has contamination potential (coal pile runoff) will be routed through the wastewater treatment plant and reused in the operation of the power plant. Nearly all stormwater runoff will pass through oil/water separating catch basins prior to entering the water quality detention basins. The project is in compliance with this policy.

Vegetation (7:7E-8.8)

Vegetation is the plant life or total plant cover that is found on a specific areas, whether indigenous or introduced by humans. Coastal development shall preserve, to the maximum extent practicable, existing vegetation within a development site. Coastal development shall plant new vegetation, particularly appropriate species, to the maximum extent practicable.

The permittee has provided a satisfactory landscaping plan for the waterfront area of this project and is in compliance with this policy.

Air Quality (7:7E-8.10)

The protection of air resources refers to the protection from air contaminants that injure human health, welfare or property, and to attainment and maintenance of State and Federal air quality goals and the prevention of deterioration of current levels of air quality. Coastal development shall conform to all applicable State and Federal regulations, standards and guidelines and be consistent with the strategies of New Jersey's State Implementation Plan (SIP).

The Department (Division of Environmental Quality, Bureau of Air Quality Planning and Evaluation) issued a Federal Prevention of Significant Deterioration (PSD) permit and state Air Pollution Control permits on September 9, 1991. The project is in compliance with this policy.

Public Access to the Waterfront (7:7E-8.11)

Public access to the waterfront is the ability of all members of the community at large to pass physically and visually to, from and along the ocean shore and other waterfronts. Coastal development adjacent to all coastal water, including both natural and developed waterfront areas, shall provide perpendicular and linear access to the water front to the maximum extent practicable, including both visual and physical access. Development that limits public access and the diversity of waterfront experiences is discouraged.

The permittee has indicated that due to the nature of the facility it is not feasible to allow public access into the envelope of the site. The operation and safety plans of the proposed cogeneration facility cannot reasonably accommodate public access, restricted or otherwise, to the project location. However, the applicant has developed a plan that would allow the employees to access the waterfront via an observation deck. To demonstrate compliance with this policy, and as a condition to the permit, the permittee shall complete the observation platform prior to the plant becoming operational.

Buffers and Compatibility of Uses (7:7E-8.13)

Buffers are natural or man made areas, structures, or objects that serve to separate distinct uses or areas. Compatibility of uses is the ability for uses to exist together without aesthetic or functional conflicts.

Development shall be compatible with adjacent land and water uses to the maximum extent practicable. Development that is likely to adversely affect adjacent areas, particularly Special Areas (N.J.A.C. 7:7E-3.1 through 7:7E-3.48) or residential or recreational uses, is prohibited unless the impact is mitigated by an adequate buffer. The purpose, width and type of the required buffer shall vary depending upon the type and degree of impact and the type of adjacent area to be affected by the development, and shall be determined on a case-by-case basis.

The facility is located on a former dredge spoil disposal area that is zoned industrial and adjacent to the Monsanto Chemical Company. The KCP will have a 2,100 foot set back from Route 130 and will be partially obstructed by existing hedgerows and proposed plantings.

Existing forested wetlands adjacent to the Delaware River will not be disturbed except for clearing in the area of the approachway pier and installation of the outfall structures. The project will maintain at least a 50 foot set back from all freshwater wetland areas.

The proposed pier and associated barge traffic will not adversely affect the present commercial or recreational uses of the Delaware River as this section of the river is already heavily industrialized.

The permittee has demonstrated through compliance with other policies that the KCP will not adversely affect adjacent areas, particularly Special Areas. The facility is designed to maintain adequate buffers and in some areas (uplands adjacent to the Delware River) additional vegetative plantings are proposed. The permittee has demonstrated compliance with this policy.

VI CONCLUSION

Based on information provided by the applicant, the preceding analysis, and the conditions expressed herein, the Adminstrator is able to make the positive findings required by the Waterfront Development Law as embodied by the Rules on Coastal Zone Management. This project also satisfies the requirements of the Freshwater Wetlands Protection Act, the Wetlands Act of 1970 and the Flood Hazard Area Control Act. The permit is expressly contigent upon compliance with all

permit conditions and failure to comply with any or all of the permit conditions may result in appropriate enforcement actions, or suspension or revocation of the permit.

This permit includes conditions to ensure compliance with the following policies. Intertidal and Subtidal Shallows (7:7E-3.16), Wetlands (7:7E-3.27), Historic and Archaeological Resources (7:7E-3.36), Endangered or Threatened Wildlife or Veegetation Species Habitats (7:7E-3.38), Acceptability Conditions for Uses (7:7E-4.11), Dredge Spoil Disposal on Land (7:7E-7.11), Water Quality (7:7E-8.4) and Public Access to the Waterfront (7:7E-8.11).

VII. Administrative Conditions

The following conditions shall be met in addition to the standard conditions found in the Coastal Permit Program Rules, dated May 7, 1989 (N.J.A.C. 7:7), the Freshwater Wetlands Protection Act Rules as amended to July 17, 1989 (N.J.A.C. 7:7A) and the Flood Hazard Area Regulations (N.J.A.C. 7:13-1.1).

This permit is issued subject to and provided the following conditions can be met to the satisfaction of the Land Use Regulation Element. All conditions must be met prior to construction unless otherwise specified. Compliance with all Administrative Conditions shall be determined once copies of all specified permits, certifications, plans agreements, etc. have been approved by the Land Use Regulation Element. All Physical Conditions are subject to on-site compliance inspection by the Bureau of Enforcement, PO Box 188, Duerer Road, Pomona, NJ 08240, in writing at least 5 days prior to commencement or site preparation.

**ADMINISTRATIVE**

1. The permittee is required to mitigate for the loss of .139 acres of intertidal area at a ratio of one to one. Prior to construction the permittee must submit a mitigation plan to the Element for review and approval pursuant to section 7:7A-14.4 of the Freshwater Wetlands Protection Act.

2. The permittee is required to mitigate for the filling and disturbance of 1.6 acres of freshwater wetlands at a ratio of 2:1 (gained:destroyed). Prior to construction, the permittee must submit to the Element, for review and approval, a wetlands mitigation plan developed pursuant to section 7:7A-14.4 of the Freshwater Wetlands Protection Act Rules.

3. Prior to the start of any construction in the waterfront area, the applicant will forward the results of the Phase 1 Archaeological survey to the Element for review and comment. Depending on the conclusions of that survey, the Element may

require the permittee to conduct additional analysis and incorporate mitigative measures as directed.

4. Prior to conducting any dredging the permittee shall provide the Department with a copy of the referenced ACOE dredge disposal permit. The permittee will also submit to the Department the anticipated dredge schedule, noting how that schedule relates to the status of the dredge permit.

5. Prior to construction the permittee must submit copies of all the permits or approvals listed below to the Element.

a. New Jersey Pollution Discharge Elimination System (NJDEPE);

b. Amendment to the Areawide Water Quality Mgm. Plan (NJDEPE);

c. Delaware River Basin Commission Approval;

d. Subaqueous Land and Coastal Zone Mgmt. (Delaware).

6. The permittee shall formally notify the Department of it's intended design modification to incorporate zero discharge. In addition, the plans referenced below must be revised to remove all reference to discharge structures;

1 - Coal Unloading Pier, Keystone Cogeneration System Inc., Sections and Elevations, drawing 3 of 5, prepared by Alan L. Flinn, dated January 30, 1991 and last revised May 21, 1991.

2 - Coal Unloading Pier, Keystone Cogneration System Inc., Dredging Plan, drawing 4 of 5, prepared by Alan L. Flinn, dated January 30, 1991, last revised May 24, 1991;

7. The applicant must deliver a copy of a Water Allocation permit to the Element prior to the start of construction.

**PHYSICAL**

1. The permittee shall complete the observation platform prior to the plant becoming operational.

2. This permit prohibits bucket dredging between the dates of March 15 and November 30 and hydraulic dredging between the dates of April 15 and June 30.

Prepared by:

David B. Fanz, Principal Environmental Specialist

Approval Recommended By:

Ruth Ehinger, Manager
Bureau of Coastal Regulation

Approved By:

Robert A. Tudor, Administrator
Land Use Regulation Element

9/24/91
Date

2. This permit prohibits bucket dredging between the dates of March 15 and November 30 and hydraulic dredging between the dates of April 15 and June 30.

Prepared by:

David B. Fanz, Principal Environmental Specialist

Approval Recommended By:

Ruth Ehinger, Manager
Bureau of Coastal Regulation

Approved By:

Robert A. Tudor, Administrator
Land Use Regulation Element

9/24/91
Date

NJ07740

STATE OF NEW JERSEY
DEPARTMENT OF ENVIRONMENTAL PROTECTION
*(See Issuing Division below)*

# PERMIT*

The New Jersey Department of Environmental Protection grants this permit in accordance with your application, attachments accompanying same application, and applicable laws and regulations. This permit is also subject to the further conditions and stipulations enumerated in the supporting documents which are agreed to by the permittee upon acceptance of the permit.

| Permit No. | Application No. |
|---|---|
| 0809-91-0010.1 .2, .3 and .6 | |

| Issuance Date | Effective Date | Expiration Date |
|---|---|---|
| SEP 24 1991 | SEP 24 1991 | SEP 24 1996 |

| Name and Address of Applicant | Name and Address of Owner | Name and Address of Operator |
|---|---|---|
| Keystone Cogeneration System Inc.<br>Suite 721, Market Tower Bldg.<br>901 Market Street<br>Wilmington, Delaware 19801 | | |

| Location of Activity/Facility *(Street Address)* | Issuing Division | Statute(s) |
|---|---|---|
| Lot 2 Block 1 | Land Use Regulation Element | NJSA 58:16A-50<br>12:5-3 58:10A-1<br>13:9B-1 13:9A-1<br>et.seq. |

Type of Permit: Stream Encroachment, Individual Freshwater Wetlands, Wetlands Type A, Waterfront Development, Water Quality Certificate

This permit grants permission to:

1. Under Flood Hazard Area Control Act (58:16A-50); establish stream encroachment lines; construct a pier and coal conveyor to perform associated dredging in the Delaware River and also to construct two stormwater outfall structures, two roadway culverts, an access roadway,a steam pipeline and trestle in the flood plain of the Delaware River at a location approximately 3500 feet westerly of the intersection of Route 130 and Center Square Road within Lot No. 2 of Block No. 1 in Logan Township, Gloucester County, New Jersey;

2. Waterfront Development and Wetlands Type A Permits (12:5-3) (13:9A-1); This permit grants permission to construct a pulverized coal-fired cogeneration power plant consisting of one boiler, a stream turbine, material handling system, pollution, stormwater, wastewater and sewage treatment control systems and a pile supported coal handling barge facility to receive the coal. The barge facility will consist of a 1600 foot long by 22.5 foot wide approachway pier and a 110 foot long by 70 foot wide deck platform supporting a fixed clamshell coal unloader, 2 water intake structures, 2 barge hauling dolphins and 6 breasting dolphins connected by a 900 foot long by 4 foot wide walkway. Approximately 40,000 cubic yards of dredge material will be removed from a 910 foot by 150 foot barge berth and disposed of at a dredge spoil site owned and operated by American Dredging in Logan Township,

EXHIBIT
Whitney-7
S. Oakley 10/10/06

EXHIBIT 10
Johnson-11
11/1/06 SU

Approved by the Department of Environmental Protection

Name (Print or Type) _____ Title _____

Signature see page 6 for signature Date _____

* *The word permit means "approval, certification, registration, etc."*

(General Conditions are on the Reverse Side)

DEP-007 (3/90)

NJ104403

3. Individual Freshwater Wetlands Permit(NJSA 13:9B-1 et.seq.); This permit grants permission to fill 1.22 acres of freshwater wetlands for the purpose of widening an access road. It also authorizes the permittee to fill 0.08 acres of wetlands to install two stormwater outfall structures and to disturbance 0.31 acres for the construction of the approachway pier and utility lines. The total wetland disturbance authorized by this permit is 1.61 acres, 1.3 acres of filling and 0.31 acres of clearing.

The Waterfront Development permit included in this approval is authorized under and in compliance with the Rules on Coastal Zone Management Policies for: (7:7E-3.4) Prime Fishing Areas, (7:7E-3.5) Finfish Migratory Pathways, (7:7E-3.7) Navigation Channels, (7:7E-3.12) Submerged Infrastructure Routes, (7:7E-3.15) Intertidal and Subtidal Shallows, (7:7E-3.23) Filled Water's Edge, (7:7E-3.25) Flood Hazard Areas, (7:E-3.27) Wetlands, (7:7E-3.28) Wetlands Buffer, (7:7E-3.36) Historic and Archaeological Resources, (7:7E-3.38) Endangered or Threatened Wildlife or Vegetation Species Habitat, (7:7E-4.7) Large Rivers, (7:7E-4.11) Acceptability Conditions for Use (g) New Dredging, (7:7E-7.4) Energy Use Policies, (7:7E-7.13) Dredge Spoil Disposal on Land, (7:7E-8.4) Water Quality, (7:7E-8.5) Surface Water Use, (7:7E-8.7) Stormwater Runoff, (7:7E-8.8) Vegetation, (7:7E-8.10) Air Quality, (7:7E-8.11) Public Access to the Waterfront, (7:7E-8.13) Buffers and Compatibility of Uses.

Prepared by: William M. Berns — David Fanz

THIS PERMIT IS SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:

1. Any construction, grading, removal of vegetation, or other disturbance at this project site, within or affecting any regulated flood plain other than specifically approved by this permit or detailed on the approved drawings shall require additional approvals from the Land Use Regulation Element.

2. All construction and/or activities approved by this permit shall be performed under the supervision and direction of a Professional Engineer licensed in the State of New Jersey. Furthermore, all construction and/or activities on site shall be subject to inspection at any time by representatives of the Department.

3. Responsibilities of Applicant

   a. The granting of this permit does not in any way relieve the applicant and/or its designated agents from the responsibility for damages caused by any construction or activities hereby approved; nor does the Department accept responsibility for the structural design.

   b. This permit is NOT VALID until such time as the permit acceptance form has been signed by the applicant, accepting and agreeing to adhere to all permit conditions, and returned to the appropriate regional office within the Element. Furthermore, the Department reserves the right to declare this permit NULL and VOID should it be determined that adequate measures had not been taken by the applicant and/or its designated agents to ensure that all terms and conditions of this permit would be fulfilled or provided for at all times.

   c. This permit, including all conditions listed herein, shall be recorded in the office of the County Clerk (the Registrar of Deeds and Mortgages if applicable) in the county or counties wherein the lands included in the permit are located within ten (10) days after receipt of the permit by the applicant. Verified notice of this action shall be forwarded to the Land Use Regulation Element immediately thereafter.

   d. A construction notice on a prescribed form shall be prepared by the applicant or its designated agent and submitted to the Land Use Regulation Element fourteen (14) days prior to the commencement of the regulated activities.

TERMS AND CONDITIONS (Continued)

e. A completion report on a prescribed form shall be prepared by a Professional Engineer licensed in the State of New Jersey and submitted to the Land Regulation Element within thirty (30) days after completion of the regulated activities.

4. All activities authorized by this permit shall be complete within five years of the issuance date; otherwise, this permit, if not previously revoked, shall automatically become null and void, and none of the activities referenced herein shall be commenced or continued until such time as this permit has been reinstated or until a new application has been submitted to and approved by the Department.

5. Erosion Control and Maintenance of Stream Corridor

a. Adequate precautions shall be taken to prevent and/or minimize the discharge of sediments into all streams within or adjacent to the project area. The Department reserves the right to order the suspension of the proposed activity if unacceptable levels of turbidity result from the same.

b. All fill and other earth work on the lands encompassed within this permit shall be stabilized in accordance with "Standards for Soil Erosion and Sediment Control in New Jersey" (obtainable from local Soil Conservation District Offices), or equal engineering specifications, to prevent eroded soil from entering adjacent waterways at any time during and subsequent to construction.

c. Where any portion of the stream corridor is altered in the course of the construction of the herein approved activities, all affected areas shall be stabilized in such a manner as to prevent erosion and the subsequent silting of the subject stream channel. Furthermore, the applicant shall maintain the stream corridor as shown on the approved drawings(s) for either such time as is required for the channel and/or banks

d. During the course of construction, neither the applicant nor its designated agents shall cause or permit any unreasonable interference with the free discharge of the stream by the placing or dumping of any materials, equipment, debris or structure in or about the stream corridor. Upon completion or abandonment of the work, the applicant and/or its agents shall remove and dispose of in a lawful manner all excess materials, equipment, and debris from the stream corridor and adjacent lands.

6. Preservation of Stream Corridor - All those lands lying between the centerline of the stream and the lines labelled Stream Encroachment Lines, as shown on the approved drawings shall be reserved for the passage of flood waters and for the preservation of near stream vegetation and wildlife. No construction, grading, removal of vegetation, or other disturbance shall be permitted within this area unless specifically approved by this permit or detailed on the approved drawings.

7. The proposed water quality measures must be adequately maintained in proper working condition at all times. The applicant must make specific arrangements to insure continuous compliance with this condition.

8. All excavated material found unsuitable as backfill and/or all dredged spoils shall be removed from the project site and disposed of outside any Flood Hazard Area, wetland, wetland transition area or open water in such a manner that it does not interfere with positive drainage of the receiving area.

9. Any activity within or adjacent to the stream channel which may introduce sediment to the stream or cause the stream to become turbid is prohibited during the period of April 1 to June 30 and September 1 to November 30 in order to protect the migratory fishery resource.

10. ADMINISTRATIVE: Waterfront and Individual Freshwater Wetlands

a. Prior to construction the permittee must submit to the Element for review and approval a mitigation plan to compensate for the loss of the .139 acres of intertidal area. Mitigation must be completed in accordance with the approved plans.

b. Prior to construction the permittee must submit to the Element for review and approval a wetlands mitigation plan developed pursuant to section 7:7A-14.4 of the Freshwater Wetlands Protection Act Rules, to compensate for the filling and disturbance to 1.6 acres of freshwater wetlands. Mitigation must be completed in accordance with the approved plan.

c. Prior to the start of any construction in the waterfront area, the applicant will forward the results of the Phase 1 Archaeological survey to the Element for review and comment. Depending on the conclusions of that survey, the Element may require the permittee to conduct additional analysis and incorporate mitigative measures as directed.

d. Prior to conducting any dredging the permittee shall provide the Department with a copy of the referenced ACOE dredge disposal permit. The permittee will also submit to the Department the anticipated dredge schedule, noting how that schedule relates to the status of the dredge permit.

TERMS AND CONDITIONS (Continued)

e. Prior to construction the permittee must submit copies of all the permits or approvals listed below to the Element.

1. New Jersey Pollution Discharge Elimination System (NJDEPE);

2. Amendment to the Areawide Water Quality Mgm. Plan (NJDEPE);

3. Delaware River Basin Commission Approval;

4. Subaqueous Land and Coastal Zone Mgmt. (Delaware);

f. The permittee shall formerly notify the Department of it's intended design modification to incorporate zero discharge. In addition, the plans referenced below must be revised to remove all reference to discharge structures;

1 - Coal Unloading Pier, Keystone Cogneration System Inc., Sections and Elevations, drawing 3 of 5, prepared by Alan L. Flinn, dated January 30, 1991 and last revised May 21, 1991.

2 - Coal Unloading Pier, Keystone Cogneration System Inc., Dredging Plan, drawing 4 of 5, prepared by Alan L. Flinn, dated January 30, 1991, last revised May 24, 1991;

g. The applicant must deliver a copy of a Water Allocation permit to the Element prior to the start of construction.

11. PHYSICAL: Waterfront and Individual Freshwater Wetlands

a. The permittee shall complete the observation platform prior to the plant becoming operational.

b. This permit prohibits bucket dredging between the dates of March 15 and November 30 and hydraulic dredging between the dates of April 15 and June 30.

12. The drawings hereby approved are seven (7) sheets prepared by Bechtel, entitled:

"KEYSTONE COGENERATION SYSTEMS, INC. KEYSTONE COGENERATION PROJECT LOGAN TOWNSHIP, NEW JERSEY",

"FINISH GRADING PLAN", drawing no.COL0101, dated April 20, 1990, last revised August 7, 1991

TERMS AND CONDITIONS (Continued)

"ROUGH GRADING PLAN EAST OF PLANT", drawing no. COY0103, dated February 2, 1991,last revised July 29, 1991

"ROUGH GRADING DETAILS SHEET NO. 1", drawing no. COY0191, dated April 20, 1990, last revised June 28, 1991,

"ROUGH GRADING DETAILS SHEET NO. 2", drawing no. COY0192, dated June 8, 1990, last revised July 30, 1991,

"EROSION AND SEDIMENT CONTROL PLAN", drawing no. COA0003, dated June 8, 1990, last revised July 29, 1991,

"KEYSTONE COGENERATION PROJECT"

"CONSTRUCTION FACILITIES PLAN", drawing no. COA0105, dated March 12, 1990, last revised July 29, 1991,

"DETENTION/SEDIMENT BASIN CROSS SECTIONS", drawing no. COL0192, dated June 8, 1990, last revised August 7, 1991,

and four (4) sheets prepared by S.T. Hudson Engineers, Inc., entitled:

"COAL UNLOADING PIER LOGAN TOWNSHIP NEW JERSEY AND BRANDYWINE HUNDRED DELAWARE COUNTY OF: GLOUCESTER, NEW JERSEY AND NEW CASTLE, DELAWARE"

"RIPARIAN PLAN", drawing no. 2 of 5, dated January 30, 1991, last revised May 20, 1991,

"SECTIONS AND ELEVATION", drawing no. 3 of 5, dated January 30, 1991, last revised May 21, 1991,

"DREDGING PLAN", drawing no. 4 of 5, dated January 30, 1991, last revised May 24, 1991,

"SECTIONS", drawing no.5 of 5, dated January 30,1991, unrevised.

/s/ [illegible]
Ruth Ehinger, Manager
Bureau of Coastal Regulation

3/24/91
Date

NJ04409

STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES
& ENVIRONMENTAL CONTROL
DIVISION OF WATER RESOURCES
89 KINGS HIGHWAY P.O. BOX 1401
DOVER, DELAWARE 19903

SURFACEWATER MANAGEMENT SECTION
WATERSHED ASSESSMENT BRANCH
POLLUTION CONTROL BRANCH
FACILITY SUPPORT BRANCH
WETLANDS & AQUATIC PROTECTION BRANCH

(302) 739-5726
(302) 739-4590
(302) 739-5731
(302) 739-5061
(302) 739-4691

Subaqueous Lands Lease: SL-0907/91
Date of Issuance: 9/30/91
Construction Expiration Date: 9/30/94
Amended Date:

**SUBAQUEOUS LANDS LEASE
GRANTED TO KEYSTONE COGENERATION SYSTEM, INC.
FOR THE CONSTRUCTION OF AN INDUSTRIAL PIER ON PUBLIC
SUBAQUEOUS LANDS AND TO CONDUCT DREDGING IN THE
DELAWARE RIVER AT LOGAN TOWNSHIP, GLOUCESTER COUNTY,
NEW JERSEY, ROUTE 130, LOT NO. 2, BLOCK NO. 1 AND
BRANDYWINE HUNDRED, NEW CASTLE COUNTY, DELAWARE**

Keystone Cogeneration Systems, Inc.
901 Market Street, Suite 721
Wilmington, DE 19801

Pursuant to the provisions of 7 Del. C. §7203, and the Department's Regulations Governing the Use of Subaqueous Lands, permission is hereby granted on this 30th day of September A.D. 1991, to Keystone Cogeneration Systems, Inc. to construct a coal unloading pier consisting of the following: main pier 22 feet by 450 feet, loading platform 70 feet by 105 feet, corner of loading platform approachway 10 feet by 10 feet, four (4) walkways 4 feet by 109 feet, two (2) walkways 4 feet by 4 feet, one (1) walkway 4 feet by 105 feet, one (1) walkway 4 feet by 100 feet, six (6) breasting dolphins 16 feet by 16 feet, two (2) mooring dolphins 25 feet by 25 feet for a total of 22, 732 square feet and to dredge 40,000 cubic yards of material from the Delaware River to create a 910 feet by 150 feet barge berth in accordance with plans and related documents submitted by the applicant titled and dated as follows:

Coal Unloading Pier: 1/30/91; revised 5/20/91, sheets 1 thru 9 of 11
Coal Unloading Pier: 5/22/91; sheet 10 and 11 of 11
Drawing A-1 Overhead View of Barge Unloading Facility: 7/10/91
Drawing A-2 Side View of Barge Unloading Facility: 7/10/91
Drawing A-3 Front View of Clamshell Barge Unloader Bucket: 7/10/91
Drawing A-4 Side View of Clamshell Barge Unloader Bucket: 7/10/91
Drawing A-5 Detailed View of Sealed-Tips of Clamshell Barge Unloader Bucket: 7/10/91
Drawing A-6 Side View of Barge Unloading Facility and Unloading Conveyor: 7/10/91
Drawing A-7 Cross Section - Unloading Conveyor: 5/30/91
Spill Prevention, Control and Countermeasures Plan: 1/91
Safety Plan: 1/31/91
Section 316(a) and (b) of the Federal Water Pollution Control Act, undated and an application dated 3/4/91.

WHEREAS, the State of Delaware is the owner of ungranted subaqueous lands lying beneath the waters of the Delaware River; and

WHEREAS, Keystone Cogeneration Systems, Inc., owner of certain adjoining lands to the Delaware River has applied for permission to construct an industrial pier and to conduct dredging; and

WHEREAS, the State of Delaware, by and through the Department of Natural Resources and Environmental Control, certifies that the permitted activity will be conducted in manner which will not violate the applicable water quality standards of the State of Delaware; and

WHEREAS, pursuant to the provisions of 7 Del. C., §7203, the Secretary of the Department of Natural Resources and Environmental Control through his duly authorized representative finds that it is not contrary to the public interest if this project is approved subject to the terms and conditions herein set forth.

This approval is in accordance with plans and application submitted to Department of Natural Resources and Environmental Control, a copy of which is attached hereto and made a part hereof.

This lease shall be continued for a period of ten (10) years or so long as the conditions attached to the lease are adhered to, whichever is the shorter in time. Upon the expiration of the ten-year term, this lease shall expire and become null and void, unless prior thereto the lessee shall have applied for and received a renewal of this lease. A renewal may be denied if the Sate determines that the lease is no longer in the public interest.

THIS lease is issued subject to the following conditions:

**SPECIAL CONDITIONS**

1. The conditions contained herein shall be included in the construction contract and other ancillary documents associated with earth disturbance and construction activities which may impact subaqueous lands associated with this project.

2. The construction schedule for this project shall be arranged so as to minimize the impact on anadromous fish passage. There shall be no dredging between March 1 and May 31 and between September 1 through November 30.

3. Construction shall be conducted so as not to violate the State of Delaware Department of Natural Resources and Environmental Control, "Surface Water Quality Standards" dated February 2, 1990.

4. The structure on subaqueous lands shall be for the explicit purpose of transferring coal as stated in Appendix A of the application.

5. All dredging and filling is to be conducted in a manner consistent with sound conservation and water pollution practices. Spoils and fill areas are to be properly diked so as to contain the dredged material and prevent its entrance into any surface water.

6. All pipelines shall be kept in good condition at all times and any leaks or breaks shall be promptly and properly repaired.

7. During the term of this lease (the lessee) agrees to pay the State of Delaware the sum of $39,781 per annum for the 22,732 square feet of public subaqueous lands utilized commencing on the 1st day of October of 1991, and a payment of the same amount on the same day of each and every year thereafter for the term of this lease. This fee shall remain in effect for a period of five years at which time the fee shall be amended in accordance with the duly adopted fee schedule for public subaqueous lands.

8. The fee for the dredging shall be $40,000.00 for the 40,000 cubic yards of public subaqueous lands to be dredged. This fee shall be payable by the lessees on the 1st day of October, 1991.

9. The discharge of any pollutant into the Delaware River shall be reported immediately to the Department of Natural Resources and Environmental Control in accordance with 7 Del. C. §6028.

10. There shall be mitigation for the 0.8 acres of shallow water impacted by dredging. The mitigation shall be in accordance with Section VII.C. of the Subaqueous Lands Application. Reports prepared by a qualified environmental firm with experience in wetland creation projects shall be submitted at the beginning and end of each growing season (May - June and August - September). Monitoring shall be conducted for two full growing seasons. If there has not been 80% coverage of emergent wetland zones and 50% survival of woody species after two full growing seasons monitoring shall continue until these percentages have been achieved. All reports shall be submitted to the Wetlands and Aquatic Protection Branch of the Division of Water Resources.

11. A copy of the final Spill Prevention, Control and Countermeasures Plan shall be submitted to the Wetlands and Aquatic Protection Branch of the Division of Water Resources Prior to January 1, 1992.

12. A report outlining a one-year study to be conducted to determine the number of striped bass eggs and larvae entrained during the operation of the water intake shall be submitted by January 1, 1992. The results of the study shall be submitted no later than three months after the plant has been in operation for one year. Mitigation shall be required if it is determined that there is damage to the striped bass population.

GENERAL CONDITIONS

1. The project is to be undertaken in accordance with the plans submitted and attached hereto. If changes are necessary, revised plans must be submitted and a supplemental approval issued prior to actual construction.

2. Representatives of the Department of Natural Resources and Environmental Control may inspect such work during any phases of the construction and may collect any samples or conduct any tests that are deemed necessary.

3. This lease does not cover the structural stability of the project units.

4. Prior to the expiration of this lease, the lessee shall remove all structures covered under this lease unless the lease has been renewed in accordance with its terms.

5. Any actions, operations or installations which are considered by the Department to be contrary to the best interests of the public shall constitute reason for the discontinuance and/or removal of said action, operation or installation.

6. The lessee shall notify the Department of Natural Resources and Environmental Control within ten (10) days of the date work will be commenced.

7. The lessee shall maintain any structure on public subaqueous lands in good and safe condition and will protect and save the State of Delaware harmless from any loss, cost or damage by reason of said structures.

8. The lessee shall at all times comply with such rules and regulations which are promulgated by the United States Corps of Engineers.

9. The issuance of this lease does not imply approval of any other part, phase, or portion of any overall project the lessee may be contemplating.

10. This lease shall not be construed to grant or confer any right, title, easement, or interest in, to, or over any land belonging to the State of Delaware other than that of a tenant.

11. This lease is subject to the terms and conditions contained in any easement, license or lease that may have been granted by the State or any political subdivision, board, commission or agency of the State in the vicinity of the leased premises.

12. Nothing contained herein shall in any manner affect the rights now existing of any riparian land owner under the laws of the State of Delaware.

13. This lease and authorization are granted for the purposes as stated herein. Any other use without prior approval shall constitute reason for this lease being revoked.

14. This lease shall expire if the project has not been completed within three (3) years from the date of issuance.

15. If the lessee considers three (3) years insufficient for completion of the project, the lessee may submit a project time schedule for consideration by the Department. If the time schedule is approved it shall be attached hereto and made a part hereof.

16. The lessee shall remove all structures prior to the sale of the property unless the purchaser or seller of the property shall have notified the state of the sale of the property.

17. The lessee shall at all times comply with all applicable laws and regulations of the Department of Natural Resources and Environmental Control.

18. The issuance of this lease does not constitute approval for any of the activities as may be required by any other local, state or federal governmental agency.

19. This lease will be revoked upon violation of any of the above conditions.

20. Application for renewal must be submitted six (6) months prior to the expiration date of this lease.

IN WITNESS WHEREOF, We, Keystone Cogeneration Systems, Inc. have caused this instrument to be executed on this 18th day of September, 1991.

KEYSTONE COGENERATION SYSTEMS, INC.

By: _____
Applicant

SWORN and subscribed before me on this 18th day of September 1991.

Bonnie S. Cramer
Notary Public

IN WITNESS WHEREOF, I, Edwin H. Clark, II, Secretary, Department of Natural Resources and Environmental Control, have hereunto set my hand and seal this 30th day of September, 1991.

Edwin H. Clark II
By Secretary of the Department of
Natural Resources and
Environmental Control

# BASIC APPLICATION FORM

**ATTACH ADDITIONAL 8 1/2" X 11" SHEETS OF PAPER AS NEEDED**

Application Number: _____
(To be assigned by agencies)

1. ~~XXXXXXXXXX~~ (Property Owner) Name and complete address:
Sun Refining & Marketing Co.
1801 Market Street
Philadelphia, PA 19103

Telephone Number
Home ( ): _____
Work ( ): 215-977-3051

2. Name of ~~XXXXXXXXX~~ Applicant (if applicable) of land where project is contemplated and complete address:
Keystone Cogeneration Systems, Inc.
901 Market Street, Suite 721
Wilmington, DE 19801

Telephone Number
Home ( ): _____
Work ( ): 215-928-2854

3. Authorized agent's name and complete address (if applicable):
Richard V. Ciliberti, Engineer
313 Chestnut Street
Philadelphia, PA 19106

Telephone Number
Home ( ): _____
Work ( ): 215-928-2854

**(Complete agent authorization statement on page 8)**

4. Is this project
__X__ New? _____Repair/Replacement?
_____ Both? If "Both," please explain:
_____ Supplimental Approval for an existing lease or permit?

5. Provide a brief description of the project:
A. __X__Dredging
Total Estimated Volume: 40,000cu. yards
B. _____Filling
Total Volume: _____ cubic yards
Area of Fill Below Mean High Water: _____ square feet
C. _____Bulkheading
Total Length: _____ ft.
D. _____Dock(s)
Total Number: _____
E. __X__Pier(s)
Total Number: 1
F. _____Other:
Total Dimensions:

ATTACHMENT A

LIST OF REQUIRED APPROVALS OR CERTIFICATIONS

I. State of Delaware Department of Natural Resources and Environmental Control

A. Application for a Coastal zone Permit

B. Application Subaqueous Lands Permit

II. U. S. Army Corps of Engineers

A. Approval under Section 10 of the River and Harbors Act of 1899

B. Approval under Section 404 of the Clean Water Act

III. New Jersey Department of Environmental Protection

A. Division of Coastal Resources

1. Waterfront Development Permit

2. Stream Encroachment Permit

3. Wetlands Type A Permit

4. Freshwater Wetland Permit

5. Water Quality certificate

B. Division of Water Resources

1. Divert Surface Waters Permit

2. Well Drilling Permit

3. New Jersey Pollution Discharge Elimination System (NJPDES) Permit

C. Division of Solid Waste

1. Solid Waste Permit (Solid Waste Facility Reg.)

D. Division of Air Quality

1. Air Quality Permit (PSD Permit)

E. Gloucester County Soil Conservation District

1. Soil Erosion and Sediment Control Plan

IV. Logan Township, New Jersey

A. Site Plan Review

10. Current land use is:
__X__ Agriculture __X__ Wooded __X__ Marsh/Swamp
____ Meadow ____ Developed
Present zoning is:
____ Agricultural ____ Commercial ____ Residential __X__ Other Industrial

11. List the name and complete address of each adjacent property owner to the project. For wetlands and marina projects, include each waterfront property owner across the waterway from the project, within a 1,000 feet radius. (Attach sheets as needed)

Monsanto Company
800 N. Linbirg Blvd.
St. Louis, MO 63167

Sun Refining & Marketing Co.
1801 Market Street
Philadelphia, PA 19103

Joseph & Eleanor Borrelli
P.O. Box 169, RD #2
Swedesboro, NJ 08085

12. Will any public benefit be derived from the project?
__X__ Yes ____ No ____ Uncertain
If yes, explain below: The plant will generate 200 MW of electrical output which will be sold to Atlantic Electric Company. The steam flow of 35,000 lbs. per hour and electricity will be sold to Monsanto Corporation which is the steam host for the qualified cogeneration facility.

13. Has any work commenced or has any portion of the project for which you are seeking a permit been completed?
_____ Yes __X__ No
If yes, give details below. State when work was completed and who performed the work. Please indicate on attached drawings what is proposed.

14. Proposed starting date: Unknown at present time.

15. Contractor's name and complete address: N/A
_____
_____
_____

Telephone Number:
Home ( ): _____
Work ( ): _____

**Please complete and attach all appropriate drawings and appendices to this section.**

# APPLICANT SIGNATURE AND/OR AGENT AUTHORIZATION

* All applicants must sign this page. Please complete the Agent Authorization only if applicable.

* If this authorization form is submitted with the application, all future correspondence may be signed by the duly authorized agent.

I, Keystone Cogeneration Systems, Inc., hereby designate and authorize Richard V. Ciliberti to act on my behalf in the processing of this application and to furnish any information that is requested.

I certify that the information on this form and the attached plans is true and accurate to the best of my knowledge.

I understand that DNREC may request information in addition to that set forth herein as may be deemed appropriate in considering this application.

I grant permission to the authorized agency representative(s) to enter upon the premises for inspection purposes during working hours.

I will abide by the conditions of this approval if issued.

I also certify that the proposed works are not inconsistent with Delaware's Coastal Zone Management Plan.

x R P Mac Keever — Applicant Signature

3/4/91 — Date

Applicant Name (Printed/Typed) Keystone Cogeneration Systems, Inc.

x R.V. Ciliberti — Agent Signature

3-4-91 — Date

Agent Name (Printed/Typed) Richard V. Ciliberti

## APPENDIX A
# BOAT DOCKING FACILITIES

* Any boat docking facility for more than four (4) slips or which is defined as a marina facility (see definitions and explanations section) must complete Appendices N and O, and must apply to the U.S. Army Corps of Engineers for approval.

* Please make sure answers to all of the questions in this appendix correspond to information on the application drawings.

1. What type of project do you propose? (Attach additional sheets as necessary)
See definition section of Joint Application Form Reference Guide for clarification of "Dock" and "Pier." Please give total numbers of:

_____Dock(s) Dimensions (Channelward of mean high water line) ____ft. by ____ft.
Dimensions (Channelward of mean low water line) ____ft. by ____ft.

_X_Pier(s) Dimensions (Channelward of mean high water line) ____ft. by ____ft.
Dimensions (Channelward of mean low water line) ____ft. by ____ft.
See Attachment B

_____Finger Pier(s): Dimensions (Channelward of mean high water line) ____ft. by ____ft.
Dimensions (Channelward of mean low water line) ____ft. by ____ft.

_____Buoy: What will be used for anchor(s) _____ type of device _____ weight

_____Dry stack facilities: Total Dimensions_____
Number of boat storage spaces_____

_____Other: Total Dimensions (Channelward of mean high water line) ____ft. by ____ft.

_____Mooring _6_Dolphin _____Piling _____Other (explain):

2. Approximately how wide is the waterway at the project site? 5,000 ft.

3. What will be the mean low water depth at the most channelward end of the mooring facility?
25 ft.

4. What type of material(s) will be used for construction of the mooring facility (e.g. salt treated wood, creosote pilings, Fiberglas floats, etc.)?
Reinforced concrete deck and steel pipe piles.

ATTACHMENT B

The proposed coal handling barge facilities will consist of a 1600' long by 22'-6" wide approachway, a 130' X 75' platform, four (4) 60ø mono-pile breasting dolphins and two (2) 20' X 20' mooring dolphins. The mooring and breasting dolphins will be connected by a 3' wide pile supported walkway.

The pier facility will extend approximately 1550' from the mean high water line and approximately 550' from the mean low water line.

## APPENDIX F
# INTAKE OR OUTFALL STRUCTURES

* The appropriate Dredging and Fill appendices should also be completed if applicable.

* Please make sure answers to all of the questions in this appendix correspond to information on the application drawings.

1. How many feet will the intake or outfall structure(s) be placed channelward of the:
   A. tidal waters: mean high water line? 1550 ft.
   mean low water line? 550 ft.
   B. non-tidal waters: ordinary high water line? _____ ft.

2. What type of material(s) will be used to construct the intake or outfall structure(s)?

3. What is the approximate median stream flow rate at the:
   A. intake site 11,320 cfs
   B. outfall site 11,320 cfs
   (If this information is unknown check here _____)

4. What will be the daily rate of withdrawal at the intake site? 7.2 mgd

5. What will be the intake velocity? 0.5 fps

6. What will be the mesh size of the screen used on the intake structure?
   1 ~~mm~~inches _____ other (explain)

7. What will be the daily rate of return at the outfall site? 3 mgd

8. Have you applied for the National Pollutant Discharge Elimination System (NPDES) permit for this project? X Yes ____No NJPDES
   If your answer is "No", contact the Pollution Control Branch, DNREC.

9. Will a splash apron be employed at the outfall site? ___ Yes X No
   If your answer is "Yes" complete Appendix I.
   If your answer is "No", explain your proposed method of preventing bank erosion.

   Outfall is sited approximately 1550 feet outshore of the mean high water line; therefore, no erosion control is necessary.

# APPENDIX S
# NEW DREDGING PROJECTS

* Please make sure that answers to all of the questions in this appendix correspond to the information on the application drawings.

* See Joint Application Form Reference Guide - "How to Calculate Square Feet, Cubic Feet and Cubic Yards."

## 1. CLASSIFICATION OF CREEK TO BE DREDGED

How is the creek classified according to the State dredging program's classification system? Is it open to dredging, open to dredging but requiring further study, or restricted due to environmental sensitivity? See example "Classification System" on page 54 of this application. For further explanation, refer to Section 2.0 of the "Goals and Objectives - Creek Evaluation Dredging Criteria" dated April, 1986.

Open to dredging.

Step One: If the creek to be dredged is "restricted", an application cannot be accepted.

Step Two: If the creek is "open" to dredging, the applicable parts of this application must be completed.

Step Three: If the creek is "open" to dredging but requiring further analysis, submit information requested as part of procedure outlined on page 4 and further explained in Section 2.4 of the Dredging Study.

## 2. SITE LOCATION OF DREDGING PROJECT

Locate the project site with respect to the county, creek, tributary (enclose 8-1/2" x 11" map). Located approximatley 1550 feet outshore of the mean high water line in the Delaware River, at river mile 78.8 in New Castle County, Delaware.

## 3. DESCRIPTION OF DREDGING PROJECT

Describe the proposed project including the equipment to be used, quantity of material to be dredged, extent of area to be dredged, place and method of disposal, etc. Detail is important.

Refer to section III B.

## 4. PURPOSE OF PROPOSED DREDGING PROJECT

Define the purpose and need of the proposed dredging project. Who will benefit?

To accomodate a 10,000 ton coal barge, the berth must be dredged to 25' below mean low water. The barge berth provides the power plant with an uninterrupted supply of coal to be used for the generation of steam and electricity.

Submit color photos of the site and bordering upland with explanation of the views shown (prints only).

**Appendix 5, continued**

10. CHARACTERIZE THE EXISTING WATER QUALITY

a. Determine the classification of the stream according to state water quality criteria. Will the dredging project cause violations of the water quality criteria? Will designated water uses be affected?

Open to dredging. All State water quality standards will be complied with. No water uses will be affected.

b. Determine levels of dissolved oxygen (D.O.) in and around the project area. Measure D.O. at the water/substrate interface during worst case conditions (i.e., summer morning).

D.O. values seldom fall below 4.0 mg/l. Mean measurements ranged from 10.0 to 5.6 mg/l, respectively, during the April through July, 1990 period (Biosystems Analysis, Inc., 1990).

11. IMPACT TO THE BOTTOM CONTOURS OF THE BAY OR CREEK

a. What is proposed dredging depth in relation to surrounding bathymetry? Provide map showing surrounding depths.

Adjacent anchorage is maintained by the U. S. Army Corps of Engineers to 40' below MLW. The dredging area will be dredged to 25 feet below MLW. A sounding plan is excluded with the application.

b. Will the project change flow or circulation patterns in the bay or creek? Will shoaling patterns be altered?

No change in flow or circulated patterns are anticipated.

12. IMPACT TO SURROUNDING LANDS

What is the proximity of the dredging project to the nearest creek bank or banks? What are the existing land uses along this bank(s)? What is the primary vegetation?

The dredging area is 1550 outshore of the MHWL. The bank is primarily forested wetlands.

13. What measures will be taken during the dredging operation to minimize environmental impact?

All dredging will be conducted so as to avoid anadromous fish migration. refer to Section VII, A for further details.

Appendix S, continued

18. CONSIDERATIONS FOR HABITAT DEVELOPMENT N/A

a. Does similar habitat already exist in the area proposed for development?

b. What is the depth of water at mean low water?

c. What is the salinity of water at the proposed site of development?

d. What is the salinity of water from which material is being dredged?

e. Is the composition of the dredged material similar to the substrate at the site of habitat development?

f. What are the biological characteristics of the site proposed for development? Are there oyster bars, spawning grounds, submerged aquatic vegetation, or other fragile ecosystems which require temporary or permanent protection? These sites should be avoided for habitat development.

g. What are the wind and current conditions at the site? Do they change seasonally?

c. Describe the proposed method of containment for the dredged material.

Earthen dikes.

d. How much acreage is required for the quantity of material being disposed of?

The approved disposal site has an extremely large holding capacity of 8 million cubic yards.

f. What measures will be taken to reduce potential environmental impact?

N/A, the disposal area is an approved site.

g. What is estimated life of the dredge spoil disposal site?

Current remaiing capacity is 8 million cubic yards.

e. Provide an engineering drawing of the proposed disposal facility.

N/A, approved disposal site.

20. Has an Erosion and Sediment Control Plan been approved by the countyy conservation district for the project? _____ Yes _____ No N/A

* Approved plans must be received by this office prior to approval being issued.

## SAMPLING PLAN FOR NEW DREDGING PROJECTS

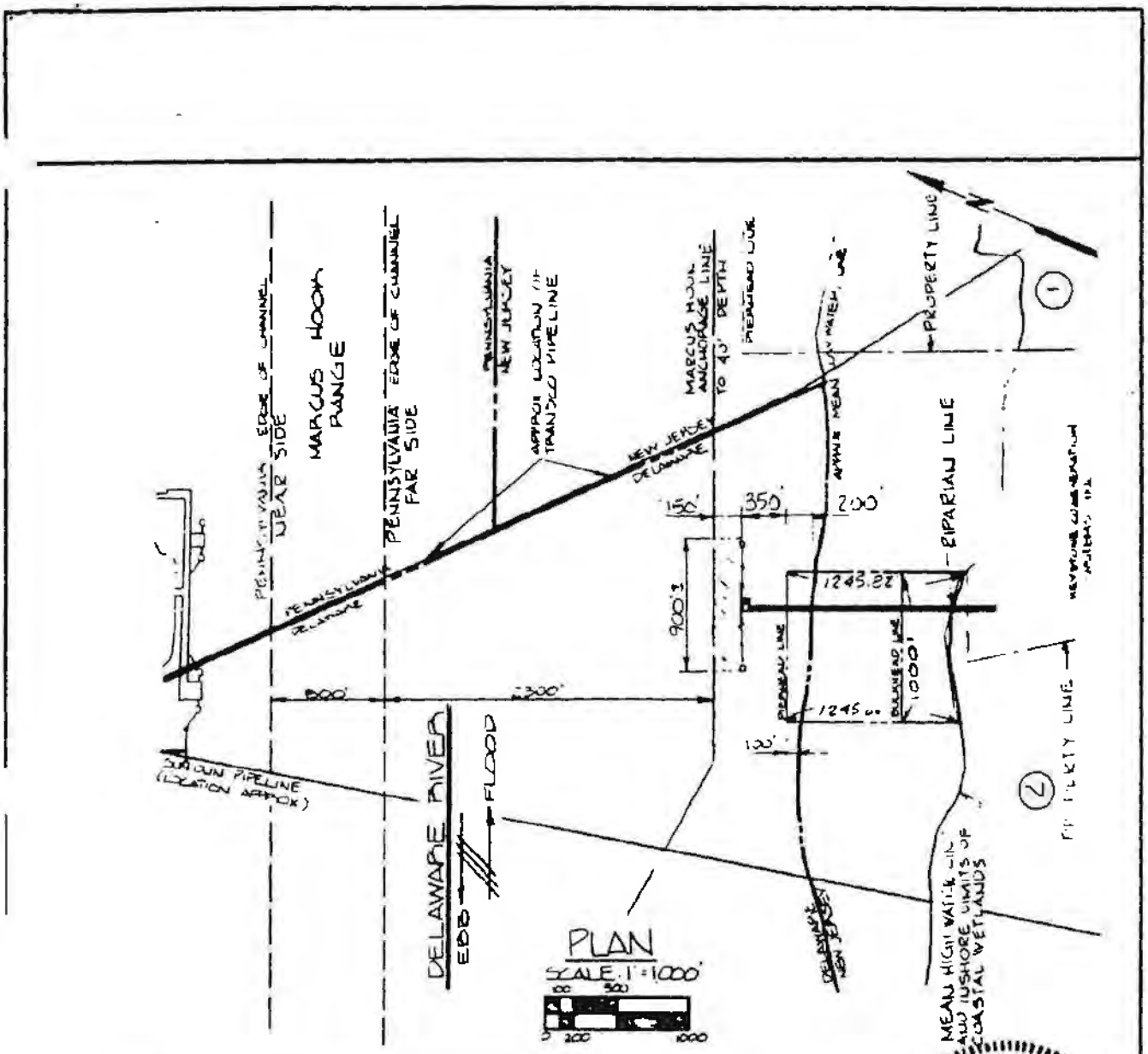
1. Physical and Chemical Analysis of Sediment — See enclosed EMA Dredge Spoil Analysis Report located in the Appendix.

a. Particle size distribution and percent solids analysis on core samples taken to depth of proposed dredging. Percentage sand, silt and clay should be given based on:
sand: Greater than or equal to 0.0625mm
silt: Less than 0.0625mm but greater than 0.0039mm
clay: Less than 0.0039mm

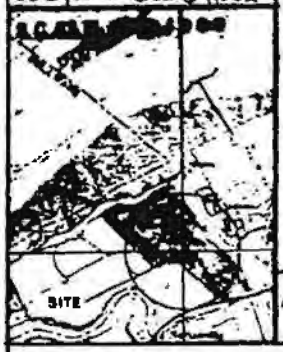
b. Bulk sediment analysis (mg/kg) on core samples taken to depth of proposed dredging for parameters on page 55 of this application.

c. Elutriate analysis (mg/l) on core samples taken to depth of proposal dredging for parameters listed on page 55 of this application. Dredge site water should be used for the dilution water.

d. Surface water analysis (mg/l) on one composite sample from dredging area for parameters listed on Chemical Parameters, for Analysis, page 55 of this application.




LOCATION MAP
USGS - MARCUS HOOK




PURPOSE: NEW COAL PIER

ADJACENT PROPERTY OWNERS:

(1) MONSANTO CHEMICAL CO

(2) SUN REFINING AND MARKETING COMPANY

△ 5/6/1991 REV PER BECHTEL DWG 20619 SK-MEK-REV "D"

NOTE:
FINAL DESIGN REQUIRED FOR CONSTRUCTION

ALAN LAWRENCE FLINN
REGISTERED
No. 3364
DELAWARE
PROFESSIONAL ENGINEER

ALAN L. FLINN P.E.
LICENSE No. 18261

ALAN L. FLINN P.E.
LICENSE No. 3364

PROPOSED: COAL UNLOADING PIER

AT: LOGAN TOWNSHIP, NEW JERSEY
BRANDYWINE HUNDRED, DELAWARE

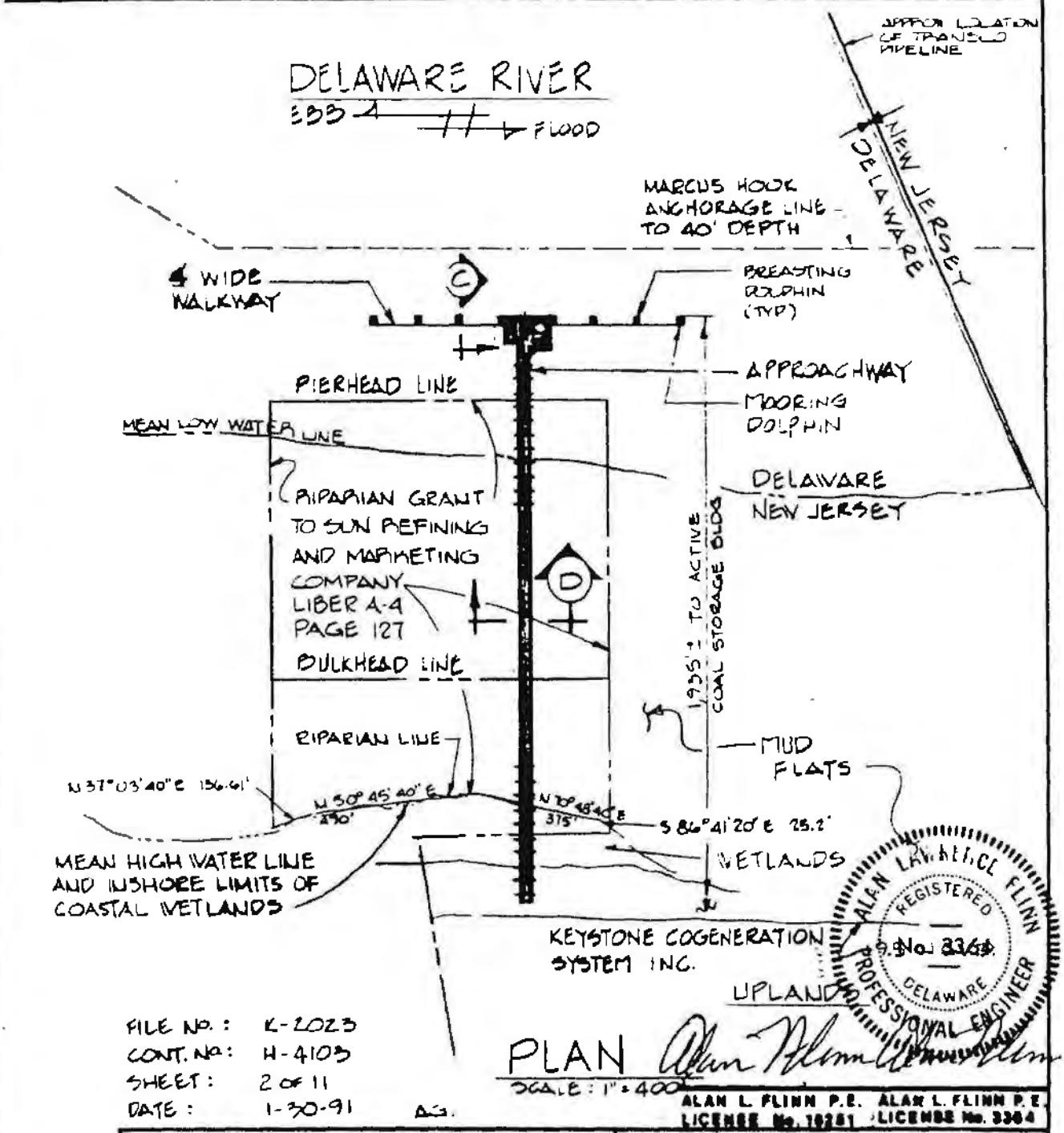
COUNTY OF: NEW CASTLE, DELAWARE
GLOUCESTER NEW JERSEY

APPLICATION BY: KEYSTONE COGENERATION SYSTEMS INC.

S. T. HUDSON ENGINEERS, INC.
HUDSON SQUARE
800 COOPER STREET
CAMDEN, NEW JERSEY 08102

FILE Nº: K-2023
CONT Nº: H-4103
SHEET: 1 OF 11
DATE: 1-30-91

DE02218




FILE NO.: K-2023
CONT. NO.: H-4103
SHEET: 2 of 11
DATE: 1-30-91 AG.

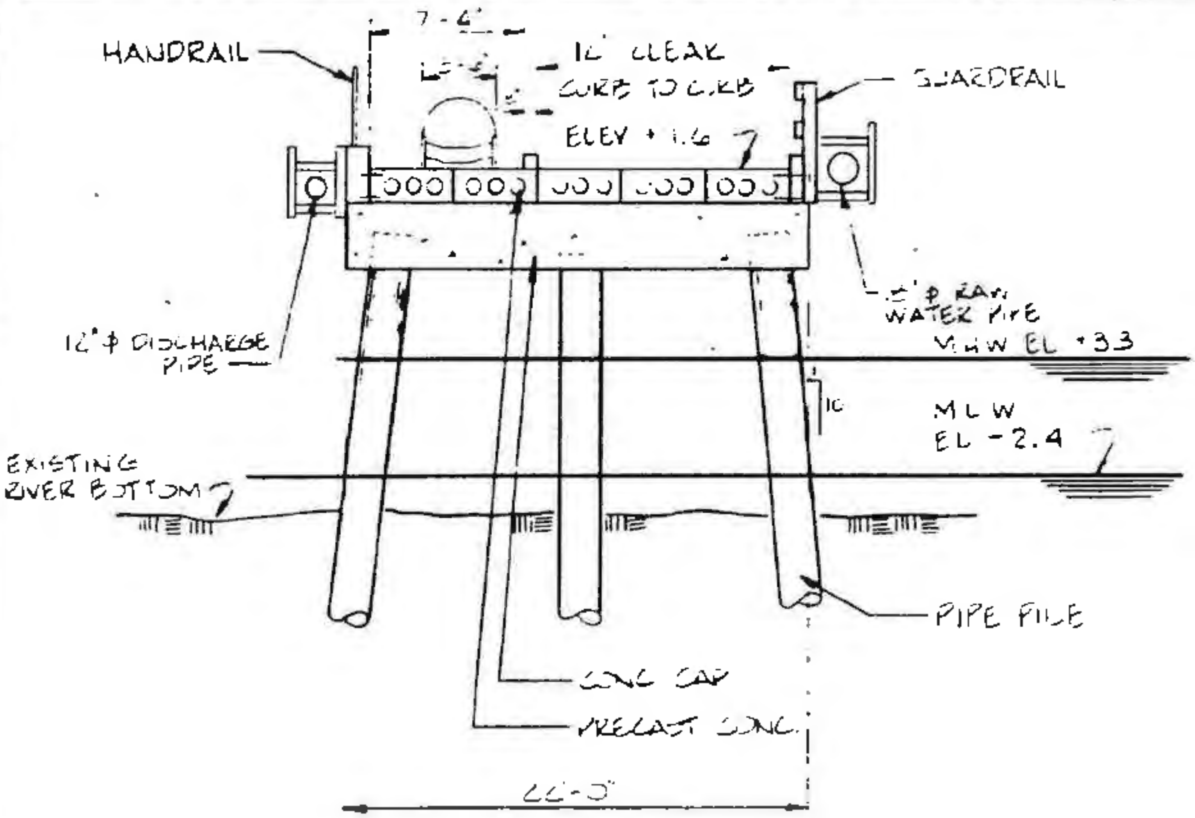
# PLAN

SCALE: 1" = 400'

ALAN L. FLINN P.E. LICENSE No. 10281 ALAN L. FLINN P.E. LICENSE No. 3364

| | |
|---|---|
| ⚠ 5/20/91 REV. PER SECHTEL DWG 2059-SK-PIER REV "B" JBS | PROPOSED: COAL UNLOADING PIER |
| S. T. HUDSON ENGINEERS, INC.<br>HUDSON SQUARE<br>800 COOPER STREET<br>CAMDEN, NEW JERSEY 08102 | NOTE:<br>FINAL DESIGN REQUIRED FOR CONSTRUCTION |
| | AT: LOGAN TOWNSHIP NEW JERSEY<br>BRANDYWINE HUNDRED DELAWARE |
| | COUNTY OF: NEW CASTLE DELAWARE<br>GLOUCESTER, NEW JERSEY |
| | APPLICATION BY: KEYSTONE COGENERATION SYSTEMS AG. |

DE02219




APPROACHWAY
SECTION (D)
SCALE: 1/8" = 1'-0"

ALAN LAWRENCE FLINN
REGISTERED
No. 3364
DELAWARE
PROFESSIONAL ENGINEER

FILE No: L-2023
CONT No: -4103
DATE: 1-30-91
SHEET 3 OF 11

ALAN L. FLINN P.E.
LICENSE No. 18251

ALAN L. FLINN P.E.
LICENSE No. 3364

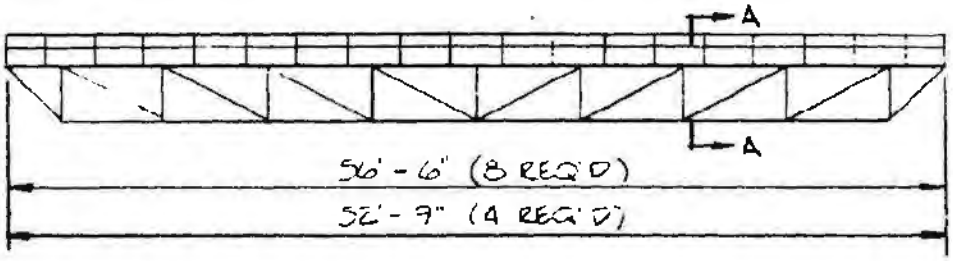
1 3/4/91 REV PER BECHTEL DWG ... PIER REV 'B'

S. T. HUDSON ENGINEERS, INC.
HUDSON SQUARE
800 COOPER STREET
CAMDEN, NEW JERSEY 08102

NOTE:
FINAL DESIGN
REQUIRED FOR
CONSTRUCTION

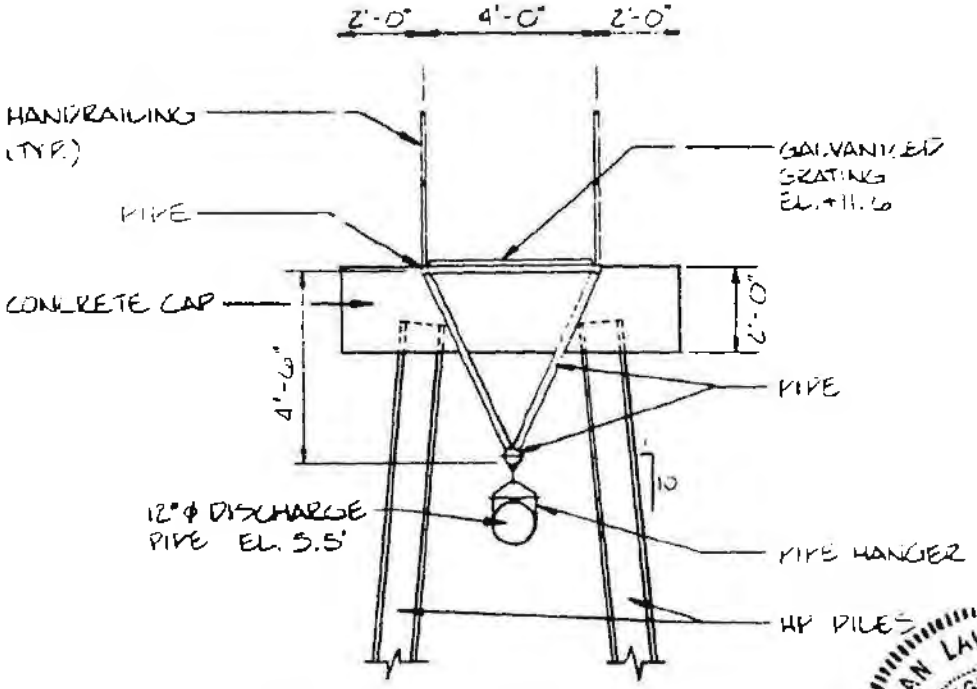
PROPOSED: COAL UNLOADING PIER
AT: LOGAN TOWNSHIP NEW JERSEY / BRANDYWINE HUNDRED DELAWARE
COUNTY OF: NEW CASTLE DELAWARE / GLOUCESTER NEW JERSEY
APPLICATION BY: KEYSTONE COGENERATION SYSTEMS INC.

DE02220




# TYPICAL CATWALK SPAN

N. T. S.




# CATWALK SECTION (A)

SCALE: 1/4" = 1'-0"

ALAN LAWRENCE FLINN
REGISTERED
No. 3364
DELAWARE
PROFESSIONAL ENGINEER

FILE NO.: K-2022
CONT NO.: F-4103
DATE: 1-30-91
SHEET: 4 of 11

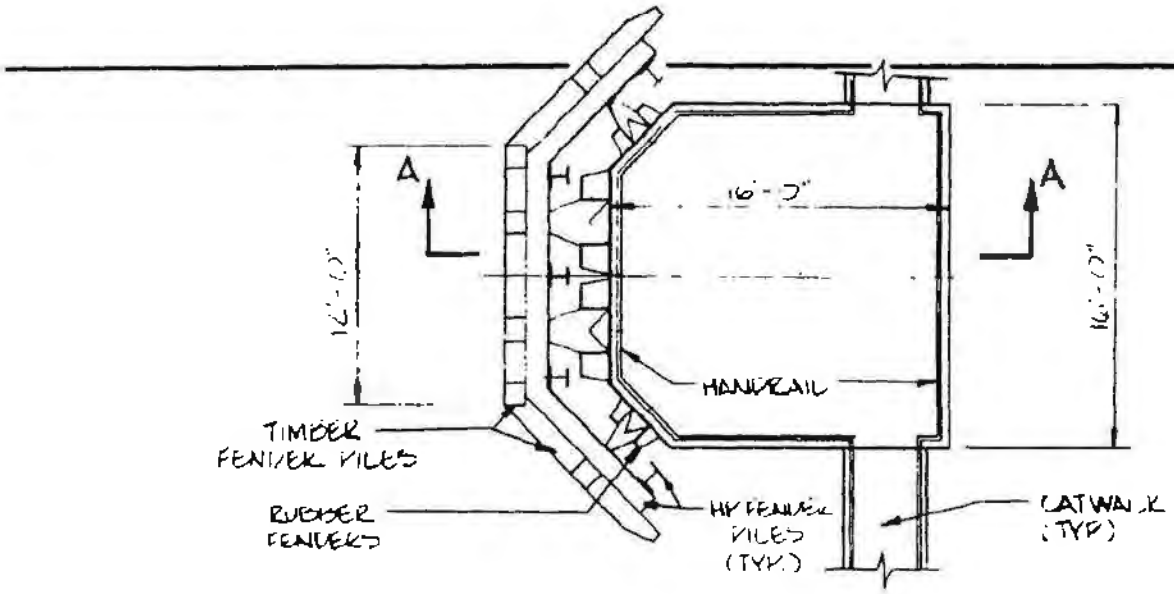
JBS

ALAN L. FLINN P.E. LICENSE No. 3364

ALAN L. FLINN P.E. LICENSE No. 16251

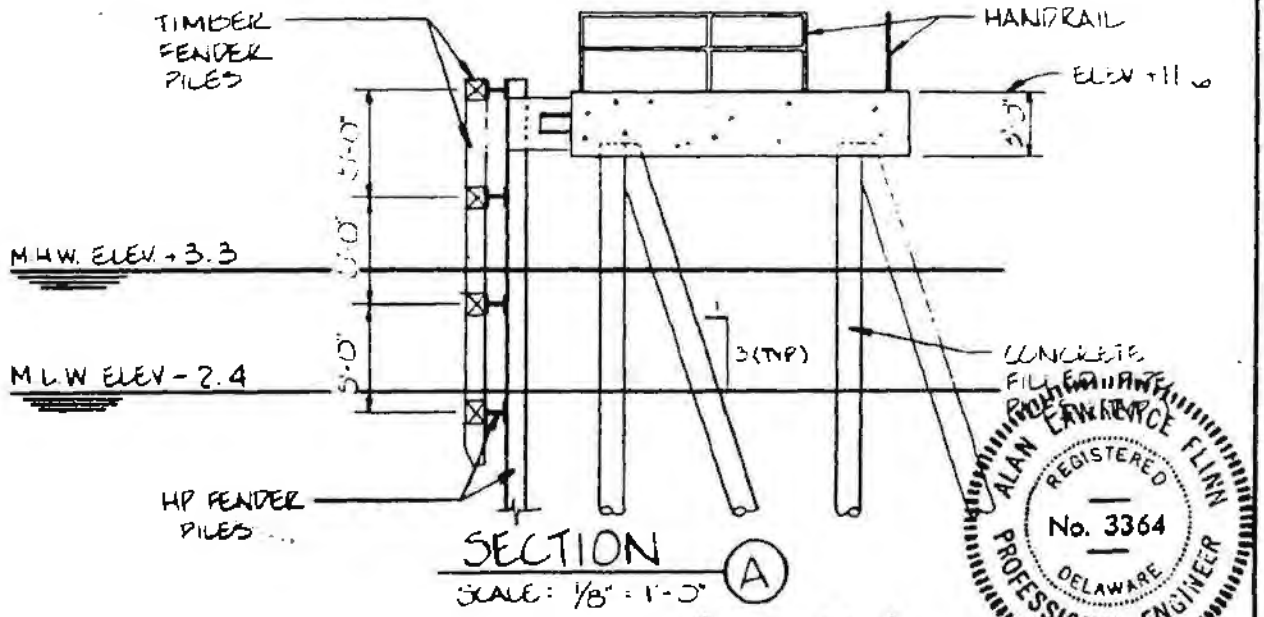
| | |
|---|---|
| ⚠ 2/6/91 REV PER BECHTEL DWG 20519-SE-PIER REV "B" JBS | PROPOSED: COAL UNLOADING PIER |
| S. T. HUDSON ENGINEERS, INC.<br>HUDSON SQUARE<br>800 COOPER STREET<br>CAMDEN, NEW JERSEY 08102 | NOTE:<br>FINAL DESIGN REQUIRED FOR CONSTRUCTION |
| | AT: LOGAN TOWNSHIP NEW JERSEY<br>BRANDYWINE HUNDRED DELAWARE |
| | COUNTY OF: NEW CASTLE DELAWARE<br>GLOUCESTER NEW JERSEY |
| | APPLICATION BY: KEYSTONE COGENERATION SYSTEMS INC. |

DE02221




## BREASTING DOLPHIN

SCALE: 1/8" = 1'-0"




## SECTION (A)

SCALE: 1/8" = 1'-0"

ALAN LAWRENCE FLINN
REGISTERED
No. 3364
DELAWARE
PROFESSIONAL ENGINEER

FILE NO.: K-2023
CONT NO.: H-4103
DATE: 1-30-91
SHEET: 5 OF 11

JBS

ALAN L. FLINN P.E.
LICENSE No. 3364

ALAN L. FLINN P.E.
LICENSE No. 18251

| | |
|---|---|
| ⚠ 5/20/91 REV PER BECHTEL DWG. 20519-SK-PIER REV "B" JBS | PROPOSED: COAL UNLOADING PIER |
| S. T. HUDSON ENGINEERS, INC.<br>HUDSON SQUARE<br>800 COOPER STREET<br>CAMDEN, NEW JERSEY 08102 | AT: LOGAN TOWNSHIP, NEW JERSEY<br>BRANDYWINE HUNDRED DELAWARE |
| NOTE:<br>FINAL DESIGN REQUIRED FOR CONSTRUCTION | COUNTY OF: NEW CASTLE, DELAWARE<br>GLOUCESTER NEW JERSEY |
| | APPLICATION BY: KEYSTONE COGENERATION SYSTEMS INC |

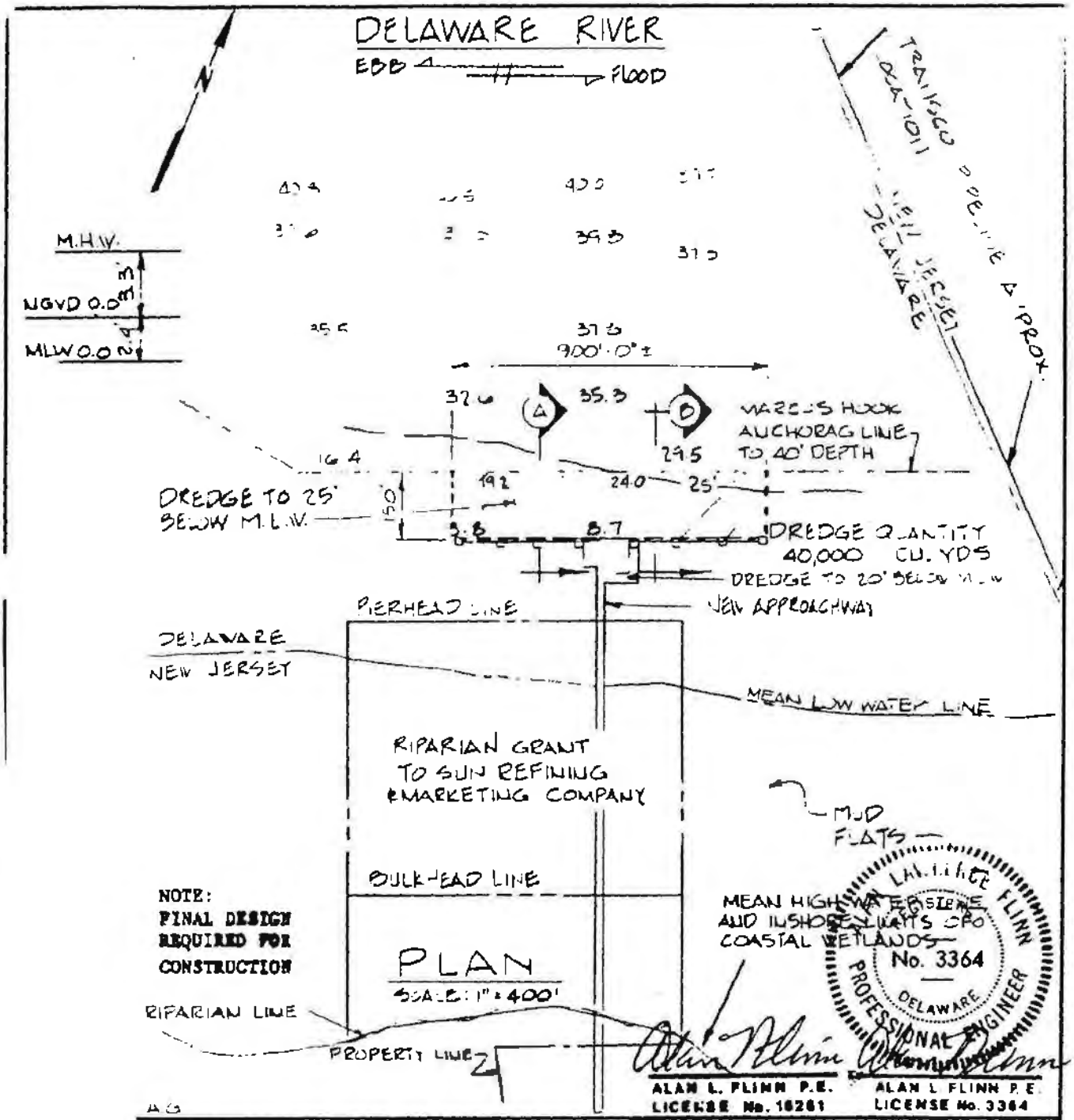
FILE N°: K-2023
CONT. N°: H-4103
SHEET: 7 of 11
DATE 1-30-91 AG

ALAN LAWRENCE FLINN
REGISTERED
No. 3364
DELAWARE
PROFESSIONAL ENGINEER

ALAN L. FLINN P.E.
LICENSE No. 10281

ALAN L. FLINN P.E
LICENSE No. 3364

| | |
|---|---|
| ⚠ 5/20/91 REV. PER BECHTEL DWG E05A-SK PIER REV "B" JBS | PROPOSED: COAL UNLOADING PIER |
| S. T. HUDSON ENGINEERS, INC.<br>HUDSON SQUARE<br>800 COOPER STREET<br>CAMDEN, NEW JERSEY 08102 | NOTE:<br>FINAL DESIGN REQUIRED FOR CONSTRUCTION |
| | AT: LOGAN TOWNSHIP, NEW JERSEY<br>BRANDYWINE HUNDRED, DELAWARE |
| | COUNTY OF: NEW CASTLE, DELAWARE<br>GLOUCESTER, NEW JERSEY |
| | APPLICATION BY: KEYSTONE COGENERATION SYSTEMS INC. |




| | |
|---|---|
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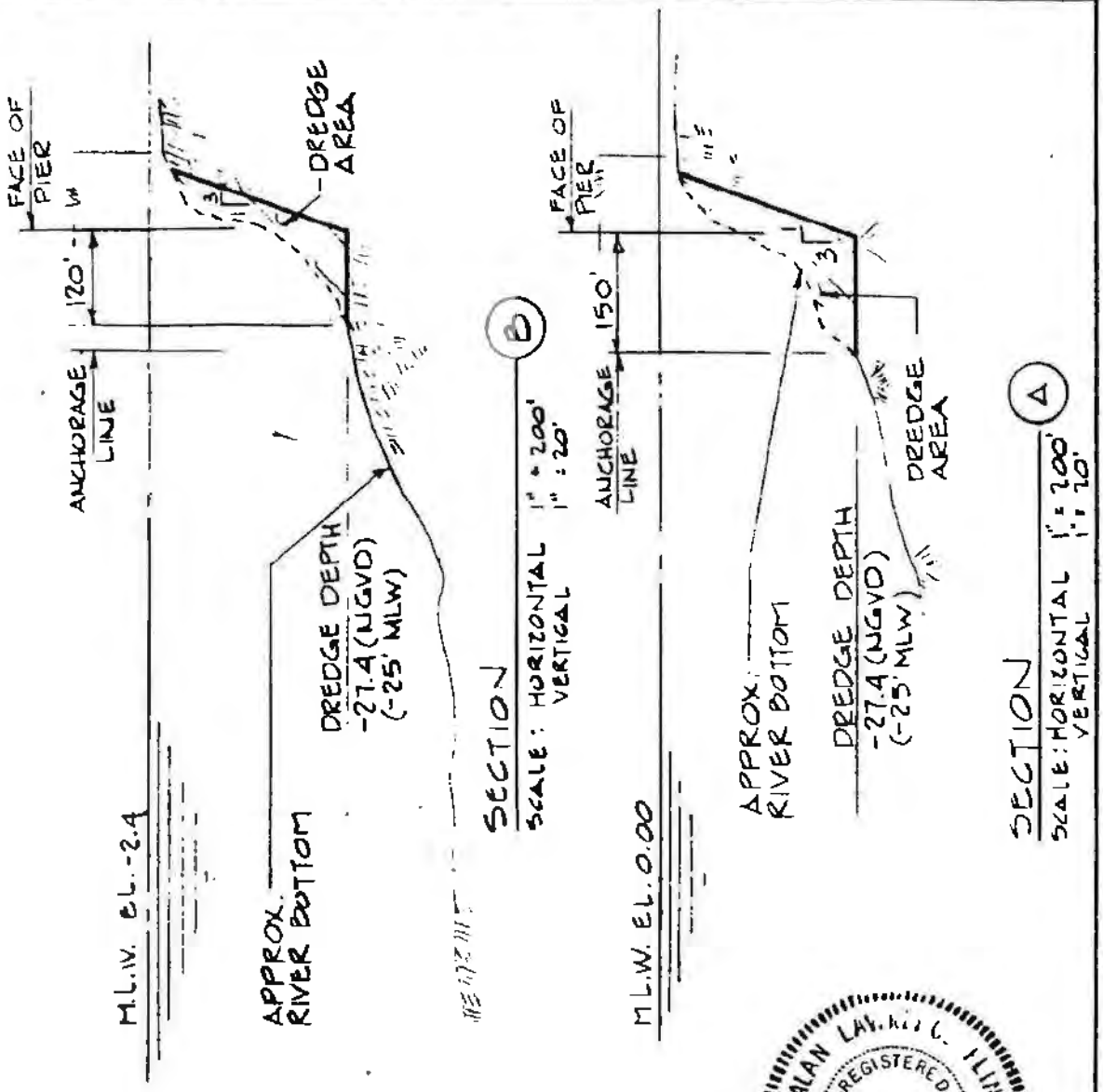
| S. T. HUDSON ENGINEERS, INC.<br>HUDSON SQUARE<br>800 COOPER STREET<br>CAMDEN, NEW JERSEY 08102 | FILE N°: K-2023<br>CONT N°: H-4103<br>SHEET 5 of 11 |
| | AT: EDGAN TOWNSHIP NEW JERSEY<br>BRANDYWINE HUNDRED, DELAWARE |
| | COUNTY OF: NEW CASTLE DELAWARE<br>GLOUCESTER, NEW JERSEY |

DE02224




ALAN L. FLINN REGISTERED No. 3364 DELAWARE PROFESSIONAL ENGINEER

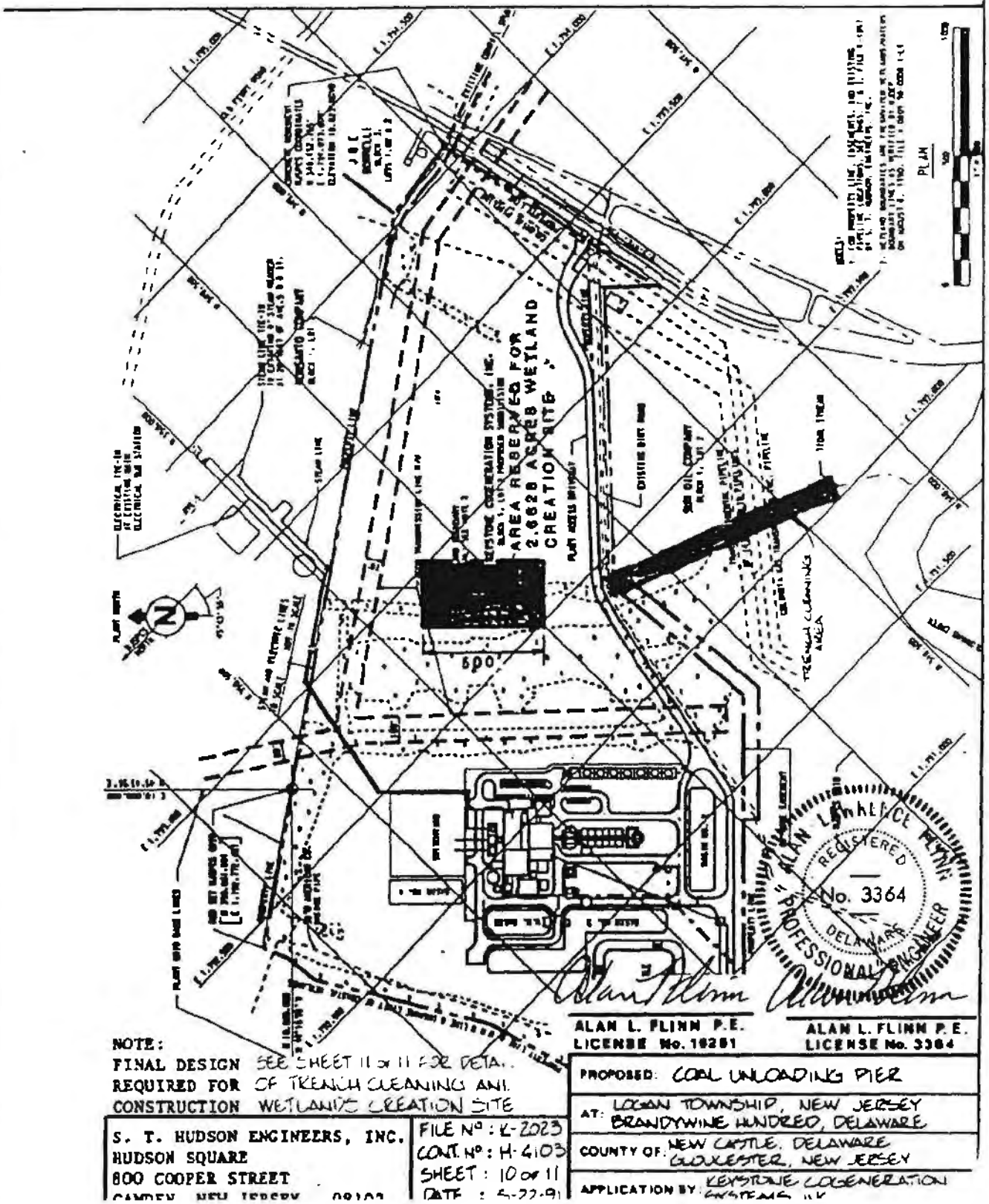
FILE NO: K-2023
CONT NO: H-4103
SHEET: 9 of 11
DATE: 1-30-91

A.G.

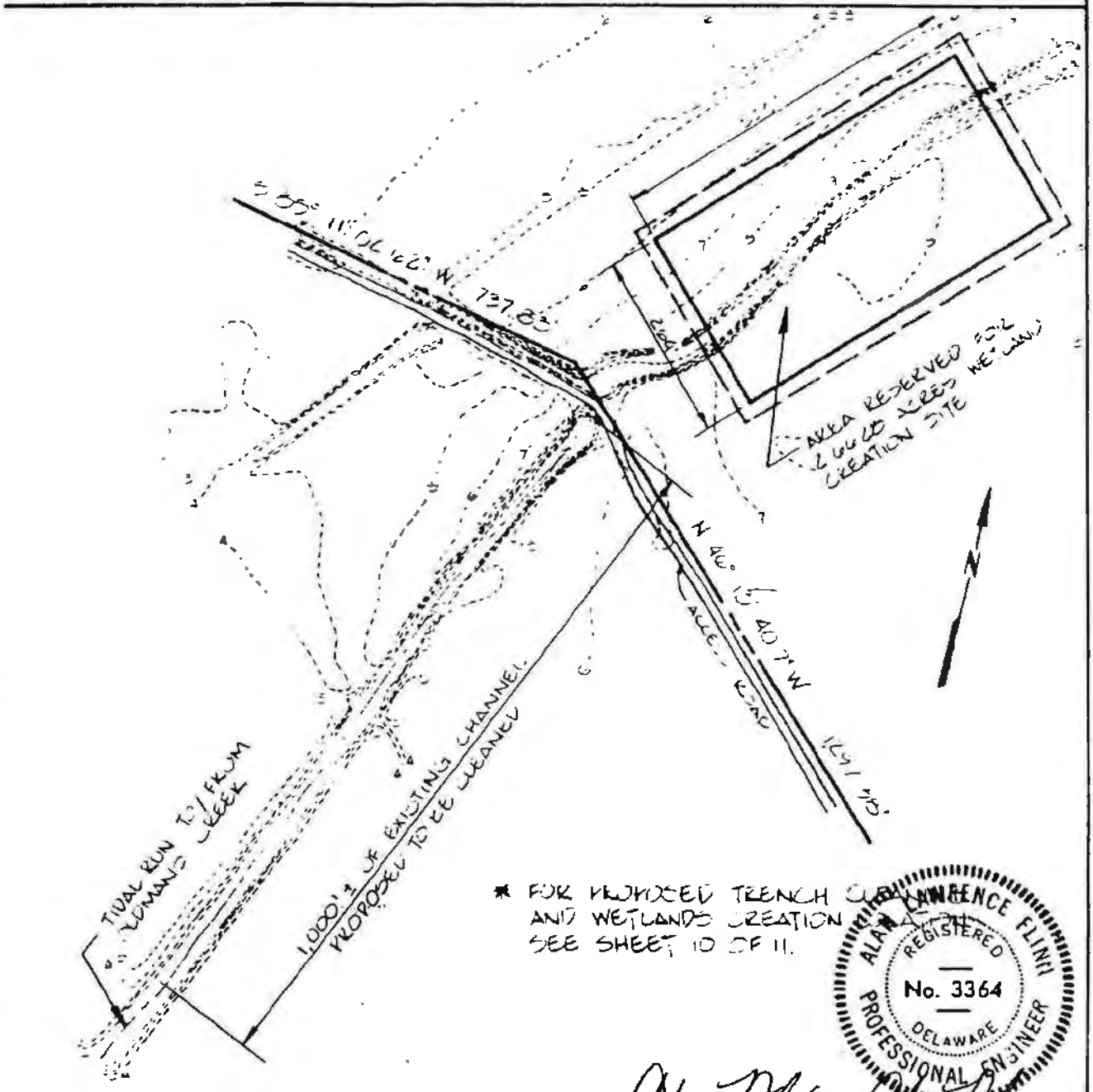
ALAN L. FLINN P.E. LICENSE No. 10251

ALAN L. FLINN P.E. LICENSE No. 3364

| | |
|---|---|
| ⚠ 5/20/91 REV PER BECHTEL DWG 20519-SK-PIER REV. "B" JBS | PROPOSED: COAL UNLOADING PIER |
| S. T. HUDSON ENGINEERS, INC.<br>HUDSON SQUARE<br>800 COOPER STREET<br>CAMDEN, NEW JERSEY 08102 | AT: LOGAN TOWNSHIP, NEW JERSEY<br>BRANDYWINE HUNDRED DELAWARE |
| NOTE:<br>FINAL DESIGN<br>REQUIRED FOR<br>CONSTRUCTION | COUNTY OF: NEW CASTLE, DELAWARE<br>GLOUCESTER, NEW JERSEY |
| | APPLICATION BY: KEYSTONE COGENERATION SYSTEMS INC. |


AREA RESERVED FOR
2.6628 ACRES WETLAND
CREATION SITE
PLAN
600'
TRENCH CLEANING AREA
NOTE:
FINAL DESIGN SEE SHEET 11 of 11 FOR DETA..
REQUIRED FOR OF TRENCH CLEANING AND
CONSTRUCTION WETLANDS CREATION SITE
ALAN L. FLINN P.E.
LICENSE No. 10251
ALAN L. FLINN P.E.
LICENSE No. 3364
PROPOSED: COAL UNLOADING PIER
AT: LOGAN TOWNSHIP, NEW JERSEY
BRANDYWINE HUNDRED, DELAWARE
COUNTY OF: NEW CASTLE, DELAWARE
GLOUCESTER, NEW JERSEY
APPLICATION BY: KEYSTONE COGENERATION
S. T. HUDSON ENGINEERS, INC.
HUDSON SQUARE
800 COOPER STREET
FILE Nº : K-2023
CONT. Nº : H-4103
SHEET : 10 of 11
DATE : 5-22-91

DE02226




* FOR PROPOSED TRENCH CUT AND WETLANDS CREATION SEE SHEET 10 OF 11.

ALAN LAWRENCE FLINN
REGISTERED
No. 3364
DELAWARE
PROFESSIONAL ENGINEER

Alan L. Flinn

ALAN L. FLINN P.E. LICENSE No. 16251

Alan L. Flinn

ALAN L. FLINN P.E. LICENSE No. 3364

FILE Nº: K-0065
CONT Nº: H-4103
SHEET: 11 of 11
DATE: 5-22-91

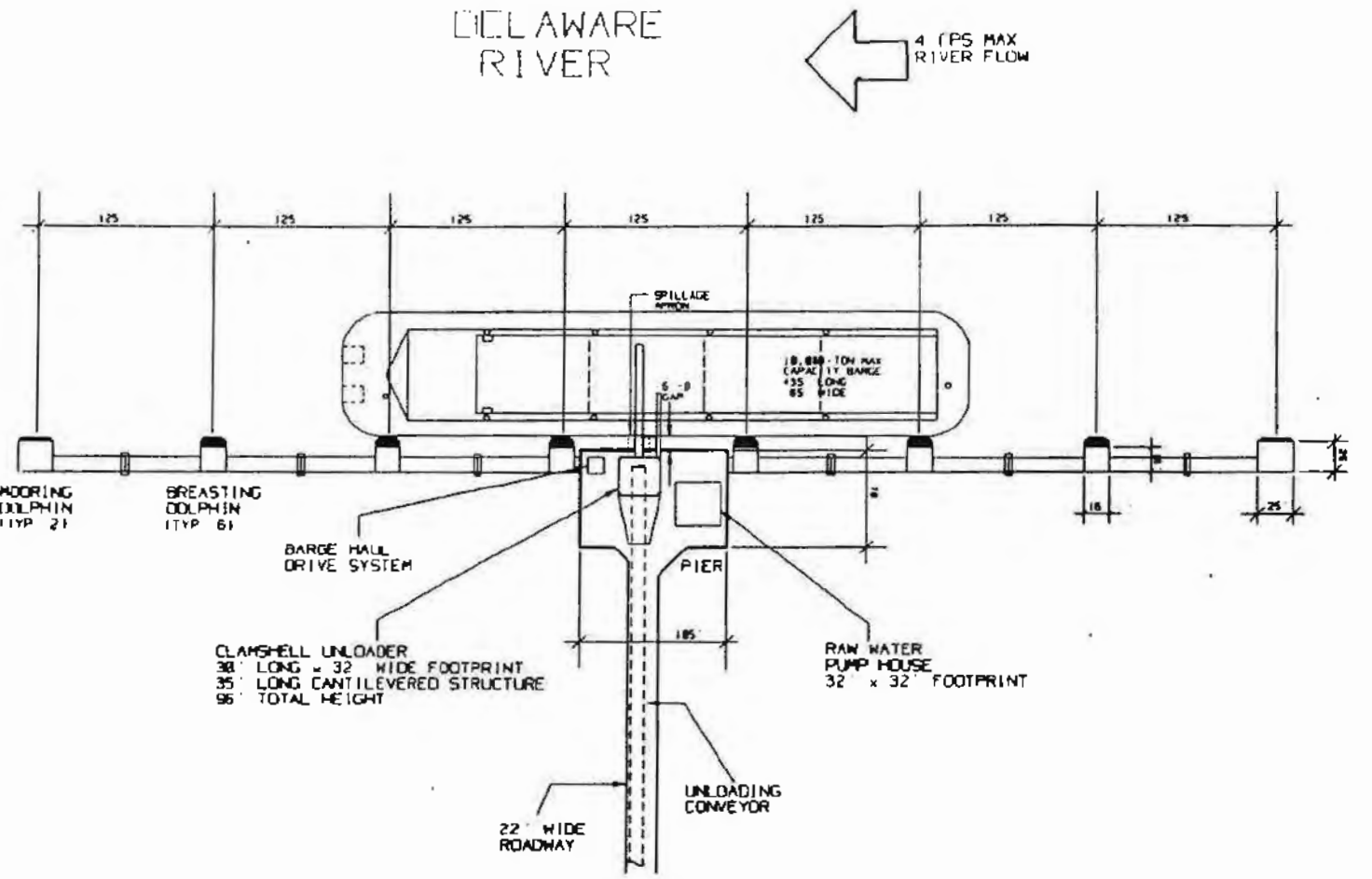
| | |
|---|---|
| S. T. HUDSON ENGINEERS, INC.<br>HUDSON SQUARE<br>800 COOPER STREET<br>CAMDEN, NEW JERSEY 08102 | NOTE:<br>FINAL DESIGN REQUIRED FOR CONSTRUCTION |

PROPOSED: COAL UNLOADING PIER
AT: LOGAN TOWNSHIP NEW JERSEY BRANDYWINE HUNDRED, DELAWARE
COUNTY OF: NEW CASTLE & SALEM GLOUCESTER NEW JERSEY
APPLICATION BY: KEYSTONE COGENERATION SYSTEMS INC

DE02227

**A-1**

**OVERHEAD VIEW OF BARGE UNLOADING FACILITY**

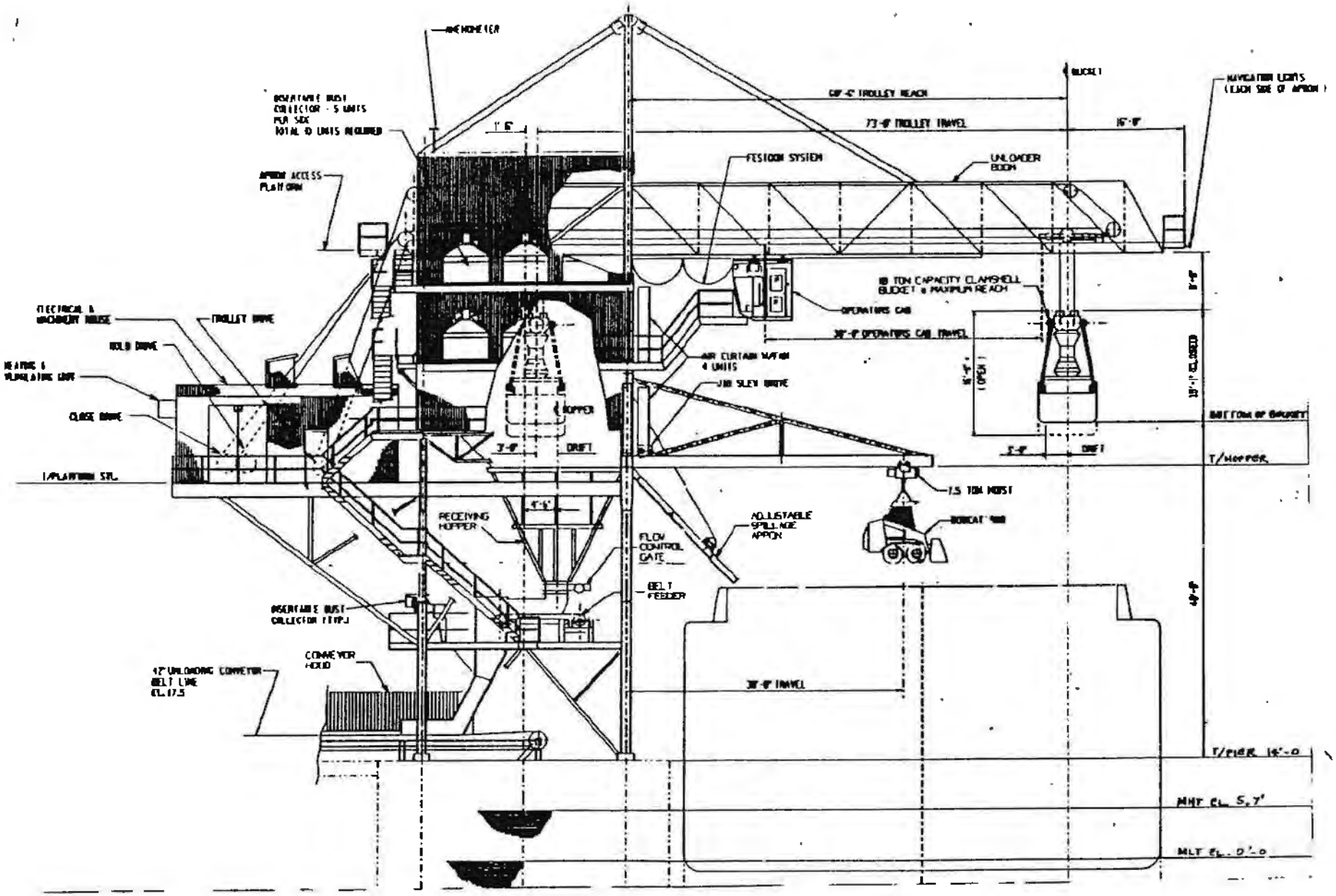



KEYSTONE COGENERATION PROJECT

PLOT PLAN
BARGE UNLOADING FACILITY
M73-JK-04

A-2

SIDE VIEW OF BARGE
UNLOADING FACILITY



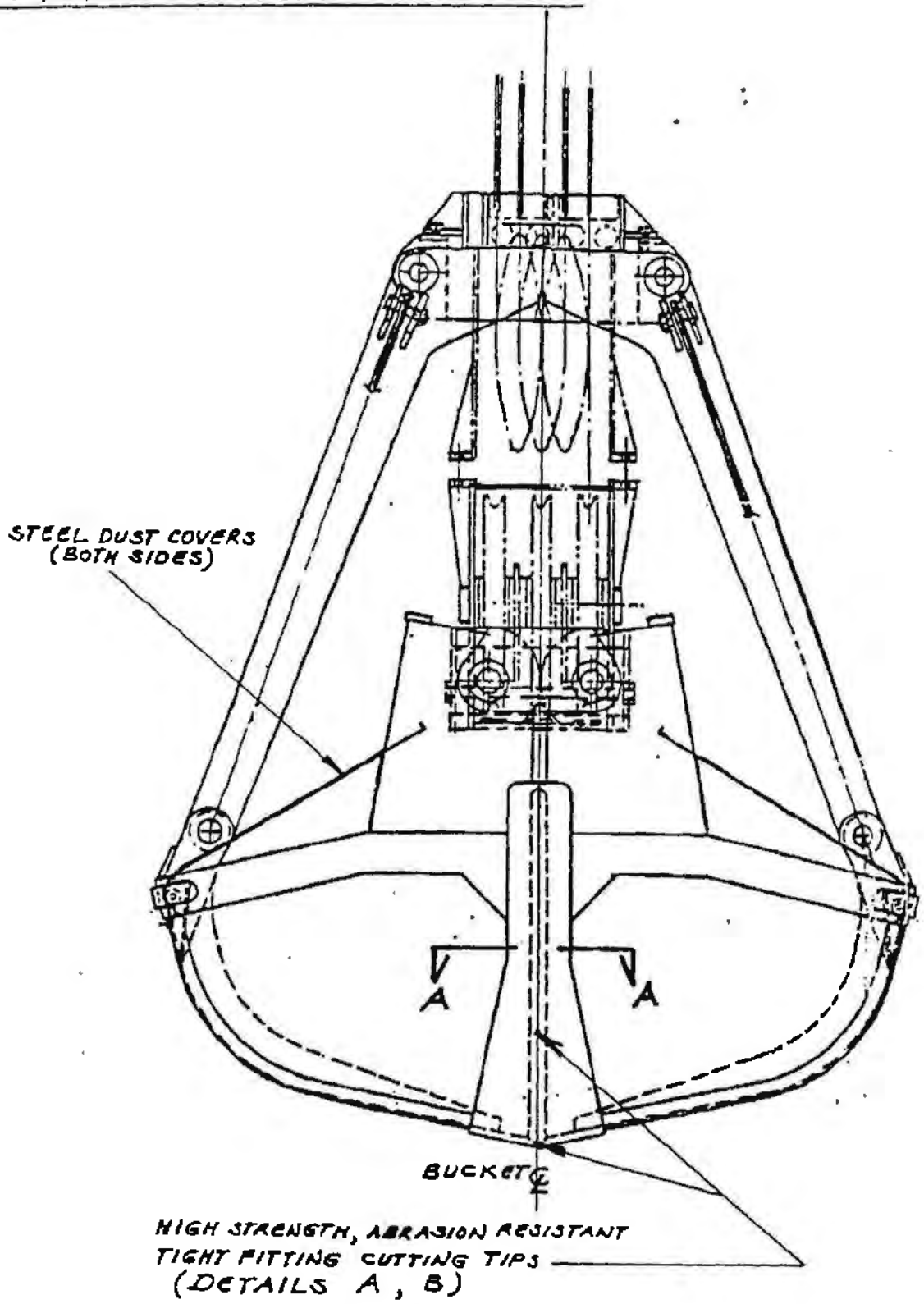

3588

DE02231

**A-3**

**FRONT VIEW OF CLAMSHELL BARGE UNLOADER BUCKET**

KEYSTONE COGENERATION PROJECT

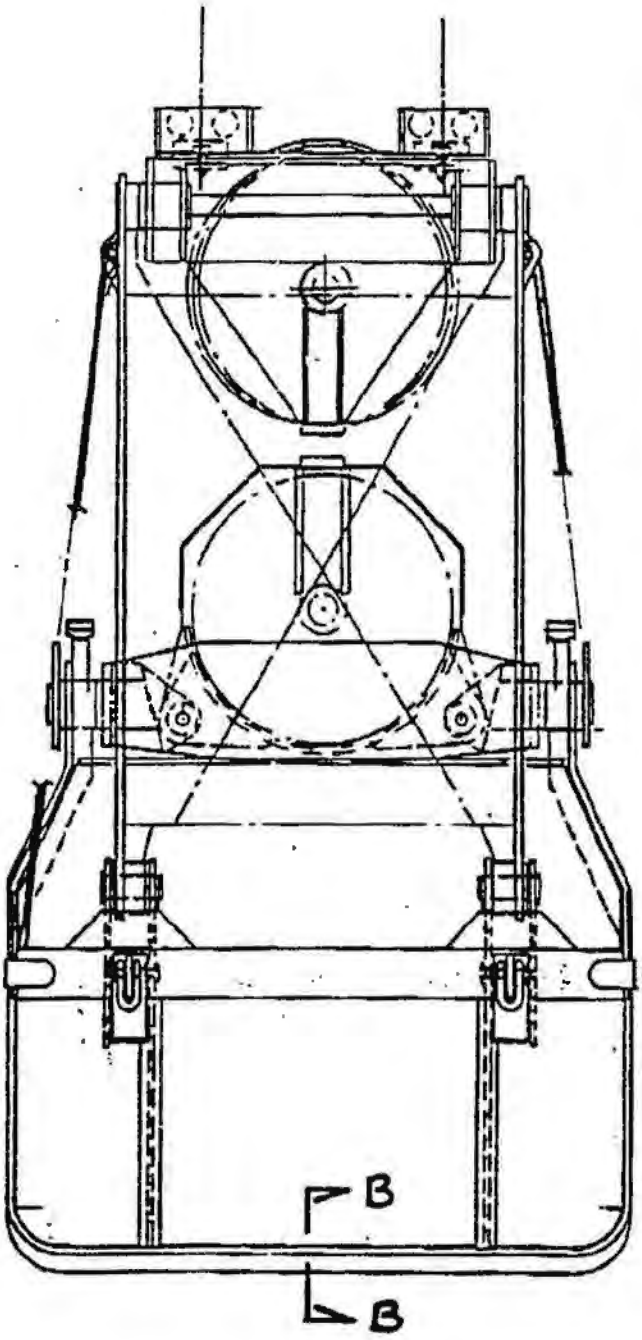



CLAMSHELL BARGE UNLOADER BUCKET
FRONT VIEW

DE02233

A-4

SIDE VIEW OF CLAMSHELL
BARGE UNLOADER BUCKET



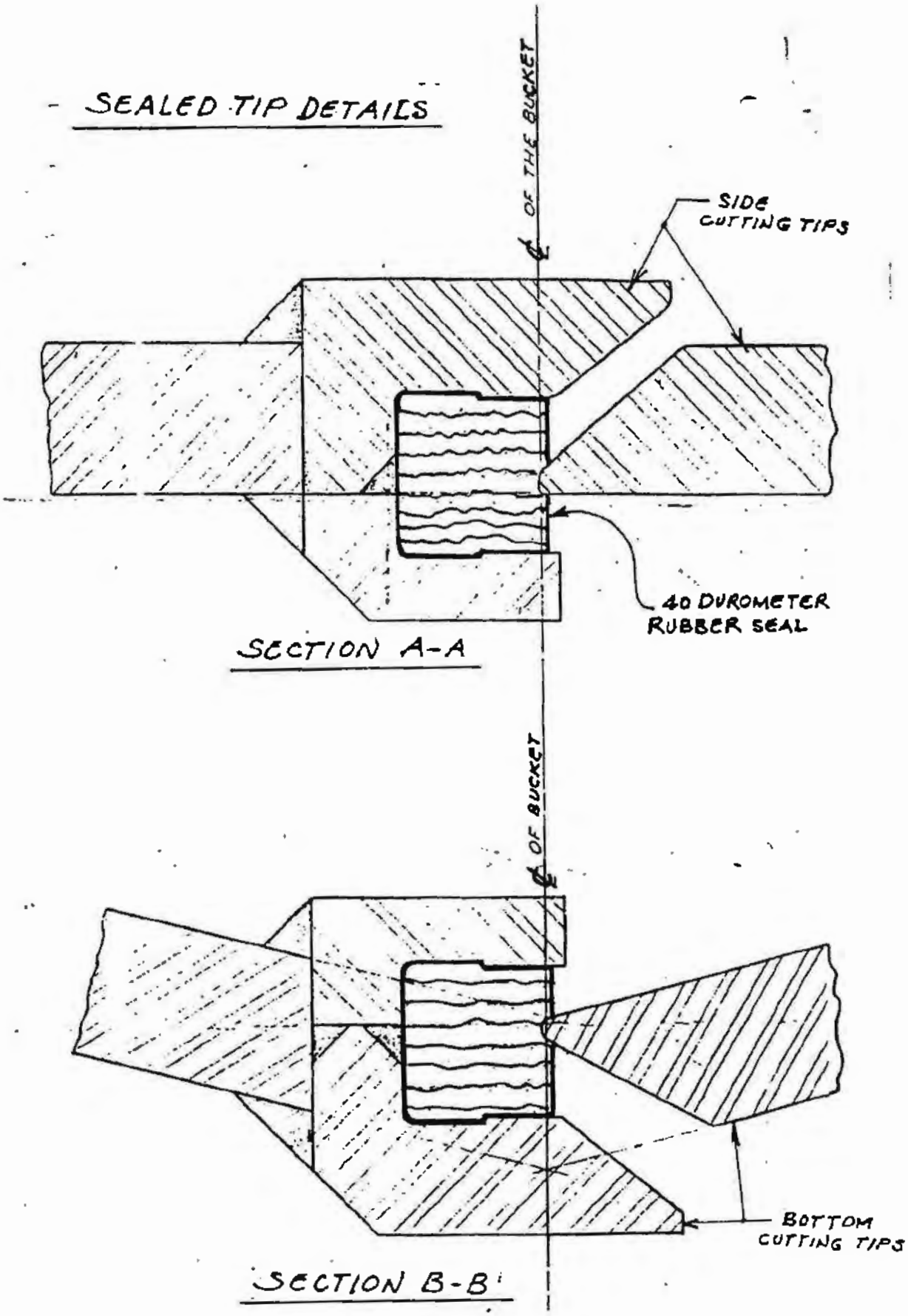

CLAMSHELL BARGE UNLOADER BUCKET

SIDE VIEW

A-5

DETAILED VIEW OF SEALED-TIPS OF
CLAMSHELL BARGE UNLOADER BUCKET

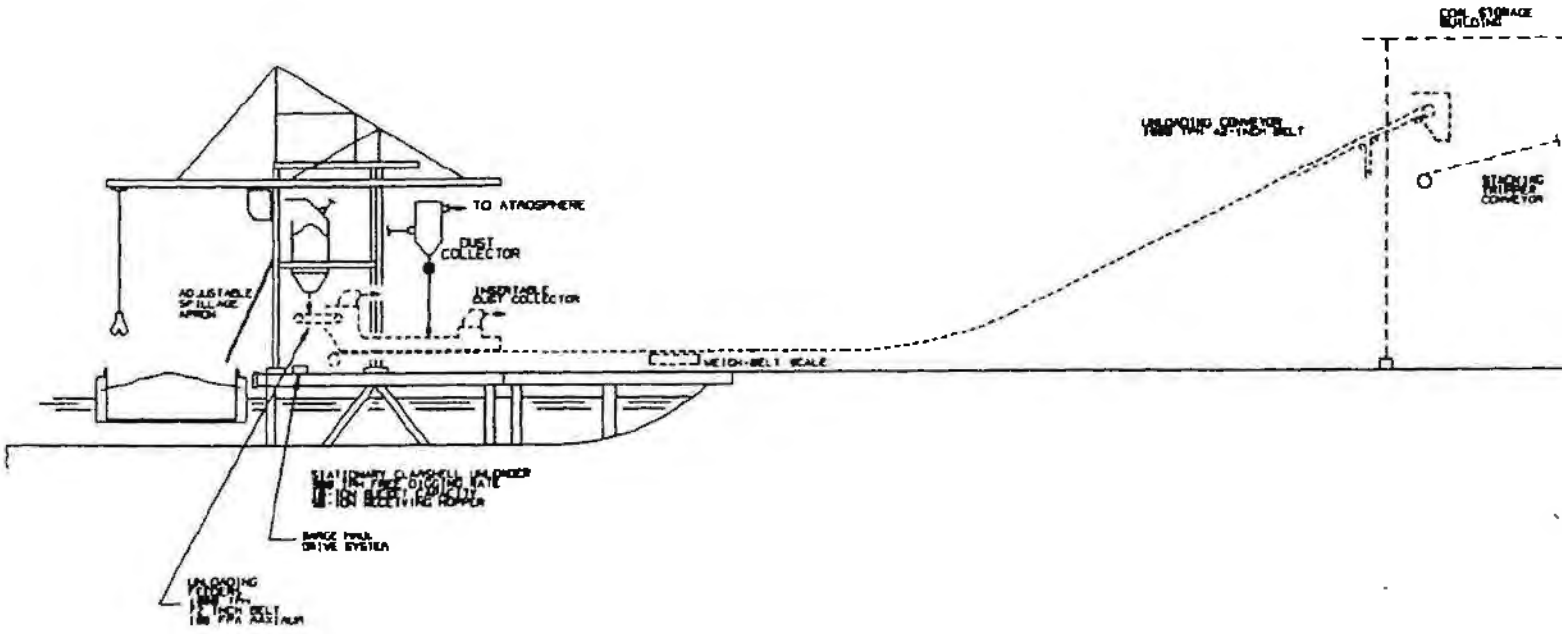
## SEALED TIP DETAILS




DE02237

A-6

SIDE VIEW OF BARGE UNLOADING FACILITY
AND UNLOADING CONVEYER




KEYSTONE COGENERATION PROJE
BARGE UNLOADING SYSTEM
FLOW DIAGRAM A73-JK03

REV

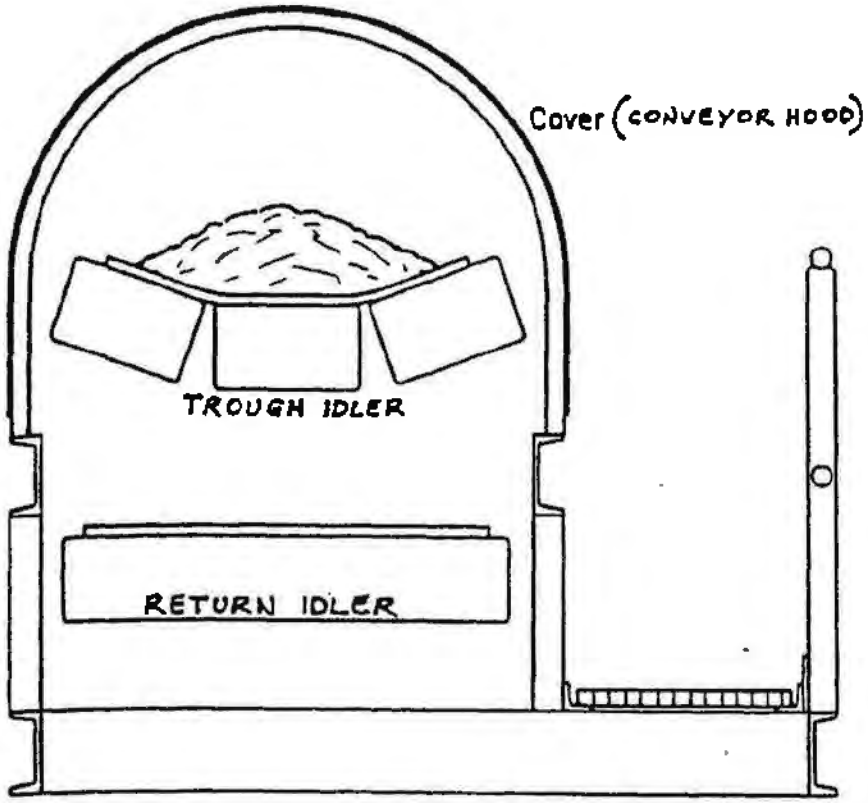
**A-7**

**CROSS SECTION - UNLOADING CONVEYOR**

# CALCULATION SHEET

| JOB NO. | CALC NO. | REV. NO. | SHEET NO. |
|---|---|---|---|
| 20519-106 | KEYSTONE | 1 | 1/1 |

| ORIGINATOR | DATE | CHECKED | DATE |
|---|---|---|---|
| GRACE A. MOORE | 5-30-91 | J.B. Alindogan | 6/5/91 |




UNLOADING CONVEYOR
CROSS SECTION

NOTE :

- Primary and secondary belt cleaners will be provided for the return belt side at the conveyor head end.
- Belt plow scrapers will be provided at the take-up and tail end sections.

DEPARTMENT OF NATURAL RESOURCES
AND
ENVIRONMENTAL CONTROL

# NOTICE OF AUTHORIZATION

**Permit/Lease No. and Description:** SL-0907/91 To construct an industrial pier on public subaqueous lands and to conduct dredging in the Delaware River

**Issued To:** KEYSTONE COGENERATION SYSTEMS, INC.

**Location of Work:** Logan Township, Gloucester County, New Jersey, Route 130, Lot no. 2, Block no. 1 & Brandywine Hundred, New Castle County, DE

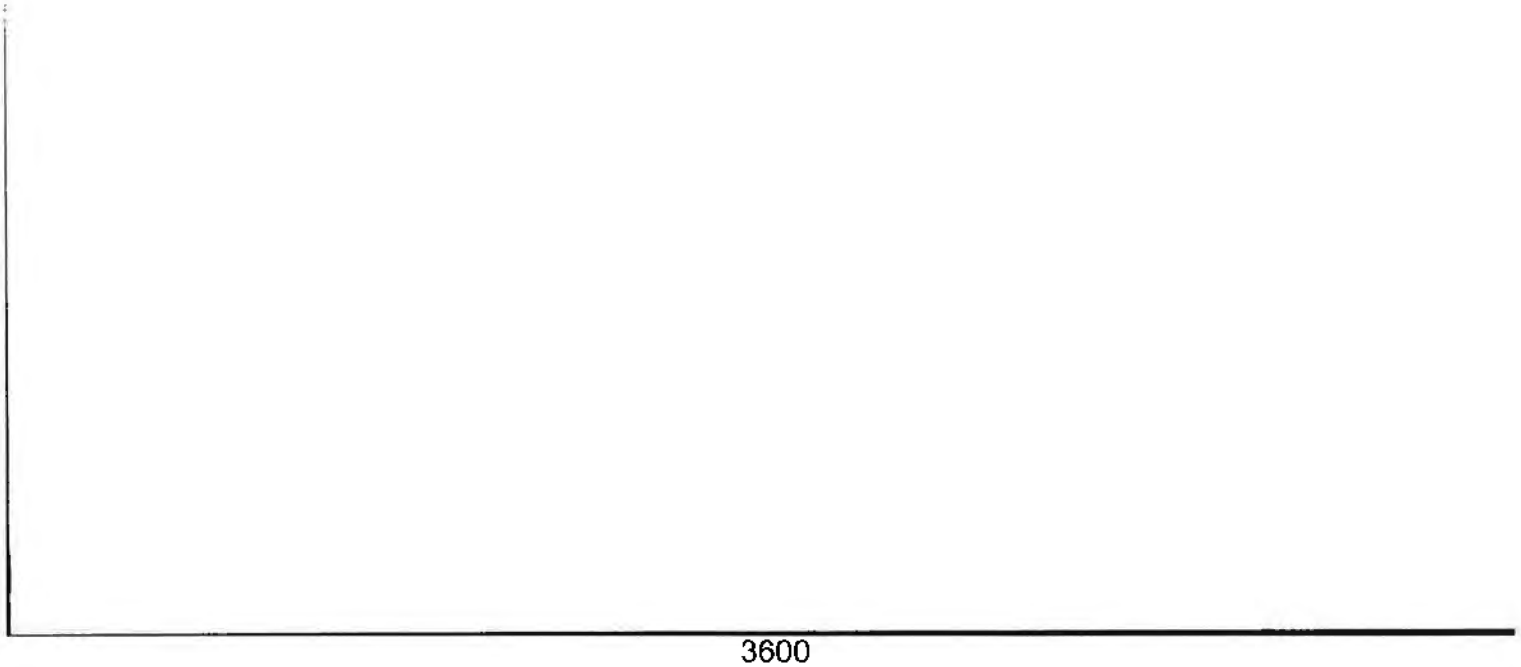
**Date of Expiration:** September 30, 1994

**DISPLAY THIS CERTIFICATE IN A HIGHLY VISIBLE LOCATION ON THE JOB SITE.**

Doc. No. 0-08/07/05/91

William F. Moyer

*William F. Moyer, Supervisor*
*Wetlands & Aquatic Protection Branch*


3600

STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES
& ENVIRONMENTAL CONTROL
DIVISION OF WATER RESOURCES
89 KINGS HIGHWAY P.O. Box 1401
DOVER, DELAWARE 19903

SURFACEWATER MANAGEMENT SECTION
WATERSHED ASSESSMENT BRANCH
POLLUTION CONTROL BRANCH
FACILITY SUPPORT BRANCH
WETLANDS & AQUATIC PROTECTION BRANCH

(302) 739-5726
(302) 739-4590
(302) 739-5731
(302) 739-5081
(302) 739-4691

October 7, 1991

Keystone Cogeneration Systems, Inc.
901 Market Street, Suite 721
Wilmington, DE 19801

Dear Sirs:

Enclosed is the subaqueous lands lease granted by the State of Delaware.

A copy of this lease will be forwarded to the Corps of Engineers.

If you have any questions regarding this approval, feel free to contact this office

Sincerely,

Tracy E. Skrabal
Program Manager
Wetlands and Aquatic Protection Branch
Telephone (302) 739-4691

TES/fr
pc: Frank Cianfrani
Enclosure

*Delaware's good nature depends on you!*

STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES
& ENVIRONMENTAL CONTROL
DIVISION OF WATER RESOURCES
89 KINGS HIGHWAY, P.O. BOX 1401
DOVER, DELAWARE 19903

GROUNDWATER MANAGEMENT SECTION
UNDERGROUND DISCHARGES BRANCH
WATER SUPPLY BRANCH

(302) 739-4556
(302) 739-4761
(302) 739-4793

# INDUSTRIAL WATER ALLOCATION

ALLOCATION NO: 91-0012
EFFECTIVE DATE: October 17, 1991
EXPIRATION DATE: October 17, 2021

Pursuant to the provisions of 6010f, 7 Del. C., an allocation of water is hereby granted to:

**Keystone Cogeneration Systems, Inc.**
**Suite 721, Market Tower Building, Wilmington, Delaware 19801**

for the withdrawal and use of water from the following water facilities:

| Intake | Location | Stream | NLatitude | WLongitude | Maximum Pumping Capacity (gpm) |
|---|---|---|---|---|---|
| AM-P001A | R.M.78.8 | Del. R. | 39°47'50" | 75°24'53" | 3,000 |
| AM-P001B | R.M.78.8 | Del. R. | 39°47'50" | 75°24'53" | 3,000 |

OTHER APPROVALS

1. This approval is subject to review every five years from effective date by the Division of Water Resources.

2. This approval is subject to all appropriate regulations and approvals of the Delaware River Basin Commission (DRBC).

3. Approval for discharge of this water must be obtained from the Division of Water Resources.

EQUIPMENT REQUIREMENTS

1. These intakes must be equipped with either flow integrators, or, where feasible, flow meters, to compute withdrawal rates and cumulative volume of pumpage to a design accuracy of ±5%.

REPORTING PROCEDURE

1. For these intakes computations of pumping rates and cumulative volume of pumpage must be made and recorded at least daily This and other relevant information, such as water purchases and sales is to be recorded on forms provided by the Division of Water Resources and submitted by the permit holder to the Division annually by January 31st or more frequently if requested.

ALLOCATION

1. In any twenty-four (24) hour period, pumpage for these intakes must not exceed **4,320,000 gallons.**

2. In any thirty (30) day period, pumpage for these intakes must not exceed **105,000,000 gallons.**

3. In any twelve (12) month period, pumpage for these intakes must not exceed **990,000,000 gallons.**

4. Withdrawals for the facilities listed below shall not exceed the following limits:

| Intake # | Permit # | Maximum Pumping Rate (gallons/day) |
|---|---|---|
| AM-P001A | 8236 | 4,320,000 |
| AM-P001B | 8237 | 4,320,000 |

5. These intakes may be used only for the purposes of industrial process/cooling and related uses. Any change in the intended use must receive prior approval from the Division of Water Resources.

6. All laws and regulations governing the construction, operation, maintenance and repair of water-supply facilities in the State of Delaware will be obeyed.

7. Representatives of the Division of Water Resources, Delaware Geological Survey and the U.S. Geological Survey may inspect this facility at any time and may conduct any testing and sampling deemed necessary.

8. This allocation is specifically subject to the requirements of 7 Del. C.s6031.

9. If the withdrawal of water pursuant to this allocation has significant adverse affects including, but not limited to, reduction of streamflows, lowering of water levels, migration of pollutants, or encroachment of salt water, the Division of Water Resources may require action to rectify the problem.

10. This permit is transferable only if the requirements of the Regulations Governing the Allocation of Water are met and, written approval is obtained from the Division of Water Resources.

11. Violations of conditions of this permit are subject to penalties provided in 7 Del. C., Chapter 60.

12. WATER CONSERVATION MEASURES

This approval is contingent on practice of the permit holder of reasonable efforts to minimize the unnecessary use and waste of water. The permit holder must:

A. Establish a program of periodic monitoring and evaluation of water usage,

B. Establish a systematic leak-detection and control program which is responsive to high unaccounted-for water usage rates, routine maintenance, and discovery of leaks,

C. Use best management practices, methods, and devices to conserve water,

D. Alert employees of the need to conserve water and reduce wasteful usage, via postings of conservation suggestions, and

E. Develop a contingency plan to be implemented in the event of water shortage emergencies. This plan should include:

1. Identification of emergency water sources,
2. Priorities of water usage, and
3. Emergency measures to curtail water usage.

The permittee must demonstrate compliance with these conditions upon request by the Division of Water Resources.

Signed: Stewart Lovell

Stewart Lovell, P.G.
Supervisor
Water Allocations

Date: October 17, 1991

cc: Delaware River Basin Commission
U.S. Geological Survey

DELAWARE

COASTAL ZONE PERMIT

DATE OF ISSUANCE: 12/13/91

NUMBER: 255

ISSUED TO: Keystone Cogeneration Systems, Inc.

TO PERMIT: Construction and utilization of a 225 MW cogeneration power plant with pier for off-loading of coal and a water intake structure for the sole use of the power plant. Note page 2 (of 2) of this permit for one special condition as part of this permit.

SITE LOCATION: Logan Township, New Jersey and adjoining Delaware River.

CONDITIONS Incorporated And Made Part Of This Permit:

1. This permit is conditional upon the permittee's compliance with all other applicable permit requirements of the State of Delaware.

2. Issuance of this permit does not relieve the permittee of the Legal obligation of complying with all building permit, subdivision, and other applicable code requirements of the county and municipality wherein the permitted project is located.

3. If there are significant deviations from the plan and operations approved by the Secretary the permittee shall notify the Secretary as soon as possible. This permit may be revoked and a new permit application required if the Secretary deems the deviations to substantially change the nature or scale of the project and to be of actual or probable harm to the purposes of the Coastal Zone Act.

SIGNATURE Edwin H Clark, II

(Secretary, Department of Natural Resources and Environmental Control)

## SPECIAL CONDITION

Further data must be collected for a period of one year regarding numbers of striped bass eggs and larvae entrained during actual operation of the water intake.

Based on that data, this Department will determine whether additional measures are necessary to mitigate any potential damage to the striped bass population.

EXHIBIT
Whitney-10
S. Oakley 10/10/06

STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES
& ENVIRONMENTAL CONTROL
DIVISION OF WATER RESOURCES
89 KINGS HIGHWAY, P.O. BOX 1401
DOVER, DELAWARE 19903

SURFACEWATER MANAGEMENT SECTION
WATERSHED ASSESSMENT BRANCH
POLLUTION CONTROL BRANCH
FACILITY SUPPORT BRANCH
WETLANDS & AQUATIC PROTECTION BRANCH

(302) 739-5729
(302) 739-4590
(302) 739-5731
(302) 739-5001
(302) 739-4581

Supplemental Lease Approval No.: SL-0907/91S
Subaqueous Lands Lease No.: SL-0907/91
Construction Expiration Date: 9/30/94

**SUPPLEMENTAL APPROVAL
GRANTED TO KEYSTONE ENERGY SERVICE COMPANY, L.P.
TO AMEND SUBAQUEOUS LANDS LEASE SL-0907/91 FOR THE
CONSTRUCTION OF AN INDUSTRIAL PIER ON PUBLIC
SUBAQUEOUS LANDS AND TO CONDUCT DREDGING IN THE
DELAWARE RIVER AT LOGAN TOWNSHIP, GLOUCESTER COUNTY,
NEW JERSEY, ROUTE 130, LOT NO. 2, BLOCK NO. 1,
AND BRANDYWINE HUNDRED, NEW CASTLE COUNTY, DELAWARE**

Keystone Energy Service Company, L. P.
901 Market Street, Suite 721
Wilmington, DE 19801

Pursuant to the provisions of 7 Del. C. §7203, and the Department's Regulations Governing the Use of Subaqueous Lands, permission is hereby granted on this 4th day of April A. D. 19 92, to Keystone Energy Service Company, L. P. to amend an existing lease to construct an industrial pier on public subaqueous lands and to conduct dredging in the Delaware River at Logan Township, Gloucester County, New Jersey, Route 130, Lot No. 2, Block No. 1, and Brandywine Hundred, New Castle County, Delaware in accordance with plans submitted by the applicant as part of the application dated 1/30/91 - 7/30/91 and received by this Division on 9/23/91.

WHEREAS, Keystone Cogeneration Systems, Inc. requested that their lease be amended to allow a change in leaseholder from Keystone Cogeneration Systems, Inc. to Keystone Energy Service Company, L. P. in accordance with the request submitted 10/28/91, a copy of which is attached and made a part hereof; and

THIS Supplemental Approval shall be amended subject to the terms and conditions herein set forth.

1. This Supplemental Approval is an addendum to Subaqueous Lands Lease No. SL-0907/91, granted to Keystone Cogeneration Systems, Inc. by the State of Delaware on 9/30/91. This supplemental approval shall be attached thereto and made a part hereof.

2. All existing conditions of Subaqueous Lands Lease No. SL-0907/91 shall remain in effect.

IN WITNESS WHEREOF, We, Keystone Energy Service Company, L. P., have caused this instrument to be executed on this 24th day of March, 1992.

By: R P McKeever
Applicant
R.P. McKEEVER, MEMBER OF BOARD OF CONTROL AND AUTHORIZED AGENT

SWORN and subscribed before me on this 24th day on March, 1992.

Pauline G. Morris
Notary Public

NOTARIAL SEAL
PAULINE G. MORRIS-NOTARY PUBLIC
PHILADELPHIA, PHILADELPHIA CO.
My Commission Expires February 21, 1994

[illegible]. Clark, II, Secretary, Department of Natural Resources and Environmental Control, have hereunto set my hand and seal this 6th day of April, 1992.

Edwin H. Clark II
By Secretary of the Department of Natural Resources and Environmental Control

DE02378

EXHIBIT
Whitney-11
S. Oakley 1/10/06

STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES
& ENVIRONMENTAL CONTROL
DIVISION OF WATER RESOURCES
89 KINGS HIGHWAY, P.O. BOX 1401
DOVER, DELAWARE 19903

SURFACE WATER MANAGEMENT SECTION
WATERSHED ASSESSMENT BRANCH
POLLUTION CONTROL BRANCH
FACILITY SUPPORT BRANCH
WETLANDS & AQUATIC PROTECTION BRANCH

(302) 739-5731
(302) 739-4590
(302) 739-5731
(302) 739-5728
(302) 739-4691

Supplemental Lease Approval No.: SL-0907/9151
Subaqueous Lands Lease No.: SL-0907/91
Construction Expiration Date: 9/31/94

**SUPPLEMENTAL APPROVAL**
**GRANTED TO KEYSTONE ENERGY SERVICE COMPANY, L.P.**
**FOR THE CONSTRUCTION OF AN INDUSTRIAL PIER ON PUBLIC SUBAQUEOUS LANDS AND TO CONDUCT DREDGING IN THE DELAWARE RIVER AT LOGAN TOWNSHIP, GLOUCESTER COUNTY, NEW JERSEY, ROUTE 130, LOT NO. 2, BLOCK NO. 1 AND BRANDYWINE HUNDRED, NEW CASTLE COUNTY, DELAWARE**

Keystone Energy Service Company, L.P.
901 Market Street, Suite 721
Wilmington, DE 19801

Pursuant to the provisions of 7 Del. C., §7203. and the Department's Regulations Governing the Use of Subaqueous Lands, permission is hereby granted on this 25th day of May A.D. 1993, to Keystone Energy Service Company, L.P. to amend an existing lease to construct a coal unloading pier consisting of the following: main pier 22 feet by 450 feet, loading platform 70 feet by 105 feet, corner of loading platform approachway 10 feet by 10 feet, four (4) walkways 4 feet by 109 feet, two (2) walkways 4 feet by 4 feet, one (1) 4 feet by 105 feet, one (1) walkway 4 feet by 100 feet, six (6) breasting dolphins 16 feet by 16 feet, two (2) mooring dolphins 25 feet by 25 feet for a total of 22,732 square feet and to dredge 40,000 cubic yards of material from the Delaware River to create a 910 feet by 150 feet barge berth in accordance with plans and related documents submitted by the applicant titled and dated as follows:

Coal Unloading Pier: 1/30/91; revised 5/20/91, sheets 1 thru 9 of 11
Coal Unloading Pier: 5/22/91; sheet 10 and 11 of 11
Drawing A-1 Overhead View of Barge Unloading Facility: 7/10/91
Drawing A-2 Side View of Barge Unloading Facility: 7/10/91
Drawing A-3 Front View of Clamshell Barge Unloader Bucket: 7/10/91
Drawing A-4 Side View of Clamshell Barge Unloader Bucket: 7/10/91
Drawing A-5 Detailed View of Sealed-Tips of Clamshell Barge Unloader Bucket: 7/10/91
Drawing A-6 Side View of Barge Unloading Facility and Unloading Conveyor: 7/10/91
Drawing A-7 Cross Section - Unloading Conveyor: 5/30/91
Spill Prevention, Control and Countermeasures Plan: 1/91
Safety Plan: 1/31/91
Section 316(a) and (b) of the Federal Water Pollution Control Act, undated and an application dated 3/4/91.

DE02289

WHEREAS, Keystone Energy Service Company, L.P. requested that their lease be amended to allow for a minor modification of pier dimensions in accordance with the revised drawings COA-6301 (Rev. 2) and COA-001 (Rev. K) dated 5/18/93, and received by this Division on 5/21/93 and Subaqueous Lands Application dated 5/19/93 and received by this Division on 5/21/93 copies of which are attached and made a part hereof; and

THIS Supplemental Approval shall be amended subject to the terms and conditions herein set forth.

1. This Supplemental Approval is an addendum to Subaqueous Lands Lease No.: SL-0907-91 granted to Keystone Energy Service Company, L.P. by the State of Delaware on 9/30/91. This supplemental approval shall be attached thereto and made a part hereof.

2. All existing conditions of Subaqueous Lands Lease No.: SL-0907/91 shall remain in effect.

IN WITNESS WHEREOF, We, Keystone Energy Service Company, L.P., have caused this instrument to be executed on this 27th day of May, 1993.

By: R C Tubbs
Applicant

SWORN and subscribed before me on this 27th day of May, 1993.

Valerie M Satterfield
Notary Public
VALERIE M. SATTERFIELD
NOTARY PUBLIC
MY TERM EXPIRES 2-16-95

IN WITNESS WHEREOF, I, Christophe A.G. Tulou, Secretary, Department of Natural Resources and Environmental Control, have hereunto set my hand and seal this 28th day of May, 1993.

Christophe A.G. Tulou
Secretary of the Department of
Natural Resources and
Environmental Control

DE02290

EXHIBIT
Whitney 12
S. Oakley 10/10/06

STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES
& ENVIRONMENTAL CONTROL
DIVISION OF AIR & WASTE MANAGEMENT
715 GRANTHAM LANE
NEW CASTLE, DELAWARE 19720

AIR RESOURCES
SECTION

TELEPHONE: (302) 323 - 4542
FAX NO.: (302) 323 - 4561

September 2, 1994

**Permit: APC-91/0602-OPERATION**
**Keystone Energy Service Company, L.P.**
**Coal Unloading Facility - Claymont**

Keystone Energy Service Company, L.P.
P.O. Box 169-C
Rt. 130 South
Swedesboro, NJ 08085-9300

ATTENTION: R. V. Ciliberti

Gentlemen:

Pursuant to the State of Delaware "Regulations Governing the Control of Air Pollution", Regulation No. 2, Section 2, approval of the Department of Natural Resources and Environmental Control is hereby granted for the operation of a Coal Unloading Facility consisting of a clamshell unloading system, an unloading hopper equipped with an air curtain, a discharge feeder, an enclosed conveyor, and fabric filter dust collectors at the Keystone Cogeneration Project Coal Pier, Claymont, Delaware, in accordance with the application submitted on Form No. AR-4 dated March 5, 1991 and cover letter dated June 12, 1991, both signed by R. V. Ciliberti, and the document dated February 6, 1991 and entitled, "Best Available Control Technology for Fugitive Particulate Emissions for the Keystone Cogeneration Project - Barge Delivery".

This permit is issued subject to the following conditions:

1. Air contaminant emission levels shall not exceed 0.066 *pound per hour* and 0.051 *ton per year* of coal dust, and those specified in the State of Delaware "Regulations Governing the Control of Air Pollution".

2. Representatives of the Department of Natural Resources and Environmental Control may, at any reasonable time, inspect this facility.

3. Emission in excess of any permit condition or emissions which create a condition of air pollution shall be reported, in person or by telephone communication, to the Department's Environmental Emergency Notification and Complaint Number immediately.

4. The Coal Unloading Facility shall not be operated unless the corresponding unloading hopper air curtain and fabric filter dust collectors are operating properly.

5. The conveyor and conveyor covers shall be maintained and operated properly during all periods of operation.

6. The clamshell bucket shall be equipped with lips to provide a complete seal between the bucket halves while in the closed position, to prevent spillage.

7. During the coal off-loading, the clamshell bucket shall be operated in such a manner as not to cause or create a condition of air pollution and to minimize coal spillage.

8. The unloading of coal shall be the only activity carried-out at this facility.

9. The emission of visible air contaminants from this unit shall not exceed twenty percent (20%) opacity for an aggregate of more than three (3) minutes in any one (1) hour period or more than fifteen (15) minutes in any twenty-four (24) hour period.

10. Odors from this source shall not be detectable beyond the plant property line in sufficient quantities to cause or create a condition of air pollution.

11. This permit shall be available on the premises.

12. Failure to comply with the provisions of this permit may be grounds for suspension or revocation.

Sincerely,

Robert J. Taggart
Program Manager
Engineering & Compliance Branch

RJT:EWJ:sr
EWJ94050

pc: Dover File

DEPARTMENT OF NATURAL RESOURCES
AND
ENVIRONMENTAL CONTROL

# NOTICE OF AUTHORIZATION

**Permit/Lease No. and Description:** SL-0907/9151 SUPPLEMENTAL APPROVAL for the construction of an industrial pier on Public Subaqueous Lands to conduct dredging in the Delaware River

**Issued To:** KEYSTONE ENERGY SERVICE COMPANY, L.P.

**Location of Work:** Logan Township, Gloucester County, New Jersey, Route 130, Lot No. 2, Block No. 1 & Brandywine Hundred, New Castle County, DE

**Date of Expiration:** September 30, 1994

**DISPLAY THIS CERTIFICATE IN A HIGHLY VISIBLE LOCATION ON THE JOB SITE.**

Doc. No. 40-05/07/08/91

William F. Moyer

*William F. Moyer, Supervisor*
*Wetlands & Aquatic Protection Branch*

DE02406

EXHIBIT
Whitney 13
S. Oakley 10/10/06

STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES
& ENVIRONMENTAL CONTROL
DIVISION OF WATER RESOURCES
89 KINGS HIGHWAY, P.O. BOX 1401
DOVER, DELAWARE 19903

WETLANDS & SUBAQUEOUS LANDS SECTION

TELEPHONE (302) 739-4691
FACSIMILE (302) 739-3491

Supplemental Lease Approval No.: SL-0907/91S2
Subaqueous Lands Lease No: SL-0907/91
Construction Expiration Date: 9/30/94

SUPPLEMENTAL APPROVAL
GRANTED TO KEYSTONE ENERGY SERVICE COMPANY, L.P.
TO AMEND SUBAQUEOUS LANDS LEASE SL-0907/91 FOR THE
CONSTRUCTION OF AN INDUSTRIAL PIER ON PUBLIC
SUBAQUEOUS LANDS AND TO CONDUCT DREDGING IN THE
DELAWARE RIVER AT LOGAN TOWNSHIP, GLOUCESTER COUNTY,
NEW JERSEY, ROUTE 130, LOT NO. 2, BLOCK NO. 1,
AND BRANDYWINE HUNDRED, NEW CASTLE COUNTY, DELAWARE

Logan Generating Company, L.P.
P.O. Box 169-C
RT. 130 South
Swedesboro, NJ 08085-9300

Pursuant to the provisions of 7 Del. C. §7203, and the Department's Regulations Governing the Use of Subaqueous Lands, permission is hereby granted on this 12 day of January, A. D. 1995, to Keystone Energy Sevice Comapny, L.P. to amend an existing lease to construct an industrial pier on public subaqueous lands and to conduct dredging in the Delaware River at Logan Township, Gloucester County, New Jersey, Route 130, Lot No. 2, Block No. 1, Brandywine Hundred, New Castle County, Delaware.

WHEREAS, Keystone Energy Service Company, L.P. requested that their lease be amended to allow a change in name from Keystone Energy Service Company, L.P., to Logan Generating Company, L.P. in accordance with the request submitted 12/19/94:

The Subaqueous Lands Lease SL-0907/91, as amended, shall be amended subject to the terms and conditions herein set forth:

1. This Supplemental Approval is an addendum to Subaqueous Lands Lease No. SL-0907/91, as amended, granted to Keystone Cogeneration Systems, Inc. by the State of Delaware on 9/30/91. This supplemental approval shall be attached thereto and made a part thereof.



*Delaware's good nature depends on you!*

SL-0907/9152

2. All existing conditions of Subaqueous Lands Lease No. SL-0907/91, as amended shall remain in effect.

IN WITNESS WHEREOF, Logan Generating Company, L.P., has caused this instrument to be executed on this 30th day of December, 1994.

LOGAN GENERATING COMPANY, L.P.

By: P. Christman Sibl
Authorized Agent

SWORN and subscribed before me on this 30th day of December, 1994.

Judith A. D'Andelet
Notary Public

JUDITH A. D'ANDELET
NOTARY PUBLIC
PRINCE GEORGES CO., MD
MY COMMISSION EXPIRES JULY 23, 1998

My Commission Expires: 7-23-98

IN WITNESS WHEREOF, I, Christophe A. G. Tulou, Secretary, Department of Natural Resources and Environmental Control have hereunto set my hand and seal this 6 day of January, 1994.95

By: Secretary of the Department of Natural Resources and Environmental Control

DE02408

STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES
& ENVIRONMENTAL CONTROL
DIVISION OF WATER RESOURCES
89 KINGS HIGHWAY, P.O. BOX 1401
DOVER, DELAWARE 19903

WETLANDS & SUBAQUEOUS LANDS SECTION

TELEPHONE (302) 739-4691
FACSIMILE (302) 739-3491

March 15, 1995

Logan Generating Company, L.P.
P. O. Box 169-C
Rt. 130 South
Swedesboro, N. J. 08085-9300

RE: SL-0907/91 Construct an industrial pier on public subaqueous lands and to conduct dredging in the Delaware River at Logan Township, Gloucester County, NJ

Dear Janine Kelly:

This letter is in response to your 3/14 /95 correspondence on the above-referenced project. By this letter, the Wetlands & Subaqueous Lands Section grants a one year extension of the subaqueous lands permit issued on 9/30/91, to dredge approximately 13,750 cubic yards of material from the permit area previously permitted in SL-0907/91.

This letter, therefore extends your authorization to conduct maintenance dredging according to the conditions in the original subaqueous lands permit through 9/29/95 .

Sincerely,

James T. Chaconas
Program Manager
Wetlands & Subaqueous
Lands Section

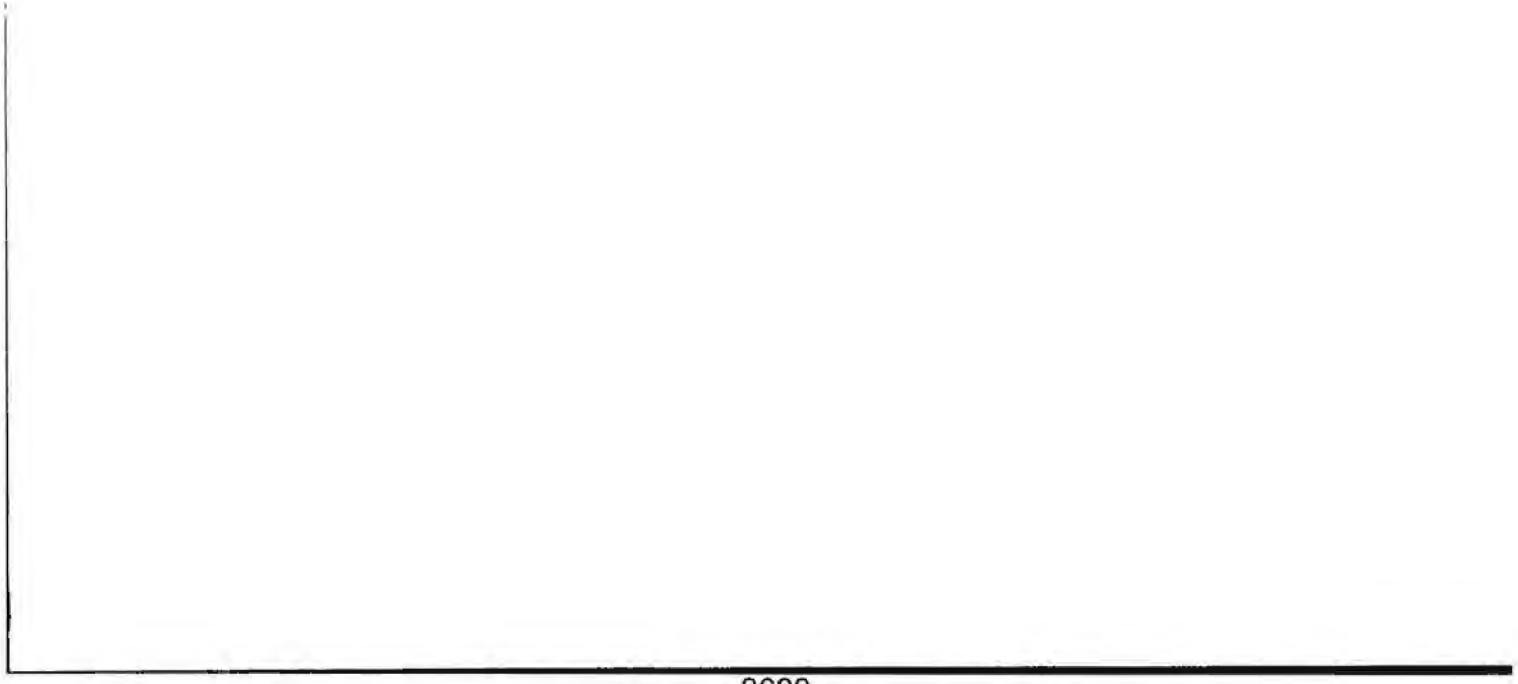
Sincerely,

William F. Moyer
Program Manager
Wetlands & Subaqueous
Lands Section

EXHIBIT
Whitnay 4
S. Oakley 10/10/06

Delaware's good nature depends on you!

DE02294



STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES
& ENVIRONMENTAL CONTROL
DIVISION OF WATER RESOURCES
89 KINGS HIGHWAY, P.O. BOX 1401
DOVER, DELAWARE 19903

WETLANDS & SUBAQUEOUS LANDS SECTION

TELEPHONE (302) 739-4691
FACSIMILE (302) 739-3491

11/12/97

Logan Generating Company L.P.
Box 169 C Route 130 South
Swedesboro, NJ 08085-9300

RE:MD-0012/97 To maintenance dredge 15,000 cubic yards of material from a barge mooring facility at the Logan Generating Company on the Delaware River, Gloucester County, New Jersey.

Dear Sirs:

Your request to conduct the above-referenced maintenance dredging has been reviewed by the Department of Natural Resources and Environmental Control. The Department hereby authorizes the dredging in accordance with the plans and specifications titled "LOGAN COGENERATION PLANT" dated 2/27/95 and received by this Division on 8/5/97 and application dated 8/1/97 and received on 8/5/97.

This letter of authorization is issued subject to the following conditions:

1. Dredging shall be conducted so as not to violate the State of Delaware, Surface Water Quality Standards dated February 26, 1993.

2. This Authorization shall not become effective until an approved Sediment and Stormwater Management Plan, when required by 7 Del. C in accordance with specifications and criteria outlined in the Delaware Erosion and Sediment Control Handbook (1989) has been obtained. Failure to comply with the provisions of the approved sediment and stormwater management plan willresult in the revocation of this authorization.

3. No dredge spoils shall be deposited on tidal wetlands at any time other than what is permitted in accordance with the submitted application and plans.

4. This Authorization shall be valid for one (1) year.

EXHIBIT
Whitney 5
S. Oakley 10/16/02

DE02308

5. A copy of this Authorization must be available on site during all phases of construction activity.

6. Water quality sampling shall be performed in accordance with the attached monitoring plan.

7. The State of Delaware hereby waives the water quality certification CENAP-OP-R- 90-2427-1 that is required in accordance with Section 401 of the Clean Water Act, for the above referenced project. This waiver satisfies the water quality certification requirements of the U.S. Army Corps of Engineers for the above referenced project.

8. This authorization will be revoked upon violation of any of the above conditions.

If you have any questions, please feel free to contact Ted Mercer of this office at 739-4691.

Sincerely,

William F. Moyer
Program Manager
Wetlands & Aquatic Protection Branch

Sincerely,

Laura M. Herr
Program Manager I
Wetlands & Aquatic Protection Branch

cc: Frank Cianfrani

EXHIBIT
Whitney 16
S. Oakley 10/19/06

STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES &
ENVIRONMENTAL CONTROL
DIVISION OF WATER RESOURCES
89 KINGS HIGHWAY
DOVER, DELAWARE 19901

WETLANDS & SUBAQUEOUS LANDS SECTION

TELEPHONE (302) 739-4691
FACSIMILE (302) 739-6304

Subaqueous Lands Lease No.: SL-245/01
Renewal of Subaqueous Lands Lease No.: SL-0907/91
Date of Issuance: 11/9/01
Lease Expiration Date: September 30, 2021
Amended Date:
Tax Parcel No.: Lot No. 2, Block No. 1

**SUBAQUEOUS LANDS LEASE**
**GRANTED TO LOGAN GENERATING COMPANY, L.P. TO MAINTAIN TWO 25 FOOT BY 25 FOOT MOORING DOLPHINS, SIX 16 FOOT BY 16 FOOT BREASTING DOLPHINS, A 70 FOOT BY 105 FOOT DOCK, A 22 FOOT BY 450 FOOT PIER, FOUR 4 FOOT BY 109 FOOT DOCK SECTIONS, TWO 4 FOOT BY 104.5 FOOT DOCK SECTIONS, TWO 2 FOOT BY 4 FOOT DOCK SECTIONS, AND A 10 FOOT BY 10 FOOT LOADING PLATFORM IN THE NEW CASTLE COUNTY, DELAWARE SECTION OF THE DELAWARE RIVER, ADJACENT TO LOGAN TOWNSHIP, GLOUCESTER COUNTY, NEW JERSEY**

Logan Generating Company, L.P.
Box 169C
Route 130 South
Swedesboro, NJ 08085-9300

Pursuant to the provisions of 7 Del. C. 7203, and the Department's Regulations Governing the Use of Subaqueous Lands, permission is hereby granted on this 9th day of November A.D. 2001, to maintain the above-referenced project in accordance with the approved plans for this lease (13 sheets), as approved on 10/20/01; and application dated 6/7/01, and received by this Division on 6/14/01.

WHEREAS, the State of Delaware is the owner of ungranted subaqueous lands lying beneath the waters of the Delaware River; and

WHEREAS, Logan Generating Company, L.P., owner of certain lands adjoining to the Delaware River has applied for permission to maintain a pier, docks, and dolphins; and

WHEREAS, pursuant to the provisions of 7 Del. C., 7203, the Secretary of the Department of Natural Resources and Environmental Control through his duly authorized representative finds

that it is not contrary to the public interest if this project is approved subject to the terms and conditions herein set forth.

This approval is in accordance with plans and application submitted to Department of Natural Resources and Environmental Control, a copy of which is attached hereto and made a part hereof.

This Lease shall be continued for a period of twenty (20) years or so long as the conditions attached to the Lease are adhered to, whichever is the shorter in time. Upon the expiration of the twenty-year term, this Lease shall expire and become null and void, unless prior thereto the lessee shall have applied for and received a renewal of this Lease. A renewal may be denied if the State determines that the Lease is no longer in the public interest.

THIS Lease is issued subject to the following conditions:

SPECIAL CONDITIONS

1. **This Lease shall not be considered valid until it has been duly recorded in the office for the Recorder of Deeds in and for the appropriate County, and a copy of the recorded Lease is returned to, and has been received by, the Department.**

2. The conditions contained herein shall be included as part of the main body of the construction contract and other ancillary documents associated with earth disturbance and any other activities directly or indirectly associated with construction or maintenance which may impact subaqueous lands associated with this project.

3. This Lease authorizes the lessee to maintain the approved structure on public subaqueous land from October 1, 2001 through September 30, 2021.

4. Pending legislative action, this leased structure could be subject to a fee. In the event the General Assembly establishes lease fees for structures over public subaqueous lands a fee will be applied to this leased structure. Lease fees established by the General Assembly shall also apply to any lease that has expired until such time as the structure is removed pursuant to a denial or revocation, or until such time as a new lease has been issued. The approved pier, docks, and dolphins include 22,732 square feet on public subaqueous lands. Using the currently adopted fee schedule, your fee would be $90,928, annually.

5. This Lease represents a renewal of Subaqueous Lands Lease No. SL-0907/91 granted to Keystone Cogeneration System, Inc. All special and general conditions contained in this Lease

shall supersede conditions set forth in Subaqueous Lands Lease No. SL-0907/91, which shall become null and void.

6. Maintenance shall be conducted so as not to violate the State of Delaware Department of Natural Resources and Environmental Control's "Surface Water Quality Standards," as amended August 11, 1999.

7. The leased structure shall be maintained in a manner so as not to impair water access.

8. This Lease does not authorize any repairs, additions, or modifications to the existing structures authorized herein. Such activities require separate written authorization from the Department of Natural Resources and Environmental Control.

9. The structures on/or adjacent to subaqueous lands shall be for the explicit purpose of vessel berthing and unloading of cargo.

10. All debris, excavated material, brush, rocks, and refuse incidental to maintenance of the leased structure shall be placed above the influence of surface waters.

## GENERAL CONDITIONS

1. The project is to be undertaken in accordance with the plans submitted and attached hereto. Any activities not specifically authorized herein may require a supplemental approval from this office prior to the initiation of construction. A determination on the need for a supplemental approval will be made by this office pursuant to the lessee submitting written notification and revised plans indicating project changes to this office.

2. Representatives of the Department of Natural Resources and Environmental Control may inspect the leased structure and may collect any samples or conduct any tests that are deemed necessary.

3. This Lease does not cover the structural stability of the project units.

4. Prior to the expiration of this Lease, the lessee shall remove all structures covered under this Lease unless the Lease has been renewed in accordance with its terms.

5. Any actions, operations or installations which are considered by the Department to be contrary to the best interests of the public shall constitute reason for the discontinuance and/or removal of said action, operation or installation.

6. The lessee shall maintain any structure on public subaqueous lands in good and safe condition and will protect and save the State of Delaware harmless from any loss, cost or damage by reason of said structures.

7. The issuance of this Lease does not imply approval of any other part, phase, or portion of any overall project the lessee may be contemplating.

8. This Lease shall not be construed to grant or confer any right, title, easement, or interest in, to, or over any land belonging to the State of Delaware other than that of a tenant.

9. This Lease is subject to the terms and conditions contained in any easement, license or lease that may have been granted by the State or any political subdivision, board, commission or agency of the State in the vicinity of the leased premises.

10. This Lease and authorization are granted for the purposes as stated herein. Any other use without prior approval shall constitute reason for this Lease being revoked.

11. This Lease is personal and may not be transferred without the prior written consent of the Department. Prior to the transfer of the adjacent upland property, the lessee shall obtain the written consent of the Department to transfer this Lease to the new upland property owner. Failure to obtain such written consent may result in the revocation of this Lease and the removal of all structures authorized by this Lease at the expense of the lessee.

12. The lessee shall at all times comply with all applicable laws and regulations of the Department of Natural Resources and Environmental Control.

13. The issuance of this Lease does not constitute approval for any of the activities as may be required by any other local, state or federal governmental agency.

14. Application for renewal must be submitted six (6) months prior to the expiration date of this Lease.

This Lease may be revoked upon violation of any of the above conditions.

IN WITNESS WHEREOF, I, Thomas W. Fromm, have caused this instrument to be executed on this 1st day of November, 2001.

Thomas W. Fromm
Applicant

Bette Jane Couse
Notary
My commission expires: BETTE JANE COUSE
NOTARY PUBLIC OF NEW JERSEY
MY COMMISSION EXPIRES DEC. 5, 2004

(Notary Seal)

By the authority invested in me under 7 Del.C.§7203(a), I hereby grant this Lease for the use of the State owned subaqueous lands to the Lessee(s) by setting my hand on this 9th day of November, 2001.

Nicholas A. DiPasquale
Secretary, Department of Natural Resources
and Environmental Control

FC 01.039

STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES & ENVIRONMENTAL CONTROL
DIVISION OF SOIL AND WATER CONSERVATION
89 KINGS HIGHWAY
DOVER, DELAWARE 19901

DELAWARE COASTAL MANAGEMENT PROGRAM

TELEPHONE: (302) 739 - 3451
FAX: (302) 739 - 2048

March 14, 2002

Mr. Thomas W. Fromm
PG&E National Energy Group
PO Box 169-C
Swedesboro, NJ 08085-9300

*RE: Delaware Coastal Management Federal Consistency Certification*
*Logan Generating Plant Maintenance Dredging (FC# 01.039)*

Dear Mr. Fromm:

The Delaware Coastal Management Program (DCMP) has received and reviewed your consistency determination for the above referenced project. Based upon our review and pursuant to National Oceanic & Atmospheric Administration regulations (15 CFR 930), the DCMP concurs with your consistency determination for maintenance dredging activities in the existing berthing facility in the Delaware River, adjacent to the Logan Generating Plant, Gloucester County, New Jersey. This concurrence is based upon the assumption that the necessary 401 Water Quality Certification and Subaqueous Lands permit from the State of Delaware will be obtained prior to the commencement of any dredging activity. It is further based upon compliance with all conditions placed upon the permits. If the necessary permits from the State of Delaware are not granted, this Federal Consistency Certification will be revoked.

If you have any questions regarding this determination please do not hesitate to contact me at (302) 739-3451.

Sincerely,

Sarah W. Cooksey

Sarah W. Cooksey, Administrator
Delaware Coastal Management Program

SWC/sel

cc: [redacted]
Edward Bonner – USACE

DE14443

P. 01

TRANSACTION REPORT

MAR-21-2002 THU 10:44 AM

| DATE | START | RECEIVER | TX TIME | PAGES | TYPE | NOTE | M# | DP |
|---|---|---|---|---|---|---|---|---|
| MAR-21 | 10:42 AM | 916107015129 | 1'08" | 2 | SEND | OK | 804 | |

TOTAL : 1M 8S PAGES: 2

State of Delaware
Department of Natural Resources & Environmental Control
Delaware Coastal Programs
89 Kings Highway, Dover, DE 19901

# FAX DCMP

DELAWARE COASTAL MANAGEMENT PROGRAM

Date: 3/21/02

Number of pages including cover sheet: 2

To: Sonny Piatkowski

Phone: 610/701-5373

Fax phone: 701-5109

From: Pat

Phone: (302)739-3451

Fax phone: (302)739-2048

faxed copy of letter of concurrence

FC # 01.039

EXHIBIT
Whitreg-19
S. Oakley 10/19/06

State of New Jersey
**Department of Environmental Protection**
**Land Use Regulation Program Application Form (LURP #1)**

PLEASE PRINT OR TYPE THE FOLLOWING: (Complete all sections unless otherwise noted)
NOTE: If you are applying for a CAFRA Permit by Rule, you need to complete items 1 thru 6 and the signature area on page 3 only.

1. Applicant Name New Jersey Department of Environmental Protection Division of Parks and Forestry Daytime Phone # 609-633-7588
   Address 501 E. State Street, Station Plaza 5
   City Trenton State NJ Zip 08625
2. Agent Name Lloyd F. Sturgeon Firm S. T. Hudson Engineers, Inc.
   Address 800 Hudson Square, P.O. Box 9106 Phone # 609-342-6600
   City Camden State NJ Zip 08101
3. Project Location - Street Address Fort Mott State Park
   Municipality Pennsville County Salem
   Block(s) 5301 Lot(s) 3
   State Plane Coordinates N 281,200 feet E 1,750,000 feet
   Nearest Waterway Delaware River Watershed Same
4. Total Fees $13,600 Fees Paid $13,600 Project Cost $1,140,000 Check Number _____
   *(See attached fee schedule)*
5. Project Description: The rehabilitation of the historic Fort Mott Pier is intended specifically to replicate the appearance of the pier in 1898, during the period of its greatest historical significance. The project was designed so that the pier would be suitable as a terminus for ferry service between Fort Mott and Fort Delaware on Pea Patch Island and Fort DuPont on the Delaware shore with provisions for handicapped access and would be eligible for inclusion in the Fort Mott and Finn's Point National Cemetery Historic District, in accordance with Department of the Interior criteria.

*FOR OFFICIAL USE ONLY*

File Number: Permit Code:
Date Received: Project Manager:
20th Day: Project Engineer:
DEP Bulletin: Date Entered:
ASU Date: Amount Filed:
XRef#:

NJ05423

6. Application(s) for: (Please check all that apply)

| | | | | | |
|---|---|---|---|---|---|
| Stream Encroachment: | Permit | ____ | Waiver | ____ | |
| CAFRA: | Individual Permit | ____ | General Permit | ____ | |
| | Exemption Request | ____ | Permit by Rule | ____ | |
| Freshwater Wetlands: | Individual Permit | ____ | General Permit | ____ | |
| | Transition Area Waiver | ____ | Letter of Interpretation | ____ | |
| | Exemption Request | ____ | Open Water Fill Permit | ____ | |
| Waterfront Development: | Residential | ____ | Commercial | X | |
| Upland Waterfront Development: | Residential | ____ | Commercial | ____ | |
| Water Quality Certificate | ____ | | Tidal Wetlands (1970) | ____ | |
| Federal Consistency Determination | ____ | | Jurisdictional Determination | ____ | |
| Permit Modification (specify) | ____ | | | | |
| Other (specify) | State - Delaware Dept. of Natural Resources and Environmental Control (DNREC) | | | | |
| | Federal - U. S. Army Corps of Engineers (Corps) | | | | |

7. Indicate below if any of the following approvals, denials or certifications were received for the project site or are required for the proposed project:
   - In Column A, indicate application status: (*P for* - pending, *A for* - approved, *D for* - denied, *T for* - to be applied for, or *O for* - other (explain other).
   - In Column B, indicate application, permit, or docket number.

| | A | B | | A | B |
|---|---|---|---|---|---|
| CAFRA Permit | ____ | ____ | Stream Encroachment Permit | ____ | ____ |
| CAFRA Permit Modification | ____ | ____ | Stream Encroachment Waiver | ____ | ____ |
| CAFRA Exemption | ____ | ____ | Stream Encroachment Permit Modification | ____ | ____ |
| Waterfront Development Permit | P | ____ | Water Quality Certificate | P | ____ |
| Tidal Wetlands (1970) Permit | ____ | ____ | Tidelands (Riparian) Conveyance | P | ____ |
| Statewide General Freshwater Wetlands Permit | ____ | ____ | Dam Construction or Rapids Permit | ____ | ____ |
| Freshwater Wetlands Letter of Interpretation | ____ | ____ | Pinelands Certificate of Filing | ____ | ____ |
| Freshwater Wetlands Transition Area Waiver | ____ | ____ | D & R Canal Commission Certificate | ____ | ____ |
| Individual Freshwater Wetlands Permit | | | Federal Permits (Specify) | P | Corps |
| Freshwater Wetlands Exemption | NJ05424 | | State Permits (Specify) | P | DNREC |

APPLICANT SIGNATURE

I certify under penalty of law that the information provided in this document is true and accurate. I am aware that there are significant civil and criminal penalties for submitting false or inaccurate information. (If corporate entity, print/type the name and title of person signing on behalf of the corporate entity.)

X Carl R Nordstrom
Signature of Applicant/Owner

Carl Nordstrom
Deputy Director

9/19/95
Date

Signature of Applicant/Owner

Date

A. PROPERTY OWNER'S CERTIFICATION*

I hereby certify that the undersigned is the owner of the property upon which the proposed work is to done. This endorsement is certification that the owner grants permission for the conduct of the proposed activity. In addition, I hereby give unconditional written consent to allow access to the site by representatives or agents of the Department for the purpose of conducting a site inspection or survey of the project site.

In addition, the undersigned property owner hereby certifies:

1. Whether any work is to be done within an easement - Yes _____ No X

2. Whether any part of the entire project (eg., pipeline, roadway, cable, transmission line, structure, etc.) will be located within property belonging to the State of New Jersey - Yes X No _____

*Type or Print Name and Address of Owner, if different from item 1 on Page 1*

9/19/95
Date

X Carl R Nordstrom
Signature of Property Owner

Carl Nordstrom
Deputy Director

NJ05425

B. APPLICANT'S AGENT

State of New Jersey Department of Environmental Protection
Division of Parks and Forestry

I Fort Mott State Park, the Applicant/Owner, authorize to act as my agent/representative in all matters pertaining to my application the following person:

Name S. T. Hudson Engineers, Inc.

Occupation/Profession Professional Consulting Engineers

Carl R. Nordstrom

*(Signature of Applicant/Owner)*

Carl Nordstrom
Deputy Director

AGENT'S CERTIFICATION

Sworn before me
this _____ day of
_____ 19 _____

I agree to serve as agent for the above-mentioned applicant

_____
Notary Public

_____
(Signature of Agent)

Lloyd F. Sturgeon
Vice President

C. STATEMENT OF PREPARER OF PLANS, SPECIFICATIONS, SURVEYOR'S OR ENGINEER'S REPORT

I hereby certify that the plans, specifications and engineer's report, if any, applicable to this project comply with the current rules and regulations of the New Jersey Department of Environmental Protection with the exceptions as noted.

_____
*Signature*

Lloyd F. Sturgeon
Type: Name and Date

Vice President
S. T. Hudson Engineers, Inc.
Position, Name of Firm

NJ05426

STATE OF NEW JERSEY
DEPARTMENT OF ENVIRONMENTAL PROTECTION
ENVIRONMENTAL REGULATION
BUREAU OF TIDELANDS MANAGEMENT
CN 401
TRENTON, NEW JERSEY 08625-0401

# APPLICATION FOR LICENSE OR EASEMENT

DATE _____

FILE # _____

Application is hereby made, in accordance with N.J.S.A. 13:1B-13 and N.J.S.A. 12:3-10 for a revocable license to use and occupy State's lands under water; subject to such terms and conditions contained therein or as may be imposed by law.

**APPLICANT** New Jersey Department of Environmental Protection
Division of Parks and Forestry

1. NAME _____

2. ADDRESS 501 E. State Street, Station Plaza 5, Trenton, NJ 08625

3. BUSINESS _____

4. PHONE # 609- 633-7588

**WHERE LICENSE IS LOCATED**

5. CITY OR MUNICIPALITY Pennsville

6. COUNTY Salem

7. NAME OF WATERWAY Delaware River

8. LOT & BLOCK Lot 3, Block 5301

**INTENDED USE**

9. Historic restoration of pier and introduction of ferry service between Fort Mott, Fort Delaware and Fort DuPont. The pier is part of the Park System and is for use by the general public. No fees will be charged.

**NAME AND ADDRESS OF THE UPLAND AND ADJOINING OWNERS**

10. Same as above.

NJ05427

**PERMITS REQUIRED: (11)**

NJDEP Waterfront Development - NJDEP NOC

TYPE: U.S. Army Corps of Engineers - Delaware Subaqueous Lands Permit

DATE APPLIED: _____

**GENERAL REMARKS (12)**

_____

_____

_____

**NOTICE: IN MAKING THIS APPLICATION, APPLICANT UNDERSTANDS THAT NO WORK SHALL BE PERFORMED BY THE APPLICANT UNLESS AND UNTIL THE LICENSE IS DELIVERED, AND ALSO ONLY IF THE APPLICANT HAS OBTAINED A PERMIT TO PERFORM SAID WORK. THE ISSUANCE OF A PERMIT IS SUBJECT TO AN INDEPENDENT DETERMINATION BY THE STATE.**

(13)
SIGNATURE X Carl R Nordstrom

PRINT NAME Carl Nordstrom

TITLE Deputy Director

**ATTEST (14)**

NJ05428

STATE OF NEW JERSEY
DEPARTMENT OF ENVIRONMENTAL PROTECTION
ENVIRONMENTAL REGULATION
BUREAU OF TIDELANDS MANAGEMENT
CN 401
TRENTON, NEW JERSEY 08625-0401

# AGENT'S AUTHORIZATION TO ACT FOR APPLICANT

I hereby authorize:

NAME: S. T. Hudson Engineers, Inc.

ADDRESS: 800 Hudson Square, P.O. Box 9106

Camden, NJ 08101-9106

TELEPHONE NUMBER: 609-342-6600

to act as my agent or representative in all matters pertianing to my application for a grant, lease, license or other conveyance of State lands, now or formerly below mean high water. I further understand that the Bureau of Tidelands Management will correspond directly with the above named agent and not myself.

x Carl R Nordstrom
Applicant's Signature
Carl Nordstrom
Deputy Director

Applicant's Signature

New Jersey Department of Environmental Protection
Division of Parks & Forestry
501 E. State Street, Station Plaza 5
Address Trenton, NJ 08625

DATE: 9/19/95

NJ05429

| APPLICATION FOR DEPARTMENT OF THE ARMY PERMIT (33 CFR 325) | OMB APPROVAL NO. 0710-003 Expires October 1996 |
|---|---|

Public reporting burden for this collection of information is estimated to average 5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Defense, Washington Headquarters Service Directorate of InformationOperations and Reports, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302; and to the Office of Management and Budget, Paperwork Reduction Project (0710-0003), Washington, DC 20503. Please DO NO RETURN your form to either of those addresses. Completed applications must be submitted to the District Engineer having jurisdiction over the location of the proposed activity.

**PRIVACY ACT STATEMENT**

Authority: 33 USC 401, Section 10; 1413, Section 404. Principal Purpose: These laws require permits authorizing activities in, or affecting, navigable waters of the United States, the discharge of dredged or fill material into waters of the United States, and the transportation of dredged material for the purpose of dumping it into ocean waters. Routine Uses: Information provided on this form will be used in evaluating the application for a permit. Disclosure: Disclosure of requested information is voluntary. If information is not provided, however, the permit application cannot be processed nor can a permit be issued.

One set of original drawings or good reproducible copies which show the location and character of the proposed activity must be attached to this application (see sample drawings and instructions) and be submitted to the District Engineer having jurisdiction over the location of the proposed activity. An application that is not completed in full will be returned.

*(ITEMS 1 THRU 4 TO BE FILLED BY THE CORPS)*

| 1. APPLICATION NO. | 2. FIELD OFFICE CODE | 3. DATE RECEIVED | 4. DATE APPLICATION COMPLETED |
|---|---|---|---|
| | | | |

*(ITEMS BELOW TO BE FILLED BY APPLICANT)*

| 5. APPLICANT'S NAME | 6. AUTHORIZED AGENT'S NAME AND TITLE (If agent is not required) |
|---|---|
| State of New Jersey<br>Dept. of Environmental Protection<br>Div. of Parks & Forestry | Lawrence R. Horan, Environmental Specialist |
| **8. APPLICANT'S ADDRESS** | **9. AGENT'S ADDRESS** |
| 501 E. State Street<br>Station Plaza 5<br>Trenton, NJ 08625 | S. T. Hudson Engineers, Inc.<br>800 Hudson Square, P.O. Box 9106<br>Camden, NJ 08101-9106 |
| **7. APPLICANT'S PHONE NOS. W/AREA CODE** | **10. AGENT'S PHONE NOS. W/AREA CODE** |
| a. Residence<br>b. Business 609- 633-7588 | a. Residence<br>b. Business 609-342-6600 |

**11. STATEMENT OF AUTHORIZATION**

I hereby authorize, S.T. Hudson Engineers, Inc. to act in my behalf as my agent in the processing of this application and to furnish, upon request, supplemental information in support of this permit application.

x _____

APPLICANT'S SIGNATURE DATE 9/19/95

Carl Nordstrom, Deputy Director

**NAME, LOCATION AND DESCRIPTION OF PROJECT OR ACTIVITY**

12. PROJECT NAME OR TITLE (See instructions)

Fort Mott Pier Rehabilitation Project

| 13. NAME OF WATERBODY, IF KNOWN (If applicable) | 14. PROJECT STREET ADDRESS (If applicable) |
|---|---|
| Delaware River | Fort Mott State Park<br>Fort Mott Road |
| **15. LOCATION OF PROJECT** | |
| Salem (COUNTY) NJ (STATE) | |

16. OTHER LOCATION DESCRIPTIONS, IF KNOWN, (See instructions)

N/A

17. DIRECTIONS TO THE SITE

Delaware River and Fort Mott Road off NJ Route 49

NJ05430

18. Nature of Activity (Description of project, include all features) Rehabilitation of the historic Fort Mott Pier. In addition, a 30 ft. wide x 100 ft. long floating barge will be permanently moored to two (2) 36" diameter monopiles at the outshore end of the Fort Mott Pier. This barge will be used as an intermediate floating pier to safely transfer passengers to and from the planned ferry boat, the "Dela-Fort" which now operates between Fort DuPont and Fort Delaware.

19. Project Purpose (Describe the reason or purpose of the project, see instructions) The project is intended specifically to replicate the appearance of the pier in 1898, during the period of its greatest historical significance. The project was designed so that the pier would be suitable as a terminus for ferry service betwe Fort Mott and Fort Delaware on Pea Patch Island, and Fort DuPont on the Delaware shore with provisions for handicapped access and would be eligible for inclusion in the Fort Mott and Finn's Point National Cemetery Historic District, in accordance with Department of the Interior criteria

USE BLOCKS 20-22 IF DREDGED AND/OR FILL MATERIAL IS TO BE DISCHARGED

20. Reason(s) for Discharge Once the pier is restored to its original height of 10 ft. above mean low water, the interportion of the crib, which is presently awash during high tide, will be filled with 1600 cubic yards of sand and gravel, then paved with stone and a 10 ft. wide concrete public access pathway will be installed down the center of the pier.

21. Type(s) of Material Being Discharged and the Amount of Each Type in Cubic Yards

Sand, gravel and stone 1600 cubic yards

22. Surface Area in Acres of Wetlands or Other Waters Filled (see instructions)

.25 acres of intertidal wetlands

23. Is Any Portion of the Work Already Complete? Yes ____ No X IF YES, DESCRIBE THE COMPLETED WORK

24. Addresses of Adjoining Property Owners, Lessees, Etc., Whose Property Adjoins the Waterbody (if more than can be entered here, please attach a supplemental list).

See Section 4.4

25. List of Other Certifications or Approvals/Denials Received from other Federal, State or Local Agencies for Work Described in This Application.

| AGENCY | TYPE APPROVAL* | IDENTIFICATION NUMBER | DATE APPLIED | DATE APPROVED | DATE DENIED |
|---|---|---|---|---|---|
| New Jersey DEP | Waterfront Development | | | Pending | |
| | Water Quality Certification | | | Pending | |
| Delaware Dept. of Natural Resources and Environmental Control | Subaqueous Lands Project | | | Pending | |

*Would include but is not restricted to zoning, building and flood plain permits

26. Application is hereby made for a permit or permits to authorize the work described in this application. I certify that the information in this application is complete and accurate. I further certify that I possess the authority to undertake the work described herein or am acting as the duly authorized agent of the applicant.

| SIGNATURE OF APPLICANT | DATE | SIGNATURE OF AGENT | DATE |
|---|---|---|---|
| | | L. Horan, Environmental Specialist | |

The application must be signed by the person who desires to undertake the proposed activity (applicant) or it may be signed by a duly authorized agent if the statement in block 11 has been filled out and signed.

18 U.S.C. Section 1001 provides that: Whoever, in any manner within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals, or covers up any trick, scheme, or disguises a material fact or makes any false, fictitious or fraudulent statements or representations or makes or uses any false writing or document knowing same to contain any false, fictitious or fraudulent statements or entry, shall be fined not more than $10,000 or imprisoned not more than five years or both.

NJ05431

DEPARTMENT OF THE ARMY
PHILADELPHIA DISTRICT, CORPS OF ENGINEERS
WANAMAKER BUILDING, 100 PENN SQUARE EAST
PHILADELPHIA, PENNSYLVANIA 19107-3390

FEB 14 1994

REPLY TO ATTENTION OF

CENAP-OP-R-Coastal Zone Management (New Jersey and Pennsylvania)

PUBLIC NOTICE

SUBJECT: "Consistency Certification" with Approved State Coastal Zone Management Program

Federal regulations require that applicants for Department of the Army permits to perform work which falls under the jurisdiction of a State with a Coastal Zone Management (CZM) Program approved by the Secretary of Commerce, MUST PROVIDE CONSISTENCY CERTIFICATION. The certification statement must accompany the application for a Department of the Army permit.

On September 29, 1978 and September 29, 1980, respectively, CZM Programs were approved for the State of New Jersey and the Commonwealth of Pennsylvania by the Department of Commerce. Therefore, all applications for Department of the Army permits for work in their designated Coastal Zones must contain a consistency statement.

The statement should be as follows:

"The proposed activity complies with and will be conducted in a manner that is consistent with the approved State Coastal Zone Management (CZM) Program".

x Carl Nordstrom

Signature of Applicant
Carl Nordstrom, Deputy Director

Additional information concerning the approved Coastal Zone Management Programs can be obtained by contacting:

State of New Jersey

New Jersey Department of
Environmental Protection and Energy
Division of Coastal Resources
Bureau of Land Use Regulation
CN 401
Trenton, New Jersey 08625
Telephone Number - (609) 633-2289

Commonwealth of Pennsylvania

Commonwealth of Pennsylvania
Department of Environmental Resources
Coastal Zone Management Office
P.O. Box 8761
Harrisburg, Pennsylvania 17105-8761
Telephone Number - (717) 541-7808

Frank J. Cianfrani
Chief, Regulatory Branch

NJ05432

# BASIC APPLICATION FORM

ATTACH ADDITIONAL 8 1/2" X 11" SHEETS OF PAPER AS NEEDED

Application Number _____
(To be assigned by agencies)

1. Applicant's (Property Owner) name and complete address:
State of New Jersey-Dept. of Environmental Protection
Division of Parks and Forestry
501 E. State Street, Station Plaza 5
Trenton, NJ 08625

Telephone Number
Home ( ): _____
Work (X): 609- 633-7588

2. Name of Leaseholder (if applicable) of land where project is contemplated and complete address: N/A

Telephone Number
Home ( ): _____
Work ( ): _____

3. Authorized agent's name and complete address ( if applicable):
S. T. Hudson Engineers, Inc.
800 Hudson Square, P.O. Box 9106
Camden, NJ 08101

Telephone Number
Home ( ): _____
Work (X): 609-342-6600

(Complete agent authorization section at the botton of page 8)

4. Is this project
__X__ New? __X__ Repair/Replacement? See Sections 1.0, 2.0 and 3.0
_____ Both? If "Both", please explain:
_____ Supplemental Approval for an existing lease or permit?

5. Provide a brief description of the project: Rehabilitation of the historic Fort Mott Pier in addition to a new ferry mooring system.

A. _____ Dredging
Total Estimated Volume: ____ cu. yds.

B. _____ Filling
Total Volume: _____ cu. yds.

C. _____ Shore Erosion Control
Total Length: _____ ft.

D. _____ Dock(s)
Total Number: _____

E. _____ Pier(s)/Walkways
Total Number: _____

F. __X__ Other Rehabilitation of the historic Fort Mott Pier. Mooring of a 30 Ft. wide X 100 ft. long floating barge.
Total Dimensions:



NJ05433

6. Primary purpose of the project:

| | |
|---|---|
| ____ Shore Erosion Control | ____ Dam |
| ____ Utility Installation | ____ Road |
| ____ Create Waterfowl Habitat | ____ Improve Navigable Access |
| ____ Temporary Construction | ____ Improve Fish Habitat |
| ____ Beach Nourishment/Fill | ____ Stream Channelization |
| ____ Residential Commercial Development | ____ Maintenance/Repair |
| | ____ Small Pond |
| ____ Erosion/Sediment Control | ____ Marina |
| ____ Stormwater Management | ____ Bridge |
| ____ Fill | ____ Vessel Berthing/Launching |
| ____ Culvert | __X__ Other Historic restoration of Pier and introduction of ferry service between Fort Mott and Fort Delaware and Fort DuPont. |

7. Have you discussed this project with any representative of Local, State, or Federal regulatory agency? __X__ Yes ____ No
If yes, complete the information below.
Name of Representative: _____
Name of Agency: DNREC, Corps, NJ and DE SHPO
Date: _____

8. Have you applied for, or obtained a permit from any Local, State, or Federal agency for any portion of this project described in this application?
__X__ Yes ____ No

If yes, provide the following:
Agency: Corps NJDEP
Type of Action/Permit: Sec. 10 & 404 Waterfront Development/Water Quality
ID No: _____
Application/Issue Date: Pending

9. Project Location: Fort Mott State Park
Site address of Location: Fort Mott Road
Pennsville Township
County/City: Salem County
Directions from nearest intersection of two state roads: Delaware River and Fort Mott Road off NJ Route 49.
Name of the waterbody at the project location: Delaware River
Is it a tributary of any other water body? ____ Yes __X__ No
If yes, which waterbody? _____

The waterbody at the project location is: (check one on line A & one on line B)

| | | | |
|---|---|---|---|
| A. | __X__ Natural | ____ Man-made | ____ Uncertain |
| B. | __X__ Tidal | ____ Non-tidal | ____ Uncertain |

10. Current land use: ____Agriculture ____ Marsh/Swamp __X__ Park Land
____Meadow ____Wooded ____Developed

Present zoning is: ____Agriculture ____Commercial
____Residential ____Other __X__ New Jersey State Park

11. For marina projects or projects that include activities or construction in wetlands, list the name and complete address of the owners, as listed with the County Board of Assessment, of neighboring lands within 1,000 feet of the project (including those across the waterway if within the 1,000 foot radius) and any claimants of such ownership rights that are known to the applicant, with their last known addresses. For all other projects, list the name and complete address of the owners of the contiguous neighboring lands on all sides of the property. (Attach sheets as needed).

See adjacent property owners list - Supplement A.

12. Will any public benefit be derived from the project? __X__ Yes ____ No
____ Uncertain If yes, explain below:

Refer to Sections 1.0, 2.0 and 3.0.

13. Has any work commenced or has any portion of the project for which you are seeking a permit been completed? ____ Yes __X__ No If yes, give details below. State when work was completed and who performed the work. Please indicate on attached drawings what is proposed.

14. Proposed Start Date: March 1996

15. Contractor's Name and Complete Address: N/A

Telephone Number:

**PLEASE COMPLETE AND ATTACH ALL APPROPRIATE DRAWINGS AND APPENDICES TO THIS SECTION. INCLUDE A COPY OF THE PROPERTY DEED AND SURVEY TO SHOW ALL PROPERTY BOUNDARIES AND DIMENSIONS.**

## APPLICANT'S REVIEW BEFORE MAILING

DID YOU COMPLETE THE FOLLOWING?

| | | |
|---|---|---|
| X | Yes | BASIC APPLICATION |
| X | Yes | APPENDICES |
| X | Yes | VICINITY MAP |
| X | Yes | PLAN VIEW |
| X | Yes | ELEVATION OR SECTION VIEW |
| X | Yes | SIGNATURE PAGE (Page 8) with Agent Authorization if appropriate |
| N/A | Yes | COPY OF PROPERTY DEED & SURVEY |
| X | Yes | THREE (3) COMPLETE COPIES |
| X | Yes | LIST OF ADJACENT PROPERTY OWNERS (as per item #11 of this basic application form) |
| N/A | Yes | APPROPRIATE APPLICATION FEE (Checks should be made payable to the State of Delaware) |

Mail 3 complete copies of the application, with drawing(s) to:

Department of Natural Resources and Environmental Control
Division of Water Resources
Wetlands and Subaqueous Lands Section
89 Kings Highway, P. O. Box 1401 Dover, DE 19903
(302) 739-4691



NJ05436

## APPLICANT SIGNATURE &/OR AGENT AUTHORIZATION

* All applicants must sign this page. Complete the Agent Authorization Section only if applicable.

I certify that the information on this form and the attached plans is true and accurate to the best of my knowledge.

I understand that DNREC may request information in addition to that set forth herein and may be deemed appropriate in considering this application.

I grant permission to the authorized DNREC representative(s) to enter upon the premises for inspection purposes during working hours.

I will abide by the conditions of this approval if issued.

x _____ 9/19/95
Applicant Signature — Date

Applicant Name (Printed/Typed) Carl Nordstrom, Deputy Director

### Agent Authorization Section

* If you elect to complete this section, all future correspondence may be signed by the duly authorized agent. In addition, the agent will become the primary point of contact for all correspondence from the Department.

I, Carl Nordstrom (Name of applicant), hereby designate and authorize S. T. Hudson Engineers, Inc. (Name of Agent) to act on my behalf in the processing of this application and to furnish any information that is requested.

x _____ 9/19/95
Applicant Signature — Date
Carl Nordstrom

_____ _____
Agent Signature — Date
Lawrence R. Horan
Environmental Specialist

Company Name N/A

# APPLICANT BACKGROUND INFORMATION

***Pursuant to 7 Del. C., Chapter 79, the following information must be submitted along with any commercial subaqueous lands permit application. "Commercial" is defined as any activity undertaken for profit for which a fee will be charged, directly or indirectly, or which results in the generation of revenue. Please use the N/A abbreviation for any items that are not applicable to your application.***

**PROVIDING ALL THE INFORMATION REQUESTED IN THIS FORM SATISFIES THE REQUIREMENTS OF 7 DEL. C., CH. 79 UNLESS THE DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL OR THE DEPARTMENT OF JUSTICE DETERMINES THAT ADDITIONAL SUBMISSIONS ARE NECESSARY. FAILURE TO PROVIDE THE INFORMATION REQUESTED OR PROVIDING ERRONEOUS INFORMATION IS GROUNDS FOR DENYING OR REVOKING AN ENVIRONMENTAL PERMIT, AND FOR CIVIL OR CRIMINAL PENALTIES.**

1. * Attach a complete list of all current members of the Board of Directors, all current corporate officers, all persons owning more than 20 percent of the applicant's stock or other resources, all subsidiary companies, all parent companies, all companies with which the applicant's company shares two or more members of the Board of Directors.

2. * Attach a description of any felony or other criminal conviction of any person or company identified in response to Question 1 where the conviction resulted in a fine greater than $1,000 or a sentence longer than seven days, regardless of whether any portion of such fine or sentence was suspended.

3. Have any of the following been issued to any person or entity specified in response to Question Number 1 or any violation of any environmental statute, regulation, permit, license, approval, or order, regardless of the state in which it occurred, during the five years prior to the date of the application:

| | | |
|---|---|---|
| **Notice of Violation** | **(yes or no)** | N/A |
| **Administrative Penalties** | **(yes or no)** | N/A |
| **Criminal Citation** | **(yes or no)** | N/A |
| **Arrests** | **(yes or no)** | N/A |
| **Convictions** | **(yes or no)** | N/A |
| **Criminal Penalties** | **(yes or no)** | N/A |

NJ05438

4. If you answered "Yes" to any of the items in Question 3, attach a description of the incidents or events leading to the issuance of each enforcement action, the disposition of each action, and any actions that have been taken to correct the violations that led to such enforcement action.

5. * Attach copies of any and all settlements of the environmental claims associated with actions identified in response to Question 3 above, whether or not such settlements were based on agreements where the applicant did not admit liability for the action.

***I do hereby swear that I have read the above questions and have provided all of the information requested and that all of the information provided is true and accurate.***

_____ Date

_____ Signature - Applicant or Corporate Agent

Name: _____

Company Name: _____

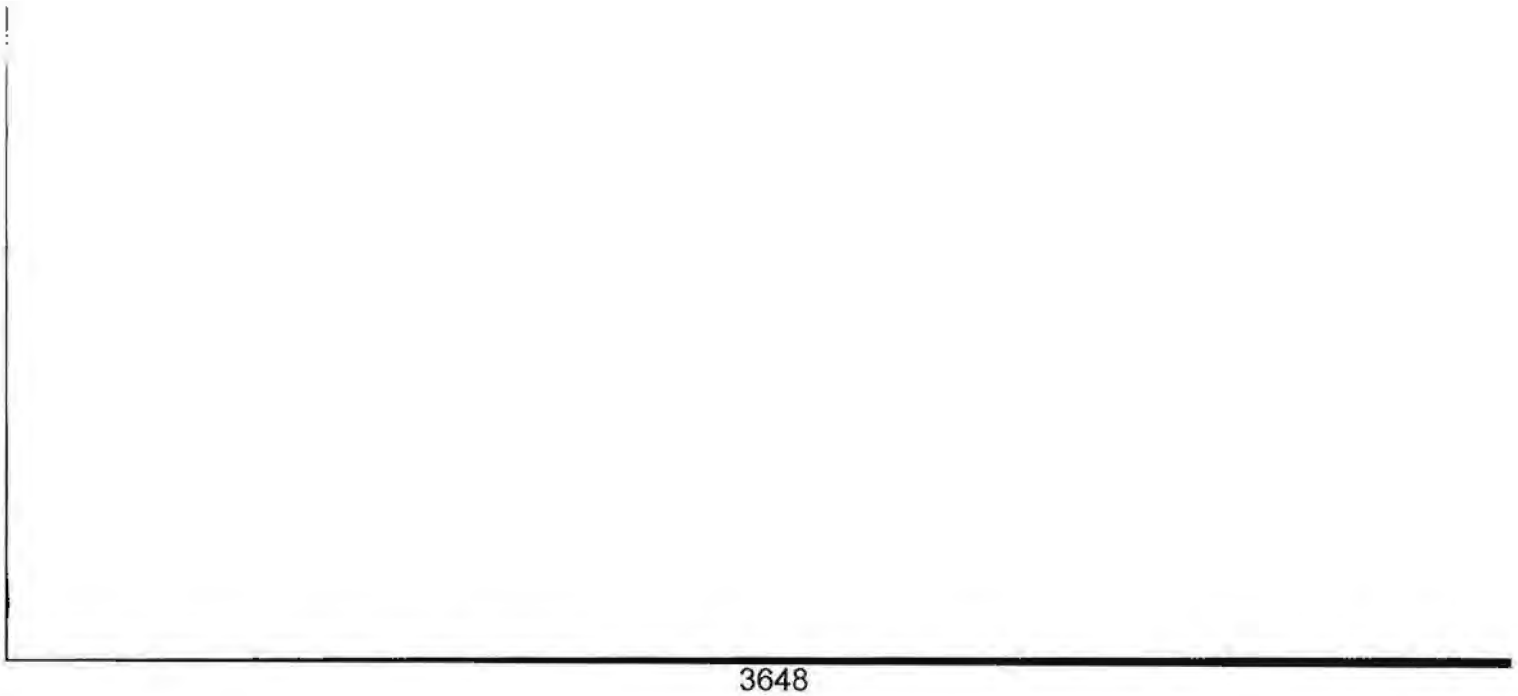
Address: _____

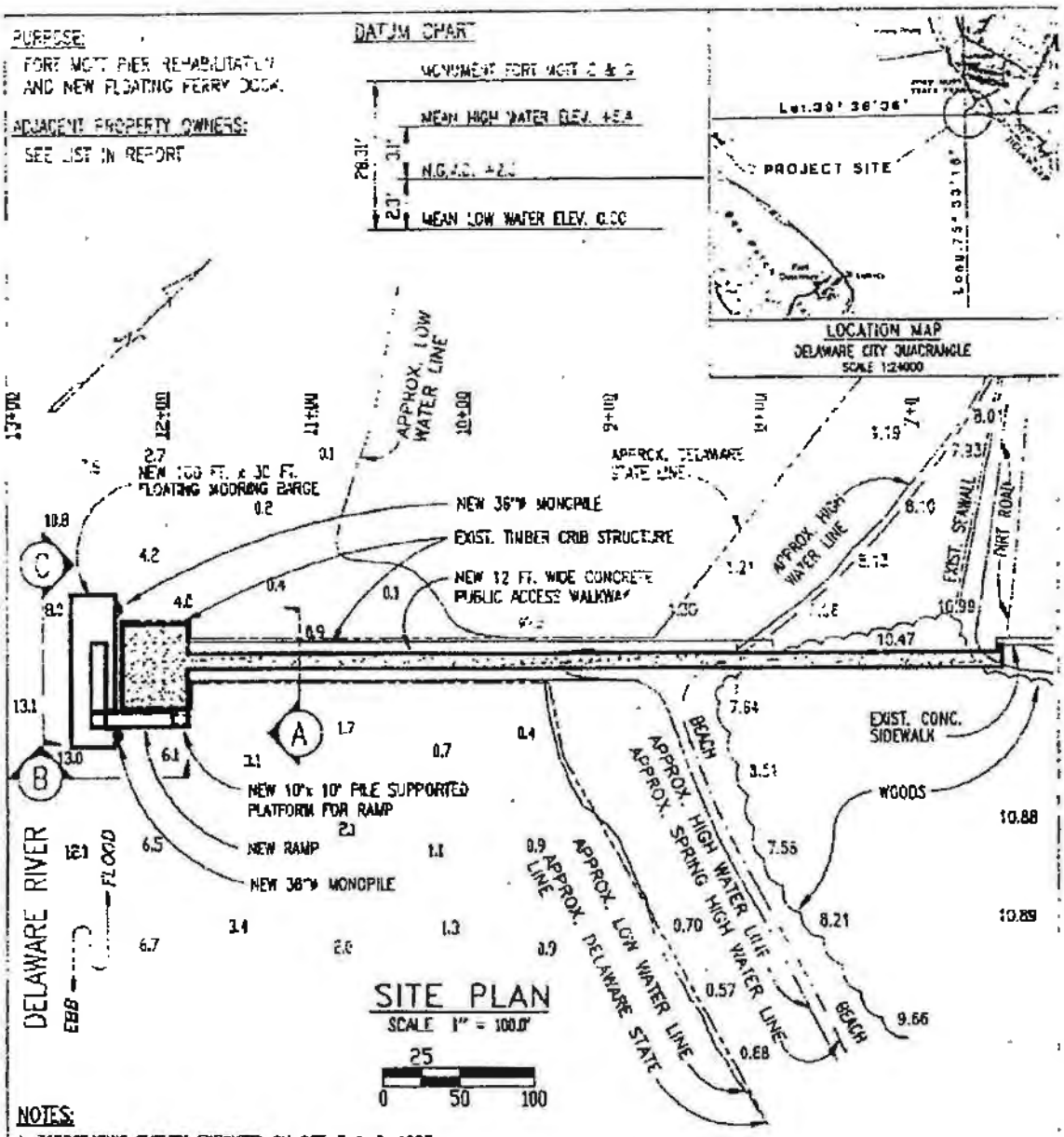
_____

Phone: _____

* NOTE: The applicant may claim that some or all of the information presented in response to Questions 1, 2, and 5 is confidential if such information is not already available to the public. An applicant wishing to make such a claim should write, preferably in red ink "claimed confidential information" at each point in the response where such confidentiality is claimed, and provide an explanation of why the release of such information would constitute an invasion of personal privacy or would seriously affect the applicant's business or competitive situation.

NJ05439






NOTES:

1. TOPOGRAPHIC SURVEY EXECUTED ON OCT. 7 & 8, 1993.
2. HYDROGRAPHIC SURVEY EXECUTED ON OCT. 13, 1993.
3. SOUNDINGS ARE IN FEET AND REFER TO MEAN LOW WATER.
4. ELEVATIONS ARE IN FEET AND REFER TO MEAN LOW WATER.
5. REFERENCE ELEVATION ON MONUMENT +28.31 WAS OBTAINED FROM U.S. ARMY CORPS OF ENGINEERS

NOTE: FINAL DESIGN REQUIRED FOR CONSTRUCTION

S.T. HUDSON ENGINEERS, INC.
PROFESSIONAL ENGINEERS & CONSULTANTS
800 Hudson Square
P.O. Box 9103
Camden, N.J. 08101
856-342-8200
Fax No. 609-342-8223

FILE No. G-2096
CONTRACT No. H-4564
DATE 9/13/95
SHEET No. 1 of 4

LLOYD STURGEON, P.E.
LICENSE No.35604

PROPOSED: PIER REHABILITATION AND NEW FLOATING FERRY DOCK
AT: FORT MOTT STATE PARK, NEW JERSEY
COUNTY OF: SALEM, NEW JERSEY
APPLICATION BY: NEW JERSEY D.E.P. DIVISION OF PARKS AND FORESTRY

DE02020

# DELAWARE DEPARTMENT OF NATURAL RESOURCES

# AND ENVIRONMENTAL CONTROL

# SUBAQUEOUS LANDS PERMIT APPLICATION

# AND

# LETTER OF AUTHORIZATION REQUEST

# FOR

# FORT MOTT PIER REHABILITATION PROJECT

# FORT MOTT STATE PARK

**FOR**

**STATE OF NEW JERSEY**
**DEPARTMENT OF ENVIRONMENTAL PROTECTION**
**DIVISION OF PARKS AND FORESTRY**
**OFFICE OF RESOURCE DEVELOPMENT**
**TRENTON, NEW JERSEY**

**PREPARED BY:**

**S. T. HUDSON ENGINEERS, INC.**
**800 HUDSON SQUARE**
**P.O. BOX 9106**
**CAMDEN, NEW JERSEY 08101**

EXHIBIT
Whitney-20
S. Oakley 10/10/06

S. T. HUDSON ENGINEERS INC.
PROFESSIONAL ENGINEERS AND CONSULTANTS

PHILADELPHIA, PA
230 SOUTH BROAD STREET
PHILADELPHIA, PA 19102
(215) 893-1410

BALTIMORE, MD
2700 BROENING HIGHWAY
208 TERMINAL OFFICE BUILDING
BALTIMORE, MD 21222
(410) 282-7817

WILMINGTON, DE
1035 PHILADELPHIA PIKE
WILMINGTON, DE 19809
(302) 798-4808

117 N. MARKET STREET
WILMINGTON, DE 19801
(302) 429-1340

PERTH AMBOY, N.J.
300 STATE STREET
P.O. BOX 1698
PERTH AMBOY, N.J. 08861
(908) 826-9100

September 20, 1995

Delaware Department of Natural Resources
and Environmental Control
Division of Water Resources
Surfacewater Management Section
89 Kings Highway
P.O. Box 1401
Dover, Delaware 19903

Attention: Mr. William Moyer

Re: State of New Jersey
Department of Environmental Protection
Division of Parks and Forestry
Rehabilitation of the Historic Fort Mott Pier
Block 5301, Lot 3, Fort Mott State Park
Pennsville Township, Salem County, NJ and
New Castle County, Delaware

Dear Mr. Moyer:

S. T. Hudson Engineers, Inc. has been engaged by the New Jersey Department of Environmental Protection, Division of Parks and Forestry to represent them in obtaining the necessary permits for the rehabilitation of the historic Fort Mott Pier, located at Fort Mott in Pennsville Township, Salem County, New Jersey.

This project is intended specifically to replicate the appearance of the pier in 1898, during the period of the greatest historical significance. The project was designed so that the pier could be made suitable as a terminus for ferry service between Fort Mott and Fort Delaware on Pea Patch Island, and Fort DuPont on the Delaware shore with provisions for handicapped access and the rehabilitated pier would be eligible for inclusion in the Fort Mott and Finn's Point National Cemetery Historic District, in accordance with Department of the Interior criteria.

We are applying for a "Letter of Authorization" for the historic restoration of the Fort Mott Pier. This restoration is intended specifically to replicate the appearance of the pier in 1898, during the period of its greatest Historic Significance. This portion of the project will not alter the present footprint of the pier. In addition, we are seeking a Subaqueous Lands Permit for the mooring of the floating barge outshore of the Fort Mott Pier which will be used as an intermediate floating pier to safely transfer passengers to and from the planned ferryboat, the "Dela-Fort" which presently operates between Fort DuPont south of Delaware City and Fort Delaware on Pea Patch Island.

In this regard, we herewith submit three (3) copies of a complete permit application package for your review.

Concurrently with this application, we have submitted permit applications to both the U. S. Army Corps of Engineers and New Jersey Department of Environmental Protection for this project.

Please do not hesitate to contact me should you have any questions concerning this application or associated documents.

Very truly yours,

Lawrence R. Horan

Lawrence R. Horan
Environmental Specialist

LRH/em

Enclosures

cc: Mr. Dale B. Smith
Mr. Indrek Ojamaa

H-4893

## TABLE OF CONTENTS


| SECTION | | PAGE |
|---|---|---|
| 1.0 | INTRODUCTION | |
| 2.0 | SITE BACKGROUND | |
| | 2.1 SITE LOCATION | |
| | 2.2 GENERAL HISTORY OF THE FORT MOTT PIER | |
| | 2.3 STATE BOUNDARY LINE | |
| 3.0 | DESCRIPTION OF THE PROPOSED PROJECT WITH PHOTOGRAPHS | |
| | 3.1 PRESENT SITE CONDITIONS | |
| | 3.2 ALTERNATIVE DESIGNS | |
| | 3.3 PROJECT DESCRIPTION | |
| 4.0 | APPLICATION FOR A SUBAQUEOUS LANDS PERMIT | |
| | 4.1 BASIC APPLICATION FORM | |
| | 4.2 APPENDIX A - BOAT DOCKING FACILITIES | |
| | 4.3 AGENT AUTHORIZATION FORM | |
| 5.0 | PERMIT DRAWINGS AND SITE PHOTOGRAPHS | |
| 6.0 | PROPERTY DEED | |

## LIST OF EXHIBITS

| EXHIBIT NO. | |
|---|---|
| 2-1 | USGS SITE LOCATION MAP |
| 2-2 | U. S. ARMY CORPS OF ENGINEERS SOUNDINGS CHART OF THE DELAWARE RIVER, CIRCA 1943 |
| 3-1 | FORT MOTT FERRY PIER REHABILITATION OPTIONS: SUMMARY ANALYSIS |

# APPENDIX

| APPENDIX NO. | |
|---|---|
| 1 | PIER REHABILITATION ALTERNATIVES |
| 2 | "BACKGROUND HISTORICAL INVESTIGATION" OF THE FORT MOTT PIER CONDUCTED BY R. ALAN MOUNIER, INC. |
| 3 | "INSHORE ARCHEOLOGICAL INVESTIGATION" CONDUCTED BY R. ALAN MOUNIER, INC. |
| 4 | SUBMERGED CULTURAL RESOURCE SURVEY BY DOLAN RESEARCH, INC. |
| 5 | U. S. DEPARTMENT OF THE INTERIOR "APPLICATION" FOR INCLUSION OF THE FORT MOTT PIER IN THE FORT MOTT AND FINN'S POINT NATIONAL CEMETERY HISTORIC DISTRICT |

# SECTION 1.0

# INTRODUCTION

# SECTION 1.0

# INTRODUCTION

S. T. Hudson Engineers, Inc. has been engaged by the New Jersey Department of Environmental Protection Division of Parks and Forestry to act as its agent in applying for permits for the rehabilitation of an historic pier at Fort Mott State Park.

An extensive study was conducted to explore and develop options for the rehabilitation. Two objectives had to be met: first, the pier had to be made suitable as a terminus for ferry service between Fort Mott and Fort Delaware on Pea Patch Island, and Fort DuPont on the Delaware shore, with provision for handicapped access; second, the rehabilitated pier had to be eligible for inclusion in the Fort Mott and Finn's Point National Cemetery Historic District, in accordance with Department of the Interior criteria.

Extensive investigative studies were performed which included:

- A "Background Historical Investigation" of the Fort Mott Pier conducted by R. Alan Mounier, Inc. Their report is included in Appendix 2.

- An "Inshore Archeological Investigation" was conducted by R. Alan Mounier, Inc. which is contained in Appendix 3.

- A Submerged Cultural Resource Survey by Dolan Research, Inc. which is contained in Appendix 4.

- Application for Inclusion in Historic District which is contained in Appendix 5.

Upon analysis of all the information and taking into account "design considerations and available funds", several alternative configurations were examined with the field narrowed down to five principal options. These five options were presented to the NJDBC, NJDEP Division of Parks and Forestry and to the Historic Preservation Offices of both New Jersey and Delaware. Their decision led to a consensus in favor of replicating the appearance of the pier as it was in 1898. This decision was partly based on the fact that this option as being least likely to affect a proposed nomination of the pier as part of the Fort Mott and Finn's Point National Cemetery Historic District.

The permit application includes copies of all studies and a discussion of all five alternative pier configurations which were examined.

# SECTION 2.0

# SITE BACKGROUND

# SECTION 2.0

# SITE BACKGROUND

## 2.1 Site Location

The pier extends into the Delaware River from the New Jersey shoreline, adjacent to Fort Mott. Fort Mott is located at Finn's Point in Lower Pennsville Township, Salem County, New Jersey. Refer to Exhibits 1 and 2 contained in this Section. It is one of three forts that were planned for the defense of the lower Delaware River. The other two forts are Fort Delaware, located on Pea Patch Island in the middle of the river off Fort Mott, and Fort DuPont located on the Delaware side of the River. The three forts are situated within one and one half miles of each other.

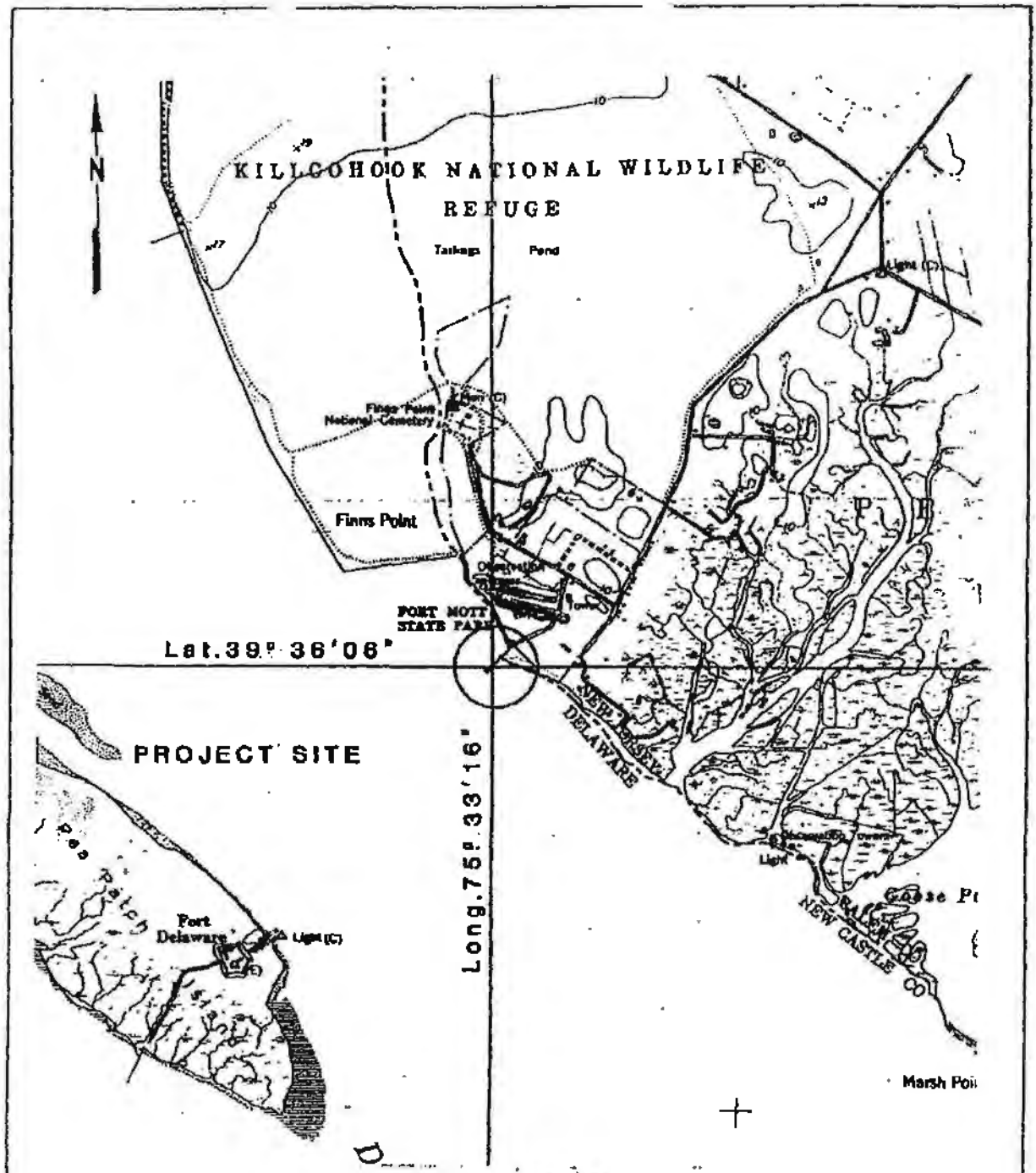
Today, Fort Mott State Park and Finn's Point are tucked between two extensive areas of artificial land (so-called "made-land") comprised of fill deposits. The one to the north is the Killcohook National Wildlife Refuge. The one to the south is known as Artificial Island, where the Salem Nuclear Plant is located. Both of these areas of made-land belong to the State of Delaware, as Delaware's State boundary is located at the low water mark along the west shore line of New Jersey at this point.

## 2.2 General History of the Fort Mott Pier

Plans for a Fort on the New Jersey side of the river, at the site of present Fort Mott, had been suggested by Pierre L'Enfant as early as 1779. The Federal Government first acquired land at Finn's Point in 1863. However, construction of the fort was not begun until after the Civil War in 1872.

The Fort Mott Pier was built in 1873 not as a pier but as a crib structure. Cribs were built as large closed-end boxes perhaps 25 feet wide and 50 or 60 feet long. Typically they were built on land near the point of use, then dragged into the water. They were then floated into position over a previously-prepared bottom, then by careful filling with rocks or other heavy material, sunk into position. Guide piles were sometimes used to aid this operation.

Subsequent crib boxes were added end-to-end and fastened together until the desired overall length was reached. The final top of pier elevation was attained by laying additional courses of horizontal face timbers, connected by tie logs transversely and longitudinally. The completed structure was then filled with sandy soil.




# LOCATION PLAN

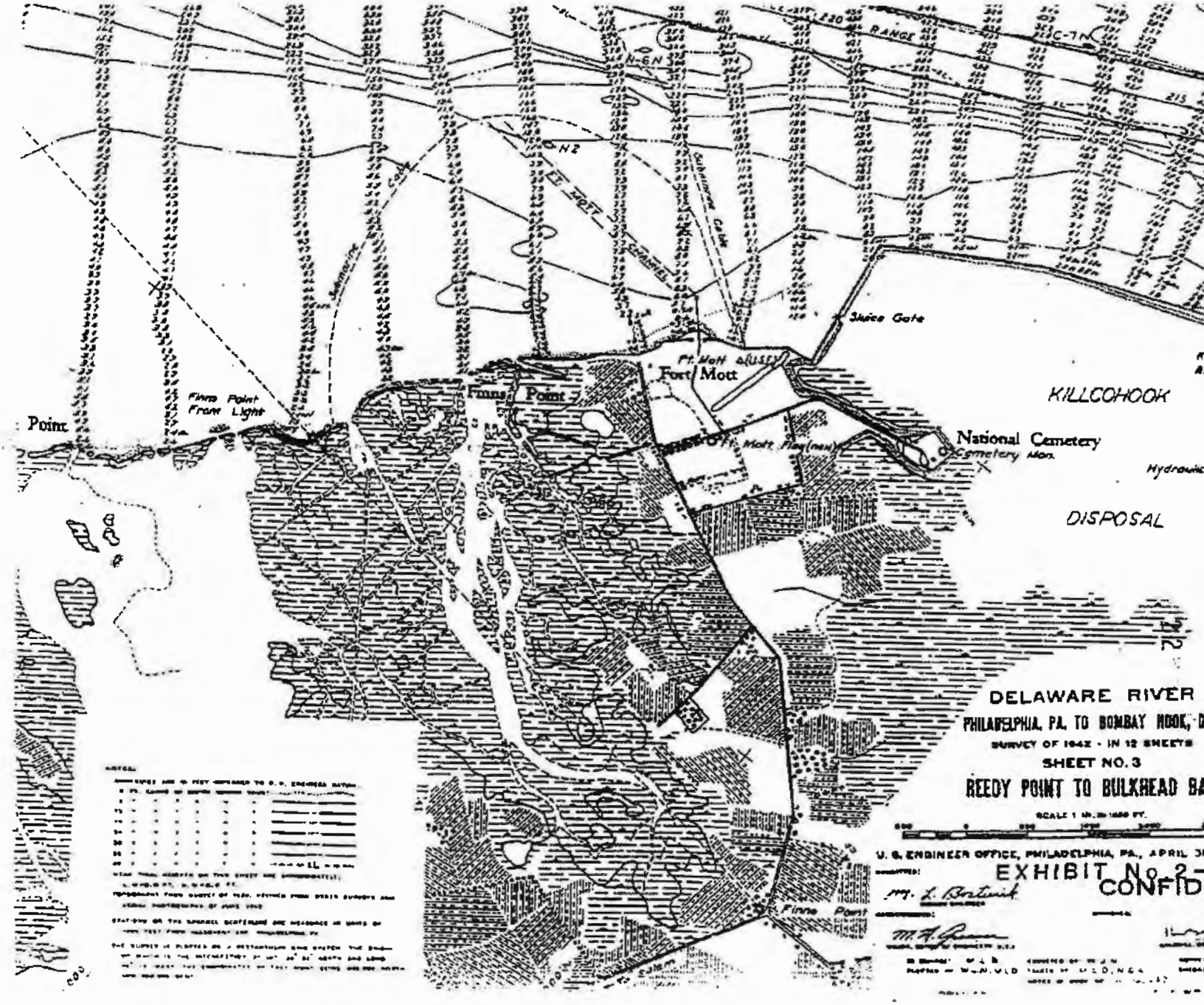
TAKEN FROM U.S.C.&G. DELAWARE CITY QUADRANGLE

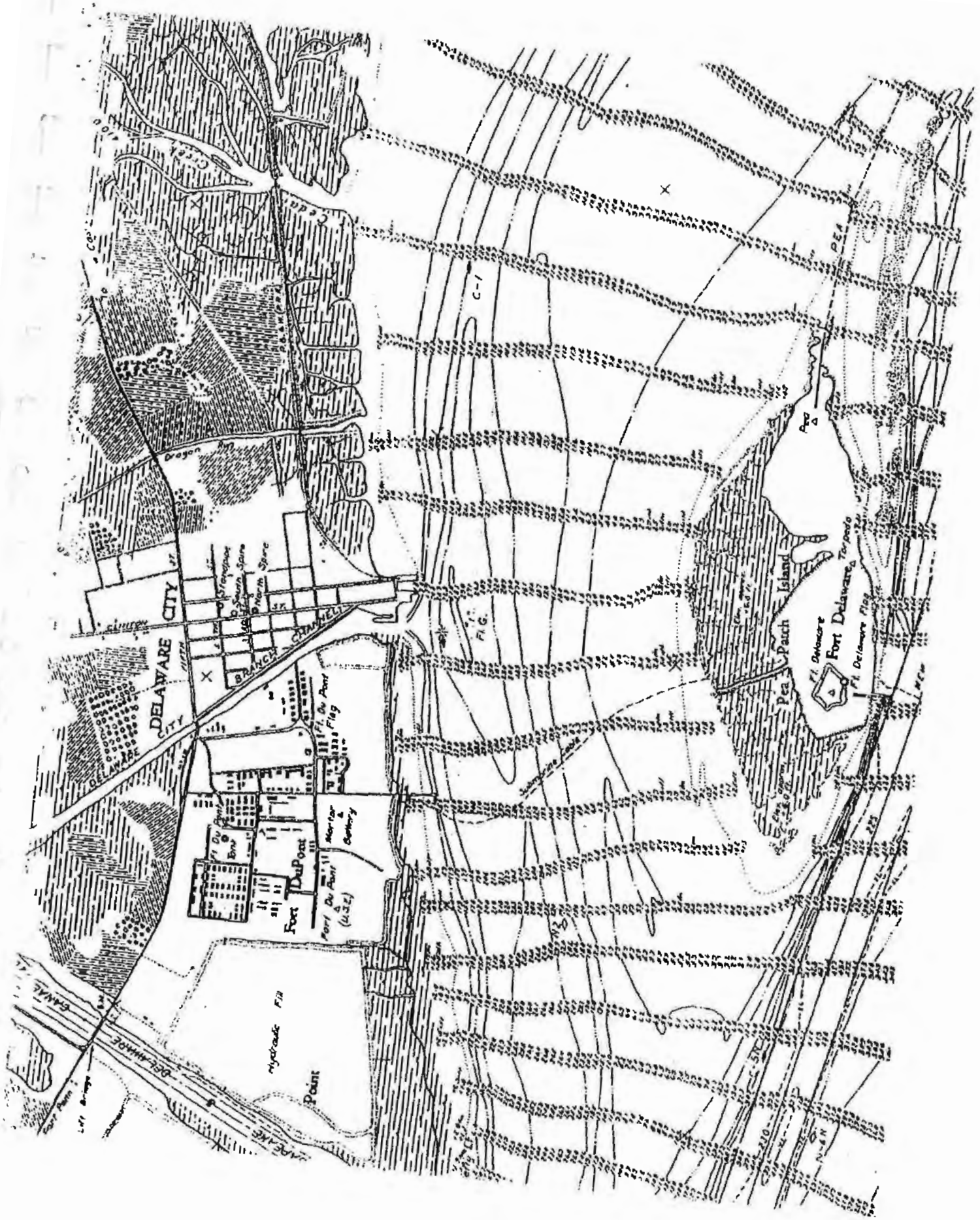
SCALE 1:24000

EXHIBIT No. 2-1

S.T. HUDSON ENGINEERS, INC.

DE01924


220 RANGE
N-6-N
N2
Ft. Mott
Fort Mott
Finns Point
Finns Point Front Light
Point
Sluice Gate
KILLCOHOOK
National Cemetery
Cemetery Mon.
DISPOSAL
DELAWARE RIVER
PHILADELPHIA, PA. TO BOMBAY HOOK,
SURVEY OF 1942 - IN 12 SHEETS
SHEET NO. 3
REEDY POINT TO BULKHEAD
U. S. ENGINEER OFFICE, PHILADELPHIA, PA., APRIL
EXHIBIT No. 2
CONFID


DELAWARE CITY
BRANCH CHANNEL
Fort DuPont
Fort Du Pont Flag
Mortar & Battery
Fort Du Pont (1832)
Hydraulic Fill
Point
Pea Patch Island
Fort Delaware
Ft. Delaware Flag
Torpedo
Pier
C-1
Dragon Run
Drawbridge
Lighthouse
Storm Store
Chimney



DE01926

Originally, the pier extended three hundred and fifty feet into the river. A length of 30 feet was added later. The water terminus is a "T" shaped head, measuring 35x48 feet. The structure rose to a height of 10± above the mean low water line.

The pier head had a derrick which unloaded materials arriving by water. Railroad cars ran along the top of the pier on narrow gauge (36") tracks. There were two such sets of tracks on the pier. One set of rails led up an inclined trestle to bins for temporary storage of small stones and sand. The other led past the end of the pier for the fort itself. This set of rails was used for all other materials arriving at the fort. The cars were moved over both tracks by means of cables which were wound on drums in an engine house located near the east end of the battery. Refer to Photograph No. 1.

After World War I, the role of Fort Mott changed rapidly and soon, along with Fort Delaware and Fort DuPont, it was supplanted as the principal defensive installation on the Delaware River with the construction of Fort Saulsbury near Milford, Delaware. The guns were all eventually dismounted and shipped to various locations. Battery Gregg's two guns and carriages were shipped to Benica Arsenal in California in 1913; the two 5-inch guns at Battery Krayenbuhl were dismounted and shipped to the Morgan Engineering Co., Alliance, Ohio, in 1917. Battery Harker's three 10-inch guns were dismounted in 1917 but were not shipped until 1941. They were sent to Canada after the War Department's Adjutant General's Office authorized the "Supply of Armament to Canada".

Troop strength at the fort was reduced during World War I, and after Fort Saulsbury opened, staff at Fort Mott was further cut back to a care-taking detachment. In 1943, the final year that the fort was maintained by the government, a staff of eleven men was stationed at the fort and only Battery Arnold was still maintained. In October of 1943, the fort was abandoned by the Army. The state of New Jersey took ownership of the military reservation after World War II. All remaining armament was scrapped before the state's appropriation of the property in 1947. Preliminary work on restoration and development of the property was initiated by the state in 1949 and the area was dedicated as a state park in June 1951.

A detailed history of both Fort Mott and the pier can be found in Appendices 2, 3, 4 and 5.

## 2.3 State Boundary Line

The project site lies within the jurisdictional limits of two states. The political boundary between Delaware and New Jersey within a circle of twelve miles about the town of New Castle is the low water mark of the Delaware River on the east or New Jersey side.

The State line, however, was in dispute for many years until the Supreme Court of the United States decision of February 5, 1934 which upheld Delaware's claim to be the owner of the entire bed of the river within the limits of this circle up to the low water mark on the east or New Jersey side. Thus the low water line as depicted on Charts Nos. 294 and 295 (published in September, 1933) and No. 1218 (published in August, 1932) of the U. S. Coast and Geodetic Survey was deemed the boundary between the two States.

Since the pier existed as essentially filled land at the time of the 1934 decision, it is our interpretation that the low water line and the State Boundary line follows the perimeter of the pier.

# SECTION 3.0

# DESCRIPTION OF THE PROPOSED PROJECT WITH PHOTOGRAPHS

# SECTION 3.0

# PROJECT DESCRIPTION

## 3.1 Present Site Condition

The pier extends 590 feet into the river from fast ground, or 430 feet from the line of mean high water. Elements of the original pier, including portions of its cribbing are visible at low water. The structure is overgrown with a variety of wetland reeds, grasses, and wild shrubs. Refer to Photographs 2, 3, 4 and 5 at the end of this section.

Presently, the subaerial portion of the pier is in disrepair. Remnant timbers rise from the water line to a height of 5± feet above mean low water. The structure is awash at high water. The subfluvial timbers are sound.

The project will not affect any subtidal shallows, however, the present pier is overgrown with wetland species of reeds (Phragmites) and several marsh grasses. The dominant species is Phragmites. Remnant timbers rise from the water line to a height of 5± feet above mean low water. The structure is awash at high water (Mean High Water is +5.4 feet above mean low water). The structure originally rose to a height of 10± feet above the mean low water line. In order to restore it to its original condition, approximately 0.25 acres of intertidal shallows and wetlands will be filled. As discussed in Section 3.0, several alternatives were proposed that would have avoided filling, however, due to historic issues which took precedence, both the New Jersey and Delaware State Historic Preservation Offices (SHPO) rejected the various alternatives in favor of historic restoration of the pier. Since the pier is being proposed for inclusion in the Fort Mott and Finn's Point National Cemetery Historic District, certain alternatives would have denied eligibility. The project is water dependent and because of these historic issues has no feasible alternative on a non-wetland site.

The pier is surrounded by plank sheeting, added at an unknown date, to repair or arrest decay. This work was supposedly done as a WPA Project, but there remains no confirming documentation. This sheeting, decayed at the water line rises to the same height as the other remnant timbers. The general elevation of the terrain immediately inshore of the pier is about 10 feet above mean low water.

The pier is considered to be a significant cultural resource solely by reason of its association with the construction and operation of Fort Mott during the period 1896-1943.

## 3.2 Alternative Designs

Several alternative configurations for the restoration of the pier were examined, as described herein, and the field was narrowed down to five principal options. A more detailed description of the five Pier Rehabilitation Alternatives can be found in Appendix 1.

Two of the options involved leaving the existing pier in more or less as-is condition, maximizing opportunities for studying its structure, and allowing access for future investigations. One of these options was to build a walkway parallel to the existing pier; the other was to support a walkway above it.

The two of the other options were to reconstruct the pier, or to encapsulate it in sheet piling, with timber sheathing to simulate its historic appearance.

The fifth and chosen option was developed after consultation with the NJDEP Division of Parks and Forestry, the New Jersey and Delaware State Historic and Preservation offices and Regulatory review of the first four: it was similar to the fourth option, but it involved using timber, vs. steel, sheet piling to encapsulate the pier, and is intended specifically to replicate the appearance of the pier in 1898, during the period of its greatest historical significance.

The results of comparing these five options are summarized in the Exhibit 3-1.

## 3.3 Project Description

### 3.3.1 Pier Rehabilitation

The existing pier will be encapsulated with CCA treated timber sheet piling for stability. The 2"x10" horizontal facing timbers and 10"x10" timber strongbacks at 7.5' intervals will be used to create the external appearance of the pier as shown in the 1897 photograph.

The crib structure will then be backfilled with sand and gravel fill to restore its appearance. The pier surface design provides for a 12' wide public access concrete walkway. On each side of the walkway 4" rounded stone will be installed to make it clear that this is not an access area. The

## FORT MOTT FERRY PIER REHABILITATION OPTIONS: SUMMARY ANALYSIS

| OPTION | A | B | C | D | E |
|---|---|---|---|---|---|
| Configuration | Independent walkway on downriver side of existing pier. | Walkway supported above existing pier, with observation "wings" at outshore end. | Reconstruction of pier, building up crib structure from existing sound base. | Encapsulation of existing pier, using steel sheet piling - sheathed with timber for appearance - to enclose the existing structure. | Encapsulation of existing pier with timber sheet piling, with external timber sheathing and "strongbacks" to replicate appearance in 1888. |
| Design Considerations | Relatively straightforward; ice resistance and compatible appearance will be major factors. | Somewhat more complex design than A: requires driving piles through bottom of crib structure. Must withstand ice loads at high water, and appearance should not detract from historic pier. | Significant removal of existing structure required to reach sound material. Also, remaining historic structures outside of "new" crib will give anachronistic appearance if left in place. | Will require removal of rip-rap banked against existing timber sheeting below MLW; also will require removal of some external timber structure (fender piles, etc.). | Will require removal of rip-rap banked against existing timber sheeting below MLW; also will require removal of some external timber structure (fender piles, etc.). |
| Est. cost (not including common items @ $360,000 additional) | $443,000<br>Thus project total $803,000 | $600,000<br>Thus project total $960,000 | $879,000<br>Thus project total $1,239,000 | $895,000<br>Thus project total $1,255,000 | $780,000<br>Thus project total $1,140,000 |
| Environmental Permitting Considerations | Relatively straight-forward; no major problem expected. | Relatively straight-forward; no major problem expected. | Could lead to problems, as pier is now technically wetlands. Also, proposed action could be interpreted as filling river (approx. 0.25 acre). | Could lead to problems, as pier is now technically wetlands. Also, proposed action could be interpreted as filling river (approx. 0.25 acre). | Could lead to problems, as pier is now technically wetlands. Also, proposed action could be interpreted as filling river (approx. 0.25 acre). |
| Historical Preservation Considerations | With interpretive graphics on parallel walkway railing, enables existing pier to be viewed as historic ruin, with unique engineering features fully visible (and accessible). | With interpretive graphics on parallel walkway railing, enables existing pier to be viewed as historic ruin, with unique engineering features fully visible (and accessible). Minimal damage to historic structure. | Visible structure would only superficially resemble historic structure, parts of which must be destroyed during construction. The remainder will be rendered inaccessible to future investigation, so mitigation (archival cataloging) may be required. | Visible structure would only superficially resemble historic structure, parts of which must be destroyed during construction. The remainder will be rendered inaccessible to future investigation, so mitigation (archival cataloging) may be required. | Visible structure would only superficially resemble historic structure, parts of which must be destroyed during construction. The remainder will be rendered inaccessible to future investigation, so mitigation (archival cataloging) may be required. |

EXHIBIT NO. 3 - 1

3669

DE01932

12' width will also allow for light truck maintenance access to the outshore end of the pier. The 12' wide public access concrete walkway will be extended inshore to connect with the existing concrete sidewalk.

3.3.2 Ferry Service

This section discusses those elements of the proposed pier structure which will be required for transferring passengers - including the handicapped - to and from the ferry boat which will ply between Ft. Mott, Ft. Delaware and Ft. DuPont.

The planned ferryboat, the "Dela Fort", which now operates between Ft. DuPont and Ft. Delaware, is about 55 ft. long, 16-1/2 ft. in beam, with a draft of about 3-1/2 ft.

In order to safely transfer passengers to and from a vessel in tidal waters, it is accepted practice to use an intermediate floating pier (barge), ballasted so that its freeboard equals that of the vessel, and accessed from a fixed shoreside structure by means of a ramp.

The ramp will be hinged at the inshore end to allow the floating pier (barge) to rise and fall with the tide. The outshore end will be fitted with rollers or slides because the horizontal projection varies with ramp angle.

We have selected a deck barge size of 100 ft. by 30 ft. as being commonly available on the used market, and of sufficient size to provide a stable landing platform under the exposed conditions at Ft. Mott. The barge will be secured in position by large (we estimate 36 inches in diameter) mooring monopiles driven up to 70 ft. into the river bottom.

The barge will be fitted with robust collars lined with a low-friction material which will allow it to move up and down the piles with the tide.

Note that the design of the mooring system is dominated by the loads generated by floating ice, beside which the effects of wind and current are almost trivial. A commonly-applied design criterion for ice loading under the effects of wind and current is to allow for a force of 2,000 lb. per linear foot at the waterline.

Access to the barge from the pier will be provided by two ramps. A hinged, variable-angle ramp will extend from the fixed pier to a platform on the floating pier. The height of the platform will be set so that the hinged ramp is horizontal at the mid-point between high and low "design tides". The length of the hinged ramp will then be set by the criterion that its upward or downward slope be equal to or less than 1 on 12 at the extremes of the design tidal range. A fixed ramp with a 1 on 12 slope will extend from the top of the platform to the deck of the floating barge.

FORT MOTT, N.J. No 1. February 14, 1898

Unloading U.S. Disappearing Carriage for 12" B.L. Rifle

1. PIER, LOOKING NORTHWEST FROM DOWNRIVER SHORELINE, CIRCA 1898

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2. AERIAL VIEW OF FORT MOTT PARK AND PIER LOOKING ACROSS THE RIVER INTO DELAWARE. NOTE FORT DELAWARE IN BACKGROUND.

3. AERIAL VIEW OF PIER LOOKING NORTHEAST (INSHORE).

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4. AERIAL VIEW OF PIER LOOKING SOUTHEAST (DOWNSTREAM).

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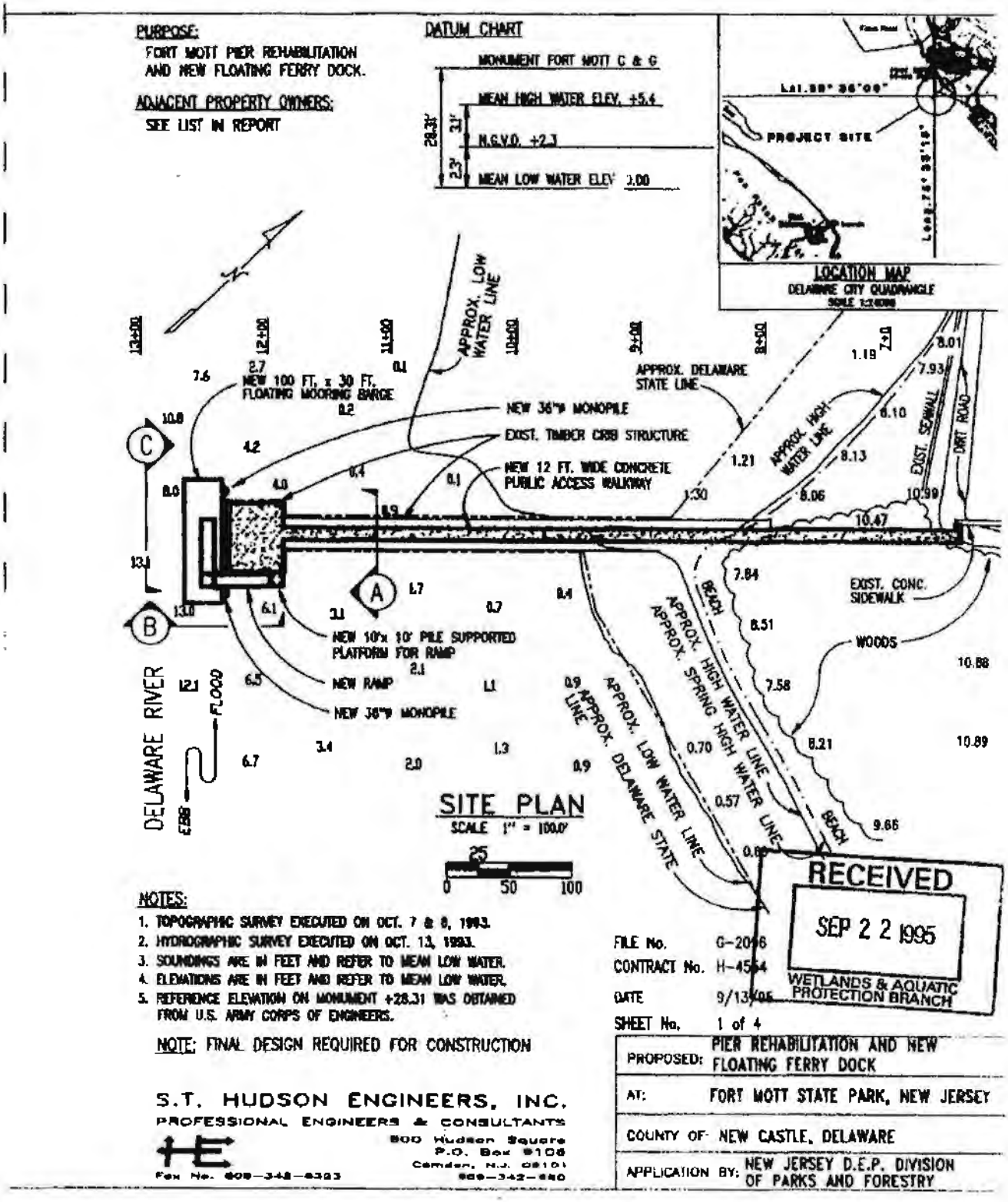
5. VIEW OF PIER LOOKING EAST, CIRCA 1965.


PURPOSE:
FORT MOTT PIER REHABILITATION AND NEW FLOATING FERRY DOCK.
ADJACENT PROPERTY OWNERS:
SEE LIST IN REPORT
DATUM CHART
MONUMENT FORT MOTT C & G
MEAN HIGH WATER ELEV. +5.4
M.S.V.D. +2.3
MEAN LOW WATER ELEV. 0.00
28.31'
3.1'
2.3'
PROJECT SITE
LOCATION MAP
DELAWARE CITY QUADRANGLE
APPROX. LOW WATER LINE
APPROX. DELAWARE STATE LINE
NEW 100 FT. x 30 FT. FLOATING MOORING BARGE
NEW 36"ø MONOPILE
EXIST. TIMBER CRIB STRUCTURE
NEW 12 FT. WIDE CONCRETE PUBLIC ACCESS WALKWAY
APPROX. HIGH WATER LINE
EXIST. SEAWALL
DIRT ROAD
EXIST. CONC. SIDEWALK
NEW 10'x 10' PILE SUPPORTED PLATFORM FOR RAMP
NEW RAMP
NEW 36"ø MONOPILE
DELAWARE RIVER
FLOOD
EBB
BEACH
WOODS
APPROX. SPRING HIGH WATER LINE
APPROX. DELAWARE STATE LINE
SITE PLAN
SCALE 1" = 100.0'
0
50
100
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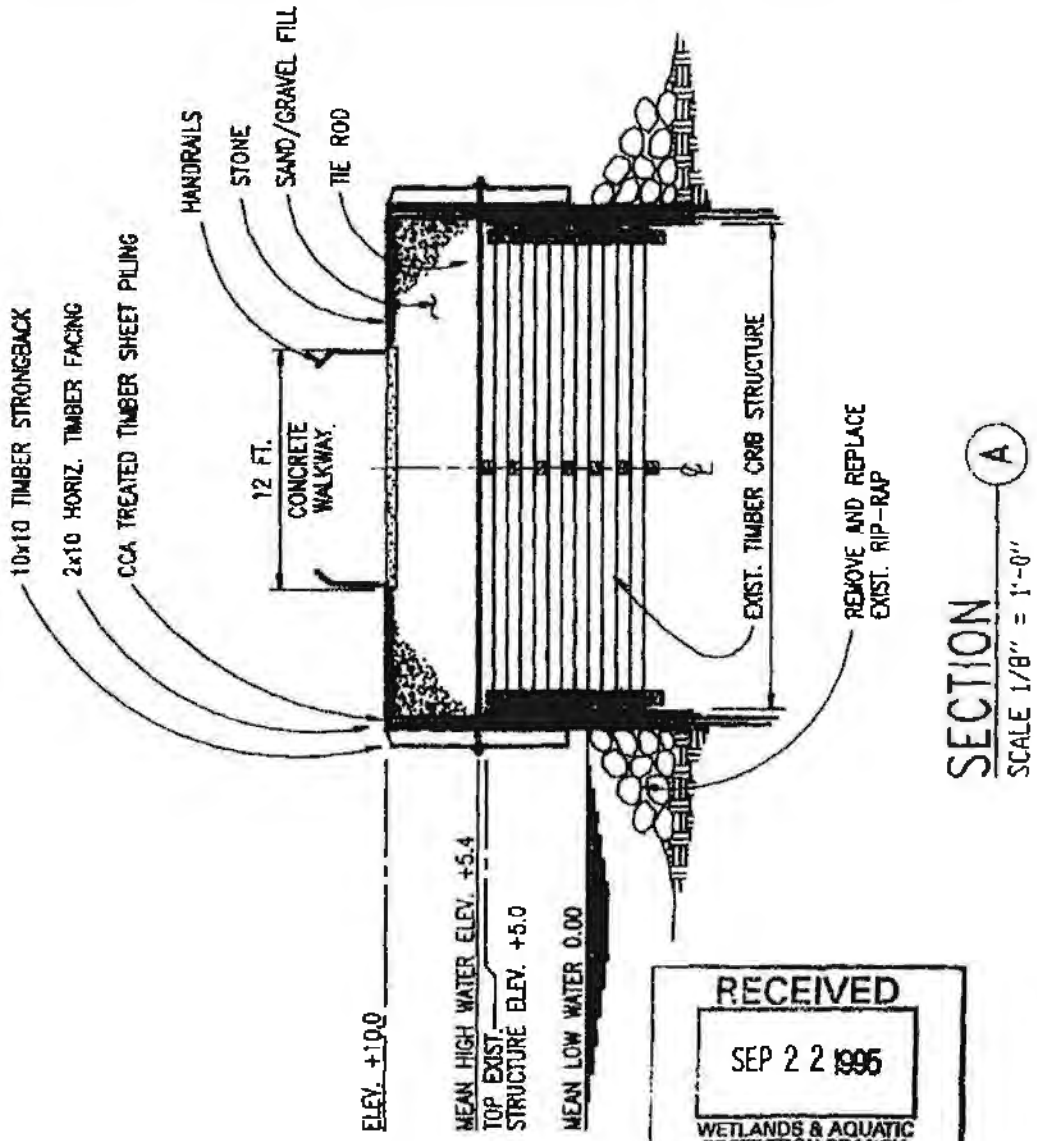
NOTES:
1. TOPOGRAPHIC SURVEY EXECUTED ON OCT. 7 & 8, 1993.
2. HYDROGRAPHIC SURVEY EXECUTED ON OCT. 13, 1993.
3. SOUNDINGS ARE IN FEET AND REFER TO MEAN LOW WATER.
4. ELEVATIONS ARE IN FEET AND REFER TO MEAN LOW WATER.
5. REFERENCE ELEVATION ON MONUMENT +28.31 WAS OBTAINED FROM U.S. ARMY CORPS OF ENGINEERS.
NOTE: FINAL DESIGN REQUIRED FOR CONSTRUCTION
FILE No. G-2096
CONTRACT No. H-4584
DATE 9/13/95
SHEET No. 1 of 4
PROPOSED: PIER REHABILITATION AND NEW FLOATING FERRY DOCK
AT: FORT MOTT STATE PARK, NEW JERSEY
COUNTY OF: NEW CASTLE, DELAWARE
APPLICATION BY: NEW JERSEY D.E.P. DIVISION OF PARKS AND FORESTRY
S.T. HUDSON ENGINEERS, INC.
PROFESSIONAL ENGINEERS & CONSULTANTS
800 Hudson Square
P.O. Box 9106
Camden, N.J. 08101
609-342-640
Fax No. 609-348-6323

DE01939




SECTION (A)

SCALE 1/8" = 1'-0"

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WETLANDS & AQUATIC PROTECTION BRANCH

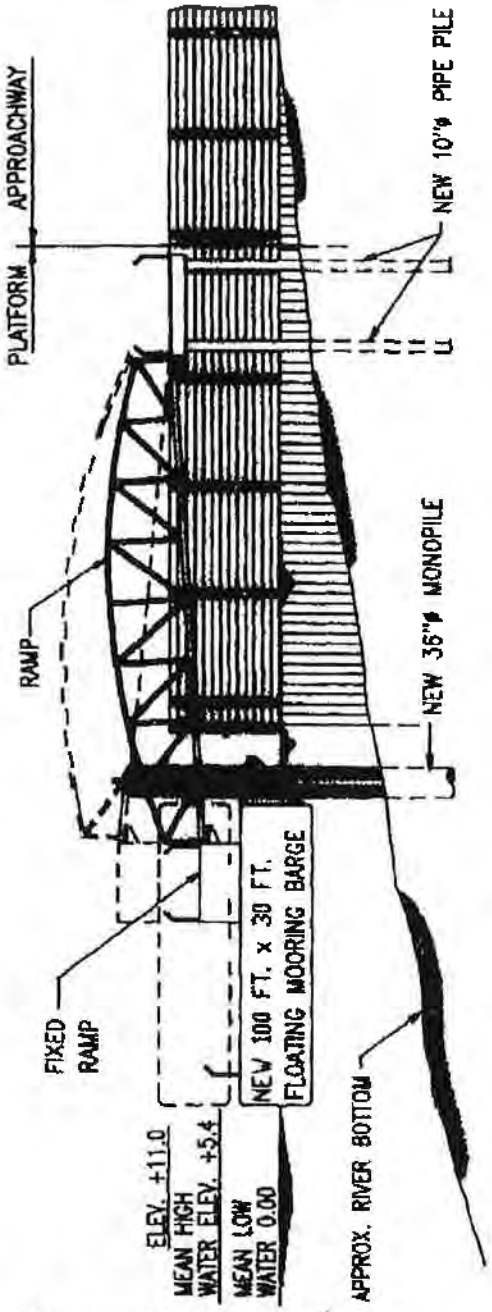
FILE No. G-2098
CONTRACT No. H-4554
DATE 9/13/95
SHEET No. 2 of 4

NOTE: FINAL DESIGN REQUIRED FOR CONSTRUCTION

| | |
|---|---|
| PROPOSED: | PIER REHABILITATION AND NEW FLOATING FERRY DOCK |
| AT: | FORT MOTT STATE PARK, NEW JERSEY |
| COUNTY OF: | NEW CASTLE, DELAWARE |
| APPLICATION BY: | NEW JERSEY D.E.P. DIVISION OF PARKS AND FORESTRY |

S.T. HUDSON ENGINEERS, INC.
PROFESSIONAL ENGINEERS & CONSULTANTS
800 Hudson Square
P.O. Box 9108
Camden, N.J. 08101
609-342-6800
Fax No. 609-342-8323

DE01940




SECTION B

SCALE 1/16" = 1'-0"

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WETLANDS & AQUATIC PROTECTION BRANCH

NOTE: FINAL DESIGN REQUIRED FOR CONSTRUCTION

S.T. HUDSON ENGINEERS, INC.
PROFESSIONAL ENGINEERS & CONSULTANTS
500 Hudson Square
P.O. Box 9108
Camden, N.J. 08101
609-342-8660
Fax No. 609-342-8323

| | |
|---|---|
| FILE No. | G-2096 |
| CONTRACT No. | H-4554 |
| DATE | 9/13/95 |
| SHEET No. | 3 of 4 |
| PROPOSED: | PIER REHABILITATION AND NEW FLOATING FERRY DOCK |
| AT: | FORT MOTT STATE PARK, NEW JERSEY |
| COUNTY OF: | NEW CASTLE, DELAWARE |
| APPLICATION BY: | NEW JERSEY D.E.P. DIVISION OF PARKS AND FORESTRY |

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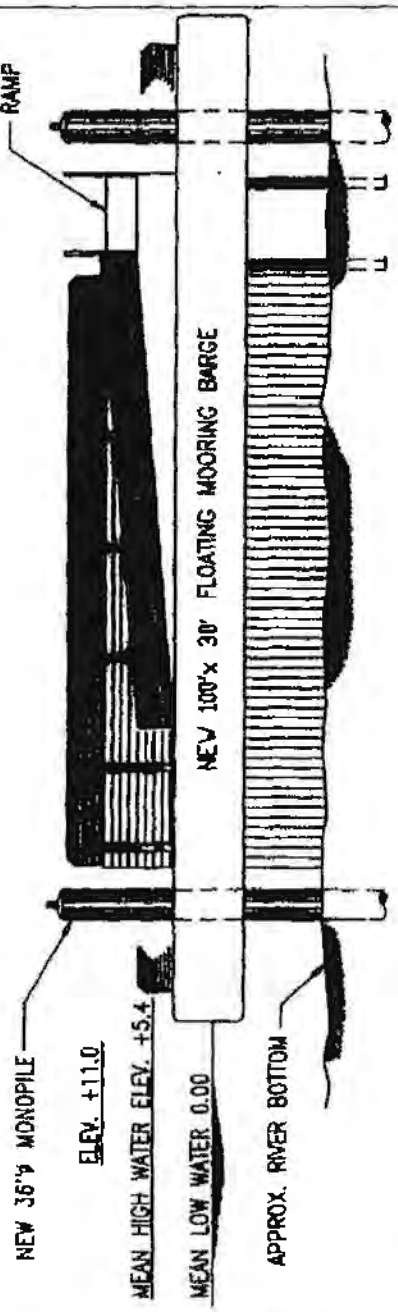


SECTION (C)
SCALE 1/16" = 1'-0"

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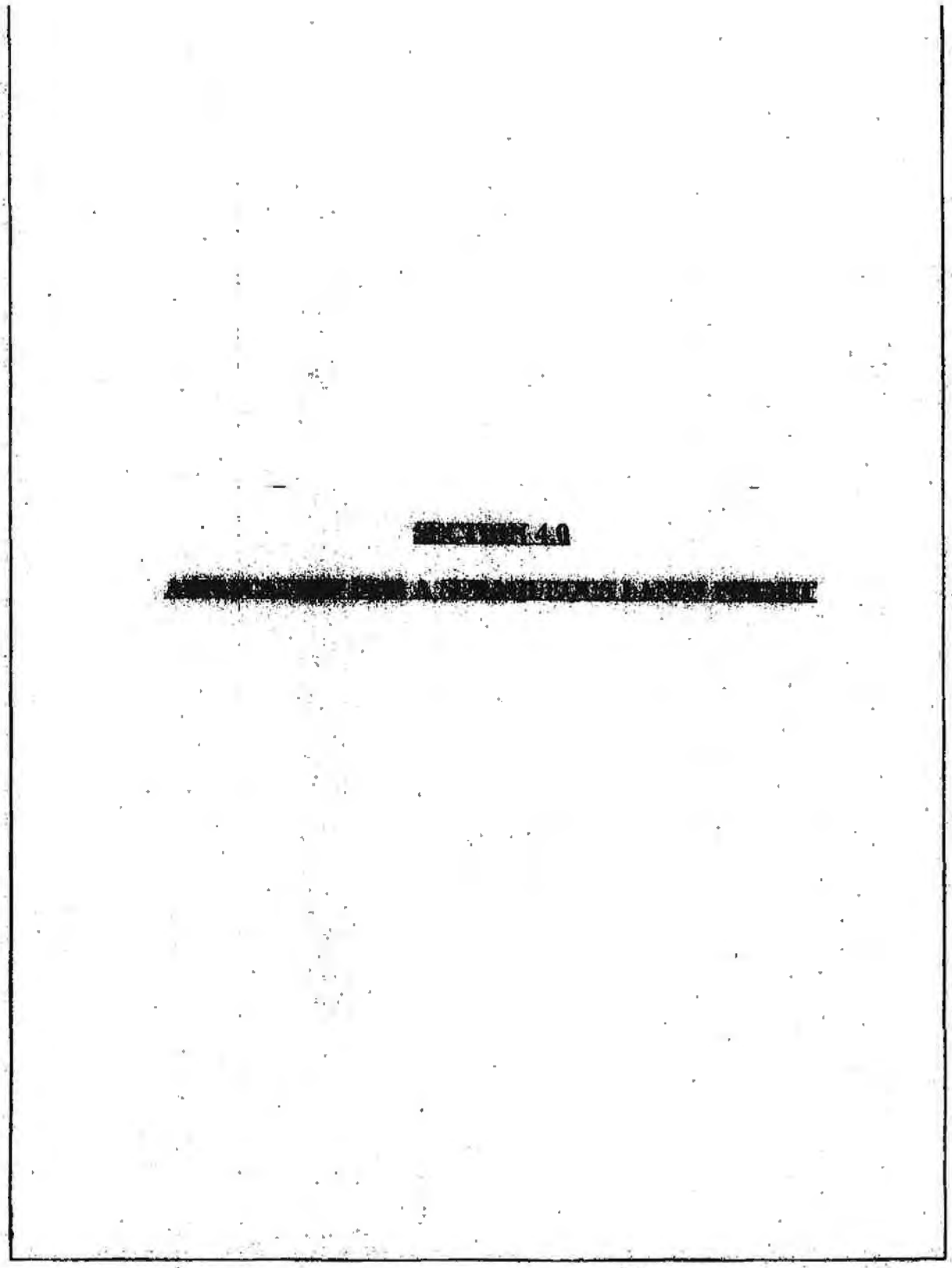
SEP 2 2 1995
WETLANDS & AQUATIC PROTECTION BRANCH

NOTE: FINAL DESIGN REQUIRED FOR CONSTRUCTION

S.T. HUDSON ENGINEERS, INC.
PROFESSIONAL ENGINEERS & CONSULTANTS
800 Hudson Square
P.O. Box 9108
Camden, N.J. 08101
609-342-8800
Fax No. 609-342-8333

| | |
|---|---|
| FILE No. | G-2096 |
| CONTRACT No. | H-4554 |
| DATE | 9/13/95 |
| SHEET No. | 4 of 4 |
| PROPOSED: | PIER REHABILITATION AND NEW FLOATING FERRY DOCK |
| AT: | FORT MOTT STATE PARK, NEW JERSEY |
| COUNTY OF: | NEW CASTLE, DELAWARE |
| APPLICATION BY: | NEW JERSEY D.E.P. DIVISION OF PARKS AND FORESTRY |

DE01942



[redacted]

[redacted]

S.T. HUDSON ENGINEERS, INC.

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WETLANDS & AQUATIC PROTECTION BRANCH

# JOINT APPLICATION FORM

## For Subaqueous Lands, Wetlands, and Marina Projects

**State of Delaware**
**Department of Natural Resources**
**and Environmental Control**
**Division of Water Resources**

DELAWARE
DIVISION OF WATER RESOURCES
*Clean Water - for Today and Tomorrow*

DELAWARE DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

# APPLICATION FOR APPROVAL OF A SUBAQUEOUS LANDS, MARINA, AND/OR WETLANDS PROJECTS

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WETLANDS & AQUATIC RESOURCES BRANCH

*PLEASE READ THE FOLLOWING INSTRUCTIONS CAREFULLY*

* Complete each section of this application as thoroughly and accurately as possible. Incomplete or inaccurate applications will be returned.

* Depending upon the nature of the project, some appendices now require professional expertise to be properly completed. A consultants list is available by calling (302) 739-4691.

* Proof of ownership or permitted land use agreement is mandatory and must be submitted at time of application.

* While completing this application, please refer to the definitions and explanations provided in the Joint Permit Application Form Reference Guide.

* All applications must be accompanied by plan drawings which show the location and design details of the proposed work. For specific requirements and typical drawings, refer to the explanation section and typical plans section of the Joint Application Form Reference Guide. 8 1/2" x 11" black and white drawings (to scale) are required for every application. Full construction plans may also be submitted for additional clarification on major projects.

* Fee schedules are provided as an insert to this application. Application fees are non-refundable regardless of the permit decision or application status.

* After completing the basic information section, complete the appropriate "type of project" appendix for your project. Please refer to the Joint Application Form Reference Guide if you need help.

* All applications must be completed in ink. Submit three (3) complete copies of the application and drawings to :

Department of Natural Resources and Environmental Control
Division of Water Resources
Wetlands and Subaqueous Lands Section
89 Kings Highway, P. O. Box 1401
Dover, DE 19903

* No construction may begin at the project site before written approval has been received for this work.

If you have any questions about this application, please call (302) 739-4691.

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# TYPE OF PROJECT
## List of Appendices

**Please complete the Basic Application Form (pages 4 through 8) for your project. Please check below only the appendices which apply to your project, complete the appropriate appendices and attach them to the Basic Application Form. (Please see definitions and explanations section of the Joint Application Form Reference Guide for further help.)**

**Applications must have the following applicable appendix completed upon submittal. Return only those appendices which apply to your project. Incomplete applications will be returned.**

A. X Boat Docking Facilities (1-4 slips)

B. _____ Boat Ramps

C. _____ Road Crossings

D. _____ Channel Modifications or Impoundment Structures (Dams)

E. _____ Utility Crossings

F. _____ Intake or Outfall Structures

G. _____ Bulkheads

H. _____ Fill

I. _____ Rip-Rap

J. _____ Vegetative Stabilization

K. _____ Groins, Jetties, or Breakwaters

L. _____ Construction in State Wetlands (Type I)

M. _____ Construction in State Wetlands(Type II)

N. _____ Preliminary Marina Screening Checklist (See * below)

O. _____ Marina (See * below)

P. _____ Stormwater Management

Q. _____ Ponds and Impoundments (Other than for Stormwater Management)

R. _____ Dredging/Maintenance
_____ Hydraulic _____ Mechanical

S. _____ New Dredging
_____ Hydraulic _____ Mechanical

*Please see following section on Marinas for a description of the requirements.

**Reminder:** After completing the basic application and the appendices which apply to this project, turn to the sample drawings in the Joint Application Form Reference Guide and prepare your application drawings.

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# MARINA REQUIREMENTS

If your project falls into one of the categories listed below, you must obtain a Marina Permit from the Division of Water Resources in addition to your Subaqueous Lands Lease, Wetlands Permit, and any necessary approvals from the U.S. Army Corps of Engineers.

A Marina Permit is required for all new marinas as well as alterations to existing marinas (See definition in the Joint Application Form Refrence Guide). For a full description of the regulatory requirements, please see the amended Marina Regulations dated February 22, 1993.

A marina includes any of the following:

* Commercial facilities which contain five (5) or more slips;

* Residential or planned community facilities which contain five (5) or more slips;

* Facilities with less than five (5) slips where one or more headboats are docked;

* Boat maintenance or repair yards that are on or adjacent to the water,

* Public or commercial boat ramps.

Prior to submitting the Basic Application form or any of the other appendices, it is recomended that marina applicants complete the "Preliminary Marina Screening Checklist" (Appendix N), and schedule a pre-application meeting with the Department to discuss the regulatory requirements for the project. If a pre-application meeting is desired by the applicant the screening checklist should be submitted to the Department at least one week before the pre-application meeting.

Following the pre-application meeting, the applicant should prepare and submit the Evaluation of Wet and Dry Boat Storage alternatives (See Sections II.B.3, II.C.1, and II.D.1 of the Marina Regulations), followed by the Marina Permit Application.

For a complete description of the Marina Permit Processing Procedure, see the Joint Application Form Reference Guide.

A complete Marina Permit Application shall include the following:

I. Siting and Design Study, including:

a. Documentation of Environmental Impact Avoidance (areas which should be addressed include but are not limited to submerged aquatic vegetation, wetlands, shellfish resources and critical habitats).
b. Water Quality Assessment
c. Benthic Resources Assessment

II. Basic Application form on pages 4 - 8 of this application.

III. Appendix O from this application plus as all other applicable appendixes).

IV. Draft Operations and Maintenance Plan (See Section V of the Marina Regulations.

V. Mitigation/Compensation Plan, as may be required (See Section II. D.10 of the Marina Regulations).

Additional guidance in preparing a Marina Permit Application can be found in the Marina Guidebook and the Joint Application Form Reference Guide.

# BASIC APPLICATION FORM

## ATTACH ADDITIONAL 8 1/2" X 11" SHEETS OF PAPER AS NEEDED

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**Application Number** _____
**(To be assigned by agencies)**

1. **Applicant's (Property Owner) name and complete address:**
State of New Jersey-Dept. of Environmental Protection
Division of Parks and Forestry
501 E. State Street, Station Plaza 5
Trenton, NJ 08625

**Telephone Number**
**Home (  ):** _____
**Work ( X ):** 609- 633-7588

2. **Name of Leaseholder (if applicable) of land where project is contemplated and complete address:** N/A

**Telephone Number**
**Home (  ):** _____
**Work (  ):** _____

3. **Authorized agent's name and complete address ( if applicable):**
S. T. Hudson Engineers, Inc.
800 Hudson Square, P.O. Box 9106
Camden, NJ 08101

**Telephone Number**
**Home (  ):** _____
**Work ( X ):** 609-342-6600

**(Complete agent authorization section at the bottom of page 8)**

4. **Is this project**
__X__ **New?** __X__ **Repair/Replacement?** See Sections 1.0, 2.0 and 3.0
_____ **Both? If "Both", please explain:**
_____ **Supplemental Approval for an existing lease or permit?**

5. **Provide a brief description of the project:** Rehabilitation of the historic Fort Mott Pier in addition to a new ferry mooring system.

A. _____ **Dredging**
**Total Estimated Volume:** _____ **cu. yds.**

B. _____ **Filling**
**Total Volume:** _____ **cu. yds.**

C. _____ **Shore Erosion Control**
**Total Length:** _____ **ft.**

D. _____ **Dock(s)**
**Total Number;** _____

E. _____ **Pier(s)/Walkways**
**Total Number:** _____

F. __X__ **Other** Rehabilitation of the historic Fort Mott Pier. Mooring of a 30 Ft. wide X 100 ft. long floating barge.
**Total Dimensions:**

DE01949

6. **Primary purpose of the project:**

| | |
|---|---|
| ____ Shore Erosion Control | ____ Dam |
| ____ Utility Installation | ____ Road |
| ____ Create Waterfowl Habitat | ____ Improve Navigable Access |
| ____ Temporary Construction | ____ Improve Fish Habitat |
| ____ Beach Nourishment/Fill | ____ Stream Channelization |
| ____ Residential Commercial Development | ____ Maintenance/Repair |
| | ____ Small Pond |
| ____ Erosion/Sediment Control | ____ Marina |
| ____ Stormwater Management | ____ Bridge |
| ____ Fill | ____ Vessel Berthing/Launching |
| ____ Culvert | _X_ Other Historic restoration of Pier and introduction of ferry service between Fort Mott and Fort Delaware and Port DuPont. |

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7. **Have you discussed this project with any representative of Local, State, or Federal regulatory agency?** _X_ **Yes** ____ **No**
**If yes, complete the information below.**
**Name of Representative:** ____
**Name of Agency:** DNREC, Corps, NJ and DE SHPO
**Date:** ____

8. **Have you applied for, or obtained a permit from any Local, State, or Federal agency for any portion of this project described in this application?**
_X_ *Yes* ____ *No*

**If yes, provide the following:**
**Agency:** Corps NJDEP
**Type of Action/Permit:** Sec. 10 & 404 Waterfront Development/Water Quality
**ID No:** ____
**Application/Issue Date:** Pending

9. **Project Location:** Fort Mott State Park
**Site address of Location:** Fort Mott Road
Pennsville Township
**County/City:** Salem County
**Directions from nearest intersection of two state roads:** Delaware River and Fort Mott Road off NJ Route 49.
**Name of the waterbody at the project location:** Delaware River
**Is it a tributary of any other water body?** ____ **Yes** _X_ **No**
**If yes, which waterbody?** ____

**The waterbody at the project location is: (check one on line A & one on line B)**

| | | | |
|---|---|---|---|
| A. | _X_ Natural | ____ Man-made | ____ Uncertain |
| B. | _X_ Tidal | ____ Non-tidal | ____ Uncertain |

10. Current land use: ____Agriculture ____ Marsh/Swamp __X__ Park Land
____ Meadow ____ Wooded ____ Developed

Present zoning is: ____Agriculture ____Commercial
____Residential ____Other __X__ New Jersey State Park

11. For marina projects or projects that include activities or construction in wetlands, list the name and complete address of the owners, as listed with the County Board of Assessment, of neighboring lands within 1,000 feet of the project (including those across the waterway if within the 1,000 foot radius) and any claimants of such ownership rights that are known to the applicant, with their last known addresses. For all other projects, list the name and complete address of the owners of the contiguous neighboring lands on all sides of the property. (Attach sheets as needed).

See adjacent property owners list - Attachment A.

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12. Will any public benefit be derived from the project? __X__ Yes ____ No
____ Uncertain If yes, explain below:

Refer to Sections 1.0, 2.0 and 3.0.

13. Has any work commenced or has any portion of the project for which you are seeking a permit been completed? ____ Yes __X__ No If yes, give details below. State when work was completed and who performed the work. Please indicate on attached drawings what is proposed.

14. Proposed Start Date: March 1996

15. Contractor's Name and Complete Address: N/A

Telephone Number: _____

**PLEASE COMPLETE AND ATTACH ALL APPROPRIATE DRAWINGS AND APPENDICES TO THIS SECTION. INCLUDE A COPY OF THE PROPERTY DEED AND SURVEY TO SHOW ALL PROPERTY BOUNDARIES AND DIMENSIONS.**

# ATTACHMENT "A"

# ADJACENT PROPERTY OWNERS LIST

OWNER & ADDRESS REPORT

PENNSVILLE

09/13/95 Page 1

NJDEP WATERFRONT DEVELOPMENT PERMIT APPLICATION
200 FT LISTING BLOCK 5301 LOT 3

| BLOCK | LOT | QUAL-IFIER | CLA | PROPERTY OWNER | PROPERTY LOCATION | Add'l Lots |
|---|---|---|---|---|---|---|
| 5301 | 1 | | 15C | UNITED STATES OF AMERICA<br>WASHINGTON<br>D C 00000 | FORT MOTT RD | |
| 5301 | 2 | | 15E | UNITED STATES OF AMERICA<br>WASHINGTON<br>D C 00000 | FORT MOTT RD | |
| 5301 | 5 | | 3B | DAVIS, JOHN U JR<br>FORT MOTT RD RD#3<br>SALEM NJ 08079 | FORT MOTT RD | 4 |
| 5401 | 1 | | 2 | HAUB, BERNARD & PRISCILLA<br>PO BOX 322<br>PENNSVILLE NJ 08070 | 2 ISAACS DR | |
| 5401 | 2 | | 2 | HADDOCKS, JAMES R<br>FORT MOTT RD RD 3<br>SALEM NJ 08079 | 6 ISAACS DR | |
| 5403 | 1 | | 2 | BRUMBAUGH, JULIUS & MARGARET<br>RD 3 FORT MOTT RD<br>SALEM NJ 08079 | 443 FORT MOTT RD | |
| 5403 | 2 | | 2 | LONG, CHARLES B & MARTHA N<br>RD 3 441 FORT MOTT RD<br>SALEM NJ 08079 | 441 FORT MOTT RD | |
| 5403 | 3 | | 2 | ELLER, BERTHA<br>RD 3 439 FORT MOTT RD<br>SALEM NJ 08079 | 439 FORT MOTT RD | |
| 5403 | 4 | | 2 | FINLAY, RAYMOND Z & DELORES<br>RD 3 437 FORT MOTT RD<br>SALEM NJ 08079 | 437 FORT MOTT RD | |
| 5403 | 5 | | 2 | DAVIS, LEONARD L & MARION L<br>RD 3 435 FORT MOTT RD<br>SALEM NJ 08079 | 435 FORT MOTT RD | |
| 5403 | 6 | | 2 | DAVIS, LEONARD L & MARION L<br>RD 3 433 FORT MOTT RD<br>SALEM NJ 08079 | 433 FORT MOTT RD | |
| 5402 | 4 | | 1 | LAKOTOS, LOUIS E<br>165 HIGHLAND AVE<br>PENNSVILLE NJ 08070 | 5 ISAACS DR | |
| 5402 | 5 | | 2 | ZIMMERMAN, LEWIS B JR & HELEN J<br>RD 3 483 FORT MOTT RD<br>SALEM NJ 08079 | 483 FORT MOTT RD | |
| 5402 | 6 | | 2 | PONYKALA, ROBERT J & CORINNE<br>RD3 481 FORT MOTT RD<br>SALEM NJ 08079 | 481 FORT MOTT RD | |
| 5402 | 7 | | 2 | COBB, CHARLES E & TERRI L<br>RD 3 479 FORT MOTT RD<br>SALEM NJ 08079 | 479 FORT MOTT RD | |
| 5402 | 8 | | 2 | BLUM, GEORGE R & CAROL A<br>RD 3 475 FORT MOTT RD<br>SALEM NJ 08079 | 475 FORT MOTT RD | |
| 5402 | 9 | | 2 | CHEESEMAN, WAYNE M & BRENDA L<br>RD 3 469 FORT MOTT RD<br>SALEM NJ 08079 | 469 FORT MOTT RD | |

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OWNER & ADDRESS REPORT



PENNSVILLE

NJDEP WATERFRONT DEVELOPMENT PERMIT APPLICATION
200 FT LISTING BLOCK 5301 LOT 3

| BLOCK | LOT | QUAL-IFIER | CLA | PROPERTY OWNER | PROPERTY LOCATION | Add'l Lots |
|---|---|---|---|---|---|---|
| 5402 | 10 | | 1 | ZANE, L V TTL PENNSVILLE TWP<br>RD 3 PO BOX 551 FORT MOTT<br>SALEM NJ 08079 | FORT MOTT RD | |
| 5402 | 11 | | 15C | PENNSVILLE TOWNSHIP OF<br>90 NORTH BROADWAY<br>PENNSVILLE NJ 08070 | FORT MOTT RD | |
| 5402 | 12 | | 2 | VETERANS ADMINISTRATION<br>20 WASHINGTON PLACE<br>NEWARK NJ 07102 | 469 FORT MOTT RD | |
| 5402 | 13 | | 1 | FITHIAN, SCOTT L & ANN M POIRIER<br>463 FORT MOTT RD<br>PENNSVILLE NJ 08070 | FORT MOTT RD | |
| 5402 | 14 | | 1 | FITHIAN, SCOTT L & ANN M POIRIER\<br>463 FORT MOTT RD<br>PENNSVILLE NJ 08070 | FORT MOTT RD | |
| 5402 | 15 | | 2 | FITHIAN, SCOTT L & ANN M POIRIER<br>463 FORT MOTT RD<br>PENNSVILLE NJ 08070 | 463 FORT MOTT RD | |
| 5402 | 16 | | 1 | JOHNSON, BENJAMIN & ANNA<br>457 FORT MOTT RD RD#3<br>SALEM NJ 08079 | FORT MOTT RD | |
| 5402 | 17 | | 2 | SORRELL, WILLIAM & BARBARA<br>RD 3 457 FORT MOTT RD<br>SALEM NJ 08079 | 457 FORT MOTT RD | |
| 5402 | 18 | | 2 | ROWE, ROLAND & LORRAINE<br>54 FRENCH ST<br>WATERBURY CT 06702 | 455 FORT MOTT RD | |
| 5402 | 19 | | 2 | MCINTOSH, CARRIE H<br>PO BOX 10621<br>WILMINGTON DE 19850 | 451 FORT MOTT RD | |
| 5402 | 20 | | 2 | AKHTAR, SAIYID A<br>31 NEWTON AVE<br>WOODBURY NJ 08096 | FORT MOTT RD | |
| 5501 | 8 | | 1 | PEDRICK, HARRY JR & ERMA M<br>RD 2 WATERWORKS RD<br>SALEM NJ 08079 | FORT MOTT RD | |

DE01953

## APPLICANT'S REVIEW BEFORE MAILING

**DID YOU COMPLETE THE FOLLOWING?**

| | | |
|---|---|---|
| X | Yes | BASIC APPLICATION |
| X | Yes | APPENDICES |
| X | Yes | VICINITY MAP |
| X | Yes | PLAN VIEW |
| X | Yes | ELEVATION OR SECTION VIEW |
| X | Yes | SIGNATURE PAGE (Page 8) with Agent Authorization if appropriate |
| X | Yes | COPY OF PROPERTY DEED & SURVEY |
| X | Yes | THREE (3) COMPLETE COPIES |
| X | Yes | LIST OF ADJACENT PROPERTY OWNERS (as per item #11 of this basic application form) |
| N/A | Yes | APPROPRIATE APPLICATION FEE (Checks should be made payable to the State of Delaware) |

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**Mail 3 complete copies of the application, with drawing(s) to:**

**Department of Natural Resources and Environmental Control**
**Division of Water Resources**
**Wetlands and Subaqueous Lands Section**
**89 Kings Highway, P. O. Box 1401 Dover, DE 19903**
**(302) 739-4691**

## APPLICANT SIGNATURE &/OR AGENT AUTHORIZATION

* **All applicants must sign this page. Complete the Agent Authorization Section only if applicable.**

**I certify that the information on this form and the attached plans is true and accurate to the best of my knowledge.**

**I understand that DNREC may request information in addition to that set forth herein and may be deemed appropriate in considering this application.**

**I grant permission to the authorized DNREC representative(s) to enter upon the premises for inspection purposes during working hours.**

**I will abide by the conditions of this approval if issued.**

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x _____ 9/19/95
**Applicant Signature** **Date**

**Applicant Name (Printed/Typed)** Carl Nordstrom, Deputy Director

### Agent Authorization Section

* **If you elect to complete this section, all future correspondence may be signed by the duly authorized agent. In addition, the agent will become the primary point of contact for all correspondence from the Department.**

**I,** Carl Nordstrom **, hereby designate and authorize**
*Name of applicant*

S. T. Hudson Engineers, Inc. **to act on my behalf in the**
*Name of Agent*

**processing of this application and to furnish any information that is requested.**

x _____ 9/19/95
**Applicant Signature** **Date**
Carl Nordstrom

_____ 9/20/95
**Agent Signature** **Date**
Lawrence R. Horan
Environmental Specialist

Company Name: N/A

## APPLICANT BACKGROUND INFORMATION

***Pursuant to 7 Del. C., Chapter 79, the following information must be submitted along with any commercial subaqueous lands permit application. "Commercial" is defined as any activity undertaken for profit for which a fee will be charged, directly or indirectly, or which results in the generation of revenue. Please use the N/A abbreviation for any items that are not applicable to your application.***

**PROVIDING ALL THE INFORMATION REQUESTED IN THIS FORM SATISFIES THE REQUIREMENTS OF 7 DEL. C., CH. 79 UNLESS THE DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL OR THE DEPARTMENT OF JUSTICE DETERMINES THAT ADDITIONAL SUBMISSIONS ARE NECESSARY. FAILURE TO PROVIDE THE INFORMATION REQUESTED OR PROVIDING ERRONEOUS INFORMATION IS GROUNDS FOR DENYING OR REVOKING AN ENVIRONMENTAL PERMIT, AND FOR CIVIL OR CRIMINAL PENALTIES.**

1. * Attach a complete list of all current members of the Board of Directors, all current corporate officers, all persons owning more than 20 percent of the applicant's stock or other resources, all subsidiary companies, all parent companies, all companies with which the applicant's company shares two or more members of the Board of Directors.

2. * Attach a description of any felony or other criminal conviction of any person or company identified in response to Question 1 where the conviction resulted in a fine greater than $1,000 or a sentence longer than seven days, regardless of whether any portion of such fine or sentence was suspended.

3 Have any of the following been issued to any person or entity specified in response to Question Number 1 or any violation of any environmental statute, regulation, permit, license, approval, or order, regardless of the state in which it occurred, during the five years prior to the date of the application:

| | | |
|---|---|---|
| **Notice of Violation** | **(yes or no)** | N/A |
| **Administrative Penalties** | **(yes or no)** | N/A |
| **Criminal Citation** | **(yes or no)** | N/A |
| **Arrests** | **(yes or no)** | N/A |
| **Convictions** | **(yes or no)** | N/A |
| **Criminal Penalties** | **(yes or no)** | N/A |

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4. If you answered "Yes" to any of the items in Question 3, attach a description of the incidents or events leading to the issuance of each enforcement action, the disposition of each action, and any actions that have been taken to correct the violations that led to such enforcement action.

5. * Attach copies of any and all settlements of the environmental claims associated with actions identified in response to Question 3 above, whether or not such settlements were based on agreements where the applicant did not admit liability for the action.

***I do hereby swear that I have read the above questions and have provided all of the information requested and that all of the information provided is true and accurate.***

_____ Date

_____ Signature - Applicant or Corporate Agent

Name: _____

Company Name: _____

Address: _____

_____

Phone: _____

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* NOTE: The applicant may claim that some or all of the information presented in response to Questions, 1, 2, and 5 is confidential if such information is not already available to the public. An applicant wishing to make such a claim should write, preferably in red ink "claimed confidential information" at each point in the response where such confidentiality is claimed, and provide an explanation of why the release of such information would constitute an invasion of personal privacy or would seriously affect the applicant's business or competitive situation.

[redacted]

[redacted]

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# APPENDIX A
# BOAT DOCKING FACILITIES

* **Any boat docking facility for more than four (4) slips or which is classified as a marina facility (see definitions and explanations section) must complete Appendices N and O, and must apply to the U. S. Corps of Engineers for approval.**

* **Please make sure answers to all of the questions in this appendix correspond to information on the application drawings.**

1. **What type of project do you propose? (Attach additional sheets as necessary.) See definition section of Joint Application Form Reference Guide for clarification of "Dock" and "Pier". Please give total numbers of:**

   X **Dock(s): Dimensions (Channelward of mean high water line)** 30 **ft. by** 100 **ft.**
   **Dimensions (Channelward of mean low water line) ___ ft. by ___ ft.**
   (Floating Barge)

   ___ **Pier(s): Dimensions (Channelward of mean high water line) ___ ft. by ___ ft.**
   **Dimensions Channelward of mean low water line) ___ ft. by ___ ft.**

   ___ **Finger Piers(s):**
   **Dimensions (Channelward of mean high water line) ___ ft. by ___ ft.**
   **Dimensions (Channelward of mean low water line) ___ ft. by ___ ft.**

   ___ **Buoy: What will be used for anchor(s) ___ type of device ___ weight**

   ___ **Dry Stack Facilities: Total Dimensions** N/A
   **Number of Boat Storage Spaces _____**

   X **Other:** 10"x10" Pile Supported Platform for Ramp
   **Total Dimensions (Channelward of mean high water line)** 10 **ft. by** 10 **ft.**

   X **Mooring ___ Dolphin ___ Piling ___ Other (Explain):**

2. **Approximately how wide is the waterway at this project site? ___ ft.** 2.5 Miles

3. **What will be the mean low water depth at the most channelward end of the mooring facility?** 13 **ft.**

4. **What type of material(s) will be used for construction of the mooring facility (e.g. salt treated wood, creosote pilings, fiberglass floats, etc.)?**

   36" steel monopiles will be used to moor the 30 ft. wide x 100 ft. long steel barge. Four (4) steel piles will be used to support the barge ramp platform

(APPENDIX A, CONTINUED)

5. **Will any structure(s) be built on the boat docking facility?** ___ Yes X No **If your answer is "YES", note dimensions and location on application drawings.**

6. **What will be the distance from the most channelward end of the docking facility to the edge of any natural or man-made channel?** 3800 **ft.**

7. **Give the number of each type of vessel (e.g. 3-sail, 4-power, 1-tug, etc.) projected to be docked/moored at the facility? Please draw exact boat locations on plans and drawings.** The ferry transfer facility will service the "Dela-Fort" which is 55 ft. long, 16 ft. in beam with a draft of 3-1/2 feet.

8. **What size vessel(s) will be moored at the facility? (Attach sheets as needed).**

| | | | | | |
|---|---|---|---|---|---|
| 55 | length | 16 | width | 3-1/2 | draft |
| | length | | width | | draft |
| | length | | width | | draft |
| | length | | width | | draft |

9. **Do you plan to reach the boat docking facility from your own upland property?** X **Yes** _____ **No If "No", explain your proposed means of access.**

10. **Give the number of each type of Marine Sanitation Device (e.g. MSD III, Portable toilet) that will be used on vessels to be docked at the facility.** N/A

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**SECTION 5.0**

**PERMIT DRAWINGS**

**SECTION 6.0**

**PROPERTY DEED**

against them the said grantors, their heirs, and against all and every other person or persons whomsoever lawfully claiming or to claim the same, or any part thereof, shall and will warrant and forever defend.

In Witness Whereof, the said parties of the first part to these presents have hereunto set their hands and seals dated the day and year first above written.

Signed, Sealed and Delivered / William Strauss (LS)
in the Presence of / William Strauss, Jr. TYPED
I. Harry Levin Rose Strauss (LS)
Rose Strauss TYPED

State of New Jersey
Cumberland County, ss.

Be it Remembered, that on this seventh day of August in the year of our Lord one thousand nine hundred and forty-seven before me, the subscriber, A Notary Public of N. J. personally appeared William Strauss, Jr. and Rose Strauss, his wife, who, I am satisfied are the grantors mentioned in the above deed or conveyance and I having first made known to them the contents thereof they acknowledged that they signed, sealed and delivered the same as their voluntary act and deed. All of which is hereby certified.

I. Harry Levin (Seal)
I. Harry Levin (Stamped)
Notary Public of New Jersey
My Commission Expires June 28, 1952

Received Sept. 3, 1947 at 9:20 A. M.
and recorded.

Clerk

---

United States of America, by / This Indenture, made
Federal Farm Mortgage Corporation / the 16th day of May 1947, between the
to / United States of America, acting by and
The State of New Jersey / through the Federal Farm Mortgage Corporation, with offices at 310 State Street, in the City of Springfield, County of Hampden, and Commonwealth of Massachusetts, under and pursuant to the powers and authority contained in the provisions of the Surplus Property Act of 1944 (58 Stat. 765); Regulation No. 1 of the Surplus Property Board (12 F.R. 3784); Order of the Secretary of Agriculture dated April 24, 1945 (10 F.R. 4847); and Order of the Governor of the Farm Credit Administration dated April 28, 1945 (10 F.R. 4894); party of the first part, and The State of New Jersey party of the second part,

Witnesseth: That the said party of the first part, for and in consideration of the sum of Seventeen Thousand Dollars ($17,000.00), to it duly paid by the said party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, has remised, released and forever quitclaimed, and by these presents does grant, remise, release and forever quitclaim unto the said party of the second part, and to its successors and assigns, forever, all the following described property situate, lying and being in the Township of Lower Penns Neck on Finns Point, County of Salem, State of New Jersey, to wit:

Beginning at high-water mark of the Delaware River at the southeast corner of lands acquired from Edward S. Sharpe in the year 1904 for an addition to the original reservation; thence North 44° 10' East along the northwest boundary of the public highway 643 feet; thence North 44° 45' East along the northwest boundary of said highway 500 feet; thence North 32°30'

East along said highway 1,058.3 feet to the northeast corner of said lands; thence North 48° 45' West 1,953.4 feet, to the northwest corner of said lands; thence South 32° 30' West 141.5 feet; thence South 45° 30' West 601.7 feet to the original reservation; thence along said original reservation, by the following course and distance: North 55° 00' West 376.4 feet; thence across a portion of the original reservation lands approximately South 50° 53' West 494.54 feet to a point at high water line on the East bank of the Delaware River; thence southeasterly along the top of the tide bank on the Delaware River winds and turns, to the point of beginning. Comprising about 103.80 acres of land.

Specifically Excepting and Reserving therefrom an Easement covering that strip of land at least 25 feet in width now and heretofore used as a highway and thoroughfare for ingress and egress to Finn's Point National Cemetery. The center line of that highway strip Easement to which is hereby so excepted is described as Beginning at a point in the extreme northwest boundary of the 103.8 acres hereby conveyed and at a distance of about 482 feet on a course of about North 50° 53' East from the high water line on the east bank of the Delaware River. From the beginning point, as above described, the center line of the excepted highway strip runs first South 55° 00' East and then about South 47° 30' East to a point in the center line of that NE - SW highway which bounds the premises hereby conveyed along its southeast boundary and which leads Northeasterly to the Finn's Point Rear Light, so-called.

Being the Southwest Portion of those lands conveyed to and acquired by the United States of America for Military Purposes, in part by a deed dated July 15, 1892 from John G. Nason and Ebenezer Dunn, Executors of the Samuel Dunn Estate, to the United States of America recorded in Salem County Clerk's Office in Liber U.U. of Deeds, folio 25 etc., and in part by Condemnation Proceedings in the United States District Court, District of New Jersey from Dr. Edward R. Sharpe, final settlement therefor being in the year 1904.

The grantee certifies it is acquiring the hereinbefore described property for the purpose of an Historic Site and State Park; that it is not acquiring it for the purpose of reselling it and in no case will it resell it within three (3) years without first obtaining the written authorization of the War Assets Administration.

Together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging, or in anywise appertaining, and the rents, issues, and profits thereof. And also, all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in and to the above-described premises and every part and parcel thereof, with the appurtenances.

Said land was duly declared surplus and was assigned to the Federal Farm Mortgage Corporation as Disposal Agency pursuant to the provisions of the above-mentioned Act, Regulation and Orders.

To have and to hold, all and singular, the foregoing described premises, together with the appurtenances unto the said party of the second part, its successors and assigns, to its own use, benefit and behoof forever.

In Witness Whereof, the party of the first part has caused these presents to be executed in its name by the Federal Farm Mortgage Corporation, and the seal of the said Corporation to be hereunto affixed the day and year first above written.

United States of America

Attest:

Harold F. Johnson
Harold F. Johnson (Typed)
Assistant Secretary

by Federal Farm Mortgage Corporation

By Carroll B. Hutchins (Corporate Seal)
Carroll B. Hutchins (Typed)
Vice President

Harold F. Johnson
Harold F. Johnson (Typed)
Subscribing Witness

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Commonwealth of Massachusetts

County of Hampden, ss.

Be it Remembered, that on this 15th day of May, in the year One Thousand Nine Hundred and Forty-seven, before me, the subscriber Allen K. Talmadge personally appeared Harold F. Johnson who, being by me duly sworn on h__ oath, doth depose and make proof to my satisfaction, that he is the Assistant Secretary of the Federal Farm Mortgage Corporation, the Grantor named in the within instrument; that Carroll B. Hutchins is the Vice President of said corporation; that the execution, as well as the making of this instrument has been duly authorized by a proper resolution of the Board of Directors of said corporation; that deponent well knows the corporate seal of said corporation; and the seal affixed to said instrument is such corporate seal and was thereto affixed and said instrument signed and delivered by said Vice President, as and for h__ voluntary act and deed and as and for the voluntary act and deed of said corporation, in presence of deponent, who thereupon subscribed h__ name thereto as witness.

Sworn and subscribed before me

at Springfield, Massachusetts

the date aforesaid

Allyn K. Talmadge (Seal)
Allyn K. Talmadge TYPED
Notary Public

Harold F. Johnson
Harold F. Johnson TYPED
Assistant Secretary

Commonwealth of Massachusetts,

County of Hampden, ss.

I, Lewis A. Twitchell, Clerk of the Supreme Judicial Court, in and for said County, do hereby certify that said Court is a Court of Record; that Allyn K. Talmadge whose name is subscribed to the Certificate or proof of acknowledgment of the annexed instrument, was at the time of taking the same, a Notary Public, in and for said County of Hampden, duly Commissioned and Sworn, and qualified to act as such; that as such Notary Public, he is duly authorized by the laws of the Commonwealth of Massachusetts to take the acknowledgments and proofs of deeds or conveyance for lands, tenements or hereditaments in said Commonwealth of Massachusetts; that I am well acquainted with the handwriting of said Notary Public, and verily believe his signature to the same is genuine.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court, at Springfield, in said County of Hampden, this 19th day of May A.D. 1947.

(Seal) Lewis A. Twitchell, Clerk.

Fort Mott Military Reservation

Commonwealth of Massachusetts

County of Hampden, ss.

Carroll B. Hutchins, being duly sworn, deposes and says that he is an officer, to wit: Vice President of the Federal Farm Mortgage Corporation, a government corporation; that said Federal Farm Mortgage Corporation has been duly designated as disposal agency of the real property consisting of 103.60 acres of land known as a portion of the U. S. Military Reservation called Fort Mott on the east bank of the Delaware River near Finn's Point in the Township of Lower Penns Neck, County of Salem, State of New Jersey, and conveyed by the United States of America to The State of New Jersey by deed dated May 16, 1947 and executed in behalf of the United States of America by the Federal Farm Mortgage Corporation.

The deponent further says that to the best of his knowledge, information and belief that there have not been any conveyances, grants or easements which would in any way adversely affect title to this property; that the real property conveyed to The State of New Jersey as aforesaid has been owned and occupied by the United States of America from the date of the conveyances and condemnations of said property to the said United States of America and that

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Carroll B. Hutchens
Carroll B. Hutchins TYPED
Vice President

Sworn to before me this 16th day of May 1947.

Allyn K. Talmadge {Seal}
Allyn K. Talmadge TYPED
Notary Public

Received Sept. 3, 1947 at 11:00 A. M.

and recorded.

Clerk

- - - - o - - - -

Marion Eberle /
Charles B. Eberle / This Indenture, Made
to / the 2nd day of July, in the year of our Lord, One
Richard F. Wild / Thousand Nine Hundred and Forty-Seven, Between
Josephine A. Wild / Marion Eberle and Charles B. Eberle, her husband, of the Town of West New York, in the County of Hudson and State of New Jersey party of the first part: And Richard F. Wild and Josephine A. Wild, his wife, of 836 Dixie Drive, Upper Penns Neck, Salem County, New Jersey, party of the second part;

Witnesseth, That the said party of the first part, for and in consideration of One ($1.00) Dollar and other good and valuable consideration, lawful money of the United States of America, to them in hand well and truly paid by the said party of the second part, at or before the sealing and delivery of these presents, the receipt thereof is hereby acknowledged, and the said party of the first part being therewith fully satisfied, contented and paid, have given, granted, bargained, sold, aliened, released, enfeoffed, conveyed and confirmed, and by these presents do give, grant, bargain, sell, alien, release, enfeoff, convey and confirm, unto the said party of the second part, and to their heirs and assigns, forever, All that certain lot, tract or parcel of land and premises, hereinafter particularly described, situate, lying and being in the Township of Upper Penns Neck, in the County of Salem and State of New Jersey, more particularly described as follows: and written out on a certain map entitled "Plan of Penns Grove Homes, Borough of Penns Grove and Upper Penns Neck Township, Salem County, N.J. Scale One (1) Inch equals Fifty (50) Feet, January, 1944, Formerly owned by Penns Grove Homes, Inc., Skinner & Compton Engineers," which map was filed in the Salem County Clerk's Office on March 8, 1944 as Map Folio 184, Block B, Lot 8.

Commonly known as 836 Dixie Drive, Upper Penns Neck, N. J.

Subject to restrictions, easements and reservations of record.

Together with All and singular the houses, buildings, trees, ways, waters, profits, privileges, and advantages, with the appurtenances to the same belonging or in any wise appertaining;

Also, all the estate, right, title, interest, property, claim and demand whatsoever, of the said party of the first part, of, in and to the same, and of, in and to every part and parcel thereof.

To have and to hold, all and singular the above described land and premises, with the appurtenances, unto the said party of the second part, their heirs and assigns, to the only proper use, benefit and behoof of the said party of the second part, their heirs and assigns forever.

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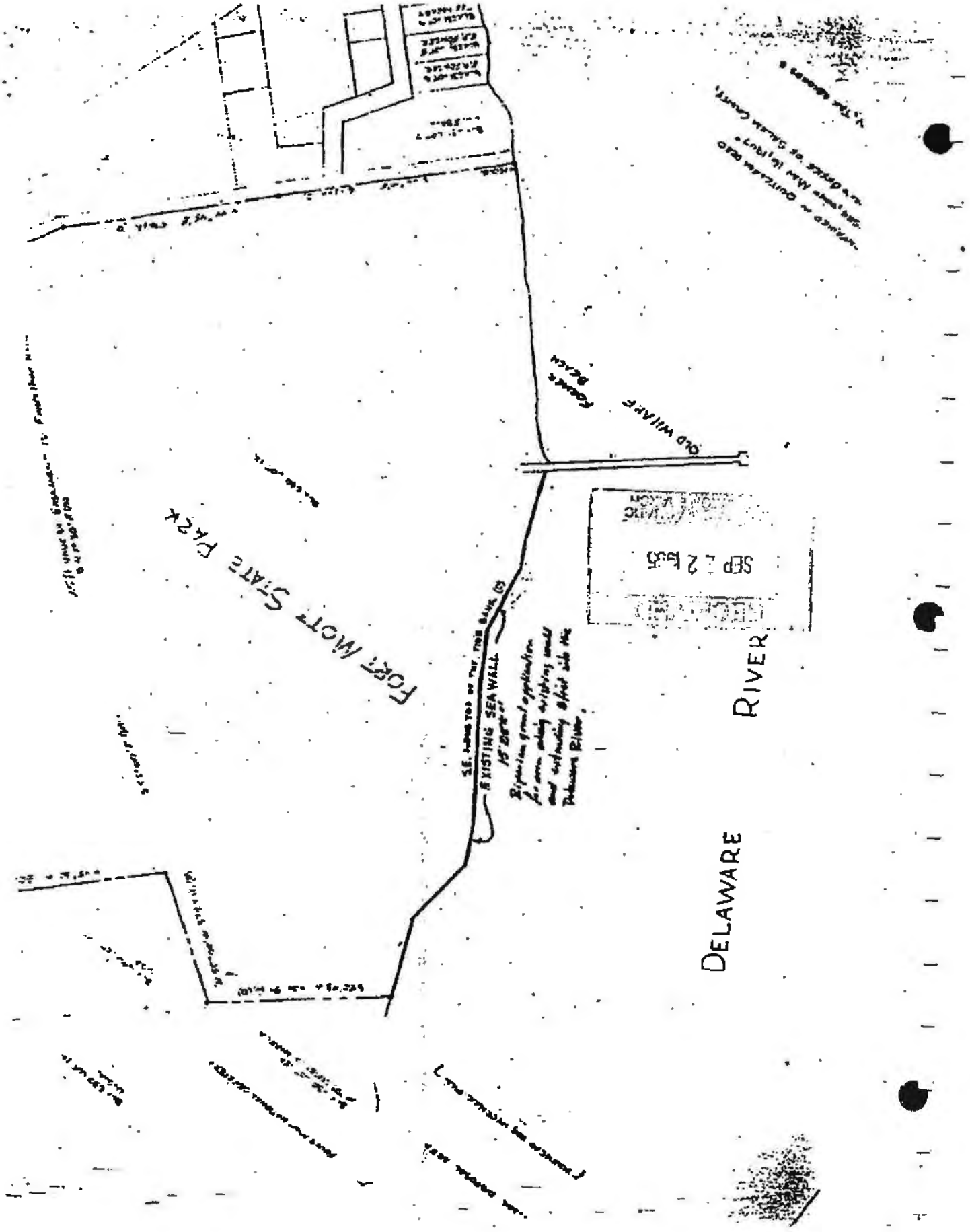
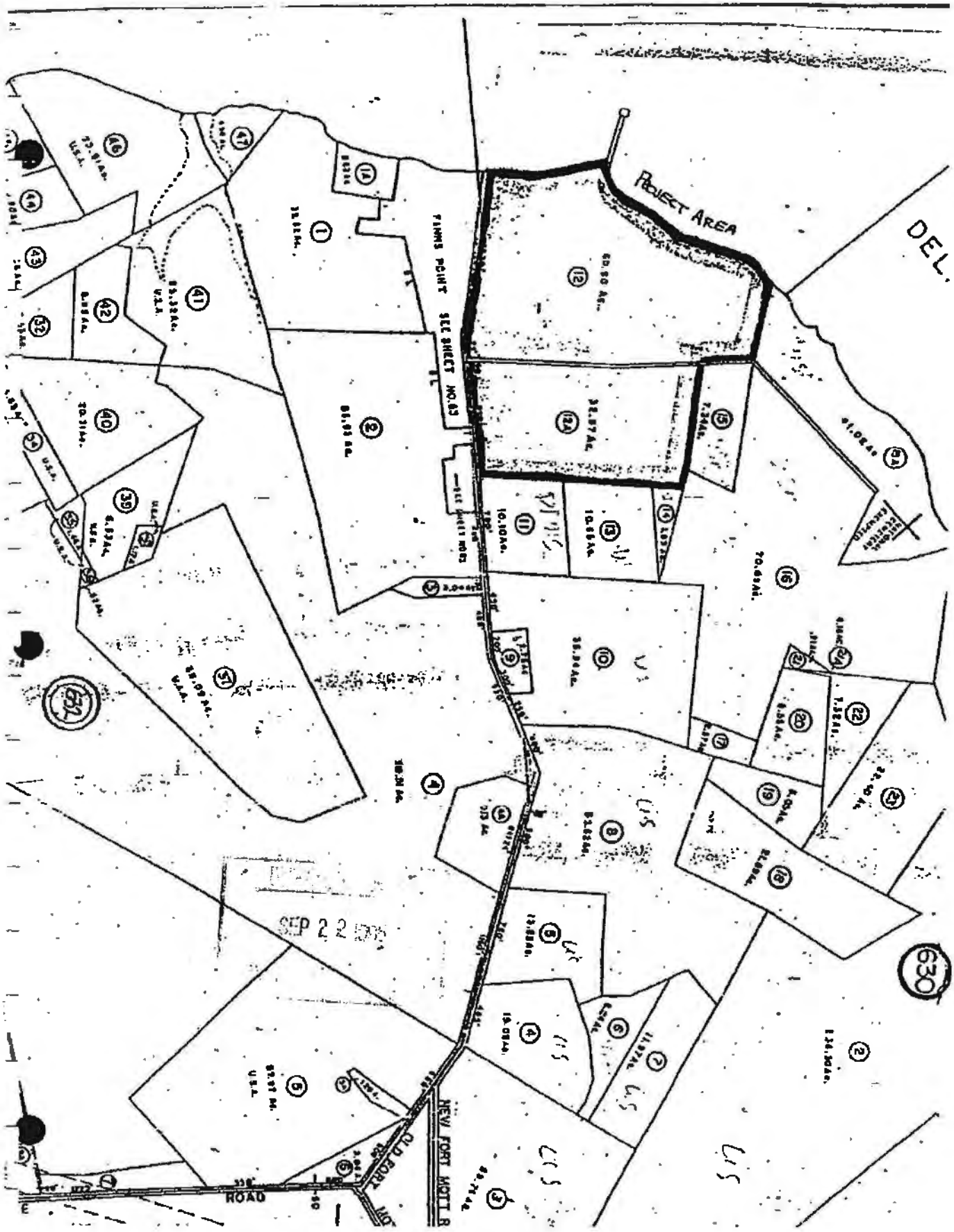

FORT MOTT STATE PARK
DELAWARE
RIVER
OLD MILL RD
EXISTING SEA WALL
SEP 22 1995

DE01967


PROJECT AREA
FINNS POINT
SEE SHEET NO. 63
NEW FORT MOTT
OLD FORT
ROAD
630
SEP 2 2

DE01968

L. Moyer
STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES
AND ENVIRONMENTAL CONTROL

[redacted]

AMOUNT
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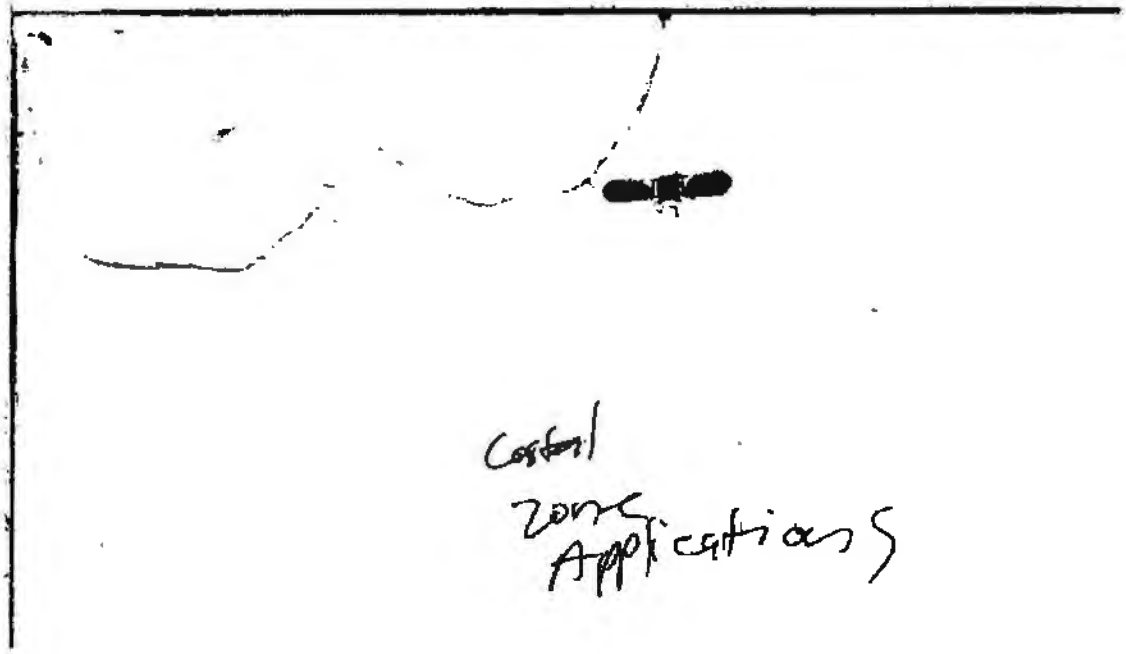

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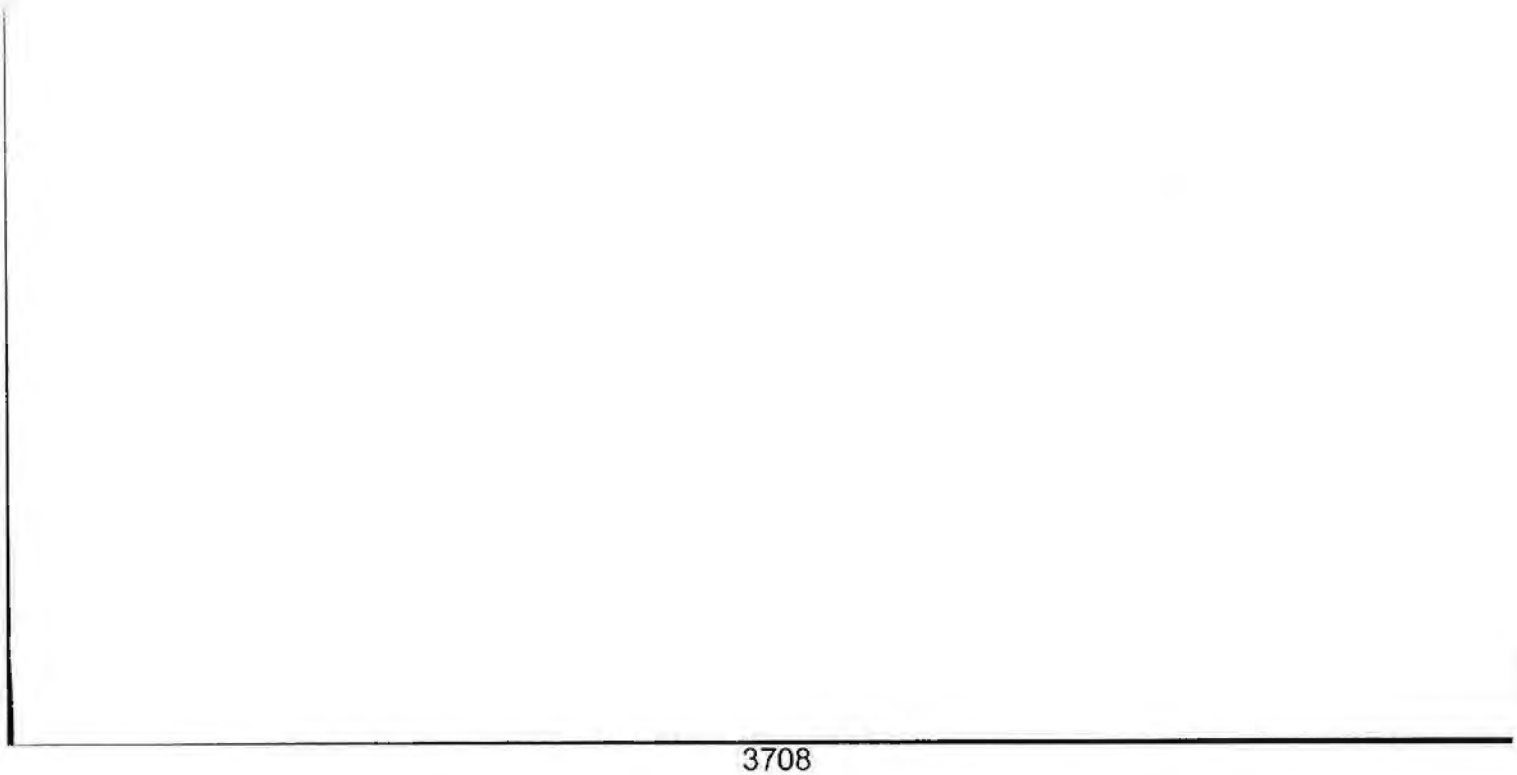
Zone
Applications



STATE OF DELAWARE
DEPARTMENT OF STATE
DIVISION OF HISTORICAL AND CULTURAL AFFAIRS
HISTORIC PRESERVATION OFFICE
15 THE GREEN
DOVER • DE • 19901-3611
TELEPHONE: (302) 739-5685
FAX: (302) 739-5660

November 14, 1995

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Mr. Frank J. Cianfrani
Chief, Regulatory Branch
Philadelphia District, Corps of Engineers
100 Penn Square East
Philadelphia, PA 19107-3390

ATTN: Jim Boyer

Dear Frank:

This letter is pursuant to our receipt and review of the Public Notice (CENAP-OP-R-199101143-24) for the proposed rehabilitation of the pier at Fort Mott. As you know, the pier is part of the Fort Mott and Finn Point National Cemetery Historic District. The pier is located within the State of Delaware; hence, our participation in the Section 106 review process.

Since 1992, we have been consulting with the NJ Parks and Forestry staff, their consultant and the NJ SHPO on this project. After reviewing the initial alternatives for providing a pier to access vessels coming from Fort Delaware and Fort DuPont, we determined that there was the potential to adversely effect this historic property pursuant to 36 CFR 800.9(b)(1) of the Advisory Council on Historic Preservation's regulations. Since those initial meetings, we have determined that rehabilitation is the least damaging to the historic property while being economically practical. The rehabilitation will result in some loss of historic property; it is not a complete replication of the historic details of the pier since there were changes made to the pier during its historic use; and, additional features or elements must be added to the rehabilitation plan to accommodate new engineering and safety standards as well as the proposed modern usage of the pier. Given the nature of the proposed work, it is our opinion that the proposed rehabilitation will adversely effect this historic property; however, to satisfactorily mitigate this adverse effect, a Memorandum of Agreement is being developed which details stipulations which the applicant will carry out in order to minimize this effect.

I have forwarded a copy of the draft Memorandum of Agreement, which has been circulated to the NJ SHPO, the Applicant and their consultant, to Jim Boyer. We hope to finalize the details of this Memorandum soon and circulate it for signatures. I request that your staff review this draft document and provide

EXHIBIT
Broderick-2a
ID 9/27/06

comments as soon as it is convenient. In the interim, if you have any question, please do not hesitate to contact me. Thank you.

Sincerely,

Faye L. Stocum

Faye L. Stocum
Archaeologist

cc: Dan Saunders, NJ SHPO
Indrek Ojamaa, NJ Parks & Forestry
L. Sturgeon, S.T. Hudson Engineering
Ralston Cox, ACHP
Bill Moyer, DNREC
Jennifer Lukens, DE CMP

STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL
DIVISION OF SOIL AND WATER CONSERVATION
89 KINGS HIGHWAY
P.O. BOX 1401
DOVER, DELAWARE 19903

OFFICE OF THE
DIRECTOR

TELEPHONE: (302) 739 - 3451

December 15, 1995

Mr. Lawrence R. Horan
S. T. Hudson Engineers Inc.
800 Cooper Street, Hudson Square
Camden, NJ 08102

*RE: Federal Consistency Certification*
*Rehabilitation of Historic Fort Mott Pier*

Dear Mr. Horan:

The Delaware Coastal Management Program (DCMP) has received and reviewed your consistency determination for the above referenced project. Based upon our review and pursuant to National Oceanic & Atmospheric Administration regulations (15 CFR 930), the DCMP concurs with your consistency certification for the rehabilitation of the historic Fort Mott Pier. Our concurrence is based upon the restrictions and/or conditions placed on any and all permits issued to you for this project.

If you have any questions regarding our concurrence please do not hesitate to contact me at (302) 739-3451.

Sincerely,

Sarah W. Cooksey, Administrator
Delaware Coastal Management Program

SWC/mal
cc: File 95.010
Frank Cianfrani, USACE

E:\96CONSIS\FCLET95\CON95.010

STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES
& ENVIRONMENTAL CONTROL
DIVISION OF WATER RESOURCES
89 KINGS HIGHWAY, P.O. BOX 1401
DOVER, DELAWARE 19903

WETLANDS & SUBAQUEOUS LANDS SECTION

TELEPHONE (302) 739-4691
FACSIMILE (302) 739-3491

January 4, 1996

NJDEP, Department of Parks and Forestry
501 East State Street, Station Plaza 5
Trenton, NJ 08625

RE: CENAP-OP-R-199101143-24 - Rehabilitation of the Pier at Fort Matt, NJ

Dear Sir or Madam:

The State of Delaware hereby waives the water quality certification that is required in accordance with Section 401 of the Clean Water Act, for the above referenced project. This waiver satisfies the water quality certification requirements of the U.S. Army Corps of Engineers for the above referenced project.

Please do not hesitate to contact this office if you have any questions regarding this matter.

Sincerely,

William F. Moyer

William F. Moyer
Program Manager II
Wetlands and Subaqueous
Lands Section

pc: Frank Cianfrani

401waiv

Delaware's coast, nature depends on you!

STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES
& ENVIRONMENTAL CONTROL
DIVISION OF WATER RESOURCES
89 KINGS HIGHWAY P.O. BOX 1401
DOVER, DELAWARE 19903

WETLANDS & SUBAQUEOUS
LANDS SECTION

TELEPHONE (302) 739-4691
FACSIMILE (302) 739-5491

*January 12, 1996*

*NJDEP Dept. of Parks and Forestry*
*501 East State Street, Station Plaza 5*
*Trenton, New Jersey 08625*

*Dear Sir/ Madam:*

*Enclosed is the subaqueous lands lease granted by the State of Delaware. Please pay special attention to General Condition No. 16, which will apply if you plan to sell the upland portion of your property. Also note Special Condition No. 10 explaining potential lease fee requirements. Although a lease fee is not currently required, a fee could be required for this structure by legislative action at a later date.*

*A copy of this approval and letter will be forwarded to the Corps of Engineers.*

*If you have any questions regarding this approval, feel free to contact this office.*

*Sincerely,*

*Laura M. Herr*
*Branch Manager*
*Wetlands & Subaqueous*
*Lands Section*

*LMH/fr*
*pc: Frank Cianfrani*
*Enclosure*

EXHIBIT
Broderick 24
SAO 9/27/06

*Delaware's good nature depends on you!*

DEPARTMENT OF NATURAL RESOURCES
AND
ENVIRONMENTAL CONTROL

# NOTICE OF AUTHORIZATION

**Permit/Lease No. and Description:** SL-1110/95 Re-construct a pier to include placement of a barge 30 feet by 100 feet and a pile-supported platform 10 feet by 10 feet on the Delaware River

**Issued To:** NJDEP, Department of Parks and Forestry

**Location of Work:** New Castle County, Delaware adjacent to New Jersey's Fort Mott State Park, Salem County, New Jersey

**Date of Expiration:** February 7, 1999

**DISPLAY THIS CERTIFICATE IN A HIGHLY VISIBLE LOCATION ON THE JOB SITE.**

Doc. No. 40-08/07/06/01

William F. Moyer

William F. Moyer, Section Manager
Wetlands & Subaqueous Land Section

DE01803

STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES
& ENVIRONMENTAL CONTROL
DIVISION OF WATER RESOURCES
89 KINGS HIGHWAY, P.O. BOX 1401
DOVER, DELAWARE 19903

WETLANDS & SUBAQUEOUS
LANDS SECTION

TELEPHONE (302) 739-4691
FAX (302) 739-3491

Subaqueous Lands Lease: SL-1110/95
Date of Issuance: 2/7/96
Construction Expiration Date: 2/7/99
Amended Date:

**SUBAQUEOUS LANDS LEASE GRANTED TO
NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION
DIVISION OF PARKS AND FORESTRY
FOR THE RE-CONSTRUCTION OF A PIER TO INCLUDE PLACEMENT OF A BARGE 30 FEET BY 100 FEET AND A PILE-SUPPORTED PLATFORM 10 FEET BY 10 FEET ON THE DELAWARE RIVER IN NEW CASTLE COUNTY, DELAWARE, ADJACENT TO NEW JERSEY'S FORT MOTT STATE PARK, SALEM COUNTY, NEW JERSEY**

NJDEP, Dept. of Parks and Forestry
501 East State Street, Station Plaza 5
Trenton, NJ 08625

Pursuant to the provisions of 7 Del. C., §7203, and the Department's Regulations Governing the Use of Subaqueous Lands, permission is hereby granted on this 7th day of February A.D. 1996, to construct the above-referenced project in accordance with plans titled "Pier Rehabilitation and New Floating Ferry Dock" Sheets 1 - 4, dated 9/13/95 and received by this Division on 9/22/95, and application dated 9/19/95 and received by this Division on 9/22/95.

WHEREAS; the State of Delaware is the owner of ungranted subaqueous lands lying beneath the waters of the Delaware River; and

WHEREAS, the New Jersey Department of Environmental Protection, Department of Parks and Forestry, owner of certain adjoining lands to the Delaware River has applied for permission to construct a pier and ferry dock; and

WHEREAS, pursuant to the provisions of 7 Del. C., §7203, the Secretary of the Department of Natural Resources and Environmental Control through his duly authorized representative finds that it is not contrary to the public interest if this project is approved subject to the terms and conditions herein set forth.

This approval is in accordance with plans and application, copies of which are attached hereto and made a part hereof.

This lease shall be continued for a period of ten (10) years or so long as the conditions attached to the lease are adhered to, whichever is the shorter in time. Upon the expiration of the ten-year term, this lease shall expire and become null and void, unless prior thereto the lessee shall have applied for and received a renewal of this lease. A renewal may be denied if the State determines that the lease is no longer in the public interest.

THIS lease is issued subject to the following conditions:

**SPECIAL CONDITIONS**

1. The conditions contained herein shall be included as part of the main body of the construction contract and other ancillary documents associated with earth disturbance and any other activities directly or indirectly associated with construction which may impact subaqueous lands associated with this project. The lessee is responsible for ensuring that the contractor and/or workers executing the activities authorized by this lease have full knowledge of the terms and conditions of this lease.

2. The construction schedule for this project shall be arranged so as to minimize the impact on anadromous fish passage.

3. Construction shall be conducted so as not to violate the State of Delaware Department of Natural Resources and Environmental Control, "Surface Water Quality Standards" dated February 26, 1993.

4. A copy of this lease must be available on-site during all phases of construction activity.

5. The structures on public subaqueous lands shall be for the explicit purpose of serving as a ferry terminal as stated in Section 7 of Appendix A of the application form.

6. Removal of wetlands and/or aquatic vegetation adjacent to the authorized construction by burning, cutting, herbicide treatments or other methods is prohibited. Removal of wetlands and/or aquatic vegetation in the path of construction shall be minimized.

7. All construction debris, excavated material, brush, rocks and refuse incidental to such work shall be placed above the influence of surface waters.

8. The dock and pier shall be constructed in a manner so as not to impair water access to the adjoining properties and a minimum of ten (10) feet from the adjacent properties.

GENERAL CONDITIONS

1. The project is to be undertaken in accordance with the plans submitted and attached hereto. Any activities not specifically authorized herein may require a supplemental approval from this office prior to the initiation of construction. A determination of the need for a supplemental approval will be made by this office pursuant to the lessee submitting written notification and revised plans indicating project changes to this office.

2. Representatives of the Department of Natural Resources and Environmental Control may inspect such work during any phase of the construction and may collect any samples or conduct any tests that are deemed necessary.

3. This lease does not cover the structural stability of the project.

4. Prior to the expiration of this lease, the lessee shall remove all structures covered under this lease unless the lease has been renewed in accordance with its terms.

5. Any actions, operations or installations which are considered by the Department to be contrary to the best interests of the public shall constitute reason for the discontinuance and/or removal of said action, operation or installation.

6. The issuance of this lease does not imply approval of any other part, phase, or portion of any overall project the lessee may be contemplating.

7. This lease is subject to the terms and conditions contained in any easement, license or permit that may have been granted by the State or any political subdivision, board, commission or agency of the State in the vicinity of the project.

8. This lease and authorization are granted for the purposes as stated herein. Any other use without prior approval shall constitute reason for this lease being revoked.

9. The lessee shall notify the Department of Natural Resources and Environmental Control within ten (10) days of the date work will be commenced.

10. The lessee shall maintain any structure on public subaqueous lands in good and safe condition and will protect and save the State of Delaware harmless from any loss, cost or damage by reason of said structures.

11. This lease shall not be construed to grant or confer any right, title, easement, or interest in, to, or over any land belonging to the State of Delaware other than that of a tenant.

12. This lease is subject to the terms and conditions contained in any easement, license or permit that may have been granted by the State or any political subdivision, board, commission or agency of the State in the vicinity of the leased premises.

13. This lease and authorization are granted for the purposes as stated herein. Any other use without prior approval shall constitute reason for this lease being revoked.

14. This lease shall expire if the project has not been completed within three (3) years from the date of issuance

15. If the lessee considers three (3) years insufficient for completion of the project, the lessee may submit a project time schedule for consideration by the Department. If the time schedule is approved it shall be attached hereto and made a part hereof.

16. This lease is not assignable or transferable without the prior written consent of the Department. Prior to the transfer of the property, it is the responsibility of the lessee to provide the new owner with a copy of the lease or to remove all structures. Prior to property conveyance, the lessee must also notify the Department of the change in ownership.

17. The lessee shall at all times comply with all applicable laws and regulations of the Department of Natural Resources and Environmental Control.

18. The issuance of this lease does not constitute approval for any of the activities as may be required by any other local, state or federal governmental agency.

19. Application for renewal must be submitted six (6) months prior to the expiration date of this lease.

20. This lease may be revoked upon violation of any of the above conditions.

IN WITNESS WHEREOF, I, Carl Nordstrom, Deputy Director of the NJDEP's Division of Parks and Forestry, have caused this instrument to be executed on this 31st day of January, 1996.

By: _____
Applicant

SWORN and subscribed before me on this 31st day of January 1996.

_____
Notary Public
TERESA M. SELLMEYER
A NOTARY PUBLIC OF NEW JERSEY
Commission Expires 7/11/99

IN WITNESS WHEREOF, I, Christophe A.G. Tulou, Secretary, Department of Natural Resources and Environmental Control, have hereunto set my hand and seal this 7th day of February, 1996.

_____
By Secretary of the Department of
Natural Resources and
Environmental Control

STATE OF NEW JERSEY
DEPARTMENT OF ENVIRONMENTAL PROTECTION
*(See Issuing Division below)*

# PERMIT*

The New Jersey Department of Environmental Protection grants this permit in accordance with your application, attachments accompanying same application, and applicable laws and regulations. This permit is also subject to the further conditions and stipulations enumerated in the supporting documents which are agreed to by the permittee upon acceptance of the permit.

| Permit No. | Application No. |
|---|---|
| 1708-95-0014.1 | 1708-95-0014.1 |

| Issuance Date | Effective Date | Expiration Date |
|---|---|---|
| JAN 24 1996 | JAN 24 1996 | JAN 24 2001 |

| Name and Address of Applicant | Name and Address of Owner | Name and Address of Operator |
|---|---|---|
| NJ Dept. of Env. Protection<br>Div. of Parks & Forestry<br>501 E. State Street<br>Trenton, NJ 08625 | Same as Applicant | Same as Applicant |

| Location of Activity/Facility *(Street Address)* | Issuing Division | Statute(s) |
|---|---|---|
| Fort Mott State Park<br>Pennsville Twp., Salem Co.<br>Lot 5301 Block 3 | Land Use Regulation | 12:5-3<br>58:10-1 to 13 |

| Type of Permit | Maximum Approved Capacity, if applicable |
|---|---|
| Waterfront Development, WQC | |

This permit grants permission to:

Reconstruct/rehabilitate the historically existing Fort Mott Pier within the dimensions of the still existing pier line and to it historic elevation of 10 feet NGVD. The structure shall be backfilled with gravel and stone and a floating 30' by 100' ferry landing shall be constructed at the terminus of the pier with pedestrian and handicap ramp access. [ferry landing to be within Delaware state waters]

Proposed work is as shown on four plan sheets entitled "Pier Rehabilitation And New Floating Ferry Dock, Fort Mott State Park, New Jersey", dated September 13, 1995, sheets 1 and 2 revised December 22, 1995, and prepared by S. T. Hudson Engineers, Inc.

This permit is authorized under, and in compliance with the following Rules on Coastal Zone Management (N.J.A.C. 7:7E-1.1 et seq.): Navigation Channels (7:7E-3.7), Intertidal & Subtidal Shallows (7:7E-3.15), Beaches (7:7E-3.22), Wetlands (7:7E-3.27), Historic & Archaeological Resources (7:7E-3.36), Acceptability Conditions for Miscellaneous Use [Floating ferry dock] (7:7E-4.2(s)), and Public Access to the Waterfront (7:7E-8.11).

EXHIBIT
Whitney-21
S. Oakley 10/10/06

Prepared by: Bruce Stoneback
Bruce Stoneback

| Revised Date | Approved by the Department of Environmental Protection |
|---|---|
| | Name (Print or Type) ~~SEE PAGE 3~~ Title |
| | Signature Date |

* *The word permit means "approval, certification, registration, etc."*

(General Conditions are on the Reverse Side)

DEP-007 (1/95)

NJ04410

The permittee shall allow an authorized representative of the Department of Environmental Protection & Energy the right to inspect construction pursuant to N.J.A.C. 7:7-1.5(b)4.

This permit is issued subject to and provided that the following conditions can be met to the satisfaction of the Land Use Regulation Program.

PHYSICAL CONDITIONS

1. No work is authorized by this permit outshore of the existing orib structure facing timbers [Delaware State Waters].

ADMINISTRATIVE CONDITIONS:

1. Permitted activities are subject to approval of the Army Corps of Engineers.

2. The following project aspects are subject to approval of the State of Delaware: a) installation of floating ferry mooring associated pilings, and b) removal of rip-rap against the crib structure below mean low water.

3. Prior to any construction, the permittee shall submit and have approved by the Program a suitable mitigation site and mitigation plan to compensate for the loss of 0.25 acres of wetlands and intertidal shallows [0.17 acres of wetland/0.09 acres of intertidal shallow]. Wetland mitigation proposal requirements can be found within Subchapter 14.4 of the Freshwater Wetlands Protection Act Rules (N.J.A.C. 7:7A-1.1 et seq.).

4. Prior to or concurrent with permitted work, the permittee shall perform mitigation activities to compensate for the authorized filling of wetlands and intertidal shallows area according to the requirements of 7:7E-3.15(c) and 7:7E-3.27(h). A model deed restriction for the chosen mitigation site is included as a permit addendum.

5. Prior to initiation of any work on the crib structure the permittee shall obtain from the Tidelands Program a finalized "Management Agreement" approved by the Tidelands Resource Council. [in lieu of license]

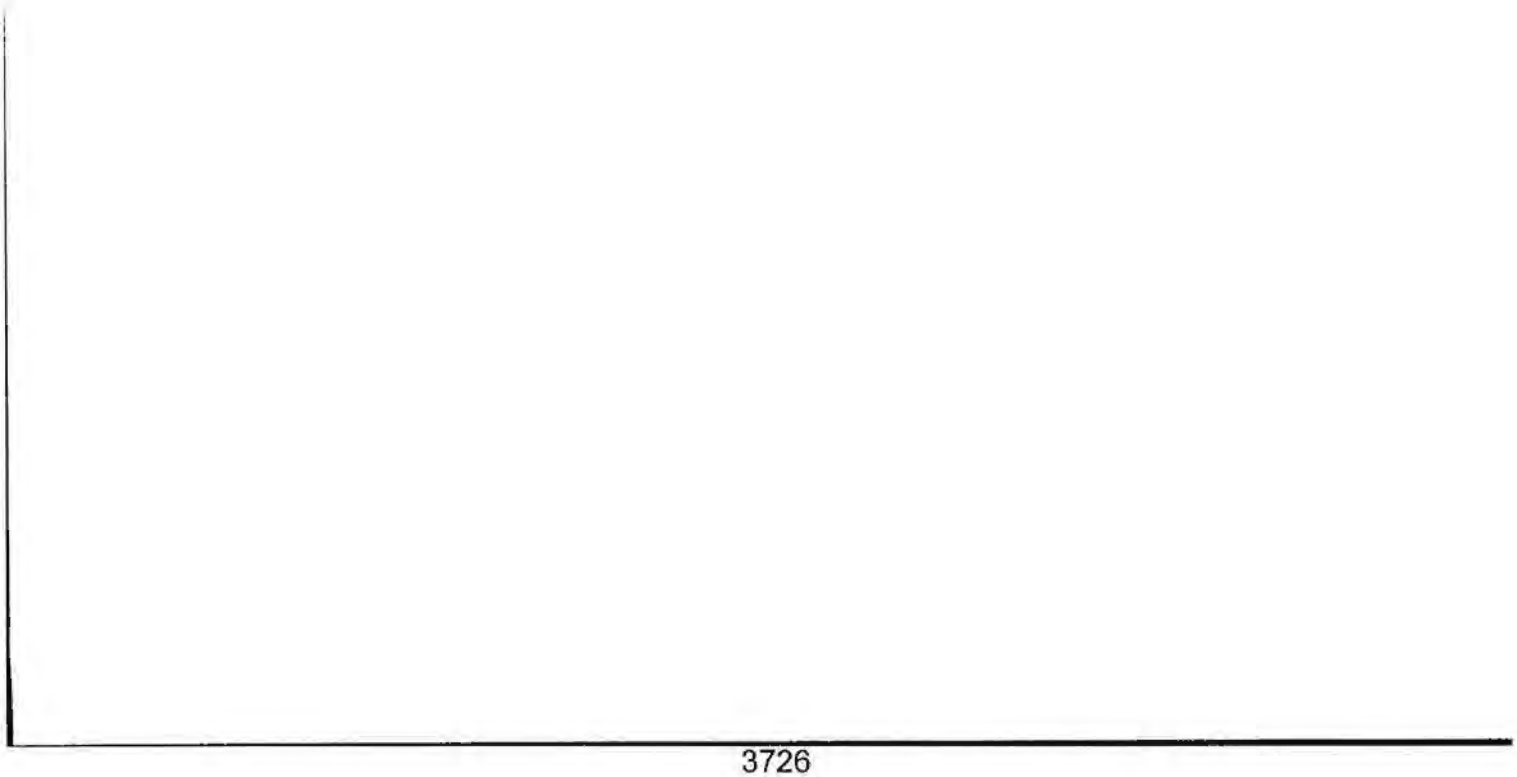
6. This permit shall be RECORDED in the office of the County Clerk (the REGISTRAR OF DEEDS AND MORTGAGES in the applicable counties) in the county wherein the lands included in the permit are located within ten (10) days after receipt of the permit by the applicant and verified notice shall be forwarded to the Land Use Regulation Program immediately thereafter.

7. This permit is NOT VALID until the permit acceptance form has been signed by the applicant, accepting and agreeing to adhere to all permit conditions, and returned to the Land Use Regulation Program at CN 401, Trenton, NJ 08625.

DATE: Jan 24, 1996

SIGNATURE: K J. Broderick
Ruth E. Ehinger, Manager
for Bureau of Coastal Regulation

NJ04412



STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES
& ENVIRONMENTAL CONTROL
DIVISION OF PARKS & RECREATION
89 KINGS HIGHWAY
P.O. BOX 1401
DOVER DELAWARE 19903

April 4, 1996

Mr. Carl Nordstrom
New Jersey Department of
Environmental Protection
CN 404
Trenton, NJ 08625-0404

Dear Carl:

It is my understanding that in order to fulfill your obligations for permitting of the restored pier at Fort Mott that you are required to mitigate one acre of wetlands. After evaluating our holdings at Pea Patch Island I am pleased to inform you that we will be glad to allow that mitigation to take place on the island. Per this letter you are authorized to conduct that mitigation pending a review and approval of plans.

Please let me know when next steps are needed to move this project forward.

Sincerely,

Mark R. Chura

Mark R. Chura, Manager
Planning, Preservation and
Development

MRC:dab
cc: Charles Salkin

State of New Jersey

Christine Todd Whitman
*Governor*

Department of Environmental Protection
Division of Parks and Forestry
CN 404
Trenton, NJ 08625-0404
Tel. #609-292-2733
Fax #609-984-0503

Robert C. Shinn, Jr.
*Commissioner*

March 6, 1997

David J. Hazelton, Project Assistant
The Delaware River & Bay Authority
PO Box 71
New Castle, Delaware 19720

Re: Riparian/Subaqueous License/Leases - Ft. Mott Pier Project

Dear Dave:

In accordance with our conversation of March 4, 1997, I've reviewed the Delaware Subaqueous Lease and N.J. Tidelands Resource Council Licenses granted for the above noted project and we have concluded the following facts.

*New Jersey Tidelands Resource License*

This license was issued on July 18, 1996 and continues for two years, expiring on July 18, 1998. This interim license was issued by the Department of Environmental Protection to our Division for construction purposes and prior to its expiration, we will apply to the Tidelands Resource Council for an additional 20 years to operate the pier facility.

As long as the Division submits the annual payment for this license and operates this pier for the public good, there is no reason for the Council to deny the extension of our license.

Please note that in accordance with our proposed landing agreement, the Division is not intending to assign this license responsibility to the DRBA and we accept full responsibility to insure its renewal for the initial and renewal term of our proposed agreement.

*Delaware Subaqueous Lease*

This lease was issued on February 7, 1997 and expires on February 7, 2007. Once again, as long as the Division operates this pier "for the public good", there is no concern on our part that this lease won't be extended beyond 2007.

The Division also accepts full responsibility for the renewal of this lease for the initial and renewal term of our proposed agreement.

Please review and I trust the above noted clarification will resolve any questions your legal department may have. Once again, please note that the Division of Parks and Forestry hereby accepts full responsibility for the continuation of the above noted license/leases and we will insure that no interruption of the proposed ferry service or use of our docking facility will occur due to revocation of these licenses.

Sincerely,

Carl R. Nordstrom
Deputy Director

CRN:ss
c: Assistant Commissioner Hall
Director Marshall
R. Barker
J. Rozmus
S. Mauger
A. Payne
I. Ojamaa

# State of Delaware
## Subaqueous Lands Lease Renewal Form

In order to insure that your lease renewal application can be processed, it is important to provide a complete and accurate answer for all of the requested information. Upon being processed, your application will be placed on public notice. Please do not respond with vague answers such as "see original application" or "see enclosed plans" as these answers may be regarded as incomplete answers. Incomplete applications may be returned for additional information. If you need assistance or have questions about this application, please contact one of our representatives at (302) RECEIVED 4943

AUG 16 2006

WETLANDS

1. Contact Information

Applicant's mailing address:

N.J. STATE PARK SERVICE
Name of applicant (an organization or person)

P.O.BOX 404 STATION PLAZA BLG.#5 4TH.FL.
Street Address and/or P. O. Box

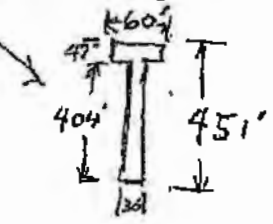
TRENTON, N.J. 08625
City State Zip Code

OFFICE Home Telephone (609)292-2772 Work Telephone (609)633-7576

2. Fill in the dimensions for all your leased structures or activities. If you leave this section blank or reference the plans (e.g. "see plans"), your application will not be accepted and will be returned to you. The dimensions listed below should be the dimensions of the structure as it exists today. If you do not have one of the structures listed, you may leave those items blank. If your structures are not covered by this list, you may list the structures in the space provided or on another page.

Use extra paper if needed.

| Activity | | Length | Width | | Linear feet | Diameter |
|---|---|---|---|---|---|---|
| Pier | perpendicular to the shoreline | 451' | 30' | Timber Bulkhead | | |
| Dock | parallel to the shoreline | | | Stone rip-rap | | |
| Dock | parallel to the shoreline | | | Transmission Line | | |
| Boat Ramp | | | | Pipe line | | |
| Breakwater/Groin | | | | Fill Area : | | |
| Stand-alone piles | No. : | | | Other : | | |




A Whitman SL-282106 rec#316081 PN 05 on 9/13/06 CM PN 12/07



p.6 302-739-6304 DNREC Dec 11 06 12:14p

DE32721

3. Please estimate the distance between the end of your structure and the nearest edge of the navigational channel. 2,500'

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AUG 16 2006
WETLANDS

4. Please list the street address at project location.

454 FORT MOTT ROAD

Street Address (Do Not use a P.O. Box or Lot number unless that number is visible somewhere at property.)

PENNSVILLE, N.J. 08070

City Zip Code

5. Please provide the directions from the nearest state or county roads *(for example: 1.3 miles north of State Route 99 on County Road 999)*. List a permanent landmark if one is nearby. We will use this information to find the structure for a site inspection. You may provide a map in lieu of directions, however that must include State or County roads. If you do provide a map, please mark the exact location of the site on the map.

* SEE ENCLOSED MAP OFF RT. 49

6. Please list the name and complete mailing address of the owners of the contiguous neighboring lands on all sides of the property (attach sheets as needed).

N.J. STATE PARK - FORT MOTT

* SEE ATTACHED BROCHURE



Dec 11 06 12:14p DNREC 302-739-6304 p.6

DE32722

N/A

**7. Complete County Tax Map Number and Parcel Number.** This information was not collected in the past. It links your leased structure to the property that it was built from. Each county has a different system for identifying property. The blocks below have been provided to help you record the complete number, from your respective county, with your application. If you do not know this number, please contact your County's Recorder of Deeds at the phone numbers provided below. You may add a "0" for every block that does not correspond to the number that identifies your property. See the example below.

**Kent County:** 736-2010

☐☐☐.☐☐-☐☐-☐☐-☐-☐☐.☐☐

|<--map page number-->|<hundred>|<town>|<block>|<--lot number-->|
*required* *required* *if relevant* *required* *required*

RECEIVED
AUG 16 2006
WETLANDS

**New Castle County:** 365-5400

☐☐-☐☐☐.☐☐-☐☐☐.☐-☐☐☐☐

|<district>|<--map page number-->|<--parcel number-->|<--subparcel-->|
*required* *required* *required* *if relevant*

**Sussex County:** 855-7878

☐-☐☐-☐☐.☐☐-☐☐☐☐.☐☐-☐☐☐☐

|<--district-->|<-----map----->|<---------- parcel ---------->|<------unit------>|
*required* *required* *required* *if relevant*

An example based on the fictitious tax parcel identification number "1-51-37-26.1" from Sussex County. "1-51" would be the district, "37" would be the map, 26.1 would be the parcel, and there would be no unit that applies to this particular tax map and parcel number. The correct way to fill out this number would be as follows:

1-51-37.00-0026.01-0000

|<--district-->|<-------map------->|<---------- parcel ---------->|<------unit------>|
*required* *required* *required* *if relevant*

**Return this application to:** **Wetlands and Subaqueous Lands Section**
**DNREC**
**89 Kings Highway**
**Dover, DE 19901**



Dec 11 09 12:15p DNREC 302-739-6304 p.7
DE32723

State of Delaware Subaqueous Lands Lease Renewal Form

Attach the $225.00 application fee. Checks should be made payable to the State of Delaware.

You must include three copies of the following items to complete your application.

1. The deed showing ownership of the upland property that abuts the leased structure and the property survey showing all legal boundaries of the upland property that abuts the leased structure.

2. A drawing of the project as it exists today. Include actual configuration, all dimensions, piles, additions, and modifications, and the position where the high water mark and the low water mark are in relation to the leased structure. IF THE ORIGINAL DRAWING DOES NOT REFLECT THE STRUCTURE AS IT EXISTS TODAY, YOU MUST DRAFT NEW, ACCURATE PLANS AND SUBMIT THEM TO THIS OFFICE.

RECEIVED
AUG 16 2006
WETLANDS

3. All four pages of this renewal form (after completing and signing).

Applicant Signature and/or Agent Authorization

I certify that the information on this form and the attached plans are true and accurate to the best of my knowledge. I understand that DNREC may request information in addition to that set forth herein as may be deemed appropriate in considering this application. I grant permission to the authorized DNREC representative(s) to enter upon the premises for inspection purposes during working hours. I will abide by the conditions of this approval if issued.

David L Hewitt — Applicant Signature
8/10/06 — Date

Applicant Name (printed or typed) DAVID L. HEWITT

If you elect to complete this section, all future correspondence may be signed by the duly authorized agent. In addition, the agent will become the primary point of contact for all correspondence from DNREC.

I, _____ (Name of Applicant), hereby designate and authorize _____ (Name of Agent) to act on my behalf in the processing of this application and to furnish any information that is requested.

David L Hewitt — Applicant Signature
8/10/06 — Date

N.J. STATE PARK SERVICE — Agent Signature
_____ — Date



Dec 11 06 12:15p DNREC 302-739-6304 p.8
DE32724

**MEMORANDUM**

PROJECT NOTICE NO. 25
DATE: December 13, 2006

TO:

SECRETARY - DNREC
DIRECTOR - Division of Air & Waste Management
DIRECTOR - Division of Parks & Recreation
DIRECTOR - Division of Fish & Wildlife
MANAGERS - Fisheries, Mosquito Control & Wildlife
DIRECTOR - Division of Soil & Water Conservation
DIRECTOR - Division of Water Resources
MANAGER - Groundwater Discharges Section - Water Resources
MANAGER - Surfacewater Discharges - Water Resources
MANAGER - Water Shed Assessment Branch - Water Resources
GEORGETOWN OFFICE - Division of Water Resources
CHIEF - Public Affairs, DNREC
DELAWARE GEOLOGICAL SURVEY
NEW CASTLE, SUSSEX & KENT COUNTY PLANNING OFFICES
DEPARTMENT OF HEALTH AND SOCIAL SERVICES
GOVERNOR'S COUNCIL ON ENVIRONMENTAL CONTROL
COUNCIL ON HISTORICAL & CULTURAL AFFAIRS, ARCHAEOLOGICAL OFFICE
ENVIRONMENTAL PROTECTION AGENCY
U. S. FISH & WILDLIFE SERVICE
U. S. ARMY CORPS OF ENGINEERS
NATIONAL OCEANIC & ATMOSPHERIC ADMINISTRATION
ADJACENT PROPERTY OWNER
WETLANDS MAILING LIST

FROM: WETLANDS AND SUBAQUEOUS LANDS SECTION - Telephone (302) 739-9943

SUBJECT: PENDING APPLICATIONS FOR SUBAQUEOUS AND/OR WETLANDS PROJECTS

---

Attached is a copy of a notice which appears in the News Journal and The Delaware State News on Wednesday, December 13, 2006. If you have any comments please return this memo to this office by January 2, 2007.

---

PROJECT NOTICE NO. 25

RETURN THIS PORTION TO: Department of Natural Resources & Environmental Control - Wetlands & Subaqueous Lands Section, 89 Kings Highway, Dover, DE 19901

1. Applicant Name: _____
2. Date Notice Received _____
3. No comments _____
4. My comments are as follows:

5. Signed _____
6. Div./Address _____
7. Phone: _____

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Dec 11 06 12:14p DNREC 302-739-6304 p.2

DE32718

LEGAL NOTICE

## DNREC - Wetlands and Subaqueous Lands Section

### Subaqueous Lands Applications

1. New Jersey State Park Service – To maintain a 30 foot by 255 foot pier, a 50 foot by 62 foot dock, a 10 foot by 10 foot platform with an 8 foot by 60 foot ramp connected to a 30 foot by 100 foot floating barge platform in the Delaware River at Fort Mott State Park, Pennsville, Salem County, NJ.

2. Murray and Tami Oltman - To maintain a 4 foot by 40 foot pier and a 5 foot by 15 foot dock in Dirickson Creek at 36490 Old Mill Bridge Road (Lot 4, Dirickson Landing), Frankford, Sussex County, DE.

3. Ronald Mould - To maintain a 5 foot by 25 foot dock in Roy Creek at 37908 Blue Heron Run, Keenwick Sound, Selbyville, Sussex County, DE.

4. Brent J. Collins - To construct a 4 foot by 90 foot pier, an 8 foot by 25 foot floating dock with a 4 foot by 12 foot roller gangway, and 2 mooring piling for a boat lift in Pepper Creek at 30664, Shell Road, Helms Landing, Dagsboro, Sussex County, DE.

### Wetlands Applications

1. Indian River Power, LLC - To construct 10,410 linear feet of shoreline stabilization comprising of 9,803 linear feet of armor stone revetment, 382 linear feet of marsh toe sill and 225 linear feet of vegetated coconut fiber logs in wetlands adjacent to the Indian River at Burtons Island, Indian River Generating Station, Millsboro, Sussex County, DE.

Applications above are available for inspection or copies may be obtained by contacting:

Denise J. Rawding
Wetlands and Subaqueous Lands Section
89 Kings Highway
Dover, DE 19901
(302) 739-9943

A public hearing on the above applications will NOT be held unless the Secretary of DNREC determines that a hearing is in the public interest or if a written meritorious objection to the application is received within 20 days from this notice. A public hearing request shall be deemed meritorious if it exhibits a familiarity with the application and provides a reasoned statement of the action's probable impact.

PUBLICATION INSTRUCTIONS:
PLEASE PUBLISH AS A 2-COLUMN DISPLAY AD IN THE FOLLOWING:
DELAWARE STATE NEWS - Wednesday, December 13, 2006
NEWS JOURNAL - Wednesday December 13, 2006
BILLING INFORMATION: DNREC
DNREC, DWR, Denise Rawding
89 KINGS HIGHWAY
DOVER, DE 19901
302-739-9943

Dec 11 06 12:14p DNREC 302-739-6304 p.3

DE32719

**DNREC – WETLANDS AND SUBAQUEOUS LANDS SECTION**

**LEGAL NOTICE**
**PERMIT APPLICATION/PUBLIC HEARING**

Pursuant to 7 Delaware Code, Subsection 7206, the Department of Natural Resources and Environmental Control will conduct a public hearing on Thursday, January 11, 2007, commencing at 6:00 pm at the Lewes Public Library, 111 Adams Avenue, Lewes, Delaware.

The purpose of the hearing is to solicit the views of interested parties in regards to the Division of Soil and Water Conservation's permit application to reconstruct and refurbish the north and south timber and stone groins at Herring Point by placing 17,900 square feet of stone rip-rap extending channelward a maximum of 250 feet from mean high water in the Atlantic Ocean at Cape Henlopen Sate Park, Lewes, Sussex County, Delaware.

The application and supporting documents may be inspected at the office of the DNREC, Division of Water Resources, Wetlands and Subaqueous Lands Section, 89 Kings Highway, Dover, Delaware, any time between 8:15 a.m. and 4:15 p.m., Monday through Friday. Comments concerning this application should be made in writing to the Division within twenty (20) days from the date of this notice. For additional information, or an appointment to inspect these documents, please call (302) 739-9943.

Statements and testimony may be presented at the public hearing either orally or in written form. Written statements may also be presented prior to the hearing and should be addressed to:

Denise Rawding
Wetlands and Subaqueous Lands Section
89 Kings Highway, Dover, DE 19901
(302) 739-9943

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PUBLICATION INSTRUCTIONS:

PLEASE PUBLISH AS A 2-COLUMN DISPLAY AD IN THE FOLLOWING:

DELAWARE STATE NEWS - Wednesday, December 13, 2006
NEWS JOURNAL - Wednesday, December 13, 2006
BILLING INFORMATION: 060802

DNREC, DWR, Denise Rawding
89 KINGS HIGHWAY
DOVER, DE 19901
302-739-9943

Dec 11 06 12:14p DNREC 302-739-6304 p.4

DE32720

STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES
& ENVIRONMENTAL CONTROL
DIVISION OF WATER RESOURCES
89 KINGS HIGHWAY P.O. BOX 1401
DOVER, DELAWARE 19901
TELEPHONE (302) 736-4761

SURFACE WATER MANAGEMENT
SECTION

April 6, 1987

Mr. Moira K. Donoghue
Manager, Real Estate
Delmarva Power
P. O. Box 9239
Newark, Delaware 19714

RE: Reconstruction of Delmarva Power's 500 kV Power Line, Fender System and Related Electric Transmission Facilities Crossing the Delaware River

Dear Mr. Donoghue:

Please be advised that the Department of Natural Resources and Environmental Control hereby authorizes the reconstruction of the above-referenced subaqueous lands structure in accordance with the plans submitted to the extent that the dimensions or intended use are not changed. Changes in either the dimensions or use shall require a permit pursuant to 7 Del. C., Chapter 72 and Section 2.01 of Delaware's Regulations Governing the Use of Water Resources and Public Subaqueous Lands.

1. Sediment and erosion controls shall be implemented so as not to violate the State of Delaware Department of Natural Resources and Environmental Control, Water Quality Standards for Streams dated December 23, 1985.

2. This authorization shall be valid for a period of one (1) year beyond this letter date.

3. A copy of this Repair and Replace must be available on-site during all phases of construction activity.

Regarding your request for placing a temporary line across the river using floating oil rigs or barges, this activity, which would require dredging and disposal, cannot be approved without

DE06129

submittal of an application for a subaqueous lands project. After the requisite public notice period, a temporary permit would be issued to allow time for repairs to the permanent structures. I would anticipate this process taking approximately forty-five (45) days.

If you have any questions regarding this authorization, please feel free to contact this office.

Sincerely yours,

William F. Moyer
Supervisor
Wetlands and Underwater Lands
Branch
(302) 736-4691

cc: Frank Cianfrani
Gerard Esposito
R. Wayne Ashbee
Charles McNally

COPY

# JOINT APPLICATION FORM

## For Subaqueous Lands, Wetlands, and Marina Projects

State of Delaware
Department of Natural Resources
and Environmental Control
Division of Water Resources

DELAWARE
DIVISION OF WATER RESOURCES
*Clean Water - for Today and Tomorrow*

DELAWARE DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DE14266

# TYPE OF PROJECT
## List of Appendices

Please complete the Basic Application Form (pages 4 through 8) for all projects. Please check below only the appendices which apply to your project, complete the appropriate appendices and attach them to the Basic Application Form. (Please see definitions and explanations section of the Joint Application Form Reference Guide for further help.)

Applications must have the following applicable appendix completed upon submittal. Return only those appendices which apply to your project. Incomplete applications will be returned.

A._____Boat Docking Facilities (1-4 slips)

B._____Boat Ramps

C._____Road Crossings

D._____Channel Modifications or Impoundment Structures (Dams)

E._X_Utility Crossings

F._____Intake or Outfall Structures

G._____Bulkheads

H._____Fill

I._____ Rip-Rap

J._____ Vegetative Stabilization

K._____Groins, Jetties, or Breakwaters

L._____Construction in State Wetlands (Type I)

M._____Construction in State Wetlands(Type II)

N._____Preliminary Marina Screening Checklist (See * below)

O._____Marina (See * below)

P._____Stormwater Management

Q._____Ponds and Impoundments (Other than for Stormwater Management)

R._____ Dredging/Maintenance
_____ Hydraulic _____Mechanical

S._____ New Dredging
_____ Hydraulic _____Mechanical

*Please see following section on Marinas for a description of the requirements.

Reminder: After completing the basic application and the appendices which apply to this project, turn to the sample drawings in the Joint Application Form Reference Guide and prepare your application drawings.

*Attachment:

Delaware State Department of Transportation
U S Route 113
Dover, DE 19901

(302) 739-4302

US Army Corps of Engineers
1203 College Park Road
Suite 103
Dover, DE 19904

(302) 736-9763

E. I Dupont Chambers
Deepwater, NJ 08023

(609) 299-5000

New Jersey Department of Transportation
1035 Parkway Avenue
Trenton, NJ 08625

(609) 530-2001

# BASIC APPLICATION FORM

ATTACH ADDITIONAL 8 1/2" X 11" SHEETS OF PAPER AS NEEDED

1. Applicant's (Property Owner) name and complete address:
Delmarva Power & Light
P.O. Box 9239
Newark, DE 19714

Telephone Number
Home ( ): _____
Work (302): 454-5169

2. Name of Leaseholder (if applicable) of land where project is contemplated and complete address: N/A

Telephone Number
Home ( ): _____
Work ( ): _____

3. Authorized agent's name and complete address ( if applicable): Juan S. Crofton
16 Harper AVenue
Portsmouth, VA 23707

Telephone Number
Home ( ): _____
Work (757): 397-1131

(Complete agent authorization section at the botton of page 8)

4. Is this project
_____ New? _____ Repair/Replacement?
__X__ Both? If "Both", please explain: Going into existing power cable easeme
_____ Supplemental Approval for an existing lease or permit?

5. Provide a brief description of the project:

A. _____Dredging
Total Estimated Volume: ____ cu. yds.
B. _____Filling
Total Volume: _____ cu. yds.
C. _____ Shore Erosion Control
Total Length: _____ft.
D._____ Dock(s)
Total Number: _____
E. _____ Pier(s)/Walkways
Total Number: _____
F. __X__ Other 3475 Lineal Feet of
Total Dimensions: Submarine Cable

6. Primary purpose of the project:

| | |
|---|---|
| ____ Shore Erosion Control | ____ Dam |
| __X__ Utility Installation | ____ Road |
| ____ Create Waterfowl Habitat | ____ Improve Navigable Access |
| ____ Temporary Construction | ____ Improve Fish Habitat |
| ____ Beach Nourishment/Fill | ____ Stream Channelization |
| ____ Residential Commercial Development | ____ Maintenance/Repair |
| | ____ Small Pond |
| ____ Erosion/Sediment Control | ____ Marina |
| ____ Stormwater Management | ____ Bridge |
| ____ Fill | ____ Vessel Berthing/Launching |
| ____ Culvert | ____ Other _____ |

7. Have you discussed this project with any representative of Local, State, or Federal regulatory agency? __X__ Yes ____ No
If yes, complete the information below.
Name of Representative: Chuck McNally - Ted Mercer
Name of Agency: Delaware DNR
Date: June 1997

8. Have you applied for, or obtained a permit from any Local, State, or Federal agency for any portion of this project described in this application?
____ Yes __X__ No

If yes, provide the following:
Agency: _____
Type of Action/Permit: _____
ID No: _____
Application/Issue Date: _____

9. Project Location: Delaware River
Site address of Location: Pigeon Point,Delaware to Deepwater, NJ (Waterborne)
County/City: New Castle, Delaware
Directions from nearest intersection of two state roads: Rt. 9 N & Lambson's Road to Corps of Engineers Southeast Corner of Landfill
Name of the waterbody at the project location: Delaware River
Is it a tributary of any other water body? ____ Yes __X__ No
If yes, which waterbody? _____

The waterbody at the project location is: (check one on line A & one on line B)

| | | | |
|---|---|---|---|
| A. __X__ Natural | ____ Man-made | ____ Uncertain |
| B. __X__ Tidal | ____ Non-tidal | ____ Uncertain |

10. Current land use: ____Agriculture ____ Marsh/Swamp __X__ Navigational Waterway
____ Meadow ____ Wooded ____ Developed

Present zoning is: ____Agriculture ____Commercial
____Residential __X__Other State Owned Bottom

11. a. List the name and complete address of the owners of the contiguous neighboring lands on all sides of the property. (Attach sheets as needed). Delaware State * (See Attached Sheet for
Army Corp of Engineers Addresses)
NJ Side - E I DuPont de Nemours and Company
NJ DOT

b. *For marina projects or projects that include activities or construction in wetlands*, list the name and complete address of the owners, as listed with the County Board of Assessment, of neighboring lands within 1,000 feet of the project (including those across the waterway if within the 1,000 foot radius) and any claimants of such ownership rights that are known to the applicant, with their last known addresses.

12. Will any public benefit be derived from the project? __X__ Yes ____ No
____ Uncertain If yes, explain below: Increase Communication Networking to Further Assist Public.

13. Has any work commenced or has any portion of the project for which you are seeking a permit been completed? ____ Yes __X__ No If yes, give details below. State when work was completed and who performed the work. Please indicate on attached drawings what is proposed.

14. Proposed Start Date: October 1, 1997

15. Contractor's Name and Complete Address: Crofton Construction Services, Inc.
16 Harper Avenue
Portsmouth, VA 23707
Telephone Number: (757) 397-1131

PLEASE COMPLETE AND ATTACH ALL APPROPRIATE DRAWINGS AND APPENDICES TO THIS SECTION. INCLUDE A COPY OF THE PROPERTY DEED AND SURVEY TO SHOW ALL PROPERTY BOUNDARIES AND DIMENSIONS.

## APPLICANT SIGNATURE &/OR AGENT AUTHORIZATION

* All applicants must sign this page. Complete the Agent Authorization Section only if applicable.

I certify that the information on this form and the attached plans is true and accurate to the best of my knowledge.

I understand that DNREC may request information in addition to that set forth herein and may be deemed appropriate in considering this application.

I grant permission to the authorized DNREC representative(s) to enter upon the premises for inspection purposes during working hours.

I will abide by the conditions of this approval if issued.

Wayne N. Brumbley — Applicant Signature

05 May 1997 — Date

Applicant Name (Printed/Typed) WAYNE N. BRUMBLEY

### Agent Authorization Section

* If you elect to complete this section, all future correspondence may be signed by the duly authorized agent. In addition, the agent will become the primary point of contact for all correspondence from the Department.

I, WAYNE N. BRUMBLEY, hereby designate and authorize
Name of applicant

JOHN S. COFFIN to act on my behalf in the
Name of Agent

processing of this application and to furnish any information that is requested.

Wayne N. Brumbley — Applicant Signature

05 May 1997 — Date

John S. Coffin — Agent Signature

17 May 1997 — Date

4. If you answered "Yes" to any of the items in Question 3, attach a description of the incidents or events leading to the issuance of each enforcement action, the disposition of each action, and any actions that have been taken to correct the violations that led to such enforcement action.

n/a 5. * Attach copies of any and all settlements of the environmental claims associated with actions identified in response to Question 3 above, whether or not such settlements were based on agreements where the applicant did not admit liability for the action.

***I do hereby swear that I have read the above questions and have provided all of the information requested and that all of the information provided is true and accurate.***

May 17, 1997
Date

Signature - Applicant or Corporate Agent

Name: Juan S. Crofton

Company Name: Crofton Technologies

Address: 16 Harper Avenue

Portsmouth, VA 23707

Phone: (757) 397-1131

* NOTE: The applicant may claim that some or all of the information presented in response to Questions, 1, 2, and 5 is confidential if such information is not already available to the public. An applicant wishing to make such a claim should write, preferably in red ink "claimed confidential information" at each point in the response where such confidentiality is claimed, and provide an explanation of why the release of such information would constitute an invasion of personal privacy or would seriously affect the applicant's business or competitive situation.

# APPENDIX E
# UTILITY CROSSINGS

*** Please make sure answers to all of the questions in this appendix correspondence to information on the application drawings.**

1. **How many utility crossings are proposed for this project?** 1 - 1 1/4" Diameter Fiber Cable

2. **What will be the purpose of the submarine crossing(s)?** Upgrade Communication Network for DP&L and Public.

3. **What is area of impact involved in crossing (channelward of mean high water)** 1875 **sq. ft.**

4. **Briefly outline the procedure(s) for placement/construction of the submarine or overhead structure(s):** Direct Bury by Plow Method Into River Substrate at a Depth Sufficient to Protect the Cable and the Public.

5. **Indicate the distance(s) that the submarine structure(s) will cross the water body relative to:**

   **Mean high water (for tidal areas only)** 3755 **ft.**
   **Ordinary high water (for non-tidal areas only)** _____ **ft.**

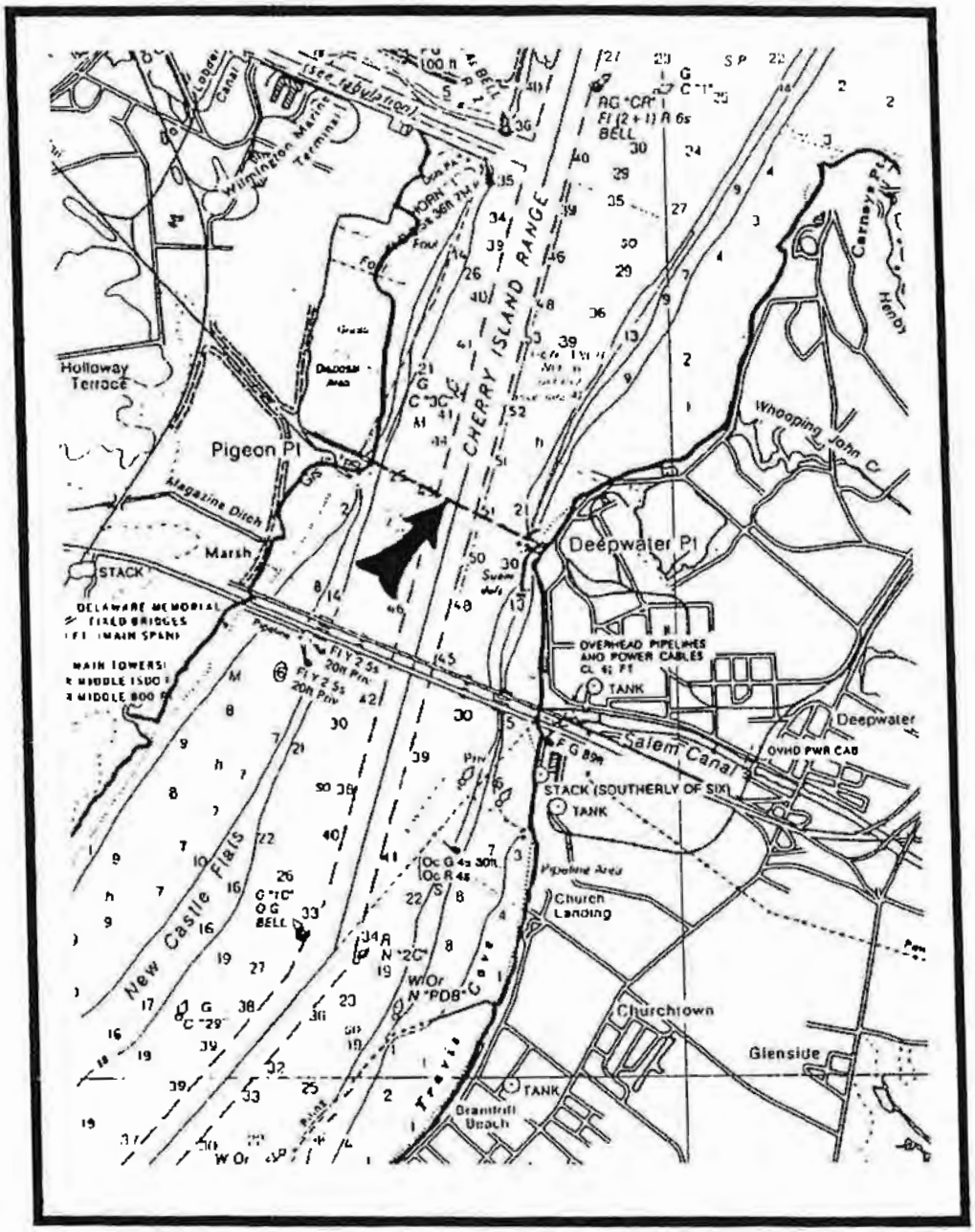
6. **Will dredging, excavating, or filling be required?** _____ **Yes** X **No**
   **If your answer is "yes", complete the appropriate appendices.**

7. **Will there be any permanent towers, poles, platforms or other structures (excluding submarine cables) on subaqueous land or wetlands?** _____ **Yes** X **No**
   **If your answer is "yes", give the number and the description of structures (the location of all structures must be shown on our drawings or the application cannot be processed). Number:** _____ **Description:**

8. **At what depth will the submarine crossing(s) be placed below the bottom of the water body?** -3 **ft.** Outside of Federal Channel Limits
   -58 **ft.** Below MLW in Federal Channel

9. **If this project will be a power line crossing, what will be the nominal system voltage of the line?** n/a

# LOCATION MAP



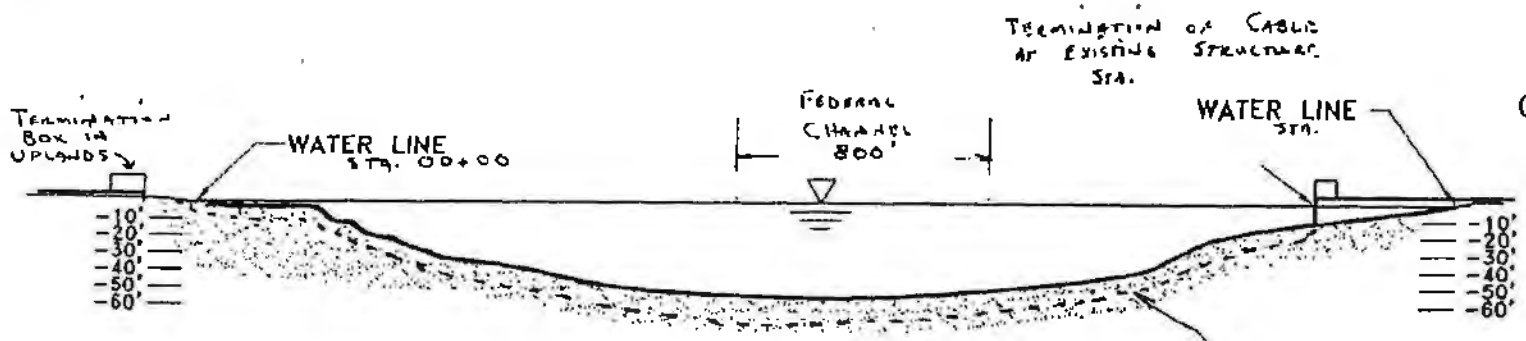

| CROFTON TECHNOLOGIES<br>PORTSMOUTH, VIRGINIA | | | |
|---|---|---|---|
| DELMARVA POWER & LIGHT<br>96 FIBER OPTIC | | | |
| ARMORED SUBMARINE CABLE CROSSING<br>DELAWARE RIVER<br>PIGEON POINT TO DEEPWATER POINT<br>WILMINGTON, DELAWARE | | | |
| DATE | 5/97 | DRAWN MTJ | REV |
| SCALE | NONE | CHECKED JSC | REV |

DE14275

# DELAWARE RIVER
# VIEWING NORTH

PIGEON POINT

DEEPWATER POINT




EXISTING CABLES
In Common Trench Across Waterway

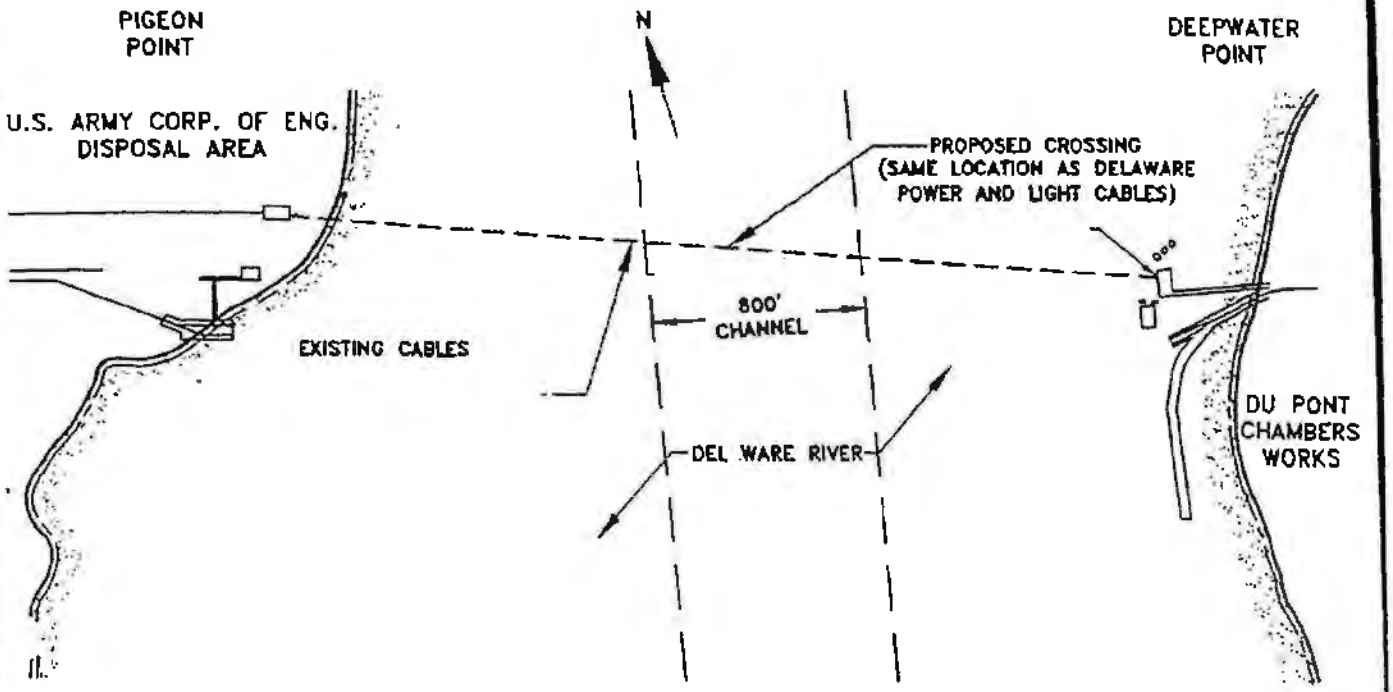
PROPOSED CROSSING
(SAME LOCATION AS DELAWARE POWER AND LIGHT CABLES)
- 3' Burial outside Channel
- 58' Burial within Federal Minimal Depth

## PROFILE

VERTICAL: 1"=10'
HORIZONTAL: 1"=500'

| | | | | |
|---|---|---|---|---|
| CROFTON TECHNOLOG | | | | |
| PORTSMOUTH, VIRGIN | | | | |
| DELMARVA POWER & L | | | | |
| 96 FIBER OPTIC | | | | |
| ARMORED SUBMARINE CABLE C | | | | |
| DELAWARE RIVER FIBER OPTIC CABLE | | | | |
| DATE | 5/97 | DRAWN | MTJ | REV |
| SCALE | NONE | CHECKED | JSC | REV |

# PHOTO LOG GUIDE




## LEGEND

(2) → FIELD OF VIEW

| | | | | |
|---|---|---|---|---|
| CROFTON TECHNOLOGIES PORTSMOUTH, VIRGINIA | | | | |
| DELMARVA POWER & LIGHT 96 FIBER OPTIC | | | | |
| ARMORED SUBMARINE CABLE CROSSING DELAWARE RIVER FIBER OPTIC CABLE | | | | |
| DATE | 5/97 | DRAWN | MTJ | REV |
| SCALE | NONE | CHECKED | JSC | REV |

DE14277

*Attachment:

Delaware State Department of Transportation
U S Route 113
Dover, DE 19901

(302) 739-4302

US Army Corps of Engineers
1203 College Park Road
Suite 103
Dover, DE 19904

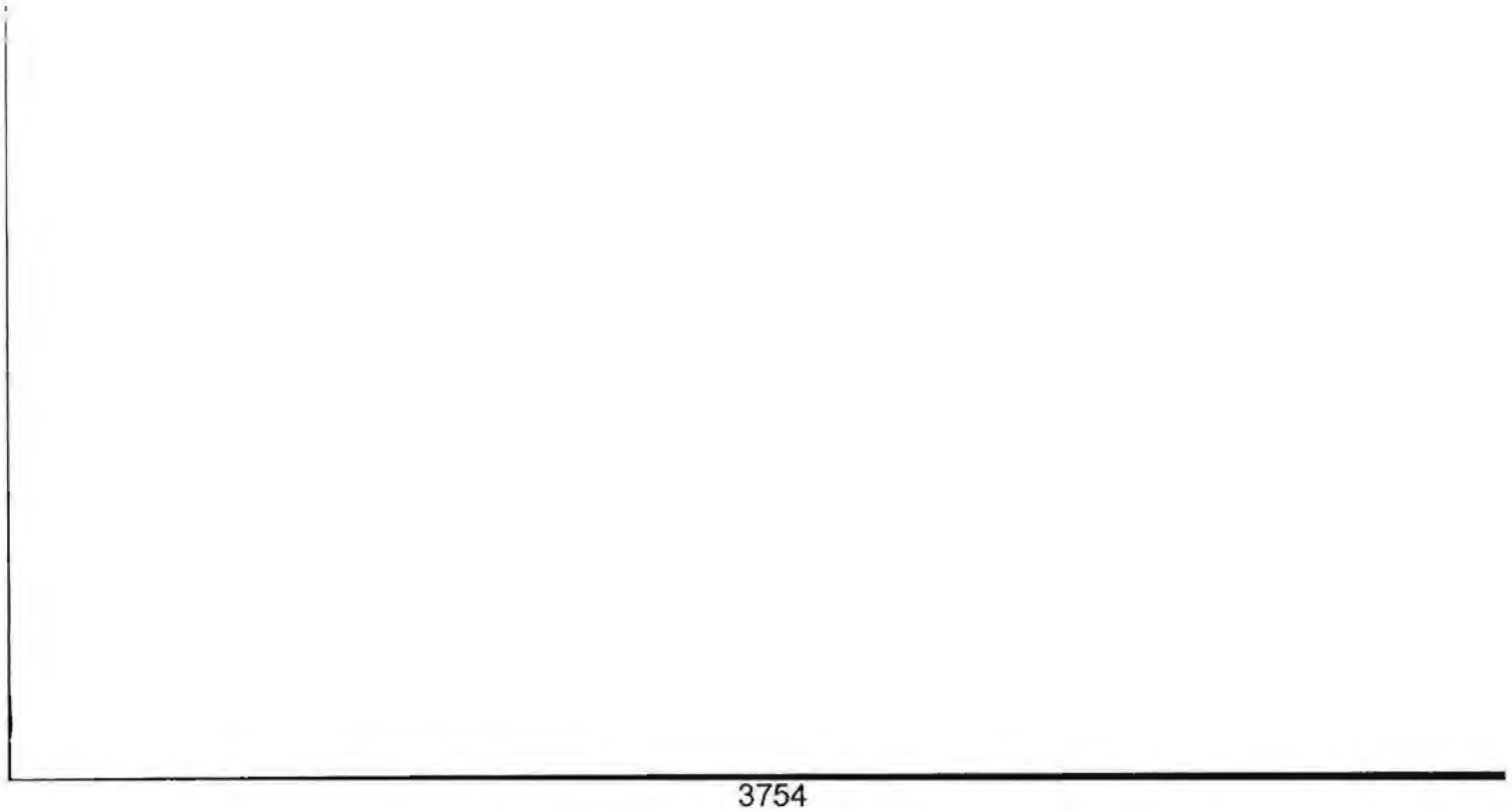
(302) 736-9763

E. I Dupont Chambers
Deepwater, NJ 08023

(609) 299-5000

New Jersey Department of Transportation
1035 Parkway Avenue
Trenton, NJ 08625

(609) 530-2001



STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES
& ENVIRONMENTAL CONTROL
DIVISION OF WATER RESOURCES
WETLANDS & SUBAQUEOUS LANDS SECTION
89 KINGS HIGHWAY, P.O. BOX 1401
DOVER, DELAWARE 19903
TELEPHONE (302) 739-4691
FACSIMILE (302) 739-3491

Subaqueous Lands Lease:SL-0109/97
Date of Issuance: 12/09/97
Construction Expiration Date: 12/09/2000
Amended Date:

**SUBAQUEOUS LANDS LEASE**
**GRANTED TO DELMARVA POWER AND LIGHT COMPANY FOR THE INSTALLATION OF 3755 LINEAR FEET OF SUBMARINE FIBER OPTIC CABLE, IN THE DELAWARE RIVER EXTENDING FROM PIGEON POINT IN NEW CASTLE COUNTY DELAWARE, TO DEEP WATER POINT IN SUSSEX COUNTY NEW JERSEY**

Delmarva Power and Light Company
P.O. Box 9239
Newark, DE 19714

Pursuant to the provisions of 7 Del. C. 7203, and the Department's Regulations Governing the Use of Subaqueous Lands, permission is hereby granted on this 9th day of December A.D. 1997, to construct the above-referenced project in accordance with plans titled " Delmarva Power and Light Company 96 Fiber Optic", dated 5/97, and received by this Division on 8/12/97 and application dated 5/5/97, and received by this Division on 8/12/97.

WHEREAS, the State of Delaware is the owner of ungranted subaqueous lands lying beneath the waters of the Delaware River.

WHEREAS, Delmarva Power and Light Company, owner of certain adjoining lands to the Delaware River, has applied for permission to install a submarine electric cable,and

WHEREAS, pursuant to the provisions of 7 Del. C., 7203, the Secretary of the Department of Natural Resources and Environmental Control through his duly authorized representative finds that it is not contrary to the public interest if this project is approved subject to the terms and conditions herein set forth.

This approval is in accordance with plans and application submitted to Department of Natural Resources and Environmental Control, a copy of which is attached hereto and made a part hereof.

This lease shall be continued for a period of ten (10) years or so long as the conditions attached to the lease are adhered to, whichever is the shorter in time. Upon the expiration of the ten-year term this lease shall expire and become null and void, unless prior thereto the lessee shall have applied for and received a renewal of this lease. A renewal may be denied if the State determines that the lease is no longer in the public interest.

THIS lease is issued subject to the following conditions:

**SPECIAL CONDITION**

1. The conditions contained herein shall be included as part of the main body of the construction contract and other ancillary documents associated with earth disturbance and any other activities directly or indirectly associated with construction which may impact subaqueous lands associated with this project. The lessee is responsible for ensuring that the contractor and/or workers executing the activities authorized by this lease have full knowledge of the terms and conditions of this lease.

2. Construction shall be conducted so as not to violate the State of Delaware Department of Natural Resources and Environmental Control, "Surface Water Quality Standards" dated February 26, 1993.

3. A copy of this lease must be available on-site during all phases of construction activity.

4. The structure on subaqueous lands shall be for the explicit purpose of upgrading the communication network for the public as stated in appendix E, Section 2, of the application.

5. All construction debris, excavated material, brush, rocks and refuse incidental to such work shall be placed above the influence of surface waters.

6. The excavated utility trench shall be backfilled to the waterbody preconstruction elevation.

7. **During the ten-year term of this lease the lessee shall agree to pay the State of Delaware the sum of $ 5632.00 per annum for a total of $56320.00 for the 3755 linear feet of public subaqueous lands utilized for the above-referenced project. The first payment of this lease shall be $5632.00 for the remainder of this billing term (through September).**

GENERAL CONDITIONS

1. The project is to be undertaken in accordance with the plans submitted and attached hereto. Any activities not specifically authorized herein may require a supplemental approval from this office prior to the initiation of construction. A determination on the need for a supplemental approval will be made by this office pursuant to the permittee submitting written notification and revised plans indicating project changes to this office.

2. Representatives of the Department of Natural Resources and Environmental Control may inspect such work during any phases of the construction and may collect any samples or conduct any tests that are deemed necessary.

3. This lease does not cover the structural stability of the project units.

4. Prior to the expiration of this lease, the lessee shall remove all structures covered under this lease unless the lease has been renewed in accordance with its terms.

5. Any actions, operations or installations which are considered by the Department to be contrary to the best interests of the public shall constitute reason for the discontinuance and/or removal of said action, operation or installation.

6. The lessee shall notify the Department of Natural Resources and Environmental Control within ten (10) days of the date work will be commenced.

7. The lessee shall maintain any structure on public subaqueous lands in good and safe condition and will protect and save the State of Delaware harmless from any loss, cost or damage by reason of said structures.

8. The issuance of this lease does not imply approval of any other part, phase, or portion of any overall project the lessee may be contemplating.

9. This lease shall not be construed to grant or confer any right, title, easement, or interest in, to, or over any land belonging to the State of Delaware other than that of a tenant.

10. This lease is subject to the terms and conditions contained in any easement, license or lease that may have been granted by the State or any political subdivision, board, commission or agency of the State in the vicinity of the leased premises.

11. This lease and authorization are granted for the purposes as stated herein. Any other use without prior approval shall constitute reason for this lease being revoked.

12. This lease shall expire if the project has not been completed within three (3) years from the date of issuance.

13. If the lessee considers three (3) years insufficient for completion of the project, the lessee may submit a project time schedule for consideration by the Department. If the time schedule is approved it shall be attached hereto and made a part hereof.

14. This lease is not assignable or transferable without the prior written consent of the Department. Prior to the transfer of the property, it is the responsibility of the lessee to provide the new owner with a copy of the lease or to remove all structures. Prior to property conveyance, the lessee must also notify the Department of the change in ownership.

15. The lessee shall at all times comply with all applicable laws and regulations of the Department of Natural Resources and Environmental Control.

16. The issuance of this lease does not constitute approval for any of the activities as may be required by any other local, state or federal governmental agency.

17. This lease will be revoked upon violation of any of the above conditions.

18. Application for renewal must be submitted six (6) months prior to the expiration date of this lease.

IN WITNESS WHEREOF, I , Wayne N. Brumbley duly authorized representative of Delmarva Power and Light Company, have caused this instrument to be executed on this 24th day of November, 1997.

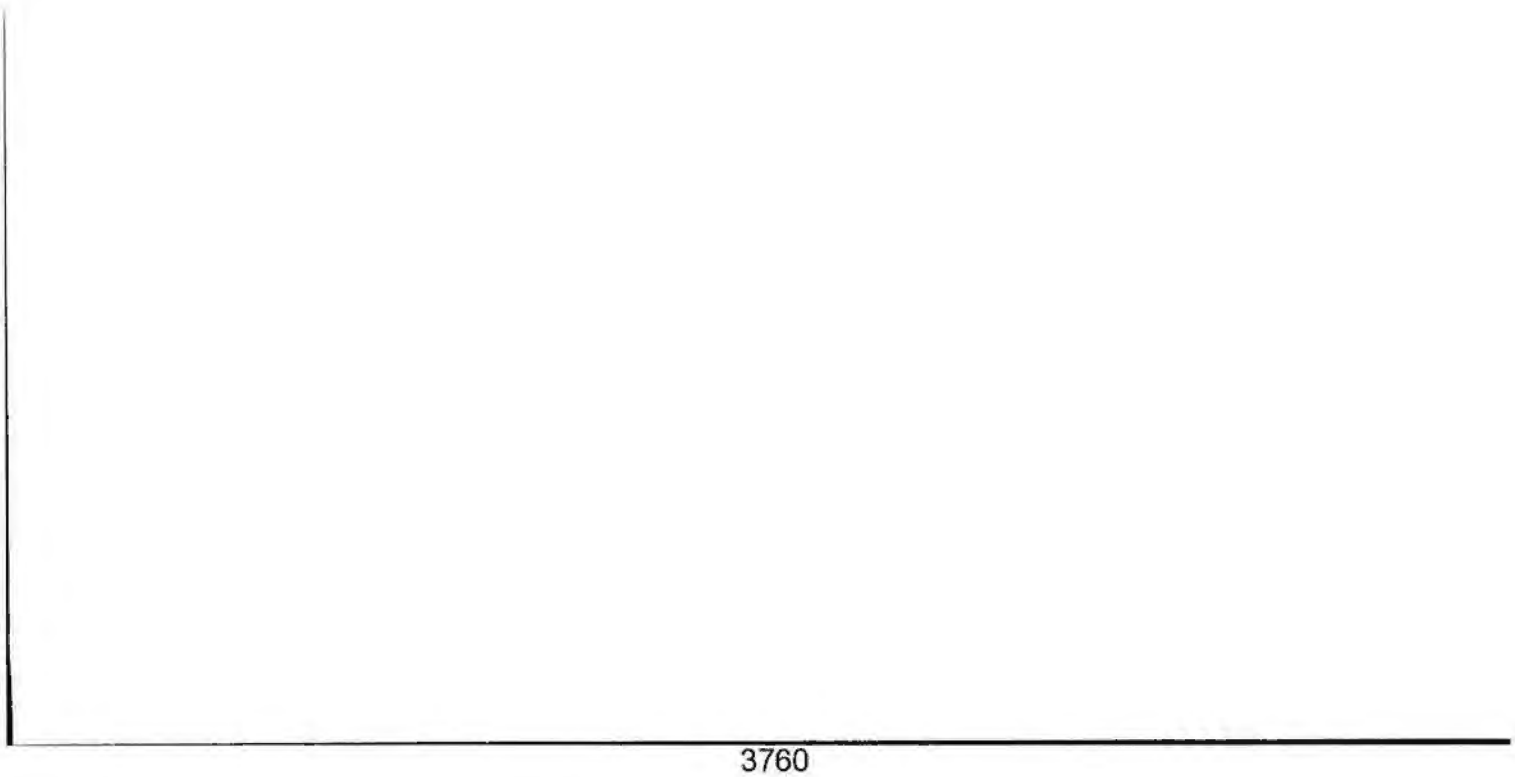
By: Wayne N. Brumbley
Applicant

SWORN and subscribed before me on
this 24 day of November
1997.

Nancy E Hayes
Notary Public NANCY E. HAYES
NOTARY PUBLIC
My Commission Expires Jan. 12, 2001

IN WITNESS WHEREOF, I, Christophe A.G. Tulou, Secretary, Department of Natural Resources and Environmental Control, have hereunto set my hand and seal this 9th day of December, 1997.

Christophe A.G. Tulou
By Secretary of the Department of
Natural Resources and
Environmental Control



85

STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL
DIVISION OF SOIL AND WATER CONSERVATION
89 KINGS HIGHWAY
P.O. BOX 1401
DOVER, DELAWARE 19903

OFFICE OF THE
DIRECTOR

TELEPHONE: (302) 739 - 3451

February 24, 1998

Mr. Juan S. Crofton
Crofton Diving Corporation
16 Harper Avenue
P.O. Box 7756
Portsmouth, Virginia 23707

*RE: Consistency Certification*
*Delmarva Power Fiber Optic Cable Crossing of the Delaware River*

Dear Mr. Crofton:

The Delaware Coastal Management Program (DCMP) has received and reviewed your consistency determination for the above referenced project. Based upon our review and pursuant to National Oceanic & Atmospheric Administration regulations (15 CFR 930), the DCMP concurs with your consistency determination for the fiber optic cable installation beneath the Delaware River. Our concurrence is based upon the restrictions and/or conditions placed on any and all permits issued to you for this project.

If you have any questions regarding this determination please do not hesitate to contact me at (302) 739-3451.

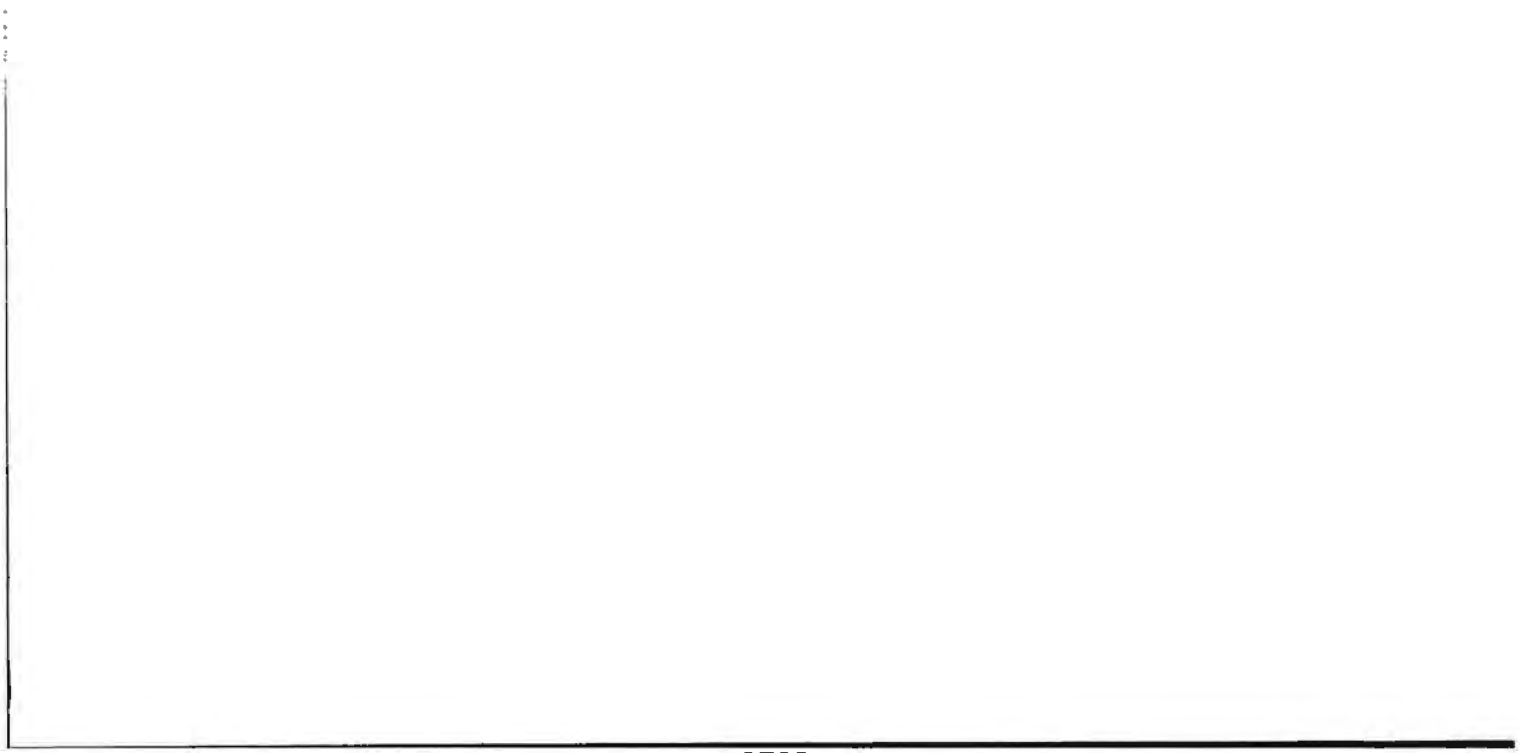
Sincerely,

Sarah W. Cooksey, Administrator
Delaware Coastal Management Program

SWC/mal

cc: File 97.025✓
Richard Hassel, Corps of Engineers, Philadelphia District

DE14240



STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES &
ENVIRONMENTAL CONTROL
DIVISION OF WATER RESOURCES
WETLANDS & SUBAQUEOUS LANDS SECTION
89 KINGS HIGHWAY
DOVER, DELAWARE 19901
TELEPHONE (302) 739-4691
FACSIMILE (302) 739-3491

Supplemental Lease Approval No.: SL-0109/97S
Subaqueous Lands Lease No.: SL-0109/97
Date of Issuance: 3/11/02
Amended Date:

**SUPPLEMENTAL APPROVAL**
**GRANTED TO CONECTIV COMMUNICATIONS, INC. FOR THE INSTALLATION OF 3755 LINEAR FEET OF SUBMARINE FIBER OPTIC CABLE, IN THE DELAWARE RIVER EXTENDING FROM PIGEON POINT IN NEW CASTLE COUNTY, DELAWARE, TO DEEP WATER POINT IN SUSSEX COUNTY, NEW JERSEY**

Richard D. Galster, Jr.
Right of Way Department
Conectiv Communications, Inc
I 95 & Route #273
P.O. Box # 9239
Newark, DE 19714-9239

Pursuant to the provisions of 7 Del. C. 7203, and the Department's Regulations Governing the Use of Subaqueous Lands, permission is hereby granted on this 11th day of March A. D. 2002, to amend an existing lease to construct the above-referenced project in accordance with plans titled "Delmarva Power & Light Company 96 Fiber Optic," dated 5/97, and received by this Division on 8/12/97; and application dated 5/5/97, and received by this Division on 8/12/97.

WHEREAS, Conectiv Communications, Inc. has requested that the lease be amended to allow for an official change of name to Conectiv Communications, Inc., in accordance with the letter of request, submitted 10/10/01, a copy of which is attached and made a part hereof; and

THE above referenced Subaqueous Lands Lease shall be amended subject to the terms and conditions herein set forth.

1. This Supplemental Approval is an addendum to Subaqueous Lands Lease No. SL-0109/97, granted to Delmarva Power & Light Company by the State of Delaware on 12/9/97. This supplemental approval shall be attached thereto and made a part hereof.

2. This approval is in accordance with the letter submitted to and approved by the Department of Natural Resources and Environmental Control, copies of which are attached hereto and made a part hereof.

IN WITNESS WHEREOF, I, Philip S. Reese, have caused this instrument to be executed on this 4th day of March, 2002.

Conectiv Communications, Inc.

By: P. S. Reese

Philip S. Reese
Vice President & Treasurer

Notary

My commission expires:

RICHARD D. GALSTER, JR.
NOTARY PUBLIC
STATE OF DELAWARE
My Commission Expires 6-29-2003

(Notary Seal)

By the authority invested in me under 7 Del.C.§7203 (a), I hereby grant this Lease for the use of the State owned subaqueous lands to the Lessee(s) by setting my hand on this 11th day of March, 2002.

Nicholas A. DiPasquale

By Secretary of the Department
of Natural Resources and
Environmental Control

STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES
& ENVIRONMENTAL CONTROL
DIVISION OF WATER RESOURCES
89 KINGS HIGHWAY, P.O. BOX 1401
DOVER, DELAWARE 19903

SURFACEWATER MANAGEMENT SECTION
WATERSHED ASSESSMENT BRANCH
POLLUTION CONTROL BRANCH
FACILITY SUPPORT BRANCH
WETLANDS & AQUATIC PROTECTION BRANCH

(302) 739-5726
(302) 739-4590
(302) 739-5731
(302) 739-5081
(302) 739-4691

April 12, 1991

Mr. Roy E. Denmark, Jr. Chief
Environmental Resources Branch
Philadelphia District, Corps of Engineers
Custom House, 2nd and Chestnut Streets
Philadelphia, PA 19106

RE: Subaqueous Lands Permit
Salem River Dredging - Deepening and Widening - 801,600 Cubic Yards

Dear Mr. Denmark:

The application for the above-referenced permit was placed on public notice on February 6, 1991 for a twenty-day review period. This office has received no objections to the proposed project as a result of our public notice.

However, because we've seen problems in recently submitted monitoring data the Division of Water Resources is reassessing the impacts of dredging projects as they relate to our amended "Surface Water Quality Standards".

Based on our review we have determined that the project is consistent with the Coastal Zone Management Program and that we will subsequently issue a permit and associated Water Quality Certificate subject to the joint development of a suitable monitoring program.

If you have any further questions regarding this matter, please feel free to call this office.

Sincerely,

Robert J. Zimmerman
Administrator
Surface Water Management Section

cc: William F. Moyer
Tracy E. Skrabal
John Maxted

/djr
wfm91018

RECEIVED
MAY 17 1994
Div. of Soil & Water Conservation

*Delaware's good nature depends on you!*

STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES
& ENVIRONMENTAL CONTROL
DIVISION OF WATER RESOURCES
89 KINGS HIGHWAY, P.O. BOX 1401
DOVER, DELAWARE 19903

SURFACEWATER MANAGEMENT SECTION
WATERSHED ASSESSMENT BRANCH
POLLUTION CONTROL BRANCH
FACILITY SUPPORT BRANCH
WETLANDS & AQUATIC PROTECTION BRANCH

(302) 739-5726
(302) 739-4590
(302) 739-5731
(302) 739-5081
(302) 739-4691

April 7, 1992

Mr. H. Ronald Kreh
Chief, Operations Division
U. S. Army, Corps of Engineers
Custom House
2nd & Chestnut Streets
Philadelphia, PA 19106

RE: MD-00011/92 Maintenance Dredging Salem River 100,000 cubic yards

Dear Mr. Kreh:

Your request to conduct the above-referenced maintenance dredging has been reviewed by the Department of Natural Resources and Environmental Control. The Department hereby authorizes the dredging in accordance with the plans titled Salem River, N.J. Entrance Channel Examination, Sheet 1 of 3 and Sheet 2 of 3 dated March 13, 1991 and Final Environmental Assessment dated April, 1984, and received by this Division on May 13, 1991, subject to the following conditions:

1. Dredging shall be conducted so as not to violate the State of Delaware Department of Natural Resources and Environmental Control, Surface Water Quality Standards dated February 2, 1990.

2. There shall be no dredging during the months of March, April, May, June, September, October and November.

3. Monitoring to determine compliance with the State of Delaware's Surface Water Quality Standards shall be conducted in accordance with the program outlined in the attached Monitoring Schedule. All parametered levels requiring notification under the Authorization shall also apply.

4. Monitoring results shall be supplied to the Department of Natural Resources and Environmental Control within thirty (30) days of the last sampling date. Results shall be accompanied with a monitoring report. The monitoring report must include levels of compliance or non-compliance with the Delaware Surface Water Quality Standards, as well as remediation procedures for non-compliance levels. This assessment includes a calculation of the spatial extent of the mixing zone as defined in Section 6 of Delaware Standards.

*Delaware's good nature depends on you!*

5. All pipelines shall be kept in good condition at all times, and any leaks or breaks shall be promptly and a properly repaired.

6. This Authorization shall be valid for one year.

7. A copy of this Authorization must be available on site during all phases of construction activity.

8. This authorization will be revoked upon violation of any of the above conditions.

9. The State of Delaware, by and through the Department of Natural Resources and Environmental Control, certifies that, with reasonable assurance the permitted activity will be conducted in a manner which will not violate the applicable water quality standards of the State of Delaware.

If you have any questions, please feel free to contact Tracy Skrabal of this office at 739-4691.

Sincerely,

William F. Moyer
Program Manager
Wetlands & Aquatic Protection Branch

Sincerely,

Tracy E. Skrabal
Program Manager
Wetlands & Aquatic Protection Branch

cc: Frank Cianfrani

WPM/TES/fr

STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES
& ENVIRONMENTAL CONTROL
DIVISION OF WATER RESOURCES
89 KINGS HIGHWAY, P.O. BOX 1401
DOVER, DELAWARE 19903

SURFACEWATER MANAGEMENT SECTION (302) 739-5726
WATERSHED ASSESSMENT BRANCH (302) 739-4590
POLLUTION CONTROL BRANCH (302) 739-5731
FACILITY SUPPORT BRANCH (302) 739-5081
WETLANDS & AQUATIC PROTECTION BRANCH (302) 739-4691

April 27, 1992

Mr. H. Ronald Kreh
Chief, Operations Division
U. S. Army, Corps of Engineers
Custom House
2nd & Chestnut Streets
Philadelphia, PA 19106

RE: MD-00011/92 Maintenance Dredging Salem River 100,000 cubic yards

Dear Mr. Kreh:

Approval for the above referenced dredging was issued on April 7, 1992. After conferring with the Department's Division of Fish and Wildlife it has been agreed that condition 2 be revised to read as follows:

2. There shall be no dredging or overboard disposal during the months of March, April, May or June:

Also the following condition is to be included as a supplement to the April 7, 1992:

10. All dredging shall cease immediately when dissolved oxygen at the disposal site sampling stations falls below 4.0 mg/l and shall not resume until the levels exceed 4.0 mg/l.

If you have any questions regarding this letter, please feel free to contact this office.

Sincerely,

William F. Moyer

William F. Moyer
Program Manager
Wetlands & Aquatic
Protection Branch

WFM/fr

*Delaware's good nature depends on you!*

DE14043

DEPARTMENT OF THE ARMY
PHILADELPHIA DISTRICT, CORPS OF ENGINEERS
WANAMAKER BUILDING, 100 PENN SQUARE EAST
PHILADELPHIA, PENNSYLVANIA 19107-3391

REPLY TO ATTENTION OF
Environmental Resources Branch

MAR 1 0 1994

Mr. David Carter
Delaware Department of Natural Resources
and Environmental Control
Division of Soil and Water Conservation
Delaware Coastal Management Program
P.O. Box 1401
Dover, Delaware 19903

Dear Mr. Carter:

This is in regards to the Salem River Deepening and Widening Project, Salem County, New Jersey and the associated conditional Coastal Zone Management Consistency Determination, Water Quality Certificate, and Subaqueous Lands Permit.

The Philadelphia District Corps of Engineers is proposing to widen and deepen the existing authorized channel, which is currently 150 feet wide by 12 feet deep at Salem Cove, narrowing to 100 feet wide at Sinnicksons Landing. The present project is approximately 5 miles long and stretches downstream from New Jersey Route 49 bridge at the City of Salem to Elsinboro Point at the southwest corner of Salem Cove in the Delaware River. The proposed channel widths will vary between 150 feet to 250 feet, and the channel depth will be increased to 18 feet. The proposed project will extend the Delaware River segment an additional 200 feet, from the 12-foot depth to the 18-foot depth contour. Approximately 1,033,000 cubic yards (approx. 646,600 cy in Delaware) of dredged material, including approximately 46,200 cubic yards from the 3.5 acre (495 feet wide) turning area at Salem, will be removed by hydraulic pipeline dredge. Approximately 7 acres of wetlands will be impacted, for which full mitigation will be provided. The dredged material generated from the initial construction of this project was originally proposed to be deposited at the active Killcohook Disposal Area, however, further evaluation of capacity needs has resulted in the need to utilize the Reedy Point South Dredged Material Disposal Area for this purpose.

Since the proposed project plan consists of modifications of the original plan including the proposed change in disposal areas and channel dimensions, we are seeking comments and subsequent approval for these modifications. In addition, we would like to initiate the development of a suitable water-sediment quality monitoring program as required in the permit conditions indicated in the 12 April 1991 letter (enclosed).

Please respond with written comments pursuant to the aforementioned permits and associated modifications within 30 days of this letter. If you have any questions or need any additional information regarding this project, please contact Steve Allen of the Environmental Resources Branch at (215) 656-6559. Thank you.

Sincerely,

Robert L. Callegari
Chief, Planning Division

Enclosure

Cen. File 94,013

13 1995

STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES
& ENVIRONMENTAL CONTROL
DIVISION OF WATER RESOURCES
89 KINGS HIGHWAY, P.O. BOX 1401
DOVER, DELAWARE 19903

WETLANDS & SUBAQUEOUS
LANDS SECTION

TELEPHONE (302) 739-4691
FACSIMILE (302) 739-3491

December 15. 1994

Philadelphia District
Corps of Engineers
Wanamaker Bldg.
100 Penn Square East
Philadelphia, PA 19107-3390

RE: Salem River Deepening
CENAP-OP-R-N/A

Dear *Mr. Robert Callegari*:

The Delaware Department of Natural Resources and Environmental Control (the Department) has evaluated the above referenced project for compliance with the State's Surface Water Quality Standards developed pursuant to Section 303 of the federal Clean Water Act (CWA). Section 401 of the CWA requires a State water quality certification decision since a federal permit is required for this project from the U.S. Army Corps of Engineers pursuant to Section 404 of the Federal Clean Water Act and Section 10 of the Federal Rivers and Harbors Act.

The Department's certification decision is based on review of your information contained in your 10/13/94 Application and received 10/14/94 which included plans dated 10/14/94. The Department's role is to determine whether the discharge of fill material in surface waters, including wetlands. impairs the biological, physical, and chemical attributes which enable such waters to continue to meet the State's Surface Water Quality Standards.

The project involves maintenance dredging of 350,000 cubic yards of material from Salem River. The applicant's stated purpose of the project is to maintain a navigational channel.

Upon evaluation of the project, as proposed in the above referenced information, the Department hereby certifies that there is reasonable assurance that the proposed activity will be conducted in a manner which will not violate Delaware's "Surface Water Quality Standards" as amended February 26, 1993, subject to the following conditions:

1) Activities shall be performed in accordance with the conditions of the Department maintenance dredging permit #MD-0023/94.

2) Erosion and sediment control measures shall be implemented in accordance with the specifications and criteria in the Delaware Erosion and Sediment Control Handbook (1989) so as to minimize dispersal of sediment and other pollutants in surface waters.

3) This certification will be revoked upon violation of any of the conditions contained herein.

Please feel free to contact this office at (302) 739-4691 if you should have any questions.

Sincerely,

William F. Moyer
Section Manager
Wetlands and Subaqueous Lands
Section

cc: Frank Cianfrani, Corps of Engineers
Sarah Cooksey, DCMP
401 File
MD-0023/94

wcq94034

STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES
& ENVIRONMENTAL CONTROL
DIVISION OF WATER RESOURCES
89 KINGS HIGHWAY, P.O. BOX 1401
DOVER, DELAWARE 19903

WETLANDS & SUBAQUEOUS
LANDS SECTION

TELEPHONE (302) 739-4691
FACSIMILE (302) 739-3491

December 15, 1994

Philadelphia District
Corps of Engineers
Wanamaker Bldg.
100 Penn Square East
Philadelphia, PA 19107-3390

RE: MD-0023/94 Maintenance Dredge 350.000 cubic yards of material from the mouth of the Salem River and place 700.000 cubic yards of material via pipeline into the Reedy Point South Dredge Material Disposal area. Reedy Point, New Castle, DE

Dear Sirs:

Your request to conduct the above-referenced maintenance dredging has been reviewed by the Department of Natural Resources and Environmental Control. The Department hereby authorizes the dredging in accordance with the plans and specifications titled "Salem River Dredging" dated "10/4/94" and received by this Division on 10/14/94 , and application received on 10/14/94.

This letter of authorization is issued subject to the following conditions:

1. Dredging shall be conducted so as not to violate the State of Delaware Department of Natural Resources and Environmental Control, Surface Water Quality Standards dated February 26, 1993.

2. This Authorization shall not become effective until an approved Sediment and Stormwater Management Plan has been issued, when required, by the local Conservation District Office.

3. No dredge spoils shall be deposited on tidal wetlands at any time other than what is permitted in accordance with the submitted application and plans.

4. This Authorization shall be valid for one (1) year.

5. A copy of this Authorization must be available on site during all phases of construction activity.

6. All monitoring shall be performed in accordance with the attached Water Quality Monitoring plan.

7. Disposal area shall be visually inspected daily during dredging to prevent breaching of containment dikes and to ensure the clarity of the effluent.

8. Sluice gate walkway and riser boards must be replaced to allow safe pedestrian access to effluent sampling area and to maintain proper water depth within spoil area.

9. This authorization will be revoked upon violation of any of the above conditions.

If you have any questions, please feel free to contact Ted Mercer of this office at 739-4691.

Sincerely,

William F. Moyer
Program Manager
Wetlands & Aquatic Protection Branch

Sincerely,

James F. Chaconas
Program Manager I
Wetlands & Aquatic Protection Branch

cc: Frank Cianfrani

STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL
DIVISION OF SOIL AND WATER CONSERVATION
89 KINGS HIGHWAY
P.O. BOX 1401
DOVER, DELAWARE 19903

OFFICE OF THE
DIRECTOR

TELEPHONE: (302) 739 - 3451

January 10, 1995

Ms. Beth Brandreth
U.S. Army Corps of Engineers
Philadelphia District
Wanamaker Building
100 Penn Square East
Philadelphia, Pennsylvania 19107-3390

*RE: Consistency Certification*
*Salem River Dredging*

Dear Ms. Brandreth:

The DCMP has received and reviewed your consistency determination for the above referenced project. We have also reviewed your responses to our concerns with the use of the Reedy Point South dredged material disposal site, and have found them to be consistent with our policies. Pursuant to National Oceanic and Atmospheric Administration regulations (15 CFR-Part 930), the DCMP concurs with your consistency determination for above referenced project. Our concurrence is based upon the restrictions and/or conditions placed on any and all permits issued to you for this project and compliance with the monitoring plan that you submitted.

If you have any further questions please do not hesitate to contact me either by phone (302) 739-3451 or at the above address.

Sincerely,

David B. Carter for

Sarah W. Cooksey, Administrator
Delaware Coastal Management Program

SWC/jll
cc: File 94.013

00.017

STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES & ENVIRONMENTAL CONTROL
DIVISION OF SOIL AND WATER CONSERVATION
89 KINGS HIGHWAY
DOVER, DELAWARE, 19901

OFFICE OF THE DIRECTOR

TELEPHONE: (302) 739-3451

March 7, 2001

**DELAWARE COASTAL ZONE FEDERAL CONSISTENCY CERTIFICATION SUNOCO, INC. MAINTENANCE DREDGING OF APPROXIMATELY 3,200 C.Y. OF SEDIMENT FROM THE MARCUS HOOK REFINERY AND TEMPORARY PLACEMENT OF APPROXIMATELY 11,000 FEET OF HYRRAULIC DREDGING PIPELEINE IN THE DELAWARE RIVER**

Mr. Thomas McVeigh
Roy F. Weston, Inc.
1400 Weston Way
P.O. Box 2653
West Chester, PA 19380

Dear Mr. McVeigh:

The Delaware Coastal Management Program (DCMP) has received and reviewed your consistency determination for hydraulic maintenance dredging of approximately 3,200 cubic yards of material from the Delaware portion of the Marcus Hook Refinery, maintenance dredging of an associated intake structure, and temporary placement of approximately 11,000 feet of hydraulic dredging pipeline in the Delaware River. Based upon our review and pursuant to National Oceanic & Atmospheric Administration regulations (15 CFR 930), the DCMP concurs with your consistency determination for this project. This concurrence is based upon the restrictions and/or conditions placed on any and all permits issued to you for this project, including the 7 special and 12 general conditions outlined in the State of Delaware Subaqueous Lands permit.

In addition to the above requirements, you must submit the following to this office:

1. Any report generated due to pipeline spillage or leakage. The report should summarize the extent of spillage, steps taken to rectify the spill and any mitigation measures.
2. A summary report of any monitoring conducted at point of dredging and at the confined disposal facility.

If you have any questions regarding this determination please do not hesitate to contact me at (302) 739-3451.

Sincerely,

Sarah W. Cooksey, Administrator
Delaware Coastal Management Program

SWC/sel

cc: File 00.079
Dave Kaplan – USACE
Laura Herr – DWR
George Murphy – Sunoco

STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES & ENVIRONMENTAL CONTROL
DIVISION OF SOIL AND WATER CONSERVATION
89 KINGS HIGHWAY
OFFICE OF THE DIRECTOR
DOVER, DELAWARE, 19901
TELEPHONE: (302) 739-3451

March 7, 2001

**DELAWARE COASTAL ZONE FEDERAL CONSISTENCY CERTIFICATION**
**TOSCO REFINING L.P. FOR TEMPORARY HYDRAULIC DREDGING**
**PIPELINE PLACEMENT IN THE DELAWARE RIVER**

Mr. Thomas McVeigh
Roy F. Weston, Inc.
1400 Weston Way
P.O. Box 2653
West Chester, PA 19380

Dear Mr. McVeigh:

The Delaware Coastal Management Program (DCMP) has received and reviewed your consistency determination for the temporary placement of approximately 11,000 feet of hydraulic dredging pipeline in the Delaware River from the Trainer Refinery to the Oldmans Confined Disposal Facility. Based upon our review and pursuant to National Oceanic & Atmospheric Administration regulations (15 CFR 930), the DCMP concurs with your consistency determination for this project. This concurrence is based upon the restrictions and/or conditions placed on any and all permits issued to you for this project, including the 8 special and 12 general conditions outlined in the State of Delaware Subaqueous Lands permit.

In addition to the above requirements, you must submit the following to this office:

1. Any report generated due to pipeline spillage or leakage. The report should summarize the extent of spillage, steps taken to rectify the spill and any mitigation measures.
2. A summary report of any monitoring conducted at point of dredging and at the confined disposal facility.

If you have any questions regarding this determination please do not hesitate to contact me at (302) 739-3451.

Sincerely,

Sarah W. Cooksey

Sarah W. Cooksey, Administrator
Delaware Coastal Management Program

SWC/sel

cc: File 00.080
✓Jim Boyer – USACE
✓Laura Herr – DWR
✓Jim Fedena – Tosco

STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES & ENVIRONMENTAL CONTROL
DIVISION OF SOIL AND WATER CONSERVATION
89 KINGS HIGHWAY
DOVER, DELAWARE 19901

DELAWARE COASTAL
MANAGEMENT PROGRAM

TELEPHONE: (302) 739 - 3451
FAX: (302) 739 - 2048

July 30, 2003

Mr. Sonny Rutkowski
Weston Solutions, Inc.
1400 Weston Way
PO Box 2653
West Chester, PA 19380

**RE: Delaware Coastal Management Federal Consistency Certification
Sunoco/Marcus Hook Refinery Maintenance Dredging of Berth 3C and RW7 Intake (FC 03.082/CENAP-OP-R-200002407-46)**

Dear Mr. Rutkowski:

The Delaware Coastal Management Program (DCMP) has received and reviewed your consistency determination for the above referenced project. Based upon our review and pursuant to National Oceanic & Atmospheric Administration regulations (15 CFR 930), the DCMP concurs with your consistency determination for the maintenance dredging of up to 10,000 cubic yards of sediment per event via hydraulic and/or mechanical methods at the Marcus Hook Refinery Dock 3C and Intake RW7 and temporary placement of approximately 11,000 feet of hydraulic dredging pipeline in the Delaware River. Please note that maintenance of navigational depths via obstruction leveling is not included as a part of this concurrence; use of obstruction leveling will require additional review by this office.

This concurrence is based upon adherence to the restrictions and/or conditions placed on any and all permits issued to you for this project. In addition, this office requests that a summary report of any monitoring conducted at the point of dredge or discharge be forwarded to this office, as well as any report generated due to pipeline spillage or leakage.

If you have any questions regarding this determination please do not hesitate to contact me at (302) 739-3451.

Sincerely,

Sarah W. Cooksey, Administrator
Delaware Coastal Management Program

SWC/sel

cc: File 03.082
David Caplan – USACE
Jim Chaconas – DWR

**No. 134, Original**

IN THE
Supreme Court of the United States

STATE OF NEW JERSEY,
*Plaintiff,*

v.

STATE OF DELAWARE,
*Defendant.*

# DELAWARE'S APPENDIX ON CROSS-MOTIONS FOR SUMMARY JUDGMENT

**VOLUME 6 (Pages 3785 – 4212)**


CARL C. DANBERG
*Attorney General*
KEVIN P. MALONEY
*Deputy Attorney General*
DELAWARE DEPARTMENT OF JUSTICE
Carvel State Office Building
820 N. French Street
Wilmington, DE 19801
(302) 577-8338

COLLINS J. SEITZ, JR.
MATTHEW F. BOYER
KEVIN F. BRADY
MAX B. WALTON
CONNOLLY BOVE LODGE & HUTZ LLP
The Nemours Building
1007 N. Orange Street
Wilmington, DE 19801
(302) 658-9141
*Special Counsel to the State of Delaware*

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December 22, 2006

**TABLE OF CONTENTS**
**VOLUME 6**

**PAGE**

**BP Crown Landing**


Permit Application Letter from Golder Associates, Inc. to DNREC (Sept. 27, 2004).....3785

Letter from Laura Herr, DNREC, to Lauren Segal, BP Crown Landing LLC (Oct. 29, 2004).....3789

Letter from Robert Stetkar, P.E., Golder Associates, to DNREC (Nov. 4, 2004).....3791

Letter from David Swayze, Parkowski, Guerke, & Swayze, to John Hughes, Secretary, DNREC (Dec. 7, 2004).....3793

Letter from John Hughes, Secretary, DNREC, to Lauren Segal, Crown Landing LLC (Feb. 3, 2005).....3811

Decision and Order, *In re Coastal Zone Status Decision on the Application of Crown Landing LLC*, No. CZ 2005-01 (Coastal Zone Industrial Control Board of the State of Delaware Apr.14, 2005).....3813

Sandia National Laboratories, *Guidance on Risk Analysis and Safety Implication of a Large Liquefied Natural Gas (LNG) Spill Over Water* (Dec. 2004) (excerpts).....3831

DNREC Subaqueous Lands Lease (SL-312/04) issued to Fenwick Commons, LLC (May 10, 2005).....3839

FERC, Final Environmental Impact Statement – Crown Landing LNG and Logan Lateral Projects, Docket Nos. CP04-411-000 & CP04-416-000 (Apr. 2006) (excerpts).....3845

Letter from David S. Swayze, Parkowski, Guerke & Swayze, to Hon. John A. Hughes, Secretary, DNREC (Dec. 7, 2004).....3863

BP Request to DNREC for a Coastal Zone Status Decision (Nov. 30, 2004) (excerpts).....3865

Del. Op. Att'y Gen. 78-018 (1978).....3881

Photographs of Structures in the Delaware River.....3885

Aerial photographs referenced in New Jersey's Castagna Expert Report (Nov. 9, 2006).....3979

Map of Fire Company Districts.....3997

Emergency Response Reports Showing Transferred Calls .....3999

Summary of Delaware River Emergency Response Calls Received by Department of Public Safety, Emergency Communications Division, New Castle County, Delaware (July 3, 1994 – Sept. 18, 2006).....4003

DNREC Air and Waste Management Complaint Files (Aug. 18, 2006).....4015

Delaware Water and Air Resources Commission, Regulations Governing the Use of Water Resources and Public Subaqueous Lands, Regulation IV (adopted July 14, 1969).....4023

DNREC, Regulations Governing the Use of Subaqueous Lands (adopted May 8, 1991, amended Sept. 2, 1992).....4025

Joint Agreement between the State of New Jersey and the State of Delaware (Aug. 29, 2001).....4049

Amendment Replacing Exhibit C of the 2001 Joint Agreement between the State of New Jersey and the State of Delaware (Feb. 22, 2005).....4055

Expert Report of Carol E. Hoffecker, Ph.D. (Nov. 9, 2006).....4059

Expert Report of Professor Joseph L. Sax (Nov. 7, 2006).....4123

New Jersey's Responses to Delaware's First Requests for Admissions (Sept. 8, 2006).....4147

*State v. Mick*, Crim. Nos. 83-05-0092 (Del. Super. Ct. May 2, 1984).....4189

*Webster's International Dictionary* (1898) (excerpts).....4193

Letter and attachment from David R. Keifer, Director of Delaware State Planning Commission, to Barry Huntsinger, El Paso Eastern Company (Feb. 23, 1972).....4201

Aerial photographs with boundary lines.....4207

**Golder Associates Inc.**

1961 Old Cuthbert Road, Suite 301
Cherry Hill, NJ 08034
Telephone (856) 616-8166
Fax (856) 616-1874

September 27, 2004

Project No. 043-6313
*via Federal Express*

Department of Natural Resources and Environmental Control
Division of Water Resources
Wetlands and Subaqueous Lands Section
89 Kings Highway
Dover, DE 19901

SEP 2 8 2004

**RE: Permit Application**
**Subaqueous Lands, Wetlands, Marina and Water Quality Certification Projects**
**Delaware River Geotechnical Borings and Cone Penetrometer Tests**

Ladies and Gentlemen:

Golder Associates Inc. (Golder) is submitting this permit application for Subaqueous Lands, Wetlands, Marina and Water Quality Certification Projects for review and approval by the Delaware Department of Natural Resources and Environmental Control, Division of Water Resources, Wetlands and Subaqueous Lands Section. This permit application has been prepared by Golder for a water-based survey investigation program consisting of cone penetrometer tests (CPTs) and geotechnical borings within the Delaware River. The Site lies just offshore from the Logan Electric Co-Generation Plant in Logan Township, Gloucester County, New Jersey. However, the proposed borings and CPTs are all located within Delaware State boundaries.

This application is being submitted pursuant to a telephone conversation between Ms. Laura Herr of the Wetlands and Subaqueous Lands Section and Mr. Michael Hart of Golder on September 16, 2004. Although Nationwide Permit No. 6 permits such survey activities with the river, Ms. Herr indicated that approval from the Wetlands and Subaqueous Lands Section would also be required prior to the start of work. Ms. Herr indicated that there were no specific permit appendices that pertain specifically to the survey activities proposed, and therefore instructed Golder to use only the basic application form and answer all questions that were pertinent to the survey activities that will actually be performed. In addition to the application form, Golder was instructed to provide a detailed description of the work being performed as well as a plan of the site and boring and CPT locations. As such, the following paragraphs provide greater detail about the survey investigation program; Attachment 1 contains the completed basic permit application form; and, a plan of boring and CPT locations is provided as Attachment 2.

The purpose of this survey investigation is to gather information for the design of a receiving terminal to support the proposed liquefied natural gas (LNG) storage facility in Logan Township,

New Jersey. Information from this investigation will be used for pier and bulkhead design, deepening for vessel berthing, and other ancillary features typical of such terminals. The survey investigation program will consist of fourteen (14) CPTs and five (5) geotechnical borings performed using barge-mounted investigation equipment within the Delaware River. As shown on the plan (Attachment 2) the boring and CPT locations lie outside of the navigable channel and anchorage limit and within the boundaries of the State of Delaware.

The investigation equipment will consist of geotechnical drill rig mounted to an approximately 30'x90' barge with a four-point anchoring system to keep position over the boring/CPT location. A tug boat will be used to position the barge over the boring/CPT locations and will also serve as a transport vessel for the drilling crew and observation personnel. All personnel working on the barge will depart from a docking facility on the New Jersey shore of the Delaware River each day. The sampling barge will remain in the river until the completion of the project. Both the sampling barge and tug boat conform to all necessary safety standards and the U.S. Coast Guard has been contacted and made aware of proposed project.

Borings will be advanced using mud-rotary drilling methods and samples will be collected via split-spoon sampler in general accordance with the American Society for Testing and Materials (ASTM) Standard Method D1586, and by direct-push Shelby tube in general accordance with ASTM D1587. In-situ vane shear testing (ASTM D2573) will also be performed within some of the borings. Where necessary to determine bedrock type, quality, and competency, diamond core drilling with an NX-size core barrel will be performed in accordance with ASTM D2113 to obtain samples of bedrock. Upon completion of each boring, the drilling rods, sampling equipment, and casing will be removed and the borehole tremie grouted to the mudline. Drill cuttings and drilling mud will be deposited upon the river bottom.

Cone penetrometer testing will be performed using an electronic piezocone. The CPTs will be advanced through the water column via casing set into the mudline and then by direct-push in accordance with ASTM D5778. The small diameter hole created during cone penetrometer testing typically closes upon cone extraction so grouting is not envisioned.

In addition to Ms. Herr, Ms. Susan Love from the Delaware Coastal Programs and Mr. Kevin Dougherty from the U.S. Army Corps of Engineers were also contacted regarding permitting. Both agencies indicated that they did not require any additional permitting for the proposed project..

This letter has attempted to provide the necessary information which is not included on the permit application in order to assist with the processing of this application. The anticipated commencement date for the survey investigation program is Monday, October 4, 2004. It is estimated that the program will require 3 to 4 weeks to complete. Therefore, time is of the

essence and we respectfully request that the Wetlands and Subaqueous Lands Section expedite its review.

If there are any questions regarding this permit application please do not hesitate to contact either of the undersigned.

Very truly yours,

GOLDER ASSOCIATES INC.

Robert S. Valorio, P.E.
Senior Project Engineer

Michael F. Hart
Project Engineer

Attachments

cc: R. Stetkar, Golder Associates Inc.

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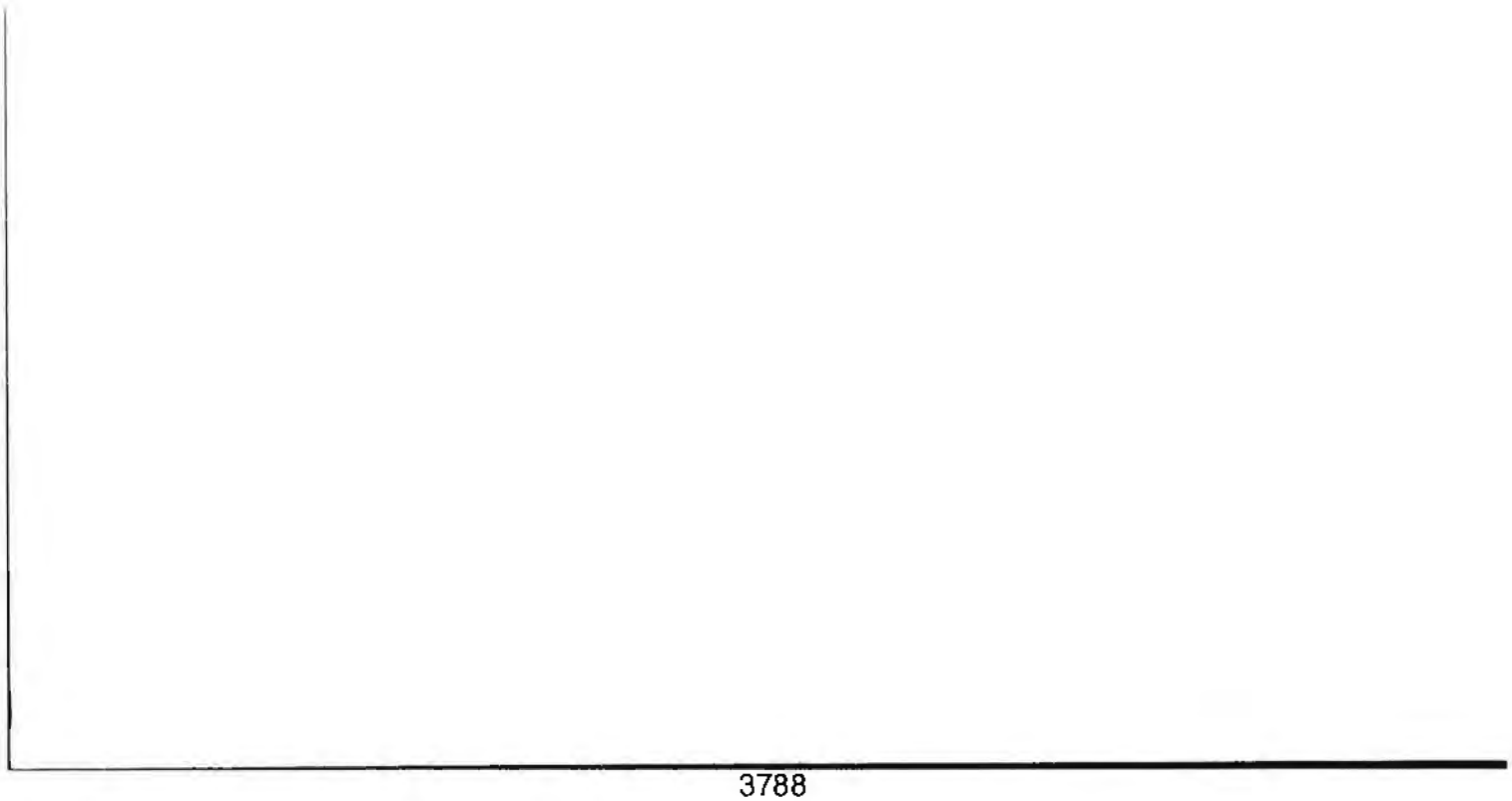
SEP 28 2004



STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES &
ENVIRONMENTAL CONTROL
DIVISION OF WATER RESOURCES
89 KINGS HIGHWAY
DOVER, DELAWARE 19901

Wetlands and Subaqueous
Lands Section

Telephone 302/739-4691
Facsimile 302/739-6304

October 29, 2004

Lauren Segal
BP Crown Landing, LLC
501 West Lake Park Blvd
Houston, TX 77079

RE: Subaqueous Lands Permit Application No. SP-389/04 for BP Crown Landing, LLC

Dear Ms. Segal:

After reviewing the above-referenced permit application and considering public comments received during the public notice process, we have determined that we cannot make a decision on your application until a determination has been made regarding whether construction of an LNG storage facility is an activity permissible in Delaware's coastal zone.

Accordingly, we are requesting that you withdraw your subaqueous lands permit application to perform 19 geotechnical test borings until the conclusion of the coastal zone status decision process. If the proposed LNG storage and transfer activities are determined to be ones that are permissible in the coastal zone, the application for the test borings can be re-submitted at that time.

If you should have any questions regarding this matter, please feel free to contact me at 302/739-4691.

Sincerely,

Laura M. Herr
Program Manager
Wetlands and Subaqueous Lands Section

cc: Pete Swinick, Golder Associates, Inc.
John A. Hughes, Secretary, DNREC
Kevin C. Donnelly, Director, Division of Water Resources

*Delaware's good nature depends on you!*

**Golder Associates Inc.**

1951 Old Cuthbert Road, Suite 301
Cherry Hill, NJ 08034
Telephone (856) 616-8166
Fax (856) 616-1874
www.golder.com

November 4, 2004

Project 043-6313
**Via Facsimile and Federal Express**

Department of Natural Resources and Environmental Control
Division of Water Resources
Wetlands and Subaqueous Land Section
89 Kings Highway
Dover, DE 19901

**RE: Permit Application**
**Subaqueous Lands, Wetlands, Marina and Water Quality Certification Projects**
**Delaware River Geotechnical Borings and Cone Penetrometer Tests**

Ladies and Gentlemen:

Golder Associates Inc. (Golder) submitted the referenced permit application for Subaqueous Lands, Wetlands, Marina and Water Quality Certification Projects for review and approval by the Delaware Department of Natural Resources and Environmental Control, Division of Water Resources, Wetlands and Subaqueous Lands Section (DNREC) on September 27, 2004. Golder respectfully withdraws the referenced application for a Subaqueous Permit at this time.

Golder's withdrawal of the referenced permit application is made without prejudice to any future filing for this application or any other application before DNREC or any other agency of the State of Delaware by Golder, Crown Landing LLC or any of their respective affiliates (collectively "Applicant Group"). Furthermore, Golder withdraws the referenced permit application without waiver of any right that any member of Applicant Group may or may not have or position that any member of Applicant Group may or may not assert in connection with such a prospective filing.

If there are any questions regarding this permit application withdrawal please do not hesitate to contact me.

Very truly yours,

GOLDER ASSOCIATES INC.

Robert E. Stetkar, P.E.
Geotechnical Practice Leader & Principal

RES/res
G:\PROJECTS\043-6313\L103041tr.DOC

Cc: Lauren Segal, BP America



DE13109

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December 7, 2004

Honorable John A. Hughes
Secretary Department of Natural Resources
and Environmental Control
89 Kings Highway
Dover, DE 19901

DEC 7 AM 9:10

Re: **Request for Coastal Zone Status Decision**

Dear Secretary Hughes:

Attached to this letter is the Request for Coastal Zone Status Decision (the "Request") filed by BP through its wholly owned indirect subsidiary, Crown Landing LLC (the "Applicant"). The Request concerns the proposed construction of a docking facility predominantly within the coastal waters of Delaware, which will exclusively serve a facility for the manufacture of LNG to be located in Logan Township, New Jersey, upland from the docking facility (collectively, the "Project"). Attached you will also find a legal memorandum prepared by this Firm addressing the relative applicability of various provisions of the Coastal Zone Act ("CZA") to the Project.

The essence of the Request, and the legal memorandum which accompanies it, is that the construction of the proposed docking facility is a permissive use under the CZA pursuant to the provisions of § 7002(f) of Title 7 because it exclusively supports a facility which meets the definition of "manufacturing" pursuant to §7002(d). Moreover, and as more fully detailed in both the Request and the legal memorandum, this result obtains even though the upland facility which is supported by the docking facility is situated in New Jersey, because the upland facility is engaging in an activity--manufacturing--which would be permissible under the Act if it were conducted on Delaware soil.

Because the docking facility which is the subject of this Request is in Delaware waters, and the manufacturing facility which it supports is in New Jersey, it is important to align the nomenclature used by the Department in its Status Decision Request form, with the descriptive language used by the Applicant in describing the various components of this Project. In this regard, the Applicant has interpreted the use of the word "Project" on the Department's form as incorporating both components of the facility: *i.e.*, the Manufacturing Facility and the Delaware River Docking Facility. In most instances, however, the Applicant will reference the specific component of the Project for which it seeks this status determination and, ultimately, a permit; to wit, the "Delaware River Docking Facility." Finally, where there are references required in the Request Form to the activities or processes occurring within the State of New Jersey, the Applicant has referenced either the "Upland Facility" or the "Manufacturing Facility." Again, however, it is only the Delaware River Docking Facility which invokes the provisions of the CZA status decision and permitting requirements..

This Request is exclusively addressed to the provisions of the CZA, related Delaware laws, and pertinent regulations. The Applicant reserves all nf its rights and claims to challenge as a matter of federal law the enforceability of the CZA with respect to the Project in the appropriate forum and at the appropriate time should that be necessary. However, it is the Applicant's respectful request that you determine that the Delaware River Docking Facility is exempted from the general CZA prohibition on the construction of new bulk product transfer facilities because it exclusively supports a facility which will engage in a permissible manufacturing use

Please advise should you require any additional information or clarification in order to process this Request.

Very truly yours,

David S. Swayze
DSS:bmh
enclosure

bp

November 30, 2004

The Honorable John Hughes, Secretary
Department of Natural Resources and Environmental Control
89 Kings Highway
Dover, DE 19901
302-739-5072
Re: Crown Landing LNG Project Coastal Zone Status Decision

Dear Secretary Hughes:

This letter introduces the Crown Landing LLC application for a Delaware Coastal Zone Status Decision for the Crown Landing LNG Project. The Crown Landing LNG Project is a proposed new waterfront facility that will receive and process liquefied natural gas (LNG) into a useable product. The facility will be constructed, owned, and operated by Crown Landing LLC, a wholly-owned subsidiary of BP America Production Company. The Manufacturing Facility will be located in Logan Township, Gloucester County, New Jersey, with the majority of a supporting Docking Facility extending into Delaware waters. The site is located at approximately River Mile 78 of the Delaware River, adjacent to the Marcus Hook Anchorage. The upland site is currently being leased from its owner, Sun Oil, Inc., and BP has the option to purchase the land.

Crown Landing LLC filed a formal application with FERC on September 16, 2004. Crown Landing LLC currently plans to begin construction in 2005 (assuming all required permits and approvals have been obtained) and begin Project operation in 2008. Crown Landing LLC is filing this application at this time in the interest of maintaining this timeline.

This proposed Project will help achieve several of the Strategies set forth in the Delaware Energy Task Force's Final Report to the Governor titled *Bright Ideas for Delaware's Energy Future*, which addresses issues of energy reliability, demand, cost and environmental impact.

Crown Landing LLC is committed to designing, constructing, and operating a safe and secure facility. The Crown Landing LNG Project is designed in accordance with the requirements of the U.S. Coast Guard's *Waterfront Facilities Handling LNG* (33 CFR 127), U.S. Department of Transportation's (DOT) *Federal Safety Standards for Liquefied Natural Gas Facilities* (49 CFR 193), the National Fire Protection Association's (NFPA) *Standards for the Production, Storage, and Handling of Liquefied Natural Gas* (NFPA 59A), and the Maritime Transportation Safety Act (MTSA).

We respectfully request that the Department of Natural Resources and Environmental Control issue a favorable Status Decision for the Crown Landing LNG Project for the reasons set forth in this Request and the accompanying memorandum of law prepared by Parkowski, Guerke & Swayze, P.A.

Sincerely,

Lauren Segal
Vice President

*Attachments*

DE20758

*Cc:* Dennis Brown
David Swayze
Gregory Roden
James Busch
Laurie Beppler

*DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL*

**REQUEST FOR A COASTAL ZONE STATUS DECISION**

**Amended August 2004**



DE20760

3797

DEPARTMENT OF NATURAL RESOURCES & ENVIRONMENTAL CONTROL
REQUEST FOR A COASTAL ZONE STATUS DECISION

| Date Received (for Secretary's use) | Project Number (for Secretary's use) |
|---|---|

IDENTIFICATION OF THE APPLICANT

Name: Crown Landing LLC

Address: 501 West Lake Park Blvd
Houston, TX 77079

Telephone No.: (281) 366-2259 Fax No.: (281) 366-2753

Site of Proposed Project (if different than above):
Route 130 Logan Township, New Jersey
Delaware River (roughly River Mile 78)

Contact Person: David Blaha
Telephone Number: (410) 266-0006
Title: Environmental Consultant
Fax Number: (410) 266-8912

Contact Person: David Swayze
Telephone Number: (302) 654-3300
Title: Legal Counsel
Fax Number: (302) 654-3033

If applicant is not the project owner, but is authorized to act for the owner, state that below and give the owner's name and address. Provide written authorization from client for being the authorized agent for this application.
Crown Landing LLC is the Project owner and is leasing the land from
Sunoco, Inc.
1801 Market Street, Philadelphia, PA. 19103-1699

1. Is the applicant claiming confidentiality in any section of their application? Yes/No **No**

If yes, applicant must do so in accordance with 29 Del. Code Chapter 100. The Secretary will not automatically honor such requests not in accordance with Chapter 79. Applicant should provide appropriate documentation with this application to assure confidentiality.

## PROJECT IDENTIFICATION AND DESCRIPTION

| | YES | NO |
|---|---|---|
| 1.a. Is the proposed project entirely or partly a new or improved or extended pier or other ship docking facility? **See Tab 1** | X | |
| 1.b. If yes, will it be used at least in part for bulk cargo transfers by the applicant? If no, please explain what it will handle. **See Tab 1** | X | |
| 2.a. Is this project entirely for pollution control purposes? | | X |
| 2.b. Is this project a new research and development facility? | | X |
| 2.c. Is this project a new or expanding (flow rate) public sewage/ water plant? | | X |
| 3.a. Will the proposed project meet the following definition of "Manufacturing" as found in the Coastal Zone Act: "Manufacturing means the mechanical or chemical trans-formation of organic or inorganic substances into new products, characteristically using power driven machines and materials handling equipment, and including establishments engaged in assembling component parts of manufactured products, provided the new product is not a structure or other fixed improvement." **See Tab 1** | X | |
| 3.b. If no to questions 3.a., explain what kind of activity will be carried out at this project site. | | |
| 4. Will the project have the following equipment or facilities? | | |
| Smoke stacks | X | |
| Tanks | X | |
| Distillation or reaction columns | X | |
| Chemical processing equipment | | X |
| Scrubbing towers | | X |
| Pickling equipment | | X |
| Waste treatment lagoons | | X |
| Smelters | | X |
| Incinerators | | X |
| **See Tab 2** | | |
| 5. Will the project use 20 acres or more? If not, how many acres will it use? 19 acres in Delaware for the pier and ship berth | | X |

| | YES | NO |
|---|---|---|
| 6.a. Does this facility appear in Appendix B of the Coastal Zone Act Regulations (the list of the nonconforming uses)? If not, proceed to question 7a. | ___ | X |
| 6.b. If so, will the proposed activity described in this application occur entirely within the lines delineating the area of nonconformity for this site as seen in the Appendices of the Regulations? | NA | |
| 6.c. If the proposed activity, or use, will straddle this line, describe what equipment, facilities, or machinery will be within the delineated area of nonconformity AND what will be out of this area of nonconformity. | NA | |
| 7.a. Is the proposed use part of a manufacturing use that was in operation prior to and on June 28, 1971? | ___ | X |
| 7.b. Has this facility ever been granted a Coastal Zone Act Permit? If so, when? _____ | ___ | X |
| 7.c. Name of prior applicant/permitee if different from present applicant/permittee: _____ | NA | |
| 8. Does the new or expanded use involve any change in existing: | | |
| processes? | ___ | X |
| facilities? | ___ | X |
| buildings? | ___ | X |
| emissions discharge | ___ | X |

If yes, please explain on a separate page.

**Because this is a new facility, it will not involve any change in existing processes, facilities, buildings, or emissions discharges.**

| | |
|---|---|
| 9.a. Will this project directly or indirectly increase plant production over present capacity? | N/A |
| 9.b. If yes, explain in what way and by how much. | |
| 9.c. Will this project directly or indirectly produce any new products at this facility over the current product line? | N/A |

If so, list them here or on an attachment.

**The proposed Project will be a new facility, and, therefore, does not have any current capacity or product line.**

10. List materials and/or ingredients to be utilized by this proposed project and how they will get to the site.

**See Tab 3**

11. Attach a concise but complete description of the proposed project, or use and how it relates to any existing manufacturing operations and facilities (if this is not for an entirely new manufacturing plant). Explain what effects there will be on land use acreage, manufacturing production capacity, modification of current product line(s), and any safety risks to the public and company employees.

**See Tab 4**

12. Is this project, or use, a complete, single project, or is it part of a long-term, large-scale project that has other components to it that may need approval under the Coastal Zone Act at a later date? If it is part of a larger project, describe the entire project on a separate attachment and mention ALL major machinery, facilities, land, products, and processes involved.

**This Project would be constructed as a single, complete project. At present, no other components are planned that would require approval under the Delaware Coastal Zone Act at a later date.**

13. Provide a detailed and accurate summary of the proposed project's effects on local surface and ground water quality, surface and groundwater withdrawals, air quality, habitat loss, solid and hazardous waste, noise, odors, and any other pertinent information about the proposed project's effects on the local environment. Provide a statement on how this proposed project will affect the local aesthetic quality.

**See Tab 5**

14. Provide a detailed statement describing the proposed project's potential to pollute should equipment malfunction or human error occur, including a description of backup controls and safety provisions.

**See Tab 6**

15. Provide a map of appropriate scale to clearly show important natural features and project buildings and processing equipment of the proposed project such as roads, wetlands, railway sidings, drainage ways, tanks, sewer systems, water mains, wells, etc.

**See Tab 7**

16. What is the current SIC code for the proposed use?

**The SIC code for the proposed use in Delaware is:**

**4491 – Marine Cargo Handling : Dock and Pier Operations**

**There is no SIC code specifically for the Liquefied Natural Gas Manufacturing Facility in New Jersey.**

17. What is the current zoning and planned land use of the proposed project site?

**See Tab 8**

18.a. Will the proposed project require a zoning change? (YES/NO) **NO**

**See Tab 9**

18.b. If so, to what classification and what zoning authority is responsible for reviewing and approving any change?

**N/A**

19. Will this project require new supporting facilities and what impacts will they have on the environment, economics of the area, aesthetic quality, zoning, and neighboring land uses?

**See Tab 10**

20. Have you enclosed your application fee check of $3,000 made out to the State of Delaware?

**Yes**

21. If applicable, have you complied with 7 Del. Code, Chapter 79? The Secretary will not make a decision on this application until the applicant has submitted all necessary information to comply with Chapter 79.

**Crown Landing LLC has submitted the background statement in accordance with 7 Del. Code, Chapter 79.**

22. Should this project proceed, what, if any, negative impact will be expected. Provide a detailed paragraph on each of the following:

a. the environment.
b. the economy (corporate, state, county).
c. aesthetic effects.
d. number and type of supporting facilities required and the impacts, if any, on these six factors.
e. county and municipal comprehensive plans.
f. effect upon neighboring land uses.

**See Tab 11**

Under the penalty of perjury pursuant to 11 Del. C. S1221-1235, I hereby certify that the information contained herein is true and complete to the best of my knowledge.

I also hereby acknowledge that all the information in this application will be public information subject to the Delaware Freedom of Information Act, except for clearly identified proprietary information agreed to by the Secretary of the Department of Natural Resources & Environmental Control.

Signature:

Title: Vice President

Date: November 30, 2004

## 11.4 PROJECT FACILITIES

### 11.4.1 Docking Facility (predominantly in Delaware)

The Docking Facility will consist of an approximately 2,000-foot-long pier and a single berth designed to accommodate LNG carriers from 138,000 to 200,000 $m^3$ in capacity (Figure 4). The berth will include four breasting dolphins equipped with fenders and quick release hooks and five mooring dolphins equipped with quick release hooks to safely moor the LNG carrier. The berth will include walkways between the dolphins and the platform for personnel access and gangways between the carrier and the dolphins for the transfer of crew. Crown Landing will install an electronic berthing aid system to assist berthing operations.

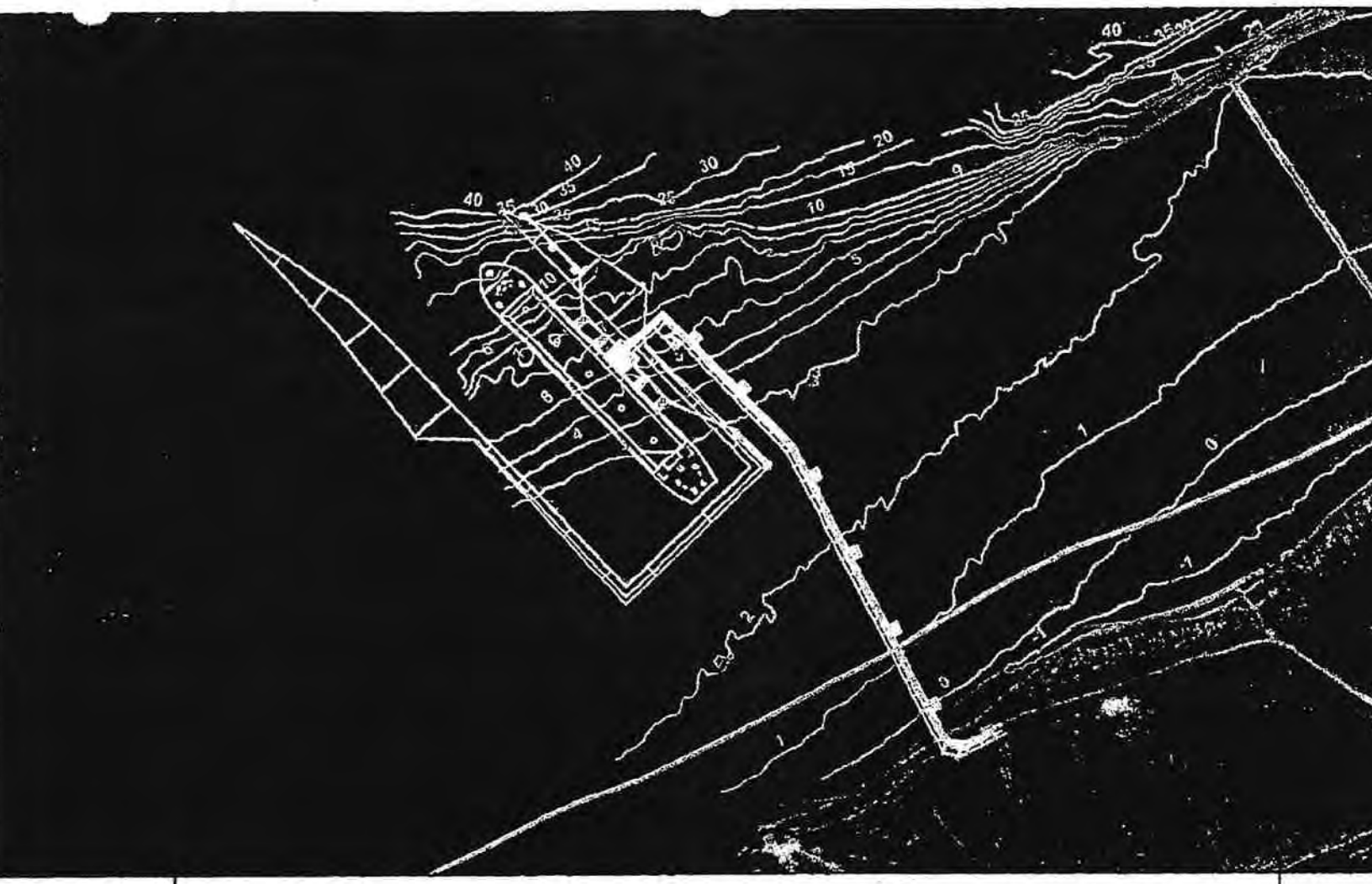
The trestle will provide the structural support for the cryogenic piping, containment trough, and utility lines from the shore to the berth and accommodate travel lanes for light vehicles. The LNG will be transferred from the ship to the Manufacturing Facility LNG storage tanks using the ship's pumps. This bulk product will be transferred from the ship through three 16-inch liquid unloading arms and will be transported from the pier through a 44-inch diameter liquid unloading line to the storage tanks. Boil-off gas (BOG) blowers will return part of the vapor generated during the unloading process from the LNG storage tanks to the ship through one 16-inch diameter vapor return arm. The remainder of the vapor is compressed, condensed back into LNG, and placed in the LNG tanks. During the holding mode of terminal operation (when no ship is unloading), a 12-inch line circulates LNG from the storage tanks to the main header at the end of the pier. The LNG returns through the liquid unloading line to keep the line cold.

### 11.4.2 Manufacturing Facilities (Entirely in New Jersey)

The Manufacturing Facility includes the following components.

*LNG Storage Tanks*

The LNG will be stored in three 158,000 $m^3$ gross full-containment storage tanks, comprised of a nine percent nickel steel inner tank, pre-stressed concrete outer tank, and a concrete roof. The concrete outer tank will serve as the secondary LNG impoundment to contain LNG in the extremely unlikely occurrence that a leak develops in the inner tank shell. All piping connections and tank nozzles will occur through the roof.




Bathymetry provided
by Ocean Surveys,
Inc. June 2003

**Figure 4**

Berth and Dedged Area

Note: Bathymetry Contours are set at Mean Low Water (MLW) Datum

0 250 500 1,000 1,500

Feet

**Legend**

- Crown Landing Site
- Bathymetry Contours
- Proposed Facilities
- DE/NJ State Line

W

*Vapor Handling*

During ship unloading, vapor in the storage tanks is displaced by unloading LNG from the ship. Vapor is generated as boil-off in the storage tanks due to heat input from the atmosphere. Blowers and compressors are used to move excess vapor from the storage tanks either to the ship or to a recondenser vessel. Vapor sent to the recondenser is condensed back into LNG by blending it with cold LNG from the low-pressure pumps. As required, gaseous nitrogen will be introduced into the BOG condenser in order to lower the heating value of the finished product.

*Low-Pressure LNG In-Tank Pumps*

The low-pressure in-tank pumps (three pumps per tank) are vertical centrifugal pumps mounted within the tank and immersed in the LNG fluid inside a pump column. Pump discharge will normally operate at a 160 psi differential into the low pressure header to the BOG condenser. The three pumps provided in each LNG storage tank are capable of sending out LNG capable of supporting the base load capacity of the Manufacturing Facility from one tank.

*High-Pressure LNG Pumps*

The outlet liquid stream from the BOG condenser flows to the high-pressure LNG pumps. These multi-stage units are each designed to pump the LNG to approximately 1,300 psig before vaporization. When the finished product is ready for distribution, the actual send out pressure will be determined by pipeline delivery requirements. The high-pressure pumps are vertical canned multistage cryogenic pumps. Seven pumps will be installed.

*LNG Vaporization*

The LNG is processed using a closed loop shell and tube heat exchanger vaporization system. Seven vertical shell and tube exchangers will be used to meet the base load capacity of the Manufacturing Facility. Water-ethylene glycol (WEG) will be used as the primary vaporization heating medium. Gas-fired heaters will heat the WEG mix. Ten gas-fired water glycol heaters provide heating. The heaters will be installed with ultra-low NOx burners to minimize air emissions. The heaters will be vented through one stack, approximately 150-foot-high. Four pumps will be available to pump the WEG from the heaters to the LNG vaporizers.

*Nitrogen*

A nitrogen injection system will be provided to reduce the heating value of the vaporized gas. This system is required in the event of deliveries of LNG which when vaporized will have heating values that exceed the limits of downstream facilities. The system will consist of a cryogenic air separation plant incorporating air filtration and dehydration, air and nitrogen compressors, heat exchangers, a turbo-expander, distillation towers, and a 750,000 gallon liquid nitrogen storage tank. The gaseous nitrogen will be injected into the LNG stream at the BOG condenser. Direct BTU analyzers will be used to monitor and control the heating value of the vaporized LNG.

***Mercaptan***

Once the LNG is vaporized, the high pressure gas will be odorized using mercaptan. The mercaptan will be injected into the gas using measuring injection pumps at a rate stipulated by the pipeline companies. The mercaptan will be stored on site in the vicinity of the metering facilities.

The finished product will be sent out to the pipeline grid at a maximum pressure of 1,200 psig and a minimum temperature of 40°F. The tie-ins with the three pipelines will occur on the Crown Landing Site. The Project will have a maximum delivery capacity of 0.6 BCFD to Transco, 0.5 BCFD to Columbia, and 0.9 BCFD to Texas Eastern, providing operational flexibility for the planned Manufacturing Facility send-out capacity of 1.2 BCFD.

***Buildings***

Six enclosed buildings will be constructed for the Crown Landing Manufacturing Facility:

- Administration Building – approximately 3,200 square foot one-story insulated metal building for the administrative headquarters of the Manufacturing Facility;
- Maintenance/Warehouse Building – approximately 7,500 square foot, one-story insulated metal building providing storage, maintenance, and repair areas;
- Motor Control Center (MCC) Building – approximately 8,500 square foot, one-story insulated metal building housing the main control room and motor controls;
- Guardhouse – approximately 150 square foot one-story insulated metal building to provide a security checkpoint for all incoming traffic to the Manufacturing Facility;
- Pier Control Building – approximately 960 square foot, one-story insulated metal building located on the trestle and housing pier operations controls; And
- Utility Building – approximately 2,400 square foot, one-story building that contains various Manufacturing Facility utilities.

The facility will also include several metal shelters (up to 15,000 square feet) that contain the air compressors, BOG compressors, water-ethylene glycol heaters, and associated equipment.

*Utilities*

The Project requires various utilities for operation: service and potable water, gas for fueling the heaters, diesel fuel for the emergency generator, electricity, instrument and plant compressed air, heating and air conditioning, on-site septic system, and storm water management. The provision of these utilities is summarized in Table 1.

*Fire Protection System*

The fire protection system is designed in compliance with NFPA 59A requirements and will provide for extinguishing Class A fires; provide water to cool structures and equipment exposed to thermal radiation; and aid in dispersing flammable vapors. The main components of the system will include:

- 300,000-gallon firewater storage tank;
- One electric and one diesel powered firewater pumps;
- One electric motor-driven jockey pump;
- A firewater piping distribution system to provide water to the facility's hydrants and monitors; and
- Fire hydrants with monitors and hose reels strategically located throughout the facility.

Fire extinguishers, which are remotely operated, will be provided throughout the terminal. Dry chemical extinguishers will be placed at strategic locations throughout the terminal.

**Table 1 Summary of Project Utility Requirements**

| | |
|---|---|
| Service water | Provided by on-site wells |
| Drinking water | Delivered as bottled water |
| Fuel gas | Self-generated with pipeline gas as a back-up |
| Diesel fuel | Delivered by truck |
| Electricity | Provided via an independent feed from the existing Conectiv 69 kV transmission line |
| Compressed air | Self generated with an air compressor system |
| Nitrogen | Outbound from on-site air separation facility |
| Heating and air conditioning | Electrical HVAC systems provided in enclosed buildings (Administrative Building, Maintenance/Warehouse Building, MCC Building, Guardhouse, Pier Control Building, and Utility Building) |
| Wastewater | On-site septic system designed in accordance with New Jersey Administrative Code 7:9A |
| Stormwater management | On-site stormwater management facilities designed in accordance with New Jersey Department of Environmental Protection Stormwater Management Guidelines (NJDEP, 2003) |
| Utility nitrogen | Obtained from air separation plant |

***LNG Project Controls***

The Project control system will consist of a Distributed Control System (DCS) with an independent safety control system. A central control room will be constructed for complete plant control and monitoring. There will also be an operator control station located on the pier.

### 11.4.3 LNG Carriers

Natural gas production is located primarily in remote areas, which are distant from consumption centers. In order to efficiently bring the natural gas to market, it is necessary to manufacture a liquid from the natural gas, which reduces the volume of the natural gas by approximately 600 times, load the LNG onto specially designed ships, and transport the cargo by sea.

The ships that will transport the LNG from the liquefaction port to Crown Landing will load the cargo of LNG into specially designed and constructed tanks. The cargo is kept at atmospheric pressure by a combination of insulation, to minimize heat transfer to the cargo, and boil-off gas generation. This boil-off gas is removed from the cargo and preferentially burned in the ship's engine room to supplement fuel oil.

All LNG ships calling at Crown Landing will be governed by a USCG - approved Operating Plan for LNG on the Delaware River. The Operating Plan is developed by taking into account public input and a formal risk assessment.

The ships that will deliver LNG to Crown Landing will be principally operated and owned by BP. BP operates its ships under the British flag. Ships will range from 138,000 $m^3$, the size of existing BP LNG ships, to 200,000 $m^3$, which have yet to be constructed. The dimensions of these ships are listed in Table 2 below.

Table 2. LNG Ship Dimensions

| Dimension | Existing Ships Actual Dimensions | Future Ships Approximate Dimensions |
|---|---|---|
| Capacity in cubic meters | 138,000 | 200,000 |
| Length in feet | 914 | 1056 |
| Beam in feet | 138 | 167 |
| Loaded Draught in feet | 38 | 38 |
| Ballast Draught in feet | 32 | 32 |
| Depth of Hull in feet | 85 | 88 |
| Loaded Displacement in long tons | 103,000 | 147,000 |

LNG ships are designed and constructed to meet standards for maximizing safety and minimizing risk. These standards exist on a variety of scales from international to domestic and include the following

- International standards are developed by the International Maritime Organization (IMO) and include Safety of Life at Sea (SOLAS), The International Code for the Construction and Equipment of Ships carrying Liquefied Gases in Bulk (IGC Code). These International standards are adopted by individual flag States into their National legislation and ships are constructed and operated to these standards. The construction and operation is monitored for compliance by the relevant flag State. An example of this being the USCG have adopted all IMO resolutions into the legislation of the US in the relevant CFRs. Additionally classification societies, such as the American Bureau of Shipping, ensure that the LNG ships are constructed and operated to their specific rules for construction and maintenance.
- Domestic standards established by the USCG (46 CFR Part 154) and the American Bureau of Shipping, which stipulate detailed construction specifications, such as steel quality as well as the IMO standards.

### 11.4.4 Downstream Facilities

One of the primary advantages of the proposed site is the proximity to natural gas transmission pipelines. The existing Columbia and Transco pipelines are located on the Crown Landing Site. The tie-ins from the metering facility to the pipelines will be short and will not require any new off-site rights-of-way. Texas Eastern has filed a separate application with FERC to extend its pipeline system approximately 12 miles to the Crown Landing Site. Upon approval of its application, Crown Landing will also connect to this lateral on-site. Metering and odorant injection facilities for all three pipelines will be provided on the Crown Landing Site.

STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES
AND ENVIRONMENTAL CONTROL
89 KINGS HIGHWAY
DOVER, DELAWARE 19901

OFFICE OF THE
SECRETARY

PHONE: (302) 739-4403
FAX: (302) 739-6242

February 3, 2005

Ms. Lauren Segal
Vice President
Crown Landing LLC
501 West Lake Park Blvd.
Houston, TX 77079

**CERTIFIED MAIL**
Return Receipt Requested

Re: Coastal Zone Act Status Decision

Dear Ms. Segal:

Based on the public comments, the assessment and recommendations of DNREC staff, and discussions with our legal representatives, I have reached a decision on your application for a coastal zone status request.

I find that your proposed facility represents a prohibited offshore bulk product transfer facility and does not meet the exemption under the bulk product transfer facility definition in that the facility cannot be considered a "manufacturing use" under the Act. Furthermore, I conclude that this facility, as proposed, exhibits characteristics sufficient to deem it a heavy industry, also prohibited under the Act. Finally, the on-shore storage tanks essential to the operation of the facility are prohibited structures.

This decision does not come without some appreciation of the need for additional natural gas supplies in this country nor the relative cleanliness of natural gas compared to other energy fuels. Despite the benefits that increased LNG imports might bring, placement of this facility within the boundaries of Delaware is, in my opinion, clearly a prohibited use within Delaware's coastal zone.

There is a fourteen-day appeal period following the publication of the enclosed legal notice announcement of this decision. If you wish to appeal this decision to the State Coastal Zone Industrial Control Board, please call Dennis Brown at 302-739-3091 for an appeal form. There is a one-hundred dollar appeal fee. If no appeal is received within the appeal period, this decision becomes final.

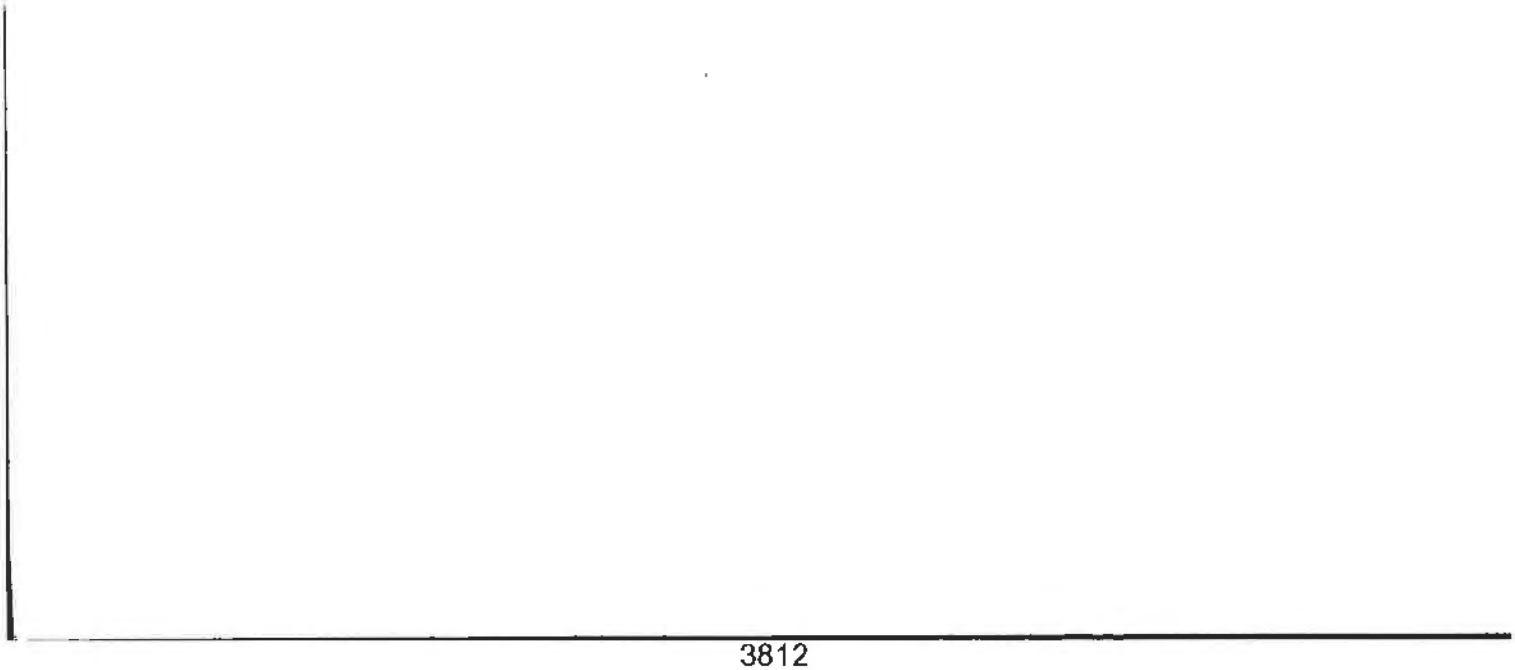
Sincerely,

John A. Hughes
Secretary

pc: Dennis Brown
David S. Swayze
Michael W. Teichman

Enclosure

Delaware's Great Nature Intended for You!



**BEFORE THE COASTAL ZONE INDUSTRIAL CONTROL BOARD OF**

**THE STATE OF DELAWARE**

| | | |
|---|---|---|
| IN THE MATTER OF COASTAL ZONE STATUS DECISION ON THE APPLICATION OF Crown Landing LLC | ) ) ) | APPEAL NO. CZ 2005-01 |

DECISION AND ORDER

Pursuant to notice, a public hearing was held on March 30, 2005, in the Conference Center of Delaware Technical & Community College, Stanton Campus, Newark, Delaware; concerning the appeal filed on February 15, 2005, by Crown Landing LLC and the appeal filed on February 18, 2005, by *pro se* appellants John M. Kearney, Maryann McGoncgal, Alan Muller and John D. Flaherty of a status decision of the Secretary of the Department of Natural Resources and Environmental Control issued February 3, 2005. Members of the Coastal Zone Industrial Control Board ("the Board") present were: Christine M. Waisanen, Chair, John Allen, Paul Bell, Albert Holmes, Pallather Subramanian and Victor Singer. Absent was Robert D. Welsh. John S. Burton and Judy McKinney-Cherry were disqualified from consideration of the matter. Phebe S. Young, Deputy Attorney General, represented the Board.

Crown Landing LLC was represented by David S. Swayze, Esq., and Michael W. Teichman, Esq., of Parkowski, Guerke & Swayze.

Collins J. Seitz, Jr., Esq. and Matthew Boyer, Esq., of Connolly Bove Lodge and Hutz LLP and Kevin Maloney, Deputy Attorney General, represented the Department of Natural Resources and Environmental Control ("DNREC") and DNREC Secretary John Hughes ("the Secretary").

PRELIMINARY MATTERS

On March 8, 2005 and March 9, 2005 respectively, Crown Landing LLC and DNREC filed motions to dismiss the appeals of John M. Kearney, Maryann McGonegal, Alan Muller and John D. Flaherty. The controlling statute, 7 *Del. C.* § 7007(b) provides that, "Any person aggrieved by a final decision of the Secretary of the Department of Natural Resources and Environmental Control under subsection (a) of § 7005 of this title may appeal same under this section." The disputed appeals favor the Secretary's status decision but include assertions that the *pro se* appellants are nevertheless "aggrieved" by the Secretary's failure to impose fines pursuant to 7 *Del. C.* § 7011 for activities the *pro se* appellants allege the applicant has undertaken without a required permit. Additionally, the disputed appeals include the assertion that, "The DNREC under John Hughes has consistently failed to defend CZA decisions at the judicial level, and have (sic) demonstrated an alarming incompetence and lack of understanding of CZA issues, including failing to appeal a clearly erroneous decision rendered by the CZICB in regard to the Delaware Terminal Company, issued February 12, 2004; and the recent illegally negotiated settlement with the Premcor Refinery, issued January 25, 2005."

The Board determined that the *pro se* appellants were not "aggrieved" by the Secretary's decision within the meaning of the statute. By a vote of 5-0 with the Chair abstaining, the Board granted the motions to dismiss.

On March 16, 2005, the Delaware Chapter of Sierra Club, Delaware Chapter of the Audubon Society and Delaware Nature Society filed a joint Motion to Intervene together with a Motion for the Admission *Pro Hac Vice* of Kenneth T. Kristl, Esq., to

represent them in this matter. On March 17, 2005, John M. Kearney, Maryann McGonegal, Alan Muller and John D. Flaherty filed a Motion to Intervene.

The Board granted the Motion to Admit Mr. Krystl *pro hac vice*.

All proposed interveners conceded that permission to intervene is discretionary with the Board. Mr. Krystl argued, on behalf of his clients, that their intervention is necessary in order to preserve their right meaningfully to appeal a decision of the Board to the Superior Court because any Superior Court appeal is on the record. The Board determined that an adequate record would be created by the existing parties together with any statements and positions the proposed interveners might choose to make as members of the public. By a vote of 5-0, with the Chair abstaining, both motions to intervene were denied.

SUMMARY OF THE EVIDENCE AND FINDINGS OF FACT

Before the hearing, the Board had reviewed the record of proceedings below including Crown Landing LLC's Request for a Coastal Zone Status Decision with supporting factual and legal arguments, voluminous public comments, the Assessment and Recommendations of DNREC staff and the Decision dated February 3, 2005, from which the appeal is taken. The application seeks a status decision for a proposed new waterfront gasification facility for receiving and processing of liquefied natural gas (LNG). The proposed construction comprises a docking facility with an approximately 2,000-foot-long trestle pier providing a single berth designed to accommodate ships carrying LNG and a gasification plant located on land. The majority of the pier would be located within the State of Delaware, inside the coastal zone, and the remainder of the construction would be in the State of New Jersey. The application for a status decision

and the status decision itself relate only to that portion of the proposed construction located in Delaware. The Secretary's decision that the proposed facility is prohibited by the Coastal Zone Act includes his rationale:

> I find that your proposed facility represents a prohibited offshore bulk product transfer facility and does not meet the exemption under the bulk product transfer facility definition in that the facility cannot be considered a "manufacturing use" under the Act. Furthermore, I conclude that this facility, as proposed, exhibits characteristics sufficient to deem it a heavy industry, also prohibited under the Act. Finally, the on-shore tanks essential to the operation of the facility are prohibited structures.

The following witnesses were called by Crown Landing:

1. Lauren Segal, the Project Director for the Crown Landing project. Ms. Segal described the overall process of producing usable natural gas. The gas, which could come from wells virtually anywhere in the world, is chilled to liquid phase prior to being loaded onto ships which transport it to facilities such as the one proposed in this matter. Many contaminants of the gas are eliminated by the chilling process. At the proposed docking facility, the chilled liquid would be off-loaded and transferred through cryogenic pipes to tanks located on shore. Within the tanks, the liquid would be circulated. Also on shore, it would be diluted by the addition of small amounts of nitrogen if necessary to adjust the BTU content. The liquid then would be heated to gaseous phase and then pressurized before being transferred to transport pipelines. A small amount of odorizing substance, Mercaptan, necessary for safety, would be added before the gas is transported through the outgoing pipelines. Ms. Segal considers the process occurring after the LNG is removed from the ship to be manufacturing because it changes an unmarketable product into a marketable product.

Ms. Segal also presented testimony concerning the need for new LNG facilities, specifically in the Mid-Atlantic region, the suitability of the chosen site for an LNG facility and the steps taken by BP (Crown Landing LLC's parent company) to ensure safety of the LNG ships while in the Delaware River and the safety of the facility as a whole.

In response to a question from the Board, Ms. Segal testified that it is her judgment that if the facility for unloading LNG were substantially distant from the proposed site, that site would not be useful as the gasification facility.

2. Laurie J. Beppler, Engineering Manager for the Crown Landing project. Ms. Beppler described, in greater detail, the construction and operation of the proposed facility. Ms. Beppler testified that LNG could not be transported safely overland to the site from an off-loading dock located some distance away. Rather, the dock and the land-based components of the facility must be considered an integrated facility. As had Ms Segal, Ms. Beppler testified that, in her judgment, the proposed site would not be useful as the gasification facility if it were substantially distant from the facility for unloading LNG.

3. Dr. Georges Melhem, Chair and Chief Engineer of ioMosaic Corporation, a company specializing in safety consulting services. Dr. Melhem testified that the product going into the distribution pipelines from the proposed facility would be a new product, not the same product that was on the ship, and therefore the onshore component meets the definition of a manufacturing facility.

Dr. Melhem also testified as to the similarities and differences between the proposed facility and one located on adjacent land. The adjacent facility, the Logan

(formerly "Keystone") cogeneration plant, received a permit under the Act for a docking facility for the off-loading of coal that is subsequently burned to produce electricity. Dr. Melhem testified that the Logan facility has more characteristics of heavy industry than would the proposed Crown Landing facility and, therefore, he concludes that the proposed facility is not heavy industry.

4. Dr. William Fagerstrom, a professor in the Mechanical Engineering Department at the University of Delaware. Dr. Fagerstrom teaches a course in manufacturing and testified that, according to the definitions used in his class, the onshore component of the proposed Crown Landing construction is manufacturing. In particular, Dr. Fagerstrom pointed out that the nitrogen used to dilute the LNG is "manufactured" on site.

5. David Blaha, of Environmental Resources Management Group, Inc., an expert in evaluating the potential environmental impact of projects. He emphasized the superiority of LNG as a fuel, the greater potential for pollution of the Logan cogeneration plant and the appropriateness of the site selected for the Crown Landing facility, primarily because the facility could use waste heat from the Logan cogeneration plant.

DNREC called Dr. Stanley I. Sandler as its only witness. Dr. Sandler gave a written statement as well as live testimony. Dr. Sandler testified that the onshore component of the proposed facility would not manufacture a new product or transform in any significant way the natural gas off-loaded from a ship at the dock. To the extent that natural gas is processed in a meaningful context, that processing occurs at the well head as the gas is captured and chilled. The gas that would leave the ship at the dock is essentially the same product that would enter the distribution pipelines.

At least eleven members of the public were heard by the Board. Most of the testimony of these speakers was directed to the dangers, real or perceived, of an LNG facility and ships carrying LNG up the Delaware River due to vulnerability to intentional attack, catastrophic accident or other failures. In addition, many speakers' comments concerned negative impacts on neighboring communities such as the impact on recreation and on business efficiency.

One witness argued that the proposed facility is essentially identical to the Logan facility, is a necessary addition to the economy of the region and will ensure the availability of natural gas essential to the production of electricity as well as growth of important industry in the region. The possibility of as many as fifty new jobs in the region was mentioned.

Every witness who addressed the issue testified that the onshore component of the proposed construction includes some but not all characteristics of a "heavy industry" as defined by the Act. The evidence as a whole reveals a significant and unresolved issue as to the safety and potential to pollute of the facility and its ships which are essential to the operation of the facility.

The Board finds, as a matter of fact, that the onshore component of the proposed facility is not a "manufacturing" facility. Rather, the facility is a single, integrated facility the onshore component of which exists solely to support the offshore component. The real sole purpose of the proposed facility is to serve as a bulk product transfer facility. Furthermore, the proposed facility has many of the characteristics of heavy industry and there remain significant questions regarding the potential impact on adjacent communities.

Coastal Zone Industrial Control Board
Appeal CZ 2005-01

## CONCLUSIONS OF LAW

Both the provisions of the Coastal Zone Act (7 Del. C. Chapter 70), ("the Act") and the Regulations Governing Delaware's Coastal Zone adopted May 11, 1999, as amended, ("Regulations") are binding on this Board.

Section 7003 of the Act absolutely prohibits new bulk product transfer facilities in the coastal zone. The proposed construction is a bulk product transfer facility as defined by § 7002 of the Act unless it qualifies for the exception found in the second sentence thereof: "Not included in this definition is a docking facility or pier for a single industrial or manufacturing facility for which a permit is granted or which is a nonconforming use."[1] The Regulations clarify this exception:

> The following uses or activities are permissible in the Coastal Zone by permit. Permits must be obtained prior to any land disturbing or construction activity.
>
> 1. The construction of pipelines or docking facilities serving as offshore bulk product transfer facilities if such facilities serve only one on-shore manufacturing or other facility. To be permissible under these regulations, the materials transferred through the pipeline or docking facilities must be used as a raw material in the manufacture of other products, or must be finished products being transported for delivery.

Regulations, § F.1.

Thus construction that otherwise would be prohibited as a bulk product transfer facility is permissible if it includes two distinct components: (1) a docking facility or pier or pipelines and (2) one single permitted on-shore manufacturing or other facility which

[1] Although the onshore part of the proposed construction is to be located in New Jersey and, therefore, is not eligible for a permit under the Act, the Board considers the nature of the entire construction for purposes of this decision and considers a facility which would be eligible for a permit if located in Delaware to be a "facility for which a permit is granted. . . ."

is served by the docking facility or pier or pipelines. "Docking Facility" is defined in the Regulations as follows:

> 6. "Docking Facility" means any structures and/or equipment used to temporarily secure a vessel to a shoreline or another vessel so that materials, cargo, and/or people may be transferred between the vessel and the shore, or between two vessels together with associated land, equipment, and structures so as to allow the receiving, accumulating, safekeeping, storage, and preparation of cargoes for further shipment, and administrative maintenance purposes directly related to such receiving, accumulating, safekeeping, storage, and preparation of cargoes for further shipment.

Regulations, § C.6.

The construction would be prohibited if the onshore component is heavy industry, since all new heavy industry is prohibited and ineligible for a permit. The Act defines "heavy industry" at § 7002(e) as follows:

> "Heavy industry use" means a use characteristically involving more than 20 acres, and characteristically employing some but not necessarily all of such equipment such as, but not limited to, smokestacks, tanks, distillation or reaction columns, chemical processing equipment, scrubbing towers, pickling equipment and waste-treatment lagoons; which industry, although conceivably operable without polluting the environment, has the potential to pollute when equipment malfunctions or human error occurs. Examples of heavy industry are oil refineries, basic steel manufacturing plants, basic cellulosic pulp-paper mills, and chemical plants such as petrochemical complexes. An incinerator structure or facility which, including the incinerator, contains 5,000 square feet or more, whether public or private, is "heavy industry" for purpose of this chapter. Generic examples of uses not included in the definition of "heavy industry" are such uses as garment factories, automobile assembly plants and jewelry and leather goods manufacturing establishments, and on-shore facilities, less than 20 acres in size, consisting of warehouses, equipment repair and maintenance structures, open storage areas, office and communications buildings, helipads, parking space and other service or supply structures required for the transfer of materials and workers in support of off-sbore research, exploration and development operations; provided, however, that on-shore facilities shall not include tank farms or storage tanks.

DNREC and several public speakers argue that the Logan/Keystone cogeneration permit is not applicable precedent since that permit allowed the construction of a docking facility to serve an onshore component which properly is considered a manufacturing facility in that it consumes the off-loaded product (coal) and produces a different product (electricity) for distribution. In contrast, the proposed Crown Landing docking facility would serve an onshore component which would produce for distribution the same product (natural gas) that is off-loaded at the docking facility. DNREC argues that the more relevant precedent, cited by several public speakers, is the 1972 denial of a permit to El Paso Eastern Company for the construction of a pier in Delaware waters serving an LNG terminal in New Jersey. That denial, which was decided early in the history of the Act and predated the adoption of the Regulations, cites an analysis of the Act from the Attorney General which states, in part:

> It is quite clear that the legislative intent was to permit docking facilities where such facilities would benefit such industries as would be granted permits to operate in the Coastal Zone. Here the situation is reversed. The terminal will only exist as an adjunct to the docking facility. In other words, the important part of the project to El Paso Eastern is not the 'industrial facility' but the docking facility.

The Board finds a similar analysis applies to the proposed Crown Landing construction. Having found that the proposed construction is a single integrated facility for the bulk transfer of natural gas, the Board concludes, as a matter of law, that the entire proposed facility is a docking facility which does not support a manufacturing or other facility. Consequently, the proposed construction is absolutely prohibited by the Act and no permit therefor may be issued.

Coastal Zone Industrial Control Board
Appeal CZ 2005-01

BOARD'S DECISION

For the foregoing reasons, the Board, by a unanimous vote of the six members present, affirms the Secretary's decision and finds that the proposed construction is a use absolutely prohibited by the Coastal Zone Act.

Date: _____

_____
Christine M. Waisanen
Chair

Coastal Zone Industrial Control Board
Appeal CZ 2005-01

BOARD'S DECISION

For the foregoing reasons, the Board, by a unanimous vote of the six members present, affirms the Secretary's decision and finds that the proposed construction is a use absolutely prohibited by the Coastal Zone Act.

Date: 4/14/05

Christine M. Walsanen
Chair



[redacted]

[redacted]

Coastal Zone Industrial Control Board
Appeal CZ 2005-01

Date: 4-14-2005

John Allen
Board Member



[redacted]

[redacted]

Coastal Zone Industrial Control Board
Appeal CZ 2005-01

Date: 4/14/05

Paul Bell
Board Member



[redacted]

[redacted]

Coastal Zone Industrial Control Board
Appeal CZ 2005-01

Date: 4/14/05

Albert Holmes
Board Member



[redacted]

[redacted]

Coastal Zone Industrial Control Board
Appeal CT 2005-01

Date: 4/14/05

Palladur M. Subramanian
Palladur Subramanian
Board Member



[redacted]

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Coastal Zone Industrial Control Board
Appeal (Z 2005-01

Date 4/14/05

Victor Singer
Board Member



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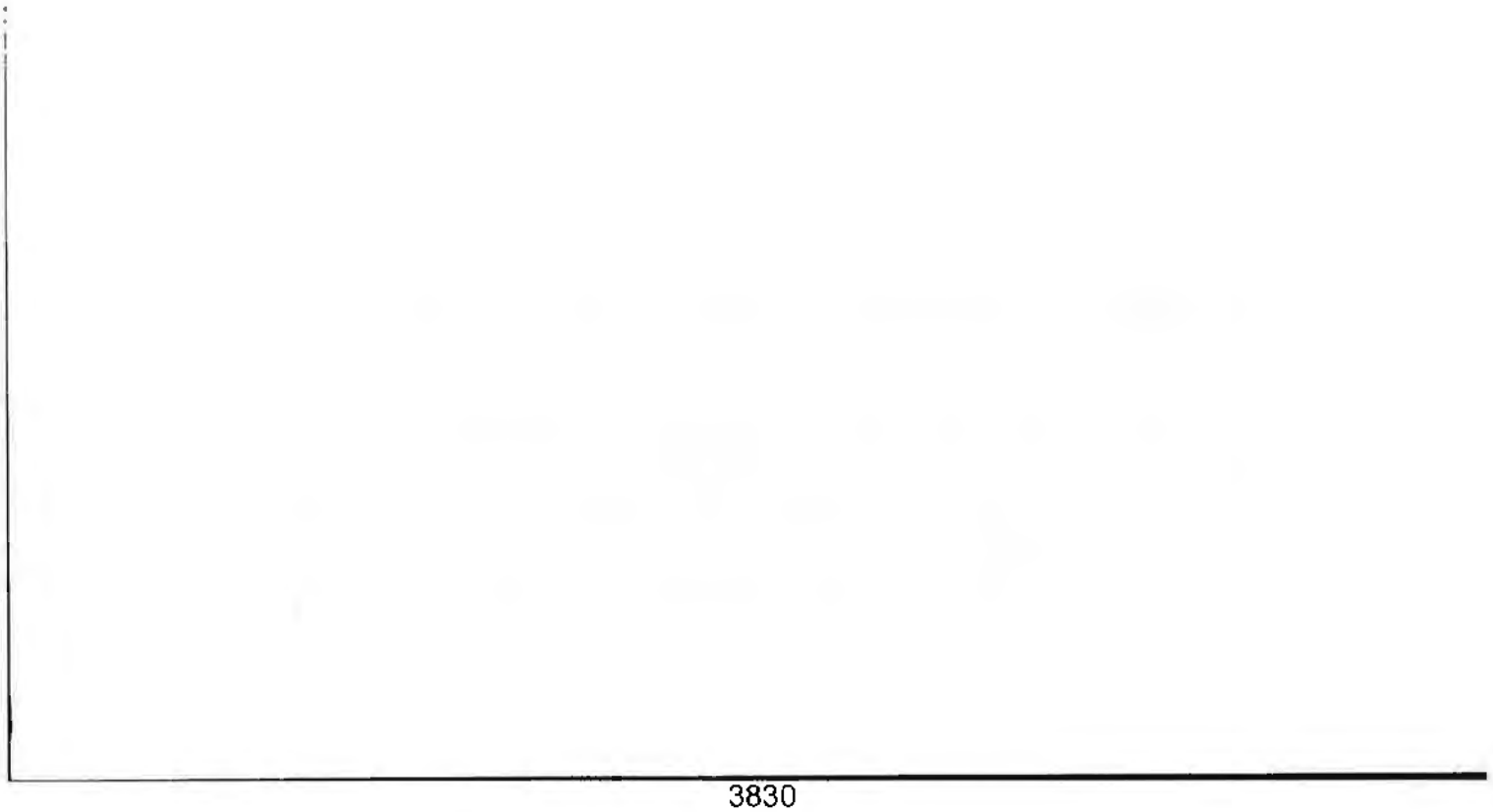

**SANDIA REPORT**

SAND2004-6258
Unlimited Release
Printed December 2004

# Guidance on Risk Analysis and Safety Implications of a Large Liquefied Natural Gas (LNG) Spill Over Water

Mike Hightower, Louis Gritzo, Anay Luketa-Hanlin, John Covan, Sheldon Tieszen, Gerry Wellman, Mike Irwin, Mike Kaneshige, Brian Melof, Charles Morrow, Don Ragland

Prepared by
Sandia National Laboratories
Albuquerque, New Mexico 87185 and Livermore, California 94550
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# Guidance on Risk Analysis and Safety Implications of a Large Liquefied Natural Gas (LNG) Spill Over Water

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**Abstract**

While recognized standards exist for the systematic safety analysis of potential spills or releases from LNG (Liquefied Natural Gas) storage terminals and facilities on land, no equivalent set of standards or guidance exists for the evaluation of the safety or consequences from LNG spills over water. Heightened security awareness and energy surety issues have increased industry's and the public's attention to these activities. The report reviews several existing studies of LNG spills with respect to their assumptions, inputs, models, and experimental data. Based on this review and further analysis, the report provides guidance on the appropriateness of models, assumptions, and risk management to address public safety and property relative to a potential LNG spill over water.



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### 5.1.1 Evaluation of the Fire Hazard of an Intentional LNG Spill

In order to determine the general range of hazard levels and to provide a demonstration of how hazard zones can be delineated, the following analysis was performed, the details of which are described in Appendix D.

As stated in Section 4, in most of the scenarios identified, the thermal hazards from an intentional spill are expected to manifest as a pool fire, based on the high probability that an ignition source will be available from most of the events identified. Based on a detailed review of the existing experimental literature presented in Appendix C, nominal fire modeling parameters were used to calculate the expected thermal hazards from a fire for the intentional breach scenarios developed. The same modeling approach and assumptions as discussed in Section 4 were used for these analyses. While the details of the analyses are presented in Appendix D, a summary of these results is shown in Table 14, where the distances to 37.5 kW/m$^2$ and 5 kW/m$^2$ are from the center of the pool.

**Table 14: Intentional Breach — Effect of Parameter Combinations on Pool Diameter**

| HOLE SIZE (m$^2$) | TANKS BREACHED | DISCHARGE COEFFICIENT | BURN RATE (m/sec) | SURFACE EMISSIVE POWER (kW/m$^2$) | POOL DIAMETER (m) | BURN TIME (min) | DISTANCE TO 37.5 kW/m$^2$ (m) | DISTANCE TO 5 kW/m$^2$ (m) |
|---|---|---|---|---|---|---|---|---|
| 2 | 3 | .6 | $3 \times 10^{-4}$ | 220 | 209 | 20 | 250 | 784 |
| 5 | 3 | .6 | $3 \times 10^{-4}$ | 220 | 572 | 6.1 | 630 | 2118 |
| 5* | 1 | .6 | $3 \times 10^{-4}$ | 220 | 330 | 6.1 | 391 | 1305 |
| 5 | 1 | .9 | $3 \times 10^{-4}$ | 220 | 405 | 5.4 | 478 | 1579 |
| 5 | 1 | .6 | $2 \times 10^{-4}$ | 220 | 395 | 6.1 | 454 | 1538 |
| 5 | 1 | .6 | $3 \times 10^{-4}$ | 350 | 330 | 6.1 | 529 | 1652 |
| 12 | 1 | .6 | $3 \times 10^{-4}$ | 220 | 512 | 3.4 | 602 | 1920 |

*nominal case

The results presented in Table 14 show that the thermal hazards of 37.5 kW/m$^2$ are expected to occur within approximately 500 m of the spill for most of the scenarios evaluated. For the 2 m$^2$ three-hole breach, it was assumed that individual pools would form; whereas, for the 5 m$^2$ three-hole breach, a single pool was assumed to form. The release from the three holes was considered to happen simultaneously. It should be noted that these conditions consider cascading damage resulting from fire or cryogenic-induced failure.

Most of the studies reviewed assume that a single, coherent pool fire can be maintained for very large pool diameters. This would be unlikely due to the inability of air to reach the interior of a fire and maintain combustion on an LNG pool that size. Instead, the flame pool envelope would break up into multiple pool fires (herein: 'flamelets'), the heights of which are much less than the fuel bed diameter used in the calculations by the four previously discussed studies. This breakup into flamelets results in a much shorter flame height than that assumed for a large pool diameter. In reality, L/D (height/pool diameter) would probably be much smaller than that assumed by the correlations in many studies, which predict an L/D ratio between 1.0 and 2.0. A more realistic ratio could be less than 1.0 [Zukoski 1986] [Corlett 1974] [Cox 1985].

Because the heat radiated by the flamelets would be far less than the heat radiation calculated in the many studies (based on a large pool fire), the amount of radiative heat flux that an adjacent object receives would be less, thereby decreasing the size of the thermal hazard zone. As discussed in Appendix D, the use of a mass fire assumption could reduce hazard distances for large spills. The development of fire whirls might increase the hazard zone. Therefore, this type of pool fire model should be carefully considered to improve thermal hazards analysis from potential large spills.

The results presented suggest that the potential thermal hazards for large spills can vary significantly, based on the uncertainty associated with potential spill sizes, dispersion variations, and threats. Based on the estimated pool size for large spills, even with the possibility of reduction in effects for mass fires as opposed to single pool fires, high thermal hazards approaching 37.5 $kW/m^2$ could probably extend to approximately 500 meters. The thermal hazards between 500 meters and 1600 meters decrease significantly. The hazards would be low, approximately 5 $kW/m^2$ beyond 1600 m from even a large spill. Based on these observations, approximate hazard zones seem to exist between 0 – 500 m, 500 – 1600 m, and over 1600 m, and were used to develop guidance on managing risks for LNG spills.

### 5.1.2 Evaluation of Vapor Dispersion Hazard of Intentional LNG Spills

In most of the scenarios identified, the thermal hazards from a spill are expected to manifest as a pool fire, based on the high probability that an ignition source will be available from most of the events identified. In some instances, such as an intentional spill without a tank breach, an immediate ignition source might not be available and the spilled LNG could, therefore, disperse as a vapor cloud. For large spills, the vapor cloud could extend to more than 1600 m, depending on spill location and site atmospheric conditions. In congested or highly populated areas, an ignition source would be likely, as opposed to remote areas, in which an ignition source might be less likely.

As mentioned in Section 4, the impact from a vapor cloud dispersion and ignition from a large spill can extend beyond 1600 meters, based on our review of external data discussed in Appendix C. This suggests that LNG vapor dispersion analysis should be conducted using site-specific atmospheric conditions, location topography, and ship operations to assess adequately the potential areas and levels of hazards to public safety and property. Consideration of risk mitigation measures, such as development of procedures to quickly ignite a dispersion cloud and stem the leak, if conditions exist that the cloud would impact critical areas.

If ignited close to the spill, and early in the spill, the thermal loading from the vapor cloud ignition might not be significantly different from a pool fire, because the ignited vapor cloud would burn back to the source of liquid LNG and transition into a pool fire. If a large vapor cloud formed, the flame could propagate downwind, as well as back to the source. If the cloud is ignited at a significant distance from the spill, the thermal hazard zones can be extended significantly. The thermal radiation from the ignition of a vapor cloud can be very high within the ignited cloud and, therefore, particularly hazardous to people.

In order to obtain LNG dispersion distances to LFL for intentional events, calculations were performed using VULCAN, as discussed in Section 4. A low wind speed and highly stable



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atmospheric condition were chosen because this state has shown to result in the greatest distances to LFL from experiment, and thus should be the most conservative. A wind speed of 2.33 m/s at 10 m above ground and an F stability class were used for these simulations. For intentional events, two cases were run, one for the nominal case of a 5-$m^2$ hole and one tank breach, and the other for a 5-$m^2$ hole and three tanks breached. This case is the largest spill; hence, it should give the greatest LFL for intentional events. As indicated in Table 15, the dispersion distance to LFL for intentional events might extend from nominally 2500 m to a conservative maximum distance of 3500 m for this unlikely event.

While previous studies have addressed the vapor dispersion issue from a consequence standpoint only, the risk analysis performed as part of this study indicates that the potential for a large vapor dispersion from an intentional breach is highly unlikely. This is due to the high probability that an ignition source will be available for many of the initiating events identified, and because certain risk reduction techniques can be applied to prevent or mitigate the initiating events identified. The significant distances, though, of a potential vapor dispersion suggest that LNG vapor dispersion analysis and risk mitigation measures should be carefully considered to protect adequately both the public and property.

**Table 15: Dispersion Distances to LFL for Intentional Spills**

| HOLE SIZE ($m^2$) | TANKS BREACHED | POOL DIAMETER (m) | SPILL DURATION (min) | DISTANCE TO LFL (m) |
|---|---|---|---|---|
| 5 | 1 | 330 | 8.1 | 2450 |
| 5 | 3 | 572 | 8.1 | 3614 |

The analyses from the fire and vapor dispersion calculations suggest that high thermal hazards from intentional events extend significantly from the spill location. Table 16 summarizes the general impacts on both public safety and property for intentional breaches and spills. In this table, high impact would include a thermal intensity in the range of 37.5 $kW/m^2$ and low values would correspond to thermal intensities in the range of 5 $kW/m^2$.

These results should be used as guidance, bearing in mind that these distances will vary, based on site-specific factors and environmental conditions.

**Table 16: Estimated Impact of Intentional LNG Breaches & Spills on Public Safety & Property**

| EVENT | POTENTIAL SHIP DAMAGE AND SPILL | POTENTIAL HAZARD | POTENTIAL IMPACT ON PUBLIC SAFETY* | | |
|---|---|---|---|---|---|
| | | | 500 m | 500 – 1800 m | >1800 m |
| Intentional Breach or Holing | Intentional, 2-7 $m^2$ breach and medium to large spill | • Large fire | High | Medium | Low |
| | | • Damage to ship | High | Medium | Low |
| | | • Fireball | Medium | Low | Very Low |
| | Intentional, large release of LNG | • Large fire | High | Medium | Low |
| | | • Damage to ship | High | Medium | Low |
| | | • Vapor cloud fire | High | High - Med | Medium |
| Attack on Ship | Intentional, 2-12$m^2$ breach and medium to large spill | • Large fire | High | Medium | Low |
| | | • Damage to ship | High | Medium | Low |
| | | • Fireball | Medium | Low | Very Low |

* Distance to spill origin, varies according to site

Very low – little or no property damage or injuries
Low – minor property damage and minor injuries
Medium –potential for injuries and property damage
High – major injuries and significant damage to structures

STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES &
ENVIRONMENTAL CONTROL
DIVISION OF WATER RESOURCES
89 KINGS HIGHWAY
DOVER, DELAWARE 19901

WETLANDS & SUBAQUEOUS
LAND SECTION

TELEPHONE (302) 739-4691
FACSIMILE (302) 739-6304

Subaqueous Lands Lease No.: SL-312/04
Associated Water Quality Certification: WQC-313/04
Date of Issuance: 5/10/05
Construction Expiration Date: 5/10/08
Amended Date:

**SUBAQUEOUS LANDS LEASE/WATER QUALITY CERTIFICATION GRANTED TO FENWICK COMMONS LLC., TO CONSTRUCT A 40 FOOT WIDE BY 750 FOOT LONG PIER, A 6 FOOT WIDE BY 95 FOOT LONG ALUMINUM GANGWAY, A 28 FOOT WIDE BY 120 FOOT LONG FLOATING DOCK AND BREAKWATER, 6 SUPPORT PILINGS, 1255 LINEAR FEET OF STEEL BULKHEAD AND TO FILL APPROXIMATELY 1882 SQUARE FEET OF PUBLIC SUBAQUEOUS LANDS AT THE PENNS GROVE RIVERFRONT AND PIER, END OF WEST MAIN STREET, PENNS GROVE, NEW JERSEY**

Fenwick Commons, L.L.C.,
c/o Cresse & Carr
39 Cooper Street
Woodbury, N.J. 08070

Pursuant to the provisions of 7 Del. C., 7203, the Department's Regulations Governing the Use of Subaqueous Lands, and Section 401 of the Clean Water Act and the Department's Regulations Governing the Control of Water Pollution, permission is hereby granted on this 10th day of May A.D. 2005, to construct the above-referenced structure in accordance with the approved plans, (12 sheets), as approved on March 9, 2005, and application dated 7/13/04 and received by this Division on 7/22/04.

WHEREAS, the State of Delaware is the owner of ungranted subaqueous lands lying beneath the waters of Delaware Bay;

WHEREAS, Fenwick Commons LLC., has applied for permission to refurbish and construct a pier, gangway, dock with breakwater, 6 support pilings, 1255 linear feet of bulkhead and to fill approximately 1822 square feet of public subaqueous lands,; and

WHEREAS, pursuant to the provisions of 7 Del. C. 7203, the Secretary of the Department of Natural Resources and Environmental Control through his duly authorized representative finds that it is not contrary to the public interest if this project is approved subject to the terms and conditions herein set forth.

WHEREAS, in accordance with Section 401 of the Clean Water Act, the State of Delaware, by and through the Department of Natural Resources and Environmental Control, certifies that the permitted activity will be conducted in a manner which will not violate the applicable water quality standards of the State of Delaware subject to the terms and conditions of this approval;

This Subaqueous Lands Lease/Water Quality Certification is issued subject to the following conditions:

THIS approval is in accordance with the plan and application submitted to the Department of Natural Resources and Environmental Control, a copy of which is attached hereto and made a part hereof.

THIS Lease shall be continued for a period of twenty (20) years or so long as the conditions attached to the Lease are adhered to, whichever is the shorter in time. Upon the expiration of the twenty-year term, this Lease shall expire and become null and void, unless prior thereto the lessee shall have applied for and received a renewal of this Lease. A renewal may be denied if the State determines that the Lease is no longer in the public interest.

THIS Lease is issued subject to the following conditions:

**SPECIAL CONDITIONS**

1. The conditions contained herein shall be incorporated into any and all construction contracts and other ancillary documents associated with earth disturbance and any other activities directly or indirectly associated with construction which may impact subaqueous lands associated with this project. The lessee and contractor are responsible to ensure that the workers executing the activities authorized by this Lease/Water Quality Certification have full knowledge of, and abide by, the terms and conditions of this Lease/Water Quality Certification.

2. **No portion of the decking on any dock or pier authorized by this Lease shall exceed the width dimensions for that structure identified on Page One of this Lease/Water Quality Certification.**

3. **During the twenty-year term of this Lease/Water Quality Certification the lessee shall agree to pay the State of Delaware the sum of $ 50.00 per annum for a total of $ 1,000.00 for the 1050 square feet of filled public subaqueous lands utilized for the replacement bulkhead. The payment for this Lease shall be submitted to the Department with the signed and notarized Lease documents.**

4. The current leased area of structure over public subaqueous lands is 34,980 square feet represented by the 40 foot by 750 foot section of pier, a 6 foot by 95 foot gangway, a 28 foot by 120 foot floating dock/breakwater, and 1050 square feet of filled Public Subaqueous Lands constructed channelward of the mean low water line.

5. A turbidity curtain shall be utilized to minimize sediment loss into the Delaware Bay during the bulkhead replacement.

6. All material associated with the proposed project and included in the above-referenced plans shall be clean and free from oils, grease, asphalt, and other contaminants.

7. The bulkhead shall follow the existing bulkhead alignment and shall be installed as close as practicable to the existing bulkhead, not to exceed 12 inches channelward from the bulkhead face.

8. The structure shall be maintained in such a manner so as not to violate the State of Delaware Department of Natural Resources and Environmental Control "Surface Water Quality Standards," as amended August 11, 1999.

9. Erosion and sediment control measures shall be implemented in accordance with the specifications and criteria in the Delaware Erosion and Sediment Control Handbook (1989), so as to minimize entry and dispersal of sediment and other contaminants in surface waters.

10. This Lease/Water Quality Certification does not authorize any additional repairs, additions, or modifications to the existing structures authorized herein. Such activities require separate written authorization from the Department of Natural Resources and Environmental Control.

11. The approved structures shall be constructed in a manner so as not to impair water access to the adjoining property.

12. All construction debris, excavated material, brush, rocks, and refuse incidental to construction of the leased structure shall be placed above the influence of surface waters.

13. The work authorized by this permit is subject to the terms and conditions of the attached Department of the Army Permit CENAP-OP-R-200401071-39.

14. The structures on/or adjacent to subaqueous lands shall be for the explicit purpose of refurbishing a historic pier for pedestrian access, emergency vehicle access, and for berthing up to 4 large vessels for public and emergency use, and for island stabilization as stated in the application.

**GENERAL CONDITIONS**

1. The project is to be undertaken in accordance with the plans submitted and attached hereto. Any activities not specifically authorized herein may require a supplemental approval from this office prior to the initiation of construction. A determination on the need for a supplemental approval will be made by this office pursuant to the lessee submitting written notification and revised plans indicating project changes to this office.

2. Representatives of the Department of Natural Resources and Environmental Control may inspect such work during any phases of the construction and may collect any samples or conduct any tests that are deemed necessary.

3. This Lease/Water Quality Certification does not cover the structural stability of the project units.

4. Prior to the expiration of this Lease/Water Quality Certification, the lessee shall remove all structures covered under this Lease/Water Quality Certification unless the Lease/Water Quality Certification has been renewed in accordance with its terms.

5. Any actions, operations or installations which are considered by the Department to be contrary to the best interests of the public may constitute reason for the discontinuance and/or removal of said action, operation or installation.

6. The lessee shall maintain any structure on public subaqueous lands in good and safe condition and will protect and save the State of Delaware harmless from any loss, cost or damage by reason of said structures.

7. The issuance of this Lease/Water Quality Certification does not imply approval of any other part, phase, or portion of any overall project the lessee may be contemplating.

8. This Lease/Water Quality Certification shall not be construed to grant or confer any right, title, easement, or interest in, to, or over any land belonging to the State of Delaware other than that of a tenant.

9. This Lease/Water Quality Certification is subject to the terms and conditions contained in any easement, license or lease that may have been granted by the State or any political subdivision, board, commission or agency of the State in the vicinity of the leased premises.

10. This Lease/Water Quality Certification shall expire if the project has not been completed within three (3) years from the date of issuance.

11. This Lease/Water Quality Certification is granted for the purposes as stated herein. Any other use without prior approval shall constitute reason for this Lease/Water Quality Certification being revoked.

12. This Lease/Water Quality Certification is not assignable or transferable without the prior written consent of the Department. Prior to the transfer of the property, it is the responsibility of the lessee to provide the new owner with a copy of the Lease/Water Quality Certification or to remove all structures. Prior to property conveyance, the lessee must also notify the Department of the change in ownership.

13. The lessee shall at all times comply with all applicable laws and regulations of the Department of Natural Resources and Environmental Control.

14. The issuance of this Lease/Water Quality Certification does not constitute approval for any of the activities as may be required by any other local, state or federal governmental agency.

15. Application for renewal must be submitted six (6) months prior to the expiration date of this Lease/Water Quality Certification.

16. This Lease/Water Quality Certification may be revoked upon violation of any of the above conditions.

Associated Water Quality Certification: WQC-313/04

IN WITNESS WHEREOF, I, George E. Kearns, III, has caused this instrument to be executed on this 6th day of May, 2005.

By _____
(Lessee) George E. Kearns, III

JOAN E. CICIK
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires Mar 10, 2007

(Notary Seal)

_____
Notary Public

IN WITNESS WHEREOF, I, John A. Hughes, Secretary, Department of Natural Resources and Environmental Control, have hereunto set my hand this 10th day of May, 2005.

_____
John A. Hughes
Secretary of the Department of
Natural Resources and
Environmental Control

*Final Environmental Impact Statement*

# Crown Landing LNG and Logan Lateral Projects

**Crown Landing LLC**
**Texas Eastern Transmission, LP**
Docket Nos. CP04-411-000 and CP04-416-000
FERC/EIS – 0179

**Federal Energy Regulatory Commission**
Office of Energy Projects
Washington, DC 20426

**Cooperating Agencies**

US Army Corps of Engineers

**April 2006**

*Final Environmental Impact Statement*

**Volume I**

# Crown Landing LNG and Logan Lateral Projects

**Crown Landing LLC**
**Texas Eastern Transmission, LP**

FERC/EIS – 0179

Docket Nos.: CP04-411-000
CP04-416-000

**Federal Energy Regulatory Commission**
Office of Energy Projects
Washington, DC 20426

**April 2006**

## TABLE OF CONTENTS

**Crown Landing LNG and Logan Lateral Projects**
**Final Environmental Impact Statement**


Page

TABLE OF CONTENTS ..... i
LIST OF APPENDICES ..... v
LIST OF TABLES ..... vi
LIST OF FIGURES ..... viii
ACRONYMS AND ABBREVIATIONS ..... ix

EXECUTIVE SUMMARY ..... ES-1
PROJECT IMPACTS ..... ES-2
ALTERNATIVES CONSIDERED ..... ES-8
PUBLIC INVOLVEMENT AND AREAS OF CONCERN ..... ES-10
MAJOR CONCLUSIONS ..... ES-11

1.0 INTRODUCTION ..... 1-1
1.1 PURPOSE AND SCOPE OF THIS STATEMENT ..... 1-2
1.2 PROJECT PURPOSE AND NEED ..... 1-3
1.3 PERMITS, APPROVALS, AND REGULATORY REQUIREMENTS ..... 1-5
1.4 STAKEHOLDER INVOLVEMENT PROCESS ..... 1-8
1.5 PUBLIC REVIEW AND COMMENT ..... 1-14
1.6 NONJURISDICTIONAL FACILITIES ..... 1-17

2.0 DESCRIPTION OF PROPOSED ACTION ..... 2-1
2.1 EXISTING SITE Conditions ..... 2-1
2.2 PROPOSED PROJECT ..... 2-1
2.2.1 LNG Terminal ..... 2-4
2.2.1.1 Ship Unloading Facility ..... 2-4
2.2.1.2 LNG Storage Tanks ..... 2-6
2.2.1.3 Vaporization System ..... 2-6
2.2.1.4 Vapor Handling System ..... 2-8
2.2.1.5 Nitrogen Injection System ..... 2-8
2.2.2 LNG Ships ..... 2-8
2.2.3 Pipeline Facilities ..... 2-11
2.3 LAND REQUIREMENTS ..... 2-12
2.3.1 LNG Terminal ..... 2-12
2.3.2 Pipeline Facilities ..... 2-16
2.4 CONSTRUCTION PROCEDURES ..... 2-18
2.4.1 LNG Terminal ..... 2-19
2.4.1.1 LNG Storage and Process Facilities ..... 2-19
2.4.1.2 Ship Unloading Facility ..... 2-21
2.4.1.3 Dredging and Dredge Disposal ..... 2-21
2.4.2 Pipeline Facilities ..... 2-23
2.4.2.1 General Construction Techniques ..... 2-23
2.4.2.2 Special Construction Techniques ..... 2-28

TABLE OF CONTENTS (cont'd)


2.5 CONSTRUCTION SCHEDULE ..... 2-30
2.6 ENVIRONMENTAL COMPLIANCE, INSPECTION, AND MITIGATION MONITORING ..... 2-31
2.7 OPERATION AND MAINTENANCE PROCEDURES ..... 2-31
2.7.1 LNG Terminal ..... 2-31
2.7.2 Pipeline Facilities ..... 2-32
2.8 SAFETY CONTROLS ..... 2-32
2.8.1 LNG Terminal ..... 2-32
2.8.1.1 Spill Impoundment System ..... 2-32
2.8.1.2 Fire and Hazard Detection System ..... 2-34
2.8.1.3 Fire and Hazard Control System ..... 2-35
2.8.1.4 Emergency Shutdown System ..... 2-37
2.8.2 Pipeline Facilities ..... 2-37
2.8.2.1 Corrosion Protection and Detection Systems ..... 2-37
2.8.2.2 Emergency Response Procedures ..... 2-37
2.9 FUTURE PLANS AND ABANDONMENT ..... 2-37

3.0 ALTERNATIVES ..... 3-1
3.1 NO ACTION OR POSTPONED ACTION ..... 3-2
3.2 SYSTEM ALTERNATIVES ..... 3-5
3.2.1 Existing Onshore and Offshore LNG Facilities ..... 3-6
3.2.2 Recently Approved, Proposed, or Planned LNG Projects ..... 3-12
3.2.2.1 Onshore LNG Projects ..... 3-12
3.2.2.2 Offshore LNG Projects ..... 3-17
3.2.3 Pipeline System Alternatives ..... 3-21
3.3 LNG TERMINAL ALTERNATIVES ..... 3-23
3.3.1 Regional Review ..... 3-23
3.3.2 Port Review ..... 3-23
3.3.2.1 Offshore Ports ..... 3 23
3.3.2.2 Specific Offshore Port Review ..... 3-30
3.3.2.3 Coastal Ports ..... 3-33
3.3.3 Site Specific Review of Onshore Sites along the Delaware Bay and River ..... 3-36
3.4 PIER ALTERNATIVES ..... 3-59
3.5 PIPELINE ALTERNATIVES ..... 3-64
3.5.1 Pipeline System Alternatives ..... 3-64
3.5.2 Major Route Alternatives ..... 3-65
3.5.2.1 Railroad Alternative ..... 3-65
3.5.2.2 Hayes Street Alternative ..... 3-68
3.5.2.3 Sunoco Alternative ..... 3-68
3.5.2.4 Upland Road Alternative ..... 3-69
3.5.3 Minor Route Variations ..... 3 70

4.0 ENVIRONMENTAL ANALYSIS ..... 4-1
4.1 GEOLOGIC RESOURCES ..... 4-2
4.1.1 Physiographic and Geologic Setting ..... 4-2
4.1.2 Blasting ..... 4-4
4.1.3 Mineral Resources ..... 4-5
4.1.4 Geologic Hazards ..... 4-5
4.1.4.1 Seismic-related Hazards ..... 4-5

TABLE OF CONTENTS (cont'd)


4.1.4.2 Load-Bearing Capacity ..... 4-8
4.1.4.3 Slope Instability ..... 4-9
4.1.4.4 Subsidence ..... 4-9
4.1.4.5 Flooding ..... 4-9
4.1.5 Paleontological Resources ..... 4-10
4.2 SOILS AND SEDIMENTS ..... 4-11
4.2.1 Soil Resources ..... 4-11
4.2.2 Sediments ..... 4-19
4.3 WATER RESOURCES ..... 4-28
4.3.1 Groundwater ..... 4-28
4.3.2 Surface Water ..... 4-32
4.4 WETLANDS ..... 4-42
4.5 VEGETATION ..... 4-48
4.6 WILDLIFE AND AQUATIC RESOURCES ..... 4-52
4.6.1 Wildlife Resources ..... 4-52
4.6.2 Aquatic Resources ..... 4-56
4.6.3 Essential Fish Habitat ..... 4-71
4.7 THREATENED, ENDANGERED, AND OTHER SPECIAL STATUS SPECIES ..... 4-73
4.7.1 Federally Listed Threatened and Endangered Species ..... 4-75
4.7.2 State-listed Species ..... 4-83
4.8 LAND USE, RECREATION, AND VISUAL RESOURCES ..... 4-88
4.8.1 Land Use ..... 4-88
4.8.1.1 LNG Terminal ..... 4-88
4.8.1.2 Pipeline Facilities ..... 4-89
4.8.2 Existing Residences and Planned Developments ..... 4-93
4.8.2.1 LNG Terminal ..... 4-93
4.8.2.2 Pipeline Facilities ..... 4-94
4.8.3 Coastal Zone Management ..... 4-97
4.8.3.1 New Jersey ..... 4-98
4.8.3.2 Delaware ..... 4-99
4.8.3.3 Pennsylvania ..... 4-101
4.8.4 Hazardous Waste Sites ..... 4-101
4.8.5 Recreation and Public Interest Areas ..... 4-105
4.8.5.1 Designated Recreation and Public Interest Areas ..... 4-105
4.8.5.2 General Recreation ..... 4-106
4.8.6 Visual Resources ..... 4-109
4.8.6.1 LNG Terminal ..... 4-109
4.8.6.2 Pipeline Facilities ..... 4-113
4.9 SOCIOECONOMICS ..... 4-115
4.9.1 Population, Economy, and Employment ..... 4-115
4.9.2 Housing ..... 4-117
4.9.3 Public Services ..... 4-118
4.9.4 Transportation and Traffic ..... 4-119
4.9.4.1 Vehicle Traffic ..... 4-119
4.9.4.2 Ship Traffic ..... 4-121
4.9.5 Property Values ..... 4-122
4.9.6 Tax Revenues ..... 4-124
4.9.7 Environmental Justice ..... 4-124
4.10 CULTURAL RESOURCES ..... 4-130

TABLE OF CONTENTS (cont'd)


4.10.1 Results of the Cultural Resources Surveys ..... 4-130
4.10.2 Native American Consultation ..... 4-134
4.10.3 Unanticipated Discoveries ..... 4-135
4.11 AIR QUALITY AND NOISE ..... 4-136
4.11.1 Air Quality ..... 4-136
4.11.2 Noise ..... 4-147
4.12 RELIABILITY AND SAFETY ..... 4-154
4.12.1 LNG Hazards ..... 4-155
4.12.2 Cryogenic Design and Technical Review ..... 4-156
4.12.3 Storage and Retention Systems ..... 4-162
4.12.4 Siting Requirements – Thermal and Dispersion Exclusion Zones ..... 4-167
4.12.5 Marine Safety ..... 4-175
4.12.5.1 Delaware Bay and River and the Marcus Hook Area ..... 4-182
4.12.5.2 Requirements for LNG Ship Operations ..... 4-185
4.12.5.3 Environmental Impacts Associated with Coast Guard Actions ..... 4-191
4.12.5.4 LNG Ship Safety ..... 4-196
4.12.6 Terrorism and Security Issues ..... 4-203
4.12.7 Pipeline Facilities ..... 4-205
4.12.7.1 Safety Standards ..... 4-205
4.12.7.2 Pipeline Accident Data ..... 4-208
4.12.7.3 Impact on Public Safety ..... 4-210
4.12.8 Additional Safety Issues Identified During Scoping ..... 4-212
4.12.9 Conclusions on Safety Issues ..... 4-213
4.13 CUMULATIVE IMPACTS ..... 4-215

5.0 CONCLUSIONS AND RECOMMENDATIONS ..... 5-1
5.1 SUMMARY OF THE STAFF'S ENVIRONMENTAL ANALYSIS ..... 5-1
5.2 FERC STAFF'S RECOMMENDED MITIGATION ..... 5-17

## APPENDICES

VOLUME II APPENDICES


| | |
|---|---|
| APPENDIX A | FINAL EIS DISTRIBUTION LIST FOR THE CROWN LANDING LNG PROJECT |
| APPENDIX B | TYPICAL RIGHT-OF-WAY CROSS SECTIONS |
| APPENDIX C | TEMPORARY EXTRA WORKSPACES AND ACCESS ROADS |
| APPENDIX D | TEXAS EASTERN'S SOIL EROSION AND SEDIMENTATION CONTROL PLAN |
| APPENDIX E | ESSENTIAL FISH HABITAT ASSESSMENT |
| APPENDIX F | RESIDENCES AND OTHER STRUCTURES WITHIN 50 FEET OF THE CONSTRUCTION WORK AREA FOR THE LOGAN LATERAL PROJECT |
| APPENDIX G | REFERENCES AND CONTACTS |
| APPENDIX H | LIST OF PREPARERS |
| APPENDIX I | FINAL SAMPLING AND ANALYSIS PLAN |
| APPENDIX J | COMMENTS AND RESPONSES ON DRAFT EIS |
| APPENDIX K | DRAFT GENERAL CONFORMITY DETERMINATION |
| APPENDIX L | U.S. COAST GUARD LETTER OF INTENT AND WATERWAY SUITABILITY REPORT LETTER |
| APPENDIX M | SUBJECT INDEX |

## TABLES


| Number | Title | Page |
|---|---|---|
| 1.3-1 | Major Permits, Approvals, and Consultations for the Crown Landing LNG Project | 1-9 |
| 1.3-2 | Major Permits, Approvals, and Consultations for the Logan Lateral Project | 1-12 |
| 1.4-1 | List of Interagency Meetings Conducted for the Proposed Projects | 1-14 |
| 1.5-1 | Primary Issues Identified and Comments Received During the Public Scoping Process for the Crown Landing LNG and Logan Lateral Projects | 1-16 |
| 2.3.2-1 | Summary of Land Requirements Associated with Construction and Operation of the Pipeline Facilities for the Logan Lateral Project | 2-16 |
| 2.3.2-2 | Location of Existing Rights-of-Way in Relation to the Proposed Pipeline Route | 2-17 |
| 2.8.1-1 | Federal Siting and Design Requirements for LNG Facilities | 2-34 |
| 2.8.1-2 | Proposed Locations of Smoke, Combustible Gas, and UV/IR Flame Detectors at the LNG Terminal | 2-35 |
| 2.8.1-3 | Proposed Locations of Fire Protection System Equipment at the LNG Terminal | 2-36 |
| 3.1-1 | Comparison of Air Emissions from Burning Fossil Fuels | 3-4 |
| 3.2.1-1 | Environmental Comparison of Crown Landing LNG and Logan Lateral Projects to the Cove Point Expansion Project | 3-7 |
| 3.2.2-1 | Recently Approved, Proposed, or Planned Onshore LNG Terminals | 3-13 |
| 3.2.2-2 | Recently Approved, Proposed, and Planned Offshore LNG Terminals | 3-18 |
| 3.3.2-1 | Estimated Air Emissions from LNG Vessel Operations During Offshore Cargo Unloading | 3-32 |
| 3.3.3-1 | Environmental Comparison of the LNG Terminal Site Alternatives to the Crown Landing LNG Terminal Site | 3-40 |
| 3.4-1 | Comparison of Alternative Pier Options With the Proposed Pier Design | 3-60 |
| 3.5.2-1 | Environmental Comparison of Alternative Routes to the Proposed Route | 3-67 |
| 4.2.1-1 | Acreage of Soils and Soil Characteristics at the Proposed LNG Terminal Site | 4-11 |
| 4.2.1-2 | Analytical Results of Soil Samples Collected within the Proposed LNG Terminal Site | 4-12 |
| 4.2.1-3 | Acreage of Soil Characteristics for the Proposed Pipeline Right-of-Way | 4-16 |
| 4.2.2-1 | Comparison of Average Metal Concentrations in the Sediment Samples and NOAA Sediment Screening Values | 4-23 |
| 4.3.1-1 | Water Supply Wells Located Within 150 Feet of the Logan Lateral Route | 4-29 |
| 4.3.2-1 | Waterbodies Crossed by the Logan Lateral Project | 4-34 |
| 4.3.2-2 | A Summary of Metal Concentrations in Sediments from the Proposed LNG Terminal Site and the Marcus Hook Channel and Berth | 4-36 |
| 4.4-1 | Wetlands and Wetland Transition Areas Located on the Proposed LNG Terminal Site Property | 4-43 |
| 4.4-2 | Wetlands Located Along the Logan Lateral Route | 4-46 |
| 4.5-1 | Acreage of Vegetative Communities Affected by Construction and Operation of the Proposed LNG Terminal | 4-49 |
| 4.5-2 | Acreage of Vegetative Communities Affected by Construction and Operation of the Logan Lateral Project | 4-50 |
| 4.6.2-1 | Representative Game and Commercial Fish Species Known to Occur in the Project Area | 4-57 |
| 4.6.2-2 | Estimate of Potential Impacts on Selected Fish Species in the Delaware River as the Result of Ballast Water Withdrawal by LNG Ships Unloading Cargo at the Proposed LNG Terminal | 4-67 |
| 4.6.2-3 | Estimate of Potential Impacts of Hydrostatic Test Water Withdrawal during Construction of the Proposed LNG Terminal on Selected Fish Species in the Delaware River | 4-70 |
| 4.7-1 | Special Status Species Potentially Occurring in the Project Area | 4-74 |

TABLES (cont'd)


| Number | Title | Page |
|---|---|---|
| 4.8.1-1 | Land Area Affected by the Proposed LNG Terminal | 4-88 |
| 4.8.1 2 | Land Uses Crossed by the Pipeline Route for the Logan Lateral Project | 4-89 |
| 4.8.1-3 | Acres of Land Affected by Construction and Operation of the Pipeline Facilities for the Logan Lateral Project | 4-91 |
| 4.8.2-1 | Planned Developments within 0.25 Mile of the Proposed Pipeline Route | 4-96 |
| 4.8.4-1 | Potential Hazardous and Solid Waste Sites within 0.25 Mile of the Proposed Pipeline Facilities | 4-103 |
| 4.8.5-1 | Summary of Public Waterfront Access Sites Evaluated for the Crown Landing LNG Project | 4-110 |
| 4.8.6-1 | Summary of Visual Analysis Conducted for the Crown Landing LNG Project | 4-114 |
| 4.9.1-1 | Existing Socioeconomic Conditions for the Crown Landing LNG and Logan Lateral Projects | 4-116 |
| 4.9.2-1 | 2000 Housing Characteristics for the Project Area | 4-117 |
| 4.9.2-2 | Temporary Accommodations Available in the Project Area | 4-118 |
| 4.9.7-1 | Racial/Ethnic Statistics for the Project Area | 4-125 |
| 4.9.7-2 | Economic Statistics for the Project Area | 4-126 |
| 4.11.1-1 | Ambient Air Quality Standards | 4-137 |
| 4.11.1-2 | Existing Ambient Air Concentrations for the Project Area | 4-138 |
| 4.11.1-3 | Emission Source Information for LNG Terminal Equipment | 4-139 |
| 4.11.1-4 | Operating Air Emissions Summary for the Proposed LNG Terminal | 4-141 |
| 4.11.1-5 | Estimated Air Emissions from the Crown Landing LNG Mobile Sources | 4-147 |
| 4.11.2-1 | Noise Sensitive Areas Near the Proposed LNG Terminal Site | 4-148 |
| 4.11.2-2 | Existing Noise Levels at the Closest Noise Sensitive Areas | 4-150 |
| 4.11.2-3 | Noise Specifications for Proposed LNG Terminal | 4-152 |
| 4.11.2-4 | Estimated Noise Impact from Proposed LNG Terminal | 4-152 |
| 4.12.4-1 | Impoundment Areas for LNG Spills | 4-170 |
| 4.12.4-2 | Thermal Exclusion Zones | 4-171 |
| 4.12.5-1 | Number of Commercial Vessels Transiting Delaware Bay and River | 4-183 |
| 4.12.5-2 | Minimum Striking Speed to Penetrate LNG Cargo Tanks | 4-198 |
| 4.12.5-3 | LNG Spills on Water | 4-201 |
| 4.12.7-1 | Natural Gas Service Incidents by Cause | 4-209 |
| 4.12.7-2 | Outside Forces Incidents by Cause (1970-1984) | 4-210 |
| 4.12.7-3 | External Corrosion by Level of Control (1970-1984) | 4-210 |
| 4.12.7-4 | Annual Average Fatalities - Natural Gas Transmission and Gathering Systems | 4-211 |
| 4.12.7-5 | Nationwide Accidental Deaths | 4-211 |
| 4.13-1 | Past, Present, and Future Projects That Could Cumulatively Impact Resources of Concern Near the Crown Landing LNG and Logan Lateral Projects | 4-216 |

## FIGURES


| Number | Title | Page |
|---|---|---|
| 2.1-1 | Aerial Photograph of Proposed LNG Terminal Site | 2-2 |
| 2.2-1 | General Project Locations | 2-3 |
| 2.2.1-1 | Proposed LNG Terminal Site Plan | 2-5 |
| 2.2.1-2 | Conceptual Design of LNG Storage Tanks | 2-7 |
| 2.2.3-1 | Proposed Logan Lateral Route (Sheet 1 of 3) | 2-13 |
| 2.2.3-1 | Proposed Logan Lateral Route (Sheet 2 of 3) | 2-14 |
| 2.2.3-1 | Proposed Logan Lateral Route (Sheet 3 of 3) | 2-15 |
| 2.4.1-1 | Proposed Dredging Area | 2-22 |
| 2.4.1-2 | Location of Proposed Dredge Disposal Site | 2-24 |
| 2.4.2-1 | Typical Pipeline Construction Sequence | 2-25 |
| 3.2.3-1 | Existing Pipeline Systems | 3-22 |
| 3.3.3-1 | Proposed and Alternative LNG Terminal Sites Along the Delaware River | 3-43 |
| 3.3.3-2 | Church Landing – LNG Terminal Site Alternative | 3-44 |
| 3.3.3-3 | Carneys Point – LNG Terminal Site Alternative | 3-46 |
| 3.3.3-4 | Ferro – LNG Terminal Site Alternative | 3-48 |
| 3.3.3-5 | Shuran – LNG Terminal Site Alternative | 3-49 |
| 3.3.3-6 | Repaupo – LNG Terminal Site Alternative | 3-51 |
| 3.3.3-7 | Paulsboro – LNG Terminal Site Alternative | 3-53 |
| 3.3.3-8 | Mantua Creek – LNG Terminal Site Alternative | 3-55 |
| 3.3.3-9 | Salem and Hope Creek - LNG Terminal Site Alternative | 3-57 |
| 3.4-1 | Pier Option A | 3-61 |
| 3.4-2 | Pier Option B | 3-62 |
| 3.4-3 | Pier Option C | 3-63 |
| 3.5.2-1 | Major Route Alternatives | 3-66 |
| 3.5.3-1 | Palmer Street Variation | 3-72 |
| 3.5.3-2 | Ward Street Variations | 3-73 |
| 4.1.1-1 | Geologic Cross Section of the LNG Terminal Site | 4-3 |
| 4.2.1-1 | Soil Sampling Locations | 4-13 |
| 4.2.2-1 | Sediment Core Locations | 4-21 |
| 4.4-1 | Wetlands Located on the LNG Terminal Site | 4-44 |
| 4.9.7-1 | Environmental Justice Communities | 4-127 |
| 4.11.2-1 | Noise Sensitive Areas | 4-149 |
| H.1 | Examples of Single Containment Tanks | 4-164 |
| H.3 | Examples of Double Containment Tanks | 4-165 |
| H.4 | Examples of Full Containment Tanks | 4-166 |
| 4.12.5-1 | Proposed Shipping Route as Described in Letter of Intent to the Coast Guard | 4-178 |
| 4.12.5-2 | Potential Sensitive Resources Along Ship Route | 4-193 |

## ACRONYMS AND ABBREVIATIONS

| | |
|---|---|
| AADT | average annual daily traffic |
| ABSG | ABSG Consulting Inc. |
| ACEEE | American Council for an Energy-Efficient Economy |
| ACHP | Advisory Council on Historic Preservation |
| AMSC | Delaware Bay Area Maritime Security Committee |
| APE | area of potential effects |
| AQCRs | Air Quality Control Regions |
| ASSRT | Atlantic Sturgeon Status Review Team |
| AST | aboveground storage tank |
| ATSDR | Agency for Toxic Substances and Disease Registry |
| BA | biological assessment |
| BACT | Best Available Control Technology |
| Bcfd | billion cubic feet per day |
| BG LNG | BG LNG Services, L.L.C. |
| BP | BP Energy Company |
| Btu | British thermal unit |
| Btu/ft$^2$-hr | British thermal units per square foot per hour |
| CAA | Clean Air Act |
| CAAA | Clean Air Act Amendments |
| CAFRA | Coastal Area Facility Review Act |
| CDC | certain dangerous cargoes |
| CEII | Critical Energy Infrastructure Information |
| CEQ | Council on Environmental Quality |
| CERCLIS | Comprehensive Environmental Response, Compensation, and Liability Information System |
| Certificate | Certificate of Public Convenience and Necessity |
| CFR | Code of Federal Regulations |
| ChevronTexaco | ChevronTexaco Corporation |
| Class I | Mandatory Federal Class I |
| cm | centimeters |
| CMP | Coastal Management Program |
| CO | carbon monoxide |
| $CO_2$ | carbon dioxide |
| Coast Guard | U.S. Coast Guard |
| COC | Certificate of Compliance |
| COE | U.S. Army Corps of Engineers |
| COI | Coast Guard Certificate of Inspection |
| Columbia Gas | Columbia Gas Transmission Company |
| Commission | Federal Energy Regulatory Commission |
| CPT | cone penetration tests |
| CRA | Charles River Associates |
| Crown Landing | Crown Landing, LLC |
| CWA | Clean Water Act of 1972 |
| CZMA | Coastal Zone Management Act of 1972 |
| CZMP | Coastal Zone Management Program |
| DAC | Delaware Administrative Code |
| dBA | decibels on the A-weighted scale |
| DCMP | Delaware Coastal Management Program |

| | |
|---|---|
| DDT | dichlorodiphenyltrichloroethane |
| DMT | dilatometer |
| DNREC | Delaware Department of Natural Resources and Environmental Control |
| DOD | U.S. Department of Defense |
| DOE | U.S. Department of Energy |
| Dominion | Dominion Cove Point LNG, LP |
| DOT | U.S. Department of Transportation |
| DP | dynamically positioned |
| DRBC | Delaware River Basin Commission |
| DRCS | Delaware River Creel Survey |
| DSCZA | Delaware State Coastal Zone Act of 1971 |
| EFH | Essential Fish Habitat |
| EI | Environmental Inspector |
| EIA | Energy Information Administration |
| EIS | Environmental Impact Statement |
| EN 1473 | European Standard for LNG facilities |
| EPA | U.S. Environmental Protection Agency |
| ESA | Endangered Species Act of 1973 |
| ESS | emergency shutdown system |
| Excelerate | Excelerate Energy, L.L.C. |
| F | Fahrenheit |
| FERC | Federal Energy Regulatory Commission |
| FERC Plan | FERC's Upland Erosion Control, Revegetation and Maintenance Plan |
| FERC Procedures | FERC's Wetland and Waterbody Construction and Mitigation Procedures |
| FPC | Federal Power Commission |
| FSO | Facility Security Officer |
| FSRU | Floating, storage, and regasification unit |
| $ft^3$ | cubic feet |
| FWS | U.S. Fish and Wildlife Service |
| g | gravity |
| Gas Tanker Code | *International Code for the Construction and Equipment of Ships Carrying Liquefied Gases in Bulk* |
| GBS | gravity-based structure |
| gpm | gallons per minute |
| GTB | geotechnical boring |
| HAP | hazardous air pollutant |
| HCAs | high consequence areas |
| HDD | horizontal direction drill |
| hp | horsepower |
| IMO | International Maritime Organization |
| kPa | kilopascals |
| kV | kilovolt |
| LAER | lowest achievable emission rate |
| $L_{day}$ | daytime sound level |
| $L_{dn}$ | day-night sound level |
| $L_{eq(24)}$ | 24-hour equivalent sound level |
| LFL | lower flammability limit |
| LNG | liquefied natural gas |
| $L_{night}$ | nighttime sound level |

| | |
|---|---|
| LOR | Letter of Recommendation |
| LPG | Liquefied Petroleum Gas |
| LUST | leaking underground storage tank |
| $m^3$ | cubic meters |
| $m^3/hr$ | cubic meters per hour |
| MACT | Maximum Achievable Control Technology |
| MARAD | Maritime Administration |
| MARSEC | Maritime Security |
| Mc | Made-land/coarse |
| MCE | Maximum Constdered Earthquake |
| MCS | Management Classification System |
| Memorandum | Memorandum of Understanding on Natural Gas Transportation Facilities |
| Mf | Made-land/fine |
| mg/kg | milligrams per kilogram |
| mg/L | milligrams per liter |
| MLLW | mean lower low water |
| mm | millimeters |
| MMBtu/hr | million British thermal units per hour |
| MMcfd | million cubic feet per day |
| MMI | Modified Mercalli Intensity |
| MNI | Moffatt & Nichol International |
| MOA | Memorandum of Agreement |
| Monitoring and Contingency Plan | Horizontal Directional Drill Monitoring and Contingency Plan |
| MP | milepost |
| mph | miles per hour |
| MSA | Magnuson-Stevens Fishery Conservation and Management Act |
| NAAQS | National Ambient Air Quality Standards |
| NAVD | North American Vertical Datum |
| NEPA | National Environmental Policy Act of 1969 |
| NESHAPs | National Emission Standards for Hazardous Air Pollutants |
| NFPA | National Fire Protection Association |
| NFPA 59A | NFPA Standards for the Production, Storage, and Handling of LNG |
| NGA | Natural Gas Act |
| NHPA | National Historic Preservation Act |
| NJAAQS | New Jersey Ambient Air Quality Standards |
| NJAC | New Jersey Administrative Code |
| NJAPCA | New Jersey Air Pollution Control Act |
| NJCMP | New Jersey Coastal Management Program |
| NJDEP | New Jersey Department of Environmental Protection |
| NJDFW | New Jersey Division of Fish and Wildlife |
| NJDOT | New Jersey Department of Transportation |
| NJSCC | New Jersey Soil Cleanup Criteria |
| NMFS | National Marine Fisheries Service |
| NNSR | Nonattainment New Source Review |
| NOA | Notice of Availability |
| NOAA | National Oceanic and Atmospheric Administration |
| $NO_2$ | nitrogen dioxide |

| | |
|---|---|
| NOI | *Notice of Intent to Prepare an Environmental Impact Statement for the Proposed Crown Landing LNG Project, Request for Comments on Environmental Issues, and Notice of Public Scoping Meeting* |
| Northeast Gateway | Northeast Gateway Energy Bridge L.L.C. |
| $NO_x$ | low nitrogen oxides |
| NPC | National Petroleum Council |
| NPDES | National Pollutant Discharge Elimination System |
| NRCS | Natural Resources Conservation Service |
| NRHP | National Register of Historic Places |
| NSAs | noise sensitive areas |
| NSPS | New Source Performance Standards |
| NSR | New Source Review |
| NVIC | Navigation and Vessel Inspection Circular |
| NYISO | New York Independent System Operator |
| $O_3$ | ozone |
| OBE | Operating Basis Earthquake |
| OCPPC | Office of Coastal Planning and Program Coordination |
| OEP | Office of Energy Projects |
| OPS | Office of Pipeline Safety |
| OCRM | Office of Coast and Ocean Resource Management |
| OWM | Office of Water Management |
| PADCNR | Pennsylvania Department of Conservation and Natural Resources |
| PADEP | Pennsylvania Department of Environmental Protection |
| PADOT | Pennsylvania Department of Transportation |
| PAFBC | Pennsylvania Fish and Boat Commission |
| PAH | polycyclic aromatic hydrocarbon |
| Pb | lead |
| PCB | polychlorinated biphenyl |
| PCZMP | Pennsylvania Coastal Zone Management Plan |
| PEL | Probable Effects Level |
| PGA | peak ground acceleration |
| PGS | Pennsylvania Geological Survey |
| PGW | Philadelphia Gas Works |
| $PM_{10}$ | particulate matter less than 10 microns in diameter |
| $PM_{2.5}$ | particulate matter less than 2.5 microns in diameter |
| ppb | parts per billion |
| ppm | parts per million |
| ppmvd | parts per million by volume on a dry basis |
| ppt | parts per thousand |
| PSD | Prevention of Significant Deterioration |
| psig | pounds per square inch gauge |
| PTE | potential to emit |
| Quest | Quest Consultants, Inc. |
| RM | river mile |
| RNA | Regulated Navigation Area |
| RPT | rapid phase transition |
| RSPA | Research and Special Programs Administration |
| Sandia Report | *Guidance on Risk Analysis and Safety Implications of a Large Liquefied Natural Gas (LNG) Spill Over Water* |

| | |
|---|---|
| SAP | Sampling and Analysis Plan |
| SB | soil boring |
| Secretary | Secretary of the Commission |
| SESC | Soil Erosion and Sedimentation Control |
| Shell | Shell USA Oil & Gas |
| SHPO | State Historic Preservation Officer |
| SIP | state implementation plan |
| SNG | Southern Natural Gas Company |
| $SO_2$ | sulfur dioxide |
| SOLAS | International Convention for the Safety of Life at Sea |
| SOTA | state-of-the-art |
| Southern LNG | Southern LNG, Inc. |
| SPCC | Spill Prevention, Containment and Countermeasure Plan |
| SPT | standard penetration tests |
| SSE | Safe Shutdown Earthquake |
| Strategy | Strategy to Reduce Ship Strikes of Right Whales |
| SVOCs | semi volatile organics |
| Tcf | trillion cubic feet |
| TEL | Threshold Effects Level |
| Texas Eastern | Texas Eastern Transmission, LP |
| TNT | trinitrotoluene |
| TPH | total petroleum hydrocarbons |
| tpy | tons per year |
| Tractabel | Tractabel LNG North America, L.L.C. |
| Transco | Transcontinental Gas Pipe Line Corporation |
| Trunkline Gas | CMS Trunkline Gas Company, L.L.C. |
| Trunkline LNG | CMS Trunkline LNG Company, L.L.C. |
| TSP | total suspended particulate |
| TSS | total suspended solids |
| USC | United States Code |
| USDA | U.S. Department of Agriculture |
| USGS | U.S. Geological Survey |
| UV/IR | ultraviolet/infrared |
| VOCs | volatile organics |
| Weeks Marine | Weeks Marine, Inc. |
| WREN | Water Resources Education Network |
| WSA | Waterway Suitability Assessment |
| WSR | Waterway Suitability Report |
| µg/kg | microgram per kilogram |

# EXECUTIVE SUMMARY

This final environmental impact statement (EIS) for the Crown Landing LNG and Logan Lateral Projects has been prepared by the staff of the Federal Energy Regulatory Commission (FERC or Commission) to fulfill the requirements of the National Environmental Policy Act (NEPA) and the Commission's implementing regulations under Title 18, Code of Federal Regulations, Part 380. The purpose of this document is to inform the public and the permitting agencies about the potential adverse and beneficial environmental impacts of the proposed project and its alternatives; and to recommend mitigation measures that would avoid or reduce any significant adverse impact to the maximum extent possible.

The FERC is the federal agency responsible for authorizing applications to construct and operate onshore LNG import and interstate natural gas transmission facilities. The U.S. Coast Guard (Coast Guard) is the federal agency responsible for issuing a Letter of Recommendation (LOR) regarding the suitability of the waterway for LNG marine traffic. The Coast Guard exercises regulatory authority over LNG facilities that affect the safety and security of port areas and navigable waterways under Executive Order 10173; the Magnuson Act (50 United States Code (USC) section 191); the Ports and Waterways Safety Act of 1972, as amended (33 USC section 1221, et seq.); and the Maritime Transportation Security Act of 2002 (46 USC section 701). The Coast Guard is responsible for matters related to navigation safety, vessel engineering and safety standards, and all matters pertaining to the safety of facilities or equipment located in or adjacent to navigable waters up to the last valve immediately before the receiving tanks. The Coast Guard also has authority for LNG facility security plan review, approval and compliance verification as provided in Title 33 Code of Federal Regulations (CFR) Part 105, and siting as it pertains to the management of marine traffic in and around the LNG facility.

The vertical line in the margin identifies text that has been modified in the final EIS and differs from the corresponding text in the draft EIS.

Crown Landing LLC (Crown Landing) proposes to construct and operate a liquefied natural gas (LNG) terminal in New Jersey and Delaware, and Texas Eastern Transmission, LP (Texas Eastern) proposes to construct and operate a new natural gas pipeline and ancillary facilities in New Jersey and Pennsylvania. Crown Landing's proposed facilities would transport a baseload rate of 1.2 billion cubic feet per day (Bcfd) and a maximum rate of 1.4 Bcfd (using spare equipment) of imported LNG to the United States market. Crown Landing proposes to interconnect the LNG facilities onsite with three pipelines. One interconnect would be with the new pipeline that Texas Eastern proposes to construct and operate (i.e., Logan Lateral) between its existing Chester Junction facility in Brookhaven Borough, Pennsylvania to the proposed LNG terminal. The other two interconnects would be with existing pipelines that currently cross the site, one pipeline owned and operated by Columbia Gas Transmission Company (Columbia Gas) and the other pipeline owned and operated by Transcontinental Gas Pipe Line Corporation (Transco).

The LNG terminal and pipeline facilities would include:

- a ship unloading facility with a single berth capable of receiving LNG ships with cargo capacities of up to 200,000 cubic meters ($m^3$);
- three 150,000 $m^3$ (net capacity) full containment LNG storage tanks;

- a closed-loop shell and tube heat exchanger vaporization system, sized for a normal sendout of 1.2 Bcfd;
- various ancillary facilities, including administrative offices, warehouse/maintenance building, main control center, guardhouse, and a pier control room;
- three meter and regulation stations located on the proposed LNG terminal site; and
- approximately 11 miles of 30-inch-diameter natural gas pipeline, a pig launcher and receiver facility at the beginning and end of the pipeline, a mainline valve, and a meter and regulation station at the end of the pipeline.

## PROJECT IMPACTS

The environmental issues associated with construction and operation of the Crown Landing LNG and Logan Lateral Projects are analyzed in this final EIS using information provided by Crown Landing and Texas Eastern and further developed from data requests; field investigations by the Commission staff; literature research; alternative analyses; comments from federal, state, and local agencies; and input from public organizations and individual citizens.

The LNG terminal would be developed on a privately owned 175-acre parcel. Of the 175-acre site, about 39 acres would be permanently developed for the LNG terminal facility and access road. The proposed LNG terminal would also require dredging of up to about 1.24 million cubic yards of sediment from the Delaware River. This dredging would disturb about 30.0 acres of the bed of the river. Construction of the Logan Lateral Project would temporarily affect another 177.3 acres of land. Of this land affected by construction of the pipeline facilities, about 54.1 acres would be retained as permanent right-of-way for the pipeline and 1.8 acres for the aboveground facilities.

Construction and operation of the project would have minimal impact on geologic resources in the project area, and the potential for geologic hazards or other natural events to significantly impact the project is low. The LNG storage tanks and other critical structures at the terminal site would be designed to address predicted ground shaking associated with a seismic event. The proposed LNG terminal site would be protected against storm surge associated with tropical storms of the magnitude that are likely to affect the project area.

Soils at the proposed LNG terminal site consist largely of dredged material that was placed onsite during past dredging of the Delaware River. Crown Landing identified some areas of soil contamination on the site that would require further evaluation. Construction of the LNG facilities would increase the potential for soil erosion on the site and sedimentation in adjacent waterbodies and wetlands. Soils along the pipeline route would also be subject to various impacts, including compaction and erosion. Crown Landing and Texas Eastern would minimize impacts on soils through their implementation of the erosion and sedimentation control measures contained in our *Upland Erosion Control, Revegetation, and Maintenance Plan* (Plan) and *Wetland and Waterbody Construction and Mitigation Procedures* (Procedures), as well as site-specific Soil Erosion and Sedimentation Control (SESC) Plans.

The estimated 1.24 million cubic yards of sediment dredged to create the berth area for the ship unloading facility would be disposed in an existing upland confined disposal facility. Preliminary chemical analyses of the proposed dredged sediments determined that eight metal contaminants were identified at elevated concentrations. The concentrations of most metals in all samples were below the National Oceanic and Atmospheric Administration (NOAA) Threshold Effects Levels (TEL) indicating that the sediments would not be expected to pose a threat to the aquatic environment. Only the

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302-678-3262
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Deeember 7, 2004

Honorable John A. Hughes
Secretary Department of Natural Resources
and Environmental Control
89 Kings Highway
Dover, DE 19901

DEC 7 AM 9:10

Re: Request for Coastal Zone Status Decision

Dear Secretary Hughes:

Attached to this letter is the Request for Coastal Zone Status Decision (the "Request") filed by BP through its wholly owned indirect subsidiary, Crown Landing LLC (the "Applicant"). The Request concerns the proposed construction of a docking facility predominantly within the coastal waters of Delaware, which will exclusively serve a facility for the manufacture of LNG to be located in Logan Township, New Jersey, upland from the docking facility (collectively, the "Project"). Attached you will also find a legal memorandum prepared by this Firm addressing the relative applicability of various provisions of the Coastal Zone Act ("CZA") to the Project.

The essence of the Request, and the legal memorandum which accompanies it, is that the construction of the proposed docking facility is a permissive use under the CZA pursuant to the provisions of § 7002(f) of Title 7 because it exclusively supports a facility which meets the definition of "manufacturing" pursuant to §7002(d). Moreover, and as more fully detailed in both the Request and the legal memorandum, this result obtains even though the upland facility which is supported by the docking facility is situated in New Jersey, because the upland facility is engaging in an activity--manufacturing--which would be permissible under the Act if it were conducted on Delaware soil.

DE20748

Because the docking facility which is the subject of this Request is in Delaware waters, and the manufacturing facility which it supports is in New Jersey, it is important to align the nomenclature used by the Department in its Status Decision Request form, with the descriptive language used by the Applicant in describing the various components of this Project. In this regard, the Applicant has interpreted the use of the word "Project" on the Department's form as incorporating both components of the facility: *i.e.*, the Manufacturing Facility and the Delaware River Docking Facility. In most instances, however, the Applicant will reference the specific component of the Project for which it seeks this status determination and, ultimately, a permit; to wit, the "Delaware River Docking Facility." Finally, where there are references required in the Request Form to the activities or processes occurring within the State of New Jersey, the Applicant has referenced either the "Upland Facility" or the "Manufacturing Facility." Again, however, it is only the Delaware River Docking Facility which invokes the provisions of the CZA status decision and permitting requirements..

This Request is exclusively addressed to the provisions of the CZA, related Delaware laws, and pertinent regulations. The Applicant reserves all of its rights and claims to challenge as a matter of federal law the enforceability of the CZA with respect to the Project in the appropriate forum and at the appropriate time should that be necessary. However, it is the Applicant's respectful request that you determine that the Delaware River Docking Facility is exempted from the general CZA prohibition on the construction of new bulk product transfer facilities because it exclusively supports a facility which will engage in a permissible manufacturing use

Please advise should you require any additional information or clarification in order to process this Request.

Very truly yours,

David S. Swayze
DSS:bmh
enclosure

DE20749

bp

November 30, 2004

The Honorable John Hughes, Secretary
Department of Natural Resources and Environmental Control
89 Kings Highway
Dover, DE 19901
302-739-5072
Re: Crown Landing LNG Project Coastal Zone Status Decision

Dear Secretary Hughes:

This letter introduces the Crown Landing LLC application for a Delaware Coastal Zone Status Decision for the Crown Landing LNG Project. The Crown Landing LNG Project is a proposed new waterfront facility that will receive and process liquefied natural gas (LNG) into a useable product. The facility will be constructed, owned, and operated by Crown Landing LLC, a wholly-owned subsidiary of BP America Production Company. The Manufacturing Facility will be located in Logan Township, Gloucester County, New Jersey, with the majority of a supporting Docking Facility extending into Delaware waters. The site is located at approximately River Mile 78 of the Delaware River, adjacent to the Marcus Hook Anchorage. The upland site is currently being leased from its owner, Sun Oil, Inc., and BP has the option to purchase the land.

Crown Landing LLC filed a formal application with FERC on September 16, 2004. Crown Landing LLC currently plans to begin construction in 2005 (assuming all required permits and approvals have been obtained) and begin Project operation in 2008. Crown Landing LLC is filing this application at this time in the interest of maintaining this timeline.

This proposed Project will help achieve several of the Strategies set forth in the Delaware Energy Task Force's Final Report to the Governor titled *Bright Ideas for Delaware's Energy Future*, which addresses issues of energy reliability, demand, cost and environmental impact.

Crown Landing LLC is committed to designing, constructing, and operating a safe and secure facility. The Crown Landing LNG Project is designed in accordance with the requirements of the U.S. Coast Guard's *Waterfront Facilities Handling LNG* (33 CFR 127), U.S. Department of Transportation's (DOT) *Federal Safety Standards for Liquefied Natural Gas Facilities* (49 CFR 193), the National Fire Protection Association's (NFPA) *Standards for the Production, Storage, and Handling of Liquefied Natural Gas* (NFPA 59A), and the Maritime Transportation Safety Act (MTSA).

We respectfully request that the Department of Natural Resources and Environmental Control issue a favorable Status Decision for the Crown Landing LNG Project for the reasons set forth in this Request and the accompanying memorandum of law prepared by Parkowski, Guerke & Swayze, P.A.

Sincerely,

Lauren Segal
Vice President

*Attachments*

DE20758

*Cc:* Dennis Brown
David Swayze
Gregory Roden
James Busch
Laurie Beppler

***DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL***

**REQUEST FOR A COASTAL ZONE STATUS DECISION**

**Amended August 2004**



DE20760

DEPARTMENT OF NATURAL RESOURCES & ENVIRONMENTAL CONTROL
REQUEST FOR A COASTAL ZONE STATUS DECISION

| Date Received (for Secretary's use) | Project Number (for Secretary's use) |
|---|---|

IDENTIFICATION OF THE APPLICANT

Name: Crown Landing LLC

Address: 501 West Lake Park Blvd
Houston, TX 77079

Telephone No.: (281) 366-2259 Fax No.: (281) 366-2753

Site of Proposed Project (if different than above):
Route 130 Logan Township, New Jersey
Delaware River (roughly River Mile 78)

Contact Person: David Blaha — Title: Environmental Consultant
Telephone Number: (410) 266-0006 — Fax Number: (410) 266-8912

Contact Person: David Swayze — Title: Legal Counsel
Telephone Number: (302) 654-3300 — Fax Number: (302) 654-3033

If applicant is not the project owner, but is authorized to act for the owner, state that below and give the owner's name and address. Provide written authorization from client for being the authorized agent for this application.
Crown Landing LLC is the Project owner and is leasing the land from
Sunoco, Inc.
1801 Market Street, Philadelphia, PA. 19103-1699

1. Is the applicant claiming confidentiality in any section of their application? Yes/No **No**

If yes, applicant must do so in accordance with 29 Del. Code Chapter 100. The Secretary will not automatically honor such requests not in accordance with Chapter 79. Applicant should provide appropriate documentation with this application to assure confidentiality.

## PROJECT IDENTIFICATION AND DESCRIPTION

| | YES | NO |
|---|---|---|
| 1.a. Is the proposed project entirely or partly a new or improved or extended pier or other ship docking facility? **See Tab 1** | X | |
| 1.b. If yes, will it be used at least in part for bulk cargo transfers by the applicant? If no, please explain what it will handle. **See Tab 1** | X | |
| 2.a. Is this project entirely for pollution control purposes? | | X |
| 2.b. Is this project a new research and development facility? | | X |
| 2.c. Is this project a new or expanding (flow rate) public sewage/ water plant? | | X |
| 3.a. Will the proposed project meet the following definition of "Manufacturing" as found in the Coastal Zone Act: "Manufacturing means the mechanical or chemical trans-formation of organic or inorganic substances into new products, characteristically using power driven machines and materials handling equipment, and including establishments engaged in assembling component parts of manufactured products, provided the new product is not a structure or other fixed improvement." **See Tab 1** | X | |
| 3.b. If no to questions 3.a., explain what kind of activity will be carried out at this project site. | | |
| 4. Will the project have the following equipment or facilities? | | |
| Smoke stacks | X | |
| Tanks | X | |
| Distillation or reaction columns | X | |
| Chemical processing equipment | | X |
| Scrubbing towers | | X |
| Pickling equipment | | X |
| Waste treatment lagoons | | X |
| Smelters | | X |
| Incinerators | | X |
| **See Tab 2** | | |
| 5. Will the project use 20 acres or more? If not, how many acres will it use? 19 acres in Delaware for the pier and ship berth | | X |

| | YES | NO |
|---|---|---|
| 6.a. Does this facility appear in Appendix B of the Coastal Zone Act Regulations (the list of the nonconforming uses)? If not, proceed to question 7a. | ___ | X |
| 6.b. If so, will the proposed activity described in this application occur entirely within the lines delineating the area of nonconformity for this site as seen in the Appendices of the Regulations? | NA | |
| 6.c. If the proposed activity, or use, will straddle this line, describe what equipment, facilities, or machinery will be within the delineated area of nonconformity AND what will be out of this area of nonconformity. | NA | |
| 7.a. Is the proposed use part of a manufacturing use that was in operation prior to and on June 28, 1971? | ___ | X |
| 7.b. Has this facility ever been granted a Coastal Zone Act Permit? If so, when? _____ | ___ | X |
| 7.c. Name of prior applicant/permitee if different from present applicant/permittee: _____ | NA | |
| 8. Does the new or expanded use involve any change in existing: | | |
| processes? | ___ | X |
| facilities? | ___ | X |
| buildings? | ___ | X |
| emissions discharge | ___ | X |

If yes, please explain on a separate page.

**Because this is a new facility, it will not involve any change in existing processes, facilities, buildings, or emissions discharges.**

| | |
|---|---|
| 9.a. Will this project directly or indirectly increase plant production over present capacity? | N/A |
| 9.b. If yes, explain in what way and by how much. | |
| 9.c. Will this project directly or indirectly produce any new products at this facility over the current product line? | N/A |

If so, list them here or on an attachment.

**The proposed Project will be a new facility, and, therefore, does not have any current capacity or product line.**

10. List materials and/or ingredients to be utilized by this proposed project and how they will get to the site.

**See Tab 3**

11. Attach a concise but complete description of the proposed project, or use and how it relates to any existing manufacturing operations and facilities (if this is not for an entirely new manufacturing plant). Explain what effects there will be on land use acreage, manufacturing production capacity, modification of current product line(s), and any safety risks to the public and company employees.

**See Tab 4**

12. Is this project, or use, a complete, single project, or is it part of a long-term, large-scale project that has other components to it that may need approval under the Coastal Zone Act at a later date? If it is part of a larger project, describe the entire project on a separate attachment and mention ALL major machinery, facilities, land, products, and processes involved.

**This Project would be constructed as a single, complete project. At present, no other components are planned that would require approval under the Delaware Coastal Zone Act at a later date.**

13. Provide a detailed and accurate summary of the proposed project's effects on local surface and ground water quality, surface and groundwater withdrawals, air quality, habitat loss, solid and hazardous waste, noise, odors, and any other pertinent information about the proposed project's effects on the local environment. Provide a statement on how this proposed project will affect the local aesthetic quality.

**See Tab 5**

14. Provide a detailed statement describing the proposed project's potential to pollute should equipment malfunction or human error occur, including a description of backup controls and safety provisions.

**See Tab 6**

15. Provide a map of appropriate scale to clearly show important natural features and project buildings and processing equipment of the proposed project such as roads, wetlands, railway sidings, drainage ways, tanks, sewer systems, water mains, wells, etc.

**See Tab 7**

16. What is the current SIC code for the proposed use?

**The SIC code for the proposed use in Delaware is:**

**4491 – Marine Cargo Handling : Dock and Pier Operations**

**There is no SIC code specifically for the Liquefied Natural Gas Manufacturing Facility in New Jersey.**

17. What is the current zoning and planned land use of the proposed project site?

**See Tab 8**

18.a. Will the proposed project require a zoning change? (YES/NO) NO

**See Tab 9**

18.b. If so, to what classification and what zoning authority is responsible for reviewing and approving any change?

**N/A**

19. Will this project require new supporting facilities and what impacts will they have on the environment, economics of the area, aesthetic quality, zoning, and neighboring land uses?

**See Tab 10**

20. Have you enclosed your application fee check of $3,000 made out to the State of Delaware?

**Yes**

21. If applicable, have you complied with 7 Del. Code, Chapter 79? The Secretary will not make a decision on this application until the applicant has submitted all necessary information to comply with Chapter 79.

**Crown Landing LLC has submitted the background statement in accordance with 7 Del. Code, Chapter 79.**

22. Should this project proceed, what, if any, negative impact will be expected. Provide a detailed paragraph on each of the following:

a. the environment.
b. the economy (corporate, state, county).
c. aesthetic effects.
d. number and type of supporting facilities required and the impacts, if any, on these six factors.
e. county and municipal comprehensive plans.
f. effect upon neighboring land uses.

See Tab 11

Under the penalty of perjury pursuant to 11 Del. C. S1221-1235, I hereby certify that the information contained herein is true and complete to the best of my knowledge.

I also hereby acknowledge that all the information in this application will be public information subject to the Delaware Freedom of Information Act, except for clearly identified proprietary information agreed to by the Secretary of the Department of Natural Resources & Environmental Control.

Signature:

Title: Vice President

Date: November 30, 2004

## 11.4 PROJECT FACILITIES

### 11.4.1 Docking Facility (predominantly in Delaware)

The Docking Facility will consist of an approximately 2,000-foot-long pier and a single berth designed to accommodate LNG carriers from 138,000 to 200,000 $m^3$ in capacity (Figure 4). The berth will include four breasting dolphins equipped with fenders and quick release hooks and five mooring dolphins equipped with quick release hooks to safely moor the LNG carrier. The berth will include walkways between the dolphins and the platform for personnel access and gangways between the carrier and the dolphins for the transfer of crew. Crown Landing will install an electronic berthing aid system to assist berthing operations.

The trestle will provide the structural support for the cryogenic piping, containment trough, and utility lines from the shore to the berth and accommodate travel lanes for light vehicles. The LNG will be transferred from the ship to the Manufacturing Facility LNG storage tanks using the ship's pumps. This bulk product will be transferred from the ship through three 16-inch liquid unloading arms and will be transported from the pier through a 44-inch diameter liquid unloading line to the storage tanks. Boil-off gas (BOG) blowers will return part of the vapor generated during the unloading process from the LNG storage tanks to the ship through one 16-inch diameter vapor return arm. The remainder of the vapor is compressed, condensed back into LNG, and placed in the LNG tanks. During the holding mode of terminal operation (when no ship is unloading), a 12-inch line circulates LNG from the storage tanks to the main header at the end of the pier. The LNG returns through the liquid unloading line to keep the line cold.

### 11.4.2 Manufacturing Facilities (Entirely in New Jersey)

The Manufacturing Facility includes the following components.

*LNG Storage Tanks*

The LNG will be stored in three 158,000 $m^3$ gross full-containment storage tanks, comprised of a nine percent nickel steel inner tank, pre-stressed concrete outer tank, and a concrete roof. The concrete outer tank will serve as the secondary LNG impoundment to contain LNG in the extremely unlikely occurrence that a leak develops in the inner tank shell. All piping connections and tank nozzles will occur through the roof.

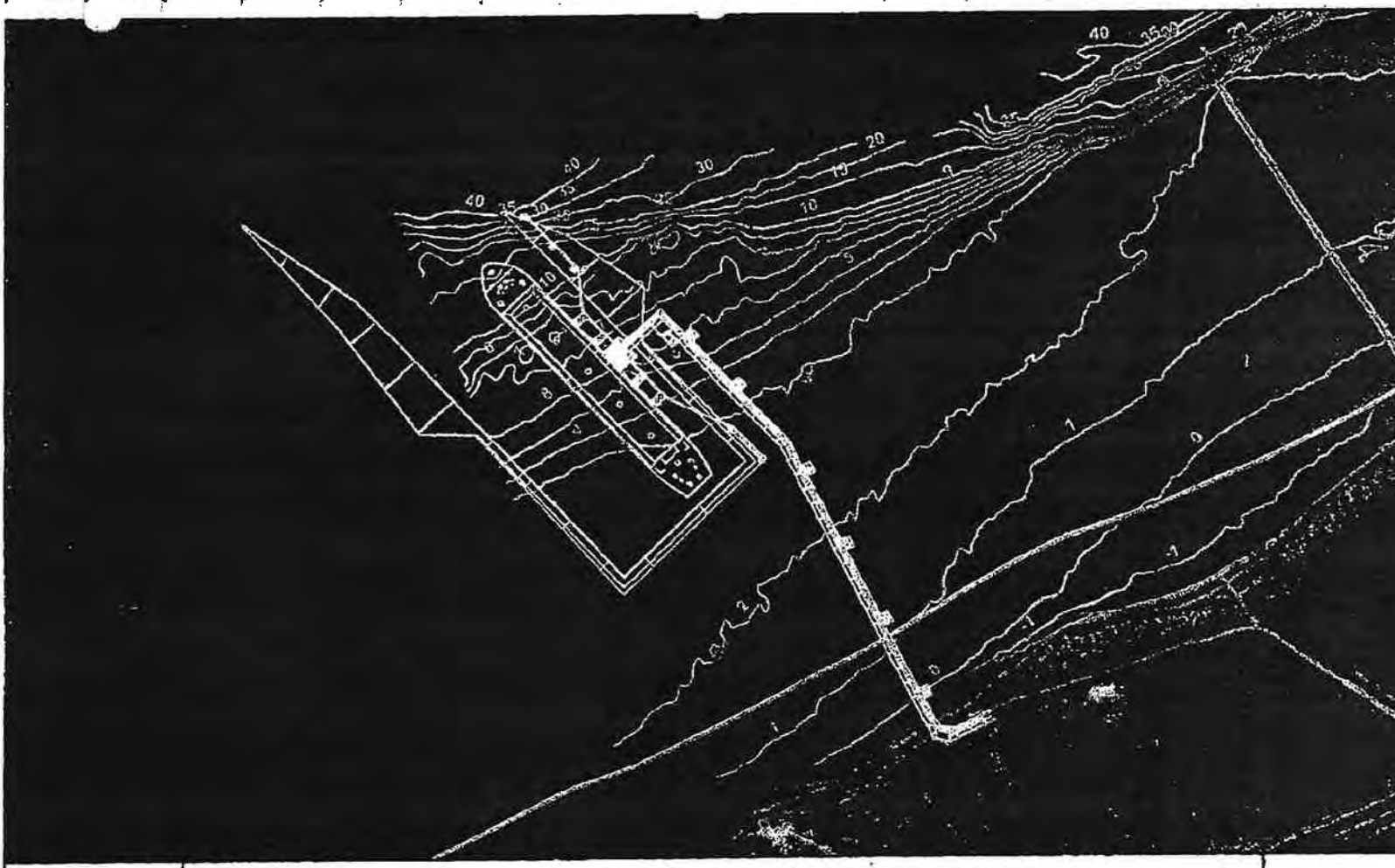


**Figure 4**

Berth and Dedged Area

Bathymetry provided by Ocean Surveys, Inc. June 2003

Note: Bathymetry Contours are set at Mean Low Water (MLW) Datum

0 250 500 1,000 1,500 Feet

**Legend**

- Crown Landing Site
- Bathymetry Contours
- Proposed Facilities
- DE/NJ State Line

N W S

*Vapor Handling*

During ship unloading, vapor in the storage tanks is displaced by unloading LNG from the ship. Vapor is generated as boil-off in the storage tanks due to heat input from the atmosphere. Blowers and compressors are used to move excess vapor from the storage tanks either to the ship or to a recondenser vessel. Vapor sent to the recondenser is condensed back into LNG by blending it with cold LNG from the low-pressure pumps. As required, gaseous nitrogen will be introduced into the BOG condenser in order to lower the heating value of the finished product.

*Low-Pressure LNG In-Tank Pumps*

The low-pressure in-tank pumps (three pumps per tank) are vertical centrifugal pumps mounted within the tank and immersed in the LNG fluid inside a pump column. Pump discharge will normally operate at a 160 psi differential into the low pressure header to the BOG condenser. The three pumps provided in each LNG storage tank are capable of sending out LNG capable of supporting the base load capacity of the Manufacturing Facility from one tank.

*High-Pressure LNG Pumps*

The outlet liquid stream from the BOG condenser flows to the high-pressure LNG pumps. These multi-stage units are each designed to pump the LNG to approximately 1,300 psig before vaporization. When the finished product is ready for distribution, the actual send out pressure will be determined by pipeline delivery requirements. The high-pressure pumps are vertical canned multistage cryogenic pumps. Seven pumps will be installed.

*LNG Vaporization*

The LNG is processed using a closed loop shell and tube heat exchanger vaporization system. Seven vertical shell and tube exchangers will be used to meet the base load capacity of the Manufacturing Facility. Water-ethylene glycol (WEG) will be used as the primary vaporization heating medium. Gas-fired heaters will heat the WEG mix. Ten gas-fired water glycol heaters provide heating. The heaters will be installed with ultra-low NOx burners to minimize air emissions. The heaters will be vented through one stack, approximately 150-foot-high. Four pumps will be available to pump the WEG from the heaters to the LNG vaporizers.

*Nitrogen*

A nitrogen injection system will be provided to reduce the heating value of the vaporized gas. This system is required in the event of deliveries of LNG which when vaporized will have heating values that exceed the limits of downstream facilities. The system will consist of a cryogenic air separation plant incorporating air filtration and dehydration, air and nitrogen compressors, heat exchangers, a turbo-expander, distillation towers, and a 750,000 gallon liquid nitrogen storage tank. The gaseous nitrogen will be injected into the LNG stream at the BOG condenser. Direct BTU analyzers will be used to monitor and control the heating value of the vaporized LNG.

***Mercaptan***

Once the LNG is vaporized, the high pressure gas will be odorized using mercaptan. The mercaptan will be injected into the gas using measuring injection pumps at a rate stipulated by the pipeline companies. The mercaptan will be stored on site in the vicinity of the metering facilities.

The finished product will be sent out to the pipeline grid at a maximum pressure of 1,200 psig and a minimum temperature of 40°F. The tie-ins with the three pipelines will occur on the Crown Landing Site. The Project will have a maximum delivery capacity of 0.6 BCFD to Transco, 0.5 BCFD to Columbia, and 0.9 BCFD to Texas Eastern, providing operational flexibility for the planned Manufacturing Facility send-out capacity of 1.2 BCFD.

***Buildings***

Six enclosed buildings will be constructed for the Crown Landing Manufacturing Facility:

- Administration Building – approximately 3,200 square foot one-story insulated metal building for the administrative headquarters of the Manufacturing Facility;
- Maintenance/Warehouse Building – approximately 7,500 square foot, one-story insulated metal building providing storage, maintenance, and repair areas;
- Motor Control Center (MCC) Building – approximately 8,500 square foot, one-story insulated metal building housing the main control room and motor controls;
- Guardhouse – approximately 150 square foot one-story insulated metal building to provide a security checkpoint for all incoming traffic to the Manufacturing Facility;
- Pier Control Building – approximately 960 square foot, one-story insulated metal building located on the trestle and housing pier operations controls; And
- Utility Building – approximately 2,400 square foot, one-story building that contains various Manufacturing Facility utilities.

The facility will also include several metal shelters (up to 15,000 square feet) that contain the air compressors, BOG compressors, water-ethylene glycol heaters, and associated equipment.

*Utilities*

The Project requires various utilities for operation: service and potable water, gas for fueling the heaters, diesel fuel for the emergency generator, electricity, instrument and plant compressed air, heating and air conditioning, on-site septic system, and storm water management. The provision of these utilities is summarized in Table 1.

*Fire Protection System*

The fire protection system is designed in compliance with NFPA 59A requirements and will provide for extinguishing Class A fires; provide water to cool structures and equipment exposed to thermal radiation; and aid in dispersing flammable vapors. The main components of the system will include:

- 300,000-gallon firewater storage tank;
- One electric and one diesel powered firewater pumps;
- One electric motor-driven jockey pump;
- A firewater piping distribution system to provide water to the facility's hydrants and monitors; and
- Fire hydrants with monitors and hose reels strategically located throughout the facility.

Fire extinguishers, which are remotely operated, will be provided throughout the terminal. Dry chemical extinguishers will be placed at strategic locations throughout the terminal.

**Table 1 Summary of Project Utility Requirements**

| | |
|---|---|
| Service water | Provided by on-site wells |
| Drinking water | Delivered as bottled water |
| Fuel gas | Self-generated with pipeline gas as a back-up |
| Diesel fuel | Delivered by truck |
| Electricity | Provided via an independent feed from the existing Conectiv 69 kV transmission line |
| Compressed air | Self generated with an air compressor system |
| Nitrogen | Outbound from on-site air separation facility |
| Heating and air conditioning | Electrical HVAC systems provided in enclosed buildings (Administrative Building, Maintenance/Warehouse Building, MCC Building, Guardhouse, Pier Control Building, and Utility Building) |
| Wastewater | On-site septic system designed in accordance with New Jersey Administrative Code 7:9A |
| Stormwater management | On-site stormwater management facilities designed in accordance with New Jersey Department of Environmental Protection Stormwater Management Guidelines (NJDEP, 2003) |
| Utility nitrogen | Obtained from air separation plant |

*LNG Project Controls*

The Project control system will consist of a Distributed Control System (DCS) with an independent safety control system. A central control room will be constructed for complete plant control and monitoring. There will also be an operator control station located on the pier.

### 11.4.3 LNG Carriers

Natural gas production is located primarily in remote areas, which are distant from consumption centers. In order to efficiently bring the natural gas to market, it is necessary to manufacture a liquid from the natural gas, which reduces the volume of the natural gas by approximately 600 times, load the LNG onto specially designed ships, and transport the cargo by sea.

The ships that will transport the LNG from the liquefaction port to Crown Landing will load the cargo of LNG into specially designed and constructed tanks. The cargo is kept at atmospheric pressure by a combination of insulation, to minimize heat transfer to the cargo, and boil-off gas generation. This boil-off gas is removed from the cargo and preferentially burned in the ship's engine room to supplement fuel oil.

All LNG ships calling at Crown Landing will be governed by a USCG - approved Operating Plan for LNG on the Delaware River. The Operating Plan is developed by taking into account public input and a formal risk assessment.

The ships that will deliver LNG to Crown Landing will be principally operated and owned by BP. BP operates its ships under the British flag. Ships will range from 138,000 $m^3$, the size of existing BP LNG ships, to 200,000 $m^3$, which have yet to be constructed. The dimensions of these ships are listed in Table 2 below.

**Table 2. LNG Ship Dimensions**

| Dimension | Existing Ships Actual Dimensions | Future Ships Approximate Dimensions |
|---|---|---|
| Capacity in cubic meters | 138,000 | 200,000 |
| Length in feet | 914 | 1056 |
| Beam in feet | 138 | 167 |
| Loaded Draught in feet | 38 | 38 |
| Ballast Draught in feet | 32 | 32 |
| Depth of Hull in feet | 85 | 88 |
| Loaded Displacement in long tons | 103,000 | 147,000 |

LNG ships are designed and constructed to meet standards for maximizing safety and minimizing risk. These standards exist on a variety of scales from international to domestic and include the following

- International standards are developed by the International Maritime Organization (IMO) and include Safety of Life at Sea (SOLAS), The International Code for the Construction and Equipment of Ships carrying Liquefied Gases in Bulk (IGC Code). These International standards are adopted by individual flag States into their National legislation and ships are constructed and operated to these standards. The construction and operation is monitored for compliance by the relevant flag State. An example of this being the USCG have adopted all IMO resolutions into the legislation of the US in the relevant CFRs. Additionally classification societies, such as the American Bureau of Shipping, ensure that the LNG ships are constructed and operated to their specific rules for construction and maintenance.
- Domestic standards established by the USCG (46 CFR Part 154) and the American Bureau of Shipping, which stipulate detailed construction specifications, such as steel quality as well as the IMO standards.

### 11.4.4 Downstream Facilities

One of the primary advantages of the proposed site is the proximity to natural gas transmission pipelines. The existing Columbia and Transco pipelines are located on the Crown Landing Site. The tie-ins from the metering facility to the pipelines will be short and will not require any new off-site rights-of-way. Texas Eastern has filed a separate application with FERC to extend its pipeline system approximately 12 miles to the Crown Landing Site. Upon approval of its application, Crown Landing will also connect to this lateral on-site. Metering and odorant injection facilities for all three pipelines will be provided on the Crown Landing Site.

*1 Office of the Attorney General
State of Delaware

Opinion No. 78-018
October 5, 1978

Nathan Hayward III
Director
Office of Management, Budget & Planning

QUESTIONS:

1. Does the exemption for docking facilities for a single industrial or manufacturing facility for which a permit is granted or which is a nonconforming use, found in 7 Del. C. § 7002(f), apply to docking facilities that are located in the State of Delaware but serve an industry located in the State of New Jersey on the eastern side of the Delaware River?

2. Does the term "bulk products" as used in the Coastal Zone Act (a) refer to cargoes shipped in large bulk masses such as oil, gas, coal and iron ore; (b) also apply to cargoes of individually identifiable units such as container packets or items of machinery or goods?

ANSWER:

1. The exemption found in 7 Del. C. § 7002(f) applies to facilities that are located on the eastern boundary of Delaware which serve an industry located in New Jersey in the same context that it would apply if the attached facility were located on fast land in Delaware.

2. The term "bulk product" refers to cargoes shipped in large mingled masses and not to cargoes of individually packaged units or individual product items.

DISCUSSION:

The Coastal Zone Act, 7 Del. C. Chapter 70 (the "Act") was adopted in 1972 amid concerns regarding the future direction of development in the coastal area of Delaware. The explicit purpose was to regulate land use in the "most critical areas for the future of the state in terms of the quality of life in the State". 7 Del. C. § 7001. The same section declares that the public policy of the State of Delaware is to control the location, extent and type of industrial development in Delaware's coastal waters. The second purpose is to "better protect the natural environment of its bay and coastal areas and safeguard their use primarily for recreation and tourism." Id. The remainder of that section makes it clear that the purpose is not to discourage industry but rather to protect the small critical area which comprises the coast of Delaware.

Water and air quality are a definite part of the environment sought to be protected by the General Assembly. 7 Del. C. § 7004(b)(1). The General Assembly

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has recognized, however, that an exemption for a single use facility would not interfere with the dual purposes of the Coastal Zone Act in such a way to be impermissable under the legislative purpose. 7 Del. C. § 7002(f). This section states:

"Bulk product transfer facility" means any port or dock facility, whether an artificial island or attached to shore by any means, for the transfer of bulk quantities of any substance from vessel to onshore facility or vice versa. Not included in this definition is a docking facility or pier for a single industrial or manufacturing facility for which a permit is granted or which is a nonconforming use. Likewise, docking facilities for the Port of Wilmington are not included in this definition.

*2 The eastern boundary of the State of Delaware extends in part to the low water mark on the eastern side of the Delaware River within the 12 mile circle described from New Castle. 29 Del. C. § 201. If the development on the eastern rim of the state were to be uncontrolled by the regulatory mechanism of the Coastal Zone Act, pressure of development antithetical to the Act would exist. As the Act states: "It is further determined that offshore bulk product transfer facilities represent a significant danger of pollution to the coastal zone and general pressure for the construction of industrial plants in the coastal zone. . .For these reasons, prohibition against bulk product transfer facilities in the coastal zone is deemed imperative." 7 Del. C. § 7001.

The question then becomes the extent to which these same rules apply where the adjacent facility is located in another jurisdiction over which the Delaware legislature has no authority. There is no reason to believe that the legislature intended any different rule to apply to unattached lands from the lands attached to the Delaware shore within the Coastal Zone. Allowing the bulk product transfer facilities to generate pressnre for industry anywhere in the water and air basins would be contrary to the purposes of the Act. This would apply no less to that part of Delaware which is located adjacent to New Jersey than to the fast lands of Delaware itself.

Failure to apply the exemption to those facilities built adjacent to New Jersey would lead ro an anomalous administration of the Act. The Act should not be read so as to produce an absurd result. Opinion of the Justices, Del. Supr., 295 A.2d 718 (1972) and State v. Braun, Del. Super, 378 A.2d 640 (1977).

As to the second question, the term "bulk" is defined in Webster's Unabridged Dictionary as "in a mass; loose; not enclosed in separate package or divided in separate parts". Webster's Third New International Dictionary, p. 293 (Ed. 1961). There are a number of cases in accord with the dictionary meaning of the word "bulk", thus it has been held to be "neither counted, weighed, nor measured", Riggs v. State, Neb. Supr., 121 NW 588 (1909); contra distinguished from "parcel", Standard Oil v. Commonwealth, Ky. Ct. App., 82 SW 1020 (1904); "of indefinite proportion", Naftalin v. John Wood Co., Minn. Supr, 116 NW 2d 91 (1962). The term "laden in bulk" means loose in the hold or not included in boxes, bales or casks, Standard Oil Co., supra. The cited cases use the commercial definition of the term. Terms in a statute relating to trade or commerce are presumed to be used in their trade or commercial sense. 2A Sutherland, Statutory Construction (Sands 4th ed 1973) § 47.31. In this case, the commercial and the dictionary meaning are in accord. Therefore, the prohibition in 7 Del. C. § 7003 against offshore gas,

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liquid or solid bulk product transfer facilities would not refer to individual products or packages.

In summary, the State of Delaware should apply the exemption for the single use bulk product transfer facility in the same manner as if the attached facility were also located in Delaware. Therefore, if a permit would have been granted or if the facility would be a nonconforming use had the facility been located in Delaware, the single use exemption may apply. The term "bulk" refers to commingled goods and not to individual packages or products.

*3 If you have any further questions, please feel free to call me.

Sincerely,

June D. MacArtor

Deputy Attorney General

APPROVED BY:

Richard R. Wier, Jr.

Attorney General

Del. Op. Atty. Gen. 78-018, 1978 WL 22485 (Del.A.G.)

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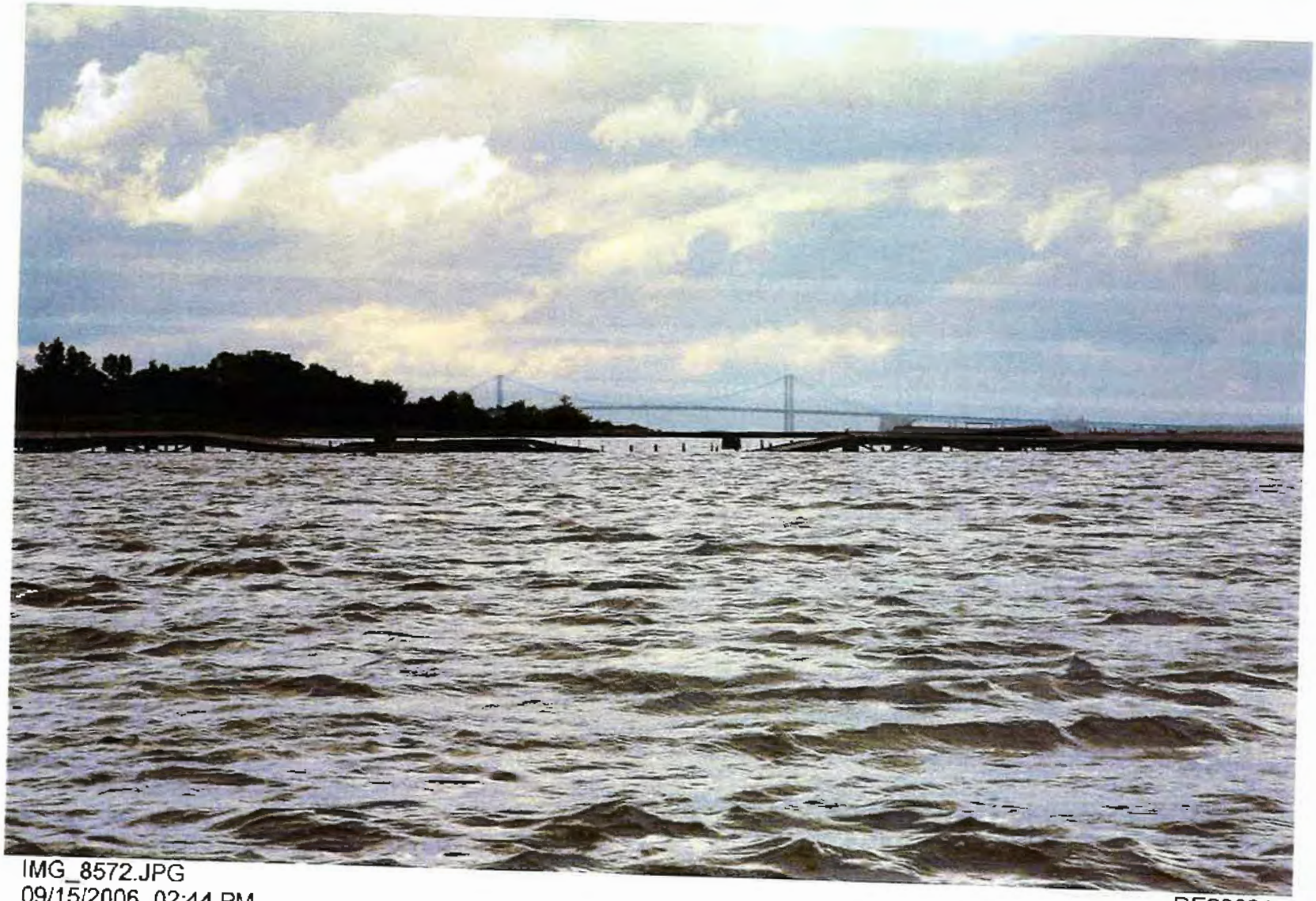

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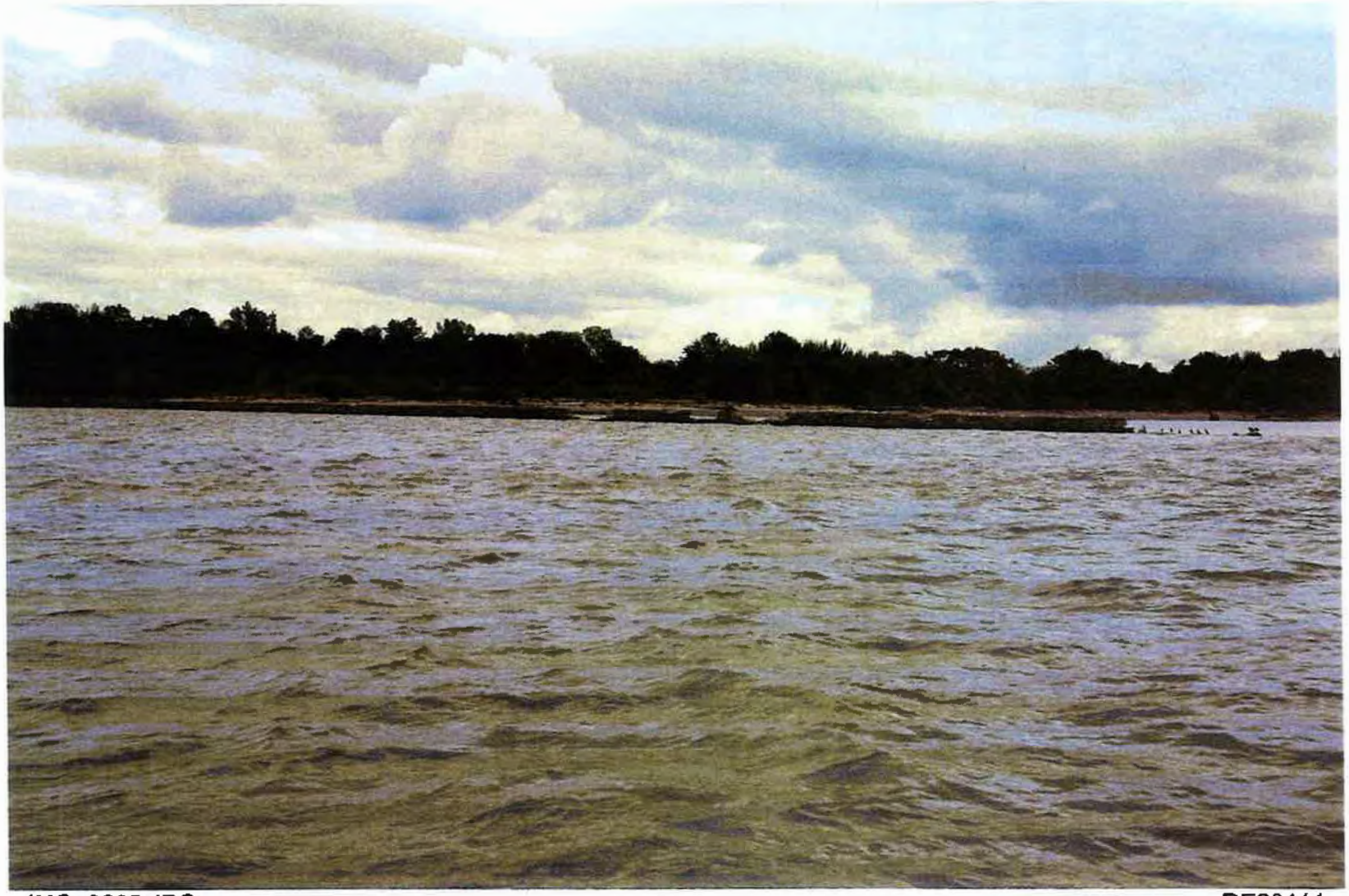

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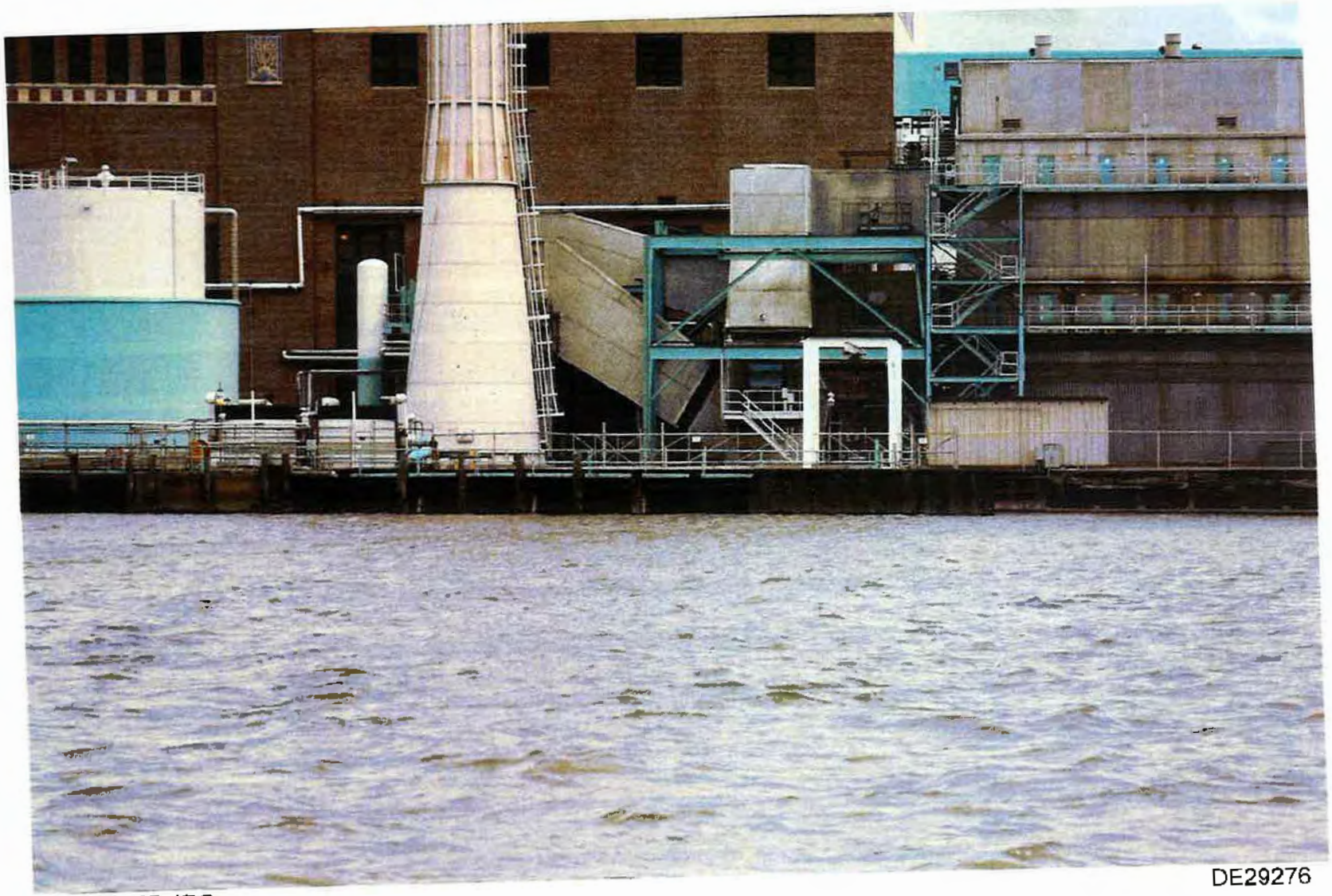

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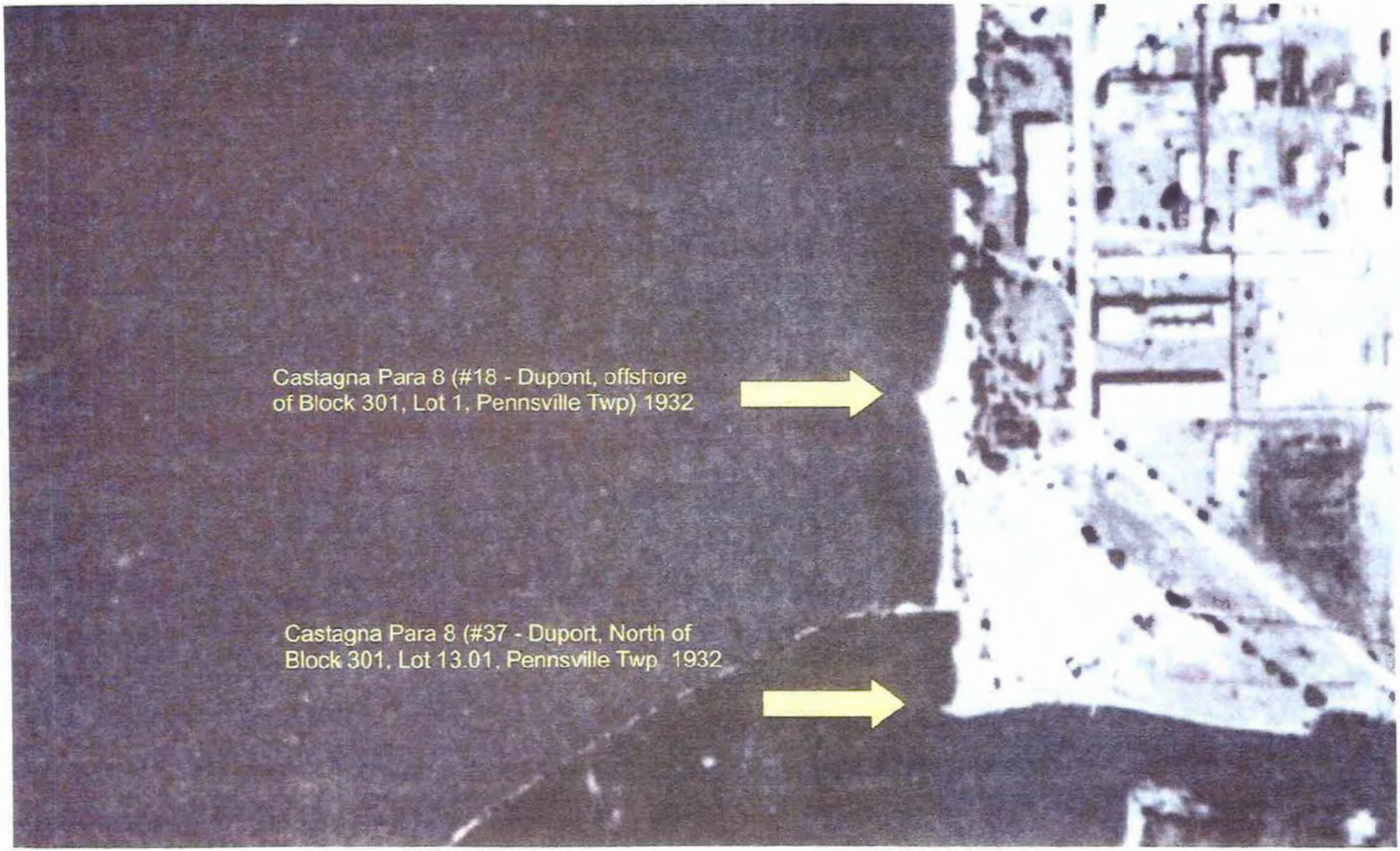


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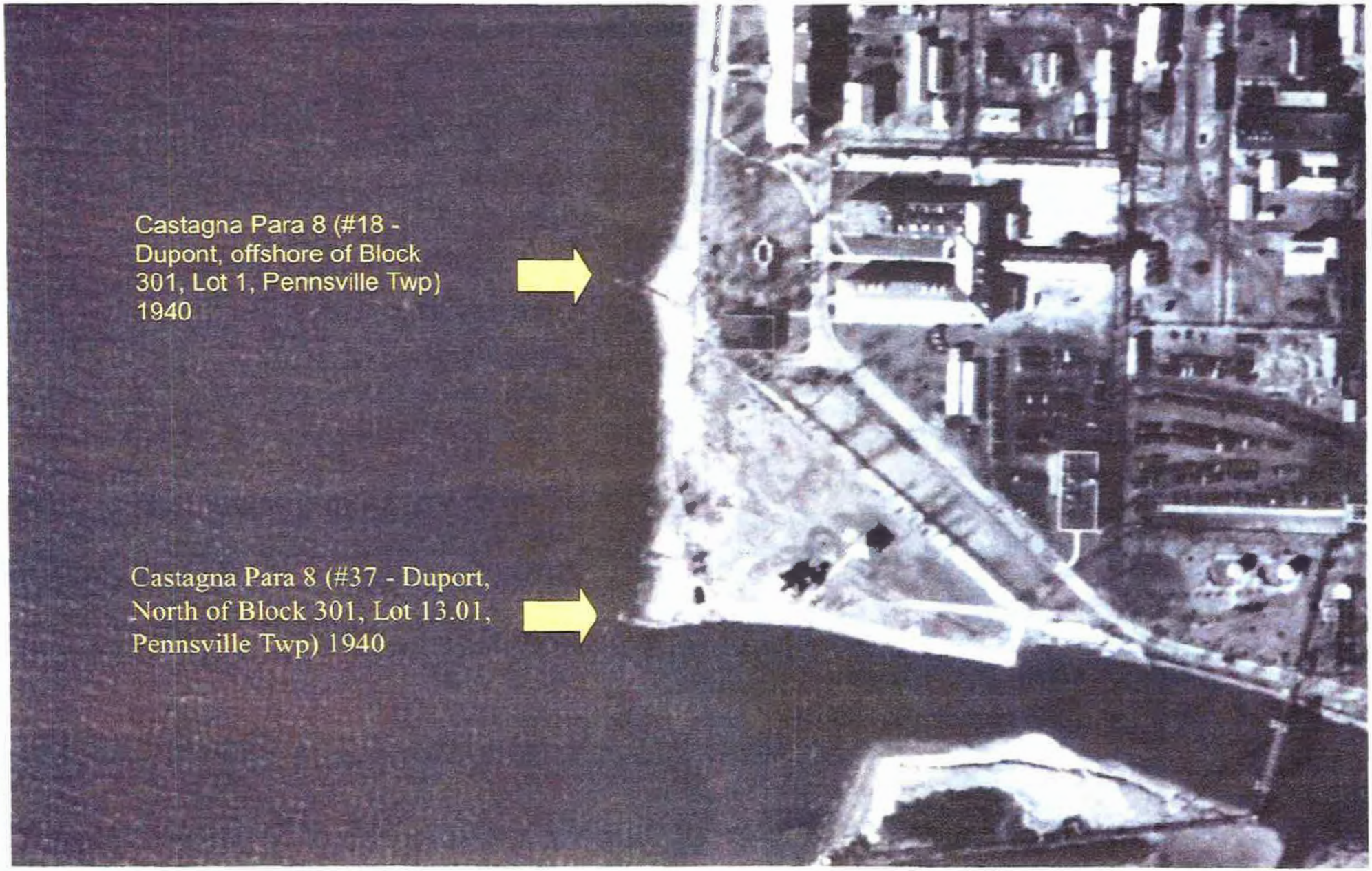


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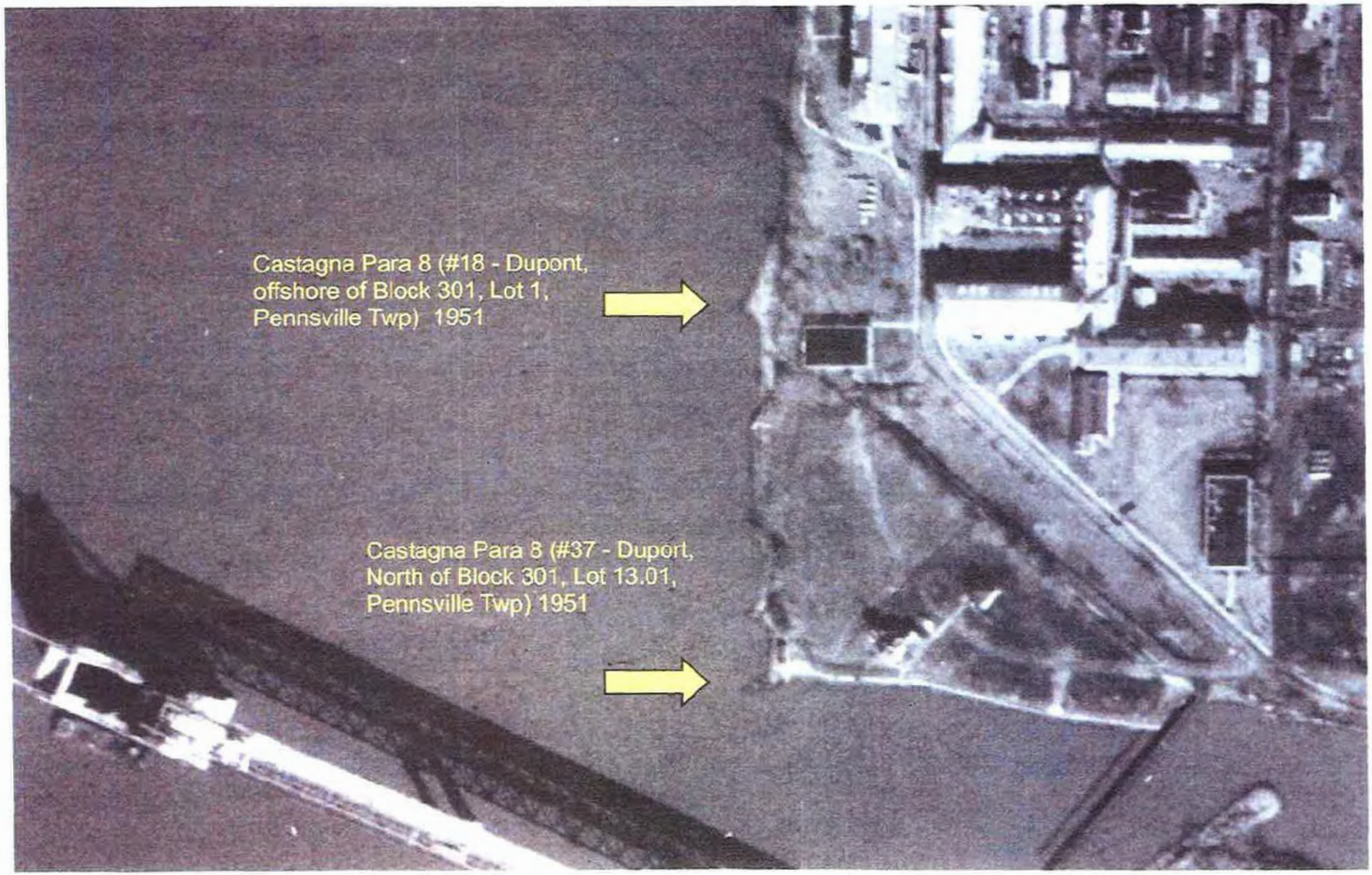


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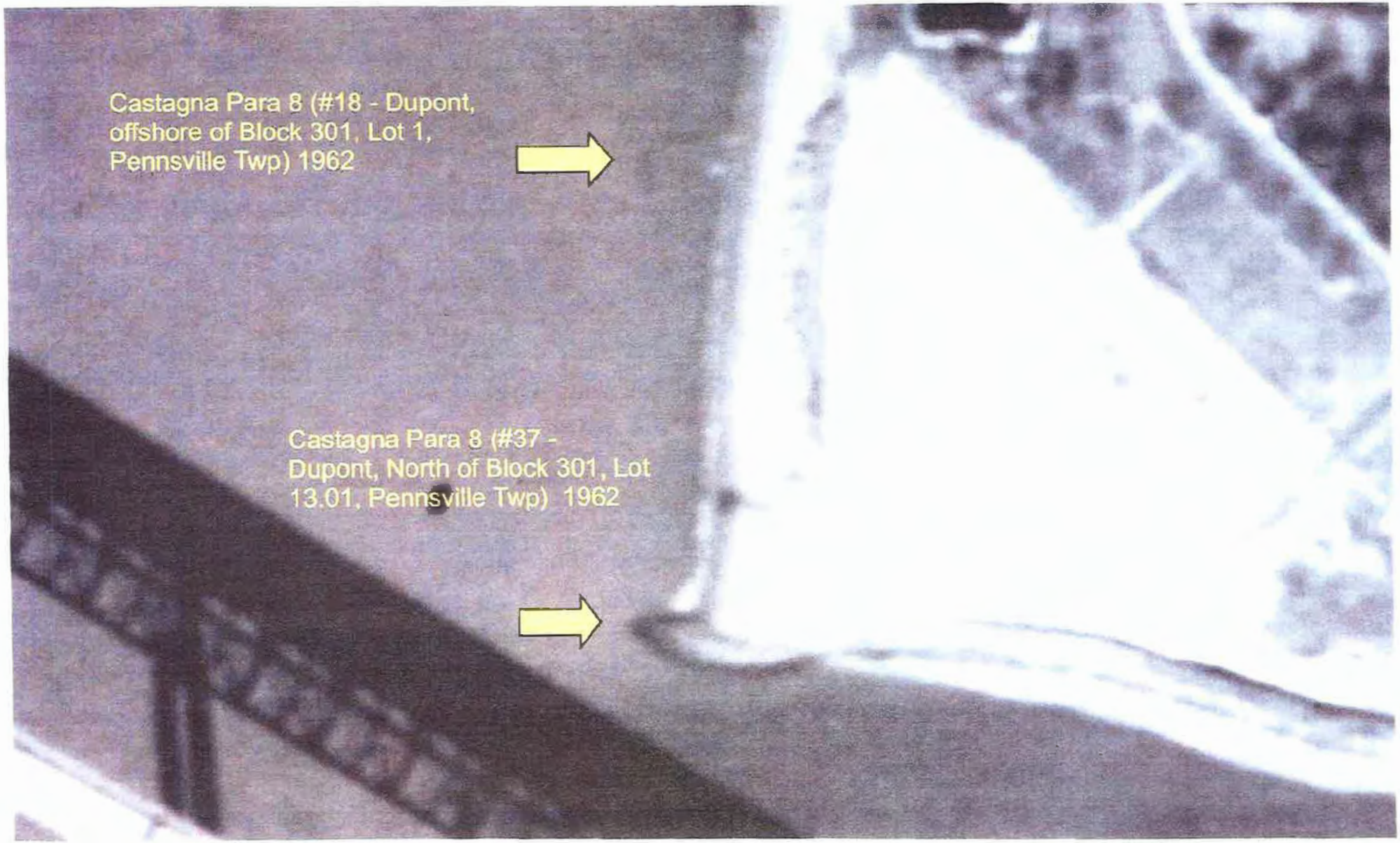


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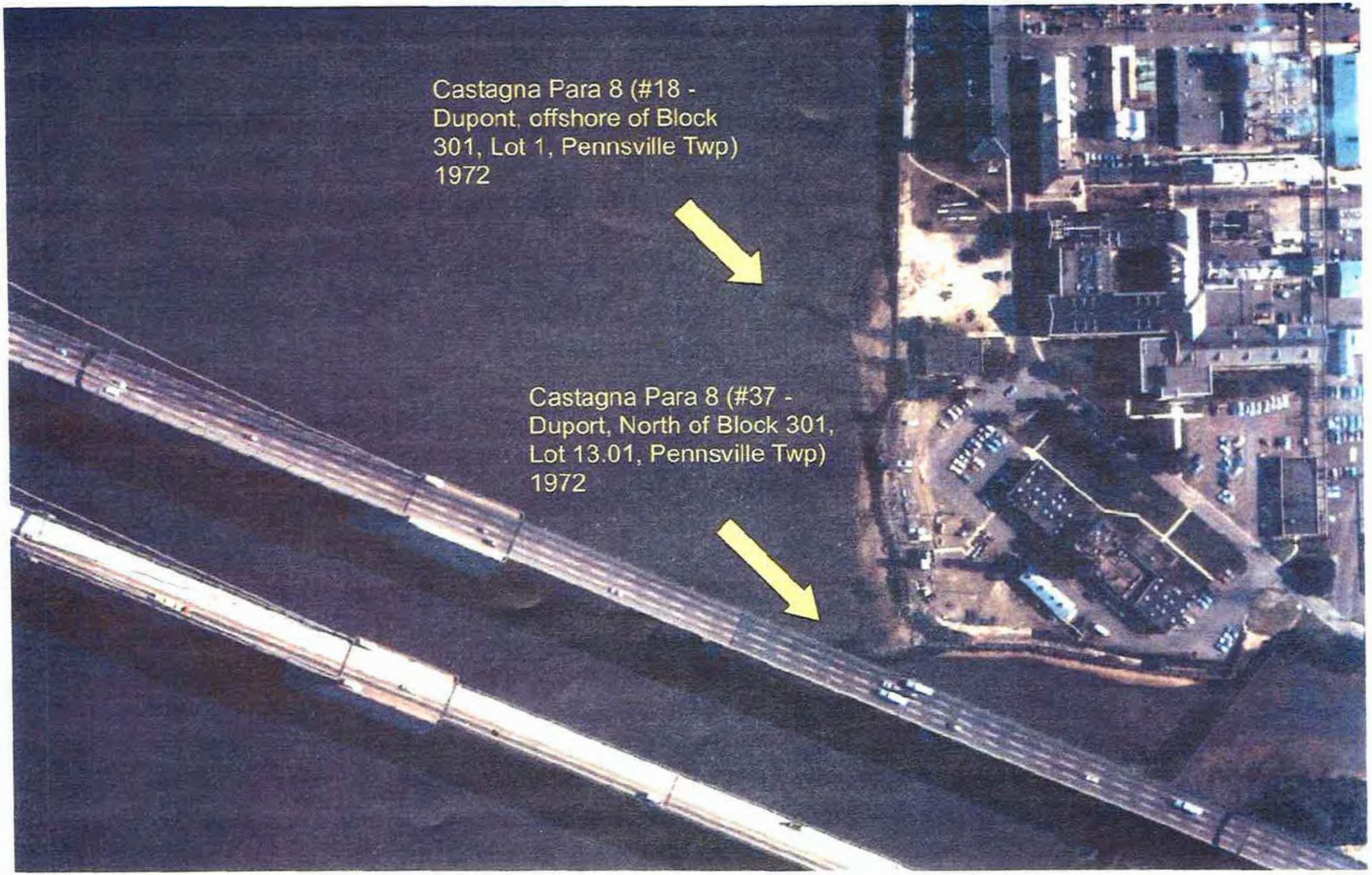


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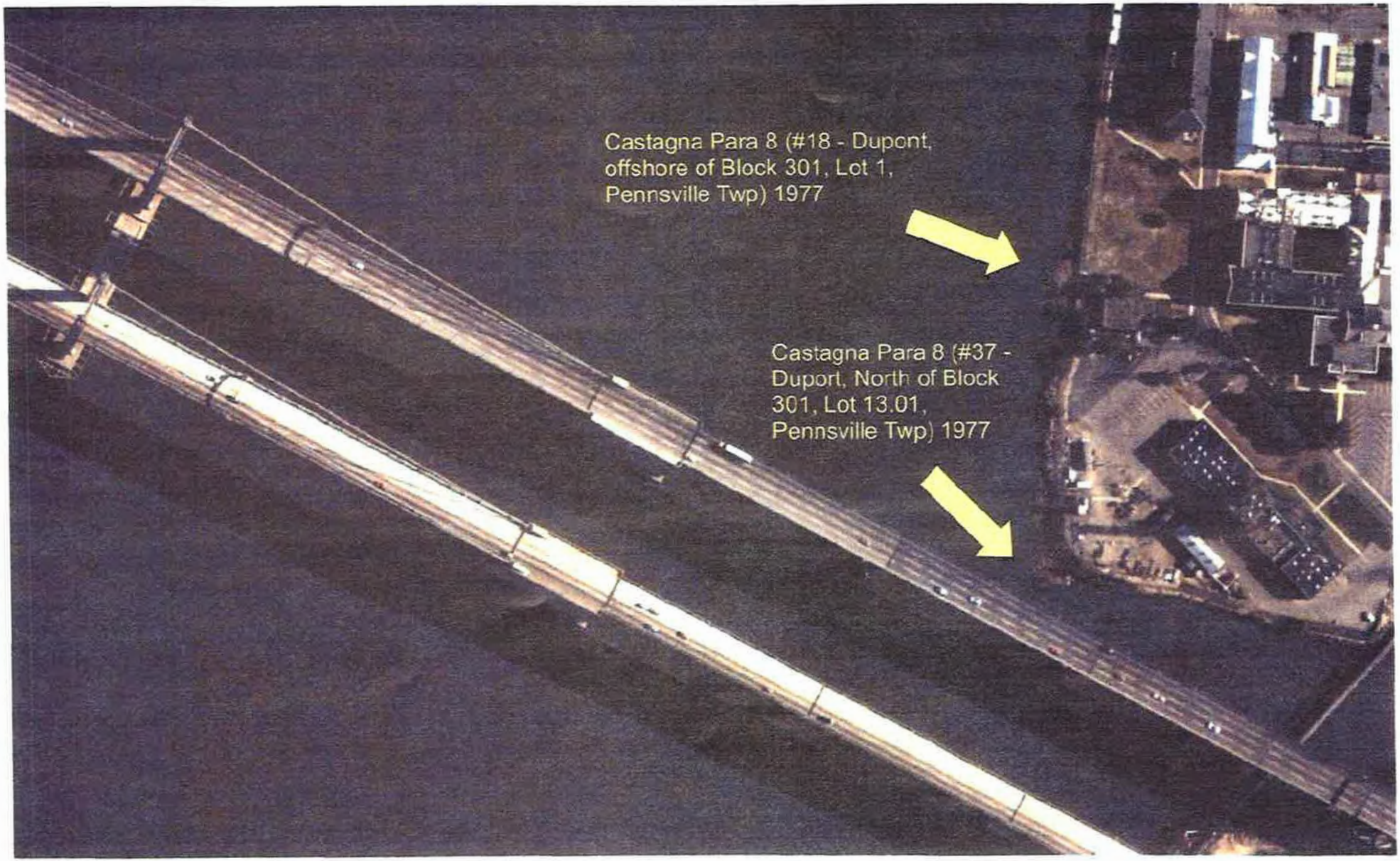


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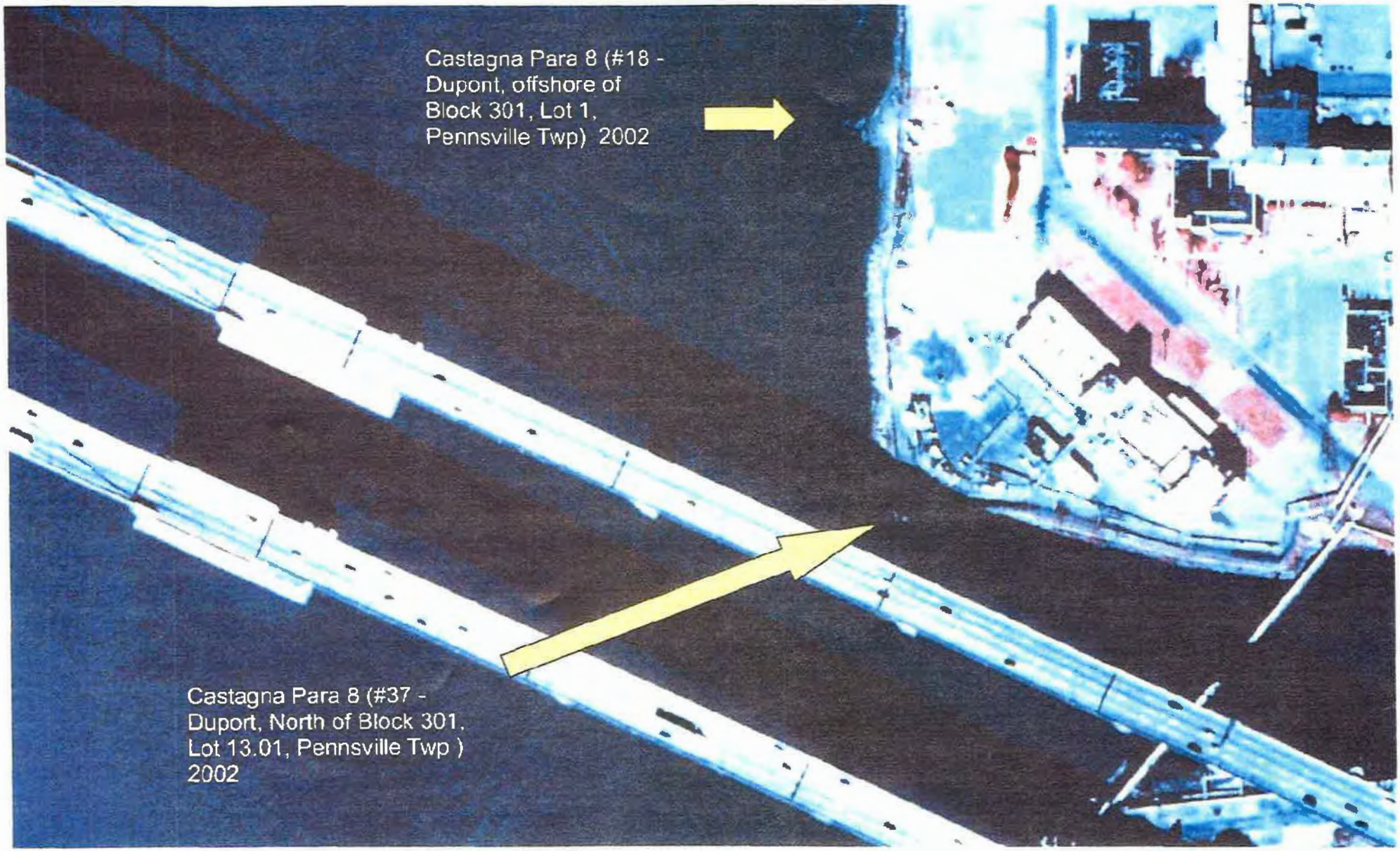


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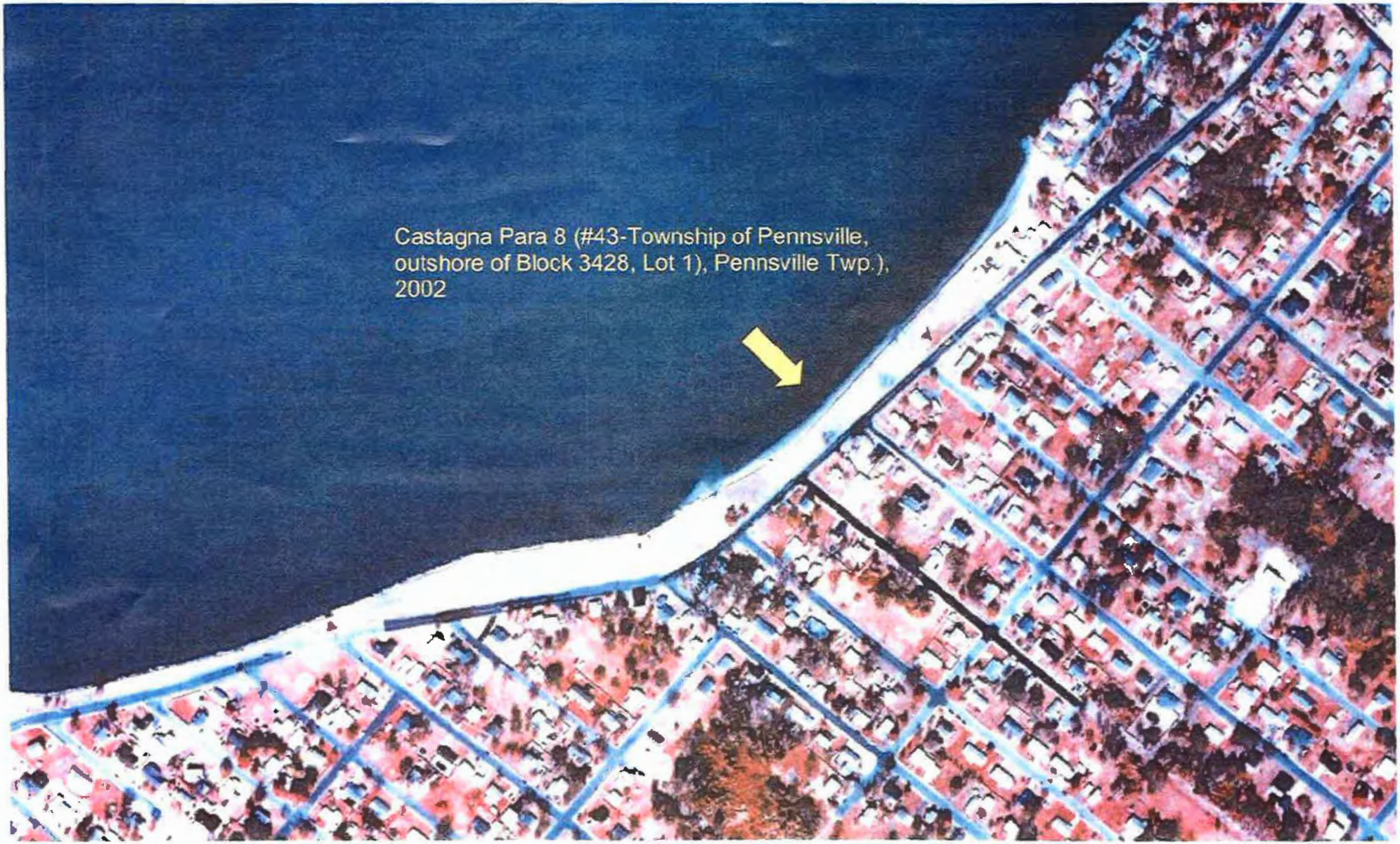


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| 94018554 | 19940703 | 1533 | PEA PATCH ISL NORTH END |
| 94018642 | 19940703 | 1533 | DE RIVER OPP DEL CITY MARINA |
| 94018749 | 19940704 | 2933 | DELAWARE RIVER - REEDY ISLAND |
| 94019498 | 19940711 | 1533 | DELAWARE RIVER ACROSS DELAWARE CITY |
| 94019501 | 19940712 | 2933 | DELAWARE RIVER OPPOSITE OAKWOOD BEACH |
| 94019716 | 19940714 | 2933 | REEDY ISLAND DELAWARE RIVER |
| 94020000 | 19940716 | 1133 | 1 MILE NORTH DEL MEM BRIDGE |
| 94020324 | 19940720 | 2933 | DEL RIVER S OF CANAL |
| 94020849 | 19940725 | 2933 | DE RIVER OFF AUGUSTINE BEACH |
| 94021991 | 19940806 | 2933 | DELAWARE RIVER AT AUGUSTINE BEACH |
| 94022797 | 19940814 | 2933 | DEL RIVER ON NJ SIDE OF JETTY |
| 94023055 | 19940817 | 1534 | DELAWARE RIVER AREA |
| 94023429 | 19940821 | 1834 | DELAWARE RIVER |
| 94023642 | 19940823 | 1533 | DELAWARE RIVER/PEA PATCH ISLAND |
| 94023754 | 19940824 | 2933 | DELA RIVER/REEDY ISLAND |
| 94025182 | 19940909 | 2933 | REEDY ISLAND RANGE - BOUY 2R |
| 94025252 | 19940909 | 1834 | DE RIVER OPP RIVERVIEW BEACH PARK |
| 94025447 | 19940911 | 2033 | DEL RIVER |
| 94026042 | 19940918 | 1834 | DELAWARE RIVER OFF KELLY POINT |
| 94026758 | 19940925 | 2933 | DELAWARE RIVER/HOPE CREEK |
| 94027176 | 19940929 | 2933 | DE RIVER E SIDE OF REEDY ISLAND |
| 94028728 | 19941015 | 2933 | DEL RIVER AT REEDY ISLAND |
| 94029908 | 19941028 | 2433 | DEL RIVER STH OF ARTIFICIAL ISL |
| 94029995 | 19941029 | 1533 | DELAWARE RIVER/STAR ENTERPR |
| 94034313 | 19941213 | 2933 | DELAWARE RIVER/REEDY ISLAND |
| 95008022 | 19950325 | 1834 | DELAWARE RIVER OFF PENNSVILLE RAMP |
| 95008339 | 19950328 | 1533 | DEL RIVER NEAR FT MOTT |
| 95010269 | 19950417 | 1133 | DELAWARE RIVER NORTH OF EDGEMOOR PLANT |
| 95011327 | 19950427 | 1333 | DELAWARE RIVER OFF CITISTEEL |
| 95012292 | 19950507 | 1834 | DEL RIVER BATTERY PARK |
| 95012648 | 19950512 | 2933 | DELAWARE RIVER NEAR ELNISBORO POINT |
| 95014886 | 19950601 | 2833 | 25 AUGUSTINE BEACH, A5 |
| 95016667 | 19950618 | 2933 | DEL RIVER/AUGUSTINE BEACH |
| 95017137 | 19950623 | 2433 | DELAWARE RIVER NEAR ARTIFICIAL ISLAND |
| 95018105 | 19950703 | 2933 | 38 AUGUSTINE BEACH, A5 |
| 95018179 | 19950704 | 1533 | DELAWARE RIVER/STAR JETTY |
| 95018257 | 19950705 | 2933 | DELAWARE RIVER NEAR ARTIFICAL ISLAND |
| 95018312 | 19950706 | 1333 | DELAWARE RIVER/BELLVUE RANGE |
| 95018998 | 19950713 | 1833 | DELAWARE RIVER- BUOY 1D- DEEPWATER RANGE |
| 95019304 | 19950715 | 2933 | REEDY ISLAND |
| 95019334 | 19950715 | 2933 | 24 AUGUSTINE BEACH, A5 |
| 95019336 | 19950715 | 1533 | PEA PATCH ISLAND/DELAWARE RIVER |
| 95021070 | 19950728 | 1133 | DELAWARE RIVER NORTH OF MARINE TERMINAL |
| 95021093 | 19950729 | 1534 | DELAWARE RIVER/DEL CITY |
| 95022520 | 19950811 | 1834 | DELAWARE RIVER NEAR LUKENS DRIVE |
| 95022916 | 19950815 | 2933 | OFF OAKWOOD BEACH ELSINBORO |
| 95022962 | 19950816 | 1834 | DELAWARE RIVER, SOUTH OF DEL MEM BRIDGE |
| 95023593 | 19950822 | 2433 | DEL RIVER 2 MI SOUTH OF POWER PLANT |
| 95024017 | 19950826 | 1834 | DELAWARE RIVER/RIVERSIDE PARK |
| 95024348 | 19950829 | 2933 | DEL RIVER OFF OF PORT PENN |
| 95024979 | 19950904 | 1333 | DEL RIVER/CLAYMONT |

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|---|---|---|
| 95025327 | 19950907 | 2033 CHERRY ISLAND FLATS |
| 95025393 | 19950906 | 2933 DELAWARE RIVER NEAR PORT PENN |
| 95026501 | 19950920 | 1834 DELAWARE RIVER OFF NEW CASTLE |
| 95026843 | 19950921 | 1834 DELAWARE RIVER/NEW CASTLE |
| 95026840 | 19950923 | 1133 DELAWARE RIVER OPPOSITE LEPARC CONDOS |
| 95026845 | 19950923 | 1834 DELAWARE RIVER OFF PENNSVILLE BOAT DOCKS |
| 95027620 | 19950930 | 1533 DEL RIVER N OF PEA PATCH ISLAND |
| 95027684 | 19951001 | 1533 DEL RIVER, 1/2 MI N OF PEA PATCH ISLAND |
| 95027808 | 19951002 | 1833 DELAWARE RIVER OFF NEW CASTLE |
| 95027878 | 19951003 | 1533 PEA PATCH ISLAND |
| 95031480 | 19951106 | 1534 DELAWARE RIVER NEAR PIER 2 |
| 95033274 | 19951123 | 1534 DELAWARE RIVER/SALEM RIVER |
| 95036214 | 19951220 | 1333 DEL RIVER OFF PHOENIX STEEL |
| 96011011 | 19960415 | 2933 DELAWARE RIVER NEAR SAM GREENS BEACH |
| 96011023 | 19960415 | 2933 DELAWARE RIVER OFF AUGUSTINE BEACH |
| 96011158 | 19960417 | 1133 DELAWARE RIVER OFF DPL EDGEMOOR |
| 96012457 | 19960428 | 2933 DELAWARE RIVER OFF PORT PENN |
| 96013246 | 19960505 | 2933 REEDY ISLAND JETTY |
| 96014777 | 19960520 | 2033 DEL RIVER 1/2 MI STH OF DMB |
| 96014844 | 19960521 | 1834 DEL RIVER OFF BATTERY PARK |
| 96014885 | 19960521 | 1133 DELAWARE RIVER OFF DP/L EDGEMOOR |
| 96015510 | 19960527 | 1534 DELAWARE RIVER BY POWER LINES |
| 96015518 | 19960527 | 1834 DELAWARE RIVER OFF 3RD ST - NEW CASTLE |
| 96016909 | 19960608 | 1533 DEL RIVER OFF FORT MOTT |
| 96019707 | 19960705 | 1834 DEL RIVER OPP DEEMERS BEACH #BOUY 4-D |
| 96021364 | 19960721 | 2033 DEL MEMO BRIDGE |
| 96021808 | 19960725 | 1833 DEL RIVER S OF NEW CASTLE |
| 96022677 | 19960804 | 2433 DELAWARE RIVER OPP SALEM NUCLEAR PLANT |
| 96023371 | 19960810 | 2933 DELAWARE RIVER OPP AUGUSTINE BEACH |
| 96023483 | 19960811 | 1533 DELAWARE RIVER BET POWER LINES/FORT MOTT |
| 96024209 | 19960818 | 1534 DEL RIVER BTWN SALEM COVE/PEA PATCH IS |
| 96024216 | 19960818 | 1534 DEL RIVER S OF PEA PATH ISLAND |
| 96027490 | 19960919 | 1333 DELAWARE RIVER - BELLEVUE RANGE #7C |
| 96027670 | 19960921 | 1833 DELAWARE RIVER OFF NEW CASTLE |
| 96027693 | 19960921 | 1333 DELAWARE RIVER AT PA/DEL LINE |
| 96027705 | 19960921 | 1834 DELAWARE RIVER BTWN DMB/PEA PATCH IS |
| 96028350 | 19960928 | 1533 DEL RIVER AT FORT DEL NJ SIDE |
| 96030548 | 19961017 | 1833 DELAWARE RIVER NORTH OF RIVERVIEW BEACH |
| 96030618 | 19961018 | 1834 DEL RIVER OFF PENNSVILLE |
| 96030827 | 19961020 | 2033 UNDER DEL MEMO BRIDGE EAST TOWER |
| 96031596 | 19961027 | 2433 DEL RIVER OFF SALEM NUCLEAR PLANT |
| 96031756 | 19961029 | 1834 DEL RIVER OFF KELLYS POINT OPP NEW CASTL |
| 96031856 | 19961029 | 2933 DEL RIVER OFF ARTIFICIAL ISLAND |
| 96032107 | 19961101 | 1533 DELAWARE RIVER UNDER HIGH TENSION WIRES |
| 97004390 | 19970212 | 1533 DEL RIVER AREA OF PEA PATCH ISLAND |
| 97014306 | 19970513 | 2933 DEL RIVER AREA OF AUGUSTINE BEACH |
| 97015448 | 19970523 | 2933 DELAWARE RIVER OFF AUGUSTINE BEACH |
| 97015757 | 19970525 | 1833 DELAWARE RIVER OFF BATTERY PARK |
| 97016081 | 19970528 | 2933 DEL RIVER S OF C/D CANAL |
| 97016083 | 19970528 | 1834 DEL RIVER END OD CHESTNUT ST |
| 97016199 | 19970529 | 2933 DELAWARE RIVER AT AUGUSTINE BEACH |
| 97016556 | 19970602 | 1333 DEL RIVER S OF MARCUS HOOK |

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|---|---|---|
| 97017084 | 19970606 | 1833 DEL RIVER/DEEMERS BEACH |
| 97017157 | 19970607 | 1834 DEL RIVER OFF NEW CASTLE |
| 97017302 | 19970608 | 1834 DELAWARE RIVER OFF BATTERY PARK |
| 97017340 | 19970608 | 2933 DEL RIVER AT REEDY ISLE |
| 97017720 | 19970611 | 1833 DEL RIVER OFF BATTERY PARK |
| 97018175 | 19970615 | 2033 DELAWARE RIVER NORTH OF DEL MEMO BRIDGE |
| 97018205 | 19970615 | 2933 AUGUSTINE BEACH |
| 97018783 | 19970621 | 1533 DEL RIVER, 1/4 MI N OF PEA PATCH ISLAND |
| 97019097 | 19970623 | 1834 DELAWARE RIVER OFF PENNSVILLE |
| 97019643 | 19970627 | 2034 DELAWARE RIVER |
| 97020413 | 19970705 | 2933 ARTIFICAL ISLAND |
| 97020525 | 19970706 | 2033 DELAWARE RIVER S OF DMB |
| 97020737 | 19970708 | 1834 DELAWARE RIVER/THIRD ST |
| 97021355 | 19970713 | 2933 DEL RIVER SOUTH OF REEDY ISLAND |
| 97022880 | 19970726 | 1533 PEA PATCH ISLAND |
| 97022885 | 19970726 | 1533 DEL RIVER OFF DEL CITY PIER |
| 97023964 | 19970805 | 1133 DELAWARE RIVER AT DP/L |
| 97024660 | 19970811 | 1834 DEL RIVER AT END OF DELAWARE ST |
| 97025305 | 19970817 | 1534 DELAWARE RIVER NEAR THE SALEM RIVER |
| 97026453 | 19970819 | 1834 DELAWARE RIVER OFF OF PENNSVILLE |
| 97027043 | 19970902 | 1533 DELAWARE RIVER NORTH OF PEA PATCH ISLAND |
| 97028259 | 19970914 | 1534 DELAWARE RIVER OPP SALEM RIVER |
| 97028444 | 19970916 | 1533 DELAWARE RIVER N OF PEAPATCH ISLAND |
| 97028603 | 19970917 | 1333 DELAWARE RIVER/PA LINE |
| 97030859 | 19971006 | 1834 DELAWARE RIVER AT PENNSVILLE BOAT RAMP |
| 97030907 | 19971006 | 1534 DEL RIVER ENT TO C/D CANAL |
| 97030914 | 19971006 | 2933 DEL RIVER OFF ARTIFICIAL ISLE |
| 97032136 | 19971017 | 1133 DELAWARE RIVER OFF DUPONT EDGEMOOR |
| 97032440 | 19971020 | 1133 OFF FOX POINT |
| 97032563 | 19971021 | 1333 DEL RIVER S OF PA LINE |
| 97035828 | 19971117 | 1333 DELAWARE RIVER OPPOSITE CAPTAINS DECK |
| 97036965 | 19971127 | 1333 DE RIVER OPP CAPTAINS DECK |
| 97037526 | 19971203 | 2034 W MAIN/DELAWARE PENNSGROVE |
| 98000837 | 19980106 | 2033 DELAWARE RIVER NEAR KELLYS POINT |
| 98001644 | 19980115 | 1533 DEL RIVER/POWER LINE |
| 98007025 | 19980303 | 1533 DE RIVER NEAR PEA PATCH ISLAND |
| 98008191 | 19980314 | 1133 DELAWARE RIVER OFF DOD, OLDMANS TWNSHP |
| 98009023 | 19980321 | 1833 DELAWARE RIVER OFF DOBBINSVILLE |
| 98011360 | 19980411 | 1834 DEL RIVER AREA RIVERVIEW INN |
| 98011476 | 19980413 | 2933 DE RIVER OFF AUGUSTINE BEACH |
| 98012151 | 19980418 | 1833 DELAWARE RIVER NORTH OF HAMBURG COVE |
| 98012580 | 19980423 | 2933 DELAWARE RIVER 1/4 MI NORTH OF PORT PENN |
| 98012747 | 19980424 | 2933 DELAWARE RIVER NEAR PORT PENN |
| 98012783 | 19980424 | 2933 DELAWARE RIV/REEDY PT |
| 98012861 | 19980425 | 2933 DELAWARE RIVER EAST OF REEDY POINT ISLAN |
| 98012995 | 19980426 | 2033 DEL RIVER S DEL MEMO BRIDGE |
| 98013531 | 19980501 | 2933 DELWARE RIVER OFF BAYVIEW BEACH |
| 98013670 | 19980502 | 2033 DELAWARE RIV 1/4M S OF BRIDGE |
| 98014275 | 19980507 | 2034 DELAWARE RIVER N OF DMB |
| 98014527 | 19980509 | 1834 DELAWARE RIVER OFF BATTERY PARK |
| 98015792 | 19980520 | 2033 DELAWARE RIVER/RIVERVIEW INN |
| 98016243 | 19980524 | 2033 DEL RIVER SOUTH OF DEL MEMO BRIDGE |

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| 98016351 | 19980525 | 1533 DELAWARE RIVER OFF DELAWARE CITY |
| 98016841 | 19980529 | 2033 UNDER DELAWARE MEMORIAL BRIDGE |
| 98017545 | 19980603 | 1834 DEL RIVER N OF JETTY OPP RIVERVIEW BEACH |
| 98018261 | 19980609 | 1133 DEL RIVER OFF EDGEMOOR |
| 98018969 | 19980615 | 1834 DELAWARE RIVER NEAR BATTERY PARK |
| 98019595 | 19980620 | 2933 AUGUSTINE BEACH |
| 98020028 | 19980624 | 1133 DEL RIVER BUOY 4 IN THE BELLVUE RANGE |
| 98020432 | 19980628 | 2933 DELAWARE RIVER/C/D CANAL |
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| 98022038 | 19980712 | 2033 DELAWARE RIVER S OF DMB |
| 98022831 | 19980719 | 2033 DELAWARE RIVER, 1/4 MI S OF DMB |
| 98023633 | 19980725 | 2033 DELWARE RIVER UNDER DEL MEMO BRDG |
| 98023599 | 19980726 | 1533 PEA PATCH ISLAND |
| 98023685 | 19980726 | 1534 PEA PATCH ISLAND |
| 98023743 | 19980727 | 1534 DEL RIVER OFF AUGUSTINE BEACH |
| 98024337 | 19980801 | 1533 DELAWARE RIVER NORTH OF THE TOWERS |
| 98024386 | 19980801 | 1533 DE RIVER NEAR NORTHERN TIP OF PEA PATCH |
| 98024446 | 19980802 | 1533 DELAWARE RIVER, N OF STAR PIERS |
| 98024719 | 19980804 | 1333 DELAWARE RIV/PA |
| 98025332 | 19980809 | 1533 PEA PATCH ISLAND |
| 98025970 | 19980814 | 1333 DEL RIVER OPP HOLLY OAK |
| 98026167 | 19980816 | 1533 1533 DELAWARE RIVER, DELR |
| 98026641 | 19980820 | 2033 DELAWARE RIVER OPP PENNSVILLE |
| 98026496 | 19980906 | 1833 DEL RIVER OFF DEEMERS BEACH |
| 98026501 | 19980906 | 1833 DEL RIVER JERSEY SIDE JETTY N POWER LINE |
| 98029177 | 19980912 | 1133 DELAWARE RIVER/EDGEMOOR |
| 98030010 | 19980919 | 2933 AUGUSTINE BEACH/SLUCE GATE |
| 98030108 | 19980919 | 2033 DELAWARE RIVER, SOUTH OF DMB |
| 98030811 | 19980925 | 1533 DELAWARE RIVER, 100 FT E OF REEDY ISLAND |
| 98032207 | 19981006 | 1833 DELAWARE RIVER/BATTERY PARK |
| 98032933 | 19981012 | 2933 DEL RIVER/NECULAR PLANT |
| 98033302 | 19981015 | 1333 DEL RIVER OPP HARBOR HOUSE APTS |
| 98033581 | 19981018 | 1133 DEL RIVER AT FOX POINT PARK |
| 98033986 | 19981021 | 1533 DELAWARE RIVER/C/D CANAL |
| 98035259 | 19981031 | 1533 1533 DELAWARE RIVER, DELR |
| 98035470 | 19981102 | 2034 DEL RIV OPP CHAMBERS WORKS |
| 98036434 | 19981110 | 2033 DEL RIVER S OF DMB |
| 98036974 | 19981115 | 2933 DEL RIVER/S OF REEDY PT |
| 98037391 | 19981118 | 1833 DELAWARE RIVER OFF DOBBINSVILLE |
| 99000547 | 19990105 | 2933 DELAWARE RIVER OFF AUGUSTINE BEACH |
| 99002831 | 19990120 | 1533 HAMBURG COVE |
| 99008062 | 19990306 | 1833 DELAWARE RIVER OFF LLANGOLLEN ESTS |
| 99010349 | 19990324 | 1834 DELAWARE RIVER END THIRD ST NEW CASTLE |
| 99012113 | 19990407 | 1534 DELAWARE RIVER |
| 99013304 | 19990417 | 2933 DEL RIVER #4L |
| 99013888 | 19990422 | 1533 DEL RIVER UNDER THE POWER LINES |
| 99013920 | 19990422 | 2933 DELAWARE RIVER |
| 99014281 | 19990425 | 2933 DELAWARE RIVER |
| 99014675 | 19990428 | 2933 DELAWARE RIVER N OF REEDY ISLAND |
| 99015038 | 19990501 | 1833 DELAWARE RIVER BULKHEAD BAR BACK CHANNEL |
| 99015071 | 19990501 | 2034 DELAWARE RIVER OFF AUGUSTINE BEACH |
| 99015043 | 19990509 | 1533 DELAWARE RIVER OFF DEL CITY |

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| 99016576 | 19990514 | 1834 | DEL RIVER NEAR E 6TH ST |
| 99016693 | 19990514 | 2933 | DELAWARE RIVER OFF ARTIFICIAL ISLAND |
| 99017021 | 19990517 | 2033 | DEL RIVER SOUTH OF BRIDGE |
| 99018550 | 19990529 | 2033 | DEL RIVER 1/4 M S OF BRIDGE |
| 99018596 | 19990529 | 2933 | DELAWARE RIVER |
| 99018831 | 19990531 | 1533 | DELAWARE RIV/C/D CANAL |
| 99019944 | 19990609 | 2933 | DELAWARE RIVER SOUTH OF REEDY ISLAND |
| 99020322 | 19990612 | 2933 | ARTIFICIAL ISLAND/DELAWARE RIVER, DELR |
| 99020399 | 19990613 | 1534 | C AND D CANAL/DELAWARE RIVER, DELR |
| 99021040 | 19990618 | 2033 | DEL MEMO BRIDGE/DELAWARE RIVER, DELR |
| 99021143 | 19990619 | 1533 | DELAWARE RIVER/HAMBURG COVE, DELR |
| 99021163 | 19990620 | 2033 | DEL MEMO BRIDGE/DELAWARE RIVER, DELR |
| 99021166 | 19990620 | 1833 | BULKHEAD SHOAL/DELAWARE RIVER, DELR |
| 99021169 | 19990620 | 2033 | DEL MEMO BRIDGE/DELAWARE RIVER, DELR |
| 99022214 | 19990628 | 2033 | DEL MEMO BRIDGE/DELAWARE RIVER, DELR |
| 99022275 | 19990629 | 1333 | DELAWARE RIVER/HARBOR HOUSE APTS, DELR |
| 99022681 | 19990702 | 2933 | DELAWARE RIVER/OAKWOOD BEACH, DELR |
| 99023005 | 19990704 | 1533 | DELAWARE RIVER/HIGH POWER LINES, DELR |
| 99023015 | 19990704 | 1833 | DELAWARE RIVER/3RD STREET |
| 99023167 | 19990705 | 2033 | DEL MEMO BRIDGE/DELAWARE RIVER, DELR |
| 99023954 | 19990711 | 1534 | C AND D CANAL/DELAWARE RIVER, DELR |
| 99023961 | 19990711 | 1533 | DELAWARE RIVER/MOTIVA PIERS |
| 99024167 | 19990713 | 2933 | AUGUSTINE BEACH/DELAWARE RIVER, DELR |
| 99024661 | 19990717 | 1533 | 1533 DELAWARE RIVER, DELR |
| 99025448 | 19990724 | 1534 | C AND D CANAL/DELAWARE RIVER, DELR |
| 99025853 | 19990727 | 2933 | AUGUSTINE BEACH/DELAWARE RIVER, DELR |
| 99026169 | 19990730 | 2033 | DEL MEMO BRIDGE/DELAWARE RIVER, DELR |
| 99027500 | 19990809 | 1333 | DEL RIVER OPP GRUBBS LANDING |
| 99027832 | 19990811 | 2933 | DELAWARE RIVER/REEDY ISLAND, DELR |
| 99028259 | 19990814 | 2033 | DELAWARE RIVER S OF DEL MEM BRI |
| 99028273 | 19990814 | 2933 | DELAWARE RIVER/REEDY ISLAND BAR, DELR |
| 99029179 | 19990821 | 1534 | DELAWARE RIVER/PEA PATCH ISLAND, DELR |
| 99029262 | 19990822 | 2933 | AUGUSTINE BEACH/DELAWARE RIVER, DELR |
| 99030364 | 19990831 | 2933 | AUGUSTINE BEACH/DELAWARE RIVER, DELR |
| 99030557 | 19990902 | 2033 | ARMY CREEK/DELAWARE RIVER, DELR |
| 99030613 | 19990902 | 1533 | 1533 DELAWARE RIVER, DELR |
| 99031191 | 19990906 | 1834 | DELAWARE RIVER/RIVERVIEW BEACH, DELR |
| 99031347 | 19990908 | 1133 | DELAWARE RIVER/FOX POINT PARK, DELR |
| 99031790 | 19990911 | 1834 | DELAWARE RIVER OFF PENNSVILLE BEACH |
| 99031890 | 19990912 | 1533 | DEL RIVER JETTY BY POWER LINES |
| 99032683 | 19990917 | 1834 | DELAWARE RIVER/PENNS BEACH, DELR |
| 99033426 | 19990920 | 1833 | DELAWARE RIVER SOUTH OF BATTERY PARK |
| 99034822 | 19991001 | 1534 | C AND D CANAL/DELAWARE RIVER, DELR |
| 99036030 | 19991011 | 1834 | DELAWARE RIVER OPPOSITE PENNSVILLE |
| 99036209 | 19991012 | 1534 | DELAWARE RIVER/PEA PATCH ISLAND, DELR |
| 99037440 | 19991022 | 1333 | DELAWARE RIVER/HOLLY OAK, DELR |
| 99038456 | 19991030 | 1333 | CITISTEEL MILL/DELAWARE RIVER, DELR |
| 99040519 | 19991114 | 1833 | DELAWARE RIVER JUST SOUTH OF DEL MEM |
| 99041666 | 19991123 | 1533 | DELAWARE RIVER MOUTH OF CANAL SOUTH SIDE |
| 8659 | 20000307 | 2933 | ARTIFICIAL ISLAND/DELAWARE RIVER, DELR |
| 11337 | 20000327 | 1533 | DELAWARE RIVER/HIGH POWER LINES, DELR |
| 12114 | 20000402 | 1533 | DELAWARE RIVER/MOTIVA PEIR |

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| 13996 | 20000416 | 1834 | BATTERY PARK/DELAWARE RIVER, DELR |
| 14973 | 20000424 | 2933 | AUGUSTINE BEACH/DELAWARE RIVER, DELR |
| 16601 | 20000506 | 1533 | 1533 DELAWARE RIVER, DELR |
| 16751 | 20000507 | 2933 | DELAWARE RIVER/REEDY ISLAND BAR, DELR |
| 17447 | 20000512 | 2933 | DELAWARE RIVER/REEDY ISLAND BAR, DELR |
| 19211 | 20000525 | 2933 | AUGUSTINE BEACH/DELAWARE RIVER, DELR |
| 20549 | 20000604 | 2933 | ARTIFICIAL ISLAND/DELAWARE RIVER, DELR |
| 20940 | 20000607 | 2033 | DEL MEMO BRIDGE/DELAWARE RIVER, DELR |
| 21020 | 20000608 | 1834 | DEL RIVER OFF BOAT RAMP NEWCASTLE |
| 21381 | 20000610 | 1533 | 1533 DELAWARE RIVER, DELR |
| 22037 | 20000615 | 1534 | DELAWARE RIVER MOUTH SALEM RIVER |
| 23030 | 20000620 | 1834 | DELAWARE RIVER/PENNS BEACH, DELR |
| 23322 | 20000623 | 1833 | DELAWARE RIVER NORTH OF POWER LINES |
| 23411 | 20000623 | 1534 | DELAWARE RIVER/SALEM RIVER, DELR |
| 23563 | 20000624 | 1534 | DELAWARE RIVER/PEA PATCH ISLAND, DELR |
| 24499 | 20000701 | 1533 | DELAWARE RIVER NORTH OF PEA PATCH ISLAND |
| 24610 | 20000702 | 1533 | DEL RIVER/MOTIVA PIERS |
| 25420 | 20000708 | 1834 | DELAWARE RIVER/RIVERVIEW BEACH, DELR |
| 26142 | 20000713 | 2033 | DEL MEMO BRIDGE/DELAWARE RIVER, DELR |
| 26995 | 20000720 | 1533 | 1533 DELAWARE RIVER, DELR |
| 27326 | 20000723 | 2933 | DELAWARE RIVER/REEDY ISLAND, DELR |
| 27337 | 20000723 | 2933 | AUGUSTINE BEACH/DELAWARE RIVER, DELR |
| 28827 | 20000803 | 1834 | DELAWARE RIVER OFF NEW CASTLE |
| 31095 | 20000820 | 1534 | DELAWARE RIVER NEAR REEDY POINT |
| 31318 | 20000822 | 1834 | BATTERY PARK/DELAWARE RIVER, DELR |
| 31835 | 20000824 | 1834 | BATTERY PARK/DELAWARE RIVER, DELR |
| 31913 | 20000826 | 1534 | C AND D CANAL/DELAWARE RIVER, DELR |
| 33012 | 20000903 | 2033 | DEL MEMO BRIDGE/DELAWARE RIVER, DELR |
| 33081 | 20000904 | 1833 | DELAWARE RIVER NEAR HAMBURG COVE |
| 33110 | 20000904 | 2933 | ARTIFICIAL ISLAND/DELAWARE RIVER, DELR |
| 34596 | 20000915 | 1834 | DELAWARE RIVER/NEW CASTLE FLATS, DELR |
| 34616 | 20000915 | 1534 | C AND D CANAL/DELAWARE RIVER, DELR |
| 34618 | 20000915 | 1534 | C AND D CANAL/DELAWARE RIVER, DELR |
| 34836 | 20000917 | 2933 | ARTIFICIAL ISLAND/DELAWARE RIVER, DELR |
| 35116 | 20000919 | 2933 | ARTIFICIAL ISLAND/DELAWARE RIVER, DELR |
| 35564 | 20000922 | 1533 | DELAWARE RIVER JETTY JUST N OF DEL CITY |
| 35590 | 20000923 | 1133 | DELAWARE RIVER APPROX 2 MILES N PORT |
| 35593 | 20000923 | 1533 | 1533 DELAWARE RIVER, DELR |
| 36594 | 20000930 | 1533 | 1533 DELAWARE RIVER, DELR |
| 36740 | 20001001 | 2033 | DELAWARE RIVER |
| 39288 | 20001020 | 1534 | DELAWARE RIVER/PEA PATCH ISLAND, DELR |
| 40705 | 20001031 | 1533 | 1533 DELAWARE RIVER, DELR |
| 41246 | 20001103 | 2033 | DEL MEMO BRIDGE/DELAWARE RIVER, DELR |
| 41286 | 20001104 | 2033 | DEL MEMO BRIDGE/DELAWARE RIVER, DELR |
| 41915 | 20001108 | 1534 | C AND D CANAL/DELAWARE RIVER, DELR |
| 44314 | 20001127 | 1834 | DELAWARE RIVER/NEW CASTLE FLATS, DELR |
| 1000413 | 20010103 | 2933 | DELAWARE RIVER AREA ARTIFICIAL ISLAND |
| 1008601 | 20010307 | 2033 | DEL MEMO BRIDGE/DELAWARE RIVER, DELR |
| 1013018 | 20010409 | 1833 | DEEMERS BEACH/DELAWARE RIVER, DELR |
| 1015107 | 20010426 | 1133 | DELAWARE RIVER AREA EDGEMOOR |
| 1015512 | 20010428 | 1834 | BATTERY PARK/DELAWARE RIVER, DELR |
| 1015777 | 20010430 | 1534 | DELAWARE RIVER/PEA PATCH ISLAND, DELR |

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| 1017396 | 20010511 | 1534 C AND D CANAL/DELAWARE RIVER, DELR |
| 1017422 | 20010511 | 1534 DELAWARE RIVER/ST GEORGES CREEK, DELR |
| 1017696 | 20010513 | 1533 1533 DELAWARE RIVER, DELR |
| 1019108 | 20010522 | 1133 DELAWARE RIVER/STONEY CREEK, DELR |
| 1019479 | 20010525 | 2033 DELAWARE RIVER/RIVER EDGE IND PARK |
| 1020697 | 20010603 | 1533 1533 DELAWARE RIVER, DELR |
| 1021250 | 20010607 | 2933 DELAWARE RIVER/REEDY ISLAND, DELR |
| 1021523 | 20010609 | 2933 DELAWARE RIVER OFF AUGUSTINE BEACH |
| 1021638 | 20010610 | 1833 DELAWARE RIVER OFF BATTERY PARK |
| 1022113 | 20010613 | 1133 CHERRY ISLAND FLAT/DELAWARE RIVER, DELR |
| 1022299 | 20010614 | 1834 DELAWARE RIVER/NEW CASTLE FLATS, DELR |
| 1023451 | 20010622 | 2033 DEL MEMO BRIDGE/DELAWARE RIVER, DELR |
| 1023595 | 20010623 | 2933 ARTIFICIAL ISLAND/DELAWARE RIVER, DELR |
| 1023618 | 20010624 | 2933 DELAWARE RIVER/REEDY ISLAND, DELR |
| 1024511 | 20010630 | 1133 DELAWARE RIVER/FOX POINT PARK, DELR |
| 1024648 | 20010701 | 1534 DELAWARE RIVER/HIGH POWER LINES |
| 1024666 | 20010701 | 1834 BATTERY PARK/DELAWARE RIVER, DELR |
| 1024666 | 20010701 | 1834 BATTERY PARK/DELAWARE RIVER, DELR |
| 1024728 | 20010701 | 1333 DELAWARE RIVER/OLDMANS CREEK, DELR |
| 1025971 | 20010710 | 2933 ARTIFICIAL ISLAND/DELAWARE RIVER, DELR |
| 1026142 | 20010711 | 1534 DELAWARE RIVER/PEA PATCH ISLAND, DELR |
| 1026287 | 20010712 | 1834 BATTERY PARK/DELAWARE RIVER, DELR |
| 1026516 | 20010714 | 1133 DELAWARE RIVER/OLDMANS POINT, DELR |
| 1026633 | 20010715 | 2933 AUGUSTINE BEACH/DELAWARE RIVER, DELR |
| 1027483 | 20010721 | 2933 AUGUSTINE BEACH/DELAWARE RIVER, DELR |
| 1028029 | 20010725 | 2933 AUGUSTINE BEACH/DELAWARE RIVER, DELR |
| 1030073 | 20010809 | 2933 DELAWARE RIVER/REEDY ISLAND, DELR |
| 1030510 | 20010811 | 1533 1533 DELAWARE RIVER, DELR |
| 1032700 | 20010826 | 1534 C AND D CANAL/DELAWARE RIVER, DELR |
| 1033302 | 20010831 | 1834 DELAWARE RIVER/RIVERVIEW BEACH, DELR |
| 1034362 | 20010907 | 2933 ARTIFICIAL ISLAND/DELAWARE RIVER, DELR |
| 1034410 | 20010908 | 2933 ARTIFICIAL ISLAND/DELAWARE RIVER, DELR |
| 1036319 | 20010921 | 1533 DELAWARE RIVER/HIGH POWER LINES, DELR |
| 1038160 | 20011004 | 1834 DELAWARE RIVER/PENNS BEACH, DELR |
| 1039053 | 20011010 | 2933 ARTIFICIAL ISLAND/DELAWARE RIVER, DELR |
| 1039145 | 20011011 | 2933 ARTIFICIAL ISLAND/DELAWARE RIVER, DELR |
| 1039415 | 20011013 | 1533 DELAWARE RIVER/HIGH POWER LINES, DELR |
| 1039915 | 20011016 | 2933 50 DELAWARE RIVER, DELR |
| 1041021 | 20011024 | 1133 DELAWARE RIVER NEAR EDGEMOOR |
| 1041422 | 20011027 | 1533 1533 DELAWARE RIVER, DELR |
| 1042571 | 20011103 | 1534 DELAWARE RIVER/PEA PATCH ISLAND, DELR |
| 1043651 | 20011111 | 2933 DELAWARE RIVER/REEDY ISLAND BAR, DELR |
| 1046027 | 20011121 | 2933 AUGUSTINE BEACH/DELAWARE RIVER, DELR |
| 1045305 | 20011123 | 2933 DELAWARE RIVER/PORT PENN, DELR |
| 2002054 | 20020115 | 1834 BATTERY PARK/DELAWARE RIVER, DELR |
| 2003396 | 20020124 | 1133 CHERRY ISLAND FLAT/DELAWARE RIVER, DELR |
| 2013360 | 20020406 | 2033 DEL MEMO BRIDGE/DELAWARE RIVER, DELR |
| 2013735 | 20020409 | 2033 DEL MEMO BRIDGE/DELAWARE RIVER, DELR |
| 2014224 | 20020412 | 1333 DELAWARE RIVER/HOLLY OAK, DELR |
| 2017342 | 20020504 | 1533 DELAWARE RIVER/HIGH POWER LINES, DELR |
| 2018811 | 20020514 | 2033 DEL MEMO BRIDGE/DELAWARE RIVER, DELR |
| 2019107 | 20020516 | 1834 DELAWARE RIVER/RIVERVIEW BEACH, DELR |

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| 2020456 | 20020525 | 2933 AUGUSTINE BEACH/DELAWARE RIVER, DELR |
| 2020663 | 20020527 | 1833 BULKHEAD SHOAL/DELAWARE RIVER, DELR |
| 2021575 | 20020601 | 1834 BATTERY PARK/DELAWARE RIVER, DELR |
| 2021680 | 20020602 | 1133 DELAWARE RIVER/OLDMANS POINT, DELR |
| 2022162 | 20020605 | 1533 1533 DELAWARE RIVER, DELR |
| 2022217 | 20020605 | 1534 DELAWARE RIVER/PEA PATCH ISLAND, DELR |
| 2022707 | 20020609 | 2033 DEL MEMO BRIDGE/DELAWARE RIVER, DELR |
| 2022739 | 20020609 | 1333 DELAWARE RIVER/OLDMANS CREEK, DELR |
| 2023582 | 20020615 | 1533 1533 DELAWARE RIVER, DELR |
| 2023626 | 20020615 | 2033 DEL MEMO BRIDGE/DELAWARE RIVER, DELR |
| 2023752 | 20020616 | 2033 DEL MEMO BRIDGE/DELAWARE RIVER, DELR |
| 2024432 | 20020621 | 1533 1533 DELAWARE RIVER, DELR |
| 2024552 | 20020622 | 2033 DEL MEMO BRIDGE/DELAWARE RIVER, DELR |
| 2025017 | 20020625 | 1534 DELAWARE RIVER/PEA PATCH ISLAND, DELR |
| 2025026 | 20020625 | 2033 DEL MEMO BRIDGE/DELAWARE RIVER, DELR |
| 2025058 | 20020626 | 1534 DELAWARE RIVER/PEA PATCH ISLAND, DELR |
| 2025187 | 20020626 | 1534 C AND D CANAL/DELAWARE RIVER, DELR |
| 2026088 | 20020702 | 1133 DELAWARE RIVER/FOX POINT PARK, DELR |
| 2026251 | 20020703 | 1333 DELAWARE RIVER/PA STATE LINE, DELR |
| 2026311 | 20020704 | 2033 DEL MEMO BRIDGE/DELAWARE RIVER, DELR |
| 2026338 | 20020704 | 1534 C AND D CANAL/DELAWARE RIVER, DELR |
| 2026558 | 20020705 | 1834 DELAWARE RIVER/RIVERVIEW BEACH, DELR |
| 2026660 | 20020706 | 2933 ALLOWAY CREEK/DELAWARE RIVER, DELR |
| 2026820 | 20020707 | 1333 DELAWARE RIVER/HARBOR HOUSE APTS, DELR |
| 2027004 | 20020709 | 1534 DELAWARE RIVER/SALEM RIVER, DELR |
| 2027434 | 20020711 | 2933 DELAWARE RIVER/REEDY ISLAND BAR, DELR |
| 2027875 | 20020714 | 1834 DELAWARE RIVER/RIVERVIEW BEACH, DELR |
| 2027961 | 20020715 | 1534 DELAWARE RIVER/SALEM COVE, DELR |
| 2028102 | 20020716 | 2033 DEL MEMO BRIDGE/DELAWARE RIVER, DELR |
| 2028237 | 20020717 | 1534 C AND D CANAL/DELAWARE RIVER, DELR |
| 2029008 | 20020722 | 1534 DELAWARE RIVER/PEA PATCH ISLAND, DELR |
| 2029430 | 20020725 | 2933 AUGUSTINE BEACH/DELAWARE RIVER, DELR |
| 2029888 | 20020728 | 2933 AUGUSTINE BEACH/DELAWARE RIVER, DELR |
| 2031016 | 20020804 | 1533 DELAWARE RIVER/HIGH POWER LINES, DELR |
| 2031047 | 20020804 | 2033 DEL MEMO BRIDGE/DELAWARE RIVER, DELR |
| 2031062 | 20020804 | 2033 DEL MEMO BRIDGE/DELAWARE RIVER, DELR |
| 2031139 | 20020805 | 1533 DELAWARE RIVER/HIGH POWER LINES, DELR |
| 2031643 | 20020808 | 1534 DELAWARE RIVER/SALEM COVE, DELR |
| 2031979 | 20020810 | 1834 DELAWARE RIVER/RIVERVIEW BEACH, DELR |
| 2033017 | 20020817 | 1533 1533 DELAWARE RIVER, DELR |
| 2033214 | 20020818 | 2033 DEL MEMO BRIDGE/DELAWARE RIVER, DELR |
| 2034274 | 20020825 | 1534 C AND D CANAL/DELAWARE RIVER, DELR |
| 2038261 | 20020922 | 2933 AUGUSTINE BEACH/DELAWARE RIVER, DELR |
| 2039157 | 20020928 | 1534 DELAWARE RIVER/PEA PATCH ISLAND, DELR |
| 2039937 | 20021003 | 2933 DEL RIVER BAKER RANGE |
| 2041243 | 20021012 | 2933 DELAWARE RIVER/REEDY ISLAND, DELR |
| 2045255 | 20021109 | 1534 DELAWARE RIVER/SALEM COVE, DELR |
| 2046762 | 20021120 | 1533 1533 DELAWARE RIVER, DELR |
| 2050759 | 20021218 | 2933 ARTIFICIAL ISLAND/DELAWARE RIVER, DELR |
| 2052620 | 20021231 | 2933 DELAWARE RIVER/REEDY ISLAND BAR, DELR |
| 3000884 | 20030107 | 2933 DELAWARE RIVER/REEDY ISLAND, DELR |
| 3003463 | 20030128 | 1533 1533 DELAWARE RIVER, DELR |

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| 3004699 | 20030204 | 1133 DELAWARE RIVER/FOX POINT PARK, DELR |
| 3007601 | 20030222 | 2033 DEL MEMO BRIDGE/DELAWARE RIVER, DELR |
| 3011941 | 20030324 | 1533 1533 DELAWARE RIVER, DELR |
| 3012692 | 20030329 | 1133 DELAWARE RIVER/FOX POINT PARK, DELR |
| 3016273 | 20030418 | 1534 C AND D CANAL/DELAWARE RIVER, DELR |
| 3016553 | 20030427 | 2033 DEL MEMO BRIDGE/DELAWARE RIVER, DELR |
| 3016620 | 20030427 | 1333 DELAWARE RIVER/HOLLY OAK, DELR |
| 3016793 | 20030428 | 2033 DEL MEMO BRIDGE/DELAWARE RIVER, DELR |
| 3017506 | 20030503 | 2933 AUGUSTINE BEACH/DELAWARE RIVER, DELR |
| 3017614 | 20030504 | 2933 DELAWARE RIVER/REEDY ISLAND, DELR |
| 3017773 | 20030505 | 2933 DELAWARE RIVER/REEDY ISLAND BAR, DELR |
| 3018944 | 20030514 | 1533 DELAWARE RIVER/HIGH POWER LINES, DELR |
| 3018952 | 20030514 | 1533 BRANCH CANAL, DELAWARE CITY |
| 3021525 | 20030602 | 2933 DELAWARE RIVER/ELSINBORO POINT, DELR |
| 3022105 | 20030607 | 1533 BRANCH CHANNEL/DELAWARE RIVER, DELR |
| 3022254 | 20030608 | 1834 DELAWARE RIVER/RIVERVIEW BEACH, DELR |
| 3023123 | 20030613 | 1533 1533 DELAWARE RIVER, DELR |
| 3023455 | 20030615 | 1534 DELAWARE RIVER/PEA PATCH ISLAND, DELR |
| 3024359 | 20030621 | 1533 BRANCH CANAL/DELAWARE RIVER, DELR |
| 3026000 | 20030701 | 2933 AUGUSTINE BEACH/DELAWARE RIVER, DELR |
| 3026415 | 20030704 | 1534 DELAWARE RIVER/PEA PATCH ISLAND, DELR |
| 3026723 | 20030706 | 1834 CEDAR POINT/DELAWARE RIVER, DELR |
| 3027457 | 20030711 | 1133 DELAWARE RIVER/DUPONT EDGEMOOR PL, DELR |
| 3027547 | 20030712 | 1834 BATTERY PARK/DELAWARE RIVER, DELR |
| 3027595 | 20030712 | 2933 AUGUSTINE BEACH/DELAWARE RIVER, DELR |
| 3027744 | 20030713 | 2933 AUGUSTINE BEACH/DELAWARE RIVER, DELR |
| 3029438 | 20030725 | 1534 C AND D CANAL/DELAWARE RIVER, DELR |
| 3029792 | 20030728 | 2933 AUGUSTINE BEACH/DELAWARE RIVER, DELR |
| 3029974 | 20030729 | 1534 DELAWARE RIVER/PEA PATCH ISLAND, DELR |
| 3030188 | 20030730 | 1834 BATTERY PARK/DELAWARE RIVER, DELR |
| 3030206 | 20030730 | 1834 BATTERY PARK/DELAWARE RIVER, DELR |
| 3030308 | 20030731 | 1133 DELAWARE RIVER/FOX POINT PARK, DELR |
| 3030878 | 20030804 | 2033 150 DELAWARE RIVER, DELR |
| 3032328 | 20030814 | 1534 DELAWARE RIVER/PEA PATCH ISLAND, DELR |
| 3032834 | 20030818 | 1534 DELAWARE RIVER/PEA PATCH ISLAND, DELR |
| 3033383 | 20030821 | 2933 DELAWARE RIVER/OAKWOOD BEACH, DELR |
| 3033902 | 20030824 | 2933 ARTIFICIAL ISLAND/DELAWARE RIVER, DELR |
| 3034647 | 20030829 | 1834 BATTERY PARK/DELAWARE RIVER, DELR |
| 3034767 | 20030830 | 1834 BATTERY PARK/DELAWARE RIVER, DELR |
| 3034771 | 20030830 | 2933 AUGUSTINE BEACH/DELAWARE RIVER, DELR |
| 3034936 | 20030831 | 2933 DELAWARE RIVER/REEDY ISLAND BAR, DELR |
| 3035924 | 20030907 | 1534 C AND D CANAL/DELAWARE RIVER, DELR |
| 3037413 | 20030916 | 1833 DEEMERS BEACH/DELAWARE RIVER, DELR |
| 3038420 | 20030919 | 2033 DEL MEMO BRIDGE/DELAWARE RIVER, DELR |
| 3040590 | 20031002 | 2933 AUGUSTINE BEACH/DELAWARE RIVER, DELR |
| 3041490 | 20031008 | 1533 DELAWARE RIVER/HIGH POWER LINES, DELR |
| 3041657 | 20031009 | 2033 DEL MEMO BRIDGE/DELAWARE RIVER, DELR |
| 3042145 | 20031012 | 1133 DELAWARE RIVER/FOX POINT PARK, DELR |
| 3044857 | 20031030 | 1333 DELAWARE RIVER/HARBOR HOUSE APTS, DELR |
| 3045815 | 20031104 | 1333 DELAWARE RIVER SOUTH OF CLAYMONT |
| 3046388 | 20031109 | 1534 C AND D CANAL/DELAWARE RIVER, DELR |
| 3046932 | 20031113 | 1534 C AND D CANAL/DELAWARE RIVER, DELR |

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|---|---|---|
| 3046997 | 20031113 | 2933 DELAWARE RIVER AT THE REEDY ISLAND BAR |
| 4000764 | 20040105 | 2033 DEL MEMO BRIDGE/DELAWARE RIVER, DELR |
| 4016114 | 20040423 | 2933 DELAWARE RIVER/REEDY ISLAND, DELR |
| 4016209 | 20040424 | 2933 DELAWARE RIVER/REEDY ISLAND BAR, DELR |
| 4017780 | 20040505 | 1533 1533 DELAWARE RIVER, DELR |
| 4018404 | 20040509 | 2933 AUGUSTINE BEACH/DELAWARE RIVER, DELR |
| 4019048 | 20040513 | 2933 AUGUSTINE BEACH/DELAWARE RIVER, DELR |
| 4019605 | 20040517 | 1833 DEL MEMO BRIDGE/DELAWARE RIVER, DELR |
| 4020487 | 20040523 | 1533 DELAWARE RIVER/HIGH POWER LINES, DELR |
| 4020606 | 20040523 | 2933 ARTIFICIAL ISLAND/DELAWARE RIVER, DELR |
| 4020628 | 20040523 | 1534 DELAWARE RIVER/PEA PATCH ISLAND, DELR |
| 4021078 | 20040527 | 1533 DELAWARE RIVER/MOTIVA PIERS, DELR |
| 4021237 | 20040528 | 1133 DELAWARE RIVER/DUPONT EDGEMOOR PL, DELR |
| 4021344 | 20040529 | 2933 DELAWARE RIVER/REEDY ISLAND, DELR |
| 4021364 | 20040529 | 2933 ARTIFICIAL ISLAND/DELAWARE RIVER, DELR |
| 4021498 | 20040530 | 2933 AUGUSTINE BEACH/DELAWARE RIVER, DELR |
| 4021959 | 20040602 | 1534 C AND D CANAL/DELAWARE RIVER, DELR |
| 4022785 | 20040608 | 1133 DELAWARE RIVER/FOX POINT PARK, DELR |
| 4023477 | 20040612 | 2933 DELAWARE RIVER/REEDY ISLAND BAR, DELR |
| 4024516 | 20040618 | 1833 BULKHEAD SHOAL/DELAWARE RIVER, DELR |
| 4024608 | 20040619 | 2034 DEL MEMO BRIDGE/DELAWARE RIVER, DELR |
| 4024615 | 20040619 | 2034 DELAWARE RIVER/DUPONT CHAMBERS WO, DELR |
| 4024804 | 20040620 | 2933 DELAWARE RIVER/REEDY ISLAND, DELR |
| 4025191 | 20040623 | 2933 DELAWARE RIVER/REEDY ISLAND, DELR |
| 4025690 | 20040627 | 1333 DELAWARE RIVER/FOX POINT PARK, DELR |
| 4026642 | 20040703 | 1533 1533 DELAWARE RIVER, DELR |
| 4026648 | 20040703 | 2933 ARTIFICIAL ISLAND/DELAWARE RIVER, DELR |
| 4026723 | 20040704 | 1533 DELAWARE RIVER/HIGH POWER LINES, DELR |
| 4026751 | 20040704 | 1533 DELAWARE RIVER/HIGH POWER LINES, DELR |
| 4026907 | 20040705 | 2933 DELAWARE RIVER/REEDY ISLAND BAR, DELR |
| 4026971 | 20040706 | 1834 BATTERY PARK/DELAWARE RIVER, DELR |
| 4029206 | 20040720 | 1533 DELAWARE RIVER/HIGH POWER LINES, DELR |
| 4029376 | 20040721 | 1534 C AND D CANAL/DELAWARE RIVER, DELR |
| 4029787 | 20040724 | 1834 DELAWARE RIVER OFF PENNS BEACH |
| 4029829 | 20040725 | 2933 DELAWARE RIVER/REEDY ISLAND BAR, DELR |
| 4029867 | 20040725 | 1533 DELAWARE RIVER/FOX POINT PARK, DELR |
| 4030793 | 20040731 | 2933 ARTIFICIAL ISLAND/DELAWARE RIVER, DELR |
| 4031587 | 20040806 | 1534 DELAWARE RIVER/PEA PATCH ISLAND, DELR |
| 4031605 | 20040806 | 2034 DEL MEMO BRIDGE/DELAWARE RIVER, DELR |
| 4031698 | 20040807 | 1533 1533 DELAWARE RIVER, DELR |
| 4033851 | 20040822 | 1534 DELAWARE RIVER/SALEM RIVER, DELR |
| 4034383 | 20040826 | 1834 BATTERY PARK/DELAWARE RIVER, DELR |
| 4034567 | 20040827 | 1834 BATTERY PARK/DELAWARE RIVER, DELR |
| 4034668 | 20040828 | 1534 DELAWARE RIVER/SALEM RIVER, DELR |
| 4034685 | 20040828 | 2933 DELAWARE RIVER/OAKWOOD BEACH, DELR |
| 4034771 | 20040829 | 2933 ARTIFICIAL ISLAND/DELAWARE RIVER, DELR |
| 4035829 | 20040905 | 1834 BATTERY PARK/DELAWARE RIVER, DELR |
| 4036548 | 20040910 | 2933 ARTIFICIAL ISLAND/DELAWARE RIVER, DELR |
| 4036691 | 20040911 | 1533 DELAWARE RIVER/HIGH POWER LINES, DELR |
| 4037782 | 20040918 | 2933 AUGUSTINE BEACH/DELAWARE RIVER, DELR |
| 4041310 | 20041010 | 1534 DELAWARE RIVER/SALEM RIVER, DELR |
| 4041329 | 20041010 | 1333 DELAWARE RIVER/PA STATE LINE, DELR |

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|---|---|---|---|
| 4041344 | 20041010 | 2933 | DELAWARE RIVER/REEDY ISLAND BAR, DELR |
| 4048107 | 20041127 | 1533 | DELAWARE RIVER/HIGH POWER LINES, DELR |
| 4048585 | 20041201 | 2033 | DELAWARE RIVER OPPOSITE PENNSVILLE |
| 4050030 | 20041211 | 1834 | DELAWARE RIVER/PENNS BEACH, DELR |
| 4050081 | 20041212 | 1834 | DELAWARE RIVER/NEW CASTLE FLATS, DELR |
| 4052213 | 20041227 | 1534 | DELAWARE RIVER/PEA PATCH ISLAND, DELR |
| 4052449 | 20041228 | 2933 | DELAWARE RIVER/MILL CREEK COVE, DELR |
| 5015786 | 20050403 | 2933 | DELAWARE RIVER/REEDY ISLAND, DELR |
| 5016055 | 20050405 | 2933 | DELAWARE RIVER/REEDY ISLAND, DELR |
| 5016098 | 20050417 | 2933 | DELAWARE RIVER/OAKWOOD BEACH, DELR |
| 5016470 | 20050419 | 2933 | DELAWARE RIVER NEAR REEDY ISLAND BAR |
| 5020902 | 20050504 | 2933 | ARTIFICIAL ISLAND/DELAWARE RIVER, DELR |
| 5021606 | 20050508 | 1534 | DELAWARE RIVER/SALEM COVE, DELR |
| 5021776 | 20050509 | 1533 | DELAWARE RIVER/HIGH POWER LINES, DELR |
| 5022424 | 20050513 | 1534 | C AND D CANAL/DELAWARE RIVER, DELR |
| 5022457 | 20050513 | 1534 | DELAWARE RIVER/PEA PATCH ISLAND, DELR |
| 5022717 | 20050515 | 2933 | AUGUSTINE BEACH/DELAWARE RIVER, DELR |
| 5023128 | 20050517 | 2933 | DELAWARE RIVER/REEDY ISLAND, DELR |
| 5024019 | 20050522 | 2933 | DELAWARE RIVER/PORT PENN, DELR |
| 5025003 | 20050526 | 1834 | BATTERY PARK/DELAWARE RIVER, DELR |
| 5025326 | 20050530 | 2933 | DELAWARE RIVER/AUGUSTINE BEACH |
| 5026221 | 20050604 | 1534 | DELAWARE RIVER/PEA PATCH ISLAND, DELR |
| 5027051 | 20050609 | 1533 | DELAWARE RIVER/PREMCOR PIERS, DELR |
| 5027624 | 20050612 | 1133 | DELAWARE RIVER/FOX POINT PARK, DELR |
| 5027763 | 20050613 | 1534 | C AND D CANAL/DELAWARE RIVER, DELR |
| 5028505 | 20050618 | 1533 | 1533 DELAWARE RIVER, DELR |
| 5029705 | 20050625 | 1533 | 1533 DELAWARE RIVER, DELR |
| 5029712 | 20050625 | 1534 | DELAWARE RIVER/PEA PATCH ISLAND, DELR |
| 5030596 | 20050630 | 1534 | DELAWARE RIVER/SALEM RIVER, DELR |
| 5031107 | 20050703 | 2933 | DELAWARE RIVER/REEDY ISLAND BAR, DELR |
| 5034500 | 20050723 | 1533 | DELAWARE RIVER/HIGH POWER LINES, DELR |
| 5035825 | 20050731 | 2933 | DELAWARE RIVER ACROSS FROM ARTIFICIAL IS |
| 5036572 | 20050804 | 2034 | DEL MEMO BRIDGE/DELAWARE RIVER, DELR |
| 5036869 | 20050806 | 1533 | DELAWARE RIVER/PREMCOR PIERS, DELR |
| 5037005 | 20050807 | 1534 | C AND D CANAL/DELAWARE RIVER, DELR |
| 5038118 | 20050813 | 1333 | DELAWARE RIVER OPPOSITE GRUBBS LANDING |
| 5039375 | 20050821 | 2933 | AUGUSTINE BEACH/DELAWARE RIVER, DELR |
| 5040087 | 20050825 | 1133 | DELAWARE RIVER/FOX POINT PARK, DELR |
| 5040247 | 20050826 | 1333 | DELAWARE RIVER/HOLLY OAK, DELR |
| 5040573 | 20050828 | 1834 | DELAWARE RIVER/PENNS BEACH, DELR |
| 5040639 | 20050829 | 1534 | DELAWARE RIVER/SALEM RIVER, DELR |
| 5041409 | 20050902 | 1534 | C AND D CANAL/DELAWARE RIVER, DELR |
| 5041442 | 20050902 | 2034 | DEL MEMO BRIDGE/DELAWARE RIVER, DELR |
| 5041716 | 20050904 | 1834 | DELAWARE RIVER/NEW CASTLE FLATS, DELR |
| 5042598 | 20050909 | 1534 | DELAWARE RIVER/PEA PATCH ISLAND, DELR |
| 5045097 | 20050923 | 1133 | DELAWARE RIVER/OLDMANS POINT, DELR |
| 5045286 | 20050924 | 1133 | CHERRY ISLAND FLAT/DELAWARE RIVER, DELR |
| 5045448 | 20050925 | 2933 | ARTIFICIAL ISLAND/DELAWARE RIVER, DELR |
| 5046481 | 20051001 | 1534 | DELAWARE RIVER/PEA PATCH ISLAND, DELR |
| 5046616 | 20051002 | 1533 | DELAWARE RIVER/HIGH POWER LINES, DELR |
| 5048993 | 20051016 | 1834 | BATTERY PARK/DELAWARE RIVER, DELR |
| 5049630 | 20051020 | 2933 | DELAWARE RIVER/REEDY ISLAND, DELR |

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|---|---|---|
| 5050206 | 20051024 | 2933 ARTIFICIAL ISLAND/DELAWARE RIVER, DELR |
| 5052298 | 20051105 | 2933 DELAWARE RIVER/REEDY ISLAND, DELR |
| 5054009 | 20051115 | 2034 DEL MEMO BRIDGE/DELAWARE RIVER, DELR |
| 5056744 | 20051201 | 1133 DELAWARE RIVER/FOX POINT PARK, DELR |
| 6006300 | 20060207 | 1534 C AND D CANAL/DELAWARE RIVER, DELR |
| 6008048 | 20060217 | 1534 C AND D CANAL/DELAWARE RIVER, DELR |
| 6010862 | 20060306 | 1533 1533 DELAWARE RIVER, DELR |
| 6016462 | 20060407 | 1534 BULKHEAD SHOAL CHA/DELAWARE RIVER, DELR |
| 6017099 | 20060411 | 2933 ARTIFICIAL ISLAND/DELAWARE RIVER, DELR |
| 6018714 | 20060420 | 1534 C AND D CANAL/DELAWARE RIVER, DELR |
| 6020074 | 20060428 | 1634 DELAWARE CITY CANA/DELAWARE RIVER, DELR |
| 6020553 | 20060501 | 2933 DELAWARE RIVER/SOUTH OF CANAL |
| 6022072 | 20060509 | 1133 DELAWARE RIVER/DUPONT EDGEMOOR PL, DELR |
| 6027267 | 20060606 | 1633 BRANCH CANAL/DELAWARE RIVER, DELR |
| 6027274 | 20060606 | 1533 BRANCH CANAL/DELAWARE RIVER, DELR |
| 6027894 | 20060610 | 1533 DELAWARE RIVER/C/D CANAL |
| 6028513 | 20060613 | 2933 ARTIFICIAL ISLAND/DELAWARE RIVER, DELR |
| 6033353 | 20060709 | 1834 DELAWARE RIVER/RIVERVIEW BEACH, DELR |
| 6033395 | 20060710 | 2933 AUGUSTINE BEACH/DELAWARE RIVER, DELR |
| 6034983 | 20060718 | 1834 DELAWARE RIVER/PENNS BEACH, DELR |
| 6036258 | 20060725 | 2933 DELAWARE RIVER/MILL CREEK COVE, DELR |
| 6036509 | 20060727 | 1533 1533 DELAWARE RIVER, DELR |
| 6036787 | 20060728 | 1834 BATTERY PARK/DELAWARE RIVER, DELR |
| 6037310 | 20060731 | 2033 DELAWARE RIVER/TRAVIS COVE, DELR |
| 6038219 | 20060805 | 2933 AUGUSTINE BEACH/DELAWARE RIVER, DELR |
| 6038394 | 20060806 | 1133 DELAWARE RIVER/FOX POINT PARK, DELR |
| 6040038 | 20060816 | 1533 DELAWARE RIVER/HIGH POWER LINES, DELR |
| 6043443 | 20060903 | 2933 DELAWARE RIVER/REEDY ISLAND, DELR |
| 6043595 | 20060904 | 1533 DELAWARE RIVER/HIGH POWER LINES, DELR |
| 6044592 | 20060910 | 2933 DELAWARE RIVER/ST GEORGES CREEK, DELR |
| 6044983 | 20060912 | 2933 AUGUSTINE BEACH/DELAWARE RIVER, DELR |
| 6045912 | 20060918 | 2933 DELAWARE RIVER/OAKWOOD BEACH, DELR |

8/18/2006 12:52:32PM

# DNREC Air and Waste Management Complaint Files

Object Of Complaint:
Start Date: End Date: Action Comment:
Location: delaware river Reported By:
Nature: Disposition:
County: Division: Section: Assigned EPO:

| Year | Complaint # | Date | EPO | Location | Nature | Object of Complaint Name | Action Comment |
|---|---|---|---|---|---|---|---|
| 1986 | 10068 | 07/12/1986 | 51 | DELAWARE RIVER & BRANCH CANAL | OIL SPILL | TEXACO | CLOSED |
| 1986 | 10687 | 10/01/1986 | 51 | DELAWARE RIVER ACROSS FROM DP&L EDGEMOOR | OIL SPILL | Unknown(no info) | CLOSED |
| 1988 | 1851 | 03/14/1988 | 11 | DELAWARE RECLAMATION CENTER | DUMPING | Unknown(no info) | |
| 1989 | 2145 | 06/24/1989 | 703 | DELAWARE RIVER OFF CLAYMONT | OIL SPILL | PRESIDENTE RIVERA TANKER | SERT |
| 1989 | 11339 | 10/27/1989 | 704 | DELAWARE RIVER NEAR PIER AREA OF STAR ENTERPR | OIL SPILL | Unknown | CLOSED |
| 1990 | 1953 | 01/31/1990 | 704 | DELAWARE RIVER AT MARCUS HOOK | OIL SPILL | Unknown(no info) | |
| 1990 | 2522 | 03/31/1990 | 702 | DELAWARE RIVER OFF EDGEMOOR | OIL SPILL | Unknown(no info) | CLOSED |
| 1990 | 10474 | 08/07/1990 | 707 | WILMINGTON DELAWARE RIVER FM CLAYMONT TO DE MEMORIAL BR | OIL SPILL | SUN OIL REFINERY | CLOSED |
| 1990 | 10720 | 08/25/1990 | 704 | DELAWARE RIVER DUPONT CHAMBERS WORKS | DISCHARGE | DUPONT-CHAMBER WORKS | CLOSED |
| 1990 | 10916 | 09/10/1990 | 702 | DELAWARE RIVER AT BUOY 32 | OIL SPILL | VESSEL WORLD VEAL | CLOSED |
| 1991 | 191 | 01/28/1991 | 701 | DELAWARE RIVER DELAWARE CITY AREA | OIL SPILL | VESSEL FAITH ONE | CLOSED |
| 1991 | 1250 | 05/06/1991 | 707 | DELAWARE RIVER, PA & DE BORDER | OIL SPILL | SUN OIL CO. | CLOSED |
| 1992 | 133 | 01/10/1992 | 709 | DELAWARE RIVER OFF PENNSVILLE | ABANDONED DRUMS | Unknown(no info) | USCG |
| 1992 | 597 | 02/19/1992 | 709 | DELAWARE RIVER (AROUND STAR ENTER. PORT) | OIL SPILL | Unknown(no info) | CLOSED |
| 1992 | 672 | 03/07/1992 | 703 | DELAWARE RIVER AT MEMORIAL BRIDGE | DISCHARGE | Unknown(no info) | CLOSED |
| 1992 | 1445 | 04/22/1992 | 712 | DELAWARE RIVER - PA SIDE | OIL SPILL | MODULAR HOME COMMUNITIE | CLOSED |
| 1992 | 2485 | 06/23/1992 | 707 | DELAWARE RIVER | OIL SPILL | Unknown(no info) | CLOSED |
| 1993 | 203 | 01/13/1993 | 704 | DELAWARE RIVER BEHIND GENERAL CHEMICAL | OIL SPILL | Unknown(no info) | CLOSED |
| 1993 | 1435 | 03/24/1993 | 712 | DELAWARE RIVER NEAR GENERAL CHEMICAL | SPILL | Unknown(no info) | CLOSED |
| 1993 | 1463 | 03/25/1993 | 701 | DELAWARE RIVER FROM PENSVILLE NJ | DISCHARGE | Unknown(no info) | CLOSED |
| 1993 | 1629 | 04/09/1993 | 709 | DELAWARE RIVER 3 MI N/O DELAWARE MEM BRIDGE | OIL SPILL | Unknown(no info) | ERB C BERLIN |
| 1993 | 2318 | 04/26/1993 | 712 | DELAWARE RIVER | DISCHARGE | Unknown(no info) | ERB AW-17 |
| 1993 | 2504 | 05/04/1993 | 711 | DELAWARE RIVER | SPILL | DUPONT EDGEMOOR | CLOSED |
| 1993 | 3367 | 06/13/1993 | 703 | DELAWARE RIVER NEAR MARCUS HOOK | OIL SPILL | SUN OIL REFINERY / MARCUS | SERT JACKSON |
| 1993 | 3498 | 06/18/1993 | 702 | DELAWARE RIVER | DIESEL FUEL SPILL | SAFETY KLEEN | CLOSED |

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8/18/2006 12:52:32PM

# DNREC Air and Waste Management Complaint Files

Object Of Complaint:
Start Date: End Date: Action Comment:
Location: delaware r% Reported By:
Nature: Disposition:
County: Division: Section: Assigned EPO:

| Year | Complaint # | Date | EPO | Location | Nature | Object of Complaint Name | Action Comment |
|---|---|---|---|---|---|---|---|
| 1993 | 3848 | 07/03/1993 | 711 | DELAWARE RT 202 FAIRFAX AREA | ODOR | Unknown(no info) | CLOSED |
| 1993 | 3992 | 07/13/1993 | 702 | DELAWARE RIVER | SPILL | STAR ENTERPRISE | SEE COMP 3970 |
| 1993 | 6044 | 11/12/1993 | 704 | DELAWARE RIVER | SHEEN | Unknown(no info) | CLOSED |
| 1994 | 327 | 01/31/1994 | 702 | DELAWARE RIVER B/T TEXACO DOCKS & C&D CANAL | SPILL | Unknown(no info) | CLOSED |
| 1994 | 2128 | 05/24/1994 | 712 | DELAWARE RIVER | ABANDONED CYLINDER | Unknown(no info) | CLOSED |
| 1994 | 2276 | 06/02/1994 | 707 | DELAWARE RIVER, STAR ENTERPRISE | DISCHARGE | STAR ENTERPRISE | CLOSED |
| 1994 | 3342 | 07/31/1994 | 700 | DELAWARE RIVER | DISCHARGE | TOM NEUMANN / MARISPOND | SEE COMP 3341 |
| 1994 | 4029 | 09/11/1994 | 706 | DELAWARE RIVER | OIL SHEEN | Unknown(no info) | CLOSED |
| 1995 | 126 | 01/06/1995 | 708 | DELAWARE RIVER, DELAWARE CITY | DISCHARGE | Unknown(no info) | CLOSED |
| 1995 | 1914 | 04/12/1995 | 707 | DELAWARE RIVER | OIL SPILL | Unknown(no info) | SEE COMP 1904 |
| 1995 | 2834 | 05/23/1995 | 709 | DELAWARE RIVER N/O STAR ENTERPRISE DOCKS | PERMIT CHECK | STAR ENTERPRISE | CLOSED |
| 1995 | 3179 | 06/08/1995 | 700 | DELAWARE RIVER | DUMPING | Unknown(no info) | CLOSED |
| 1995 | 3525 | 06/24/1995 | 707 | DELAWARE RIVER | SHEEN / SPILL | Unknown(no info) | CLOSED |
| 1996 | 15 | 01/02/1996 | 711 | DELAWARE RIVER @ EDGEMOOR | SPILL | Unknown(no info) | CLOSED |
| 1996 | 69 | 01/10/1996 | 702 | DELAWARE RIVER 3-C DOCK | SPILL | SUN OIL REFINERY | CLOSED |
| 1996 | 209 | 01/23/1996 | 704 | DELAWARE RIVER NEAR FOX POINT IN THE CHANNEL | ABANDONED DRUMS | Unknown(no info) | CLOSED |
| 1996 | 1408 | 04/02/1996 | 704 | DELAWARE RIVER @ HAY RD WWTP, WILMINGTON | DISCHARGE | CITY OF WILMINGTON PUBLIC | CLOSED |
| 1996 | 1862 | 04/18/1996 | 711 | DELAWARE RIVER NEAR THE STAR DOCKS DEL CITY | SPILL | Unknown(no info) | CLOSED |
| 1996 | 1989 | 04/25/1996 | 711 | DELAWARE RIVER S/O PEA PATCH ISLAND | DISABLED VESSEL | A-I TOWING INC / BARGE PPT | CLOSED |
| 1996 | 2414 | 05/16/1996 | 709 | DELAWARE RIVER AT PEA PATCH ISLAND | SPILL | Unknown(no info) | CLOSED |
| 1996 | 3102 | 06/15/1996 | 704 | DELAWARE RIVER NJ SIDE N/O REEDY ISL PORT PEN | SPILL | Unknown(no info) | CLOSED |
| 1996 | 4016 | 07/22/1996 | 704 | DELAWARE RIVER | SPILL | EAGLE POINT | CLOSED |
| 1996 | 4139 | 07/26/1996 | 702 | DELAWARE RIVER, GLOUCSTER, NJ | SPILL | Unknown(no info) | CLOSED |
| 1996 | 4642 | 08/19/1996 | 705 | DELAWARE RIVER W/S NEAR CHRISTIANA RIVER | DISCHARGE | Unknown(no info) | CLOSED |
| 1996 | 5182 | 09/18/1996 | 707 | DELAWARE RIVER, DELAWARE COUNTY, PA | SPILL | Unknown(no info) | CLOSED |
| 1996 | 5480 | 10/03/1996 | 707 | DELAWARE RIVER @ STAR ENTERPRISE | OIL SPILL | VOSHELL, FREDERICK | CLOSED |

6/16/2008 12:52:32PM

# DNREC Air and Waste Management Complaint Files

Object Of Complaints:
Start Date: End Date: Action Comment:
Location: delaware r% Reported By:
Nature: Disposition:
County: Division: Section: Assigned EPO:

| Year | Complaint # | Date | EPO | Location | Nature | Object of Complaint Name | Action Comment |
|---|---|---|---|---|---|---|---|
| 1996 | 6088 | 11/05/1996 | 707 | DELAWARE RIVER | SPILL | SUN OIL REFINERY | CLOSED |
| 1996 | 6490 | 11/26/1996 | 705 | DELAWARE RIVER NEAR PENNS GROVE NJ | SPILL | Unknown(no info) | CLOSED |
| 1996 | 6528 | 12/02/1996 | 704 | DELAWARE RIVERMOBIL OIL REFINERY | SPILL | MOBILE OIL CO. | CLOSED |
| 1996 | 6878 | 12/16/1996 | 707 | DELAWARE RIVER BY DP&L IN EDGEMOOR | SPILL | Unknown(no info) | CLOSED |
| 1996 | 6883 | 12/16/1996 | 707 | DELAWARE RIVER IN EDGEMOOR BY FOX POINT PARK | SPILL | Unknown(no info) | CLOSED |
| 1997 | 152 | 01/15/1997 | 709 | DELAWARE RIVER | SPILL | VAN BROTHERS | CLOSED |
| 1997 | 467 | 02/10/1997 | 705 | DELAWARE RIVER | SPILL | DELAWARE RIVER | |
| 1997 | 517 | 02/14/1997 | 702 | DELAWARE RIVER | SPILL | Unknown(no info) | CLOSED |
| 1997 | 719 | 03/02/1997 | 704 | DELAWARE RIVER | SPILL | Unknown(no info) | CLOSED |
| 1997 | 882 | 03/14/1997 | 702 | DELAWARE RECYCLE LAN | FIRE | DELAWARE RECYCLABLE PRC | CLOSED |
| 1997 | 899 | 03/17/1997 | 711 | DELAWARE RIVER | DISCHARGE | CITY OF WILMINGTON WASTE | NR4934 |
| 1997 | 1106 | 03/28/1997 | 709 | DELAWARE RIVER | SPILL | ICI AMERICAS | CLOSED |
| 1997 | 3039 | 07/12/1997 | 704 | DELAWARE RIVER | SPILL | SUN OIL CO | CLOSE |
| 1997 | 3702 | 08/14/1997 | 709 | DELAWARE RIVER N/O DELAWARE CITY | SPILL | Unknown(no info) | CLOSED |
| 1997 | 3709 | 08/14/1997 | 707 | DELAWARE RIVER | DUMPING | Unknown(no info) | CLOSED |
| 1997 | 4295 | 09/03/1997 | 711 | DELAWARE RECYCLEABLE | SPILL | DRPI | CLOSED |
| 1997 | 5245 | 10/17/1997 | 707 | DELAWARE RIVER | SPILL | Unknown(no info) | CLOSED |
| 1997 | 5642 | 11/10/1997 | 704 | DELAWARE RECYCLING | O/B | DELAWARE RECYCLABLE PRC | CLOSED |
| 1998 | 30 | 01/03/1998 | 707 | DELAWARE RIVER | SPILL | Unknown | CLOSED |
| 1998 | 756 | 02/18/1998 | 711 | DELAWARE RIVER | EXCEEDANCE | UNKNOWN | CLOSED |
| 1998 | 1404 | 03/27/1998 | 704 | DELAWARE RIVER NEAR NEW CASTLE | SPILL | UNKNOWN | CLOSED |
| 1998 | 2192 | 05/13/1998 | 707 | DELAWARE RIVER CAMDNE NJ | SPILL | MCCALLESTER TUG | CLOSED |
| 1998 | 2421 | 05/26/1998 | 711 | DELAWARE RT 9 NORTH OF NEW CASTLE NEW CASTLE | SPILL | REGNIERS REFRIGERATED ED | NR7418 |
| 1998 | 2834 | 06/13/1998 | 711 | DELAWARE RIVER VICTORY BUS GARAGE 110 VICTORY | SPILL | HOPKINS, RON T/A SEPTA | CLOSED |
| 1998 | 3325 | 07/10/1998 | 707 | DELAWARE RIVER WILMINGTON | SPILL | ZENECA | CLOSED |
| 1998 | 4378 | 09/03/1998 | 702 | DELAWARE RIVER | SPILL | UNKNOWN | CLOSED |
| 1998 | 4380 | 09/03/1998 | 702 | DELAWARE RIVER | SPILL | UNKNOWN | CLOSED |
| 1998 | 4551 | 09/14/1998 | 704 | DELAWARE RIVER | SPILL | SCOPIO SHIP MANAAGE | CLOSED |
| 1998 | 4552 | 09/14/1998 | 704 | DELAWARE RIVER | EXCEEDANCE | UNKNOWN | CLOSED |
| 1998 | 4553 | 09/14/1998 | 704 | DELAWARE RIVER | SPILL | UNKNOWN | CLOSED |
| 1998 | 4995 | 10/14/1998 | 707 | DELAWARE RIVER AT MOTIVA ENTERPRISE6 DE CITY | EXCEEDANCE | NEW IDEAL SHIPPING CORP | NR7903 |

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# DNREC Air and Waste Management Complaint Files

Object Of Complaints:
Start Date: End Date: Action Comment:
Location: delaware r% Reported By:
Nature: Disposition:
County: Division: Section: Assigned EPO:

| Year | Complaint # | Date | EPO | Location | Nature | Object of Complaint Name | Action Comment |
|---|---|---|---|---|---|---|---|
| 1998 | 5597 | 11/22/1998 | 707 | DELAWARE RIVER | SPILL | UNKNOWN | CLOSED |
| 1998 | 6008 | 12/17/1998 | 709 | DELAWARE RIVER PORT OF WILMINGTON | EROSION | US ARMY CORP OF ENGINEEF | CLOSED |
| 1999 | 143 | 01/12/1999 | 705 | DELAWARE RIVER | RELEASE | NRC | CLOSED |
| 1999 | 362 | 01/28/1999 | 707 | DELAWARE RIVER GLOUCHESTER NJ | SPILL | UNKNOWN | CLOSED |
| 1999 | 757 | 02/18/1999 | 711 | DELAWARE RIVER AT THE PENN TERMINAL CHESTER | SPILL | DROOP, RON / MORAN DRYBU | CLOSED |
| 1999 | 827 | 02/24/1999 | 709 | DELAWARE REFINERY | EXCEEDANCE | DP&L | CLOSED |
| 1999 | 898 | 03/01/1999 | 704 | DELAWARE RIVER | EXCEEDANCE | UNKNOWN | CLOSED |
| 1999 | 1239 | 03/24/1999 | 702 | DELAWARE RIVER PENN | EXCEEDANCE | UNKNOWN | CLOSED |
| 1999 | 2023 | 05/05/1999 | 709 | DELAWARE RIVER @ FOX POINT PARK | O/B | SHIP COLORADO | CLOSED |
| 1999 | 2265 | 05/18/1999 | 709 | DELAWARE RIVER TRAINER | SPILL | UNKNOWN | CLOSED |
| 1999 | 2394 | 05/22/1999 | 709 | DELAWARE RIVER MEMORIAL BRIDGE | EXCEEDANCE | UNKNOWN | CLOSED |
| 1999 | 2500 | 05/30/1999 | 702 | DELAWARE RIVER | SPILL | MOTIVA ENTERPRISE | CLOSED |
| 1999 | 2722 | 06/11/1999 | 711 | DELAWARE RIVER GENERAL CHEMICAL | ASSIST | GENERAL CHEMICAL | CLOSED |
| 1999 | 2736 | 06/12/1999 | 711 | DELAWARE RIVER MARCUS HOOK S/O CLAYMONT | EXCEEDANCE | UNKNOWN | CLOSED |
| 1999 | 2737 | 06/12/1999 | 711 | DELAWARE RIVER NORTH OF PEA PATCH ISLAND | ASSIST | SLAASCH, DAVID | CLOSED |
| 1999 | 4486 | 09/20/1999 | 711 | DELAWARE RIVER SWEDESBORO, NJ MILE MARKER 81 | SPILL | UNKNOWN | CLS |
| 1999 | 4764 | 10/03/1999 | 709 | DELAWARE RIVER-DEPTFORD NJ | SPILL | UNKNOWN | CLS |
| 1999 | 4963 | 10/18/1999 | 711 | DELAWARE RIVER OFF MARCUS HOOK | SPILL | UNKNOWN | CLOSED |
| 1999 | 5207 | 11/01/1999 | 709 | DELAWARE RIVER DEPTFORD NJ | SPILL | UNKNOWN | CLOSED |
| 1999 | 5243 | 11/02/1999 | 705 | DELAWARE RIVER | EXCEEDANCE | MARTRANS | CLOSED |
| 1999 | 6042 | 12/10/1999 | 711 | DELAWARE RIVER MARCUS HOOK | SPILL | UNKNOWN | CLOSED |
| 1999 | 6043 | 12/10/1999 | 711 | DELAWARE RIVER | SPILL | UNKNOWN | CLOSED |
| 1999 | 6097 | 12/15/1999 | 710 | DELAWARE RIVER | RELEASE | UNKNOWN | CLOSED |
| 2000 | 458 | 01/31/2000 | 703 | DELAWARE RIVER | EXCEEDANCE | | CLOSED |
| 2000 | 515 | 02/04/2000 | 704 | DELAWARE RIVER | SPILL | UNKNOWN | CLOSED |
| 2000 | 1519 | 03/30/2000 | 711 | DELAWARE RIVER N/O DELAWARE MEMORIAL BRIDGE | ASSIST | DECOWSKY, GREG | CLOSED |
| 2000 | 1802 | 04/04/2000 | 705 | DELAWARE RIVER ROCK JETTY | DUMPING | WILMINGTON WASTEWATER T | CLOSED |
| 2000 | 2342 | 05/15/2000 | 705 | DELAWARE RIVER | EXCEEDANCE | UNKNOWN | CLOSED |
| 2000 | 2441 | 05/22/2000 | 705 | DELAWARE RIVER | SPILL | MOTIVA ENTERPRISE | CLOSED |
| 2000 | 2471 | 05/23/2000 | 704 | DELAWARE RIVER AT I495 CALL BOX 4089 CLAYMONT | SPILL | UNKNOWN | CLOSED |

DE21804

8/18/2008 12:52:32PM

# DNREC Air and Waste Management Complaint Files

Object Of Complaints:
Start Date: End Date: Action Comment:
Location: delaware r% Reported By:
Nature: Disposition:
County: Division: Section: Assigned EPO:

| Year | Complaint # | Date | EPO | Location | Nature | Object of Complaint Name | Action Comment |
|---|---|---|---|---|---|---|---|
| 2000 | 2625 | 06/01/2000 | 702 | DELAWARE RIVER AND CHRISTINA RIVER | FISH KILL | UNKNOWN | CLOSED |
| 2000 | 3122 | 06/29/2000 | 707 | DELAWARE RIVER | SPILL | UNKNOWN | CLOSED |
| 2000 | 4086 | 08/22/2000 | 705 | DELAWARE RIVER NEW CASTLE CITY | SPILL | UNKNOWN | CLOSED |
| 2000 | 4094 | 08/22/2000 | 700 | DELAWARE RIVER NEW CASTLE | EXCEEDANCE | UNK | CLOSED |
| 2000 | 4260 | 09/01/2000 | 700 | DELAWARE RIVER | EXCEEDANCE | UNK | CLOSED |
| 2000 | 4293 | 09/04/2000 | 711 | DELAWARE RIVER MOTIVA | DUMPING | UNKNOWN | CLOSED |
| 2000 | 5027 | 10/12/2000 | 700 | DELAWARE RIVER NC | EXCEEDANCE | UNKNOWN | CLOSED |
| 2000 | 5669 | 12/08/2000 | 700 | DELAWARE RIVER | EXCEEDANCE | UNKNOWN | CLOSED |
| 2001 | 204 | 01/14/2001 | 702 | DELAWARE RIVER AT PA LINE | SPILL | PHILADELPHIA NAVAL SHIP YA | CLOSED |
| 2001 | 2846 | 06/16/2001 | 712 | DELAWARE RIVER AT PA | SPILL | UNKNOWN (NO INFO) | CLOSED |
| 2001 | 2930 | 06/20/2001 | 703 | DELAWARE RIVER/NEW CASTLE | SPILL | | CLOSED |
| 2001 | 5044 | 10/24/2001 | 707 | DELAWARE RIVER & BAY AUTHORITY NEW CASTLE | BIOA | N/A | CLOSED |
| 2002 | 1290 | 03/22/2002 | 711 | DELAWARE RIVER AT SUN OIL MARCUS HOOK PA | SPILL | SUN OIL CO | CLOSED |
| 2002 | 1353 | 03/28/2002 | 712 | DELAWARE RIVER NEAR MARCUS HOOK PA | SPILL | SUN OIL CO | CLOSED |
| 2002 | 1433 | 04/02/2002 | 705 | DELAWARE RIVER NEW CASTLE | SPILL | ICI AMERICAS | CLOSED |
| 2002 | 3554 | 07/30/2002 | 705 | DELAWARE RIVER INDUSTRIAL PARK | SPILL | TRANSRITE GLOBAL LOGISTIC | CLOSED |
| 2002 | 4512 | 08/25/2002 | 705 | DELAWARE RIVER CLAYMONT | ODOR | | CLOSED |
| 2002 | 4547 | 08/27/2002 | 711 | DELAWARE RIVER CLAYMONT | SPILL | UNKNOWN (NO INFO) | CLOSED |
| 2002 | 5663 | 10/25/2002 | 711 | DELAWARE RIVER AT WILMINGTON WWTP | ASSIST | US FILTERS | CLOSED |
| 2002 | 5740 | 11/01/2002 | 707 | DELAWARE RIVER CLAYMONT | NOTIFICATION | SUN OIL CO | CLOSED |
| 2002 | 6161 | 12/09/2002 | 711 | DELAWARE RIVER AT MARCUS HOOK PA | DUMPING | NORFOLK DREDGING | CLOSED |
| 2003 | 1434 | 04/16/2003 | 711 | DELAWARE RIVER @ MOTIVA DELAWARE CITY | SPILL | TUG BOAT DAUPHIN | CLOSED |
| 2003 | 1790 | 05/07/2003 | 711 | DELAWARE RIVER AND BAY AUTHORITY NEW CASTLE | BIOA | DELAWARE RIVER AND BAY A | CLOSED |
| 2003 | 2650 | 06/25/2003 | 712 | DELAWARE RIVER PENNSYLVANIA | SPILL | VANE LINE BUNKERING | CLOSED |
| 2003 | 2712 | 06/28/2003 | 711 | DELAWARE RIVER MARCUS HOOK PA | SPILL | SUN OIL CO | CLOSED |
| 2003 | 3507 | 08/16/2003 | 711 | DELAWARE RIVER AT MOTIVA DELAWARE CITY | SPILL | MOTIVA | NR12967 & NR129 |
| 2003 | 3875 | 09/16/2003 | 707 | DELAWARE RIVER/DEEMERS BEACH NEW CASTLE | ASSIST | | CLOSED |
| 2003 | 4328 | 10/08/2003 | 711 | DELAWARE RIVER AT PA STATE LINE | SPILL | UNKNOWN (NO INFO) | CLOSED |

DE21805

8/18/2006 12:52:32PM

# DNREC Air and Waste Management Complaint Files

Object Of Complaints:
Start Date: End Date: Action Comment:
Location: delaware r% Reported By:
Nature: Disposition:
County: Division: Section: Assigned EPO:

| Year | Complaint # | Date | EPO | Location | Nature | Object of Complaint Name | Action Comment |
|---|---|---|---|---|---|---|---|
| 2004 | 2415 | 06/28/2004 | 704 | DELAWARE RIVER | SPILL | Sunoco 0004 5581 Claymont | CLOSED |
| 2004 | 2595 | 07/07/2004 | 708 | DELAWARE RIVER @ DUPONT EDGEMORE | Spill | DuPont Edgemoor Plant | PENDING |
| 2004 | 2673 | 07/12/2004 | 711 | DELAWARE RIVER CLAYMONT | Spill | UNKNOWN | |
| 2004 | 3142 | 08/12/2004 | 711 | DELAWARE RIVER CLAYMONT | Spill | SUN OIL | |
| 2004 | 3464 | 09/06/2004 | 712 | DELAWARE RIVER @30 MILES NORTH OF DELAWARE | Spill | PENCO | CLOSED |
| 2004 | 3634 | 09/29/2004 | 704 | DELAWARE RIVER | Discharge | UniQema New Castle Plant | CLOSED |
| 2004 | 4741 | 11/27/2004 | 711 | DELAWARE RIVER | Spill | MV ATHOS 1 | |
| 2004 | 4889 | 12/09/2004 | 711 | DELAWARE RIVER | Spill | ANTHOS 1 | |
| 2005 | 483 | 02/20/2005 | 709 | DELAWARE RIVER AT PREMCOR'S PIER 3 | Spill | ATHOS 1 | CLOSED |
| 2005 | 590 | 03/06/2005 | 711 | DELAWARE RIVER AT CHAMBERS WORKS | Discharge | AHODIA PHARM SOLUTIONS | |
| 2005 | 607 | 03/06/2005 | 711 | DELAWARE RIVER AT THE PREMCOR INTAKES DELAWAR | Spill | UNKNOWN | |
| 2005 | 810 | 03/28/2005 | 711 | DELAWARE RIVER DELAWARE COUNTY PA | Spill | UNKNOWN | |
| 2005 | 811 | 03/28/2005 | 711 | DELAWARE RIVER MARCUS HOOK PA | Spill | UNKNOWN | |
| 2005 | 909 | 04/06/2005 | 705 | DELAWARE RIVER IN CHESTER | Abandoned Container | UNKNOWN | CLOSED |
| 2005 | 1033 | 04/15/2005 | 707 | DELAWARE RIVER, WILMINGTON | OUTREACH | NONE | |
| 2005 | 1215 | 05/01/2005 | 711 | DELAWARE RIVER IN THA AREA OF CITI STEEL CLAY | Spill | UNKNOWN | |
| 2005 | 1230 | 05/02/2005 | 704 | DELAWARE RIVER | Spill | N/A | CLOSED |
| 2005 | 1284 | 05/06/2005 | 711 | DELAWARE RIVER PAULSBORO NEW JERSEY | Spill | KSHEA | |
| 2005 | 1484 | 05/20/2005 | 704 | DELAWARE RIVER NEAR WILMINGTON AIRPORT | Drill | N/A | CLOSED |
| 2005 | 1554 | 05/27/2005 | 707 | DELAWARE RIVER, CLAYMONT | Spill | UNKNOWN | |
| 2005 | 1601 | 06/01/2005 | 704 | DELAWARE RIVER, CLAYMONT, DE 19703 | SPILL | UNKNOWN, POSSIBLY RELATE | CLOSED |
| 2005 | 1643 | 06/04/2005 | 705 | DELAWARE RIVER | NOTIFICATION | | CLOSED |
| 2005 | 1734 | 06/09/2005 | 707 | DELAWARE RIVER | Property Check | NONE | |
| 2005 | 1858 | 06/21/2005 | 711 | DELAWARE RIVER AT PAULSBORO NJ | Spill | SUSPECTED TO BE MV ANTHC | |
| 2005 | 1927 | 06/23/2005 | 711 | DELAWARE RIVER | Assist | USCG NATIONAL RESPONSE C | |
| 2005 | 1997 | 06/28/2005 | 711 | DELAWARE RIVER GLOUSTER COUNTY NEW JERSEY | Spill | UNKNOWN | |

DE21806

8/18/2006 12:52:32PM

# DNREC Air and Waste Management Complaint Files

**Object Of Complaint:**
**Start Date:** **End Date:** **Action Comment:**
**Location:** delaware r% **Reported By:**
**Nature:** **Disposition:**
**County:** **Division:** **Section:** **Assigned EPO:**

| Year | Complaint # | Date | EPO | Location | Nature | Object of Complaint Name | Action Comment |
|---|---|---|---|---|---|---|---|
| 2005 | 2123 | 07/11/2005 | 711 | DELAWARE RIVER SALEM NEW JERSEY | Spill | ANTHOS I | |
| 2005 | 2160 | 07/13/2005 | 707 | DELAWARE RIVER, CLAYMONT, DE | Spill | UNKNOWN | |
| 2005 | 2778 | 09/09/2005 | 707 | DELAWARE RIVER, DELAWARE CITY, DE | Spill | MORAN TOWING | |
| 2005 | 3053 | 10/03/2005 | 711 | DELAWARE RIVER NORTH OF WILMINGTON WASTE WATE | Abandoned Container | UNKNOWN | |
| 2005 | 3231 | 10/24/2005 | 711 | DELAWARE RT 1 AT DELAWARE RT 72 DELAWARE CITY | Odor | VALERO REFINERY | |
| 2005 | 3576 | 11/21/2005 | 704 | DELAWARE RIVER, DELAWARE CITY | Spill | UNKNOWN | CLOSED |
| 2005 | 3793 | 12/07/2005 | 711 | DELAWARE RIVER SALEM NEW JERSEY | Spill | DAN MARINE TOWING COMPA | CLOSED |
| 2005 | 3892 | 12/16/2005 | 704 | DELAWARE RIVER, EDGEMOOR DU PONT, HAY ROAD, W | Discharge | DuPont Edgemoor Titanium Oxid | CLOSED |
| 2005 | 3926 | 12/20/2005 | 711 | DELAWARE RIVER PAULSBORO BEACH PAULSBORO NJ | Spill | UNKNOWN | CLOSED |
| 2006 | 5 | 01/02/2006 | 708 | DELAWARE RIVER AT THE CITY DOCKS | Spill | UNKNOWN | CLOSED |
| 2006 | 101 | 01/11/2006 | 711 | DELAWARE RIVER AT WEST DEPTFORD NJ | Spill | UNKNOWN | CLOSED |
| 2006 | 112 | 01/11/2006 | 711 | DELAWARE RIVER AT MARCUS HOOK PA | Spill | UNKNOWN | CLOSED |
| 2006 | 690 | 02/23/2006 | 704 | DELAWARE RIVER NEAR VALERO DOCK #1 | Spill | UNKNOWN | CLOSED |
| 2006 | 755 | 03/09/2006 | 707 | DELAWARE RIVER | Notification | UNKNOWN | CLOSED |
| 2006 | 1385 | 05/04/2006 | 711 | DELAWARE RIVER AT LOGAN TOWNSHIP NJ | Spill | UNKNOWN | CLOSED |
| 2006 | 1439 | 05/10/2006 | 711 | DELAWARE RIVER AT ARTIFICIAL ISLAND NJ | Discharge | SALEM NUCLEAR GENERATIN | CLOSED |
| 2006 | 1490 | 05/15/2006 | 711 | DELAWARE RIVER LOWER ALLOWAYS TOWNSHIP NJ | Discharge | SALEM NUCLEAR GENERATIN | CLOSED |
| 2006 | 1727 | 06/06/2006 | 704 | DELAWARE RIVER AT EDGEMOOR | Abandoned Drum | JOHN R. YOUNG & CO. | CLOSED |
| 2006 | 1797 | 06/11/2006 | 709 | DELAWARE RIVER NORTH OF THE BRANCH CANAL | Spill | UNKNOWN | CLOSED |
| 2006 | 2063 | 07/02/2006 | 705 | DELAWARE RIVER | Spill | UNKNOWN | CLOSED |
| 2006 | 2065 | 07/03/2006 | 708 | DELAWARE RIVER AT THE MEMORIAL BRIDGE | Spill | NONE | CLOSED |
| 2006 | 2069 | 07/03/2006 | 705 | DELAWARE RIVER | Spill | UNKNOWN | CLOSED |
| 2006 | 2070 | 07/03/2006 | 708 | DELAWARE RIVER | Spill | UNKNOWN | CLOSED |
| 2006 | 2122 | 07/07/2006 | 711 | DELAWARE RIVER AT MARCUS HOOK PA | Miscellaneous | D'AMICO TANKERS | CLOSED |
| 2006 | 2152 | 07/11/2006 | 711 | DELAWARE RIVER PAULSBORO NJ | Spill | PENN MARITIME | CLOSED |
| 2006 | 2153 | 07/11/2006 | 704 | DELAWARE RIVER | Spill | UNKNOWN | CLOSED |

DE21807

8/18/2006 12:52:32PM

# DNREC Air and Waste Management Complaint Files

Object Of Complaints:
Start Date: End Date: Action Comment:
Location: delaware:% Reported By:
Nature: Disposition:
County: Division: Section: Assigned EPO:

| Year | Complaint # | Date | EPO | Location | Nature | Object of Complaint Name | Action Comment |
|---|---|---|---|---|---|---|---|
| 2006 | 2189 | 07/12/2006 | 711 | DELAWARE RIVER WEST DEPTFORD NJ | Miscellaneous | UNKNOWN MALE IN A KAYAK | CLOSED |
| 2006 | 2215 | 07/18/2006 | 704 | DELAWARE RIVER NEAR CHERRY ISLAND | Spill | International Petroleum Corporati | CLOSED |
| 2006 | 2364 | 07/31/2006 | 711 | DELAWARE RIVER MARCUS HOOK PA | Materials Handling | UNKNOWN | CLOSED |
| 2006 | 2400 | 08/03/2006 | 711 | DELAWARE RIVER ACROSS FROM PHILA NAVAL YARD G | Spill | UNKNOWN | CLOSED |
| 2006 | 2457 | 08/09/2006 | 711 | DELAWARE RIVER NEW CASTLE | DRILL | PARKS RICHARD T/A PENN MA | CLOSED |

Total number of complaints is 197

DE21808

# WATER AND AIR RESOURCES COMMISSION

## REGULATIONS

## GOVERNING THE USE OF WATER RESOURCES

## AND PUBLIC SUBAQUEOUS LANDS

## STATE OF DELAWARE

**ADOPTED JULY 14, 1969**

DE21210

REGULATION NO. IV

REQUIREMENTS FOR THE USE OF PUBLIC SUBAQUEOUS LANDS

Section 1. Scope and Applicability

1.01 The Commission and the Governor have exclusive jurisdiction, pursuant to the provisions of Chapter 64, Subchapter II, Title 7, Delaware Code as amended, to convey a fee simple or lesser interest and to lease or grant permits or easements over all public subaqueous lands of the State.

1.02 This jurisdiction includes all ungranted subaqueous lands in non-navigable waters, and all ungranted tide and submerged lands in navigable and non-navigable waters, whether within or beyond the boundaries of the State, heretofore and hereafter acquired by the State by any legal means.

1.03 All jurisdiction and authority to convey a fee simple or lesser interest, to lease or to grant permits, concessions, alterations or requests of any nature to dredge, fill, occupy, lease, purchase or otherwise alter or use public subaqueous lands, to erect any structure as defined herein on land abutting, in, on, under, or over public subaqueous lands, or otherwise alter shore lines in any way, is vested in the Commission and the Governor.

1.04 No use of public subaqueous lands or beach or shore to the mean high water level shall be undertaken except pursuant to a recommendation for approval by the Commission and subsequent approval by the Governor.

1.05 Those activities involving the use of private subaqueous lands may be subject to formal Commission review and consideration insofar as such activities may contribute to the pollution of public waters, infringe upon the water rights of other private owners, or make connection with public subaqueous lands.

1.06 Those private lands lost by the processes of Nature and acts of God, being covered by water, become the lands of the State and permission to recover such lands rests entirely at the discretion of the State.

1.07 The Commission, in evaluating all applications for the use and/or recovery of subaqueous lands, shall do so in light of its overall policy and its recognition of sound estuarine conservation practices, as well as a due regard for the general interest and welfare of the people of the State.

1.08 All projects requiring approval pursuant to the provisions of Section 2 of this Regulation shall be subject to review by the appropriate State and Federal agencies having jurisdiction or interest in matters pertaining to water pollution, public health, fish and wildlife, planning, geology, or navigation. Conditions imposed upon the applicant in the approval certificate shall reflect the comments of such agencies, provided that such comments do not constitute reason for public hearing and subsequent denial of approval.

# *The Regulations Governing The Use of Subaqueous Lands*

Adopted: May 8, 1991
Amended: September 2, 1992

State of Delaware
Department of Natural Resources and
Environmental Control
Division of Water Resources

DE06713

STATE OF DELAWARE

DEPARTMENT OF NATURAL RESOURCES
AND
ENVIRONMENTAL CONTROL

# REGULATIONS
# GOVERNING THE USE OF SUBAQUEOUS LANDS
MAY 8, 1991

AMENDED SEPTEMBER 2, 1992

STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL
REGULATIONS GOVERNING THE USE OF SUBAQUEOUS LANDS

TABLE OF CONTENTS

FOREWORD ..... 1

AUTHORITY ..... 1

PURPOSES ..... 1

DEFINITIONS ..... 1

SECTION 1. ADMINISTRATIVE PRINCIPLES ..... 5

1.01 Jurisdiction ..... 5

1.02 Scope of Regulations ..... 5

1.03 Activities on Private Subaqueous Lands: Types of Projects Requiring a Permit ..... 6

1.04 Use of Public Subaqueous Lands: Types of Projects Requiring Approval ..... 7

1.05 Statewide Activity Approvals ..... 8

1.06 Prohibitions ..... 8

1.07 Other Projects ..... 9

1.08 Exemptions ..... 9

1.09 Waivers ..... 10

1.10 Revocation ..... 10

1.11 Penalties ..... 11

1.12 Other Regulatory Agencies ..... 11

1.13 Public Information ..... 11

1.14 Severability ..... 11

1.15 Appeals ..... 11

1.16 Effective Date of These Regulations ..... 11

SECTION 2. PROCEDURES FOR APPLICATION ..... 12

2.01 General ..... 12

2.02 Additional Information ..... 13

2.03 Burden on Applicant ..... 13

SECTION 3. CRITERIA OF PERMITS, LEASES, AND LETTERS OF AUTHORIZATION ..... 14

3.01 Evaluation Considerations ..... 14

3.02 Requirements for all Structures ..... 16

3.03 Boating Docking Facilities ..... 16

3.04 Installation and Use of Shoreline Erosion Control Measures ..... 18

3.05 Activities Involving Dredging, Filling, Excavating or Extracting Materials ..... 20

3.06 Creation of Lands ..... 22

3.07 Installation and Use of Pipeline and Other Conduits ..... 23

SECTION 4. FEES ..... 24

4.01 Application Fees ..... 24

4.02 Lease Fees ..... 24

4.03 Hearing Fees ..... 24

STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

# REGULATIONS GOVERNING THE USE OF SUBAQUEOUS LANDS

## FOREWORD

### AUTHORITY

These regulations governing the use of subaqueous lands are promulgated in accordance with the provisions of 7 Del. C. §7212.

### PURPOSES

Subaqueous lands within the boundaries of Delaware constitute an important resource of the State and require protection against uses or changes which may impair the public interest in the use of tidal or navigable waters. The purposes of this chapter are to empower the Secretary to deal with or to dispose of interest in public subaqueous lands, and to place reasonable limits on the use and development of private subaqueous lands, in order to protect the public interest by employing orderly procedures for granting interests in public subaqueous land, and for issuing permits for uses of or changes in private subaqueous lands. To this end, 7 Del. C. §7212 empowers the Secretary to adopt rules and regulations to effectuate the purposes of the chapter, to apply to the courts for aid in enforcing this statute and the rules and regulations adopted pursuant thereto, and to convey interests in subaqueous lands belonging to the State.

### DEFINITIONS

The following words or phrase shall have the following definitions unless the context clearly indicates otherwise.

(1) "Activity" includes, but is not limited to, any human induced action, such as dredging, draining, filling, grading, bulkheading, mining, drilling, extraction of materials or excavation or construction of any kind, including, but not limited to, construction of a boat ramp or slip, breakwater, residences, bridge, bulkhead, culvert, dam, derrick, dock, groin, jetty, lagoon, gabion, rip-rap, launching facility, marina, mooring facility, pier, seawall, walkway or wharf.

(2) "Anchoring" means the holding of a vessel solely by means of an anchor which is dropped to underwater lands and which is carried aboard the vessel.

(3) "Anchorage/Moorage" means a designated and permitted area reserved for the anchoring or mooring of vessels.

(4) "Approved upland residential unit(s)" means the residential units given final approval by a local government zoning agency for one parcel of land riparian to the adjacent or affected waterbody.

(5) "Boat docking facility" means a place where a vessel or vessels may be secured to a fixed or floating structure, or moorage or mooring onto the shoreline or shoreline structure (including marginal docks), either temporarily or indefinitely.

(6) "Commercial" means any activity undertaken for profit, for which a fee will be charged, directly or indirectly, or which results in the generation of revenue.

(7) "Commercial Project" means any boat docking facility or anchorage, other than a single-boat pier, dock or anchorage intended to serve a single family dwelling.

(8) "Convenience Structure" means any structure which provides access to a watercourse, including but not limited to, a boat ramp or slip, derrick, dock, dolphin, piling, launching facility, marina, mooring facility, pier, walkway or wharf, whether permanent or temporary, floating or fixed.

(9) "Critical Habitat" includes areas classified by the Department and serving an essential role in the maintenance of sensitive species. Areas may include unique aquatic or terrestrial ecosystems that support rare endangered or threatened plants and animals. Rare, endangered or threatened species are defined by both state and/or federal listings.

(10) "Cumulative Impacts" means the changes in an aquatic ecosystem that are attributable to the collective effect of a number of individual discharges or activities. Although the impact of a particular discharge or activity may be a minor change in itself, the cumulative effect may impair the water resources and interfere with the productivity, water quality, or public use of existing aquatic ecosystems.

(11) "Department" means the Department of Natural Resources and Environmental Control.

(12) "Dredging" means the removal or displacement, by artificial activities, of mud, soil, sand, gravel, shells or other material from subaqueous lands.

(13) "Facility" means all related land, structures, services, appurtenances and improvements associated with an activity regulated under 7 Del. C. Chapter 72.

(14) "Filled Lands" includes tidelands and submerged lands reclaimed artificially through raising such lands above the highest probable elevation of the tides to form dry land by placement of a fill or deposit of earth, rock, sand or other solid materials.

(15) "Filling" means depositing materials from any source onto tidelands, submerged lands, wetlands or upland, whether for the purpose of creating new uplands or for any other purpose, including the disposal of dredged materials.

(16) "Floating Platform" means any floating structure which has no means of propulsion or is not designed as a boating vessel.

(17) "Governor" means the Governor of the State of Delaware.

(18) "Lease" means an agreement for exclusive possession of lands for a determinate period.

(19) "Marginal dock" means a fixed or floating structure placed immediately contiguous and parallel to or including an established seawall, bulkhead, or revetment, used for the purpose of berthing vessels either temporarily or indefinitely.

(20) "Marina" means a boat docking facility, as defined in the Department's Marina Regulations.

(21) "Mean high water" or "mean high tide" (a tidal datum) means the point on a bank, tide flat, beach or shore, up to which the presence and action of the water is so continuous as to leave a distinct mark either by erosion, destruction of terrestrial vegetation (non-aquatic), physical markings or characteristics, known vegetation lines, and

maybe further identified by tidal gauge data, or any other suitable means delineating the mean height reached by a rising tide.

(22) "Mean low water" or "mean low tide" (a tidal datum) means the average lowest point on a bank, tide flat, beach or shore, found during normal tide conditions. This may be determined by physical or biological characteristics, interpolation from mean high water based on knowledge of tidal range for an area or tide gauge information, if corrected to account for local conditions.

(23) "Mooring" means the holding of a vessel by means of a mooring buoy or similar device which is fastened to a stationary underwater device that is not carried aboard the vessel as regular equipment.

(24) "Navigable water" means a river, stream, lake, bay, inlet, or other waterway capable of having been or being used for transport of useful commerce, including waterways which become navigable as the result of alteration such as dredging. "Transport of useful commerce" shall include the transportation of goods or persons by water including, but not limited to, recreational transport, such as canoeing, rafting, sailing, tubing, water-skiing, motor boating or windsurfing.

(25) "Ordinary high water line" means for nontidal waters, the line where the presence and action of the water are so continuous in all ordinary years as to mark upon the soil of the bed, or character distinct from that of the banks, with respect to vegetation, as well as with respect to the nature of the soil itself.

(26) "Person" means any individual, minor, partnership, corporation, joint venture, estate, trust, syndicate, fiduciary, firm and other association and combination whether public or private, including quasi-public corporations, political subdivisions, and governmental agencies, instrumentalities, and other entities.

(27) "Pier" means a structure in, on, or over subaqueous lands which is used by the public primarily for fishing, crabbing, swimming, or viewing. A pier shall not include vessel berthing use unless specifically designated as such.

(28) "Preemptive area" means the area of public subaqueous lands from which the traditional public uses have been, or would be, excluded to any extent by an activity, structure, or vessel.

(29) "Private subaqueous lands" means any subaqueous lands which are not public subaqueous lands.

(30) "Public interest" means demonstrable environmental, social, and economic benefits which would accrue to the public at large as a result of a proposed action, and which would exceed all demonstrable environmental, social, and economic costs of the proposed action. In determining the public interest in a request for use, sale, lease, or transfer of interest in subaqueous lands, the Department shall consider the ultimate project and purpose to be served by said use, sale, permit, lease, or transfer of lands or materials.

(31) "Public subaqueous lands" means those subaqueous lands owned by the State of Delaware, including subaqueous lands which were altered or created from non-subaqueous lands by excavation or other means or through loss by natural processes or acts of God.

(32) "Resident vessel" means a live-aboard vessel docked or moored at an anchorage, marina, or other boat docking facility for a period exceeding a total of two consecutive weeks in a single year.

(33) "Riparian habitat" means a habitat that is strongly influenced by water and which occurs in, or adjacent to, a waterbody (i.e. rivers, streams, ponds, lakes, bays, ocean, wetlands, etc.).

(34) "Secondary Effects" are effects on an aquatic ecosystem that are associated with a discharge or activity, but do not directly result from the discharge or activity.

(35) "Secretary" means the Secretary of the Department of Natural Resources and Environmental Control.

(36) "Shoreline Erosion Control Structure or Measure" means any activity or structure which provides for stabilization of the shore or bank of a watercourse including, but not limited to, a bulkhead, breakwater, gabion, groin, jetty, rip-rap revetments, seawall, vegetation, and/or grading of banks.

(37) "State" means the State of Delaware.

(38) "Structure" includes, but is not limited to, any boat ramp, slip, building, breakwater, bridge, bulkhead, culvert, dam, derrick, dock, gabion, groin, jetty, residence, launching facility, marina, mooring facility, pier, seawall, walkway, or wharf.

(39) "Subaqueous lands" means submerged lands and tidelands.

(40) "Submerged lands" means land lying below the line of mean low tide in the beds of all tidal waters within the boundaries of the State, together with the beds (channelward of ordinary high water in non-tidal waters) of navigable rivers, streams, lakes, bays, inlets, ponds, or other waterways within the boundaries of the State.

(41) "Tidal waters" means any waters affected by tide.

(42) "Tidelands" means lands lying between the line of mean high water and the line of mean low water.

(43) "Vessel" means and includes every description of watercraft, boat, houseboat, or other contrivance capable of navigating the waters of the State.

(44) "Water-dependent activity" means an activity which can only be conducted on, in, over, or adjacent to water, and where the use of the water or subaqueous lands is a primary and integral part of the activity or use.

(45) "Wetlands" means those lands defined as "Wetlands" in 7 Del. C. Chapter 66.

## SECTION 1. ADMINISTRATIVE PRINCIPLES

1.01 Jurisdiction

These Regulations are adopted pursuant to 7 Del. C. §7212.

1.02 Scope of Regulations

A. Applicability

1. The extent of jurisdictional authority over public or private subaqueous lands includes any activity in a navigable stream or waterbody, which have a hydrologic connection to natural waterbodies.

2. These Regulations shall apply to all activities upon or affecting public and private subaqueous lands within the State of Delaware.

3. These Regulations shall apply to all applications received on or after the effective date of these Regulations. Applications submitted before the effective date of these Regulations shall be governed by the regulations titled "Regulations Governing the Use of Public Subaqueous Lands," adopted July 14, 1969 and revised July 30, 1985.

4. These Regulations shall not alter any right or obligation arising from any lease, easement, license, grant or other legally binding agreement from or between the State of Delaware and any person which is in effect prior to the effective date of these Regulations.

5. To the extent that any activity is commenced prior to the effective date of these Regulations, any previous regulation or law which applied to such activity prior to the effective date of these Regulations shall remain in force.

6. Any expansion, modification, renewal, repair, or rebuilding of any structure affecting subaqueous lands, which occurs after the effective date of these Regulations, shall be subject to these Regulations.

7. Any change or modification of a permitted or grandfathered activity affecting subaqueous lands, which occurs after the effective date of these Regulations, shall be subject to these Regulations.

B. Subaqueous Lands

1. The areas where these Regulations apply are shown on the U.S. Geological Survey 7.5 Minutes Series (Topographic) Quadrangle Charts for the various quadrangles making up the State of Delaware. Such jurisdiction shall be presumed correct subject to written rebuttal by the public or the Department based on a determination made in the field, using established criteria and procedures adopted by the Department in accordance with the Regulations. These criteria shall be developed using biological and physical indicators which include, but are not limited to, the presence of a defined channel, banks, aquatic fauna and flora, and other field indicators of instream habitat.

2. Final determination of the location of mean high water shall be determined in the field by the Department, using biological and physical indicators. Where the bank or shore at any particular site is of such character that it is impossible or difficult to ascertain where the point of mean high water is, recourse may be had to other places on the bank or shore of the same stream, lake, etc. to determine whether a given stage of water is above or below the mean high water mark. Similarly, the ordinary high water mark along the banks of a navigable bay, lake, pond, river, stream, or other waterway shall be taken as the boundary between the subaqueous lands and the non-subaqueous lands.

3. These Regulations acknowledge the applicability of the Public Trust Doctrine to all navigable waters. Any applicant asserting private ownership of subaqueous lands must demonstrate said ownership.

1.03 Activities on Private Subaqueous Lands; Types of Projects Requiring a Permit

A. Owners of private subaqueous lands shall obtain a permit from the Department, pursuant to this regulation, before undertaking any activity on such lands which, as determined by the Department, may contribute to the pollution of public waters, have an adverse impact or destroy aquatic habitats, infringe upon the rights of the public use of the waterway or the public, infringe upon the rights of other private owners, or make connection with public subaqueous lands, including but not limited to, the activities specified in subsection C of this section.

B. No person shall deposit material upon, remove, or extract materials from, or construct, modify, repair, reconstruct, except as specified in subsection 1.08(B) any structure or facility upon or over private subaqueous lands

without first having obtained a permit or letter of authorization from the Department.

C. Permits or Letters of Authorization

The following types of activities in, on, over, or under private subaqueous lands require a permit or letter of authorization from the Department:

1. Construction of a convenience structure or boat docking facility.

2. Construction of a shoreline erosion control structure or measure.

3. Dredging, filling, excavating, or extracting of materials.

4. Excavation, creation, or alteration of any channel, lagoon, turning basin, pond, embayment, or other navigable waterway on private subaqueous lands which will make connection with public subaqueous lands.

5. Dredging of existing channels, ditches, dockages, lagoons, and other navigable waterways to maintain or restore the approved depth and width (letter of authorization).

6. Excavation of land which makes connection to subaqueous lands.

7. The laying of any pipeline, electric transmission line, telephone line, or any other utility structure in, on, over, or under the beds of private subaqueous lands.

8. Installation of temporary or permanent mooring buoys or private marker buoys.

9. Establishment of an anchorage for the use of a mooring for more than two (2) boats or for appurtenant onshore services.

10. Anchoring or mooring a floating platform over private subaqueous lands for a period of twenty-four (24) consecutive hours or more.

11. Anchoring or mooring any vessel or platform over private subaqueous lands for a revenue generating purpose.

12. Repair and replacement of existing serviceable structures over private subaqueous lands (letter of authorization), except no permit or letter is required for repairs or structural replacements which are above the mean low tide and which do not increase any dimensions or change the use of the structure.

1.04 Use of Public Subaqueous Lands: Types of Projects Requiring Approval

A. The Secretary may convey a fee simple title or any lesser interest for a commercial or noncommercial project. Once public subaqueous lands become private subaqueous lands, they are subject to regulation as private subaqueous lands pursuant to these Regulations.

B. The following types of activities on public subaqueous lands require a lease, permit, or letter of authorization from the Department:

1. Construction or use of any structure on, in, under, or over public subaqueous lands, including but not limited to, any convenience structures, shoreline erosion control structure or measure, or boat docking facility.

2. Dredging, filling, excavating, or extracting of materials.

3. Continuous anchoring or mooring of a commercial vessel used in a commercial activity on or over public subaqueous lands for thirty (30) or more consecutive calendar days or for thirty (30) or more calendar days during any consecutive three (3) months.

4. The laying of any pipeline, electric transmission line, or telephone line in, on, over, or under the beds of public subaqueous lands.

5. Installation of temporary or permanent mooring buoys or private marker buoys.

6. Establishment of an anchorage for mooring more than two (2) boats or which serves as a permanent place for resident vessels.

7. Anchoring or mooring a floating platform over public subaqueous lands and for a period of twenty-four (24) consecutive hours or more.

8. Maintenance dredging of existing or new channels, ditches, dockages, lagoon and other waterways to maintain or restore the approach depth and width (letter of authorization).

9. Anchoring or mooring any vessel or platform over public subaqueous lands for revenue generating purposes.

10. Repair and replacement of existing serviceable structures over private subaqueous lands (letter of authorization), except no permit or letter is required for repairs or structural replacements which are above the mean low tide and which do not increase any dimensions or change the use of the structure.

11. New dredging activities of channels, ditches, dockages or other waterways.

1.05 Statewide Activity Approvals

The Department may adopt statewide activity approvals for certain specified activities with limiting dimensions and criteria which are considered to have minimal impacts on subaqueous lands, water quality, habitats, etc. The qualification of a project for a statewide activity approval may require no review or will invoke an abbreviated review process for a decision by the Department.

1.06 Prohibitions

Certain types of projects are deemed inappropriate for consideration and shall not be considered or approved for private or public subaqueous lands under these Regulations:

A. Houseboats

No non-motorized vessel or floating platform whose function or use is primarily that of a residence shall be authorized under these Regulations to moor, anchor, dock over or otherwise occupy subaqueous lands.

1.07 Other Projects

No other project which may potentially impact the public interest in the use of tidal or navigable waters, contribute to water pollution, infringe upon the rights of the public, infringe on the rights of private owners, or make connection with public subaqueous lands, shall be undertaken on public or private subaqueous lands unless approval has been obtained from the Department.

1.08 Exemptions

A. Anchoring

A waterfront property owner, other than one within a development which provides a marina or anchorage for residents' use, may anchor or moor, not more than two (2) personally owned vessels in the waters adjacent to and within the perpendicular seaward extension of the property boundaries of the waterfront property, provided that the preemptive mooring area does not extend more than ten percent of the width of the waterbody at high tide, is not in a navigational channel, and does not pose a navigational hazard.

B. Written Notification of Exempted Repairs and Replacements

Repairs or structural replacements which are above the mean low tide and which do not increase any dimensions or change the use of the structure are exempt from the permit or letter of authorization requirements contained herein. The user shall notify the Department in writing in advance of utilization of the exemption. For purposes of this subsection, the notice shall include the location of the structure, a description of the use of the structure, and provide its dimensions.

C. Shellfishing

The use of shellfish grounds for shellfishing and the authorized use, deployment, and marking of fishing equipment and gear, is regulated under the authority of 7 Del. C. Chapters 9, 11, 18, 19, 21, 23, 24, 25 and 27.

D. Drainage Ditches

Artificially created channels excavated from non-subaqueous lands and designed according to reasonable drainage standards do not require approval under these Regulations.

1.09 Waivers

A. The Department may waive any provision of these regulations when warranted under the following circumstances:

1. Life-threatening emergencies.

2. Actions are required for public safety for which sufficient time is not available to follow the Regulations.

3. Where the authority of the Department under 7 Del. C. Chapter 72 overlaps with another statute, including but not limited to Shellfish Grounds, 7 Del C. Chapter 19; Beach Preservation, 7 Del. C. Chapter 68; or Wetlands, 7 Del. C. Chapter 66, provided that the following criteria are met:

a. If, in the opinion of the Secretary, equal environmental impact review and regulation of

the activity would be provided by either statute; and

b. Waiver of these regulations would not be contrary to the purposes of 7 Del. C. Chapter 72.

B. For facilities or activities which require a permit pursuant to the Department Marina Regulations, the Department will waive the provisions of Sections 3.01.B and 3.01.C of these Regulations.

C. The failure of the Department to enforce any of the provisions of these Regulations, however, shall not constitute a waiver by the Department of any such provisions.

1.10 Revocation

The Secretary may revoke any lease or permit for failure to comply with these Regulations or the terms and conditions of the lease or permit. The Secretary may, upon expiration or cancellation of a lease, direct the lessee to remove all structures and equipment from the leased area within 180 days. If the lessee fails to remove the structures and equipment thereon within the 180 day period, the Department shall, at its option and after 10 days from receipt of written notice by certified mail to the lessee, have the structures and equipment removed at the expense of the lessee.

1.11 Penalties

Violations of these regulations shall be punishable in accordance with 7 Del. C. §7214.

1.12 Other Regulatory Agencies

Compliance with these Regulations does not relieve any person from complying with the laws, rules, regulations, and requirements imposed on the same lands, uses, structures, facilities or other appurtenances by local, State and Federal government agencies or other divisions within the Department.

1.13 Public Information

All material submitted in connection with any application shall be deemed public records subject to disclosure subject to 29 Del. C. Chapter 100 unless designated by the applicant and accepted by the Department as covered by one or more of the exceptions enumerated in 29 Del. C. §10002(d).

1.14 Severability

If any part of these Regulations or the application of any part thereof are held invalid or unconstitutional, the application of such part to other persons or circumstances, and the remainder of these Regulations, shall not be affected thereby and shall be deemed valid and effective.

1.15 Appeals

Any person whose interest is substantially affected by any action of the Secretary taken pursuant to these Regulations may appeal to the Environmental Appeals Board as per 7 Del. C., §7210. There shall be no appeal of a decision by the Secretary to deny a permit on any matter involving State-owned subaqueous lands.

1.16 Effective Date of These Regulations

These Regulations shall take effect upon final adoption.

## SECTION 2. PROCEDURES FOR APPLICATION

### 2.01 General

A. Requirements for Every Application

A person seeking a lease or permit shall submit to the Secretary a written request, using the appropriate forms available from the Department, stating in detail the type of grant, lease or permit desired, showing the location of the area and containing specifications for any proposed activity.

The application for every type of activity shall provide the information requested in the appropriate application form. No application shall be considered complete or acted upon until the application is deemed complete by the Department. Providing false or inaccurate information shall be grounds for denial or revocation of a permit or lease and shall be grounds for a civil or criminal penalty.

B. Required Attachments to the Application

The applicant shall attach the following to the application:

1. A map showing the location and boundaries of the proposed project in relation to the adjoining property and to the nearest existing street or road intersection, and the specific location of all proposed activities.

2. A neat, scaled drawing of the proposed activities on 8-1/2" x 11" paper which shows: i) that the design conforms to generally accepted engineering principles, ii) accurate dimensions of the proposed activity (e.g., cubic yards of dredging or fill, square feet of dock, pier, jetty, or preemptive area, linear feet of bulkheading, utilities, etc.), iii) all existing structures, iv) exact location of property corners and property lines, wetlands and aquatic habitats. If the design does not conform to generally accepted engineering principles, the Secretary may require that the design be prepared, signed, and sealed by a professional engineer registered in the State of Delaware.

3. A certified copy of the deed and survey plot plan (to indicate property lines and corners) to the land, and written permission from the owner if other than the applicant for the project. The Department may request such additional information as will enable it to determine ownership of or authority to use the property.

4. Evidence of zoning approval for the project. The Department may defer consideration of the application if it determines that substantive questions regarding the validity of the County's or municipality's actions are raised in an appeal of that action.

5. The application fee and any deposit required.

6. Performance bond as required.

7. Additional information as required by the Department.

C. Current Application

The applicant shall maintain the application in a current state and notify the Department immediately of any changes in the information provided.

2.02 Additional Information

The Department may request such additional information as will enable it to consider the application properly. The Department may require the applicant to provide an environmental assessment if it determines that the proposed activity may have a substantial adverse effect on the environment. Any requested additional information not provided to the Department within a reasonable time may be grounds to declare the permit incomplete or deny the permit.

The Department may request of any State agency a report or recommendation concerning any application before it which affects that agency or for which that agency has particular information or expertise. The Department may consider the report in ruling on the application.

2.03 Burden on Applicant

The burden shall be on the applicant to satisfy the Department that the requirements of these Regulations have been met; and if the granting of the permits, lease or approval will result in loss to the public of a substantial resource, that the loss has been offset or mitigated.

## SECTION 3. CRITERIA OF PERMITS, LEASES, AND LETTERS OF AUTHORIZATION

**3.01** Evaluation Considerations

Each application shall be reviewed based on the consideration of the performance specifications, standards and other criteria listed in this section for the type of activity proposed.

An application may be denied if the activity could cause harm to the environment, either singly or in combination with other activities or existing conditions, which cannot be mitigated sufficiently.

For shoreline erosion control structures or measures and for water-dependent activities, each activity shall be reviewed on basis of need for the type of structure proposed.

For repair and replacement projects of serviceable structures, serviceability must be proven to the satisfaction of the Department. A serviceable structure includes existing structures which are intact and functioning for the original intended design purpose. For structures which are no longer intact due to a specific and catastrophic water event or activity, camera-dated photographs or aerial photography must clearly indicate the serviceability of said structure (as defined by the criteria above) within six (6) months prior to the date of application.

With regard to an evaluation of the overall public benefits from the proposed activity or structure, the following criteria may be used to determine whether or not to issue a permit, easement, lease, fee simple interest, or other instrument, with or without mitigating measures and conditions.

A. Public Use Impact

The Department shall consider the public interest in any proposed activity which might affect the use of subaqueous lands. These considerations include, but are not limited to, the following:

1. The value to the State or the public in retaining any interest in subaqueous lands which the applicant seeks to acquire, including the potential economic value of the interest.

2. The value to the State or the public in conveying any interest in subaqueous lands which the applicant seeks to acquire.

3. The potential effect on the public with respect to commerce, navigation, recreation, aesthetic enjoyment, natural resources, and other uses of the subaqueous lands.

4. The extent to which any disruption of the public use of such lands is temporary or permanent.

5. The extent to which the applicant's primary objectives and purposes can be realized without the use of such lands (avoidance).

6. The extent to which the applicant's primary purpose and objectives can be realized by alternatives, i.e. minimize the scope or extent of an activity or project and its adverse impact.

7. Given the inability for avoidance or alternatives, the extent to which the applicant can employ mitigation measures to offset any losses incurred by the public.

8. The extent to which the public at large would benefit from the activity or project and the extent to which it would suffer detriment.

9. The extent to which the primary purpose of a project is water-dependent.

B. Environmental Considerations

1. The Department shall consider the impact on the environment, including but not limited to, the following:

a. Any impairment of water quality, either temporary or permanent, which may reasonably be expected to cause violation of the State Surface Water Quality Standards. This impairment may include violation of criteria or degradation of existing uses.

b. Any effect on shellfishing, finfishing, or other recreational activities, and existing or designated water uses.

c. Any harm to aquatic or tidal vegetation, benthic organisms or other flora and fauna and their habitats.

d. Any loss of natural aquatic habitat.

e. Any impairment of air quality, either temporarily or permanently, including noise, odors, and hazardous chemicals.

f. The extent to which the proposed project may adversely impact natural surface and groundwater hydrology and sediment transport functions.

2. For major commercial activities, or for other activities which may have a substantial environmental impact, the Department may require an environmental impact assessment. In all cases, a general assessment of potential impacts listed in Section 3.01.B(1) must be provided by the applicant.

3. The Department shall consider whether the activity under review could have the potential to cause any adverse environmental impacts, taken in conjunction with the existing situation and with other activities under construction or review. To assess the cumulative and secondary impacts, the Department may require the applicant to provide the following information:

a. Determination of cumulative effects on the aquatic ecosystem, natural surface and groundwater hydrology.

b. Determination of secondary effects on the aquatic ecosystem, natural surface and groundwater hydrology.

4. The Department shall consider whether any significant impacts or potential harm could be offset or mitigated by appropriate actions or changes to the proposed activity by the applicant. If so, the required mitigating measures may be included as conditions of the permit or lease.

C. Other Considerations

The Department shall also consider the following to determine whether to approve the application:

1. The degree to which the project represents an encroachment on or otherwise interferes with public lands, waterways or surrounding private interests.

2. The degree to which the project incorporates sound engineering principles and appropriate materials of construction.

3. The degree to which the proposed project fits in with the surrounding structures, facilities, and uses of the subaqueous lands and uplands.

4. Whether the proposed activity complies with the State of Delaware's Surface Water Quality Standards both during construction and during subsequent operation or maintenance.

5. The degree to which the proposed project may adversely affect shellfish beds or finfish activity in the area.

3.02 Requirements for all Structures

A. Structures shall be constructed in a manner that allows for continued growth and nourishment of aquatic and wetland vegetation under or near the structure wherever possible, and allows for adequate water circulation and water quality to support plants and animals.

B. Structures shall be constructed, installed, and used in a manner that minimizes pollution or the causing of harm to aquatic and tidal plants, fish and wildlife.

C. Structures shall utilize the best available materials and technologies and shall be constructed in a manner that will prevent or minimize leaching or runoff of harmful chemicals or other substances which may cause water pollution or harm to aquatic plants and wildlife.

D. Structures shall not interfere with navigation, public, or other rights.

3.03 Boating Docking Facilities

A. All new and existing marinas must comply with the requirements of the Department's Marina Regulations.

B. General Siting Considerations: Siting of boat docking facilities shall be evaluated on site-specific conditions including, but not limited to, location of navigational channel, proximity of existing structures, aquatic habitats, and width and orientation of waterbody. The following criteria will be weighed and balanced when evaluating the siting of boat docking facilities.

1. Structures should be sheltered or protected from storm-driven currents, waves, and ice in an area with low or moderate normal currents and littoral drift.

2. Structures should be constructed to avoid dredging or filling, with minimal impact on aquatic vegetation and wetlands, and without dead-end or poorly flushed lagoons.

3. Structures should be located away from critical habitats, historic, or archaeological areas.

4. Structures should be located away from hazardous facilities or designated recreational swimming areas.

5. Where adequate depths exist for water-dependent structures, no dock, mooring, piling, or other structure or mooring area shall extend channelward more than 10 percent of the width of the waterbody at that location (from mean low water). In no case shall a structure extend more than 20 percent of the width of the waterbody, nor shall it extend seaward more than 250 feet, except under exceptional circumstances necessary to provide access for needed commerce.

6. Docks, mooring, pilings, or other structures should be located a minimum of ten (10) feet from a navigation channel.

7. Docks and piers should extend out from the shoreline far enough so as to eliminate need for dredging and filling, and provide sufficient height to allow light to penetrate to vegetation underneath and alongside.

8. Slips, lagoons, basins, and access channels should be no deeper than the parent waterbody (i.e. no sill), and the depth should slope upward toward the landward extent from the parent waterbody. Exception may be allowed only by individual review of the potential environmental impacts and approval granted by the Secretary of the Department.

9. Berms and grasslands should be made a part of the boat docking facility design wherever feasible and possible, particularly for buffer zones between the facility and any wetlands. As much of the land surface as possible should be vegetated or covered with porous materials to decrease stormwater runoff.

10. All convenience structures shall be set back a minimum of ten (10) feet from adjacent property lines. Exceptions may be allowed only if a written letter of no objection is obtained from the adjacent property owner, and the Department is satisfied that no navigation hazard or other adverse environmental impact may result.

11. New docking facilities should not extend beyond existing structures in the immediate vicinity unless absolutely necessary to obtain navigable water depths for a water-dependent activity.

12. Docking facilities should extend out from the shoreline no further than to a depth necessary for docking a boat capable of navigating the waterway.

13. Dredging to obtain navigable water depths in conjunction with private residential boat docking facilities should be avoided.

C. Structures shall not be constructed using creosote treated lumber.

D. For subdivided, recorded parcels of real property, applications for construction of a boat docking and/or launching facility must satisfy the minimum area requirements of a lot for residential construction, to include applicable setback and utility construction requirements (based on county, state and municipal standards), prior to consideration for approval for a subaqueous lands lease/permit. Community or common area parcels within an approved subdivision must satisfy the requirements defined by the Marina Regulations for a marina, based on the maximum number of potential users within the subdivision.

E. Properties which were legally subdivided and recorded prior to the adoption of Subaqueous Lands law (July 14, 1969) are exempted from the minimum size requirements for a docking facility as specified by Subsection 3.03D of these Regulations. All structures exempted by this condition must satisfy all other siting, design, and review criteria of these Regulations.

F. Minimum frontage adjacent to subaqueous lands for a docking facility for any parcel will be forty (40) feet.

Any proposed structure must satisfy all setback requirements as defined by state, federal or county regulation or guidelines.

G. Applications for the construction of a boat docking/launching facility within a recorded easement/right-of-way, linking non-waterfront properties to the shoreline, must be submitted with a written letter of no objection by the owner of the property containing said conveyance. Location and siting of the structure must satisfy all setback and frontage requirements, as defined by the Department. Applications will not be accepted for private/community structures within approved public easements or right-of-ways.

3.04 Installation and Use of Shoreline Erosion Control Measures

A. Requirements

1. Structural shoreline erosion control measures shall not be permitted in those areas where minimal demonstrable erosion is evident, as determined by the Department.

2. Efforts shall be made to utilize shoreline erosion control methods that best provide for the conservation of aquatic nearshore habitat, maintain water quality, and avoid other adverse environmental effects. These include, but are not limited to, vegetation, revetments, and gabions. Structural erosion control measures may be allowed where it can be shown, through a review of site conditions and generally accepted engineering standards, that nonstructural measures would be ineffective in controlling erosion. When engineering feasibility and effectiveness considerations are equal, the shoreline erosion control method utilized shall be the one with the least adverse environmental impact.

3. Nonstructural measures are preferred for shoreline stabilization work in:

a. Low wave energy areas where no significant shoreline erosion occurs or wetlands occur. In this case, the allowable activity or measure should be limited to, the introduction or management of suitable vegetation.

b. Eroding areas where combinations of structural/nonstructural measures would be a practicable and effective method of erosion control. In this case, the allowable activities include:

(1) The properly designed and constructed regrading and contouring of the shoreline followed by planting and management of suitable vegetative stabilizing cover.

(2) A combination of low profile stone groins and suitable vegetative stabilizing cover.

(3) Properly designed and constructed low-profile rip-rap revetments, marsh-toe sills, or other non-vertical structures which may be used in conjunction with vegetative stabilizing cover.

4. Vertical-walled structures shall be allowed only where a non-vertical structure, designed to equal standards, would be ineffective to control erosion, where deleterious environmental effects associated with the construction of vertical structures would be less than the impacts on the adjacent environment during construction of a non-vertical structure, where functionally, no practical alternatives exist for certain water-dependent facilities or activities, or where generally accepted engineering practices would preclude the use of non-vertical walled structures.

5. All structural shoreline erosion control measures shall be designed to conform to generally accepted engineering principles. If the designed measure does not conform to accepted engineering principles, the

Department may require a design to be prepared, signed, and sealed by a professional engineer registered in Delaware.

6. Structural erosion control measures shall address and satisfy the following elements:

a. Protection of aquatic biota, wetlands, and nearshore shallow water habitat.

b. Protection of water quality, flushing, and naturally occurring littoral drift and flow.

c. For vertical walls, protection against "toe scour" by adequately designed toe depth and, in high energy environments, rip-rap at the toe of the structure for existing tidal and wave conditions.

d. Adequate flow and circulation necessary to support the functional value of adjacent wetlands or aquatic habitat.

e. Materials and methods of construction shall be sufficient to withstand the stresses to which they will be subjected, from wind, waves, tides, currents, ice, and debris.

f. Avoidance or minimization of increased erosion of adjacent or downdrift shorelines.

B. Additional Requirements

1. Erosion control measures shall be installed and used only for the purposes of shoreline stabilization; any structure which serves or could serve to increase the property of an applicant shall be regulated by the provisions of Section 3.05 below.

2. Bulkheads must be aligned, where possible, with any adjacent bulkheads and shall be designed to prevent the possibility of trapping floating debris or impairing water circulation.

3. Each shoreline erosion control structure shall be designed to the extent possible to minimize adverse environmental impacts. If the Department determines that the granting of a permit for a shoreline erosion control structure will result in loss to the public of a substantial resource, the permittee may be required to take measures which will offset or mitigate the loss.

4. No permanent structure (building, house, patio, porch, deck, or other such structure) shall be constructed on a bulkhead or any portion of the anchoring system or any adjacent area that would interfere with future repair and/or replacement of the bulkhead.

3.05 Activities Involving Dredging, Filling, Excavating or Extracting Materials

A. Objectives

Projects shall be designed to meet the following objectives:

1. Conform to the pertinent objectives, classification system, environmental considerations, and criteria of the "Inland Bays Dredging Study, Volumes I and II," dated April 1986, as adopted by the Department on July 18, 1986.

2. Maintain the navigability of channels.

3. Maintain or improve the environmental quality of the State's water resources, subaqueous lands

and wetlands.

B. General Evaluation Consideration

The Department shall consider the following additional factors in reviewing a dredging, filling, excavating, or extracting application:

1. Any environmental impacts at and surrounding the dredging site(s).

2. Any environmental effects of the disposal of the dredged materials at and surrounding the disposal or fill site(s), before or after mitigation, during and following the disposal of fill activities and particularly impacts on water quality as described below in Paragraph C.

3. Any economic and noneconomic benefits of the project compared to the costs of the project, both direct and secondary.

4. Consistency of the project with regional growth and local land use plans.

C. Water Quality on Dredging Projects

The applicant may be required to submit information to the Department to facilitate its evaluation of water quality impacts, as may be required to ensure compliance with State Surface Water Quality Standards.

The following concerns for protecting water quality shall be specifically considered by the Department in evaluating applications for dredging projects:

1. All dredging is to be conducted in a manner consistent with sound conservation and water pollution control practices. Spoil and fill areas are to be properly diked to contain the dredged material and prevent its entrance into any surface water. Specific requirements for spoils retention may be specified by the Department in the approval, permit or license.

2. All material excavated shall be transported, deposited, confined, and graded to drain within the disposal areas approved by the Department. Any material that is deposited elsewhere than in approved areas shall be removed by the applicant and deposited where directed at the applicant's expense, and any required mitigation shall also be at the applicant's expense.

3. Materials excavated by hydraulic dredge shall be transported by pipeline directly to the approved disposal area. All pipelines shall be kept in good condition at all times and any leaks or breaks shall be immediately repaired.

4. Materials excavated and not deposited directly into an approved disposal area shall be placed in scows or other vessels and transported to either an approved enclosed basin, dumped, and then rehandled by hydraulic dredge to an approved disposal area, or to a mooring where scows or other vessels shall be unloaded by pumping directly to an approved disposal area.

5. When scows or other vessels are unloading without dumping, they shall have their contents pumped directly into an approved disposal area by a means sufficient to preclude any loss of material into the body of water.

6. In approved disposal areas, the applicant may construct any temporary structures or use any means

necessary to control the dredge effluent, except borrowing from the outer slopes of existing embankments and/or hydraulic placing of perimeter embankments. For bermed disposal sites, a minimum freeboard of two (2) feet, measured vertically from the retained materials and water to the top of the adjacent confining embankment, shall be maintained at all times.

7. The applicant shall not obstruct drainage or tidal flushing on existent wetlands or upland areas adjacent thereto. The applicant shall leave free, clear, and unobstructed outfalls of sewers, drainage ditches, and other similar structures affected by the disposal operations. The dredged materials shall be distributed within the disposal area in a reasonably uniform manner to permit full drainage without ponding during and after fill operations.

8. The dredging operation must be suspended if water quality conditions deteriorate in the vicinity of dredging or the spoil disposal site. Minimum water quality standards may be included as an element of the permit and shall be monitored by the applicant. Violation of these conditions shall be cause for immediate suspension of activity and notification of the Department. Dredging shall not be resumed until water quality conditions have improved and the Department has authorized the resumption.

D. Prohibited Dredging Project

The following types of dredging projects are prohibited.

1. Dredging of biologically productive areas, such as nursery areas, shellfish beds, and submerged aquatic vegetation, if such dredging will have a significant or lasting impact on the biological productivity of the area.

2. Dredging of new dead-end lagoons, new basins and new channels, which have a length to width ratio greater than 3:1 and for which the applicant cannot prove, by clear and convincing evidence, that such dredging would not violate State Surface Water Quality Standards. This subsection shall not apply to marina projects governed by the Marina Regulations.

3. Dredging channels, lagoons, or canals deeper than the existing controlling depth of the connecting or controlling waterway, unless otherwise approved under Subsection 3.03B(8) of these Regulations.

4. Dredging channels, cleaning marinas, or other subaqueous areas by using propeller wash from boats.

E. Removal of Public Subaqueous Lands

No person shall remove any material from public subaqueous lands without Department approval and receipt by the Department of full payment of the fee for the amount of material estimated to be removed. The Department reserves the right to determine the amount of material to be removed in dredging and/or filling projects.

3.06 Creation of Lands.

A. Creation

No person shall fill, reclaim, or alter public subaqueous lands without the Department approval and receipt by the Department of full payment of a lease fee for the estimated area of land created or affected. The land created shall remain State property and may be leased to the applicant under terms and conditions to be set by the Department, unless otherwise conveyed as noted below in paragraph B. Lease fees may be waived for shoreline erosion control projects which have demonstrated water quality or habitat benefits associated with their use.

## SECTION 4. FEES

4.01 Application Fees

Every application, except those from a state or federal government agency or political subdivision of the State of Delaware, shall be accompanied by the nonrefundable application fee established by the General Assembly. This fee shall cover the costs of handling and evaluating the application, and other expenses of administering the subaqueous lands program.

4.02 Lease Fees

Lease fees shall be established by the General Assembly for all commercial and non-commercial projects over public subaqueous lands.

The lease and fee requirements of these Regulations shall be applicable to all activities and structures, including previously leased lands, where no fee was required.

Lease fees shall apply to any lease that has expired until such time as the structure is removed pursuant to a denial or revocation, or until such time as a new lease has been issued.

4.03 Hearing Fees

A. Costs

The costs of public hearings, as described below, shall be charged to the applicant. These costs may include the costs of publication of the notice of the hearing, charge for the hearing room, if any, costs for recording, transcription, and copying the proceedings, and other costs directly related to the hearing. No charge will be made for the salaries and expenses of the public officials involved in the hearing.

B. Deposit

The Secretary may require a deposit in addition to the application fee at the time of application, or at any other time, to ensure payment of the applicable fees.

JOINT AGREEMENT
BETWEEN
THE STATE OF NEW JERSEY
AND
THE STATE OF DELAWARE

WHEREAS, pursuant to 29 Del. C.§202, the Director of the Division of Historical and Cultural Affairs and the Secretary of the Department of Natural Resources and Environmental Control have been authorized to make joint agreements with the appropriate officials or agencies of an adjacent State and the National Geodetic Survey to delineate more thoroughly any part of any common boundary between the State of Delaware and any adjacent State; and

WHEREAS, pursuant to 29 Del. C.§202(c), the Director of the Division of Historical and Cultural Affairs and the Secretary of the Department of Natural Resources and Environmental Control in conjunction with the Delaware State Boundary Commission are authorized to negotiate a final settlement of questions arising as to the common boundary between the State of Delaware and any adjacent State; and

WHEREAS, N.J.S.A. 52:29-2 authorizes and directs the New Jersey Department of Environmental Protection to examine every monument marking the boundaries of the State of New Jersey and to cooperate with adjacent States to restore and repair boundary monuments found to have been injured, displaced or removed and to set suitable monuments wherever they are wanting at intersections with highways; and

WHEREAS, at a joint meeting of representatives of the State of New Jersey and the Boundary Commission of Delaware held January 29, 1986, in Newark, Delaware, it was determined that five Delaware-New Jersey Boundary Reference Monuments and one Delaware-New Jersey Boundary Monument needed corrective action and that efforts would be made to correct those problems as is more particularly described in Exhibit A attached hereto and made part hereof; and.

WHEREAS, necessary corrective action was taken, including replacement of one boundary monument with a boundary reference monument and having Global Positioning by Satellite (GPS) positions established for all new reference monuments set,

NOW, THEREFORE, pursuant to their respective authorities, the parties have determined and agree that the appropriate restorative and resurvey actions were taken; and that the National Geodetic Survey has reviewed, adjusted, and accepted the GPS resurvey of the six new Delaware-New Jersey Boundary Reference Monuments which have had GPS positions established, from which one can reference the 1934 Mean Low Water Line Boundary between the States of Delaware and New Jersey as more particularly described in Exhibit B attached hereto and made part hereof; that the six new Boundary Reference Monuments which reference the 1934 Mean Low Water Line Boundary are properly represented between DE-NJ Reference Monument 1 and DE-NJ Reference Monument 6, each having a GPS position that can be precisely relocated using GPS technology as is more particularly described in Exhibit C attached hereto and made part hereof.

This agreement does not alter the location of the boundary between the states as determined by the United States Supreme Court in New Jersey v. Delaware, 295 U.S. 694 (1935) and the Compact of 1907, 34 Stat. 858, nor does it affect the provisions of N.J.S.A. 52:29-1 et seq.

It is agreed by the parties that the above survey represents with greatest possible fidelity the present established boundary of the States.

IN WITNESS WHEREOF, The parties have hereunto executed this Agreement this 29th day of August, 2001.

STATE OF NEW JERSEY
Department of Environmental Protection

By _____
Robert C. Shinn, Jr., Commissioner

STATE OF DELAWARE
Department of Natural Resources and Environmental Control

By _____
Nicholas A. DiPasquale, Secretary

New Jersey Geological Survey

By _____
Karl W. Muessig, State Geologist

Division Of Historical And Cultural Affairs

By _____
Daniel R. Griffith, Director

State Boundary Commission

By _____
Robert R. Jordan, Chairman

_____
Susanne N. Fox, Commissioner

_____
Bettina L. Riveros, Commissioner

DE20120

STATE OF NEW JERSEY )
) ss.
COUNTY OF MERCER )

I hereby certify that Robert C. Shinn, Jr., Commissioner of the New Jersey Department of Environmental Protection, personally appeared before me this 5th day of May, 2001 and acknowledged the foregoing Agreement to be his act and deed and the act and deed of the Department of Environmental Protection for the purposes therein contained.

Richard H. Heenan, Esq.
Notary Public
Attorney-at-Law of N.J.

STATE OF NEW JERSEY )
) ss.
COUNTY OF MERCER )

I hereby certify that Karl W. Muessig, State Geologist of the New Jersey Geological Survey, personally appeared before me this 8th day of May, 2001 and acknowledged the foregoing Agreement to be his act and deed and the act and deed of the Department of Environmental Protection for the purposes therein contained.

Richard H. Heenan, Esq.
Notary Public
Attorney-at-Law of N.J.

STATE OF DELAWARE )
) ss.
COUNTY OF KENT )

I hereby certify that Nicolas A. DiPasquale, Secretary of the Department of Natural Resources and Environmental Control of the State of Delaware, personally appeared before me this 1st day of June, 2001 and acknowledged the foregoing Agreement to be his act and deed and the act and deed of the State Boundary Commission for the purposes therein contained.

Gail Alex Krause
Notary Public

DE20121

STATE OF DELAWARE )
) ss.
COUNTY OF KENT )

I hereby certify that Daniel R. Griffith, Director of the Division of Historical and Cultural Affairs of the State of Delaware, personally appeared before me this 26th day of June, 2001 and acknowledged the foregoing Agreement to be his act and deed and the act and deed of the State Boundary Commission for the purposes therein contained.

Charles R. Vickers
Notary Public
CHARLES R. VICKERS
NOTARY PUBLIC, STATE OF DELAWARE
COMMISSION EXPIRES 1-10-02

STATE OF DELAWARE )
) ss.
COUNTY OF NEW CASTLE )

I hereby certify that Robert R. Jordan, Chairman of the State Boundary Commission, personally appeared before me this 6th day of August, 2001 and acknowledged the foregoing Agreement to be his act and deed and the act and deed of the State Boundary Commission for the purposes therein contained.

Notary Public

STATE OF DELAWARE )
) ss.
COUNTY OF KENT )

I hereby certify that Susanne N. Fox, Commissioner of the State Boundary Commission, personally appeared before me this 11th day of JUNE, 2001 and acknowledged the foregoing Agreement to be her act and deed and the act and deed of the State Boundary Commission for the purposes therein contained.

Notary Public

DE20122

STATE OF DELAWARE )
) ss.
COUNTY OF NEW CASTLE )

I hereby certify that Bettina L. Riveros, Commissioner of the State Boundary Commission, personally appeared before me this 18th day of June, 2001 and acknowledged the foregoing Agreement to be her act and deed and the act and deed of the State Boundary Commission for the purposes therein contained.

Notary Public

DE20123

EXHIBIT A

# JOINT AGREEMENT
## BETWEEN THE STATES OF DELAWARE AND NEW JERSEY

This agreement between the States of Delaware and New Jersey indicates the steps that are to be taken to correct problems with boundary reference monuments and boundary monuments, along the Delaware-New Jersey boundary line. The work should be carried out expeditiously by representatives of the States and the National Geodetic Survey. Any expenses involved are to be identified and agreed to by the Delaware State Boundary Commission before proceeding. New Jersey shall provide in kind service only.

The Commissioners specify these actions:

| Monuments | Problem | Corrective Action |
|---|---|---|
| Reference | | |
| Boundary Ref. DE-NJ 1 | Tilted, located in hazardous waste area. | Set a new monument referencing the original 1934 mean low water point. |
| Boundary Ref. DE-NJ 2 | Concrete is badly crazed. | Set a new monument referencing the original 1934 mean low water point. |
| Boundary Ref. DE-NJ 3 | Missing. | Set a new monument referencing the original 1934 mean low water point. |
| Boundary Ref. DE-NJ 4 | Prone, underwater, disc missing. | Set a new monument referencing the original 1934 mean low water point. |
| Boundary Ref. DE-NJ 5 | Prone, underwater, disc missing. | Set a new monument referencing the original 1934 mean low water point. |
| Boundary | | |
| Boundary Mon. DE-NJ 6 | Top of monument containing disc broken. | Set a new monument referencing the original position of the 1934 Boundary Monument #6. |

For the State of Delaware

Robert R. Jordan, Chairman
Delaware Boundary Commission

Date 4/11/86

For the State of New Jersey

Richard T. Dewling, Commissioner
Department of Environmental Protection

Date 5/19/86

DE20124

AMENDMENT REPLACING EXHIBIT C
OF THE 2001 JOINT AGREEMENT
BETWEEN
THE STATE OF NEW JERSEY
AND
THE STATE OF DELAWARE

WHEREAS, pursuant to 29 Del. C. § 202, the Director of the Division of Historical and Cultural Affairs and the Secretary of the Department of Natural Resources and Environmental Control have been authorized to make joint agreements with appropriate officials or agencies of an adjacent state and the National Geodetic Survey to delineate more thoroughly any part of any common boundary between the state of Delaware and any adjacent state; and

WHEREAS, N.J.S.A. 52:29-2 authorizes and directs the New Jersey Department of Environmental Protection to examine every monument marking the boundaries of the state of New Jersey and to cooperate with adjacent states to restore and repair boundary monuments found to have been injured, displaced or removed and set suitable monuments wherever they are wanting at intersections with highways; and

WHEREAS, at joint meeting of representatives of the State of New Jersey and the Boundary Commission of Delaware held August 29, 2001, an agreement was signed by both parties re-establishing six new boundary reference monuments that have Global Positioning by Satellite (GPS) positions from which one can reference the 1934 Mean Low Water Line Boundary between the States of Delaware and New Jersey within the 12-Mile Circle; and

WHEREAS, during work on recreating the 1934 Mean Low Water Line as a digital vector line layer, for inclusion in the Delaware Spatial Data Framework (DSDF) boundary layer the U.S. Geological Survey (USGS) found inconsistencies in attachment C of the 2001 agreement pertaining to the exact location of reference monuments 1,3,4, and 5; and

WHEREAS, Mr. David Doyle, Chief Geodetic Surveyor, National Oceanic and Atmospheric Administration National Geodetic Survey, has researched these inconsistencies and in a review and report on the Delaware-New Jersey boundary through the Delaware River and Delaware Bay, has provided a detailed explanation of the inconsistencies as is more particularly described in his January 6, 2004 report attached hereto as Exhibit A and made part hereof; and

WHEREAS, Mr. Doyle also recommends in his report that the lists of the North American Datum of 1927 (NAD27) and NAD83 (1991) for the Boundary Points 1,2,3,4,5, and 6 provided in his report be incorporated into the agreement by this amendment to avoid future confusion,

NOW THEREFORE, pursuant to their respective authorities, the parties have determined and agree that the North American Datum of 1927 (NAD27) and NAD83

DE26046

(1991) coordinates provided by Mr. Doyle in his report for Boundary Points 1,2,3,4,5, and 6 are verified and correct, and that this amendment and the report at Exhibit A shall be attached to the original agreement signed August 29, 2001 and shall replace the original Exhibit C in that agreement.

It is agreed by the parties that the above amendment and the attached report of Exhibit A replaces Exhibit C in the original August 29, 2001 agreement and that this now amended agreement represents, with the greatest possible fidelity, the present established boundary of the states.

The amendment shall become effective on the date of the last signature.

STATE OF NEW JERSEY
Department of Environmental Protection

By _____
Bradley M. Campbell, Commissioner

STATE OF DELAWARE
Department of Natural Resources and Environmental Control

By _____
John A. Hughes, Secretary

New Jersey Geological Survey

By _____
Karl W. Muessig, State Geologist

Division of Historical and Cultural Affairs

By _____
Daniel R. Griffith, Director

DE26047

STATE OF NEW JERSEY )
) ss.
COUNTY OF MERCER )

I hereby certify that Bradley M. Campbell, Commissioner of the New Jersey Department of Environmental Protection, personally appeared before me this 22nd day of February, 2005 and acknowledged the foregoing agreement to be his act and deed and the act and deed of the Department of Environmental Protection for the purposes therein contained.

Catherine A. Torre
~~Notary Public~~
Attorney at Law of New Jersey

STATE OF NEW JERSEY )
) ss.
COUNTY OF MERCER )

I hereby certify that Karl W. Muessig, State Geologist of the New Jersey Geological Survey, personally appeared before me this 25 day of January, 2005 and acknowledged the foregoing agreement to be his act and deed and the act and deed of the of the New Jersey Geological Survey for the purposes therein contained.

Cindy L. Britton
Notary Public

STATE OF DELAWARE )
) ss.
COUNTY OF KENT )

I hereby certify that John A. Hughes, Secretary of the Department of Natural Resources and Environmental Control, personally appeared before me this 1st day of December, 2004 and acknowledged the foregoing agreement to be his act and deed and the act and deed of the of Department of Natural Resources and Environmental Control for the purposes therein contained.

Carol C. Brown
Notary Public

CAROL C. BROWN
Notary Public, State of Delaware
My Commission Expires Nov. 29, 2007

DE26048

STATE OF DELAWARE )
) ss.
COUNTY OF KENT )

I hereby certify that Daniel R. Griffith, Director of the Delaware Division of Historical And Cultural Affairs, personally appeared before me this 21st day of December, 2004 and acknowledged the foregoing agreement to be his act and deed and the act and deed of the of Division of Historical And Cultural Affairs for the purposes therein contained.

Notary Public

462-03

DE26049

No. 134, Original
In the
Supreme Court
of the
United States

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State of New Jersey

v.

State of Delaware

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**Expert Report of Carol E. Hoffecker, Ph.D.**

My name is Carol E. Hoffecker, Ph.D. My address is 804 Cinnamon Drive, Hockessin, Delaware 19707. I am Richards Professor Emerita of History, University of Delaware, where I taught for approximately thirty-five years. I am the author of numerous books and articles dealing with aspects of Delaware history, including *Democracy in Delaware. The Story of the First State's General Assembly* (2004) and *Federal Justice in the First State: A History of the United States District Court for Delaware* (1992).

I have been assisted in preparing this report by Barbara E. Benson, Ph.D. Dr. Benson is the retired Executive Director of the Historical Society of Delaware and had served as an adjunct faculty member in the History Department of the University of Delaware from 1981-2003.

Neither I nor Dr. Benson has any financial interest in, or current employment or consulting arrangement with, any of the parties to this case other than having been

retained by the State of Delaware to review the claim made by the State of New Jersey, to provide my opinion as an expert on the background and historical context of the Compact of 1905 and to prepare this Expert Report.

**Qualifications**

Over more than forty years as a scholar and teacher, one of my principal interests has been research and teaching Delaware history, including the State's political history.

**Information Required Pursuant to Rule 26(a)(2)(B)**

My curriculum vitae is attached hereto as Exhibit A. Dr. Benson's curriculum vitae is attached hereto as Exhibit B.

All the data and information considered by me in forming the opinions herein, other than knowledge gained over many years of study in the field, are cited in this report.

I am being compensated for my work in preparing this report and for my testimony, if called, at the rate of $200 per hour. Dr. Benson is being compensated at the same rate. Our compensation is not contingent on, or related in any way, to the outcome of this case.

**Scope of Assignment**

I have been retained by the State of Delaware to provide an opinion as to the historical background and context of the Compact of 1905.

**Summary of Opinion**

The Compact of 1905 grew out of an interstate conflict concerning the regulation of fishing rights in the Delaware River. In 1871, Delaware's General Assembly adopted a law to tax out-of-state commercial fisherman in Delaware's waters. Since colonial

times, Delaware had claimed water rights and the subaqueous soil in the Delaware River to the low water mark within a twelve-mile circle measured from the town of New Castle, Delaware. In 1877, New Jersey brought suit in the United States Supreme Court to contest Delaware's boundary claim and its right to regulate fishing in the river. The case languished for many years until both states decided to discontinue the litigation, without prejudice, based on agreements set forth in an interstate compact, which has come to be known as the Compact of 1905. The Compact of 1905 should be viewed in the context of a particular historical moment in time. It was designed to resolve the fishing dispute that caused the litigation. It was not intended to infringe on Delaware's boundary or jurisdictional claims in other respects, as to which both states reserved their claims. Delaware's boundary claim was later confirmed by the United States Supreme Court in 1934. By that time, there were few fish in the Delaware River, and the states were no longer concerned with the fishing issues that had led them to enter into the Compact of 1905.

**Opinion**

Disputes over the commercial uses of the Delaware River and Bay have plagued relations between Delaware and New Jersey since colonial times. The two states' protracted cases before the United State Supreme Court can remind readers of fiction of the seemingly endless suit of *Jarndyce* v. *Jarndyce*, in Charles Dickens's *Bleak House*. Since the Age of Discovery, the Delaware River and Bay have provided a major entry into the east coast of the United States. Today they remain a major commercial link to the world for the cities of Trenton, New Jersey, Philadelphia, Pennsylvania, and Wilmington, Delaware. These waterways are also an essential part of the Atlantic

Basin's ecosystem and have been an important source of food to the people who have lived along their shores for many centuries. Those many uses have not always coexisted harmoniously. The Delaware River and Bay have served both Delaware and New Jersey well, yet these bodies of water continue to separate the two states in more ways than one. This report describes the historical background of some of those conflicts and how the states have attempted to resolve them over time.

**Early Fishing on the Delaware**

Long before the European settlement of the Delaware River Valley, Native Americans paddled their dugout canoes on the waters of the Lenape Wihittuck, or the river of the Lenape, as the great river was then called.[1] The Lenni Lenape lived on both sides of the river, which was their major transportation artery and an important source of food. As part of their annual cycle of the seasons, Lenni Lenape visited the shores of the river and its tributaries during the summer months to fish for shad, sturgeon, and other fin fish, as well as to harvest oysters and shellfish. The abundance of fish and oysters made fishing easy. During the spawning season for shad and sturgeon, Lenape men and boys came to the river as those fish moved from salt to fresh water and then back again. They used woven nets and wooden stakes to create fence-like weirs to capture the fish. Some of the Native Americans would wade into the river to drive the fish into the net, where others could spear or even catch their slippery prey with bare hands.[2]

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[1] C.A. Weslager and Louise Heite, "History," in *The Delaware Estuary: Rediscovering a Forgotten Resource*, eds. Tracey L. Bryant and Jonathan R. Pennock (Newark, Del.: University of Delaware Sea Grant Program, 1998), p. 11.

[2] Ibid.; C. A. Weslager, *The Delaware Indians* (New Brunswick, N. J.: Rutgers University Press, 1972), esp. chap. 3, pp. 50-76. For an illustration of Lenape shad fishing, see Weslager and Heite, "History," p. 14. Eventually the river once known as the "river of the Lenape" came to be known as the Delaware River, and the Native Americans living there as Delaware Indians.

Western Europeans arrived in ever-increasing numbers in the seventeenth century to exploit and to assert their control over the Delaware River and Valley and the lands that surround it. For nearly a hundred years, the Dutch, the Swedes, and the English vied for control over part or all of the lands along the Delaware. Fur trading and whaling brought the first Europeans, but soon many could see the opportunities for financial advancement through exploitation of other natural resources. Most people immediately think of the trade in animal pelts, especially the highly prized beaver, but the variety and abundance of fin fish and shellfish under the water were also seen as a major commercial resource.[3]

Virtually every explorer and early settler commented on the abundance of the Delaware River. For example, Thomas Yong, sailing for England in 1634, waxed eloquent about the region of the Delaware. He compared the climate to that of Italy, and of the fish he noted, "heere is plenty, but especially sturgeon all the sommer time . . . ."[4] Peter Lindeström, who came about 1650 to the Delaware as part of the New Sweden Colony, had to describe shad for his masters in Stockholm: "a kind of large fish like the salmon, runs against the stream like a salmon . . . ; a very fine flavored and excellent tasting fish . . . ."[5] Within a year of his arrival on the Delaware, William Penn bragged to friends back in England about the bounty of the Delaware River. To John Aubrey he

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[3] Two scholarly but highly readable introductions to colonization of the western shore of the Delaware River are John A. Munroe, *Colonial Delaware: A History* (Millwood, N.Y.: KTO Press, 1978) and C.A. Weslager, *The English on the Delaware, 1610-1682* (New Brunswick, N.J.: Rutgers University Press, 1967).

[4] "Account of Thomas Yong, 1634," in *Narratives of Early Pennsylvania, West New Jersey, and Delaware, 1630-1707*, ed. Albert Cook Myers (New York: Charles Scribner's Sons, 1912), p. 48.

[5] Peter Lindeström, *Geographia Americae*, trans. Amandus Johnson (Philadelphia: Swedish Colonial Society, 1925), p. 187.

wrote, "the sorts of fish in these parts are excellent and numerous. Sturgeon leap day and night that we can hear them . . . in our beds."[6] A month later he told the Earl of Sunderland that there were "fish in abundance, especially of Shad and Rock [striped bass], which are excellent here."[7]

In 1683 William Penn had every reason to enjoy, in a proper Quaker way, his enviable position as proprietor of not one, but two, English colonies in North America. Little did he know then how difficult, how litigious, his struggle would be to hold claim to his colonies and to pass them down to his heirs. Because of his father's wealth and position, William traveled in the upper circles of the English aristocracy. His conversion to the radical new religion of the Society of Friends pained and frustrated his father and often moved young Penn beyond the realms of elite society. His faith led him to many places, including the Mid-Atlantic region of North America. His first encounter with this colonial world came with West Jersey, an experience that he found fraught with both potential and pitfalls. He learned that colonial lands could be used to create areas of settlement for Quakers and other religious nonconformists, but he also learned various lessons about the legal dangers of both partnerships and the Crown.[8]

William Penn subsequently sought a grant of land from England's monarch to create his own colony on the opposite or western side of the Delaware River. King Charles II owed Penn a large debt for money borrowed from Penn's late father. Penn preferred land to cash, and North American land was much easier for Charles to spare

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[6] William Penn to John Aubrey, June 13, 1683, *The Papers of William Penn*, 5 vols., eds. Richard S. Dunn and Mary Maples Dunn et al. (Philadelphia: University of Pennsylvania Press, 1981-1986), 2:395.

[7] William Penn to Earl of Sunderland, July 28, 1683, *The Papers of William Penn*, 2: 417.

[8] For a modern biography of William Penn, see Richard S. Dunn and Mary Maples Dunn, eds., *The World of William Penn* (Philadelphia: University of Pennsylvania Press, 1986).

than money. But such a grant had to fit a new colony into an area already partially carved up into the Colony of Maryland, granted to Lord Baltimore by Charles I in 1632, and the Three Lower Counties on Delaware, which the king's brother, James, duke of York, had seized from the Dutch in 1664. Imprecise knowledge of the area's geography, and its cartographic representations, made this grant tricky, and thereby began the controversy over the boundaries of Delaware.

Delaware's unusual shape and its claim to the Delaware River to the low-water mark on the eastern shore began with the royal grant of Pennsylvania. The Duke of York wanted to protect his major town and administrative center on the western side of the Delaware River, so his secretary, Sir John Werden, proposed a circle boundary from the town, New Castle, as a territorial buffer. The final determination of a twelve-mile circle was transferred just two years later, in 1682, by deed and lease to William Penn. Penn thus gained control of the western side of the Delaware River through two separately granted but contiguous colonies: the Province of Pennsylvania and The Three Lower Counties on Delaware.

Much time and attention, to say nothing of parchment, paper, and ink, have been lavished on the question of Delaware's boundaries for over 300 years. The Duke of York's "clouded title" to land on the western side of the river, as noted historian John A. Munroe so delicately termed it, accounts for those controversies. Lawyers, historians, and archivists have spent countless hours marshalling the documents and arguments used to assert the rights of one claimant over another, from William Penn and Charles Calvert, Lord Baltimore, to the states of New Jersey and Delaware. Legal decisions establishing and affirming the boundaries of the second smallest colony/state by size took from 1750

when the English Court of Chancery upheld the Penn claims over those of Lord Baltimore to the 1934 United States Supreme Court decision written by Justice Benjamin Cardozo upholding the State of Delaware's claim to the territory within the twelve-mile circle from New Castle to the low-water mark on the eastern shore of the Delaware River.[9]

**The Nineteenth-Century Fishing Industry on the Delaware**

While the colonial population expanded and territorial boundaries were adjudicated, the river of the Lenni Lenape became a major transportation corridor, and its fin fish and shellfish continued to be an important part of the local diet and commerce. By the middle of the nineteenth century fishing on the Delaware had become a profitable business, and newspapers in Philadelphia eagerly reported on the enormity of the annual catch.[10] Fishermen and fishing industries on the Delaware, like individuals and companies almost everywhere, reacted accordingly. Throughout history, when natural resources appear to be so plentiful as to be without limit, those involved in their exploitation see little reason for restraint. Exploitation, not conservation, becomes the operative mentality. The reasoning is always the same: if the harvest of a resource, like fish, is good, then more capital, more labor, and more tools will surely lead to greater exploitation and greater profits.

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[9] For brief summaries of early boundary decisions, see, among many, Weslager, *English on the Delaware,* pp. 221-26, and Munroe, *Colonial Delaware*, pp. 79-84. The Duke of York's deed of feoffment to William Penn delineated the boundary thusly: "all that the Towne of NewCastle otherwise called Delaware and All that Tract of Land lying within the Compass or circle of Twelve Miles about the same scituate lying and being upon the River Delaware in America And all Islands in the same River Delaware and the said River and Soyle thereof lying North of the Southernmost part of the said Circle of Twelve Miles about the said Towne" (*State of New Jersey v. State of Delaware*, 291 U.S. 361, 364 (1934)).

[10] Quoted in *Delmarva Star* (Wilmington, Del.), Mar. 31, 1929.

The two fin fish of particular value to the Delaware River's nineteenth-century fishing industry were the favorites from time immemorial: the shad and the sturgeon. William Penn's beloved shad is one of the largest and most valuable members of the herring family. Shad, which can weigh as much as twelve pounds, live in the salt water of the Atlantic Ocean, but from age three to five onward they return to fresh water to spawn. Shad-spawning season on the Delaware is primarily April through June. Shad can be found along the Atlantic coast of North America from the Gulf of Saint Lawrence to Florida, but they are most abundant in the Delaware River and the Chesapeake Bay. Atlantic sturgeon are found from the Saint Lawrence River south to the Gulf of Mexico. At the height of the sturgeon industry, the Delaware fishery was the largest in America. Sturgeon can reach a length of ten to twelve feet and, like shad, live in salt water but travel to fresh water to spawn. Sturgeon spawning season on the Delaware is normally the months of May and June.[11]

The Delaware River's commercial fishing industry began and ended with shad. From the 1870s, shad fishermen on the Delaware found eager buyers. At first fishermen sold their catch from their boats, or their wives hawked them at local markets. Then buyers from all over the East Coast came to the major port towns. By the end of the nineteenth century, much of Delaware's shad catch was sent to distant markets in water-tank rail cars. As the shad industry boomed, its expenses increased. More men and boats took to the water, and the drift nets used to catch the shad got longer and longer, reaching up to a mile in length. Often fishermen worked cooperatively in groups, fishing in teams

[11] For an overview of the fish and fishing industry of the Delaware River and Bay, including shad and sturgeon, see Kent S. Price, Robert A. Beck, Steward M. Tweed, and Charles B. Epifanio, "Fisheries," in *The Delaware Estuary: Rediscovering a Forgotten Resource*, eds. Tracey L. Bryant and Jonathan R. Pennock (Newark, Del.: University of Delaware Sea Grant Program, 1998), pp. 71-89.

and sharing shoreline fishing shacks for eating and sleeping between trips. On the western shore of the river, the dominant shad-fishing area extended from Port Penn to Wilmington, while on the eastern shore, Penn's Grove was an important shad center. The shad catch in the Delaware increased dramatically: from about 3 million pounds a year in 1880 to nearly 15 million pounds in the early twentieth century. But then the shad industry fell as rapidly as it had soared. For the State of Delaware alone, the shad catch dropped 99 percent from 1896 to 1944. What brought about this collapse? One newspaper bluntly summed it up by saying, "killed off by greed and pollution."[12]

Initially, commercial fishermen on the Delaware viewed the huge, jumping sturgeon as a "nuisance" rather than an exploitable asset. Sturgeon surged upriver in spawning season in such huge numbers that people swore that the fish would actually jump into boats.[13] Shad fishermen hated sturgeon because the fish caused heavy damage, even destruction, when caught in shad nets. When shad fishermen saw sturgeon racing toward their nets, their best recourse was to try to take their nets in. Slowly a market grew for sturgeon meat, particularly smoked sturgeon, but the sturgeon really took off

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[12] *Delmarva Star*, Mar. 4, 1923. No single comprehensive source on the history of shad fishing in the Delaware River exists, but a good understanding can be gained by reading Price, Beck, Tweed, and Epifanio, "Fisheries," pp. 71-77, who note that improved water quality and government regulations have recently significantly increased the shad population in the Delaware. This increase, however, has not created a similar return of a shad fishing industry because the competitive situation has changed. See also, James G. Horn, "The History of the Commercial Fishing Industry in Delaware" (B.A. thesis, University of Delaware, 1957), pp. 2-20; Jay L. Hannic, "History of Delaware's Shad Fisheries," in *Delaware Conservationist* (Spring 1963): 14-15; and a series of articles in Delaware newspapers, especially Wilmington *Journal-Every Evening*, Aug. 30, 1947, and Wilmington *Evening Journal*, Jan. 25, 1927.

[13] No single comprehensive source for the history of sturgeon fishing on the Delaware exists, but a good overview of the industry can be gained from John N. Conn, "The Sturgeon Fishery of Delaware River and Bay," in U.S. Commission of Fish and Fisheries, *Report of the Commissioner for the United States Commission of Fish and Fisheries for 1899* (Washington, D.C.: Government Printing Office, 1899), pp. 369-80; John A. Ryder, "The Sturgeon and Sturgeon Industries of the Eastern Coast of the United States . . . ," *Bulletin of the United States Commission of Fish and Fisheries for 1888* (Washington, D.C.: Government Printing Office, 1889), pp. 231-328; Price, Beck, Tweed, and Epifanio, "Fisheries," pp. 71-77; Horn, "Commercial Fishing Industry in Delaware," pp. 2-20; Wilmington *Every Evening*, Jan. 25, 1927.

when the price of caviar increased. The price of sturgeon eggs, or roe, jumped from 30 cents a pound in 1897 to $3.50 1922.[14] Now female sturgeon became truly valuable. Sturgeon vessels and nets appeared on the Delaware to compete with shad ships. Sturgeon fishermen often worked from scows fitted out with two cabins, a large one for communal living and a small one for butchering the catch and preparing the roe. Others fished from sailing ships known as sturgeon skiffs, which were larger than shad skiffs. Sturgeon fishermen drifted long gill nets, often using fifteen small boats working as a team. The center of the sturgeon industry on the western side of the Delaware was from approximately twenty miles north to twenty miles south of Delaware City, while Penn's Grove and Bayside were important sturgeon centers on the eastern shore. Fishermen sold locally, nationally, and particularly internationally for caviar. As market demand increased, so did the number of fishermen and the size of the catch, leading to the beginning of the end of the sturgeon industry on the Delaware. The number of nets might increase, but the catch per net began a steady decline as early as 1888. High prices, however, sustained some level of commercial sturgeon fishing on the Delaware into the 1930s. Once again, "greed and pollution" got the blame for the industry's demise; but in the case of sturgeon, over-fishing through greed was believed to be the greater culprit.

**From the Fishing War of 1871 to the United States Supreme Court, Round 1**

Not all of those who worked in the fishing industries or in the governments of the states in which fisheries operated remained oblivious to the imperative of sustainability. Without regulation and protection of a natural resource, fishing could not survive at a commercial level. As early as 1871 the federal government created the United States

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[14] Price, Beck, Tweed, and Epifanio, "Fisheries," p. 75.

Commission of Fish and Fisheries to study why food fish in American waters were declining and how that decline could be turned around. From that commission came two major reports on the sturgeon industry of the Delaware River and Bay in 1888 and 1899.[15] At about the same time state governments with interests in the Delaware River and Bay began to enact legislation designed to protect the fishing interests of their citizens. New Jersey appointed Commissioners of Fisheries in 1870, and the following year Delaware's governor urged the legislature to appoint a study commission. The Delaware legislature subsequently approved the appointment of five fish commissioners in 1873.[16]

As commercial fishing became important at the beginning of the 1870s, both Delaware and New Jersey took an increasing interest in the Delaware River. Delaware Governor Gove Saulsbury included a section on fishing in his message of 1871 to the Delaware legislature concerning the conservation of the resource for the benefit of Delaware citizens.[17] "The laws of the state have not been adequate to the protection of

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[15] Ryder, "The Sturgeon and Sturgeon Industries of the Eastern Coast of the United States . . . ," is a scientific study delineating the need to control over-fishing, protect habitat, and promote propagation; Conn, "The Sturgeon Fishery of the Delaware Bay and River" is a detailed history of the sturgeon industry to the end of the nineteenth century.

[16] *Revision of the Statutes of New Jersey, Published under the Authority of the Legislature* (Trenton: John L. Murphy, 1877), 425 [This law, passed in 1870 and amended in 1873 and 1874, was entitled "An act for the appointment of commissioners for the better protection of fishing interests of the state of New Jersey]; Gove Saulsbury, Governor's Message of Jan. 3, 1871, in Delaware, *Journal of the Senate*, 1871, pp. 16-17; *Laws of Delaware*, vol. 14, chap. 419, sec. 2, p. 281.

The laws cited above were not the first passed by either state relating to fin fishing. At least as early as 1808, New Jersey enacted concurrent legislation with Pennsylvania to regulate fishing on the northern portion of the Delaware River. This legislation, supplemented many times, was in effect at the time the State of New Jersey created fish commissioners (*Revision of the Statutes . . . , 1877*, pp. 426-33). The State of Delaware passed its first regulatory fishing law in 1829, an act to regulate and tax gill nets, but promptly repealed it a year later. Another law adopted a decade later made it illegal for nonresidents to hunt, fish, or take oysters "from, in, or near the waters of the Delaware River and Bay" (*Laws of Delaware*, vol. 7, chap. 181, p. 372, and vol. 9, chap. 216, p. 263).

[17] Saulsbury, "Message of Jan. 3, 1871," p. 17.

our oyster beds, planting grounds, and fisheries from depredation by non-residents . . . ."

The legislature, he wrote, has a duty

> to protect our inhabitants in the proximity to our rivers and streams, and the proprietors of the soil along our coasts, and all engaged in the business of fishing and culture of oysters, in all the rights which their location and business entitle them to, as it is to protect our fruit growers or the producers of any other of our staple crops.[18]

Governor Saulsbury's concerns relating to fishing were nothing new in Delaware. The state's first such law in the nineteenth century, passed in 1812, declared Delaware's waters off-limits to non-Delawareans. While this law was concerned with oysters and terrapin, the legislature's next protective effort, in 1839, prohibited all non-Delawareans from fishing and hunting in or near the "waters of the Delaware."[19] Clearly Delaware's lawmakers assumed ownership of the river, but equally clearly those laws lacked teeth, for funds were never allocated to enforce them.

New Jersey's fish commissioners approached their mandate from a perspective very different from that of Governor Saulsbury. In 1871 they recommended legislation to regulate fishing by day, season, and mesh size of net. They also sought a tax on drift nets, which met immediate opposition from fishermen. All of the commissioners' recommendations were passed by New Jersey's legislature on March 15, 1871, with the exception of the tax on fishing nets.[20]

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[18] Ibid.

[19] *Delaware Laws*, vol. 9, chap. 216, pp. 263-65; *Delaware Laws*, vol. 4, chap. 209, pp. 568-69. In 1851, the legislature extended the law of 1839 to include all rivers and streams in addition to the Delaware River and Bay (*Delaware Laws*, vol. 10, chap. 569, pp. 564-65).

[20] *Laws of New Jersey*, Supplement to An Act to regulate the fisheries in the river Delaware, and for other purposes, Article 44, Mar. 15, 1871, p. 433.

New Jersey's legislators and fish commissioners approached fishing issues through the perspective of creating interstate agreements. The act was adopted as a supplement to legislation first passed in 1808 that had required the Commonwealth of Pennsylvania to pass an act of the same or similar wording before it took effect in New Jersey. Likewise, in 1871 New Jersey's fish commissioners sought Delaware's participation in creating a tri-state coalition on fishing laws. The commissioners, in fact, were most concerned with what New Jersey considered to be the southern portion of the Delaware River (that is the area of the river between the states of New Jersey and Delaware) because that area saw the most traffic in drift-net shad fishing. Thus, they sought, and received, permission from their governor to visit Delaware's legislators in Dover.[21] In some ways they counted their trip a success, for on March 28, 1871, the Delaware General Assembly passed an act that joined with New Jersey's law in regulating day, season, and mesh size of nets. But Delaware's legislators added a provision that addressed the issue raised by their governor. Section 1 of "An Act for the Protection of Fishermen" made it illegal for all non-Delaware residents to "catch or take fish of any kind in Delaware bay or river, or any of the creeks emptying into the same within the limits of the same" without a license. It would now cost non-Delawareans $20 per annum for a license.[22]

Instead of creating harmony between and among the governments and fishermen of the states bordering the Delaware River, this fishing law emanating from Dover in 1871 unleashed a tidal wave of ill will and litigation that has pitted New Jersey against

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[21] *Third Annual Report of the Commissioners of Fisheries of the State of New Jersey, For the Year 1872* (Trenton: State Gazette, 1872), pp. 9-10.

[22] An Act for the Protection of Fishermen, *Delaware Laws*, vol. 14, chap. 72, pp. 84-87. A supplemental act in 1871 (vol. 14, chap. 73, p. 88) instituted a $5.00 license fee for state residents.

Delaware for over 130 years, as the protection of fish and fishermen morphed into a full-scale, recurring judicial argument on state boundaries so reminiscent to Delawareans of the earlier, and seemingly endless, boundary dispute among William Penn, Lord Baltimore, and the English Crown.

Delaware's fishing law of 1871 sought to protect the state's own fishermen and fishing industry by oversight and control of all of the Delaware River that it had claimed since 1682, during the Duke of York-William Penn era—all of the water, and its soil below, to the low-water mark on the eastern side of the river within the twelve-mile circle from the town of New Castle. To Delawareans this boundary was beyond discussion. Indeed, it appears that the State of Delaware considered the twelve-mile circle to be such a given that it did not bother to codify it until 1852, in response to the Pea-Patch Island dispute in the 1840s.[23]

To non-Delaware fishermen using the Delaware River, the out-of-state licensing provision of Delaware's law of 1871 was offensive. No matter who claimed to own the river, fishermen had always taken equal access for granted. News did not travel as fast as it does today, but once people heard, they were anxious and confused. What would be the practical implications? The answer came in the spring of 1872 and was a straightforward application of the law, apparently initiated by Delaware's attorney general. On May 2, 1872, W.W. Pritchett, a constable in Wilmington, accompanied by an armed posse, took a steam tugboat to the eastern side of the Delaware River and arrested twenty-two New Jersey residents for fishing in the waters of the State of Delaware without

[23] "Of Sovereignty; Jurisdiction and Limits," chap. 1, sec. 1, *Revised Statutes of Delaware*, 1852, pp. 2-3. For the Pea-Patch Island case, see Justice Cardozo's discussion of *In re Pea Patch Island*, 30 F. Cas. 1123 (Arb. Ct. 1848) (No. 18311). *State of New Jersey v. State of Delaware II*, 291 U.S. 361, 377, 54 S. Ct. 407, 412-13 (1934).

licenses. The men were taken, some at gun point, to the district attorney in Wilmington, along with their eleven rowboats and fishing nets. When the fishermen told the district attorney that they had always fished on the river and never had had to have a license, he told them of the new law and gave them a choice of buying licenses and paying court costs or forfeiting their boats and nets and going to jail to await trial. Reluctantly the men bought licenses.[24]

Reaction to those arrests was swift. Within a week, New Jersey's governor, Joel Parker, issued a proclamation asserting the State of New Jersey's right to the Delaware River from its own shore to the middle of the river and the right of New Jersey fishermen to fish in those water without having to get licenses from the State of Delaware. Governor Parker then warned "all persons" (meaning, of course, Delaware officials) not to arrest New Jersey fishermen in the disputed area and urged New Jersey citizens to resist violence.[25] Governor Parker next wrote a letter to Delaware's governor that both asserted New Jersey's territorial claim to the eastern half of the Delaware River and announced his proclamation of the previous day. New Jersey, he said, believed the question of state boundary claims required judicial resolution.

A few days later, Governor James Ponder of Delaware responded to Governor Parker with a strong assertion of Delaware's right to the river within the twelve-mile

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[24] Affidavits of John Q.A. Denny, George Stanton, and Job Barker, in Record, *New Jersey v. Delaware*, No. 1, (1877)) (excerpt), reprinted in Documents submitted by the State of Delaware to U.S. Supreme Court in *New Jersey v. Delaware III* on Oct. 27, 2005, Lodging, tab 1:44-47.

[25] Joel Parker, governor of the State of New Jersey, to James Ponder, governor of the State of Delaware, Trenton, May 9, 1872, in *Report of the correspondence between Govs. Parker and Ponder* . . . (Trenton: State Gazette, 1873), p. 3; "A Proclamation by the Governor of New Jersey," May 8, 1872, reprinted in Record, *New Jersey v. Delaware*, No. 1, p. 25.

circle. It was, said Governor Ponder, "not . . . an open question."[26] From Delaware's perspective, the law of 1871 was not at all a territorial assertion; it was enacted "for the purpose of aiding the propagation of certain fish which were fast becoming extinct," a law passed "at the suggestion and request of the fish commissioners of New Jersey. . . ."[27] As to judicial review, Governor Ponder asked for a proposal from his counterpart because he (Ponder) did not have the constitutional power to agree to arbitration.

Governor Parker got the final word in this particular flurry of correspondence. On May 22, he sent a letter to Governor Ponder that again denied Delaware's boundary claim. His proposal for judicial review was to pass the question to his attorney general.[28] So, the first salvo of the Delaware River fishing war, which started with a drawn gun, ended in a barrage of words and legal maneuvering.

Later, Governor Parker, Governor Ponder, and the attorneys general of the two states met. After a "free interchange" of ideas, the officials of both states agreed that Delaware would make no arrests east of the middle of the Delaware River while both governors urged their respective state legislatures to appoint three commissioners to settle the question of river jurisdiction.[29] After some to-ing and fro-ing, both legislatures agreed.

Delaware went first. On January 30, 1873, the legislature adopted joint resolutions to establish the six-man commission recommended by the governor. The

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[26] James Ponder, governor of the State of Delaware, to Joel Parker, governor of the State of New Jersey, Dover, May 14, 1872, in *Report of the Correspondence between Govs. Parker and Ponder . . .*, p. 4.

[27] Ibid.

[28] Ibid., pp. 5-8.

[29] Governor's Annual Address, July 14, 1873, New Jersey, *Senate Journal*, pp. 47-48.

legislature agreed that the decision of the commission was to be final. Two weeks later the legislature added supplementary joint resolutions that clarified their intent: Delaware would not submit the boundary question, but only the right, and the extent of that right, of citizens of New Jersey to fish in the Delaware River within the twelve-mile circle.[30] To up the ante, the Delaware General Assembly then passed a supplement to the "Act for the Protection of Fishermen of 1871" instituting a tax for nonresidents on nets greater than 300 fathoms.[31]

New Jersey's legislature soon followed Delaware's by passing an act to appoint three commissioners to a joint commission to "negotiate and agree respecting territorial limits and jurisdictions of the two states." When the legislature learned of the precise wording of Delaware's supplementary resolutions of February 14, it, in turn, modified its original legislation after receiving a message from Governor Parker. The governor reminded the legislators that "the important practical question which interests most of our citizens is the right of fishing in the river Delaware, its nature and extent . . . ."[32] By a supplement approved March 11, New Jersey's legislature agreed, for the sake of expediency, to negotiate on the narrow issue of fishing rights.[33] Delaware responded to New Jersey's apparent willingness to negotiate within Delaware's more narrow parameters with a major olive branch. In joint resolutions of April 8, 1873, the Delaware

[30] Delaware, Legislature, Joint Resolutions, Jan. 30, 1873, Feb. 14, 1873, and Feb. 19, 1873, reprinted in Record, *New Jersey v. Delaware*, pp. 26-28.

[31] "A Supplement to the Act Entitled 'An Act for the Protection of Fishermen," vol. 14, chap. 419, Feb. 19, 1873, in *Revised Statutes of the State of Delaware . . . to . . .1874* (Wilmington: James and Webb, 1874), p. 281.

[32] Governor Joel Parker, Message to the Legislature, printed in New Jersey, *Journal of the Senate*, Mar. 5, 1873, p. 505.

[33] New Jersey, Legislature, Act of Feb. 26, 1873, and Supplement to Act, Mar. 11, 1873, reprinted in Record, *New Jersey v. Delaware III*, Lodging, tab 1, pp. 29-32.

legislature suspended the out-of-state fishing license section of the troublesome 1871 fishing protection act pending the outcome of the commission's negotiations. Moreover, if the commission decided favorably on Delaware's position, its state commissioners were authorized to agree to a mutual right of fishery. [34]

The new commission held meetings in the spring and summer of 1873. Delaware's three commissioners made several proposals to their counterparts from New Jersey, but since all of those proposals began with acceptance of Delaware's title to the river to the low-water mark on the eastern shore within the twelve-mile circle, the New Jersey commissioners declined to agree. The commission held three more unproductive meetings through June 1874. Then Delaware's commissioners presented their New Jersey counterparts with what in essence amounted to a closely argued legal brief, taking thirty-four pages to "prove" Delaware's title.[35] Eight months later Delaware's commissioners still had not received a response. Thus, they reported to their legislature that they did not believe the joint commission could ever come to a mutually agreeable settlement. [36]

In his message to Delaware's General Assembly in January 1877, Governor John P. Cochran reviewed the history of the joint commission. He said that the previous legislature of 1875 had construed New Jersey's long silence as "an implied abandonment of their case and a tacit relinquishment of their alleged claim of title and jurisdiction," so

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[34] Delaware Legislature, Joint Resolution, Apr. 8, 1873, reprinted in Record, *New Jersey v. Delaware*, 32-37.

[35] *The Fishery Question Argument of the Delaware Commissioners* (Wilmington: James & Webb, 1874).

[36] Report of the Fishery Commissioners, in Delaware, *Journal of the Senate*, Feb. 2, 1875, pp. 211-12.

on March 18, 1875, Delaware lawmakers disbanded the commission.[37] The Delaware legislators then reinstated the out-of-state fishing license requirement of the 1871 act. According to New Jersey's attorney general, New Jersey knew nothing about those actions until a New Jersey citizen called Governor Joseph D. Bedle's attention to a notice placed in the Wilmington *Morning Herald* on March 15, 1876, announcing the need for fishermen to again secure licenses from Delaware. The attorney general asserted that Delaware had misconstrued New Jersey's silence, for its commissioners were, in fact, still wrestling with the issues on the table.[38]

Territorial title remained an unresolved issue, but of greater concern to New Jersey's governor was the return of Delaware's fishing license law. Governor Bedle invited Governor Cochran of Delaware to a meeting in Philadelphia in hopes of winning a postponement of the law's reinstatement. At their meeting the governors could not resolve the issues, so the only recourse left to the State of New Jersey was to seek resolution by the United States Supreme Court. And so it did in March 1877.[39]

**Efforts to Reach a Settlement**

In preparation for litigation, Delaware's General Assembly adopted joint resolutions proclaiming the state's ownership of, and exclusive jurisdiction over, the twelve-mile circle across the Delaware River to the low water mark on the New Jersey

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[37] *First Biennial Message of His Excellency John P. Cochran, Governor of Delaware to the General Assembly, Session of 1877* (Wilmington, 1876 [*sic*]), p. 21; *Delaware Laws*, vol. 15, chap. 2249, pp. 254-55.

[38] Bill of Complaint, reprinted in Record, *New Jersey v. Delaware*, pp. 31-36. See also New Jersey, *Journal of the Senate*, Mar. 22, 1876, pp. 325-27 for letters of Governor Joseph D. Bedle and A. Browning for New Jersey Commissioners to governor of New Jersey.

[39] *First . . . Message of John P. Cochran . . .*, p. 22; *Laws of Delaware*, vol. 15, pt. 2, chap. 504, Jan. 26, 1877, pp. 641-42; *Third Annual Message of His Excellency Joseph D. Bedle, Governor of New Jersey to the legislature, Session of 1878*, Doc. No. 1 (Trenton, 1878), p. 23.

shore and authorizing the governor to employ counsel to defend the First State's position before the United States Supreme Court.[40] Governor John P. Cochran then appointed three of the state's most outstanding lawyers to represent the state in the suit. They were Thomas F. Bayard, George Gray, and George H. Bates. All were Democrats, then the majority party in Delaware. By 1885 only Bates, the son of a prominent Delaware jurist, Chancellor Daniel Moore Bates, and a former Speaker of the House of the Delaware legislature, was left. Bayard had gone on to become United States Secretary of State in Grover Cleveland's first administration, while Gray became a United States senator and then a federal judge. Preparation of the case was extremely time-consuming. Between 1901 and 1905, George Bates amassed piles of documents from the early colonial period. Some required translation; all had to be typed, edited for modern readers, and interpreted.[41]

In March 1877 the Supreme Court issued an injunction ordering Delaware to suspend the out-of-state license provision pending resolution of the litigation. The suit then languished for want of interest on the part of New Jersey, the complainant state, until the next fishing dispute arose. This time the source of the controversy lay south of the river, in the Delaware Bay. In 1885 Delaware authorities arrested and even jailed some fishermen in the upper Delaware Bay, confiscating their boats and nets.[42] Delaware argued that such arrests were permissible because the United States Supreme Court's injunction applied only to the contested portion of the Delaware River, that is, the area

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[40] *Laws of Delaware*, vol. 15, chap. 504, pp. 641-42.

[41] George H. Bates to Attorney General Robert H. Richards, March 8, 1909, Bates Family Collection (hereafter B.F.C.), Historical Society of Delaware, Wilmington, Del. (hereafter H.S.D.).

[42] *Report of the Commissioners of the Fisheries of New Jersey, 1884-85* (Trenton: John J. Murphy, 1886), pp. 5-6 (quotation, p. 5); *New York Times*, Aug. 13, 1885.

within the twelve-mile circle. But where did the river and bay divide? The governors of New Jersey and Delaware agreed that their respective attorneys general should meet to determine the boundary line. With the assistance of scholars and lawyers, Attorney General John H. Paynter of Delaware and Attorney General John P. Stockton of New Jersey set the dividing line between river and bay to run from Cohansey Light in New Jersey west to Bombay Hook Point in Delaware. Once that agreement was reached, Delaware agreed to drop its charges against the fishermen, whose boats and nets had already been returned. Delaware continued to insist upon its citizens' exclusive fishing rights in its half of the Delaware Bay, but for all practical purposes Delaware does not seem to have enforced that position. Attorney General Stockton urged another conference between the two states to secure mutual fishing rights in all the waters of the Delaware Bay. Such a conference never took place, most probably because it did not prove necessary. With the acquiescence of both states to the concept of mutual fishing rights in the waters of the river and bay, fishing continued unmolested.[43] As Governor Joel Parker had reminded the New Jersey legislature more than a decade earlier, "the important practical question . . . is the right of fishing in the Delaware . . . ."[44] For the moment fishing rights were secure.

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[43] *Report of the Commissioners of Fisheries*, p. 6; *Annual Report of the Attorney General of the State of New Jersey, for the Year 1887*, pp. 19-21; *Final Report of the State Geologist*, vol. I: *Topography, Magnetism, Climate* (Trenton: John J. Murphy, 1888), pp. 83-84; *New York Times*, Aug. 13, 1885.

[44] New Jersey, *Senate Journal*, 1873, p. 505.

**The Oyster Conflict Opens and Closes**

Between 1871 and 1905, only once did an issue beyond fin fishing cause a ripple in the relationship of New Jersey and Delaware. The issue concerned oysters, and this time the aggressive assertion of legal rights came from New Jersey and not Delaware.

Oysters, like fin fish, had been an important part of the local diet since the time of the Native Americans, and they attracted as much attention from Western European explorers and settlers as did the Delaware River's shad and sturgeon. From earliest times, the governments of Delaware and New Jersey recognized the significance of this aqueous resource and passed laws to protect, preserve, and control an important food source and an increasingly valuable economic commodity. The main stimulus to commercial oystering in the Delaware Bay came in 1870 with the extension of the New Jersey Southern Railroad, a division of the New Jersey Central Railroad, to the Maurice River, a tributary of the Delaware Bay. With the railroad, the number of shucking houses increased, and New Jersey oysters could reach well beyond local and regional markets.[45]

Even without the railroad connection, New Jersey always had the advantage over Delaware because its oyster beds were larger than those of its neighbor to the west. Still, Delaware had significant oyster resources. Many families living along the Delaware Bay earned their livings from oystering. Delaware's oysters were most plentiful along the shores of Kent County from Leipsic to Bowers Beach, with the center at Port Mahon. With poorer train connections and smaller shucking houses, Delaware always lagged

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[45] Mary Emily Miller, "The Delaware Oyster Industry," *Delaware History*, 14(1971): 239-41; James E. Valle, "Harvesting Oysters," in *The Delaware Estuary: Rediscovering a Forgotten Resource*, eds. Tracey L. Bryant and Jonathan R. Pennock (Newark, Del.: University of Delaware Sea Grant Program, 1998), p. 26; Donald H. Rolfe, "Bivalve, New Jersey: 'Long Reach Remembered, '" in *The Delaware Estuary: Rediscovering a Forgotten Resource*, p. 82.

behind New Jersey in the scale of its oystering operations. Indeed, as time went on, Philadelphians came to dominate Delaware's oyster beds. Philadelphia entrepreneurs sent sailing ships equipped with two-to-four dredges into the Delaware Bay. The ships took their cargoes directly to Philadelphia for shucking and transport.[46]

Philadelphia ships also dredged for oysters in the eastern half of the Delaware Bay, which led to the first complaints about territorial claims to oyster areas. In 1871, the Commonwealth of Pennsylvania issued a report "in Reference to the Oyster fisheries in Delaware Bay" in response to a law passed by New Jersey's legislature earlier that year.[47] According to Pennsylvania, the three states of Pennsylvania, New Jersey, and Delaware had enjoyed common usage of oystering areas since the 1830s.

Then in 1871 the New Jersey legislature passed a law to require every boat working in New Jersey's waters to buy a license. The license was available only to individuals who had been residents of New Jersey for at least six months. The law added a sliding scale of license fees ranging from $10 to $60, depending upon the size of the oyster boat, as well as multiple enforcement provisions such as the appointment of a "special officer" who would have the power of arrest.

Not to be outdone, Delaware's legislature passed similarly restrictive laws that same year. The state closed its oyster beds to non-Delawareans or non-owners of Delaware plantation rights. Legislators also added a licensing fee on boats dredging in public beds that was three times that charged by New Jersey. Finally came the

[46] Valle, "Harvesting Oysters," p. 26; Weslager and Heite, "History," p. 25; Mary Emily Miller, "The Delaware Oyster Industry: Past and Present" (Ph.D. diss., Boston University, 1962), pp. 142-44.

[47] Miller, "The Oyster Industry: Past and Present," pp. 133-34. The New Jersey law was entitled "An Act for the better enforcement in Maurice River cove and Delaware Bay of the act entitled 'An Act for the preservation of clams and oysters . . . '" (New Jersey P.L., 1871, p. 642). The original law was enacted on April 14, 1846.

enforcement provisions, which included a collector with arrest powers and the purchase of a watchboat.[48]

Aside from angering some in Pennsylvania, few jurisdictional problems appear to have arisen from the oystering legislation emanating from Trenton and Dover. One scholar noted no significant friction arising from the laws passed on both sides of the river. He found that for Delaware, the major result of the residency requirement was that members of New Jersey oystering families moved to Delaware to expand their operations, a migration that perhaps worked both ways.[49] In the last quarter of the nineteenth century, Delaware's oystermen voiced concern primarily about individuals who illegally dredged for oysters, "marauders" primarily from Pennsylvania. Eventually the conflict escalated to a level of combat and bloodshed. "Oyster pirates," as they came to be called, armed their boats with cannon and were able to overwhelm Delaware's watchboat and small, legal oyster boats.[50]

In 1887, Delaware's legislature passed a law that expanded the state's claim to oyster beds in the Delaware Bay. Until that time Delaware legislators had not asserted jurisdiction east of Blake's Channel.[51] Now they extended Delaware's jurisdictional claim to the oyster bed at Ship John Light. New Jersey responded by arresting two Delaware oystermen working in the Ship John bed. Prosecution was dropped when the

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[48] *Laws of Delaware,* vol. 14, chaps. 9-14, pp. 11-25. Oyster plantations, according to Delaware's 1871 legislation, were available in one area located south of Reedy Island and west of Blake's Channel. Private citizens could obtain a plantation for the planting of oysters for an annual fee plus a boat license.

[49] Valle, "Harvesting Oysters," p. 26.

[50] Miller, "The Delaware Oyster Industry: Past and Present," pp. 137-40; Miller, "The Delaware Oyster Industry," 245-46.

[51] *Laws of Delaware,* vol. 18, pt. 1, chap. 248, p. 464.

State of Delaware agreed to a settlement through negotiation, which must have included a repeal of the law.[52] No attorney general files exist in the Delaware Public Archives for this period, but, according to the New Jersey attorney general's statement in his brief to the United States Supreme Court in 1933, calm was returned. Under those circumstances, it does not seem surprising that the question of oysters did not loom large in the Compact of 1905. Over time each state had enacted, amended, repealed, and rewritten dozens of acts to promote, protect, and regulate oystering. Each side had vested interests, which at the time of the writing of the Compact of 1905 were satisfied by the status quo.[53]

**Construction into the River**

Although Delaware consistently laid claim to the waters and subaqueous soils to low water on the New Jersey shore within the twelve-mile circle, the wharves, piers, and bulkheads along the New Jersey shore were never part of the debate in the nineteenth century. Delaware neither interfered with their construction, nor did it tax such structures on either side of the river.

Delaware and New Jersey pursued different policies regarding wharfage. New Jersey established extensive controls, but Delaware did not. Urbanization was the major

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[52] Brief of Plaintiff, reprinted in Documents submitted by the State of Delaware to U.S. Supreme Court in *New Jersey v. Delaware III* on Oct. 27, 2005, Lodging, tab. 10, p. 373; *Laws of Delaware*, vol. 18, pt. 1, chap. 557, p. 679.

[53] The Delaware legislature created an oyster commission in 1909, and with the U.S. Bureau of Fisheries produced a report and a map entitled "Chart of Leased Oyster Bottoms, Delaware Bay, State of Delaware" that showed no Delaware oyster beds east of the Delaware Bay's main shipping channel (Delaware Oyster Survey Commission, *Report of Commission* [Baltimore: King Bros., n.d.]. Twenty years later, the situation had changed dramatically, with the Ship John oyster bed as the flash point. Wilmington's *Every Evening* subsequently termed it an "armed fight' between New Jersey and Delaware oystermen over rights to the beds from the ship channel to the middle of the bay (Oct. 9, 1933). By 1929 oysters had become one of the two issues of sufficient magnitude to New Jersey to lead that state to return to the U.S. Supreme Court. The other issue was wharfage. ("Report to Honorable Morgan F. Larson, Governor of New Jersey by William A. Stevens, Attorney General . . . ," 1929).

factor in explaining those differences. New Jersey had the major port cities of New York and Philadelphia opposite its watery borders, whereas Delaware had none. In 1851 New Jersey began taking control over its riparian lands by requiring that land owners obtain licenses from the state to build structures into New Jersey's waterways.[54] In 1864 the New Jersey legislature adopted "An Act to ascertain the rights of the state and of the riparian owners in the lands lying under the water of the bay of New York and elsewhere in the state."[55] It was the first of a series of laws, all of which traced their origins to the 1864 statute, by which New Jersey governed, sold, leased, and taxed submerged lands. The 1864 law explicitly focused on two urban areas: the waters along the Hudson River and New York Bay, and "the lands lying under the water of the Delaware river, opposite to the county of Philadelphia." Neither that law, nor those that followed, mentioned those parts of the Delaware River lying north or south of Philadelphia.

It is not surprising that New Jersey lawmakers concentrated their riparian laws on those parts of their state's waterways that were in contact with the major out-of-state commercial and industrial centers of New York City and Philadelphia. Those were the places where wharfage was most important and most lucrative. In 1871 New Jersey began the practice of committing the taxes it raised from those urban-area wharves to help support the state's public schools.[56]

By contrast, Delaware had no major urban centers lying across its portion of the Delaware River's eastern shore to prod it into licensing, controlling, or taxing wharves.

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[54] New Jersey P.L., 1851, p. 335.

[55] New Jersey P.L., 1864, p. 681.

[56] New Jersey P.L., 1871, p. 98.

A search of the state's laws in the nineteenth century reveals a few acts whereby the legislature gave steamboat and railroad companies permission to build wharves as part of the powers granted to them in their acts of incorporation.[57] In addition, in the 1850s a few individuals requested private acts whereby the legislature concurred in their construction of wharves, but, in the absence of a legal requirement to get advance approval from Delaware, such requests soon disappeared from Delaware law books.[58] The state did not tax wharves that extended into the state's waters, nor did it require a state license to erect them.

The State of Delaware has never taxed real estate. Its counties tax real estate. Until the mid-twentieth century all three of Delaware's county governments were called "Levy Courts" because they set the levies on taxable real estate. A search in the Delaware Public Archives found no records from the nineteenth century to show whether or not the assessors from New Castle County, the county that includes the twelve-mile circle, included wharves extending from either the western or eastern shore of the Delaware River in their assessment of real estate. Theirs was a rather unsophisticated operation designed to raise the modest sums needed to support the county jail and a poor house, and to build bridges across creeks. It is not surprising that the assessors never ventured across the Delaware River to claim taxes from wharf-owners on the eastern shore.

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[57] See, for example, *Laws of Delaware*, vol. 9, chap. 11, "An Act to Incorporate the Delaware Rail Road Company, pp. 17-26, and chap. 312, "An Act to Incorporate the Breakwater, Lewes, and Philadelphia Steam-boat Company," pp. 359-62.

[58] *Laws of Delaware*, vol. 11, chap. 463, p.528; chap. 398, p. 444.

The most important wharves extending from the New Jersey side of the Delaware River within the twelve-mile circle were associated with Delaware-based companies. Throughout most of the nineteenth century and well into the twentieth century, the Wilmington Steamboat Company, later called the Wilson Line, ran boats from Wilmington to Chester and Philadelphia, Pennsylvania. In the summer months the company also ran excursion boats from the west bank cities to a picnic grove at Penns Grove, New Jersey. In the 1920s an amusement park called Riverview Beach was added on the New Jersey shore of the river. Likewise, Delaware-owned ferry companies operated between Delaware and New Jersey until the Delaware Memorial Bridge opened in 1951.[59] The only industrial site with structures extending into the river from the New Jersey side within the twelve-mile circle was the Du Pont Company's Chambers Works. The Du Pont Company was, then as now, a Wilmington-based corporation.

**Seeking a Settlement**

The repeated postponements of *New Jersey v. Delaware I* stopped in 1901 when the Supreme Court's clerk alerted the parties that the Justices would wait no longer. Delaware had to decide to go forward or risk losing its boundary claim to the New Jersey shore. Neither Delaware's governor nor legislature hesitated to continue to press for vindication of the state's boundary rights. The legislature adopted a resolution whereby the attorney general and special counsel were "instructed to maintain the defense of said suit."[60] George Bates stopped all other business to concentrate on meeting the deadline to file an answer to New Jersey's Bill of Complaint.[61]

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[59] See Richard V. Elliott, *The Saga of the Wilson Line, Last of the Steamboats* (Cambridge, Md.: Tidewater Publishers, 1970).

[60] *Laws of Delaware*, vol. 22, chap. 244, p. 531.

The work of meeting Supreme Court deadlines proved so onerous to both sides that in 1903 they agreed to appoint the two states' governors, attorneys general, and counsels as their commissioners in an attempt to find a settlement without recourse to further court proceedings. Whereas Delawareans had no experience with interstate compacts, New Jersey's leaders could look back to a great deal of such experience. The Garden State already had compacts with both New York and Pennsylvania regarding those states' respective contiguous watery boundaries: the New York harbor and the Delaware River, respectively. Those documents provided for boundaries through the middle of those waters and explicitly noted which state owned every island in between. Each state had jurisdiction over the area within its own boundary, except that authorities on either side of the waterway were permitted to cross those bounds to pursue, arrest, and remove back to their own state persons accused of committing crimes in the arresting officer's state.[62] Thus New Jersey had a template for what might constitute an interstate compact.

The Delawareans had no such experience, but George H. Bates was a seasoned negotiator who had dealt with obstinate opponents in delicate diplomatic situations. In 1885 Bates had gone to the Samoan Islands as the special agent of the United States government to help re-establish peace among warring chiefs who were being urged on by the competing governments of Imperial Germany and Great Britain. The United States also had significant commercial and naval interests in the Samoan Islands. Bates was

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[61] Attorney General Herbert H. Ward to Governor John Hunn, Jan. 31, 1903, Delaware Public Archives, Dover (hereafter D.P.A.).

[62] New York Compact: N.J. Stat. sec. 52:28 *et. seq.*; Pennsylvania Compact: N.J. Stat. sec. 52:18-23 *et. seq.*

later one of three commissioners to represent the United States government at conferences with the Germans and British held in Washington, D.C., in 1887 and in Berlin in 1889 for the purpose of restoring peace in Samoa. Bates proved to be a vigorous negotiator on behalf of his country in dealing with such seasoned diplomats as Chancellor Otto von Bismarck of Germany. The representatives of the three powers all claimed to want a restoration of the *status quo*, whereby citizens of their countries could live and trade in the islands without fear that one of the other powers would stir up trouble. Bates's experience was thus appropriately germane to the business of negotiating on behalf of Delaware over the ownership and use of the Delaware River. [63]

Delaware's commissioners began their work by seeking the views of the people most concerned about the dispute: the state's fishermen. Those commercial fishermen, together with their New Jersey counterparts, constituted a major industry that employed 165 boats, each of which reportedly took in $550 weekly during shad season. In early March 1903, Delaware's commissioners, including George Bates, organized a meeting with Delaware fishermen in the coastal town of Delaware City. The meeting proved to be very instructive. One fisherman complained of his arrest by New Jersey authorities when he had been fishing for sturgeon near the Jersey shore. Most fishermen agreed, however, that although the river within the circle rightfully belonged to Delaware, New Jerseymen should be permitted to cast their nets wherever they pleased so long as they abided by Delaware's Sabbath and seasonal restrictions.[64]

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[63] George Handy Bates Samoan Papers, University of Delaware Special Collections, Newark, Del. See particularly box 1, folder 13; box 2, folder 21; and box 3, folders 28-28.

[64] Wilmington *Evening Journal*, Mar. 4, 1903.

In light of such "live and let live" testimony from the fishermen, and considering the additional cost and effort of continuing the suit, the commissioners attempted to conclude a compact that would unify the states' conflicting fishing laws and thus end the case. As Delaware's Attorney General Herbert H. Ward put it to Governor John Hunn, "if the entire controversy between the two states can be settled out of court, it would seem the part of good reason to attempt to make such a settlement."[65]

The commission composed of the governors, attorneys general, and counsels of the two states, met in Philadelphia on March 12, 1903. The evidence is very scant, but it would appear that both sides came with ideas and language that they would like to see written into the compact. It is worth noting, for example, that Articles I and II, permitting each state to serve legal papers or make arrests on the entire breadth of the river, contain principles similar to New Jersey's compacts with New York and Pennsylvania.

The proposed document created in 1903 was designed to resolve the fishing issue, as detailed in Articles III, IV, and V, which proclaimed a common right of fishery, provided for the passage of uniform fishing laws in both states, and permitted the continuance of certain existing laws until adoption of the uniform legislation. The document also permitted the states to continue enforcing their laws with respect to two matters that had not been the subject of longstanding controversy: the oyster industry and the building of piers and wharves. But for the dispute in 1887, which had been resolved, the oyster industry had not been the cause of controversy between the states. In drafting the compact in 1903, Article VI was written to maintain the *status quo* of that industry. Likewise, with respect to Article VII, there was no evidence of a practical dispute with

[65] Ward to Hunn, Jan. 31, 1903, D.P.A.

regard to the construction of piers and wharves extending from the New Jersey shore that entered onto the portion of the Delaware River within Delaware's twelve-mile circle. At that time the modest piers on the New Jersey shore that entered into the twelve-mile circle served the interests of citizens of both states.

Article VIII of the 1903 compact stated that nothing would affect the "territorial limits, rights or jurisdiction of either state" relating to the river or the ownership of its subaqueous soil except as "expressly set forth" in the document. Through this provision, the states sidestepped the dispute over ownership within the twelve-mile circle, as to which the two states could never have reached agreement, and similarly deferred other jurisdictional questions that did not require resolution at the time. Each state preserved its claims in Article IX, which stated that the lawsuit was to be dismissed "without prejudice."

The effort to forge an interstate agreement proved fruitless, however, because the Delaware General Assembly ended its session too soon to take up the proposed compact.[66] The suit would go on, at least until 1905, when Delaware's legislators were next scheduled to meet.

The lawyers on both sides had no recourse but to carry on their preparations for the fast-approaching deadline to submit their briefs to the Supreme Court's Special Commissioner, Francis Rawle. Francis Rawle (1846-1930) knew George Bates very well. In 1895, at Rawle's request, Bates drafted a law regarding street railways that was adopted by the Delaware General Assembly. That same year, George Bates's son, Theodore, became a law clerk in Rawle's Philadelphia office. When Theodore

[66] Attorney General Herbert H. Ward to George H. Bates, Feb. 11, 1905, B.F.C., H.S.D.

committed suicide later that year, his father assumed responsibility for completing work that Rawle had assigned to his son.[67]

In developing his case Bates called several of Delaware's most distinguished elderly lawyers to appear at a hearing held in Salem, New Jersey. Those men all testified that going back as far as the 1840s, Delaware had exercised the right to arrest and try violators of Delaware state laws on the river, and that federal cases drawn from the river territory had been heard in the Federal District Court for Delaware.[68]

By the end of 1904 Bates's quest for evidence was nearly complete. The most pressing claim on his time was to organize the mass of historical documents he had collected. The clerk of the U.S. Supreme Court agreed to one final extension, to March 1, 1905, by which time the defense must present its evidence. New Jersey would then have until June 1, 1905, for rebuttal, and both parties were to have their arguments in the hands of Special Master Rawle by November 1, 1905.[69]

**Adopting the Compact of 1905**

It was in this context that Delaware's General Assembly met in Dover for its biennial session in January 1905. In his final month as governor, John Hunn told the assemblymen of his hope to end the long-smoldering case with New Jersey through "the appointment of a commission with full powers to settle the issue by arbitration." The "continuance of this suit," he said, "has been, and is likely to be, an extremely costly one

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[67] See various letters in B.F.C., H.S.D., especially Francis Rawle to George Bates, Jan. 31, 1895; George Bates to F. Rawle, Feb. 14, 1895; Theodore Bates to F. Rawle, Jun. 1895; Elizabeth Bates to George Bates, Dec. 4, 1896.

[68] The State of Delaware had made it illegal for nonresidents to fish in Delaware waters in 1839 (*Laws of Delaware*, vol. 9, chap. 216, p. 263).

[69] James H. McKenney, Esq., Clerk, U.S. Supreme Court, to George H. Bates, n.d., B.F.C., H.S.D.

for the State, thousands of dollars having already been expended in its prosecution." He told the legislators that his recent communications with New Jersey officials convinced him that they, too, were willing to pursue "an amicable arrangement for a settlement" outside the judicial system. It is worth noting that the interconnection of reaching an "amicable settlement" with that of saving a large sum of the state's money must have been particularly appealing to a governor who was both a Quaker and a businessman.[70] Later that same month Governor Hunn sent a message to the legislature drawing their attention to the chaotic nature of the state's fishing laws. He admonished them that rationalizing the fishing laws "demands primary consideration in as much as it concerns the propagation and protection of one of the largest sources of food supply belonging to the people." He recommended the creation of a commission charged to draft "a uniform, reasonable, comprehensive, and plain bill" to be presented to the next meeting of the legislature in 1907.[71]

Delaware's outgoing attorney general, Herbert H. Ward, and his successor, Robert H. Richards, were in complete agreement with Governor Hunn regarding both the desirability of an interstate compact and the need to redraft Delaware's fishing laws. In February 1905 Ward notified George Bates that the Delaware General Assembly had adopted a joint resolution "of precisely similar terms to that of two years ago, with the addition of the words 'and bay.'"[72] The commissioners appointed to serve were to be Delaware's new governor, Preston Lea, a Republican and Quaker businessman like his predecessor, together with Ward himself, his successor as attorney general, Robert H.

[70] Delaware, *Journal of the Senate*, 1905, p. 93.

[71] Ibid., pp. 91-92.

[72] Herbert H. Ward to George H. Bates, Feb. 11, 1905, B.F.C., H.S.D.

Richards, and George Bates. The New Jersey legislature having passed a similar measure earlier that same week, the commissioners could begin their work promptly so as to complete their compact in time for the Delaware General Assembly to act on it before it adjourned.

Once again commissioners from the two states met in Philadelphia, where they made the minor adjustments to the two-year-old compact document noted above. The first difference was changing the term "Delaware River" to "Delaware River and Bay" in passages concerning the regulation of fishing in Article IV. The Compact of 1905 also added a provision whereby the states were to determine the dividing line between the river and bay and then mark that division with monuments on both shores.[73]

All was not the same, however. In the two years since he had been a member of the commission of 1903, George Bates had changed his mind about the idea of substituting a compact for a ruling by the United States Supreme Court. He had prepared what he regarded as an unimpeachable case in support of Delaware's title and was ready to present the First State's arguments to Special Master Rawle. Why then should Delaware agree to put aside the case before the United States Supreme Court?

Disagreements among Delaware's commissioners over the efficacy of adopting a compact in lieu of continuing the state's defense before the Supreme Court became public knowledge through the pages of the Wilmington *Every Evening*. The *Every Evening* was aligned with George Bates and his political party, the Democrats. Interestingly, Wilmington's leading Republican daily, the *Morning News*, largely ignored the compact issue.

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[73] Delaware, *Journal of the Senate*, 1903, pp. 898-902; *Laws of Delaware*, vol. 23, chap. 5, pp. 12-17.

On March 2, 1905, the compact went to the Delaware Senate, where it was ratified by a unanimous vote without debate.[74] In the days that followed, the *Every Evening* published a daily barrage of editorials, articles, and letters to the editor hostile to the boundary compact. "Shall We Surrender All That We Have Contended For In The New Jersey Boundary Dispute?" the paper asked on the front page of the March 6 edition. The article that followed mirrored Bates's view that "no agreement should be made until the Supreme Court has judicially decided the underlying and basic question of territorial jurisdiction." The writer was not against establishing a fishing compact with New Jersey but thought that the compact should follow a ruling by the Supreme Court rather than serve as its substitute. The article also noted that some Delaware fishermen had been arrested and fined by New Jersey authorities, yet nothing in the compact provided for their reimbursement. "Shall we surrender . . . on the threshold of success?"[75]

The *Every Evening's* aggressive journalism drew a prompt response from Herbert Ward. The former state attorney general sent a letter to the editor that appeared just two days later. Ward wrote that the case had sprung from Delaware's "unwise legislation" in 1871. He contended that the proposed compact dealt solely with fishing rights and did nothing to affect Delaware's title to waters or soil within the twelve-mile circle.[76]

The next day's edition featured a letter from Alexander B. Cooper, a Democratic lawyer from New Castle. Cooper had made a close study of Delaware's historic

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[74] Delaware, *Journal of the Senate*, 1905, p. 335.

[75] Wilmington *Every Evening*, Mar. 6, 1905.

[76] Ibid., Mar. 8, 1905.

boundaries that had convinced him that the colonial records supported Delaware's claim to the low water mark on the New Jersey shore within the twelve-mile circle. According to Cooper, the compact's language merely postponed an inevitable showdown before the United States Supreme Court over the First State's eastern boundary. Cooper also challenged the compact's supporters sanguine expectation that by endorsing the agreement Delaware could let New Jersey bear some of the cost of policing the river. Allowing authorities from both shores to arrest people on the river was certain to cause confusion, Cooper said. He ended with a grandiloquent flourish: "It is not a question of expense; it is a question of principle—the title to our lands, both under and above the water."[77] Cooper, like Bates, believed so firmly in the strength of the Delaware claim that he rejected the less expensive expedient of a compact with the uncertainty that might bring.

Not surprisingly, two days later Herbert Ward responded to Alexander Cooper's arguments. Ward recalled that as attorney general he had presented the almost identical compact to Delaware's House of Representatives two years before. He had then told the legislators that be was willing to continue to fight the case before the Supreme Court if that was what they wanted him to do, "but that my own judgment strongly favored the adoption of the compact . . . and thus avoiding the expense." Had the legislature taken his advice and acted at that time, Delaware could have saved substantial legal fees.[78] Whereas George Bates was eager to present his evidence in support of Delaware's title before the United States Supreme Court, Herbert Ward, who believed that the compact

[77] Ibid., Mar. 9, 1905.

[78] Ibid., Mar. 11, 1905.

did nothing to undermine Delaware's title, was determined to save the state the expense of further litigation.

Because of the public disagreements over the wisdom of ratifying the compact, the Delaware House of Representatives set aside an afternoon to hear all sides of the issue before the vote was scheduled. Perhaps because the event provided a venue for the compact's defenders to speak publicly, the Republican Wilmington *Morning News* covered the hearing in much greater detail than did the *Every Evening*.

At the hearing Alexander Cooper and George Bates urged the legislators to reject the compact while Attorney General Robert Richards and former attorney general Herbert Ward argued for its ratification. The compact's defenders said that the agreement would provide "an amicable solution to the problem without surrendering Delaware's rights or title to territory within the famous Twelve-mile Circle." Speakers on both sides of the issue agreed that continuing the suit before the Supreme Court was likely to cost the state between $15,000 and $20,000.

Herbert Ward and Robert Richards repeatedly assured members of the House of Representatives that ratification of the compact would not impact Delaware's clear title to the Delaware River within the twelve-mile circle. Ward explained that under the compact New Jersey would no longer be able to arrest Delaware fishermen. If a Delaware fisherman broke the law, he would be arrested and tried by Delawareans, in Delaware, the former attorney general said. In response to a question, Ward responded "that Delaware would have jurisdiction in criminal matters over the entire river to the New Jersey shore."

Placed on the defensive, George Bates stated his belief that the compact that he had participated in writing and had championed two years before was "unwise and a useless and serious blow to the dignity of Delaware." These words drew an equally patriotic declaration from Attorney General Richards, who professed to be second to none in his willingness to uphold Delaware's honor. But the state's honor was not the issue. Speaking for himself and his predecessor, Herbert Ward, Richards told the legislators, "we do advise you that we consider it is for the best interests of the state to adopt this compact without yielding a foot of property or title." He also reminded the House members that should they reject the compact he would be coming back to them to ask that they appropriate at least $10,000 to continue the suit.[79]

In all the news reports about the drafting and adoption of the compact, there is no record of any debate about the provisions of Articles VI and VII concerning regulation of the oyster and other shellfish industry or riparian rights. Issues concerning the oyster industry appeared to be settled, and riparian issues presented no problems since at that time Delaware did not regulate or tax structures built into the Delaware River on either side of the river.

Three days after the hearing the House ratified the compact with New Jersey by the close vote of seventeen to fourteen. Almost to a man, the Republicans voted "yea" while the Democrats voted "nay."[80]

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[79] Wilmington *Morning News*, Mar. 15, 1905.

[80] Delaware, *Journal of the House of Representatives*, 1905, p. 783.

**The Compact in the Context of its Time**

The compact never rose to the prominence in Delaware politics that one might have assumed from the articles that appeared in the Wilmington *Every Evening* or from the partisan nature of the vote in the House of Representatives. Other issues were riveting the attention of politically-minded Delawareans. In March 1905 all eyes focused on efforts to rescind Delaware's infamous Voter Assistance Law. That law had a curious history that explains a good deal about the state's politics during the first decade of the twentieth century.

Delaware had been a border state during the Civil War: that is, it was a slave state that remained loyal to the Union. In the post-war years the Democrats were the major party in Delaware, although the Republican Party was strong among businessmen, especially in Wilmington. In 1889, after years in the minority, a split among the Democrats allowed the Republicans to claim control of the General Assembly.

The GOP triumph meant that Republican legislators could choose Delaware's next United States senator. Party stalwarts were astonished when a man who was a complete unknown in state politics appeared in Dover and announced that he must be the Republicans' choice. The man was John Edward O'Sullivan Addicks, a Philadelphia-based owner of municipal gas works, who was known as the "Napoleon of Gas." To claim citizenship in Delaware, Addicks bought a house in Claymont, the state's northern-most town.

In his quest for a seat in the United States Senate, Addicks proved to be rich, unscrupulous, and persistent. When persuasion failed in 1889, he resorted to spending large sums of money to elect Republican legislators who would be beholden to him,

particularly in rural parts of the state where the Democrats had been dominant. Delaware's Voter Assistance Law allowed Addicks's lieutenants to enter the voting booth with voters and thus make sure that Addicks got the votes he had paid for.

The Addicks phenomenon helped make the Republicans Delaware's major party, but it also split the party into two fiercely rival groups. To the acute frustration of all, in legislative session after session neither side had the votes to elect its candidate for the United States Senate seat. In 1903 the factions finally worked out a compromise that allowed one of Addicks's followers to be elected, but this did not satisfy the gas king.

In 1905 Addicks made what proved to be his final attempt to secure election. Once more he failed, and thereafter, his money exhausted, he dropped from the political scene, setting the stage for the emergence of the du Pont family as the major force in Delaware's Republican politics.

In 1905 amid cries denouncing corruption and "wholesale bribery" or shouting "Addicks or nobody" it was hard to concentrate legislators' attention on a mere fishing compact.[81] Yet, as the Assembly was riveted on those more compelling political concerns, it did find time on March 23, 1905, to appoint commissioners to confer with their counterparts in New Jersey regarding the two transcendent issues in the compact: drafting uniform fishing laws and delineating the boundary between the Delaware River and the Delaware Bay. Among Delaware's three commissioners was Alexander B.

[81] Carol E. Hoffecker, *Democracy in Delaware: The Story of the First State's General Assembly* (Wilmington: Cedar Tree Books, 2004), pp. 120-25, 138-39.

Cooper, who became president of the "Delaware Commissioners, (Delaware-New Jersey Fisheries Compact)," as the commission's letterhead read.[82]

At the initial meeting of the joint commission held in Philadelphia on December 15, 1905, the six commissioners unanimously agreed to a resolution requesting their respective governors to seek a delay in Congressional ratification of the compact "until the Commission shall make further request."[83] The governors of both New Jersey and Delaware agreed to the commissioners' request.[84] But the postponement created new problems because of the constraints of the various state and national governmental bodies dealing with both the lawsuit and the compact. Two governors, two state legislatures, the United States Congress, and the United States Supreme Court all operated on differing schedules and with different time limitations.

Those time constraints, coupled with the large number of participants, sometimes led to miscommunications and hard feelings. For example, on March 14, 1906, Walter Hayes, secretary of the Delaware commissioners, sent Hiram R. Burton, Delaware's Congressman, a copy of the joint commissioners' resolution of December 15, 1905, asking for Congressional delay in ratification of the compact. Delaware's Attorney General Richards had also written to Burton to request such a delay.[85] Just a day earlier,

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[82] *Laws of Delaware*, vol. 23, pt. I, chap. 6, pp. 17-20. See various correspondence using the letterhead, such as Alexander B. Cooper to Walter H. Hayes, Esq., January 29, 1907.

[83] Minutes of Meeting, Dec. 15, 1905, Delaware Commissioners, Delaware-New Jersey Fisheries Compact, Minute Book, 1905-1908, D.P.A.

[84] E.C. Stokes to H.C. Loudenslager, Mar. 14, 1906, New Jersey State Archives, Trenton, N.J. (hereafter N.J.S.A.)

[85] Walter H. Hayes to Hiram Burton, Mar. 14, 1906, Delaware Commissioners, Delaware-New Jersey Fisheries Compact, Letter Book, 1905-1908, D.P.A.; [Robert H. Richards] to Hiram R. Burton, Jan. 19, 1907, National Archives, Washington, D.C. (hereafter N.A.) There is no signature, but attribution is confirmed by internal dating, content, and style of letter.

however, it appears that at least some New Jersey leaders were so eager to secure ratification that they had encouraged Senator John Kean to rush the compact bill through the United States Senate without even informing his Delaware colleague of his action.[86] This apparent cross-purpose of activity led to telegrams between commissioners and their Congressmen. Delaware's commissioners alleged "bad faith" on the part of New Jersey. Congressman H.C. Loudenslager sought clarification from Trenton.[87] William J. Bradley, one of New Jersey's fish commissioners and head of the New Jersey Senate, wrote to his Delaware counterpart on the joint fishing commission that he believed that Kean's action was due to "some misunderstanding."[88]

Meanwhile, the work of the joint fishing commission went forward. Commissioners on both sides of the river held public meetings in the spring of 1906 to solicit the opinions of the states' fishermen about what the fishing regulations should contain. They found the views of the fishermen of the two states to be quite "harmonious."[89] At a meeting of the joint commission on October 10, 1906, the Delaware commissioners were first to present their version of an appropriate uniform fishing law. [90] New Jersey acted more slowly to draft a proposal, too slowly from the perspective of the Delaware commissioners, whose legislature was scheduled to meet in

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[86] Because of the Addicks dispute, Delaware had but one elected U.S. senator in 1907.

[87] Telegram, H.C. Loudenslager to E.C. Stokes, Mar. 14, 1906, N.J.S.A.

[88] William J. Bradley to Alexander B. Cooper, Mar. 19, 1906, D.P.A.

[89] Minutes of Meeting, May 8, 1906, Delaware Commissioners, Delaware-New Jersey Fisheries Compact, Minute Book, D.P.A.

[90] Minutes of Meeting, Oct. 10, 1906, ibid.

January 1907.[91] When the New Jersey document was completed, it was found to be incongruent with the Delaware draft. The joint body then met twice in January 1907 in an effort to bring the two proposed laws into uniformity.

On January 16, 1907, the six members of the joint fishing commission agreed that they had created the uniform fishing laws demanded by the compact and were ready to present them to their respective state legislatures. They wrote to their governors that Congress could now ratify the compact.[92] Three days later, Robert H. Richards, Delaware's Attorney General, informed Congressman Burton that it was now "necessary" that the Compact be ratified before the expiration of the February 1, 1907, deadline set by the United States Supreme Court.[93] On January 19, the same day he had written to Burton, Richards also wrote to the chairman of the House Judiciary Committee to say that, speaking on behalf of the government of Delaware, he urged the House of Representatives to move promptly to ratify the compact. Richards explained that "the object and purpose of this compact was to settle certain matters concerning fisheries which had been the cause of the litigation for years pending in the Supreme Court."[94]

Attorney General Richards was at pains to point out that the compact had gained the support of both states' legislatures. He added that "It does not purport to settle any of the boundary line between the two states," and went on to say "but on the other hand, [the compact] expressly provides that the boundary line between the two states shall not in

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[91] Alexander B. Cooper to William J. Bradley, Jan. 5, 1907, D.P.A.

[92] Minutes of Meeting, Jan. 16, 1907, Delaware Commissioners, Delaware-New Jersey Fisheries Compact, Minute Book, D.P.A. The commissioners met again several days later to complete minor adjustments.

[93] [Richards] to Burton, Jan. 19, 1907, N.A.

[94] Attorney General Robert H. Richards to Chairman, Judiciary Committee, U.S. House of Representatives, Jan. 19, 1907, D.P.A.

any wise be affected by the compact." Robert Richards's desire for speedy action in the United States House of Representatives was fulfilled when, on January 24, 1907, the House ratified the New Jersey-Delaware Compact.

On April 23, 1907, the Delaware General Assembly approved "An Act Providing Uniform Laws to Regulate the Catching and Taking of Fish in the Delaware River and Bay between the State of Delaware and the State of New Jersey."[95] New Jersey's legislature approved a comparable, but not identical, law on May 7, 1907.[96]

With passage of the fishing laws, the members of the joint commission's work was over. If preserving the health of the fishing industry on the Delaware River and Bay was the ultimate goal of the new laws, then the commissioners bore a heavy burden. In their final report, Delaware's commissioners noted "the undoubted fact of the gradual disappearance of the shad ... and the almost total disappearance of the valuable sturgeon industries." They focused blame on two factors: the destruction of small food fish by menhaden fishermen and industrial pollution. The commissioners suggested that the menhaden fishing problem could be resolved by restricting its season to the summer months. To the pollution problem they offered no remedy.[97]

The commissioners had also fulfilled their mandate under Article IV of the compact to place monuments to mark the division of the Delaware River and Bay on both shores. In June 1906 the members of the Joint Commission boarded a tug boat that took them down the Delaware River to locate the place that they would declare to be the end

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[95] *Laws of Delaware*, vol. 24, pt. 1, chap. 146, pp. 272-81.

[96] New Jersey P.L., 1907, chap. 131, p. 302.

[97] Report of the Commissioners to the Del. Gen. Assembly, 1906.

of the river and beginning of the bay. Their efforts were thwarted by the soggy marshland soil on either side, but not by any disagreement concerning where the imaginary line should be drawn. They settled on places of adequately fast land, one near Liston's Point on the Delaware side and another near the mouth of Hope Creek in New Jersey. In those places monuments to delineate the mouth of the Delaware River could be erected without fear of their sinking.[98]

Perhaps finally the troublesome and costly issues that had sprung from Delaware's fishing law of 1871 could be put to rest, but it was not to be. As early as 1909 Governor Preston Lea told the legislators in Dover that "unfortunately, certain modifications were made in the bill as passed by the General Assembly of Delaware so that it does not conform to the bill prepared by said Joint Commission and which was passed by the state of New Jersey."[99] Put simply, in spite of so much effort, the two states' fishing laws were not uniform, and they were destined to become even less so in the years to come. The mandate in Article IV of the compact for the passage of uniform laws never happened, not within the two year requirement of the compact—or ever.

**The Post-Compact Era**

Legislative memory was short. Members of Delaware's General Assembly seldom served for more than one or two terms. In the years after 1907 the state government focused its attention on the large-scale tasks of providing modern roads and highways for the increasing number of automobiles and providing modern schools, including high schools, for the state's youth. In that environment, the Compact of 1905

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[98] *Report of Delaware Commissioners on Delaware and New Jersey Fisheries Compact* (no place, no date), pp. 6-8. D.P.A.

[99] State of Delaware, *Biennial Message of His Excellency Preston Lee, Governor, to the General Assembly convened at Dover on Tuesday, The Fifth Day of January, 1909*, p. 25, D.P.A.

quickly receded into hazy memory. No one complained when the legislatures of either state made changes in their respective fishing laws; and the Delaware River within the twelve-mile circle came to be seen as a commercial highway rather than as a source of food.

A letter from New Jersey's attorney-general, John W. Wescott, to Herbert H. Ward dated July 3, 1914, demonstrates how quickly memory of the compact had faded. The little that Wescott knew about the agreement had come in garbled form from an older colleague. The attorney-general falsely claimed that Delaware had never even tried to pass a fisheries law subsequent to the 1905 Compact. Wescott went on to observe that New Jersey had recently changed its fishing law and suggested that Delaware adopt that same law. Thus, he said, the two states might yet achieve uniform laws. Delaware did not respond, and New Jersey never pursued the issue.[100]

In the mid-1920s jurisdiction over oyster beds in the Delaware Bay became an issue. The Compact of 1905 had not established an east-west boundary between the states in the Delaware Bay. Article VI of the compact had merely allowed both states to maintain their laws respecting oysters. In 1925, the arrest of Delaware oystermen by New Jersey for working in water claimed by both states set in motion a series of steps that led to another joint commission. According to the joint resolution of the Delaware legislature, the commission was charged with creating "the final adjustment of all controversies relating to the boundary line between said States and to their respective

[100] John W. Wescott to Herbert H. Ward, Trenton, N. J., July 3, 1914.

rights in the Delaware River and Bay.[101] After that commission failed, New Jersey decided to put the state's land claims to the final test in the United States Supreme Court. In its bill of complaint New Jersey claimed title to the subaqueous soil of the Delaware River and Bay to the ship channel, specifically including the area within the twelve-mile circle. In addition to maintaining its ownership of the river within the twelve-mile circle, Delaware also claimed the boundary below the circle along the center of the waterway as measured from shore to shore. Delaware would finally get the day in court to put the boundary question to rest that George Bates and Alexander Cooper had desired back in 1905.

Unlike the dilatory movement of the similar case filed in 1877, this time the process moved forward quickly. William L. Rawls, Esq., of Baltimore, Maryland, was appointed special master in 1930 and promptly began hearings in 1931. Oral arguments were completed in the fall of 1932, and Special Master Rawls filed his report with the United States Supreme Court on October 9, 1933. To keep abreast of this speedy schedule Delaware's counsel, Clarence Sutherland, made extensive use of the documentary evidence that George Bates had collected nearly thirty years before.[102]

The special master gave something to both sides. He accepted Delaware's contention that the Penn grant had given the First State the river's subaqueous soils within the twelve-mile circle. On the other hand, he rejected Delaware's claim to the

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[101] *Laws of Delaware*, vol. 35, chap. 243, p. 644, reprinted in Documents submitted by the State of Delaware to U.S. Supreme Court in *New Jersey v. Delaware III* on Oct. 27, 2005, Lodging, tab 4, pp. 20-21.

[102] Clarence Sutherland to the Hon. Percy Warren Green, Attorney General of Delaware, July 3, 1935, D.P.A.

geographic center below the circle in favor of New Jersey's assertion that the dividing line was the ship channel.

On February 5, 1934, Justice Benjamin Cardozo announced the Supreme Court's final decree, which upheld the special master's rulings on both counts. After a careful review of the documentary evidence from colonial times Justice Cardozo concluded that the twelve-mile circle did indeed extend to the low water mark on the New Jersey shore. He also took pains to refute New Jersey's contention that by agreeing to the Compact of 1905 Delaware had abandoned its claims to the river waters and subaqueous soils within the twelve-mile circle.

Justice Cardozo wrote, "We are told that by this compact the controversy was set at rest and the claim of Delaware abandoned. It is an argument wholly without force. The compact of 1905 provides for the enjoyment of riparian rights, for concurrent jurisdiction in respect to civil and criminal process, and for concurrent rights of fishery. Beyond that it does not go."[103] In closing, Justice Cardozo reiterated the court's opinion that "Within the twelve-mile circle, the river and the subaqueous soil thereof up to low water mark on the easterly or New Jersey side will be adjudged to belong to the State of Delaware, subject to the Compact of 1905."[104]

What might the words "subject to the Compact of 1905" have meant, taken in historical context? The compact had been created to address conflict over the rights of commercial fishermen of New Jersey and Delaware, particularly within the twelve-mile circle. The compact's major goal had been the creation of uniform fishing laws, yet,

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[103] *New Jersey v. Delaware*, 291 U.S. 361, 377-378.

[104] Ibid., 385.

despite the compact, such laws never came into being. In the years that followed the Supreme Court's decree of 1934, various officials in both Delaware and New Jersey occasionally brought the uniform law issue to the attention of other officials in their respective states, but neither side rose to the challenge to address those suggestions.[105] The reason is clear: by the 1930s few if any commercial fishermen cast their nets within the twelve-mile circle because there were few fish to be caught there. Commercial fishing had moved downstream to the Delaware Bay and Atlantic Ocean.

There was also the question of jurisdictional rights in the waters and subaqueous soils of the circle. In his final report to Delaware's attorney general, Clarence Sutherland, Delaware's special counsel in the Supreme Court case, mused that the state might consider taxing wharfs on the New Jersey shore.[106] But nothing came of that idea, perhaps because in Delaware real estate taxes were levied by the counties, not the state.

**Conclusion**

Viewed in historical context, the Compact of 1905 addressed the most pressing and divisive issue of the time, which was fishing rights in the Delaware River. The compact did not attempt to resolve other issues, it merely deferred them with language that permitted the *status quo* to continue. As George Bates told the United States Supreme Court when he made oral argument on behalf of both state's joint application for suspension of proceedings in February 1906, "the compact . . . [was] not a settlement of the disputed boundary, but a truce or *modus vivendi*. . . . Its main purpose is to

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[105] See, for example, State of New Jersey Board of Fish and Game Commissioners to the Hon. A. Harry Moore, Governor of New Jersey, February 14, 1939; memo from Delaware Assistant Attorney General Jeremy W. Homer to Nathan Hayward, III, Director, Office of Management, Budget and Planning, October 28, 1977, 1977 WL 25804 (Del. A.G.), opinion number 77-033.

[106] Sutherland to Green, Jul. 3, 1935, D.P.A.

provide for enacting and enforcing a joint code of laws regulating the business of fishing in the Delaware River and Bay."[107]

Respectfully submitted,

Carol E. Hoffecker

Carol E. Hoffecker, Ph.D.

Date: November 9, 2006

[107] Statement of reasons submitted orally for the joint application of counsel on both sides for suspension of proceedings until the further order of the Court, reprinted in Documents submitted by the State of Delaware to U.S. Supreme Court in *New Jersey v. Delaware III* on Oct. 27, 2005, Lodging, tab 7, [p. 10].

# EXHIBIT A

*CAROL E. HOFFECKER*

*ADDRESS* *804 Cinnamon Drive*
*Bon Ayre*
*Hockessin, DE 19707* *(302) 239-6724*

*CURRENT POSITION*

*Richards Professor and Alison Professor, University of Delaware, Emerita, 2003*
*Richards Professor of History, University of Delaware, 1982*
*Alison Professor, University of Delaware, 1998*

*PREVIOUS POSITIONS*

*Instructor, Sweet Briar College (1963-66)*
*Visiting Assistant Professor, Northeastern University (1967-68)*
*Junior Resident Scholar, Eleutherian Mills Historical Library (1968-69)*
*Coordinator, Hagley Graduate Program (1970-73)*
*Assistant Professor, University of Delaware (1973-75)*
*Associate Professor, University of Delaware (1975-82)*
*Chairperson, Department of History, University of Delaware (1983-88)*
*Associate Provost for Graduate Studies, University of Delaware (1988-95)*

*EDUCATION*

| | |
|---|---|
| *B.A. (with Honors)* | *University of Delaware, 1960* |
| *M.A.* | *Radcliffe College, 1962* |
| *Ph.D.* | *Harvard University, 1967* |

*PUBLICATIONS*

*Books*

*Readings in Delaware History (editor), University of Delaware Press, 1973.*
*Wilmington, Delaware: Portrait of an Industrial City, 1830-1910, University of Virginia Press, 1974.*
*Brandywine Village: the Story of a Milling Community, Old Brandywine Village, Inc., 1974.*
*Delaware: A Bicentennial History, W. W. Norton, 1977.*

*Wilmington: A Pictorial History, Donning Company Publishers, 1982.*
*Corporate Capital: Wilmington in the Twentieth Century, Temple University Press, 1983.*
*Books, Bricks, Bibliophiles: The University of Delaware Library, (with John A. Munroe), University of Delaware Press, 1984.*
*Delaware, Small Wonder, State of Delaware and Harry N. Abrams, Inc. 1984.*
*Delaware, the First State, Mid-Atlantic Press, 1988.*
*Federal Justice in the First State: A History of the United States District Court for Delaware, 1992.*
*Beneath Thy Guiding Hand: A History of Women at the University of Delaware, the University of Delaware, 1994.*
*New Sweden In America, ed, University of Delaware Press, 1995.*
*Unidel, A Foundation For University Enrichment, University of Delaware, 1996.*
*Honest John Williams, U.S. Senator from Delaware, University of Delaware Press, 2000.*
*Familiar Relations: the du Ponts and the University of Delaware, University of Delaware, 2000.*
*Democracy in Delaware, The Story of the First State's General Assembly, Cedar Tree Books, 2004.*
*The Delaware Adventure (with Barbara E. Benson), Gibbs Smith Publishers, 2006.*

*Articles*

*"Nineteenth Century Wilmington: Satellite or Independent City?" Delaware History, April, 1972.*
*"Church Gothic: A Case Study of Revival Architecture in Wilmington, Delaware," Winterthur Portfolio, 1972*
*"The Politics of Exclusion: Blacks in Late Nineteenth Century Wilmington, Delaware," Delaware History, April, 1974.*
*"The Diaries of Edmund Canby, A Quaker Miller," Delaware History, October, 1974, and spring-summer, 1975.*
*"Four Generations of Jewish Life in Wilmington," in Delaware and the Jews, Jewish Historical Society of Delaware, 1979.*
*"The Land of the Middle Brow Amateur" in Artists in Wilmington, 1890-1940," Delaware Art Museum, 1980.*
*"Water and Sewage Works in Wilmington, Delaware, 1810-1910," Public Works Historical Society, 1981.*
*"Delaware's Woman Suffrage Campaign," Delaware History, spring-summer, 1983.*
*"The Emergence of a Genre: The Urban Pictorial History," Public Historian, 1983.*
*"George Read: Father of the Delaware State," with Richard R. Cooch, Delaware Lawyer, Fall 1987.*
*"Benjamin Ferris and the Perils of Liberal Religion," Quaker History, Spring 1988.*
*"Delaware," Encyclopedia Britannica, 1998.*
*"John James Williams (1904-1988)," Scribner Encyclopedia of American Lives, 1998.*
*"Introduction," University of Delaware, A Celebration, 1998.*
*"Emily P. Bissell," American National Biography, 1999.*

*"The Changing Look of Delaware," Picturing Delaware, University of Delaware Library, 2001.*
*"William V. Roth," Scribner Encyclopedia of American Lives, 2005.*

*GRANTS RECEIVED*

*Harry S. Truman Library Research Grant, 1963*
*Eleutherian Mills-Hagley Foundation, Junior Resident Scholar, 1968-69*
*National Endowment for the Humanities Research Grant, 1977-80*
*T. Wistar Brown Fellowship, Haverford College, 1986*

*PRIZES AND AWARDS*

*Richards Professor of History, 1982*
*Joseph P. delTufo Award, Delaware Humanities Forum, 1989*
*Goldey-Beacom College, Honorary Doctorate, 1993*
*Hall of Fame of Delaware Women, 1993*
*E. Arthur Trabant Institutional Award for Women's Equity, 1997-98*
*Francis Alison Professor, 1998*
*University of Delaware Medal of Distinction, 1998*
*CASE Professor of the Year for Delaware, 1999*
*University of Delaware Alumni Wall of Fame, 2001*

*SERVICE*

*Board of Managers, Wilmington Institute Free Library, 1974-79*
*Historical Records Advisory Board, State of Delaware, 1976-87*
*Historical Society of Delaware, Board of Trustees, 1979-88*
*State Records Advisory Task Force, 1984-96*
*National Endowment for the Humanities, review panelist and project reviewer, various years*
*Rockwood Museum Planning Task Force, New Castle County, 1999-2000*
*Rockwood Museum Advisory Committee, 2000-05*
*Delaware Geographic Names Committee, 2001-*
*Editor, Delaware History, periodical of the Historical Society of Delaware, 1995-*
*In addition, I give talks and speeches on Delaware-related subjects to a wide variety of organizations throughout the state, usually about twenty per year.*

*UNIVERSITY SERVICE (selected examples)*

*University Women's Studies Executive Committee, with brief interruptions from 1972-2000*
*Vice-president, University Faculty Senate, 1980-81*
*President, University Faculty Senate, 1981-83*
*Coordinator, University Roundtable on Secondary Education, 1984-85*

*University President's Advisory Council, 1981-83*
*Winterthur Graduate Program Executive Committee, 1983-85*
*Hagley Museum and Library Advisory Committee, 1983-88*
*Council on Program Evaluation, 1985-1992*
*Middle States Re-accreditation Committee, 1989-1992, 1999-2000*
*Chair, University's Project Vision Implementation Committee, 1990*
*Chair, University Ad Hoc Committee on General Education, 1997-2000*
*University of Delaware Press Board, 1997-2001*
*President Phi Beta Kappa Honorary, UD Chapter, 1999-2000*
*Chair, Commission on the Status of Women, 1999-2000*
*Chair, Faculty Senate Committee on Student and Faculty Honors, 1999-2000*

# EXHIBIT B

# BARBARA E. BENSON

804 Cinnamon Drive
Bon Ayre
Hockessin, Delaware 19707
302-239-6724
bcde1@verizon.net

**Historical Consultant** (September 2003--)

Provides a range of strategic planning, management, writing, and design assistance to individuals, businesses, and nonprofit organizations.

Recent Projects:

- Co-author, *The Delaware Adventure (Gibbs Smith, 2006), a social-studies textbook*
- Curator, 300th Anniversary Exhibition on Delaware General Assembly, Delaware Public Archives (2003)
- Space planning and exhibition creation, Rehoboth Beach Historical Society (2003--)
- Strategic planning and Director's Search Committee, Hagley Museum and Library (2003--)

**Historical Society of Delaware**

- *Executive Director*, (1990—2003)
- *Managing Editor of Delaware History*, **Historical Society of Delaware** (1977—2003)
- *Director of Library and Publications* (1980-1990)

Responsibilities: chief staff and administrative officer for a private, nonprofit state historical organization (founded in 1864) with three principal museum sites, a major manuscript and reference library, and four additional historical properties used for a variety of purposes; educational programs serving over 50,000 adults and children a year; and publications program.

**University of Delaware**

- *Adjunct Associate Professor* (1989--2003)
- Adjunct Assistant Professor (1981-1989),

Responsibilities: Teaching H200, History and Government of Delaware, H206 Survey of United States History, 1865-Present, H268 History Seminar for Undergraduate Majors, H411 History Seminar; H603 Public History, H667 Seminar in Historical Editing, H803 Writing Seminar in the History of the Delaware Valley.

**Hagley Museum and Library**

- *Assistant to the Director of the Library* (1973-19s75)
- *Editor of Publications* (1975-1980)

**EDUCATION:**

Ph.D., *American History*, Indiana University, 1977
Areas of specialization: economic history; regional history. Dissertation: "The Development of Michigan's Lumber Industry, 1837-1870"
M.A., *American History*, Indiana University, 1969
B.A., *History*, Beloit College, 1965

**COMMUNITY SERVICE:**

**New Castle County Historic Review Board,** Chairperson, 2003--

**New Castle County Personnel Committee** board member, 2000 –2003

**New Castle County Rockwood Advisory Committee,** Chairperson, 2000--2005

**African American Museum of Delaware,** Board Member, 1999--2003

**New Castle County Taskforce Committee** on Rockwood Museum, 1999

**Wilmington Rotary Club,** Board of Directors, 1997-1999

**YWCA,** Centennial Committee, 1994

**Delaware Humanities Forum** (the state-based agency of the National Endowment for the Humanities), council member, 1987-90; 1990-94; chairperson, 1992-94; vice-chairperson, 1990-1992; chairperson, grants review committee, 1988-1992; outside evaluator, 1980-1987

**Delaware State Tourism Advisory Board,** gubernatorial appointment, 1988-1991; 2002--

**Association of Delaware Historical Societies,** secretary-treasurer, 1985-1995

**Delaware Heritage Commission,** member of publications committee, 1984-1988; scholarship judge, 1986-94, ex-officio member of board, 1993--

**Sister Cities of Wilmington,** member of board of directors, 1986-96; official delegate to Kalmar, Sweden, 1985

**Lectures and Workshops for state and local groups** (1991--), including schools, church groups, patriotic organizations, genealogical societies, school districts, public libraries, museums, and historical societies in all three counties.

**PROFESSIONAL/SCHOLARLY ACTIVITIES:**

**Delaware State Records Commission,** gubernatorial appointment, 1988--2000

**Delaware State Historical Records Advisory Board** (state-based program of the National Historical Publications and Records Commission), member, 1986-89, 1990-93, vice-chair, 1994--2000

**American Association of State and Local History,** state representative for awards committee, 1985-91; state membership chair, 1996--2003

**Hagley Museum and Library,** McShain Editorial Board, 1993-94

**Museum Council of Philadelphia,** board member, 1991-92

**Delaware Historic Preservation Review Board,** member, 1990-93, 1993-97

**Institute of Museum Services,** grants reviewer, 1986, 1987, 1988, 1991, 1992, 1993, 1994, 1996, 1997, 1999, 2001

**Mid-Atlantic Regional Archives Conference,** member of governing board, 1982-1984, 1984-1986; chairperson of nominating committee, 1985-1986; conference speaker and commentator, 1985 ("Getting Published"), 1986 ("Collecting African-American Sources"), 1988 ("Conservation for Small Organizations"), 1989 ("Designing and Constructing Archival Storage Facilities")

**Salisbury State University,** workshop leader, 1989

**Taft Seminar at University of Delaware,** 1989, 1990, 1991 presented papers on government in Delaware

**New Sweden Conference, University of Delaware,** 1988, chair and commentator for session on archival sources in Scandinavia and America

**New Jersey Historical Commission Annual Symposium,** 1988, chair and commentator for session on Swedish and Finnish Migration

**Delaware Valley Eighteenth-Century Society,** 1987, presented paper on Delaware in the 1780s

**University of Delaware, History of Technology Speakers Series,** 1987, presented a paper on the underwater archaeology of the Kronan

**Delaware State House Symposium,** chairperson of sessions, 1977, 1984, 1986

**Central Michigan University,** Clarke Memorial Lecturer, Clarke Historical Library, 1983

**Consultant on Collections, Exhibitions, and Publications**
Chesapeake Bay Girl Scouts Council; Mrs. Lammot du P. Copeland; Hershey Archives; History Store, Inc.; Greater Harrington Historical Society; Laurel Historical Society; Lewes Historical Society; Milford Museum; Rockwood Museum

**American Library Association, Rare Books and Manuscripts Preconference,** 1985 panelist, library exhibits and the public

**Consultant to Video Projects**
*Whispers of Angels*, Teleduction, 2001
*Slavery in Delaware*, WHYY-TV, 1997
*Celebrate 75*, Celebrate 75 Video Production, 1995
*Wilmington in the Age of Confidence*, WHYY-TV, 1990-92
*1968 – The Siege of Wilmington*, WHYY-TV, 1989
*New Sweden: An American Portrait*, Dick Young Productions for Swedish Tobacco Company, 1988

**PUBLICATIONS:**

*The Delaware Adventure* (Gibbs Smith Publishers, 2006)

"New Castle County Courthouses," in *Delaware Lawyer* (2003)

"Delaware in World War II," in *Delaware History* (vol. 23, 1995-96)

Co-editor, *New Sweden in America* (University of Delaware Press, 1996)

*Wilmington and Beyond* with Michael Biggs (Jared Press, 1990)

*Logs to Lumber: The Development of the White Pine Lumber Industry in Michigan* (Clark Library Press of Central Michigan University, 1989)

Editor, *Arriving in Delaware: The Italian-American Experience* by Priscilla Thompson (History Store and Italo-Americans United, 1989)

Editor, "Colonial and Revolutionary Delaware," in *Dictionary of Colonial and Revolutionary America* (Sachem Press, 1989)

"Joshua Clayton" and "Henry Latimer," *Delaware Medical Journal* (April, 1989)

Contributor, *A Historical Dictionary of American Industrial Language*, ed. William H. Mulligan, Jr. (Greenwood Press, 1988)

Introduction and text for Michael Biggs, *Delaware...A Photographic Journey* (Jared Press, 1986)

"Delaware's First 'Doctor': Tyman Stidham and the Tools He Used," *Delaware Medical Journal* (Oct. 1986)

Contributor, *The Craft of Public History*, ed. Robert Pomeroy and David Trask (Greenwood Press, 1983)

"Profile of Delaware," "Thomas F. Bayard," and "Bayard Family" in *World Book Encyclopedia*, 1985-86, 1990

Editor, *The Engineer as an Agent of Technological Transfer in the Nineteenth Century* (Eleutherian Mills Historical Library, 1975)

Book reviews and conference report in *Indiana Magazine of History, Business History Review,* and *Technology and Culture*

**AWARDS AND HONORS:**

Who's Who in America, 1991-2003

New Castle County Historic Review Board, Achievement Award, 2003

City of Wilmington, Certificate of Recognition, 2003

Delaware State Society of the National Society of the Daughters of the American Colonists, Certificate of Recognition, 1989

Council for the Advancement of Citizenship and the Center for Civic Education Bicentennial Leadership Award, 1988

Delaware Teacher Center Award, 1988

Royal Recognition Medallion, King Karl XVI Gustav of Sweden, 1988

Official Visitor from Wilmington to Kalmar, Sweden, Sister Cities Program, 1985

No. 134, Original

In the Supreme Court of the United States

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State of New Jersey

*v.*

State of Delaware

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Expert Report of Professor Joseph L. Sax

1. My name is Joseph L. Sax. My address is: Boalt Hall, School of Law, University of California, Berkeley, California, 94720. I am the James H. House & Hiram H. Hurd Professor (emeritus) at the University of California, Berkeley. I have been a member of the Berkeley faculty since 1987. From 1966 to 1986, I was on the faculty of the University of Michigan, where I was the Philip Hart Distinguished University Professor. Prior to that time, I practiced law in Washington, D.C. and was on the faculty of the University of Colorado. From 1994 to 1996, I served as Deputy Assistant Secretary of the Interior and as Counselor to the Secretary of the Interior. I am a graduate of Harvard College and the University of Chicago Law School, and hold an honorary Doctor of Laws degree from the Illinois Institute of Technology. I am a fellow of the American Academy of Arts and Sciences.

2. I have no interest in, or connection with, any of the parties to this case other than having been retained by the State of Delaware to review the claim made by the State of New Jersey, to provide my opinion as an expert on the background and historical understanding of riparian law, and to prepare this Expert Report.

Qualifications

3. For more than 40 years as a scholar and teacher, one of my principal interests has been research and teaching in the field of water law. It has been a central issue considered in classes and seminars I have taught. I am the author of a number of books and articles on the subject, including *Water Law: Cases and Commentary* (Pruett Press, 1965); *Water Law, Planning and Policy* (Bobbs-Merrill, 1968); *Federal Reclamation Law, in II Waters and Water Rights*, Chapter 8 (Allen Smith Co., ed. R. E. Clark, 1967); and four editions of *Legal Control of Water Resources*, the most recent being the 4th edition (with Barton H. Thompson, John Leshy & Robert H. Abrams) (St. Paul, Thomson/West, 2006). I have consulted for the Council of Great

Lakes Governors and the International Joint Commission (Great Lakes). During my tenure at the United States Department of the Interior, one of my principal responsibilities was dealing with interstate water issues on the Colorado River. After leaving the Department of the Interior, I served as a consultant for the U.S. Bureau of Reclamation, and I am currently a consultant for the Southern Nevada Water Authority. I served as an expert for the State of Mississippi in a case involving riparian rights and submerged lands owned by the State. I recently prepared a report on the law of groundwater for the California State Water Resources Control Board.

Information Required Pursuant to Rule 26(a)(2)(B)

4. My *curriculum vitae* is attached hereto as Exhibit A, and a list of all my publications within the past 10 years is attached hereto as Exhibit B.

5. All the data and information considered by me in forming the opinions herein, other than knowledge gained over many years of study in the field, are cited in this report.

6. I am being compensated for my work in preparing this report and for my testimony, if called, at the rate of $500 per hour, plus out-of-pocket and travel expenses. My compensation is not contingent on or related in any way to the outcome of this case.

7. I testified as an expert witness for the State of Mississippi in *Bayview Land, Ltd. v. Mississippi*, Cause No. C2402-98-389, in the Chancery Court of Harrison County, Mississippi, in 2002. I have recently prepared an expert report for the United States and expect to be called to testify in the pending case of *Glamis Gold, Ltd. and United States of America (In the Arbitration Under Chapter Eleven of the NAFTA and the UNCITRAL Arbitration Rules)*.

Scope of Assignment

8. I have been retained by the State of Delaware to provide an historical analysis of riparian rights and laws as they existed at the time the 1905 Compact was executed by Delaware and New Jersey, as well as an opinion as to the interpretation to be given to the language in Article VII of the 1905 Compact at issue in this case, insofar as I can do so based on my knowledge of the history and understanding of the law of riparian rights in the 19th and early 20th centuries. For the purpose of preparing this opinion, I have read the initial pleadings and appendices filed in this case, the riparian grants, leases, and conveyances issued by New Jersey between 1854 and 1920 (which are discussed in the Affidavit of Richard Castagna and attached to New Jersey's initial filing), New Jersey's responses to Delaware's requests for admissions, certain documents pertaining to New Jersey's 1980 Coastal Management Plan, a permit issued by New Jersey in 1991 to the Keystone project, and a permit issued by New Jersey in 1996 to the Fort Mott project.

9. I have been asked to address the historical context for the drafting of Article VII, and the meaning and scope of the Article VII language "to exercise riparian jurisdiction of every kind and nature, and to make grants, leases, and conveyances of riparian lands and rights under the laws of the respective States." My report therefore describes the history and understanding of riparian

rights and laws in the United States, including New Jersey and Delaware, up to the execution of the 1905 Compact.

Summary of Opinion

10. Riparian jurisdiction embraces jurisdiction only over the incidents of riparian land-ownership, such as authorization to build a wharf to access navigable waters far enough to permit the loading and unloading of ships, and the right to own accretions. Authority to make grants, leases, and conveyances of riparian lands and rights is the concomitant power to make available state-owned lands beneath navigable waters needed to implement incidents of riparian landownership, such as construction of a wharf. Such authority is jurisdiction over the definition and scope of property rights, that is, the rights and privileges that attach to riparian lands. It does not include police power jurisdiction to determine the legality of activities on, or in connection with the use of, riparian property such as a wharf. Nor does it include jurisdiction to determine the scope or content of public rights in navigable waters, which may he invoked to limit the exercise of riparian rigbts.

Opinion

11. Article VII of the 1905 Compact reads: "Each state may, on its own side of the river, continue to exercise riparian jurisdiction of every kind and nature, and to make grants, leases, and conveyances of riparian lands and rights under the laws of the respective states." The phrase "riparian jurisdiction" was not then, and is not now, a legal term of art. It is, to the best of my knowledge, found neither in the treatise or article literature, nor in judicial opinions or statutes. That particular verbal formulation seems to have been devised for nse in Article VII of the 1905 Compact as a limitation on the term "jurisdiction."[1]

12. Riparian law is a distinctive sub-category of the law of property. It deals with the incidents specific to ownership of riparian land.[2] A riparian tract of land is one that abuts the water's edge on a river or lake, or the shore of the sea.[3] The term derives from the Latin word "ripa", which means bank, as in the bank of a river. Land that is on the bank of a river is riparian land. As a

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[1] Elsewhere in the 1905 Compact one finds the more familiar terms "jurisdiction" (in the introductory paragraphs and in Article VIII) or "exclusive jurisdiction" (in Article IV).

[2] In this Report, I shall speak of riparian rights as they existed prior to the time of the 1905 Compact, though the general shape of riparian rights has not changed significantly in the past century.

[3] *See* John M. Gould, *A Treatise on the Law of Waters, Including Riparian Rights and Public and Private Rights in Waters Tidal and Inland* § 148, at 297 (3d ed. 1900) ("Gould"). Legally, there is no distinction between land on the bank of a river and land on the bank of a lake or the sea, though technically the latter categories are termed littoral land, lit(t)us being the Latin word for sea shore or coast.

legal matter, the test of whether land is riparian is whether its boundary is at the water's edge, touching the water, whether or not there is anything like a bank. Such lands – and only such lands – are riparian. Riparian law, or what is usually called the law of riparian rights,[4] describes a set of special benefits in regard to the adjacent water body to which riparian landowners are entitled.

13. Riparian landownership conventionally includes the right to divert a reasonable amount of water for use on the riparian tract, the right to use the entire surface of the water (regardless of bottomland ownership) for recreational swimming or boating, and the right to stop up a river to install a dam in order to produce hydro-power.[5] There are other incidents of riparian ownership, such as a right to cut ice in the winter, though that use is of little importance today, as compared with the 1800s. Other important elements of riparian law are the rules of accretion, avulsion, erosion, and reliction, which determine how and whether the shore boundary moves as land is deposited or eroded at the edge of the tract, or as the sea level rises or falls. Another incident of riparian landownership is wharfing out, which is a right of access to a navigable depth of water.[6]

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[4] While it is conventional to use the term riparian rights, or entitlements, some riparian incidents are property rights, and some – such as wharfing out onto state-owned bottomlands – are usually privileges that depend on prior governmental permission. *See, e.g.*, 1 Henry Philip Farnham, *The Law of Waters and Water Rights* § 113, at 528 (1904) ("Farnham's Law of Waters"). For convenience, in this Report, I will use "riparian rights" as a general term to describe use incidents of riparian landownership.

[5] *See generally* 1 Farnham's Law of Waters at 278-347; Gould at 296-447. A modern description of the incidents of riparian ownership, which for most purposes are quite similar to what they were a century ago, can be found in 1 Joseph W. Dellapenna, *Waters and Water Rights* §§ 6.01 *et seq.* (1991).

[6] *See* Gould § 149, at 300; 1 Samuel C. Wiel, *Water Rights in the Western States* § 904, at 942 (3d ed. 1911) ("Wiel"). *See, e.g.*, *New Jersey v. Delaware*, 291 U.S. 361, 375 (1934) ("By the law of waters of many of our states, a law which in that respect has departed from the common law of England, riparian proprietors have very commonly enjoyed the privilege of gaining access to a stream by building wharves and piers, and this though the title to the foreshore or the bed may have been vested in the state."); *Shively v. Bowlby*, 152 U.S. 1, 40 (1894) ("a riparian proprietor, whose land is bounded by a navigable stream, has the right of access to the navigable part of the stream in front of his land, and to construct a wharf or pier projecting into the stream, for his own use, or the use of others, subject to such general rules and regulations as the legislature may prescribe for the protection of the public") (internal quotation marks omitted); *Mayor of Newark v. Sayre*, 60 N.J. Eq. 361, 372-73, 45 A. 985, 990 (Ct. Errors & Appeals 1900) ("Unquestionably the owner of a wharf on the river bank has, like every other subject of the realm, the right of navigating the river, as one of the public. This, however, is not a right coming to him qua owner or occupier of any lands on the bank, nor is it a right which per s[e] he enjoys in a manner different from any other member of the public. But, when this right of navigation is connected with an exclusive access to and from a particular wharf, it assumes a

Essentially, wharfing out allows the riparian landowner to build a structure in the adjacent bottomlands sufficiently far out into the water to allow a ship to navigate to it, so it could load and unload, and its cargo could be transported on the wharf to the shore. As an access right, it provides the riparian landowner the physical capacity to make use of its water adjacency to benefit from water-borne commerce or recreation.[7]

14. As these examples demonstrate, riparian rights deal with facilitation of the ability by a riparian landowner to make general use of the water to which the riparian land is adjacent, rather than with the ultimate specific uses made of the water. Riparian law is property law.[8] It speaks to the rights of riparian landowners to make use of tidelands beneath navigable waters. And it speaks to the rights of riparian landowners among themselves, but not to the application of the general police power to riparian property. Thus, for example, riparian law determines how much water a riparian landowner may divert for use on his riparian tract, vis-à-vis other riparian landowners, but it does not speak to regulation of the kind of crops that may be grown, or whether

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very different character. It ceases to be a right held in common with the rest of the public, for other members of the public have no access to or from the river at the particular place; and it becomes a form of enjoyment of the land, and of the river in connection with the land[.]") (Depue, J., concurring) (internal quotation marks omitted).

[7] However, as a New Jersey court held long ago, while "[i]t is true[] that a grant of a right to build and maintain a wharf bears with it, by implication, the right to use it," that does not mean that any use that is advantageous to, or desirable for, the owner of the wharf is permissible. *Keyport & Middletown Point Steamboat Co. v. Farmers Transp. Co.*, 18 N.J. Eq. 511, 1866 WL 89, at *5 (Ct. Errors & Appeals 1866). "Extraordinary, unusual modes of use, no matter how convenient they may be, are not annexed as incidents in law to" the property right of wharfing out. *Id.*

[8] *See Yates v. Milwaukee*, 77 U.S. (10 Wall.) 497, 504 (1871) ("This riparian right is property, and is valuable, and, though it must be enjoyed in due subjection to the rights of the public, it cannot be arbitrarily or capriciously destroyed or impaired."); *Bell v. Gough*, 23 N.J.L. 624, 1852 WL 3448, at *38 (Ct. Errors & Appeals 1852) ("I am further of opinion that, by the true principles of the English common law, adopted in this state by the constitution of 1776, and adapted to the condition and requirements of our government, the owner of a freehold estate on the margin of tide water navigation has rights appurtenant to his freehold in the adjoining shore . . . as appurtenant to his riparian ownership, the right to exclude the influx of the tide by the erection of embankments, docks, or wharves, provided he does not impair or interfere with the common right of navigation or fishery or any other common right") (Nevius, J.); *see also id.* at *23 (Elmer, J.), *33 (Potts, J.); 1 Farnham's Law of Waters § 65, at 294 ("It appears to me impossible to say that a mode of enjoyment of land on the bank of a navigable river which is thus valuable, and as to which the landowner can thus protect himself against disturbance, is otherwise than a right, or claim to which the owner of land on the bank of the river is by law entitled within the meaning of the act requiring compensation for the destruction of such rights.").

a certain type of industrial facility, for which cooling water may be diverted from the river, is permissible in regard to air pollution. Those are matters left to the general police power. One finds no discussion or consideration of such issues in treatises and case law describing riparian rights and riparian law. By analogy, the law of real property permits ownership and occupancy of real property, but those general rights may be limited under the police power to regulate, restrict, or even prohibit specific activities on that property.

15. Similarly, certain public rights such as the federal navigation servitude, or state public trust law, impose limits on what riparian landowners may do, but they do not arise out of riparian landownership, and they exist independently of riparian law.[9] For example, the federal navigation servitude arises out of the federal commerce power,[10] not out of property law, and imposes independent restrictions on riparian rights.[11] Similarly, there are public rights in the preservation of fisheries that arise out of an independent body of environmental law – international, national, or state – that may restrict the riparian rights to dam a stream for hydro-power, but the exercise of that power would not logically be deemed an exercise of "riparian" jurisdiction.[12]

16. Because the jurisdiction of only one state is at issue in ordinary cases affecting riparian rights, courts have not needed to distinguish between the realm of riparian jurisdiction and jurisdiction exercised pursuant to the police power. For example, if a riparian landowner loses the use of some of the industrial cooling water it was diverting under its riparian rights because the factory using it had to cut back production under applicable state air pollution laws, no question arises as to the scope of riparian jurisdiction, as all jurisdiction is ordinarily embodied within a single sovereign state or is dealt with under the Supremacy Clause of the Constitution[13] if there is conflict between state and federal laws.

17. However, under the terms of the 1905 Compact at issue here, identification of the extent and limits of the riparian realm, "riparian jurisdiction," in the specific context of wharfing out, becomes relevant. To ascertain why the "riparian jurisdiction" and grants language of Article VII

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[9] *See, e.g., Obrecht v. National Gypsum Co.*, 361 Mich. 399, 105 N.W.2d 143 (1960) (public trust, nuisance).

[10] *See Gilman v. City of Philadelphia*, 70 U.S. (3 Wall.) 713, 724-25 (1866).

[11] "[I]t was recognized from the beginning that all riparian interests were subject to a dominant public interest in navigation." *United States v. Willow River Power Co.*, 324 U.S. 499, 507 (1945).

[12] Riparian landowners held their riparian rights and privileges subject to the public right to have migratory fish pass up rivers to their headwaters. *See* Gould § 188, at 358; Joseph K. Angell, *Treatise on the Right of Property in Tide Waters and in the Soil and Shores Thereof* 89 (1826, reprint ed. 1983) ("Angell on Tide Waters"); Wiel § 905, at 945.

[13] U.S. Const. art. VI, § 2.

of the 1905 Compact might have been chosen, it is useful to note the historic situation of the law affecting wharfing out.[14]

18. In the late 19th and early 20th centuries, wharfing out into navigable waters – an incident of the ownership of riparian land[15] – was understood to have two elements that demanded state involvement: protection of the public right of navigation (usually implemented by setting a bulkhead line to mark the furthest permissible water-ward extent of wharfs and other structures) and permission to use submerged land below the high-water mark of navigable waters, which land was owned by the state.[16] The latter use was often implemented by a grant or lease of such land, as was the case in New Jersey. Under an 1871 New Jersey statute, riparian owners on tidal waters who wanted to build a wharf could obtain a lease, grant, or conveyance to state-owned lands in front of their riparian tracts by application to a board of riparian commissioners.[17] Some states, such as Delaware, however, seemed to recognize in this period that existing wharves would be protected so long they did not impede public rights such as that of navigation.[18] As to the first element, protection of the right of navigation, if the wharf interfered with the public right of navigation, it was considered a public nuisance. As to the second element, permission to use

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[14] Nothing in this Report involves the meaning of the Article VII phrase "own side of the river." Instead, the analysis in this Report is based on my expertise in the history of riparian rights and laws and thus the interpretation of the "riparian" language in Article VII.

[15] "[O]wnership of the bed of the river . . . cannot be the foundation of a riparian rights properly so called, because the word 'riparian' is relative to the bank, and not to the bed of the stream, and the connection, when it exists, of property on the banks with property in the bed of the stream depends not upon nature, but on grant or presumption of law." Gould § 148, at 297.

[16] *See Shively*, 152 U.S. at 49-50; *Pollard's Lessee v. Hagan*, 44 U.S. (3 How.) 212 (1845). "The right of property in the soil covered by tide waters, in all navigable rivers and arms of the sea within the limits of the state of New Jersey is vested in the state." *Gough v. Bell*, 22 N.J.L. 441, 1850 WL 4394, at *10 (Sup. Ct. 1850), *aff'd*, 23 N.J.L. 624, 1852 WL 3448 (Ct. Errors & Appeals 1852); *see Mayor of Newark*, 60 N.J. Eq. at 363, 45 A. at 986.

[17] 1871 N.J. Laws ch. 256, p. 44, § 1. The present version of the law is found in New Jersey Statutes Annotated § 12:3-10. Prior to the regulation of wharfing out by statute, "the owners of land bounding on navigable waters had an absolute right to wharf out and otherwise reclaim the land down to and even below low water, provided they did not thereby impede the paramount right of navigation." *Bell v. Gough*, 1852 WL 3448, at *23, *29 (Elmer, J.). But the "absolute right" was apparently only recognized down to the line of low water. *See id.* at *38 (Nevius, J.). The Wharf Act of 1851 required state approval to fill below the low-water line. *See* 1851 N.J. Laws, p. 335.

[18] "[I]n the case of a mere purpresture the court will not enjoin or abate it, unless it shall appear as a fact . . . to the injury of the public." *Harlan & Hollingsworth Co. v. Paschall*, 5 Del. Ch. 435, 1882 WL 2713, at *11 (1882).

submerged lands, if permission to use state submerged land on which to build a wharf was not granted or otherwise assured, the wharf was subject to removal as a trespass on sovereign property, historically known as a purpresture.[19]

19. Riparian landowners who desired to wharf out routinely sought prior authority for their wharf from the state as to both these matters.[20] In the ordinary case, there was no ambiguity about which state had jurisdiction over this riparian activity: the state in which the riparian land was located also owned the submerged bottomlands.[21] The failure to resolve New Jersey's challenge

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[19] "If a littoral proprietor, without grant or license from the Crown, extends a wharf or building into the water in front of his land it is purpresture, though the public rights of navigation and fishery may not be impaired. If such a structure causes injury to the public right, it is a common nuisance and abatable as such[.]" Gould § 21, at 45 (footnotes omitted); *see also* Farnham's Law of Waters § 113, at 527. For a discussion of the traditional law relating to wharfing out, *see* Angell on Tide Waters at 125-33.

[20] The law in New Jersey from the legislation of 1851 to modern times, as set out in note 17, *supra*, is discussed in detail in *Bailey v. Driscoll*, 19 N.J. 363, 117 A.2d 265 (1955). State permission to extend facilities into the state's territory was authorized by grant or lease of land within the external boundaries of the riparian tract after 1871. In addition, the laws established bulkhead and pier lines to set an outer boundary beyond which improvement could not be made, in order to protect public rights of use in the waters, essentially the public right of navigation. In that way, both state proprietorship and the public's rights of use were recognized. At the same time, the authority of the federal government to control the navigation of navigable waters to the extent necessary for the regulation of interstate and foreign commerce was acknowledged. This history was similar to that in other states. *See* 1 Farnham's Law of Waters §§ 113h, 115, at 533, 554.

[21] *See* note 16, *supra*. Some states have granted specific tracts of land between high and low tide to the riparian owners (*e.g.*, *People v. California Fish Co.*, 166 Cal. 576, 138 P. 79 (1913)) or, like Delaware, recognized generally that "title to riparian property extends from the upland to the low water mark," *City of Wilmington v. Parcel of Land Known as Tax Parcel No. 26.067.00.004*, 607 A.2d 1163, 1168 (Del. Sup. Ct. 1992); *Harlan & Hollingsworth*, 1882 WL 2713, at *10. What is unusual here is that New Jersey owns the land between the high- and low-water marks (except to the extent it has granted that land away), and Delaware owns the land below the low-water mark. *See New Jersey v. Delaware*, 291 U.S. 361 (1934). These are the lands usually referred to as being in the public trust, or jus publicum. American public trust law is usually traced back to the 1821 New Jersey case of *Arnold v. Mundy*, 6 N.J.L. 1, 1821 WL 1269 (Sup. Ct. 1821), a case involving conflicting claims to ownership of oyster beds, in which the court upheld the state's ownership of land beneath tidal waters, in this much-quoted passage: "[T]he navigable rivers, where the tide ebbs and flows, the ports, the bays, the coasts of the sea, including both the water and the land under the water, for the purposes of passing and repassing, navigation, fishing, fowling, sustenance, and all the other uses of the water and its products . . . are common to all the people, and that each has a right to use them according to his pleasure,

to the boundary prior to the time of the 1905 Compact (or in the Compact itself) would have created an unusual set of potential problems for New Jersey with regard to its issuance of "grants, leases, and conveyances" to riparian landowners within the Twelve-Mile Circle, because New Jersey's claim to have jurisdiction on, over, and under the Delaware River within that area had been denied by Delaware.

20. New Jersey may have been uncertain as to which state's law governed the right to wharf out because the law was that "[i]n a case of wharfing out . . . '[t]he rights of a riparian owner upon a navigable stream in this country are governed by the law of the state in which the stream is located.' "[22] Thus, New Jersey could have feared that its prior grants, leases, and conveyances applied to land that might turn out to be in Delaware, and that structures upon those lands would become subject to scrutiny under the riparian standards that Delaware applied in its state.[23] Whether those standards might turn out to be more rigorous than those New Jersey had applied could not be known with certainty. Because, as Justice Cardozo later noted, "New Jersey in particular has been liberal in according" to riparians "the privilege of gaining access to a stream by building wharves and piers,"[24] New Jersey might have wished to protect the owners of existing wharves and structures.

21. At the time the 1905 Compact was being drafted, there were, according to New Jersey's Castagna Affidavit, only a handful of structures extending from New Jersey into Delaware. Insofar as the unresolved boundary question between the two states raised in a novel form the historic concern about purprestures and the states were concerned about which state's law of wharfing out applied to those landowners, it may explain the distinctive language chosen by the drafters of Article VII of the 1905 Compact. The law of wharfing out concerns a question of jurisdiction over a riparian right; thus, it would explain the use of the phrase "riparian jurisdiction." Moreover, because exercise of this riparian right under New Jersey law required a grant or lease of state-owned land, it would explain the phrase in Article VII "to make grants, leases, and conveyances of riparian lands and rights." Such language would also have been appropriate to other riparian property rights questions, such as which state's law governed accretions, or which state had jurisdiction to authorize diversions of water for use on riparian

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subject only to the laws which regulate that use; that the property indeed vests in the sovereign, but it vests in him for the sake of order and protection, and not for his own use, but for the use of the citizen[.]" *Id.* at *9. For a brief historical discussion, *see* Moses M. Frankel, *Law of Seashore, Waters and Water Courses, Maine and Massachusetts* 125 (1969).

[22] 1 Wiel § 898, at 934 (quoting *Weems Steamboat Co. of Baltimore v. People's Steamboat Co.*, 214 U.S. 345, 355 (1909)).

[23] *See, e.g., Harlan & Hollingsworth, supra.*

[24] *New Jersey v. Delaware*, 291 U.S. at 375.

lands. Those concerns would he addressed by the phrasing "riparian jurisdiction of every kind and nature."

22. Such an arrangement would have been consistent with descriptions in the then-existing treatises (cited throughout this opinion), and the laws of New Jersey and Delaware, as to what was comprised within the category of riparian rights: e.g., the right of access to navigable depths via a wharf, the right to own accretions, or the right to divert from the river for use on riparian land.

23. Riparian law descriptions and definitions do not, however, describe the conduct that may be engaged in on riparian property. Such conduct is governed under the jurisdiction of the general police power. For example, one has a riparian right to use river water to irrigate a riparian tract, but there is no riparian right to grow marijuana or any other crop on the tract. One may have a riparian right to wharf out to navigable water so that a ship can tie up to the dock, but that does not create a riparian right to have, or not to have, gambling on the ship or dock, or to determine the safety rules for the ships that dock, whether or not they must be double-hulled, or have air-pollution controls on their emissions, for example. Similarly, nothing in the law governing the right to construct a wharf insulates activities to be engaged in on the wharf, such as those involved in the loading or unloading of particular cargoes, if they should constitute a nuisance or otherwise violate general laws for the protection of public health or safety. These are matters of general police power law governed by the sovereign that has general police power authority.

24. I have examined New Jersey's responses to Delaware's Requests for Admissions, as well as the riparian grants, leases, and conveyances issued by New Jersey between 1854 and 1920 discussed in the Castagna Affidavit. The distinction between that which is authorized under these exercises of riparian jurisdiction, and that which is within the scope of the general police power jurisdiction, is manifest in these documents. The various grants describing the land being transferred state that piers or other structures are to be built, and where they describe the intended uses do so in general terms, such as "he may deem proper and necessary for the improvement of his property or for the benefit of commerce";[25] or "for the accommodation of vessels navigating the same, and from time to time to rebuild and repair the same as may he necessary for the improvement of his property and the benefit of commerce";[26] or "to exclude the tide-water from so much of the land above described as lie under tide-water, by filling in or otherwise improving the same, and to appropriate the lands under water above described to exclusive private uses."[27] These actions exercising riparian jurisdiction do not include examination or regulation of the particular activities intended to be engaged in.

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[25] Cited in Affidavit of Richard Castagna (reproduced as Appendix 5 to NJ Brief at 33a, ¶ (5)).

[26] *Id.* at 32a-33a, ¶ (4).

[27] *Id.* at 39a, ¶ (17).

25. The responses to Delaware's Requests for Admissions indicate a similar distinction. For example, New Jersey responded that "the grants do not expressly specify the precise business that can be carried on at any point in time"[28] or "the precise cargo that can be loaded or unloaded at any specific point in time."[29] It also stated that the authorization or restriction of any particular activity to be conducted on a wharf, pier, or like structure "would be under other State, federal or local laws, and not by the establishment of pierhead and bulkhead lines."[30] A person wishing to conduct a particular business activity on a wharf, in addition to receiving a riparian grant, would still have to comply with all other "applicable New Jersey laws[] and local laws."[31] To the best of my knowledge, the separation of authorities described in New Jersey's Responses to Requests for Admissions reflects the usual and traditional separation of the exercise of riparian rights from the exercise of state police power.

26. This distinction between riparian property law and general regulatory law has been drawn in many cases over the past century, though it has not arisen in the specific instance of two different states, one holding riparian jurisdiction and another holding general police power jurisdiction.[32] *Cummings v. City of Chicago*,[33] a case in the United States Supreme Court decided in the same period the 1905 Compact in issue here was being drafted, illustrates the separateness of the riparian realm of jurisdiction and that of the general police power, though it formally involved jurisdiction over riparian rights in the federal government and a claim of federal preemption. In that case, the United States regulated riparian landowners' wharfing out. The landowner there had complied with all the requirements of the federal permitting scheme that dealt with the building of a dock in the river, only to find that its project was blocked because it did not have an additional required permit from the City of Chicago. The riparian landowner claimed that, having complied with the wharfing out law, the further regulatory demand of the city under the police power was a violation of its property right, and the federal permitting system for wharfing out should be viewed as preemptive. Otherwise, the riparian owner suggested, it would have met all the requirements of the jurisdiction that governed riparian developments in the river and have

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[28] New Jersey's Responses to Delaware's First Requests for Admissions, No. 5 (filed Sept. 8, 2006).

[29] *Id.*, No. 9.

[30] *Id.*, No. 3.

[31] *Id.*, No. 22.

[32] Other than the instant case, the case of *Virginia v. Maryland*, 540 U.S. 56 (2003), and another New Jersey case involving an interstate compact with New York, *see People v. Central R.R. Co. of New Jersey*, 42 N.Y. 283, 1870 WL 7713 (1870), the division of jurisdiction between states over rivers appears to be unprecedented.

[33] 188 U.S. 410 (1903).

fully implemented its riparian rights, only to be frustrated by the separate police power standards of the local government. The Court held that, merely because a company that wanted to build a dock had complied with all the detailed federal riparian regulation of wharfing out that had been imposed on the Calumet River in that case, that did not mean that "no jurisdiction or authority whatever remains with the local authorities."[34] The Court noted that, whatever the legitimate concerns of the federal government over the construction of wharves, the state also has its own internal police power to protect the interests of its citizens. Despite the extensive scope of the federal regulation there, and the claims that Congress had taken "possession" of the river, the Court indulged no such presumption, warning that the "river, it must be remembered, is entirely within the limits of Illinois, and the authority of the state over it is plenary."[35] Emphasizing the importance to a state of retaining regulatory jurisdiction over activities within its territory, the Court said that any congressional determination to abolish such state authority "would have been manifested by clear and explicit language."[36] One would expect the same standard to apply where a state is claimed to have divested itself of general police power jurisdiction over its territory.

27. The independence of the riparian and the police power realms is sharply drawn in the opinion of Justice Holmes in *Hudson County Water Co. v. McCarter*,[37] a case arising from New Jersey. The water company, a riparian landowner, sought to deliver to New York some water it was diverting from the Passaic River, in violation of a New Jersey law prohibiting such exports.[38] Justice Holmes characterized the case as one in which the water company was asserting that the anti-export law violated its riparian property rights.[39] The opinion is famous for its statement that

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[34] *Id.* at 426. A similar point was made in a New Jersey case, where a municipality challenged a riparian landowner who was making a legitimate riparian use of the shore and who refused to obtain a city permit under the police power. The court said that "[t]he authority lodged in the [state] to make grants or leases of the state's riparian lands is not . . . inconsistent with the existence of the police power in the municipality in respect thereof." *Ross v. Mayor & Council of Edgewater*, 115 N.J.L. 477, 487, 180 A. 866, 872 (Sup. Ct. 1935).

[35] *Cummings*, 188 U.S. at 426-27.

[36] *Id.* at 430.

[37] 209 U.S. 349 (1908). The named plaintiff in that case, Robert McCarter, was both New Jersey's Attorney General and one of the New Jersey commissioners who negotiated the 1905 Compact.

[38] Notably, water has had a special place under the so-called dormant Commerce Clause. *See Sporhase v. Nebraska ex rel. Douglas*, 458 U.S. 941 (1982). *See also Idaho ex rel. Evans v. Oregon*, 462 U.S. 1017, 1025 (1983).

[39] It had been strongly argued that what the company wanted to do was not within its riparian rights at all, *see McCarter v. Hudson County Water Co.*, 70 N.J. Eq. 695, 708, 65 A.

"[a]ll rights tend to declare themselves absolute to their logical extreme."[40] The decision centrally rests on a recognition of the separateness of the realms of the law of property and of the police power. Whatever the company's riparian rights may have been, the decision holds, they must nonetheless pass the independent test of the police power invoked to protect "the interests of the public."[41] "[T]he private property of riparian proprietors cannot be supposed to have deeper roots. . . . The private right to appropriate is subject . . . to the initial limitation that it may not substantially diminish one of the great foundations of public welfare and health."[42] Accordingly, the domain of property rights, whatever its scope, must nonetheless be tested against the distinct demands of the police power. As Justice Holmes thus made clear, the police power embodies a jurisdiction separate and apart from the head of jurisdiction that defines property rights.[43]

28. In the same respect, riparian landowners who had established mills in full compliance with the riparian law[44] could be compelled at some later time, in response to regulatory laws designed to protect or restore fisheries, to install fish ladders to allow the passage of migratory species, because riparian landowners held their riparian rights subject to the restrictions imposed to protect public rights under police power jurisdiction.[45] Over the years, public interests of various

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489, 494 (Ct. Errors & Appeals 1906), *aff'd*, 209 U.S. 349 (1908), but Justice Holmes ignored those claims and used the decision to emphasize the separateness of authority over property and the authority of the police power.

[40] 209 U.S. at 355.

[41] *Id.*

[42] *Id.* at 356.

[43] "And these rights of the 'riparian owner' are not *common* rights, for they do not belong to his neighbor, who lies behind him on the main land, nor are they mere rights of adjacency to land belonging to the State, for mere adjacency to a mud flat belonging to the State lying inland would give no right in or over it; they are therefore *private* rights of the 'riparian owner' in the lands of the State lying in front of him beyond the 'shore;' which rights are his by the local common law of the State by reason of his adjacency." Opinion Concerning Riparian Rights at 8, Hon. George M. Robeson, Attorney General of New Jersey (1867).

[44] A dam erected for reasonable mill purposes is an incident of riparian landownership. *See* John Norton Pomeroy, *A Treatise on the Law of Riparian Rights* § 11, at 13 (1887); *McCarter*, 70 N.J. Eq. at 708, 65 A. at 494. But mill rights were sometimes viewed quite restrictively in light of the traditional riparian right to benefit from the continued natural flow of the stream. *See, e.g., Delaney v. Boston*, 2 Del. (Harr.) 489, 1839 WL 165, at *4 (Super. Ct. 1839).

[45] *See* Gould § 187, at 358; Angell on Watercourses § 89, at 89; 1 Wiel § 905, at 945.

kinds have been imposed to restrict or prevent uses otherwise authorized pursuant to riparian landowners' proprietary rights.[46]

29. A modern state case, citing both *Hudson County* and *Cummings*, powerfully reinforces the distinction drawn in those decisions. In *Obrecht v. National Gypsum Co.*,[47] a riparian proprietor built a wharf in accord with its riparian rights and with the authority of the riparian permitting jurisdiction (also in that case the U.S. Corps of Engineers). But the use made of the wharf – loading and transporting gypsum rock – was challenged as a nuisance. The riparian landowner defended on the ground that it was operating pursuant to its duly permitted wharfing out riparian property right, and that the use it was making of the wharf could not be separately challenged under the state's nuisance or public trust laws. The court rejected that defense, noting the separate categories of riparian rights and public rights. Though the exercise of its riparian rights had received approval from the Corps of Engineers, which had jurisdiction to authorize "the construction of a massive and permanent loading dock . . . and the dredging of more than a mile deep channel,"[48] the riparian proprietor had to comply as well with state requirements for the protection of the public health and welfare. The *Obrecht* court also cited the Supreme Court's 19th-century decisions in *Yates v. Milwaukee*[49] and *Illinois Central Railroad v. Illinois*,[50] in which the Court observed that a riparian proprietor may access navigable waters and make a wharf or pier for that purpose, but nevertheless must also comply with general laws protecting public rights. *Obrecht* thus reiterates the firmly rooted principle that the entity with authority over riparian permitting deals with the limited issues of the property rights of the riparian owner and the physical extent of that right to the line of navigability, but not with the general scope of the police power.

30. The distinction between riparian rights and public rights drawn in *Obrecht*, as well as the importance to a state of issues affecting the public health and welfare, buttresses the likelihood that, insofar as the 1905 Compact may be construed as a transfer of any permanent authority by Delaware to New Jersey over waters within its boundaries, that authority would have been limited to administration of the property aspects of riparian landownership on the New Jersey shore, and

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[46] *See, e.g., Colberg, Inc. v. State ex rel. Dep't of Public Works*, 67 Cal. 2d 408, 432 P.2d 3 (1967) (access to navigable waters cut off by highway bridge over navigable water); *Freed v. Miami Beach Pier Corp.*, 93 Fla. 888, 899, 112 So. 841, 845 (1927) (if they become a nuisance, wharves can be removed or abated); *State v. Central Vermont Ry., Inc.*, 153 Vt. 337, 351-52, 571 A.2d 1128, 1135-36 (1989) (wharves no longer meet public trust standard).

[47] 361 Mich. 399, 105 N.W.2d 143 (1960).

[48] 361 Mich. at 405, 105 N.W.2d at 145.

[49] 77 U.S. (10 Wall.) 497 (1871).

[50] 146 U.S. 387 (1892).

not to the far more extensive and significant administration of public rights and the general police power over the Delaware River and its environs as affected by activities related to use of wharves constructed, or to be constructed, from the New Jersey shore into the river.

Conclusion

31. For the above reasons, and assuming it was determined that New Jersey's "riparian jurisdiction" extended water-ward of the mean low-water mark on the easterly shore of the Delaware River within the Twelve-Mile Circle, it is my opinion that, in agreeing to the exercise of "riparian jurisdiction of every kind and nature, and to make grants, leases, and conveyances of riparian lands and rights"on the part of New Jersey, those who drafted and approved the 1905 Compact did not intend to withdraw from Delaware regulatory or police power authority over uses or activities of those who might in the future use, or propose to use, wharves built out from the New Jersey shoreline beyond the territorial limits of New Jersey.

Respectfully submitted,

Joseph L. Sax

Date: Nov. 7, 2006

EXHIBIT A

**Joseph L. Sax**

**James H. House & Hiram H. Hurd Professor (emeritus)**

**School of Law (Boalt Hall)**

**University of California (Berkeley)**

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Education:

A.B. Harvard University 1957

J.D. University of Chicago 1959

Admitted to Practice:

Michigan, District of Columbia (inactive), U.S. Supreme Court

Professional Experience:

Attorney, private practice, Washington, D.C. (1959-62)

Professor of Law, University of Colorado (1962-66)

Philip A. Hart Distinguished University Professor, University of Michigan (1966-86)

Counselor to the Secretary of the Interior, Deputy Assistant Secretary of the Interior (1994-1996)

Visiting Professor of Law:

University of Paris I (Panthéon-Sorbonne)

Stanford University

Order of the Coif Distinguished Visitor (Texas Tech., West Virginia, Nebraska)

University of Utah

University of Colorado

Centennial Distinguished Visitor, IIT-Chicago Kent College of Law

Virginia Environmental Endowment Professor, University of Richmond

Wallace S. Fujiyama Visiting Professor, Univ. of Hawaii

Honors and Awards (selected):

•Fellow, American Academy of Arts and Sciences

•Doctor of Laws (hon.), Illinois Institute of Technology

Chicago-Kent College of Law

•Professional Achievement Citation, University of Chicago Alumni Ass'n

•Elizabeth Haub Award, Free University Brussels, Gold Medalist

•Fellow, Center for Advanced Study in the Behavioral Sciences, Stanford

•Distinguished Water Attorney Award (Water Education Foundation, 2004)

•Cook Lecturer in American Institutions, University of Michigan

•Environmental Law Institute Award

•Wm. O. Douglas Legal Achievement Award, The Sierra Club

•Biennial Book Award, University of Michigan Press

•Conservationist of the Year, Audubon Society (Detroit)

•Resource Defense Award, National Wildlife Federation

•Distinguished Faculty Achievement Award, University of Michigan

•Environmental Quality Award, U.S. E.P.A.

•American Motors Conservation Award

Consultancies (selected)

In recent years, I have consulted/prepared reports/been an expert witness for: (1) United States Bureau of Reclamation; (2) Coachella Valley (California) Water District; (3) Los Angeles Department of Water and Power; (4) State of Mississippi; (5) County of Riverside, California; (6) City of Santa Cruz, California; (7) Council of Great Lakes Governors; (8) International Joint Commission (Great Lakes); (9) California State Water Resources Control Board; (10) City of Glendale, California; (11) Southern Nevada Water Authority; (12) County of Yolo, California; (13) State of Delaware (original jurisdiction suit in the U.S. Supreme Court); (14) United States (Department of State).

EXHIBIT B

Publications 1996-2006

Books

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"Reflections on the Great Lakes," the 2d Annual Peter M. Wege Lecture, University of Michigan School of Natural Resources (Nov. 6, 2002), at www.css.snre.umich.edu.

"Public Interests and Common Concerns," Paper Delivered at the Workshop, Legal Tools for World Heritage Conservation, Siena, Italy, Nov. 11, 2002.

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"The Unfinished Business of Environmental Law," IUCN 3rd Colloquium Lectures, Sydney, Australia (Cambridge Univ. Press, 2006, forthcoming).

"Environment and Its Mortal Enemy: The Rise and Decline of the Property Rights Movement," 28 U. Hawaii L. Rev. 7 (Winter 2005).

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C. J. Seitz

No. 134, Original

In The
# Supreme Court of the United States

STATE OF NEW JERSEY,

*Plaintiff.*

v.

STATE OF DELAWARE,

*Defendant.*

## NEW JERSEY'S RESPONSES TO DELAWARE'S FIRST REQUESTS FOR ADMISSIONS

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EXHIBIT
CASPENA 22
10-24-06

## REQUESTS FOR ADMISSIONS

1. With respect to each of the 41 riparian grants from New Jersey described in paragraph 8(1)-(44) of the Castagna Affidavit, admit that none of those grants expressly authorized the loading or unloading of any specific type of cargo on a wharf, pier, or like structure.

**New Jersey objects to this Request because it calls for a legal conclusion and the 41 riparian grants speak for themselves. Without waiver of this objection, New Jersey denies this Request in part, insofar as use of a wharf, pier or like structure inherently includes the ability to load or unload cargo from a vessel, and the ability for a vessel that is loading or unloading cargo to reach the main navigational channel. New Jersey admits this Request in part, insofar as the grants do not specify the precise type of cargo that could be loaded or unloaded from a wharf, pier or like structure at any specific point in time.**

2. Admit that New Jersey has never issued a riparian grant, whether inside or outside the twelve-mile circle, that expressly authorized the loading or unloading of any specific type of cargo on a wharf, pier, or like structure.

**New Jersey objects to this Request because it calls for a legal conclusion and the State tidelands grants issued by New Jersey speak for themselves. In addition, the Request is overbroad because it applies to all riparian grants issued by New Jersey, including thousands of grants outside of the twelve-mile circle. Without waiver of this objection, New Jersey denies this Request, insofar as the use of a wharf, pier or like structure inherently includes the ability**

**to load or unload cargo from a vessel, and the ability of a vessel that is loading or unloading cargo to reach the main navigational channel.**

3. Admit that the establishment of pierhead and bulkhead lines by New Jersey agencies, boards, or commissions (*see, e.g.*, Castagna Aff. ¶ 8(7) & (14)) did not thereby authorize any particular activity to be conducted on a wharf, pier, or like structure.

**New Jersey objects to this Request because it calls for a legal conclusion. Without waiver of this objection, New Jersey denies this Request in part, insofar as the use of a wharf, pier, or like structure inherently includes the ability to load or unload cargo from vessels, and the ability of a vessel that has loaded or unloaded cargo to reach the main navigational channel. Further, the purpose of such lines is to facilitate navigation. The authorization of any particular activity or the restriction thereof would be under other State, federal or local laws, and not by the establishment of pierhead and bulkhead lines. New Jersey admits this Request in part, insofar as pierhead and bulkhead lines are not established to allow or disallow particular activities on a wharf, pier or like structure.**

4. Admit that the proposed Crown Landing pier would be the longest wharf, pier, or similar structure emanating from New Jersey within the twelve-mile circle.

**New Jersey objects to this Request because "similar structure" is not defined and therefore the Request is vague. In addition, the Request calls for speculation concerning pending or proposed projects, which the Special Master has ruled are not a subject of relevant inquiry. Without waiver of this objection, New Jersey denies the request, because pierhead**

**and bulkhead lines already established by New Jersey in the Twelve-Mile Circle would allow longer piers, wharves or other structures in certain locations than the proposed Crown Landing pier. In addition, an outfall extension currently under consideration and proposed by DuPont at its facility within the Twelve Mile Circle may be approved to be longer than the proposed Crown Landing pier.**

5. With respect to each of the 41 riparian grants from New Jersey described in paragraph 8(1)-(44) of the Castagna Affidavit, admit that none of those grants expressly authorized the carrying on of any particular business.

**New Jersey objects to this Request because it calls for a legal conclusion and the 41 riparian grants speak for themselves. Without waiver of this objection, New Jersey partially denies the Request, insofar as use of the granted area inherently includes the ability to load or unload cargo from vessels, and the ability of a vessel that has loaded or unloaded cargo to reach the main navigational channel. New Jersey partially admits the Request, insofar as the grants do not expressly specify the precise business that can be carried on at any point in time.**

6. Admit that New Jersey has never issued a riparian grant, whether inside or outside the twelve-mile circle, that expressly authorized the carrying on of any particular business.

**New Jersey objects to this Request because it calls for a legal conclusion and the riparian grants speak for themselves. In addition, the Request is overbroad, because it applies to the thousands of grants issued outside of the twelve-mile circle. Without waiver of this objection, New Jersey denies the Request, insofar as use of the granted area inherently**

**includes the ability to load or unload cargo from vessels, and the ability of a vessel that has loaded or unloaded cargo to reach the main navigational channel.**

7. With respect to each of the 41 riparian grants from New Jersey described in paragraph 8(1)-(44) of the Castagna Affidavit, admit that none of those grants expressly authorized the offloading of natural gas, whether in liquefied or non-liquefied form.

**New Jersey objects to this Request because it calls for a legal conclusion and the grants speak for themselves. Without waiver of this objection, New Jersey denies the request in part, insofar as use of the granted area inherently includes the ability of vessels to load or unload cargo and the ability of a vessel that has loaded or unloaded cargo to reach the main navigational channel. New Jersey admits the Request in part, insofar as the grants do not specify that natural gas can be offloaded.**

8. Admit that New Jersey has never issued a riparian grant, whether inside or outside the twelve-mile circle, that expressly authorized the offloading of natural gas, whether in liquefied or non-liquefied form.

**New Jersey objects to this Request because it calls for a legal conclusion and the grants speak for themselves. In addition, the Request is overbroad because it applies to thousands of grants issued outside of the twelve-mile circle. Without waiver of this objection, New Jersey denies the request insofar as use of the granted area inherently includes the ability of vessels**

**to load or unload cargo and the ability of a vessel that has loaded or unloaded cargo to reach the main navigational channel.**

9. With respect to each of the 41 riparian grants from New Jersey described in paragraph 8(1)-(44) of the Castagna Affidavit, admit that none of those grants expressly authorized the offloading of flammable cargo.

**New Jersey objects to this Request because it calls for a legal conclusion and the grants speak for themselves. Without waiver of this objection, New Jersey partially denies the request insofar as use of the granted area inherently includes the ability of vessels to load or unload cargo and the ability of a vessel that has loaded or unloaded cargo to reach the main navigational channel. New Jersey partially admits the Request, insofar as the grants do not specify the precise cargo that can be loaded or unloaded at any specific point in time.**

10. Admit that New Jersey has never issued a riparian grant, whether inside or outside the twelve-mile circle, that expressly authorized the offloading of flammable cargo.

**New Jersey objects to this Request because it calls for a legal conclusion and the grants speak for themselves. In addition, the Request is overbroad because it applies to thousands of grants issued outside of the twelve-mile circle. Without waiver of this objection, New Jersey denies the request insofar as use of the granted area inherently includes the ability of vessels to load or unload cargo and the ability of a vessel that has loaded or unloaded cargo to reach the main navigational channel.**

11. With respect to each of the 41 riparian grants from New Jersey described in paragraph 8(1)-(44) of the Castagna Affidavit, admit that none of those grants excused compliance by the grantee (or any other person) with any other New Jersey laws.

**Admitted.**

12. Admit that New Jersey has never issued a riparian grant, whether inside or outside the twelve-mile circle, that excused compliance by the grantee (or any other person) with any other New Jersey laws.

**Admitted.**

13. With respect to each of the 41 riparian grants from New Jersey described in paragraph 8(1)-(44) of the Castagna Affidavit, admit that none of those grants excused compliance by the grantee (or any other person) with New Jersey's Coastal Zone Act.

**Denied in part, insofar as New Jersey does not have a "Coastal Zone Act."**

**Admitted in part, insofar as New Jersey has a Waterfront Development Law, Coastal Area Facility Review Act, Coastal Wetlands Act, and other laws that may be applicable to the construction of improvements on or development of New Jersey's shoreline within the Twelve Mile Circle.**

14. Admit that New Jersey has never issued a riparian grant, whether inside or outside the twelve-mile circle, that excused compliance by the grantee (or any other person) with New Jersey's Coastal Zone Act.

**Admitted in part, insofar as grants do not excuse compliance by the grantee (or any other person) with New Jersey's coastal zone management rules, which are set forth at N.J.A.C. 7:7E and 7:7 and used to implement various New Jersey laws, as specified therein. Denied in part, insofar as New Jersey does not have a "Coastal Zone Act."**

15. Admit that New Jersey's Coastal Zone Act applies to a person regardless of whether the person has a riparian grant.

**New Jersey objects to this Request because it calls for a legal conclusion. Without waiver of this objection, New Jersey admits the Request in part, insofar as persons who engage in regulated activities must comply with New Jersey's coastal zone management rules, which are set forth at N.J.A.C. 7:7E and 7:7 and used to implement various New Jersey laws, as specified therein. The Request is partially denied, insofar as New Jersey does not have a "Coastal Zone Act."**

16. With respect to each of the 41 riparian grants from New Jersey described in paragraph 8(1)-(44) of the Castagna Affidavit, admit that none of those grants excused compliance by the grantee (or any other person) with New Jersey's Water Pollution Control Act, N.J. Stat. Ann. §§ 58:10A-1 *et seq.* ("Water Pollution Control Act").

**Admitted.**

17. Admit that New Jersey has never issued a riparian grant, whether inside or outside the twelve-mile circle, that excused compliance by the grantee (or any other person) with New Jersey's Water Pollution Control Act.

**Admitted.**

18. Admit that New Jersey's Water Pollution Control Act applies to a person regardless of whether the person has a riparian grant.

**New Jersey objects to this Request because it calls for a legal conclusion. Without waiver of this objection, New Jersey admits the Request, insofar as persons who engage in activities subject to New Jersey's Water Pollution Control Act must comply with the Act.**

19. With respect to each of the 41 riparian grants from New Jersey described in paragraph S(1)-(44) of the Castagna Affidavit, admit that none of those grants excused compliance by the grantee (or any other person) with New Jersey's Coastal Area Facility Review Act, N.J.S.A. §§ 13:19-1 *et seq.* ("CAFRA").

**Admitted, to the extent that CAFRA is applicable within the Twelve Mile Circle.**

20. Admit that New Jersey has never issued a riparian grant, whether inside or outside the twelve-mile circle, that excused compliance by the grantee (or any other person) with CAFRA.

**Admitted.**

21. Admit that CAFRA applies to a person regardless of whether the person has a riparian grant.

**New Jersey objects to this Request because it calls for a legal conclusion. Without waiver of this objection, New Jersey admits the Request insofar as persons who engage in activities subject to CAFRA must comply with CAFRA.**

22. With respect to each of the 41 riparian grants from New Jersey described in paragraph 8(1)-(44) of the Castagna Affidavit, admit that a person wishing to conduct a particular business activity on a wharf, in addition to having received the riparian grant, would still have to comply with all other applicable New Jersey or local laws, including but not limited to licensing and permitting requirements.

**New Jersey objects to this Request because it calls for a legal conclusion and for speculation. In addition, the Request appears to refer to future activities, which the Special Master has determined are not relevant to a determination of the issues regarding the 1905 Compact. Without waiver of this objection, New Jersey admits this Request as to applicable New Jersey laws, and local laws, to the extent that local laws are not preempted or superseded by state or federal laws.**

23. Admit that a person wishing to conduct a particular business activity on a wharf, in addition to having received a riparian grant from New Jersey, whether inside or outside the twelve-mile circle, would still have to comply with all other applicable New Jersey or local laws, including but not limited to licensing and permitting requirements.

**New Jersey objects to this Request because it calls for a legal conclusion and for speculation. In addition, the Request appears to refer to future activities, which the Special Master has determined are not relevant to a determination of the issues regarding the 1905 Compact. Without waiver of this objection, New Jersey admits this Request as to applicable New Jersey laws, and to local laws, to the extent that those local laws are not preempted or superseded by state or federal laws.**

24. With respect to each of the 41 riparian grants from New Jersey described in paragraph 8(1)-(44) of the Castagna Affidavit, admit that a person wishing to conduct a particular business activity on a wharf, in addition to having received the riparian grant, would still have to comply with all other applicable New Jersey or local health and safety laws.

**New Jersey objects to this Request because it calls for a legal conclusion and for speculation. In addition, the Request appears to refer to future activities, which the Special Master has determined are not relevant to a determination of the issues regarding the 1905 Compact. Further, New Jersey objects because this Request is duplicative of Request 23. Without waiver of these objections, New Jersey admits this Request as to applicable New Jersey laws, and to local laws, to the extent that local laws are not preempted or superseded by state or federal laws.**

25. Admit that a person wishing to conduct a particular business activity on a wharf, in addition to having received a riparian grant from New Jersey, whether inside or outside the

twelve-mile circle, would still have to comply with all other applicable New Jersey or local health and safety laws.

**New Jersey objects to this Request because it calls for a legal conclusion and for speculation. In addition, the Request appears to refer to future activities, which the Special Master has determined are not relevant to a determination of the issues regarding the 1905 Compact. Further, New Jersey objects to this Request as it is duplicative of Request 23. Without waiver of these objections, New Jersey admits this Request as to applicable New Jersey laws, and local laws, to the extent that local laws are not preempted or superseded by state or federal laws.**

26. With respect to each of the 41 riparian grants from New Jersey described in paragraph 8(1)-(44) of the Castagna Affidavit, admit that a person wishing to conduct a particular business activity on a wharf, in addition to having received the riparian grant, would still have to comply with all other applicable New Jersey or local wage and hour laws.

**New Jersey objects to this Request because it calls for a legal conclusion and for speculation. In addition, the Request appears to refer to future activities, which the Special Master has determined are not relevant to a determination of the issues regarding the 1905 Compact. Further, New Jersey objects to this Request as it is duplicative of Request 23. Without waiver of these objections, New Jersey admits this Request as to applicable New Jersey laws, and to local laws, to the extent that local laws are not preempted or superseded by state or federal laws.**

27. Admit that a person wishing to conduct a particular business activity on a wharf, in addition to having received a riparian grant from New Jersey, whether inside or outside the twelve-mile circle, would still have to comply with all other applicable New Jersey or local wage and hour laws.

**New Jersey objects to this Request because it calls for a legal conclusion and for speculation. In addition, the Request appears to refer to future activities, which the Special Master has determined are not relevant to a determination of the issues regarding the 1905 Compact. Further, New Jersey objects to this Request as it is duplicative of Request 23. Without waiver of these objections, New Jersey admits this Request as to applicable New Jersey laws, and local laws, to the extent that local laws are not preempted or superseded by state or federal laws.**

28. With respect to each of the 41 riparian grants from New Jersey described in paragraph 8(1)-(44) of the Castagna Affidavit, admit that a person wishing to conduct a particular business activity on a wharf, in addition to having received the riparian grant, would skill have to comply with all other applicable New Jersey or local laws prohibiting, restricting, or regulating the means of transport of cargo, such as gas, oil, food, cigarettes, alcohol, pesticides, or drugs.

**New Jersey objects to this Request because it calls for a legal conclusion and for speculation. In addition, the Request appears to refer to future activities, which the Special Master has determined are not relevant to a determination of the issues regarding the 1905 Compact. Further, New Jersey objects to this Request as it is duplicative of Request 23. Without waiver of these objections, New Jersey admits this Request as to applicable New**

**Jersey laws, and to local laws, to the extent that local laws are not preempted or superseded by state or federal laws.**

29. Admit that a person wishing to conduct a particular business activity on a wharf, in addition to having received a riparian grant from New Jersey, whether inside or outside the twelve-mile circle, would still have to comply with all other applicable New Jersey laws prohibiting, restricting, or regulating the means of transport of cargo, such as gas, oil, food, cigarettes, alcohol, pesticides, or drugs.

**New Jersey objects to this Request because it calls for a legal conclusion and for speculation. In addition, the Request appears to refer to future activities, which the Special Master has determined are not relevant to a determination of the issues regarding the 1905 Compact. Further, New Jersey objects to this Request as it is duplicative of Request 23. Without waiver of these objections, New Jersey admits this Request as to applicable New Jersey laws, and to local laws, to the extent that local laws are not preempted or superseded by state or federal laws.**

30. With respect to each of the 41 riparian grants from New Jersey described in paragraph 8(1)-(44) of the Castagna Affidavit, admit that none of those grants excused compliance by the grantee (or any other person) with any "other required federal, New Jersey, or local" permitting requirements or laws (Castagna Aff. ¶7).

**Admitted, as to federal and State permitting requirements and laws, and to such local laws, to the extent that such local laws are not preempted or superseded by state or federal laws.**

31. Admit that New Jersey has never issued a riparian grant, whether inside or outside the twelve-mile circle, that excused compliance by the grantee (or any other person) with any "other required federal, New Jersey, or local" permitting requirements or laws (Castagna Aff. ¶7).

**Admitted, as to federal and State permitting requirements and laws, and to such local laws, to the extent that such local laws are not preempted or superseded by state or federal laws.**

32. Admit that, before 1978, New Jersey did not condition any of its riparian grants, including those described in the Castagna Affidavit within the twelve-mile circle, "on the applicant's obtaining a New Jersey regulatory permit, together with all other required federal, New Jersey and local regulatory permits" (Castagna Aff. ¶7).

**Denied. Recipients of New Jersey riparian grants always have been subject to all applicable federal and state approvals, as well as to all applicable, non-preempted local laws. In addition, before 1914, riparian grants issued by New Jersey functioned as State of New Jersey permits for riparian structures within the granted area. In 1914, the Waterfront Development Law, which requires a state permit for waterfront development, was adopted and became applicable to development within any granted area. N.J.S.A. 12:5-3. In 1970 the**

**Coastal Wetlands Act (N.J. Stat,. Ann. 13:9A), which requires a permit for regulated activities in coastal wetlands, was adopted.**

33. Admit that, in the map appended to the Castagna Affidavit (*see* N.J. App. 54a), which provides a distance scale at the bottom of the map, the riparian grants depicted are not actually drawn to the scale provided on the map. (For example, number 43 on the map appears to suggest, based upon the map scale, that the grant extends at least one-fifth of a mile (1,056 feet) beyond the mean low-water mark, while paragraph 8(43) of the Castagna Affidavit states that the grant extends only "35 feet beyond the mean low water line.").

**Admitted; the scale never was intended to apply to the depicted grants.**

34. Admit that, with respect to the riparian grants described in the following subparagraphs of paragraph 8 of the Castagna Affidavit, no wharf, pier, or like structure has ever existed on the submerged land at issue since the time of the grant:

**New Jersey admits the request in part, insofar as structures did or did not appear on aerial photography taken of certain of the granted areas in the years stated in a. through x. below. New Jersey denies the request in part, insofar as it has no further information at this time regarding the existence of structures at times other than the dates of the aerial photography. In addition, New Jersey notes that some upland owners may put seasonal docks in their granted areas, and may have removed them at the time of the aerial photography.**

**a. (3) 1870 Walker**
**b. (8) 1883 Kent - No structures show on aerial photography from 1930, 1951, 1962, 1979, 2000, 2002.**

c. (9) 1891 Brown - No structures show on aerial photography from 1940, 1951, 1962, 1977, 1979, 2002.
d. (10) 1891 DuPont - A pier is shown on this site in 1940, 1977, and 1979 aerial photography.
e. (13) 1916 Barber lease - No structures show on aerial photography from 1946, 1962, 1977.
f. (16) 1916 DuPont
g. (17) 1917 DuPont - Pilings and a dock are shown on this site in aerial photography from 1940, 1951, 1977, 1979.
h. (18) 1918 DuPont
I. (24) 1925 Acton - No structures show on aerial photography from 1940, 1951, 1962, 1977, 1979.
j. (25) 1925 Lower Penns Neck - No structures show on aerial photography from 1940, 1951, 1962, 1977, 1979.
k. (26) 1925 Acton - No structures show on aerial photography from 1940, 1951, 1962, 1977, 1979.
l. (28) 1929 Locuson - No structures shown on aerial photography from 1930, 1940, 1951, 1962, 1971, 1977, 1979, and 2002.
m. (29) 1929 Locuson - No structures shown on aerial photography from 1930, 1940, 1951, 1962, 1971, 1977, 1979, and 2002.
n. (30) 1929 Locuson - No structures shown on aerial photography from 1930, 1940, 1951, 1962, 1971, 1977, 1979, and 2002.
o. (31) 1929 Locuson - No structures shown on aerial photography from 1930, 1940, 1951, 1962, 1971, 1977, 1979, and 2002.
p. (32) 1929 Locuson - No structures shown on aerial photography from 1930, 1940, 1951, 1962, 1971, 1977, 1979, and 2002.
q. (33) 1929 DuPont - No structures shown on aerial photography from 1930, 1940, 1951, 1962, 1971, 1977, 1979, and 2002.
r. (34) 1929 De. River Power Co. license - No structures appear in 1940 aerial photography. Three concrete ice breakers appear in 1951, 1977, 1979 aerial photography.
s. (36) 1935 Strickler - No structures show on 1940, 1946, 1962, 1977 aerial photography.
t. (37) 1943 DuPont - A dock is visible on 1962, 1971, 1977, 1979, and 2002 aerial photography.
u. (39) 1960 DuPont - No structures show on 1940, 1951 aerial photography. A pier is shown on 1977 and 1979 aerial photography.
v. (40) 1967 DuPont - No structures shown in 1940, 1951 aerial photography. A large wharf is seen next to the pier referenced in (39), in 1977 and 1979 aerial photography.
w. (42) 1999 Bergmann - No structures show in 1940, 1951, 1962, 1977, 1979 aerial photography. A structure is shown in 2000 and 2002 aerial photography.
x. (43) 2000 Tp. of Pennsville - No structures show in 1930, 1951, 1977, 2002 aerial photography.

35. Admit that, with respect to the 41 riparian grants described in paragraph 8(1)-(44) of the Castagna Affidavit, there are only six wharves, piers, or like structures standing today that cross the boundary line into Delaware, specifically:

a. Fort Mott State Park (*see* Castagna Aff. ¶8(44))

b. Keystone Urban Renewal Limited Partnership (*see* Castagna Aff. ¶8(41))

c. Conectiv Energy (grant to the former Franklin Real Estate Company for the Deep Water Power Plant (*see* Castagna Aff. ¶8(27))

d. Delaware & New Jersey Ferry Company (Originally granted to William D. Acton and the Fogg and Hires Company under two separate grants) (*see* Castagna Aff. ¶8(20, 22))

e. E.I. DuPont de Nemours & Co. (*see* Castagna Aff. ¶8(15))

f. PennsGrove Pier (Fenwick Commons, LLC, was awarded a grant in 2004 to refurbish this currently dilapidated pier) (*see* Castagna Aff. ¶8(2, 12))

**Denied, based on the facts stated in response to Request 34, above.**

36. Admit that, of the six wharves or like structures standing today described in the previous request, Delaware has issued permits for four of them, specifically:

a. Fort Mott State Park (*see* Castagna Aff. ¶8(44))

b. Keystone Urban Renewal Limited Partnership (*see* Castagna Aff. ¶8(41))

c. E.I. DuPont de Nemours & Co. (*see* Castagna Aff ¶8(15))

d. Fenwick Commons (formerly PennsGrove Pier) (*see* Castagna Aff. ¶8(2, 12))

**New Jersey objects to this Request to the extent that it implies there are only six wharves or like structures extending from the New Jersey shoreline into the Delaware River beyond the low water line, within the Twelve Mile Circle, and because "like structures" is not defined and the Request is vague. Without waiver of this objection, the Request is partially denied, insofar as the DuPont and Fenwick Commons Delaware leases were received from Delaware under protest, and based on the facts stated in response to Request 34, above, and is otherwise partially admitted.**

37. Admit that the wharf situated on the land subject to the grant by New Jersey to the Delaware & New Jersey Ferry Company (originally granted to William D. Acton and the Fogg and Hires Company under two separate grants (*see* Castagna Aff. ¶8(20, 22)) is dilapidated and unused.

**New Jersey objects to this Request as vague and because the term "dilapidated" is not defined. Thus the Request calls for a subjective judgment, not confirmation or denial of an issue of fact. Without waiver of this objection, New Jersey partially admits this request insofar as the pier at the end of the granted area currently appears to be dilapidated. New Jersey denies the Request in part because it does not have knowledge or information about whether the wharf is unused.**

38. Admit that the wharf situated on the land subject to the grant by New Jersey to Conectiv Energy (originally granted to the former Franklin Real Estate Company for the Deep Water Power Plant (*see* Castagna Aff ¶8(27)) extends less than 100 feet into Delaware beyond the low-water mark on the New Jersey shore.[1]

**New Jersey admits this Request to the extent that the wharf or dock appears to extend roughly 100 feet waterward of the bulkhead.**

39. Admit that, since the 1935 decree in *New Jersey v. Delaware II*, New Jersey has issued only nine riparian grants within the twelve-mile circle (*see* Castagna Aff. ¶8(36)-(44)).

**New Jersey objects to this Request because it includes the term "only" and thus calls for a subjective judgment rather than a confirmation or denial of fact. Without waiver of this objection, the Request is denied to the extent that it implies that New Jersey's rights are limited by the number of grants issued; the State has always had the right to approve grants for structures anywhere along the entire Twelve Mile Circle shoreline, and has consistently asserted that right. Without waiver of these objections, the Request is otherwise admitted.**

40. Admit that, since Delaware enacted its first subaqueous lands statute in 1961, New Jersey has issued only five riparian grants within the twelve-mile circle (*see* Castagna Aff. ¶8(40)-(44)).

[1]See, e.g., http://maps.google.com/maps?f=q&hl=en&q=pennsville,+nj&ie+UTF8&ll=39.68382,-75.509478&spn=0.005689,0.013475&t=h&om=1

**New Jersey objects to this Request because it includes the term "only" and thus calls for a subjective judgment rather than a confirmation or denial of fact. Without waiver of this objection, the Request is denied to the extent that it implies that New Jersey's rights are limited by the number of grants issued; the State has always had the right to approve grants for structures anywhere along the entire Twelve Mile Circle shoreline, and has consistently asserted that right. Without waiver of these objections, the Request is otherwise admitted.**

41. Admit that, since Delaware enacted its Coastal Zone Management Act in 1971, New Jersey has issued only four riparian grants within the twelve-mile circle (*see* Castagna Aff. ¶8(41)-(44)).

**New Jersey objects to this Request because it includes the term "only" and thus calls for a subjective judgment rather than a confirmation or denial of fact. Without waiver of this objection, the Request is denied to the extent that it implies that New Jersey's rights are limited by the number of grants issued; the State has always had the right to approve grants for structures anywhere along the entire Twelve Mile Circle shoreline, and has consistently asserted that right. Without waiver of these objections, the Request is otherwise admitted.**

42. Admit that, since Delaware enacted its Coastal Zone Management Act in 1971, the four riparian grants issued by New Jersey were for projects that did not violate Delaware's Coastal Zone Management Act.

**New Jersey objects to this Request because it calls for legal conclusions and responding to the Request would require New Jersey to engage in legal analyses of Delaware law and in a substantive review of the submitted applications for riparian grants, rather than to confirm**

**or deny an issue of fact. Further, New Jersey is unable to admit or deny the Request, based on insufficient knowledge.**

43. With respect to the "riparian rights of property owners in New Jersey in 1905, or shortly thereafter, rights which continue to be in effect to the present day" (Castagna Aff. ¶5), admit that such "riparian rights of property owners" did not include a riparian right to operate a casino on a wharf, pier, or like structure.

**New Jersey objects to this Request because it calls for a legal conclusion rather than a confirmation or denial of an issue of fact. In addition, the Request calls for speculation and is not relevant to the issues surrounding the Compact of 1905 as set forth by the Special Master, since it is related to potential future projects, which have been determined to be irrelevant to interpreting the Compact. Further, riparian rights do not by themselves exclude any business. Rather, restrictions may exist by virtue of other federal, State and local laws. Casino-related facilities exist on piers in Atlantic City, New Jersey since gambling was approved in Atlantic City, and similarly exist elsewhere on and tied up to piers in other States. Without waiver of these objections, the Request is partially admitted insofar as the Castagna affidavit does not specifically identify the right to operate a casino on a wharf, pier or a like structure, but is otherwise denied in part, insofar as riparian rights do not exclude a right to operate any business.**

44. With respect to the "riparian rights of property owners in New Jersey in 1905, or shortly thereafter, rights which continue to be in effect to the present day" (Castagna Aff. ¶5), admit that

such "riparian rights of property owners" did not include a riparian right to operate or manage a condominium on a wharf, pier, or like structure.

**New Jersey objects to this Request because it calls for a legal conclusion rather than a confirmation or denial of an issue of fact. In addition, the Request calls for speculation and is not relevant to the issues surrounding the Compact of 1905 as set forth by the Special Master, since it is related to potential future projects, which have been determined to be irrelevant to interpreting the Compact. Further, riparian rights do not by themselves exclude rights to operate or manage a condominium, on a wharf pier or other structure. Rather, restrictions may exist pursuant to other federal, State or local laws. Condominiums do exist in New Jersey on piers where permitted, and similarly exist in other States. Without waiver of these objections, the request is partially admitted insofar as the Castagna affidavit does not specifically identify the right to operate or manage a condominium on a wharf, pier or like structure, but is otherwise denied in part, insofar as riparian rights do not exclude a right to operate any business.**

45. With respect to the "riparian rights of property owners in New Jersey in 1905, or shortly thereafter, rights which continue to be in effect to the present day" (Castagna Aff. ¶5), admit that such "riparian rights of property owners" did not include a riparian right to operate a mining operation on a wharf, pier, or like structure.

**New Jersey objects to this Request because it calls for a legal conclusion rather than for confirmation or denial of an issue of fact. In addition, the Request calls for speculation and is not relevant to the issues surrounding the Compact of 1905 as set forth by the Special**

**Master, since it is related to potential future projects, which have been determined to be irrelevant to interpreting the Compact. Further, riparian rights do not by themselves exclude a right to operate any business. Rather, restrictions may exist by virtue of federal, State or local laws. Without waiver of these objections, the Request is admitted in part, insofar as the Castagna affidavit does not specifically identify the right to operate a mining operation on a wharf, pier, or like structure, but is otherwise partially denied insofar as riparian rights do not exclude a right to operate any business.**

46. With respect to the "riparian rights of property owners in New Jersey in 1905, or shortly thereafter, rights which continue to be in effect to the present day" (Castagna Aff. ¶5), admit that such "riparian rights of property owners" did not include a riparian right to operate a heliport or airport on a wharf, pier, or like structure.

**New Jersey objects to this Request because it calls for a legal conclusion rather than for confirmation or denial of an issue of fact. In addition, the Request calls for speculation and is not relevant to the issues surrounding the Compact of 1905 as set forth by the Special Master, since it is related to potential future projects, which have been determined to be irrelevant to interpreting the Compact. Further, riparian rights do not by themselves exclude a right to operate any business. Rather, restrictions may exist by virtue of federal, State or local laws. Without waiver of these objections, the Request is partially admitted insofar as the Castagna affidavit does not specifically identify the right to operate a heliport or airport on a wharf, pier, or like structure, but is otherwise denied in part insofar as riparian rights do not exclude a right to operate any business.**

47. With respect to the "riparian rights of property owners in New Jersey in 1905, or shortly thereafter, rights which continue to be in effect to the present day" (Castagna Aff. ¶5), admit that such "riparian rights of property owners" did not include a riparian right to operate a restaurant on a wharf, pier, or like structure.

**New Jersey objects to this Request because it calls for a legal conclusion rather than for confirmation or denial of an issue of fact. In addition, the Request calls for speculation and is not relevant to the issues surrounding the Compact of 1905 as set forth by the Special Master, since it is related to potential future projects, which have been determined to be irrelevant to interpreting the Compact. Further, riparian rights do not by themselves exclude a right to operate any business. Those restrictions exist by virtue of federal, State or local laws. Without waiver of these objections, the Request is partially admitted to the extent that the Castagna affidavit does not specifically include the right to operate a restaurant on a pier, wharf, or like structure, and partially denied insofar as riparian rights do not exclude a right to operate any business.**

48. With respect to the "riparian rights of property owners in New Jersey in 1905, or shortly thereafter, rights which continue to be in effect to the present day" (Castagna Aff. ¶5), admit that such "riparian rights of property owners" did not include a riparian right to operate a bar or night club on a wharf, pier, or like structure.

**New Jersey objects to this Request because it calls for a legal conclusion rather than for confirmation or denial of an issue of fact. In addition, the Request calls for speculation and is not relevant to the issues surrounding the Compact of 1905 as set forth by the Special**

**Master, since it is related to potential future projects, which have been determined to be irrelevant to interpreting the Compact. Further, riparian rights do not by themselves exclude a right to operate any business. Those restrictions exist by virtue of federal, State or local laws. Without waiver of these objections, the Request is partially admitted to the extent that the Castagna affidavit does not specifically include the right to operate a bar or night club on a wharf, pier, or like structure, and denied in part insofar as riparian rights do not exclude a right to operate any business.**

49. Admit that, under New Jersey's interpretation of the 1905 Compact, Delaware received no specific benefit in exchange for giving New Jersey riparian jurisdiction over Delaware's submerged lands on the eastern half of the Delaware River.

**New Jersey objects to this Request, because it states that New Jersey was given riparian jurisdiction over "Delaware's submerged lands." As of 1905, the boundary was not established, and thus neither State had an established right of jurisdiction or an established ownership of the submerged lands in question. Without waiver of this objection, New Jersey denies the Request. The Compact of 1905 benefitted both states by ending years of litigation and resolving certain jurisdictional and other issues.**

50. Admit that the drafters of the 1905 Compact were familiar with the Compact of 1834 between New Jersey and New York.

**New Jersey denies this Request. There is no evidence in the record provided by either New Jersey or Delaware to support a claim that the drafters of the Compact of 1905 knew of**

**the content of the Compact of 1834 or utilized or relied upon it in any manner in drafting the 1905 Compact.**

51. Admit that New Jersey has not issued all of the necessary permits for the Crown Landing facility either to begin construction or to operate.

**Admitted, but not relevant to this litigation.**

52. Admit that, before New Jersey filed this litigation in July 2006, New Jersey's Office of Dredging and Sediment Technology advised BP on February 4, 2005, that "activities taking place from the mean low water line ... outshore are located in the State of Delaware and therefore are subject to Delaware Coastal Zone Management Regulations." Letter from David Q. Risilia, ODST, to David Blaha, Environmental Resources Management (Feb. 4, 2005)(Del. App. 85).

**Admitted in part, insofar as the letter of February 4, 2005 contains the statement quoted. Denied in part, insofar as the quoted statement was corrected in a May 24, 2005 letter, which letter also was sent from the Office of Dredging and Sediment Technology to BP, before New Jersey filed this litigation.**

53. Admit that no permit for discharge into the Delaware River within the twelve-mile circle may be issued under EPA regulations by New Jersey when the imposition of permit conditions for the discharge cannot ensure compliance with the applicable water quality requirements of all affected states.

**New Jersey objects to this Request because it calls for a legal conclusion and for speculation, and is irrelevant. The Request does not relate to any of the issues identified by the Special Master and is not relevant to determining the parties' rights under the Compact of 1905 or to interpreting that Compact. Rather, the Request relates to a hypothetical project that may be proposed within the Twelve-Mile Circle in the future. Without waiving this objection, New Jersey denies this statement, to the extent that it deviates from the provisions set forth in the applicable regulations, 40 C.F.R. 122.4(c) and 40 C.F.R. 123.44(c)2 and in the applicable federal law, Section 402(b)(5) of the Clean Water Act (33 U.S.C. 1342(b)(5).**

54. Admit that, within the twelve-mile circle, New Jersey has no riparian jurisdiction over ships or boats in Delaware territory in the Delaware River.

**New Jersey objects to and cannot admit or deny this Request because Delaware has not defined the term "riparian jurisdiction" as used in this request and the Request calls for a legal conclusion, not confirmation or denial of a fact. Without waiver of this objection, New Jersey asserts that it has authority to enforce federal law relating to vessels traveling on any portion the Delaware River, including the Twelve Mile Circle; to enforce New Jersey criminal law on any portion the Delaware River, including the Twelve Mile Circle; and to take such action as necessary to prevent imminent loss of life or bodily harm on any portion the Delaware River, including within the Twelve Mile Circle; and has jurisdiction over boats fastened to a dock or pier extending from the New Jersey shoreline into the Delaware River.**

55. Admit that, within the twelve-mile circle, New Jersey has no riparian jurisdiction over ships or boats in Delaware territory in the Delaware River that are not fastened to a wharf emanating from New Jersey.

**New Jersey objects to and cannot admit or deny this Request for Admission, because Delaware has not defined the term "riparian jurisdiction" as used in this request and because it calls for a legal conclusion. Without waiver of this objection, New Jersey asserts that it has authority to enforce federal law relating to ships or boats traveling on any portion the Delaware River, including the Twelve Mile Circle; that it has authority to enforce New Jersey criminal law on any ship or boat in any portion the Delaware River, including the Twelve Mile Circle; and that it may take action with respect to any ship or boat or occupant therein on any portion the Delaware River, including the Twelve Mile Circle, as necessary to prevent imminent loss of life or bodily injury.**

56. Admit that New Jersey may not under EPA regulations issue a permit for discharge into the Delaware River within the twelve-mile circle unless Delaware water quality requirements are satisfied or Delaware agrees to waive those requirements.

**New Jersey objects to this Request beeause it ealls for a legal conclusion and for speculation, and is irrelevant. The Request is not related to any of the issues identified by the Special Master, and is not relevant to determining the parties' rights under the Compact of 1905 or the meaning of the Compact; rather, the Request relates to a hypothetical project that may be presented within the Twelve-Mile Circle in the future. Without waiver of this objection, New Jersey denies this Request for Admission to the extent that it deviates from the**

**provisions of the applicable federal regulations, 40 C.F.R. 122.4(c) and 40 C.F.R. 123.44(c)(2), and from the provisions of the applicable federal statute, Section 402(b)(5) of the Clean Water Act.**

57. Admit that Delaware is a participating and voting member of the Delaware River Basin Commission ("DRBC").

**Admitted.**

58. Admit that New Jersey is a participating and voting member of the DRBC.

**Admitted.**

59. Admit that all discharges into the Delaware River within the twelve-mile circle must receive authorization (also known as a "docket") from the DRBC.

**Admitted in part, insofar as this Request for Admission refers to new discharges; denied in part, insofar as the Request refers to applications to renew discharges or to discharges from sources or entities that are not subject to DRBC jurisdiction.**

60. Admit that all water withdrawals by New Jersey from the Delaware River within the twelve-mile circle must receive authorization (also known as a "docket") from the DRBC.

**Partially denied, insofar as DRBC's jurisdiction with respect to water withdrawals from the Delaware River by New Jersey is limited to withdrawals of 100,000 gallons or more per day. New Jersey partially admits the Request insofar as withdrawals of 100,000 gallons**

**or more a day must receive DRBC authorization, in addition to authorization from New Jersey.**

61. Admit that Delaware has regulated every pier and/or wharf specifically identified in the Affidavit of Kevin Broderick, dated June 16, 2005 (N.J. App. 66a-72a).

**Admitted in part, as to the Keystone Cogeneration pier and the Fort Mott pier. Denied in part, as to the DuPont pier existing in 1982, because the documents in the possession of New Jersey, including those produced by Delaware and by DuPont de Nemours to Delaware and New Jersey, do not evidence any regulation by Delaware of the DuPont pier that existed in 1982.**

62. Admit that New Jersey's Coastal Zone Management Program and Final Environmental Impact Statement, page 20, dated August 1980, requires that any New Jersey project extending beyond mean low water in the Delaware River within the twelve-mile circle must obtain coastal zone approvals from both New Jersey and Delaware.

**New Jersey objects to this Request because it calls for a legal conclusion. Without waiving this objection, New Jersey partially admits this Request for Admission, insofar as the New Jersey Coastal Zone Management Program and Final Environmental Impact Statement, dated August 1980, states that the Delaware-New Jersey boundary in most of Salem County, New Jersey is the mean low water line, and states that "The New Jersey and Delaware Coastal Zone Management agencies have discussed this issue and have concluded that any New Jersey project extending beyond mean low water must obtain coastal permits from both states." New Jersey partially denies this Request For Admission insofar as the Request states that the**

**referenced document "requires" approvals from both Delaware and New Jersey for any New Jersey project extending beyond mean low water into Delaware. This alleged "requirement" is not contained within any enforceable New Jersey statute, regulation, rule, or Executive Order, and the federal Coastal Zone Management Act does not modify or supersede any interstate compact. 16 U.S.C. §1456(e)(1).**

63. Admit that New Jersey has not amended its Coastal Zone Management Program and Final Environmental Impact Statement, page 20, dated August 1980, to remove the requirement that any New Jersey project extending beyond mean low water in the Delaware River within the twelve-mile circle must obtain coastal zone approvals from both New Jersey and Delaware.

**New Jersey objects to this Request for Admission because it calls for a legal conclusion and because it incorrectly states that the referenced document contains a "requirement" for approvals from both states for any New Jersey project extending beyond mean low water in the Delaware River within the Twelve-Mile Circle. Without waiving this objection, New Jersey partially admits the Request, to the extent that the referenced document has not been amended to remove or revise the statement quoted in New Jersey's response to Request for Admission 62, above, and partially denies the Request, because the quoted statement does not contain or impose a "requirement" for approvals from both states, for the reasons stated in response to Request for Admission 62, above.**

64. Admit that Delaware provides emergency fire response services on the eastern half of the Delaware River within the twelve-mile circle.

**New Jersey objects to this Request for Admission because the term "emergency" is not defined, nor is the Request specific to any particular period of time. Thus, the Request calls for speculation. Notwithstanding this objection, New Jersey partially admits the Request to the extent that Delaware is authorized to provide fire response service to vessels traveling on water within the Twelve Mile Circle beyond the low water line, and to assist the US Coast Guard in emergency response pursuant to operations plans approved by the US Coast Guard, but denies the Request in part, to the extent that it calls for the conclusion that Delaware provides, or is authorized to provide, fire response services for any dock or pier on or extending from the New Jersey shoreline of the Delaware River, or to any boat docked thereto. In addition, the Request is denied to the extent it implies that New Jersey is not authorized to assist in emergency response or in the event of exigent circumstances.**

65. Admit that Delaware provides emergency medical services on the eastern half of the Delaware River within the twelve-mile circle.

**New Jersey objects to this Request for Admission because the term "emergency" is not defined, nor is the Request specific to any particular period of time. Thus, the Request calls for speculation. Notwithstanding this objection, New Jersey admits the Request in part, and denies the Request in part. New Jersey admits the Request to the extent that both Delaware and New Jersey are authorized to provide emergency medical service to vessels traveling on water within the Twelve Mile Circle beyond the low water line, and to assist the US Coast Guard in emergency response pursuant to operations plans approved by the US Coast Guard, but denies that Delaware provides, or is authorized to provide, emergency medical services for**

**incidents on any dock or pier on or extending from the New Jersey shoreline of the Delaware River, or to any boat docked thereto.**

66. Admit that Delaware provides police services on the eastern half of the Delaware River within the twelve-mile circle.

**New Jersey objects to this Request for Admission because the term "police services" is not defined, nor is the Request specific to any particular point in time. Thus, the Request calls for speculation. Notwithstanding this objection, New Jersey admits the Request in part to the extent that Delaware has authority to enforce federal law relating to ships or boats traveling on any portion the Delaware River, including on water within the Twelve Mile Circle; admits the Request in part to the extent that Delaware may enforce its laws and is authorized to provide police service concerning any incident occurring on water within the eastern half of the Delaware River within the Twelve Mile Circle up to the mean low water line on the New Jersey side of the River; and denies the Request in part, to the extent that New Jersey denies that Delaware provides, or is authorized to provide, "police services" for incidents on any dock or pier on or extending from the New Jersey shoreline of the Delaware River, or to any boat docked thereto.**

67. Admit that Delaware police investigate crimes that occur on the eastern half of the Delaware River within the twelve-mile circle.

**New Jersey admits the Request in part, insofar as Delaware has authority to investigate violations of federal law relating to ships or boats traveling on any portion the Delaware River,**

**including the Twelve Mile Circle, and insofar as Delaware may investigate violations of Delaware law concerning any incident occurring on water within the eastern half of the Delaware River within the Twelve Mile Circle up to the mean low water line on the New Jersey side of the Twelve Mile Circle; and denies the Request in part, to the extent that it calls for the conclusion that Delaware investigates or is authorized to investigate crimes occurring on any dock or pier on or extending from the New Jersey shoreline of the Delaware River, or upon any boat docked thereto.**

68. Admit that New Jersey routes police, fire, and rescue calls to Delaware for events on the eastern half of the Delaware River within the twelve-mile circle.

**New Jersey partially denies the Request, to the extent that it states that New Jersey routes calls for police, fire or medical assistance to Delaware if those calls concern an event on a dock or a pier on or extending from the New Jersey shoreline of the Delaware River, or upon any boat docked thereto. New Jersey admits the Request in part to the extent that when New Jersey receives calls for police, fire or medical assistance for events on a boat or in the water within the eastern half of the Delaware River within the Twelve Mile Circle and beyond the low water line on the New Jersey side of the River, it relays those calls for assistance to Delaware, and that it responds to the event if Delaware advises that New Jersey should handle the matter or in the event of exigent circumstances.**

69. Admit that New Jersey routes 911 calls for police, fire, and rescue for events on the eastern half of the Delaware River within the twelve-mile circle to Delaware's 911 call centers.

**New Jersey admits that 911 calls for police, fire, and rescue made on cellular telephones are directed to the nearest cellular tower, regardless of the state in which the tower is located. New Jersey denies that it routes any 911 call it receives for police, fire or medical assistance to Delaware if the call concerns an event on a dock or a pier on or extending from the New Jersey shoreline of the Delaware River, or upon any boat docked thereto. New Jersey admits that when it receives a cellular telephone 911 call for police, fire or medical assistance for any event on a boat or in the water in the eastern half of the Delaware River within the Twelve Mile Circle it conveys the request for assistance to both New Jersey and Delaware Emergency Response Coordinators for the areas closest to the event, since it is often unclear whether the emergency is within the Twelve Mile Circle or above or below mean low water.**

70. Admit that Delaware law enforcement agencies investigate drownings that occur on the eastern half of the Delaware River within the twelve-mile circle.

**New Jersey admits that Delaware is authorized to investigate boat accidents and drownings in the water beyond the mean low water line on the eastern half of the Delaware River, within the Twelve Mile circle, and to take possession of corpses found there, and to investigate the circumstances leading to death.**

71. Admit that the Claymont Fire Company in Delaware is primarily responsible for fire and/or emergency responses for any event that might occur on or connected with the pier associated with BP's proposed LNG facility.

**New Jersey objects to this Request because it calls for a legal conclusion rather than for confirmation or denial of an issue of fact. In addition, the Request calls for speculation and is not relevant to the issues surrounding the Compact of 1905 as set forth by the Special Master, since it is related to potential future projects, which have been determined to be irrelevant to interpreting the Compact. Without waiver of these objections, the Request is denied.**

72. Admit that Delaware enforces its boating laws on the eastern half of the Delaware River within the twelve-mile circle.

**Admitted that Delaware enforces Delaware boating laws in Delaware territory; however, the Request is denied to the extent that it calls for the conclusion that Delaware enforces its boating laws with respect to boats fastened to docks or piers on or extending from the New Jersey shoreline of the Delaware River.**

73. Admit that the eastern half of the Delaware River within the twelve-mile circle is not included in any New Jersey fire district.

**New Jersey objects to this Request because the term "fire district" is not defined and therefore the Request is vague. Without waiver of this objection, the Request is denied. New Jersey asserts that it provides fire fighting service to all docks or piers on or extending from the New Jersey shoreline of the Delaware River as well as to any vessel docked thereto.**

74. Admit that the eastern half of the Delaware River within the twelve-mile circle is not included in any New Jersey police district.

**New Jersey objects to this Request because "police district" is not defined, and therefore the Request is vague. New Jersey denies the Request insofar as it refers to police response to incidents on a dock, pier or other structure on or extending from the New Jersey shoreline, or to an incident on a boat fastened thereto.**

75. Admit that the eastern half of the Delaware River within the twelve-mile circle is not included in any New Jersey emergency response district.

**New Jersey objects to and denies this Request because the term "emergency response" and "district' are not defined and may vary depending upon federal law, the nature of the "emergency," and any operations plan in place that apportions responsibility between federal and state first responders. New Jersey asserts that it responds to emergencies occurring on any dock or pier on the eastern half of the Delaware River, including the Twelve Mile Circle, and to any emergency occurring on a boat fastened thereto, unless modified by written federal directive.**

76. Admit that New Jersey does not have any police, fire or rescue boats specifically assigned to patrol or respond to events on the eastern half of the Delaware River within the twelve-mile circle.

**Denied in part. New Jersey asserts that it has police boats assigned to patrol the Delaware River, including the Twelve Mile Circle, but admits that the boats are not specifically assigned to the area within the Twelve Mile Circle.**

77. Admit that, when New Jersey provides emergency and police responders on the eastern half of the Delaware River within the twelve-mile circle, New Jersey responders are acting under the command of Delaware officials.

**New Jersey objects to and cannot admit or deny this Request for Admission because it calls for a legal conclusion that depends entirely upon the circumstances of the specific event.**

78. Admit that Delaware hunting and fishing laws govern all hunting and fishing activities on the eastern half of the Delaware River within the twelve-mile circle.

**Denied in part and admitted in part. The Request is denied in part, insofar as hunting for migratory birds including waterfowl, woodcock, mourning doves, rails and gallinules must comply with the Federal Migratory Bird Treaty and rules of the Migratory Bird Harvest Information Program as specified in 50 C.F.R. Part 20.20. Both New Jersey and Delaware may enforce federal law relating to hunting in the water within the Twelve Mile Circle, including discharge of firearms, take limits, and season limits. The Request is admitted in part, insofar as it refers to fishing activities within Delaware's boundary that are subject to Delaware law rather than to federal law.**

79. Admit that Delaware law enforcement agencies are responsible for the enforcement of all Delaware hunting and fishing laws on the eastern half of the Delaware River within the twelve-mile circle.

**New Jersey admits that Delaware is responsible for enforcing Delaware hunting and fishing law in Delaware territory, subject to the limitations stated in response to Request for Admission 78, above. Hunting for migratory birds including waterfowl, woodcock, mourning doves, rails and gallinules must comply with the Federal Migratory Bird Treaty and rules of the Migratory Bird Harvest Information Program as specified in 50 C.F.R. Part 20.20. Both New Jersey and Delaware may enforce federal law relating to hunting in the water within the Twelve Mile Circle, including discharge of firearms, take limits, and season limits.**

ANNE MILGRAM
Acting Attorney General of New Jersey

By: Rachel Horowitz
Rachel Horowitz
Deputy Attorney General

Dated: September 8, 2006

No. 134, Original

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C. J. Seitz

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

STATE OF NEW JERSEY,

*Plaintiff,*

v.

STATE OF DELAWARE,

*Defendant.*

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

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on the 8th day of September 2006, counsel for the State of New Jersey caused New Jersey's Responses to Delaware's First Requests for Admissions to be served upon counsel for the State of Delaware in the manner indicated below:

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SUPERIOR COURT
OF THE
STATE OF DELAWARE

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May 2, 1984

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RE: State v. Mick, Parsons, Crow and Willey
83-05-0092-93, 0094-95, 0081-0091
0071-0080, 1080, 2080, 3080, 1091,
2091, 3091

Gentlemen and Madam:

The parties do not dispute the fact that in 1905 Delaware and New Jersey entered into an interstate compact relating to disputes over territory, jurisdiction, and the taking and catching of fish in the Delaware River and Bay.

The compact authorized the passage of uniform laws by the states but did not require them to be passed.

In 1907, contrary to the position taken by defendants, the states did not enact uniform laws pursuant to the compact and this lack of uniformity is obvious from an examination of the pertinent provisions of the 1907 legislation.

Consequently, the various laws regulating the taking of fish, enacted by the Delaware General Assembly between 1907 and today, are valid and enforceable.

Aside from the obvious substantive differences in the content of the 1907 Delaware and New Jersey statutes, historians, individuals, organizations and legal advisors have consistently agreed over the years that the 1907 laws were not uniform in many important respects.

Since the provisions of Article IV of the compact, authorizing the states to pass uniform laws, were never put into effect, the states have been free to enact their own legislation regulating the fishing in the bay and ocean.

An excellent in-depth review of this question is found in the State's answering brief filed on September 7, 1983, pp. 16-35.

Defendant's argument relating to the 1915 Delaware Code "revisions" is without merit because the changes were simply proposed, and New Jersey had then, and has since had, its own statutes dealing with the taking of fish, different in substance from Delaware's.

Because no uniform laws ever existed in 1907, nor since, the Delaware General Assembly has never been bound by any of the provisions of the compact.

* * * * * *

Defendants challenge the pertinent statutes on the ground of vagueness and the consequent failure to give notice as to what type of conduct is prohibited. Such challenges must be examined in the light of the facts of the particular case at hand. U.S. v. Maguire, 419 U.S. 544 (1975); Upshur v. State, Del. Supr., 420 A.2d 165 (1980). (There are no First Amendment rights raised by defendants.)

It is abundantly clear from the facts of record in these cases that defendants knew what type of conduct would be considered unlawful under 7 Del. C. §910 and 936.

* * * * * *

I find no inconsistencies in Chapter 9 of 7 Del. C. sufficient to support a constitutional attack on any of the sections of that chapter. When read and analyzed together they are reasonably clear and consistent.

A comprehensive resources management plan, whether put into effect by statute or regulation enacted pursuant to statute, is necessarily suspect and subject by its very nature to arguments relating to vagueness and inconsistency; but the administrators and the courts must be slow to throw them aside because of the importance of resources management to society, absent a clear showing of inconsistency.

* * * * *

The question raised by the parties regarding the duty of the Delaware General Assembly to modernize the fin fishing laws has been recently mooted. The duty of the courts, in most cases, is to interpret the law without regard to whether it comports with good public policy. And if a statute is antiquated or may produce a hardship to a special class of persons or may lead to an unwise result, it is for the legislative branch of government to act, not the judicial branch.

* * * * *

Defendants' non-enforcement argument has previously been disposed of by the Delaware Court of Chancery in Delaware Watermen's Assoc. v. DNREC, et al., C.A. 789 (1983), Kent County, Brown, Chancellor.

For the reasons set out herein the defendants' motions to dismiss must be, and they are hereby, denied.

Sincerely yours,

Claud L. Tease

Claud L. Tease

CLT:llf
cc: Prothonotary
Case Scheduling Office

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2. Uninterrupted; unbroken; continual; continued.
An unfeeble and continuate goodness. *Shak.*

**Con-tin'u-a'tion** (kŏn-tĭn'ū-ā'shŭn), *n.* [L. *continuatio*: cf. F. *continuation*.] 1. The act or state of continuing; the state of being continued; uninterrupted extension or succession; prolongation; propagation.
Preventing the *continuation* of the royal line. *Macaulay.*

2. That which extends, increases, supplements, or carries on; as, the *continuation* of a story.
My *continuation* of the version of Statius. *Pope.*

**Con-tin'u-a-tive** (kŏn-tĭn'ū-ā-tĭv), *n.* [Cf. F. *continuatif*.] 1. (*Logic*) A term or expression denoting continuance. [R.]
To these may be added *continuatives*: as, Rome remains to this day; which includes, at least, two propositions, viz., Rome was, and Rome is. *I. Watts.*

2. (*Gram.*) A word that continues the connection of sentences or subjects; a connective; a conjunction.
*Continuatives* . . . consolidate sentences into one continuous whole. *Harris.*

**Con-tin'u-a'tor** (-ā'tẽr), *n.* [Cf. F. *continuateur*.] One who, or that which, continues; esp., one who continues a series or a work; a continuer. *Sir T. Browne.*

**Con-tin'ue** (kŏn-tĭn'ū), *v. i.* [*imp.* & *p. p.* CONTINUED (-ūd); *p. pr.* & *vb. n.* CONTINUING.] [F. *continuer*, L. *continuare*, *continuatum*, to connect, continue, fr. *continuus*. See CONTINUOUS, and cf. CONTINUATE.] 1. To remain in a given place or condition; to remain in connection with; to abide; to stay.
Here to *continue*, and build up here
A growing empire. *Milton.*
They *continue* with me now three days, and have nothing to eat. *Matt. xv. 32.*

2. To be permanent or durable; to endure; to last.
But now thy kingdom shall not *continue*. *1 Sam. xiii. 14.*

3. To be steadfast or constant in any course; to persevere; to abide; to endure; to persist; to keep up or maintain a particular condition, course, or series of actions; as, the army *continued* to advance.
If ye *continue* in my word, then are ye my disciples indeed. *John viii. 31.*

Syn. — To persevere; persist. See PERSEVERE.

**Con-tin'ue**, *v. t.* 1. To unite; to connect. [Obs.]
The use of the navel is to *continue* the infant unto the mother. *Sir T. Browne.*

2. To protract or extend in duration; to persevere or persist in; to cause not.
O *continue* thy loving kindness unto them that know thee. *Ps. xxxvi. 10.*
You know how to make yourself happy by only *continuing* such a life as you have been long accustomed to lead. *Pope.*

3. To carry onward or extend; to prolong or produce; to add to or draw out in length.
A bridge of wond'rous length,
From hell *continued*, reaching th' utmost orb
Of this frail world. *Milton.*

4. To retain; to suffer or cause to remain; as, the trustees were *continued*; also, to suffer to live.
And how shall we *continue* Cæsar? *Shak.*

**Con-tin'ued** (-ūd), *p. p.* & *a.* Having extension of time, space, order of events, exertion of energy, etc.; extended; protracted; uninterrupted; also, resumed after interruption; extending through a succession of issues, sessions, etc.; as, a *continued* story. "*Continued* woo." *Tennyson.* "*Continued* succession." *Locke.*

*Continued bass* (*Mus.*), a bass continued through an entire piece of music, while the other parts of the harmony are indicated by figures beneath the bass; the same as *thorough bass* or *figured bass*; basso continuo. [It.] — *Continued fever* (*Med.*), a fever which presents no intermission in its course. — *Continued fraction* (*Math.*), a fraction whose numerator is 1, and whose denominator is a whole number plus a fraction whose numerator is 1 and whose denominator is a whole number plus a fraction, and so on. — *Continued proportion* (*Math.*), a proportion composed of two or more equal ratios, in which the consequent of each preceding ratio is the same with the antecedent of the following one; as, $4:8::8:16::16:32$.

**Con-tin'u-ed-ly** (-ū-ĕd- *or* -ūd-), *adv.* Continuously.

**Con-tin'u-er** (-ū-ẽr), *n.* One who continues; one who has the power of perseverance or persistence. "Indulgent *continuers* in sin." *Hammond.*
I wonder my horse had the speed of your tongue, and so good a *continuer*. *Shak.*

**Con-ti-nu'i-ty** (kŏn'tĭ-nū'ĭ-tĭ), *n.*; *pl.* CONTINUITIES (-tĭz). [L. *continuitas*: cf. F. *continuité*. See CONTINUOUS.] The state of being continuous; uninterrupted connection or succession; close union of parts; cohesion; as, the *continuity* of fibers. *Grew.*
The sight would be tired, if it were attracted by a *continuity* of glittering objects. *Dryden.*

Law of continuity (*Math. & Physics*), the principle that nothing passes from one state to another without passing through all the intermediate states. — Solution of continuity. (*Med.*) See under SOLUTION.

**Con-ti'nu-o** (kŏn-tĭ'nŭ-ō *or* -tĭn'ū-ō), *n.* [It.] (*Mus.*) Basso continuo, or continued bass.

**Con-tin'u-ous** (kŏn-tĭn'ū-ŭs), *a.* [L. *continuus*, fr. *continere* to hold together. See CONTINENT.] 1. Without break, cessation, or interruption; without intervening space or time; uninterrupted; unbroken; continual; unceasing; constant; continued; protracted; extended; as, a *continuous* line of railroad; a *continuous* current of electricity.
He can hear its *continuous* murmur. *Longfellow.*

2. (*Bot.*) Not deviating or varying from uniformity; not interrupted; not jointed or articulated.

Continuous brake (*Railroad*), a brake which is attached to each car of a train, and can be caused to operate in all the cars simultaneously from a point on any car or on the engine. — Continuous impost. See IMPOST.

Syn. — CONTINUOUS, CONTINUAL. *Continuous* is the stronger word, and denotes that the continuity or union of parts is absolute and uninterrupted; as, a *continuous* sheet of ice; a *continuous* flow of water or of argument. So Daniel Webster speaks of "a *continuous* and unbroken strain of the martial airs of England." *Continual*, in most cases, marks a clean and unbroken succession of things, rather than absolute continuity. Thus we speak of *continual* showers, implying a repetition with occasional interruptions; we speak of a person as liable to *continual* calls, or as subject to *continual* applications for aid, etc. See CONSTANT.

**Con-tin'u-ous-ly** (kŏn-tĭn'ū-ŭs-lĭ), *adv.* In a continuous manner; without interruption. — **Con-tin'u-ous-ness**, *n.*

**Cont'line** (kŭnt'lĭn), *n.* 1. (*Ropemaking*) The space between the strands on the outside of a rope. *Knight.*
2. (*Naut.*) The space between the bilges of two casks stowed side by side.

**Con-tor'ni-ate** (kŏn-tôr'nĭ-āt), } *n.* [It. *contorniato*,
**Con-tor'ni-a'to** (-nĭ-ā'tō), } p. pr. of *contornare* to make a circuit or outline, fr. *contorno* circuit, outline. See CONTOUR.] (*Numis.*) A species of medial or medallion of bronze, having a deep furrow on the contour or edge; — supposed to have been struck in the days of Constantine and his successors. *R. S. Poole.*

**Con-tor'sion** (kŏn-tôr'shŭn), *n.* See CONTORTION.

**Con-tort'** (kŏn-tôrt'), *v. t.* [L. *contortus*, p. p. of *contorquere* to twist; *con-* + *torquere* to twist. See TORTURE.] To twist, or twist together; to turn awry; to bend; to distort; to wrest.
The vertebral arteries are variously *contorted*. *Kay.*
Kant *contorted* the term category from the proper meaning of attribution. *Sir W. Hamilton.*

**Con-tort'ed**, *a.* 1. Twisted, or twisted together. "A *contorted* chain of icicles." *Massinger.*
2. (*Bot.*) (*a*) Twisted back upon itself, as some parts of plants. (*b*) Arranged so as to overlap each other; as, petals in *quincunx* or convolute æstivation.

**Con-tor'tion** (kŏn-tôr'shŭn), *n.* [L. *contorsio*; cf. F. *contorsion*. See CONTOUR, and cf. TORMION.] A twisting; a writhing; a wresting; wry motion; a twist; as, the *contortion* of the muscles of the face. *Swift.*
All the *contortions* of the sibyl, without the inspiration. *Burke.*

**Con-tor'tion-ist**, *n.* One who makes or practices contortions.

**Con-tor'tive** (kŏn-tôr'tĭv), *a.* Expressing contortion.

**Con-tor-tu'pli-cate** (kŏn'tôr-tū'plĭ-kāt), *a.* [L. *contortuplicatus*; *contortus* contorted + *plicare* to fold.] (*Bot.*) Plaited lengthwise and twisted in addition, as the bud of the morning-glory. *Gray.*

**Con-tour'** (kŏn-tōōr'), *n.* [F. *contour*, fr. *contourner* to mark the outlines; *con-* + *tourner* to turn. See TURN.] 1. The outline of a figure or body, or the line or lines representing such an outline; the line that bounds; periphery.
Titian's coloring and *contour*. *A. Hammond.*

2. (*Mil.*) The outline of a horizontal section of the ground, or of works of fortification.

Contour feathers (*Zoöl.*), those feathers that form the general covering of a bird. — Contour of ground (*Surv.*), the outline of the surface of ground with respect to its undulations, etc. — Contour line (*Topographical Surv.*), the line in which a horizontal plane intersects a portion of ground, or the corresponding line in a map or chart.

**Con'tour-né'** (kŏn'tōōr-nā'), *a.* [F., p. p. of *contourner* to twist.] (*Her.*) Turned in a direction which is not the usual one; — said of an animal turned to the sinister which is usually turned to the dexter, or the like.

**Con-tour'ni-a'ted** (kŏn-tōōr'nĭ-ā'tĕd), *a.* [Cf. CONTORNIATE.] (*Numis.*) Having furrowed edges, as if turned in a lathe.

**Con'tra-** (kŏn'trȧ-). A Latin adverb and preposition, signifying *against*, *contrary*, in *opposition*, etc., entering as a prefix into the composition of many English words. Cf. COUNTER-, *adv.* & *pref.*

**Con'tra-band** (kŏn'trȧ-bănd), *n.* [It. *contrabbando*; *contra* + *bando* ban, proclamation; cf. F. *contrebande*. See BAN an edict.] 1. Illegal or prohibited traffic.
Persons the most bound in duty to prevent *contraband*, and the most interested in the seizures. *Burke.*

2. Goods or merchandise the importation or exportation of which is forbidden.

3. A negro slave who, during the Civil War, escaped to, or was brought within, the Union lines. Such slave was considered contraband of war. [*U. S.*]

Contraband of war, that which, according to international law, cannot be supplied to a hostile belligerent except at the risk of seizure and condemnation by the aggrieved belligerent. *Wharton.*

**Con'tra-band**, *a.* Prohibited or excluded by law or treaty; forbidden; as, *contraband* goods, or trade.
The *contraband* will always keep pace, in some measure, with the fair trade. *Burke.*

**Con'tra-band**, *v. t.* 1. To import illegally, as prohibited goods; to smuggle. [Obs.] *Johnson.*
2. To declare prohibited; to forbid. [Obs.]
The law severely *contrabands*
Our taking business of men's hands. *Hudibras.*

**Con'tra-band-ism** (-ĭz'm), *n.* Traffic in contraband goods; smuggling.

**Con'tra-band'ist** (-bănd'ĭst), *n.* One who traffics illegally; a smuggler.

**Con'tra-bass'** (kŏn'trȧ-bās'), *a.* (*Mus.*) Double bass; — applied to any instrument of the same deep range as the stringed double bass: as, the *contrabass* ophicleide; the *contrabass* tuba or bombardon.

**Con'tra-bas'so** (-bās'sō), *n.* [It. *contrabbasso*.] (*Mus.*) The largest kind of bass viol. See VIOLONE.

**Con-tract'** (kŏn-trăkt'), *v. t.* [*imp.* & *p. p.* CONTRACTED; *p. pr.* & *vb. n.* CONTRACTING.] [L. *contractus*, p. p. of *contrahere* to contract; *con-* + *trahere* to draw; cf. F. *contracter*. See TRACE, and cf. CONTRACT, *n.*]
1. To draw together or nearer; to reduce to a less compass; to shorten, narrow, or lessen; as, to *contract* one's sphere of action.
In all things demitude doth *contract* and narrow our faculties. *Dr. H. More.*
2. To draw together so as to wrinkle; to knit.
Thus didst *contract* and purse thy brow. *Shak.*
3. To bring on; to incur; to acquire; as, to *contract* a habit; to *contract* a debt; to *contract* a disease.
Each from each *contract* new strength and light. *Pope.*
Such behavior we *contract* by having much conversed with persons of high station. *Swift.*
4. To enter into, with mutual obligations; to make a bargain or covenant for.
We have *contracted* an inviolable amity, peace, and league with the aforesaid queen. *Hakluyt.*
Many persons . . . had *contracted* marriage within the degrees of consanguinity . . . prohibited by law. *Strype.*
5. To betroth; to affiance.
The truth is, she and I, long since *contracted*,
Are now so sure, that nothing can dissolve us. *Shak.*
6. (*Gram.*) To shorten by omitting a letter or letters, or by reducing two or more vowels or syllables to one.

Syn. — To shorten; abridge; epitomize; narrow; lessen; condense; reduce; confine; incur; assume.

**Con-tract'** (kŏn-trăkt'), *v. i.* 1. To be drawn together so as to be diminished in size or extent; to shrink; to be reduced in compass or in duration; as, iron *contracts* in cooling; a rope *contracts* when wet.
Years *contracting* to a moment. *Wordsworth.*
2. To make an agreement; to covenant; to agree; to bargain; as, to *contract* for carrying the mail.

**Con'tract** (kŏn'trăkt), *a.* Contracted; as, a *contract* verb. *Goodwin.*

**Con-tract'** (kŏn-trăkt'), *a.* [L. *contractus*, p. p.] Contracted; affianced; betrothed. [Obs.] *Shak.*

**Con'tract** (kŏn'trăkt), *n.* [L. *contractus*, fr. *contrahere*: cf. F. *contrat*, formerly also *contract*.] 1. (*Law*) The agreement of two or more persons, upon a sufficient consideration or cause, to do, or to abstain from doing, some act; an agreement in which a party undertakes to do, or not to do, a particular thing; a formal bargain; a compact; an interchange of legal rights. *Wharton.*
2. A formal writing which contains the agreement of parties, with the terms and conditions, and which serves as a proof of the obligation.
3. The act of formally betrothing a man and woman.
This is the night of the *contract*. *Longfellow.*

Syn. — Covenant; agreement; compact; stipulation; bargain; arrangement; obligation. See COVENANT.

**Con-tract'ed** (kŏn-trăk'tĕd), *a.* 1. Drawn together; shrunken; wrinkled; narrow; shortened; as, a *contracted* brow; a *contracted* poem.
2. Narrow; illiberal; selfish; as, a *contracted* mind; *contracted* views.
3. Bargained for; betrothed; as, a *contracted* peace.
Inquire me out *contracted* bachelors. *Shak.*

**Con-tract'ed-ly**, *adv.* In a contracted manner.

**Con-tract'ed-ness**, *n.* The state of being contracted; narrowness; meanness; selfishness.

**Con-tract'i-bil'i-ty** (-tĭ-bĭl'ĭ-tĭ), *n.* Capability of being contracted; quality of being contractible; as, the *contractibility* and dilatability of air. *Arbuthnot.*

**Con-tract'i-ble** (-tĭ-b'l), *a.* Capable of contraction.
Small air bladders dilatable and *contractible*. *Arbuthnot.*

**Con-tract'i-ble-ness**, *n.* Contractibility.

**Con-tract'ile** (kŏn-trăk'tĭl), *a.* [Cf. F. *contractile*.] Tending to contract; having the power or property of contracting, or of shrinking into shorter or smaller dimensions; as, the *contractile* tissues.
The heart's *contractile* force. *H. Brooke.*
Each cilium seems to be composed of *contractile* substance. *Huxley.*

Contractile vesicle (*Zoöl.*), a pulsating cavity in the interior of a protozoon, supposed to be excretory in function. There may be one, two, or more.

**Con'trac-til'i-ty** (kŏn'trăk-tĭl'ĭ-tĭ), *n.* 1. The quality or property by which bodies shrink or contract.
2. (*Physiol.*) The power possessed by the fibers of living muscle of contracting or shortening.

☞ When subject to the will, as in the muscles of locomotion, such power is called *voluntary contractility*; when not controlled by the will, as in the muscles of the heart, it is *involuntary contractility*.

**Con-trac'tion** (kŏn-trăk'shŭn), *n.* [L. *contractio*; cf. F. *contraction*.] 1. The act or process of contracting, shortening, or shrinking; the state of being contracted; as, *contraction* of the heart, of the pupil of the eye, or of a tendon; the *contraction* produced by cold.
2. (*Math.*) The process of shortening an operation.
3. The act of incurring or becoming subject to, as liabilities, obligations, debts, etc.; the process of becoming subject to; as, the *contraction* of a disease.
4. Something contracted or abbreviated, as a word or phrase; — as, *plenipo* for *plenipotentiary*; *crim. con.* for *criminal conversation*, etc.
5. (*Gram.*) The shortening of a word, or of two words, by the omission of a letter or letters, or by reducing two or more vowels or syllables to one; as, *ne'er* for *never*; *can't* for *can not*; *don't* for *do not*; *it's* for *it is*. *Shak.*
6. A marriage contract. [Obs.]

**Con-tract'ive** (kŏn-trăk'tĭv), *a.* Tending to contract; having the property or power of contracting.

**Con-tract'or** (kŏn-trăk'tẽr), *n.* [L.] One who contracts; one of the parties to a bargain; one who covenants to do anything for another; specifically, one who contracts to perform work on a rather large scale, at a certain price or rate, as in building houses or making a railroad.

**Con-trac'ture** (kŏn-trăk'tūr; 135), *n.* [L. *contractura* a drawing together.] (*Med.*) A state of permanent rigidity or contraction of the muscles, generally of the flexor muscles.

**Con'tra-dance'** (kŏn'trȧ-dăns'), *n.* [Prob. *country dance*: cf. F. *contredanse*. Cf. COUNTRY-DANCE.]

…ūz'), n. [OF. F. excuse. See Excuse, v.] Act of excusing, apologizing, exculpating, …g, and the like; acquittal; release; …ation; extenuation.
…so wisely in excuse of it. Bacon.
…offered as a reason for being excused; …tenuation of a fault or irregular de…; as, an excuse for neglect of duty; …payment.
…n denial vain and coy excuse. Milton.
…cuses; that which extenuates or justifies the excuse of youth." Shak.
…It were made for saying.
…y is its own excuse for being. Emerson.
…per.
Having no excuse; not admitting …. Whitlock.
…n-kūz'ment), n. [Cf. OF. excusement, Obs.] Excuse. Gower.
…n. 1. One who offers excuses or …s of the fault of another. Swift.
…s or forgives another. Shelton.
…'), v. t. [L. excussus, p. p. of excutere, from + quatere to shake. Cf. …e off; to discard. [R.]
…ius of a Deity cut off all their minds. Hy. Stillingfleet.
…investigate; to decipher. [R.]
…in excussing some old arguments. F. Junius (1651).
…ue by law, as goods. [Obs.] Ayliffe.
…kŭs'hŭ), n. [L. excussus a shaking …g of corn; cf. F. excussion.] The …ure by law. [Obs.] Ayliffe.
…, n. [L., let him go forth.] 1. A …on in a college or a religious house. Shipley.
…ish a bishop grants to a priest to … Wharton.
…'), a. [L. execrabilis, execrabilis: …Execrate.] Deserving to be execrable; detestable; abominable; …. "Execrable pride." Hooker. …n. — Ex'e-cra-bly, adv.
…t. t. [imp. & p. p. Execrated; …n. Execrating (-krā'tĭng).] [L. …p. of execrare, execrare, to execrate, holy, sacred. See Sacred.] To …or to imprecate evil upon; to …e as unholy or detestable; hence, …hor; to abominate. "They . . . Cowper.
…shŭn), n. [L. exsecratio, execratio.] 1. The act of cursing; a curse …gs of hatred; imprecation; utter …
…ssion, these execrations. Shak.
…rated; a detested thing.
…ation and . . . a curse. Jer. xxiii. 10.
…ek'rā-tĭv), a. Cursing; imprecat… — Ex'e-cra-tive-ly, adv.
…ord used for cursing; an imprec… Burke.
…ek'rā-tō-ry), a. Of the nature of …; denunciatory. C. Kingsley. — …ations. L. Addison.
…. [See Execrate.] To cut off or …. Harrow.
…shŭn), n. [Obs.] See Execution.
…ek'sē-kū-bl'), a. Capable of being …n executable project. [R.]
…-cŭt'ant), n. One who executes …order on a musical instrument. …tenes on the organ. De Quincey.
…, v. t. [imp. & p. p. Executed; …. Executing (-kū'tĭng).] [F. exécuter, p. p. of exequer to follow it + sequi to follow. See Sequel of. Execute.] 1. To follow …; to carry out or into complete …finish; to effect; to perform; …plan, a design, or a scheme.
…y delays
…ing what his decree …? Milton.
…egal instrument; to perform …validity to, as by signing and …ering; as, to execute a deed.
…o what is provided or required …ements or stipulations of; as, …nt, writ, or process.
…dismount on; to put to death in …one; as, to execute a traitor.
…ly; to kill. [Obs.] Shak.
…a piece of music, either on …oice; as, to execute a difficult …
…effect; fulfill; achieve; …. See Accomplish.
…do one's work; to act one's …. Heywood.
…r), n. One who performs or …cutor.
…shŭn), n. [F. exécution, L. ex… act of executing; a carrying …; performance; achievement; …ution of a plan, a work, etc. …contributed much to the happi… Dryden.
2. A putting to death as a legal penalty; death lawfully inflicted; as, the execution of a murderer.
A warrant for his execution. Shak.
3. The act or the mode of performing a work of art, of performing on an instrument, of engraving, etc.; as, the execution of a statue, painting, or piece of music.
The first quality of execution is truth. Hazlitt.
4. (Law) (a) The carrying into effect the judgment given in a court of law. (b) A judicial writ by which an officer is empowered to carry a judgment into effect; final process. (c) The act of signing, sealing, and delivering a legal instrument, or giving it the forms required to render it valid; as, the execution of a deed, or a will.
5. That which is executed or accomplished; effect; effective work; — usually with de.
To do some fatal execution. Shak.
6. The act of sacking a town. [Obs.] Beau. & Fl.
Ex'e-cu'tion-er (ĕks'ē-kū'shŭn-ẽr), n. 1. One who executes; an executor. Bacon.
2. One who puts to death in conformity to legal warrant, as a hangman.
Ex-ec'u-tive (ĕg-zĕk'ū-tĭv; 277), a. [Cf. F. exécutif.] Designed or fitted for execution, or carrying into effect; as, executive talent; qualifying for, concerned with, or pertaining to, the execution of the laws or the conduct of affairs; as, executive power or authority; executive duties, officer, department, etc.
☞ In government, executive is distinguished from legislative and judicial; legislative being applied to the agents or organs of government which make the laws; judicial, to that which interprets and applies the laws; executive, to that which carries them into effect or secures their due performance.
Ex-ec'u-tive, n. An impersonal title of the chief magistrate or officer who administers the government, whether king, president, or governor; the governing person or body.
Ex-ec'u-tive-ly, adv. In the way of executing or performing.
Ex-ec'u-tor (ĕg-zĕk'ū-tẽr or ĕks-; ĕks'ē-kū'tẽr in senses 1 & 2), n. [L. executor, executor: cf. F. exécuteur. Cf. Executer.] 1. One who executes or performs; a doer; as, an executor of baseness. Shak.
2. An executioner. [Obs.]
Delivering o'er to executors pale
The lazy, yawning drone. Shak.
3. (Law) The person appointed by a testator to execute his will, or to see its provisions carried into effect, after his decease.
‖ Executor de son tort (OF., executor of his own wrong) (Law), a stranger who intermeddles without authority in the distribution of the estate of a deceased person.
Ex-ec'u-to'ri-al (ĕg-zĕk'ū-tō'rĭ-al), a. [LL. executorialis.] Of or pertaining to an executor; executive.
Ex-ec'u-tor-ship (ĕg-zĕk'ū-tẽr-shĭp), n. The office of an executor.
Ex-ec'u-to-ry (-tō-rĭ), a. [LL. executorius, L. executorius: cf. F. exécutoire.] 1. Pertaining to administration, or to putting the laws in force; executive.
The official and executory duties of government. Burke.
2. (Law) Designed to be executed or carried into effect in time to come, or to take effect on a future contingency; as, an executory devise, remainder, or estate; an executory contract. Blackstone.
Ex-ec'u-trix (-trĭks), n. [Cf. F. exécutrice.] An executrix.
Ex-ec'u-trix (-trĭks), n. [LL.] (Law) A woman executing the functions of an executor.
Ex'e-dent (ĕks'ē-dent), a. [L. exedens, -entis, p. pr. of exedere. See Exedra.] Eating out; consuming. [R.]
‖ Ex'e-dra (ĕks'ē-drȧ), n.; pl. Exedræ (-drē). [L., fr. Gr. ἐξέδρα; ἐξ out + ἕδρα seat.] 1. (Class. Antiq.) A room in a public building, furnished with seats.
2. (Arch.) (a) The projection of any part of a building in a rounded form. (b) Any out-of-door seat in stone, large enough for several persons; esp., one of curved form.
Ex'e-ge'sis (ĕks'ē-jē'sĭs), n.; pl. Exegeses (-sēz). [NL., fr. Gr. ἐξήγησις, fr. ἐξηγεῖσθαι to explain, interpret; ἐξ out + ἡγεῖσθαι to guide, lead, akin to ἄγειν to lead. See Agent.] 1. Exposition; explanation; especially, a critical explanation of a text or portion of Scripture.
2. (Math.) The process of finding the roots of an equation. [Obs.]
Ex'e-gete (ĕks'ē-jēt), n. [Gr. ἐξηγητής: cf. F. exégète. See Exegesis.] An exegetist.
Ex'e-get'ic (-jĕt'ĭk), } a. [Gr. ἐξηγητικός: cf. F.
Ex'e-get'ic-al (-ĭ-kal), } exégétique.] Pertaining to exegesis; tending to unfold or illustrate; explanatory; expository. Walker. — Ex'e-get'ic-al-ly, adv.
Ex'e-get'ics (-ĭks), n. The science of interpretation or exegesis.
Ex'e-ge'tist (-jē'tĭst), n. One versed in the science of exegesis or interpretation; — also called exegete.
Ex-em'plar (ĕg-zĕm'plẽr), n. [L. exemplar, exemplum: cf. F. exemplaire. See Example, and cf. Examplar, Banner.] 1. A model, original, or pattern, to be copied or imitated; a specimen; sometimes, an ideal model or type, as that which an artist conceives.
Such grand exemplars as make their own abilities the sole measure of what is fit or unfit. South.
2. A copy of a book or writing. [Obs.] Udall.
Ex-em'plar, a. Exemplary. [Obs.]
The exemplar piety of the father of a family. Jer. Taylor.
Ex'em-pla-ri-ly (ĕg-zĕm'plȧ-rĭ-lĭ), adv. In a manner fitted or designed to be an example for imitation or for warning; by way of example.
She is exemplarily loyal. Howell.
Some he punisheth exemplarily. Hakewill.
Ex'em-pla-ri-ness, n. The state or quality of being exemplary; fitness to be an example.
Ex'em-plar'i-ty (ĕg-zĕm'plȧr'ĭ-tĭ), n. [Cf. LL. exemplaritas.] Exemplariness. [R.]
The exemplarity of Christ's life. Bp. Sharp.
Ex'em-pla-ry (ĕg-zĕm'plȧ-rĭ; 277), a. [L. exemplaris, fr. exemplar: cf. F. exemplaire. See Example.]
1. Serving as a pattern; deserving to be proposed for imitation: commendable; as, an exemplary person; an exemplary condition.
[Bishops'] lives and doctrines ought to be exemplary. Bacon.
2. Serving as a warning; monitory; as, exemplary justice, punishment, or damages.
3. Illustrating as the proof of a thing. Fuller.
Exemplary damages. (Law) See under Damage.
Ex'em-pla-ry, n. An exemplar; also, a copy of a book or writing. (Obs.) Donne.
Ex-em'pli-fi'a-ble (ĕg-zĕm'plĭ-fī'ȧ-b'l), a. That can be exemplified.
Ex-em'pli-fi-ca'tion (-fĭ-kā'shŭn), n. 1. The act of exemplifying; a showing or illustrating by example.
2. That which exemplifies; a case in point; example.
3. (Law) A copy or transcript attested to be correct by the seal of an officer having custody of the original.
Ex-em'pli-fi'er (ĕg-zĕm'plĭ-fī'ẽr), n. One who exemplifies by following a pattern.
Ex-em'pli-fy (-fī), v. t. [imp. & p. p. Exemplified (-fīd); p. pr. & vb. n. Exemplifying.] [L. exemplum example + -fy; cf. LL. exemplificare to copy, serve as an example.] 1. To show or illustrate by example.
We see but . . . exemplify the principles in which he had been brought up. Cowper.
2. To copy; to transcribe; to make an attested copy or transcript of, under seal, as of a record. Holland.
3. To prove or show by an attested copy.
Ex-empt' (ĕg-zĕmt'; 215), a. [F. exempt, L. exemptus, p. p. of eximere to take out, remove, free; ex out + emere to buy, take. Cf. Exon, Redeem.] 1. Cut off; set apart. [Obs.]
Corrupted, and exempt from ancient gentry. Shak.
2. Extraordinary; exceptional. [Obs.] Chapman.
3. Free, or released, from some liability to which others are subject; excepted from the operation or burden of some law; released; free; clear; privileged; — (with from); not subject to; not liable to; as, goods exempt from execution; a person exempt from jury service.
True nobility is exempt from fear. Shak.
'T is just on all, not any one exempt. Dryden.
Ex-empt', n. 1. One exempted or freed from duty; one not subject.
2. One of four officers of the Yeomen of the Royal Guard, having the rank of corporal; an Exon. [Eng.]
Ex-empt', v. t. [imp. & p. p. Exempted; p. pr. & vb. n. Exempting.] [F. exempter. See Exempt, a.]
1. To remove; to set apart. [Obs.] Holland.
2. To release or deliver from some liability which others are subject to; to except or excuse from the operation of a law; to grant immunity to; to free from obligation; to release; as, to exempt from military duty or from jury service; to exempt from fear or pain.
Death
So snatched will not exempt us from the pain
We are by doom to pay. Milton.
Ex-empt'i-ble (-ĭ-b'l), a. That may be exempted.
Ex-emp'tion (ĕg-zĕmp'shŭn; 215), n. [L. exemptio a removing: cf. F. exemption. exemption.] The act of exempting; the state of being exempt; freedom from any charge, burden, evil, etc., to which others are subject; immunity; privilege; as, exemption of certain articles from seizure; exemption from military service; exemption from anxiety, suffering, etc.
Ex'em-pi'tious (ĕg'zĕm-tĭsh'ŭs; 215), a. Separable. [Obs.] "Exemptitious from matter." Dr. H. More.
Ex-en'ter-ate (ĕks-ĕn'tẽr-āt), v. t. [L. exenteratus, p. p. of exenterare: cf. Gr. ἐξεντερίζειν; ἐξ out + ἔντερον intestine.] To take out the bowels or entrails of; to disembowel; to eviscerate; as, exenterated fishes. [R.]
Exenterated rule-mongers and eviscerated logicians. More.
Ex-en'ter-a'tion (-ā'shŭn), n. [LL. exenteratio.] Act of exenterating. [R.] Sir T. Browne.
‖ Ex'e-quā'tur (ĕks'ē-kwē'tẽr), n. [L., 3d pers. sing. pres. subj. of exequi, exequi, to perform, execute.] 1. A written official recognition of a consul or commercial agent, issued by the government to which he is accredited, and authorizing him to exercise his powers in the place to which he is assigned.
2. Official recognition or permission. Prescott.
Ex-e'qui-al (ĕks-ē'kwĭ-al), a. [L. exequialis, exequialis, fr. exequiæ exequies.] Of or pertaining to funerals; funereal. Pope.
Ex-e'qui-ous (-ŭs), a. Funereal. [Obs.] Drayton.
Ex'e-quy (ĕks'ē-kwĭ), n.; pl. Exequies (-kwĭz). [L. exequiæ, exequiæ, a funeral procession, fr. exequi to follow out: cf. OF. exeque. See Execute.] A funeral rite (usually in the plural); the ceremonies of burial; obsequies; funeral procession.
But see his exequies fulfilled in Rome. Shak.
Ex-er'cent (ĕks-ẽr'sent), a. [L. exercens, -entis, p. pr. of exercere. See Exercise.] Practicing; professional. [Obs.] "Every exercent advocate." Ayliffe.
Ex'er-ci'sa-ble (ĕks'ẽr-sī'zȧ-b'l), a. That may be exercised, used, or exerted.
Ex'er-cise (-sīz), n. [F. exercice, L. exercitium, from exercere, exercitum, to drive on, keep busy, prob. orig., to thrust or drive out of the inclosure; ex out + arcere to shut up, inclose. See Ark.] 1. The act of exercising; a setting in action or practicing; employment in the proper mode of activity; exertion; application; use; habitual activity; occupation, in general; practice.
In the exercise of the important function confided by the constitution to the legislature. Jefferson.
O we will walk this world,
Yoked in all exercise of noble end. Tennyson.
2. Exertion for the sake of training or improvement,

whether physical, intellectual, or moral; practice to acquire skill, knowledge, virtue, perfectness, grace, etc. "Desire of knightly *exercise*." *Spenser.*

An *exercise* of the eyes and memory. *Locke.*

3. Bodily exertion for the sake of keeping the organs and functions in a healthy state; hygienic activity; as, to take *exercise* on horseback.

The wise for cure on *exercise* depend. *Dryden.*

4. The performance of an office, a ceremony, or a religious duty.

Lewis refused even those of the church of England . . . the public *exercise* of their religion. *Addison.*

To draw him from his holy *exercise*. *Shak.*

5. That which is done for the sake of exercising, practising, training, or promoting skill, health, mental improvement, moral discipline, etc.; that which is assigned or prescribed for such ends; hence, a disquisition; a lesson; a task; as, military or naval *exercises*; musical *exercises*; an *exercise* in composition.

The clumsy *exercises* of the European tourney. *Prescott.*

He seems to have taken a degree, and performed public *exercises* in Cambridge, in 1665. *Brydges.*

6. That which gives practice; a trial; a test.

Patience is more oft the *exercise*
Of saints, the trial of their fortitude. *Milton.*

Exercise bone (*Med.*), a deposit of bony matter in the soft tissues, produced by pressure or exertion.

**Ex-er-cise** (ĕks'ẽr-sīz), *v. t.* [imp. & p. p. EXERCISED (-sīzd); p. pr. & vb. n. EXERCISING (-sī-zing).] **1.** To set in action; to cause to act, move, or make exertion; to give employment to; to put in action habitually or constantly; to school or train; to exert repeatedly; to busy.

Herein do I *exercise* myself, to have always a conscience void of offence. *Acts xxiv. 16.*

**2.** To exert for the sake of training or improvement; to prescribe in order to develop; hence, also, to improve by practice; to discipline, and to use or to perform for the purpose of training; as, to *exercise* arms; to *exercise* one's self in music; to *exercise* troops.

About him *exercised* heroic games
The unarmed youth. *Milton.*

**3.** To occupy the attention and effort of; to task; to tax, especially in a painful or vexatious manner; to harass; to vex; to worry or make anxious; to afflict; to discipline; as, *exercised* with pain.

Where pain of unextinguishable fire
Must *exercise* us without hope of end. *Milton.*

**4.** To put in practice; to carry out in action; to perform the duties of; to use; to employ; to practise; as, to *exercise* authority; to *exercise* an office.

I am the Lord which *exercise* loving-kindness, judgment, and righteousness, in the earth. *Jer. ix. 24.*

The people of the land have used oppression and *exercised* robbery. *Ezek. xviii. 12.*

**Ex'er-cise**, *v. i.* To exercise one's self, as under military training; to drill; to take exercise; to use action or exertion; to practice gymnastics; as, to *exercise* for health or amusement.

I wear my trusty sword,
When I do *exercise*. *Cowper.*

**Ex'er-cis'er** (-sī'zẽr), *n.* One who exercises.

**Ex'er-ci'si-ble** (-sī'sĭ-b'l), *a.* Capable of being exercised, employed, or enforced; as, the authority of a magistrate is *exercisible* within his jurisdiction.

**Ex-er'ci-ta'tion** (ĕgz-ẽr'sĭ-tā'shĭn *or* ĕks-), *n.* [L. *exercitatio*, fr. *exercitare*, intens., fr. *exercere* to exercise: cf. F. *exercitation*.] Exercise; practice; use. [R.] *Sir T. Browne.*

**Ex-ergue'** (ĕgz-ẽrg' *or* ĕks-), *n.* [F., fr. Gr. ἐξ out + ἔργον work; lit., out work, i. e., accessory work. See WORK.] (*Numis.*) The small space beneath the base line of a subject engraved on a coin or medal. It usually contains the date, place, engraver's name, etc., or other subsidiary matter. *Pelerholt.*

**Ex-ert'** (ĕgz-ẽrt'), *v. t.* [imp. & p. p. EXERTED; p. pr. & vb. n. EXERTING.] [L. *exsertus, exertus*, p. p. of *exserere, exserere*, to thrust out; ex out + *serere* to join or bind together. See SERIES, and cf. EXSERT.] **1.** To thrust forth; to emit; to push out. [Obs.]

So from the seas *exerts* his radiant head
The star by whom the lights of heaven are led. *Dryden.*

**2.** To put forth, as strength, force, ability, or anything of the nature of an active faculty; to put in vigorous action; to bring into active operation; as, to *exert* the strength of the body, limbs, faculties, or imagination; to *exert* the mind or the voice.

**3.** To put forth, as the result or exercise of effort; to bring to bear; to do or perform.

When the will has *exerted* an act of command on any faculty of the soul or member of the body. *South.*

To *exert* one's self, to use efforts or endeavors; to strive; to make an attempt.

**Ex-er'tion** (-ẽr'shĭn), *n.* The act of exerting, or putting into motion or action; the active exercise of any power or faculty; an effort, esp. a laborious or perceptible effort; as, an *exertion* of strength or power; an *exertion* of the limbs or of the mind; it is an *exertion* for him to move, to-day.

**Syn.** — Attempt; endeavor; effort; essay; trial. See ATTEMPT.

**Ex-ert'ive** (-tĭv), *a.* Having power or a tendency to exert; using exertion.

**Ex-ert'ment** (-ment), *n.* Exertion. [R.]

**Ex-e'sion** (ĕgz-ē'zhĭn), *n.* [L. *exedere, exesum*, to eat up; ex out + *edere* to eat.] The act of eating out or through. [Obs.] *Sir T. Browne.*

**Ex-es'tu-ate** (ĕgz-ĕs'tū-āt; 135), *v. i.* [L. *exaestuare* to boil up. See ESTUATE.] To be agitated; to boil up; to effervesce. [Obs.]

**Ex-es'tu-a'tion** (-ā'shĭn), *n.* [L. *exaestuatio*.] A boiling up; effervescence. [Obs.] *Boyle.*

**Ex'e-unt** (ĕks'ē-ŭnt). [L., 3d pers. pl. pres. of *exire* to go out.] They go out, or retire from the scene; as, *exeunt* all except Hamlet. See 1st EXIT.

**Ex-fo-li-a'tion** (ĕks-fō-lĭ-ā'shĭn), *n.* [Pref. *ex-* + *foliation*.] (*Med.*) Imperfect fetation in some organ exterior to the uterus; extra-uterine fetation. *Hoblyn.*

**Ex-fo'li-ate** (ĕks-fō'lĭ-āt), *v. t.* [imp. & p. p. EXFOLIATED (-ā'tĕd); p. pr. & vb. n. EXFOLIATING (-ā'tĭng).] [L. *exfoliare* to strip of leaves; ex out, from + *folium* leaf.] **1.** To separate and come off in scales or lamina, as pieces of carious bone or of bark.

**2.** (*Min.*) To split into scales, especially to become converted into scales at the surface, as the result of heat or decomposition.

**Ex-fo'li-ate**, *v. t.* To remove scales, laminæ, or splinters from the surface of.

**Ex-fo'li-a'tion** (-ā'shĭn), *n.* [Cf. F. *exfoliation*.] The scaling off of a bone, a rock, or a mineral, etc.; the state of being exfoliated.

**Ex-fo'li-a-tive** (ĕks-fō'lĭ-ā-tĭv), *a.* [Cf. F. *exfoliatif*.] Having the power of causing exfoliation. — *n.* An exfoliative agent. *Wiseman.*

**Ex-hal'a-ble** (ĕks-hāl'ā-b'l), *a.* Capable of being exhaled or evaporated. *Boyle.*

**Ex-hal'ant** (-ant), *a.* [Cf. F. *exhalant*.] Having the quality of exhaling or evaporating.

**Ex'ha-la'tion** (ĕks'hā-lā'shĭn *or* ĕgz'ā-; 277), *n.* [L. *exhalatio*: cf. F. *exhalation, exhalaison*.] **1.** The act or process of exhaling, or sending forth in the form of steam or vapor; evaporation.

**2.** That which is exhaled, or which rises in the form of vapor, fume, or steam; effluvium; emanation; as, *exhalations* from the earth or flowers, decaying matter, etc.

To mists and *exhalations*, that now rise
From hill or steaming lake. *Milton.*

**3.** A bright phenomenon; a meteor.

I shall fall
Like a bright *exhalation* in the evening. *Shak.*

**Ex-hale'** (ĕks-hāl' *or* ĕgz-hāl'), *v. t.* [imp. & p. p. EXHALED (-hāld'); p. pr. & vb. n. EXHALING.] [L. *exhalare*; ex out + *halare* to breathe; cf. F. *exhaler*. Cf. INHALE.] **1.** To breathe out. Hence: To emit, as vapor; to send out, as an odor; to evaporate; as, the earth *exhales* vapor; parches *exhale* noxious effluvia.

Less fragrant scents the unfolding rose *exhales*. *Pope.*

**2.** To draw out; to cause to be emitted in vapor; as, the sun *exhales* the moisture of the earth.

**Ex-hale'**, *v. i.* To rise or be given off, as vapor; to pass off, or vanish.

Their inspiration *exhaled* in elegies. *Prescott.*

**Ex-hale'ment** (-ment), *n.* Exhalation. [Obs.]

**Ex-hal'ence** (-ens), *n.* Exhalation. [R.]

**Ex-haust'** (ĕgz-ast'; 277), *v. t.* [imp. & p. p. EXHAUSTED; p. pr. & vb. n. EXHAUSTING.] [L. *exhaustus*, p. p. of *exhaurire*; ex out + *haurire, haustum*, to draw, esp. water; perhaps akin to Icel. *ausa* to sprinkle, pump.]

**1.** To draw or let out wholly; to drain off completely; as, to *exhaust* the water of a well; the moisture of the earth is *exhausted* by evaporation.

**2.** To empty by drawing or letting out the contents; as, to *exhaust* a well, or a treasury.

**3.** To drain, metaphorically; to use or expend wholly, or till the supply comes to an end; to deprive wholly of strength; to use up; to weary or tire out; to wear out; as, to *exhaust* one's strength, patience, or resources.

A decrepit, *exhausted* old man at fifty-five. *Motley.*

**4.** To bring out or develop completely; to discuss thoroughly; as, to *exhaust* a subject.

**5.** (*Chem.*) To subject to the action of various solvents in order to remove all soluble substances or extractives; as, to *exhaust* a drug successively with water, alcohol, and ether.

Exhausted receiver. (*Physics*) See under RECEIVER.

Syn. — To spend; consume; tire out; weary.

**Ex-haust'**, *a.* [L. *exhaustus*, p. p.] **1.** Drained; exhausted; having expended or lost its energy.

**2.** Pertaining to steam, air, gas, etc., that is released from the cylinder of an engine after having performed its work.

Exhaust draught, a forced draught produced by drawing air through a place, as through a furnace, instead of blowing it through. — Exhaust fan, a fan blower so arranged as to produce an exhaust draught, or to draw air or gas out of a place, as out of a room in ventilating it. — Exhaust nozzle, Exhaust orifice (*Steam Engine*), the blast orifice or nozzle. — Exhaust pipe (*Steam Engine*), the pipe that conveys exhaust steam from the cylinder to the atmosphere or to the condenser. — Exhaust port (*Steam Engine*), the opening, in the cylinder or valve, by which the exhaust steam escapes. — Exhaust purifier (*Milling*), a machine for sorting grains, or purifying middlings by an exhaust draught. *Knight.* — Exhaust steam (*Steam Engine*), steam which is allowed to escape from the cylinder after having been employed to produce motion of the piston. — Exhaust valve (*Steam Engine*), a valve that lets exhaust steam escape out of a cylinder.

**Ex-haust'**, *n.* (*Steam Engine*) **1.** The steam let out of a cylinder after it has done its work there.

**2.** The foul air let out of a room through a register or pipe provided for the purpose.

**Ex-haust'er** (-ẽr), *n.* One who, or that which, exhausts or draws out.

**Ex-haust'i-bil'i-ty** (-ĭ-bĭl'ĭ-tĭ), *n.* Capability of being exhausted.

I was seriously tormented by the thought of the *exhaustibility* of musical combinations. *J. S. Mill.*

**Ex-haust'i-ble** (-ĭ-b'l), *a.* Capable of being exhausted, drained off, or expended. *Johnson.*

**Ex-haust'ing**, *a.* Producing exhaustion; as, *exhausting* labor. — **Ex-haust'ing-ly**, *adv.*

**Ex-haus'tion** (ĕgz-as'chŭn; 106, 277), *n.* [Cf. F. *exhaustion*.] **1.** The act of drawing out or draining off; the act of emptying completely of the contents.

**2.** The state of being exhausted or emptied; the state of being deprived of strength or spirits.

**3.** (*Math.*) An ancient geometrical method in which an exhaustive process was employed. It was nearly equivalent to the modern method of limits.

☞ The method of exhaustions was applied to a great variety of propositions, pertaining to rectifications and quadratures, now investigated by the calculus.

**Ex-haust'ive** (ĕgz-as'tĭv), *a.* Serving or tending to exhaust; exhibiting all the facts or arguments; as, an *exhaustive* method. — **Ex-haust'ive-ly**, *adv.*

**Ex-haust'less**, *a.* Not to be exhausted; inexhaustible; as, an *exhaustless* fund or store.

**Ex-haust'ment** (-ment), *n.* Exhaustion; drain. [Obs.]

**Ex-haus'ture** (-as'tŭr), *n.* Exhaustion. *Wreszall.*

‖ **Ex'he-dra** (ĕks'hē-drȧ), *n.* [NL.] See EXEDRA.

**Ex-her'e-date** (ĕks-hĕr'ĭ-dāt), *v. t.* [L. *exheredatus*, p. p. of *exheredare* to disinherit; ex out + *heres, heredis*, heir.] To disinherit. [R.] *Halsol.*

**Ex-her'e-da'tion** (-dā'shĭn), *n.* [L. *exheredatio*: cf. F. *exhérédation*.] A disinheriting; disherison. [R.]

**Ex'he-red'i-ta'tion** (ĕks'hĕ-rĕd'ĭ-tā'shĭn), *n.* [L. *exhereditare, exheredatum*, to disinherit.] A disinheriting; disherison. [R.] *E. Waterhouse.*

**Ex-hib'it** (ĕgz-ĭb'ĭt *or* ĕks-hĭb'ĭt), *v. t.* [imp. & p. p. EXHIBITED; p. pr. & vb. n. EXHIBITING.] [L. *exhibitus*, p. p. of *exhibere* to hold forth, to tender, exhibit; ex out + *habere* to have or hold. See HABIT.] **1.** To hold forth or present to view; to produce publicly, for inspection; to show, especially in order to attract notice to what is interesting; to display; as, to *exhibit* commodities in a warehouse, a picture in a gallery.

*Exhibiting* a miserable example of the weakness of mind and body. *Pope.*

**2.** (*Law*) To submit, as a document, to a court or officer, in course of proceedings; also, to present or offer officially or in legal form; to bring, as a charge.

He suffered his attorney-general to *exhibit* a charge of high treason against the earl. *Clarendon.*

**3.** (*Med.*) To administer as a remedy; as, to *exhibit* calomel.

To *exhibit* a foundation or prize, to hold it forth or to tender it as a bounty to candidates. — To exhibit an essay, to declaim or otherwise present it in public. [Obs.]

**Ex-hib'it**, *n.* **1.** Any article, or collection of articles, displayed to view, as in an industrial exhibition; a display; as, this *exhibit* was marked A; the English *exhibit*.

**2.** (*Law*) A document produced and identified in court for future use as evidence.

**Ex-hib'it-or** (-ẽr), *n.* [Cf. EXHIBITOR.] One who exhibits; one who presents a petition, charge, or bill. *Shak.*

**Ex'hi-bi'tion** (ĕks'hĭ-bĭsh'ŭn), *n.* [L. *exhibitio* a delivering: cf. F. *exhibition*.] **1.** The act of exhibiting for inspection, or of holding forth to view; manifestation; display.

**2.** That which is exhibited, held forth, or displayed; also, any public show; a display of works of art, or of feats of skill, or of oratorical or dramatic ability; as, an *exhibition* of animals; an *exhibition* of pictures, statues, etc.; an industrial *exhibition*.

**3.** Sustenance; maintenance; allowance, esp. for meat and drink; pension. Specifically: (*Eng. Univ.*) Private benefaction for the maintenance of scholars.

What maintenance he from his friends receive,
Like *exhibition* thou shalt have from me. *Shak.*

I have given more *exhibitions* to scholars, in my days, than to the priests. *Tyndale.*

**4.** (*Med.*) The act of administering a remedy.

**Ex'hi-bi'tion-er** (-ẽr), *n.* (*Eng. Univ.*) One who has a pension or allowance granted for support.

A youth who had come as an *exhibitioner* from Christ's Hospital. *C. Elliot.*

**Ex-hib'it-ive** (ĕgz-ĭb'ĭt-ĭv *or* ĕks-hĭb'-), *a.* Serving for exhibition; representative; exhibitory. *Norris.* — **Ex-hib'it-ive-ly**, *adv.*

**Ex-hib'it-or** (-ĭt-ẽr), *n.* [Cf. L. *exhibitor* a giver.] One who exhibits.

**Ex-hib'it-o-ry** (-ō-rĭ), *a.* [L. *exhibitorius* relating to giving up: cf. F. *exhibitoire* exhibiting.] Exhibiting; publicly showing. *J. Warton.*

**Ex-hil'a-rant** (ĕgz-ĭl'ȧ-rant *or* ĕks-hĭl'-), *a.* [L. *exhilarans, -antis*, p. pr. See EXHILARATE.] Exciting joy, mirth, or pleasure. — *n.* That which exhilarates.

**Ex-hil'a-rate** (-rāt), *v. t.* [imp. & p. p. EXHILARATED (-rā'tĕd); p. pr. & vb. n. EXHILARATING.] [L. *exhilaratus*, p. p. of *exhilarare* to gladden; ex out + *hilarare* to make merry, *hilaris* merry, cheerful. See HILARIOUS.] To make merry or jolly; to enliven; to animate; to gladden greatly; to cheer; as, good news *exhilarates* the mind; wine *exhilarates* a man.

**Ex-hil'a-rate**, *v. i.* To become joyous. [R.] *Bacon.*

**Ex-hil'a-ra'ting** (-rā'tĭng), *a.* That exhilarates; cheering; gladdening. — **Ex-hil'a-ra'ting-ly**, *adv.*

**Ex-hil'a-ra'tion** (-rā'shĭn), *n.* [L. *exhilaratio*.] **1.** The act of enlivening the spirits; the act of making glad or cheerful; a gladdening.

**2.** The state of being enlivened or cheerful.

*Exhilaration* hath some affinity with joy, though it be a quick lighter motion. *Bacon.*

**Syn.** — Animation; joyousness; gladness; cheerfulness; gayety; hilarity; merriment; jollity.

**Ex-hort'** (ĕgz-hôrt' *or* ĕks-hôrt'), *v. t.* [imp. & p. p. EXHORTED; p. pr. & vb. n. EXHORTING.] [L. *exhortari*; ex out + *hortari* to incite, encourage: cf. F. *exhorter*. See HORTATIVE.] To incite by words or advice; to animate or urge by arguments, as to a good deed or to laudable conduct; to address exhortation to; to urge strongly; hence, to advise, warn, or caution.

Examples grace as earth exhort me. *Shak.*

Let me *exhort* you to take care of yourself. *J. D. Forbes*

**Ex-hort'**, *v. i.* To deliver exhortation; to use words or arguments to incite to good deeds.

With many other words did he testify and *exhort*. *Acts ii. 40*

**Ex-hort'**, *n.* Exhortation. [Obs.] *Pope.*

**Ex'hor-ta'tion** (ĕks'hôr-tā'shŭn), *n.* [L. *exhortatio*: cf. F. *exhortation*.] **1.** The act or practice of exhorting

**Ri'ot** (rī'ŭt), *n.* [OF. *riote*, of uncertain origin; cf. OD. *rioot*, *ravoot*.] **1.** Wanton or unrestrained behavior; uproar; tumult.

His headstrong *riot* hath no curb. *Shak.*

**2.** Excessive and expensive feasting; wild and loose festivity; revelry.

Venus loveth *riot* and dispense. *Chaucer.*

The lamb thy *riot* dooms to bleed to-day. *Pope.*

**3.** (*Law*) The tumultuous disturbance of the public peace by an unlawful assembly of three or more persons in the execution of some private object.

**To run riot**, to act wantonly or without restraint.

**Ri'ot** (rī'ŭt), *v. i.* [*imp. & p. p.* RIOTED; *p. pr. & vb. n.* RIOTING.] [OF. *rioter*; cf. OD. *ruwoeten*.] **1.** To engage in riot; to act in an unrestrained or wanton manner; to indulge in excess of luxury, feasting, or the like; to revel; to run riot; to go to excess.

Now he exacts of all, wastes in delight,
*Riots* in pleasure, and neglects the law. *Daniel.*

No pulse that *riots*, and no blood that glows. *Pope.*

**2.** (*Law*) To disturb the peace; to raise an uproar or sedition. See RIOT, *n.*, 2. *Johnson.*

**Ri'ot**, *v. t.* To spend or pass in riot.

[He] had *riotted* his life out. *Tennyson.*

**Ri'ot-er** (-ẽr), *n.* **1.** One who riots; a revealer; a reveler. *Chaucer.*

**2.** (*Law*) One who engages in a riot. See RIOT, *n.*, 3.

**Ri'ot-ing** (-ĭng), *n.* Excess; tumult; revelry. [Obs.]

His life he led in lawless *riotins*. *Spenser.*

**Ri'ot-ist** (-ĭst), *n.* A rioter. [Obs.] *Chaucer.*

**Ri'ot-ous** (rī'ŭt-ŭs), *a.* [OF. *rioteux*.] **1.** Involving, or engaging in, riot; wanton; unrestrained; luxurious.

The younger son . . . took his journey into a far country, and there wasted his substance with *riotous* living. *Luke* xv. 13.

**2.** Partaking of the nature of an unlawful assembly or its acts; seditious; tumultuous.

— **Ri'ot-ous-ly**, *adv.* — **Ri'ot-ous-ness**, *n.*

**Ri'ot-ry** (-rĭ), *n.* The act or practice of rioting; riot. "Mischievous *riotry*." *Walpole.*

**Rip** (rĭp), *n.* [Cf. Icel. *krip* a box or basket; perhaps akin to E. *corb*. Cf. RIPPAR.] A wicker fish basket.

**Rip**, *v. t.* [*imp. & p. p.* RIPPED (rĭpt); *p. pr. & vb. n.* RIPPING.] [Cf. AS. *rȳpan*, also E. *repe* to ripple flax, D. *repelen*, G. *reffen*, *riffeln*, and E. *raff*, *raffle*. Cf. RAFF, RIFFLE of flax.] **1.** To divide or separate the parts of, by cutting or tearing; to tear or cut open or off; to tear off or out by violence; as, to *rip* a garment by cutting the stitches; to *rip* off the skin of a beast; to *rip* up a floor; — commonly used with up, open, off.

**2.** To get by, or as by, cutting or tearing.

He 'll *rip* the fatal secret from her heart. *Granville.*

**3.** To tear up for search or disclosure, or for alteration; to search to the bottom; to discover; to disclose; — usually with up.

They *ripped* up all that had been done from the beginning of the rebellion. *Clarendon.*

For brethren to debate and *rip* up their failing out in the ear of a common enemy . . . is neither wise nor comely. *Milton.*

**4.** To saw (wood) lengthwise of the grain or fibre.

**Ripping chisel** (*Carp.*), a crooked chisel for cleaning out mortises. *Knight.* — **Ripping iron**, (*Shipbuilding*) same as RAVENHOOK. — **Ripping saw**, (*Carp.*) See RIPSAW. — **To rip out**, to rap out; to utter hardily and violently; as, *to rip out* an oath. [*Colloq.*] See *To rip out*, under RAP, *v. t.*

**Rip**, *n.* **1.** A rent made by ripping, esp. by a seam giving way; a tear; a place torn; laceration.

**2.** [Perh. a corruption of the first syllable of *reprobate*.] A term applied to a mean, worthless thing or person, as to a scamp, a debauchee, or a prostitute, or a worn-out horse. [*Slang*]

**3.** A body of water made rough by the meeting of opposing tides or currents.

**Ri-pa'ri-an** (rĭ-pā'rĭ-an), *a.* [L. *riparius*, fr. *ripa* a bank. See RIVER, and cf. ARRIVE.] Of or pertaining to the bank of a river; as, *riparian* rights.

**Ri-pa'ri-ous** (-ŭs), *a.* [L. *riparius*.] Growing along the banks of rivers; riparian.

**Ripe** (rīp), *n.* [L. *ripa*.] The bank of a river. [Obs.]

**Ripe** (rīp), *a.* [*Compar.* RIPER (-ẽr); *superl.* RIPEST.] [AS. *rīpe*; akin to OS. *rīpi*, D. *rijp*, G. *reif*, OHG. *rīfi*; cf. AS. *rip* harvest, *rīpan* to reap. Cf. REAP.] **1.** Ready for reaping or gathering; having attained perfection; mature; — said of fruits, seeds, etc.; as, *ripe* grain.

So mayst thou live, till, like *ripe* fruit, thou drop
Into thy mother's lap. *Milton.*

**2.** Advanced to the state of fitness for use; mellow; as, *ripe* cheese; *ripe* wine.

**3.** Having attained its full development; mature; perfected; consummate. "*Ripe* courage." *Chaucer.*

He was a scholar, and a ripe and good one. *Shak.*

**4.** Maturated or suppurated; ready to discharge; — said of sores, tumors, etc.

**5.** Ready for action or effect; prepared.

Walle things were just *ripe for* a war. *Addison.*

I am not *ripe* to pass sentence on the gravest public bodies. *Burke.*

**6.** Like ripened fruit in ruddiness and plumpness.

Those happy smilets,
That played on her *ripe* lip. *Shak.*

**7.** Intoxicated. [Obs.] "Reeling *ripe*." *Shak.*

**Syn.** — Mature; complete; finished. See MATURE.

**Ripe**, *v. t.* [AS. *rīpian*.] To ripen; to grow ripe. [Obs.]

**Ripe**, *v. i.* To mature; to ripen. [Obs.] *Shak.*

**Ripe'ly**, *adv.* Maturely; at the fit time. *Shak.*

**Rip'en** (rīp'n), *v. t.* [*imp. & p. p.* RIPENED (-nd); *p. pr. & vb. n.* RIPENING.] **1.** To grow ripe; to become mature, as grain, fruit, flowers, and the like; as, grapes ripen in the sun.

**2.** To approach or come to perfection.

**Rip'en**, *v. t.* **1.** To cause to mature; to make ripe; as, the warm days *ripened* the corn.

**2.** To mature; to fit or prepare; to bring to perfection; as, to ripen the judgment.

When faith and love, which parted from thee never,
Had *ripened* thy just soul to dwell with God. *Milton.*

**Ripe'ness** (rīp'nĕs), *n.* [AS. *rīpenes*.] The state or quality of being ripe; maturity; completeness; perfection; as, the *ripeness* of grain; *ripeness* of manhood; *ripeness* of judgment.

Time, which made them their fame guiltless,
To Cowley scarce did *ripeness* give. *Denham.*

**Ri-pid'o-lite** (rĭ-pĭd'ō-līt), *n.* [Gr. ῥιπίς, ῥιπίδος, fan + -*lite*.] (*Min.*) A translucent mineral of a green color and micaceous structure, belonging to the chlorite group; a hydrous silicate of alumina, magnesia, and iron; — called also *chrysolite*.

**Ri-pi-a'rist** (rĭ-pē-ā'rĭst), *n.* (*Mus.*) A player in the *ripieno* portion of an orchestra. See RIPIENO.

**Ri-pi-e'no** (-ā'nō), *a.* [It.] (*Mus.*) Filling up; supplementary; supernumerary; — a term applied to those instruments which only swell the mass or *tutti* of an orchestra, but are not obbligato.

**Rip'per** (rĭp'pẽr), } *n.* [Cf. RIP a basket, or RUPANT-
**Rip'par** (-pẽr), } ER.] (*O. E. Law*) One who brings fish from the seacoast to markets in inland towns. [Obs.]

But what 's the action we are *for* now?
Robbing a ripper of his fish. *Beau. & Fl.*

**Ri-post'** (rĭ-pōst'), *n.* [F. *riposte*.] **1.** In fencing, a return thrust after a parry.

**2.** A quick and sharp retort; a repartee. *J. Morley.*

**Rip'per** (rĭp'pẽr), *n.* **1.** One who, or that which, rips; a ripping tool.

**2.** A tool for trimming the edges of roofing slates.

**3.** Anything huge, extreme, startling, etc. [*Slang*]

**Rip'ple** (-p'l), *n.* [From RIP, *v.*] An implement with teeth like those of a comb, for removing the seeds and seed vessels from flax, broom corn, etc.

**Rip'ple**, *v. t.* **1.** To remove the seeds from (the stalks of flax, etc.), by means of a ripple.

**2.** Hence, to scratch or tear. *Holland.*

**Rip'ple**, *v. t.* [*imp. & p. p.* RIPPLED (-p'ld); *p. pr. & vb. n.* RIPPLING (-plĭng).] [Cf. RIMPLE, RUMPLE.] **1.** To become fretted or dimpled on the surface, as water when agitated or running over a rough bottom; to be covered with small waves or undulations, as a field of grain.

**2.** To make a sound as of water running gently over a rough bottom, or the breaking of ripples on the shore.

**Rip'ple**, *v. t.* To fret or dimple, as the surface of running water; to cover with small waves or undulations; as, the breeze *rippled* the lake.

**Rip'ple**, *n.* **1.** The fretting or dimpling of the surface, as of running water; little curling waves.

**2.** A little wave or undulation; a sound such as is made by little waves; as, a *ripple* of laughter.

**Ripple grass**, (*Bot.*) See RIBWORT. — **Ripple mark**. (*a*) The mark produced on sand or mud by a gentle undulatory movement of water. (*b*) (*Geol.*) A mark on the surface of a rock resembling that left by a receding wave on a seabeach.

**Rip'ple-marked'** (-mārkt'), *a.* Having ripple marks.

**Rip'plet** (-plĕt), *n.* A small ripple.

**Rip'pling-ly** (-plĭng-lĭ), *adv.* In a rippling manner.

**Rip'ply** (-plĭ), *a.* Having ripples; as, *ripply* water; hence, resembling the sound of rippling water; as, *ripply* laughter; a *ripply* cove. *Keats.*

**Rip'rap'** (-răp'), *n.* [Cf. RAP.] (*Masonry*) A foundation or sustaining wall of stones thrown together without order, as in deep water or on a soft bottom.

**Rip'rap'**, *v. t.* [*imp. & p. p.* RIPRAPPED (-răpt'); *p. pr. & vb. n.* RIPRAPPING.] To form a riprap in or upon.

**Rip'saw'** (-sô'), *n.* [See RIP, *v. t.*, 4.] (*Carp.*) A handsaw with coarse teeth which have but a slight set, used for cutting wood in the direction of the fiber; — called also *ripping saw*.

**Rip'tow-el** (-tou-ĕl), *n.* [AS. *rip* harvest + a word of uncertain etymology.] (*Feud. Law*) A gratuity given to tenants after they had reaped their lord's corn. [Obs.]

**Rise** (rīz or rĭz), *n.* [AS. *hrīs*; akin to D. *ris*, G. *reis*, OHG. *hrīs*.] A bough or branch; a twig. [Obs.]

As white as is the bloosom upon the *rise*. *Chaucer.*

**Rise** (rīz), *v. i.* [*imp.* ROSE (rōz); *p. p.* RISEN (rĭz'n); *p. pr. & vb. n.* RISING.] [AS. *rīsan*; akin to OS. *rīsan*, D. *rijzen*, OHG. *rīsan* to rise, fall, Icel. *rísa*, Goth. *urreisan*, G. *reise* journey. Cf. ARISE, RAISE, REAR, *v.*]

**1.** To move from a lower position to a higher; to ascend; to mount up. Specifically: —

(*a*) To go upward by walking, climbing, flying, or any other voluntary motion; as, a bird *rises* in the air; a fish *rises* to the bait.

(*b*) To ascend or float in a fluid, as gases or vapors in air, cork in water, and the like.

(*c*) To move upward under the influence of a projecting force; as, a bullet *rises* in the air.

(*d*) To grow upward; to attain a certain height; as, this elm *rises* to the height of seventy feet.

(*e*) To reach a higher level by increase of quantity or bulk; to swell; as, a river *rises* in its bed; the mercury *rises* in the thermometer.

(*f*) To become erect; to assume an upright position; as, to *rise* from a chair or from a fall.

(*g*) To leave one's bed; to arise; as, to *rise* early.

He that would thrive, must *rise* by five. *Old Proverb.*

(*h*) To tower up; to be heaved up; as, the Alps *rise* far above the sea.

(*i*) To slope upward; as, a path, a line, or a surface *rises* in this direction. "A *rising* ground." *Dryden.*

(*j*) To retire; to give up a siege.

He, *rising* with small honor from Ganza, . . . was gone. *Knolles.*

(*k*) To swell or puff up in the process of fermentation; to become light, as dough, and the like.

**2.** To have the aspect or the effect of rising. Specifically: —

(*a*) To appear above the horizon, as the sun, moon, stars, and the like. "He maketh his sun to *rise* on the evil and on the good." *Matt.* v. 45.

(*b*) To become apparent; to emerge into sight; to come forth; to appear; as, an eruption *rises* on the skin; the land *rises* to view or one sailing toward the shore.

(*c*) To become perceptible to other senses than sight; as, a noise *rose* on the air; odor *rises* from the flower.

(*d*) To have a beginning; to proceed; to originate; as, rivers *rise* in lakes or springs.

A sceptre shall *rise* out of Israel. Num. xxiv. 17.

Honor and shame from no condition *rise*. *Pope.*

**3.** To increase in size, force, or value; to proceed toward a climax. Specifically: —

(*a*) To increase in power or fury; — said of wind or a storm, and hence, of passion. "High winds . . . began to *rise*, high passions — anger, hate." *Milton.*

(*b*) To become of higher value; to increase in price.

Bullion is *risen* to six shillings . . . the ounce. *Locke.*

(*c*) To become larger; to swell; — said of a boil, tumor, and the like.

(*d*) To increase in intensity; — said of heat.

(*e*) To become louder, or higher in pitch, as the voice.

(*f*) To increase in amount; to enlarge; as, his expenses *rose* beyond his expectations.

**4.** In various figurative senses. Specifically: —

(*a*) To become excited, opposed, or hostile; to go to war; to take up arms; to rebel.

At our backs all hell should *rise*
With blackest insurrection. *Milton.*

No more shall nation against nation *rise*. *Pope.*

(*b*) To attain to a better social position; to be promoted; to excel; to succeed.

Some *rise* by sin, and some by virtue fall. *Shak.*

(*c*) To become more and more dignified or forcible; to increase in interest or power; — said of style, thought, or discourse; as, to *rise* in force of expression; to *rise* in eloquence; a story *rises* in interest.

(*d*) To come to mind; to be suggested; to occur.

A thought *rose* in me, which often perplexes men of contemplative nature. *Spectator.*

(*e*) To come; to offer itself.

There chanced to the prince's hand to *rise*
An ancient book. *Spenser.*

**5.** To ascend from the grave; to come to life.

But now is Christ *risen* from the dead. 1 Cor. xv. 20.

**6.** To terminate an official sitting; to adjourn; as, the committee *rose* after agreeing to the report.

It was near nine . . . before the House *rose*. *Macaulay.*

**7.** To ascend on a musical scale; to take a higher pitch; as, to *rise* a tone or semitone.

**8.** (*Print.*) To be lifted, or to admit of being lifted, from the imposing stone without dropping any of the type; — said of a form.

**Syn.** — To arise; mount; ascend; climb; scale. — RISE, APPRECIATE. Some in America use the word *appreciate* for "rise in value;" as, stocks *appreciate*, money *appreciates*, etc. This use is not unknown in England, but it is less common there. It is undesirable, because *rise* sufficiently expresses the idea, and *appreciate* has its own distinctive meaning, which ought not to be confused with one so entirely different.

**Rise** (rīz *or* rĭz; 277), *n.* **1.** The act of rising, or the state of being risen.

**2.** The distance through which anything rises; as, the *rise* of the thermometer was ten degrees; the *rise* of the river was *six feet*; the *rise* of an arch or of a step.

**3.** Land which is somewhat higher than the rest; as, the house stood on a *rise* of land. [*Colloq.*]

**4.** Spring; source; origin; as, the *rise* of a stream,

All wickedness takes its *rise* from the heart. *R. Nelson.*

**5.** Appearance above the horizon; as, the *rise* of the sun or of a planet. *Shak.*

**6.** Increase; advance; augmentation, as of price, value, rank, property, fame, and the like.

The *rise* or fall that may happen in his constant revenue by a Spanish war. *Sir W. Temple.*

**7.** Increase of sound; a swelling of the voice.

The ordinary *rises* and falls of the voice. *Bacon.*

**8.** Elevation or ascent of the voice; upward change of key; as, a *rise* of a tone or semitone.

**9.** The spring of a fish to seize food (as a fly) near the surface of the water.

**Ris'en** (rĭz'n). **1.** *p. p. & a.* from RISE. "How *risen* Son and Lord." *Rabbi.*

**2.** *Obs.* imp. *pl.* of RISE. *Chaucer.*

**Ris'er** (rīz'ẽr), *n.* **1.** One who rises; as, an early *riser*.

**2.** (*Arch.*) (*a*) The upright piece of a step, from tread to tread. Hence: (*b*) Any small upright face, as of a seat, platform, veranda, or the like.

**3.** (*Mining*) A shaft excavated from below upward.

**4.** (*Founding*) A feed head. See under FEED, *n.*

**Rish** (rĭsh), *n.* A rush (the plant). [Obs.] *Chaucer.*

**Ris'i-bil'i-ty** (rĭz'ĭ-bĭl'ĭ-tĭ), *n.* [Cf. F. *risibilité*.] The quality of being risible; as, *risibility* is peculiar to the human species.

A strong and obvious disposition to *risibility*. *Sir W. Scott.*

**Ris'i-ble** (rĭz'ĭ-b'l), *a.* [F., fr. L. *risibilis*, fr. *ridere*, *risum*, to laugh. Cf. RIDICULOUS.] **1.** Having the faculty or power of laughing; disposed to laugh.

Laughing is our business . . . it has been made the definition of man that he is *risible*. *Dr. H. More.*

**2.** Exciting laughter; worthy to be laughed at; amusing. "*Risible* absurdities." *Johnson.*

I hope you find nothing *risible* in my compliment. *Sir W. Scott.*

**3.** Used in, or expressing, laughter; as, *risible* muscles.

☞ *Risible* is sometimes used as a noun, in the plural, for the feeling of amusement and for the muscles and other organs used in laughing, collectively; as, unable to control one's *risibles*.

**Syn.** — Ludicrous; laughable; amusing; ridiculous.

3. To become disgusting or tedious.
The trifling pleasure *sickens* into pain. *Goldsmith.*
4. To become weak; to decay; to languish.
All pleasures *sicken*, and all glories sink. *Pope.*

**Sick'en-ing** (sĭk'n-ĭng), *a.* Causing sickness; nauseating, causing surfeit of disgust; nauseating. — **Sick'en-ing-ly**, *adv.*

**Sick'er** (sĭk'ẽr), *v. t.* [AS. *sicerian.*] (*Mining*) To percolate, trickle, or ooze, as water through a crack. [Also written *sigger*, *sigger*, and *sigler*.] [*Prov. Eng.*]

**Sick'er, Sik'er**, *a.* [OE. *siker*; cf. OS. *sikur*, LG. *seker*, D. *zeker*, Dan. *sikker*, OHG. *sihhur*, G. *sicher*; all fr. L. *securus*. See SECURE, SURE.] Sure; certain; trusty. [*Obs.* or *Prov. Eng. & Scot.*] *Burns.*
When he is *siker* of his good name. *Chaucer.*

**Sick'er, Sik'er**, *adv.* Surely; certainly. [*Obs.*]
Believe this as *siker* as your creed. *Chaucer.*
*Siker*, Willye, thou wachest well. *Spenser.*

**Sick'er-ly, Sik'er-ly**, *adv.* Surely; securely. [*Obs.*]
But *sikerly*, withouten any fable. *Chaucer.*

**Sick'er-ness, Sik'er-ness**, *n.* The quality or state of being sicker, or certain. [*Obs.*] *Chaucer. Spenser.*

**Sick'ish**, *a.* 1. Somewhat sick or diseased.
2. Somewhat sickening; as, a *sickish* taste.
— **Sick'ish-ly**, *adv.* — **Sick'ish-ness**, *n.*

**Sic'kle** (sĭk'k'l), *n.* [OE. *sikel*, AS. *sicol*; akin to D. *sikkel*, G. *sichel*, OHG. *sihhila*, Dan. *segl*, *segl*, L. *secula*, fr. *secare* to cut; or perhaps from L. *secula*. See SAW a cutting instrument.] 1. A reaping instrument consisting of a steel blade curved into the form of a hook, and having a handle fitted on a tang. The sickle has one side of the blade notched, so as always to sharpen with a serrated edge. Cf. *Reaping hook*, under REAP.

When corn has once felt the *sickle*, it has no more benefit from the sunshine. *South.*

2. (*Astron.*) A group of stars in the constellation Leo. See *Illust.* of LEO.

**Sickle pod** (*Bot.*), a kind of rock cress (*Arabis Canadensis*) having very long curved pods. **Sickle.**

**Sic'kle-bill'** (-bĭl'), *n.* (*Zoöl.*) (*a*) Any one of three species of humming birds of the genus *Eutoxeres*, native of Central and South America. They have a long and strongly curved bill. Called also the *sickle-billed hummer*. (*b*) A curlew. (*c*) A bird of the genus *Epimachus* and allied genera.

Sickle-bill (*Eutoxeres aquila*).

**Sic'kled** (-k'ld), *a.* Furnished with a sickle.

**Sic'kle-man** (sĭk'k'l-măn), *n.*; *pl.* **Sickle-men** (-mĕn). One who uses a sickle; a reaper.
You sunburned *sickle-men*, of August weary. *Shak.*

**Sic'kler** (-klẽr), *n.* One who uses a sickle; a sickle-man; a reaper.

**Sick'less** (sĭk'lĕs), *a.* Free from sickness. [*R.*]
Give me long breath, young Bede, and *sickless* care. *Marston.*

**Sic'kle-wort'** (sĭk'k'l-wûrt'), *n.* [AS. *sicolwyrt.*] (*Bot.*) (*a*) A plant of the genus *Coronilla* (*C. scorpioides*); — so named from its curved pods. (*b*) The heal-all (*Brunella vulgaris*).

**Sick'lied** (sĭk'lĭd), *a.* Made sickly. See SICKLY, *v.*

**Sick'li-ness** (-lĭ-nĕs), *n.* The quality or state of being sickly.

**Sick'ly** (-lĭ), *a.* [*Compar.* SICKLIER (-lĭ-ẽr); *superl.* SICKLIEST.] 1. Somewhat sick; disposed to illness; attended with disease; as, a *sickly* body.
This physic but prolongs thy *sickly* days. *Shak.*
2. Producing, or tending to, disease; as, a *sickly* autumn; a *sickly* climate. *Cowper.*
3. Appearing as if sick; weak; languid; pale.
The moon grows *sickly* as the sight of day. *Dryden.*
Nor torrid summer's *sickly* smile. *Keble.*
4. Tending to produce nausea; sickening; as, a *sickly* smell; *sickly* sentimentality.
Syn. — Diseased; ailing; infirm; weakly; unhealthy; healthless; weak; feeble; languid; faint.

**Sick'ly**, *adv.* In a sick manner or condition; ill.
My people *sickly* [with ill will] beareth our marriage. *Chaucer.*

**Sick'ly**, *v. t.* To make sick or sickly; — with *over*, and probably only in the past participle.
*Sicklied* o'er with the pale cast of thought. *Shak.*
Sentiments *sicklied* over . . . with that cloying heaviness into which unrelieved sweetness is too apt to subside. *Jeffrey.*

**Sick'ness**, *n.* [AS. *seócnes.*] 1. The quality or state of being sick or diseased; illness; disease or malady.
I do lament the *sickness* of the king. *Shak.*
Trust not, too much your now resistless charms;
Those, age or *sickness* soon or late disarms. *Pope.*
2. Nausea; qualmishness; as, *sickness* of stomach.
Syn. — Illness; disease; malady. See ILLNESS.

**Sic'cle** (sĭk'k'l), *n.* [F., fr. L. *siclus*, Heb. *shegel*. See SHEKEL.] A shekel. [*Obs.*]
The holy mother brought five *sicles* and a pair of turtledoves to redeem the Lamb of God. *Jer. Taylor.*

**Sida** (sī'dȧ), *n.* [NL., fr. Gr. *sidē* a kind of plant.] (*Bot.*) A genus of malvaceous plants common in the tropics. All the species are mucilaginous, and some have tough ligneous fibers which are used as a substitute for hemp and flax. *Balfour (Cyc. of India).*

**Sid'dow** (sĭd'dō), *a.* Soft; pulpy. [*Obs.* or *Prov. Eng.*]

**Side** (sīd), *n.* [AS. *side*; akin to D. *zijde*, G. *seite*, OHG. *sīta*, Icel. *sīða*, Dan. *side*, Sw. *sida*; cf. AS. *sīd* large, spacious, Icel. *sīðr* long, hanging.] 1. The margin, edge, verge, or border of a surface; especially (when the thing spoken of is somewhat oblong in shape), one of the longer edges as distinguished from the shorter edges, called *ends*; a bounding line of a geometrical figure; as, the *side* of a field, of a square or triangle, of a river, of a road, etc.
2. One of the surfaces which define or limit a solid, especially (when there is a difference in length), one of the longer surfaces; a part (as a wall of a room) connecting the extremities of the top and bottom; as, the *side* of a box, a plank, a lens, a prism, etc.
3. Any outer portion of a thing considered apart from, and yet in relation to, the rest; as, the upper *side* of a sphere; also, any part or position viewed as opposite to or contrasted with another; as, this or that *side*.
Looking round on every *side* beheld
A pathless desert. *Milton.*
4. (*a*) One of the halves of the body, of an animal or man, on either side of the mesial plane; or that which pertains to such a half; as, a *side* of beef; a *side* of sole leather. (*b*) The right or left part of the wall or trunk of the body; as, a pain in the *side*.
One of the soldiers with a spear pierced his *side*. *John* xix. 34.
5. A slope or declivity, as of a hill, considered as opposed to another slope over the ridge.
Along the *side* of yon small hill. *Milton.*
6. The position of a person or party regarded as opposed to another person or party, whether as a rival or a foe; a body of advocates or partisans; a party; hence, the interest or cause which one maintains against another; a doctrine or view opposed to another.
God on our *side*, doubt not of victory. *Shak.*
We have not always been of the . . . same *side* in politics. *Lowber.*
Sets the passions on the *side* of truth. *Pope.*
7. A line of descent traced through one parent as distinguished from that traced through another.
To sit upon thy father David's throne,
By mother's *side* thy father. *Milton.*
8. Fig.: Aspect or part regarded as contrasted with some other; as, the bright *side* of poverty.
By the *side* of, close at hand; near to. — **Exterior side**, (*Fort.*) See EXTERIOR, and *Illust.* of BASTION. — **Interior side** (*Fort.*), the line drawn from the center of one bastion to that of the next, or the line of the curtain produced to the two oblique radii in front. *H. L. Scott.* — **Side by side**, close together and abreast; in company or along with. — **To choose sides**, to select those who shall compete, as in a game, on either side. — **To take sides**, to attach one's self to, or give assistance to, one of two opposing sides or parties.

**Side** (sīd), *a.* 1. Of or pertaining to a side, or the sides; being on the side, or toward the side; lateral.
One mighty squadron with a *side* wind sped. *Dryden.*
2. Hence, indirect; oblique; collateral; incidental; as, a *side* issue; a *side* view or remark.
The law hath no *side* respect to their persons. *Hooker.*
3. [AS. *sīd*. Cf. SIDE, *n.*] Long; large; extensive. [*Obs.* or *Scot.*] *Shak.*
His gown had *side* sleeves down to mid leg. *Lanchan.*

**Side action**, in breech-loading firearms, a mechanism for operating the breech block, which is moved by a lever that turns sidewise. — **Side arms**, weapons worn at the side, as sword, bayonet, pistols, etc. — **Side ax**, an ax of which the handle is bent to one side. — **Side-bar rule** (*Eng. Law*), a rule authorized by the courts to be granted by their officers as a matter of course, without formal application being made to them in open court: — so called because eminently moved for by the attorneys at *side bar*, that is, informally. *Burrill.* — **Side box**, a box or inclosed seat on the side of a theater.
To insure a *side* box station at half price. *Cowper.* — **Side chain**, one of two safety chains connecting a tender with a locomotive, at the sides. — **Side cut**, a canal or road branching out from the main one. *G. A.* — **Side dish**, one of the dishes subordinate to the main course. — **Side glance**, a glance or brief look to one side. — **Side hook** (*Carp.*), a notched piece of wood for clamping a board to something, as a bench. — **Side lever**, a working beam of a side-lever engine. — **Side-lever engine**, a rocking steam engine having a working beam on each side of the cylinder, near the bottom of the engine, communicating motion to a crank that is above them. — **Side pipe** (*Steam Engine*), a steam or exhaust pipe connecting the upper and lower steam chests of the cylinder of a beam engine. — **Side plane**, a plane in which the cutting edge of the iron is at the side of the stock. — **Side posts** (*Carp.*), posts in a truss, usually placed in pairs, each post set at the same distance from the middle of the truss, for supporting the principal rafters, hanging the tiebeam, etc. — **Side rod**. (*a*) One of the rods which connect the piston-rod crosshead with the side levers, in a side-lever engine. (*b*) See *Parallel rod*, under PARALLEL. — **Side screw** (*Firearms*), one of the screws by which the lock is secured to the side of a firearm stock. — **Side table**, a table placed either against the wall or aside from the principal table. — **Side tool** (*Mach.*), a cutting tool, used in a lathe or planer, having the cutting edge at the side instead of at the point. — **Side wind**, a wind from one side; hence, an indirect attack, or indirect means. *Wright.*

**Side**, *v. t.* [imp. & p. p. SIDED; p. pr. & vb. n. SIDING.] 1. To lean on one side. [*Obs.*] *Bacon.*
2. To embrace the opinions of one party, or engage in its interest, in opposition to another party; to take sides; as, to side with the ministerial party.
All *sides* in parties, and begin the attack. *Pope.*

**Side**, *v. t.* 1. To be or stand at the side of; to be on the side toward. [*Obs.*]
His blind eye that *sided* Paridell. *Spenser.*
2. To suit; to pair; to match. [*Obs.*] *Clarendon.*
3. (*Shipbuilding*) To work (a timber or rib) to a certain thickness by trimming the sides.
4. To furnish with a siding; as, to *side* a house.

**Side'board'** (-bōrd'), *n.* A piece of dining-room furniture having compartments and shelves for keeping or displaying articles of table service.
At a stately *sideboard*, by the wine,
That fragrant smell diffused. *Milton.*

**Side'bone'** (sīd'bōn'), *n.* (*Vet.*) A morbid growth or deposit of bony matter behind and at the sides of the coronet and coffin bone of a horse. *J. H. Walsh.*

**Sid'ed** (sīd'ĕd), *a.* Having (such or so many) sides; — used in composition; as, *one-sided*; *many-sided*.

**Side'hill'** (sīd'hĭl'), *n.* The side or slope of a hill; sloping ground; a descent. [*U. S.*]

**Sid'ling** (-lĭng), *adv.* [OE. *sideling*, fr. *side* side. See SIDE, and cf. SIDELONG, HEADLONG.] Sidelong; on the side; laterally; also, obliquely; askew.
A fellow pulled up maps . . . some *sideling*, and others upside down. *Swift.*

**Side'ling**, *a.* Inclining to one side; directed toward one side; sloping; inclined; as, *sideling* ground.

**Side'long'** (-lông'; 115), *adv.* [See SIDELONG, *adv.*]
1. Laterally; obliquely; in the direction of the side.
2. On the side; as, to lay a thing *sidelong*. [See SIDELONG, *adv.*] *Evelyn.*

**Side'long**, *a.* Lateral; oblique; not being directly in front; as, a *sidelong* glance.
The bashful virgin's *sidelong* looks of love. *Goldsmith.*

**Side'piece'** (-pēs'), *n.* (*Joinery*) The jamb, or cheek, of an opening in a wall, as of a door or window.

**Sid'er** (sīd'ẽr), *n.* One who takes a side.

**Sid'er** (sī'dẽr), *n.* Cider. [*Obs.*]

**Sid'er-al** (sĭd'ẽr-al; 277), *a.* [L. *sideralis*. See SIDEREAL.] 1. Relating to the stars.
2. (*Astrol.*) Affecting unfavorably by the supposed influence of the stars; baleful. "*Sideral* blast." *Milton.*

**Sid'er-a-ted** (-ā-tĕd), *a.* [L. *sideratus*, p. p. of *siderare* to be blasted by a constellation, fr. *sidus*, *sideris*, a constellation.] Planet-struck; blasted. [*Obs.*]

**Sid'er-a'tion** (-ā'shŭn), *n.* [L. *sideratio*.] The state of being sidereated, or planet-struck; esp., blastin plants; also, a sudden and apparently causeless stroke of disease, as in apoplexy or paralysis. [*Obs.*] *Bay.*

**Si-de're-al** (sī-dē'rē-al), *a.* [L. *siderius*, from *sidus*, *sideris*, a constellation, a star. Cf. SIDEREAL, CONSIDER, DESIRE.] 1. Relating to the stars; starry; astral; as, *sidereal* astronomy.
2. (*Astron.*) Measured by the apparent motion of the stars; designated, marked out, or accompanied, by a return to the same position in respect to the stars; as, the *sidereal* revolution of a planet; a *sidereal* day.
**Sidereal** clock, day, month, year. See under CLOCK, DAY, etc. — **Sidereal time**, time as reckoned by sidereal days, or, taking the sidereal day as the unit, the time elapsed since a transit of the vernal equinox, reckoned in parts of a sidereal day. This is, strictly, *apparent sidereal time*, mean *sidereal time* being reckoned from the transit, not of the *true*, but of the *mean*, equinoctial point.

**Si-de're-al-ize** (-īz), *v. t.* To elevate to the stars, or to the region of the stars; to etherealize.
German literature transformed, *sidereal*ized, as we see it in Goethe, reckons Winckelmann among its initiators. *W. Pater.*

**Si-de're-ous** (-ŭs), *a.* [L. *siderus*.] Sidereal. [*Obs.*]

**Sid'er-ite** (sĭd'ẽr-īt; 277), *n.* [L. *siderites* loadstone, Gr. σιδηρίτης, σιδηρίτις, of iron, from σίδηρος iron.]
1. (*Min.*) (*a*) Carbonate of iron, an important ore of iron occurring generally in cleavable masses, but also in rhombohedral crystals. It is of a light yellowish brown color. Called also *spathy iron*, *spathic iron*. (*b*) A meteorite consisting solely of metallic iron. (*c*) An indigo-blue variety of quartz. (*d*) Formerly, magnetic iron ore, or lodestone.
2. (*Bot.*) Any plant of the genus *Sideritis*; ironwort.

**Sid'er-o-graph'ic** (-ō-grăf'ĭk), } *a.* Of or pertaining
**Sid'er-o-graph'ic-al** (-ĭ-kal), } to siderography; executed by engraved plates of steel; as, *siderographic* art; *siderographic* impressions.

**Sid'er-og'ra-phist** (-ŏg'rȧ-fĭst), *n.* One skilled in siderography.

**Sid'er-og'ra-phy** (-ĭ), *n.* [Gr. σίδηρος iron + *-graphy*.] The art or practice of steel engraving; especially, the process, invented by Perkins, of multiplying facsimiles of an engraved steel plate by first rolling over it, when hardened, a soft steel cylinder, and then rolling the cylinder, when hardened, over a soft steel plate, which thus becomes a facsimile of the original. The process has been superseded by *electrotypy*.

**Sid'er-o-lite** (sĭd'ẽr-ō-līt), *n.* [Gr. σίδηρος iron + *-lite*.] A kind of meteorite. See under METEORITE.

**Sid'er-o-man'cy** (-măn'sĭ), *n.* [Gr. σίδηρος iron + *-mancy*.] Divination by burning straws on red-hot iron, and noting the manner of their burning. *Crabb.*

**Sid'er-o-scope** (sĭd'ẽr-ō-skōp; 277), *n.* [Gr. σίδηρος iron + *-scope*.] An instrument for detecting small quantities of iron in any substance by means of a very delicate combination of magnetic needles.

**Sid'e-ro'sis** (sĭd'ē-rō'sĭs), *n.* [NL., fr. Gr. σίδηρος iron.] (*Med.*) A sort of pneumonia occurring in iron workers, produced by the inhalation of particles of iron.

**Sid'er-o-stat** (sĭd'ẽr-ō-stăt), *n.* [L. *sidus*, *sideris*, a star + Gr. στατός standing, fixed, fr. ἱστάναι to place.] (*Astron.*) An apparatus consisting essentially of a mirror moved by clockwork so as to throw the rays of the sun or a star in a fixed direction; — a more general term for *heliostat*.

Sidesaddle flower (*Sarracenia purpurea*).

**Sid'e-rox'y-lon** (sĭd'ē-rŏks'ĭ-lŏn), *n.* [NL., fr. Gr. σίδηρος iron + ξύλον wood.] (*Bot.*) A genus of tropical sapotaceous trees noted for their very hard wood; ironwood.

**Side'sad'dle** (sīd'săd'd'l), *n.* A saddle for women, in which the rider sits with both feet on one side of the animal mounted.

**Sidesaddle flower** (*Bot.*), a plant with hollow leaves and curiously shaped flowers: — called also *huntsman's cup*. See SARRACENIA.

STATE OF DELAWARE
EXECUTIVE DEPARTMENT
PLANNING OFFICE
DOVER

RUSSELL W. PETERSON
GOVERNOR

DAVID R. KEIFER
DIRECTOR

February 23, 1972

Mr. Barry Huntsinger
El Paso Eastern Company
2727 Allen Parkway
Houston, Texas 77019

Dear Mr. Huntsinger:

This is to inform you of my status decision regarding the El Paso Eastern Company proposed project for a pier within Delaware's jurisdiction in the Delaware River to serve as a tanker berthing facility in connection with a Liquified natural gas terminal near Penns Grove, New Jersey.

The status of the pier facility for this El Paso Eastern Company project is that it is an offshore bulk product transfer facility which is prohibited in the Delaware coastal zone by the terms of Section 7003 of the Coastal Zone Act (Chapter 70, Title 7, Delaware Code). No coastal zone permit may be issued for such a use. This opinion is based on the advice of Attorney General Stabler and my examination of the descriptive material provided in your letter of December 21, 1971.

If you wish to file an appeal from this decision it should be filed within fourteen (14) days of your receipt of this notice on the appeal form provided herein. Items A, B, and E on the appeal form should be filled in, as well as the date of the appeal application. At this time there is no appeal fee required. The appeal should be sent to the State Coastal Zone Industrial Control Board at the address shown on the appeal application form.

If you have any questions, please contact me.

Sincerely,

David R. Keifer
Director

DRK/baf

Enclosure

CC: Secretary Austin N. Heller
Commissioner Richard Sullivan

JAN 2 1972

STATE OF DELAWARE
DEPARTMENT OF JUSTICE

W. LAIRD STABLER, JR.
ATTORNEY GENERAL

Wilmington, Delaware

January 20, 1972

Mr. David R. Keifer, Director
Planning Office
Executive Department
State of Delaware
Dover, Delaware 19901

Re: Coastal Zone Act - Bulk Transfer Facility
(El Paso Eastern Company)

Dear Dave:

I have reviewed the material submitted to you with regard to the liquid natural gas (LNG) terminal which El Paso Eastern Company proposes to built in New Jersey with docking facilities extending into the Delaware River. I agree with your determination that this facility is an offshore bulk product transfer facility as that term is defined by the Coastal Zone Act. However, there may be some question as to whether or not the terminal is excepted from 7 Del. C. §7002(f) by virtue of the fact that it is "a docking facility or pier for a single industrial or manufacturing facility for which a permit is granted".

It is my opinion that the El Paso Eastern terminal does not fit within the "single industrial or manufacturing facility" exception. The Delaware courts have uniformly held that the meaning of a statute depends on the intent of the legislature and that such intent must be ascertained from an interpretation of the act as a whole. The facts contained in the letter from the El Paso Eastern Company indicate that the LNG terminal in question is merely a way station in the natural gas transportation system which El Paso Eastern is endeavoring to develop. It is quite clear that the legislative intent was to permit docking facilities where such facilities would benefit such industries as would be granted permits to operate in the Coastal Zone. Here the situation is reversed. The terminal will only exist as an adjunct to the docking facility. In other words, the important part of the project to El Paso Eastern is not the "industrial facility" but the docking facility. Further, I assume that the facility proposed by El Paso Eastern is not the type of "single industrial or manufacturing facility" for which your office would grant a permit under 7 Del. C. §7004. The statute specifically mandates that such approval is necessary.

With specific reference to situations similar to the one here in issue, it is my recommendation that your office more clearly define "single industrial or manufacturing facility". The definition should explicate the legislative intent to allow an exception for docking or pier facilities only where the facilities are to be used in conjunction with industries of the type permitted under 7 Del. C. §7003. The definition I envisio will permit your office to evaluate applications for construction onthe New Jersey shore as if they were applications for construction on the Delaware shore. Such a standard would negate claims that applications which require the approval of more than one governmental agency are acted upon by Delaware in an arbitrary or capricious manner. However, it must be clear that Delaware is not attempting to regulate development beyond the state boundary. Therefore, any reference to potential development in New Jersey should be avoided.

If you should wish to discuss this matter further, please do not hesitate to contact me. Also at this time I would like to stress that this is an informal advisory opinion. Please advise me if a formal opinion becomes necessary.

Sincerely,

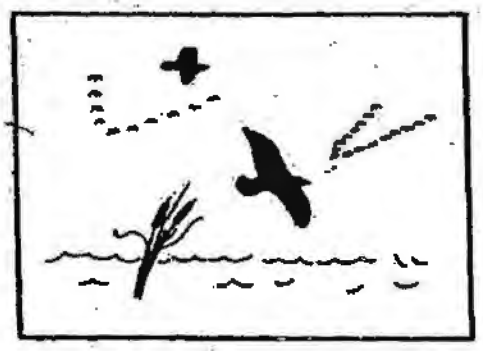
Laird

W. Laird Stabler, Jr.
Attorney General

WLSJr:ls

# COASTAL ZONE ACT ADMINISTRATION

JUNE 28, 1971 - JUNE 30, 1977



STATE COASTAL ZONE INDUSTRIAL CONTROL BOARD
AND
OFFICE OF MANAGEMENT BUDGET AND PLANNING
FORMERLY DELAWARE STATE
PLANNING OFFICE

NOVEMBER, 1977

DE08401

Project Number 5 - El Paso Eastern Company

In a letter to the State Planner, December 21, 1971, the vice-president of the El Paso Eastern Company described a project for a liquified natural gas (LNG) terminal in New Jersey opposite Claymont involving a pier extending into Delaware waters beyond mean low water on the New Jersey side of the Delaware River. The project involved importation of North African liquified natural gas by tanker, storage and regassification at this terminal, and shipment by pipeline to customers in the Northeast. The letter suggested that the State Planner examine the project in the context of the Coastal Zone Act.

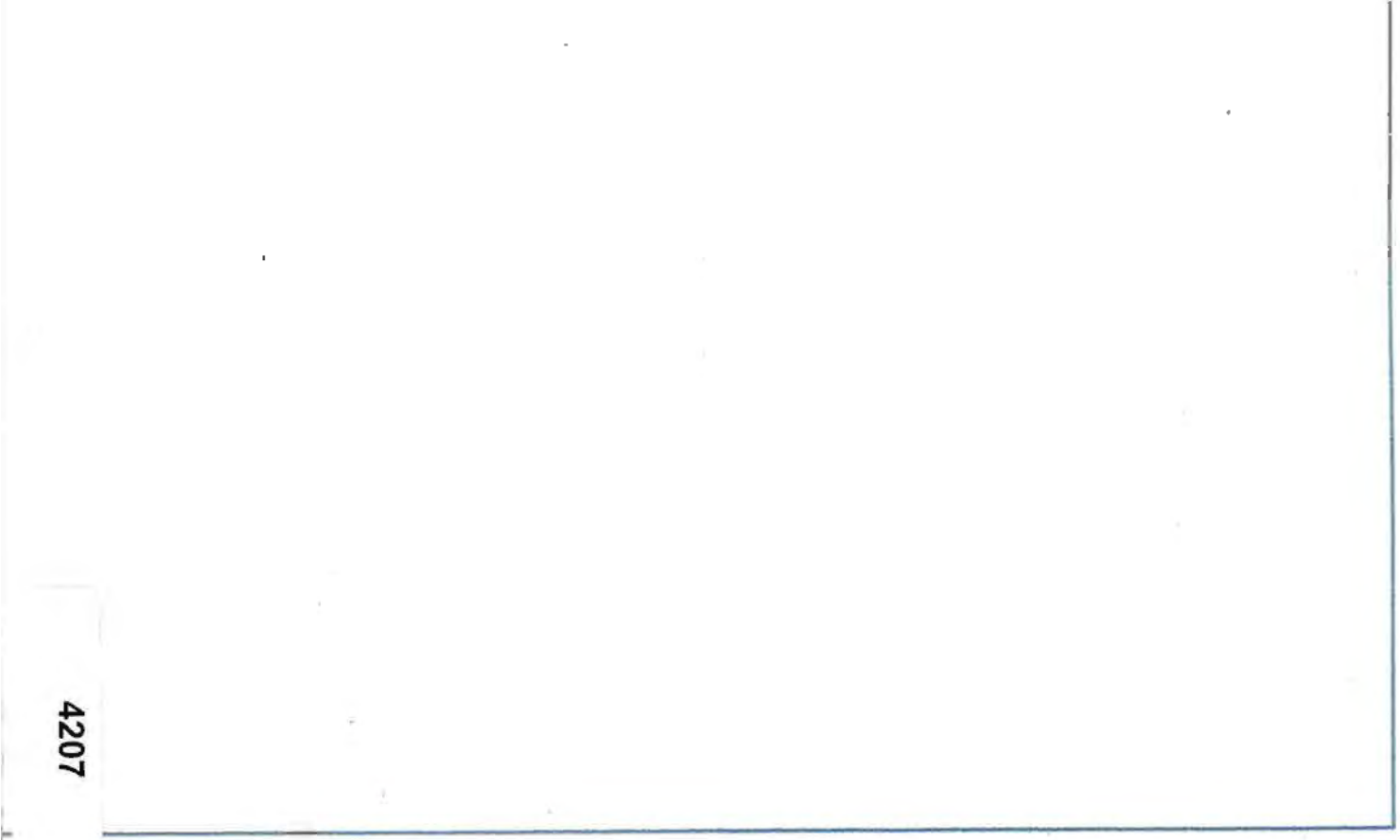
Prior to his status decision, the State Planner sought the Attorney General's legal advice on this project. On January 20, 1972, the Attorney General advised that the pier would be a (prohibited) off-shore bulk product transfer facility and that it was not exempt from prohibition by reason of the clause in Section 7002(f) of the Law providing for piers or docking facilities to be used solely by a single industrial or manufacturing user. (See Appendix 3.)

On February 23, 1972, the State Planner informed the vice-president of El Paso Eastern Compnay that the pier for the LNG terminal would be a prohibited off-shore bulk product transfer facility. On March 3, 1972, the Company vice-president replied that El Paso had abandoned the project a few days prior to the State Planner's decision and requested a withdrawal of the status decision saying that he had merely sought information advice on the status of the project. The State Planner refused to withdraw his status decision on March 17, 1972. No appeal was filed, and since the project had apparently previosuly been dropped by the Company, no appeal could logically have been expected.

Project Number 6 - Sun Olin Chemical Company

This project consisted of construction of a Stretford Sulfur Recovery Unit at the Sun Olin Chemical Plant in Claymont. This unit would remove hydrogen sulfied from a by-product stream and convert it to elemental sulfur thus removing sulfur dioxide as an emission to the atmosphere. Sun Olin was under orders by the Department of Natural Resources and Environmental Control to remove sulfur dioxide emissions in order to meet State air quality requirements by January 1973.

The status decision request was received on January 26, 1972, and the decision was made on March 9, 1972; the decision was that as expansion or extension of a non-conforming use, this project did not require a coastal zone permit because it had no significant effect on land use area, plant production, or (negative) environmental impact. There was no appeal.

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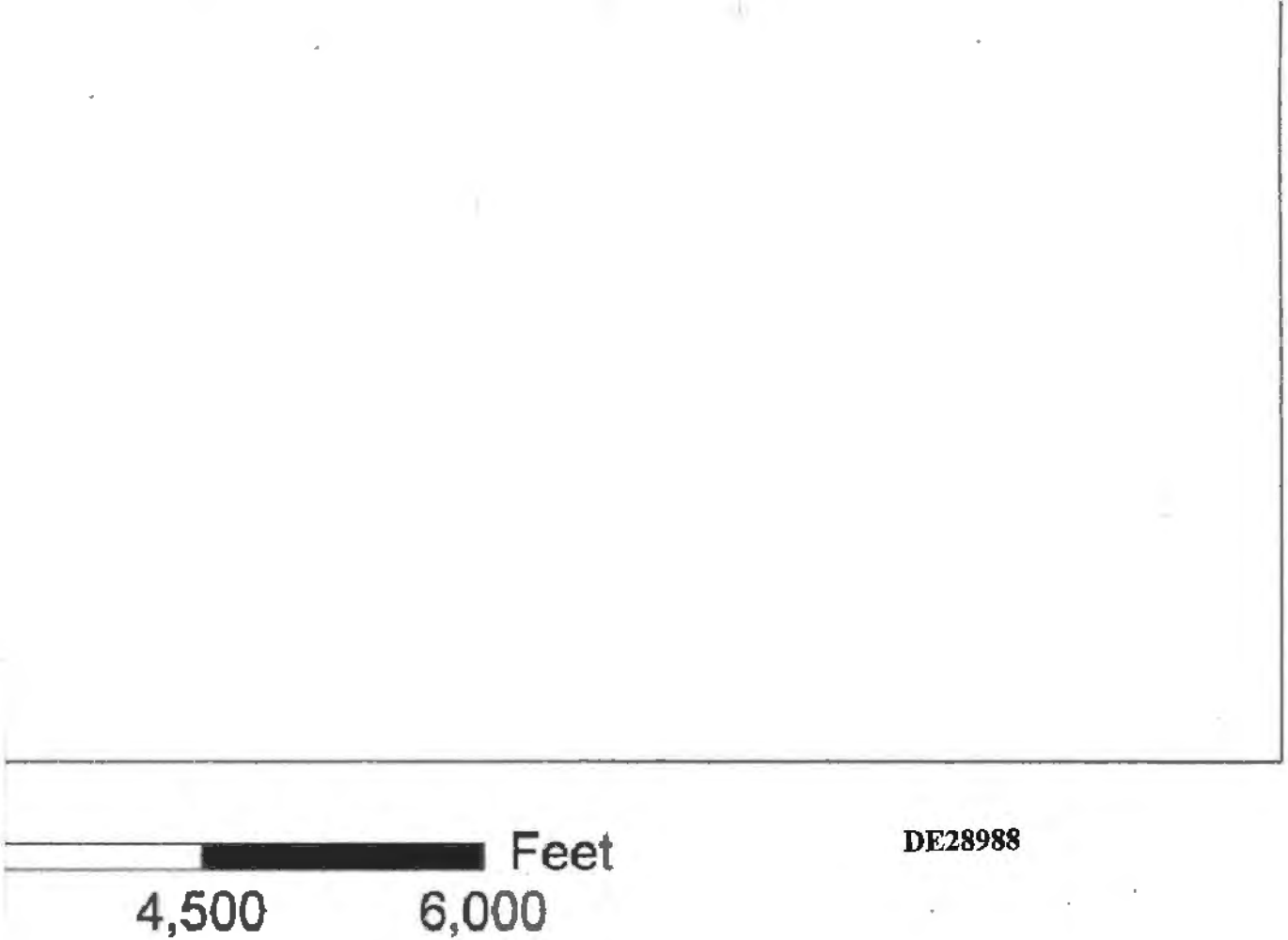
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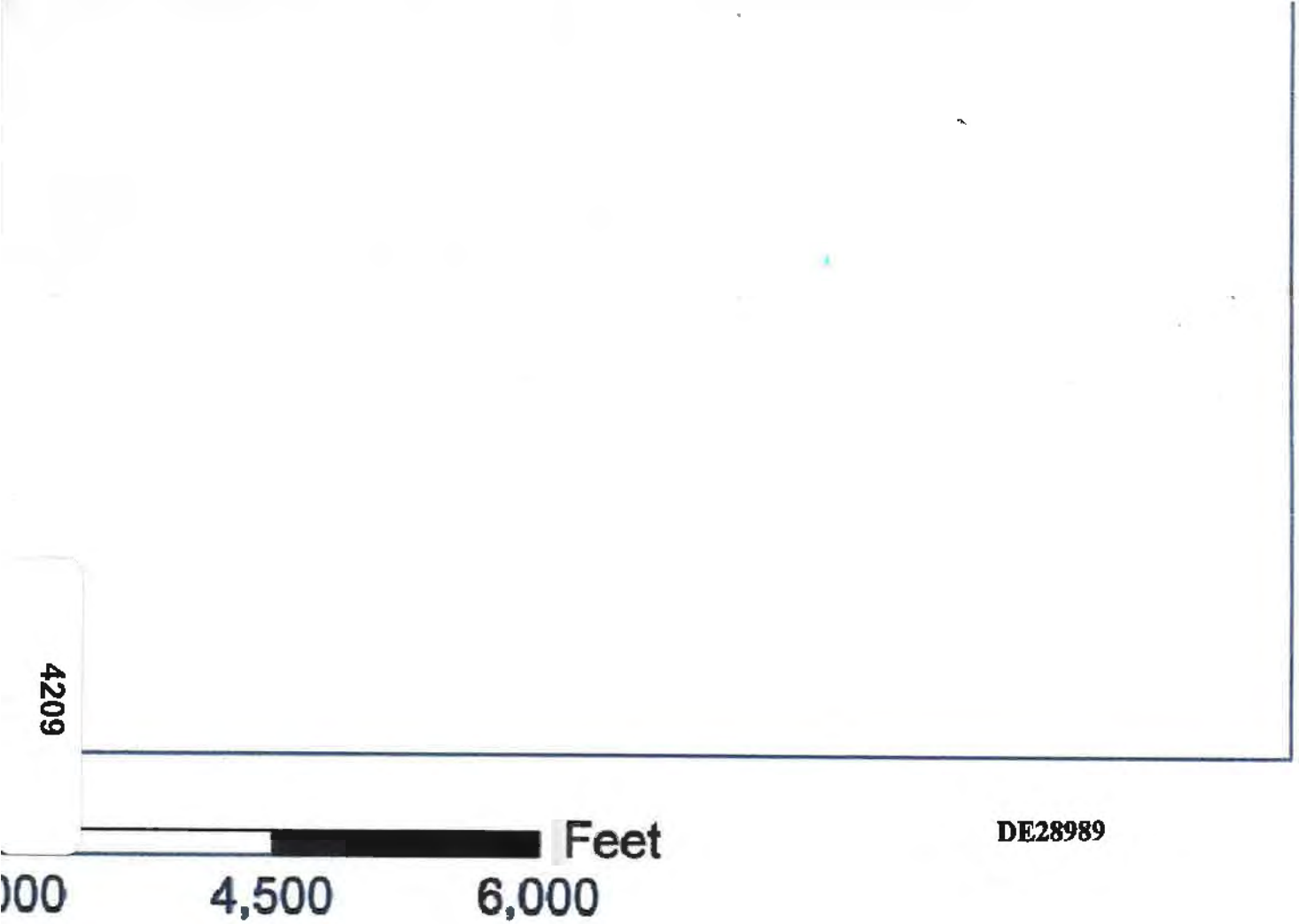


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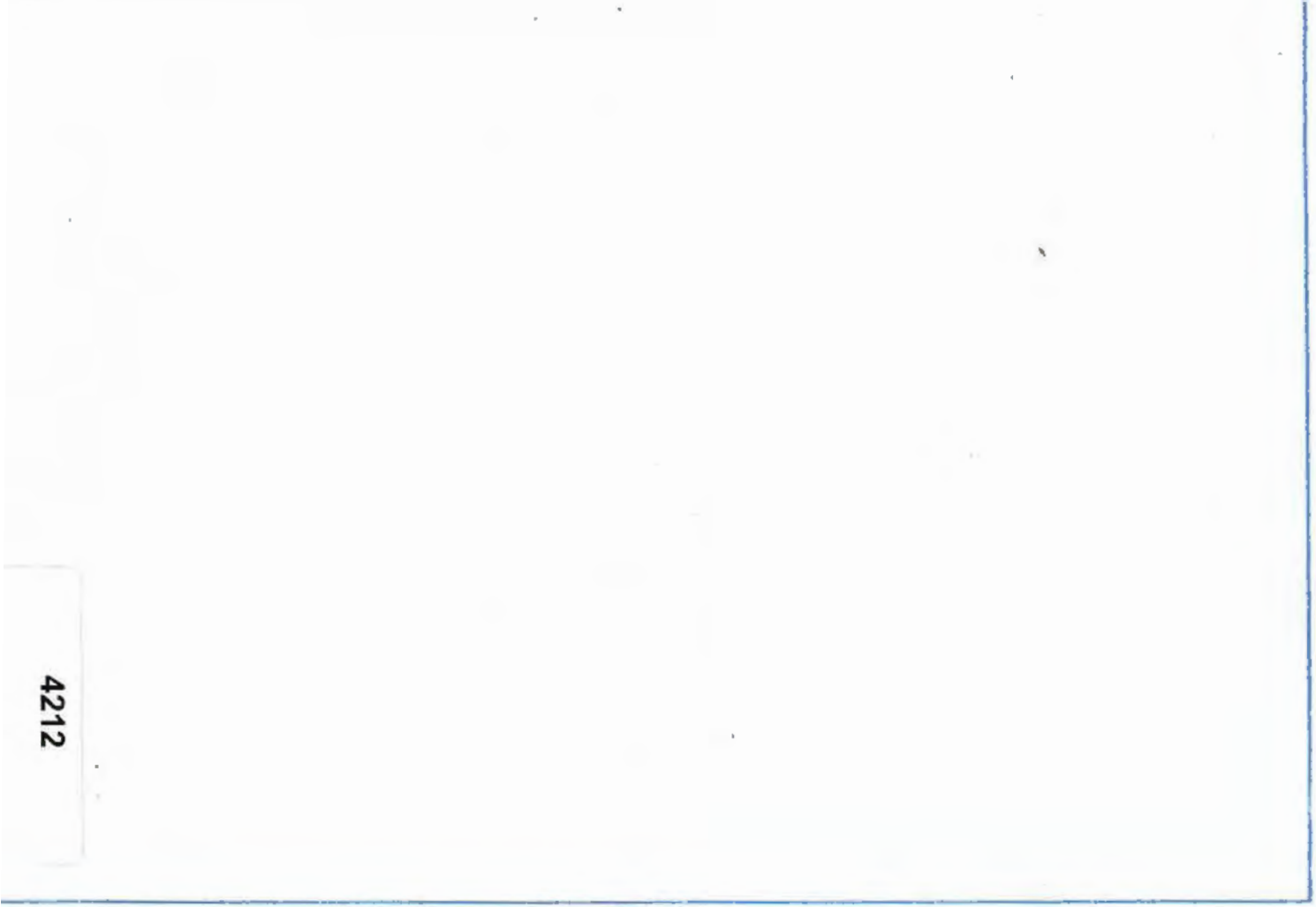


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**No. 134, Original**

IN THE
Supreme Court of the United States

STATE OF NEW JERSEY,
*Plaintiff*,

v.

STATE OF DELAWARE,
*Defendant.*

# DELAWARE'S APPENDIX ON CROSS-MOTIONS FOR SUMMARY JUDGMENT

**VOLUME 7 (Pages 4213 – 4400)**


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December 22, 2006

**TABLE OF CONTENTS**
**VOLUME 7**

**PAGE**

**Expert Reports and Affidavits**


Expert Report of Carol E. Hoffecker, Ph.D. (Nov. 9, 2006) ..... 4213

Expert Report of Professor Joseph L. Sax (Nov. 7, 2006) ..... 4279

Affidavit of Philip Cherry ..... 4303

Affidavit of Sarah Cooksey ..... 4311

Affidavit of R. Peder Hansen ..... 4319

Affidavit of Laura M. Herr ..... 4323

Affidavit of Robert Hutchins ..... 4339

Affidavit of Ali Mirzakhalili ..... 4345

Affidavit of William Moyer ..... 4349

Affidavit of Kurt Reuther ..... 4359

Affidavit of William S. Schenck ..... 4371

Affidavit of David M. Small ..... 4375

Affidavit of William Streets ..... 4381

No. 134, Original
In the
Supreme Court
of the
United States

---

State of New Jersey

v.

State of Delaware

---

**Expert Report of Carol E. Hoffecker, Ph.D.**

My name is Carol E. Hoffecker, Ph.D. My address is 804 Cinnamon Drive, Hockessin, Delaware 19707. I am Richards Professor Emerita of History, University of Delaware, where I taught for approximately thirty-five years. I am the author of numerous books and articles dealing with aspects of Delaware history, including *Democracy in Delaware, The Story of the First State's General Assembly* (2004) and *Federal Justice in the First State: A History of the United States District Court for Delaware* (1992).

I have been assisted in preparing this report by Barbara E. Benson, Ph.D. Dr. Benson is the retired Executive Director of the Historical Society of Delaware and had served as an adjunct faculty member in the History Department of the University of Delaware from 1981-2003.

Neither I nor Dr. Benson has any financial interest in, or current employment or consulting arrangement with, any of the parties to this case other than having been

retained by the State of Delaware to review the claim made by the State of New Jersey, to provide my opinion as an expert on the background and historical context of the Compact of 1905 and to prepare this Expert Report.

**Qualifications**

Over more than forty years as a scholar and teacher, one of my principal interests has been research and teaching Delaware history, including the State's political history.

**Information Required Pursuant to Rule 26(a)(2)(B)**

My curriculum vitae is attached hereto as Exhibit A. Dr. Benson's curriculum vitae is attached hereto as Exhibit B.

All the data and information considered by me in forming the opinions herein, other than knowledge gained over many years of study in the field, are cited in this report.

I am being compensated for my work in preparing this report and for my testimony, if called, at the rate of $200 per hour. Dr. Benson is being compensated at the same rate. Our compensation is not contingent on, or related in any way, to the outcome of this case.

**Scope of Assignment**

I have been retained by the State of Delaware to provide an opinion as to the historical background and context of the Compact of 1905.

**Summary of Opinion**

The Compact of 1905 grew out of an interstate conflict concerning the regulation of fishing rights in the Delaware River. In 1871, Delaware's General Assembly adopted a law to tax out-of-state commercial fisherman in Delaware's waters. Since colonial

times, Delaware had claimed water rights and the subaqueous soil in the Delaware River to the low water mark within a twelve-mile circle measured from the town of New Castle, Delaware. In 1877, New Jersey brought suit in the United States Supreme Court to contest Delaware's boundary claim and its right to regulate fishing in the river. The case languished for many years until both states decided to discontinue the litigation, without prejudice, based on agreements set forth in an interstate compact, which has come to be known as the Compact of 1905. The Compact of 1905 should be viewed in the context of a particular historical moment in time. It was designed to resolve the fishing dispute that caused the litigation. It was not intended to infringe on Delaware's boundary or jurisdictional claims in other respects, as to which both states reserved their claims. Delaware's boundary claim was later confirmed by the United States Supreme Court in 1934. By that time, there were few fish in the Delaware River, and the states were no longer concerned with the fishing issues that had led them to enter into the Compact of 1905.

**Opinion**

Disputes over the commercial uses of the Delaware River and Bay have plagued relations between Delaware and New Jersey since colonial times. The two states' protracted cases before the United State Supreme Court can remind readers of fiction of the seemingly endless suit of *Jarndyce* v. *Jarndyce,* in Charles Dickens's *Bleak House.* Since the Age of Discovery, the Delaware River and Bay have provided a major entry into the east coast of the United States. Today they remain a major commercial link to the world for the cities of Trenton, New Jersey, Philadelphia, Pennsylvania, and Wilmington, Delaware. These waterways are also an essential part of the Atlantic

Basin's ecosystem and have been an important source of food to the people who have lived along their shores for many centuries. Those many uses have not always coexisted harmoniously. The Delaware River and Bay have served both Delaware and New Jersey well, yet these bodies of water continue to separate the two states in more ways than one. This report describes the historical background of some of those conflicts and how the states have attempted to resolve them over time.

**Early Fishing on the Delaware**

Long before the European settlement of the Delaware River Valley, Native Americans paddled their dugout canoes on the waters of the Lenape Wihittuck, or the river of the Lenape, as the great river was then called.[1] The Lenni Lenape lived on both sides of the river, which was their major transportation artery and an important source of food. As part of their annual cycle of the seasons, Lenni Lenape visited the shores of the river and its tributaries during the summer months to fish for shad, sturgeon, and other fin fish, as well as to harvest oysters and shellfish. The abundance of fish and oysters made fishing easy. During the spawning season for shad and sturgeon, Lenape men and boys came to the river as those fish moved from salt to fresh water and then back again. They used woven nets and wooden stakes to create fence-like weirs to capture the fish. Some of the Native Americans would wade into the river to drive the fish into the net, where others could spear or even catch their slippery prey with bare hands.[2]

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[1] C.A. Weslager and Louise Heite, "History," in *The Delaware Estuary: Rediscovering a Forgotten Resource*, eds. Tracey L. Bryant and Jonathan R. Pennock (Newark, Del.: University of Delaware Sea Grant Program, 1998), p. 11.

[2] Ibid.; C. A. Weslager, *The Delaware Indians* (New Brunswick, N. J.: Rutgers University Press, 1972), esp. chap. 3, pp. 50-76. For an illustration of Lenape shad fishing, see Weslager and Heite, "History," p. 14. Eventually the river once known as the "river of the Lenape" came to be known as the Delaware River, and the Native Americans living there as Delaware Indians.

Western Europeans arrived in ever-increasing numbers in the seventeenth century to exploit and to assert their control over the Delaware River and Valley and the lands that surround it. For nearly a hundred years, the Dutch, the Swedes, and the English vied for control over part or all of the lands along the Delaware. Fur trading and whaling brought the first Europeans, but soon many could see the opportunities for financial advancement through exploitation of other natural resources. Most people immediately think of the trade in animal pelts, especially the highly prized beaver, but the variety and abundance of fin fish and shellfish under the water were also seen as a major commercial resource.[3]

Virtually every explorer and early settler commented on the abundance of the Delaware River. For example, Thomas Yong, sailing for England in 1634, waxed eloquent about the region of the Delaware. He compared the climate to that of Italy, and of the fish he noted, "heere is plenty, but especially sturgeon all the sommer time . . . ."[4] Peter Lindeström, who came about 1650 to the Delaware as part of the New Sweden Colony, had to describe shad for his masters in Stockholm: "a kind of large fish like the salmon, runs against the stream like a salmon . . . ; a very fine flavored and excellent tasting fish . . . ."[5] Within a year of his arrival on the Delaware, William Penn bragged to friends back in England about the bounty of the Delaware River. To John Aubrey he

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[3] Two scholarly but highly readable introductions to colonization of the western shore of the Delaware River are John A. Munroe, *Colonial Delaware: A History* (Millwood, N.Y.: KTO Press, 1978) and C.A. Weslager, *The English on the Delaware, 1610-1682* (New Brunswick, N.J.: Rutgers University Press, 1967).

[4] "Account of Thomas Yong, 1634," in *Narratives of Early Pennsylvania, West New Jersey, and Delaware, 1630-1707*, ed. Albert Cook Myers (New York: Charles Scribner's Sons, 1912), p. 48.

[5] Peter Lindeström, *Geographia Americae*, trans. Amandus Johnson (Philadelphia: Swedish Colonial Society, 1925), p. 187.

wrote, "the sorts of fish in these parts are excellent and numerous. Sturgeon leap day and night that we can hear them . . . in our beds."[6] A month later he told the Earl of Sunderland that there were "fish in abundance, especially of Shad and Rock [striped bass], which are excellent here."[7]

In 1683 William Penn had every reason to enjoy, in a proper Quaker way, his enviable position as proprietor of not one, but two, English colonies in North America. Little did he know then how difficult, how litigious, his struggle would be to hold claim to his colonies and to pass them down to his heirs. Because of his father's wealth and position, William traveled in the upper circles of the English aristocracy. His conversion to the radical new religion of the Society of Friends pained and frustrated his father and often moved young Penn beyond the realms of elite society. His faith led him to many places, including the Mid-Atlantic region of North America. His first encounter with this colonial world came with West Jersey, an experience that he found fraught with both potential and pitfalls. He learned that colonial lands could be used to create areas of settlement for Quakers and other religious nonconformists, but he also learned various lessons about the legal dangers of both partnerships and the Crown.[8]

William Penn subsequently sought a grant of land from England's monarch to create his own colony on the opposite or western side of the Delaware River. King Charles II owed Penn a large debt for money borrowed from Penn's late father. Penn preferred land to cash, and North American land was much easier for Charles to spare

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[6] William Penn to John Aubrey, June 13, 1683, *The Papers of William Penn*, 5 vols., eds. Richard S. Dunn and Mary Maples Dunn et al. (Philadelphia: University of Pennsylvania Press, 1981-1986), 2:395.

[7] William Penn to Earl of Sunderland, July 28, 1683, *The Papers of William Penn*, 2: 417.

[8] For a modern biography of William Penn, see Richard S. Dunn and Mary Maples Dunn, eds., *The World of William Penn* (Philadelphia: University of Pennsylvania Press, 1986).

than money. But such a grant had to fit a new colony into an area already partially carved up into the Colony of Maryland, granted to Lord Baltimore by Charles I in 1632, and the Three Lower Counties on Delaware, which the king's brother, James, duke of York, had seized from the Dutch in 1664. Imprecise knowledge of the area's geography, and its cartographic representations, made this grant tricky, and thereby began the controversy over the boundaries of Delaware.

Delaware's unusual shape and its claim to the Delaware River to the low-water mark on the eastern shore began with the royal grant of Pennsylvania. The Duke of York wanted to protect his major town and administrative center on the western side of the Delaware River, so his secretary, Sir John Werden, proposed a circle boundary from the town, New Castle, as a territorial buffer. The final determination of a twelve-mile circle was transferred just two years later, in 1682, by deed and lease to William Penn. Penn thus gained control of the western side of the Delaware River through two separately granted but contiguous colonies: the Province of Pennsylvania and The Three Lower Counties on Delaware.

Much time and attention, to say nothing of parchment, paper, and ink, have been lavished on the question of Delaware's boundaries for over 300 years. The Duke of York's "clouded title" to land on the western side of the river, as noted historian John A. Munroe so delicately termed it, accounts for those controversies. Lawyers, historians, and archivists have spent countless hours marshalling the documents and arguments used to assert the rights of one claimant over another, from William Penn and Charles Calvert, Lord Baltimore, to the states of New Jersey and Delaware. Legal decisions establishing and affirming the boundaries of the second smallest colony/state by size took from 1750

when the English Court of Chancery upheld the Penn claims over those of Lord Baltimore to the 1934 United States Supreme Court decision written by Justice Benjamin Cardozo upholding the State of Delaware's claim to the territory within the twelve-mile circle from New Castle to the low-water mark on the eastern shore of the Delaware River.[9]

**The Nineteenth-Century Fishing Industry on the Delaware**

While the colonial population expanded and territorial boundaries were adjudicated, the river of the Lenni Lenape became a major transportation corridor, and its fin fish and shellfish continued to be an important part of the local diet and commerce. By the middle of the nineteenth century fishing on the Delaware had become a profitable business, and newspapers in Philadelphia eagerly reported on the enormity of the annual catch.[10] Fishermen and fishing industries on the Delaware, like individuals and companies almost everywhere, reacted accordingly. Throughout history, when natural resources appear to be so plentiful as to be without limit, those involved in their exploitation see little reason for restraint. Exploitation, not conservation, becomes the operative mentality. The reasoning is always the same: if the harvest of a resource, like fish, is good, then more capital, more labor, and more tools will surely lead to greater exploitation and greater profits.

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[9] For brief summaries of early boundary decisions, see, among many, Weslager, *English on the Delaware*, pp. 221-26, and Munroe, *Colonial Delaware*, pp. 79-84. The Duke of York's deed of feoffment to William Penn delineated the boundary thusly: "all that the Towne of NewCastle otherwise called Delaware and All that Tract of Land lying within the Compass or circle of Twelve Miles about the same scituate lying and being upon the River Delaware in America And all Islands in the same River Delaware and the said River and Soyle thereof lying North of the Southernmost part of the said Circle of Twelve Miles about the said Towne" (*State of New Jersey v. State of Delaware*, 291 U.S. 361, 364 (1934)).

[10] Quoted in *Delmarva Star* (Wilmington, Del.), Mar. 31, 1929.

The two fin fish of particular value to the Delaware River's nineteenth-century fishing industry were the favorites from time immemorial: the shad and the sturgeon. William Penn's beloved shad is one of the largest and most valuable members of the herring family. Shad, which can weigh as much as twelve pounds, live in the salt water of the Atlantic Ocean, but from age three to five onward they return to fresh water to spawn. Shad-spawning season on the Delaware is primarily April through June. Shad can be found along the Atlantic coast of North America from the Gulf of Saint Lawrence to Florida, but they are most abundant in the Delaware River and the Chesapeake Bay. Atlantic sturgeon are found from the Saint Lawrence River south to the Gulf of Mexico. At the height of the sturgeon industry, the Delaware fishery was the largest in America. Sturgeon can reach a length of ten to twelve feet and, like shad, live in salt water but travel to fresh water to spawn. Sturgeon spawning season on the Delaware is normally the months of May and June.[11]

The Delaware River's commercial fishing industry began and ended with shad. From the 1870s, shad fishermen on the Delaware found eager buyers. At first fishermen sold their catch from their boats, or their wives hawked them at local markets. Then buyers from all over the East Coast came to the major port towns. By the end of the nineteenth century, much of Delaware's shad catch was sent to distant markets in water-tank rail cars. As the shad industry boomed, its expenses increased. More men and boats took to the water, and the drift nets used to catch the shad got longer and longer, reaching up to a mile in length. Often fishermen worked cooperatively in groups, fishing in teams

[11] For an overview of the fish and fishing industry of the Delaware River and Bay, including shad and sturgeon, see Kent S. Price, Robert A. Beck, Steward M. Tweed, and Charles E. Epifanio, "Fisheries," in *The Delaware Estuary: Rediscovering a Forgotten Resource*, eds. Tracey L. Bryant and Jonathan R. Pennock (Newark, Del.: University of Delaware Sea Grant Program, 1998), pp. 71-89.

and sharing shoreline fishing shacks for eating and sleeping between trips. On the western shore of the river, the dominant shad-fishing area extended from Port Penn to Wilmington, while on the eastern shore, Penn's Grove was an important shad center. The shad catch in the Delaware increased dramatically: from about 3 million pounds a year in 1880 to nearly 15 million pounds in the early twentieth century. But then the shad industry fell as rapidly as it had soared. For the State of Delaware alone, the shad catch dropped 99 percent from 1896 to 1944. What brought about this collapse? One newspaper bluntly summed it up by saying, "killed off by greed and pollution."[12]

Initially, commercial fishermen on the Delaware viewed the huge, jumping sturgeon as a "nuisance" rather than an exploitable asset. Sturgeon surged upriver in spawning season in such huge numbers that people swore that the fish would actually jump into boats.[13] Shad fishermen hated sturgeon because the fish caused heavy damage, even destruction, when caught in shad nets. When shad fishermen saw sturgeon racing toward their nets, their best recourse was to try to take their nets in. Slowly a market grew for sturgeon meat, particularly smoked sturgeon, but the sturgeon really took off

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[12] *Delmarva Star*, Mar. 4, 1923. No single comprehensive source on the history of shad fishing in the Delaware River exists, but a good understanding can be gained by reading Price, Beck, Tweed, and Epifanio, "Fisheries," pp. 71-77, who note that improved water quality and government regulations have recently significantly increased the shad population in the Delaware. This increase, however, has not created a similar return of a shad fishing industry because the competitive situation has changed. See also, James G. Horn, "The History of the Commercial Fishing Industry in Delaware" (B.A. thesis, University of Delaware, 1957), pp. 2-20; Jay L. Harmic, "History of Delaware's Shad Fisheries," in *Delaware Conservationist* (Spring 1963): 14-15; and a series of articles in Delaware newspapers, especially Wilmington *Journal-Every Evening*, Aug. 30, 1947, and Wilmington *Evening Journal*, Jan. 25, 1927.

[13] No single comprehensive source for the history of sturgeon fishing on the Delaware exists, but a good overview of the industry can be gained from John N. Conn, "The Sturgeon Fishery of Delaware River and Bay," in U.S. Commission of Fish and Fisheries, *Report of the Commissioner for the United States Commission of Fish and Fisheries for 1899* (Washington, D.C.: Government Printing Office, 1899), pp. 369-80; John A. Ryder, "The Sturgeon and Sturgeon Industries of the Eastern Coast of the United States . . . ," *Bulletin of the United States Commission of Fish and Fisheries for 1888* (Washington, D.C.: Government Printing Office, 1889), pp. 231-328; Price, Beck, Tweed, and Epifanio, "Fisheries," pp. 71-77; Horn, "Commercial Fishing Industry in Delaware," pp. 2-20; Wilmington *Every Evening*, Jan. 25, 1927.

when the price of caviar increased. The price of sturgeon eggs, or roe, jumped from 30 cents a pound in 1897 to $3.50 1922.[14] Now female sturgeon became truly valuable. Sturgeon vessels and nets appeared on the Delaware to compete with shad ships. Sturgeon fishermen often worked from scows fitted out with two cabins, a large one for communal living and a small one for butchering the catch and preparing the roe. Others fished from sailing ships known as sturgeon skiffs, which were larger than shad skiffs. Sturgeon fishermen drifted long gill nets, often using fifteen small boats working as a team. The center of the sturgeon industry on the western side of the Delaware was from approximately twenty miles north to twenty miles south of Delaware City, while Penn's Grove and Bayside were important sturgeon centers on the eastern shore. Fishermen sold locally, nationally, and particularly internationally for caviar. As market demand increased, so did the number of fishermen and the size of the catch, leading to the beginning of the end of the sturgeon industry on the Delaware. The number of nets might increase, but the catch per net began a steady decline as early as 1888. High prices, however, sustained some level of commercial sturgeon fishing on the Delaware into the 1930s. Once again, "greed and pollution" got the blame for the industry's demise; but in the case of sturgeon, over-fishing through greed was believed to be the greater culprit.

**From the Fishing War of 1871 to the United States Supreme Court, Round 1**

Not all of those who worked in the fishing industries or in the governments of the states in which fisheries operated remained oblivious to the imperative of sustainability. Without regulation and protection of a natural resource, fishing could not survive at a commercial level. As early as 1871 the federal government created the United States

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[14] Price, Beck, Tweed, and Epifanio, "Fisheries," p. 75.

Commission of Fish and Fisheries to study why food fish in American waters were declining and how that decline could be turned around. From that commission came two major reports on the sturgeon industry of the Delaware River and Bay in 1888 and 1899.[15] At about the same time state governments with interests in the Delaware River and Bay began to enact legislation designed to protect the fishing interests of their citizens. New Jersey appointed Commissioners of Fisheries in 1870, and the following year Delaware's governor urged the legislature to appoint a study commission. The Delaware legislature subsequently approved the appointment of five fish commissioners in 1873.[16]

As commercial fishing became important at the beginning of the 1870s, both Delaware and New Jersey took an increasing interest in the Delaware River. Delaware Governor Gove Saulsbury included a section on fishing in his message of 1871 to the Delaware legislature concerning the conservation of the resource for the benefit of Delaware citizens.[17] "The laws of the state have not been adequate to the protection of

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[15] Ryder, "The Sturgeon and Sturgeon Industries of the Eastern Coast of the United States . . . ," is a scientific study delineating the need to control over-fishing, protect habitat, and promote propagation; Conn, "The Sturgeon Fishery of the Delaware Bay and River" is a detailed history of the sturgeon industry to the end of the nineteenth century.

[16] *Revision of the Statutes of New Jersey, Published under the Authority of the Legislature* (Trenton: John L. Murphy, 1877), 425 [This law, passed in 1870 and amended in 1873 and 1874, was entitled "An act for the appointment of commissioners for the better protection of fishing interests of the state of New Jersey]; Gove Saulsbury, Governor's Message of Jan. 3, 1871, in Delaware, *Journal of the Senate*, 1871, pp. 16-17; *Laws of Delaware*, vol. 14, chap. 419, sec. 2, p. 281.

The laws cited above were not the first passed by either state relating to fin fishing. At least as early as 1808, New Jersey enacted concurrent legislation with Pennsylvania to regulate fishing on the northern portion of the Delaware River. This legislation, supplemented many times, was in effect at the time the State of New Jersey created fish commissioners (*Revision of the Statutes . . . , 1877*, pp. 426-33). The State of Delaware passed its first regulatory fishing law in 1829, an act to regulate and tax gill nets, but promptly repealed it a year later. Another law adopted a decade later made it illegal for nonresidents to hunt, fish, or take oysters "from, in, or near the waters of the Delaware River and Bay" (*Laws of Delaware*, vol. 7, chap. 181, p. 372, and vol. 9, chap. 216, p. 263).

[17] Saulsbury, "Message of Jan. 3, 1871," p. 17.

our oyster beds, planting grounds, and fisheries from depredation by non-residents . . . ."

The legislature, he wrote, has a duty

> to protect our inhabitants in the proximity to our rivers and streams, and the proprietors of the soil along our coasts, and all engaged in the business of fishing and culture of oysters, in all the rights which their location and business entitle them to, as it is to protect our fruit growers or the producers of any other of our staple crops.[18]

Governor Saulsbury's concerns relating to fishing were nothing new in Delaware. The state's first such law in the nineteenth century, passed in 1812, declared Delaware's waters off-limits to non-Delawareans. While this law was concerned with oysters and terrapin, the legislature's next protective effort, in 1839, prohibited all non-Delawareans from fishing and hunting in or near the "waters of the Delaware."[19] Clearly Delaware's lawmakers assumed ownership of the river, but equally clearly those laws lacked teeth, for funds were never allocated to enforce them.

New Jersey's fish commissioners approached their mandate from a perspective very different from that of Governor Saulsbury. In 1871 they recommended legislation to regulate fishing by day, season, and mesh size of net. They also sought a tax on drift nets, which met immediate opposition from fishermen. All of the commissioners' recommendations were passed by New Jersey's legislature on March 15, 1871, with the exception of the tax on fishing nets.[20]

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[18] Ibid.

[19] *Delaware Laws*, vol. 9, chap. 216, pp. 263-65; *Delaware Laws*, vol. 4, chap. 209, pp. 568-69. In 1851, the legislature extended the law of 1839 to include all rivers and streams in addition to the Delaware River and Bay (*Delaware Laws*, vol. 10, chap. 569, pp. 564-65).

[20] *Laws of New Jersey*, Supplement to An Act to regulate the fisheries in the river Delaware, and for other purposes, Article 44, Mar. 15, 1871, p. 433.

New Jersey's legislators and fish commissioners approached fishing issues through the perspective of creating interstate agreements. The act was adopted as a supplement to legislation first passed in 1808 that had required the Commonwealth of Pennsylvania to pass an act of the same or similar wording before it took effect in New Jersey. Likewise, in 1871 New Jersey's fish commissioners sought Delaware's participation in creating a tri-state coalition on fishing laws. The commissioners, in fact, were most concerned with what New Jersey considered to be the southern portion of the Delaware River (that is the area of the river between the states of New Jersey and Delaware) because that area saw the most traffic in drift-net shad fishing. Thus, they sought, and received, permission from their governor to visit Delaware's legislators in Dover.[21] In some ways they counted their trip a success, for on March 28, 1871, the Delaware General Assembly passed an act that joined with New Jersey's law in regulating day, season, and mesh size of nets. But Delaware's legislators added a provision that addressed the issue raised by their governor. Section 1 of "An Act for the Protection of Fishermen" made it illegal for all non-Delaware residents to "catch or take fish of any kind in Delaware bay or river, or any of the creeks emptying into the same within the limits of the same" without a license. It would now cost non-Delawareans $20 per annum for a license.[22]

Instead of creating harmony between and among the governments and fishermen of the states bordering the Delaware River, this fishing law emanating from Dover in 1871 unleashed a tidal wave of ill will and litigation that has pitted New Jersey against

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[21] *Third Annual Report of the Commissioners of Fisheries of the State of New Jersey, For the Year 1872* (Trenton: State Gazette, 1872), pp. 9-10.

[22] An Act for the Protection of Fishermen, *Delaware Laws*, vol. 14, chap. 72, pp. 84-87. A supplemental act in 1871 (vol. 14, chap. 73, p. 88) instituted a $5.00 license fee for state residents.

Delaware for over 130 years, as the protection of fish and fishermen morphed into a full-scale, recurring judicial argument on state boundaries so reminiscent to Delawareans of the earlier, and seemingly endless, boundary dispute among William Penn, Lord Baltimore, and the English Crown.

Delaware's fishing law of 1871 sought to protect the state's own fishermen and fishing industry by oversight and control of all of the Delaware River that it had claimed since 1682, during the Duke of York-William Penn era—all of the water, and its soil below, to the low-water mark on the eastern side of the river within the twelve-mile circle from the town of New Castle. To Delawareans this boundary was beyond discussion. Indeed, it appears that the State of Delaware considered the twelve-mile circle to be such a given that it did not bother to codify it until 1852, in response to the Pea-Patch Island dispute in the 1840s.[23]

To non-Delaware fishermen using the Delaware River, the out-of-state licensing provision of Delaware's law of 1871 was offensive. No matter who claimed to own the river, fishermen had always taken equal access for granted. News did not travel as fast as it does today, but once people heard, they were anxious and confused. What would be the practical implications? The answer came in the spring of 1872 and was a straight-forward application of the law, apparently initiated by Delaware's attorney general. On May 2, 1872, W.W. Pritchett, a constable in Wilmington, accompanied by an armed posse, took a steam tugboat to the eastern side of the Delaware River and arrested twenty-two New Jersey residents for fishing in the waters of the State of Delaware without

[23] "Of Sovereignty, Jurisdiction and Limits," chap. 1, sec. 1, *Revised Statutes of Delaware*, 1852, pp. 2-3. For the Pea-Patch Island case, see Justice Cardozo's discussion of *In re Pea Patch Island*, 30 F. Cas. 1123 (Arb. Ct. 1848) (No. 18311). *State of New Jersey v. State of Delaware II*, 291 U.S. 361, 377, 54 S. Ct. 407, 412-13 (1934).

licenses. The men were taken, some at gun point, to the district attorney in Wilmington, along with their eleven rowboats and fishing nets. When the fishermen told the district attorney that they had always fished on the river and never had had to have a license, he told them of the new law and gave them a choice of buying licenses and paying court costs or forfeiting their boats and nets and going to jail to await trial. Reluctantly the men bought licenses.[24]

Reaction to those arrests was swift. Within a week, New Jersey's governor, Joel Parker, issued a proclamation asserting the State of New Jersey's right to the Delaware River from its own shore to the middle of the river and the right of New Jersey fishermen to fish in those water without having to get licenses from the State of Delaware. Governor Parker then warned "all persons" (meaning, of course, Delaware officials) not to arrest New Jersey fishermen in the disputed area and urged New Jersey citizens to resist violence.[25] Governor Parker next wrote a letter to Delaware's governor that both asserted New Jersey's territorial claim to the eastern half of the Delaware River and announced his proclamation of the previous day. New Jersey, he said, believed the question of state boundary claims required judicial resolution.

A few days later, Governor James Ponder of Delaware responded to Governor Parker with a strong assertion of Delaware's right to the river within the twelve-mile

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[24] Affidavits of John Q.A. Denny, George Stanton, and Job Barker, in Record, *New Jersey v. Delaware*, No. 1, (1877)) (excerpt), reprinted in Documents submitted by the State of Delaware to U.S. Supreme Court in *New Jersey v. Delaware III* on Oct. 27, 2005, Lodging, tab 1:44-47.

[25] Joel Parker, governor of the State of New Jersey, to James Ponder, governor of the State of Delaware, Trenton, May 9, 1872, in *Report of the correspondence between Govs. Parker and Ponder . . .* (Trenton: State Gazette, 1873), p. 3; "A Proclamation by the Governor of New Jersey," May 8, 1872, reprinted in Record, *New Jersey v. Delaware*, No. 1, p. 25.

circle. It was, said Governor Ponder, "not . . . an open question."[26] From Delaware's perspective, the law of 1871 was not at all a territorial assertion; it was enacted "for the purpose of aiding the propagation of certain fish which were fast becoming extinct," a law passed "at the suggestion and request of the fish commissioners of New Jersey. . . ."[27] As to judicial review, Governor Ponder asked for a proposal from his counterpart because he (Ponder) did not have the constitutional power to agree to arbitration.

Governor Parker got the final word in this particular flurry of correspondence. On May 22, he sent a letter to Governor Ponder that again denied Delaware's boundary claim. His proposal for judicial review was to pass the question to his attorney general.[28] So, the first salvo of the Delaware River fishing war, which started with a drawn gun, ended in a barrage of words and legal maneuvering.

Later, Governor Parker, Governor Ponder, and the attorneys general of the two states met. After a "free interchange" of ideas, the officials of both states agreed that Delaware would make no arrests east of the middle of the Delaware River while both governors urged their respective state legislatures to appoint three commissioners to settle the question of river jurisdiction.[29] After some to-ing and fro-ing, both legislatures agreed.

Delaware went first. On January 30, 1873, the legislature adopted joint resolutions to establish the six-man commission recommended by the governor. The

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[26] James Ponder, governor of the State of Delaware, to Joel Parker, governor of the State of New Jersey, Dover, May 14, 1872, in *Report of the Correspondence between Govs. Parker and Ponder . . .*, p. 4.

[27] Ibid.

[28] Ibid., pp. 5-8.

[29] Governor's Annual Address, July 14, 1873, New Jersey, *Senate Journal*, pp. 47-48.

legislature agreed that the decision of the commission was to be final. Two weeks later the legislature added supplementary joint resolutions that clarified their intent: Delaware would not submit the boundary question, but only the right, and the extent of that right, of citizens of New Jersey to fish in the Delaware River within the twelve-mile circle.[30] To up the ante, the Delaware General Assembly then passed a supplement to the "Act for the Protection of Fishermen of 1871" instituting a tax for nonresidents on nets greater than 300 fathoms.[31]

New Jersey's legislature soon followed Delaware's by passing an act to appoint three commissioners to a joint commission to "negotiate and agree respecting territorial limits and jurisdictions of the two states." When the legislature learned of the precise wording of Delaware's supplementary resolutions of February 14, it, in turn, modified its original legislation after receiving a message from Governor Parker. The governor reminded the legislators that "the important practical question which interests most of our citizens is the right of fishing in the river Delaware, its nature and extent . . . ."[32] By a supplement approved March 11, New Jersey's legislature agreed, for the sake of expediency, to negotiate on the narrow issue of fishing rights.[33] Delaware responded to New Jersey's apparent willingness to negotiate within Delaware's more narrow parameters with a major olive branch. In joint resolutions of April 8, 1873, the Delaware

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[30] Delaware, Legislature, Joint Resolutions, Jan. 30, 1873, Feb. 14, 1873, and Feb. 19, 1873, reprinted in Record, *New Jersey v. Delaware*, pp. 26-28.

[31] "A Supplement to the Act Entitled 'An Act for the Protection of Fishermen," vol. 14, chap. 419, Feb. 19, 1873, in *Revised Statutes of the State of Delaware . . . to . . . 1874* (Wilmington: James and Webb, 1874), p. 281.

[32] Governor Joel Parker, Message to the Legislature, printed in New Jersey, *Journal of the Senate*, Mar. 5, 1873, p. 505.

[33] New Jersey, Legislature, Act of Feb. 26, 1873, and Supplement to Act, Mar. 11, 1873, reprinted in Record, *New Jersey v. Delaware III*, Lodging, tab 1, pp. 29-32.

legislature suspended the out-of-state fishing license section of the troublesome 1871 fishing protection act pending the outcome of the commission's negotiations. Moreover, if the commission decided favorably on Delaware's position, its state commissioners were authorized to agree to a mutual right of fishery. [34]

The new commission held meetings in the spring and summer of 1873. Delaware's three commissioners made several proposals to their counterparts from New Jersey, but since all of those proposals began with acceptance of Delaware's title to the river to the low-water mark on the eastern shore within the twelve-mile circle, the New Jersey commissioners declined to agree. The commission held three more unproductive meetings through June 1874. Then Delaware's commissioners presented their New Jersey counterparts with what in essence amounted to a closely argued legal brief, taking thirty-four pages to "prove" Delaware's title.[35] Eight months later Delaware's commissioners still had not received a response. Thus, they reported to their legislature that they did not believe the joint commission could ever come to a mutually agreeable settlement. [36]

In his message to Delaware's General Assembly in January 1877, Governor John P. Cochran reviewed the history of the joint commission. He said that the previous legislature of 1875 had construed New Jersey's long silence as "an implied abandonment of their case and a tacit relinquishment of their alleged claim of title and jurisdiction," so

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[34] Delaware Legislature, Joint Resolution, Apr. 8, 1873, reprinted in Record, *New Jersey v. Delaware*, 32-37.

[35] *The Fishery Question Argument of the Delaware Commissioners* (Wilmington: James & Webb, 1874).

[36] Report of the Fishery Commissioners, in Delaware, *Journal of the Senate*, Feb. 2, 1875, pp. 211-12.

on March 18, 1875, Delaware lawmakers disbanded the commission.[37] The Delaware legislators then reinstated the out-of-state fishing license requirement of the 1871 act. According to New Jersey's attorney general, New Jersey knew nothing about those actions until a New Jersey citizen called Governor Joseph D. Bedle's attention to a notice placed in the Wilmington *Morning Herald* on March 15, 1876, announcing the need for fishermen to again secure licenses from Delaware. The attorney general asserted that Delaware had misconstrued New Jersey's silence, for its commissioners were, in fact, still wrestling with the issues on the table.[38]

Territorial title remained an unresolved issue, but of greater concern to New Jersey's governor was the return of Delaware's fishing license law. Governor Bedle invited Governor Cochran of Delaware to a meeting in Philadelphia in hopes of winning a postponement of the law's reinstatement. At their meeting the governors could not resolve the issues, so the only recourse left to the State of New Jersey was to seek resolution by the United States Supreme Court. And so it did in March 1877.[39]

**Efforts to Reach a Settlement**

In preparation for litigation, Delaware's General Assembly adopted joint resolutions proclaiming the state's ownership of, and exclusive jurisdiction over, the twelve-mile circle across the Delaware River to the low water mark on the New Jersey

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[37] *First Biennial Message of His Excellency John P. Cochran, Governor of Delaware to the General Assembly, Session of 1877* (Wilmington, 1876 [*sic*]), p. 21; *Delaware Laws*, vol. 15, chap. 2249, pp. 254-55.

[38] Bill of Complaint, reprinted in Record, *New Jersey v. Delaware*, pp. 31-36. See also New Jersey, *Journal of the Senate*, Mar. 22, 1876, pp. 325-27 for letters of Governor Joseph D. Bedle and A. Browning for New Jersey Commissioners to governor of New Jersey.

[39] *First . . . Message of John P. Cochran . . .*, p. 22; *Laws of Delaware*, vol. 15, pt. 2, chap. 504, Jan. 26, 1877, pp. 641-42; *Third Annual Message of His Excellency Joseph D. Bedle, Governor of New Jersey to the legislature, Session of 1878*, Doc. No. 1 (Trenton, 1878), p. 23.

shore and authorizing the governor to employ counsel to defend the First State's position before the United States Supreme Court.[40] Governor John P. Cochran then appointed three of the state's most outstanding lawyers to represent the state in the suit. They were Thomas F. Bayard, George Gray, and George H. Bates. All were Democrats, then the majority party in Delaware. By 1885 only Bates, the son of a prominent Delaware jurist, Chancellor Daniel Moore Bates, and a former Speaker of the House of the Delaware legislature, was left. Bayard had gone on to become United States Secretary of State in Grover Cleveland's first administration, while Gray became a United States senator and then a federal judge. Preparation of the case was extremely time-consuming. Between 1901 and 1905, George Bates amassed piles of documents from the early colonial period. Some required translation; all had to be typed, edited for modern readers, and interpreted.[41]

In March 1877 the Supreme Court issued an injunction ordering Delaware to suspend the out-of-state license provision pending resolution of the litigation. The suit then languished for want of interest on the part of New Jersey, the complainant state, until the next fishing dispute arose. This time the source of the controversy lay south of the river, in the Delaware Bay. In 1885 Delaware authorities arrested and even jailed some fishermen in the upper Delaware Bay, confiscating their boats and nets.[42] Delaware argued that such arrests were permissible because the United States Supreme Court's injunction applied only to the contested portion of the Delaware River, that is, the area

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[40] *Laws of Delaware*, vol. 15, chap. 504, pp. 641-42.

[41] George H. Bates to Attorney General Robert H. Richards, March 8, 1909, Bates Family Collection (hereafter B.F.C.), Historical Society of Delaware, Wilmington, Del. (hereafter H.S.D.).

[42] *Report of the Commissioners of the Fisheries of New Jersey, 1884-85* (Trenton: John J. Murphy, 1886), pp. 5-6 (quotation, p. 5); *New York Times*, Aug. 13, 1885.

within the twelve-mile circle. But where did the river and bay divide? The governors of New Jersey and Delaware agreed that their respective attorneys general should meet to determine the boundary line. With the assistance of scholars and lawyers, Attorney General John H. Paynter of Delaware and Attorney General John P. Stockton of New Jersey set the dividing line between river and bay to run from Cohansey Light in New Jersey west to Bombay Hook Point in Delaware. Once that agreement was reached, Delaware agreed to drop its charges against the fishermen, whose boats and nets had already been returned. Delaware continued to insist upon its citizens' exclusive fishing rights in its half of the Delaware Bay, but for all practical purposes Delaware does not seem to have enforced that position. Attorney General Stockton urged another conference between the two states to secure mutual fishing rights in all the waters of the Delaware Bay. Such a conference never took place, most probably because it did not prove necessary. With the acquiescence of both states to the concept of mutual fishing rights in the waters of the river and bay, fishing continued unmolested.[43] As Governor Joel Parker had reminded the New Jersey legislature more than a decade earlier, "the important practical question . . . is the right of fishing in the Delaware . . . ."[44] For the moment fishing rights were secure.

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[43] *Report of the Commissioners of Fisheries*, p. 6; *Annual Report of the Attorney General of the State of New Jersey, for the Year 1887*, pp. 19-21; *Final Report of the State Geologist*, vol. 1: *Topography, Magnetism, Climate* (Trenton: John J. Murphy, 1888), pp. 83-84; *New York Times*, Aug. 13, 1885.

[44] New Jersey, *Senate Journal*, 1873, p. 505.

**The Oyster Conflict Opens and Closes**

Between 1871 and 1905, only once did an issue beyond fin fishing cause a ripple in the relationship of New Jersey and Delaware. The issue concerned oysters, and this time the aggressive assertion of legal rights came from New Jersey and not Delaware.

Oysters, like fin fish, had been an important part of the local diet since the time of the Native Americans, and they attracted as much attention from Western European explorers and settlers as did the Delaware River's shad and sturgeon. From earliest times, the governments of Delaware and New Jersey recognized the significance of this aqueous resource and passed laws to protect, preserve, and control an important food source and an increasingly valuable economic commodity. The main stimulus to commercial oystering in the Delaware Bay came in 1870 with the extension of the New Jersey Southern Railroad, a division of the New Jersey Central Railroad, to the Maurice River, a tributary of the Delaware Bay. With the railroad, the number of shucking houses increased, and New Jersey oysters could reach well beyond local and regional markets.[45]

Even without the railroad connection, New Jersey always had the advantage over Delaware because its oyster beds were larger than those of its neighbor to the west. Still, Delaware had significant oyster resources. Many families living along the Delaware Bay earned their livings from oystering. Delaware's oysters were most plentiful along the shores of Kent County from Leipsic to Bowers Beach, with the center at Port Mahon. With poorer train connections and smaller shucking houses, Delaware always lagged

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[45] Mary Emily Miller, "The Delaware Oyster Industry," *Delaware History*, 14(1971): 239-41; James E. Valle, "Harvesting Oysters," in *The Delaware Estuary: Rediscovering a Forgotten Resource*, eds. Tracey L. Bryant and Jonathan R. Pennock (Newark, Del.: University of Delaware Sea Grant Program, 1998), p. 26; Donald H. Rolfe, "Bivalve, New Jersey: 'Long Reach Remembered, '" in *The Delaware Estuary: Rediscovering a Forgotten Resource*, p. 82.

behind New Jersey in the scale of its oystering operations. Indeed, as time went on, Philadelphians came to dominate Delaware's oyster beds. Philadelphia entrepreneurs sent sailing ships equipped with two-to-four dredges into the Delaware Bay. The ships took their cargoes directly to Philadelphia for shucking and transport.[46]

Philadelphia ships also dredged for oysters in the eastern half of the Delaware Bay, which led to the first complaints about territorial claims to oyster areas. In 1871, the Commonwealth of Pennsylvania issued a report "in Reference to the Oyster fisheries in Delaware Bay" in response to a law passed by New Jersey's legislature earlier that year.[47] According to Pennsylvania, the three states of Pennsylvania, New Jersey, and Delaware had enjoyed common usage of oystering areas since the 1830s.

Then in 1871 the New Jersey legislature passed a law to require every boat working in New Jersey's waters to buy a license. The license was available only to individuals who had been residents of New Jersey for at least six months. The law added a sliding scale of license fees ranging from $10 to $60, depending upon the size of the oyster boat, as well as multiple enforcement provisions such as the appointment of a "special officer" who would have the power of arrest.

Not to be outdone, Delaware's legislature passed similarly restrictive laws that same year. The state closed its oyster beds to non-Delawareans or non-owners of Delaware plantation rights. Legislators also added a licensing fee on boats dredging in public beds that was three times that charged by New Jersey. Finally came the

[46] Valle, "Harvesting Oysters," p. 26; Weslager and Heite, "History," p. 25; Mary Emily Miller, "The Delaware Oyster Industry: Past and Present" (Ph.D. diss., Boston University, 1962), pp. 142-44.

[47] Miller, "The Oyster Industry: Past and Present," pp. 133-34. The New Jersey law was entitled "An Act for the better enforcement in Maurice River cove and Delaware Bay of the act entitled 'An Act for the preservation of clams and oysters . . . '" (New Jersey P.L., 1871, p. 642). The original law was enacted on April 14, 1846.

enforcement provisions, which included a collector with arrest powers and the purchase of a watchboat.[48]

Aside from angering some in Pennsylvania, few jurisdictional problems appear to have arisen from the oystering legislation emanating from Trenton and Dover. One scholar noted no significant friction arising from the laws passed on both sides of the river. He found that for Delaware, the major result of the residency requirement was that members of New Jersey oystering families moved to Delaware to expand their operations, a migration that perhaps worked both ways.[49] In the last quarter of the nineteenth century, Delaware's oystermen voiced concern primarily about individuals who illegally dredged for oysters, "marauders" primarily from Pennsylvania. Eventually the conflict escalated to a level of combat and bloodshed. "Oyster pirates," as they came to be called, armed their boats with cannon and were able to overwhelm Delaware's watchboat and small, legal oyster boats.[50]

In 1887, Delaware's legislature passed a law that expanded the state's claim to oyster beds in the Delaware Bay. Until that time Delaware legislators had not asserted jurisdiction east of Blake's Channel.[51] Now they extended Delaware's jurisdictional claim to the oyster bed at Ship John Light. New Jersey responded by arresting two Delaware oystermen working in the Ship John bed. Prosecution was dropped when the

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[48] *Laws of Delaware*, vol. 14, chaps. 9-14, pp. 11-25. Oyster plantations, according to Delaware's 1871 legislation, were available in one area located south of Reedy Island and west of Blake's Channel. Private citizens could obtain a plantation for the planting of oysters for an annual fee plus a boat license.

[49] Valle, "Harvesting Oysters," p. 26.

[50] Miller, "The Delaware Oyster Industry: Past and Present," pp. 137-40; Miller, "The Delaware Oyster Industry," 245-46.

[51] *Laws of Delaware*, vol. 18, pt. 1, chap. 248, p. 464.

State of Delaware agreed to a settlement through negotiation, which must have included a repeal of the law.[52] No attorney general files exist in the Delaware Public Archives for this period, but, according to the New Jersey attorney general's statement in his brief to the United States Supreme Court in 1933, calm was returned. Under those circumstances, it does not seem surprising that the question of oysters did not loom large in the Compact of 1905. Over time each state had enacted, amended, repealed, and rewritten dozens of acts to promote, protect, and regulate oystering. Each side had vested interests, which at the time of the writing of the Compact of 1905 were satisfied by the status quo.[53]

**Construction into the River**

Although Delaware consistently laid claim to the waters and subaqueous soils to low water on the New Jersey shore within the twelve-mile circle, the wharves, piers, and bulkheads along the New Jersey shore were never part of the debate in the nineteenth century. Delaware neither interfered with their construction, nor did it tax such structures on either side of the river.

Delaware and New Jersey pursued different policies regarding wharfage. New Jersey established extensive controls, but Delaware did not. Urbanization was the major

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[52] Brief of Plaintiff, reprinted in Documents submitted by the State of Delaware to U.S. Supreme Court in *New Jersey v. Delaware III* on Oct. 27, 2005, Lodging, tab. 10, p. 373; *Laws of Delaware,* vol. 18, pt. 1, chap. 557, p. 679.

[53] The Delaware legislature created an oyster commission in 1909, and with the U.S. Bureau of Fisheries produced a report and a map entitled "Chart of Leased Oyster Bottoms, Delaware Bay, State of Delaware" that showed no Delaware oyster beds east of the Delaware Bay's main shipping channel (Delaware Oyster Survey Commission, *Report of Commission* [Baltimore: King Bros., n.d.]. Twenty years later, the situation had changed dramatically, with the Ship John oyster bed as the flash point. Wilmington's *Every Evening* subsequently termed it an "armed fight' between New Jersey and Delaware oystermen over rights to the beds from the ship channel to the middle of the bay (Oct. 9, 1933). By 1929 oysters had become one of the two issues of sufficient magnitude to New Jersey to lead that state to return to the U.S. Supreme Court. The other issue was wharfage. ("Report to Honorable Morgan F. Larson, Governor of New Jersey by William A. Stevens, Attorney General . . . ," 1929).

factor in explaining those differences. New Jersey had the major port cities of New York and Philadelphia opposite its watery borders, whereas Delaware had none. In 1851 New Jersey began taking control over its riparian lands by requiring that land owners obtain licenses from the state to build structures into New Jersey's waterways.[54] In 1864 the New Jersey legislature adopted "An Act to ascertain the rights of the state and of the riparian owners in the lands lying under the water of the bay of New York and elsewhere in the state."[55] It was the first of a series of laws, all of which traced their origins to the 1864 statute, by which New Jersey governed, sold, leased, and taxed submerged lands. The 1864 law explicitly focused on two urban areas: the waters along the Hudson River and New York Bay, and "the lands lying under the water of the Delaware river, opposite to the county of Philadelphia." Neither that law, nor those that followed, mentioned those parts of the Delaware River lying north or south of Philadelphia.

It is not surprising that New Jersey lawmakers concentrated their riparian laws on those parts of their state's waterways that were in contact with the major out-of-state commercial and industrial centers of New York City and Philadelphia. Those were the places where wharfage was most important and most lucrative. In 1871 New Jersey began the practice of committing the taxes it raised from those urban-area wharves to help support the state's public schools.[56]

By contrast, Delaware had no major urban centers lying across its portion of the Delaware River's eastern shore to prod it into licensing, controlling, or taxing wharves.

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[54] New Jersey P.L., 1851, p. 335.

[55] New Jersey P.L., 1864, p. 681.

[56] New Jersey P.L., 1871, p. 98.

A search of the state's laws in the nineteenth century reveals a few acts whereby the legislature gave steamboat and railroad companies permission to build wharves as part of the powers granted to them in their acts of incorporation.[57] In addition, in the 1850s a few individuals requested private acts whereby the legislature concurred in their construction of wharves, but, in the absence of a legal requirement to get advance approval from Delaware, such requests soon disappeared from Delaware law books.[58] The state did not tax wharves that extended into the state's waters, nor did it require a state license to erect them.

The State of Delaware has never taxed real estate. Its counties tax real estate. Until the mid-twentieth century all three of Delaware's county governments were called "Levy Courts" because they set the levies on taxable real estate. A search in the Delaware Public Archives found no records from the nineteenth century to show whether or not the assessors from New Castle County, the county that includes the twelve-mile circle, included wharves extending from either the western or eastern shore of the Delaware River in their assessment of real estate. Theirs was a rather unsophisticated operation designed to raise the modest sums needed to support the county jail and a poor house, and to build bridges across creeks. It is not surprising that the assessors never ventured across the Delaware River to claim taxes from wharf-owners on the eastern shore.

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[57] See, for example, *Laws of Delaware*, vol. 9, chap. 11, "An Act to Incorporate the Delaware Rail Road Company, pp. 17-26, and chap. 312, "An Act to Incorporate the Breakwater, Lewes, and Philadelphia Steam-boat Company," pp. 359-62.

[58] *Laws of Delaware*, vol. 11, chap. 463, p.528; chap. 398, p. 444.

The most important wharves extending from the New Jersey side of the Delaware River within the twelve-mile circle were associated with Delaware-based companies. Throughout most of the nineteenth century and well into the twentieth century, the Wilmington Steamboat Company, later called the Wilson Line, ran boats from Wilmington to Chester and Philadelphia, Pennsylvania. In the summer months the company also ran excursion boats from the west bank cities to a picnic grove at Penns Grove, New Jersey. In the 1920s an amusement park called Riverview Beach was added on the New Jersey shore of the river. Likewise, Delaware-owned ferry companies operated between Delaware and New Jersey until the Delaware Memorial Bridge opened in 1951.[59] The only industrial site with structures extending into the river from the New Jersey side within the twelve-mile circle was the Du Pont Company's Chambers Works. The Du Pont Company was, then as now, a Wilmington-based corporation.

**Seeking a Settlement**

The repeated postponements of *New Jersey v. Delaware I* stopped in 1901 when the Supreme Court's clerk alerted the parties that the Justices would wait no longer. Delaware had to decide to go forward or risk losing its boundary claim to the New Jersey shore. Neither Delaware's governor nor legislature hesitated to continue to press for vindication of the state's boundary rights. The legislature adopted a resolution whereby the attorney general and special counsel were "instructed to maintain the defense of said suit."[60] George Bates stopped all other business to concentrate on meeting the deadline to file an answer to New Jersey's Bill of Complaint.[61]

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[59] See Richard V. Elliott, *The Saga of the Wilson Line, Last of the Steamboats* (Cambridge, Md.: Tidewater Publishers, 1970).

[60] *Laws of Delaware*, vol. 22, chap. 244, p. 531.

The work of meeting Supreme Court deadlines proved so onerous to both sides that in 1903 they agreed to appoint the two states' governors, attorneys general, and counsels as their commissioners in an attempt to find a settlement without recourse to further court proceedings. Whereas Delawareans had no experience with interstate compacts, New Jersey's leaders could look back to a great deal of such experience. The Garden State already had compacts with both New York and Pennsylvania regarding those states' respective contiguous watery boundaries: the New York harbor and the Delaware River, respectively. Those documents provided for boundaries through the middle of those waters and explicitly noted which state owned every island in between. Each state had jurisdiction over the area within its own boundary, except that authorities on either side of the waterway were permitted to cross those bounds to pursue, arrest, and remove back to their own state persons accused of committing crimes in the arresting officer's state.[62] Thus New Jersey had a template for what might constitute an interstate compact.

The Delawareans had no such experience, but George H. Bates was a seasoned negotiator who had dealt with obstinate opponents in delicate diplomatic situations. In 1885 Bates had gone to the Samoan Islands as the special agent of the United States government to help re-establish peace among warring chiefs who were being urged on by the competing governments of Imperial Germany and Great Britain. The United States also had significant commercial and naval interests in the Samoan Islands. Bates was

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[61] Attorney General Herbert H. Ward to Governor John Hunn, Jan. 31, 1903, Delaware Public Archives, Dover (hereafter D.P.A.).

[62] New York Compact: N.J. Stat. sec. 52:28 *et. seq.*; Pennsylvania Compact: N.J. Stat. sec. 52:18-23 *et. seq.*

later one of three commissioners to represent the United States government at conferences with the Germans and British held in Washington, D.C., in 1887 and in Berlin in 1889 for the purpose of restoring peace in Samoa. Bates proved to be a vigorous negotiator on behalf of his country in dealing with such seasoned diplomats as Chancellor Otto von Bismarck of Germany. The representatives of the three powers all claimed to want a restoration of the *status quo*, whereby citizens of their countries could live and trade in the islands without fear that one of the other powers would stir up trouble. Bates's experience was thus appropriately germane to the business of negotiating on behalf of Delaware over the ownership and use of the Delaware River. [63]

Delaware's commissioners began their work by seeking the views of the people most concerned about the dispute: the state's fishermen. Those commercial fishermen, together with their New Jersey counterparts, constituted a major industry that employed 165 boats, each of which reportedly took in $550 weekly during shad season. In early March 1903, Delaware's commissioners, including George Bates, organized a meeting with Delaware fishermen in the coastal town of Delaware City. The meeting proved to be very instructive. One fisherman complained of his arrest by New Jersey authorities when he had been fishing for sturgeon near the Jersey shore. Most fishermen agreed, however, that although the river within the circle rightfully belonged to Delaware, New Jerseymen should be permitted to cast their nets wherever they pleased so long as they abided by Delaware's Sabbath and seasonal restrictions.[64]

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[63] George Handy Bates Samoan Papers, University of Delaware Special Collections, Newark, Del. See particularly box 1, folder 13; box 2, folder 21; and box 3, folders 28-28.

[64] Wilmington *Evening Journal*, Mar. 4, 1903.

In light of such "live and let live" testimony from the fishermen, and considering the additional cost and effort of continuing the suit, the commissioners attempted to conclude a compact that would unify the states' conflicting fishing laws and thus end the case. As Delaware's Attorney General Herbert H. Ward put it to Governor John Hunn, "if the entire controversy between the two states can be settled out of court, it would seem the part of good reason to attempt to make such a settlement."[65]

The commission composed of the governors, attorneys general, and counsels of the two states, met in Philadelphia on March 12, 1903. The evidence is very scant, but it would appear that both sides came with ideas and language that they would like to see written into the compact. It is worth noting, for example, that Articles I and II, permitting each state to serve legal papers or make arrests on the entire breadth of the river, contain principles similar to New Jersey's compacts with New York and Pennsylvania.

The proposed document created in 1903 was designed to resolve the fishing issue, as detailed in Articles III, IV, and V, which proclaimed a common right of fishery, provided for the passage of uniform fishing laws in both states, and permitted the continuance of certain existing laws until adoption of the uniform legislation. The document also permitted the states to continue enforcing their laws with respect to two matters that had not been the subject of longstanding controversy: the oyster industry and the building of piers and wharves. But for the dispute in 1887, which had been resolved, the oyster industry had not been the cause of controversy between the states. In drafting the compact in 1903, Article VI was written to maintain the *status quo* of that industry. Likewise, with respect to Article VII, there was no evidence of a practical dispute with

[65] Ward to Hunn, Jan. 31, 1903, D.P.A.

regard to the construction of piers and wharves extending from the New Jersey shore that entered onto the portion of the Delaware River within Delaware's twelve-mile circle. At that time the modest piers on the New Jersey shore that entered into the twelve-mile circle served the interests of citizens of both states.

Article VIII of the 1903 compact stated that nothing would affect the "territorial limits, rights or jurisdiction of either state" relating to the river or the ownership of its subaqueous soil except as "expressly set forth" in the document. Through this provision, the states sidestepped the dispute over ownership within the twelve-mile circle, as to which the two states could never have reached agreement, and similarly deferred other jurisdictional questions that did not require resolution at the time. Each state preserved its claims in Article IX, which stated that the lawsuit was to be dismissed "without prejudice."

The effort to forge an interstate agreement proved fruitless, however, because the Delaware General Assembly ended its session too soon to take up the proposed compact.[66] The suit would go on, at least until 1905, when Delaware's legislators were next scheduled to meet.

The lawyers on both sides had no recourse but to carry on their preparations for the fast-approaching deadline to submit their briefs to the Supreme Court's Special Commissioner, Francis Rawle. Francis Rawle (1846-1930) knew George Bates very well. In 1895, at Rawle's request, Bates drafted a law regarding street railways that was adopted by the Delaware General Assembly. That same year, George Bates's son, Theodore, became a law clerk in Rawle's Philadelphia office. When Theodore

[66] Attorney General Herbert H. Ward to George H. Bates, Feb. 11, 1905, B.F.C., H.S.D.

committed suicide later that year, his father assumed responsibility for completing work that Rawle had assigned to his son.[67]

In developing his case Bates called several of Delaware's most distinguished elderly lawyers to appear at a hearing held in Salem, New Jersey. Those men all testified that going back as far as the 1840s, Delaware had exercised the right to arrest and try violators of Delaware state laws on the river, and that federal cases drawn from the river territory had been heard in the Federal District Court for Delaware.[68]

By the end of 1904 Bates's quest for evidence was nearly complete. The most pressing claim on his time was to organize the mass of historical documents he had collected. The clerk of the U.S. Supreme Court agreed to one final extension, to March 1, 1905, by which time the defense must present its evidence. New Jersey would then have until June 1, 1905, for rebuttal, and both parties were to have their arguments in the hands of Special Master Rawle by November 1, 1905.[69]

**Adopting the Compact of 1905**

It was in this context that Delaware's General Assembly met in Dover for its biennial session in January 1905. In his final month as governor, John Hunn told the assemblymen of his hope to end the long-smoldering case with New Jersey through "the appointment of a commission with full powers to settle the issue by arbitration." The "continuance of this suit," he said, "has been, and is likely to be, an extremely costly one

[67] See various letters in B.F.C., H.S.D., especially Francis Rawle to George Bates, Jan. 31, 1895; George Bates to F. Rawle, Feb. 14, 1895; Theodore Bates to F. Rawle, Jun. 1895; Elizabeth Bates to George Bates, Dec. 4, 1896.

[68] The State of Delaware had made it illegal for nonresidents to fish in Delaware waters in 1839 (*Laws of Delaware*, vol. 9, chap. 216, p. 263).

[69] James H. McKenney, Esq., Clerk, U.S. Supreme Court, to George H. Bates, n.d., B.F.C., H.S.D.

for the State, thousands of dollars having already been expended in its prosecution." He told the legislators that his recent communications with New Jersey officials convinced him that they, too, were willing to pursue "an amicable arrangement for a settlement" outside the judicial system. It is worth noting that the interconnection of reaching an "amicable settlement" with that of saving a large sum of the state's money must have been particularly appealing to a governor who was both a Quaker and a businessman.[70] Later that same month Governor Hunn sent a message to the legislature drawing their attention to the chaotic nature of the state's fishing laws. He admonished them that rationalizing the fishing laws "demands primary consideration in as much as it concerns the propagation and protection of one of the largest sources of food supply belonging to the people." He recommended the creation of a commission charged to draft "a uniform, reasonable, comprehensive, and plain bill" to be presented to the next meeting of the legislature in 1907.[71]

Delaware's outgoing attorney general, Herbert H. Ward, and his successor, Robert H. Richards, were in complete agreement with Governor Hunn regarding both the desirability of an interstate compact and the need to redraft Delaware's fishing laws. In February 1905 Ward notified George Bates that the Delaware General Assembly had adopted a joint resolution "of precisely similar terms to that of two years ago, with the addition of the words 'and bay.'"[72] The commissioners appointed to serve were to be Delaware's new governor, Preston Lea, a Republican and Quaker businessman like his predecessor, together with Ward himself, his successor as attorney general, Robert H.

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[70] Delaware, *Journal of the Senate*, 1905, p. 93.

[71] Ibid., pp. 91-92.

[72] Herbert H. Ward to George H. Bates, Feb. 11, 1905, B.F.C., H.S.D.

Richards, and George Bates. The New Jersey legislature having passed a similar measure earlier that same week, the commissioners could begin their work promptly so as to complete their compact in time for the Delaware General Assembly to act on it before it adjourned.

Once again commissioners from the two states met in Philadelphia, where they made the minor adjustments to the two-year-old compact document noted above. The first difference was changing the term "Delaware River" to "Delaware River and Bay" in passages concerning the regulation of fishing in Article IV. The Compact of 1905 also added a provision whereby the states were to determine the dividing line between the river and bay and then mark that division with monuments on both shores.[73]

All was not the same, however. In the two years since he had been a member of the commission of 1903, George Bates had changed his mind about the idea of substituting a compact for a ruling by the United States Supreme Court. He had prepared what he regarded as an unimpeachable case in support of Delaware's title and was ready to present the First State's arguments to Special Master Rawle. Why then should Delaware agree to put aside the case before the United States Supreme Court?

Disagreements among Delaware's commissioners over the efficacy of adopting a compact in lieu of continuing the state's defense before the Supreme Court became public knowledge through the pages of the Wilmington *Every Evening*. The *Every Evening* was aligned with George Bates and his political party, the Democrats. Interestingly, Wilmington's leading Republican daily, the *Morning News*, largely ignored the compact issue.

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[73] Delaware, *Journal of the Senate*, 1903, pp. 898-902; *Laws of Delaware*, vol. 23, chap. 5, pp. 12-17.

On March 2, 1905, the compact went to the Delaware Senate, where it was ratified by a unanimous vote without debate.[74] In the days that followed, the *Every Evening* published a daily barrage of editorials, articles, and letters to the editor hostile to the boundary compact. "Shall We Surrender All That We Have Contended For In The New Jersey Boundary Dispute?" the paper asked on the front page of the March 6 edition. The article that followed mirrored Bates's view that "no agreement should be made until the Supreme Court has judicially decided the underlying and basic question of territorial jurisdiction." The writer was not against establishing a fishing compact with New Jersey but thought that the compact should follow a ruling by the Supreme Court rather than serve as its substitute. The article also noted that some Delaware fishermen had been arrested and fined by New Jersey authorities, yet nothing in the compact provided for their reimbursement. "Shall we surrender . . . on the threshold of success?"[75]

The *Every Evening's* aggressive journalism drew a prompt response from Herbert Ward. The former state attorney general sent a letter to the editor that appeared just two days later. Ward wrote that the case had sprung from Delaware's "unwise legislation" in 1871. He contended that the proposed compact dealt solely with fishing rights and did nothing to affect Delaware's title to waters or soil within the twelve-mile circle.[76]

The next day's edition featured a letter from Alexander B. Cooper, a Democratic lawyer from New Castle. Cooper had made a close study of Delaware's historic

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[74] Delaware, *Journal of the Senate*, 1905, p. 335.

[75] Wilmington *Every Evening*, Mar. 6, 1905.

[76] Ibid., Mar. 8, 1905.

boundaries that had convinced him that the colonial records supported Delaware's claim to the low water mark on the New Jersey shore within the twelve-mile circle. According to Cooper, the compact's language merely postponed an inevitable showdown before the United States Supreme Court over the First State's eastern boundary. Cooper also challenged the compact's supporters sanguine expectation that by endorsing the agreement Delaware could let New Jersey bear some of the cost of policing the river. Allowing authorities from both shores to arrest people on the river was certain to cause confusion, Cooper said. He ended with a grandiloquent flourish: "It is not a question of expense; it is a question of principle—the title to our lands, both under and above the water."[77] Cooper, like Bates, believed so firmly in the strength of the Delaware claim that he rejected the less expensive expedient of a compact with the uncertainty that might bring.

Not surprisingly, two days later Herbert Ward responded to Alexander Cooper's arguments. Ward recalled that as attorney general he had presented the almost identical compact to Delaware's House of Representatives two years before. He had then told the legislators that he was willing to continue to fight the case before the Supreme Court if that was what they wanted him to do, "but that my own judgment strongly favored the adoption of the compact . . . and thus avoiding the expense." Had the legislature taken his advice and acted at that time, Delaware could have saved substantial legal fees.[78] Whereas George Bates was eager to present his evidence in support of Delaware's title before the United States Supreme Court, Herbert Ward, who believed that the compact

[77] Ibid., Mar. 9, 1905.

[78] Ibid., Mar. 11, 1905.

did nothing to undermine Delaware's title, was determined to save the state the expense of further litigation.

Because of the public disagreements over the wisdom of ratifying the compact, the Delaware House of Representatives set aside an afternoon to hear all sides of the issue before the vote was scheduled. Perhaps because the event provided a venue for the compact's defenders to speak publicly, the Republican Wilmington *Morning News* covered the hearing in much greater detail than did the *Every Evening*.

At the hearing Alexander Cooper and George Bates urged the legislators to reject the compact while Attorney General Robert Richards and former attorney general Herbert Ward argued for its ratification. The compact's defenders said that the agreement would provide "an amicable solution to the problem without surrendering Delaware's rights or title to territory within the famous Twelve-mile Circle." Speakers on both sides of the issue agreed that continuing the suit before the Supreme Court was likely to cost the state between $15,000 and $20,000.

Herbert Ward and Robert Richards repeatedly assured members of the House of Representatives that ratification of the compact would not impact Delaware's clear title to the Delaware River within the twelve-mile circle. Ward explained that under the compact New Jersey would no longer be able to arrest Delaware fishermen. If a Delaware fisherman broke the law, he would be arrested and tried by Delawareans, in Delaware, the former attorney general said. In response to a question, Ward responded "that Delaware would have jurisdiction in criminal matters over the entire river to the New Jersey shore."

Placed on the defensive, George Bates stated his belief that the compact that he had participated in writing and had championed two years before was "unwise and a useless and serious blow to the dignity of Delaware." These words drew an equally patriotic declaration from Attorney General Richards, who professed to be second to none in his willingness to uphold Delaware's honor. But the state's honor was not the issue. Speaking for himself and his predecessor, Herbert Ward, Richards told the legislators, "we do advise you that we consider it is for the best interests of the state to adopt this compact without yielding a foot of property or title." He also reminded the House members that should they reject the compact he would be coming back to them to ask that they appropriate at least $10,000 to continue the suit.[79]

In all the news reports about the drafting and adoption of the compact, there is no record of any debate about the provisions of Articles VI and VII concerning regulation of the oyster and other shellfish industry or riparian rights. Issues concerning the oyster industry appeared to be settled, and riparian issues presented no problems since at that time Delaware did not regulate or tax structures built into the Delaware River on either side of the river.

Three days after the hearing the House ratified the compact with New Jersey by the close vote of seventeen to fourteen. Almost to a man, the Republicans voted "yea" while the Democrats voted "nay."[80]

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[79] Wilmington *Morning News*, Mar. 15, 1905.

[80] Delaware, *Journal of the House of Representatives*, 1905, p. 783.

**The Compact in the Context of its Time**

The compact never rose to the prominence in Delaware politics that one might have assumed from the articles that appeared in the Wilmington *Every Evening* or from the partisan nature of the vote in the House of Representatives. Other issues were riveting the attention of politically-minded Delawareans. In March 1905 all eyes focused on efforts to rescind Delaware's infamous Voter Assistance Law. That law had a curious history that explains a good deal about the state's politics during the first decade of the twentieth century.

Delaware had been a border state during the Civil War: that is, it was a slave state that remained loyal to the Union. In the post-war years the Democrats were the major party in Delaware, although the Republican Party was strong among businessmen, especially in Wilmington. In 1889, after years in the minority, a split among the Democrats allowed the Republicans to claim control of the General Assembly.

The GOP triumph meant that Republican legislators could choose Delaware's next United States senator. Party stalwarts were astonished when a man who was a complete unknown in state politics appeared in Dover and announced that he must be the Republicans' choice. The man was John Edward O'Sullivan Addicks, a Philadelphia-based owner of municipal gas works, who was known as the "Napoleon of Gas." To claim citizenship in Delaware, Addicks bought a house in Claymont, the state's northern-most town.

In his quest for a seat in the United States Senate, Addicks proved to be rich, unscrupulous, and persistent. When persuasion failed in 1889, he resorted to spending large sums of money to elect Republican legislators who would be beholden to him,

particularly in rural parts of the state where the Democrats had been dominant. Delaware's Voter Assistance Law allowed Addicks's lieutenants to enter the voting booth with voters and thus make sure that Addicks got the votes he had paid for.

The Addicks phenomenon helped make the Republicans Delaware's major party, but it also split the party into two fiercely rival groups. To the acute frustration of all, in legislative session after session neither side had the votes to elect its candidate for the United States Senate seat. In 1903 the factions finally worked out a compromise that allowed one of Addicks's followers to be elected, but this did not satisfy the gas king.

In 1905 Addicks made what proved to be his final attempt to secure election. Once more he failed, and thereafter, his money exhausted, he dropped from the political scene, setting the stage for the emergence of the du Pont family as the major force in Delaware's Republican politics.

In 1905 amid cries denouncing corruption and "wholesale bribery" or shouting "Addicks or nobody" it was hard to concentrate legislators' attention on a mere fishing compact.[81] Yet, as the Assembly was riveted on those more compelling political concerns, it did find time on March 23, 1905, to appoint commissioners to confer with their counterparts in New Jersey regarding the two transcendent issues in the compact: drafting uniform fishing laws and delineating the boundary between the Delaware River and the Delaware Bay. Among Delaware's three commissioners was Alexander B.

[81] Carol E. Hoffecker, *Democracy in Delaware: The Story of the First State's General Assembly* (Wilmington: Cedar Tree Books, 2004), pp. 120-25, 138-39.

Cooper, who became president of the "Delaware Commissioners, (Delaware-New Jersey Fisheries Compact)," as the commission's letterhead read.[82]

At the initial meeting of the joint commission held in Philadelphia on December 15, 1905, the six commissioners unanimously agreed to a resolution requesting their respective governors to seek a delay in Congressional ratification of the compact "until the Commission shall make further request."[83] The governors of both New Jersey and Delaware agreed to the commissioners' request.[84] But the postponement created new problems because of the constraints of the various state and national governmental bodies dealing with both the lawsuit and the compact. Two governors, two state legislatures, the United States Congress, and the United States Supreme Court all operated on differing schedules and with different time limitations.

Those time constraints, coupled with the large number of participants, sometimes led to miscommunications and hard feelings. For example, on March 14, 1906, Walter Hayes, secretary of the Delaware commissioners, sent Hiram R. Burton, Delaware's Congressman, a copy of the joint commissioners' resolution of December 15, 1905, asking for Congressional delay in ratification of the compact. Delaware's Attorney General Richards had also written to Burton to request such a delay.[85] Just a day earlier,

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[82] *Laws of Delaware*, vol. 23, pt. 1, chap. 6, pp. 17-20. See various correspondence using the letterhead, such as Alexander B. Cooper to Walter H. Hayes, Esq., January 29, 1907.

[83] Minutes of Meeting, Dec. 15, 1905, Delaware Commissioners, Delaware-New Jersey Fisheries Compact, Minute Book, 1905-1908, D.P.A.

[84] E.C. Stokes to H.C. Loudenslager, Mar. 14, 1906, New Jersey State Archives, Trenton, N.J. (hereafter N.J.S.A.)

[85] Walter H. Hayes to Hiram Burton, Mar. 14, 1906, Delaware Commissioners, Delaware-New Jersey Fisheries Compact, Letter Book, 1905-1908, D.P.A.; [Robert H. Richards] to Hiram R. Burton, Jan. 19, 1907, National Archives, Washington, D.C. (hereafter N.A.) There is no signature, but attribution is confirmed by internal dating, content, and style of letter.

however, it appears that at least some New Jersey leaders were so eager to secure ratification that they had encouraged Senator John Kean to rush the compact bill through the United States Senate without even informing his Delaware colleague of his action.[86] This apparent cross-purpose of activity led to telegrams between commissioners and their Congressmen. Delaware's commissioners alleged "bad faith" on the part of New Jersey. Congressman H.C. Loudenslager sought clarification from Trenton.[87] William J. Bradley, one of New Jersey's fish commissioners and head of the New Jersey Senate, wrote to his Delaware counterpart on the joint fishing commission that he believed that Kean's action was due to "some misunderstanding."[88]

Meanwhile, the work of the joint fishing commission went forward. Commissioners on both sides of the river held public meetings in the spring of 1906 to solicit the opinions of the states' fishermen about what the fishing regulations should contain. They found the views of the fishermen of the two states to be quite "harmonious."[89] At a meeting of the joint commission on October 10, 1906, the Delaware commissioners were first to present their version of an appropriate uniform fishing law. [90] New Jersey acted more slowly to draft a proposal, too slowly from the perspective of the Delaware commissioners, whose legislature was scheduled to meet in

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[86] Because of the Addicks dispute, Delaware had but one elected U.S. senator in 1907.

[87] Telegram, H.C. Loudenslager to E.C. Stokes, Mar. 14, 1906, N.J.S.A.

[88] William J. Bradley to Alexander B. Cooper, Mar. 19, 1906, D.P.A.

[89] Minutes of Meeting, May 8, 1906, Delaware Commissioners, Delaware-New Jersey Fisheries Compact, Minute Book, D.P.A.

[90] Minutes of Meeting, Oct. 10, 1906, ibid.

January 1907.[91] When the New Jersey document was completed, it was found to be incongruent with the Delaware draft. The joint body then met twice in January 1907 in an effort to bring the two proposed laws into uniformity.

On January 16, 1907, the six members of the joint fishing commission agreed that they had created the uniform fishing laws demanded by the compact and were ready to present them to their respective state legislatures. They wrote to their governors that Congress could now ratify the compact.[92] Three days later, Robert H. Richards, Delaware's Attorney General, informed Congressman Burton that it was now "necessary" that the Compact be ratified before the expiration of the February 1, 1907, deadline set by the United States Supreme Court.[93] On January 19, the same day he had written to Burton, Richards also wrote to the chairman of the House Judiciary Committee to say that, speaking on behalf of the government of Delaware, he urged the House of Representatives to move promptly to ratify the compact. Richards explained that "the object and purpose of this compact was to settle certain matters concerning fisheries which had been the cause of the litigation for years pending in the Supreme Court."[94]

Attorney General Richards was at pains to point out that the compact had gained the support of both states' legislatures. He added that "It does not purport to settle any of the boundary line between the two states," and went on to say "but on the other hand, [the compact] expressly provides that the boundary line between the two states shall not in

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[91] Alexander B. Cooper to William J. Bradley, Jan. 5, 1907, D.P.A.

[92] Minutes of Meeting, Jan. 16, 1907, Delaware Commissioners, Delaware-New Jersey Fisheries Compact, Minute Book, D.P.A. The commissioners met again several days later to complete minor adjustments.

[93] [Richards] to Burton, Jan. 19, 1907, N.A.

[94] Attorney General Robert H. Richards to Chairman, Judiciary Committee, U.S. House of Representatives, Jan. 19, 1907, D.P.A.

any wise be affected by the compact." Robert Richards's desire for speedy action in the United States House of Representatives was fulfilled when, on January 24, 1907, the House ratified the New Jersey-Delaware Compact.

On April 23, 1907, the Delaware General Assembly approved "An Act Providing Uniform Laws to Regulate the Catching and Taking of Fish in the Delaware River and Bay between the State of Delaware and the State of New Jersey."[95] New Jersey's legislature approved a comparable, but not identical, law on May 7, 1907.[96]

With passage of the fishing laws, the members of the joint commission's work was over. If preserving the health of the fishing industry on the Delaware River and Bay was the ultimate goal of the new laws, then the commissioners bore a heavy burden. In their final report, Delaware's commissioners noted "the undoubted fact of the gradual disappearance of the shad ... and the almost total disappearance of the valuable sturgeon industries." They focused blame on two factors: the destruction of small food fish by menhaden fishermen and industrial pollution. The commissioners suggested that the menhaden fishing problem could be resolved by restricting its season to the summer months. To the pollution problem they offered no remedy.[97]

The commissioners had also fulfilled their mandate under Article IV of the compact to place monuments to mark the division of the Delaware River and Bay on both shores. In June 1906 the members of the Joint Commission boarded a tug boat that took them down the Delaware River to locate the place that they would declare to be the end

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[95] *Laws of Delaware*, vol. 24, pt. 1, chap. 146, pp. 272-81.

[96] New Jersey P.L., 1907, chap. 131, p. 302.

[97] Report of the Commissioners to the Del. Gen. Assembly, 1906.

of the river and beginning of the bay. Their efforts were thwarted by the soggy marshland soil on either side, but not by any disagreement concerning where the imaginary line should be drawn. They settled on places of adequately fast land, one near Liston's Point on the Delaware side and another near the mouth of Hope Creek in New Jersey. In those places monuments to delineate the mouth of the Delaware River could be erected without fear of their sinking.[98]

Perhaps finally the troublesome and costly issues that had sprung from Delaware's fishing law of 1871 could be put to rest, but it was not to be. As early as 1909 Governor Preston Lea told the legislators in Dover that "unfortunately, certain modifications were made in the bill as passed by the General Assembly of Delaware so that it does not conform to the bill prepared by said Joint Commission and which was passed by the state of New Jersey."[99] Put simply, in spite of so much effort, the two states' fishing laws were not uniform, and they were destined to become even less so in the years to come. The mandate in Article IV of the compact for the passage of uniform laws never happened, not within the two year requirement of the compact—or ever.

**The Post-Compact Era**

Legislative memory was short. Members of Delaware's General Assembly seldom served for more than one or two terms. In the years after 1907 the state government focused its attention on the large-scale tasks of providing modern roads and highways for the increasing number of automobiles and providing modern schools, including high schools, for the state's youth. In that environment, the Compact of 1905

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[98] *Report of Delaware Commissioners on Delaware and New Jersey Fisheries Compact* (no place, no date), pp. 6-8. D.P.A.

[99] State of Delaware, *Biennial Message of His Excellency Preston Lea, Governor, to the General Assembly convened at Dover on Tuesday, The Fifth Day of January, 1909*, p. 25, D.P.A.

quickly receded into hazy memory. No one complained when the legislatures of either state made changes in their respective fishing laws; and the Delaware River within the twelve-mile circle came to be seen as a commercial highway rather than as a source of food.

A letter from New Jersey's attorney-general, John W. Wescott, to Herbert H. Ward dated July 3, 1914, demonstrates how quickly memory of the compact had faded. The little that Wescott knew about the agreement had come in garbled form from an older colleague. The attorney-general falsely claimed that Delaware had never even tried to pass a fisheries law subsequent to the 1905 Compact. Wescott went on to observe that New Jersey had recently changed its fishing law and suggested that Delaware adopt that same law. Thus, he said, the two states might yet achieve uniform laws. Delaware did not respond, and New Jersey never pursued the issue.[100]

In the mid-1920s jurisdiction over oyster beds in the Delaware Bay became an issue. The Compact of 1905 had not established an east-west boundary between the states in the Delaware Bay. Article VI of the compact had merely allowed both states to maintain their laws respecting oysters. In 1925, the arrest of Delaware oystermen by New Jersey for working in water claimed by both states set in motion a series of steps that led to another joint commission. According to the joint resolution of the Delaware legislature, the commission was charged with creating "the final adjustment of all controversies relating to the boundary line between said States and to their respective

[100] John W. Wescott to Herbert H. Ward, Trenton, N. J., July 3, 1914.

rights in the Delaware River and Bay.[101] After that commission failed, New Jersey decided to put the state's land claims to the final test in the United States Supreme Court. In its bill of complaint New Jersey claimed title to the subaqueous soil of the Delaware River and Bay to the ship channel, specifically including the area within the twelve-mile circle. In addition to maintaining its ownership of the river within the twelve-mile circle, Delaware also claimed the boundary below the circle along the center of the waterway as measured from shore to shore. Delaware would finally get the day in court to put the boundary question to rest that George Bates and Alexander Cooper had desired back in 1905.

Unlike the dilatory movement of the similar case filed in 1877, this time the process moved forward quickly. William L. Rawls, Esq., of Baltimore, Maryland, was appointed special master in 1930 and promptly began hearings in 1931. Oral arguments were completed in the fall of 1932, and Special Master Rawls filed his report with the United States Supreme Court on October 9, 1933. To keep abreast of this speedy schedule Delaware's counsel, Clarence Sutherland, made extensive use of the documentary evidence that George Bates had collected nearly thirty years before.[102]

The special master gave something to both sides. He accepted Delaware's contention that the Penn grant had given the First State the river's subaqueous soils within the twelve-mile circle. On the other hand, he rejected Delaware's claim to the

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[101] *Laws of Delaware*, vol. 35, chap. 243, p. 644, reprinted in Documents submitted by the State of Delaware to U.S. Supreme Court in *New Jersey v. Delaware III* on Oct. 27, 2005, Lodging, tab 4, pp. 20-21.

[102] Clarence Sutherland to the Hon. Percy Warren Green, Attorney General of Delaware, July 3, 1935, D.P.A.

geographic center below the circle in favor of New Jersey's assertion that the dividing line was the ship channel.

On February 5, 1934, Justice Benjamin Cardozo announced the Supreme Court's final decree, which upheld the special master's rulings on both counts. After a careful review of the documentary evidence from colonial times Justice Cardozo concluded that the twelve-mile circle did indeed extend to the low water mark on the New Jersey shore. He also took pains to refute New Jersey's contention that by agreeing to the Compact of 1905 Delaware had abandoned its claims to the river waters and subaqueous soils within the twelve-mile circle.

Justice Cardozo wrote, "We are told that by this compact the controversy was set at rest and the claim of Delaware abandoned. It is an argument wholly without force. The compact of 1905 provides for the enjoyment of riparian rights, for concurrent jurisdiction in respect to civil and criminal process, and for concurrent rights of fishery. Beyond that it does not go."[103] In closing, Justice Cardozo reiterated the court's opinion that "Within the twelve-mile circle, the river and the subaqueous soil thereof up to low water mark on the easterly or New Jersey side will be adjudged to belong to the State of Delaware, subject to the Compact of 1905."[104]

What might the words "subject to the Compact of 1905" have meant, taken in historical context? The compact had been created to address conflict over the rights of commercial fishermen of New Jersey and Delaware, particularly within the twelve-mile circle. The compact's major goal had been the creation of uniform fishing laws, yet,

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[103] *New Jersey v. Delaware*, 291 U.S. 361, 377-378.

[104] Ibid., 385.

despite the compact, such laws never came into being. In the years that followed the Supreme Court's decree of 1934, various officials in both Delaware and New Jersey occasionally brought the uniform law issue to the attention of other officials in their respective states, but neither side rose to the challenge to address those suggestions.[105] The reason is clear: by the 1930s few if any commercial fishermen cast their nets within the twelve-mile circle because there were few fish to be caught there. Commercial fishing had moved downstream to the Delaware Bay and Atlantic Ocean.

There was also the question of jurisdictional rights in the waters and subaqueous soils of the circle. In his final report to Delaware's attorney general, Clarence Sutherland, Delaware's special counsel in the Supreme Court case, mused that the state might consider taxing wharfs on the New Jersey shore.[106] But nothing came of that idea, perhaps because in Delaware real estate taxes were levied by the counties, not the state.

**Conclusion**

Viewed in historical context, the Compact of 1905 addressed the most pressing and divisive issue of the time, which was fishing rights in the Delaware River. The compact did not attempt to resolve other issues, it merely deferred them with language that permitted the *status quo* to continue. As George Bates told the United States Supreme Court when he made oral argument on behalf of both state's joint application for suspension of proceedings in February 1906, "the compact . . . [was] not a settlement of the disputed boundary, but a truce or *modus vivendi*. . . . Its main purpose is to

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[105] See, for example, State of New Jersey Board of Fish and Game Commissioners to the Hon. A. Harry Moore, Governor of New Jersey, February 14, 1939; memo from Delaware Assistant Attorney General Jeremy W. Homer to Nathan Hayward, III, Director, Office of Management, Budget and Planning, October 28, 1977, 1977 WL 25804 (Del. A.G.), opinion number 77-033.

[106] Sutherland to Green, Jul. 3, 1935, D.P.A.

provide for enacting and enforcing a joint code of laws regulating the business of fishing in the Delaware River and Bay."[107]

Respectfully submitted,

Carol E. Hoffecker

Carol E. Hoffecker, Ph.D.

Date: November 9, 2006

[107] Statement of reasons submitted orally for the joint application of counsel on both sides for suspension of proceedings until the further order of the Court, reprinted in Documents submitted by the State of Delaware to U.S. Supreme Court in *New Jersey v. Delaware III* on Oct. 27, 2005, Lodging, tab 7, [p. 10].

# EXHIBIT A

*CAROL E. HOFFECKER*

*ADDRESS* *804 Cinnamon Drive*
*Bon Ayre*
*Hockessin, DE 19707* *(302) 239-6724*

*CURRENT POSITION*

*Richards Professor and Alison Professor, University of Delaware, Emerita, 2003*
*Richards Professor of History, University of Delaware, 1982*
*Alison Professor, University of Delaware, 1998*

*PREVIOUS POSITIONS*

*Instructor, Sweet Briar College (1963-66)*
*Visiting Assistant Professor, Northeastern University (1967-68)*
*Junior Resident Scholar, Eleutherian Mills Historical Library (1968-69)*
*Coordinator, Hagley Graduate Program (1970-73)*
*Assistant Professor, University of Delaware (1973-75)*
*Associate Professor, University of Delaware (1975-82)*
*Chairperson, Department of History, University of Delaware (1983-88)*
*Associate Provost for Graduate Studies, University of Delaware (1988-95)*

*EDUCATION*

| | |
|---|---|
| *B.A. (with Honors)* | *University of Delaware, 1960* |
| *M.A.* | *Radcliffe College, 1962* |
| *Ph.D.* | *Harvard University, 1967* |

*PUBLICATIONS*

*Books*

*Readings in Delaware History (editor), University of Delaware Press, 1973.*
*Wilmington, Delaware: Portrait of an Industrial City, 1830-1910, University of Virginia Press, 1974.*
*Brandywine Village: the Story of a Milling Community, Old Brandywine Village, Inc., 1974.*
*Delaware: A Bicentennial History, W. W. Norton, 1977.*

*Wilmington: A Pictorial History, Donning Company Publishers, 1982.*
*Corporate Capital: Wilmington in the Twentieth Century, Temple University Press, 1983.*
*Books, Bricks, Bibliophiles: The University of Delaware Library, (with John A. Munroe), University of Delaware Press, 1984.*
*Delaware, Small Wonder, State of Delaware and Harry N. Abrams, Inc. 1984.*
*Delaware, the First State, Mid-Atlantic Press, 1988.*
*Federal Justice in the First State: A History of the United States District Court for Delaware, 1992.*
*Beneath Thy Guiding Hand: A History of Women at the University of Delaware, the University of Delaware, 1994.*
*New Sweden in America, ed, University of Delaware Press, 1995.*
*Unidel, A Foundation For University Enrichment, University of Delaware, 1996.*
*Honest John Williams, U.S. Senator from Delaware, University of Delaware Press, 2000.*
*Familiar Relations: the du Ponts and the University of Delaware, University of Delaware, 2000.*
*Democracy in Delaware, The Story of the First State's General Assembly, Cedar Tree Books, 2004.*
*The Delaware Adventure (with Barbara E. Benson), Gibbs Smith Publishers, 2006.*

*Articles*

*"Nineteenth Century Wilmington: Satellite or Independent City?" Delaware History, April, 1972.*
*"Church Gothic: A Case Study of Revival Architecture in Wilmington, Delaware," Winterthur Portfolio, 1972*
*"The Politics of Exclusion: Blacks in Late Nineteenth Century Wilmington, Delaware," Delaware History, April, 1974.*
*"The Diaries of Edmund Canby, A Quaker Miller," Delaware History, October, 1974, and spring-summer, 1975.*
*"Four Generations of Jewish Life in Wilmington," in Delaware and the Jews, Jewish Historical Society of Delaware, 1979.*
*"The Land of the Middle Brow Amateur" in Artists in Wilmington, 1890-1940," Delaware Art Museum, 1980.*
*"Water and Sewage Works in Wilmington, Delaware, 1810-1910," Public Works Historical Society, 1981.*
*"Delaware's Woman Suffrage Campaign," Delaware History, spring-summer, 1983.*
*"The Emergence of a Genre: The Urban Pictorial History," Public Historian, 1983.*
*"George Read: Father of the Delaware State," with Richard R. Cooch, Delaware Lawyer, Fall 1987.*
*"Benjamin Ferris and the Perils of Liberal Religion," Quaker History, Spring 1988.*
*"Delaware," Encyclopedia Britannica, 1998.*
*"John James Williams (1904-1988)," Scribner Encyclopedia of American Lives, 1998.*
*"Introduction," University of Delaware, A Celebration, 1998.*
*"Emily P. Bissell," American National Biography, 1999.*

*"The Changing Look of Delaware," Picturing Delaware, University of Delaware Library, 2001.*
*"William V. Roth," Scribner Encyclopedia of American Lives, 2005.*

*GRANTS RECEIVED*

*Harry S. Truman Library Research Grant, 1963*
*Eleutherian Mills-Hagley Foundation, Junior Resident Scholar, 1968-69*
*National Endowment for the Humanities Research Grant, 1977-80*
*T. Wistar Brown Fellowship, Haverford College, 1986*

*PRIZES AND AWARDS*

*Richards Professor of History, 1982*
*Joseph P. delTufo Award, Delaware Humanities Forum, 1989*
*Goldey-Beacom College, Honorary Doctorate, 1993*
*Hall of Fame of Delaware Women, 1993*
*E. Arthur Trabant Institutional Award for Women's Equity, 1997-98*
*Francis Alison Professor, 1998*
*University of Delaware Medal of Distinction, 1998*
*CASE Professor of the Year for Delaware, 1999*
*University of Delaware Alumni Wall of Fame, 2001*

*SERVICE*

*Board of Managers, Wilmington Institute Free Library, 1974-79*
*Historical Records Advisory Board, State of Delaware, 1976-87*
*Historical Society of Delaware, Board of Trustees, 1979-88*
*State Records Advisory Task Force, 1984-96*
*National Endowment for the Humanities, review panelist and project reviewer, various years*
*Rockwood Museum Planning Task Force, New Castle County, 1999-2000*
*Rockwood Museum Advisory Committee, 2000-05*
*Delaware Geographic Names Committee, 2001-*
*Editor, Delaware History, periodical of the Historical Society of Delaware, 1995-*
*In addition, I give talks and speeches on Delaware-related subjects to a wide variety of organizations throughout the state, usually about twenty per year.*

*UNIVERSITY SERVICE (selected examples)*

*University Women's Studies Executive Committee, with brief interruptions from 1972-2000*
*Vice-president, University Faculty Senate, 1980-81*
*President, University Faculty Senate, 1981-83*
*Coordinator, University Roundtable on Secondary Education, 1984-85*

*University President's Advisory Council, 1981-83*
*Winterthur Graduate Program Executive Committee, 1983-85*
*Hagley Museum and Library Advisory Committee, 1983-88*
*Council on Program Evaluation, 1985-1992*
*Middle States Re-accreditation Committee, 1989-1992, 1999-2000*
*Chair, University's Project Vision Implementation Committee, 1990*
*Chair, University Ad Hoc Committee on General Education, 1997-2000*
*University of Delaware Press Board, 1997-2001*
*President Phi Beta Kappa Honorary, UD Chapter, 1999-2000*
*Chair, Commission on the Status of Women, 1999-2000*
*Chair, Faculty Senate Committee on Student and Faculty Honors, 1999-2000*

# EXHIBIT B

# BARBARA E. BENSON

804 Cinnamon Drive
Bon Ayre
Hockessin, Delaware 19707
302-239-6724
bcde1@verizon.net

**Historical Consultant** (September 2003--)

Provides a range of strategic planning, management, writing, and design assistance to individuals, businesses, and nonprofit organizations.

Recent Projects:

- Co-author, *The Delaware Adventure (Gibbs Smith, 2006), a social-studies textbook*
- Curator, 300th Anniversary Exhibition on Delaware General Assembly, Delaware Public Archives (2003)
- Space planning and exhibition creation, Rehoboth Beach Historical Society (2003–)
- Strategic planning and Director's Search Committee, Hagley Museum and Library (2003--)

**Historical Society of Delaware**

- *Executive Director,* (1990—2003)
- *Managing Editor of Delaware History,* **Historical Society of Delaware** (1977—2003)
- *Director of Library and Publications* (1980-1990)

Responsibilities: chief staff and administrative officer for a private, nonprofit state historical organization (founded in 1864) with three principal museum sites, a major manuscript and reference library, and four additional historical properties used for a variety of purposes; educational programs serving over 50,000 adults and children a year; and publications program.

**University of Delaware**

- *Adjunct Associate Professor* (1989--2003)
- Adjunct Assistant Professor (1981-1989),

Responsibilities: Teaching H200, History and Government of Delaware, H206 Survey of United States History, 1865-Present, H268 History Seminar for Undergraduate Majors, H411 History Seminar; H603 Public History, H667 Seminar in Historical Editing, H803 Writing Seminar in the History of the Delaware Valley.

**Hagley Museum and Library**

- *Assistant to the Director of the Library* (1973-19s75)
- *Editor of Publications* (1975-1980)

**EDUCATION:**

Ph.D., *American History*, Indiana University, 1977
Areas of specialization: economic history; regional history. Dissertation: "The Development of Michigan's Lumber Industry, 1837-1870"
M.A., *American History*, Indiana University, 1969
B.A., *History*, Beloit College, 1965

**COMMUNITY SERVICE:**

**New Castle County Historic Review Board**, Chairperson, 2003--

**New Castle County Personnel Committee** board member, 2000 –2003

**New Castle County Rockwood Advisory Committee**, Chairperson, 2000--2005

**African American Museum of Delaware**, Board Member, 1999--2003

**New Castle County Taskforce Committee** on Rockwood Museum, 1999

**Wilmington Rotary Club**, Board of Directors, 1997-1999

**YWCA**, Centennial Committee, 1994

**Delaware Humanities Forum** (the state-based agency of the National Endowment for the Humanities), council member, 1987-90; 1990-94; chairperson, 1992-94; vice-chairperson, 1990-1992; chairperson, grants review committee, 1988-1992; outside evaluator, 1980-1987

**Delaware State Tourism Advisory Board**, gubernatorial appointment, 1988-1991; 2002--

**Association of Delaware Historical Societies**, secretary-treasurer, 1985-1995

**Delaware Heritage Commission**, member of publications committee, 1984-1988; scholarship judge, 1986-94, ex-officio member of board, 1993--

**Sister Cities of Wilmington**, member of board of directors, 1986-96; official delegate to Kalmar, Sweden, 1985

**Lectures and Workshops for state and local groups** (1991--), including schools, church groups, patriotic organizations, genealogical societies, school districts, public libraries, museums, and historical societies in all three counties.

**PROFESSIONAL/SCHOLARLY ACTIVITIES:**

**Delaware State Records Commission**, gubernatorial appointment, 1988--2000

**Delaware State Historical Records Advisory Board** (state-based program of the National Historical Publications and Records Commission), member, 1986-89, 1990-93, vice-chair, 1994--2000

**American Association of State and Local History,** state representative for awards committee, 1985-91; state membership chair, 1996--2003

**Hagley Museum and Library,** McShain Editorial Board, 1993-94

**Museum Council of Philadelphia,** board member, 1991-92

**Delaware Historic Preservation Review Board,** member, 1990-93, 1993-97

**Institute of Museum Services,** grants reviewer, 1986, 1987, 1988, 1991, 1992, 1993, 1994, 1996, 1997, 1999, 2001

**Mid-Atlantic Regional Archives Conference,** member of governing board, 1982-1984, 1984-1986; chairperson of nominating committee, 1985-1986; conference speaker and commentator, 1985 ("Getting Published"), 1986 ("Collecting African-American Sources"), 1988 ("Conservation for Small Organizations"), 1989 ("Designing and Constructing Archival Storage Facilities")

**Salisbury State University,** workshop leader, 1989

**Taft Seminar at University of Delaware,** 1989, 1990, 1991 presented papers on government in Delaware

**New Sweden Conference, University of Delaware,** 1988, chair and commentator for session on archival sources in Scandinavia and America

**New Jersey Historical Commission Annual Symposium,** 1988, chair and commentator for session on Swedish and Finnish Migration

**Delaware Valley Eighteenth-Century Society,** 1987, presented paper on Delaware in the 1780s

**University of Delaware, History of Technology Speakers Series,** 1987, presented a paper on the underwater archaeology of the Kronan

**Delaware State House Symposium,** chairperson of sessions, 1977, 1984, 1986

**Central Michigan University,** Clarke Memorial Lecturer, Clarke Historical Library, 1983

**Consultant on Collections, Exhibitions, and Publications**
Chesapeake Bay Girl Scouts Council; Mrs. Lammot du P. Copeland; Hershey Archives; History Store, Inc.; Greater Harrington Historical Society; Laurel Historical Society; Lewes Historical Society; Milford Museum; Rockwood Museum

**American Library Association, Rare Books and Manuscripts Preconference**, 1985 panelist, library exhibits and the public

**Consultant to Video Projects**

*Whispers of Angels*, Teleduction, 2001
*Slavery in Delaware*, WHYY-TV, 1997
*Celebrate 75*, Celebrate 75 Video Production, 1995
*Wilmington in the Age of Confidence*, WHYY-TV, 1990-92
*1968 – The Siege of Wilmington*, WHYY-TV, 1989
*New Sweden: An American Portrait*, Dick Young Productions for Swedish Tobacco Company, 1988

**PUBLICATIONS:**

*The Delaware Adventure* (Gibbs Smith Publishers, 2006)

"New Castle County Courthouses," in *Delaware Lawyer* (2003)

"Delaware in World War II," in *Delaware History* (vol. 23, 1995-96)

Co-editor, *New Sweden in America* (University of Delaware Press, 1996)

*Wilmington and Beyond* with Michael Biggs (Jared Press, 1990)

*Logs to Lumber: The Development of the White Pine Lumber Industry in Michigan* (Clark Library Press of Central Michigan University, 1989)

Editor, *Arriving in Delaware: The Italian-American Experience* by Priscilla Thompson (History Store and Italo-Americans United, 1989)

Editor, "Colonial and Revolutionary Delaware," in *Dictionary of Colonial and Revolutionary America* (Sachem Press, 1989)

"Joshua Clayton" and "Henry Latimer," *Delaware Medical Journal* (April, 1989)

Contributor, *A Historical Dictionary of American Industrial Language*, ed. William H. Mulligan, Jr. (Greenwood Press, 1988)

Introduction and text for Michael Biggs, *Delaware...A Photographic Journey* (Jared Press, 1986)

"Delaware's First 'Doctor': Tyman Stidham and the Tools He Used," *Delaware Medical Journal* (Oct. 1986)

Contributor, *The Craft of Public History*, ed. Robert Pomeroy and David Trask (Greenwood Press, 1983)

"Profile of Delaware," "Thomas F. Bayard," and "Bayard Family" in *World Book Encyclopedia*, 1985-86, 1990

Editor, *The Engineer as an Agent of Technological Transfer in the Nineteenth Century* (Eleutherian Mills Historical Library, 1975)

Book reviews and conference report in *Indiana Magazine of History*, *Business History Review*, and *Technology and Culture*

**AWARDS AND HONORS:**

Who's Who in America, 1991-2003

New Castle County Historic Review Board, Achievement Award, 2003

City of Wilmington, Certificate of Recognition, 2003

Delaware State Society of the National Society of the Daughters of the American Colonists, Certificate of Recognition, 1989

Council for the Advancement of Citizenship and the Center for Civic Education Bicentennial Leadership Award, 1988

Delaware Teacher Center Award, 1988

Royal Recognition Medallion, King Karl XVI Gustav of Sweden, 1988

Official Visitor from Wilmington to Kalmar, Sweden, Sister Cities Program, 1985

No. 134, Original

In the Supreme Court of the United States

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State of New Jersey

*v.*

State of Delaware

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Expert Report of Professor Joseph L. Sax

1. My name is Joseph L. Sax. My address is: Boalt Hall, School of Law, University of California, Berkeley, California, 94720. I am the James H. House & Hiram H. Hurd Professor (emeritus) at the University of California, Berkeley. I have been a member of the Berkeley faculty since 1987. From 1966 to 1986, I was on the faculty of the University of Michigan, where I was the Philip Hart Distinguished University Professor. Prior to that time, I practiced law in Washington, D.C. and was on the faculty of the University of Colorado. From 1994 to 1996, I served as Deputy Assistant Secretary of the Interior and as Counselor to the Secretary of the Interior. I am a graduate of Harvard College and the University of Chicago Law School, and hold an honorary Doctor of Laws degree from the Illinois Institute of Technology. I am a fellow of the American Academy of Arts and Sciences.

2. I have no interest in, or connection with, any of the parties to this case other than having been retained by the State of Delaware to review the claim made by the State of New Jersey, to provide my opinion as an expert on the background and historical understanding of riparian law, and to prepare this Expert Report.

Qualifications

3. For more than 40 years as a scholar and teacher, one of my principal interests has been research and teaching in the field of water law. It has been a central issue considered in classes and seminars I have taught. I am the author of a number of books and articles on the subject, including *Water Law: Cases and Commentary* (Pruett Press, 1965); *Water Law, Planning and Policy* (Bobbs-Merrill, 1968); *Federal Reclamation Law, in II Waters and Water Rights*, Chapter 8 (Allen Smith Co., ed. R. E. Clark, 1967); and four editions of *Legal Control of Water Resources*, the most recent being the 4th edition (with Barton H. Thompson, John Leshy & Robert H. Abrams) (St. Paul, Thomson/West, 2006). I have consulted for the Council of Great

Lakes Governors and the International Joint Commission (Great Lakes). During my tenure at the United States Department of the Interior, one of my principal responsibilities was dealing with interstate water issues on the Colorado River. After leaving the Department of the Interior, I served as a consultant for the U.S. Bureau of Reclamation, and I am currently a consultant for the Southern Nevada Water Authority. I served as an expert for the State of Mississippi in a case involving riparian rights and submerged lands owned by the State. I recently prepared a report on the law of groundwater for the California State Water Resources Control Board.

Information Required Pursuant to Rule 26(a)(2)(B)

4. My *curriculum vitae* is attached hereto as Exhibit A, and a list of all my publications within the past 10 years is attached hereto as Exhibit B.

5. All the data and information considered by me in forming the opinions herein, other than knowledge gained over many years of study in the field, are cited in this report.

6. I am being compensated for my work in preparing this report and for my testimony, if called, at the rate of $500 per hour, plus out-of-pocket and travel expenses. My compensation is not contingent on or related in any way to the outcome of this case.

7. I testified as an expert witness for the State of Mississippi in *Bayview Land, Ltd. v. Mississippi*, Cause No. C2402-98-389, in the Chancery Court of Harrison County, Mississippi, in 2002. I have recently prepared an expert report for the United States and expect to be called to testify in the pending case of *Glamis Gold, Ltd. and United States of America (In the Arbitration Under Chapter Eleven of the NAFTA and the UNCITRAL Arbitration Rules)*.

Scope of Assignment

8. I have been retained by the State of Delaware to provide an historical analysis of riparian rights and laws as they existed at the time the 1905 Compact was executed by Delaware and New Jersey, as well as an opinion as to the interpretation to be given to the language in Article VII of the 1905 Compact at issue in this case, insofar as I can do so based on my knowledge of the history and understanding of the law of riparian rights in the 19th and early 20th centuries. For the purpose of preparing this opinion, I have read the initial pleadings and appendices filed in this case, the riparian grants, leases, and conveyances issued by New Jersey between 1854 and 1920 (which are discussed in the Affidavit of Richard Castagna and attached to New Jersey's initial filing), New Jersey's responses to Delaware's requests for admissions, certain documents pertaining to New Jersey's 1980 Coastal Management Plan, a permit issued by New Jersey in 1991 to the Keystone project, and a permit issued by New Jersey in 1996 to the Fort Mott project.

9. I have been asked to address the historical context for the drafting of Article VII, and the meaning and scope of the Article VII language "to exercise riparian jurisdiction of every kind and nature, and to make grants, leases, and conveyances of riparian lands and rights under the laws of the respective States." My report therefore describes the history and understanding of riparian

rights and laws in the United States, including New Jersey and Delaware, up to the execution of the 1905 Compact.

Summary of Opinion

10. Riparian jurisdiction embraces jurisdiction only over the incidents of riparian landownership, such as authorization to build a wharf to access navigable waters far enough to permit the loading and unloading of ships, and the right to own accretions. Authority to make grants, leases, and conveyances of riparian lands and rights is the concomitant power to make available state-owned lands beneath navigable waters needed to implement incidents of riparian landownership, such as construction of a wharf. Such authority is jurisdiction over the definition and scope of property rights, that is, the rights and privileges that attach to riparian lands. It does not include police power jurisdiction to determine the legality of activities on, or in connection with the use of, riparian property such as a wharf. Nor does it include jurisdiction to determine the scope or content of public rights in navigable waters, which may be invoked to limit the exercise of riparian rights.

Opinion

11. Article VII of the 1905 Compact reads: "Each state may, on its own side of the river, continue to exercise riparian jurisdiction of every kind and nature, and to make grants, leases, and conveyances of riparian lands and rights under the laws of the respective states." The phrase "riparian jurisdiction" was not then, and is not now, a legal term of art. It is, to the best of my knowledge, found neither in the treatise or article literature, nor in judicial opinions or statutes. That particular verbal formulation seems to have been devised for use in Article VII of the 1905 Compact as a limitation on the term "jurisdiction."[1]

12. Riparian law is a distinctive sub-category of the law of property. It deals with the incidents specific to ownership of riparian land.[2] A riparian tract of land is one that abuts the water's edge on a river or lake, or the shore of the sea.[3] The term derives from the Latin word "ripa", which means bank, as in the bank of a river. Land that is on the bank of a river is riparian land. As a

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[1] Elsewhere in the 1905 Compact one finds the more familiar terms "jurisdiction" (in the introductory paragraphs and in Article VIII) or "exclusive jurisdiction" (in Article IV).

[2] In this Report, I shall speak of riparian rights as they existed prior to the time of the 1905 Compact, though the general shape of riparian rights has not changed significantly in the past century.

[3] *See* John M. Gould, *A Treatise on the Law of Waters, Including Riparian Rights and Public and Private Rights in Waters Tidal and Inland* § 148, at 297 (3d ed. 1900) ("Gould"). Legally, there is no distinction between land on the bank of a river and land on the bank of a lake or the sea, though technically the latter categories are termed littoral land, lit(t)us being the Latin word for sea shore or coast.

legal matter, the test of whether land is riparian is whether its boundary is at the water's edge, touching the water, whether or not there is anything like a bank. Such lands – and only such lands – are riparian. Riparian law, or what is usually called the law of riparian rights,[4] describes a set of special benefits in regard to the adjacent water body to which riparian landowners are entitled.

13. Riparian landownership conventionally includes the right to divert a reasonable amount of water for use on the riparian tract, the right to use the entire surface of the water (regardless of bottomland ownership) for recreational swimming or boating, and the right to stop up a river to install a dam in order to produce hydro-power.[5] There are other incidents of riparian ownership, such as a right to cut ice in the winter, though that use is of little importance today, as compared with the 1800s. Other important elements of riparian law are the rules of accretion, avulsion, erosion, and reliction, which determine how and whether the shore boundary moves as land is deposited or eroded at the edge of the tract, or as the sea level rises or falls. Another incident of riparian landownership is wharfing out, which is a right of access to a navigable depth of water.[6]

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[4] While it is conventional to use the term riparian rights, or entitlements, some riparian incidents are property rights, and some – such as wharfing out onto state-owned bottomlands – are usually privileges that depend on prior governmental permission. *See, e.g.*, 1 Henry Philip Farnham, *The Law of Waters and Water Rights* § 113, at 528 (1904) ("Farnham's Law of Waters"). For convenience, in this Report, I will use "riparian rights" as a general term to describe use incidents of riparian landownership.

[5] *See generally* 1 Farnham's Law of Waters at 278-347; Gould at 296-447. A modern description of the incidents of riparian ownership, which for most purposes are quite similar to what they were a century ago, can be found in 1 Joseph W. Dellapenna, *Waters and Water Rights* §§ 6.01 *et seq.* (1991).

[6] *See* Gould § 149, at 300; 1 Samuel C. Wiel, *Water Rights in the Western States* § 904, at 942 (3d ed. 1911) ("Wiel"). *See, e.g., New Jersey v. Delaware*, 291 U.S. 361, 375 (1934) ("By the law of waters of many of our states, a law which in that respect has departed from the common law of England, riparian proprietors have very commonly enjoyed the privilege of gaining access to a stream by building wharves and piers, and this though the title to the foreshore or the bed may have been vested in the state."); *Shively v. Bowlby*, 152 U.S. 1, 40 (1894) ("a riparian proprietor, whose land is bounded by a navigable stream, has the right of access to the navigable part of the stream in front of his land, and to construct a wharf or pier projecting into the stream, for his own use, or the use of others, subject to such general rules and regulations as the legislature may prescribe for the protection of the public") (internal quotation marks omitted); *Mayor of Newark* v. *Sayre*, 60 N.J. Eq. 361, 372-73, 45 A. 985, 990 (Ct. Errors & Appeals 1900) ("Unquestionably the owner of a wharf on the river bank has, like every other subject of the realm, the right of navigating the river, as one of the public. This, however, is not a right coming to him qua owner or occupier of any lands on the bank, nor is it a right which per s[e] he enjoys in a manner different from any other member of the public. But, when this right of navigation is connected with an exclusive access to and from a particular wharf, it assumes a

Essentially, wharfing out allows the riparian landowner to build a structure in the adjacent bottomlands sufficiently far out into the water to allow a ship to navigate to it, so it could load and unload, and its cargo could be transported on the wharf to the shore. As an access right, it provides the riparian landowner the physical capacity to make use of its water adjacency to benefit from water-borne commerce or recreation.[7]

14. As these examples demonstrate, riparian rights deal with facilitation of the ability by a riparian landowner to make general use of the water to which the riparian land is adjacent, rather than with the ultimate specific uses made of the water. Riparian law is property law.[8] It speaks to the rights of riparian landowners to make use of tidelands beneath navigable waters. And it speaks to the rights of riparian landowners among themselves, but not to the application of the general police power to riparian property. Thus, for example, riparian law determines how much water a riparian landowner may divert for use on his riparian tract, vis-à-vis other riparian landowners, but it does not speak to regulation of the kind of crops that may be grown, or whether

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very different character. It ceases to be a right held in common with the rest of the public, for other members of the public have no access to or from the river at the particular place; and it becomes a form of enjoyment of the land, and of the river in connection with the land[.]") (Depue, J., concurring) (internal quotation marks omitted).

[7] However, as a New Jersey court held long ago, while "[i]t is true[] that a grant of a right to build and maintain a wharf bears with it, by implication, the right to use it," that does not mean that any use that is advantageous to, or desirable for, the owner of the wharf is permissible. *Keyport & Middletown Point Steamboat Co. v. Farmers Transp. Co.*, 18 N.J. Eq. 511, 1866 WL 89, at *5 (Ct. Errors & Appeals 1866). "Extraordinary, unusual modes of use, no matter how convenient they may be, are not annexed as incidents in law to" the property right of wharfing out. *Id.*

[8] *See Yates v. Milwaukee*, 77 U.S. (10 Wall.) 497, 504 (1871) ("This riparian right is property, and is valuable, and, though it must be enjoyed in due subjection to the rights of the public, it cannot be arbitrarily or capriciously destroyed or impaired."); *Bell v. Gough*, 23 N.J.L. 624, 1852 WL 3448, at *38 (Ct. Errors & Appeals 1852) ("I am further of opinion that, by the true principles of the English common law, adopted in this state by the constitution of 1776, and adapted to the condition and requirements of our government, the owner of a freehold estate on the margin of tide water navigation has rights appurtenant to his freehold in the adjoining shore . . . as appurtenant to his riparian ownership, the right to exclude the influx of the tide by the erection of embankments, docks, or wharves, provided he does not impair or interfere with the common right of navigation or fishery or any other common right") (Nevius, J.); *see also id.* at *23 (Elmer, J.), *33 (Potts, J.); 1 Farnham's Law of Waters § 65, at 294 ("It appears to me impossible to say that a mode of enjoyment of land on the bank of a navigable river which is thus valuable, and as to which the landowner can thus protect himself against disturbance, is otherwise than a right, or claim to which the owner of land on the bank of the river is by law entitled within the meaning of the act requiring compensation for the destruction of such rights.").

a certain type of industrial facility, for which cooling water may be diverted from the river, is permissible in regard to air pollution. Those are matters left to the general police power. One finds no discussion or consideration of such issues in treatises and case law describing riparian rights and riparian law. By analogy, the law of real property permits ownership and occupancy of real property, but those general rights may be limited under the police power to regulate, restrict, or even prohibit specific activities on that property.

15. Similarly, certain public rights such as the federal navigation servitude, or state public trust law, impose limits on what riparian landowners may do, but they do not arise out of riparian landownership, and they exist independently of riparian law.[9] For example, the federal navigation servitude arises out of the federal commerce power,[10] not out of property law, and imposes independent restrictions on riparian rights.[11] Similarly, there are public rights in the preservation of fisheries that arise out of an independent body of environmental law – international, national, or state – that may restrict the riparian rights to dam a stream for hydro-power, but the exercise of that power would not logically be deemed an exercise of "riparian" jurisdiction.[12]

16. Because the jurisdiction of only one state is at issue in ordinary cases affecting riparian rights, courts have not needed to distinguish between the realm of riparian jurisdiction and jurisdiction exercised pursuant to the police power. For example, if a riparian landowner loses the use of some of the industrial cooling water it was diverting under its riparian rights because the factory using it had to cut back production under applicable state air pollution laws, no question arises as to the scope of riparian jurisdiction, as all jurisdiction is ordinarily embodied within a single sovereign state or is dealt with under the Supremacy Clause of the Constitution[13] if there is conflict between state and federal laws.

17. However, under the terms of the 1905 Compact at issue here, identification of the extent and limits of the riparian realm, "riparian jurisdiction," in the specific context of wharfing out, becomes relevant. To ascertain why the "riparian jurisdiction" and grants language of Article VII

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[9] *See, e.g., Obrecht v. National Gypsum Co.*, 361 Mich. 399, 105 N.W.2d 143 (1960) (public trust, nuisance).

[10] *See Gilman v. City of Philadelphia*, 70 U.S. (3 Wall.) 713, 724-25 (1866).

[11] "[I]t was recognized from the beginning that all riparian interests were subject to a dominant public interest in navigation." *United States v. Willow River Power Co.*, 324 U.S. 499, 507 (1945).

[12] Riparian landowners held their riparian rights and privileges subject to the public right to have migratory fish pass up rivers to their headwaters. *See* Gould § 188, at 358; Joseph K. Angell, *Treatise on the Right of Property in Tide Waters and in the Soil and Shores Thereof* 89 (1826, reprint ed. 1983) ("Angell on Tide Waters"); Wiel § 905, at 945.

[13] U.S. Const. art. VI, § 2.

of the 1905 Compact might have been chosen, it is useful to note the historic situation of the law affecting wharfing out.[14]

18. In the late 19th and early 20th centuries, wharfing out into navigable waters – an incident of the ownership of riparian land[15] – was understood to have two elements that demanded state involvement: protection of the public right of navigation (usually implemented by setting a bulkhead line to mark the furthest permissible water-ward extent of wharfs and other structures) and permission to use submerged land below the high-water mark of navigable waters, which land was owned by the state.[16] The latter use was often implemented by a grant or lease of such land, as was the case in New Jersey. Under an 1871 New Jersey statute, riparian owners on tidal waters who wanted to build a wharf could obtain a lease, grant, or conveyance to state-owned lands in front of their riparian tracts by application to a board of riparian commissioners.[17] Some states, such as Delaware, however, seemed to recognize in this period that existing wharves would be protected so long they did not impede public rights such as that of navigation.[18] As to the first element, protection of the right of navigation, if the wharf interfered with the public right of navigation, it was considered a public nuisance. As to the second element, permission to use

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[14] Nothing in this Report involves the meaning of the Article VII phrase "own side of the river." Instead, the analysis in this Report is based on my expertise in the history of riparian rights and laws and thus the interpretation of the "riparian" language in Article VII.

[15] "[O]wnership of the bed of the river . . . cannot be the foundation of a riparian rights properly so called, because the word 'riparian' is relative to the bank, and not to the bed of the stream, and the connection, when it exists, of property on the banks with property in the bed of the stream depends not upon nature, but on grant or presumption of law." Gould § 148, at 297.

[16] *See Shively*, 152 U.S. at 49-50; *Pollard's Lessee v. Hagan*, 44 U.S. (3 How.) 212 (1845). "The right of property in the soil covered by tide waters, in all navigable rivers and arms of the sea within the limits of the state of New Jersey is vested in the state." *Gough v. Bell*, 22 N.J.L. 441, 1850 WL 4394, at *10 (Sup. Ct. 1850), *aff'd*, 23 N.J.L. 624, 1852 WL 3448 (Ct. Errors & Appeals 1852); *see Mayor of Newark*, 60 N.J. Eq. at 363, 45 A. at 986.

[17] 1871 N.J. Laws ch. 256, p. 44, § 1. The present version of the law is found in New Jersey Statutes Annotated § 12:3-10. Prior to the regulation of wharfing out by statute, "the owners of land bounding on navigable waters had an absolute right to wharf out and otherwise reclaim the land down to and even below low water, provided they did not thereby impede the paramount right of navigation." *Bell v. Gough*, 1852 WL 3448, at *23, *29 (Elmer, J.). But the "absolute right" was apparently only recognized down to the line of low water. *See id.* at *38 (Nevius, J.). The Wharf Act of 1851 required state approval to fill below the low-water line. *See* 1851 N.J. Laws, p. 335.

[18] "[I]n the case of a mere purpresture the court will not enjoin or abate it, unless it shall appear as a fact . . . to the injury of the public." *Harlan & Hollingsworth Co. v. Paschall*, 5 Del. Ch. 435, 1882 WL 2713, at *11 (1882).

submerged lands, if permission to use state submerged land on which to build a wharf was not granted or otherwise assured, the wharf was subject to removal as a trespass on sovereign property, historically known as a purpresture.[19]

19. Riparian landowners who desired to wharf out routinely sought prior authority for their wharf from the state as to both these matters.[20] In the ordinary case, there was no ambiguity about which state had jurisdiction over this riparian activity: the state in which the riparian land was located also owned the submerged bottomlands.[21] The failure to resolve New Jersey's challenge

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[19] "If a littoral proprietor, without grant or license from the Crown, extends a wharf or building into the water in front of his land it is purpresture, though the public rights of navigation and fishery may not be impaired. If such a structure causes injury to the public right, it is a common nuisance and abatable as such[.]" Gould § 21, at 45 (footnotes omitted); *see also* Farnham's Law of Waters § 113, at 527. For a discussion of the traditional law relating to wharfing out, *see* Angell on Tide Waters at 125-33.

[20] The law in New Jersey from the legislation of 1851 to modern times, as set out in note 17, *supra*, is discussed in detail in *Bailey v. Driscoll*, 19 N.J. 363, 117 A.2d 265 (1955). State permission to extend facilities into the state's territory was authorized by grant or lease of land within the external boundaries of the riparian tract after 1871. In addition, the laws established bulkhead and pier lines to set an outer boundary beyond which improvement could not be made, in order to protect public rights of use in the waters, essentially the public right of navigation. In that way, both state proprietorship and the public's rights of use were recognized. At the same time, the authority of the federal government to control the navigation of navigable waters to the extent necessary for the regulation of interstate and foreign commerce was acknowledged. This history was similar to that in other states. *See* 1 Farnham's Law of Waters §§ 113b, 115, at 533, 554.

[21] *See* note 16, *supra*. Some states have granted specific tracts of land between high and low tide to the riparian owners (*e.g.*, *People v. California Fish Co.*, 166 Cal. 576, 138 P. 79 (1913)) or, like Delaware, recognized generally that "title to riparian property extends from the upland to the low water mark," *City of Wilmington v. Parcel of Land Known as Tax Parcel No. 26.067.00.004*, 607 A.2d 1163, 1168 (Del. Sup. Ct. 1992); *Harlan & Hollingsworth*, 1882 WL 2713, at *10. What is unusual here is that New Jersey owns the land between the high- and low-water marks (except to the extent it has granted that land away), and Delaware owns the land below the low-water mark. *See New Jersey v. Delaware*, 291 U.S. 361 (1934). These are the lands usually referred to as being in the public trust, or jus publicum. American public trust law is usually traced back to the 1821 New Jersey case of *Arnold v. Mundy*, 6 N.J.L. 1, 1821 WL 1269 (Sup. Ct. 1821), a case involving conflicting claims to ownership of oyster beds, in which the court upheld the state's ownership of land beneath tidal waters, in this much-quoted passage: "[T]he navigable rivers, where the tide ebbs and flows, the ports, the bays, the coasts of the sea, including both the water and the land under the water, for the purposes of passing and repassing, navigation, fishing, fowling, sustenance, and all the other uses of the water and its products . . . are common to all the people, and that each has a right to use them according to his pleasure,

to the boundary prior to the time of the 1905 Compact (or in the Compact itself) would have created an unusual set of potential problems for New Jersey with regard to its issuance of "grants, leases, and conveyances" to riparian landowners within the Twelve-Mile Circle, because New Jersey's claim to have jurisdiction on, over, and under the Delaware River within that area had been denied by Delaware.

20. New Jersey may have been uncertain as to which state's law governed the right to wharf out because the law was that "[i]n a case of wharfing out . . . '[t]he rights of a riparian owner upon a navigable stream in this country are governed by the law of the state in which the stream is located.' "[22] Thus, New Jersey could have feared that its prior grants, leases, and conveyances applied to land that might turn out to be in Delaware, and that structures upon those lands would become subject to scrutiny under the riparian standards that Delaware applied in its state.[23] Whether those standards might turn out to be more rigorous than those New Jersey had applied could not be known with certainty. Because, as Justice Cardozo later noted, "New Jersey in particular has been liberal in according" to riparians "the privilege of gaining access to a stream by building wharves and piers,"[24] New Jersey might have wished to protect the owners of existing wharves and structures.

21. At the time the 1905 Compact was being drafted, there were, according to New Jersey's Castagna Affidavit, only a handful of structures extending from New Jersey into Delaware. Insofar as the unresolved boundary question between the two states raised in a novel form the historic concern about purprestures and the states were concerned about which state's law of wharfing out applied to those landowners, it may explain the distinctive language chosen by the drafters of Article VII of the 1905 Compact. The law of wharfing out concerns a question of jurisdiction over a riparian right; thus, it would explain the use of the phrase "riparian jurisdiction." Moreover, because exercise of this riparian right under New Jersey law required a grant or lease of state-owned land, it would explain the phrase in Article VII "to make grants, leases, and conveyances of riparian lands and rights." Such language would also have been appropriate to other riparian property rights questions, such as which state's law governed accretions, or which state had jurisdiction to authorize diversions of water for use on riparian

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subject only to the laws which regulate that use; that the property indeed vests in the sovereign, but it vests in him for the sake of order and protection, and not for his own use, but for the use of the citizen[.]" *Id.* at *9. For a brief historical discussion, *see* Moses M. Frankel, *Law of Seashore, Waters and Water Courses, Maine and Massachusetts* 125 (1969).

[22] 1 Wiel § 898, at 934 (quoting *Weems Steamboat Co. of Baltimore v. People's Steamboat Co.*, 214 U.S. 345, 355 (1909)).

[23] *See, e.g., Harlan & Hollingsworth, supra.*

[24] *New Jersey v. Delaware*, 291 U.S. at 375.

lands. Those concerns would be addressed by the phrasing "riparian jurisdiction of every kind and nature."

22. Such an arrangement would have been consistent with descriptions in the then-existing treatises (cited throughout this opinion), and the laws of New Jersey and Delaware, as to what was comprised within the category of riparian rights: e.g., the right of access to navigable depths via a wharf, the right to own accretions, or the right to divert from the river for use on riparian land.

23. Riparian law descriptions and definitions do not, however, describe the conduct that may be engaged in on riparian property. Such conduct is governed under the jurisdiction of the general police power. For example, one has a riparian right to use river water to irrigate a riparian tract, but there is no riparian right to grow marijuana or any other crop on the tract. One may have a riparian right to wharf out to navigable water so that a ship can tie up to the dock, but that does not create a riparian right to have, or not to have, gambling on the ship or dock, or to determine the safety rules for the ships that dock, whether or not they must be double-hulled, or have air-pollution controls on their emissions, for example. Similarly, nothing in the law governing the right to construct a wharf insulates activities to be engaged in on the wharf, such as those involved in the loading or unloading of particular cargoes, if they should constitute a nuisance or otherwise violate general laws for the protection of public health or safety. These are matters of general police power law governed by the sovereign that has general police power authority.

24. I have examined New Jersey's responses to Delaware's Requests for Admissions, as well as the riparian grants, leases, and conveyances issued by New Jersey between 1854 and 1920 discussed in the Castagna Affidavit. The distinction between that which is authorized under these exercises of riparian jurisdiction, and that which is within the scope of the general police power jurisdiction, is manifest in these documents. The various grants describing the land being transferred state that piers or other structures are to be built, and where they describe the intended uses do so in general terms, such as "he may deem proper and necessary for the improvement of his property or for the benefit of commerce";[25] or "for the accommodation of vessels navigating the same, and from time to time to rebuild and repair the same as may be necessary for the improvement of his property and the benefit of commerce";[26] or "to exclude the tide-water from so much of the land above described as lie under tide-water, by filling in or otherwise improving the same, and to appropriate the lands under water above described to exclusive private uses."[27] These actions exercising riparian jurisdiction do not include examination or regulation of the particular activities intended to be engaged in.

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[25] Cited in Affidavit of Richard Castagna (reproduced as Appendix 5 to NJ Brief at 33a, ¶ (5)).

[26] *Id.* at 32a-33a, ¶ (4).

[27] *Id.* at 39a, ¶ (17).

25. The responses to Delaware's Requests for Admissions indicate a similar distinction. For example, New Jersey responded that "the grants do not expressly specify the precise business that can be carried on at any point in time"[28] or "the precise cargo that can be loaded or unloaded at any specific point in time."[29] It also stated that the authorization or restriction of any particular activity to be conducted on a wharf, pier, or like structure "would be under other State, federal or local laws, and not by the establishment of pierhead and bulkhead lines."[30] A person wishing to conduct a particular business activity on a wharf, in addition to receiving a riparian grant, would still have to comply with all other "applicable New Jersey laws[] and local laws."[31] To the best of my knowledge, the separation of authorities described in New Jersey's Responses to Requests for Admissions reflects the usual and traditional separation of the exercise of riparian rights from the exercise of state police power.

26. This distinction between riparian property law and general regulatory law has been drawn in many cases over the past century, though it has not arisen in the specific instance of two different states, one holding riparian jurisdiction and another holding general police power jurisdiction.[32] *Cummings v. City of Chicago*,[33] a case in the United States Supreme Court decided in the same period the 1905 Compact in issue here was being drafted, illustrates the separateness of the riparian realm of jurisdiction and that of the general police power, though it formally involved jurisdiction over riparian rights in the federal government and a claim of federal preemption. In that case, the United States regulated riparian landowners' wharfing out. The landowner there had complied with all the requirements of the federal permitting scheme that dealt with the building of a dock in the river, only to find that its project was blocked because it did not have an additional required permit from the City of Chicago. The riparian landowner claimed that, having complied with the wharfing out law, the further regulatory demand of the city under the police power was a violation of its property right, and the federal permitting system for wharfing out should be viewed as preemptive. Otherwise, the riparian owner suggested, it would have met all the requirements of the jurisdiction that governed riparian developments in the river and have

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[28] New Jersey's Responses to Delaware's First Requests for Admissions, No. 5 (filed Sept. 8, 2006).

[29] *Id.*, No. 9.

[30] *Id.*, No. 3.

[31] *Id.*, No. 22.

[32] Other than the instant case, the case of *Virginia v. Maryland*, 540 U.S. 56 (2003), and another New Jersey case involving an interstate compact with New York, *see People v. Central R.R. Co. of New Jersey*, 42 N.Y. 283, 1870 WL 7713 (1870), the division of jurisdiction between states over rivers appears to be unprecedented.

[33] 188 U.S. 410 (1903).

fully implemented its riparian rights, only to be frustrated by the separate police power standards of the local government. The Court held that, merely because a company that wanted to build a dock had complied with all the detailed federal riparian regulation of wharfing out that had been imposed on the Calumet River in that case, that did not mean that "no jurisdiction or authority whatever remains with the local authorities."[34] The Court noted that, whatever the legitimate concerns of the federal government over the construction of wharves, the state also has its own internal police power to protect the interests of its citizens. Despite the extensive scope of the federal regulation there, and the claims that Congress had taken "possession" of the river, the Court indulged no such presumption, warning that the "river, it must be remembered, is entirely within the limits of Illinois, and the authority of the state over it is plenary."[35] Emphasizing the importance to a state of retaining regulatory jurisdiction over activities within its territory, the Court said that any congressional determination to abolish such state authority "would have been manifested by clear and explicit language."[36] One would expect the same standard to apply where a state is claimed to have divested itself of general police power jurisdiction over its territory.

27. The independence of the riparian and the police power realms is sharply drawn in the opinion of Justice Holmes in *Hudson County Water Co. v. McCarter*,[37] a case arising from New Jersey. The water company, a riparian landowner, sought to deliver to New York some water it was diverting from the Passaic River, in violation of a New Jersey law prohibiting such exports.[38] Justice Holmes characterized the case as one in which the water company was asserting that the anti-export law violated its riparian property rights.[39] The opinion is famous for its statement that

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[34] *Id.* at 426. A similar point was made in a New Jersey case, where a municipality challenged a riparian landowner who was making a legitimate riparian use of the shore and who refused to obtain a city permit under the police power. The court said that "[t]he authority lodged in the [state] to make grants or leases of the state's riparian lands is not . . . inconsistent with the existence of the police power in the municipality in respect thereof." *Ross v. Mayor & Council of Edgewater*, 115 N.J.L. 477, 487, 180 A. 866, 872 (Sup. Ct. 1935).

[35] *Cummings*, 188 U.S. at 426-27.

[36] *Id.* at 430.

[37] 209 U.S. 349 (1908). The named plaintiff in that case, Robert McCarter, was both New Jersey's Attorney General and one of the New Jersey commissioners who negotiated the 1905 Compact.

[38] Notably, water has had a special place under the so-called dormant Commerce Clause. *See Sporhase v. Nebraska ex rel. Douglas*, 458 U.S. 941 (1982). *See also Idaho ex rel. Evans v. Oregon*, 462 U.S. 1017, 1025 (1983).

[39] It had been strongly argued that what the company wanted to do was not within its riparian rights at all, *see McCarter v. Hudson County Water Co.*, 70 N.J. Eq. 695, 708, 65 A.

"[a]ll rights tend to declare themselves absolute to their logical extreme."[40] The decision centrally rests on a recognition of the separateness of the realms of the law of property and of the police power. Whatever the company's riparian rights may have been, the decision holds, they must nonetheless pass the independent test of the police power invoked to protect "the interests of the public."[41] "[T]he private property of riparian proprietors cannot be supposed to have deeper roots. . . . The private right to appropriate is subject . . . to the initial limitation that it may not substantially diminish one of the great foundations of public welfare and health."[42] Accordingly, the domain of property rights, whatever its scope, must nonetheless be tested against the distinct demands of the police power. As Justice Holmes thus made clear, the police power embodies a jurisdiction separate and apart from the head of jurisdiction that defines property rights.[43]

28. In the same respect, riparian landowners who had established mills in full compliance with the riparian law[44] could be compelled at some later time, in response to regulatory laws designed to protect or restore fisheries, to install fish ladders to allow the passage of migratory species, because riparian landowners held their riparian rights subject to the restrictions imposed to protect public rights under police power jurisdiction.[45] Over the years, public interests of various

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489, 494 (Ct. Errors & Appeals 1906), *aff'd*, 209 U.S. 349 (1908), but Justice Holmes ignored those claims and used the decision to emphasize the separateness of authority over property and the authority of the police power.

[40] 209 U.S. at 355.

[41] *Id.*

[42] *Id.* at 356.

[43] "And these rights of the 'riparian owner' are not *common* rights, for they do not belong to his neighbor, who lies behind him on the main land, nor are they mere rights of adjacency to land belonging to the State, for mere adjacency to a mud flat belonging to the State lying inland would give no right in or over it; they are therefore *private* rights of the 'riparian owner' in the lands of the State lying in front of him beyond the 'shore;' which rights are his by the local common law of the State by reason of his adjacency." Opinion Concerning Riparian Rights at 8, Hon. George M. Robeson, Attorney General of New Jersey (1867).

[44] A dam erected for reasonable mill purposes is an incident of riparian landownership. *See* John Norton Pomeroy, *A Treatise on the Law of Riparian Rights* § 11, at 13 (1887); *McCarter*, 70 N.J. Eq. at 708, 65 A. at 494. But mill rights were sometimes viewed quite restrictively in light of the traditional riparian right to benefit from the continued natural flow of the stream. *See, e.g., Delaney v. Boston*, 2 Del. (Harr.) 489, 1839 WL 165, at *4 (Super. Ct. 1839).

[45] *See* Gould § 187, at 358; Angell on Watercourses § 89, at 89; 1 Wiel § 905, at 945.

kinds have been imposed to restrict or prevent uses otherwise authorized pursuant to riparian landowners' proprietary rights.[46]

29. A modern state case, citing both *Hudson County* and *Cummings*, powerfully reinforces the distinction drawn in those decisions. In *Obrecht v. National Gypsum Co.*,[47] a riparian proprietor built a wharf in accord with its riparian rights and with the authority of the riparian permitting jurisdiction (also in that case the U.S. Corps of Engineers). But the use made of the wharf – loading and transporting gypsum rock – was challenged as a nuisance. The riparian landowner defended on the ground that it was operating pursuant to its duly permitted wharfing out riparian property right, and that the use it was making of the wharf could not be separately challenged under the state's nuisance or public trust laws. The court rejected that defense, noting the separate categories of riparian rights and public rights. Though the exercise of its riparian rights had received approval from the Corps of Engineers, which had jurisdiction to authorize "the construction of a massive and permanent loading dock . . . and the dredging of more than a mile deep channel,"[48] the riparian proprietor had to comply as well with state requirements for the protection of the public health and welfare. The *Obrecht* court also cited the Supreme Court's 19th-century decisions in *Yates v. Milwaukee*[49] and *Illinois Central Railroad v. Illinois*,[50] in which the Court observed that a riparian proprietor may access navigable waters and make a wharf or pier for that purpose, but nevertheless must also comply with general laws protecting public rights. *Obrecht* thus reiterates the firmly rooted principle that the entity with authority over riparian permitting deals with the limited issues of the property rights of the riparian owner and the physical extent of that right to the line of navigability, but not with the general scope of the police power.

30. The distinction between riparian rights and public rights drawn in *Obrecht*, as well as the importance to a state of issues affecting the public health and welfare, buttresses the likelihood that, insofar as the 1905 Compact may be construed as a transfer of any permanent authority by Delaware to New Jersey over waters within its boundaries, that authority would have been limited to administration of the property aspects of riparian landownership on the New Jersey shore, and

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[46] *See, e.g., Colberg, Inc. v. State ex rel. Dep't of Public Works*, 67 Cal. 2d 408, 432 P.2d 3 (1967) (access to navigable waters cut off by highway bridge over navigable water); *Freed v. Miami Beach Pier Corp.*, 93 Fla. 888, 899, 112 So. 841, 845 (1927) (if they become a nuisance, wharves can be removed or abated); *State v. Central Vermont Ry., Inc.*, 153 Vt. 337, 351-52, 571 A.2d 1128, 1135-36 (1989) (wharves no longer meet public trust standard).

[47] 361 Mich. 399, 105 N.W.2d 143 (1960).

[48] 361 Mich. at 405, 105 N.W.2d at 145.

[49] 77 U.S. (10 Wall.) 497 (1871).

[50] 146 U.S. 387 (1892).

not to the far more extensive and significant administration of public rights and the general police power over the Delaware River and its environs as affected by activities related to use of wharves constructed, or to be constructed, from the New Jersey shore into the river.

Conclusion

31. For the above reasons, and assuming it was determined that New Jersey's "riparian jurisdiction" extended water-ward of the mean low-water mark on the easterly shore of the Delaware River within the Twelve-Mile Circle, it is my opinion that, in agreeing to the exercise of "riparian jurisdiction of every kind and nature, and to make grants, leases, and conveyances of riparian lands and rights"on the part of New Jersey, those who drafted and approved the 1905 Compact did not intend to withdraw from Delaware regulatory or police power authority over uses or activities of those who might in the future use, or propose to use, wharves built out from the New Jersey shoreline beyond the territorial limits of New Jersey.

Respectfully submitted,

Joseph L. Sax

Date: Nov. 7, 2006

EXHIBIT A

**Joseph L. Sax**

**James H. House & Hiram H. Hurd Professor (emeritus)**

**School of Law (Boalt Hall)**

**University of California (Berkeley)**

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Education:

A.B. Harvard University 1957

J.D. University of Chicago 1959

Admitted to Practice:

Michigan, District of Columbia (inactive), U.S. Supreme Court

Professional Experience:

Attorney, private practice, Washington, D.C. (1959-62)

Professor of Law, University of Colorado (1962-66)

Philip A. Hart Distinguished University Professor, University of Michigan (1966-86)

Counselor to the Secretary of the Interior, Deputy Assistant Secretary of the Interior (1994-1996)

Visiting Professor of Law:

University of Paris I (Panthéon-Sorbonne)

Stanford University

Order of the Coif Distinguished Visitor (Texas Tech., West Virginia, Nebraska)

University of Utah

University of Colorado

Centennial Distinguished Visitor, IIT-Chicago Kent College of Law

Virginia Environmental Endowment Professor, University of Richmond

Wallace S. Fujiyama Visiting Professor, Univ. of Hawaii

Honors and Awards (selected):

•Fellow, American Academy of Arts and Sciences

•Doctor of Laws (hon.), Illinois Institute of Technology

Chicago-Kent College of Law

•Professional Achievement Citation, University of Chicago Alumni Ass'n

•Elizabeth Haub Award, Free University Brussels, Gold Medalist

•Fellow, Center for Advanced Study in the Behavioral Sciences, Stanford

•Distinguished Water Attorney Award (Water Education Foundation, 2004)

•Cook Lecturer in American Institutions, University of Michigan

•Environmental Law Institute Award

•Wm. O. Douglas Legal Achievement Award, The Sierra Club

•Biennial Book Award, University of Michigan Press

•Conservationist of the Year, Audubon Society (Detroit)

•Resource Defense Award, National Wildlife Federation

•Distinguished Faculty Achievement Award, University of Michigan

•Environmental Quality Award, U.S. E.P.A.

•American Motors Conservation Award

Consultancies (selected)

In recent years, I have consulted/prepared reports/been an expert witness for: (1) United States Bureau of Reclamation; (2) Coachella Valley (California) Water District; (3) Los Angeles Department of Water and Power; (4) State of Mississippi; (5) County of Riverside, California; (6) City of Santa Cruz, California; (7) Council of Great Lakes Governors; (8) International Joint Commission (Great Lakes); (9) California State Water Resources Control Board; (10) City of Glendale, California; (11) Southern Nevada Water Authority; (12) County of Yolo, California; (13) State of Delaware (original jurisdiction suit in the U.S. Supreme Court); (14) United States (Department of State).

EXHIBIT B

Publications 1996-2006

Books

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"Comment on John Harte's Paper, "Land Use, Biodiversity, and Ecosystem Integrity: The Challenge of Preserving the Earth's Life-Support System," Symposium, Environment 2000–New Issues for a New Century, 27 Ecol. L. Q. 1003 (2001).

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"The History of Water Law in the United States," Water Resources Center Archives (Univ. of Cal. Berkeley), June 2004, vol. 11, no. 1,
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No. 134, Original

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

STATE OF NEW JERSEY,

*Plaintiff,*

v.

STATE OF DELAWARE,

*Defendant.*

**AFFIDAVIT OF PHILIP CHERRY IN SUPPORT OF DELAWARE ON CROSS-MOTIONS FOR SUMMARY JUDGMENT**

STATE OF DELAWARE :
: SS
COUNTY OF KENT :

Philip Cherry, being duly sworn, deposes and says:

1. I am the Director of Policy and Planning for the Delaware Department of Natural Resources and Environmental Control ("DNREC"), an agency of the State of Delaware. I have knowledge of the matters set forth herein, based upon my personal knowledge and upon my review of the files maintained by DNREC and documents produced in this litigation.

2. From 1983 to 1990, I was employed by the Division of Water Resources of DNREC, initially as a geohydrologist and later as the manager of the Water Supply Branch. In 1990, I was promoted and served as the Pollution Prevention Program Director for DNREC until 1993. From 1993 to 1998, I served as an executive assistant to the Secretary of DNREC representing DNREC on legislative matters. In 1998, I left DNREC to act as a legislative liaison for then Governor (now Senator) Thomas

Carper. In December 2000, I returned to DNREC to serve in my current position, Director of Policy and Planning.

3. As part of my responsibilities as Director of Policy and Planning for DNREC, I supervise the administration of the Delaware Coastal Zone Act. Del. Code Ann. tit. 7, §§ 7001 *et seq.* (herein, the "DCZA" or the "Act"). I report directly to the Secretary of DNREC on all DCZA issues and applications.

4. The DCZA, adopted in 1971, begins with a statement of legislative policy and purpose declaring that "the coastal areas of Delaware are the most critical areas for the future of the State in terms of the quality of life in the State." Del. Code Ann. tit. 7, § 7001. Under the Act, the "declared public policy" of Delaware is "to control the location, extent and type of industrial development in Delaware's coastal areas." *Id.* The Act specifically finds that "offshore bulk transfer facilities represent a significant danger of pollution to the coastal zone and generate pressure for the construction of industrial plants in the coastal zone, which construction is declared to be against public policy." For these reasons, the Act declares that an absolute "prohibition against bulk transfer facilities in the coastal zone is deemed imperative." *Id.* Section 7003, "uses absolutely prohibited in the coastal zone," implements this policy by providing that "offshore gas, liquid or solid bulk product transfer facilities which are not in operation on June 28, 1971, are prohibited." Del. Code Ann. tit. 7, § 7003. Delaware's coastal zone consists of land, water, and subaqueous land within the territorial limits of Delaware in the Delaware River, including the water and subaqueous soil within a twelve-mile arc from the town of New Castle, Delaware, which is known as the twelve-mile circle. Del. Code Ann. tit. 7, § 7002(a).

5. In December 1971, the El Paso Eastern Company ("El Paso") submitted a proposal to construct a liquefied natural gas ("LNG") terminal in New Jersey, opposite Claymont, Delaware, which also proposed extending a pier into Delaware territory within the twelve-mile circle. On February 23, 1972, the State Planner, then charged with administering the DCZA, issued a status decision[1] rejecting El Paso's proposed LNG terminal as a

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[1] Under Delaware's coastal zone act application process, an applicant may either apply for a permit or seek a status decision regarding whether a proposed use is permitted under the Act. Applicants, such as El Paso and Crown Landing LLC, often apply for a status decision before making a formal permit application.

prohibited use under the DCZA. DE App. 3483-3484. The State Planner apprised New Jersey officials of El Paso's proposal and Delaware's application of the DCZA to the proposal. Delaware's files indicate that New Jersey expressed no objection to Delaware's application of the DCZA to the El Paso proposal. DE App. 3487.

6. In 1972, the Federal government adopted the Coastal Zone Management Act ("CZMA") pursuant to which coastal states were authorized to develop a Coastal Zone Management Plan. 16 U.S.C. §§ 1451 *et seq.* The Office of Coastal Resource Management of the National Oceanic and Atmospheric Administration ("NOAA"), within the U.S. Department of Commerce, administers the CZMA. In 1979, NOAA approved Delaware's Coastal Zone Management Plan ("CZMP"), which includes the DCZA as part of Delaware's final Environmental Impact Statement under the Federal Coastal Zone Management Program. Delaware's CZMP was updated and approved in 1995, 1998, and 2003. Delaware's CZMP states that there is no site in Delaware suitable for the location of any LNG import-export facility.

7. In 1980, New Jersey submitted to NOAA a final environmental impact statement ("EIS") for New Jersey's proposed CZMP, which recognized Delaware's authority to apply its coastal zone laws to boundary-straddling projects. The 1980 New Jersey EIS reported that New Jersey and Delaware agencies had concluded that "any New Jersey project extending beyond mean low water must obtain coastal permits from both states. New Jersey and Delaware, therefore, will coordinate reviews of any proposed development that would span the interstate boundary to ensure that no development is constructed unless it would be consistent with both state coastal management programs." DE App. 2607-2626; *Id.* at 2619. New Jersey's 1980 CZMP also stated that it "considers decisions concerning the siting of LNG terminals to be an interstate matter." *Id.* at 261 (emphasis added).

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Status decisions are binding decisions of DNREC that may be appealed to the Coastal Zone Industrial Control Board and through the state court system. *See Coastal Bardge Corp. v. Coastal Zone Indus. Control Bd.*, 492 A.2d 1242, 1244 (Del. 1985). A coastal zone permit cannot issue for a proposed if a status decision has previously held that the proposed use is prohibited under the act.

8. On July 13, 1990, Keystone Cogeneration Systems, Inc. ("Keystone") (currently known as the Logan Generating Company) applied to DNREC for a status decision relating to its proposal to build a 200 megawatt coal-fueled cogeneration facility in Logan Township, New Jersey, including an 1,100 foot pier extending into Delaware waters. In a status decision issued November 19, 1990, DNREC determined that the project did not constitute a prohibited bulk product transfer facility under the DCZA because it fell within a statutory exception for a single use industrial or manufacturing facility. DE App. 3505. However, DNREC required Keystone to satisfy the permitting requirements under the DCZA. On September 24, 1991, New Jersey approved Keystone's permit on the express condition that Keystone, prior to construction, Keystone was required to obtain permits required by Delaware under its coastal zone regulations as well as its subaqueous lands regulations. DE App. 3549-3556.

9. In 2002, representatives of British Petroleum, through its wholly owned indirect subsidiary, Crown Landing LLC (herein, "BP") contacted DNREC regarding a proposal to construct an LNG terminal partially within Delaware waters. At that time, BP advised DNREC that the majority of the offshore unloading facility for the proposed project would be located in Delaware waters within the boundaries of New Castle County, Delaware. The related onshore facilities would be located in Logan Township, New Jersey. BP stated that approval under the DCZA would be required because the project is partially located in Delaware territory.

10. BP's representatives advised DNREC that one of the primary advantages of the proposed site is the proximity to natural gas transmission pipelines. BP, however, has alternate available sites where it could locate its proposed facility in the Delaware River outside Delaware's coastal zone (including sites in Logan Township, New Jersey, Greenwich Township, New Jersey, Paulsboro Borough, New Jersey, and West Deptford, New Jersey).

11. On September 27, 2004, BP submitted an application to DNREC for permission to perform approximately nineteen tests including geotechnical test borings in the Delaware River to gather information for the design of a receiving terminal to support the proposed LNG facility. DE App. 3785-3788. On October 29, 2004, after public comments were received on BP's application for geotechnical test borings in the Delaware River, Laura M. Herr, the Program Manager of DNREC's Wetland and Subaqueous Lands Section, advised BP that DNREC could not make a decision

on the application until a determination was made on whether construction of an LNG facility is an activity permitted in Delaware's coastal zone. DE App. 3789. On November 4, 2004, BP withdrew its geotechnical test boring application. DE App. 3791.

12. On December 7, 2004, BP filed a request under the DCZA seeking a status decision by the Secretary of DNREC as to whether the proposed LNG facility would be a permitted use under the DCZA.

13. BP's request stated that the proposed LNG terminal docking facility would consist of a 2,000 foot long pier and a single berth. The supertankers berthing at the docks would range from 914 to 1,056 feet in length and would transport from 138,000 to 200,000 cubic meters of LNG.

14. BP's unloading facility would require the dredging of 1.2 million cubic yards of Delaware subaqueous soil, covering an area larger than 30 acres. Thereafter, because of sedimentation, BP or others would be required to dredge 60,000 to 90,000 cubic yards per year of Delaware's subaqueous land to enable the supertankers to navigate the Delaware River.

15. BP's proposed LNG terminal would include a docking facility that would extend 2,000 feet from the New Jersey shore into Delaware territory and would be 50 feet wide. The facility would also include a 6,000 square foot unloading platform in Delaware territory. The trestle is designed to provide structural support for cryogenic piping, a containment trough, and utility lines from shore to berth. The trestle will also accommodate two travel lanes for light vehicles. This pier would be supported on approximately 80 steel pilings, each three feet in diameter and 100-120 feet long which are anchored into the riverbed.

16. The proposed LNG terminal would be expected to receive two to three ships per week. These ships would navigate up the Delaware River, by the Salem Nuclear Power Plant, under the Delaware Memorial Bridge (a major interstate bridge that connects New Jersey and Delaware), and past densely populated areas of New Castle County, Delaware, including its largest city, Wilmington, and the towns of New Castle, Delaware City, and

Claymont. These communities could be within a potential hazard area during the LNG supertanker transit.[2]

17. When the proposed LNG supertankers are in transit, a moving safety and security zone would restrict other vessels 3,000 feet ahead and behind and 1,500 feet on all sides of the supertanker. When docked, a temporary hazard area would exist around the unloading facility during the period when the ship is at the dock. The LNG supertankers would be docked at the BP facility approximately 30 to 40 percent of each year. The LNG supertankers would also be in close proximity to current gas pipelines in the Delaware River.

18. In January of 2005, DNREC published notices inviting public comment on BP's request for a coastal zone status decision. Over 200 public comments were received, all but one urging rejection of the proposal.

19. On February 3, 2005, John A. Hughes, Secretary of DNREC, issued DNREC's status decision on BP's application. In the status decision, Secretary Hughes concluded that the proposed LNG terminal represents a prohibited bulk product transfer facility which is prohibited under the DCZA. Secretary Hughes also held that the proposed facility exhibits characteristics sufficient to deem it heavy industry, which is also prohibited under the DCZA. DE App. 3811.

20. On February 15, 2005, BP filed an appeal of the status decision, which was heard by Delaware's Coastal Zone Industrial Control Board (the "Board") on March 30, 2005. After extensive briefing and a public hearing, the Board issued a decision on April 14, 2005, unanimously affirming the Secretary's determination that BP's proposed LNG terminal is a prohibited bulk transfer facility under the DCZA. DE App. 3813-3829. The Board's decision holds that "the proposed construction is absolutely prohibited by the" DCZA and "no permit therefor may be issued." *Id.* at 10.

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[2] A December 2004 study by Sandia National Laboratories for the United States Department of Energy, titled "Guidance On Risk Analysis And Safety Implications Of A Large Liquefied Natural Gas (LNG) Spill Over Water," reported that a spill of LNG could create a fireball that would cause injuries and property damage over 1600 meters away. DE App. 3835-3837.

21. BP chose to not appeal this decision of the Board to Delaware's Superior Court, as permitted by the DCZA.

Philip Cherry

Subscribed And Sworn To
Before Me This 16th Day
Of December, 2006

Notary Public
Of The State Of Delaware

No. 134, Original

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

STATE OF NEW JERSEY,

*Plaintiff,*

v.

STATE OF DELAWARE,

*Defendant.*

**AFFIDAVIT OF SARAH W. COOKSEY IN SUPPORT OF DELAWARE ON CROSS-MOTIONS FOR SUMMARY JUDGMENT**

STATE OF DELAWARE :
: ss:
COUNTY OF NEW CASTLE :

Sarah W. Cooksey, being duly sworn, deposes and says:

1. I have knowledge of the matters set forth herein, based upon my personal knowledge, based upon my review of the files maintained by my office and documents produced in this litigation.

2. I am employed as an Environmental Program Administrator for the Delaware Department of Natural Resources and Environmental Control ("DNREC"). Since 1992, I have directed the day to day operations of Delaware's Coastal Management Program, and in that position I am responsible for implementing Delaware and federal coastal management laws. The Delaware Coastal Management Program is a part of the Division of Soil and Water Conservation within DNREC.

3. In 1972, Congress passed what is known as the Coastal Zone Management Act. 16 U.S.C. §§ 1451 *et seq.* In passing the

Act, Congress stated that "[i]n light of . . . the urgent need to protect and to give high priority to natural systems in the coastal zone, present state and local institutional arrangements for planning and regulating land and water uses in such areas are inadequate." 16 U.S.C. § 1451(h). Congress stated that "[t]he key to more effective protection and use of the land and water resources of the coastal zone is to encourage the states to exercise their full authority over the lands and waters in the coastal zone by assisting the states, in cooperation with Federal and local governments and other vitally affected interests, in developing land and water use programs for the coastal zone, including unified policies, criteria, standards, methods, and processes for dealing with land and water use decisions of more than local significance." 16 U.S.C. § 1451(i). Congress also declared it to be the national policy to "encourage the participation and cooperation of the public, state and local governments, and interstate and other regional agencies, as well as of the Federal agencies having programs affecting the coastal zone, in carrying out the purposes of" the Act. 16 U.S.C. § 1452(4).

4. Under the Coastal Zone Management Act, the coastal zone is defined as "the coastal waters (including the lands therein and thereunder) and the adjacent shorelands (including the waters therein and thereunder), strongly influenced by each other and in proximity to the shorelines of the several coastal states, and includes islands, transitional and intertidal areas, salt marshes, wetlands, and beaches . . ." 16 U.S.C. § 1453(1).

5. As an inducement for States to develop a coastal zone management program pursuant to the Coastal Zone Management Act, the Act authorizes the Secretary of Commerce to make grants to states upon approval of a coastal zone management program by the Secretary of Commerce. 16 U.S.C. § 1454; 16 U.S.C. § 1455(b). Federal funding is an important incentive for coastal states to seek approval of a coastal zone management program.

6. For a state to obtain approval of a coastal management program, the Secretary of Commerce must find that the state has developed and adopted a management program for its coastal zone "with the opportunity of full participation by relevant Federal agencies, State agencies, local governments, regional organizations, port authorities, and other interested parties and individuals, public and private, which is adequate to carry out the purposes of this chapter and is consistent with the policy declared in section 1452 of this title." 16 U.S.C. § 1455(d)(1). A state's coastal zone management program must include, among other

things: (a) "[a]n identification of the boundaries of the coastal zone subject to the management program" and (b) "[a] description of the organizational structure proposed to implement such management program, including the responsibilities and interrelationships of local, areawide, State, regional, and interstate agencies in the management process." 16 U.S.C. § 1455(d)(2)(A); 16 U.S.C. § 1455(d)(2)(F).

7. In the late 1970s, both Delaware and New Jersey worked on developing a coastal management program[1] under the federal Coastal Zone Management Act to take advantage of federal funding available under the Act. To obtain approval, each State was required to submit and receive approval of an environmental impact statement ("EIS").

8. Delaware's initial program and EIS was adopted over a period of four years. The program, which was approved in 1979, incorporated Delaware's Wetlands Act, Delaware's Beach Preservation Act, The Natural Areas Preservation System Act, Delaware's Underwater Lands Law (now the Subaqueous Lands Act), Delaware's State Coastal Zone Act, Delaware's Environmental Protection Act, Delaware's Land Use Planning Act, and Delaware's Erosion and Sedimentation Control Act as elements of its management program. In Delaware's approved Coastal Zone Management Program, Delaware's coastal zone is considered as the entire State, due to the small size of the state and the state's proximity to tidal waters. Delaware's coastal zone management boundary includes the area known as the twelve-mile circle.

9. During the late 1970s, New Jersey similarly worked on the development of a coastal zone management program. In developing its program, New Jersey advised the federal government that, for activities occurring in the twelve-mile circle, both states would be required to regulate boundary straddling projects. Specifically, New Jersey represented in its final EIS submitted for approval of its coastal zone management program that:

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[1] "The term 'management program' includes, but is not limited to, a comprehensive statement in words, maps, illustrations, or other media of communication, prepared and adopted by the state in accordance with the provisions of this chapter, setting forth objectives, policies, and standards to guide public and private uses of lands and waters in the coastal zone." 16 U.S.C. § 1453(12).

In most of Salem County, the Delaware-New Jersey State boundary is the mean low water line on the eastern (New Jersey) shore of the Delaware River. The New Jersey and Delaware Coastal Management agencies have discussed this issue and have concluded that any New Jersey project extending beyond mean low water must obtain coastal permits from both states. New Jersey and Delaware, therefore, will coordinate review of any proposed development that would span the interstate boundary to ensure that no development is constructed unless it would be consistent with both state coastal management programs. DE App. 2657.

10. New Jersey's EIS also commented upon the siting of liquefied natural gas ("LNG") facilities, and represented to the Federal government that the siting of LNG facilities should be an interstate matter. Specifically, New Jersey's EIS states:

The New Jersey Coastal Program states that LNG terminals are discouraged unless they are constructed so as to neither unduly endanger human life nor property nor otherwise impair the public health, safety and welfare, and comply with the Coastal Resource and Development Policies. Because the tinkering of LNG could pose potential risk to life and property adjacent to New Jersey's waterways which also serve as boundaries with the states of Pennsylvania and Delaware along the Delaware River and the state of New York in the Port of New York and New Jersey, the state considers decisions concerning the siting of LNG terminals to be an interstate matter. DE App. 2891.

11. After each state's coastal zone management program was approved by the federal government, the states received funding from the federal government to support each state's federal coastal management programs. The National Oceanic Atmospheric Administration ("NOAA") has advised that New Jersey has received in excess of $70,000,000.00 in federal funding for its coastal zone program since 1980. DE App. 3171.

12. If a state (such as New Jersey and Delaware) has an approved coastal zone management plan, that plan governs federally regulated activities within the State's coastal zone. Consequently, if an activity involves federal permitting, the applicant must obtain a state coastal zone consistency determination prior to engaging in the particular activity. Under Delaware's program, an applicant must demonstrate that it can meet all Delaware coastal zone laws, including, but not limited to, Delaware's Coastal Zone Act. Del. Code Ann. tit. 7, §§ 7001 *et*

*seq.* If an applicant cannot demonstrate that the proposed activity complies with Delaware's Coastal Zone Act, the proposed activity will be deemed inconsistent with Delaware's Coastal Management Program.

13. An applicant seeking a coastal zone management consistency determination is required to apply for and receive appropriate approvals from the relevant DNREC agencies which administer Delaware laws governed by Delaware's Coastal Zone Management Plan. The applicant submits its application for a consistency determination to the Delaware Coastal Management Program while seeking the required state approvals. After public notice, the Delaware Coastal Management Program Office will either concur with the applicant's statement of consistency or object to it. 16 U.S.C. A. § 1456(C)(3)(A).

14. Since the approval of Delaware's Coastal Management Program in 1980, Delaware has required that an applicant requiring federal consistency for a project crossing the boundary between New Jersey and Delaware in the twelve-mile circle must receive a coastal zone consistency determination from Delaware. Delaware consistency determinations were issued for the following projects on the easterly half of the Delaware River in the twelve-mile circle during my tenure as the administrator of Delaware's Coastal Management Program.

15. Salem River Navigation Project. The Salem River Navigation Project was submitted to the Delaware Coastal Management Program in November of 1994. The request was made to widen and deepen the existing Salem River navigation channel. The channel modifications were to produce a one-way channel that varies in width from 150 feet to 250 feet with a depth of 16 feet below the mean water line. The dredging and excavation from this project sought removal of approximately 700,000 cubic yards of material from the Salem River. In a January 10, 1995 consistency determination letter, the DCMP stated that it found the Salem River project to be consistent with Delaware polices. DE App. 3777.

16. Fort Mott Pier Rehabilitation. On October 16, 1995, the Delaware Coastal Management Program received a request from New Jersey to reconstruct the historically existing Fort Mott Pier in New Jersey. The proposed structure was to also consist of a floating ferry landing with pedestrian and handicap ramp access. The ferry landing was to be constructed within Delaware state waters. In a December 15, 1995 consistency determination letter,

the DCMP stated that it found the Fort Mott Pier Rehabilitation project to be consistent with Delaware polices. DE App. 3711.

17. Delmarva Power Fiber Optic Cable Crossing. In December of 1997, the Delaware Coastal Management Program received an application from Delmarva Power & Light to install a fiber optic cable under the Delaware River between Pigeon Point, Delaware and Deepwater Point, New Jersey. The fiber optic cable was to be placed at a depth of 20 feet below the authorized project channel depth of 60 feet below the mean low water line. The purpose of this project was to increase the communication network to better serve the public. In a February 24, 1998 consistency determination letter, the DCMP stated that it found the fiber optic cable installation beneath the Delaware River to be consistent with Delaware policies. DE App.3761.

18. Marcus Hook Maintenance Dredging. In June of 2003, Sunoco, Inc. submitted an application to the Delaware Coastal Management Program for hydraulic maintenance dredging of approximately 10,000 cubic yards of sediment material from a portion of Dock 3C and RW-7 intake structures at the Marcus Hook Refinery. The applicant's purpose for the project was to maintain safe berthing areas at the Marcus Hook Refinery. In a July 30, 2003 consistency determination letter, the DCMP stated that it found the Sunoco/Marcus Hook Refinery maintenance dredging project to be consistent with Delaware's polices. DE App. 3783.

19. Tosco Pipeline. In February 2001, Tocso Refining Corporation submitted an application to the Delaware Coastal Management Program to perform hydraulic maintenance dredging of approximately 140,000 cubic yards of material from the docks and berthing areas at the Trainer refinery. Dredged material was to be transported via pipeline into one of two disposal facilities, Pedricktown or Oldmans located in Oldmans Township, Salem County, New Jersey. The applicant's purpose was to maintain safe berthing areas at the refinery. In a March 7, 2001 consistency determination letter, the DCMP stated that it found the Tosco Refining, L.P.'s request for a temporary hydraulic dredging pipeline placement project to be consistent with Delaware's polices. DE App. 3781.

20. Logan Generating Plant. In January 2002, Logan Generating Plant submitted an application to the Delaware Coastal Management Program for periodic maintenance dredging of approximately 15,000-30,000 cubic yards of sediment material per

year from the coal unloading pier at the Logan Generating Plant on the Delaware River. Using a clamshell dredge, the coal unloading dock was to be dredged to its design depth of 25 feet below the mean low water line. In a March 14, 2002 consistency determination letter the DCMP stated that it found the Logan Generating Plant project to be consistent with Delaware's policies based upon the assumption that the necessary 401 Water Quality Certification and Subaqueous Lands permit from the State of Delaware would be obtained prior to the commencement of any dredging activity. DE App. 3629.

21. Sunoco, Inc., Marcus Hook Pipeline Dredging. In February 2001, Sunoco Inc. submitted an application to the Delaware Coastal Management Program for hydraulic maintenance dredging of 3,200 cubic yards of sediment material from a portion of Dock 3C at the Marcus Hook Refinery. Approximately 28,000 square feet of the dredge area was to be dredge in Delaware. The second portion of the project to occur in Delaware was for the temporary placement of approximately 11,000 feet of hydraulic dredging pipeline in the Delaware River. The purpose of the project was to return the docking areas associated with Marcus Hook Refinery to permitted depths. In a March 7, 2001 consistency determination letter, the DCMP stated that it found the Marcus Hook pipeline dredging project to be consistent with Delaware's policies. DE App. 3779.

22. Delaware's Coastal Management Program has always taken the position that a Delaware coastal zone consistency determination must be received for any qualifying project that straddles the boundary between Delaware and New Jersey. In addition, no project can receive a federal consistency determination unless the project is in compliance with Delaware's Coastal Zone Act.

Sarah W. Cooksey

Subscribed and Sworn To
Before Me This 19 Day
of December, 2006

Notary Public
Of The State Of Delaware

No. 134, Original

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

STATE OF NEW JERSEY,

*Plaintiff,*

v.

STATE OF DELAWARE,

*Defendant.*

**AFFIDAVIT OF R. PEDER HANSEN IN SUPPORT OF DELAWARE ON CROSS-MOTIONS FOR SUMMARY JUDGMENT**

STATE OF DELAWARE :
: SS
COUNTY OF KENT :

R. Peder Hansen, being duly sworn, deposes and says:

1. I am an Environmental Program Manager II in the Surface Water Discharges Section, Division of Water Resources, of the Delaware Department of Natural Resources and Environmental Control ("DNREC"), an agency of the State of Delaware. I have served as an Environmental Program Manager II in the Division of Water Resources since 1993. I am responsible for the review of all applications for discharges into the Delaware River, including discharges into the Delaware River within Delaware territory known as the twelve-mile circle. I have knowledge of the matters set forth herein based upon my personal knowledge and upon my review of the DNREC files relating to the matters addressed below and documents produced in this litigation.

2. DNREC does not require that a New Jersey applicant who is seeking to discharge into the Delaware River from the New Jersey shore obtain a permit from both New Jersey and Delaware,

even though the outfall may cross the boundary of New Jersey into Delaware within the twelve-mile circle. Delaware does not require DNREC permits for such discharges because the United States Environmental Protection Agency ("EPA") provides uniform minimum standards for discharges into the Delaware River under the federal Clean Water Act, 33 U.S.C.A. §§ 1251 *et seq.* (2005) ("CWA") and the National Pollution Discharge Elimination System ("NPDES") Program pursuant to 33 U.S.C.A. §§ 1311 and 1342(a) (2005).

3. Federally delegated discharge permitting authorities, such as Delaware and New Jersey, must obtain approval from the EPA to assure that minimum water quality discharge standards under the CWA are adopted as a component of any State permitting program that also serves as a Federal permit. *See* 40 C.F.R. § 123 *et seq.* Under federal regulations promulgated under NPDES, no state may issue a permit for discharge unless it can ensure compliance with the applicable water quality requirements of all affected States. 40 C.F.R. § 122.4(d) ("No permit may be issued . . . [w]hen the imposition of conditions cannot ensure the applicable water quality requirements of all affected States"). Therefore, under 40 C.F.R. § 122.4(d), New Jersey may not issue a permit for discharge into the Delaware River within the twelve-mile circle unless Delaware water quality requirements are satisfied. Consequently, there is no reason for Delaware to issue a separate permit for discharges within the twelve-mile circle when the EPA requires New Jersey to satisfy Delaware's water quality standards.

4. Delaware also ensures compliance with Delaware's water quality standards for discharges through its participation in the Delaware River Basin Commission ("DRBC"). The DRBC exists pursuant to an interstate compact between Delaware, New Jersey, New York, and Pennsylvania, which constitute the States bordering the Delaware River. Del. Code Ann. tit. 7 § 6501. As a signatory to the Delaware River Basin Compact, Delaware appoints a representative who serves as a voting member of the DRBC. The DRBC receives notice of, and provides its own approval for, proposed discharges within the Delaware River basin, including proposed discharges within the twelve-mile circle. If New Jersey were to issue a permit for discharges into the Delaware River within the twelve-mile circle that did not conform to Delaware's water quality standards, Delaware could assure compliance with its water quality standards as an affected State through the DRBC permitting process.

5. In light of the avenues for assuring compliance with Delaware's water quality standards through federal law and the Delaware River Basin Compact, Delaware has chosen to avoid needless overregulation of water discharges from the New Jersey shore.

6. However, when Delaware has concerns regarding the effect of proposed discharges from New Jersey into Delaware waters, Delaware has participated in proceedings relating to such discharges. For example, by letter dated April 7, 2004, to the Acting Secretary of the Army, the Governors of Delaware and New Jersey jointly expressed concern regarding a proposal to ship wastewater resulting from the destruction of VX nerve agent to the Chambers Works site in New Jersey for treatment and disposal into the Delaware River. By letter dated April 19, 2004, to Army officials, DNREC Secretary John Hughes reported DNREC's response to a draft Environmental Impact Statement regarding the VX proposal.

7. DNREC staff has worked countless hours evaluating the scientific data for the VX proposal and have been heavily involved in the permitting process for this proposed discharge into the Delaware River. Delaware has also hosted meetings at DNREC's office with officials from DuPont, New Jersey, and federal regulatory agencies relating to the VX proposal to ensure that Delaware water quality standards are met.

R. Peder Hansen

Subscribed And Sworn To
Before Me This 29th Day
Of December, 2006

Max B Walters
Notary Public
Of The State Of Delaware

No. 134, Original

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

STATE OF NEW JERSEY,

*Plaintiff,*

v.

STATE OF DELAWARE,

*Defendant.*

**AFFIDAVIT LAURA M. HERR IN SUPPORT OF DELAWARE ON CROSS-MOTIONS FOR SUMMARY JUDGMENT**

STATE OF DELAWARE :
: ss:
COUNTY OF NEW CASTLE :

Laura M. Herr, being duly sworn, deposes and says:

1. I am the head of the Wetlands and Subaqueous Lands Section of the Delaware Department of Natural Resources and Environmental Control ("DNREC"). I have worked for DNREC since 1986, in the Wetlands and Subaqueous Lands Section since 1990, and was promoted to head of the section in 2005. I have knowledge of the matters set forth herein, based upon my personal knowledge, upon my review of the files maintained by DNREC, and upon documents produced in this litigation.

**A. Delaware's Wetlands And Subaqueous Lands Program**

2. In my capacity as the head of the Wetlands and Subaqueous Lands Section, I am responsible for administering Delaware's subaqueous lands law, codified at Title 7, Chapter 72 of the Delaware Code. In administering Delaware's subaqueous lands laws, I am also responsible for administering Delaware's regulations governing the use of subaqueous lands, adopted on

May 8, 1991, and amended on September 2, 1992 (hereinafter "1992 Regulations").

3. I am responsible for the review of all applications for use of subaqueous lands in the State of Delaware, including applications for uses that straddle the boundary between New Jersey and Delaware in the Delaware River in the area known as the twelve-mile circle.

4. Under Delaware's subaqueous lands laws and regulations, if an applicant desires permission to construct a pier or a dock, the structure is not permitted to interfere with "navigation, public, or other rights." 1992 Regulations at 3.02D. Generally, boat docking facilities are evaluated on site specific conditions, including location of the navigation channel, the proximity of existing structures, the proximity of aquatic habitats and with the orientation of the waterbody. 1992 Regulations at 3.03B. Generally, where adequate depths exist, no dock, structure, or mooring area is permitted to extend channelward more than ten percent of the waterbody at the proposed location. 1992 Regulations at 3.03B.5. In no case is a structure permitted to extend more than twenty percent of the waterbody, or seaward more than 250 feet, except under exceptional circumstances to provide access for needed commerce. *Id.*[1]

5. While an application fee is charged by Delaware to an applicant that seeks permission to build a dock or a pier, since 1993 no lease fee has been charged by Delaware for the use of subaqueous lands for a dock or a pier. Generally, subaqueous lands are leased for a ten year period, and must be renewed thereafter.

6. Delaware's subaqueous lands laws and regulations also establish requirements for dredging projects, which are in many ways separate and distinct from the approval process for the construction of docks and piers. No person is permitted to extract material from submerged lands without first having obtained a permit, lease, or a letter of approval from the Wetlands and Subaqueous Lands Section. *See* Del. Code Ann. tit. 7, § 7205(a).

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[1] Our office has always considered any pier built prior to the adoption of the July 14, 1969 regulations governing the use of water resources and public subaqueous lands as a grandfathered structure that does not require a subaqueous lands lease from the Wetlands and Subaqueous Lands Section unless the structure is modified.

In evaluating proposed dredging projects, our office considers several factors, including but not limited to, impacts to the navigation channel, environmental impacts of the disposal of the dredged material, water quality standards, the type of dredging equipment used, the depth of the proposed dredging, and whether the dredging will be performed in biologically productive areas. 1992 Regulations at 3.05. No person is permitted to remove any material from Delaware public subaqueous lands without the approval of DNREC. *Id.* at 3.05E. Full payment of the fee for the subaqueous material estimated to be removed must be submitted prior to the commencement of any dredging. *Id.*

7. Since I began my employment with DNREC in 1986, the Wetlands and Subaqueous Lands Section has exercised jurisdiction in the Delaware River within the area known as the twelve-mile circle to the mean low water mark on the New Jersey shore. During my tenure, our office has applied Delaware subaqueous lands laws and regulations to any project that straddled the boundary between New Jersey and Delaware, because the subaqueous lands act applies to "[c]onstruction or use of any structure on, in, under, or over public subaqueous lands, including, but not limited to, any convenience structures . . . or boat docking facilities." 1992 Regulations 1.04B.1.

8. The Wetlands and Subaqueous Lands Section also regulates all pipeline crossings, utility crossings, maintenance dredging, and piers for any use that begins in New Jersey and enters into Delaware territory within the twelve-mile circle. For proposed activities that enter Delaware territory, an applicant must obtain the appropriate subaqueous land leases, permits, and letters of approval from Delaware for the proposed use. Del. Code Ann. tit. 7, § 7205(a). In addition, the applicant must comply "with the laws, rules, regulations and requirements imposed on the same lands, uses, structures, facilities or other appurtenances by local, state and federal government agencies or other divisions within" DNREC. 1992 Regulations 1.12.

**B. Boundary Straddling Piers Within The Twelve-Mile Circle**

9. During my career with the Wetlands and Subaqueous Lands Section, there have been at least four proposals to construct or rehabilitate large piers that straddle the boundary between Delaware and New Jersey in the twelve-mile circle: (1) Keystone Cogeneration, Inc. for the Logan Cogeneration Facility; (2) the Fort Mott State Park pier; (3) the Pennsgrove Riverwalk and Pier

project; and (4) Crown Landing LLC's proposal to construct a liquefied natural gas ("LNG") facility.

Keystone/Logan Generating Station

10. In 1991, after a coastal zone act status decision was issued by DNREC's secretary, our office approved a subaqueous lands lease application by Keystone Cogeneration Systems, Inc. ("Keystone") to build a 200 megawatt coal fueled cogeneration facility. The proposed facility was located partially in Logan Township, New Jersey with the dock of the facility extending into Delaware territory within the twelve-mile circle. On September 30, 1991, DNREC issued a subaqueous lands lease permitting the construction of the coal unloading pier and permitting the dredging of 40,000 cubic yards of material from the Delaware River. A copy of the lease is included in Delaware's appendix. DE App. 3557-62.

11. On September 24, 1991, New Jersey also issued a waterfront development and wetlands permit for the Keystone facility, which required Delaware subaqueous land and coastal zone management approval prior to construction. A copy of the New Jersey permit, conditioning its permit on Delaware's approvals, is included in Delaware's appendix. DE App. 3549-56.

12. On May 28, 1993, Delaware issued additional approvals for the Keystone facility to allow for a modification of pier dimensions. On March 15, 1995, my office issued a letter of authorization for a one year extension of the subaqueous lands permit issued on September 30, 1991, and provided permission to dredge an additional 13,750 cubic yards of material. On November 12, 1997, my office issued a letter of authorization for maintenance dredging at the facility. On November 9, 2001, my office issued a renewal to maintain a pier, docks and dolphins at the facility. Copies of the supplemental approvals for the Keystone facility are is included in Delaware's appendix. DE App. 3611-12, 3619, 3621-27.

Fort Mott State Park

13. On February 7, 1996, the Wetlands and Subaqueous Lands Section issued a subaqueous lands lease to the New Jersey Department of Parks and Forestry to rehabilitate the existing pier at Fort Mott. The lease permitted for the re-construction of a pier to include placement of a barge 30 feet by 100 feet and a pile supported platform 10 feet by 10 feet on the Delaware River in

New Castle County. The lease was for a period of ten years. A copy of the lease is included in Delaware's appendix. DE App. 3717-21.

14. On August 10, 2006, the New Jersey State Park Service applied to Delaware to renew its subaqueous lands lease for the Fort Mott pier. The renewal application and the required application fee were received by DNREC on August 16, 2006. DE App. 3731-34. The public notice for this renewal was published on December 13, 2006. DE App. 3735-38.

Fenwick Commons, LLC

15. On May 10, 2005, the Delaware Wetlands and Subaqueous Lands Section issued a subaqueous lands lease and a water quality certification to Fenwick Commons, LLC to construct a 40 foot wide by 750 foot long pier, a 6 foot wide by 95 foot long aluminum gangway, a 28 foot wide by 120 foot long floating dock and breakwater, 6 support pilings, 1,255 linear feet of steel bulkhead and permission to fill 1,882 square feet of public subaqueous lands near Penns Grove, New Jersey. This lease is for twenty years, and seeks to rehabilitate the dilapidated pier at the end of west main street in Penns Grove New Jersey. A copy of the lease is included in Delaware's appendix. DE App. 3839-44.

Crown Landing LLC/British Petroleum

16. On September 27, 2004, Crown Landing LLC requested permission from the Wetlands and Subaqueous Lands Section for permission to drill geotechnical test borings in the Delaware River for a proposed LNG facility. DE App. 3785-87. Crown Landing's proposed LNG facility, if built, would construct a 2,000 square foot pier extending into Delaware territory. Upon receipt of the application for geotechnical test borings, our office requested that the applicant withdraw the application until a coastal zone act determination was made. DE App. 3789. Crown Landing withdrew its application for geotechnical test borings and has not made any further applications to the Wetlands and Subaqueous Lands Section for approvals for the proposed LNG facility.

17. To my knowledge, these four projects are the only substantial pier construction projects submitted to our office that straddle the Delaware/New Jersey boundary in the twelve-mile circle during my employment with the Wetlands and Subaqueous Lands Section. I am unaware of any other applications for pier construction projects that straddle the boundary that have occurred

within the twelve-mile circle since 1986. To my knowledge, all other significant piers in the twelve-mile circle area were constructed prior to 1986.

**C. Review Of Historical Structures In The Delaware River**

18. On November 9, 2006 New Jersey served the expert report of Richard Castagna, entitled "New Jersey's Exercise of Regulatory Authority Over Waterfront Improvements in the Twelve Mile Circle Outshore of Low Water" ("Castagna Rep."). Mr. Castagna claims, "[b]ased on the record in New Jersey v. Delaware II, aerial photography on file in the New Jersey Bureau of Tidelands Management, Riparian Atlas Sheets available at the Bureau of Tidelands Management, and the Bureau's riparian grant files," that 23 structures or "other activity" have extended beyond the mean low water line (into Delaware territory) within the twelve-mile circle.

19. I have reviewed Mr. Castagna's report and affidavit, aerial photography, and other documents pertaining to this case, and have discovered errors and/or items that require clarification in Mr. Castagna's report, which are discussed below.

Three Docks Identified Were Never Built

20. Mr. Castagna's expert report does not support any claim that three of the alleged twenty three boundary straddling structures ever existed. *See* Castagna Rep. 3, 14, and 18.

a. According to the Castagna report, an 1871 New Jersey law gave Robert Walker and others the right to build wharves, piers, and bulkheads in front of their lands in the Township of Upper Penns Neck (now Pennsgrove). Castagna Rep. 3; *see also* Castagna Aff. 8(3). Mr. Castagna makes no mention of an actual structure being built pursuant to this grant and does not identify a single aerial photograph that demonstrates the existence of a pier at this location. New Jersey previously admitted that no structure existed at this location, contradicting Mr. Castagna's report. *See* DE App. 4147-88. New Jersey's Responses to Delaware's First Requests for Admissions ("NJ Admission Response") No. 34(a). Mr. Castagna also admitted that no structure exists at his October 24, 2006 deposition. *See* DE App. 531-32, Castagna Dep. Tr. 201-02 (admitting that New Jersey has no evidence that a structure ever existed on the Walker grant at any point in time).

b. The Castagna report also states that New Jersey awarded a grant to the DuPont Company on May 20, 1918. *See* Castagna Rep. 14; Castagna Aff. 8(18). Mr. Castagna cites aerial photography (DE App. 3979-92 (NJ10002, NJ10013, NJ10024, NJ10035, NJ10046, NJ10057, and NJ10068)) that he claims shows the existence of a "stone jetty" on this grant from 1940 to 2002. Although the quality of these photographs produced by New Jersey is not high, they do not appear to show definitive evidence of a man-made structure that enters Delaware territory below the mean low water line existing at this location. *See* DE App. 3981-92 (NJ10013, NJ10024, NJ10035, NJ100046, NJ10057, and NJ10068). Mr. Castagna's description of the aerial photographs contradicts New Jersey's previous admission that there was no evidence of a structure ever being built on this grant. *See* DE App. 4147-88, NJ Admission Response No. 34(h). Even if a jetty existed at this location at some time, the jetty would be considered a grandfathered structure under Delaware subaqueous lands laws if the structure was built prior to 1969.

c. On September 13, 1943, New Jersey issued another grant to DuPont which allegedly provided permission to build beyond the mean low water mark. *See* Castagna Rep. 18; Castagna Aff. 8(37). Relying on aerial photographs (DE App. 3979-92 (NJ10002, NJ10013, NJ10024, NJ10035, NJ10046, NJ10057, and NJ10068)), Mr. Castagna claims that a "dock" was located on the granted area from at least 1930 to 2002. Although the quality of these photographs produced by New Jersey is not high, they do not appear to show definitive evidence of a man-made structure that enters Delaware territory below the mean low water line existing at this location. *See* DE App. 3981-92 (NJ10013, NJ10024, NJ10035, NJ100046, NJ10057, and NJ10068). Moreover, based upon the boundary maps produced by Delaware depicting the actual boundary between the states, this protrusion does not enter into Delaware territory. DE App. 4209 (DE28989).

21. Accordingly, Mr. Castagna's claim of twenty-three structures that allegedly straddle the boundary must be reduced by three because there is no clear evidence that these structures ever existed.

Two Structures Are Not Docks

22. Two of the remaining twenty structures are not docks, piers, or wharves and therefore could not be used to load or unload cargo from a ship. *See* Castagna Rep. 13, and 16.

a. New Jersey issued a riparian grant to William Acton on August 17, 1925. Mr. Sherman testified in 1929 that the granted land then contained a "y-shaped jetty." *See* Castagna Rep. 13; Castagna Aff. 8(23). Mr. Castagna fails to identify a single overhead photo depicting this structure. According to testimony in *New Jersey v. Delaware II*, the structure was intended to protect the Riverview Beach Park from erosion rather than allow boats to dock at the location. *See* Testimony of Mr. Sherman, DE App. 2259 (Stip. Rec. at 272-273) (DE15086); Castagna Rep. 13. In any event, this jetty extended at most only 47 feet beyond the mean low water mark on the New Jersey shore (*see* Castagna Rep. 13 and fig. 8), and is a grandfathered structure under Delaware law.

b. The Delaware River Power Company was awarded a license on October 21, 1929 purportedly providing permission to build submarine power cables and protective ice breakers. *See* Castagna Expert Rep. 16; Castagna Aff. 8(34). Ice breakers are not docks or piers, and the construction of ice breakers in 1929 is grandfathered under Delaware law.

23. Accordingly, of the twenty structures identified in Mr. Castagna's affidavit, only eighteen could potentially be used for boat docking or unloading of cargo.

One Structure Does Not Cross The Boundary

24. At least one of the eighteen structures does not extend beyond the mean low water line into Delaware territory. William J. Bergmann, et al., was awarded a grant on January 11, 1999, later renewed on February 13, 2002, to build a dock at his private residence. *See* Castagna Rep. 22; Castagna Aff. 8(42). Mr. Castagna claims evidence of a "pier" at this location based on a 2002 aerial photograph. DE App. 3993 (NJ10071). Mr. Castagna's affidavit claims that the applicant could build to a maximum of 25 feet beyond the mean low water line (Castagna Aff. 8(42)). There is, however, no evidence that this alleged structure crosses the mean low waterline as it existed in 1934 and

there is no evidence that this structure crosses the New Jersey/Delaware boundary in the twelve-mile circle. Indeed, there is no evidence of a pier crossing the actual boundary between the states as depicted by Delaware's boundary map. DE App. 4209-10 (DE28989-DE28990).[2]

The Castagna Report Double Counts Structures

25. Mr. Castagna has also counted three structures twice, apparently because they occupy an area covered by more than one riparian grant. Those three structures cover six separate grants. *See* Castagna Rep. at 1, 2, 8, 10, 20, and 21.

a. The subaqueous land grant to Thomas Broadway in 1854 in what is now Pennsville Township was later granted to William Acton in 1923 where a ferry pier was ultimately built. *See* Castagna Rep. 1 and 10; Castagna Aff. 8(1) ("This pier was . . . included within the 1923 State grant to William D. Acton"); Castagna Aff. (20). This structure was built prior to 1969 and is considered grandfathered by Delaware's subaqueous lands program.

b. An 1855 law incorporated the Pennsgrove Pier Company and purportedly allowed that company to build a wharf or pier. *See* Castagna Rep. 2; Castagna Aff. 8(2). The land under this grant was granted again in 1916 to the Pennsgrove Pier Company and it was used by the Wilson Line and later the Delaware and New Jersey Ferry Company as a ferry dock. *See* Castagna Rep. 8; Castagna Aff. 8(12); *see also* Castagna Aff. 8(2) (noting that the 1855 grant was included within the 1916 grant for the Pennsgrove Pier Company). Yet Mr. Castagna counts this single ferry dock as two structures. *See* Castagna Rep. 2 and 8. While the existing structure was grandfathered under Delaware law, Fenwick Commons, LLC recently applied

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[2] While not referenced in Mr. Castagna's expert report, Mr. Castagna's affidavit references a lease to the Township of Pennsville where he claims that the upland owner could develop to the maximum extent of 35 feet below the mean low water line. Castagna Aff. 8(43). There is no indication that the structure crosses the mean low water mark as it existed in 1934. (*see* DE App. 3995 (NJ10073)), Indeed, there is no evidence of a pier crossing the actual boundary between the states as depicted by Delaware's boundary map. DE App. 4209-10 (DE28989-DE28990).

for and received a subaqueous lands lease to rehabilitate this pier from the State of Delaware in 2005. DE App. 3839; *see also* Castagna Aff. 8(12).

c. New Jersey issued two riparian grants to DuPont in March 1960 and September 1967 for adjacent lands on which DuPont constructed an "outfall line on a pier" that is protected by a manmade "dike" on the northern side. *See* Castagna Rep. 20-21; Castagna Aff. 8(39)-(40). These two grants are for a single structure.

26. Accordingly, because one structure clearly does not extend past low water and structures on another three grants were double-counted, Mr. Castagna at most has identified evidence of only fourteen potential structures over the last 150 years that at some point both extended into Delaware and were capable of being used to load or unload cargo from a boat or ship.

The Fourteen Remaining Structures Are Regulated By Delaware Or Grandfathered

27. A very few of the fourteen remaining structures extended more than a small distance into Delaware, and Delaware has regulated all structures of significance.

28. Only four structures ever built within the twelve-mile circle that cross the boundary can purport to extend 500 feet or more beyond the mean low water line. *See* Castagna Rep. 2 (Pennsgrove Pier Company), 6 (DuPont), 7 (Denny's Wharf), and 19 (Keystone); Castagna Aff. 8(2), (10), (11), and (41). One pier appears to be no longer in existence, one structure is a grandfathered structure that is not currently a pier, and Delaware has regulated construction of the two other piers after 1969.

a. The Pennsgrove Pier[3] was constructed before *New Jersey v. Delaware II* was decided and is considered a grandfathered use under Delaware's subaqueous lands laws. Now that the pier is being rehabilitated, Fenwick Commons, LLC applied to and received permission to rehabilitate the pier. DE App. 3839. Delaware's subaqueous lands lease issued

[3] According to the record in *New Jersey v. Delaware II*, the Pennsgrove Pier extends 600 to 700 feet beyond the mean low water mark. *See* DE App. 2263-66, *New Jersey v. Delaware II*, Plaintiff's Exhibits 62-63.

to Fenwick Commons, LLC authorizes the construction and rehabilitation of the pier.

b. The Keystone facility,[4] built in the early 1990s, is subject to Delaware law. Delaware regulates the Keystone facility, and issued permits for the use of Delaware subaqueous lands for the facility. DE App. 3549-56, 3557-62, and 3611-12. Delaware's subaqueous lands lease issued to Keystone authorized the construction of the existing pier, and New Jersey's permit for the facility was conditioned on Delaware's approval. DE App. 3549-56.

c. For Denny's wharf, Mr. Sherman testified in *New Jersey v. Delaware II* that this wharf extended 100 feet beyond the low water line (DE App. 2257, Stip. Rec. 131) (DE15014) but Exhibit 59 of the record purports that the wharf extends 550 from shore. *See* DE App. 2261, *New Jersey v. Delaware II*, Plaintiff's Exhibit 59. As of the date of Mr. Sherman's testimony, the pier was not in use. DE App. 2257, Stip. Rec. 131. Mr. Castagna's report does not identify any aerial photography identifying the location of this structure. Castagna Rep. 7. Presumably, this structure no longer exists and has not existed for many years.

d. New Jersey issued a riparian grant to DuPont at the northern end of what is now called the DuPont Chambers Works complex on November 27, 1891. *See* Castagna Rep. 6; Castagna Aff. 8(10). Mr. Castagna claims to see in the cited photographs evidence of a "pier" at this location in 1940, 1977, 1979, and 2002 based on aerial photographs. DE App. 3979-91 (NJ10002, NJ10013, NJ10024, NJ10035, NJ10046, NJ10057, and NJ10068). While the exact length of this structure is unknown, it is possible that a man-made structure at one time extended more than 500 feet beyond the mean low water mark. Even if a man-made existed at this location at some time, such use would be grandfathered under Delaware's subaqueous lands law because it was constructed prior to 1969. Today, no pier is visible at this location and the structure appears to be nothing more than a land mass surrounded by rip-rap. Reuther Aff. 64.

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[4] Keystone's coal unloading dock was built in or after 1991. It extends approximately 550 feet beyond the mean low water mark. DE App. 3569 (DE02212). As Mr. Castagna notes, Delaware also issued permits for the Keystone project. *See* Castagna Rep. 19; Castagna Aff. 8(41).

29. Eight structures allegedly extend between 100 and 500 feet into Delaware territory. *See* Castagna Rep. 1 (Broadway), 5 (Barber), 9 (1916 DuPont), 11 (Fogg & Hires), 12 (Acton), 17 (Penn Beach), 20 (1960 DuPont), and 23 (Fort Mott); Castagna Aff. 8(1), (5), (15), (21), (22), (35), (39), and (44).

a. The Broadway[5] wharf (1854) was presumably built prior to the Court's decision in 1934 establishing the boundary between the states and prior to the adoption of Delaware subaqueous lands laws. Under Delaware law, this is a grandfathered structure.

b. The Barber wharf[6] (1871) was presumably built prior to the Court's decision in 1934 establishing the boundary between the states and prior to the adoption of Delaware subaqueous lands laws. If this structure exists, it is a grandfathered use under Delaware's subaqueous lands laws. Mr. Castagna, however, does not identify any aerial photographs depicting this alleged structure. Castagna Rep. 5.

c. For the 1916 DuPont grant,[7] the structure at this location was presumably constructed prior to the 1934 decision establishing the boundary between the states, and the structure would be grandfathered under Delaware's subaqueous lands law if constructed prior to 1969. Moreover, Delaware regularly regulates dredging

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[5] According to the record in *New Jersey v. Delaware II*, the Delaware New Jersey Ferry Line dock in Pennsville, originally granted to Thomas Broadway, extended approximately 350 feet beyond the mean low water mark. *See* DE App. 2273-75, *New Jersey v. Delaware II,* Plaintiff's Exhibit 91. As noted above, this grant was included within the 1923 grant of William Acton. Castagna Aff. 8(1) ("This pier was . . . included within the 1923 State grant to William D. Acton");

[6] According to Mr. Sherman's testimony in *New Jersey v. Delaware II*, Henry Barber built a wharf 400 feet beyond the mean low water mark. *See* Sherman Testimony, DE App. 2260 (Stip. Rec. at 282 (DE15091)).

[7] According to the record in *New Jersey v. Delaware II*, the pier at the DuPont Chamber works extends 325 to 375 feet beyond the mean low water mark. *See* DE App. 2267, *New Jersey v. Delaware II,* Plaintiff's Exhibit 69.

associated with the DuPont pier. DE App. 3431. Delaware also issued a lease for this pier in 1971. DE App. 3403.

d. For the Fogg & Hires wharf,[8] (1924) the structure at this location was presumably built prior to the Court's decision in 1934 establishing the boundary between the states and prior to the adoption of Delaware subaqueous lands laws. This structure is a grandfathered use under Delaware's subaqueous lands laws if constructed prior to 1969.

e. For the Acton grant (1923),[9] the structure at this location was presumably constructed prior to the 1934 decision establishing the boundary between the states, and the structure would be grandfathered under Delaware's subaqueous lands law if constructed prior to 1969. Again, Mr. Castagna's expert report fails to identify any aerial photographs that show the location of this structure which presumably no longer exists.

f. For the Penns Beach grant (1929),[10] the structure at this location was presumably constructed prior to the 1934 decision establishing the boundary between the states, and the structure would be grandfathered under Delaware's subaqueous lands law if constructed prior to 1969. Again, Mr. Castagna's expert report fails to identify any aerial photographs that show the location of this structure which presumably no longer exists.

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[8] The exact length of the wharf is unknown. However, according to the record in *New Jersey v. Delaware II,* this pier was adjacent to the Broadway wharf and appears to have at one time extended approximately the same distance as the Broadway wharf. *See* DE App. 2273-76, *New Jersey v. Delaware II,* Plaintiff's Exhibit 91.

[9] According to Mr. Sherman's testimony in *New Jersey v. Delaware II,* the Riverview Beach pier, built on land granted to William Acton, extended 494 feet beyond the mean low water mark. *See* DE App. 2258, *New Jersey v. Delaware II,* Sherman Testimony, Stip. Rec. at 144-145 (DE15021).

[10] According to the record in *New Jersey v. Delaware II,* a timber pier on this land leased to the Penn Beach Property Owners Association extended 280 to 330 feet beyond the mean low water mark. *See* DE App. 2277-78, *New Jersey v. Delaware II,* Plaintiff's Exhibit 96.

g. For the 1960 DuPont grant,[11] the original outfall appears to be constructed prior to the adoption of the Delaware regulations in 1969 and appears to be a grandfathered use. If the location of the outfall pipe changes, a subaqueous lands lease from Delaware is required. *See* DE App. 3461.

h. For the Fort Mott project,[12] New Jersey applied to Delaware for permission to rehabilitate the pier in 1996. Delaware issued a subaqueous lands lease for the project, and as recently as August 16, 2006, New Jersey has applied to Delaware for renewal of the lease. *See supra* ¶¶ 13-14.

30. The remaining two structures are less than 100 and 25 feet beyond the mean low water line, respectively. *See* Castagna Rep. 4 (Guest Wharf) and 15 (Franklin/Conectiv); Castagna Aff. 8(4) and (27).

a. The Guest Wharf (1870)[13] was presumably constructed prior to the 1934 decision establishing the boundary between the states, and the structure would be grandfathered under Delaware's subaqueous lands law because it was constructed prior to 1969. Again, Mr. Castagna's expert report fails to identify any aerial photographs that show the location of this structure which presumably no longer exists.

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[11] The outfall pipe at DuPont Chamber Works facility extends 500 feet from high water line according to the application for its repair, and certainly less than that from the mean low water mark. *See* DE App. 3409-12 (DUP0000776 – DUP0000779).

[12] The renovated pier at Fort Mott State Park extends approximately 300 feet beyond the mean low water mark. *See* DE App. 3649 (DE02020).

[13] According to the record in *New Jersey v. Delaware II*, the Joseph Guest Wharf extends 100 feet below high-water line, and certainly less than that below the mean low water line. *See* DE App. 2279, *New Jersey v. Delaware II*, Plaintiff's Exhibit 134.

b. The Franklin/Conectiv grant (1928)[14] was presumably constructed prior to the 1934 decision establishing the boundary between the states, and the structure is grandfathered under Delaware's subaqueous lands law because it was constructed prior to 1969. This structure barely crosses into Delaware territory within the twelve-mile circle. DE App. 4209 (DE 28989).

31. Many of the structures, if they still exist, are in a severely dilapidated state. There currently are only four structures extending into Delaware and capable of receiving a boat that are not in a dilapidated condition – Keystone, DuPont, Franklin/Conectiv, and Fort Mott. Reuther Aff. 57, 65, 66, and 69. The remaining structures in the twelve-mile circle that are grandfathered structures are subject to Delaware regulation if repairs are made to the structure.

[14] According to the record in *New Jersey v. Delaware II*, the dock built on a grant issued to the Franklin Real Estate Company is now used by a Pepco subsidiary (formerly Conectiv) for its power plant and extends less than 25 feet beyond the mean low water mark. *See* DE App. 2269, *New Jersey v. Delaware II*, Plaintiff's Exhibit 74; *see also* DE App. 4209 (DE 28989).

Laura M. Herr

Subscribed and Sworn To
Before Me This 20th Day
of December, 2006

Max B Wallace

Notary Public
Of The State Of Delaware

No. 134, Original

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

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STATE OF NEW JERSEY,

*Plaintiff,*

v.

STATE OF DELAWARE,

*Defendant.*

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**AFFIDAVIT OF ROBERT HUTCHINS IN SUPPORT OF DELAWARE ON CROSS-MOTIONS FOR SUMMARY JUDGMENT**

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STATE OF DELAWARE :
: ss:
COUNTY OF NEW CASTLE :

Robert Hutchins, being duly sworn, deposes and says:

1. I have knowledge of the matters set forth herein, based upon my personal knowledge and based upon my review of the files maintained by my office.

2. I am employed as the Captain of the Fish and Wildlife Enforcement Section of the Delaware Department of Natural Resources and Environmental Control ("DNREC").

3. Since 1974, upon graduation from the Delaware State Police Academy, I have been employed at DNREC. I was promoted to Captain of the New Castle County Fish and Wildlife unit in 1988.

4. As Captain, I am responsible for seven full time employees and one reserve part time employee. These officers are all assigned to New Castle County and all have the law enforcement authority as the Delaware State Police. *See* Del. Code Ann. tit. 11, § 1911(a).

5. My office, stationed in Delaware City, is responsible for patrolling and responding to complaints and incidents occurring in the area known as the twelve-mile circle in the Delaware River. Our office handles police enforcement in the twelve-mile circle for fish and game, drownings, boating violations, boating while intoxicated and any other investigation or law enforcement action required by Delaware law. Major crimes on the water are handled jointly with the Delaware State Police. Our office also assists when needed for environmental emergencies and assists with narcotics enforcement.

6. During my thirty-two year career with the Division of Fish and Wildlife, our unit has always exercised jurisdiction over the entire twelve-mile circle area for law enforcement purposes. It has always been the responsibility of our office to enforce Delaware law to the low water mark on the easterly side of the River within the twelve-mile circle. Thus, any crime, investigation, or arrest occurring on the easterly half of the River, including an incident occurring on a dock, pier or structure straddling the boundary between New Jersey and Delaware is the responsibility of the Delaware State Police or my unit.

7. My unit regularly patrols on the easterly half of the Delaware River within the twelve-mile circle because that area is in the jurisdiction of the State of Delaware. To my knowledge, no New Jersey policing authority patrols this area, and New Jersey policing authorities do not respond to calls in this area unless they are providing mutual aid to Delaware authorities. If New Jersey law enforcement officers provide mutual aid, they are under the command of Delaware officers because the twelve-mile circle area is in the jurisdiction of my unit and the Delaware State Police.

8. During my career, I have issued citations and assisted boaters who have had their boats lodged on jetties and groins straddling the boundary between the states. My unit has also made many arrests and issued citations for fishing violations, hunting violations, boating violations, and other crimes on the easterly half of the Delaware River within the twelve-mile circle. Our office always enforces Delaware fishing, hunting, and boating laws and regulations in this area.

9. If an arrest is made on the easterly half of the Delaware River and the suspect is taken into custody, the suspect is placed in custody in Delaware. If a citation is used, the citation is for an appearance in a Delaware Justice of the Peace Court. If a boat is impounded, the boat is taken to our boat storage facility in Little Creek, Delaware.

10. I am not aware of any New Jersey policing authority that has disputed Delaware's enforcement jurisdiction within the twelve-mile circle during my tenure.

11. In fact, if a 911 call is received for an incident on the easterly side of the Delaware River within the twelve-mile circle, Delaware emergency responders (generally volunteer fire companies) are called to respond and our office also responds when police presence is required. If a call is received by Salem County 911 or Salem County Police for law enforcement in the twelve-mile circle, the call is directed to the New Castle County 911 center. Salem County directs the calls New Castle County office because all policing activity to the low water mark on the New Jersey shore within the twelve-mile circle is in Delaware's jurisdiction.

12. Similarly, the United States Coast Guard has consistently recognized Delaware's jurisdiction within the twelve-mile circle. The Coast Guard requests Delaware's assistance for policing events within the twelve-mile circle because the twelve-mile circle area is within Delaware's jurisdiction.

13. Our office regularly receives requests for assistance from New Jersey authorities for law enforcement on the easterly side of the River within the twelve-mile circle. For example, each year the Town of Pennsville holds a festival called the Septemberfest. Pennsville police request water assistance from Delaware officers for the Septemberfest because the River is part of Delaware's police jurisdiction. Our office has provided police assistance for Pennsville's Septemberfest for the past several years.

14. New Jersey officers have also deferred to Delaware's jurisdiction to investigate incidents that occur on or near Gull Island at the mouth of the Salem River. Because of the swift current near Gull Island, there have been many boating accidents and drownings over my career. Our office has always been responsible for investigation and law enforcement activities related to this location which is very close to the New Jersey shore. New

Jersey officers never questioned Delaware's jurisdiction for law enforcement activities at or near Gull Island.

15. I am aware that Crown Landing LLC, a subsidiary of British Petroleum ("BP"), desires to build a liquefied natural gas ("LNG") facility that will be located partially in Delaware in the twelve-mile circle near Claymont, Delaware. It is my understanding that DNREC, along with the Delaware State Police and the United States Coast Guard, would be responsible for law enforcement relating to any activity occurring on an LNG supertanker or on any dock connected with an LNG supertanker within the twelve-mile circle. My understanding of Delaware's law enforcement jurisdiction for the LNG facility is consistent with the law enforcement practice for the twelve-mile circle area that has been in place during my thirty-two year career with DNREC.

Robert W. Hutchins

Robert Hutchins

Subscribed and Sworn To
Before Me This 16th Day
of December, 2006

Max B Walton

Notary Public
Of The State Of Delaware

No. 134, Original

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

STATE OF NEW JERSEY,

*Plaintiff,*

v.

STATE OF DELAWARE,

*Defendant.*

**AFFIDAVIT OF ALI MIRZAKHALILI IN SUPPORT OF DELAWARE ON CROSS-MOTIONS FOR SUMMARY JUDGMENT**

STATE OF DELAWARE :
: ss:
COUNTY OF NEW CASTLE :

Ali Mirzakhalili, being duly sworn, deposes and says:

1. I have knowledge of the matters set forth herein, based upon my personal knowledge and based upon my review of the files maintained by my office.

2. I am a registered professional engineer in Delaware and hold a Bachelor of Science in Civil Engineering from the University of Delaware. I am employed as the Environmental Program Administrator for the Air Quality Management Section, Delaware Department of Natural Resources and Environmental Control ("DRNEC"). I have served in this position since 2001.

3. For the past 22 years, I have been employed by DNREC. My entire career with DNREC has focused on air quality issues, including regulatory program development, planning, compliance and enforcement.

4. The Air Quality Management Section of DNREC is charged with, among other things, directing revisions to the State Implementation Plan ("SIP") as required under the Clean Air Act Amendments of 1990, promulgating and amending the State of Delaware's Regulations Governing the Control of Air Pollution, and tracking air quality status and attainment status.

5. Under the Clean Air Act Amendments of 1990, each state has the primary responsibility for assuring air quality within the entire geographic region comprising that state. 42 U.S.C. § 7407(a). This responsibility includes submission of the State SIP which provides the "manner in which national primary and secondary ambient air quality standards will be achieved and maintained within each air quality control region in such state." *Id.* The SIP "include[s] a program for the enforcement of [control] measures ... and regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that national ambient air quality standards are achieved...." 42 U.S.C. § 7410(a)(2)(C).

6. In compliance with the requirements of the Federal Clean Air Act Amendments, the Air Quality Management Section of DNREC has promulgated Regulations Governing the Control of Air Pollution. These regulations provide air quality management and permitting requirements applicable to stationary sources located in Delaware. A "stationary source" is defined as including "any ... waterborne craft ... deposited, parked, moored, or otherwise remaining temporarily in place, which emits or may emit any air contaminant." 7-1000-1101 *Del. Code Regs.* § 2. Thus, a boat fixed to a dock is a "stationary source" under Delaware air quality regulations. As such, a "stationary source" located in Delaware is required to comply with Delaware's air quality regulations pertaining to, among other things, permits, new source performance standards, emission standards for hazardous air pollutants, and requirements for preconstruction review. 7-1000-1102 *Del. Code Regs.* § 2.0; 7-1000-1120 *Del. Code Regs.* § 1.1; 7-1000-1121 *Del. Code Regs.* § 1.1; 7-1000-1125 *Del. Code Regs.* §§ 1.2-1.3, 4.0.

7. If the liquefied natural gas ("LNG") facility proposed by British Petroleum ("BP") were constructed, supertankers moored to the dock as well as onboard equipment used to transfer cargo would be required to satisfy the air quality requirements for stationary sources under Delaware's air quality regulations. The proposed BP facility would have to comply with all best available technology requirements for preconstruction review and all

relevant notification, recording, and monitoring provisions for new source performance standards. 7-1000-1120 *Del. Code Regs.* §§ 1.2, 1.3; 7-1000-1125 *Del. Code Regs.* § 4.0. The supertankers and the onboard equipment would also be required to comply with Delaware's regulation concerning emission standards for hazardous air pollutants. 7-1000-1121 *Del. Code Regs.* § 1.1. BP would be required to follow Delaware air quality standards because the supertankers would be moored in Delaware.

8. Stationary sources at the Keystone/Logan facility,[1] any other facility extending into Delaware from the New Jersey shore within the twelve-mile circle, and ships anchored at big stone anchorage for lightering are subject to all Delaware air quality standards and permit requirements because: (1) the ships and any onboard equipment are stationary sources under Delaware regulations; and (2) the docking facilities and any stationary sources housed on or connected with them are located in Delaware.

9. The Air Quality Management Section of DNREC has notified BP regarding Delaware's air permitting requirements. BP has submitted preliminary data to DNREC for air quality permitting review. Data submitted to DNREC by BP identifies emissions of nitrogen oxides, sulfur oxides, carbon monoxide, volatile organic compounds, total suspended particles, $PM_{10}$, $PM_{2.5}$, Acrolein, and formaldehyde stemming from the operation of LNG supertankers in quantities which trigger best available technology permit requirements. 7-1000-1102 *Del. Code Regs.* § 2.1; 7-1000-1125 *Del. Code Regs.* § 4.0. Because the best available technology requirements are triggered, and because the proposed LNG docking and transfer operations are located in Delaware territory, the LNG supertankers servicing the proposed LNG facility (if built) are subject to Delaware air quality standards and the air emission permitting requirements of DNREC.

[1] Our office issues air permits and performs air quality inspections for equipment at the dock for the Keystone/Logan facility.

Ali Mirzakhalili

Subscribed and Sworn To
Before Me This 26th Day
of December, 2006

Notary Public
Of The State Of Delaware
Attorney at Law
Pursuant to 29 Del C § 4323

No. 134, Original

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

STATE OF NEW JERSEY,

*Plaintiff,*

v.

STATE OF DELAWARE,

*Defendant.*

**AFFIDAVIT OF WILLIAM MOYER IN SUPPORT OF DELAWARE ON CROSS-MOTIONS FOR SUMMARY JUDGMENT**

STATE OF DELAWARE :
: ss:
COUNTY OF NEW CASTLE :

William Moyer, being duly sworn, deposes and says:

1. I have knowledge of the matters set forth herein, based upon my personal knowledge and based upon my review of the files maintained by DNREC.

2. In 2004, I retired from my position as the Manager of the Wetlands and Subaqueous Lands Section of the Delaware Department of Natural Resources and Environmental Control ("DNREC") after a thirty-one year career. I was the head of the Wetlands and Subaqueous Lands Section within DNREC from 1975-2004. In that position I implemented Delaware laws applicable to the coastal zone on a daily basis.

3. In 1966, Delaware passed a law known as the Underwater Lands Act. 55 Del. Laws 442. The Underwater Lands Act superseded other related Delaware subaqueous laws first passed in 1961. The Underwater Lands Act authorized the Air and Water Resources Commission ("Commission") (later DNREC) to

promulgate rules relating to the processing of applications for permission to use subaqueous lands. 55 Del. Laws 442 § 4657.

4. On or about July 14, 1969, Delaware adopted Regulations Governing the Use of Water Resources and Public Subaqueous Lands, as authorized by the Underwater Lands Act. (hereinafter "1969 Regulations"). In the 1969 Regulations, the Commission stated that in evaluating all applications for the use of Delaware subaqueous lands, the Commission would review applications with due regard for the general interest and welfare of the people of the State. 1969 Regulations § 1.07. The 1969 Regulations also required review by the appropriate State and Federal agencies having jurisdiction or interest in matters pertaining to water pollution, public health, fish and wildlife, planning, geology, or navigation before a project could be approved. 1969 Regulations § 1.08. Selected provisions of the 1969 Regulations are included in Delaware's appendix. DE App. 4023-24.

5. From the time that I became the head of DNREC's Subaqueous Lands Section in 1975, our office always treated any structure construed prior to the adoption of the 1969 Regulations as a grandfathered use. Our office did not require a new application for continued use of an existing pier or structure, so long as the structure was constructed prior to July 14, 1969. This grandfathering policy applied throughout Delaware's coastal areas along the Delaware River, from Delaware's northern boundary with Pennsylvania to its southern boundary. The policy also applied to structures on Delaware subaqueous lands within the twelve-mile circle, regardless of whether they began on fast land in Delaware or New Jersey.

6. The Underwater Lands Act (as amended) remained the law governing the use of Delaware's subaqueous lands until 1986 when the Delaware General Assembly passed the Subaqueous Lands Act. *See* Del. Code Ann. tit. 7, §§ 7201 *et seq.*[1]

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[1] The General Assembly describes the purpose of the Subaqueous Lands Act as:

> Subaqueous lands within the boundaries of Delaware constitute an important resource of the State and require protection against uses or changes which may impair the public interest in the use of tidal or nontidal waters. The purposes of this chapter are to empower the Secretary to deal with or to dispose of interest in public subaqueous lands

Regulations Governing the Use of Subaqueous Lands were adopted pursuant to the Subaqueous Lands Act on May 8, 1991, and amended on September 2, 1992 (hereinafter "1992 Regulations").

7. The grandfathering of certain existing piers and structures was codified in the 1992 Regulations, which state: "[t]o the extent that any activity is commenced prior to the effective date of these Regulations, any previous regulation or law which applied to such activity prior to the effective date of these Regulations shall remain in force." 1992 Regulations at 1.02A.5. However, under the 1992 Regulations, a permit is required for a modification of any grandfathered use. 1992 Regulations at 1.02A.7; 1.04B.10.[2] ("[a]ny change or modification of a . . . grandfathered activity affecting subaqueous lands, which occurs after the effective date of these Regulations, shall be subject to these Regulations)".

8. The Subaqueous Lands Act and its regulations authorize DNREC both to regulate any potentially polluting use made of Delaware's subaqueous lands[3] and to grant or lease property

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> and to place reasonable limits on the use and development of private subaqueous lands., in order to protect the public interest by employing orderly procedures for granting interests in public subaqueous land and for issuing permits for uses of or changes in private subaqueous lands. To this end, this chapter empowers the Secretary to adopt rules and regulations to effectuate the purposes of the chapter, to apply to the courts for aid in enforcing this statute and the rules and regulations adopted pursuant hereto, and to convey interests in subaqueous lands belonging to the State.

Del. Code Ann. tit. 7, § 7201.

[2] A copy of the 1992 Regulations is included in Delaware's appendix. DE App. 4025-48.

[3] *See* Del. Code Ann., tit. 7, § 7203(b) ("Owners of private subaqueous lands must obtain a permit from the Department before making any use of such lands which may contribute to the pollution of public waters, infringe upon the rights of the public, infringe upon the rights of other private owners or make connection with public subaqueous lands."); *see also id.* § 7201 ("Subaqueous lands within the boundaries of Delaware constitute an important resource of the State and require protection against

interests in those State lands.[4] Thus, the Wetlands and Subaqueous Lands Section of DNREC evaluates the environmental impacts of any proposed project, including impacts relating to dredging and/or driving piles, and impacts to water quality, shell fisheries, aquatic vegetation, habitat, air quality (including noise, odors and hazardous chemicals), and the effects on aquatic ecosystems. The Wetlands and Subaqueous Lands Section also evaluates the public interest in any proposed project that may affect the use of subaqueous lands. An applicant is required to satisfy Delaware environmental standards before a lease or a permit can issue for a proposed use.

9. Approval from the Subaqueous Lands Section does not relieve an applicant from complying with the laws, rules, regulations and requirements imposed on the same lands, uses, structures, facilities or other appurtenances by local, State and federal government agencies or other divisions within DNREC. 1992 Regulations at 1.12. Other required approvals could include but are not limited to approvals for the proposed use under Delaware's State Coastal Zone Act (*See* Del. Code Ann. tit. 7, § 7001 et seq.), and/or obtaining a consistency determination through Delaware's Coastal Zone Management Program for projects that require federal authorization. Because additional DNREC permits, state permits, federal permits, and local permits are required from other divisions and agencies before an applicant can obtain permission for a particular use of Delaware subaqueous land, the Subaqueous Lands Section requires that the applicant describe the intended use of the proposed facility in the application process. No subaqueous lands lease, permit, or letter of authorization should issue unless the applicant can demonstrate compliance with all applicable laws and regulations relating to the proposed use.

10. An applicant is required to obtain a lease, permit, or letter of authorization from DNREC for construction or use of any structure on, in, under or over Delaware subaqueous lands. 1992

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uses or changes which may impair the public interest in the use of tidal or nontidal waters. The purposes of this chapter are to empower the Secretary to deal with or to dispose of interest in public subaqueous lands and to place reasonable limits on the use and development of private subaqueous lands.

[4] *See* Del. Code Ann. tit. 7, § 7206 ("[T]he Secretary shall have exclusive jurisdiction and authority over all projects to convey a fee simple or lesser interest or to grant easements with respect to subaqueous lands belonging to the State.").

Regulations at 1.04B.1; *see also* Del. Code Ann. tit. 7, § 7205. Because the twelve-mile circle area of the Delaware River is in Delaware territory, the Subaqueous Lands Section has required that a subaqueous lands lease, permit, or letter of authorization be issued for all docks and piers constructed on the easterly half of the River after 1969. Delaware's subaqueous lands laws also apply to projects that straddle the boundary between the states because any project that requires the use of Delaware subaqueous lands requires authorization from the subaqueous lands section. Since enactment of the 1969 Regulations, Delaware has regulated the uses of those lands, performed environmental review of projects, and has required leases, permits or letters of authorization for boundary-straddling projects regardless of whether New Jersey also regulates a project that extends from the New Jersey shore.

11. For any dredging activity, including activity occurring on the easterly half of the Delaware River in the twelve-mile circle, our office has required that the applicant receive a dredging permit or a letter of authorization. 1992 Regulations at 1.04B.2, 1.04B.8; 3.05; *see also* Del. Code Ann. tit. 7, § 7205. During my tenure, a subaqueous lands lease was not a prerequisite for dredging activity because dredging and pier construction were considered separate activities. Different regulations and standards apply to construction of piers and dredging activities. *Compare* 1992 Regulations at 3.02 and 3.03 (boat docking facilities) with 1992 Regulations at 3.05 (dredging requirements). For example, an applicant with a pier that was either constructed pursuant to a valid subaqueous lands lease or grandfathered as a pre-1969 structure is nevertheless required to obtain all applicable approvals for any subsequent dredging.

12. During my twenty-nine year career as Manager of the Wetlands and Subaqueous Lands Section, my office issued numerous approvals for activities on Delaware subaqueous lands on the easterly side of the Delaware River within the twelve-mile circle. A summary of the approvals granted by the Wetlands and Subaqueous Lands Section for activities occurring on the easterly half of the Delaware River within the twelve-mile circle during my DNREC career and after my retirement are outlined below.

DuPont Approvals

13. On March 18, 1982, my office issued a Letter of Authorization to S.T. Hudson Engineers, Inc. to repair and replace an existing 36-pile cluster with a filled steel sheet structure at the

E.I. DuPont de Nemours & Co., Inc. facility in Deepwater, New Jersey. DE App. 1329.

14. On October 15, 1982, my office issued a Letter of Authorization to E.I. DuPont de Nemours & Co., to conduct maintenance dredging of 85,000 square yards of material from the Delaware River at Deepwater, New Jersey. DE App. 3431.

15. On January 5, 1987, my office issued a Letter of Authorization to S.T. Hudson Engineers, Inc. to repair and replace timber docking and stringers on the approachway at the Chambers Works, Delaware River, Deepwater, New Jersey facility. DE App. 3433.

16. On February 9, 1988, my office issued a letter of authorization to E.I. DuPont de Nemours & Co. to conduct maintenance dredging of 80,000 cubic yards of material from the Delaware River at the Chambers Works, Delaware River, Deepwater, New Jersey facility. DE App. 3435.

17. On May 4, 2001, my office issued a Subaqueous Lands Permit to DuPont Chambers Works to dredge approximately 4,650 cubic yards of material and to backfill to existing elevations in the Delaware River. DE App. 3439.

18. On March 7, 2006, the Subaqueous Lands Section issued a Subaqueous Lands Permit to the E.I. DuPont de Nemours and Company to dredge 1,800 cubic yards of material beyond the mean low water mark on the Delaware River adjacent to DuPont Chambers Works. DE App. 3455.

Delmarva Power Approvals

19. On April 6, 1987, my office issued a letter of authorization to Delmarva Power for the reconstruction of a 500 KV power line, fender system and related electric transmission facilities crossing the Delaware River. DE App. 3739.

20. On December 9, 1997, my office issued a Subaqueous Lands Lease to Delmarva Power and Light Company for the installation of 3755 linear feet of submarine fiber optic cable in the Delaware River extending from Pigeon Point in New Castle County to Deep Water Point in Sussex County, New Jersey. DE App. 3755.

Colonial Pipeline Approvals

21. On August 3, 1987, my office issued a Subaqueous Land Lease to Colonial Pipeline Company to conduct pipeline construction activity in the Delaware River. DE App. 3357-62.

22. On January 26, 1995, my office issued Subaqueous Land Lease to Colonial Pipeline Company to renew a lease to maintain 8000 feet of 30 inch diameter pipeline across the Delaware River between Marcus Hook and New Castle County. DE App. 3375-80.

Keystone Approvals

23. On September 30, 1991, my office issued a Subaqueous Lands Lease to Keystone Cogeneration Systems, Inc. to construct a coal unloading pier and to dredge 40,000 cubic yards of material from the Delaware River and to create a 910 feet by 150 feet barge berth. DE App. 3557-62.

24. On April 6, 1992, my office issued a Supplemental Approval to Keystone Energy Service Company, L.P. to allow for a change in leaseholder from Keystone Cogeneration Systems, Inc. to Keystone Energy Service Company, L.P. DE App. 3609-10.

25. On May 28, 1993, my office issued a supplemental approval to Keystone Energy Service Company for a modification of pier dimensions. DE App. 3611-12.

26. On November 12, 1997, my office issued a Letter of Authorization to Logan Generating Company, L.P. to conduct maintenance dredging of 15,000 cubic yards of material from a barge mooring facility on the Delaware River in Gloucester County, New Jersey. DE App. 3621.

27. On November 9, 2001, my office issued a Subaqueous Lands Lease renewal to Logan Generating Company, L.P. to maintain a pier, docks and dolphins in the Delaware River. DE App. 3623-27.

Army Corps Approvals

28. On April 7, 1992, my office issued a Letter of Authorization to the U.S. Army, Corps of Engineers to conduct maintenance dredging in the Salem River of 100,000 cubic yards of material. DE App. 3767-68.

29. On December 15, 1994, my office issued a Letter of Authorization to the U.S. Army, Corps of Engineers for maintenance dredging of 350,000 cubic yards of material from the Salem River to maintain the navigational channel. DE App. 3773-74.

Fort Mott Approvals

30. On February 7, 1996, my office issued a Subaqueous Lands Lease to the New Jersey Department of Environmental Protection, Department of Parks and Forestry for rehabilitation of the Fort Mott pier. New Jersey applied for permission to re-construct a pier to include placement of a barge 30 feet by 100 feet and a pile supported platform 10 feet by 10 feet on the Delaware River. DE App. 3717-21.

William Moyer

Subscribed and Sworn To
Before Me This 15 Day
of December, 2006

Notary Public
Of The State Of Delaware

No. 134, Original

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

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STATE OF NEW JERSEY,

*Plaintiff,*

v.

STATE OF DELAWARE,

*Defendant.*

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**AFFIDAVIT OF KURT REUTHER IN SUPPORT OF DELAWARE ON CROSS-MOTIONS FOR SUMMARY JUDGMENT**

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STATE OF DELAWARE :
: ss:
COUNTY OF NEW CASTLE :

Kurt Reuther, being duly sworn, deposes and says:

1. I have knowledge of the matters set forth herein, based upon my personal knowledge and based upon my review of the files maintained by my office.

2. I am employed as the Chief of Enforcement, of the Division of Air and Waste Management for the Delaware Department of Natural Resources and Environmental Control ("DNREC"). I have been employed by DNREC since 1984.

3. In Delaware, the Division of Air and Waste Management is responsible for enforcement of environmental laws and for responding to environmental spills and emergencies. The DNREC emergency response team consists of two main components: (1) the enforcement component, which is responsible for enforcing environmental laws, prosecuting violations of environmental laws and receiving release and discharge notifications; and (2) the

scientific component, which is responsible for providing scientific and technical support in responding to environmental emergencies.

Hazardous Substances Reporting Requirements.

4. Under the Emergency Planning and Community Right to Know Act ("EPCRA") (42 U.S.C. §§ 11001 *et seq.*), Congress has required states to establish state emergency response commissions ("SERCs") and local emergency planning committees ("LEPCs"). 42 U.S.C. § 11001(a)(c). The LEPCs are required under EPCRA to develop comprehensive emergency response plans to deal with, among other things, emergency responses for extremely hazardous substances. 42 U.S.C. § 11003(a). Once established, the SERCs review the plans prepared by the LEPCs. 42 U.S.C. § 11003(e).

5. EPCRA mandates industry reporting requirements for extremely hazardous substances above a certain threshold quantities. The list of extremely hazardous substances and reportable quantities of extremely hazardous substances under EPCRA is at 40 C.F.R. Part 355.

6. Under EPCRA, if a release of an extremely hazardous substance occurs from a facility at which a hazardous chemical is produced, used, or stored, the facility must provide notification of the release, identifying the chemical name of the substance involved in the release, an indication of whether the substance is on the list of extremely hazardous substances, an estimated quantity of any such substance that was released, the time and duration of the release, the medium or media into which the release occurred, the known or anticipated acute or chronic health risks associated with the emergency, the proper precautions to be taken as a result of the release, and the contact information for the facility. 42 U.S.C. § 11004(a)(2), (b)(2). 42 U.S.C. § 11004 (a)(2). Delaware law has similar reporting requirements. Del. Code Ann. tit. 16, § 6304(a); Del. Code Ann. tit. 7, § 6028(a).

7. Under EPCRA, notice is required to be provided by the owner or operator of a facility immediately after a release of an extremely hazardous substance above a reportable quantity. The notice must be provided "to the community emergency coordinator for the local emergency planning committees . . . for any area likely to be affected by the release and to the State emergency planning commission of any State likely to be affected by the release." 42 U.S.C. §11004(b)(1); 40 C.F.R. § 355.40(b)(1). Delaware law requires that notification must be provided to DNREC. *See* Del. Code Ann. tit. 16, § 6304(c).

8. EPCRA imposes stringent penalties for failure to notify LEPCs and SERCs likely to be affected by any EPCRA qualified release. Pursuant to 42 U.S.C. § 11045(b), a party failing to notify of a qualified release can receive a fine of up to $25,000.00 per day for each day that the violation continues, and can be fined up to $75,000.00 per day for a subsequent violation. In addition, if an owner or facility operator knowingly and willfully fails to provide notice, the person can be fined not more than $25,000.00 and be imprisoned for not more than two years. 42 U.S.C. § 11045(B)(4); 40 C.F.R. § 355.50(c). For a second violation, a person could be fined up to $50,000.00 and be imprisoned for up to five years. 40 C.F.R. § 355.50(c).

9. Under the Federal Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA") the Federal government also requires notification for release of hazardous substances beyond a threshold quantity limit. The CERCLA list of hazardous substances and designated reportable quantities are codified at 40 C.F.R. § 302.4, Table 302.4.

10. Under CERCLA, any person in charge of a vessel or an offshore or an onshore facility shall, as soon as he has knowledge of any release (other than a federally permitted release) of a hazardous substance from such vessel or facility in quantities equal to or greater than the reportable quantities established by 40 C.F.R. § 302.4, Table 302.4, must immediately notify the National Response Center established under the Clean Water Act of such release. 42 U.S.C. § 9603(a). The National Response Center is then required to convey the notification expeditiously to all appropriate Government agencies, including the Governor of any affected State. *Id.* Delaware law also requires that a similar notification be made to DNREC for CERCLA qualified releases. *See* Del. Code Ann. tit. 7, § 6028 (a).

11. Under CERCLA, any person subject to the act that fails to notify "immediately the appropriate agency of the United States Government as soon as he has knowledge" of a release of a hazardous substance above a reportable quantity or "who submits in such a notification any information which he knows to be false or misleading" may be fined "in accordance with the applicable provisions of Title 18 or imprisoned for not more than 3 years (or not more than 5 years in the case of a second or subsequent conviction), or both." 42 U.S.C. § 9603(b). Under Delaware law, any person who willfully or negligently violates the reporting requirements for CERCLA qualified releases can be punished with

a fine up to $25,000.00 per day for each day of the violation. Del. Code Ann. tit. 7, § 6028(f); Del. Code Ann. tit. 7, 6013(a).

12. During my tenure with the Enforcement Division of Air and Waste Management within DNREC, our office has always assumed jurisdiction for any release of an EPCRA qualified release or a CERCLA qualified release in the Delaware River within the twelve-mile circle. Our office has always assumed jurisdiction to the mean low water mark on the New Jersey shore within the twelve-mile circle.

13. Consequently, if a facility has an EPCRA qualified release of an extremely hazardous substance on the easterly side of the Delaware River within the twelve-mile circle (including an event occurring on a pier that straddles the boundary), the facility is required to notify Delaware of the release under EPCRA's notification requirements and under Delaware law. 42 U.S.C. § 11004(b)(1); 40 C.F.R. § 355.40(b)(1); Del. Code Ann. tit. 16, § 6304(c). Once notified, my office is responsible for responding to the incident and activating the necessary Delaware emergency responders to assist with the response.

14. Similarly, if a person causes qualified release of a CERCLA hazardous substance on the easterly half of the Delaware River within the twelve-mile circle (including an event occurring on a pier straddling the boundary), DNREC and the National Response Center must be notified because the release is in Delaware's jurisdictional limits. 42 U.S.C. § 9603(a); Del. Code Ann. tit. 7, § 6028(a). If the National Response Center receives a notification of a CERCLA qualified release on the easterly half of the Delaware River within the twelve-mile circle, the National Response Center immediately notifies our office, as well as other affected agencies, of the release by flash fax. If the event is reported in the twelve-mile circle, the Delaware Emergency Management Agency, the Delaware State Police, and DNREC are all considered to be primary responding agencies.

15. If the EPCRA or CERCLA qualified release emanated from a pier straddling the border between New Jersey and Delaware in the twelve-mile circle, DNREC would have jurisdiction to respond to the release, and would have jurisdiction to enforce criminal penalties for the release.

16. If DNREC discovered that an EPCRA or CERCLA qualified release occurred on the eastern half of the Delaware River within the twelve-mile circle, and the release was not

reported to DNREC, the appropriate Delaware LEPC, the SERC for Delaware, or the National Response Center as required by law, DNREC would institute applicable fines and criminal proceedings for failure to report the release.

Delaware Hazardous Material Responses In The Twelve-Mile Circle

17. Included in Delaware's Appendix (DE App. 4015-4022) is a list of hazardous materials responses in the Delaware River since 1986 for which Delaware responded. Outlined below are the hazardous material responses or investigations performed by our office on the easterly half of the Delaware River within the twelve-mile circle since 1986.

18. On October 1, 1986, Environmental Protection Officer No. 51 responded to an oil spill located on the Delaware River across from Delmarva Power and Light in Edgemoor, identified as complaint number 10687.

19. On June 24, 1989, Environmental Protection Officer No. 703 responded to an oil spill located on the Delaware River off Claymont, identified as complaint number 2145.

20. On August 7, 1990, Environmental Protection Officer No. 707 responded to an oil spill located on the Delaware River across from Claymont to the Delaware Memorial Bridge, identified as complaint number 10474.

21. On August 25, 1990, Environmental Protection Officer No. 704 responded to a discharge call located on the Delaware River at DuPont Chambers Works, identified as complaint number 10720.

22. On May 6, 1991, Environmental Protection Officer No. 707 responded to an oil spill located on the Delaware River at the Delaware/Pennsylvania Border, identified as complaint number 1250.

23. On January 10, 1992, Environmental Protection Officer No. 709 responded to a call regarding abandoned drums located on the Delaware River off Pennsville, identified as complaint number 133.

24. On March 25, 1993, Environmental Protection Officer No. 701 responded to a discharge call located on the Delaware River at Pennsville, identified as complaint number 1463.

25. On January 23, 1996, Environmental Protection Officer No. 704 responded to call regarding abandoned drums located on the Delaware River near Fox Point in the channel, identified as complaint number 209.

26. On June 15, 1996, Environmental Protection Officer No. 704 responded to a spill located on the easterly half of the Delaware River north of Reedy Island at Port Penn, identified as complaint number 3102.

27. On July 26, 1996, Environmental Protection Officer No. 702 responded to a spill located on the Delaware River in Gloucester, New Jersey, identified as complaint number 4139.

28. On November 26, 1996, Environmental Protection Officer No. 705 responded to a spill located on the Delaware River near Penns Grove, New Jersey, identified as complaint number 6490.

29. On May 13, 1998, Environmental Protection Officer No. 707 responded to a spill located on the Delaware River near Camden, New Jersey, identified as complaint number 2192.

30. On January 28, 1999, Environmental Protection Officer No. 707 responded to a spill located on the Delaware River near Gloucester, New Jersey, identified as complaint number 382.

31. On September 20, 1999, Environmental Protection Officer No. 711 responded to a spill located on the Delaware River near Swedesboro, New Jersey, at mile marker 81, identified as complaint number 4488.

32. On October 3, 1999, Environmental Protection Officer No. 709 responded to a spill located on the Delaware River near Deptford, New Jersey, identified as complaint number 4764.

33. On November 1, 1999, Environmental Protection Officer No. 709 responded to a spill located on the Delaware River near Deptford, New Jersey, identified as complaint number 5207.

34. On January 14, 2001, Environmental Protection Officer No. 702 responded to a spill located on the Delaware River at the Pennsylvania State Line, identified as complaint number 204.

35. On October 8, 2003, Environmental Protection Officer No. 711 responded to a spill located on the Delaware River at the Pennsylvania State Line, identified as complaint number 4328.

36. On November 27, 2004, Environmental Protection Officer No. 711 responded to a spill located on the Delaware River, identified as complaint number 4741.

37. On December 9, 2004, Environmental Protection Officer No. 711 responded to a spill located on the Delaware River, identified as complaint number 4889.

38. On February 20, 2005, Environmental Protection Officer No. 709 responded to a spill located on the Delaware River at Premcor's Pier, identified as complaint number 483.

39. On March 6, 2005, Environmental Protection Officer No. 711 responded to a discharge call located on the Delaware River at DuPont Chambers Works, identified as complaint number 590.

40. On May 6, 2005, Environmental Protection Officer No. 711 responded to a spill located on the Delaware River at Paulsboro, New Jersey, identified as complaint number 1284.

41. On June 21, 2005, Environmental Protection Officer No. 711 responded to a spill located on the Delaware River at Paulsboro, New Jersey, identified as complaint number 1888.

42. On June 28, 2005, Environmental Protection Officer No. 711 responded to a spill located on the Delaware River at Glouster County, New Jersey, identified as complaint number 1997.

43. On July 11, 2005, Environmental Protection Officer No. 711 responded to a spill located on the Delaware River at Salem, New Jersey, identified as complaint number 2123.

44. On December 7, 2005, Environmental Protection Officer No. 711 responded to a spill located on the Delaware River at Salem, New Jersey, identified as complaint number 3793.

45. On December 20, 2005, Environmental Protection Officer No. 711 responded to a spill located on the Delaware River at Paulsboro Beach, New Jersey, identified as complaint number 3928.

46. On January 11, 2006, Environmental Protection Officer No. 711 responded to a spill located on the Delaware River at West Deptford, New Jersey, identified as complaint number 101.

47. On May 4, 2006, Environmental Protection Officer No. 711 responded to a spill located on the Delaware River at Logan Township, New Jersey, identified as complaint number 1385.

48. On May 10, 2006, Environmental Protection Officer No. 711 responded to a discharge call located on the Delaware River at Artificial Island, New Jersey, identified as complaint number 1439.

49. On May 15, 2006, Environmental Protection Officer No. 711 responded to a discharge call located on the Delaware River at Lower Alloway Township, New Jersey, identified as complaint number 1490.

50. On July 11, 2006, Environmental Protection Officer No. 711 responded to a spill located on the Delaware River at Paulsboro, New Jersey, identified as complaint number 2152.

51. On July 12, 2006, Environmental Protection Officer No. 711 responded to a miscellaneous call located on the Delaware River at West Deptford, New Jersey, identified as complaint number 2169.

52. The enforcement section of the Division of Air and Waste Management of DNREC investigated and responded to these incidents on the easterly half of the River within the twelve-mile circle because the incidents/releases occurred in Delaware territory and fell under the jurisdiction of my office.

Facilities That Straddle The Boundary Between Delaware And New Jersey In The Twelve-Mile Circle

53. In addition to responding to hazardous material spills on the Delaware River, our office also performs patrols along the River for wetlands and subaqueous lands violations, such as illegal docks, piers, and/or wetlands filling.

54. If our office located a new dock or pier on the easterly half of the Delaware River within the twelve-mile circle, our office would first use GPS technology to determine whether the new structure actually crosses into Delaware territory. If the structure actually crosses into Delaware territory, we would check with the

appropriate agencies within DNREC to determine if the appropriate permits were issued for the structure.

55. There are very few structures that straddle the boundary between Delaware and New Jersey in the twelve-mile circle.

56. On September 15, 2006, I accompanied Michael Lehm, a photographer hired by the State of Delaware, on a boating trip for the purpose of cataloging every structure that crosses the boundary between New Jersey and Delaware within the twelve-mile circle. We determined the actual boundary between the states by using aerial photographs of the River with the boundary line superimposed upon the photograph. DE App. 4207-4212 (DE28987-DE28992). Photographs of the structures that cross the boundary are listed below.

57. Photographs identified as DE29001, DE29007, DE29014, DE29031, DE29033, and DE29037, included in Delaware's appendix at DE App. 3885-3895, are of the Keystone/Logan Generating Facility. According to the aerial boundary maps (DE App. 4207-4212, (DE28987-DE28992)), the pier of this facility crosses into Delaware territory.

58. Photograph DE29044, included in Delaware's appendix at DE App. 3897, depicts pilings south of the Keystone/Logan Pier on the easterly side of the Delaware River. According to the aerial boundary maps (DE App. 4207-4212, (DE28987-DE28992)), these pilings are partially located in Delaware territory.

59. Photographs DE29050, DE29052, and DE29058, included in Delaware's appendix at DE App. 3899-3903 are signs depicting the pipeline crossing north of Old Man's Creek. I understand that the proposed Crown Landing liquefied natural gas ("LNG") facility, if built, would be located very near this pipeline crossing.

60. Photographs identified as DE29068, DE29077, DE29080, DE29081 and DE29096, included in Delaware's appendix at DE App. 3905-3913, depict a broken pier on the easterly side of the Delaware River south of boundary marker 2, approximately across from Bellevue, Delaware. According to the aerial boundary maps (DE App. 4207-4212, (DE28987-DE28994)), this dilapidated pier is partially located in Delaware territory.

61. Photographs identified as DE29103 and DE29111, included in Delaware's appendix at DE App. 3915-3918, depict a stone groin the on the easterly side of the Delaware River approximately

across from Bellevue, Delaware. According to the aerial boundary maps (DE App. 4204-4212, (DE28987-DE28992)), this dilapidated groin is partially located in Delaware territory.

62. Photographs DE29122, DE29127, DE29129, and DE29136, included in Delaware's appendix at DE App. 3919-3926, depict pilings on the easterly side of the Delaware River south of the stone jetty, approximately across from Bellevue, Delaware. According to the aerial boundary maps (DE App. 4207-4212, (DE28987-DE28992)), these pilings are partially located in Delaware territory.

63. Photographs DE29152, DE29153, DE29173, DE29178, DE29182, and DE29194, included in Delaware's appendix at DE App. 3927-3938, depict the remnants of the Pennsgrove Pier on the easterly side of the Delaware River. According to the aerial boundary maps (DE App. 4207-4212, (DE28987-DE28992)), this dilapidated pier is partially located in Delaware territory.

64. Photograph DE29213, included in Delaware's appendix at DE App. 3939, depicts a jet of land on the easterly side of the Delaware River south of Pennsgrove Pier north of DuPont Chambers Works. According to the aerial boundary maps (DE App. 4207-4212, (DE28987-DE28992)), this jet of land is partially located in Delaware territory.

65. Photographs DE29225, DE29243, DE29248, DE29254, and DE29261, included in Delaware's appendix at DE App. 3941-3950, depict the DuPont Chambers Works outfall and pier on the easterly side of the Delaware River. According to the aerial boundary maps (DE App. 4207-4212, (DE28987-DE28992)), the outfall and the pier are partially located in Delaware territory.

66. Photographs DE29276, DE29278, and DE29280, included in Delaware's appendix at DE App. 3951-3956, depict the power company formerly known as Conectiv on the easterly side of the Delaware River. According to the aerial boundary maps (DE App. 4207-4212, (DE28987-DE28992)), a few feet of this pier is located in Delaware territory.

67. Photographs DE29290, DE29294, and DE29295, included in Delaware's appendix at DE App. 3957-3962, depict a groin on the easterly side of the Delaware River, south of Conectiv and North of Pennsville. According to the aerial boundary maps (DE App. 4207-4212, (DE28987-DE28992)), this groin is partially located in Delaware territory.

68. Photographs DE29312, DE29314, DE29317, DE29328, DE29336, and DE29344, included in Delaware's appendix at DE App. 3963-3974, depict the remnants of the Pennsville Pier on the easterly side of the Delaware River. According to the aerial boundary maps (DE App. 4207-4212, (DE28987-DE28992)), portions of this dilapidated pier are located in Delaware territory.

69. Photographs identified as DE29351 and DE29362, included in Delaware's appendix at DE App. 3975-3978, depict the pier at Fort Mott on the easterly side of the Delaware River. According to the aerial boundary maps (DE App. 4207-4212, (DE28987-DE28992)), portions of this pier are located in Delaware territory.

70. Beyond these structures, there are no other piers or groins that straddle the boundary between Delaware and New Jersey within the twelve-mile circle. There are only three active piers that straddle the boundary between the states to any significant degree – Keystone Logan, DuPont Chambers works, and Fort Mott. The Conectiv pier barely crosses the boundary between the States.

71. There are only three facilities that begin in New Jersey and that straddle the Delaware boundary which could be subject to material reporting requirements under EPCRA – the Keystone Facility, the DuPont Chambers Works Facility, and the Conectiv Facility. These facilities are not required to provide hazardous material reports to Delaware because no hazardous or extremely hazardous materials are stored in Delaware territory. If, however, there is a spill or release of hazardous material or extremely hazardous material that reaches Delaware territory in the twelve-mile circle, that release must be reported to DNREC. 42 U.S.C. § 9603(a); 42 U.S.C. §11004(b)(1); 40 C.F.R. § 355.40(b)(1); Del. Code Ann. tit. 7, § 6028 (a); CERCLA; Del. Code Ann. tit. 16, § 6304(c). Our office is the lead agency for the response in the twelve-mile circle unless the coast guard takes command of the response.

72. Similarly, if the proposed Crown Landing LNG facility were built, our unit would be the lead agency for any hazardous materials response occurring in Delaware Territory for any event occurring on the supertanker, on the pier, or in the River unless the Coast Guard took command of the response.

Kurt Reuther

Subscribed and Sworn To
Before Me This 19th Day
of December, 2006

Max B Walton

Notary Public
Of The State Of Delaware

No. 134, Original

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

STATE OF NEW JERSEY,

*Plaintiff,*

v.

STATE OF DELAWARE,

*Defendant.*

**AFFIDAVIT OF WILLIAM S. SCHENCK IN SUPPORT OF DELAWARE ON CROSS-MOTIONS FOR SUMMARY JUDGMENT**

STATE OF DELAWARE :
: ss:
COUNTY OF NEW CASTLE :

William S. Schenck, being duly sworn, deposes and says:

1. I have knowledge of the matters set forth herein, based upon my personal knowledge and based upon my review of the files maintained by my office.

2. I am employed as a Scientist for the Delaware Geological Survey. I have been employed by the Delaware Geological Survey since 1980.

3. From approximately the beginning of my employment with the Delaware Geological Survey until 2001, Dr. Robert Jordan, the former Director of the Delaware Geological Survey and the former State geologist for the State of Delaware, served as the chair of the Delaware Boundary Commission. Throughout my employment with the Delaware Geological Survey, I assisted Dr. Jordan and the Delaware Boundary Commission in working with the states of Maryland, Pennsylvania, and New Jersey to reestablish the

boundary monuments that mark the exact boundaries between the states.

4. In 1987, the Delaware State Boundary Commission began working with New Jersey and the National Geodetic Survey in attempt to restore six boundary reference monuments establishing the boundary between Delaware and New Jersey in the twelve-mile circle, as established by the United States Supreme Court in 1934. *See New Jersey v. Delaware*, 291 U.S. 361 (1934); *New Jersey v. Delaware*, 295 U.S. 694 (1935) (Decree). This work continued between 1987 and 1996.

5. Because the boundary point markers from 1934 had not been maintained, some of the boundary markers were dilapidated, some of the boundary markers could not be located, and some of the boundary markers were underwater due to erosion of the shoreline. Consequently, the states established positions for the location of new boundary reference markers, and worked with a private survey company and the National Geodetic Survey to establish the distances and directions to establish the official boundary between the states as it existed in 1934. DE App. 4049-4054 (DE20119-DE20124).

6. Based on distances and coordinates verified by the National Geodetic Survey, a boundary agreement was drafted between the states. The agreement was drafted for the purpose of establishing as the official boundary between the states in the twelve-mile circle area as the mean low water mark as it existed in 1934. In 2001, New Jersey and Delaware signed the boundary agreement establishing the boundary in the twelve-mile circle area as the mean low water line as it existed in 1934.

7. In 2003, the Delaware Geological Survey requested that the United States Geological Survey ("USGS") create a digital boundary line between the states, including the twelve-mile circle area, based upon the turning points and azimuths in the boundary agreement.

8. When the USGS attempted to map the coordinates in the 2001 boundary agreement, the USGS found errors in the distances and directions in certain of the newly established boundary reference markers. Thereafter, the National Geodetic Survey provided corrected distances and directions for the boundary point markers in question. With the revised calculations from the National Geodetic Survey, the USGS was able to align the 1934

shoreline to fit the corrected boundary point markers and to digitally map the mean low water mark as it existed in 1934.

9. In December 2004, Delaware signed an amendment to the 2001 boundary agreement confirming the corrected boundary reference points for the boundary. New Jersey signed the amendment in February 2005. DE App. 4055-4058 (DE26046-DE26049). Thus, the boundary agreement between the states confirms that the official boundary in the twelve-mile circle is the mean low water mark on the easterly side of the River as it existed in 1934.

10. The USGS then created a digital boundary line between the State of Delaware and the State of New Jersey. The digital boundary line between the states in the twelve-mile circle prepared by the USGS is depicted on aerial photography of the Delaware River. DE App. 4207-4212 (DE28987-DE28992). This depiction of the 1934 mean low water mark boundary between the states is digitized from the revised boundary agreements between the states and the map attached to the United States Supreme Court decree in *New Jersey v. Delaware*, 295 U.S. 694 (1935). This depiction can be located online at http://datamil.delaware.gov.

11. Also located online are aerial photographs of the Delaware River within the twelve-mile circle dating back to 1937. Starting in 1961, the aerial photographs contain images of the eastern and western shore of the River in the area of the twelve-mile circle.

12. I have compared the aerial photographs of the Delaware River from 1961, 1968 and 2002 that are maintained by my office and can be found online at http://datamil.delaware.gov. In comparing the 1961, 1968 and 2002 aerial photography, I have located only three structures that were constructed or expanded since 1968 that straddle the boundary between the New Jersey and Delaware. One new structure is a large pier located across from Claymont Delaware which is known as the Keystone facility. The second structure is just north of the Delaware Memorial Bridge at DuPont. The aerial photographs appear to show that some minor modifications of the DuPont pier area have occurred since 1968. The third structure is Fort Mott pier located south of Killcohook National Wildlife Refuge, which appears to have expanded between 1968 and 2002. No other structures appear to cross the boundary.

William S. Schenck

Subscribed and Sworn To
Before Me This 18th Day
of December, 2006

Notary Public
Of The State Of Delaware

No. 134, Original

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

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STATE OF NEW JERSEY,

*Plaintiff,*

v.

STATE OF DELAWARE,

*Defendant.*

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**AFFIDAVIT OF DAVID SMALL**
**IN SUPPORT OF DELAWARE ON**
**CROSS MOTIONS FOR SUMMARY JUDGMENT**

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STATE OF DELAWARE :
: SS
COUNTY OF KENT :

David Small, being duly sworn, deposes and says:

1. Since July 2001, I have served as Deputy Secretary for the Delaware Department of Natural Resources and Environmental Control ("DNREC") within the Office of the Secretary. In that capacity I assist Secretary John A. Hughes in providing overall direction, management, and policy within DNREC. Among other things, I have participated in DNREC's evaluation of BP/Crown Landing's application to construct a liquefied natural gas facility partially within Delaware territory. I have knowledge of the matters set forth herein based upon my personal knowledge, my review of the files maintained by DNREC, and my review of documents produced in discovery in this litigation.

2. The mission of DNREC is to ensure the wise management, conservation, and enhancement of the State's natural resources, protect public health and the environment, provide quality outdoor

recreation, improve the quality of life, and educate the public on historic, cultural and natural resources, use requirements and issues. DNREC carries out its responsibilities through six divisions: (i) the Office of the Secretary; (ii) the Division of Air and Waste Management; (iii) the Division of Fish and Wildlife; (iv) the Division of Parks and Recreation; (v) the Division of Soil and Water Conservation; and (vi) the Division of Water Resources. All of these divisions have management responsibilities with regard to activities that occur within Delaware's twelve-mile circle, including structures within the twelve-mile circle.

3. The Office of the Secretary is responsible for policy development and program coordination and management. Among other things, the Secretary administers Delaware's Coastal Zone Act ("DCZA"), adopted in 1971. Recognizing that "the coastal areas of Delaware are the most critical areas for the future of the State in terms of the quality of life in the State," the DCZA declares that it is the "public policy of the State to control the location, extent and type of industrial development in Delaware's coastal areas" in order to "better protect the natural environment of its bay and coastal areas and safeguard their use primarily for recreation and tourism." 7 Del. Code Ann. tit. 7, § 7001. Under the DCZA, certain activities in the coastal zone are absolutely prohibited, including the construction of heavy industry and offshore gas, liquid, or solid bulk product transfer facilities. Other activities are allowed in the coastal zone only by permit. A permit must be obtained prior to any land disturbing or construction activity. DNREC's implementation of the DCZA is described in more detail in an affidavit from Philip Cherry, DNREC's Director of Policy and Planning.

4. The Division of Air and Waste Management monitors Delaware's air quality, plans for and responds to environmental incidents, and regulates the handling, transfer, storage and disposal of solid, infectious, and hazardous waste. Through its Air Quality Management Section (Ali Mirzakhalili, Manager), the Division monitors compliance with Delaware's air quality standards, including compliance by ships docked within Delaware's twelve-mile circle. Through its Enforcement Section (Kurt Reuther, Chief), the Division performs emergency response, investigative and criminal enforcement relating to air quality, regulated and hazardous substances, and also provides enforcement for the Divisions of Soil and Water Conservation and Water Resources. The Division also carries out Federal reporting requirements under the Emergency Planning and Community Right to Know Act ("EPCRA") and the Federal Comprehensive Environmental

Response, Compensation and Liability Act of 1980 ("CERCLA"). DNREC's activities in these areas are set forth in greater detail in affidavits from Messrs. Mirzakhalili and Reuther.

5. The Division of Fish and Wildlife carries out public safety services in the areas of boating, hunting, fishing, shell fishing, and disaster response. Enforcement activities in these areas are described in more detail in an affidavit from Captain Robert Hutchins, an enforcement officer with many years experience patrolling the twelve-mile circle.

6. The Division of Parks and Recreation operates and maintains fifteen state parks and related preserves and greenways throughout Delaware, including historic Fort Delaware State Park, located on Pea Patch Island in the Delaware River within the twelve-mile circle.

7. The Division of Soil and Water Conservation is responsible for preserving and protecting the state's soil, water, and coastal resources by managing the state's shoreline, coastal zone, and navigable waterways, by regulating coastal and urban land use and construction activities and by promoting agricultural land management practices. The Division houses the Delaware Coastal Management Program, established in 1979 pursuant to the federal Coastal Zone Management Act. This Program works to protect and enhance the coastal resources of the state through the review of federal and state projects to ensure that they are consistent with state coastal policies. Under the Coastal Zone Management Act, an applicant for a Federal license or permit to conduct an activity affecting the coastal zone of a state must provide a certification that the proposed activity complies with the policies of the state's approved program and that such activity will be conducted in a manner consistent with the program. Applicants whose proposed projects that qualify under the Coastal Zone Management Act and would affect Delaware's coastal zone must obtain Federal consistency certifications through Delaware's Coastal Management Program. Delaware's activities under the Program are set forth in more detail in the affidavit of Sarah W. Cooksey, Program Administrator.

8. The Division of Water Resources monitors, manages and protects Delaware's ground and surface waters, tidal wetlands, and underwater lands. The Division is a link to the Delaware Estuary Program, Inland Bays Estuary Program and the Delaware River Basin Commission. The Division's Wetlands and Subaqueous Lands Section (Laura M. Herr, Manager) provides permitting

services for activities that affect subaqueous lands and tidal wetlands, including the dredging of Delaware subaqueous lands. The Division's Surface Water Discharges Section (R. Peder Hansen, Manager) issues permits for industrial and municipal wastewater treatment systems (including storm water) and sludge management. With regard to projects entering Delaware from the New Jersey shore, compliance with Delaware's water quality standards for discharges is assured through the uniform minimum standards for discharges established under the federal Clean Water Act, and the National Pollution Discharge Elimination System Program, as well as through Delaware's participation in the Delaware River Basin Commission. The Division's activities within the twelve-mile circle are set forth in greater detail in the affidavits of Mr. Hansen and Ms. Herr.

9. In order to obtain a right to construct and operate a pier within Delaware territory, applicants must obtain a variety of permits and approvals from DNREC, including: a subaqueous lands lease, a permit under the Delaware Coastal Zone Act, a Federal consistency determination under Delaware's Coastal Zone Management Program, and approvals regarding any effect of the proposed project on wetlands, fisheries and historical locations.

10. With regard to any pier or wharf in Delaware territory within the twelve-mile circle, DNREC provides public safety, monitoring, and enforcement services. These services include emergency response, police enforcement, fish and wildlife enforcement, and air quality monitoring.

11. As set forth above, during my entire tenure, DNREC has consistently exercised jurisdiction within the twelve-mile circle, both as a general proposition and specifically with regard to structures entering Delaware territory from the New Jersey shore.

David Small

Subscribed And Sworn To
Before Me This 20th Day
Of December, 2006

Notary Public
Of The State Of Delaware

No. 134, Original

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

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STATE OF NEW JERSEY,

*Plaintiff,*

v.

STATE OF DELAWARE,

*Defendant.*

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**AFFIDAVIT OF WILLIAM F. STREETS IN SUPPORT OF DELAWARE ON CROSS-MOTIONS FOR SUMMARY JUDGMENT**

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STATE OF DELAWARE :
: ss:
COUNTY OF NEW CASTLE :

William F. Streets, being duly sworn, deposes and says:

1. I have knowledge of the matters set forth herein, based upon my personal knowledge and based upon my review of the files maintained by my office.

2. I am employed by the New Castle County, Delaware, Department of Public Safety, Emergency Communications Division. I am one of two team leaders in the Emergency Communications Division.

3. I have been employed by New Castle County for the past thirty-one years. For the past seventeen years, I have acted as the custodian of records for the New Castle County Emergency Communications Division and the New Castle County 911 Center. Prior to acting as custodian of records for the 911 Center, I worked as fire supervisor. Prior to that, I worked as a dispatcher for the 911 Center.

4. The New Castle County Emergency Communications Division handles all 911 emergency response calls in New Castle County relating to fire and emergency services, with the exception of 911 calls from the City of Wilmington. The City of Wilmington maintains its own 911 call center.

5. The New Castle County Emergency Communications Division also handles 911 calls for the Delaware State Police, the New Castle County Police, and most municipalities within the County. Police calls occurring in the City of Newark and in the City of Wilmington are processed by the local municipality and are not processed by our office, unless assistance is requested from Wilmington or Newark.

6. When a 911 call is received by our office for police, fire, or other emergency, the call is logged into the computer system by a call operator. The call operator determines whether the call is for police, fire, or rescue. If it is a fire or rescue call, it is transferred into the fire communications section. If it is a police related incident, the call operator processes the entire complaint. If the call is received from a land-based telephone line, the location of the incident is automatically loaded into the computer system. If the call is received from a cell phone, the dispatcher logs the location of the incident. Once the location of the incident is logged, the 911 computer system automatically determines the appropriate jurisdictional responder for the incident and the appropriate police agency or fire company is dispatched to respond to the call. The location of the call and the dispatch information is recorded by our computer system.

7. All of New Castle County is divided into fire districts. Most fire and emergency responses in New Castle County are handled by local volunteer fire companies, which have some paid personnel. The City of Wilmington fire company is fully staffed by paid personnel.

8. There are nine New Castle County fire companies that border the Delaware River. Those fire companies are the Claymont Fire Company (Station 13), the Brandywine Hundred Fire Company (Station 11), the Wilmington Fire Department, the Holloway Terrace Fire Company (Station 20), the Goodwill Fire Company (Station 18), the Delaware City Fire Company (Station 15), the Port Penn Fire Company (Station 29), the Odessa Fire Company (Station 24), and the Townsend Fire Company (Station 26). Stations 11, 24, and 26 do not have marine units. If a water

response is required in these districts, the fire companies closest to the district with marine units handle the water response.

9. A map showing the fire company districts for districts with River jurisdiction is included in Delaware's appendix. DE App. 3997. A map of the County fire districts is loaded into the 911 computer system maintained by our office, and a printed copy of the fire district map hangs in my office and in the fire communications section. As shown on the fire district maps, the jurisdiction for Delaware fire companies adjoining the Delaware River within the twelve-mile circle extend to the mean low water mark on the easterly half of the River. Throughout my entire career with the New Castle County Emergency Communications Division, Delaware fire companies and police agencies have considered any matter west of the mean low water line in the Delaware River in Delaware's jurisdiction. Delaware police and fire agencies have always been dispatched and responded to police, fire or emergency calls in the Delaware River during my thirty-one years of service with the County.

10. If a call is received by New Castle County's 911 Center for a fire or an emergency response in Delaware River west of the mean low water mark, the appropriate jurisdictional fire company is dispatched to command the response. Most Delaware fire companies that adjoin the River have emergency response boats and have trained personnel to respond to the incident. The Wilmington Fire Company marine unit commands a fire boat that is sent to fight any fires on the River. The Wilmington fire boat is moored at the 7th street marina in Wilmington and has a crew available at all times to respond to fires and emergencies in the Delaware River. If a call is received for an event on the River, our office alerts Wilmington Station 2 and the captain of the fire boat and the Wilmington fire boat responds to emergencies along with volunteer fire company responders.

11. I am only aware of two Salem County municipalities adjoining New Castle County that maintain any emergency response boats – Salem City and Lower Alloway Creek Township. To my knowledge, no other New Jersey municipality that borders the twelve-mile circle maintains any emergency response boat.

12. The protocol for a River response is that there is always a three boat response for any emergency call on the River. Consequently, multiple Delaware fire companies generally respond to emergency response calls for fire and rescue on the River. If Lower Alloway Creek Township or Salem City has a boat

available to assist in the response, those agencies will provide mutual aid as part of the three boat response. However, Delaware's emergency responders command and are in charge of the response for all River calls within the twelve-mile circle because the response is in Delaware's jurisdiction, unless the Coast Guard takes control of the response. Our office notifies the Coast Guard of fire or emergency calls in the River.

13. If a 911 call is made from a cell phone on the Delaware River, the cell phone call is routed to the closest available cell phone tower. Thus, the 911 call may be received by Salem County or the call may be received by New Castle County. If Salem County New Jersey receives a 911 call for an emergency response on the Delaware River, Salem County 911 transfers the call to New Castle County's fire communications section. Salem County transfers the call for a River response to New Castle County's fire communications section because, for any incident occurring west of the mean low water line in the River, the event occurs in Delaware's police, fire, and emergency response jurisdiction. Included in Delaware's appendix (DE App. 3999-4002) are three emergency response reports whereby Salem County 911 transferred a River emergency response call to New Castle County.

14. If a call is received by New Castle County's 911 center for law enforcement purposes on the easterly half of the Delaware River, our office notifies the Delaware State Police and/or the Delaware Fish and Wildlife officers (commonly called the marine police) of the event. In addition, certain municipalities, such as the Delaware City Police, have police boats. Generally, however, policing activity on the Delaware River falls under the jurisdiction of the State Police or the marine police. Salem County also refers law enforcement 911 calls to the New Castle County because the response is in Delaware's jurisdiction.

15. Included in Delaware's appendix (DE App. 4003-4014) is a summary of all Delaware River emergency response calls received by my office and handled by Delaware volunteer fire companies between July 3, 1994 and September 18, 2006. The first column of the chart describes the incident number. The second column of the report describes the date of the incident. The first two digits of the third column identify the fire company making the response. The second two digits of the third column demonstrate that the call is a River response, as calls coded with a 33 or a 34 are River responses. The last column states a description of the location of the response, as provided to the dispatcher handling the call.

16. While it is difficult to pinpoint where the exact location of the emergency responses on the Delaware River occur because no latitude or longitude lines are kept and no street address can be assigned to River responses, it appears that, based upon the descriptions provided by the dispatchers in DE App. 4003-4014, Delaware emergency responders (excluding calls received and handled by the City of Wilmington) responded to approximately 155 calls on the easterly half of the Delaware River within the twelve-mile circle between July 1994 and September 2006. A description of each call is outlined below.

17. On July 3, 1994, Fire Company No. 15 (Delaware City) responded to an emergency call located on the north end of Pea Patch Island, identified as run number 94018554.

18. On August 14, 1994, Fire Company No. 29 (Port Penn) responded to an emergency call located on the New Jersey side of the jetty, identified as run number 94022797.

19. On August 23, 1994, Fire Company No. 15 (Delaware City) responded to an emergency call located at Pea Patch Island, identified as run number 94023642.

20. On September 18, 1994, Fire Company No. 18 (Goodwill) responded to an emergency call located off Kelly Point, identified as run number 94026042.

21. On September 25, 1994, Fire Company No. 29 (Port Penn) responded to an emergency call located at Hope Creek, identified as run number 94026758.

22. On March 25, 1995, Fire Company No. 18 (Goodwill) responded to an emergency call located off the Pennsville ramp, identified as run number 95008022.

23. On March 28, 1995, Fire Company No. 15 (Delaware City) responded to an emergency call located near Fort Mott, identified as run number 95008339.

24. On May 12, 1995, Fire Company No. 29 (Port Penn) responded to an emergency call located near Elsinboro Point, identified as run number 95012848.

25. On June 23, 1995, an incident was reported in Fire District 24 (Odessa) and Delaware emergency responders responded to the

call located near of Artificial Island, identified as run number 95017137.

26. On July 5, 1995, an incident was reported in Fire District 24 (Odessa) and Delaware emergency responders responded to the call located near of Artificial Island, identified as run number 95018257.

27. On July 13, 1995, Fire Company No. 18 (Goodwill) responded to an emergency call located at buoy 1D-Deepwater Range, identified as run number 95018998.

28. On July 15, 1995, Fire Company No. 15 (Delaware City) responded to an emergency call located at Pea Patch Island, identified as run number 95019336.

29. On August 15, 1995, Fire Company No. 29 (Port Penn) responded to an emergency call located off Oakwood Beach Elsinboro, identified as run number 95022916.

30. On September 23, 1995, Fire Company No. 18 (Goodwill) responded to an emergency call located off Pennsville boat docks, identified as run number 95026845.

31. On September 30, 1995, Fire Company No. 15 (Delaware City) responded to an emergency call located north of Pea Patch Island, identified as run number 95027620.

32. On October 1, 1995, Fire Company No. 15 (Delaware City) responded to an emergency call located one-half mile north of Pea Patch Island, identified as run number 95027684.

33. On October 3, 1995, Fire Company No. 15 (Delaware City) responded to an emergency call located at Pea Patch Island, identified as run number 95027878.

34. On November 23, 1995, Fire Company No. 15 (Delaware City) responded to an emergency call located on the Salem River, identified as run number 95033274.

35. On June 8, 1996, Fire Company No. 15 (Delaware City) responded to an emergency call located off Fort Mott, identified as run number 96016909.

36. On July 5, 1996, Fire Company No. 18 (Goodwill) responded to an emergency call located opposite of Deemers Beach at buoy 4-D, identified as run number 96019707.

37. On August 4, 1996, an incident was reported in Fire District 24 (Odessa) and Delaware emergency responders responded to the call located opposite of the Salem Nuclear Power Plant, identified as run number 96022677.

38. On August 11, 1996, Fire Company No. 15 (Delaware City) responded to an emergency call located between power lines and Fort Mott, identified as run number 96023483.

39. On August 18, 1996, Fire Company No. 15 (Delaware City) responded to an emergency call located between Salem Cove and Pea Patch Island, identified as run number 96024209.

40. On August 18, 1996, Fire Company No. 15 (Delaware City) responded to an emergency call located south of Pea Patch Island, identified as run number 96024216.

41. On September 28, 1996, Fire Company No. 15 (Delaware City) responded to an emergency call located at Fort Delaware on the easterly half of the Delaware River, identified as run number 96028350.

42. On October 18, 1996, Fire Company No. 18 (Goodwill) responded to an emergency call located off Pennsville, identified as run number 96030618.

43. On October 27, 1996, an incident was reported in Fire District 24 (Odessa) and Delaware emergency responders responded to the call located off Salem Nuclear Power Plant, identified as run number 96031596.

44. On October 29, 1996, Fire Company No. 29 (Port Penn) responded to an emergency call located off Artificial Island, identified as run number 96031856.

45. On February 12, 1997, Fire Company No. 15 (Delaware City) responded to an emergency call located in the area of Pea Patch Island, identified as run number 97004390.

46. On June 21, 1997, Fire Company No. 15 (Delaware City) responded to an emergency call located one-quarter mile north of Pea Patch Island, identified as run number 97018783.

47. On June 23, 1997, Fire Company No. 18 (Goodwill) responded to an emergency call located off Pennsville, identified as run number 97019097.

48. On July 5, 1997, Fire Company No. 29 (Port Penn) responded to an emergency call located at Artificial Island, identified as run number 97020413.

49. On July 26, 1997, Fire Company No. 15 (Delaware City) responded to an emergency call located at Pea Patch Island, identified as run number 97022880.

50. On August 17, 1997, Fire Company No. 15 (Delaware City) responded to an emergency call located near the Salem River, identified as run number 97025305.

51. On August 19, 1997, Fire Company No. 18 (Goodwill) responded to an emergency call located off of Pennsville, identified as run number 97025453.

52. On September 2, 1997, Fire Company No. 15 (Delaware City) responded to an emergency call located north of Pea Patch Island, identified as run number 97027043.

53. On September 14, 1997, Fire Company No. 15 (Delaware City) responded to an emergency call located opposite of the Salem River, identified as run number 97028259.

54. On September 16, 1997, Fire Company No. 15 (Delaware City) responded to an emergency call located north of Pea Patch Island, identified as run number 97028444.

55. On October 6, 1997, Fire Company No. 18 (Goodwill) responded to an emergency call located at the Pennsville boat ramp, identified as run number 97030859.

56. On October 6, 1997, Fire Company No. 29 (Port Penn) responded to an emergency call located off Artificial Island, identified as run number 97030914.

57. On November 17, 1997, Fire Company No. 13 (Claymont) responded to an emergency call located opposite to Captain's Deck, identified as run number 97035828.

58. On December 3, 1997, Fire Company No. 20 (Holloway Terrace) responded to an emergency call located at Pennsgrove, identified as run number 97037526.

59. On March 3, 1998, Fire Company No. 15 (Delaware City) responded to an emergency call located near Pea Patch Island, identified as run number 98007025.

60. On March 14, 1998, an incident was reported Fire District No. 11 (Brandywine Hundred) and Delaware emergency responders responded to the call located at Oldmans Township, identified as run number 98008191.

61. On June 3, 1998, Fire Company No. 18 (Goodwill) responded to an emergency call located north of the jetty, Opposite Riverview Beach, identified as run number 98017545.

62. On July 6, 1998, Fire Company No. 18 (Goodwill) responded to an emergency call located off Pennsville, identified as run number 98021387.

63. On July 26, 1998, Fire Company No. 15 (Delaware City) responded to an emergency call located near Pea Patch Island, identified as run number 98023599.

64. On July 26, 1998, Fire Company No. 15 (Delaware City) responded to an emergency call located near Pea Patch Island, identified as run number 98023685.

65. On August 1, 1998, Fire Company No. 15 (Delaware City) responded to an emergency call located near the northern tip of Pea Patch Island, identified as run number 98024365.

66. On August 9, 1998, Fire Company No. 15 (Delaware City) responded to an emergency call located on Pea Patch Island, identified as run number 98025332.

67. On August 20, 1998, Fire Company No. 20 (Holloway Terrace) responded to an emergency call located on the Delaware River opposite Pennsville, identified as run number 98026641.

68. On September 6, 1998, Fire Company No. 18 (Goodwill) responded to an emergency call located on the easterly half of the Delaware River at the jetty north power line, identified as run number 98028501.

69. On October 12, 1998, Fire Company No. 29 (Port Penn) responded to an emergency call located at the Salem Nuclear Power Plant, identified as run number 98032933.

70. On November 2, 1998, Fire Company No. 20 (Holloway terrace) responded to an emergency call located at the Delaware River opposite DuPont Chambers Works, identified as run number 98035470.

71. On May 14, 1999, Fire Company No. 29 (Port Penn) responded to an emergency call located off Artificial Island, identified as run number 99016693.

72. On June 12, 1999, Fire Company No. 29 (Port Penn) responded to an emergency call located off Artificial Island, identified as run number 99020322.

73. On July 2, 1999, Fire Company No. 29 (Port Penn) responded to an emergency call located on at Oakwood Beach, identified as run number 99022681.

74. On August 21, 1999, Fire Company No. 15 (Delaware City) responded to an emergency call located at Pea Patch Island, identified as run number 99029179.

75. On September 6, 1999, Fire Company No. 18 (Goodwill) responded to an emergency call located at Riverview Beach, identified as run number 99031191.

76. On September 11, 1999, Fire Company No. 18 (Goodwill) responded to an emergency call located at Pennsville Beach, identified as run number 99031790.

77. On September 17, 1999, Fire Company No. 18 (Goodwill) responded to an emergency call located off Penns Beach, identified as run number 99032883.

78. On October 11, 1999, Fire Company No. 18 (Goodwill) responded to an emergency call located opposite Pennsville, identified as run number 99036030.

79. On October 12, 1999, Fire Company No. 15 (Delaware City) responded to an emergency call located at Pea Patch Island, identified as run number 99036209.

80. On March 7, 2000, Fire Company No. 29 (Port Penn) responded to an emergency call located on Artificial Island, identified as run number 8659.

81. On June 4, 2000, Fire Company No. 29 (Port Penn) responded to an emergency call located on Artificial Island, identified as run number 20549.

82. On June 15, 2000, Fire Company No. 15 (Delaware City) responded to an emergency call located at the mouth of the Salem River, identified as run number 22037.

83. On June 20, 2000, Fire Company No. 18 (Goodwill) responded to an emergency call located at Penns Beach, identified as run number 23030.

84. On June 23, 2000, Fire Company No. 15 (Delaware City) responded to an emergency call located at the Salem River, identified as run number 23411.

85. On June 24, 2000, Fire Company No. 15 (Delaware City) responded to an emergency call located at Pea Patch Island, identified as run number 23563.

86. On July 1, 2000, Fire Company No. 15 (Delaware City) responded to an emergency call located north of Pea Patch Island, identified as run number 24499.

87. On July 8, 2000, Fire Company No. 18 (Goodwill) responded to an emergency call located at Riverview Beach, identified as run number 25420.

88. On September 4, 2000, Fire Company No. 29 (Port Penn) responded to an emergency call located at Artificial Island, identified as run number 33110.

89. On September 17, 2000, Fire Company No. 29 (Port Penn) responded to an emergency call located at Artificial Island, identified as run number 34838.

90. On September 19, 2000, Fire Company No. 29 (Port Penn) responded to an emergency call located at Artificial Island, identified as run number 35118.

91. On October 20, 2000, Fire Company No. 15 (Delaware City) responded to an emergency call located at Pea Patch Island, identified as run number 39288.

92. On January 3, 2001, Fire Company No. 29 (Port Penn) responded to an emergency call located at Artificial Island, identified as run number 1000413.

93. On April 30, 2001, Fire Company No. 29 (Port Penn) responded to an emergency call located at Pea Patch Island, identified as run number 1015777.

94. On June 23, 2001, Fire Company No 29 (Port Penn) responded to an emergency call located at Artificial Island, identified as run number 1023595.

95. On July 1, 2001, Fire Company No. 13 (Claymont) responded to an emergency call located at Oldmans Creek, identified as run number 1024728.

96. On July 10, 2001, Fire Company No. 29 (Port Penn) responded to an emergency call located at Artificial Island, identified as run number 1025971.

97. On July 11, 2001, Fire Company No. 15 (Delaware City) responded to an emergency call located at Pea Patch Island, identified as run number 1026142.

98. On July 14, 2001, an incident was reported in Fire District 11 (Brandywine Hundred) and Delaware emergency responders responded to the call located at Oldmans Point, identified as run number 1026516.

99. On August 31, 2001, Fire Company No. 18 (Goodwill) responded to an emergency call located at Riverview Beach, identified as run number 1033302.

100. On September 7, 2001, Fire Company No. 29 (Port Penn) responded to an emergency call located at Artificial Island, identified as run number 1034362.

101. On September 8, 2001, Fire Company No. 29 (Port Penn) responded to an emergency call located at Artificial Island, identified as run number 1034410.

102. On October 4, 2001, Fire Company No. 18 (Goodwill) responded to an emergency call located at Penns Beach, identified as run number 1038160.

103. On October 10, 2001, Fire Company No. 29 (Port Penn) responded to an emergency call located at Artificial Island, identified as run number 1039053.

104. On October 11, 2001, Fire Company No. 29 (Port Penn) responded to an emergency call located at Artificial Island, identified as run number 1039145.

105. On November 3, 2001, Fire Company No. 15 (Delaware City) responded to an emergency call located at Pea Patch Island, identified as run number 1042571.

106. On June 2, 2002, an incident was reported in Fire District 11 (Brandywine Hundred) and Delaware emergency responders responded to the call located at Oldmans Point, identified as run number 2021680.

107. On June 5, 2002, Fire Company No. 15 (Delaware City) responded to an emergency call located at Pea Patch Island, identified as run number 2022217.

108. On June 5, 2002, Fire Company No. 13 (Claymont) responded to an emergency call located at Oldmans Creek, identified as run number 2022739.

109. On June 25, 2002, Fire Company No. 15 (Delaware City) responded to an emergency call located at Pea Patch Island, identified as run number 2025017.

110. On June 26, 2002, Fire Company No. 15 (Delaware City) responded to an emergency call located at Pea Patch Island, identified as run number 2025058.

111. On July 5, 2002, Fire Company No. 18 (Goodwill) responded to an emergency call located at Riverview Beach, identified as run number 2026558.

112. On July 9, 2002, Fire Company No. 15 (Delaware City) responded to an emergency call located within the Salem River, identified as run number 2027004.

113. On July 14, 2002, Fire Company No. 18 (Goodwill) responded to an emergency call located at Riverview Beach, identified as run number 2027875.

114. On July 15, 2002, Fire Company No. 15 (Delaware City) responded to an emergency call located at Salem Cove, identified as run number 2027961.

115. On July 22, 2002, Fire Company No. 15 (Delaware City) responded to an emergency call located at Pea Patch Island, identified as run number 2029008.

116. On August 8, 2002, Fire Company No. 15 (Delaware City) responded to an emergency call located at Salem Cove, identified as run number 2031643.

117. On August 10, 2002, Fire Company No. 18 (Goodwill) responded to an emergency call located at Riverview Beach, identified as run number2031979.

118. On September 28, 2002, Fire Company No. 15 (Delaware City) responded to an emergency call located at Pea Patch Island, identified as run number 2039157.

119. On November 9, 2002, Fire Company No. 15 (Delaware City) responded to an emergency call located at Salem Cove, identified as run number 2045255.

120. On December 18, 2002, Fire Company No. 29 (Port Penn) responded to an emergency call located at Artificial Island, identified as run number 2050759.

121. On June 2, 2003 Fire Company No. 29 (Port Penn) responded to an emergency call located at Elsinboro Point, identified as run number 3021525.

122. On June 7, 2003, Fire Company No. 15 (Delaware City) responded to an emergency call located at Branch Channel, identified as run number 3022105.

123. On June 8, 2003, Fire Company No. 29 (Port Penn) responded to an emergency call located at Riverview Beach, identified as run number 3022254.

124. On June 15, 2003, Fire Company No. 15 (Delaware City) responded to an emergency call located at Pea Patch Island, identified as run number 3023455.

125. On July 4, 2003, Fire Company No. 15 (Delaware City) responded to an emergency call located at Pea Patch Island, identified as run number 3026415.

126. On July 6, 2003, Fire Company No. 15 (Delaware City) responded to an emergency call located at Cedar Point, identified as run number 3026723.

127. On July 29, 2003, Fire Company No. 15 (Delaware City) responded to an emergency call located at Pea Patch Island, identified as run number 3029974.

128. On August 14, 2003, Fire Company No. 15 (Delaware City) responded to an emergency call located at Pea Patch Island, identified as run number 3032328.

129. On August 18, 2003, Fire Company No. 15 (Delaware City) responded to an emergency call located at Pea Patch Island, identified as run number 3032834.

130. On August 21, 2003, Fire Company No. 29 (Port Penn) responded to an emergency call located at Oakwood Beach, identified as run number 3033383.

131. On August 24, 2003, Fire Company No. 29 (Port Penn) responded to an emergency call located at Artificial Island, identified as run number 3033902.

132. On May 23, 2004, Fire Company No. 29 (Port Penn) responded to an emergency call located at Artificial Island, identified as run number 4020506.

133. On May 23, 2004, Fire Company No. 15 (Delaware City) responded to an emergency call located at Pea Patch Island, identified as run number 4020528.

134. On May 29, 2004, Fire Company No. 29 (Port Penn) responded to an emergency call located at Artificial Island, identified as run number 4021364.

135. On June 19, 2004, Fire Company No. 20 (Holloway Terrace) responded to an emergency call located at DuPont Chambers Works, identified as run number 4024615.

136. On July 3, 2004, Fire Company No. 29 (Port Penn) responded to an emergency call located at Artificial Island, identified as run number 4026648.

137. On July 24, 2004, Fire Company No. 18 (Goodwill) responded to an emergency call located off Penns Beach, identified as run number 4029787.

138. On July 31, 2004, Fire Company No. 29 (Port Penn) responded to an emergency call located at Artificial Island, identified as run number 4030793.

139. On August 6, 2004, Fire Company No. 15 (Delaware City) responded to an emergency call located at Pea Patch Island, identified as run number 4031587.

140. On August 22, 2004, Fire Company No. 15 (Delaware City) responded to an emergency call located within the Salem River, identified as run number 4033851.

141. On August 28 2004, Fire Company No. 15 (Delaware City) responded to an emergency call located within the Salem River, identified as run number 4034666.

142. On August 28 2004, Fire Company No. 29 (Port Penn) responded to an emergency call located at Oakwood Beach, identified as run number 4034685.

143. On August 29, 2004, Fire Company No. 29 (Port Penn) responded to an emergency call located at Artificial Island, identified as run number 4034771.

144. On September 10, 2004, Fire Company No. 29 (Port Penn) responded to an emergency call located at Artificial Island, identified as run number 4036548.

145. On December 1, 2004, Fire Company No. 20 (Holloway Terrace) responded to an emergency call located opposite Pennsville, identified as run number 4048585.

146. On December 11, 2004, Fire Company No. 18 (Goodwill) responded to an emergency call located at Penns Beach, identified as run number 4050030.

147. On December 27, 2004, Fire Company No. 15 (Delaware City) responded to an emergency call located at Pea Patch Island, identified as run number 4052213.

148. On December 28, 2004, Fire Company No. 29 (Port Penn) responded to an emergency call located at Mill Creek Cove, identified as run number 4052449.

149. On April 17, 2005, Fire Company No. 29 (Port Penn) responded to an emergency call located at Oakwood Beach, identified as run number 5018098.

150. On May 5, 2005, Fire Company No. 29 (Port Penn) responded to an emergency call located at Artificial Island, identified as run number 5020902.

151. On May 8, 2005, Fire Company No. 15 (Delaware City) responded to an emergency call located at Salem Cove, identified as run number 5021605.

152. On May 13, 2005, Fire Company No. 15 (Delaware City) responded to an emergency call located at Pea Patch Island, identified as run number 5022457.

153. On June 4, 2005, Fire Company No. 15 (Delaware City) responded to an emergency call located at Pea Patch Island, identified as run number 5026221.

154. On June 25, 2005, Fire Company No. 15 (Delaware City) responded to an emergency call located at Pea Patch Island, identified as run number 5029712.

155. On June 30, 2005, Fire Company No. 15 (Delaware City) responded to an emergency call located within the Salem River, identified as run number 5030596.

156. On July 31, 2005, Fire Company No. 29 (Port Penn) responded to an emergency call located across from Artificial Island, identified as run number 5035825.

157. On August 28, 2005, Fire Company No. 18 (Goodwill) responded to an emergency call located at Penns Beach, identified as run number 5040573.

158. On August 29, 2005, Fire Company No. 15 (Delaware City) responded to an emergency call located within the Salem River, identified as run number 5040639.

159. On September 9, 2005, Fire Company No. 15 (Delaware City) responded to an emergency call located at Pea Patch Island, identified as run number 5042588.

160. On September 23, 2005, an incident was reported in Fire District 11 (Brandywine Hundred) and Delaware emergency responders responded to the call located at Oldmans Point, identified as run number 5045097.

161. On September 25, 2005, Fire Company No. 29 (Port Penn) responded to an emergency call located at Artificial Island, identified as run number 5045448.

162. On October 1, 2005, Fire Company No. 15 (Delaware City) responded to an emergency call located at Pea Patch Island, identified as run number 5046481.

163. On October 24, 2005, Fire Company No. 29 (Port Penn) responded to an emergency call located at Artificial Island, identified as run number 5050206.

164. On April 11, 2006, Fire Company No. 29 (Port Penn) responded to an emergency call located at Artificial Island, identified as run number 6017099.

165. On June 13, 2006, Fire Company No. 29 (Port Penn) responded to an emergency call located at Artificial Island, identified as run number 6028513.

166. On July 9, 2006, Fire Company No. 18 (Goodwill) responded to an emergency call located at Riverview Beach, identified as run number 6033353.

167. On July 18, 2006, Fire Company No. 18 (Goodwill) responded to an emergency call located at Penns Beach, identified as run number 6034983.

168. On July 25, 2006, Fire Company No. 29 (Port Penn) responded to an emergency call located at Mill Creek Cove, identified as run number 6036258.

169. On September 18, 2006, Fire Company No. 29 (Port Penn) responded to an emergency call located at Oakwood Beach, identified as run number 6045912.

William F. Streets

Subscribed and Sworn To
Before Me This 19 Day
of December, 2006

Notary Public
Of The State Of Delaware